

MINUTES OF THE METRO COUNCIL MEETING

Thursday, May 22, 2003
Metro Council Chamber

Councilors Present: David Bragdon (Council President), Susan McLain, Brian Newman, Carl Hosticka, Rod Monroe, Rex Burkholder

Councilors Absent: Rod Park

Council President Bragdon convened the Regular Council Meeting at 2:01 p.m.

1. INTRODUCTIONS

There were none.

2. CITIZEN COMMUNICATIONS

There were none.

3. CONSENT AGENDA

3.1 Consideration of minutes of the May 15, 2003 Regular Council Meetings.

Motion:

Councilor Hosticka moved to adopt the meeting minutes of the May 15, 2003, Regular Metro Council meeting.

Vote:

Councilors Hosticka, Burkholder, McLain, Monroe, Newman and Council President Bragdon voted in support of the motion. The vote was 6 aye, the motion passed.
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4. ORDINANCES - FIRST READING

4.1 **Ordinance No. 03-1008**, For the Purpose of Amending the Metro Code Title X, Metro Regional Parks and Greenspaces, to Increase Park Fees.

Council President Bragdon assigned Ordinance No. 03-1008 to Council.

4.2 **Ordinance No. 03-1009**, Amending the FY 2002-03 Budget and Appropriations Schedule to move \$300,000 from General Fund Contingency to Special Appropriations; and Declaring an Emergency.

Council President Bragdon assigned Ordinance No. 03-1009 to Council.

5. RESOLUTIONS

5.1 **Resolution No. 03-3330**, For the Purpose of Revising the Hearings Officer's Proposed Final Order and Authorizing the Chief Operating Officer to issue a final order imposing civil penalty against Pride Recycling Company for violation of Metro Franchise No. F-002-98.

Council President Bragdon explained the rules of the proceeding (a copy of which is found in the meeting record).

Robert Harris, Hearings Officer, explained the process. He gave an overview of his process. The findings of fact were set forth of pages 2 through 6. He concluded that there was a violation as alleged. The penalty was reasonable. Therefore, he recommends the order be upheld.

Lee Kell, Attorney for Pride Disposal, said they had submitted to the Council written exceptions. He spoke to the primary issues, the extent of the penalty.

Paul Garrahan, Assistant Attorney, urged Council to revise the order. He said they didn't oppose the Hearings Officer's penalty recommendation. He provided background to the matter and detailed the specifics of the violation. He then spoke to Pride's exceptions to the proposed order. He explained why these exceptions were not valid. He asserted that the \$20,000 penalty was appropriate and explained why. The penalty must be sufficient to serve as an appropriate punishment. He urged that the Council adopt the Chief Operating Officer's final order.

Councilor Newman asked about the language in the Code as to what constituted a violation. Mr. Garrahan reviewed the language.

Mr. Harris responded to the exceptions. What constitutes a violation was an important issue. It was important to have some definiteness and explained why. As to Pride's specific exceptions, Mr. Garrahan covered what he would have said as well.

Mike Leichner, President, provided his comments about the issue.

Councilor McLain asked for clarification on Council action. Marv Fjordbeck, Senior Assistant Attorney, explained what the Council must consider today. Councilor McLain asked for clarification on the issue of separate violations. Mr. Harris gave an example of a per day violation for the purposes of this issue. Councilor McLain followed up with what Mr. Garrahan had said about separate violation. Her understanding was that we had the discretion to look at each violation and take into consideration exceptions that made this unique from the Willamette Resource Industry issue. Was he standing on the belief that we were on credible ground? Mr. Garrahan said there were two parts to this, what constitutes a separate violation and once decided you can determine how many violations there were, and then, second, once you know the penalty you can impose, what you consider the penalty would be. He submitted, based on the facts of any given case, you have the flexibility to use any rational interpretation of what "each violation" would be. There may be some need to a review this in the future. Mr. Kell commented that one of the problems with this issue was that Metro held that WRI's fine was \$500.00 per day. He said they had to make a decision as to whether to lay off employees and cease recycling.

Councilor Monroe asked Mr. Fjordbeck if he believed there was sufficient inconsistency. Mr. Fjordbeck said he did not. He gave his recommendation and reviewed what the Code said. The question of what constitutes a violation could be considered in several ways and explained his approach. The language was designed to give Council the greatest flexibility. Councilor Monroe said in this instance each truckload was considered a separate violation? Mr. Fjordbeck said that was correct. He referred to the citation.

Councilor Newman said he was in support of the Chief Operating Officer's final order and explained why.

Motion:	Councilor Newman moved to adopt Resolution No. 03-3330.
Seconded:	Councilor Monroe seconded the motion

Councilor Hosticka asked about wet waste and the statement about not knowing what was wet waste. Mr. Harris said Pride had raised this issue in the submittals. It may have been raised by Metro earlier but was not included in the evidence. He did not consider that issue in the facts of finding because it appeared to be an unresolved dispute. He decided not to include it as a mitigating factor. Councilor Hosticka asked how we knew it was wet or dry waste. Mr. Garrahan said the loads in question were from multifamily complex. He explained their interpretation of what constitutes a wet or dry load. Councilor Hosticka asked if we do an independent appraisal of each load. Mr. Garrahan said no and explained how they interpret classifications. Councilor Burkholder said he would be voting in favor of this order. We were following all of the rules. The question was, were our fines appropriate? He spoke to Pride’s interpretation of what constitutes recycling. He felt it had raised questions. He didn’t think those issue had to do with what they must consider today but felt staff should look at these issues in the future. Councilor McLain agreed with Councilor Burkholder’s comments and felt we could do a better job of defining fines. She spoke to why she would be supporting the final order as revised. She suggested talking more about the multifamily issue.

Vote:

Councilors Hosticka, Burkholder, McLain, Monroe, Newman and Council President Bragdon voted in support of the motion. The vote was 6 aye, the motion passed.
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5.2 **Resolution No. 03-3324**, For the Purpose of Authoring the Chief Operating Officer to purchase the Hewitt property in the Clear Creek Canyon Target Area.

Moved to later in the agenda.

5.3 **Resolution No. 03-3327**, For the Purpose of Confirming the Appointments of Anita Largent, Pamela Pavidonis, Wade Lange, Thomas Badrick, Eileen Newman, and Mike Huycke to the Metro Solid Waste Advisory Committee (SWAC).

Motion:	Councilor McLain moved to adopt Resolution No. 03-3327.
Seconded:	Councilor Monroe seconded the motion

Councilor McLain spoke to the committee composition. It was important to include people who were not in the industry or on the fringe of industry. She applauded the credentials of those appointments.

Vote:

Councilors Hosticka, Burkholder, McLain, Monroe, Newman and Council President Bragdon voted in support of the motion. The vote was 6 aye, the motion passed.
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5.4 **Resolution No. 03-3334**, For the Purpose of Authorizing the Release of Request for Proposal 03-1072-OMA For Selection of Hearings Officers for Contested Case Hearings Pursuant to Metro Code Chapter 2.05 for the Period Commencing July 2003.

Motion:	Councilor McLain moved to adopt Resolution No. 03-3334.
Seconded:	Councilor Newman seconded the motion

Councilor McLain explained the Request For Proposals. She urged support. Councilor McLain noted that the staff report covered the financial issues.

Vote:

Councilors Hosticka, Burkholder, McLain, Monroe, Newman and Council President Bragdon voted in support of the motion. The vote was 6 aye, the motion passed.

5.5 **Resolution No. 03-3338**, For the Purpose of Directing the Metro Chief Operating Officer to Establish a Sustainable Business Model for Metro Departments and Facilities and to undertake Related Duties.

Motion:	Councilor McLain moved to adopt Resolution No. 03-3338.
Seconded:	Councilor Burkholder seconded the motion

Councilor McLain spoke to the Informal where they had talked about the sustainability agenda, Metro’s internal businesses and whom we relate to should be a sustainable effort. This program was set up to bring about a business model to deal with sustainability. It was also included in the budget. Councilor Burkholder said he felt this was a wonderful idea. He applauded Councilor McLain bringing this forward. He suggested that we may need some outside assistance on this effort. Councilor Newman was also in support of this resolution.

Council President Bragdon opened a public hearing.

Jeannie Roy, Oregon Natural Step Network, 2420 SW Boundary St. Portland, OR 97239 commended Councilor McLain and all who had worked on this resolution. She felt Council was doing it in the right way. She spoke to companies who were successful integrated sustainability into their business plan. She gave additional suggestions on how Metro might systematically integrate sustainability into the system. She thought that Metro had the opportunity to be a successful model and a leader in the sustainability effort.

Regina Houser, Oregon Natural Step Network, 700 SW Washington, Portland, OR, reiterated Ms. Roy’s comments. She applauded all who had been a part of this effort.

Council President Bragdon closed the public hearing.

Councilor McLain acknowledge Steve Apotheker, Solid Waste and Recycling Department, and his efforts. She urged support of the resolution.

Vote:

Councilors Hosticka, Burkholder, McLain, Monroe, Newman and Council President Bragdon voted in support of the motion. The vote was 6 aye, the motion passed.

**EXECUTIVE SESSION HELD PURSUANT TO ORS 192.660(1)(e).
DELIBERATIONS WITH PERSONS DESIGNATED TO NEGOTIATE
REAL PROPERTY TRANSACTIONS.**

5.2 **Resolution No. 03-3324**, For the Purpose of Authoring the Chief Operating Officer to purchase the Hewitt property in the Clear Creek Canyon Target Area.

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Session Began 3:30 p.m.

Members Present: William Eadie, Jim Desmond, Joel Morton, Marv Fjordbeck, Michael Jordan,
member of the Council, Council Clerk

Session Ended: 3:36 p.m.

Motion:	Councilor Newman moved to adopt Resolution No. 03-3324.
Seconded:	Councilor Hosticka seconded the motion

Councilor Newman spoke to the resolution. He detailed the property and urged support.

Vote:

Councilors Hosticka, Burkholder, McLain, Monroe, Newman and Council President Bragdon voted in support of the motion. The vote was 6 aye, the motion passed.
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6. COUNCILOR COMMUNICATION

Councilor Newman talked about a draft for a Centers Plan. He asked Council to provide comments to the factors.

7. ADJOURN

There being no further business to come before the Metro Council, Council President Bragdon adjourned the meeting at 3:38 p.m.

Prepared by

Chris Billington
Clerk of the Council

ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF MAY 22, 2003

Item	Topic	Doc Date	Document Description	Doc. Number
3.1	Minutes	5/15/03	Metro Council Minutes of May 15, 2003 Submitted for Approval	052203c-01
5.2	Staff report	5/1/03	To: Metro Council From: Jim Desmond and Nancy Chase, Parks and Greenspaces Dept. Re: Revised staff report for Resolution No. 03-3324	052203c-02
4.1	Ordinance	5/22/03	To: Metro Council From: Dan Kromer Re: Ordinance No. 03-1008, For the purpose of Amending Metro Code Title X, Metro Regional Parks and Greenspaces, to Increase Park Fees	052203c-03