

MINUTES OF THE METRO COUNCIL WORK SESSION MEETING

Tuesday, December 2, 2003
Metro Council Chamber

Councilors Present: Rod Park (Deputy Council President), Susan McLain, Carl Hosticka, Rod Monroe, Rex Burkholder

Councilors Absent: David Bragdon (excused), Brian Newman (excused)

Deputy Council President Park convened the Metro Council Work Session Meeting at 1:10 p.m.

1. DISCUSSION OF AGENDA FOR COUNCIL REGULAR MEETING, DECEMBER 4, 2003.

Deputy Council President Park reviewed the upcoming agenda. He talked about three possible amendments. Councilor Monroe talked about supporting the amendment to extend the contract from 4 to 5 years and limiting the waste to the region. Andy Cotugno, Planning Director, talked about possible amendments to the Title 4. He reviewed the Regional Transportation Plan update. He then reviewed the three resolutions concerning transportation.

2. REVENUE SHARING

Reed Wagner, Metro Intern, presented a power point on Regional Revenue Sharing (a copy of which is included in the meeting record). Councilor Hosticka introduced the subject. Mr. Wagner said he was a graduate student at the University of Oregon focusing primarily public finance. He had reviewed reports on regional plans, interviewed some local jurisdictions as well as Councilors. He focused on the Minnesota model. He spoke to fiscal zoning to achieve fiscal stability rather than land use. He talked about the costs of services. He defined revenue sharing. He talked about several models of regional revenue sharing. He then talked about the application to Metro both positive and negative. He noted interviews both inside and outside of Metro. The results of the interviews indicated varying ideas about revenue sharing, some were supportive others were not. He reviewed possible options in the short and long term. Councilor Hosticka asked about the alternatives. Mr. Wagner suggested that a lot of the ideas were just preliminary and needed further study.

Councilors discussed the issue of revenue sharing. Councilor Burkholder talked about value capture idea and how useful this revenue would be for the region. This would bring new revenue and new resources to bear. Councilor Monroe said one problem that could be addressed had to do with the unincorporated areas. Clackamas and Washington County had the most unincorporated areas. Councilor Hosticka said Multnomah was successful because they had done a detailed study. Councilor McLain said when you were changing something individuals needed to know what the costs and benefits would be. Deputy Council President Park asked about System Development Charges. Michael Jordan, Chief Operating Officer, talked about Clackamas County and system development charges. Councilor Hosticka talked about system development charges and not being able to collect enough revenue to build the projects. Councilors talked about development in the Damascus area. Mr. Jordan asked Council how they would like to move forward. Deputy Council President Park asked about where the private sector was on this issue. Mr. Jordan said there were many who cared about the issue. Councilor McLain said she thought that Mr. Jordan should look at what we wanted the task force to do, what was the vision and how did it relate to subregional. Mr. Jordan talked about the system being broken. Councilor Hosticka

suggested a task force that would address the issue. Councilor McLain suggested inventorying the service across the region.

3. FRANCHISE AND NON-SYSTEM LICENSES DISCUSSION

Roy Brower, Solid Waste and Recycling Department, noted two documents, one was a staff response to comments. He noted a one-page summary of all of the comments (both are included in the meeting record). He noted a non-system license resolution, which needed to be amended. Mr. Brower addressed the ordinances and the proposed amendments. First, franchise term, staff believed that a four-year term was appropriate so that all of the franchises were on the same timeline. They suggested, based on the planning process, that the four-year franchise term made sense. Deputy Council President Park asked about financial burden and which would have greater impact on the system. Councilor McLain said they asked staff to provide opportunity to look at the system as a whole. Councilor Monroe said having everything lined up made sense. Deputy Council President Park asked about the financial hardship for the franchises if they went to four years. Councilor Monroe said they had heard that the minimum of five years was important. Councilor McLain said there were two goals, to be fair and equitable to business partners and also to keep our system whole. She talked about lining up the system. Mr. Brower said the non-system licenses would have a lot less capital costs. He then addressed tonnage cap, in district versus in and out of district waste. Councilor Monroe expressed concern about enforcement. Could they tell where the waste comes from? Mr. Brower said they would need to have more detailed reporting.

Councilor Burkholder asked about the service area report and what it would tell the Council. Mr. Brower responded to his question. Councilor Burkholder said he felt the burden of proof should be on the franchisee. Deputy Council President Park said if they allowed the tonnage cap, there should be a clause. Councilor McLain said they were supposed to be providing a system for our area. Our responsibilities were to take care of our needs without hampering business. Mr. Brower addressed the Oregon Department of Transportation (ODOT) inspections. He suggested pulling this out of the franchise and letting the process track outside of the franchises. It would get to the issue of consistency. ODOT had asked that Metro make this change to the franchise. He then addressed the issue of inspections and audits. They suggested that Council not require the one-hour notice. Mr. Brower addressed the issue of definitions. He felt the burden should be shifted to the franchises. Councilor Burkholder talked about the comparison in the current Code. Paul Garrahan, Metro Assistant Attorney, said existing franchises don't have provisions to change if the Code was changed after they agreed to the franchise language.

Mr. Brower talked about four technical amendments to improve and clarify the language. He then talked about items that staff generally disagreed with, customer lists, ticket number correspondence, source separated, reporting issues, unusual occurrences, modification termination, incidental recovery, and direct haul.

Mike Dewey, Waste Management, 1245 Commercial St SE, Salem, OR 97302 addressed the decisions to be made in the future and said five years made more sense than four because of business considerations. He acknowledged that there would be an effect on non-system licenses. He said the ODOT inspections in relation to safe truck conditions on roads and highways and overweight restrictions should be monitored correctly. At the same time they had concerns with ODOT people coming into their facilities. They were limited and would vary from site to site. They had utilized spotters and had been moved them from the back to the front. They were concerned that with more people and traffic in the area, there would be more accidents. They thought what Metro ought to do was take a look at Metro's process. There seemed to be some

concern that there was tonnage lost because there was an inspector on the premise. They hadn't seen any data that this was the case but nonetheless there was concern. They were willing to sit down and talk with Metro's staff and ODOT to have further discussion about ODOT inspections.

He spoke to Section 213 of the Metro Code. The change was a significant legal issue. They didn't think that Metro could necessarily do this. They were concerned because it doesn't provide certainty (i.e. capital investments). They had made a capital investment and continue to make capital investments but if Metro demands upon them certain conditions that were going to require additional capital investment, they had not planned on that originally as they signed up for this. They were willing to negotiate on additional terms and conditions. They would hope that they could agree mutually to arrive at a conclusion. Metro did have significant leverage in this area without that language because Metro got to renew the license either every four or five years and Metro didn't necessarily have to renew. On the issue of organics and contaminants, that it was time to have the discussion about what the contaminate level is. He understood staff didn't want to go there, but they now provided source-separated material. They felt 5% was the appropriate amount. If it was above 5% it was not useful for a compost or organic material. With regard to the one-hour notice, they would like to have a manager on staff when there was an inspection. Metro acknowledges that. They thought it was more appropriate than having someone from Metro wait until a manager was on site. The one-hour notice was not to avoid any circumstances that were not correct, it was to try to deal with peoples time in an efficient manner because they require staff to be there. With regard to odor, it is subjective. There had to be an operating plan in existence to make sure there was no detectable odor off premise.

Councilor McLain didn't understand the spot check hour advance notice request. It was supposed to be not a planned inspection but a spot check. She asked for clarification. Dean Kampf, Waste Management, 7227 NE 55th Portland OR 97218 explained the spot check procedures. They did require that a manager had to be on site to go with the inspector. The request was made so that the company could make sure that a manager was on site so that the Metro inspector didn't have to wait. Most inspections were routine. She also asked for clarification on reduction of waste. Why was it any different for them to have to follow federal and state laws than to follow a change in a regional law? Mr. Dewey said their issue was they wanted to mutually come to terms with the direction the company went. They were signing up to a four to five year commitment and they didn't want "the game to change midstream." Mr. Kampf added that the window of opportunity to deal with this issue could be voided. They didn't want to have to use legal action once the franchise was signed.

Councilor Hosticka asked if a franchise was considered a contract under the U.S. Constitution? Mr. Dewey responded by saying their interpretation was that a franchise was a contract. Councilor Hosticka wanted clarification if a franchise could be changed. Dan Cooper, Metro Attorney, responded that franchises had contractual elements to them. They were binding and they were considered contracts under the federal constitution. However, Metro's authority to regulate police power activities was not limited by that contract. It depended upon what they would be changing. Metro's ability to take an action legislatively that might affect the franchisee depended upon why they did it and who else was affected by it was not limited by the constitution. There were limitations in a franchise that prohibited certain changes. Mr. Dewey said, under Oregon law, the franchise was a contract. Mr. Cooper summarized that you can't contract away Council's legislative powers. The franchisee could waive some of their contractual likes to allow Council greater powers than they might have under the federal constitution. He understood that the company didn't want. They were open to working towards mutually agreed upon language. They had very good working relationships and believed they would continue to

do so. Councilor Monroe said he felt this was something that could easily be fixed. He didn't think we were at loggerheads.

Ray Phelps, Willamette Resources Inc. offered an apology regarding customer lists. He was misinformed. He had verified with Metro staff. They have withdrawn their objection to the customer list. He also addressed the duration of franchise. It was far less expensive for them with regard to a non-system license. They had to take the waste somewhere. The franchise was where the financial burdens would be. With regard to the tonnage cap, with respect to enforcement, they had a designated facility agreement with Coffin Butte. They had to keep the record. The burden was on them to tell Metro where the waste came from. Metro was capable of doing that now, they didn't have any problem reproccating that at WRI. With regard to more detail records and partial loads out of region, there was language in the proposed document right now that would require that. They had no difficulty with this. With regard to the Metro waste first policy, they agreed with Metro. They accept the burden that they had to demonstrate that the waste was out of district. With regard to definitions, WRI has the same concerns as Pride. Mr. Phelps expressed their intention to make the system work. He didn't believe any of the companies had ever not made the system work. They wanted to work with Metro to achieve good public policy.

Councilor McLain wanted to clarify that all of the language they could agree to was included in the amendments. Mr. Phelps said yes.

Councilor Park asked about excise tax. Should it be counted inside or outside the total? Mr. Phelps felt it should be counted outside the total but he was not clear in his own mind as to whether or not Metro can accomplish that. If you can't accomplish that he thought Metro should amend the excise tax so they had a different excise levy based on a different kind of activity that may be related to the facility itself. Councilor Park spoke to dealing with regional system fees and applying it to out of district fees. If it was not paid at a Metro facility, where was it paid? Mr. Phelps said he didn't know. Paul Garrahan, Metro Assistant Attorney provided clarification. Regional systems fees only apply to tonnage that originates within the district. The excise tax is applied for the priviledge of use of the facility that we were franchising in addition to our own facilities. The excise tax applies to any tons that come to the facilities but the regional system fees don't apply to waste generated outside the district. Councilor Park said he didn't know what the effect was on outside our district. Mr. Phelps said with regard to supporting a Canby or Woodburn program, their costs were already in their collection fees so that the hauler who makes the collection who would be bringing it to WRI has levied what ever that cost was onto the customer. The haulers always collect the fees. They pay out depending upon what their costs was. If they were coming to WRI, there would be a negotiation. That doesn't minimize the fees that would be paid to those communities that have their programs. The hauler is the one who collects all of that revenue. Councilor Park said he would ask for clarification from staff on this issue. With regard to his comment on excise tax, that was WRI only. He was not sure where the other companies were on this issue.

Vince Gilbert, ECR, said at his facility, since they were within the Metro region, any waste that comes to their facility was Metro waste because it was his believe that once it comes into the Metro region and is deposited on the ground it is Metro's waste. If the facility were to catch on fire or shut down, it would be Metro's problem. His company takes in a great deal of waste from Vancouver, Washington. He also addressed the five-year term, the NSL versus the franchise. The equipment for an NSL should be on the same time period as the franchise. Their door was always open to Metro inspectors. He also addressed the five percent contamination level. Metro staff had established guidelines for his facility. He felt that Metro would have to parallel what the staff had put on them or change his facility to what ever they came up with. They were already

under contamination guidelines. He felt that every other facility should operate with established guidelines. He also addressed odors. He has had a lot of experience dealing with odors. DEQ has standardized language that says an odor event would be five different complaints from five different addresses. Metro should consider this.

Councilor Park said this would be heard this Thursday and then final consideration would be on the following week.

Paul Garrahan asked for other particular amendments that Councilors have. Mike Jordan, Chief Operating Officer, asked for the amendments by noon, December 3rd.

4. 2003 INDUSTRIAL LAND ALTERNATIVE LAND ANALYSIS STUDY

Tim O'Brien, Planning Department, said he would go over the 2003 Industrial Lands Analysis. Councilor Park asked to proceed by exception.

Councilor Burkholder asked how this work related to Task 3 work. Mr. O'Brien explained that the report only addressed thirteen study areas, which Council had adopted. All of the other areas in our alternatives analysis had been studied last time around. For these areas – A through M – the majority of them were in Tier 5 classification, the soils were class one and two. There was some exception land on the edge as well as some lower classed resource land. The study talked about public services, the feasibility of providing water, sewer, storm water as well as transportation services. He also provides the expectant buildable acres that they would get out of these areas. He described areas removed based upon slope, etc. They also completed the ESEE analysis as well as the agriculture compatibility analysis. If the area were urbanized would it be compatible with adjacent agricultural uses. He also discussed additional issues such as soil classification. The report did not address urban form, complete communities or separation of communities. It just addressed the Goal 14 factors.

Generally, the methodology was the same as the 2002 study except for a few modifications based on the fact that we were looking for industrial lands such as 10 percent slope was a good number to use. Also, in the first study, they had a redevelopment factor. But this factor was not part of this study. 6.5 percent of the acreage was built. In the previous study, there was the question about parcels that were partially vacant. In this study, it was still included. He mentioned Area F that had a cluster of high value homes. Staff contacted the service providers directly this time. They also gathered additional information on water rights in this study. This was noted in the report, but it was not used in the agricultural analysis. Councilor Park asked why the right was being used or not being used. Councilor McLain asked how they had developed integrating agricultural impacts in this study. She noted that Jim Johnson was involved from the Department of Agriculture. Some areas in district had higher consequences than others. In the short paper, all four had the same language. It said the area received a high level of impact on agricultural production. Mr. O'Brien stated in the report there was a lot more agricultural consequences based on the methodology that was used in the last two studies. Councilor McLain expressed concern about this report going to MPAC. She felt having the four with the same language was misleading. Mr. O'Brien reminded that this report only addressed the thirteen study areas, not the 2002 study areas. Councilor McLain wondered if anything had changed. This study was an instrument of discussion to demonstrate what part of the alternative analysis said.

Councilor Burkholder had question about Areas E and F. He asked why they were rated difficult to serve? He thought from a regional perspective that that did not matter, at least on the technical analysis level. Mr. O'Brien responded that this was summary. He cited some of the factors used

in the methodology, one of which was ability to serve. Councilor Burkholder said he thought there would be at least one jurisdiction that would be concerned about that factor.

Councilor McLain commented on other studies out there. She wanted to bring out some of the language in these reports. She emphasized that the land had remained the same. She wanted to ask questions on why some of the language regarding these areas had changed. Mr. O'Brien said that he had updated reports to provide her with documentation on how services would be provided in these areas. Mr. O'Brien summarized that this did not constitute a scientific study even though there were some numbers and rankings, there was a lot of subjectivity. It was based upon new information received by jurisdictions. The trend was that the larger areas got a higher score. The overall ranking between a more suitable and most suitable area could be as minimal as one point. An adjusted methodology needed to be developed to further study these areas.

Councilor McLain asked about the irrigated lands. How was Mr. O'Brien working with the individuals who continued to talk about the agricultural impact and continue to imprint that material on the report? Mr. O'Brien said Jim Johnson's report was being finalized. That will be important information that overlays the analysis that has already been done. This was more on the ground information.

Councilor Hosticka stated that he was interested in water information. He spoke to water rights. Actual practice and what is written down can vary. Councilor Park commented on the complexity of water rights such as irrigation issues. Mr. O'Brien talked about what was reported. Councilor McLain spoke to irrigation districts, these were big uses. Councilor Park summarized the water issue and the difficulties. He then summarized what this study did and did not do. Mr. O'Brien noted that public comment would be accepted through Christmas Eve.

5. CITIZEN COMMUNICATION

There were none.

6. CHIEF OPERATING OFFICER COMMUNICATION

There was none.

7. COUNCILOR COMMUNICATION

Council expressed condolences to Councilor McLain. Councilor Burkholder reminded everyone to attend the Metro Employee Holiday Party to hear his band.

There being no further business to come before the Metro Council, Deputy Council President Park 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 DECEMBER 2,
2003

Item	Topic	Doc Date	Document Description	Doc. Number
1	Agenda	12/4/03	Council Agenda For December 4, 2003	120203c-01
2	Memo	12/2/03	To: Metro Council and Michael Jordan, From: Reed Wagner, Council Intern Re: Regional Revenue Sharing	120203c-02
3	Work Session Worksheet	12/2/03	To: Metro Council From: Roy Brower, Solid Waste and Recycling Department Re: Summary of Franchise Renewal Conditions	120203c-03