

MINUTES OF THE METRO COUNCIL MEETING

Thursday, October 28, 2004
Metro Council Chamber

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

Councilors Absent: Rod Park (excused)

Council President Bragdon convened the Regular Council Meeting at 2:02 p.m.

1. INTRODUCTIONS

There were none.

2. CITIZEN COMMUNICATIONS

There were none.

3.1 NORTH PORTLAND ENHANCEMENT FUND 04-05 SLATE OF PROJECTS AND REPORT FROM PAST RECIPIENTS

Councilor Burkholder talked about the North Portland Enhancement Fund current projects.

Alan Holzaphel, North Portland Enhancement Committee member (representing Arbor Lodge neighborhood) provided an overview of the North Portland Enhancement fund. The North Portland program serves the community affected by the now-closed St. Johns landfill. Funds are generated from a 50-cent surcharge collected on each ton of garbage disposed of at the landfill. Interest generated from the \$1.9 million fund supports the grant program. More than \$1.9 million has been awarded to 333 projects since the enhancement program began in 1987.

Senate Bill 662, Metro Code, and the bylaws for the North Portland Enhancement Committee define the criteria for awarding grant funds. Criteria includes:

1. Rehabilitation and enhancement of the area affected by the solid waste facility
2. Improving economic and employment opportunities
3. Upgrading housing stock
4. Improving safety and
5. Benefiting low-income youth and seniors

Seven residents from the target area represent the interests of their respective neighborhoods on the committee, and share the responsibility of awarding grants. Metro Councilor Rex Burkholder serves as the committee chair. Mr. Holzaphel noted the importance of citizen input and participation, in that both provide accurate observations about the needs of community. He emphasized that it should be continued on in this manner, and asked for follow up on organizations to ensure oversight, etc. He commented on the slate of projects selected for the 2004-05 grant cycle. The committee reviewed and ranked (34) applications and interviewed applicants for clarity on proposals before selecting (19) projects to fund. The Metro Council asked the committee for guidance on distributing another \$11,000 to local businesses, residents and schools during the grant cycle.

Mr. Holzaphel stated that additional money was the result of a fine Metro imposed on American Compost and Recycling for accepting a shipment of spoiled lentils for composting at its facility, noting the company's license did not allow it to receive the lentils. He also thanked the Council for the confidence it placed in the committee to not only help define the most adversely affected areas, but also to determine how best to spend the proceeds from the fine. The committee decided to add the money to the grant fund "pot" and disburse it using grant program guidelines. This year's slate of projects reflects the priority placed on responding to the urgent needs of the youngest and oldest members of the community. Priorities include funding food distribution and nutritional education projects, health care clinics and screenings, and before- and after-school supervised care. Mr. Holzaphel noted they committee also earmarked monies to help support two promising start-up programs – a tool-lending library for low- to moderate-income residents and a science research seminar for Roosevelt High School's new POWER Academy. The performing arts got a slice of this year's pie as well with funds for free concerts in Cathedral Park, dance classes for children at the local community center and much more.

Mr. Holzaphel was delighted that two of grant recipients at the meeting today to tell the Council about their funded projects. They represent organizations that have been awarded several grants over the years. They have earned the respect and trust of the committee and admiration in the community for helping to make good things happen in North Portland. Mr. Holzaphel closed by thanking the Council for its support, and introduced the grant recipients, Beth White and Sarah Rosenberg.

Beth White, Neighborhood Project Coordinator for Friends of Trees and (a 2004-05-grant recipient), spoke about their tree planting efforts. She gave several examples of specific projects, and applauded the Council for helping to make these tree-planting projects possible.

Sarah Rosenberg, High School Mentor Program Coordinator for the Girl Scouts/Columbia River Council (and a 2004-05-grant recipient), talked about their grant projects. Ms. Rosenberg runs the high school mentoring project in which high school girls are recruited to mentor younger girls. She told a story about one student, Rose, who became a role model for younger girls through her work at Columbia Park. Ms. Rosenberg noted the benefits and challenges of the program, adding that before the school year began, she had calls from teachers requesting to enroll girls in the program.

Councilor Hosticka asked if these grants were given on a one-time basis. Mr. Holzaphel said they had both one-time and on-going grants. He noted that the committee looks at each and every grant every year. Councilor Burkholder thanked those who testified, noting that a similar committee functions in west Portland. He talked about the criteria for making choices on who received the grants, and spoke to the needs of the community. He felt it was an excellent program

4. CONSENT AGENDA

4.1 Consideration of minutes of the October 21, 2004 Regular Council Meetings.

4.2 **Resolution No. 04-3499**, For the Purpose of Confirming the Appointment Of Alison Cable to the Regional Solid Waste Advisory Committee (SWAC).*

4.3 **Resolution No. 04-3504**, For the Purpose of Authorizing the Chief Operating Officer to Issue a Non-System License to Willamette Resources, Inc., for Delivery of Solid Waste to the Riverbend Landfill

- 4.4 **Resolution No. 04-3505**, For the Purpose of Authorizing the Chief Operating Officer to Issue a Non-System License to Waste Management of Oregon, Inc. For Delivery of Solid Waste from the Troutdale Transfer Station to the Columbia Ridge Landfill and the Riverbend Landfill.

Motion:

Councilor Newman moved to adopt the meeting minutes of the October 21, Regular Metro Council and Resolution Nos. 04-3499, 04-3504 and 04-3505.
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Vote:

Councilors Burkholder, McLain, Monroe, Newman, Hosticka and Council President Bragdon voted in support of the motion. The vote was 6 aye, the motion passed.
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Councilor McLain said they had just appointed a new member to SWAC as well as approved two non-system license renewals.

*Note for the record: Amy Pepper was called out incorrectly on the agenda as the SWAC appointment, when Alison Cable should have been called out on the agenda.

5. ORDINANCES – SECOND READING

- 5.1 **Ordinance No. 04-1060**, For the Purpose of Removing \$367,740 in Grants, Donations and Related Expenditures from Regional Parks Capital Fund, and Transferring \$58,500 from Capital Outlay to Contingency in the Regional Parks Capital Fund; and Declaring an Emergency.

Motion:	Councilor McLain moved to adopt Ordinance No. 04-1060.
Seconded:	Councilor Newman seconded the motion

Councilor McLain explained the ordinance. She said the Tax Supervision Conservation Commission (TSCC) reviewed Metro’s budget every year. The TSCC pointed out a change that was needed in order for Metro to follow its budget law. She further detailed the adjustment. The reason they were doing this was because TSCC indicated that it was a violation. Councilor McLain urged support for the ordinance.

Council President Bragdon opened a public hearing on Ordinance No. 04-1060. No one came forward. Council President Bragdon closed the public hearing.

Vote:

Councilors Hosticka, Burkholder, McLain, Newman, Monroe and Council President Bragdon voted in support of the motion. The vote was 6 aye, the motion passed.
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- 5.2 **Ordinance No. 04-1061**, For the Purpose of Recognizing \$367,740 in Grants, Donations and Related Capital Expenditures in the Regional Parks Capital Fund; and Declaring an Emergency.

Motion:	Councilor McLain moved to adopt Ordinance No. 04-1061.
Seconded:	Councilor Monroe seconded the motion

Councilor McLain said they had gone over the 10% increase in the fund. Hence, Metro violated the 10% rule and had to remedy this by moving the funds. Kathy Rutkowski, Metro Budget Coordinator, explained the ordinance in more detail. Councilor McLain urged support.

Council President Bragdon opened a public hearing on Ordinance No. 04-1061. No one came forward. Council President Bragdon closed the public hearing.

Vote:

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

6.1 **Resolution No. 04-3496**, For the Purpose of Formalizing Budget Assumption Guidelines for Departmental Use in Preparing the Fiscal Year 2005-06 Budget and Capital Improvement Plan, and Directing the Chief Operating Officer to Advise Council of any Substantive Changes in the Assumptions Prior to the Submission of the Proposed Budget to Council for Public Review.

Motion:	Councilor Burkholder moved to adopt Resolution No. 04-3496.
Seconded:	Councilor Hosticka seconded the motion

Councilor Burkholder said Council had been having a series of discussions concerning the FY 2005-06 budget. Staff had put together a number of assumptions so that the departments could begin to draft their budget. He talked about the Public Employees Retirement System (PERS) contribution and issues surrounding this allocation. He noted predictions of revenue that we expected to receive. He said there was a request not to include Capital Improvement Plan (CIP) projects that were under \$100,000. The Council did not approve this, so the Budget Office had withdrawn the request. He noted additional materials provided by the Budget Manager. This authorized the Chief Operating Officer (COO) to give these assumptions to the departments to begin developing their budgets.

Vote:

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

7. CONTRACT REVIEW BOARD

7.1 **Resolution No. 04-3502**, For the Purpose of Authorizing the Chief Operating Officer to Execute Change Order No. 6 to the Contract For Operation of the Metro South and Metro Central Transfer Stations.

Motion:	Councilor Monroe moved to adopt Resolution No. 04-3502.
Seconded:	Councilor Newman seconded the motion

Councilor Monroe said in March 2004, Metro released a request for proposals to operate Metro's transfer stations. Due to a variety of factors, Metro was unsuccessful in negotiating a contract with the highest-ranked firm. Metro extended negotiations and successfully completed a contract with the next highest-ranked firm, Browning-Ferris Industries. Because of the extended time period to evaluate and negotiate the contract, an extension of the existing operations contract was also needed. This change order also addresses the following issues: 1) Change in law related to

the payment of overtime, 2) Addition of organics reload services (anticipated to begin in January 2005) and 3) Reimbursement of the contractor for limited equipment maintenance expenses. Councilor Monroe urged support.

Councilor Hosticka wanted to know the relationship between the two resolutions. Councilor Monroe explained that if the Council did not approve the new contract, we would need to go out for another bid. Council President Bragdon said that Councilor Park requested that these decisions be delayed one week so he could be present for the vote. Councilor McLain indicated that the first resolution would be to extend the contract. Dan Cooper, Metro Attorney, said they could continue both resolutions until next week. Council President Bragdon opened a public hearing on Resolution Nos. 04-3502 and 04-3503.

Mike Huycke, BFI Allied Waste, expressed support for Resolutions 04-3502 and 04-3503. He spoke to BFI's ten-year relationship with Metro. He noted the standards that Metro had set forth in the new contract and explained their proposal in more detail. He underscored that one of BFI's highest priorities is environmental stewardship.

Dean Large, Waste Connections, noted that Eric Merrill could not attend the meeting today. He said felt the process was sufficiently flawed and asked that there be a rebid. Councilor Hosticka asked what the specific flaws were. Mr. Large said that Mr. Merrill would be contacting the Council with specifics. Councilor McLain asked about the process and the ability to reject a bid and do a rebid. Mr. Cooper explained the process, and had a memorandum concerning the Release For Proposal (RFP) process. The conclusion was that as a legal matter, the Council could approve the contract without a legal risk. Councilor McLain asked the following question: if there were other vendors that wanted to see Metro rebid, did they have a timeline? Mr. Cooper explained the appeal process, adding that no one had filed an appeal and the time period had lapsed. Council President Bragdon noted that Waste Connection had not bid the contract. Mr. Cooper said that Mr. Large was exercising his first amendment rights. Councilor Newman said he respected Mr. Merrill's request, but did not understand why he was weighing in at this time.

Vince Gilbert said he was here on behalf of ORR, which submitted the highest score to operate the transfer stations. He spoke to the contract costs. He also noted that Metro had held only two contracting meeting with ORR. He said ORR had agreed to provide a surety bond as well as a letter of credit for \$2 million. ORR had quoted a price for organics of about \$17.00 a ton. Metro had asked ORR to reduce the tonnage prices to about \$10. He continued talking about the contracting process, stating that they felt they were close to having an agreement. He said then Metro notified them that they were terminating their negotiations. He made some suggestions on how to improve the process.

Councilor Burkholder asked why ORR didn't appeal the decision. Mr. Gilbert said they did not appeal the decision because they were waiting for Metro to make a decision on another contractor. They did not anticipate Metro's decision. Councilor Burkholder asked about the contracting and appeal process. Mr. Cooper explained the process and the time period for filing an appeal. Council President Bragdon asked if ORR was not aware of the timeline for appeal. Mr. Gilbert said they wanted what was best for Metro, but he was concerned that the process needed to be looked at.

Councilor McLain asked Mr. Cooper about the negotiation period and what his understanding of the process was. Mr. Cooper said an RFP process was very different from a bid. With a RFP process, it is anticipated that after the best proposal is selected after the scoring process, negotiations would begin. The public entity can asked for a better deal than the RFP called for, but we are not allowed to have the bidder get a better deal at the cost of a better deal to Metro.

Warren Roosevelt, ORR member, clarified the notice was sent to their partners in Montana. He came before Council as a matter of policy not to ask for rebid.

Council President Bragdon closed the public hearing. He stated that he was considering the request for delay. Councilor McLain concurred with that suggestion. She talked about the RFP process and the bid process. She felt it was important to talk about this next week prior to final consideration. In the long run, legal staff had indicated they had followed the proper procedures.

Councilor Newman asked Mr. Cooper about the requirement for a material change and the request for a corporate guarantee. Mr. Cooper said ORR was a new entity and the evaluation committee had some very real questions about ORR's ability to carry out the contract. The evaluation committee, which wanted to reject ORR's bid, was advised to seek a corporate guarantee. Councilors Newman and Burkholder agreed to the request for delay. Council President Bragdon asked about the difference between a corporate guarantee and a surety bond. Councilor Hosticka asked about the process for working with the highest scoring entity. Mr. Cooper responded to his question. Councilor Hosticka said he was trying to understand the negotiating process. He wanted to know what the typical negotiation process was.

Council President Bragdon announced that this item would be continued until November 4th.

7.2 **Resolution No. 04-3503**, For the Purpose of Authorizing the Chief Operating Officer to Execute Contract No. 926063 for Operation of the Metro South and Metro Central Transfer Stations

Motion:	Councilor Monroe moved to adopt Resolution No. 04-3503.
Seconded:	Councilor Newman seconded the motion

Councilor Monroe said the Metro Council is being asked to approve the contract negotiated with Browning-Ferris Industries to operate Metro's transfer stations. The contract is attached as Exhibit "A". The final contract contains the following features: 1) Term of 5 years beginning April 1, 2005, but Metro can terminate after three years, 2) Guaranteed recycling rate of 15% at Metro South and 17% at Metro Central, slightly higher than current recovery rates. 3) Provision for replacement of rolling stock and new material recovery line at Metro South to improve recovery of dry waste, 4) Staffing levels and training requirements are increased, 5) Provision for the reloading of source-separated organics at Metro Central, 6) Variety of sustainability features.

Two major changes from BFI's proposal were required: 1) Contractor withdrew its offer to install a compactor in Bay 3 at Metro South. This withdrawal did not affect the scoring or value of the contract and 2) In exchange, Metro received a reduction in the organics reload rate from \$19.50/ton to \$8.50/ton – a savings over the life of the contract of \$1.6 million. The overall value of the contract is \$30 million. Costs will increase approximately \$1/ton over the current contract. He urged adoption.

Council President Bragdon announced that this resolution would be continued until November 4th.

8. CHIEF OPERATING OFFICER COMMUNICATION

Michael Jordan, COO, asked if the Council wanted this item on Work Session agenda. Council President Bragdon said they had individual questions, which could be answered individually.

Mr. Jordan also noted that Senior Management was discussing the budget at a retreat today and tomorrow.

9. COUNCILOR COMMUNICATION

Councilor Newman reminded the public that November 2nd is Election Day, and noted where the public could drop off their ballot.

Councilor Newman asked Randy Tucker to walk through the Department of Land Conservation and Development (DLCD) report. Councilor McLain thought they should get copies of the decision. Councilor Newman said that there was no deviation from what the Council had asked. Councilor McLain commented about the process. Mr. Tucker said he had what Richard Benner had drafted. They had a meeting where they developed a strategy about how best to make the presentation to DLCD. He explained the details of who would speak at the presentation. Councilor Newman said he sensed there was anxiety. There was very strong direction from the Council to defend their position they made in June 2004. On Wednesday they had a 30-minute opportunity to make their case to DLCD. Appellants would also be asked to respond. Councilor Newman talked about his role at the hearing. Councilor McLain urged Councilor Newman to provide his talking points the day before DLCD. She felt this wasn't a one-person show. Councilor Newman said they were looking at a head nod today about how the process would go, adding they should have all of the presentations ready by Monday, at which time they would share them with the Council.

Councilor Burkholder asked if this was a time to lay out other concerns they had. Council President Bragdon said this was not the time. Councilor Burkholder suggested that they make some remarks about suggested changes. Councilor McLain made some suggestions about Councilor Newman remarks. Councilor Newman said that Council President Bragdon would give opening remarks, Andy Cotugno, Planning Director, would be presenting what the process was, and Councilor Newman would explain the big picture and the why. Councilor Hosticka asked about the process. Mr. Cooper explained the process and said things were compressed. They would be defending the decision vigorously.

10. ADJOURN

There being no further business to come before the Metro Council, Council President Bragdon adjourned the meeting at 3:27 p.m.

Prepared by

Chris Billington
Clerk of the Council

ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF OCTOBER 28, 2004

Item	Topic	Doc Date	Document Description	Doc. Number
4.1	Minutes	10/21/04	Minutes of the Metro Council Meeting of October 21, 2004	102804c-01
5.1	Memo	9/28/04	To: Metro Council From: Kathy Rutkowski, Budget Coordinator Re: Budget Assumptions Follow-up and Financial Assumptions for FY 05-06	102804c-02
3	Committee Roster and grant awards	2004-05	To: Metro Council From: Karen Blauer, Solid Waste and Recycling Department Re: North Portland Enhancement Committee Roster and Grant Program Awards for 2004-05 Grant Cycle	102804c-03
7.1 & 7.2	Memo	10/28/04	To: Metro Council From: Dan Cooper, Metro Attorney Re: Executive Summary of OMA Advice Provided During the Transfer Station RFP Process	102804c-04
7.1 & 7.2	Letter	10/28/04	To: Metro Council From: Dean Alterman, Lane Power Spears Lubersky Re: RFP No. 04-1091SWR	102804c-05
9	Memo	10/25/04	To: John Van Landingham Chair LCDC From: Metro Re: Exceptions to Department's October 13, 2004 Report on Metro's Task 3	102804c-06