

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING THE ) RESOLUTION NO. 93-1821  
SELECTION OF HEARINGS OFFICERS FOR )  
CONTESTED CASE HEARINGS ) Introduced by  
) Councilor George Van Bergen

WHEREAS, Section 2.05.025(a) of the Metro Code requires that contested case hearings and amendments to the Regional Urban Growth Boundary (UGB) shall be held before a Hearings Officer; and

WHEREAS, Metro also utilizes the services of Hearings Officers in other cases when contested case hearings must be held pursuant to the Metro Code; and

WHEREAS, The Council may from time to time approve and provide to the Executive Officer a list of prospective Hearings Officers from which Hearings Officers may be appointed by the Executive Officer; and

WHEREAS, The Council adopted Resolution No. 93-1744 authorizing the issuance of a Request for Proposals for Hearings Officer services; and

WHEREAS, Five responses were received and the responses were reviewed by a committee consisting of the Chair of the Planning Committee, the Metro General Counsel, and the Council Analyst assigned to the Planning Committee; and

WHEREAS, The review committee recommends that three responses be accepted and that Larry Epstein, John W. Burgess, and George D. McDowell be designated as approved Hearings Officers, and that the Executive Officer be authorized to enter into contracts to secure their services; now, therefore,

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BE IT RESOLVED THAT

A. Pursuant to Metro Code Section 2.05.025(a) Larry Epstein, John W. Burgess, and George D. McDowell are designated as approved Hearings Officers.

B. The Executive Officer is authorized to enter into contracts with Larry Epstein, John Burgess, and George McDowall in a form substantially similar to the Request for Proposals document approved by Resolution No. 93-1744 and the responses received thereto.

ADOPTED by the Metro Council this 22nd day of July 1993.

  
Judy Wyers, Presiding Officer

## STAFF REPORT

### CONSIDERATION OF RESOLUTION NO. 93-1821 FOR THE PURPOSE OF APPROVING THE SELECTION OF HEARINGS OFFICERS FOR CONTESTED CASE HEARINGS

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Date: June 15, 1993

Presented by:  
Councilor George Van Bergen

#### PROPOSED ACTION

This Resolution would complete the process initiated by Resolution No. 93-1744 whereby the Council authorized the release of an RFP to identify qualified Hearings Officers. This Resolution officially designates three Hearings Officers, Larry Epstein, George D. McDowall, and John W. Burgess to conduct contested case hearings on amendments to the Regional Urban Growth Boundary (UGB), other land use decisions, and any other contested case hearings required by the Metro Code.

#### FACTUAL BACKGROUND AND ANALYSIS

In adopting Resolution No. 93-1744, the Council initiated a procedure for selecting an approved list of Hearings Officers as required by Metro Code Section 2.05.025(a). The previous list which had been created in 1988 was no longer sufficient since the two qualified applicants at that time had now dwindled to one and their contracts have expired.

Pursuant to Resolution No. 93-1744, a Request for Proposals document was released and applicants were solicited. Five applicants submitted written proposals to provide Hearings Officer services to Metro. The proposal documents were reviewed by a committee consisting of Councilor George Van Bergen, General Counsel Dan Cooper, and Council Analyst Gail Ryder. Larry Epstein, who has previously provided Hearings Officer services to Metro submitted a proposal indicating his past experience and his willingness to perform services for an hourly rate of \$70 per hour. Mr. Epstein was deemed highly qualified by the committee based on his past work for Metro and his hourly rate was considered to be reasonable given his experience and the expertise required for his services. A proposal was received from John Burgess to perform Hearings Officer services. Mr. Burgess has considerable experience acting as a Hearings Officer for agencies of the State of Oregon in non-land use matters. His hourly rate is \$55 per hour. Based on his considerable experience, he also was approved with the intention that he would be utilized on non-land use decision matters that happen to come before the Metro Council. George McDowall also submitted a proposal. His hourly rate is quoted as \$55 per hour. He has less land use experience than Mr. Epstein, though in the views of the committee is qualified to conduct land use or other Hearings Officer services to Metro.

Two other proposals were received. One was from an attorney with virtually no experience conducting any contested case proceedings in land use matters or otherwise. A second proposal was received from an experienced land use attorney who has experience in contested case matters. However, his hourly rate was quoted at a substantially higher amount than those submitted by the other applicants and it was felt that three Hearings Officers selected would be sufficient.

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## **PLANNING COMMITTEE REPORT**

### **CONSIDERATION OF RESOLUTION NO. 93-1821, APPROVING THE SELECTION OF HEARINGS OFFICERS FOR CONTESTED CASE HEARINGS**

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Date: June 28, 1993

Presented by: Councilor Moore

**Committee Recommendation:** At the June 22 meeting, the Planning Committee voted unanimously to recommend Council adoption of Resolution No. 93-1821. Voting in favor: Councilors Van Bergen, Kvistad, Gates, Monroe, and Moore. Absent: Councilor Devlin.

**Committee Issues/Discussion:** Dan Cooper, Metro General Counsel, presented the staff report. He explained that this resolution completes the process for selection of hearings officers to conduct contested case hearings. The process began with issuance of an RFP, authorized by Resolution No. 93-1744. Five applicants responded. These were screened by a committee, consisting of Councilor Van Bergen, Dan Cooper, and Gail Ryder, and three names are suggested in this resolution as qualified.

He reviewed the rationale for selecting these applicants. Larry Epstein, who has previously filled this role is again selected, as are two other applicants. Of the two new applicants, one is qualified for urban growth boundary cases, the other for general contested cases. The applicants will be paid between \$55-70 per hour for their work.