



METROPOLITAN SERVICE DISTRICT

NEW ADDRESS: 527 SW Hall, Portland, Oregon 97201 222-3671

BOARD OF DIRECTORS

PORTLAND WATER BUREAU
1800 SW 6TH AVE.
AUDITORIUM

JULY 25, 1975
2:00 P.M.

A G E N D A

- I. MINUTES
- II. ACCOUNTS PAYABLE
- III. PUBLIC COMMUNICATIONS
- IV. ORDINANCE NO. 30 - SECOND PUBLIC HEARING
AN ORDINANCE ESTABLISHING A CODE OF THE METROPOLITAN
SERVICE DISTRICT OF THE PORTLAND METROPOLITAN AREA AND
CODIFYING EXISTING ORDINANCES OF THE METROPOLITAN SERVICE
DISTRICT
- V. SOLID WASTE SYSTEM PROCUREMENT
- VI. ZOO PROGRAM REPORT
- VII. OTHER BUSINESS



METROPOLITAN SERVICE DISTRICT

NEW ADDRESS: 527 SW Hall, Portland, Oregon 97201 222-3671

JULY 21, 1975

TO: MSD BOARD OF DIRECTORS

FROM: MSD STAFF

SUBJECT: STAFF REPORT FOR THE JULY 25, 1975 BOARD MEETING

PRESENTED TO THE BOARD FOR TRANSMITTAL AND RECOMMENDED ACTION
ARE THE FOLLOWING ITEMS:

PAGE

- | | |
|---|--|
| 1 | I. MINUTES
Action - <u>Approve</u> the minutes of the July 11,
1975 meeting |
| 7 | II. ACCOUNTS PAYABLE
Action - <u>Approve</u> the Accounts Payable in the
amount of \$415.49 |
| 9 | III. PUBLIC COMMUNICATIONS
Action - <u>Receive</u> comments from the public on
items not specified on the agenda |

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- 10 IV. ORDINANCE NO. 30 - SECOND PUBLIC HEARING
AN ORDINANCE ESTABLISHING A CODE OF THE METROPOLITAN
SERVICE DISTRICT OF THE PORTLAND METROPOLITAN
AREA AND CODIFYING EXISTING ORDINANCES OF THE
METROPOLITAN SERVICE DISTRICT
Action - Hold second public hearing, receive
testimony, and adopt Ordinance No. 30
- 11 V. SOLID WASTE SYSTEM PROCUREMENT
Action - Approve staff report
- 13 VI. ZOO PROGRAM REPORT
Action - Receive report from the Zoological
Gardens and take appropriate action
- 16 VII. OTHER BUSINESS

I. MINUTES

THE FOLLOWING PAGES CONTAIN THE MINUTES OF THE JULY 11, 1975 BOARD MEETING AND PUBLIC HEARING.

THE STAFF RECOMMENDS APPROVAL OF THE JULY 11, 1975 BOARD MINUTES.

7-25-75

TO MSD

[illegible]

II. ACCOUNTS PAYABLE

THE FOLLOWING PAGE CONTAINS THE ACCOUNTS PAYABLE LIST
VOUCHER NUMBERS 188 THROUGH 195 SHOWING A TOTAL AMOUNT
OF \$415.49.

THE STAFF RECOMMENDS APPROVAL OF THE ACCOUNTS PAYABLE.

ACCOUNTS PAYABLE

July 1975

VOUCHER NO.	CHECK NO.	PAYBLE TO	PURPOSE	AMOUNT	PROGRAM	CODE
188	188	Boise Cascade Office Products	Office Supplies	3.71	Q401	308
189	189	Daily Journal of Commerce	Notice for 7/11/75 Board Meeting	19.20	Q401	308
190	190	Connie Eliason	Travel Expense	9.00	Q403	305
191	191	Merle Irvine	Travel Expense	8.10	Q201	305
192	192	Fred S. James Co.	Liability Insurance	81.00	Q201	334
193	193	Litton Industries	Calculator Lease	46.74	Q401	321
194	194	Portland State University	Printing	186.26 48.22 3.16	Q201 Q203 Q300	306 306 306
195	195	Jean Woodman	Reimburse Personal funds used for making duplicate keys	10.10	Q401	308

APPROVED METROPOLITAN
SERVICE DISTRICT
BOARD OF DIRECTORS

TOTAL

\$415.49

ACTION NO. 75-375

DATE 7/25/75

BY Jean Woodman
CLERK OF THE BOARD

III. PUBLIC COMMUNICATIONS

THIS AGENDA ITEM ALLOWS FOR THE MSD BOARD TO HEAR COMMENTS FROM THE PUBLIC ON ITEMS NOT CONTAINED ON THIS AGENDA.

IV. ORDINANCE NO. 30 - SECOND PUBLIC HEARING

UNDER SEPARATE HANDOUT IS AN ORDINANCE ESTABLISHING THE CODE OF THE METROPOLITAN SERVICE DISTRICT OF THE PORTLAND METROPOLITAN AREA AND CODIFYING EXISTING ORDINANCES OF THE METROPOLITAN SERVICE DISTRICT. ORDINANCE NO. 30 RECEIVED ITS FIRST PUBLIC HEARING ON JULY 11, 1975 WITH NO AMENDMENTS PROPOSED BY THE PUBLIC OR THE BOARD MEMBERS.

THE STAFF RECOMMENDS HOLDING THE SECOND PUBLIC HEARING ON ORDINANCE NO. 30, RECEIVING PUBLIC TESTIMONY, AND ADOPTING THE ORDINANCE.

APPROVED METROPOLITAN
SERVICE DISTRICT
BOARD OF DIRECTORS

ACTION NO. 75-377

DATE 7/25/75

BY James M. Wood
CLERK OF THE BOARD

V. SOLID WASTE SYSTEM PROCUREMENT

AT THE LAST MSD BOARD MEETING ON JULY 11, 1975, THE MSD BOARD WAS PRESENTED WITH A LEGAL OPINION REGARDING THE RFP PROCUREMENT PROCESS AND THE LEGAL RISKS OF NEGOTIATING CONTRACTS WITH A MODIFIED SOLID WASTE SYSTEM. AS YOU MAY REMEMBER THE PROPOSAL EVALUATION TEAM RECOMMENDED THE FOLLOWING CONCERNING THE SOLID WASTE SYSTEM:

".....THAT MSD ADHERE TO THE ADOPTED COMPREHENSIVE SOLID WASTE PLAN, HOWEVER, PHASE THE CONSTRUCTION OF THE FOUR TRANSFER/PROCESSING STATIONS BY CONSTRUCTING THE FIRST FACILITY AT THE ROSSMAN LOCATION. FOLLOWING THOROUGH CHECK-OUT AND OPERATION, CONSTRUCT THE SECOND FACILITY AT THE NORTH PORTLAND ROAD SITE. FURTHER, A TRANSFER STATION BE CONSTRUCTED IN WASHINGTON COUNTY IN THE VICINITY OF MERLO ROAD AND SW 158TH, PARALLEL TO THE CONSTRUCTION OF THE ROSSMAN FACILITY. THIS FACILITY WOULD PROVIDE TRANSFER OF UNPROCESSED MATERIALS FROM WASHINGTON COUNTY TO THE TWO INITIAL PROCESSING STATIONS. THE THIRD TRANSFER/PROCESSING FACILITY SHOULD BE PLANNED FOR CONSTRUCTION DURING THE 1985-1990 PERIOD BY EXPANDING THE WASHINGTON COUNTY TRANSFER STATION."

THIS MODIFIED SOLID WASTE SYSTEM WOULD ALLOW FOR REDUCED CAPITALIZATION AND LOWER OPERATIONS AND MAINTENANCE COSTS. IN ADDITION, IT WOULD PROVIDE THE FACILITIES TO PROCESS DESIGN QUANTITIES OF SOLID WASTE GENERATED IN THE AREA. IF THE SOLID WASTE QUANTITIES GROWTH CONTINUE AS PREDICTED, THE TRANSFER STATION IN WASHINGTON COUNTY WOULD BE CONVERTED TO PROCESSING IN ABOUT 1985. ADDITIONAL TRANSFER/PROCESSING FACILITIES COULD BE ADDED AS THE NEED ARISES.

THE STATE LEGISLATURE BY THEIR ACTION OF RESERVING ONLY \$12.5 MILLION FOR MSD FACILITIES FOR THE BIENNIUM PRECLUDED THE ABILITY OF MSD TO SIGN NECESSARY CONTRACTS FOR A FOUR TRANSFER/PROCESSING FACILITY SYSTEM. THEREFORE, THE MSD BOARD SHOULD APPROVE THIS MODIFIED SYSTEM AS A PRELIMINARY TO SUBSEQUENT POLICY DECISIONS.

IN CONSIDERATION OF THE LEGAL OPINION PRESENTED AT THE PREVIOUS MEETING AND ATTACHED HEREIN, IT WOULD APPEAR THAT THE ACTIONS PRESENTED BY LEGAL COUNSEL SHOULD BE DISCUSSED AND ONE SELECTED SO THAT THE STAFF CAN DIRECT THEIR EFFORTS.

THE FOURTH OPINION OPTION PROVIDES FOR CERTAIN FLEXIBILITIES AND ADVANTAGES THAT ARE COMMESURATE WITH THE PRESENT MSD FUNDING LEVEL. THE STAFF WOULD CONCUR WITH THE LEGAL COUNSEL CONCLUSION AND WOULD RECOMMEND APPROVAL TO PROCEED WITH OPTION NUMBER FOUR.

THE SOLID WASTE ADVISORY COMMITTEE ON JULY 21, 1975 AFTER DETAILED DISCUSSION RECOMMENDED THAT THE MSD BOARD:

"REJECT ALL OF THE BIDS NOW BEING EVALUATED AND SET PLANS FOR NEGOTIATING WITH ONE OR MORE PROSPECTIVE CONTRACTORS FOR THE TWO TRANSFER/PROCESSING AND ONE TRANSFER STATION SYSTEM."

APPROVED METROPOLITAN
SERVICE DISTRICT
BOARD OF DIRECTORS

ACTION NO. 75-378

DATE 7/25/75

BY [Signature] CLERK OF THE BOARD

HARDY, BUTTLER, McEWEN, WEISS & NEWMAN

(FOUNDED AS CAKE & CAKE-1886)

ATTORNEYS AT LAW

1408 STANDARD PLAZA

PORTLAND, OREGON 97204

TELEPHONE 226-7321
AREA CODE 503

RALPH H. CAKE
(1891-1973)

NICHOLAS JAUREGUY
(1896-1974)

HERBERT C. HARDY
JOHN H. BUTTLER
DONALD W. McEWEN
ROBERT L. WEISS
JONATHAN U. NEWMAN
JOHN R. FAUST, JR.
JOSEPH J. HANNA, JR.
DEAN P. GISVOLD
GEORGE C. REINMILLER
ROBERT D. RANKIN
THOMAS L. GALLAGHER, JR.
VICTOR W. VANKOTEN
ALBERT J. BANNON
ROBERT B. SMITH
JOSEPH S. VOBORIL
LINDA L. JANIK

July 11, 1975

Mr. Charles Kemper
Metropolitan Service District
527 S. W. Hall Street
Portland, Oregon

Re: LCCM 093

Dear Mr. Kemper:

Question

You have asked us whether the MSD may negotiate with one of the bidders on the solid waste transfer/processing system if the system configuration is changed from four transfer processing stations to two transfer/processing stations and one transfer station.

Opinion

It is our opinion that in the event of litigation challenging the Request for Proposals (RFP) process MSD would not likely prevail if the system configuration were changed at this point and the RFP was not reissued.

Analysis

Though what case law there is on negotiation with bidders after bids have been opened indicates that courts may view competitive bidding requirements liberally so long as the end result is a cheaper product for the public, the courts seem quite adamant in their insistence that whatever negotiations there are take place only within the original bidding specifications. That is, making the specifications more detailed or specific or clearing up a specification ambiguity would be permissible but a change in the specifications themselves would not.

Mr. Charles Kemper
July 11, 1975
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We think that the proposal by the evaluation team represents a material change in specifications from the original RFP because the original solid waste management plan and RFP called for construction of four transfer processing stations, the RFP mentions nothing about phased construction, and the evaluation teams report recommends against making a commitment to build the two succeeding processing stations after the first two are built.

It appears to us that the other two bidders could argue that had they known about the changes they would have substantially changed their proposals, such as using dual lines instead of a single line processing. Further, those that reviewed the RFP but decided against bidding could argue that the decreased magnitude of the system now makes the project something they could bid on. Thus, we cannot recommend adoption of that portion of the evaluation team's report, which recommends proceeding with the RFP process with a changed system configuration.

Options

We see four options open to the Metropolitan Service District at this time.

First, the MSD may accept the evaluation team's report and award a contract to Parker Northwest for the construction of two transfer/processing stations and one transfer station. As indicated above, this course may risk litigation in which the MSD is likely to be unsuccessful. This litigation could be instituted at virtually any time, including after the contract is awarded and substantial investments are made. The MSD could conceivably be enjoined from proceeding under the contract until the litigation is settled. We should point out, however, that generally only taxpayers have the right to bring suit when competitive bidding requirements are alleged to be violated. Nevertheless, it is likely that at least some of the unsuccessful bidders or non-bidders would be considered to have the status of a taxpayer, and in any event, it would not be difficult for them to find a taxpayer plaintiff willing to carry on the litigation in his name.

Mr. Charles Kemper
July 11, 1975
Page Three

Second, the MSD may reject all bids and issue a new RFP with specifications for two transfer/processing stations and one transfer station in accordance with the evaluation team's report.

Third, the evaluation team could be asked to reevaluate the original three bids but only within the terms of the original specifications. Acceptance of one of the bids to build the four transfer/processing stations would require MSD to seek additional funding from the Emergency Board and the State legislature or investigate other sources of funding because the 1975 legislature did not appropriate enough money to the Emergency Board for construction of all four stations.

Fourth, the MSD could reject all bids and negotiate directly with one or more of the present bidders and with non-bidders for design and operation of the system, supply of the machinery, and marketing of waste products. The construction of the buildings themselves would have to be put out for competitive bidding, because Oregon statutes require that contracts for public improvements on real estate must follow the competitive bidding process. It is quite clear under Oregon law that MSD can enter into exclusive contracts for the performance of its solid waste disposal functions. This option has the advantages of (1) avoiding the delay inherent in options one and two, (2) avoiding the delay, uncertainty, and expense of searching for additional revenue sources, and (3) allowing MSD to negotiate in detail the respective portions of the solid waste management system with one or more entities.

In conclusion, we recommend that the MSD reject all of the bids now being evaluated and set plans for negotiating with one or more prospective contractors for the various aspects of the solid waste management system.

Very truly yours,
HARDY, BUTTLER, McEWEN, WEISS & NEWMAN
Dean P. Gisvold
Dean P. Gisvold

DPG:rm

VI. ZOO PROGRAM REPORT

DUE TO THE APPROVAL OF MSD SB 937 DURING THE 1975 STATE LEGISLATIVE SESSION, MSD IS ANTICIPATING A NOVEMBER SPECIAL ELECTION FOR PROVISION OF A ZOO TAX LEVY. THE FOLLOWING PAGES CONTAIN A REPORT DEVELOPED BY THE PORTLAND ZOOLOGICAL GARDENS CONCERNING THE PROPOSED TAX LEVY.

THE STAFF RECOMMENDS THAT THE BOARD RECEIVE THE REPORT AND TAKE APPROPRIATE ACTION.

PORTLAND ZOOLOGICAL GARDENS

Date: July 22, 1975
Subject: MSD-Zoo Tax Levy
From: Dr. Ogilvie, Executive Director, Portland Zoological Gardens
To: MSD Board

1. Election Date: November 8, 1975. The county clerks in Clackamas, Multnomah, and Washington counties anticipate no other issues being scheduled for a November vote. However, levies may be registered with the clerks up until 35 days before the November 8 date. Whether the MSD tax levy will be the sole issue on the ballots in the three counties then will remain uncertain until the 35 day deadline.

2. Number of polling places: Because this will be a special district election, precincts may be combined into units not exceeding 2,000 voters each. Therefore, it is estimated that only one-third as many polling places will be needed as in a typical general election. Estimated cost for the election is \$90,000-\$100,000. Should additional districts request tax votes, costs for the election would be shared proportionally among the districts involved.

3. Wording of Ballot: The City Attorney's office indicates that the tax levy amount may be worded in terms of, for example, "1 million dollars per year for 5 years," or, "a 5 million dollar levy collected at 1 million dollars per year for 5 years." There apparently is no requirement that the levy be stated only as a total amount rather than as a rate. The Multnomah County election authorities ultimately determine the ballot title wording.

4. Availability of Funds: Assuming a November 8, 1975 election date, funds for the tax levy would become available no sooner than December 1, 1976. Therefore, from approximately July, 1976 through November, 1976 some borrowing scheme would need to be arranged to cover for the lack of revenue.

5. Deadlines:

July 25, 1975: MSD Board decision on November 8, 1975 election date.*

August 22, 1975: MSD Board decision on amount and duration of the levy. Review and approval of zoo budget covering period of levy. Consideration of relationship of Portland Zoological Society and MSD Board in operation of zoo (see Section V of memo entitled "A Proposal For A Metropolitan Zoo" for zoo recommendations).

September 14, 1975: Filing of detailed budget covering period of levy with Tax Commission including projected use of tax revenues (ORS294.655). Three to four weeks after such filing the commission will hold a public hearing on the proposed tax levy.

October 4, 1975: Filing of legal notice, ballot title, description of purpose of levy, and date of vote with Multnomah County Election authority (RS chap. 259.090 as amended by HB 2021). The Multnomah County clerk will then notify the Washington and Clackamas County election authorities. Though a final decision on the tax levy amount and duration need not legally be made until this date, both the election authorities and prudent campaign strategies suggest a decision by mid-August would be most advisable.

6. Recommendations: *Zoo recommends MSD Board approval of November 8, 1975 election date and notification of decision to Multnomah County election authorities. No decision is needed at this date regarding amount and duration of levy.

VII. OTHER BUSINESS