

MINUTES OF THE METRO COUNCIL

CORRECTED

March 24, 1994

Council Chamber

Councilors Present: Presiding Officer Judy Wyers, Deputy Presiding Officer Ed Washington, Roger Buchanan, Richard Devlin, Jim Gardner, Sandi Hansen, Jon Kvistad, Ruth McFarland, Susan McLain, Rod Monroe, Terry Moore and George Van Bergen

Councilors Absent: Mike Gates

Also Present: Executive Officer Rena Cusma

Presiding Officer Wyers called the regular meeting to order at 4:00 p.m.

Presiding Officer Wyers announced Agenda Item No. 8.1 had been added to the agenda.

1. INTRODUCTIONS

None.

2. CITIZEN COMMUNICATIONS TO THE COUNCIL ON NON-AGENDA ITEMS

None.

3. EXECUTIVE OFFICER COMMUNICATIONS

3.1 Presentation of Metro Regional Arts Facilities and Program Funding Task Force Final Report

David Knowles, Regional Funding Task Force chair, distributed the Regional Funding Task Force's Final Report dated March 1994 and briefed the Council on the same. Other persons who briefed the Council were Gerry Drummond, Joyce Ashmanskas, Chet Orloff, and Commissioner Mike Lindberg.

The Council and members of the Regional Funding Task Force's final report further.

Councilor Monroe asked when the Task Force wanted to see a measure placed on the ballot. Mr. Knowles said they hoped the ballot measure would be on the May 1994 ballot, or the November 1994 ballot, at the latest.

4. CONSENT AGENDA

4.1 Council Meeting Minutes of March 10, and Council Budget Work Session Minutes of February 26, 1994

REFERRED FROM THE PLANNING COMMITTEE

4.2 Resolution No. 94-1917, For the Purpose of Certifying that the Portland Metropolitan Area is in Compliance with Federal Transportation Planning Requirements

Motion: Councilor Devlin moved, seconded by Councilor McLain, for adoption of the Consent Agenda

METRO COUNCIL

March 24, 1994

Page 2

Vote: Councilors Devlin, Gardner, Hansen, McFarland, McLain, Monroe, Moore, Van Bergen, Washington and Wyers voted aye. Councilors Buchanan, Gates and Kvistad were absent. The vote was 10-0 in favor and the Consent Agenda was adopted.

5. ORDINANCES, SECOND READINGS

5.1 Ordinance No. 94-523A, For the Purpose of Revising Metro Code Chapter 2.02, Personnel Rules, for Non-Represented and Represented Employees

The Clerk read the ordinance for a second time by title only.

Presiding Officer Wyers announced that Ordinance No. 93-523 was first read on November 10, 1993, and referred to the Governmental Affairs Committee for consideration. She announced the Committee reviewed the ordinance six times between December 2, 1993, and March 8, 1994, and that the Committee recommended Ordinance No. 94-523A to the full Council for consideration.

Main Motion: Councilor Van Bergen moved, seconded by Councilor Devlin, for adoption of Ordinance No. 94-523A.

Councilor Van Bergen gave the Governmental Affairs Committee's report and recommendations.

Motion to Amend: Councilor Van Bergen moved, seconded by Councilor McFarland, to amend Ordinance No. 94-523A to add a new section (a) to Section 2.02.080 as follows: "All promotions and appointments to vacancies shall be based on the requirements of the position and organizational and operational needs" and to renumber the remaining subsections in 2.02.080 accordingly.

Councilor Devlin asked General Counsel Dan Cooper what the legal ramifications were if the amendment passed and also what the American Federation of State, County and Municipal Employees (AFSCME) representative present had to say about the amendment. Mr. Cooper said the amendment, if passed, reaffirmed existing statutes and AFSCME representative Cathy Thomas said the union had no objections to the amendment.

Vote on Motion to Amend: Councilors Buchanan, Devlin, Gardner, Hansen, Kvistad, McFarland, McLain, Monroe, Moore, Van Bergen, Washington and Wyers voted aye. Councilor Gates was absent. The vote was 12-0 and Ordinance No. 94-523A was amended.

Presiding Officer opened the public hearing. No persons appeared to testify and the public hearing was closed.

Councilor Gardner said one significant change in the ordinance addressed how non-represented employees were disciplined and/or terminated. He said previously, that could happen for "just cause" and grounds for same were listed in the old personnel rules. He said the new personnel rules made non-represented employees "at will" employees with less protections. He asked for the record what kind of record would be required and what grounds would be shown for discipline and/or termination.

Paula Paris, Director of Personnel, said the "at will" standard was common for non-represented employees. She said the standard was usually arrived at in the collective bargaining forum and not usually accompanied with an exhaustive list of why or how employees could be disciplined and/or terminated.

METRO COUNCIL

March 24, 1994

Page 3

Councilor Gardner asked how many non represented employees Metro had. Ms. Paris said Metro had approximately 66 permanent non-represented employees. Councilor Gardner expressed concern that there was too wide a gap between "just cause" and "at will" criteria to terminate an employee. Ms. Paris said reason still had to be given for terminating an employee, although a lesser standard of proof could be used for non-represented employees.

Councilor Gardner said the 66 employees in question were not likely to be comfortable with the pending change in Executive Officers. Ms. Paris said that was one of the hazards of being in the public sector and that such employees should be sophisticated enough to know that they worked in a political environment.

Mr. Cooper stated for the record that political reasons and or contributing funds to the wrong candidate were not valid legal reasons for hiring and/or terminating employees.

Councilor Moore asked why Metro wanted volunteers to sign liability waiver forms because she said volunteers should be covered when they worked for the agency. Mr. Cooper explained the new personnel rules clearly stated that volunteers were not employees, but said as agents of Metro, Metro was required to indemnify them while they were carrying out duties on Metro's behalf.

Councilor Kvistad asked about the proposed elimination of bonuses and COLAs for non-represented employees. Ms. Paris explained that staff's recommendation was that COLAs not be awarded automatically, but that Metro utilize a review process instead. She said staff recommended an 8 percent cap on review increases also. She said bonuses previously awarded were one-time only events with a maximum amount of \$300.00.

Vote on Main Motion as Amended

Councilors Buchanan, Devlin, Gardner, Hansen, Kvistad, McFarland, McLain, Monroe, Moore, Van Bergen, Washington and Wyers voted aye. Councilor Gates was absent. The vote was 12-0 and Ordinance No. 94-523A was adopted as amended.

5.2 Ordinance No. 94-532, For the Purpose of Granting a Franchise to Pemco, Inc. for the Purpose of Operating a Petroleum Contaminated Soil Processing Facility and Declaring an Emergency

The Clerk read the ordinance for a second time by title only.

Presiding Officer announced that Ordinance No. 94-532 was first read on March 10, 1994 and referred to the Solid Waste Committee for consideration. She said the Committee considered the ordinance on March 15 and recommended it to the full Council for adoption.

Motion

Councilor McLain moved, seconded by Councilor Hansen, for adoption of Ordinance No. 94-532.

Councilor McLain gave the Solid Waste Committee's report and recommendations.

Councilor Washington asked if there were any special liability considerations because of the large amount of soil moved and or processed. Councilor McLain said she understood that the franchise presented no extraordinary liability considerations. Councilor Moore asked if Pemco, Inc. had acquired the necessary permits. Councilor McLain said Pemco, Inc. had acquired the necessary permits for the franchise.

Presiding Officer Wyers opened the public hearing.

METRO COUNCIL

March 24, 1994

Page 4

Bruce Broussard, Cadtek, noted Metro's good faith efforts to employ and contract with minorities and women. He said Metro should make every effort to communicate those good faith efforts to Metro's franchisees.

Presiding Officer Wyers asked if any other persons wished to testify. No other persons appeared to testify and the public hearing was closed.

Vote Councilors Buchanan, Devlin, Gardner, Hansen, Kvistad, McFarland, McLain, Monroe, Moore, Van Bergen, Washington and Wyers voted aye. The vote was 12/0 in favor and Ordinance No. 94-532 was adopted.

6. RESOLUTIONS

6.1 Resolution No. 94-1902, For the Purpose of Amending the Transportation Policy Alternatives Committee (TPAC) Bylaws

Motion: Councilor Gardner moved, seconded by Councilor Devlin, for adoption of Resolution No. 94-1902.

Councilor Gardner gave the Planning Committee's report and recommendations.

Councilor Moore asked what criteria if any was used to reject an applicant aside from obvious criminal activity.

The Council as a whole discussed qualifications and criteria for applicants. Councilor Gardner noted membership numbers had increased and said the Planning Committee should discuss compatibility issues between members and their alternates.

Vote Councilors Buchanan, Devlin, Gardner, Hansen, Kvistad, McFarland, McLain, Monroe, Moore, Van Bergen, Washington and Wyers voted aye. Councilor Gates was absent. The vote was 12/0 in favor and Resolution No. 94-1902 was adopted.

6.2 Resolution No. 94-1916, Approving the FY 1995 Unified Work Program

Motion: Councilor Monroe moved, seconded by Councilor Gardner, for adoption of Resolution No. 94-1916.

Councilor Monroe gave the Planning Committee's report and recommendations.

There was no Councilor discussion and/or questions.

Vote Councilors Devlin, Gardner, Hansen, Kvistad, McFarland, McLain, Monroe, Moore, Van Bergen, Washington and Wyers voted aye. Councilors Buchanan and Gates were absent. The vote was 11/0 in favor and Resolution No. 94-1916 was adopted.

6.3 Resolution No. 94-1921, For the Purpose of Appointing John A. Hilton to Fill a Vacancy on the North Portland Rehabilitation and Enhancement Committee

Motion: Councilor Hansen moved, seconded by Councilor Van Bergen, for adoption of Resolution No. 94-1921.

METRO COUNCIL

March 24, 1994

Page 5

Councilor Hansen gave the Solid Waste Committee's report and recommendations. Councilor Hansen said the Council was pleased to appoint Mr. Hilton to the committee.

There was no Councilor discussion and/or questions.

Vote: Councilors Devlin, Gardner, Hansen, Kvistad, McFarland, McLain, Monroe, Moore, Van Bergen, Washington and Wyers voted aye. Councilors Buchanan and Gates were absent. The vote was 11/0 in favor and Resolution No. 94-1921 was adopted.

Presiding Officer Wyers recessed the Metro Council and convened the Metro Contract Review Board to consider Agenda Item No. 6.4.

6.4 Resolution No. 94-1926, For the Purpose of Authorizing an Exemption from Competitive Bidding and Issuance of a Request for Proposals for the Design and Manufacture of Compost Bins and Development of a Public Education Program, and Authorizing the Executive Officer to Enter into a Multi-Year Contract

Main Motion: Councilor Monroe moved, seconded by Councilor Hansen, for adoption of Resolution No. 94-1926.

Councilor Monroe gave the Solid Waste Committee's report and recommendations.

Councilor Moore asked if the composting bins would have Metro's logo on them.

Leigh Zimmerman, Market Development Manager, explained that logos were not required for the bins, but were on the educational and promotional materials, and noted the project was a joint one with other jurisdictions. Councilor McFarland concurred with Councilor Moore's comments and said the bins should have Metro's name logo on them since they were funded by Metro.

Motion to Amend: Councilor Moore moved, seconded by Councilor Kvistad, to amend the Request for Proposals to add language to require that Metro's logo be stamped on the compost bins.

Vote on Motion to Amend: Councilors Devlin, Gardner, Hansen, Kvistad, McFarland, McLain, Monroe, Moore, Van Bergen, Washington and Wyers voted aye. Councilors Buchanan and Gates were absent. The vote was 11/0 in favor and Resolution No. 94-1926 was amended.

Ms. Zimmerman explained the contract amount would be returned to Metro. Councilor Moore said the amount of the contract should be clarified in the resolution. She asked staff to add an additional Whereas stating that Metro would receive \$20,000 back. John Houser, Senior Council Analyst, said rebate amounts were addressed in the ordinance allocating funds for the program.

Councilor Moore and Ms. Zimmerman discussed the areas of distribution for the bins. To Councilor Moore's question, Ms. Zimmerman said notices would be issued so that citizens would be informed of, and able to, participate in the program.

METRO COUNCIL

March 24, 1994

Page 6

Vote on Main Motion as Amended: Councilors Devlin, Gardner, Hansen, Kvistad, McFarland, McLain, Monroe, Moore, Van Bergen, Washington and Wyers voted aye. Councilors Buchanan and Gates were absent. The vote was 11:0 in favor and Resolution No. 94-1926 was adopted as amended.

Presiding Officer Wyers adjourned Metro's Contract Review Board and reconvened the Metro Council

6.5 Resolution No. 94-1906, For the Purpose of Withdrawing Metro's Participation in the Forum on Cooperative Urban Services

Motion Councilor McLain moved, seconded by Councilor Hansen, for adoption of Resolution No. 94-1906.

Councilor McLain gave the Governmental Affairs Committee's report and recommendations. She said although she had moved for adoption and was giving the committee report, she did not support the resolution and would vote against it. She said FOCUS covered regional issues and issues that jurisdictions worked on cooperatively. She said Metro should retain its membership in FOCUS.

Presiding Officer Wyers said it had been difficult to determine whether Metro should continue to participate in FOCUS or not. She said it had been difficult for Councilors to participate because FOCUS meetings were held on the same dates as Council meetings were. She noted that Metro also participated in Portland State University's Institute of Metropolitan Studies. Councilor McFarland asked if FOCUS had been asked to change their meeting nights to accommodate the Council. Councilor McLain said that request had been hard to fulfill because Metro Councilors had meetings on most week nights. Casey Short, Senior Council Analyst, discussed conflicting meeting times issues as compared to last year. He noted the Governmental Affairs Committee meeting dates no longer conflicted with FOCUS meeting times.

Councilor McLain said she opposed the resolution for many reasons including FOCUS' ability to influence the Metropolitan Policy Advisory Committee (MPAC) on issues related to the 1992 Metro Charter. She said she planned to keep attending their meetings.

Councilor Van Bergen said it was no secret how FOCUS felt about the Metro Council. Councilor Hansen said the Council had been in communication with FOCUS for over two years, but had no impact or input on their work plan. She said it was silly to give them money if they were not going to pay attention to Metro's issues and or concerns. She said many FOCUS members served on the various Metro policy advisory committees.

Presiding Officer Wyers opened a public hearing

Scott Lazenby and Greg Chew, FOCUS, McKeever Morris, Inc., 722 SW Second Ave., Portland, both urged the Council to continue Metro's membership in FOCUS and said they would facilitate Metro's needs as much as possible.

The Council discussed the issues with Mr. Lazenby and Mr. Chew further. Councilor McLain said FOCUS representatives needed to transmit to FOCUS members that it was important for them to keep abreast of Metro issues and urged their attendance at Metro meetings.

Merrie Waylett, Senior Management Analyst, testified on the issues. Councilor Hansen asked how much time Ms. Waylett had spent on FOCUS concerns. Ms. Waylett said she had attended FOCUS meetings every month and had tried to join in discussion if the issues discussed were Metro, or affected Metro, issues.

METRO COUNCIL

March 24, 1994

Page 7

The Council discussed the issues further. Councilor Hansen expressed concern because no elected officials served on FOCUS and/or were asked for their input on the issues. Councilor Washington said he had heard that FOCUS had been critical of Metro. He said he would support Metro's continued participation in FOCUS, but said that if the current issues were not resolved, he would not support Metro's renewing its membership in the future.

Ms. Waylett encouraged the Council to continue to work on finding mutually agreeable meeting times. She said staff did not have the same clout as an elected official, but said staff could provide information in the absence of elected officials. She said a Councilor in attendance at FOCUS meetings was preferable, though.

Councilor McFarland said she could not vote to give a group money that was not supportive of Metro on a consistent basis.

Councilor Gardner said he agreed with most of the comments made at this meeting. He said there had been misunderstandings over local government and FOCUS dues. He said there had been conflict over meeting times now resolved by the Governmental Affairs Committee having a different meeting time. He said it was still valuable for Metro to retain its membership in FOCUS.

Motion to Amend Councilor Gardner moved, seconded by Councilor Hansen, to amend Resolution No 94-1906 to change language in the resolution title and language where applicable to continue Metro's membership in FOCUS.

Vote on Motion to Amend Councilors Buchanan, Gardner, Hansen, McFarland, Moore and Wyers voted aye. Councilors Kvistad, McLain, Monroe, Van Bergen and Washington voted nay. Councilors Devlin and Gates were absent. The vote was 6/5 in favor and Resolution No. 94-1906 was amended.

The Council discussed the issues further.

Vote on Main Motion as Amended Councilors Gardner, Hansen, McFarland, McLain, Monroe, Moore and Wyers voted aye. Councilors Buchanan, Kvistad, Van Bergen and Washington voted nay. Councilors Devlin and Gates were absent. The vote was 7/4 in favor and Resolution No. 94-1906 was adopted as amended.

6.6 Resolution No. 94-1925, Confirming the Appointment of Gary Conkling to the Metropolitan Exposition-Recreation Commission

Motion Councilor Moore moved, seconded by Councilor Hansen, for adoption of Resolution No. 94-1925.

Councilor Moore gave the Regional Facilities Committee report and recommendations.

Councilor Kvistad said he would abstain from voting on the resolution because Mr. Conkling owned a company that was a Metro vendor. He said he had the highest regard for the nominee, but believed the ownership question represented a conflict of interest.

The Council discussed the issues. Councilor Van Bergen said that Metropolitan Exposition-Recreation Commissioners had to fill out economic interest statement forms substantially similar to those required of

elected officials from the Oregon Government Standards and Practices Commission. Mr. Short noted Ordinance No. 94-523A adopted earlier at this meeting continued ethical requirements for elected officials and MERC and Portland Boundary Commission appointments. Councilor Buchanan said the Council and the Executive Officer often found themselves in conflict of interest situations. He said some appointments had been made to advisory committees that should not have been made. Presiding Officer Wyers agreed and instructed the Governmental Affairs Committee to work on and define those issues further. Councilor Kvistad stated again for the record that the nominee himself did not represent any problems of an ethical nature.

Vote. Councilors Buchanan, Hansen, Kvistad, McFarland, McLain, Monroe, Moore, Van Bergen, Washington and Wyers voted aye. Councilors Devlin, Gardner and Gates were absent. The vote was 10-0 in favor and Resolution No. 94-1925 was adopted.

8. NON-REFERRED RESOLUTIONS

Presiding Officer Wyers noted Resolution No. 94-1939 had been recommended by the Governmental Affairs Committee to the full Council for adoption.

Motion Councilor Van Bergen moved, seconded by Councilor Buchanan, for adoption of Resolution No. 94-1939.

Councilor Van Bergen explained Governmental Affairs Committee discussion and action. He said the resolution was written in response to Executive Officer Cusma's signing an amendment to Metro's contract with Oregon Waste Systems on her own authority. He said the issue was not that the amendment was good or bad, but who at Metro had the ultimate authority to sign such an amendment; the Council or the Executive Officer. He said Committee discussion noted that Metro's designated facilities franchise code required that amendments be approved by the Council; that Legal Counsel was designated to have a conflict of interest if a requested opinion dealt with the division of powers between the Council and the Executive Officer, and that, while there were particular statutes and Code provisions involved, the Charter adopted in November 1992 clearly brought new definition to the separation of powers issue. He said depending on legal counsel's opinion, the contract amendment would either be valid or null and void.

The Council discussed the resolution. Councilor Hansen asked if that meant all contracts signed since January 1993 would be investigated also if the Charter was considered a deciding factor. She asked how much outside legal counsel would cost. Councilor Van Bergen did not believe the action called for in the resolution would lead to invalidating other, unrelated contracts and or amendments and said the cost would be approximately \$2,500. Councilor Van Bergen said that such issues should be clarified for the January 1995 Council.

The Council discussed the issues further. Councilor McFarland said the action called for was not directed towards any one contract and said it would not be in Metro's best interests to reevaluate all the contracts it had signed over the last 18 months. She did not want to make any legal opinion or ruling retroactive. Councilor Van Bergen said if necessary, the Council could reaffirm contracts adopted since January 1993. Presiding Officer said the Council should be the preeminent body with regard to contracting. She said the Charter stated that the Council would set policy and said the Council should be responsive to that. Councilor McLain supported the resolution and said in these cases, a specific issue usually was the catalyst for such action. Councilor Monroe stated his support for the resolution also.

Vote Councilors Buchanan, Hansen, Kvistad, McFarland, McLain, Monroe, Moore, Van Bergen, Washington and Wyers voted aye. Councilors Devlin, Gardner and Gates were absent. The vote was 10-0 in favor and Resolution No. 94-1939 was adopted.

METRO COUNCIL

March 24, 1994

Page 9

7. COUNCILOR COMMUNICATIONS AND COMMITTEE REPORTS

Councilor Monroe asked the Council to authorize the appointment of an additional member to the Budget Committee as an alternate. He said the alternate would vote only when he/she was needed to make up a quorum for that committee. He said Councilor Washington had agreed to serve as alternate. Councilor Van Bergen said Councilor Washington should make a full, voting member. The Council discussed the issues further. Councilor Monroe said simply making Councilor Washington an eighth member would not solve quorum problems. Councilor Van Bergen said the Council could change quorum requirements to four. Councilor Monroe agreed.

Motion: Councilor Monroe moved, seconded by Councilor Van Bergen, to suspend the Council's rules requiring resolutions for appointments to Council committees and to authorize the Presiding Officer to add Councilor Washington to the Budget Committee as an eighth member and to require four members in attendance for the purposes of a quorum.

Vote: Councilors Hansen, Kvistad, McFarland, McLain, Monroe, Moore, Van Bergen, Washington and Wyers voted aye. Councilors Buchanan, Devlin, Gardner and Gates were absent. The vote was 9-0 in favor and the motion passed.

Councilor Hansen reminded those present that the reception to welcome the new Parks and Regional Greenspaces Department to Metro would be held Thursday, March 31, at 5:00 p.m.

Councilor McLain briefed the Council on the all-day Future Vision Commission work session held March 12. She said the Future Vision Commission had decided to meet every Monday for the next two months to heighten coordination with 2040 Program work and activities.

Councilor Moore reminded the Council of Metro's 2040 Youth Involvement Project, informational packets sent to the schools and other related activities.

Councilor Kvistad said he was deeply offended by how the amendment to Metro's contract with OWS had been handled. He said it was an issue the Council should have handled. He said he was also offended that a press conference was given on the amendment without the Council being informed. He said he wanted to know why the issue was not referred to the Council as a whole for consideration.

Councilor Van Bergen discussed the Valley Policy Advisory Committee (VPAC), of which he was a member, formed to study high speed rail from Eugene to Portland. He said the State Legislature had allocated \$100 million to the project with the expectation that the federal government would also allocate \$100 million. He said the federal government had not allocated those funds and said VPAC would now focus on projected ridership, survey local citizens and in general use the format used to date for the South-North Light Rail project. He asked if any other Councilor wished to serve in his place. Presiding Officer Wyers asked Councilor Van Bergen to continue his membership.

Presiding Officer Wyers discussed PSU's Institute of Portland Metropolitan Studies and said she had started to attend their meetings. She said currently under discussion: 1) An economic base line for the region, 2) Utilizing interns to work on and coordinate projects; 3) Working on how a telecommuting highway would work which she said Metro might wish to look at in further depth, and 4) A project illustrating what the metro area looked like now and what it would look like in the future using overlay maps. She said that effort was similar to Metro's RLIS work.

METRO COUNCIL

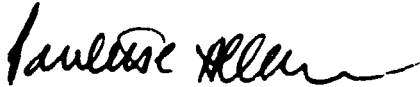
March 24, 1994

Page 10

Councilor McLain said FOCUS held an event on January 29 to discuss how governments could better communicate among each other and would hold two more work sessions on those issues.

All business having been attended to, Presiding Officer Wyers adjourned the regular meeting at 6:05 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paulette Allen", with a long, sweeping horizontal stroke at the end.

**Paulette Allen
Clerk of the Council
MCMIN94.083**