

MINUTES OF THE METRO COUNCIL

August 11, 1994

Council Chamber

APPROVED
Date 9/8/94

Councilors Present: Deputy Presiding Officer Ed Washington, Richard Devlin, Jim Gardner, Sandi Hansen, Jon Kvistad, Ruth McFarland, Susan McLain, Rod Monroe and Terry Moore

Councilors Absent: Presiding Officer Judy Wyers, Roger Buchanan, Mike Gates and George Van Bergen

Deputy Presiding Officer Washington called the regular meeting to order at 4:03 p.m.

Deputy Presiding Officer Washington announced that Agenda Item Nos. 5.4, 7.4 and 8.1 had been added to the agenda and that Agenda Item No. 8 had been renumbered as Agenda Item No. 9.

Deputy Presiding Officer Washington announced that the Council would consider Agenda Item No. 8.1 first so that Legal Counsel could fax the adopted resolution to the pertinent jurisdiction before the end of the business day the date of this meeting.

NEW/ADDITIONAL ITEM

Deputy Presiding Officer Washington announced that Lindsey Ray, Council Department Administrative Secretary, had reached her five-year anniversary of employment with Metro and presented her with a Certificate of Appreciation and a pin commemorating her five years of service. He announced Ms. Ray began work at Metro in the Oregon Convention Center Office in May 1989 and began work in the Council Department in May 1990. He read Ms. Ray's certificate of appreciation for the record. Ms. Ray thanked Deputy Presiding Officer Washington and the Council.

8. NON-REFERRED RESOLUTIONS

8.1 Resolution No. 94-2023, For the Purpose of Authorizing a Request for Amicus Participation in 1000 Friends of Oregon v. City of North Plains

Motion: Councilor Gardner moved, seconded by Councilor Moore, to suspend the Council's rules requiring that resolutions be referred by committee so that the Council as a whole could consider Resolution No. 94-2023.

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

Main Motion: Councilor Kvistad moved, seconded by Councilor Devlin, for adoption of Resolution No. 94-2023

Councilor Kvistad explained that the City of North Plains had acted to double the size of its Urban Growth Boundary (UGB) and said that action had been appealed by 1000 Friends of Oregon, the Department of Land Conservation and Development, and the Oregon Department of Transportation. He said the Land Use Board of Appeals remanded the case to North Plains for numerous violations of statewide goals and rules and said one criteria for remand was the inclusion of some projected growth within Metro's boundary as a basis of the City's UGB. He said the resolution would authorize Metro's legal counsel to seek permission and file with the Court

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of Appeals as an amicus, or friend of the court, brief on behalf of Metro supporting LUBA's ruling and requiring the City to coordinate on any projected use of Metro growth.

There was no Council discussion

Vote: Councilors Devlin, Gardner, Hansen, Kvistad, McFarland, McLain, Monroe, Moore and Washington voted aye. Councilors Buchanan, Gates, Van Bergen and Wyers were absent. The vote was 9/0 in favor and Resolution No. 94-2023 was adopted.

1. INTRODUCTIONS

None.

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

None.

3. EXECUTIVE OFFICER COMMUNICATIONS

None.

4. CONSENT AGENDA

4.1 Minutes of June 29 and 30, 1994

REFERRED FROM THE REGIONAL FACILITIES COMMITTEE

4.2 Resolution No. 94-2007, For the Purpose of Authorizing an Exemption to Metro Code Chapter 2.04.04(c) to Enter into a Sole Source Contract with Dr. Joel Arick for the Evaluation of the Environmental Enrichment Science Education Workshops

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

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

5. ORDINANCES, FIRST READINGS

5.1 Ordinance No. 94-561, An Ordinance Amending the FY 1994-95 Budget and Appropriations Schedule of the Rehabilitation and Enhancement Fund For the Purpose of Funding a Recoverable Grant to the Portland Housing Center's Down Payment Assistance Fund and Declaring an Emergency

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

Deputy Presiding Officer Washington referred Ordinance No. 94-561 to the Solid Waste and the Finance Committees for consideration

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5.2 Ordinance No. 94-564, An Ordinance Amending the FY 1994-95 Budget by Transferring \$10,500 from the Support Services Fund Contingency to Materials & Services, in the General Services Department For the Purpose of Providing Clerical Relief for the General Metro Switchboard Receptionist, and Declaring an Emergency

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

Deputy Presiding Officer Washington referred Ordinance No. 94-564 to the Finance Committee for consideration.

5.3 Ordinance No. 94-565, An Ordinance Amending the FY 1994-95 Budget and Appropriations Schedule by Transferring \$68,262 from the Solid Waste Revenue Fund Contingency to the Administration Division Materials & Services, Misc. Professional Services Account For the Purpose of Providing Legal Services Regarding Metro Executive Officer Contracting Authority, and Declaring an Emergency

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

Deputy Presiding Officer Washington referred Ordinance No. 94-565 to the Finance Committee for consideration.

5.4 Ordinance No. 94-566, For the Purpose of Amending the Metro Code and Relating to the Annual Budget

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

Deputy Presiding Officer Washington referred Ordinance No. 94-566 to the Finance Committee for consideration.

6. ORDINANCES, SECOND READINGS

6.1 Ordinance No. 94-554A, Relating to Contract Procedures Amending Metro Code Chapter 2.04 to Increase to \$25,000 the Maximum Amount of Contracts That May be Let Without Using a Formal Bid or Request for Proposals Process (Public Hearing)

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

Deputy Presiding Officer Washington announced that Ordinance No. 94-554 was first read on May 26, 1994 and referred to the Finance Committee for consideration. The Finance Committee considered the ordinance on July 12 and recommended Ordinance No. 94-554A to the full Council for adoption. Ordinance No. 94-554A was scheduled for second reading and adoption at the July 28 Council meeting, but was removed from the agenda at that time because it was not included in Metro's notice of public meetings advertisement in The Oregonian.

Motion: Councilor Hansen moved, seconded by Councilor McFarland, for adoption of Ordinance No. 94-554A.

Councilor Hansen gave the Finance Committee's report and recommendations. She explained that raising the contract amount to \$25,000 would simplify Metro's administrative processes and enable more small vendors to bid for Metro contracts.

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Deputy Presiding Officer Washington opened the public hearing

No persons present appeared to testify and the public hearing was closed.

Councilor Devlin asked General Counsel Dan Cooper if the Executive Officer would still sign off on all contracts larger than \$25,000. Mr. Cooper said she would. Councilor Devlin asked Casey Short, Senior Council Analyst, if Metro had adequate safeguards in its process so that Metro could avoid the difficulties encountered by the City of Portland which had been reported upon by Willamette Week in the past. Mr. Short said Metro's contracting system was quite different from the City's and that Metro should not encounter the same problems.

Councilor Moore asked how the ordinance would make the process different. Councilor Hansen said bids would still be taken and compared. Mr. Short said the principal difference between formal bid processes and informal bid processes was that Metro did not advertise the informal bids. He said the General Services Department would advertise formal bids and send out notices of informal bids to qualified contractors on Metro's lists.

Councilor Gardner and Rich Wiley, Procurement Officer, discussed how the new process would work. Mr. Wiley said Mr. Short had described the proposed new process correctly. Councilor Gardner said another difference beyond changes in advertisements and procedural steps was that bid documents would be less complex for the bidder. Mr. Wiley said the new process would eliminate bid bonds and other procedures now required by state law that were in many cases a formality. Councilor Gardner asked if the state requirement would still apply. Mr. Wiley said it would, but said Metro could adjust how much it required for bid bond amounts.

Councilor Moore asked if the ordinance would require that a minimum amount of proposers would be contacted. Mr. Wiley said the ordinance would require at least three vendor contacts, and in other cases the minimum three plus a woman-owned and a minority-owned business, which meant five contacts would be made.

Councilor Gardner said he supported simplifying the process for smaller contractors, but said the ordinance would mitigate the principle of competitive process. He said there was no guarantee that truly competitive processes would occur and that Metro would not end up using the same vendors again and again. He said he feared many small businesses would be shut out.

Councilor McLain said she would vote nay on the ordinance also. She concurred with Councilor Gardner's statement that the goals contained in the ordinance were good, but also expressed concern about potential abuses of the system. She said whether the ordinance passed or not, the Council should continue to review and improve Metro's contracting processes.

Councilor Devlin said he would support the ordinance because it maintained the checks and balances system with the Executive Officer continuing to sign off on contracts. He expressed concern about smaller businesses being able to successfully bid for Metro contracts. He asked, since the process appeared to be so costly, if there was a possible misallocation of resources. He said if vendors were not treated fairly under the new process, Metro would hear from them. He said Councilor Hansen had shown the best of intentions in bringing the ordinance forward.

Councilor Kvistad said he would vote nay on the ordinance because Metro's contracting system as a whole had problems and did not think it was appropriate to raise the minimum contracting amount at this time.

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Councilor Hansen said Councilor Devlin was correct when he stated that Metro would hear from vendors if they were dissatisfied with the new process. She said the ordinance was drafted after meeting with approximately 30 potential vendors who expressed dissatisfaction with the process now. She said Multnomah County was raising its contract amount to \$25,000 also and said it would assist small vendors if local governments were more consistent in their processes. She said this change would help Metro's contracting process become more efficient and changes could be made in the future to refine it.

Vote: Councilors Devlin, Hansen, McFarland, Monroe, Moore and Washington voted aye. Councilors Gardner, Kvistad and McLain voted nay. Councilors Buchanan, Gates, Van Bergen and Wyers were absent. The vote was 6/3 in favor and Ordinance No. 94-554 Δ failed to pass lacking the necessary seven aye votes to adopt, but was not considered defeated.

Deputy Presiding Officer Washington said Ordinance No. 94-554 Δ would be continued to the next Council meeting.

Councilor McFarland asked why the ordinance had failed to pass. Mr. Cooper explained per the 1992 Metro Charter, an ordinance required seven aye votes to pass and therefore Ordinance No. 94-554 Δ was considered neither adopted nor defeated and could be continued to the next Council meeting for adoption.

6.2 Ordinance No. 94-557. For the Purpose of Establishing a Metro Illegal Dumping Ordinance (Public Hearing)

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

Deputy Presiding Officer Washington announced that Ordinance No. 94-557 was first on July 14 and referred to the Solid Waste Committee for consideration. The Solid Waste Committee considered the ordinance on August 2 and referred it to the full Council for adoption.

Motion: Councilor McLain moved, seconded by Councilor Hansen, for adoption of Ordinance No. 94-557.

Councilor McLain gave the Solid Waste Committee's report and recommendations. She said Metro had developed a model illegal dumping ordinance for local governments to develop a process for civil citations rather than a criminal procedure. She cited reports provided to the Council by Solid Waste Department staff in favor of the civil process. She said either Metro staff or the Multnomah County Sheriffs, working under contract with Metro, could do so. She said fines could range from \$500 to \$1,000 per offense with lesser fines for uncovered loads and explained penalties further. She said the issue of whether Metro was circumventing the local jurisdictions' responsibilities or rights was discussed at committee and said the ordinance would not disable local governments.

Deputy Presiding Officer Washington opened the public hearing.

No persons present appeared to testify and the public hearing was closed.

Councilor McLain said a public hearings officer would cost approximately \$9,000 per year and that Metro expected to recover those costs via the collected penalties.

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Vote: Councilors Devlin, Gardner, Hansen, Kvistad, McFarland, McLain, Monroe, Moore and Washington voted aye. Councilors Buchanan, Gates, Van Bergen and Wyers were absent. The vote was 9/0 in favor and Ordinance No. 94-557 was adopted.

7. RESOLUTIONS

7.1 Resolution No. 94-2001B, For the Purpose of Supporting Passage of Flow Control Legislation by the U.S. Congress

Motion: Councilor Hansen moved, seconded by Councilor McFarland, for adoption of Resolution No. 94-2001B.

Councilor Hansen gave the Solid Waste Committee's report and recommendations. She noted the Solid Waste Committee recommended the resolution to the full Council for adoption at the Council meeting on July 14. She said after Council discussion at that meeting, the resolution was referred back to committee for further work and the Solid Waste Committee recommended Resolution No. 94-2001B to the full Council for adoption at its August 2 meeting. She referred the Council to new language in the resolution Be It Resolved section: "That the Metro Council supports those provisions of pending federal legislation that preserve Metro's flow control authority as outlined in Metro Code Chapter 5.05 and ~~(passage of flow control legislation by the U.S. Congress that would)~~ allow other states and political subdivisions to direct, limit, regulate, or prohibit the movement of all municipal solid waste, excluding recyclables separated from other waste, generated or disposed within its boundaries." She said the new language preserved Metro's own flow control authority and retained the phrase "excluding recyclables."

Deputy Presiding Officer Washington opened a public hearing.

Jeff Murray, Far West Fibers, Inc., 10750 SW Denney Road, Beaverton, distributed written testimony from John Drew, president, Far West Fibers. He said Far West Fibers was concerned about the language "excluding recyclables separated from other waste." He said if there was no intent to control recyclables, the reference to recyclables should not be included at all.

Councilor Hansen said once recyclables were source-separated, they were not considered waste. Councilor Hansen and Mr. Murray discussed the issues further. Councilor Hansen said the language was general in nature and should not adversely affect Far West Fibers or other similar industries.

Also received for the record was a letter from Raymond H. Petermeyer, general manager, EZ Recycling, 12820 NE Marx St., Portland, expressing opposition to the resolution.

Councilor McFarland said she did not favor amendment at this time and said the Metro Code was very specific on the issues. She did not see how recyclables or industries related to recyclables would be adversely affected by the resolution. She said flow control was necessary to cover the cost of Metro's transfer stations.

The Council discussed the issues further. Councilor McLain said the concerns expressed seemed to center on the classification of recyclables itself. She said the Council could address the issues by reviewing federal legislative items as they occurred to minimize or negate negative impacts to the recycling industry. Councilor Gardner said he thought the language "excluding recyclables separated from other waste" was clear and said he was confused by the objections expressed. He said the letter from EZ Recycling objected to "flow control of any kind." Mr. Murray explained the industry opposed flow control. He said the language would no longer be considered objectionable if the reference to recyclables was removed. Councilor Gardner said the language did

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not contain any ambiguity and the resolution should not be amended at this time. Mr. Murray said the resolution was supportive of national legislation and other jurisdictional legislation and was why they believed the resolution language to be so important.

Deputy Presiding Officer Washington asked if any other persons present wished to testify.

No other persons appeared to testify and the public hearing was closed.

Councilor Gardner said Metro's ability to finance its solid waste facilities and market bonds depended on its ability to guarantee how much solid waste would be processed at those facilities.

Councilor Moore supported the resolution and said Metro's record was very clear in that it was not addressing source-separated recyclables and said it was necessary for Metro to exercise this kind of control.

Vote: Councilors Devlin, Gardner, Hansen, McFarland, McLain, Monroe, Moore and Washington voted aye. Councilor Kvistad voted nay. Councilors Buchanan, Gates, Van Bergen and Wyers were absent. The vote was 8/1 in favor and Resolution No. 94-2001B was adopted.

Deputy Presiding Officer Washington recessed the Metro Council and convened the Metro Contract Review Board to consider Agenda Item No. 7.2.

7.2 Resolution No. 94-1966, For the Purpose of Approving a Contract Amendment for Purchase of Computer Software for Use by Metro's Regional Land Information System

Motion: Councilor Kvistad moved, seconded by Councilor Devlin, for adoption of Resolution No. 94-1966.

Councilor Kvistad gave the Planning Committee's report and recommendations. He explained the resolution would upgrade a 1988 contract Metro began with the Environmental Science Research Institute to purchase Arc/Info mapping software. He said a new pricing formula would allow Metro and its RLIS members to pool their licenses and qualify for the maximum discounts available.

There was no Council discussion.

Vote: Councilors Devlin, Gardner, Hansen, Kvistad, McFarland, McLain, Monroe, Moore and Washington voted aye. Councilors Buchanan, Gates, Van Bergen and Wyers were absent. The vote was 9/0 in favor and Resolution No. 94-1966 was adopted.

7.3 Resolution No. 94-2016, Waiving the Filing Deadline for a Proposed Urban Growth Boundary Locational Adjustment

Deputy Presiding Officer Washington announced that Agenda Item No. 7.3 had been removed from the agenda and referred to a letter submitted on the item.

Councilor Devlin noted the letter submitted from Donald P. Richards stating that he had a scheduling conflict and could not attend this meeting.

Deputy Presiding Officer Washington announced that Resolution No. 94-2016 would be rescheduled for the September 8 Council agenda.

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7.4 Resolution No. 94-2022A, For the Purpose of Authorizing Issuance of a Request for Proposals for an Operator for MetroKids Child Development Center and to Authorize Execution of a Contract with the Selected Operator

Motion: Councilor McLain moved, seconded by Councilor Hansen, for adoption of Resolution No. 94-2022.

Councilor McLain gave the Finance Committee's report and recommendations. Councilor McLain said the Child Care Committee had decided to terminate Metro's contract with its current day care provider for MetroKids Center. She said Metro would initiate a 90-day procurement process and would allow the current provider to submit a new proposal. She said there were no questions or doubts about the care given by the current provider and referred the Council to Mr. Short's memo on the issues.

Councilor Hansen said the parents liked the staff working at the MetroKids Center. She said there had been difficulties with the national organization sponsoring the contract. She said Metro could find a provider more amenable on working with Metro on fiscal and curriculum issues.

Vote: Councilors Devlin, Gardner, Hansen, Kvistad, McFarland, McLain, Monroe, Moore and Washington voted aye. Councilors Buchanan, Gates, Van Bergen and Wyers were absent. The vote was 9/0 in favor and Resolution No. 94-2022 was adopted.

9. COUNCILOR COMMUNICATIONS AND COMMITTEE REPORTS

Motion to Adjourn: Councilor Kvistad moved to adjourn.

The motion to adjourn failed for lack of a second.

Motion: Councilor Gardner moved, seconded by Councilor Moore, in conformance with the provisions of Metro Code Section 2 01 140(h), to remove Ordinance No. 94-556B from the Finance Committee and bring it to the full Council for consideration at its August 25, 1994 Council meeting.

The Council discussed the motion. Councilor Kvistad said he objected to the Ordinance being removed from committee without the full Council present to consider such a motion. Councilor Devlin said he objected to the motion also because he did not believe the ordinance was ready for Council consideration. Councilor Monroe said the ordinance was controversial and had opponents, but had proponents also, including the Metro Policy Advisory Committee (MPAC) which voted August 10 to support it as well as other groups such as 1000 Friends of Oregon. Councilor McFarland said this and other issues of large magnitude should be considered by the full Council and said if the ordinance was not in acceptable form at that time, she would not support it. Deputy Presiding Officer Washington said he did not support the ordinance and would not vote to remove it from committee.

Vote: Councilors Gardner, Hansen, McFarland, McLain, Monroe and Moore voted aye. Councilors Devlin, Kvistad and Washington voted nay. Councilors Buchanan, Gates, Van Bergen and Wyers were absent. The vote was 6/3 in favor and the motion passed.

Deputy Presiding Officer Washington announced that the Council would consider Ordinance No. 94-556B at its August 25 meeting.

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Councilor Hansen noted Metro Washington Park Zoo staff had instituted valet parking to decrease congestion and parking problems at the Zoo.

Councilor Moore discussed new appointments to MPAC. She said MPAC would hold a panel on affordable housing issues at its August 24 meeting.

Deputy Presiding Officer Washington said the Hotel Workers Organizing Committee would hold a meeting at Metro Regional Center on August 17 and said he would attend and report on that meeting to the full Council.

Deputy Presiding Officer Washington extended his and the Council's best wishes to Presiding Officer Wyers and her family on her pending surgery August 12.

All business having been attended to, Deputy Presiding Officer Washington adjourned the regular meeting at 5:32 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paulette Allen", with a stylized, flowing script.

Paulette Allen
Clerk of the Council
MCMIN94.223