

APPROVED
Date 9/22/94

MINUTES OF THE METRO COUNCIL

August 25, 1994

Council Chamber

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

Councilors Absent: Presiding Officer Judy Wyers

Also Present: Executive Officer Rena Cusma

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

Deputy Presiding Officer Washington announced he would expect compliance with the Council rules of conduct per Resolution No. 94-1467A. He said Councilors would have five minutes apiece to make statements on each item of business, excluding question time with testifiers, and that testifiers would have three minutes apiece to give testimony, excluding question time with Councilors.

Deputy Presiding Officer Washington announced the Council would consider Agenda Item No. 6.6 immediately after the Consent Agenda because Resolution No. 94-2005 should be adopted before Ordinance No. 94-560 was considered and adopted in order for the ordinance to be effective, the ordinance being the funding mechanism for the resolution.

Deputy Presiding Officer Washington announced also that the Council would consider Agenda Item No. 5.2 before Agenda Item No. 5.1, Agenda Item No. 5.2 being Ordinance No. 94-560.

1. INTRODUCTIONS

None.

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

John Ayer, c/o 14511 SE River Road, Milwaukie, asked the Council to hire one FTE to work on Metro's compliance with the U.S. Constitution and distributed a written statement on the same.

The Council briefly discussed the issues with Mr. Ayer. Deputy Presiding Officer Washington said he would refer the issues to the appropriate Council staff.

3. EXECUTIVE OFFICER COMMUNICATIONS

None.

4. CONSENT AGENDA

4.1 Minutes of July 14 and 28, 1994

REFERRED FROM THE REGIONAL FACILITIES COMMITTEE

4.2 Resolution No. 94-2020, For the Purpose of Exempting Curriculum Development, Teacher Training, and Program Evaluation for the Zoomobile Science Enhancement Project for the Washington Park Zoo from Competitive Bid, and Authorizing a Sole Source Contract with Janet Jewell

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REFERRED FROM THE SOLID WASTE COMMITTEE

4.3 Resolution No. 94-1971. For the Purpose of Re-Appointing Jim Cozzetto, Jr. and Andrew Thaler to Serve on the Solid Waste Rate Review Committee

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

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

6. RESOLUTIONS

6.6 Resolution No. 94-2005. For the Purpose of Adopting an Interim Contract Services Division Report on MBE/WBE/DBE Utilization and Authorizing the Executive Officer

Motion: Councilor Hansen moved, seconded by Councilor McLain, for adoption of Resolution No. 94-2005.

Councilor Hansen gave the Finance Committee's report and recommendations.

Councilor Moore asked how Metro would determine who would be appropriate contractors. Councilor Hansen said Metro would use the State of Oregon's certified contractors list.

Vote: Councilors Buchanan, Gates, Hansen, Kvistad, McFarland, McLain, Monroe, Moore, Van Bergen and Washington voted aye. Councilors Devlin, Gardner and Wyers were absent. The vote was 10/0 in favor and Resolution No. 94-2005 was adopted.

5. ORDINANCES, SECOND READINGS

5.2 Ordinance No. 94-560. An Ordinance Amending the FY 1994-95 Budget and Appropriations Schedule For the Purpose of Funding a Contract to Recommend Further Improvements in Competitive Bidding, Procurement and Contracting Services

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

Deputy Presiding Officer Washington announced that Ordinance No. 94-560 was first read on July 14 and referred to the Finance Committee for consideration. The Finance Committee considered the ordinance on August 10 and recommend it to the full Council for adoption.

Motion: Councilor Hansen moved, seconded by Councilor McLain, for adoption of Ordinance No. 94-560.

Councilor Hansen gave the Finance Committee's report and recommendations. She explained Ordinance No. 94-560 was companion legislation to Resolution No. 94-2005, just adopted.

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

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To Councilor Moore's question, Doug Butler, Director of General Services, said the policy contained in the ordinance was very specific and would guide Metro's steps in refining its contracting policy by the end of December, 1994.

Vote: Councilors Buchanan, Gates, Hansen, Kvistad, McFarland, McLain, Monroe, Moore, Van Bergen and Washington voted aye. Councilor Gardner voted nay. Councilors Devlin and Wyers were absent. The vote was 10/1 and Ordinance No. 94-560 was adopted.

Councilor Gardner announced he wished to change his nay vote to an aye vote.

Restatement of Vote: Councilors Buchanan, Gardner, Gates, Hansen, Kvistad, McFarland, McLain, Monroe, Moore, Van Bergen and Washington voted aye. Councilors Devlin and Wyers were absent. The vote was 11/0 in favor and Ordinance No. 94-560 was adopted.

S.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

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. 94-554 Δ to the full Council for adoption. He announced that Ordinance No. 94-554 Δ 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. He said it was then placed on the August 11 Council agenda, was considered and received a 6/3 vote in favor. He said the ordinance, without an emergency clause, required 7 votes to be adopted, but was not considered defeated either and was continued to this meeting for Council consideration a second time. Deputy Presiding Officer Washington noted the Clerk read the ordinance for a second time by title only at the August 11 meeting.

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

Councilor Hansen said the ordinance had already been extensively discussed by the Finance Committee, but said the ordinance would increase the contracting amount to \$25,000 which would make bidding simpler for smaller contractors and simplify the contracting process as a whole.

Motion to Amend: Councilor McLain moved, seconded by Councilor Moore, to amend Ordinance No. 94-554 Δ as follows: To add the following language to the end of Section 2.04.043(a): "Prior to selecting any contractor for a public contract greater than \$10,000, but not more than \$25,000, the contracting department shall notify the Department of General Services of the nature of the proposed contract, the estimated cost of the contract, and the name of a contact person. The Department of General Services shall publish notice of the intent to solicit competitive quotes, including a summary of the information supplied by the contracting department. No contract selection may be made until at least five days after such publication and after consideration of all quotes received;" and to add the following language to the end of Section 2.04.052(a): "Prior to selecting any contractor for a personal services contract greater than \$10,000 but not more than \$25,000, the contracting department

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shall notify the Department of General Services of the nature of the proposed contract, the estimated cost of the contract, and the name of a contact person. The Department of General Services shall publish notice of the intent to solicit competitive proposals, including a summary of the information supplied by the contracting department. No contract selection may be made until at least five days after such publication and after consideration of all proposals received."

The Council discussed the amendment. Councilor Gardner asked how explicit the notice would be and where it would be published. Dan Cooper, General Counsel, said notice would likely be published in The Daily Journal of Commerce. He said the structure of the notice would not be formalized, but would be as explicit as was considered necessary.

Councilor Gardner said if the amendment passed, he would vote for the ordinance as amended. He said the amendment allayed his concerns about the new process with regard to public notice and other concerns.

Vote on Motion to Amend: Councilors Devlin, Gardner, Gates, Hansen, Kvistad, McFarland, McLain, Monme, Moore and Washington voted aye. Councilors Buchanan and Van Bergen voted nay. Councilor Wyers was absent. The vote was 10/2 in favor and the motion to amend passed.

George Ward, 510 SW Third, Portland, submitted written testimony in favor of the ordinance.

Joyce Hart, 7018 Montauk, Lake Oswego, said she had been working with farmers on salmon propagation issues. She said the ordinance would assist citizens in submitting ideas to government(s) to resolve problems/issues.

Charles Hines, 7122 SW Montauk Circle, Lake Oswego, urged the Council to adopt the ordinance because it would provide ideas for the Council to help resolve regional problems. He said the new procedures had been used by the Army Corps of Engineers and had been quite effective.

The Council briefly discussed the issues with the three testifiers further.

Faye Burch, State of Oregon, Governor's Advocate for the Office of Minority, Women and Emerging Small Businesses, submitted written testimony in support of the ordinance. She complimented Metro on its existing DBE program. She said Metro had been exemplary in its work with women-owned businesses, but less so with minority-owned businesses. She gave recommendations on how Metro could improve that participation via record-keeping and other processes.

Deputy Presiding Officer Washington asked if any other persons wished to testify on the ordinance. No other persons appeared to testify and the public hearing was closed.

Councilor Gates said the Council should attempt to incorporate Ms. Burch's recommendations in the process after the ordinance was adopted.

Councilor Kvistad said the Council had just adopted Ordinance No. 94-560 and said Ordinance No. 94-554^Δ did not particularly address minority contracting issues. He said Ordinance No. 94-560 should be allowed to do its work and Metro could then improve its minority contracting processes.

Councilor Moore said she wanted to hear by the end of December how the minority contracting process had been improved and wished to see Ms. Burch's recommendations included in the process also. She said Ms.

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Burch's letter should be provided to the consultant obtained via Ordinance No. 94-560 and Resolution No. 94-2005

Councilor Van Bergen said he would support the ordinance as a whole, but preferred to do so without the amended language

Councilor Hansen acknowledged concerns expressed by Councilors, but said the ordinance would begin improvement of Metro's contracting procedures.

Vote on Main Motion as Amended: Councilors Buchanan, Devlin, Gardner, Gates, Hansen, McFarland, McLain, Monroe, Moore, Van Bergen and Washington voted aye. Councilor Kvistad voted nay. Councilor Wyers was absent. The vote was 11/1 in favor and Ordinance No. 94-554A was adopted as amended.

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

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

Deputy Presiding Officer Washington announced that Ordinance No. 94-566 was first read on August 11 and referred to the Finance Committee for consideration. The Finance Committee considered the ordinance on August 24 and recommended Ordinance No. 94-566A to the full Council for adoption.

Motion: Councilor Kvistad moved, seconded by Councilor Gates, for adoption of Ordinance No. 94-566A.

Councilor Kvistad gave the Finance Committee's report and recommendations. He said the ordinance would advance the budget process by two weeks by requiring the Executive Officer to submit his/her budget earlier. He said advancing the schedule would not remove the emergency clause, but would give the Council more time to work on the budget.

Motion to Amend: Councilor Hansen moved, seconded by Councilor Gardner, to amend the submittal date for the FY 1995-96 Budget from February 1995 to April 1995.

Councilor Hansen said the budget submittal date was too early for administrative staff to forecast Metro's budget needs accurately.

Councilor Monroe opposed the amendment and said it would give the Council two weeks less time than the Council had this year to consider the budget.

Councilor Gardner said he had been through ten Metro budget processes and said the Council had always tried to strike a balance between giving the Executive Officer enough time to prepare the budget and the Council enough time to consider it. He said a transitional year for the Council, going from 13 to 7 members, was a bad time to try to change the schedule. He said the budget should not be adopted by a bare majority, but should be an instrument of consensus. He said issues of timing should be decided by the new Executive Officer and the new Council.

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Councilor Gates said the Council had received the budget in March in the past. He said he was not comfortable with receiving the budget in April or in January.

To Councilor Van Bergen's question, Councilor Kvistad said per Ordinance No. 94-566A, the Council would receive the budget at its first Council meeting in February which would be February 9, 1995.

The Council discussed the issues further. Councilor Hansen said the early date meant Metro staff would be working on the budget year-round. Councilor Kvistad said the new Council and the new Executive Officer would have to work as a team on the budget regardless of when the FY 1995-96 Budget was submitted.

Vote on the Motion to Amend: Councilors Buchanan, Devlin, Gates, Kvistad, McLain, Monroe and Washington voted nay. Councilors Gardner, Hansen, McFarland, Moore and Van Bergen voted aye. Councilor Wyers was absent. The vote was 7/5 opposed and the motion to amend failed.

Deputy Presiding Officer Washington recessed the Council at 5:20 p.m.

The Council reconvened at 5:34 p.m.

5.5 Ordinance No. 94-556B, An Ordinance Relating to Taxation, Establishing a Construction Excise Tax, Reducing the Metro Excise Tax, Reducing Solid Waste Rates, and Refunding Payments to Local Governments

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

Deputy Presiding Officer Washington announced that Ordinance No. 94-556 was first read on June 9 and referred to the Finance Committee for consideration. The Finance Committee considered the ordinance on June 22, July 12, 18, 27 and August 1. The Committee did not forward Ordinance No. 94-556B to the full Council for adoption and the Council, at its August 11 meeting, voted 6/3 in favor to have the Council as a whole consider the ordinance at this meeting.

Main Motion: Councilor Monroe moved, seconded by Councilor McLain, for adoption of Ordinance No. 94-556B.

Councilor Monroe gave the report on Ordinance No. 94-556B. He said the ordinance would place a 12 cent tax per square foot on new construction, reduce the solid waste tipping fee, and rebate governmental dues to local governments.

First Motion to Amend: Councilor Monroe moved, seconded by Councilor McLain, to amend ordinance Section 7.02.110 to read: "The Executive Officer may enter into inter-governmental agreements with other governments to provide for the enforcement of this chapter and the collection of the Construction Excise Tax. The agreements may provide for the governments to retain no more than 5 percent of the taxes actually collected as reimbursement of administrative expense and be reimbursed for the government's reasonable, one time start up costs as set forth in the agreements." Under the same motion, Section 4 of the ordinance on page 10 was amended to read: "The Executive Officer shall rebate to each local government that has made a voluntary payment to Metro in lieu of the per capita payments required by the provisions of former ORS 268.513 for fiscal year 1994-95 an amount equal to the number of days remaining in

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~~fiscal year 1994-95 on the effective date of this Ordinance divided by 365. [Prior to making any rebate, however, the Executive Officer shall deduct from the amount to be paid to any local government the amount of start-up costs that Metro has agreed to pay pursuant to any intergovernmental agreement authorized by Metro Code Section 7.02.110.]~~

Vote on First Motion to Amend: Councilors Devlin, Gardner, Gates, Hansen, McFarland, McLain, Monroe, Moore and Washington voted aye. Councilors Kvistad and Van Bergen voted nay. Councilors Buchanan and Wyers were absent. The vote was 9/2 in favor and the motion to amend passed.

Second Motion to Amend: Councilor McLain moved, seconded by Councilor McFarland, to amend the ordinance by adding a new Section 5 to read: "The Metro Construction Excise Tax established pursuant to Metro Code Chapter 7.02 shall not be imposed on and no person shall be liable to pay any tax for any construction activity that is commenced pursuant to a building permit issued on or after July 1, 2000."

Councilor McFarland said she had made it quite clear that she would not support the ordinance without a sunset clause because it would force the future Council to realize that this was a short-range tax to meet the immediate mandates of the 1992 Metro Charter. She urged the Council to adopt the sunset clause and said without it, she would not vote aye on the ordinance as a whole.

Councilor Devlin said he would vote for the amendment, but believed the sunset clause should have been set for an earlier date.

Councilor Monroe said he would support the amendment and said the ordinance as drafted contained the "McRoberts amendment" which required review and study by 1998. He said that amendment and the sunset clause as proposed would assure the public that Metro intended to find a permanent broad-based tax to replace the construction excise tax.

Councilor Van Bergen said the amendment was dubious and not well thought out, and said the rest of the ordinance was not well thought out, either. Councilor McLain said she had Legal Counsel review the amendment and they had stated the amendment was correct and valid.

Vote on Second Motion to Amend: Councilors Devlin, Gardner, Gates, Hansen, McFarland, McLain, Monroe, Moore and Washington voted aye. Councilors Kvistad and Van Bergen voted nay. Councilors Buchanan and Wyers were absent. The vote was 9/2 in favor and the motion to amend passed.

Councilor Monroe asked that Jennifer Sims, Director of Finance & Information Management, give an informational report on the ordinance.

Councilor Van Bergen objected. He said Ms. Sims would report favorably on the ordinance and said someone opposed to ordinance should also be called upon to testify.

Ms. Sims reviewed the history of the ordinance and the use and need for the funds. She said per the 1992 Metro Charter, planning was now Metro's primary mandate and the Charter specifically stated when Metro

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would achieve specific goals, but did not specify how Metro was to fund those goals. She said Metro appointed a Tax Advisory Committee which recommended several options including a construction excise tax. She said the Budget Committee, when it finished the budget process, had determined it was necessary to raise the excise tax to 7.5 percent.

Andy Cotugno, Director of Planning, explained and described Metro's planning mandates. He said Future Vision had to be adopted by 1995 and the Regional Framework Plan had to be adopted by 1997. He said Metro had to ensure that the Regional Framework Plan was incorporated into local plans by 1999. He said all projects had to have periodic review every five years including the Regional Transportation Plan and discussed other federal planning requirements. He noted financial information provided stated 92 percent of the funds raised would meet federal, state and regional requirements and 8 percent would be dedicated to small, discretionary projects. He said the construction excise tax was part of a larger funding mix including the Metro excise tax. He said Metro's share was 20 percent and 50 to 60 percent of that was the construction excise tax.

Executive Officer Cusma acknowledged that new taxes were not popular, but said Metro had to fund planning. She said Metro had to stop relying on the solid waste tipping fee and Zoo revenues. She said the local governments no longer wished to pay dues. She cited Seattle, Washington and cities in California as examples of what could happen when proper planning was not done. She said the public wanted good planning and urged the Council to adopt Ordinance No. 94-556B.

Councilor Kvistad asked Ms. Sims if she had proposed a base budget with an excise tax of 6 percent. Ms. Sims said she had and that the Council did not adopt a base budget. Councilor Kvistad asked Mr. Cotugno if the agency had done a specific review of how much it would take to fund Metro's various planning mandates. Mr. Cotugno said such specific financial information had been provided to the Council. Councilor Kvistad said staff had not provided point-by-point funding costs. Mr. Cotugno said the Council had extensively reviewed the Planning Department budget item by item. Councilor Kvistad said items were added back, but did not feel that process had provided a comprehensive financial overview of necessary costs. Deputy Presiding Officer Washington opened the public hearing.

Mike Houck, The Wetlands Conservancy, Urban Streams Council, PO Box 1195, Tualatin, distributed written testimony and said it was fair that new construction should pay for planning costs. He said Metro's Planning Department's resources was woefully inadequate and said per Future Vision, Metro was also charged with ascertaining the region's carrying capacity for its population now and in the future. He said Metro would need a lot more funding to do what it was charged to do.

Councilor Kvistad asked Mr. Houck where the funding was supposed to come from. Mr. Houck said he believed there would be overwhelming support for a charge on new construction to pay for planning.

Mike Meyer, Audubon Society of Portland executive director, 5151 NW Cornell Road, Portland, said good planning was good for wildlife and the environment. He said Metro had been charged with the task of good planning. He said it would save more money in the long run by making good choices now. He said the construction excise tax met the requirements of a "good tax" and said Metro would begin to fulfill its charge by implementing it. He said the problems the Audubon Society had dealt with had resulted from the lack of good planning.

Len Freiser, Metro Future Vision Commission chair, said the Commission had met with citizens from all over the region. He said he had never seen a region where citizens loved where they lived so much. He said only planning would protect the Metro region. He said planning saved not only the area, but money. He said inertia now would cost more later. He cited examples of areas that did not practice good planning.

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Teri Duffy, Northeast Community Development Corporation, 4114 N. Vancouver Avenue, Portland, asked the Council to exempt all non-profit organizations that produced low-income housing. She said they planned to build approximately 60 new homes next year. She noted language allowed the Executive Officer to exercise an exemption option, but said that option was variable and not a requirement. She said it would be more efficient for Metro to exempt all non-profits from the construction excise tax and said that exemption would continue to keep low-income housing affordable.

Councilor Monroe asked Ms. Sims to explain how the exemption for non-profits would work. Ms. Sims said Section 7.02.120 of the ordinance contained provisions for three different rebates and explained the same. Ms. Duffy said she felt the language was still arbitrary and was not clear policy. She said it did not represent Metro's commitment to affordable housing. Councilor Monroe explained the provisions further. He said local jurisdictions had promised to honor the rebate language. Ms. Duffy said if the exemption was granted outright now, it would reduce bureaucratic procedures. Councilor Gardner said the language resulted from Metro's need to deal with other jurisdictions. He said the Council was clearly expressing at this meeting its intent that non-profit organizations that met stated criteria would receive exemptions, and if not, rebates. He said the word "may" in that section could be changed to "shall". He said he would confer with Legal Counsel on such an amendment.

Tasha Harmon, Community Development Network coordinator, 802 SE 27th Avenue, spoke in favor of changing the word "may" to the word "shall".

James Cozzetto, Jr., general manager, Metropolitan Disposal & Recycling, 554 N. Columbia Blvd, said he was a member of the Tri-County Council, the Rate Review Committee and the Solid Waste Advisory Committee. He said he strongly supported the ordinance if it lowered the solid waste tipping fee by \$2 per ton. He said it would create a revenue source for Charter-mandated planning and said it was not true that haulers would simply pocket the reduction in the tipping fee. He said all cities and counties in the region had commercial franchises and that rates were set. He said haulers had to comply with waste reduction programs and implement them. He said the new, additional revenue would offset haulers' costs in providing waste reduction programs and services. He said Metro needed to continue to look at revenue options as waste disposal decreased.

Diana Jetje, ERA Waltz & Weber, 3605 Pacific Avenue, Forest Grove, asked why the ordinance was before the Council since it had failed at committee. She asked why Metro would want to jeopardize economic development such as Intel's proposed expansion in Washington County.

Councilor Monroe said the committee vote was 4/4. Councilor Devlin explained that a majority of the Council could bring an issue to the full Council for consideration if it failed in committee. Councilor Gardner said the proposed construction excise tax for the Intel development would only be \$7,000 for a \$1 billion dollar facility. Councilor McFarland said she had believed all along that an issue of this magnitude should come before the full Council for consideration. Councilor McLain noted Ms. Jetje raised the issue of the cost of administration. She said the non-profits would cost some administrative dollars, but said large projects would offset administrative losses.

John Liljegren, Westwood Corporation, 3030 SW Moody, Portland, asked if Metro needed to get \$1.3 million annually, what Metro would charge for retail, industrial, retail and public square footage. He said information provided by Metro did not break down costs according to the different types of construction, only for private, single-family homes.

Councilor Monroe referred Mr. Liljegren to Ms. Sims for that information. Mr. Liljegren said the Council should know such specific details. He said he raised the issues at Metro's public hearing in November.

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Councilor Monroe said Metro's projections were based on construction events during the last 11 years. He said he did not know what specific revenues could be tied to different construction categories. Mr. Liljegren asked specifically how many planners and related personnel would be cut if Metro did not receive the proposed revenue. He asked what objectives the planners were supposed to achieve in the next five years. He asked what would happen to the region if those objectives were not achieved. Councilor Gates said almost all Metro dollars were split. He said most Metro projects and programs received matching funds. He said if Metro could not raise revenue, it would lose the matching revenue from another source. He said there was no succinct answer to that question considering Metro's complex financing structure. Mr. Liljegren said he had asked that question on multiple occasions and had never received a satisfactory answer.

The Council and Mr. Liljegren discussed the issues further. Deputy Presiding Officer Washington referred Mr. Liljegren to Mr. Cotugno to answer the questions he had raised and said he would be happy to welcome him back for further testimony.

Councilor McLain said Metro's needs assessment was not vague. She said the questions raised were complex and could not be answered at this time, but could be answered with more time and Metro staff on hand. She said the Council would not vote on an ordinance of this magnitude if they did not know what they were voting for.

Councilor Devlin said the estimate at this time was that Metro would collect \$2 million per year, but that it would give up \$1.2 million in revenue from solid waste tipping fees and local governmental dues. Mr. Liljegren said he had understood that Metro would make \$2 million net per year. Councilor Monroe said Metro would make \$500,000 in new revenues and also replace old revenues.

Councilor Moore said the record should reflect a response to Mr. Liljegren's questions in some form.

Steve Schwab, Sunset Garbage Collection owner, member of the Tri-County Council, the Rate Review Committee and the Solid Waste Advisory Committee, said he was speaking on behalf of the Tri-County Council and distributed written testimony and read from the same in support of Ordinance No. 94-556B.

M'Lou Christ, SE Uplift executive director, 904 SE 13th, Portland, concurred with Mr. Houck's and Mr. Myer's testimony given previously. She said she would have preferred to see a higher rate imposed on single-family rather than multi-family housing. She said it should be clarified which entities would receive exemptions and/or rebates and said that should apply only to low-income housing. She said education-related programs should also be included in Metro's definition of planning activities.

Jack Nelson, Associated General Contractors, 9450 SW Commerce Circle, Wilsonville, said he represented AGC's 150 members. He said the construction excise tax imposed a disproportionate tax on a certain segment of the population to pay for something that would benefit all. He said only taxing new construction was unfair and placed a burden on the few. He said Metro should find a mechanism that all citizens, either directly or indirectly, could pay for.

Marian Drake, 6110 NE Prescott, Portland, submitted an article for the record from The Columbian which reported on the effects on citizens from unplanned growth. She said she supported the ordinance. She asked if Metro's fiscal projections were tied to the 1994 dollar. She concurred with Mr. Houck's, Mr. Meyer's, and Mr. Freiser's testimony and said there should be careful planning and protection of open, natural areas and greenspaces. She said planners should look at social planning and noted the pending grocery workers strike.

Councilor Monroe said inflation rates would slightly erode new revenues.

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Daniel Temple, 1331 NE 30th Court, Gresham, said Metro would only achieve \$500,000 in new revenues. He said he was a builder, and said the building industry was already the most regulated industry. He noted testimony given by solid waste haulers which stated it was unfair for the solid waste industry to pay for planning, but said that excise tax revenue from solid waste rates was the most broad-based tax because everyone disposed of garbage. He said the construction excise tax would total \$3.30 per month per homeowner over the life of a 30-year mortgage, and said the garbage fees would only be reduced by 10 cents per month per homeowner.

Greg Specht, chair, Public Affairs of the Association of Industrial and Office Parks, 15400 SW Millikan Way, Beaverton, said he was a strong proponent of planning and said Metro's planning staff did an excellent job. He said he had benefitted from the planning efforts of others. He said he opposed the construction excise tax because of its narrow focus. He said planning benefitted everyone, not just those in the construction community. He said all should carry the burden. He opposed the tax because it was a replacement tax. He opposed the tax because it exempted governmental entities. He said governments built some of the biggest projects around. He opposed it because it did not specifically exempt non-profits from the tax and said he sat on the board of a non-profit agency. He said the issue was not about good or bad planning, but how planning was paid for. He said such an issue should be decided via the elections process.

Jon Chandler, staff attorney, Metropolitan Homebuilders Association and Common Ground, 15555 SW Bangy, Lake Oswego, said the issues were not about land use planning. He said HBA had consistently supported planning, LCDC, Metro's efforts, and believed the garbage haulers were right, but said the issue was one of fairness. He said Metro needed a stable, long-term base and said the construction excise tax was a niche tax. He said the need for money should not blind the Council to the fact that they were still targeting only one industry. He said it was not good policy, not a good tax, and not a good funding source. He said they would help Metro in any way, and also financially possible, to help Metro find a stable funding base.

Councilor Kvistad asked if the Homebuilders Association would refer the issue to the voters. Mr. Chandler said they had discussed that issue, but were hesitant because they would have to beat up Metro to do it. He said that would not be the appropriate thing to do, although he said they conducted a poll about it and the poll results had indicated such a tax measure would fail. He said they wished to continue working with Metro and not be adversarial with Metro.

Councilor Kvistad asked, if Metro did not adopt the construction excise tax, if the Homebuilders would support some other type of permanent, broad-based tax. Mr. Chandler said they would.

The Council and Mr. Chandler discussed the issues further. Councilor Devlin asked, if House Bill 2028 passed, if the Homebuilders would seek a moratorium on the construction excise tax. Mr. Chandler said they likely would.

Robin White, Portland Metropolitan BOMA executive vice-president, 1221 SW Fifth Ave., Suite 2722, Portland, said she did not believe Metro had proven its need for the revenue. She said planning was a top priority, but said Metro should budget for planning first and fund other needs after that. She said Metro was transferring the burden from one industry to another, especially to an industry with great revenue fluctuations. She said the amount of money talked about was not a great deal, and said the sunset clause helped, but said there was nothing to stop the Council from increasing it and/or extending it. She again stated for the record her opposition to the construction excise tax. She said the construction industry would assist the Council in finding a permanent funding mechanism.

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Denny Krause, Greater Gresham Board of Realtors legislative chair, 1550 NW Eastman Parkway, Gresham, concurred with the previous testimony given that builders supported planning. He asked how the Council could start the whole process all over again after it failed in committee.

Councilor Moore said it was a big issue and should be heard by the full Council, but would not be raised again after this meeting. Mr. Krause said the process seemed redundant and asked again about the \$2 million amount discussed earlier. He asked how much the matching funds totalled.

Mr. Cotugno explained again about the Planning Department budget and matching grants. Mr. Krause said Metro did not receive matching dollars for all programs/projects and said it was a misconception to state that Metro would lose \$4, \$6 or \$8 million. Mr. Cotugno again explained that different programs/projects had different amounts of matching funds.

The Council and Mr. Krause discussed the issues further.

Mr. Krause asked what Metro would do if local governments did not wish to participate in collecting the construction excise tax.

Deputy Presiding Officer Washington asked if there was a list of governments who had stated they did not wish to participate in collection. Councilor Monroe said the ordinance provided that if Metro could execute intergovernmental agreements with local governments, they would, and if not, Metro would collect the tax on their behalf.

Amanda Fritz, 4106 SW Vacuna Street, testified in favor of the ordinance. She identified herself as a "general citizen of the region" and said citizens should do everything possible to maintain livability in the region.

Mr. Cotugno reported to the Council that he had provided Mr. Liljegen with fiscal funding data on what would happen with construction excise tax revenues and what cuts would have to be made if Metro did not obtain the new revenues.

Also submitted for the record and filed with the record of this meeting were records of telephone calls from: 1) Robert Vaught, 55 N. Shore Road, Lake Oswego; 2) Charles Rearrick, 5162 SE 28th Drive, Gresham; 3) John Lee, 2811 SW Miles, Portland; 4) Linda Eaton, 9625 SW Lewis Lane, Portland; 5) Roxanne Rosenblatt, 14755 SW 139th, Tigard; and 6) Budd Larson, 15485 SW Bob White, Beaverton. All six citizens who called were opposed to Ordinance No. 94-556B.

Also submitted for the record was a letter in support of the ordinance dated August 24, 1994 from JPACT members Commissioner Earl Blumenauer, City of Portland; Commissioner Tanya Collier, Multnomah County; Tom Walsh, Tri-Met general manager; Dave Lohman, Policy and Planning Director, Port of Portland, and Councilor Bernie Giusto, Cities in Multnomah County.

Also submitted for the record was a letter in support of the ordinance dated August 24, 1994 from Commissioner Gretchen Kafoury, City of Portland.

Also submitted for the record was a letter in support of the ordinance expressing MPAC's support of the ordinance dated August 18, 1994 and signed by Gussie McRobert, MPAC chair and City of Gresham Mayor.

Also submitted for the record was a letter in support of the ordinance dated August 24, 1994 from Nick Sauvie, Rose Community Development Corporation, 7455 SE 52nd Avenue, Portland.

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Also submitted for the record was a letter in opposition to the ordinance from Professionals Realtors 100, Portland Executive Branch, 10260 SW Greenburg Road, Lincoln Tower 250, Portland. The letter was signed by 18 persons.

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

The Council as a whole discussed Ordinance No. 94-556B and the testimony given.

Councilor Hansen said that the solid waste industry paid for and supported the regional solid waste system and that builders should pay for regional planning made necessary by growth.

Councilor Gates said he did not have reservations about using solid waste excise taxes to pay for planning, but said it was more equitable to tie planning to construction. He said the solid waste excise tax was a hidden tax, and the construction excise tax was a high-profile tax. He said he had reservations about the lag time between when the construction excise tax became effective and when revenues were actually collected, but said he would support it.

Councilor Gardner said the Council had heard a great deal of testimony on how certain industries had been singled out, both from solid waste and construction industry representatives. He said the best tax was the tax that others had to pay. He said the growth the region was facing was what convinced him that the construction excise tax was the best tax to impose. He said new development required more planning than an existing community did. He said the Council had to comply with the 1992 Metro Charter's mandates and its tight time frames. He said new growth would not pay for all of the planning, only part of it, and that the rest would continue to be paid from a broad-based excise tax via the Zoo and solid waste. He said the new tax would create a balance for all of its payers. He discussed Joint Policy Advisory Committee on Transportation (JPACT) and Metro Policy Advisory Committee (MPAC) review of the issues. He said the sunset clause provided more reassurance that Metro would continue to try to find the best funding solution possible.

Councilor Van Bergen said he opposed the construction excise tax completely. He said the solid waste disposal rates had been driven by Metro's need for excise tax money and said the construction excise tax was not a fair tax either as was stated by testifiers at this meeting.

Councilor McLain said the Council would not make such a decision lightly. She said she would vote for the construction excise tax because of the sunset and affordable housing clauses. She said she spent a great deal of time dealing with planning issues. She urged the Council to vote for the ordinance and personally pledged to continue to seek a broad-based funding source for Metro.

Councilor Moore concurred with Ms. Fritz's testimony given earlier and said the construction excise tax would maintain the community that citizens wanted to live in which keep it a desirable market. She said if the region's quality of life was degraded, citizens would not want to live there any more.

Councilor Kvistad concurred with Councilor Van Bergen's comments. He said the construction excise tax was not a stable source of funding and that the majority should pay for planning, not the select few. He said voters should be able to vote on an issue of this magnitude. He said Metro should raise a reasonable tax for an appropriate purpose and said the construction excise tax did not meet that criteria, but was merely a niche tax. He said he planned to help fight implementation of the construction excise tax and asked the Council to reject it at this time and accept the offers of assistance to find a permanent source of broad-based funding made at this meeting.

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Councilor Devlin said he was going to vote nay on the construction excise tax and said it would be one of the most difficult votes of his life. He said he believed the construction industry should pay a part, and did not question the need to fund planning, but believed that the process used and the proposal itself was severely flawed. He said he could see the rationale behind reducing the excise tax rate from 7.5 to 6 percent and giving up \$1.5 million in revenue, but said he did not understand why Metro was giving up a broad-based tax and going for one more narrow in scope. He said there was no guarantee that the construction excise tax would not be referred. He said construction industry revenues fluctuated a great deal. He said if planning functions were dependent on a narrow revenue base, that would make it hard to get a broad-based tax later. He said if it was referred, Metro could not collect those revenues and the excise tax would not be reduced either. He said the State Legislature would likely vote on a moratorium on real estate taxes which would effectively stop the construction excise tax also. He expressed concern also about administrative costs. He said collection of the construction excise tax involved intergovernmental agreements (IGAs) with 27 governments. He said it was a political charade to reduce solid waste tipping fees from \$75 to \$73 per ton because all staff estimates pointed to it being raised back up again. He said the entire package was flawed. He stated for the record that he was running for election to the State Legislature, but said many testifiers at this meeting supported his opponent, and said that his vote was a vote of conscience.

Councilor Van Bergen discussed the cyclical effect of "soft money." He said Councilor Devlin had raised many of the issues he had wished to address. He referred those present to the supplemental packet of material provided for the ordinance demonstrating what planning efforts had been funded to-date. He said Metro had fully funded planning all along.

Councilor Gardner asked if the rebate for single family homes in Section 7.02.120(a)(1) applied to manufactured housing.

Third Motion to Amend: Councilor Gardner moved, seconded by Councilor Moore, to amend Ordinance NO. 94-556B by changing "may" to "shall" in Section 7.02.040(b).

Councilor Van Bergen asked what the purpose of the amendment was. Councilor Gardner said the amendment would ensure that non-profit organizations would receive exemptions from the construction excise tax.

Councilor Van Bergen said he could not support the amendment as he could not support the ordinance as a whole, but said he felt exemption authority should be at the Executive Officer's discretion.

Councilor Kvistad said the amendment demonstrated that the ordinance before the Council was not perfect and needed further work. He said the Council should stop nitpicking and leave such decisions to the Executive Officer.

Councilor Moore said the amendment was critical to the success of the ordinance as a whole.

Vote on Third Motion to Amend: Councilors Devlin, Gardner, Gates, Hansen, McFarland, McLain, Monroe, Moore and Washington voted aye. Councilors Kvistad and Van Bergen voted nay. Councilors Buchanan and Wyers were absent. The vote was 9/2 in favor and the motion to amend passed.

Deputy Presiding Officer Washington said he had stated all along that he would not support the ordinance as a whole. He had supported the amendments because he thought they were good, but could not vote for Ordinance No. 94-556B.

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Councilor Monroe thanked all those who had assisted in the development of Ordinance No. 94-556B: Deputy Presiding Officer Washington; the Tax Study Committee; the Finance Committee; Councilor Gardner; Ms. Sims and her staff; Mr. Cooper; all of the citizens who had testified; Mr. Chandler; and Mrs. Monroe.

Vote on Main Motion as Amended: Councilors Buchanan, Gardner, Gates, Hansen, McFarland, McLain, Monroe and Moore voted aye. Councilors Devlin, Kvistad, Van Bergen and Washington voted nay. Councilor Wyers was absent. The vote was 8/4 in favor and Ordinance No. 94-556B was adopted as amended.

Deputy Presiding Officer Washington recessed the Council at 8:40 p.m.

The Council reconvened at 8:55 p.m.

5. ORDINANCES, SECOND READINGS (Continued)

5.3 Ordinance No. 94-566A, For the Purpose of Amending the Metro Code and Relating to the Annual Budget (Continued)

The Council continued discussion on Ordinance No. 94-566A.

Councilor Kvistad noted he had spoken with Mike Burton, Executive Officer candidate, who had stated he preferred to review the budget sooner than later. He said the ordinance moved submittal of the budget up only eight days from last year's budget schedule per Resolution No. 94-1839 adopted on September 9, 1993.

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

Councilor Van Bergen called the question.

Vote to Call the Question: Councilors Devlin, Gates, Hansen, Kvistad, McFarland, McLain, Monroe, Van Bergen and Washington voted aye. Councilors Gardner and Moore voted nay. Councilor Buchanan abstained. Councilor Wyers was absent. The vote was 9/2 in favor and the motion passed.

Councilor Buchanan changed his abstention to an "aye" vote.

Restatement of Vote to Call the Question: Councilors Buchanan, Devlin, Gates, Hansen, Kvistad, McFarland, McLain, Monroe, Van Bergen and Washington voted aye. Councilors Gardner and Moore voted nay. Councilor Wyers was absent. The vote was 10/2 and the motion passed.

The Council discussed the ordinance further.

Ms. Sims asked if she could make an informational statement.

Motion to Suspend the Rules: Councilor Monroe moved, seconded by Councilor Moore, to suspend the rules to allow Ms. Sims to speak.

Vote on Motion to Suspend the Rules: Councilors Buchanan, Devlin, Gardner, Gates, Hansen, McFarland, McLain, Monroe, Moore and Washington voted aye. Councilors Kvistad and Van Bergen voted nay. Councilor Wyers was absent. The vote was 10/2 in favor and the motion passed.

Ms. Sims said per Oregon Budget Law, Metro administrative staff had to submit budget information one week prior to February 9 to Council staff.

Vote: Councilors Buchanan, Devlin, Gates, Kvistad, McFarland, McLain, Monroe, Van Bergen and Washington voted aye. Councilors Gardner, Hansen and Moore voted nay. Councilor Wyers was absent. The vote was 9/3 in favor and Ordinance No. 94-566A was adopted.

5.4 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 second time by title only.

Deputy Presiding Officer Wyers announced that Ordinance No. 94-561 was first read on August 11 and referred to the Finance Committee for consideration. The Finance Committee considered the ordinance on August 24 and recommended it to the full Council for adoption.

Motion: Councilor Hansen moved, seconded by Councilor Devlin, for adoption of Ordinance No. 94-561.

Councilor Hansen gave the Finance Committee's report and recommendations.

Councilor Moore asked if Metro would collect interest on the fund. Councilor Hansen said Metro would not.

Deputy Presiding Officer Washington opened the public hearing.

Amanda Fritz, 4106 SW Vacuna St., Portland, said she wanted to let the Council know how thorough she thought Metro staff had been when they had answered her questions on the fund in question and urged the Council to adopt the ordinance.

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.

Vote: Councilors Buchanan, Devlin, Gardner, Gates, Hansen, Kvistad, McFarland, McLain, Monroe, Moore, Van Bergen and Washington voted aye. Councilor Wyers was absent. The vote was 12/0 in favor and Ordinance No. 94-561 was adopted.

6. RESOLUTIONS (Continued)

6.1 Resolution No. 94-2024B, Publishing a Schedule of Public Hearings and Metro Council Decisions to Select the Region 2040 Preferred Alternative

Motion: Councilor Gardner moved, seconded by Councilor Moore, for adoption of Resolution No. 94-2024B

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Councilor Gardner gave the Planning Committee's report and recommendations. He said the resolution listed the schedule of public hearings to consider the Region 2040 Preferred Alternative with the end adoption date by the Council slated for December 8, 1994.

The Council discussed the resolution further. Councilor Kvistad described what procedures the Committee/Council would use in workshops/public hearings.

Councilor Moore asked Mr. Cotugno to provide finalized information for consideration on the 2040 process at the next Metro Committee for Citizen Involvement Committee. She also asked that staff call the preferred alternative, the "recommended preferred alternative" from now on.

Vote: Councilors Buchanan, Devlin, Gardner, Gates, Hansen, Kvistad, McFarland, McLain, Monroe, Moore and Washington voted aye. Councilors Van Bergen and Wyers were absent. The vote was 11/0 in favor and Resolution No. 94-2024B was adopted.

6.2 Resolution No. 94-2015, Amending the FY 1995 Metro TIP to Allocate Funds to Two Road Widening Projects and Acknowledging Miscellaneous Administrative Amendments

Motion: Councilor Monroe moved, seconded by Councilor Gates, for adoption of Resolution No. 94-2015.

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

Councilor Moore stated for the record that a footnote would be added to the TIP for a truck climbing lane.

Vote: Councilors Devlin, Gardner, Gates, Hansen, Kvistad, McFarland, McLain, Monroe, Moore and Washington voted aye. Councilors Buchanan, Van Bergen and Wyers were absent. The vote was 10/0 in favor and Resolution No. 94-2015 was adopted.

6.3 Resolution No. 94-2025, Entering Into a Grant Agreement with the Metropolitan Arts Council

Motion: Councilor Moore moved, seconded by Councilor Gates, for adoption of Resolution No. 94-2025.

Councilor Moore gave the Regional Facilities Committee's report and recommendations.

Vote: Councilors Devlin, Gardner, Gates, Hansen, Kvistad, McFarland, McLain, Monroe, Moore and Washington voted aye. Councilors Buchanan, Van Bergen and Wyers were absent. The vote was 10/0 in favor and Resolution No. 94-2025 was adopted.

7. COUNCILOR COMMUNICATIONS AND COMMITTEE REPORTS

Motion: Councilor McLain moved, seconded by Councilor Hansen, in conformance with the provisions of Metro Code Section 2.01.140(h), to remove Ordinance No. 94-559 from the Governmental Affairs Committee and bring it to the full Council for consideration at its September 8, 1994 Council meeting.

The Council as a whole discussed the motion

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Vote: Councilors Devlin, Gardner, Gates, Hansen, McFarland, McLain, Monroe, Moore and Washington voted aye. Councilor Kvistad voted nay. Councilors Buchanan, Van Bergen and Wyers were absent. The vote was 9/1 in favor and the motion passed.

All business having been attended to, Deputy Presiding Officer Washington adjourned the regular meeting at 9:40 p.m.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Paulette Allen", with a long horizontal flourish extending to the right.

**Paulette Allen
Clerk of the Council
MCMIN94.237**