

**MINUTES OF THE COUNCIL
OF THE METROPOLITAN SERVICE DISTRICT**

August 6, 1981

Councilors in Attendance

**Presiding Officer Jack Deines
Vice Presiding Officer Betty Schedeen
Councilor Ernie Bonner
Councilor Cindy Banzer
Councilor Bruce Etlinger
Councilor Mike Burton
Councilor Bob Oleson
Councilor Charlie Williamson
Councilor Craig Berkman
Councilor Corky Kirkpatrick
Councilor Jane Rhodes**

In Attendance

Executive Officer Rick Gustafson

Staff in Attendance

Andy Jordan	Dennis O'Neil
Merle Irvine	Norm Wietting
Caryl Waters	Evelyn Brown
Judy Roumpf	Doug Drennen
Mike Holstun	

Others in Attendance

**Phil Adamsak
N.L. Parks
Gus Sahli
Fran Sahli
Diane Quick
Horace A. Donaldson
Dorene Warner
Marie Donaldson
Clyde Johnson
Gayle W. Compton
Daniel B. Cooper
Gary Newbore
John Trout
Mark Greenfield
Tom Vander-Zanden
Tim Ramis
Paul & Dons Clark
Verna Reynolds
Bill Anton
Bob Root
Robert Blair
Sylvia Parent
Frank & Helen Miller
F. Le Graham
R. Compton
Vince Kohler
Orville M. & Helen Beard
Beth & Bob Blunt
Bill & Ruth Olson
Julia Dunn
Allen Emmett**

CALL TO ORDER

After declaration of a quorum, the meeting was called to order by Presiding Officer Deines at 7:35 p.m. in the Council Chamber, 527 S.W. Hall Street, Portland, Oregon 97201.

1. CITIZEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS

There were no written communications to Council on non-agenda items at this meeting.

ORDINANCES

Presiding Officer Deines, with the Council's permission, requested that this evening's agenda order be changed so that Ordinances' testimonies can be heard earlier in the evening.

PUBLIC HEARING on Ordinance No. 81-111, An Ordinance Relating to Solid Waste Disposal; Providing for Disposal Franchising; Amending Code Section 4.03.020; and Repealing Code Chapters 4.02 and 4.04 (First Reading)

It having been ascertained that it was the consensus of the Council to do so, the Clerk read Ordinance No. 81-111 for the first time by title only.

Coun. Banzer moved seconded by Coun. Rhodes to adopt Ordinance No. 81-111.

Coun. Banzer reported that the Regional Services Committee (RSC) recommends that the Council adopt the Disposal Franchising Ordinance which repeals chapters 4.02 and 4.04 of Metro's Solid Waste Code. The Ordinance effects a transfer from the current solid waste certificate system to a franchise system. Franchise authority strengthens Metro's flow control, eliminates certificate requirements which duplicates those of DEQ and requires the District to set Solid Waste disposal rates. The development of the Ordinance has been a process of incorporating the input of many interested groups. A Subcommittee of Solid Waste Policy Advisory Committee (SWPAC) formulated the first draft of the Ordinance during the Fall of 1979 and Winter of 1980. SWPAC reviewed the Subcommittee's recommended draft and after numerous discussions and revisions forwarded the Ordinance to the RSC on May 13. RSC held a public hearing on the Ordinance and as a result of the comments that were received from the public and from some of the concerns of Council members, further revisions were made. One controversial issue was not resolved in Committee, it was Subsection 13(12), commonly referred to as the "conflict of interest" section. Some members of the Collections industry indicated to the RSC that they feared that solid waste operators, with an interest in collection, could charge their own companies a reduced disposal rate or give their own companies other special treatment.

Coun. Banzer said that Coun. Rhodes will be submitting a minority report on the Regional Services Committee stand on Subsection 13(12) and then recommended that Merle Irvine, Director of Solid Waste, outline the major features of this Ordinance.

Mr. Irvine stated that the major areas of concern in the Disposal Franchise are: 1) Establishment of rates - A Rate Review Committee will be established that will comprise 2 Public Certified Accountants, 2 members from the general public and 1 person representing local government that has financial accounting experience. The role of the Rate Review Committee will be to review the request by the various disposal facilities, processing centers and transfer stations to determine the rates that should be charged and then make recommendations to the Executive Officer and Council. The purpose of the Committee is to ensure that the rates charged at the various disposal facilities are fair and equitable. The Ordinance also allows for different rates for the various sites or the ability to establish a uniform rate throughout the entire system. 2) Overlap of authority between Metro & DEQ - (in environmental and operating standards) in the current certificate process, i.e. leachate control, gas control and methods of operating daily cover, etc. The proposed Franchise Ordinance would eliminate this duplication and would provide that the State DEQ will be the regulatory and enforcing agency in this area. This will correct a conflict that Metro currently has as the operator of the St. John's Landfill as well as regulator of other facilities. 3) Flow control - will give Metro the ability to direct material to specified sites, i.e. transfer stations, landfills and resource recovery. The ordinance also provides that the Council, upon giving notice to the franchise site, can direct material away from that franchise site to resource recovery. It will also allow the Executive Officer, in emergency situations, to divert material to the resource facility. Another important issue is that this Ordinance provides an exemption to the Franchise Ordinance for source separated material, i.e. cardboard, glass, newspaper, etc.

Coun. Rhodes, in presenting her Minority Report, said that the question of the "Gate" and how do we prevent the kind of "conflict of interest" that the haulers have been concerned about, is a question that is an important one. The Regional Services Committee decided controls needed to be placed on the franchise person to eliminate unfair advantage to the rest of the system.

She then recommended that certain language be deleted and alternate language be substituted into the Ordinance which says: That if the person who has the franchise chooses to be involved with hauling, it is that person's choice, that Metro would operate the Gate, and thereby ensure that at least the admittance fees would be carefully monitored.

Coun. Rhodes requested that those in the audience who wish to speak on this issue, do so before the Council votes on the amendment.

Coun. Rhodes moved, seconded by Presiding Officer (for discussion purposes) to amend Ordinance 81-111 by deleting the language in Section 13(12) and inserting the language which is presented in the Minority Report.

Presiding Officer Deines announced that a Public Hearing on Ordinance No. 81-111 is now open for testimony.

Daniel B. Cooper, Attorney representing the Oregon Drop Box Association, said that his Association endorses Section 13(12) as it is without the amendment and urges that no changes be made. The possibility of a "conflict of interest" on the part of the holder of a landfill franchise would affect the integrity, the very operation of the landfill. There are 4 basic problems that Metro is presented with where (1) the operator of the landfill might be tempted to favor his own trucks at the dumping site over the trucks of other parties, he can send his trucks to the place where the ground is firm and his competitors to the place where the ground is muddy. (2) He has the ability to circumvent Metro's surcharge on solid waste by seeing to it that his trucks enter the landfill at hours when it is unmanned and dumped unrecorded - Metro would have no record of it. (3) He has a strong temptation to give himself preferential rates or charges - his own trucks coming through the landfill may not be measured right, weighed right or billed properly. (4) He is also tempted to give himself preferential treatment when billing himself. Mr. Cooper stated that the amendment would address two of these concerns but leave the other two totally unaddressed. He then reviewed the history of the original Ordinance as it progressed through both the SWPAC and RSC meetings and once again reiterated the need to keep the language exactly as it is in the Ordinance without any amendments.

During general questions by Councilors, Mr. Cooper made reference to widely believed and alleged cheating by the previous City's landfill operators. He also stated that government bodies have difficulty in enforcing regulations so that policing and regulating violations may be impractical.

Gary Newbore, representing operators of the Nash Pit, said that his company is presently in the landfill business and they feel that it is unfair to restrict a company in one business from going into another business. Although the Nash Pit is not presently in the hauling business, they should not be restricted from that possibility, at some future date, should they wish to as it could be viewed as just another aspect of the recycling business. He said that his company has a large investment in the Pit and certainly would not jeopardize their interest by the possibility of cheating if they were to go into the hauling business. He believes that safeguards can be imposed to curtail cheating and at this time, asks that the Council adopt the Minority Report. He stated that the Ordinance's flow control issue would be a problem to his company because any facility that Metro operates is not bound by this Ordinance. If flow control is utilized to divert away material from his company's landfill or others, that wherever it is done, it should be on an equitable basis. He suggested an amendment to the Ordinance's section 8.6 A and B which says in essence: "wherever possible, solid waste should be directed away from all franchises, equally." Also an amendment to section 5.2 (that says which sections Metro does have to comply with) adds the words: "Add section 8.6 A and B to those paragraphs where appropriate.

Mr. Irvine said that the need for diversion of material and rate adjustments was discussed by Council members and since the specific costs are not known at this time, the intent is to be flexible and equitable. Therefore, Mr. Newbore's suggested amendments will be looked at by the RSC in time for the Ordinance's second reading.

John Trout, representing Collectors of Local Teamsters 281, stated that his group is in opposition to the amendment of the Minority report on 13(12) and supports the Ordinance as drafted with a total outright prohibition. In addition to the issues that Mr. Cooper has pointed out earlier, a more important issue is "competition equity." He explained that when an operator of a landfill is also in collection operation, he is in a position to shift funds from his right pocket to his left pocket in paying his disposal bills. This gives him an unfair advantage over other haulers in reducing his own collection costs.

Coun. Bonner asked Mr. Trout how haulers found out about the alleged improprieties at the City's Landfill. Mr. Trout replied that when that activity was going on, it was obvious to haulers that some trucks were not going through the gates as most haulers, but around the gates to avoid the fee (which were the Landfill operator's trucks).

As there was no further testimony, Presiding Officer Deines, closed the Public Hearing on Ordinance 81-111.

Coun. Rhodes noted that according to the present wording of this Ordinance, its administration is to be by the Council rather than staff and asked whether this is agreeable to Council. The answer was yes.

PUBLIC HEARING on ORDINANCE No. 81-112, An Ordinance Establishing Solid Waste Disposal Franchise Fees (First Reading)

It having been ascertained that it was the consensus of the Council to do so, the Clerk read Ordinance No. 81-112 for the first time by title only.

Coun. Banzer moved seconded by Coun. Rhodes to adopt Ordinance 81-112.

Coun. Banzer summarized the Disposal Franchise Fee Ordinance, pointing out that the following fees to be received, will defray the cost for administering the franchise program: \$100 annual franchise fee for franchise sites receiving waste only from their own collection company. \$300 annual franchise fee for all other sites. \$200 application fee for all other sites (for processing applications). No fee for sites currently operating under a District Certificate which will be transferred to the franchise program upon adoption of the Disposal.

Presiding Officer Deines opened the Public Hearing on Ordinance 81-112. As no one present wished to give testimony, the Hearing was closed.

Coun. Burton commented that the fees are inordinarily low, if they are indeed intended to cover the cost of administering the franchise program (assuming it includes legal fees). Merle Irvine said that the

current budget is \$70,000 and explained how it was arrived at, its use, and agreed that the fee set does not cover the entire cost.

INTRODUCTION

Coun. Kirkpatrick introduced Allen Emmett, COG Chairman of the Greater Vancouver, B.C. area.

CONSENT AGENDA (Items 2.1 thru 2.13)

Coun. Schedeen moved, seconded by Coun. Kirkpatrick to accept the Consent Agenda.

Rick Gustafson, Executive Officer, stated that the A-95 Review (2.1) had been withdrawn after the Agenda mailing because the grant was not received by METRO.

There being no further discussion, a vote was taken on the motion to accept the Consent Agenda. The motion passed unanimously.

Presiding Officer Deines called for a dinner recess at 7:00 p.m. and asked the Councilors and audience to reconvene at 7:30 p.m.

CONTESTED CASE

Contested Case No. 81-2, In the Matter of Clackamas County's Request for an Urban Growth Boundary (UGB) Amendment for Waldow Estates

Mike Holstun, Assistant General Counsel, outlined the four options and its ramifications before the Council:

- 1) Majority report from the Regional Development Committee
- 2) To adopt an order to approve either unconditionally or only with development conditions stated
- 3) An order to deny
- 4) An order to deny with an invitation to resubmit as a trade

He said that under Metro's Contested Case rules this hearing tonight will not be for the purpose of taking new evidence or new public testimony, it will be a review of the record that was compiled by the RDC and forwarded to the Council. He told the audience that this issue has been inexhaustibly discussed at the RDC hearings and will help the Council to reach a decision tonight. He also stated that if there have been ex parte contacts now would be the appropriate time for Councilors to expose them.

Couns. Rhodes, Etlinger, Kirkpatrick, Oleson, Williamson, and Berkman all described the brief contact they had, either by letter, conversation, or lunch on Mr. Jimmie Johnson's behalf, and all stated that it will not affect their decision on this case.

Presiding Office Deines called on Jill Hinckley, Special Department/Land Use Coordinator, to give the staff review.

Ms. Hinckley summarized the amendment before the Council and reviewed its history. She asked Councilors to look at the schematic sketch of the project along with a tentative plat design, also an aerial photo showing the location of the amendment relative to the Urban Growth Boundary (UGB) and nearby landmarks. The project is being sponsored and supported by Clackamas County. Oregon City has gone on record in support of this project. The sewers will be provided on an interim basis by Oregon City through their existing plant with the intent to immediately annex and eventually receive service from Tri City Service District (see Map of proposed Tri City system with project on it). The RDC, aside from looking at services in this area, also looked at the impact on the Oregon City Bypass. Clackamas County in conjunction with Metro's transportation staff did a careful analysis on the impact it would have and was satisfied that the transportation needs of this project could be accommodated by the Bypass without overloading it.

Ms. Hinckley identified material in the Agenda packet which are as follows:

- a) Standards - adopted by RDC as basis for review of this amendment
- b) List of written exhibits in addition to minutes of two meetings and two hearings
- c) Majority report of the RDC's position
- d) Arguments on the Majority report by the parties
- e) Minority report which will be discussed by Coun. Oleson

Presiding Officer Deines said that Council will not be taking any more testimony this evening but will be deliberating on the results of past hearings. He then called on the RDC's Chairman, Coun. Bonner.

Coun. Bonner reported that this Committee supports the Waldow Estates development as proposed but it is not compelled to conclude, after lengthy hearings, that Metro's established standards for approval of an Urban Growth Boundary (UGB) change have been met in the application of Clackamas County. The Committee could find no general need to add land for residential use to the urban service area, not in Clackamas County and not in the region as a whole. Approximately 26,000 acres of land for residential use (housing) are needed in the region as determined to the year 2000. Over 41,000 acres are vacant for residentially-zoned land in relatively large tracts which are included in the urban service area - some 14,000 acres more than we can realistically expect to need by the year 2000. Further, Metro's addition last year of almost 1,000 acres of land inside the UGB in Clackamas County was found by Metro to provide adequately for general housing needs in urban Clackamas County. The Committee agrees that there is a general need for low cost Senior Housing in the region. By low cost, we mean less than \$250 per month in communities that are blessed with support services, amenities as proposed in Waldow Estates. However, the project proposed does not meet that particular special need. It will provide Senior Housing but at moderate and high, not low cost. Monthly housing costs, by the developers own estimates will be \$450-550 - "this is affordable housing" only to those with incomes greater than \$20,000. Therefore, the project will not provide housing to the 96% of all senior residents in Clackamas County, who now pay at most \$250 per month.

Even some of the subsidized lots (50-100) would only be available to senior households with incomes of \$8,000-15,000. Only 40% of Clackamas County's senior households make that much money.

In summary, the project will not meet the very special public and private needs of low income households in this region. The project will provide a choice of housing that residents do not enjoy now and would very much like. There is a demand for this type of housing in the community but there is not a "special need." In conclusion, the Committee could find no special need for this particular use and cannot qualify it as a "special need" of the region. Further, the developer has not provided compelling testimony that alternative locations for the project do not exist - either inside or outside the UGB. The applicant has reviewed alternative sites, spent considerable time and effort at that task and the Committee agrees that this standard is also a very difficult one to meet. However, the developer's findings often include cursory comments of feasibility and conditions without documentation or specifications and examples of this can be found in the findings of the Majority Report. The applicant may offer additional documentation in this matter during this and future hearings but what the Committee had for the record was what the Committee used as the basis to judge, and was not compelled by the testimony to conclude that all the alternative sites checked are in fact not available nor could we conclude that all possible alternatives had been checked. This is the principle difference between the Majority and Minority Reports of the Committee. The Minority feeling that there were not alternative sites.

The Committee found the project worthy but the standards established by the Committee for a major amendment such as this, involving almost 200 acres added and none removed are stringent and clear. The Committee could not approve this application without condition because it could not find that the project met those standards. The Committee therefore recommends to the Council an interim order, an associated resolution which together support the project proposed and approve the petition of Clackamas County - if and when that petition is modified so as to meet the standards for a trade as provided in our rules. This will permit the project to go forth without adding land to the region's urban reserve.

Coun. Bonner then asked the three parties, who have been involved in the long process, to comment as part of this report, if they wished: Tom Vanderzanden-Clackamas County, Tim Ramis- the developer's representative, and Mark Greenfield-1000 Friends of Oregon.

Tom Vanderzanden of Clackamas County said that the County's position is that the addition of this property is justifiable. However, because of the desire to provide lower and moderate cost housing to the region and because of the potential delays of this project as well as the delays that have already occurred (and its associated costs), the County will fully support the idea of a trade and would like to move along with the trade concept to expedite the project at this time.

Coun. Burton asked Mr. Vanderzanden if Clackamas County has any specific land to propose as a trade at this time. Mr. Vanderzanden replied that there are a number of opportunities for a trade with the County but the County would like to reserve the right to investigate where those opportunities are and then come back to the Council with suggestions on a specific property.

Tim Ramis, Attorney representing the Property Owner - Jim Johnson, thanked the staff and Council for wading through all written material and maps to reach a trade or no trade choice. Speaking for his client, he said that Mr. Johnson can agree to the trade concept and the Majority Report. While there is some disagreement with Coun. Bonner's analysis, Mr. Johnson agrees with the trade approach based on assurances by Clackamas County that the County will be able to find a realistic piece of property to trade and the assurances by 1000 Friends of Oregon that the trade concept is one that they can also endorse. He further stated that all along, Mr. Johnson has been opposed to the trade because it did not seem to be workable since both he and Mr. Johnson searched for months to find a suitable trade property but were unsuccessful. Problems were that people wanted a high price for land development rights and local jurisdictions were not anxious to help Clackamas County by trading land out of their jurisdiction or allow Clackamas County to have more land in theirs. Fortunately, based on negotiations between all parties involved, there is now sufficient assurance that a parcel of land will be found so that this project can be built as quickly as possible.

Mark Greenfield, Staff Attorney for 1000 Friends of Oregon, said that his group did not oppose the Standard Locational Ordinance adoption which allows for a trade. His concern is only that the criteria set forth in the Ordinance are complied with. He will be looking at whether or not the land which would be taken out of the Boundary is adjacent to land which is currently designated and zoned for farm or forest uses. He commended the staff and the RDC for the well run proceedings which were fair. He concurred with the Majority Report, that there is no special need, agrees with the findings of alternative locations but disagrees with the finding that the land is committed to non-farm uses - we believe that it is a matter of law that the finding cannot be supported.

Coun. Bonner asked Mr. Greenfield what will his recommendation be to his Board. Mr. Greenfield replied that if the Standards of the Locational Adjustment are met, that there will be no litigation on the trade.

Coun. Berkman asked Mr. Ramis of Clackamas County what is the time frame for this land trade? Mr. Ramis replied that after suitable land is found, it will take from 6-weeks to 2 months for legal proceedings (to meet their own Ordinance) before coming back to Metro.

Presiding Officer Deines then requested that Coun. Oleson comment on the Minority Report.

Coun. Oleson, referring to his memo of August 5 which was distributed to the Council, said the impetus for the Minority Report was that during Committee deliberations it seemed that a land trade was not forthcoming.

That fact, and the making the land trade a condition of approving the project (by the majority) could be interpreted as a denial. It was both his and Coun. Schedeen's feeling that the applicant had demonstrated a compelling case on the "special need" for affordable housing and the Minority Report would help put pressure on and surface that issue on the parties involved.

Coun. Oleson said that if the Council reverts to the trade standards, it is giving up the ability to place some conditions on the applicant. Approval would have allowed Council to apply conditions that will now essentially be delegated back to the County to provide the most affordable housing to the greatest amount of people. Although Metro will be taking a secondary role, it hopes that the County will keep that goal in mind. He then asked Jill Hinckley, Metro's Land Use Coordinator, to make additional comments about this report.

Ms. Hinckley stated that when the petition comes back to Metro as a trade, it will be heard under the established rules for locational adjustments, there may be some room to attach further conditions. She then added that the developer has already signed an agreement with the County to donate 10% of the units to Clackamas County's Housing Authority for low cost housing. Ultimately, it is always the County's responsibility to make the development approvals for the project. Since Clackamas County has shown the willingness to put a trade together, it has demonstrated its commitment to seeing this project built equal to or greater than Metro's expectations.

After further discussion, Presiding Officer Deines asked Councilors to look at the Resolution 81-269 (pg. 41) in their packet.

Coun. Bonner moved, seconded by Coun. Schedeen to adopt the resolution approving Clackamas County's request for an Amendment of the Urban Growth Boundar for Waldo Estates contingent upon re-submission as a trade.

Councilors discussed the specific language and intent of this resolution. Andy Jordan, General Counsel, pointed out that the Council will be adopting an Interlocutory Order which means it is an interim order and the case is not completed yet. Council may change its opinion at a later date based on new findings.

Coun. Rhodes, wishing to clarify the resolution before her, said not only are we saying that we will not or cannot approve an addition to UGB but furthermore we are saying that if Clackamas County does find a trade that meets Metro's criteria, that Metro will amend the boundary so it will not come back to Metro as a decision as to whether or not Metro will accept the trade - it comes back only as a decision that this property meets the criteria, and if it does - we will then go forward again.

Some Councilors felt that the Resolution was satisfactory as it is while a few Councilors felt it was not. After discussion, Presiding Officer called for a vote.

A vote was taken on the motion. All Councilors present voted aye except Coun. Rhodes voted no and Councilor Banzer abstained. Motion carried.

Coun. Williamson said he wished to recognize and commend Coun. Bonner for the tremendous and diligent job he did on all the Hearings and reports pertaining to this case.

Presiding Officer Deines asked Councilors to look at the RDC's proposed Findings for Clackamas County's Request for Amendment of July 20/81 Summary and Conclusions (pg. 43) which will accompany the Interlocutory Order of Contested Case 81-2 when voted on.

Coun. Bonner moved, seconded by Coun. Kirpatrick to adopt the Interlocutory Order Contested Case No. 81-2.

A vote was taken on the motion. All Councilors present voted aye except Coun. Rhodes voted no and Coun. Banzer abstained. The motion carried.

GENERAL DISCUSSION

Executive Officer Rick Gustafson reported on the following:

- a) Last week, one of the organized unions had an election at the Zoo to decertify the union and join the Employees' Association at Metro
- b) Progress of the Resource Recovery in Oregon City
- c) The Administration has drafted a proposal for funding the Banfield Light Rail project. September 1 is the key date for Transportation funding in this region, that's when the Senate commences the markup of the 1982 budget.

Regional Development Committee - Because of Labor Day holiday, the Committee will meet Wednesday, September 9.

Regional Services Committee - Coun. Banzer announced that the regular meeting will be on Tuesday, September 15 this month. She said that the PRT Board is holding a Picnic and is inviting all Councilors to attend.

Coordinating Committee - Coun. Burton said that at the Committee's next meeting, members will be looking at the coordinating process in relationship to the Regional Development and Services Committee. Councilors who have any thoughts on this, please voice them at the meeting of the 12th.

NARC - Coun. Kirkpatrick reported that she and Coun. Schedeen attended a Region 9 and 10 meeting in Ashland last week. Among items discussed were
- new document summarizing alternative funding sources
- getting sub-state regions together to work on States' block grants

Presiding Officer Deines said that he and a number of other Councilors will be out of town during the August 27 meeting. If there isn't any objection by Councilors or staff, that meeting will be cancelled and the next regular Council meeting will be Sept 3, 1981. He then adjourned the meeting at 9:10 p.m.