

MINUTES OF THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

April 1, 1982

Members present: Couns. Banzer, Berkman, Bonner, Burton, Deines, Etlinger, Kafoury, Kirkpatrick, Oleson, Rhodes, Schedeen and Williamson.

Staff present: Andy Jordan, Jill Hinckley, Don Carlson, Dennis O'Neil, Andy Cotugno, Sonnie Russill, Norm Wietting, Kay Rich, Jennifer Sims, Mike Holstun, Mel Huie and Caryl Waters.

Visitors present: Dean Gisvold, Metro's consulting attorney for ERF contract negotiations;
Beth Blunt, League of Women Voters;
Jim Murphy and Ed Loeb, Clifton and Company, Insurance broker for the ERF.

The meeting was called to order by Presiding Officer Banzer at 7:30 PM.

Consent Agenda of 3/25/82.

Action on the consent agenda of 3/25/82 had been postponed due to a lengthy meeting. It consisted of:

- 6.2 Resolution No. 82-313, Amending the FY '82 Unified Work Program.
- 6.3 Resolution No. 82-314, Extending the July 1 Deadline for Petitions for Locational Adjustments to Metro's Urban Growth Boundary.
- 6.6 Resolution No. 82-319, Amending the Solid Waste Policy Alternatives Committee Bylaws and Appointing Members.
- 6.7 Resolution No. 82-317, Establishing a New Classification of Educational Services Aide at the Washington Park Zoo.
- 6.8 Resolution No. 82-318, Establishing a New Classification of Animal Hospital Attendant at the Washington Park Zoo.

Motion that the consent agenda carried over from 3/25/82 be adopted; carried unanimously. (Kirkpatrick/Kafoury)

Recommendations on Establishing Council Work Sessions on Energy Recovery.

Coun. Rhodes explained her memo to the Council regarding the Energy Recovery Facility. A motion at the Services Committee was passed unanimously and reads as follows:

"Motion to:

- 1. Recommend Council work sessions to be held on the second Thursday of each month at 7:00 PM;
- 2. All contracts and decisions relating to the Energy Recovery Facility will be handled through the established procedures;
- 3. Those issues which need to be handled in Executive Session will be handled prior to any regularly scheduled Council meeting;
- 4. Council will be notified of all task force meetings;

5. Individual sessions on the Energy Recovery Facility and process will be made available to all Councilors through Tom O'Connor; and
6. Presiding Officer will call a Committee of the Whole meeting between March 9 and March 25, 1982, to discuss the Energy Recovery process;

carried unanimously. (Rhodes/Oleson)"

Coun. Rhodes stated that since two ERF sessions had already been held, #6 of her motion should be eliminated from this action.

Motion to adopt the recommendation from the Services Committee on the informal meetings on Energy Recovery; carried unanimously. (Rhodes/Deines)

Coun. Bonner stated he hoped the Council will be considering an effort to inform the public that Energy Recovery is not a foregone conclusion, but a decision to be made in the future.

Coun. Etlinger stated he would support an independent group of people to assist in the evaluation of the Energy Recovery Facility and help the Council in making a decision. He stated that because of the nature of this project, the largest capital project in the State's history, he does not feel that the Staff has provided an independent, objective analysis.

Coun. Berkman defended the Staff's position, stating that many sessions had been held on the Energy Recovery Facility. He also stated that if the Council wished to have independent committees studying this issue, the budgetary items and the means of support for these committees should be brought to the Council. He feels it is an injustice to make accusations of professional people who have their reputations on the line and have already spent countless hours in providing the information necessary for Council to make a decision.

Coun. Oleson asked about the status of Coun. Berkman's suggestion for an ERF Blue Ribbon Commission.

Coun. Berkman responded that the Executive Officer is in the process of contacting potential people to see if they are available and he will be bringing some recommendations to the Council, to be added to by the Council, in order to provide the citizen overview and input.

Coun. Oleson asked if Coun. Etlinger's statements would be in agreement with Coun. Berkman's intent of the Blue Ribbon Commission.

Coun. Etlinger objected, stating he would like a review of the "build" and "no-build" and smaller options than the Energy Recovery Facility and its impact on solid waste over the next 30 years.

Coun. Rhodes stated these discussions are important but irrelevant to the motion at hand.

Presiding Officer Banzer stated that she was distressed that the Executive Officer is proceeding with recruiting for the Blue Ribbon Commission while the Council still has not determined the form or the charge of such a committee.

Coun. Berkman responded that the Executive Officer is polling members of

the community who have the respect of the Councilors and going to bring a recommendation after consultations with the Presiding Officer and other members of the Council. Coun. Berkman continued that the Executive Officer is responding to a memo from him on the matter and Coun. Berkman is satisfied that the Executive Officer is trying to find out if some competent people would be interested in serving on such a committee if asked.

A vote on the motion was taken and it passed unanimously.

Presiding Officer stated she has been working on the staffing and formation of committees relating to the ERF and has talked to some Councilors about same. She asked that other Councilors be prepared in the next couple of days with their suggestions.

Resolution No. 82-315, Granting a Franchise to Marine Drop Box Corp. for the Purpose of Operating a Solid Waste Processing Facility.

Coun. Burton asked that this resolution be tabled. There were no objections.

Resolution No. 82-303, Authorizing the Executive Officer to Review and Approve Metro's Recommendations to the Land Conservation and Development Commission (LCDC) on Requests for Compliance Acknowledgement.

Coun. Burton introduced the following amendment to the fifth paragraph of the resolution:

"WHEREAS, Metro Council policy on the review of Compliance Acknowledgement requests has been established through action on past reviews and appropriate future review may be accomplished at the request of local governments, now, therefore:

BE IT RESOLVED:

1. That the Council requests of the Land Conservation and Development Commission that local jurisdictions in the Metro area be allowed to forward compliance acknowledgements requests directly to the Department of Land Conservation and Development (DLCD).

2. That Metro encourages local jurisdictions to use the services of Metro for review of their plans or plan amendments."

Motion to amend the resolution as stated (Burton/Deines).

Coun. Burton explained that legislation passed during the last legislative session and LCDC was faced with a shorter compliance time to match local changes in comprehensive plans. The resolution, as stated, takes the review process from the Council and gives it to the Executive Officer. His amendment takes Metro out of the review process altogether, thereby doing away with an unnecessary layer of government review.

Coun. Deines stated sees it as dual responsibility and authority that Metro shares with the State, and if the State has the ultimate authority in approving, Metro should simply comment that the change is not in violation of

the UGB or its requirements.

Coun. Rhodes asked for staff comments on both the resolution and the amendment.

Jill Hinckley stated the resolution was initiated in response to some changes in legislation that occurred during the last session. Regarding the amendment, Metro does have a statutory obligation to advise LCDC on goal compliance, whether local jurisdictions are complying with goals; and the State does provide coordination money. Metro acts as mediator between the local and state level.

General Counsel Jordan stated that aside from the State goals, Metro also reviews for regional compliance with goals, plans and policies--Solid Waste Management Plan, Urban Growth Boundary, "208" Plan, Drainage Management Plan, etc. In reviewing a plan for compliance with State goals, one of the goals is that the local plans be coordinated.

Coun. Kirkpatrick stated that as Metro adopts functional plans, then each time a local comprehensive plan is reviewed, it must be in compliance with regional functional plans.

Coun. Burton stated that if there is a significant role for Metro to play in reviewing comprehensive plans, then the review should be done at the Council level.

Coun. Williamson stated that the Regional Transportation Plan is another plan that should be part of the compliance review process. He agreed with Coun. Burton that the Council should not be taken out of the process, but disagreed with the amendment.

Coun. Deines stated that if the desire of the Council is to remain as part of the review process, then voting no on both the amendment and the resolution would accomplish that.

Coun. Burton stated he was convinced by Coun. Deines' arguments.

Coun. Bonner stated as the process stands now, there seems to be a duplication of effort by Metro and the State. He continued that, ideally, there would be some way for Metro to review for compliance with its regional functional plans and not spend time reviewing for compliance with State goals.

Coun. Williamson stated that major comprehensive plan amendments for Washington County will be coming through next year and the Council should not be removed from the review process, since that one plan covers approximately one-third of the region.

A vote on the motion to amend the resolution was taken and failed to pass. (3 votes yes; 7 votes no; 2 absent)

Coun. Burton urged the Council to vote in opposition to the Resolution in order that the Council will remain part of the review process.

Motion to approve Resolution No. 82-303. (Rhodes/Schedeen)

Motion to table Resolution No. 82-303; carried. (Williamson/Schedeen, Rhodes voting "no")

Resolution No. 82-315, Granting a Franchise to Marine Drop Box Corporation for the Purpose of Operating a Solid Waste Processing Facility.

At the request of Coun. Burton, Chairman of the Services Committee, the Presiding Officer referred this resolution to the Services Committee. There were no objections.

Resolution No. 82-312, Amending the Transportation Improvement Program (TIP) to Incorporate Oregon Department of Transportation's (ODOT) Six-Year Highway Improvement Program of Projects in Urbanized Areas.

Coun. Oleson stated he had some questions regarding this resolution previously and that staff had answered them. He now recommends approval of the resolution.

Motion to approve Resolution No. 82-312; carried unanimously. (Oleson/Rhodes)

5. Consent Agenda (for 4/1/82 meeting)

The consent agenda for the 4/1/82 meeting consisted of the following:

5.1 A-95 Review.

5.2 Minutes of 2/25/82 and 3/4/82 Council Meetings.

Motion to approve the consent agenda; carried unanimously. (Kirkpatrick/Bonner)

Resolution No. 82-322, Authorizing the Executive Officer to Enter into a Contract with Clifton and Company for their Services as Agent of Record for the Energy Recovery Project to Conduct Risk Analysis and Insurance Needs Assessment and Placement.

Coun. Oleson stated that the Contract Review Board has reviewed this contract and since the dollar amount is over \$50,000, it is before the Council for approval.

Mike Holstun stated that on the Grant/Contract Summary page in the package, there is a typographical error on line 6 and line 7 which should be changed to read "not to exceed \$66,500" instead of "not to exceed \$62,500". Mr. Holstun explained that the contract is divided into phases. The first phase is the risk analysis which will be reported to Council and staff. That phase is the only phase that will be completed this fiscal year.

Coun. Oleson stated that Clifton and Co. was chosen because of their experience and the work done in submitting their proposal; also, Clifton's estimate for the scope of work was lowest of the qualified bidders.

Dean Gisvold, Chairman of the Insurance Task Force, reviewed the evaluation process that the Task Force used and the qualifications of Clifton and Company. He introduced Ed Loeb and Jim Murphy.

Mr. Gisvold continued his statements by explaining that the contract is in three phases:

Phase 1 - Risk Analysis (Establishing Metro and Wheelabrator-Frye responsibilities)

Phase 2 - Placement of Insurance (separately by Metro or in conjunction with Wheelabrator-Frye)

Phase 3 - Insurance for Construction and Operation of the Facility (claims management, monitoring of insurance coverage, etc.)

Mr. Gisvold stressed that there are checkpoints provided in the contract for the Council. There is a provision in the contract that it may be terminated with five days notice. Also, between phases, written notice to proceed is required before Clifton and Company can proceed with the next phase.

Mr. Gisvold stated that, in the opinion of the Task Force, the reason for this contract coming to the Council and bypassing the Coordinating Committee was due to time restraints. The next Council meeting is in approximately a month and delaying this contract a month would therefore delay Clifton and Company's work by a month and delay the overall momentum of the project.

Motion to approve Resolution No. 82-322. (Oleson/Schedeen)

Motion to amend Resolution No. 82-322, the last paragraph, to read:

"That the Council authorizes the Executive Officer to enter into the contract for Phase 1 of the services of Clifton and Company for an amount not to exceed \$16,500."

(Bonner/Etlinger)

Coun. Bonner stated that his reason for amending the resolution is that the information to be provided in Phase 1 of the contract will be the information necessary for the Council to make a decision on the ERF. He objects to contracting for services that Metro may not ever need.

Dean Gisvold explained the reason for insurance contract services as a package rather than separating it in phases. He stated that it will be helpful for Council to have this contract in place when the decision is made in order to proceed with the implementation of its decision.

Coun. Bonner stated he is concerned with making a statement that the Council has not made a decision on the ERF and that the Council need the information to be provided in Phase 1 to make the decision.

Coun. Rhodes stated Coun. Bonner's amendment would increase not only time, but also expense, although she agreed with Coun. Bonner's intent. The other consideration is that the company may choose not to enter into the contract for Phase 1 only because they are assured that if Council makes a favorable decision

to proceed with ERF, the company is guaranteed to have the contract.

Coun. Bonner stated he would be willing to change the motion to indicate that if Council makes a decision to go ahead with the ERF, it will contract with Clifton and Company, but that now the Council is only contracting for \$16,500.

Mike Holstun stated that Metro's contract procedures have come under scrutiny lately and the package presented is a contract covering all phases of the proposed project. To address Coun. Bonner's objection, the wording of the contract could be changed to make it clearer.

Coun. Bonner stated that the advantage to the contract for the entire process is to have the ability to implement it quickly once a decision is made. However, his concern remains with the fact that it will appear, from the record of the proceedings, that Metro has made a decision for a contract in the amount of \$66,500 for the entire project, not \$16,500 for Phase 1 only.

Mr. Gisvold suggested rewording the first part of the contract to reflect Coun. Bonner's intention, that Phase 1 is authorized immediately and that Phases 2 and 3 will not be authorized without written notification from the Metro Council.

Coun. Deines stated that the Council has requested outside people with expertise to give advice to the Council. What the Task Force has done is present a contract for Phase 1, but also allows for proceeding with Phases 2 and 3 when and if the Council so decides.

Motion to end debate; carried. (Williamson/Deines, Banzer voting "no")

A vote on the motion to amend the resolution and the contract to provide for Phase 1 only failed to pass. (3 yes; 8 no; 1 absent)

Presiding Officer Banzer stated she could not act on behalf of the public if she had not been given the opportunity to review items such as these before voting on them.

Coun. Schedeen stated that she is satisfied with the competence of the people the Council chose to serve on this committee and has no problem with approving their recommendation.

Coun. Berkman objected to Council's asking people with demonstrated expertise and to have them bring a contract that protects the Council, which will terminate unless the Council votes to proceed, only to have their recommendations disapproved.

The motion to adopt Resolution No. 82-322 as presented passed by the following roll call vote:

YEAS: Berkman, Deines, Etlinger, Kirkpatrick, Oleson, Rhodes, Schedeen, and Williamson.

NAYS: Banzer and Bonner.

ABSENT: Burton and Kafoury.

There was a five-minute recess.

6.1 Public Hearing on Ordinance No. 82-131, For the Purpose of Amending Appropriations and Adopting a Supplemental Budget. (First Reading)

Jennifer Sims stated that the Council is convened as the Budget Committee to receive the Supplemental Budget for FY '82 and also convened as the Council to consider the ordinance. Ms. Sims explained the budget process and the tables of the Supplemental Budget.

General discussion of the Supplemental Budget.

Motion that Ordinance No. 82-131 be adopted. (Kirkpatrick/Williamson)

General Counsel Jordan stated that two amendments should be made to the ordinance as presented. "Be It Resolved" should be changed to read "The Council of the Metropolitan Service District Does Hereby Ordain". The second change is to paragraph two of the ordinance after "indicated in Exhibit 'C'" add the words "of this ordinance".

Motion to approve the amendments stated by the General Counsel; carried by the following vote:

YEAS: Williamson, Rhodes, Etlinger, Deines, Oleson, Berkman, Kirkpatrick.

NAYS: None

ABSENT: Banzer, Bonner, Kafoury, Schedeen.

7.1 Resolution No. 82-321, Transmitting the Fiscal Year 1982 Supplemental Budget to the Tax Supervising and Conservation Commission.

Motion to adopt Resolution No. 82-131; carried unanimously. (Kirkpatrick/Rhodes)

8.1 Executive Officer's Report.

There was no report from the Executive Officer.

8.2 Committee Reports.

Coun. Deines reminded all Councilors present of the upcoming Coordinating Committee meeting a week from Monday.

Coun. Etlinger stated the Development Committee would be discussing the bike program on Monday 4/5.

The meeting adjourned at 9:45 PM.

Respectfully submitted,


Sue Haynes
Clerk of the Council