

MINUTES OF THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

REGULAR MEETING
NOVEMBER 22, 1983

Councilors Present: Councilors Deines, Etlinger, Hansen, Kelley, Kirkpatrick, Oleson, Van Bergen, and Waker.

Councilors Absent: Councilors Banzer, Bonner, Rafoury, and Williamson.

Also Present: Rick Gustafson, Executive Officer.

Staff Present: Donald Carlson, Andrew Jordan, Ray Barker, Jennifer Sims, Andy Cotugno, Dick Karnuth, Dan Durig, Norm Wietting, Ed Stuhr, Mel Huie, Phil Fell, Sue Klobertanz, and Dennis Mulvihill.

Testifiers: Ernestine Francisco, Mayor Jack Nelson, Ron Anderson, Gary Newbore, Robert Breihof, and John Charles.

A regular meeting of the Council of the Metropolitan Service District was called to order at 7:35 p.m. by Deputy Presiding Officer Oleson.

1. Introductions.

There were no introductions at this time.

2. Councilor Communications.

Deputy Presiding Officer Oleson announced that the Council's second meeting in December would be held on Tuesday, December 20 instead of Thursday, December 22 because a majority of the Councilors had indicated a preference to hold the meeting earlier in the week given the Christmas holiday.

He also announced that the Presiding Officer had appointed Councilor Kirkpatrick, as member, and Councilor Williamson, as alternate, to the Southwest Corridor Transportation Study Policy Committee.

3. Executive Officer Communications.

There were no Executive Officer Communications.

4. Written Communications to Council on Non-Agenda Items.

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

5. Citizen Communications to Council on Non-Agenda Items.

Ms. Ernestine Francisco, 11727 S.e. Brookside, Portland, representing the Columbia River Region Inter-League Organization (CRRIO) League of Women Voters, presented and read into the record a letter regarding their observations and views on the conduct of Metro Council meetings (a copy of the letter is attached to the agenda of the meeting).

6.1 Consent Agenda.

The Consent Agenda consisted of the following items:

- 6.1 Minutes of the meetings of September 29 (regular), October 6 (special), October 6 (regular), and October 27 (regular).
- 6.2 Intergovernmental Project Review Report.
- 6.3 Resolution No. 83-434, for the purpose of amending the Transportation Improvement Program (TIP) to incorporate a series of projects sponsored by the Oregon Department of Transportation.
- 6.4 Resolution No. 83-438, confirming nominations to the Tri-Met Special Needs Transportation Committee and approving Special Needs Planning Requirements.
- 6.5 Resolution No. 83-431, adopting guidelines for the expenditure of Council per diem, expense and general materials and services accounts.
- 6.6 Intergovernmental Agreement with Oregon City regarding Clackamas Transfer and Recycling Center (CTRC).
- 6.7 Request for assistance in funding East Washington County Urban Services Study.

Councilor Van Bergen said he had submitted a written request to remove agenda item 6.6 from the Consent Agenda.

Motion: Councilor Kirkpatrick moved adoption of the Consent Agenda, excluding agenda item 6.6. Councilor Waker seconded the motion.

Vote: The vote on the motion resulted in:

Ayes: Councilors Deines, Etlinger, Hansen, Kirkpatrick, Oleson, Van Bergen, and Waker.

Nays: None.

Absent: Councilors Banzer, Bonner, Kafoury, and Williamson.

Abstention: Councilor Kelley.

Motion carried; Consent Agenda adopted.

6.6 Intergovernmental Agreement with Oregon City regarding Clackamas Transfer and Recycling Center (CTRC).

Motion: Councilor Hansen moved approval of the Intergovernmental Agreement. Councilor Kirkpatrick seconded the motion.

Councilor Van Bergen indicated he was not supportive of the agreement.

Vote: The vote on the motion resulted in:

Ayes: Councilors Etlinger, Hansen, Kelley, Kirkpatrick, Oleson, and Waker.

Nays: Councilors Deines and Van Bergen.

Absent: Councilors Banzer, Bonner, Kafoury, and Williamson.

Motion carried.

Deputy Presiding Officer Oleson introduced Mayor Jack Nelson who was present for agenda item 6.7. Beaverton Mayor Jack Nelson expressed his appreciation to the Council for their assistance in partially funding the East Washington County Urban Services Study. He also read a list of jurisdictions and businesses which had joined to cooperatively finance the study.

7.1 Consideration of Ordinance No. 83-165 for the purpose of adopting a Disadvantaged Business Program; and Resolution No. 83-435, for the purpose of approving FY 1983-84 Goals for Utilization of Disadvantaged and Women-Owned Businesses. (First Reading)

The ordinance was read a first time, by title only.

Councilor Hansen, chair of the MBE Subcommittee, reported on the Subcommittee's work. He said they had met approximately six times and that the product that was formulated was a fair, workable and easily understood document.

Councilor Kirkpatrick reported that no one had testified at the Council Coordinating Committee meeting on November 14 and that the Committee was unanimously recommending adoption of the ordinance. She noted that the Committee would conduct a work session on the ordinance at their December meeting to make any modifications in response to questions or issues raised by Council members.

Donald Carlson, Deputy Executive Officer, reviewed with the Council the essential features of the ordinance, as contained in the agenda of the meeting. Sue Klobertanz, Management Analyst, reviewed the resolution which set forth the FY 83-84 goals for use of disadvantaged and women-owned businesses.

Councilor Van Bergen asked if the kinds of contracts the DBP included such items as short-term securities or depository agreements. In addition, he was concerned about Section 7 of the ordinance which addressed minority-owned banks. He said the DPB program may be in conflict with the adopted investment policies of Metro. Ms. Klobertanz responded that anytime Metro would make a commitment for an expenditure, it would come under the program. Mr. Carlson said if changes or clarifications were required because of a conflict, staff would bring them to the Council Coordinating Committee work session in December.

Councilor Waker questioned whether Section 12(h) would prohibit Metro from accepting a low bid if the contractor did not comply with the DBP requirements, and the enforceability of the forfeiture of the bid bond if a contractor did not comply with the DBP requirements. Mr. Jordan responded that Metro could reject a bid if it did not comply and that the bid bond requirement was the only lever Metro had to ensure that a bidder carried through with the DBP requirements.

Councilor Waker commented that he would prefer that the first policy statement (Section 2(a)(1)) state in effect that Metro was expressing "its strong commitment to provide equal opportunity to disadvantaged and women-owned businesses in contracting". He said the way it read they would be going beyond what he believed was a prudent course. He also said it didn't make sense and was not efficient to include in Section 11(b) language which required a minority prime contractor to subcontract a percentage of the contract work to one or more disadvantaged business contractors.

Ms. Klobertanz said the philosophy behind Section 11(b) was that if a minority prime contractor was bidding a job over \$50,000, he really wasn't a disadvantaged business any longer and should meet the same requirements as any other non-minority prime contractor.

Councilor Waker then commented on Section 7 which addressed the use of minority-owned banks. He said there was only one way to make the "greatest feasible use" of a minority-owned bank and that was exclusive use of their services. He said he believed the intent was to give minority-owned banks an equal opportunity for use.

Councilor Deines said he believed that the low bidder should have to submit evidence of goal compliance or good faith effort at the time the bid was submitted (Section 12(h)) instead of being able to submit the proof no later than five days after the bid submittal date.

Mr. Carlson said that the contractors who sat on the MBE Subcommittee had requested the five day "window" because of time constraints in getting all the information gathered.

Councilor Deines requested that alternative language be presented which would require all DBP information to be submitted with the bid and if not submitted, the bid would not be considered.

Motion: Councilor Kirkpatrick moved adoption of Ordinance No. 83-165. Councilor Deines seconded the motion.

Deputy Presiding Officer Oleson then called for public testimony.

Mr. Ron Anderson, 1529 S.w. 12th Avenue, 97201, stated he had served as a member of the MBE Subcommittee. He complimented

the staff and Councilor Hansen for the work they had done. He said he believed the document was a workable one and supported the Council's efforts to adopt a plan. In response to Councilor Deines' comments regarding the five-day "window", he said contractors were overwhelmed by the amount of documentation which must be submitted with their bids and needed the extra time to comply with requirements.

Mr. Barker, Council Assistant, asked Mr. Anderson what the differences were between the City of Portland' plan and the proposed Metro plan. Mr. Anderson responded that the major difference between the plans was that Metro's plan would use the City of Portland's certification list of MBE's as well as other DOT certifying agencies. He said by in large Metro's plan was a mirror of Portland's plan.

Councilor Etlinger asked if the City of Portland and Multnomah County had the five-day "window" for submission of MBE goal compliance documentation in their plans. Mr. Anderson responded that Multnomah County did have the "window" and Ms. Klobertanz said the City of Portland also had the five-day language.

The ordinance was then passed to second reading on December 20, 1983.

7.2 Consideration of Ordinance No. 83-166, for the purpose of establishing the Metro Equal Employment Opportunity and Affirmative Action Policies; and Resolution No. 83-436, for the purpose of adopting the Goals and Objectives in the Affirmative Action Plan as the approved goals for FY 1983-84. (First Reading)

Councilor Kirkpatrick reported that the Council Coordinating Committee unanimously recommended Council adoption of Ordinance No. 83-166. She said the Committee would hold a work session on the ordinance at its December 12 meeting and the ordinance would come back to the Council for second reading on December 20.

Motion: Councilor Kirkpatrick moved adoption of Ordinance No. 83-166. Councilor Kelley seconded the motion.

Ms. Jennifer Sims, Budget & Administrative Services Manager, presented the staff report, as contained in the agenda of the meeting.

Deputy Presiding Officer Oleson asked Mr. Karnuth how the complaint system worked. Mr. Karnuth, Personnel Assistant, explained the two pronged system for discrimination complaints--for applicants for positions at Metro; and for employees of Metro.

The ordinance was then read a first time, by title only.

The ordinance was passed to second reading on December 20, 1983.

7.3 Consideration of Ordinance No. 83-163, relating to Solid Waste Disposal Charges and User Fees; amending Metro Code Sections 5.02.040, 5.02.050 and 5.01.050; and declaring an emergency. (Read Twice).

Deputy Presiding Officer Oleson noted there were three motions on the floor:

Motion 1: To adopt the ordinance (Hansen/Williamson)

Motion 2: To amend the main motion to delete the last two sentences from Section 1(b) and Section 2(d). (Deines and Etlinger)

Motion 3: To substitute the motion by Councilors Deines and Etlinger to amend the last two sentences in Section 1(b) and Section 2 (d) to read as follows: "The minimum charge for private trips shall be waived for any person delivering one-half cubic yard or more of waste delivered at the extra yardage rate", and to change the base disposal rate from \$9.64 to \$9.70. (Hansen/Kirkpatrick)

Councilor Hansen said the language in Sections 1 and 2 would encourage recycling by offering a reduced rate to those bringing recycled materials to St. Johns or CTCRC along with a small amount of material to be landfilled. Councilor Deines argued that the language should not be included. He said public funds should not be used to induce people to bring recyclables to Metro landfills. He said they would not ask a private landfill operator to reduce his rates for that purpose without allowing him to make up the cost somewhere else. Councilor Etlinger responded by saying that just as it was sometimes needed to spend public funds to encourage minority businesses, it was also necessary at times to use public funds to encourage people to do something in the interest of conserving resources.

Deputy Presiding Officer Oleson then asked for public testimony.

Mr. Gary Newbore, representing Killingsworth Fast Disposal, thanked the Council for delaying the matter so Killingsworth Fast Disposal could meet with the staff regarding their concerns. He said in looking at the issue they had found that Metro has many policies--some of which conflicted, some of which have the effect of raising the cost of disposing garbage faster than inflation, and some which discourage private investment. He said policies took time to change and there wasn't enough time to effect those changes before the rates needed to be adopted by the Council. He suggested that the present 1983 rate of \$13.48 a ton at St. Johns remain the same for 1984, and that staff be directed to look at, in the next two to three months, a policy for flow diversion out of St. Johns, and to look at the costs of hauling from CTRC to St. Johns. He also asked that policies which were adverse to private capital be looked at.

Dan Durig, Solid Waste Director, said that staff was in agreement for the most part with Mr. Newbore's comments and were recommending that the base disposal rate at St. Johns and CTRC be raised from the proposed \$9.70 per ton to \$9.80 per ton.

Deputy Presiding Officer Oleson asked Councilor Hansen if he would accept the recommendation as a friendly amendment to his substitute motion. Councilor Hansen responded that he would not because he believed the raise would create an artificial rate at St. Johns.

Vote: The vote on the substitute motion to amend the last two sentences in Sections 1(b) and 2(d) and change the base disposal rate from \$9.64 to \$9.70, resulted in:

Ayes: Councilors Etlinger, Hansen, Kirkpatrick, Oleson, and Van Bergen.

Nays: Councilors Deines, Kelley, and Waker.

Absent: Councilors Banzer, Bonner, Kafoury, and Williamson.

Motion to substitute carried.

Motion to amend: Councilor Etlinger moved to amend the main motion, as previously amended, to change the base disposal rate at CTRC and St. Johns from \$9.70 per ton to \$9.80 per ton. Councilor Kelley seconded the motion.

Mr. Durig commented that there was a need to prolong the life of St. Johns and that diverting material from St. Johns was one way to do that. He said that if the rates at Killingsworth Fast Disposal and St. Johns were comparable, waste would go to the closest landfill available to the hauler, thus keeping waste from St. Johns. He also said that because of the contact with Genstar to operate St. Johns, contract costs rose with increased flow.

Vote: The vote on the motion to amend the main motion to change the base disposal rate from \$9.70 to \$9.80 resulted in:

Ayes: Councilors Etlinger, Kelley, Kirkpatrick, Oleson, Van Bergen, and Waker.

Nays: Councilors Deines and Hansen.

Absent: Councilors Banzer, Bonner, Kafoury, and Williamson.

Motion to amend carried.

Councilor Deines inquired when the contract with Genstar would be renewed. Mr. Durig responded that it would be negotiated in January 1984.

Motion: Councilor Deines moved to amend the main motion to lower the convenience charge from \$2.25 to \$2.00 at CTRC. Councilor Kirkpatrick seconded the motion.

Councilor Deines commented that it did not make sense to set the 1984 rates at this time when it was unknown what the contractor was going to charge until January. He also said it was unknown how much waste was being transferred from CTRC to St. Johns and whether the convenience charge was serving the purpose of diverting flow. He asked that flow figures from CTRC to St. Johns be provided.

Councilor Kelley moved to table the amendment until the Services Committee had had an opportunity to review it. Councilor Kirkpatrick seconded the motion. General Counsel Jordan advised that the effect of tabling the amendment would be to table the entire ordinance. Councilor Kelley then withdrew her motion and Councilor Kirkpatrick her second.

Vote: The vote on the motion to amend the main motion to reduce the convenience charge at CTRC resulted in:

Ayes: Councilors Deines.

Nays: Councilors Etlinger, Hansen, Kelley, Kirkpatrick, Oleson, Van Bergen, and Waker.

Absent: Councilors Banzer, Bonner, Kafoury, and Williamson.

Motion to amend failed.

Deputy Presiding Officer Oleson then called for the question on the main motion, as amended.

Vote: The vote on the main motion, as amended, to adopt Ordinance No. 83-163 resulted in:

Ayes: Councilors Etlinger, Kelley, Kirkpatrick, Oleson, and Van Bergen.

Nays: Councilors Deines, Hansen, and Waker.

Absent: Councilors Banzer, Bonner, Kafoury, and Williamson.

Motion failed for lack of a majority.

Councilor Kirkpatrick put on notice a motion for reconsideration of the main motion as amended, at the next regular meeting of the Council, December 1, 1983.

7.4 Consideration of Ordinance No. 83-167, relating to the Solid Waste Rate Review Committee structure, amending Metro Code Section 5.01.170. (First Reading)

Councilor Hansen reported that during the Services Committee consideration of the appointments to the Rate Review Committee, it was recommended that an increase in the number of members representing the public be made. He said an increase would result in a committee made up of three public members and three members of professions relevant to the Committee's activities.

Motion: Councilor Hansen moved adoption of Ordinance No. 83-167. Councilor Kelley seconded the motion.

Councilors Kirkpatrick and Deines said that they were opposed to increasing the membership. Councilor Kirkpatrick said it was unwise to have a committee made up of an equal number of members. Councilor Deines said he did not believe the committee was worth having and that the roles of SWPAC and the Rate Review Committee were unclear.

The ordinance was then read a first time, by title only.

Motion: Councilor Deines moved to table Ordinance No. 83-167. Councilor Kirkpatrick seconded the motion.

Vote: The vote on the motion to table resulted in:

Ayes: Councilors Deines, Kirkpatrick, Van Bergen, and Waker.

Nays: Councilors Etlinger, Hansen, Kelley, and Oleson.

Absent: Councilors Banzer, Bonner, Kafoury, and Williamson.

Tie Vote, Motion to Table failed.

The ordinance was passed to second reading on December 20, 1983.

7.5 Consideration of Resolution No. 83-437, for the purpose of diverting newsprint from Metro Solid Waste Facilities.

Councilor Hansen reported that the Services Committee recommended adoption of the Resolution.

Motion: Councilor Etlinger moved adoption of Resolution No. 83-437, with the following amendments:

- 1) Substitute Resolve No. 2 with the following language: "A newsprint recovery program shall become a component of the Recycling System Plan".
- 2) Delete Resolve No. 3 and renumber Resolve No. 4 as Resolve No. 3.

Councilor Hansen seconded the motion.

Councilor Van Bergen said he could not vote for a policy that did not tie the staff to it.

Councilor Hansen said when the resolution was first proposed to the Recycling Subcommittee, it was presented as a resolution which would ban newsprint at Metro's disposal sites. He said the hue and cry received from all quarters was that no one wanted a strong statement. As a result, the amended resolution was the strongest statement they could make and be able to do anything. He said it was a small step toward encouraging recycling.

Councilor Deines said the resolution had no teeth in it and questioned whether it was the proper vehicle. He said he would support it and although there wasn't much the Solid Waste Department was going to do to enforce it, he did think the Recycling Subcommittee could do something by emphasizing that newspaper was easily recyclable.

Councilor Kirkpatrick said she would oppose the resolution because she believed it should be considered as part of a complete recycling package.

Deputy Presiding Officer Oleson then asked for public testimony.

Mr. Robert Breihof, Jr., PRROS Recyclers, 1246 S.E. 49th Avenue, 97215, testified in support of the resolution as proposed in the agenda, not as it was amended by Councilor Etlinger.

Vote: The vote on the motion to adopt Resolution No. 83-437, as amended, resulted in:

Ayes: Councilors Deines, Etlinger, Hansen, Kelley, and Oleson.

Nays: Councilors Kirkpatrick, Van Bergen, and Waker.

Absent: Councilors Banzer, Bonner, Kafoury, and Williamson.

Motion carried, Resolution adopted.

8.1 Consideration of Solid Waste Rate Review Committee appointments.

Councilor Hansen reported that the Services Committee recommended that the following people be appointed to the Rate Review Committee: David T. Chen, George Hubel, Alexis Dow, and Douglas K. Plambeck.

Mr. Durig presented the staff report which outlined the process for the selection of the candidates, as contained in the agenda of the meeting.

Motion: Councilor Hansen moved appointment of David Chen, George Hubel, Alexis Dow and Douglas Plambeck to the Rate Review Committee. Councilor Kelley seconded.

Motion to Substitute: Councilor Deines moved to substitute the main motion with a motion not to appoint anyone to the Rate Review Committee. Councilor Kirkpatrick seconded the motion.

Councilor Deines said he would also like to see the Rate Review Committee removed as an advisory committee to the Metropolitan Service District and that the responsibilities of the Rate Review Committee be turned over to SWPAC. General Counsel Jordan advised that to do that it would take an ordinance to amend the Code.

Deputy Presiding Officer asked Mr. Durig if he had any comment on the substitute motion.

Mr. Durig responded that perhaps the two committees could be merged, retitled, a redefined, and a broad enough representation made to satisfy the Council's needs as far as policy advice. He said the Committee shouldn't be eliminated until a review had been conducted.

Councilor Kirkpatrick said she seconded the motion with the intent that if it carried, the Services Committee would take a look at the merits and demerits of the committee.

Mr. Gustafson said he supported a review of the role of the Rate Review Committee and SWPAC but cautioned that the Services Committee had other major issues before it and should dispose of those before they took on a review of the committee.

Councilor Hansen said he thought it was a mistake to start a major discussion on the issue at the Council meeting. He said the problems with the committee should have been raised at the Services Committee, and indicated he would vote against the substitute motion.

Councilor Kelley said she agreed with Councilor Hansen's remarks.

Vote: The vote on the motion to substitute resulted in:

Ayes: Councilors Deines, Etlinger, Kirkpatrick, Van Bergen, and Waker.

Nays: Councilors Hansen, Kelley, and Oleson.

Absent: Councilors Banzer, Bonner, Kafoury, and Williamson.

Motion to substitute carried.

8.2 Consideration of Yard Debris Demonstration Grant Report.

Dennis Mulvihill, Waste Reduction Manager, summarized the staff report regarding the Yard Debris Demonstration Grant, as contained in the agenda of the meeting.

He noted that on November 18, the EQC had directed their staff to develop draft rules to be presented in January that would implement a burning ban. He suggested the action might represent the EQC's feelings about the yard debris report and whether or not it provided sufficient information for them to defend the legislative-imposed criteria of whether or not reasonable alternatives exist.

Deputy Presiding Officer Oleson asked if DEQ was jumping the gun by moving ahead with the burning ban.

Mr. Mulvihill said that DEQ had decided there was enough information in the report for them to proceed with the ban.

Mr. Gustafson said that it was a DEQ judgement as to whether a reasonable alternative had been found to burning. He said burning was not a key issue to Metro but of greater concern was the amount of yard debris going into the landfill. He said the Solid Waste System Planning effort should identify yard debris as a significant recyclable material to be addressed. He said there are processing centers in the region which should be maintained, that promotion and education has been helpful and that the next area to be looked into was markets.

Mr. Mulvihill said a broad policy question which must be addressed before concluding the yard debris question was if a limited amount of money was going to be spent on increasing recycling, where was it to be most effectively used? He suggested that the Solid Waste Systems Planning effort would

produce the information which would allow a comparison of roles, costs and gains. He said in the meantime, Metro's promotion and education efforts should be continued.

Councilor Etlinger asked why they couldn't improve the markets and the collection, diversion and processing of yard debris at the same time. Mr. Mulvihill responded that they could do both, if it was affordable.

Councilor Deines commented that if there were no markets, the material would be buried in the landfill. He said the key to recycling was markets.

Motion: Councilor Etlinger moved to refer the topic to the Recycling Subcommittee as part of their System Planning. Councilor Hansen seconded the motion.

Mr. John Charles, Oregon Environmental Council, testified that it was in Metro's interest to participate in DEQ's rulemaking on S.B. 405 and make sure yard debris was determined to be a recyclable material under the bill. He also urged Metro to continue its promotion and education work and seek markets for recyclable material.

Vote: The vote on the motion resulted in:

Ayes: Councilors Etlinger, Hansen, Kelley, Kirkpatrick, Oleson, and Van Bergen.

Nays: Councilors Deines and Waker.

Absent: Councilors Banzer, Bonner, Kafoury, and Williamson.

Motion carried.

9. Committee Reports.

Councilor Oleson said that he, Councilor Kirkpatrick, and Mr. Gustafson had attended a meeting at Representative Glenn Otto's home with Tri-Met leaders on November 21 regarding the Special Legislative Task Force on Regional Government.

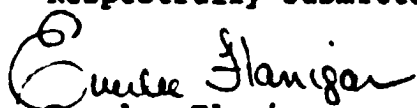
Councilor Hansen reported that there would be a regular Services Committee meeting on December 6 and probably a special Services Committee meeting on December 8 regarding the Washington County Transfer Station.

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Councilor Kirkpatrick reported on the first meeting of the Southwest Corridor Transportation Policy Committee. She also reported on the November 14 Coordinating Committee's discussion of future funding.

There being no further business, the meeting adjourned at 10:35 p.m.

Respectfully submitted,


Everlee Flanigan
Clerk of the Council

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