

MINUTES OF THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

September 13, 1984

Councilors Present: Councilors Banzer, Bonner, Cooper, Deines, Hansen, Kafoury, Kelley, Oleson, Van Bergen, Waker, Williamson and Kirkpatrick

Staff Present: Eleanore Baxendale, Jennifer Sims, Dan Durig, Dan LaGrande, Ray Barker, Norm Weitting, Doug Drennen, Leigh Zimmerman, Sonnie Russill, Mel Huie, Ed Stuhr, Mary Jane Aman, Dennis Mulvihill and Buff Winn

A regular meeting of the Council was called to order by Presiding Officer Kirkpatrick at 5:35 p.m.

1. INTRODUCTIONS

None.

2. COUNCILOR COMMUNICATIONS

2.1 Legislative Program Report

Presiding Officer Kirkpatrick referred Council to the report included in the agenda materials regarding Metro's proposal for financial stability. She said she would be presenting this proposal to the House Interim Committee the following day. Resolution No. 84-500, included in the report, would be considered for adoption on September 25, 1984, she said. In answer to Councilor Kelley's question, the Presiding Officer said Councilors would have an opportunity to add to the proposed program at a later date.

2.2 Lobbyist Contract Approval (Resolution No. 84-501)

Dan LaGrande explained the process for soliciting proposals and selecting a proposed contractor to serve as Metro's governmental relations representative for the 1985 legislative session. He said the selection committee recommended the firm of Martin & Associates based on Roger Martin's demonstrated knowledge and experience in working with the legislative and executive branches of state government. Mr. LaGrande said the fees quoted by the four firms submitting proposals were virtually identical.

Mr. LaGrande pointed out Resolution No. 84-501 had been revised to provide for review of the contract's work scope by the Management Committee on September 20, 1984, should the Council adopt the resolution at this meeting. Presiding Officer Kirkpatrick explained this provision had been added because some Councilors wanted more assurance about the contract work program. The Presiding Officer then introduced Roger Martin to the Council.

Councilor Deines thought it premature to discuss funding a contract when a specific legislative program had not yet been developed. The Presiding Officer said one of Mr. Martin's first responsibilities as contractor would be to develop such a program with assistance from the Council and staff.

Motion: Councilor Van Bergen moved for adoption of Resolution No. 84-501 which approved Contract No. 84-9-708. Councilor Williamson seconded the motion.

Vote: A vote on the motion resulted in:

Ayes: Councilors Bonner, Cooper, Deines, Hansen, Kafoury, Kelley, Oleson, Van Bergen, Waker, Williamson and Kirkpatrick

Absent: Councilor Banzer

Resolution No. 84-501 was adopted and Contract No. 84-9-708 was approved.

Other communications from Councilors included a report from Councilors Kelley and Oleson and Ray Barker regarding their recent visit to Victoria, B.C. to tour the Capital Regional District Park system. Councilor Kelley distributed a written summary to Councilors regarding the visit. She said she would be working with John Sewell and the Victoria regional park system to establish a sister park in the Metro area.

Councilor Deines reported he had attended the Government Refuse Collection and Disposal Association (GRCDA) conference in Orlando in August. Of special interest to the Councilor were seminars regarding methane gas collection. He said he would prepare a written summary of the conference for later distribution to the Council.

3. EXECUTIVE OFFICER COMMUNICATIONS

None.

4. WRITTEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS

None.

5. CITIZEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS

Jean Orcutt, 12831 S.E. Morrison, Portland, expressed dissatisfaction that agenda materials relating to some items being considered by the Council had not been made available to the public.

6. CONSENT AGENDA

Motion: Councilor Kafoury moved approval of the consent agenda. Councilor Bonner seconded the motion.

Vote: The vote on the motion resulted in:

Ayes: Councilors Bonner, Cooper, Deines, Hansen, Kafoury, Kelley, Oleson, Van Bergen, Waker, Williamson and Kirkpatrick

Absent: Councilor Banzer

The motion carried and the consent agenda was approved.

7.1 Consideration of Ordinance No. 84-179, for the purpose of amending the Public Contract Procedures for emergency contracts, Code Sections 2.04.011 and 2.04.030 (First Reading)

Motion: Councilor Kafoury moved for adoption of the Ordinance and Councilor Bonner seconded the motion.

Eleanore Baxendale explained Metro's original contract procedures had included provisions for timely approval of emergency type contracts. The recently amended procedures, however, require Council approval of such contracts which could cause up to three week delays in getting emergency contracts approved. For example, Ms. Baxendale said a three week delay in executing the recent Zoo train emergency repair contract would have resulted in the loss of such revenue. She explained the Ordinance before the Council would not require a change in Metro's internal policies and would not be a breach of state contracting law.

Councilor Deines pointed out that under the former Council structure, the Council met often enough to approve contracts as need for approval arose. Because there are fewer meetings under the reorganized structure, staff must learn to plan ahead for contract approvals. Otherwise, more contracts will be considered to be emergency type contracts and they will be approved without public comment, he said. Councilor Deines added the Council would be abdicating its responsibility if Ordinance No. 84-179 were adopted.

Councilor Oleson asked if emergency type contracts could be approved via telephone conference calls. Ms. Baxendale responded that contracts between \$2,500 and \$50,000 could be approved by the Management Committee via such calls if staff could arrange to get a quorum of busy Councilors together. However, in the event of a true emergency, an effective emergency procedure would be the most desirable solution, such as the emergency procedures that were in effect six weeks ago, she said.

Councilor Waker said the types of contracts that would be covered under the proposed Ordinance would not be contracts effecting Metro policy. Rather, they would be similar to the contract for repairing the Zoo train engine where the decision was simply whether to make the repairs.

There being no further discussion, the Presiding Officer said a public hearing and a vote on whether to adopt the Ordinance would occur on September 25, 1984.

7.2 Consideration of Ordinance No. 84-178, for the purpose of amending Ordinance No. 84-172 and transferring appropriations (First Reading)

Jennifer Sims explained the Ordinance before the Council contained provisions to transfer funds from contingency for three purposes:
1) \$5,000 to provide funding assistance for the Columbia-Willamette Futures Forum (CWFF); 2) \$19,170 to provide funds for computer equipment; and
3) \$17,000 to fund the contract previously approved by the Management Committee for a consultant to assist with the recruitment and selection of a new Zoo Director.

Councilor Waker asked if other agencies were contributing to the CWFF. Ms. Sims said Tri-Met was also providing financial assistance.

Councilors Deines and Cooper were concerned that other government agencies were not helping to fund CWFF. Councilor Kafoury responded that the Council had directed CWFF to seek another funding source and then Metro would match those funds. She said they had succeeded in finding another source and now Metro should make good on its commitment.

Keith Lawton then explained staff's proposed plan for purchasing data processing equipment. Staff recommended purchasing Macintosh computers because they were versatile, economical and easy for non-computer people to use. He also explained staff had been invited to submit proposals on proposed equipment uses. Based on responses received, he had recommended the first two work stations be located in the Public Affairs and Solid Waste offices. Other work stations would be added if staff's conclusions about the appropriateness of the Macintosh computers proved to be correct, he said.

Councilor Kafoury questioned why staff had demonstrated a need for different types of computer equipment during the budget approval process. Mr. Lawton explained that special auxiliary equipment purchased with the Macintosh's would allow them to satisfactorily replace some of the equipment requested earlier, thus reducing overall costs.

Councilor Waker said he found staff's proposal unacceptable because he was not convinced staff had used the correct method to determine the type of equipment to purchase. He did not think an Apple Macintosh would be an appropriate purchase for the Public Affairs Department because the word processing function of the computer would not be the best replacement for another typewriter, as previously budgeted. He thought something in the nature of a Xerox memory typewriter would be a better solution. Mr. Lawton pointed out that Public Affairs would be using the computer for other functions in addition to word processing.

Councilor Kelley asked why the three proposed budget transfers had been included in one ordinance. Ms. Sims explained that staff had traditionally combined several transfer requests under one ordinance to streamline the approval process. She said Council had the option of amending any budget ordinance to delete or change any item.

Councilor Van Bergen said he would not vote to adopt the proposed Ordinance because he did not think the matters before the Council were of a contingency nature.

Regarding the proposed transfer to fund the contract for assisting in recruiting and selecting a new Zoo Director, Councilor Banzer asked if the contract had been awarded to the lowest bidder. Ms. Sims said only materials and services contracts were awarded to the lowest, qualified bidder. Because this was a personal services contract, the contractor's quoted fee was one of several factors that had been objectively rated. Sonnie Russell said the contractor's fee was about mid-range of all the proposals submitted for that project. Councilor Banzer said she thought \$17,000 was too much to pay for consultant fees, especially since the job was a highly desirable one and many people would apply for the position.

Councilor Waker asked if a work program had been established for the consultant. Ms. Russell said a program had been established with Council assistance and staff would be meeting with the consultant weekly to monitor progress.

Jean Orcutt, 12831 S.E. Morrison, Portland, testified she interpreted the proposed contribution to the CWFF as buying influence for Metro. She also said she resented the waste of spending \$17,000 to secure a Zoo Director and the passage of Ballot Measure No. 2 would stop such government waste.

There being no further comment, Presiding Officer Kirkpatrick said a public hearing and a vote on whether to adopt Ordinance No. 84-179 would be held at the next Council meeting.

8.1 Consideration of Resolution No. 84-496, for the purpose of supporting the Columbia-Willamette Futures Forum Critical Choices 1984 Conference

Ray Barker explained the Resolution before the Council would establish Metro as an organizational affiliate of the CWFF conference and as such, Metro would provide public support by encouraging conference participation by providing information about the conference through the Metro mailing list and/or newsletter. Mr. Barker said this support could be provided at little or no additional cost to Metro if conference information were provided in connection with another mailing.

Councilor Van Bergen asked if Counsel had reviewed the Resolution for possible conflict of interest. Ms. Baxendale said she had not. Councilor Ban Bergen then said he was concerned about supporting an effort that could turn out to be a political endeavor. He suggested Metro continue to be a "supporter" and not become an "organizational affiliate".

Councilor Hansen spoke in support of the Resolution saying CWFF had been producing valuable work on topics that were very important to Metro.

Motion: Councilor Kafoury moved for adoption of Resolution No.84-496. Councilor Cooper seconded the motion.

Councilor Waker was concerned about the term "organizational affiliate" and said he would not vote to support an ill-defined effort.

Councilor Kelley said she was also concerned about the wording of the Resolution because if Metro's role were perceived to be self-serving, the results would be a failure for everyone. She said she would prefer that CWFF had a broader based, regional support.

Motion: Councilor Williamson moved to amend the proposed Resolution as follows: 1) delete the third paragraph ("Whereas, the CWFF has requested that Metro become an "organizational affiliate" in order to strengthen the broad-based coalition of organizations and governments in the region"); 2) delete the first paragraph after "Be it resolved" ("That Metro become an organizational affiliate to the Critical Choices 1984 Conference"); and 3) from the second paragraph, delete the number "2" and the phrase "as an organizational affiliate". Councilor Waker seconded the motion.

Vote: The vote on the motion to amend the Resolution resulted in:

Ayes: Councilors Banzer, Bonner, Cooper, Deines, Hansen, Kafoury, Kelley, Van Bergen, Waker, Williamson and Kirkpatrick

Absent: Councilor Oleson

The motion carried and Resolution No. 84-496 was amended.

Vote: The vote on the main motion, as amended, resulted in:

Ayes: Councilors Banzer, Bonner, Cooper, Hansen, Kafoury, Kelley,
Van Bergen, Waker, Williamson and Kirkpatrick

Abstain: Councilor Deines

Absent: Councilor Oleson

The motion carried and Resolution No. 84-496 was adopted as amended.

8.2 Consideration of Resolution No. 84-491, for the purpose of establishing an interim management strategy for the St. Johns Landfill, the region's only general purpose sanitary landfill

Dan Durig explained the Resolution had been introduced to Council at the meeting of August 23, 1984. At that meeting, Council had moved to amend the Resolution and those changes had been incorporated into the document now before the Council for adoption. Mr. Durig said the changes in item 4 would put Metro on record as urging Senate Bill 405 to go into effect as quickly as possible. Mr. Durig also said he thought the variety of comments received at the last Council meeting had served to strengthen the Resolution and thus provide Metro with a clear policy direction for continuing to institute an interim landfill management strategy.

In addressing item 4 of the revised Resolution, Councilor Waker said he had received Dennis Mulvihill's memo dated September 7, 1984, which referred to two lists of recyclable materials. He said he would not support item 4 because, without seeing DEQ's lists of what would be considered recyclable materials, he could not endorse DEQ's recycling program.

Councilors Bonner and Deines both agreed that item 4 of the Resolution should be amended. Councilor Bonner said he wanted section 4 to address specific Metro recycling programs.

Motion: Councilor Deines moved to adopt the Resolution and to amend it by deleting item 4. Councilor Waker seconded the motion.

Presiding Officer Kirkpatrick said she recalled the Council had instructed staff to revise the Resolution to include language about recycling, recognizing that waste reduction would be a significant part of the interim management strategy. However, she said when more is known about the outcome of Senate Bill 405, Metro can develop a specific recycling policy as it relates to this issue.

Councilor Cooper said he thought efforts should be made to involve Clark County in the interim strategy since their landfill will also be closing in four years. Mr. Durig responded that staff had good communication with

Clark County via the Bi-State Policy Advisory Committee. He also said the Interstate Commerce Clause posed special problems in handling solid waste occross state boundaries but both parties were continuing to work for solutions.

Vote: The vote on the motion to adopt Resolution No. 84-491, as amended, resulted in:

Ayes: Councilors Banzer, Bonner, Cooper, Daines, Hansen, Kafoury, Kelley, Van Bergen, Waker, Williamson and Kirkpatrick

Absent: Councilor Oleson

The motion carried and Resolution No. 84-491 was adopted as amended.

9. COMMITTEE REPORTS

Councilor Bonner reported the Management Committee approved the contract to assist with the recruitment and selection of a Zoo Director. The Committee had also approved a contract with the firm of Barney & Associates to establish a regional criminal justice program. He reported the matter of establishing a task force to assist and direct the consultant would be brought before the Council at a later date.

The Presiding Officer said she attended a recent Friends of the Zoo meeting as an alternate for Councilor Kafoury. The Friends are involved in two major fund raising events: The Penguin Ball and This Bud's for the Zoo. She urged Councilors to participate in both events.

10. OTHER BUSINESS

10.1 Criteria for Selecting Hearings Officers

In response to a previous request of the Council to explain the process for selecting hearings officers, Ms. Baxendale reported hearings officers are designated by ordinance to hear contested cases involving land use, personnel and permit issues. She also explained the ordinance provides for the Council to establish a list from which the Executive Officer will choose a hearings officer for each case. The Executive Officer currently chooses officers who are experienced in hearing specific types of cases, she said. Also, the current Personnel Rules allow an employee to choose one officer from a list of at least three to hear grievances. These current policies explain why the list system exists, she said.

Ms. Baxendale further explained Metro was responsible for designating an officer for each case who would take a neutral position and would listen to the facts as presented. For example, she said, Metro does not advocate particular position in land use cases. Rather, Metro represents the public interest by upholding its land use ordinances and policies.

In summary, Ms. Baxendale reported a change in current policy of selecting hearings officers would require a change in Metro's Ordinance.

Councilor Van Bergen said he was not discontent with the current policy but would prefer a system where hearings officers were chosen from a list on a rotating basis in order to avoid any potential for bias. He said the current practice of choosing an officer because he/she knows more about

land use cases could be construed as bias. An officer could, by nature of not being an expert in land use matters, provide an unbiased perspective, he said.

Councilor Waker said he was satisfied with the current process. Councilor Williamson said he was also satisfied and would consider changing the policy only if Metro received specific complaints about the current policy.

With no further dissent, the Presiding Officer said the current practice of selecting hearings officers would continue.

10.2 Senate Bill 405 Update

Dennis Mulvihill presented an overview of the history of SB 405. Of concern to Metro, he said, would be the manner in which recycling opportunities would be offered, specifically curbside collection. Mr. Mulvihill said he had served on a task force along with other representatives from local jurisdictions, the hauling industry, end markets, brokers and other government agencies, to assist the State Department of Environmental Quality (DEQ) in writing guidelines and rules to accomplish the priorities set out in SB 405.

Mr. Mulvihill said the task force had completed a draft set of rules which he distributed to Councilors. He explained these rules have not yet been accepted by all of the task force members but he said all the members were committed to increasing recycling efforts and he was confident a set of rules would soon be produced that would be satisfactory to all.

Mr. Mulvihill then introduced Bill Bree, Waste Reduction Program Coordinator for the DEQ, who addressed the Council regarding the status of the rules adoption process and implementation of the rules. Mr. Bree explained the draft rules would be presented to the Environmental Quality Commission (EQC) at a hearing in Portland on October 1, 1984. He then reviewed the major elements of the proposed rules. One major provision of the rules was that cities of a population of 4,000 or more would receive curbside recycling services. Because Metro is within one urban growth boundary, he said the entire District would receive curbside services, even small cities of less than 4,000 in population. Mr. Bree also reported the task force was proposing four waste sheds for the Metro area: one for each of the three counties, excluding the Portland city limits, and one for the City of Portland. Under the proposed rules, Metro would be excluded from becoming involved in collection services, he said.

Presiding Officer Kirkpatrick asked for three volunteers from the Council to work with Mr. Mulvihill to review the "Proposed Rules for the Implementation of the Recycling Opportunity Act", as circulated by Mr. Bree, and report back to the Council on September 25, 1984, on what Metro's testimony should be before the EQC on October 1, 1984. Councilors Waker and Hansen volunteered. There being no third volunteer, the Presiding Officer said she would also serve if she determined Councilors absent at this meeting were not available to serve.

Councilor Waker asked Mr. Mulvihill if the materials listed in the third paragraph of his memorandum dated September 7, 1984, represented an accurate list of materials proposed to be handled by recycling wastesheds. Mr. Mulvihill responded that although every landfill or city may not be required to recycle all the materials listed, the opportunity must be presented at one place in each waste shed to recycle all the materials.

Mr. Mulvihill added that the list of recyclable materials was based on a number of factors including the availability of markets for the materials. He said SB 405 contained specific language regarding these factors.

In answer to Councilors' questions, Mr. Mulvihill explained that local jurisdictions would need to decide how to govern the collection of recyclables and how best to design their education and promotion programs. These efforts would take place on both regional and local levels, he said, and Metro would take an active role in the regional promotion and education and in coordinating the efforts of the local jurisdictions. However, Mr. Mulvihill said Metro staff would not volunteer to explain new legislation to the public until the specific rules were established and Metro was asked to provide such services.

Presiding Officer Kirkpatrick pointed out that if Metro wanted to change the proposed rules to allow the District to be one waste shed, staff and the Council would have to take an immediate, active role to bring about these changes by November 1, 1984. Mr. Mulvihill replied the current waste shed designations, as discussed in the DEQ report, had been assigned for reporting purposes only and this would not preclude Metro from establishing a single waste shed for the District.

The Presiding Officer invited Councilors to ask questions of Mr. Mulvihill and to submit comments to him or herself before the November 1 hearing date.

EXECUTIVE SESSION

Presiding Officer Kirkpatrick called the Council into Executive Session at 7:50 p.m. under the authority of ORS 192.660(1)(h). Present were Councilors Bonner, Cooper, Deines, Hansen, Kelley, Van Bergen, Waker, Williamson and Kirkpatrick.

ALASKA TUNDRA LITIGATION

In the Presiding Officer's absence, Vice-Presiding Officer Bonner reconvened the regular session of the Council at 8:25 p.m.

Motion: Councilor Williamson moved to authorize Legal Counsel to file suit against the surety company at such time deemed most suitable by Counsel. Councilor Hansen seconded the motion.

Vote: The vote on the motion resulted in:


Ayes: Councilors Bonner, Cooper, Deines, Hansen, Kelley, Van Bergen, Waker and Williamson

Absent: Councilors Banzer, Kafoury, Oleson and Kirkpatrick

The motion carried.

There being no further business, the Vice-Presiding Officer adjourned the meeting at 8:30 p.m.

Respectfully submitted,



A. Marie Nelson, Clerk of the Council