

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

November 8, 1984

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

Councilors Absent: Councilors Bonner and Oleson

Staff Present: Don Carlson, Eleanore Baxendale, Doug Drennen, Ed Stuhr, Buff Winn, Mary Jane Aman, Randi Wexler, Steve Siegel, Peg Henwood, Herman Brame, Phillip Fell, Jill Hinckley, Kay Rich

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

1. INTRODUCTIONS

None.

2. COUNCILOR COMMUNICATIONS

2.1 Report on Tri-Met Finances and Short-term Plans

The Presiding Officer introduced Jack Mason, Director of Finance, Tri-Met, to report on the current status of Tri-Met finances and short-range plans. The Presiding Officer explained Councilors had requested such a report at their meeting of October 25.

Mr. Mason said first quarter fare box revenues were 11 percent over projections and payroll taxes were 2 percent above anticipated. However, he said some service cutbacks and personnel savings measures had continued in order to offset high expenses.

Regarding the Banfield Light Rail project, Mr. Mason reported Tri-Met anticipated small deficits the first two years of operation. Thereafter, the agency projected profits due to greater ridership and more light rail hours exchanged for bus hours. Mr. Mason also said Tri-Met planned to ask the Legislature to restructure its debt to allow more flexibility in advance refunding of outstanding bonds.

Mr. Mason reported the two biggest problems facing the agency were replacing buses and funding the pension plan.

3. EXECUTIVE OFFICER COMMUNICATIONS

Don Carlson explained that Executive Officer Gustafson would be out of town until next Wednesday but he had prepared a written report to Councilors on the status of current litigation and the regular Executive Officer Report.

3.1 Presentation of the FY 1983-84 Audit by Coopers & Lybrand

Chum Chitty said the Council Management Committee would be reviewing the Audit in detail at their meeting on November 15. He then introduced Jim Savage and Phil Jukeland of Coopers & Lybrand and said they would present a very brief overview of the Audit.

Mr. Savage read the Audit opinion letter to the Council. He explained the opinion was unqualified and the auditors had not encountered problems in the course of doing their work. He said the Solid Waste Enterprise Fund had witnessed an \$1.8 million increase during the year and the Zoo and General funds had also experienced increases. In summary, Mr. Savage said the staff had been extremely cooperative and well prepared, essential factors in producing the best audit report received to date.

Councilor Williamson congratulated Mr. Chitty on his fine work and said the Council should continue to meet with the Audit and Investment Committees to ensure clean audits in the future.

4. WRITTEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS

None.

5. CITIZEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS

None.

6. APPROVAL OF MINUTES

Motion: Councilor Kelley moved to approve the minutes of the October 11, 1984, Council meeting.
Councilor Williamson seconded the motion.

Vote: A vote on the motion resulted in:

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

Absent: Councilors Banzer, Bonner, Hansen and Oleson

The motion carried and the minutes were approved.

7. ORDINANCES

7.1 Consideration of Ordinance No. 84-182, for the Purpose of Adopting a Final Order and Amending the Metro Urban Growth Boundary for Contested Case No. 84-1; Ray Property (First Reading)

The Clerk read the Ordinance by title only.

Motion: Councilor Kafoury moved to adopt the Ordinance.
Councilor Waker seconded the motion.

Eleanore Baxendale explained this case had been heard before Hearings Officer Frank Josselson with ample opportunity for public comment. She said the matter now before the Council was to consider the Hearings Officer's final report and no further public testimony and presentation of new facts would be allowed. Staff, in assistance to Counsel, prepared comments on the Hearings Officer's report which pointed out some changes that Council may want to consider making to the report.

Ms. Baxendale explained that if the Council wished to adopt staff's proposed amendments or any of their own, the correct procedure would be to make a motion to remand the Hearings Officer's Report back to the Hearings Officer with direction to make specific amendments. If such a motion carried, she said the Hearings Officer would make the necessary corrections to the report and would then submit to the Council an amended order, which would become a part of the amended Ordinance, to be reviewed at the next Council meeting.

Mr. Josselson, the Hearings Officer, then explained the background of the request to amend the Urban Growth Boundary, particularly the public hearing process and the opportunity all parties had to participate. Mr. Josselson said he approved of all the amendments to his report recommended by staff. Mr. Josselson also recommended staff and the Council review the Ordinance that addressed matters relating to the regional transit corridor. It was difficult to interpret the document to the public because of the way it was worded, he said.

Richard Gibbons, 15800 S.W. Boones Ferry Road, Lake Oswego, said he was a planning consultant and had reviewed the application on behalf of the applicant. He said he had also reviewed staff's suggested amendments to the Hearings Officer's Report and had no problems with those amendments.

Councilor Kelley circulated to the Council, Mr. Josselson and Mr. Gibbons, a memo from Ms. Hinckley outlining some proposed changes to the report. She explained her proposed changes would not

Metro Council
November 8, 1984
Page 4

substantially alter the intent of staff's amendments but would make the language more clear. Mr. Josselson and Mr. Gibbons said they had no problems with these proposed changes.

Motion: Councilor Kelley moved to remand to the Hearings Officer the changes proposed in Jill Hinckley's memo dated November 8, 1984. Councilor Waker seconded the motion.

Councilor Van Bergen expressed concern about the process for adequate public review of the proposed changes. Ms. Baxendale explained the Metro Ordinance provided for the Council to make changes to the Hearings Officer's Report by remanding amendments back to the Hearings Officer. The Hearings Officer could then make the changes and bring them back before the Council. She explained that, after the Ordinance is adopted, there would be an opportunity for the applicants to ask for rehearing or reconsideration of the Ordinance.

Jill Hinckley said she and Ms. Baxendale were in the process of drafting suggested changes to improve the Metro contested case hearings procedures. She said she would take Councilor Van Bergen's comments into consideration when proposing these changes and encouraged other Councilors' comments.

After receiving comment from Councilor Williamson, Councilor Kelley agreed to the following substitute motion:

Motion: Councilor Kelley moved to remand to the Hearings Officer the changes proposed in Jill Hinckley's memo dated November 8, 1984, and the changes proposed by staff in the staff report dated October 26, 1984. Councilor Waker seconded the motion.

Vote: A vote on the motion resulted in:

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

Absent: Councilors Bonner, Deines, Hansen and Oleson

The motion carried and the Ordinance was remanded back to the Hearings Officer to make the above changes.

7.2 Consideration of Ordinance No. 84-181, for the Purpose of Amending the Disadvantaged Business Program (First Reading)

The Clerk read the Ordinance by title only.

Don Carlson introduced Herman Brame, the newly hired Grants and Contracts Specialist, to the Council. Mr. Carlson explained this Ordinance and Resolution No. 84-511 should be considered together as the annual revision of the District's Disadvantaged Business Program (DBP).

Mr. Brame reported Metro was required to submit DBP goals to the Urban Mass Transit Association (UMTA) on an annual basis. This, he said, was required for any agency receiving Oregon Department of Transportation (ODOT) funds. He explained that as part of this process, Metro was required to announce a 45-day period in which public comments could be received on the DBP goals. He said the City of Portland, Tri-Met, minority business planning centers, Small Business Association, Multnomah County, and ODOT would also be given an opportunity to comment. At the end of this period, he said the Ordinance and Resolution would be brought before the Council for adoption along with a summary of any comments received.

Mr. Brame then explained the new goals were developed as a result of previous comments from the public and other agencies as well as closely examining the numbers of service providers available to provide the kinds of services Metro would require.

In response to Councilor Waker's question, Mr. Brame said UMTA had requested Metro explore the possibility of establishing a set-aside program -- a kind of program that would require Metro to set aside a certain number of contracts exclusively for minority and women contractors. In addition, he said, Metro had, by Ordinance, set aside a category of contract exempt from public contracting procedures. Mr. Brame said he would be exploring the possibility of matching these currently exempt categories with minority and women contractors who could provide these goods and services. He said UMTA would be informed that our first priority would be to conduct business within the confines of our existing procedures and laws.

Councilor Waker questioned the notion of achieving equal opportunity by "far exceeding all formerly established numerical goals," as quoted from the staff report. Mr. Brame explained that the 1982 Surface Transportation Act required all agencies receiving federal funds to make a good faith effort to achieve a 10 percent goal in contracting/purchasing from minority and women business enterprises. Because our stated goals were less than 10 percent, Mr. Brame emphasized we would continue to make a good faith effort and exceed these stated goals and achieve the desired 10 percent goal.

Councilor Williamson requested staff review the language of Section 7 of the Ordinance regarding minority-owned banks. He pointed out that Metro no longer had an Investment Committee and

when the committee existed, its responsibilities did not include making policy for identifying banks. Mr. Carlson said he would be presenting a quarterly investment report at the next Council Management Committee meeting and this matter could be reviewed at that meeting.

Councilor Kelley asked about Section 8(b) of the Ordinance which would provide for Metro to assist disadvantaged businesses in overcoming certain economic barriers. Mr. Brame explained this assistance would take place in the form of referrals to other agencies who were set up to provide direct services and, therefore, no conflicts of interest would occur. Councilor Kelley requested the language of Section 8(b) be changed to: "Providing (assistance) information to disadvantaged and women-owned businesses in overcoming barriers such as the inability to obtain bonding, financing or technical assistance."

There was no public testimony on the Ordinance. The Presiding Officer announced a second reading would occur at the December 13, 1984, Council meeting.

8. RESOLUTIONS

8.1 Consideration of Resolution No. 84-511, for the Purpose of Adopting Disadvantaged Business Program Goals for FY 1984-85

The Presiding Officer explained this Resolution would be reviewed now but it would be considered for adoption at the Council meeting of December 13, 1984.

Mr. Brame said staff's goal was to create a realistic set of objectives based on past performance, comparison with similar agencies and comparison of budgeted contracting opportunities with actual profiles of existing minority and women-owned businesses. For example, he said the procurement goal had been lowered to reflect the fact that the Zoo was responsible for most of the procurement activities and there were very few certified businesses to service the Zoo's needs.

After Council discussion, the Presiding Officer requested staff to publish requests for bids or proposals in both minority trade journals and in journals of general circulation.

8.2 Consideration of Resolution No. 84-512, for the Purpose of Continuing Current Solid Waste Disposal Rates

There was no discussion about the Resolution.

Motion: Councilor Waker moved to adopt the Resolution.
Councilor Kelley seconded the motion.

Vote: A vote on the motion resulted in:

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

Nay: Councilor Hansen

Absent: Councilors Banzer, Bonner and Oleson

The motion carried and the Resolution was adopted.

8.3 Consideration of Resolution No. 84-513, for the Purpose of
Authorizing an Exemption to the Public Contracting Procedure
Set Out in Metro Code Section 2.04.001 Et Seq for the
Construction of the Bear Grotto Project

Ms. Baxendale explained Metro's contracting procedure provided for an exemption from the regular public bidding process when it was desirable to obtain price comparisons and when the unique nature of the project would disqualify many contractors. She said the Zoo's proposal varied from the standard procedure in two ways: 1) a prequalification procedure would be applied in order to determine three candidates deemed best qualified to bid on the work; and 2) the three candidates would then be allowed to submit bids, including cost savings proposals. Ms. Baxendale said this procedure was very similar to the standard state RFP process.

Motion: Councilor Kafoury moved to adopt the Resolution.
Councilor Waker seconded the motion.

Councilor Van Bergen was concerned this was the second such appeal for a variance to the Public Contracting Procedure and requested staff work to revise the procedures to include provisions for major projects. He also thought it too restrictive to limit the bidding on the Bear Grotto project to three contractors.

Kay Rich said he could expand the process to allow for more than three bidders. He also explained the process being proposed was the most suitable one for most Zoo construction. Because most contractors were unfamiliar with the unique requirements of the Zoo, he said they were more likely to increase bid amounts to cover unforeseen expenses. When bids were negotiated, he said a better dialogue existed for discussing the scope of work and for contractors to share cost-saving ideas. He cited the Primate construction project as an example of how the negotiated bid process had saved Metro approximately \$300,000.

Councilor Waker questioned why the bidders would provide cost-saving ideas when some of this information could be shared with other contractors. Mr. Rich answered this procedure had been successful for the Primate Project and he expected it also would be successful for the Bear Grotto Project.

Councilor Waker asked what role the Council would play in selecting the contractor. Mr. Rich responded that a five-member selection committee would screen the proposals. As in the case of the Primate Project, a Councilor could serve on the committee. The Council would also approve the construction contract, he said.

Presiding Officer Kirkpatrick instructed staff not limit the finalists to three but to negotiate with all contractors meeting prequalification standards.

Vote: A vote on the motion resulted in:

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

Absent: Councilors Banzer, Bonner, Deines and Oleson

The motion carried the the Resolution was adopted.

8.4 Consideration of Resolution No. 84-515, for the Purpose of Amending the 1983-85 Collective Bargaining Agreement, Schedule A

The Presiding Officer explained the Council had reviewed this matter at a previous Executive Session. She said Resolution No. 84-515 would amend the Union Agreement to reflect salary increases and Resolution No. 84-516 would amend the Metro Pay Plan.

Motion: Councilor Kelley moved the Resolution be adopted.
Councilor Kafoury seconded the motion.

Vote: A vote on the motion resulted in:

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

Absent: Councilors Banzer, Bonner, Deines and Oleson

The motion carried and Resolution No. 84-515 was adopted.

8.5 Consideration of Resolution No. 84-516, for the Purpose of Amending the Metro Pay Plan

Metro Council
November 8, 1984
Page 9

Motion: Councilor Waker moved the Resolution be adopted.
Councilor Kelley seconded the motion.

Vote: The vote on the motion resulted in:

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

Absent: Councilors Bonner, Deines and Oleson

The Motion carried and Resoltuion No. 84-516 was adopted.

Don Carlson said the Executive Officer would be presenting recommendations for possible salary adjustments for non-union employees at the December 13 Council meeting.

9. COMMITTEE REPORTS

Councilor Williamson reported that JPACT would be reviewing an \$18 million Milwaukie Corridor project and a proposed 3¢ gas tax increase for purposes of economic development. He suggested Councilors contact Andy Cotugno before the meeting if they wished to comment on these issues.

EXECUTIVE SESSION

The Presiding Officer announced there would be no Executive Session because staff had not yet received information regarding litigation matters.

Respectfully submitted,



A. Marie Nelson
Clerk of the Council

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