

MINUTES OF THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

June 13, 1985

**Councilors Present:** Councilors DeJardin, Gardner, Hansen,  
Kirkpatrick, Kelley, Myers, Van Bergen and Waker

**Councilors Absent:** Cooper, Hansen, Kafoury (excused), Oleson and  
Bonner (excused)

**Also Present:** Rick Gustafson, Executive Officer

**Staff Present:** Eleanore Baxendale, Jennifer Sims, Sonnie  
Russill, Gene Leo, Bob Porter, Jack Delaini, Dan  
Durig, Buff Winn, Rich McConaghy, Richard  
Brandman, Dennis O'Neil, Peg Henwood, Randi  
Wexler, Leigh Zimmerman, Norm Wietting, Mary  
Jane Aman, Ed Stuhr, Wayne Rifer, Dennis  
Mulvihill, Phillip Fell, Doug Drennen, Ray Barker

Vice Presiding Officer Waker called the meeting to order at 5:40 p.m.

1. INTRODUCTIONS

None.

2. COUNCILOR COMMUNICATIONS

None.

3. EXECUTIVE OFFICER COMMUNICATIONS

Portland Ozone Attainment. Richard Brandman presented an update on attainment with acceptable levels of ozone in the Portland area. He reported the area was marginally within attainment of federal standards. Based on emission forecasts, he expected the area to be within attainment for the next 15 years. A strategy needed to be developed to accommodate new industrial growth, however, because ozone levels were so close to the attainment level. He explained Metro would be participating with the Department of Environmental Quality (DEQ) Air Quality Advisory Committee to study alternatives for accommodating new industrial growth. He expected the Committee to make a recommendation in August and would report their findings to the Council. The Council could recommend a strategy to the DEQ and The Ozone State Implementation Plan would then be revised, he reported.

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St. Johns Landfill Operations Contract. Executive Officer Gustafson reported all firms submitting prequalification applications had been judged qualified to bid on the contract.

National Association of Regional Councils (NARC) Annual Conference. The Executive Officer said he and Councilors Gardner and Kirkpatrick attended the conference in Pittsburg. Topics of interest included the extent to which non-profit organizations formed by major corporations were involved in regional public policy issues. Two such organizations, the Regional Plan Association of New York and the Greater Philadelphia First Corporation, were very supportive of public sector regional government, he said. The Executive Officer was encouraged by this increased interest in regionalism.

He also reported that Minnesota had adopted legislation prohibiting the issuance of landfill permits after 1990 unless waste was processed (i.e. recycled, shredded or burned). Councilor Gardner added it appeared the preferred method of waste processing would be energy recovery facilities. The Council would receive copies of Minnesota's legislation.

Tax Supervising & Conservation Commission (TSCC) Hearing on Metro's FY 1985-86 Annual Budget. The hearing was scheduled for June 14.

The Metro Annual Conference was scheduled for Friday, June 21 and would deal with the subject of telecommunications. The featured keynote speaker would be Dr. Gerhard Hanneman from the ELRA Group of San Francisco.

Legislative Update. The Executive Officer reviewed the current status of Metro-supported legislation as outlined in the "Executive Officer Report" dated June 13, 1985. Updates to this report are noted below:

HB 2275 (Excise Tax). The bill was not been amended and no concurrence would be required in the House. The bill contained provisions for reducing the number of signatures required for Metro referendums (4 percent of those voting in the last gubernatorial election) and initiatives (6 percent). The existing percentage requirement was 25 percent. He explained the 25 percent requirements were adopted in 1983 for smaller, special service districts and because no distinctions were made for larger districts, the old legislation inadvertently applied to Metro. The Executive Officer said it became clear in discussions with legislators that if an attempt were made to amend proposed percentage requirements, the entire bill would be lost. (Note: See agenda item 9.2 for more discussion of this legislation.)

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SB 662 (state landfill siting authority). The Executive Officer announced a discussion of this legislation would take place under agenda item 9.1.

SB 872 (pesticide surcharge). No committee hearing had been scheduled to date.

SB 808 (financing the cost of jailing felons). Councilor Kelley asked why the bill died and if there were any chance of it being revived. The Executive Officer said it would not be revived and the bill died because the Ways and Means Committee refused to accept the financial obligations associated with the legislation.

In summary, Executive Officer Gustafson reported two outstanding bills remained on the Council's formally adopted legislation program: HB 2275 (excise tax) and SB 662 (state landfill siting authority).

4. WRITTEN COMMUNICATIONS TO THE COUNCIL ON NON-AGENDA ITEMS

None.

5. CITIZEN COMMUNICATIONS TO THE COUNCIL ON NON-AGENDA ITEMS

Mr. Richard Franzke, attorney with the firm of Stoel, Rives, Boley, Fraser & Wyse, representing Roadway Constructors Corporation, addressed the Council regarding Metro's prequalification application requirements for the St. Johns Landfill operation contract.

Councilor Myers excused himself from considering this matter because his law firm did business with Riedel Internation, the owner of Roadway Constructors. Eleanore Baxendale, Metro Counsel, requested Councilor Myers remain in the chamber to constitute a quorum but noted he would be excused from taking formal action.

Mr. Franzke explained that after the Council meeting of June 6, 1985, Roadway Constructors asked his firm to review Metro's prequalification procedure and to offer an opinion regarding whether proper and legal procedures had been followed. Mr. Franzke said Roadway had most likely contacted his firm because of its history in representing contractors in public bidding matters. Also, Mr. Franzke stated that in 1975 he had served on the Attorney General's Advisory Committee which drafted ORS 279, the current public contracting laws including prequalification procedures.

Mr. Franzke discussed the process of revising the state statutes as they applied to prequalification requirements. The private sector had argued that prequalification was burdensome and lobbied to

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eliminate the process. Public agencies, however, argued they had legitimate concerns and wanted to know more about the people with which they would be doing business. Therefore, the Attorney General's Advisory Committee proposed, as was eventually adopted by the Legislature, to maintain prequalification but to limit it as follows: 1) to prescribe one form for all agencies to use; 2) to allow a rebuttable presumption that if a contractor had been approved by one agency, he/she was qualified to perform that work for any another agency of the state. The burden would be on the agency to prove a contractor was not qualified under the provisions of 2) above, he said.

Mr. Franzke stated Metro's prequalification form was not the standard form prescribed by the state and had departed from that form in 10 to 15 respects. He said Metro did not have the right to impose the submittal of a deviant form on contractors. Metro's form had also requested ellicit financial information, he said. The law was amended in 1975 to allow contractors to post a 100 percent surety bond. If a bond were posted, that would constitute sufficient evidence of a company's financial ability to perform a contract, he asserted.

Mr. Franzke distributed the following materials to the Council: 1) a letter to the Council from himself, dated June 13, 1985, summarizing his position; 2) a letter to the Council from John Bradach, dated June 13, 1985, which amplified Mr. Franzke's comments; and 3) Roadway Constructor's prequalification form filed with the Oregon Department of Transportation (ODOT) on the form prescribed by the Department of General Services and dated March 25, 1985. Mr. Franzke said he was submitting this form to the Council for its consideration.

In summary, Mr. Franzke said the fact of Roadway Constructors not submitting a prequalification application by the prescribed deadline was clearly waivable by the Council. If the Council elected to waive the deadline, no other bidder would have a basis to complain. He said not waiving the deadline would be contrary to the intent of the law which was to encourage competition and to prefer doing business with local firms. He again discussed the Council's lack of legal authority to require its prequalification form and advised the Council to waive the application requirement in Roadway's case. He stated that if Metro was dissatisfied with the Department of General Services' form, Metro should ask General Services to amend the form. Metro went beyond the permissible limits of its authority under state statutes when it developed its own prequalification form, he said.

In response to Mr. Franzke's statements, Ms. Baxendale distributed a document entitled "Metro Prequalification Form Summary," dated

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June 13, 1985, and a copy of the state statutes applicable to the prequalification process. She explained the first document described provisions of the General Services prequalification form, the areas where Metro's form had differed from the standard state form and the sources for those differences.

She then asked Mr. Franzke to confirm whether he was actively submitting to Metro Roadway Constructor's prequalification form previously filed with ODOT to satisfy Metro's preapplication requirement. Mr. Franzke said he was submitting the ODOT form to Metro and he believed, under the ORS provisions, Roadway was therefore entitled to a rebuttable presumption of prequalification. Vice Presiding Officer Waker then asked if Mr. Franzke's assumption was that all public work was alike, that one form covered all qualifications and that no differentiation needed to be made between various types of public work. Mr. Franzke responded that in its infinite or perhaps not infinite wisdom, the Legislature had said one form would be used. If this form proved to be inadequate, the form could be revised by General Services, not by individual agencies, he said. He explained the form was intended to show a contractor had the equipment and experience needed to perform specific elements of the work and therefore, would be qualified to perform a project even if the contractor had not previously worked on the same type of project. With minor exceptions, the work methods and equipment needed to operate a landfill were required of contractors to perform work in other settings, he said. Further, he explained, as the requirement for performance bonds had become almost universal, many states had eliminated the need for prequalification as an unnecessary redundancy.

Ms. Baxendale said she and Mr. Franzke did agree that it was within the Council's discretion to amend Resolution No. 85-564 and waive the prequalification deadline. They did not agree on other issues, she explained.

Regarding Roadway's submittal of a prequalification to ODOT and the rebuttable presumption that it would satisfy Metro requirements, Ms. Baxendale stated this had not been asserted to staff and no application had been submitted until this evening. According to state statute, Ms. Baxendale said Roadway should have submitted the ODOT application to Metro within Metro's prescribed deadline for it to be considered. She read the state statute which supported this position. The statute raised the question of whether the work requirements for operating the St. Johns Landfill were the same as the work requirements of ODOT. Ms. Baxendale said that even if the Council waived the deadline requirement, staff would be in the position of disqualifying Roadway because information provided on the ODOT form would not satisfy requirements for operating a sanitary landfill. She advised the Council not to extend the deadline.

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Ms. Baxendale then addressed the issue of whether Metro's prequalification form violated the state statutes. Referring to ORS 279.039(1), the last sentence, she said when drafting Metro's form, she had called the Department of General Services and learned they had no standard prequalification form. The only existing form was developed for ODOT. When reviewing ODOT's form, she noted the form listed many elements of work including an "other" category but the form did not specifically address Metro's unique requirements for sanitary landfills. She said she then called the Attorney General's office who advised substituting "sanitary landfill" for the word "other." Ms. Baxendale said this could not be construed as a material deviation from the form when the form invited one to submit something else in addition to the topics already listed.

Other items on the form and submitted by Mr. Franzke as being impermissible, said Ms. Baxendale, were based on questions asked by other local governments. She said items which deviated from the ODOT form were primarily copied from the prequalification form used by the City of Portland. In fact, she explained, Roadway was prequalified in Portland using the City of Portland prequalification form - the same form Mr. Franzke now asserted contained illegal questions. None of these questions asked about a firm's financial capabilities. Metro had stated on the front page of its application that financial capability would be measured by a firm's ability to produce a performance bond, she said, and no applicant had been disqualified on the basis of financial ability. Ms. Baxendale then reviewed other deviations from the ODOT form and the sources for those deviations as itemized on the "Metro Prequalification Form Summary" document. She asserted that in each case, questions were derived from State of Oregon Statutes, the ODOT form, the City of Portland form and from advice of the Attorney General's office. In no case, she said, was a question asked that exceeded provisions of the statutes.

In summary, Ms. Baxendale recommended the Council not find its procedure in violation of the state statutes because it was staff's opinion the process was legal. If, however, the Council decided it would promote public policy to waive the prequalification application deadline, she asked that the ODOT form submitted by Roadway at this meeting not be considered as a suitable application because it did not respond to Metro's unique sanitary landfill operation questions.

Vice Presiding Officer Waker said he believed the issue before the Council was the same issue before the Council on June 6, 1985. The Council had established a prequalification process and a schedule for receiving prequalification statements. Through no fault of the Council's, a statement was not submitted in a timely fashion and

Roadway was asking the Council to waive the deadline requirement, he said. He explained it was the Council's prerogative to waive the deadline at on June 6, the Council choose not to waive the deadline. He announced he was prepared to entertain appropriate motions from Councilors.

Councilor Kelley questioned whether a quorum was present. Ms. Baxendale explained that for non-legislative items, a quorum needed to be present (7 Councilors) and the majority present and voting on an issue would affirm the motion.

Councilor Kirkpatrick stated that although the Council made the correct decision on June 6 not to waive the deadline for submitting prequalification applications, she was uncomfortable that no clear action was taken. She then proposed the following motion:

Motion: Councilor Kirkpatrick moved not to waive the prequalification application deadline previously established by the Council. Councilor DeJardin seconded the motion.

Councilor DeJardin said he was also uncomfortable with the Council's not taking action on June 6. Because Rodaway's Chief Estimator's accident occurred before the prequalification forms were prepared, he could not support a deadline extension. Also, he could not support Rodaway's position that the ODOT form would qualify them for the Metro contract.

Councilor Gardner agreed with Ms. Baxendale's opinion that Metro's prequalification form did not technically deviate from the state statutes. He did not think that prequalification for ODOT work would qualify one for performing sanitary landfill work. Metro's requirements were unique, he said, and it was appropriate to require specific responses to questions about qualifications. Finally, Councilor Gardner said he was sensitive to Roadway's concern about increasing bidding competition. However, he thought that of the nine firms deemed qualified to bid, adding one more bidder was not significant enough an increase to deviate from Metro's established process.

Councilor DeJardin added he regretted that Roadway, being a local firm, could not bid on the project.

Councilor Van Bergen asked if an affirmative vote, versus taking no action, would give more ease to a temporary restraining order. Ms. Baxendale said she did not think it would make a difference. Councilor Van Bergen said because the Council had adopted the prequalification procedures, he would support the position not to deviate from those procedures.

Vote: A vote on the motion resulted in:

Ayes: Councilors DeJardin, Gardtner, Kirkpatrick, Kelley,  
Van Bergen and Waker

Absent: Councilors Cooper, Hansen, Kafoury, Oleson and Bonner

Abstain: Councilor Myers

The motion carried.

6. CONSENT AGENDA

Motion: Councilor Kirkpatrick moved to approve the Consent  
Agenda and Councilor Kelley seconded the motion.

Vote: A vote on the motion resulted in:

Ayes: Councilors DeJardin, Gardner, Kirkpatrick, Kelley,  
Myers, Van Bergen and Waker

Absent: Councilors Cooper, Hansen, Kafoury, Oleson and Bonner

The following items were approved or adopted:

6.1 Minutes of the Meeting of May 9, 1985

6.2 Resolution No. 85-573, Amending the Classification and Pay  
Plans for the Metropolitan Service District (for the Positions  
of Personnel Officer, Data Processing Manager and Information  
Systems Analyst)

7. ORDINANCES

7.1 Consideration of Ordinance No. 85-186, for the Purpose of  
Amending the FY 1984-85 Budget and Appropriations Schedule  
(Second Reading and Public Hearing)

The Clerk read the ordinance by title only.

Jennifer Sims reported the proposed amended budget was heard by the  
Tax Supervising & Conservation Commission (TSCC) on May 22 and a  
letter from the TSCC certifying the budget was included in the  
agenda materials. In response to the TSCC's request, funds were  
removed from the Solid Waste contingency fund and placed in the Solid  
Waste beginning fund balance for FY 1985-86. Ms. Sims also reviewed  
changes proposed by staff since the revised budget was first brought  
before the Council for consideration. These changes were itemized  
in the staff report materials.



Councilor Kirkpatrick asked why the Management Committee had just approved a Transportation Department computer purchase not to exceed \$44,770 and the amount listed for that line item was shown as \$63,800. Because Ms. Sims could not answer the question without consulting with staff who were not present, Vice Presiding Officer excused her from the Council Chamber to secure the needed information.

The Vice Presiding Officer opening the public hearing. There being no comment, he closed the public hearing.

Councilor Gardner asked if anticipated revenues received as a result of increasing the number of Zoo visitor services workers would exceed expenses. The Vice Presiding Officer said budget figures showed revenues would exceed expenses.

The Vice Presiding Officer called a recess at 6:50 p.m. He reconvened the meeting at 7:00 p.m. Ms. Sims was still unable to secure the information Councilor Kirkpatrick had requested so the Vice Presiding Officer announced that Ordinance No. 85-186 would be considered at the end of Agenda Item No. 9.1. (Note: For recording purposes, the Clerk has noted further discussion on this item in the paragraphs below.)

Ms. Sims distributed a report to the Council entitled "Computer Purchase Account Codes." In response to Councilor Kirkpatrick's question, she explained the computer purchase contract in the amount of \$44,770 had recently been approved by the Council Management Committee. In addition to that expense, \$9,990 was budgeted for accompanying software, license and adaptation. \$9,040 was also budgeted for auxiliary graphic equipment and a printer. The total of these items would account for the \$63,800, she reported.

Councilor Kirkpatrick expressed concern that when the staff report for the \$44,700 MASSCOMP computer purchase was presented to the Management Committee, staff did not outline the full scope of related costs. She requested that in the future, the Council be informed of total costs of large projects such as this. Vice Presiding Officer Waker recalled that he had received information from staff outlining total computer costs.

Motion: Councilor Kelley moved that Ordinance No. 85-186 be adopted as amended as proposed by the TSCC and staff. Councilor Kirkpatrick seconded the motion.

Vote: A vote on the motion resulted in:

Ayes: Councilors DeJardin, Gardner, Kirkpatrick, Kelley, Myers, Van Bergen and Waker

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the legislation would effect the Wildwood site and said she would carefully review the draft bill the following morning for possible problem areas. Councilor Myers requested she notify Phillip Fell immediately if a conference needed to be arranged.

Councilor Van Bergen said he hoped the per ton fees established by the legislation would not conflict with Metro's current volume disposal charges. He was especially concerned about individual disposers, keeping costs reasonable and the time it would take to weigh small loads. Mr. Durig said staff had anticipated this problem and were working on possible solutions.

Councilor Kirkpatrick said she recognized Metro had asked the Legislature for greater authority and assistance in landfill siting. However, she did not think the current draft of SB 662 was the best response and asked if the bill was the only alternative to consider. Mr. Fell explained the bill would end Metro's involvement in landfill siting only until the next new landfill was sited. Councilor Kirkpatrick then asked if it were preferable for the Legislature not to adopt the legislation this year. The Executive Officer said he did not think it best to kill the bill because it was compatible with all the Council's principles with the exception of diminished public involvement. Councilor Kirkpatrick thought the legislation would remove Metro from the landfill business. Executive Officer Gustafson said explained the EQC would designate who would design, own and operate the landfill and as a local government, Metro could have extensive involvement. He agreed a problem existed because the House had perceived the bill to be punishment to Metro for not doing a good job. However, he said, this misimpression could be remedied after the legislation was adopted. To kill the bill now would cause the agency severe damage, he said. Mr. Fell added the bill would be in force for a limited time period and would expire after the current landfill situation is revolved. Although this language was not in the current draft, it was part of the official record, he said.

Councilor Gardner asked if staff had problems with the January 1, 1986, deadline for submitting a waste reduction plan and would this deadline allow enough time for public comment before the plan was submitted to the EQC. Mr. Durig said the deadline might not allow for the extensive type of citizen involvement staff would prefer. Staff had addressed these same concerns before the senate committee but deadlines were not extended. Mr. Durig said staff would come back to the Council with a plan which could include meeting the formal January 1 deadline, arranging a period of public involvement and comment after January 1, and revising the plan after comment was received.

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9. OTHER BUSINESS

9.1 Discussion of the Scope and Authority of the Solid Waste Management Plan

Senate Bill 662 Update

The Executive Officer requested the Council review the latest draft of Senate Bill 662 at this meeting. He explained the recent revisions had significantly changed the direction of the bill. Vice Presiding Officer Waker said this could be the last opportunity for the Council to address the proposed legislation because the 1985 Legislature would soon adjourn.

Dan Durig reported the initial concept of this legislation was to provide Metro assistance in siting an all purpose landfill. He said that concept was contained in the draft bill in addition to some new procedures. A major amendment would transfer the authority once granted the local government advisory committee to the Environmental Quality Commission (EQC). Mr. Durig reviewed other major areas that had been amended: the term "landfill" had been changed to read "disposal site" which would broaden the scope of the legislation; and the state would require Metro to submit a waste reduction plan by January 1, 1986.

Mr. Durig said the heart of the bill was contained in Section 5(6) enabling the "EQC to direct the Department of Environment Quality (DEQ) to complete the establishment of disposal sites subsequent to the approval of the EQC notwithstanding any city, county or other local government charter or ordinance to the contrary". The DEQ could establish a disposal site without obtaining any license, permit, franchise or other form of approval from a local government unit.

After reviewing other provisions of SB 662, Councilors asked questions about the proposed legislation.

Councilor Waker asked about the process for collecting fees at the landfill to finance the new siting process. Mr. Durig responded a fee of \$.50 per ton would be collected at St. Johns Landfill, effective immediately, after the legislation was adopted. This revenue would be paid by Metro to DEQ, he said, and up to \$1.50 per ton could be collected over the next two-year period. Metro would continue to budget some funds for landfill siting.

Councilor Myers asked Counsel if the bill contained any provisions that could create implementation problems. Ms. Baxendale answered the bill appeared to be workable. She was uncertain, however, how

Absent: Councilors Cooper, Hansen, Kafoury, Oleson and Bonner

The motion carried and the Ordinance was adopted.

**8. RESOLUTIONS**

**8.1 Consideration of Resolution No. 85-575, for the Purpose of Appointing a Citizen Member to the Transportation Policy Alternatives Committee (TPAC) (Milton Fyre)**

Peg Henwood reported this resolution would appoint Milton Fyre as a citizen member to TPAC to complete the unexpired term due to the resignation of Bruce Clark. She said Mr. Fyre was an engineer at Bonneville Power Administration and was serving on the Planning Commission and the Transportation Committee for the city of Tigard.

Councilor Gardner asked if it were coincidental that both Mr. Clark and Mr. Fyre were from Washington County. Ms. Henwood said that although TPAC's citizen members did not officially represent distinct areas, the current membership provided an excellent geographic representation. When Mr. Clark resigned, she explained, staff tried to recommend a replacement from Washington County.

Vice Presiding Officer Waker thought this consideration appropriate in view of the many important Washington County transportation issues before TPAC.

**Motion:** Councilor Kirkpatrick moved the Council adopt Resolution No. 85-575 and Councilor Kelley seconded the motion.

**Vote:** A vote on the motion resulted in:

**Ayes:** Councilors DeJardin, Gardner, Kirkpatrick, Kelley, Myers, Van Bergen and Waker

Absent: Councilors Cooper, Hansen, Kafoury, Oleson and Bonner

The motion carried and the Resolution was adopted.

Councilor Van Bergen said although he endorsed Mr. Fyre for the TPAC position, he was uncomfortable with the unwritten policy of giving preference to candidates from a particular geographical area. This practice would preclude other qualified candidates from being considered, he said.

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Councilor Van Bergen explained he had not supported SB 662 earlier but thought the current draft was something he could support, especially given the limited time for acting on the bill. He advocated Council support for the legislation versus taking no position.

Motion: Councilor Myers moved the Council express support for SB 662 in its current form. Councilor Van Bergen seconded the motion.

Councilor Kelley said she would not support the motion because the bill lacked adequate provision for local government input in the landfill siting process. Mr. Durig explained that Section 2 of the bill invited public and local government participation in the siting process.

Vote: A vote on the motion resulted in:

Ayes: Councilors DeJardin, Gardner, Kirkpatrick, Myers, Van Bergen and Waker

Nay: Councilor Kelley

Absent: Councilors Cooper, Hansen, Kafoury, Oleson and Bonner

The motion carried.

#### Scope and Authority of the Solid Waste Management Plan

Wayne Rifer distributed copies of ORS 459.005 to 459.285, Solid Waste Management (General Provisions), and ORS 268.300 to 390, powers of the Metropolitan Service District, to the Council.

Mr. Rifer explained the intent of the evening's discussion was to understand the legal authority issues for solid waste management planning as distinct from operational authorities. On July 11, the Council would be requested to approve a set of alternatives for action which would give staff direction regarding these issues. On July 25, staff would present a plan summarizing the assumptions for the entire solid waste management planning process. The summary would include the implications of SB 662, if adopted, and existing legislation, Mr. Rifer reported.

Mr. Rifer reviewed information contained in the Executive Summary of the staff report. He explained the four planning functions mandated by law included adoption of: 1) a Metro Solid Waste System's Plan; 2) a Solid Waste Management Plan - a regional plan, including planning for collection; 3) a Waste Reduction Program; and 4) a Functional Plan. The staff report defined the elements that must be included in these plans.

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Regarding the Solid Waste Management Plan, Mr. Rifer referred to ORS 459.095 which defined the intent of the Plan and responsibilities of local governments in relation to the Plan. He explained the Legislation intended the Plan to be the basis for the solid waste collection function. He also explained that up until the drafting of SB 662, Metro's adoption of a Waste Reduction Plan was discretionary. Councilor Kirkpatrick pointed out that a Waste Reduction Plan was required to site an energy recovery facility and that a plan had been in existence since 1980.

Mr. Rifer reviewed the state statutes that applied to the Functional Plan. If the Solid Waste Management Plan were to be designated by the Council as the Functional Plan, the general provisions defined in ORS 459.095 would apply to the Functional Plan, he said. These provisions were described in ORS 268.390.

Mr. Rifer then summarized the decisions to be made by the Council regarding solid waste planning: 1) would the plan encompass the full tri-county area or the area within Metro's boundaries; 2) what issues would be included in the Plan (would the collection function be included in the Plan); 3) should the waste reduction program be part of the Solid Waste Management Plan; and 4) is it appropriate to exercise the full force of Metro's planning authority.

Due to time constraints and the importance of the issues before the Council, Vice Presiding Officer Waker requested Mr. Rifer prepare a summary of key policy questions to be answered by the Council and the laws governing each issue. Mr. Rifer said he could also prepare alternative motions the Council could adopt in order to give staff specific direction.

Councilor Kelley requested an informal workshop be scheduled this summer in order to give the Council an opportunity to ask questions relating to this element of the Solid Waste Management Plan. After discussion, it was agreed the workshop should be scheduled between July 11 and 25. Executive Officer Gustafson advised the Presiding Officer be consulted about scheduling a series of workshops to discuss other elements of the Plan.

#### Alternative Technology

In response to Councilor Myers question of June 6, Mr. Rifer distributed a description of the July 26 and 27 Alternative Technology Symposium and the general composition of the symposium's panel members. He explained the panel members would, after evaluating presentations of various waste reduction technologies, make specific recommendations to the Council.

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Vice Presiding Officer Waker asked if the cost of each technology presented would be evaluated. Mr. Rifer responded that a dollar ceiling would be established but a full cost analysis would not be conducted for each alternative presented. The panel would be instructed to recommend affordable options to the Council, he said.

Mr. Rifer invited the Council to attend the Symposium.

Councilor Gardner asked if staff had considered having a SWPAC member serve on the panel. Mr. Rifer said because of the technical nature of the material to be evaluated, it was not considered.

#### 9.2 Consideration of Adopting a Council Position on HB 2275

Executive Officer Gustafson asked if the Council was sufficiently concerned about HB 2275 and proposed requirements regarding signature requirements for Metro referendums and initiatives to not endorse passage of the bill.

In response to Councilor Myers question, Mr. Fell reported HB/2275 would not affect state statutes as they related to Metro. Only Metro-adopted legislation would be affected.

Councilor Myers explained when the bill passed the House earlier in the week, he had expressed the view he thought the Council should have an opportunity to discuss their position on referendum and initiative signature requirements. He asked the Executive Officer to provide an assessment of any risk that might exist.

The Executive Officer said he was not comfortable with the signature change amendment because of the nature in which it was imposed. He also was concerned that the requirements did not apply to Tri-Met and the Port of Portland. However, he said, if experience proved that referendums and initiatives were too easy to file, Metro could ask the Legislature to amend the law. This would be preferable to giving up excise tax revenue, he explained.

After Council discussion on the issue, especially as it related to the possible disruption of Metro business, it was decided no formal position should be taken.

#### EXECUTIVE SESSION

At 8:45 p.m., Vice Presiding Officer Waker called the Council into Executive Session under the authority of ORS 192.660(1)(h). The regular session reconvened at 8:55 p.m.

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### 9.3 Consideration of LUBA Decision

Ms. Baxendale requested the Council consider whether the Executive Officer should file an appeal of the LUBA decision which denied Metro's appeal of Section IV (the Wildwood exclusion) of Multnomah County's new landfill siting ordinance.

Motion: Councilor Kirkpatrick moved to authorize the Executive Officer to file an appeal. Councilor DeJardin seconded the motion.

Executive Officer Gustafson said, depending on next week's legislative events as they related to SB 662, it could be determined that it would be in Metro's best interests not to file an appeal. The Council concurred that if that decision became necessary, the Council would be immediately informed.

Councilor Kelley said she would support the motion but requested that questions of equity and dealings with other local governments be addressed in the next appeal.

Vote: A vote on the motion resulted in:

Ayes: Councilors DeJardin, Gardner, Kirkpatrick, Kelley, Myers, Van Bergen and Waker

Absent: Councilors Cooper, Hansen, Kafoury, Oleson and Bonner

The motion carried.

Councilor Van Bergen stated he was uncomfortable with the qualifier the Executive Officer had placed on the appeal. Executive Officer Gustafson said he was very interested in appealing the decision and would take the most prudent action necessary.

There being no further business, the meeting was adjourned at 9:00 p.m.

Respectfully submitted,



A. Marie Nelson  
Clerk of the Council

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