

MINUTES OF THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

December 5, 1985

Councilors Present: Councilors Cooper, Gardner, Hansen, Kirkpatrick, Kafoury, Kelley, Oleson, Van Bergen, Waker and Bonner

Councilors Absent: Councilors DeJardin and Myers

Also Present: Rick Gustafson, Executive Officer

Staff Present: Don Carlson, Eleanore Baxendale, Dan Durig, Dennis Mulvihill, Doug Drennen, Norm Wietting, Chuck Geyer, Randi Wexler, Patrick Miner, Debbie Gorham, Mary Jane Aman, Wayne Rifer, Gene Leo, Kay Rich, Bob Porter, Chet Gregg, Vickie Rocker, Janet Schaeffer, Phillip Fell, Randy Boose and Ray Barker

1. INTRODUCTIONS

None.

2. COUNCILOR COMMUNICATIONS

Councilor Oleson circulated a proposed amendment to Order No. 85-5, in the matter of Contested Case No. 84-2 (a petition for an Urban Growth Boundary locational adjustment by Portland General Electric et al). Presiding Officer Bonner announced consideration of the Order had been postponed until January 9, 1986, and Councilor Oleson's proposed amendment would also be considered on that date.

The Presiding Officer submitted for the record a letter he had received from City of Portland Commissioner Dick Bogle endorsing the Metro Council's adoption of Ordinance No. 85-194, an Ordinance that would restrict the use of the St. Johns Landfill to waste generated within the tri-county area.

3. EXECUTIVE OFFICER COMMUNICATIONS

Executive Officer Gustafson reported on the status of the Committee on Regional Convention, Trade, and Spectator Facilities (CTS). He said the CTS Committee would be meeting December 19 to consider possible dates for a General Obligation bond election to finance the facility. He also reported an ordinance would be before the Multnomah County Commission this month for the purpose of imposing a 3 percent hotel/motel tax to finance the convention center.

Marine Facility Proposal. The Executive Officer said Commissioner Mike Lindberg had announced plans to conduct a feasibility study for the facility and had asked for Metro's full cooperation in evaluating the study.

4. WRITTEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS

None.

5. CITIZEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS

None.

6. CONSIDERATION OF RESOLUTION NO. 85-612, for the Purpose of Authorizing a New Classification of Construction Manager

Randy Boose, Personnel Officer, explained the position was necessary to manage increased construction activity at the Zoo. Mr. Boose said he had conducted an extensive study of the proposed position and in accordance with the CPA Job Evaluation and Classification Study, had factored the position in the 12.5 salary range.

Motion: Councilor Kirkpatrick moved to adopt Resolution No. 85-612 and Councilor Van Bergen seconded the motion.

Vote: A vote on the motion resulted in:

Ayes: Councilors Gardner, Hansen, Kirkpatrick, Kafoury, Kelley, Oleson, Van Bergen and Bonner

Absent: Councilors Cooper, DeJardin, Myers and Waker

The motion carried and Resolution No. 85-612 was adopted.

7. Public Hearing Regarding the Waste Reduction Program

Chairman Bonner announced that in order to give as many people as possible the opportunity to speak, each testifier would be limited to five minutes.

Dan Durig, Director, Metro Solid Waste Department, first identified the written reports and documents available at the meeting including the Waste Reduction Program, the Program Summary, Work Plan, Staff Amendments, a flow chart of the Work Plan and a copy of Resolution No. 85-611, a Resolution for the Purpose of Adopting a Solid Waste Reduction Program.

Mr. Durig then presented an overview of the region's solid waste management system. Metro, he said, had the responsibility and authority for providing for the efficient and environmentally sound disposal of solid waste. Collection of that waste, however, was furnished by the private sector. Mr. Durig explained this diversity of responsibility sometimes confused the public because they did not

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understand who was responsible for solid waste disposal. The diversity of the system also made solid waste management planning more difficult, he said.

Finally, Mr. Durig reviewed elements of the document entitled "Waste Reduction Program, Proposed Framework (Draft Report)." The plan gave substantial credence to the concept contained in state law that it was more desirable to first "reduce, reuse and recycle" than it was to recover energy or landfill solid waste material. He said the fact that landfills were a last resort for solid waste disposal was a key to Metro's current direction. The plan also implied Metro would commit to spending more money for disposal methods other than landfilling. He further explained the plan contained three phases: 1) working to achieve cooperation with the public, local jurisdictions and the collection industry to achieve reductions in the amounts of solid waste disposed, including materials recovery methods; 2) imposing strict compliance techniques as necessary and continuing emphasis on materials recovery; and 3) assessing the accomplishments of material recovery techniques and allocating materials presumed not reducible, reusable or recyclable to alternative technology.

In summary, Mr. Durig reviewed the philosophy used in developing the Solid Waste Reduction Program and emphasized it would require a variety of methods to achieve the goal of substantially reducing the amount of solid waste landfilled.

Councilor Waker, Chairman of the Council Solid Waste Reduction Task Force, explained the Task Force had incorporated the major policies and principals of the Waste Reduction Program into Resolution No. 85-611 and requested the Council accept the Resolution as the vehicle for adopting the entire plan.

Motion: Councilor Waker moved, seconded by Council Gardner, to introduce Resolution No. 85-611 for the purpose of adopting the Waste Reduction Program.

Presiding Officer Bonner opened the public hearing on the Waste Reduction Program.

State Representative Wayne Fawbush, Hood River, advocated the concept of "reduce, reuse and recycle," explaining solutions such as extending the St. Johns Landfill and building large garbage burners were unworkable and undesirable approaches to solid waste disposal. Regarding Metro's proposed plan, Representative Fawbush said it addressed the concerns implied in Senate Bill 662 but he thought it needed to be more specific. He also suggested it could be necessary to implement source separation in order to achieve the goals outlined in Phase 1 of the plan.

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In response to Councilor Kafoury's question, the Representative said he did not think the Legislature would adopt laws to substantially reduce the quantity of solid waste entering the waste stream with the possible exception of enlarging the bottle bill. The provisions of SB 405 and SB 662 were the Legislature's position on solid waste, he said.

Councilor Oleson asked Representative Fawbush to comment on whether he thought the plan should be a wish list or a doable list for solid waste reduction. Representative Fawbush replied the plan should be as realistic as possible and source separation would help accomplish the goals of waste reduction.

State Representative Mike McCracken, Albany, Chairman of the House Environmental and Energy Committee, testified Metro must now be innovative and aggressive in order to accomplish the goals outlined in SB 662. DEQ had sent the message the draft plan needed to be more specific, he said, and if Metro failed to present an acceptable plan, it would lose its solid waste management powers.

Councilor Waker said the Legislature had given Metro the responsibility for carrying out solid waste management but had not granted the regulatory and siting authority to do the job.

Representative McCracken responded that SB 662 was the Legislature's response to that situation. Waste reduction, he said, was now Metro's responsibility.

State Representative Mike Burton, District 17, Portland, primary sponsor of SB 662 and former Metro Councilor, also responded to Councilor Waker's statement. He said the Council could have exercised supersiting authority to site a landfill but did not. The Council could also use ordinance authority to mandate source separation and that option had not been used.

Regarding the Waste Reduction Program, Representative Burton congratulated the Council on taking a strong position to reduce waste 58 percent by recycling. He had difficulties, however, with other aspects of the plan, and was especially critical of the plan's proposal to extend the life of the St. Johns Landfill. He also questioned the necessity of spending time to solicit proposals from alternative technologies when many technologies had already approached Metro about their willingness to participate. He challenged the Council to develop a specific plan in order not to lose its solid waste planning authority.

Councilor Kafoury asked if Representative Burton was suggesting Metro could bypass the Request for Proposals (RFP) process in order to save time. He responded that the process would not be bypassed because many parties had already submitted proposals to Metro.

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In response to Councilor Kelley's question, the Representative said mandated source separation in homes and businesses would help reduce waste.

Leeanne MacColl, 2620 S.W. Georgian Place, Portland, President, Portland League of Women Voters, testified the League heartily supported the reduce, reuse and recycling program components of the proposed plan. She urged the Council to consider rate incentives as an effective means of encouraging recycling and waste reduction. She also said the League was concerned about Metro's seeking proposals from major energy recovery facilities before recycling became established. Such a facility, she said, would be competitive with the recycling concept and would discourage source separation of solid waste. She, therefore, requested Metro change the language of the Alternative Technologies section so that Metro would seek letters of interest from vendors rather than RFPs.

Estle Harlan, 2202 Lake Road, Milwaukie, energy consultant for the Oregon Sanitary Service Institute, submitted written testimony to the Council. In reviewing her written comments, Ms. Harlan stressed the industry she represented was especially interested in keeping the cost of garbage service as low as possible for rate payers. She also pointed out the plan's optimistic recycling projections could only be met if better markets existed for recyclables.

Marjorie Hull, 1840 N.E. 126th Place, Portland, testified she heartily approved of a solid waste management system that eliminated landfilling. She urged the Council to leave garbage collection to the collection industry and to use disposal methods that would generate revenue.

Rebecca Marshall, 222 S.W. Columbia, Suite 1500, Portland, of Government Finance Associates, explained she had been involved in the financing of solid waste projects and had served on several Metro solid waste committees. Ms. Marshall said she supported the majority of the plan and approved of its flexibility. She stressed the importance of a plan that could adjust to fluctuating market and financial conditions. She also approved of RDF technology having a priority in the plan. Finally, Ms. Marshall was concerned about the certification of local governments and that application of the program would delay the timeline for the plan.

John Spencer, 1 S.W. Columbia, Suite 1200, Portland, Century West Engineering Corporation and past regional administrator for the Environmental Protection Agency (EPA), advocated the use of proven alternative technologies rather than mass burn technology. He also suggested the process outlined for selecting technology was too laborious.

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In response to Councilor Oleson's comments about the Vancouver, B.C. solid waste program, Mr. Spencer cautioned the Council against a piecemeal approach to an overall program, explaining all components were dependent on solid waste flow.

Bud Kramer, 3200 N.W. Yeon, Portland, Schnitzer Steel Products, said he had learned earlier in the day testimony would be limited to five minutes per person. As such, he wanted to give his time to Michael Bick.

Michael Bick, 10900 N.E. 8th Avenue, Bellevue, Washington, representing EBASCO, distributed a document to the Council entitled "Public Hearing, Formal Testimony before the Metro Council by Schnitzer Steel Products Company and EBASCO Services Incorporated, December 5, 1985." Mr. Bick read highlights of the written testimony and advocated the use of mass burn technology. He said the technology was compatible with the mandate of SB 662, was technologically and economically feasible, environmentally safe, publicly acceptable, reduced waste to landfill and complemented the reduce, reuse and recycle goals of Metro. He urged the Council to enter into negotiations with EBASCO for such a mass burn facility.

Councilor Hansen pointed out it was unlikely the Council would select the EBASCO proposal without looking at other proposals and asked Mr. Bick to suggest a more expedient vendor selection process. Mr. Bick suggested the Council begin negotiating with firms who had something to offer such as available sites and financing. In response to Councilor Hansen's question, Mr. Bick said his proposed facility could be operated solely on residential garbage.

Kathy Cancilla, P. O. Box 66398, Portland, representing Portland Recycling Refuse Operators, Inc. (PRROS), submitted written testimony which she read before the Council. She testified PRROS supported continuing existing recycling programs because they worked well. Metro should complement these programs with education and promotion, she said. Also, private enterprise should be encouraged to use source separation techniques to reduce the waste stream and the concept of reuse should be promoted within the industry to create jobs in a cooperative, community spirit.

Ernestine Francisco, 11727 S.E. Brookside Drive, Portland, representing the Columbia River Region Interleague Organization of the League of Women Voters (CRRILO), said the organization believed a regional sense of community was vital in dealing with regional solid waste issues. She supported recommending the the proposed plan to the DEQ, stating it was the beginning of a regional solution.

Gaylen Kiltow, P. O. Box 66193, Portland, representing the Portland Association of Sanitary Service Operators (PASSO), submitted written

testimony which he read before the Council. PASSO, he said, supported a separate collection system for cardboard with a rate incentive passed on to the customer which took into account fluctuating market values.

Jeanne Robinette, P. O. Box 384, Lake Oswego, Executive Director of Oregonians for Cost-effective Government, said her organization had carefully evaluated the proposed plan in terms of their goals. She supported the "privitization" movement and encouraged Metro's emphasis in this area. Also, she said the two-step plan adoption approach was wise and could eliminate the potential for future bureaucratic buildup. Ms. Robinette then reviewed the problem areas in the plan. The term "maximum feasible" was an undefined waste reduction goal, she said, and could be interpreted to mean "maximum possible at any cost." She said the City certification program was a case of overlapping governmental duties. The plan also called for creating products prior to testing adequate market demand. In conclusion, Ms. Robinette said she would submit a detailed proposal for amendments to the plan by December 11.

Louis Turnidge, 18144 S.E. Pine Street, Portland, proposed the Council consider a system that would shred paper materials into small particles which would be placed into containers. This system, he said, would improve air quality.

John Trout, 3540 S.W. Vista Drive, Portland, Secretary-Treasurer, Teamsters Local 281, representing member collectors, read written testimony distributed to Councilors. Mr. Trout criticized the proposed Waste Reduction Program because it did not address a legislative mandate to find a cost-effective approach to waste reduction. The major emphasis of the plan, he said, focused on the Opportunity to Recycle Act, SB 405, which was the responsibility of the DEQ. He said the industry consensus was that Metro should concentrate on alternative technology to produce true waste reduction. He challenged the Council to direct staff to redesign the program in which consideration would be given to energy efficient, cost-effective, legally, technically and economically feasible programs. The collection industry was prepared to work with staff and the Council to achieve this goal, he said.

Jean Orcutt, 12831 S.E. Morrison, Portland, objected that the hearing had been scheduled for 6:00 p.m., dinner time for the public. She also criticized staff's efforts to inform the public about the plan and questioned whether Columbia Research Institute, whose offices were located in the same building as Metro's, could provide an impartial survey of the public's attitudes about solid waste reduction. Regarding the plan, Ms. Orcutt said it was not specific and questioned whether Metro could be trusted to work out the details later because they had bungled all other responsibilities.

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She spoke against mass burn technology and advocated Sig Jensen's burner as a good model. Finally, Ms. Orcutt said the Council should ask DEQ for an extension of the January 1 deadline in order to develop a plan containing reasonable solutions to solid waste problems.

Presiding Officer Bonner called a 10-minute break at 8:00 p.m. The Council reconvened at 8:10 p.m.

Mike Sykes, Columbia County Commissioner, said he was impressed with the proposed Plan but urged the Council to be leary of unproven modes of alternative technology, using Eugene's problem with their RDF plant as an example. He thought mass burning technology was a more proven an acceptable alternative.

Councilor Hansen thanked Commissioner Sykes for his leadership in advocating a broader approach to Columbia County's disposal problems.

Denis L. Heidtmann, 7820 S.W. Walnut Lane, Portland, member of Metro's Alternative Technology Symposium Panel, said the political success of the plan would require cooperative work with local governments which would require continuing attention. He also urged the Council not to eliminate the option of several alternative technology facilities simply because of potential siting problems. In summary, he said the staff had developed an aggressive program and he challenged the Council to take an equally aggressive role in supporting the plan and directing successful implementation.

Dick Weitzel, 10640 S.W. 11th Drive, Portland, a private hauler, said he was concerned that Metro would want to assume control of the collection industry. He thought collectors were doing a good job collecting recyclables and were willing to work with Metro to improve the system.

Tom Donaca, P.O. Box 1006, Tualatin, representing Associated Oregon Industries, testified he was concerned with the portion of the plan that called for reduction of plastic and packaging. As suggested earlier by Representative McCracken, he did not think the Legislature would pass laws to regulate plastic and container use, especially in light that the bottle bill was currently strangling Oregon retail grocers. In response to a question by Presiding Officer Bonner, Mr. Donaca said the Legislature's priorities should be to encourage the development of business in Oregon.

A discussion followed regarding the probable scenerio of DEQ and EQC action once Metro submitted the plan to the DEQ.

Luke Grimm, 2784 N.W. Savier, Portland, testified that source separation was a key issue in waste reduction. The consumer, he



said, must take responsibility for material use and disposal. He challenged Metro to concentrate efforts on developing strong markets for recyclables and to develop ways to reduce waste generated by product packaging.

Stan Pintarich, 53048 N.W. 11th Avenue, Scappoose, said he was concerned about the regional issue of source separation. Mr. Pintarich explained his "simple complex" concept of waste reduction: the waste causer should be the waste payer. It must therefore be determined whether the waste causer was the manufacturer of the container or the buyer of the container, he said.

John Drew, 2885 N.W. Baner Wood Drive, Portland, recycler, urged the Council not to adopt Resolution No. 85-611 as written because it did not take into consideration the free enterprise recycling system. He suggested the Council appoint an ad hoc task force to gain solid waste industry input on the plan rather than rely solely on input from a public hearing. Regarding the plan, Mr. Drew said if strong economic incentives existed for recycling, people would respond and Metro should develop those markets. He also discussed the fact that Oregon was the largest producer of paper, a recyclable packaging material.

In responding to Presiding Officer Bonner's question, Mr. Drew said in addition to the market value for recyclables, punitive costs of landfilling recyclables must also be factored. He again urged the Council to help develop stronger markets for more recyclables.

Councilor Oleson asked if Mr. Drew thought the plan included an accurate projection of the waste stream. Mr. Drew said the waste stream projection appeared accurate but the estimate of recycling activity seemed low.

Tom Miller, 5150 S.W. Alger, Beaverton, testified his family had been in the collection business for 80 years and he supported private sector solutions to solid waste collection problems. Mr. Miller discussed the problem of high costs associated with providing the opportunity to recycle based on his firm's one-year curbside collection recycling demonstration program.

Councilor Gardner asked if high costs of curbside recycling were due to providing the recycling opportunity to everyone. Mr. Miller replied that some costs could be attributed to that fact, but high costs could also be attributed to handling and storage costs.

Merle Irvine, P. O. Box 17561, Portland, recycler, testified his firm was the largest buy-back center and materials recovery center in the state. Mr. Irvine said he supported the step program concept of the plan which would maximize recovery of materials and provide

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several solutions to the solid waste problem at a lower risk to Metro. Mr. Irvine said, however, the plan's framework contained few specific details and he urged the Council to develop more specific language. He also suggested Metro use existing facilities to test elements of the plan at little cost. At Councilor Kafoury's suggestion, Mr. Irvine said he would provide written comments about the plan to the Council.

Councilor Kafoury asked Mr. Irvine to evaluate the Request for Qualifications (RFQ) process discussed by Representative Burton and others. Mr. Irvine advocated the RFQ process, saying it could provide more accurate information about specific technologies. Several firms, based on the results of RFQs, could then be contracted to develop detailed proposals, he said.

Judy Dehen, 2965 N.W. Verde Vista, Portland, representing the Columbia Group of the Sierra Club, reported she was very pleased with the plan, especially its flexibility of approaches. She urged using rate controls, rather than mandatory measures, to encourage recycling efforts. She also suggested more creative approaches to recycling such as weekly curbside collection and more market assistance. The time had finally come to move off the federal dole, she said, and to accept the true costs of disposal. Ms. Dehen specifically requested that on page 26 of the proposed Work Plan, item 8 be deleted and the words "50 tons per day for developmental technology" be added to item 5.

Stan Kahn, 722 S.E. 18th Avenue, Portland, recycler, said the plan was bold, innovative and would easily produce results. Mr. Kahn discussed the cost-effectiveness of recycling, especially when compared with the high costs of landfilling. He said it was ironic the Legislature charged Metro with developing a solid waste reduction plan but failed to do anything to reduce the amount of product packaging. Finally, Mr. Kahn supported economic incentives for recycling, such as the bottle bill, rather than mandatory incentives.

Ruth Selid, 1120 S.W. 5th Avenue, Room 740, Portland, Manager, City Of Portland Recycling Program, said she would be submitting more specific written comments about the plan before December 11. She said the plan was ambitious and going in the right direction but she asked for more public input, specific targets for waste reduction on each program and more extensive work with local governments to achieve waste reduction goals. She supported the proposed regional promotional and education program and alternative technology elements of the plan. Regarding the SB 405 mandated portions of the plan, Ms. Selid said these functions could best be performed by the DEQ.

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Lyle Stanley, 3450 S.W. 102nd Avenue, Apt. 44, Beaverton, testified he supported the overall plan. He made the same suggestions for change to page 26 of the Work Plan as suggested by Ms. Dehen. Mr. Stanley strongly advocated in-vessel composting as a preferred method of alternative technology.

David A. Phillips, 902 Abernethy Road, Oregon City, representing the Clackamas County Recycling Task Force, submitted written testimony and reviewed highlights of those comments. He preferred source separation technologies over other methods, extensive education and promotional activities, expanded legislative action regarding glass and plastic containers and packaging reduction, realistic guidelines for local government certification programs, cost-effective rate incentives, and maintaining free enterprise, market-driven recycling and local government control over collection. Finally, Mr. Phillips said if Phases I and II did not work, Phase III should include provisions for a strict review of why they did not work.

In response to Councilor Waker's question, Mr. Phillips said money would be better spent on alternative technology methods of disposal versus recycling efforts. Economic feasibility should be a prime consideration in the plan, he said.

Dick Hatchard, 7 S.E. 97th Avenue, Portland, representing Talbott Engineering, commended the comprehensive approach of the plan in addressing a problem long ignored. He urged the Council to maintain a broad perspective and said his firm was very interested in the RFQ/RFP process as proposed in the Plan. Mr. Hatchard said he would be submitting more detailed comments by December 11.

Carl Miller, Washington County hauler, said he wished to elaborate on the earlier testimony of Tom Miller. He questioned the cost-effectiveness of curbside recycling based on his firm's one-year demonstration program. Mr. Miller said if recyclables were collected, customers tended to increase the volume of non-recyclables, thus increasing the total volume of waste handled. He also questioned the accuracy of 1982 figures on amounts recycled.

Michael Dees, owner of a yard debris business, testified in support of the reduction program. He said it was his experience that markets did exist for recycled products, citing his expanding markets for wood chip products as an example. Mr. Dees also advocated source separation as the key to waste reduction, saying it would be more cost-effective than handling materials later on in the process. Finally, he encouraged the use of economic incentives as a very effective means of encouraging enterprising recyclers to help solve waste reduction problems.

NOTE: Written testimony of those not verbally testifying has been entered as part of the meeting record and copies of that testimony can be obtained by contacting the Clerk of the Council.

There being no further public testimony, Presiding Officer Bonner closed the public hearing. He summarized the comments and concerns of the public testifying as follows:

- \* Metro should stay out of the collection business
- \* Private recyclers are doing a good job;
- \* The cost of proposed programs may be too high;
- \* Emphasis should be on private investment;
- \* Emphasis on flexibility rather than specific plan elements;  
and
- \* Emphasis on specific plan elements rather than flexibility.

Councilor Waker added more areas of comment and concern:

- \* Metro should stay out of the SB 405 certification program;
- \* Use rate incentives rather than mandatory controls to encourage recycling;
- \* Create markets for recyclables; and
- \* Don't rush into the total phases of the program before working out details.

Councilor Kirkpatrick added:

- \* Metro should enhance its promotion and education activities.

Councilor Oleson added:

- \* Look at the Vancouver, B.C. model as a successful solid waste reduction program.

Councilor Cooper added:

- \* Use free enterprise to make the system work.

Councilor Hansen added:

- \* The plan should provide more detail, harder numbers, specific goals, facts and figures; and
- \* There are lots of different options.

The Presiding Officer announced the Council would accept written public comments on the Plan through 5:00 p.m., December 11. The Council would then meet on December 12 for a work session on the Plan. On December 19, the Council would consider adopting the Plan. Public hearings were not scheduled for the meetings of December 12 and 19, he said, but Councilors could ask questions of those in attendance.

Motion: Councilor Kirkpatrick moved, seconded by Councilor Waker, to carry over consideration of Resolution No. 85-611 until December 19, 1985.

Vote: A vote on the motion resulted in:

Ayes: Councilors Cooper, Gardner, Hansen, Kirkpatrick, Oleson, Waker and Bonner

Absent: Councilors DeJardin, Kafoury, Kelley, Myers and Van Bergen

The motion carried.

8. CONSIDERATION OF ORDINANCE NO. 85-194, for the Purpose of Restricting the Use of the St. Johns Landfill to Waste Generated in Clackamas, Multnomah and Washington Counties (First Reading and Public Hearing)

Dan Durig reviewed information contained in the agenda materials including the history of recent events which called for the need to limit the flow of waste to St. Johns Landfill from outside the solid waste planning area. The landfill, he said, was a finite resource and Metro had an obligation to protect its use. He explained a new landfill could be operational by October 1989 but that was an optimistic schedule which did not allow for legal challenges to the new law established under Senate Bill 662, to any challenges to the Environmental Quality Commission's choice of a disposal site, or for other engineering or construction delays.

Mr. Durig then reviewed a series of recent events which had caused haulers from outside the region to dispose of waste at St. Johns. He said the proposed Ordinance would prohibit Metro from receiving waste from outside the Solid Waste Planning Area effective

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January 1, 1986, and it would apply to both St. Johns Landfill and the Clackamas Transfer & Recycling Center (CTRC).

The Clerk then read the Ordinance by title only. Presiding Officer Bonner opened the public hearing on the Ordinance.

Motion: Councilor Gardner moved, seconded by Councilor Waker, to adopt Ordinance No. 85-194.

Mike Sykes, Columbia County Commissioner, testified he could understand Metro's need to protect the St. Johns Landfill but also explained that Columbia County had few other options. On January 1, he said the cities of Scappoose and St. Helens would have no operating landfills within their boundaries in spite of active efforts to find disposal alternatives. He requested the Council consider an emergency exemption to the Ordinance to allow a jurisdiction to use Metro's disposal facilities if that jurisdiction had no other options.

After a discussion about the likelihood of Columbia County finding disposal alternatives in surrounding areas, Councilor Hansen requested staff prepare two amendments for Council consideration on December 19: 1) a clause that would allow for short-term exceptions in cases of emergencies, and 2) an exception clause that could apply to jurisdictions outside Metro's boundaries if no landfill existed within that jurisdiction's solid waste planning area.

Councilor Kirkpatrick asked staff to consider whether a heavy rate differential could be imposed on jurisdictions if exceptions to the Ordinance were declared in their favor.

Dick Maizels, 813 S.W. Alder, Portland, an attorney representing two garbage haulers, testified his clients brought refuse from Clark County to the St. Johns Landfill. This Ordinance, he said, would effectively cut out his clients' availability to remain in business. He also said a one-month notice was not enough time for his clients to find a suitable alternative. Further, given Commissioner Sykes' testimony, Mr. Maizels said he did not think his clients could ever find another suitable alternative.

Mr. Maizels said his understanding of the situation was that outside haulers were responsible for decreasing the life of St. Johns by about 150 days. But the real issue, he said, was whether a new landfill would actually be operational on schedule. He thought there was more opportunity to expand the capacity of St. Johns than to site another facility according to planning schedules.

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Finally, Mr. Maizels reported the City of Portland attempted to pass a similar ordinance several years ago which was struck down in the Federal Court by Judge Maloney as being unconstitutional. In that case, the Judge cited the United States Supreme Court case of Philadelphia v. New Jersey, he said, in which the Supreme Court decided that garbage was part of interstate commerce. Mr. Maizels then read Judge Maloney's statement on the case:

"On its face the statute (or in this case, the ordinance) imposes on out of state commercial interests the full burden of conserving the state's remaining landfill space. What is crucial is the attempt by one state to isolate itself from a problem common to many by erecting a barrier against the movement of interstate trade."

Mr. Maizels maintained the Portland metropolitan area included Clark and Columbia counties and again pointed out the dilemma for Clark and Columbia haulers of having no reasonable alternatives if the Ordinance were adopted.

Ms. Baxendale then addressed the issue of the legality of Metro's proposed Ordinance. She discussed the City of Portland's earlier attempt to pass a similar ordinance to exclude waste originating from the state of Washington which was struck down by Judge Maloney. However, since that time, that case had been reexamined by the courts, she explained. Two subsequent courts had determined it was not a violation of the interstate commerce clause for a local government which owned its own landfill to regulate who used the landfill. The courts had allowed local governments the freedom to define their own markets in the same as any other market participant. This theory had also been applied in other cases unrelated to garbage, she said, and was a theory the Supreme Court had accepted for a long time. For those reasons, Ms. Baxendale said it was reasonable for the Council to adopt the Ordinance and to expect it would be sustained.

Mr. Maizels responded he maintained Metro's Ordinance would restrict interstate commerce and until someone declared garbage was no longer a commodity of interstate commerce, the Philadelphia case was still a good law.

Councilor Cooper said Mr. Maizels' clients still had other alternatives available to them. Mr. Maizels answered the alternatives cited by Councilor Cooper did not take economic factors into consideration.

The Presiding Officer read into the record a letter from Dick Bogle, City of Portland Commissioner of Public Works. Commissioner Bogle endorsed the intent of the Ordinance as a necessary step to preserve

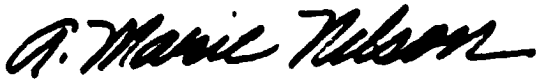
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St. Johns Landfill's capacity for all Multnomah, Clackamas and Washington County citizens until a new landfill became available.

There being no further testimony, the Presiding Officer closed the public hearing. He announced a second reading on the Ordinance would take place at the December 19, 1985, Council meeting.

Presiding Officer Bonner adjourned the meeting at 11:10 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "A. Marie Nelson". The signature is written in a cursive, flowing style.

A. Marie Nelson  
Clerk of the Council

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