

MINUTES OF THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

Special Meeting
January 29, 1987

Councilors Present: Mike Bonner, Tanya Collier, Larry Cooper,
Tom DeJardin, Jim Gardner, Gary Hansen,
Sharron Kelley, Corky Kirkpatrick, David
Knowles, Mike Ragsdale, George Van Bergen
and Richard Waker

Staff Present: Eleanore Baxendale, Richard Engstrom, Chuck
Stoudt, Kim Duncan, Randy Boose, Andy
Cotugno, Dick Bolen, Jennifer Sims, Keith
Lawton, Vickie Rucker, Cathy Vandehey,
Donald Carlson, Janet Schaeffer, Gwen
Ware-Barrett, Tuck Wilson, Darlene Badrick,
Dennis Mulvihill, Jill Hinckley, Debbie
Allmeyer, Cathy Thomas, Audrey Lloyd, Becky
Crockett and Wayne Rifer

Presiding Officer Waker called the special meeting to order at
7:15 p.m.

1. Consideration of Authorizing Execution of an Amended
Intergovernmental Agreement to Preserve the Southern Pacific
Railroad Right-of-way (Jefferson Street Branch) Between
Portland and Lake Oswego

Andy Cotugno, Transportation Director, summarized staff's written
report. He explained the Council had previously approved the
agreement which required the City of Portland to complete the option
and lease transaction by December 31, 1986. The City, however,
would probably not complete those transactions until the end of
February and he requested the agreement be amended to reflect that
change.

Motion: Councilor Van Bergen moved, seconded by Councilor
DeJardin, to authorize execution of the amended
agreement which would require the City of Portland to
complete the option and lease transaction by
February 28, 1987.

Vote: A vote on the motion resulted in all twelve
Councilors voting aye.

The motion carried.

EXECUTIVE OFFICER'S ADDRESS TO THE COUNCIL

Because Executive Officer Cusma could not attend the special
meeting, Richard Engstrom read an address from the Executive in
which she outlined the following recommendations to the Council:

1. Council consent to her request to terminate Daniel Durig's (Solid Waste Director) employment contract. She believed the facts presented to the Council at the January 22 executive session merited his termination and the District would be best served by that action.
2. Expansion of the duties of the convention center legislative liaison, Kim Duncan, to include the legislative priorities of the District.
3. Consideration of action on the Executive's proposed amendments to the Personnel Rules. Executive Officer Cusma explained she strongly believed the amendments were necessary to begin to clarify the authority of the Executive Officer and the role of the Council and for her to make the changes she was elected to execute.

The Personnel Rules changes, as explained in her address, would make Executive Management "at will" employees and would make the heads of operating agencies (the Zoo, Solid Waste, Public Affairs and the Intergovernmental Resource Center) subject to confirmation of the Council. In conclusion, Executive Officer Cusma explained she could not support any amendments to the Personnel Rules which would continue or expand the Council's involvement in the business of hiring, firing and administering employees.

Councilor Knowles had to leave the meeting due to an emergency.

2. EXECUTIVE SESSION (Held Under the Authority of ORS 192.660(1)(f))

Presiding Officer Waker called the meeting into executive session at 7:25 p.m. for the purpose of discussing Dan Durig's employment contract. Eleven Councilors were present at the session, Councilor Knowles being absent. The Presiding Officer called the meeting back into regular session at 8:20 p.m.

Consideration of Dan Durig's Employment Contract (Regular Session)

Motion: Councilor Van Bergen moved, seconded by Councilor DeJardin, to grant Dan Durig, with his attorney if he chose, an audience before the Council, either at the meeting of February 12 or at an earlier special meeting called at the pleasure of Mr. Durig, for the purpose of granting Mr. Durig the opportunity to make a statement to the Council before the Council considered further action. The audience could be in executive or regular session at the pleasure of Mr. Durig.

Metro Council
January 29, 1987
Page 3

The Presiding Officer said he would assume Mr. Durig would appear before the Council on February 12 unless he heard otherwise from Mr. Durig or Mr. Durig's attorney.

Vote: A vote on the motion resulted in all eleven Councilors present voting aye. Councilor Knowles was absent.

The motion carried.

3. Report on Status of Legislative Liaison Functions

Presiding Officer Waker reported the Executive Officer had expanded the duties of Kim Duncan, Senior Analyst for the Convention Center Project, to include all legislative priorities of the District.

A discussion followed about Ms. Duncan's precise duties as Metro's sole legislative liaison. Presiding Officer Waker explained she had been hired on a temporary basis and would serve the District until the end of the current legislative session to lobby all the Council's adopted legislative priorities. She would not lobby the Executive's proposed statute changes. She would be supervised by the Convention Center Project Director and the Executive Officer, depending on the subject legislation.

Councilor Collier strongly endorsed Ms. Duncan.

Councilor Van Bergen questioned the propriety of endorsing the appointment before the Council had an opportunity to examine the Executive's legislative program and personnel plans. The Presiding Officer said Ms. Duncan's appointment was in line with the existing Personnel Rules and the Executive Officer had already appointed Ms. Duncan as was her prerogative.

Motion: Councilor Collier moved, seconded by Councilor Ragsdale, to approve Kim Duncan for the position of Legislative Liaison.

Councilors Van Bergen and Kelley were concerned whether the appointment was made according to the existing Personnel Rules. Randy Boose, Personnel Officer, explained Ms. Duncan had been appointed to the temporary position of Senior Analyst for the Convention Center Project. Her job title would remain that of Senior Analyst but she would assume the additional legislative liaison duties for all of Metro's issues until the end of the 1985 legislative session. She would perform those extra duties for additional pay, he reported.

Metro Council
January 29, 1987
Page 4

In response to Councilor Kelley's question, Mr. Boose further explained Ms. Duncan had not been hired by a competitive process because such a process was not required for temporary employees. Ms. Duncan's job would terminate according to Metro's Personnel Rules governing the employment of temporary employees.

Given the clarification of Ms. Duncan's employment, the makers of the original motion asked to revised that motion.

Revised Motion: Councilor Collier moved, seconded by Councilor Ragsdale, to approve Kim Duncan's temporary appointment to undertake the additional duties of all the District's legislative liaison functions.

Vote: A vote on the motion resulted in all eleven Councilors present voting aye. Councilor Knowles was absent.

The motion carried.

Councilor Ragsdale asked if Marc Madden were lobbying on behalf of the Executive Officer's legislative proposals. Richard Engstrom, Acting Deputy Presiding Officer, replied Mr. Madden was on contract until January 31 and the Executive had asked him to lobby for her programs.

Motion: Councilor Ragsdale moved, seconded by Councilor DeJardin, to direct the Executive Officer that Marc Madden not be employed to lobby the Executive's position before the Oregon Legislature.

Councilor DeJardin explained the Metro Code required no person, other than an elected Metro official, could lobby on behalf of Metro interests without the Council's consent.

Vote: A vote on the motion resulted in:

Ayes: Councilors Bonner, Collier, Cooper, DeJardin, Gardner, Hansen, Kirkpatrick, Ragsdale, Van Bergen and Waker

Nay: Councilor Kelley

Absent: Councilor Knowles

The motion carried.

Presiding Officer Waker called a recess at 8:45 p.m. The Council reconvened at 9:00 p.m.

4. Discussion of Metro Personnel Rules and Specific Changes Thereto

Presiding Officer Waker announced it was not his intent that changes to the Personnel Rules of Metro's Code be made at this meeting. Rather, he requested the Council confine discussion to whether there were reasons to change the Code and to recommend areas where action should or should not be taken.

Caroline Miller, current Multnomah County Commissioner and one of Metro's originally elected Councilors, presented a historical perspective of Metro's Personnel Rules. She explained the Rules layed out the balance of Metro's executive and legislative branches. Commissioner Miller said when the Metropolitan Service District was restructured in 1979, she had represented the Council on a Personnel Transition Committee with also included John Stevenson, Personnel Officer from the City of Portland; Mayor Campbell from the City of Lake Oswego; John Burne of Pacific Northwest Bell and; Mr. Casper of Milwaukie. The Personnel Transition Committee was charged with drafting personnel rules for the new Metro government which would be considered for adoption by the Metro Council. From that committee of personnel and government experts, the Commissioner said she learned much about the "ecology" of government.

Commissioner Miller then discussed the various models of government examined by the Personnel Transition Committee. The United States Government model was rejected as significantly different from Metro's structure because both the executive and legislative branches had their own bureaucracies on which to rely for information. The State of Oregon model was rejected for the same reason. She noted Metro's government had one bureaucracy on which both branches relied.

The City of Portland government model was different than Metro's because the Mayor and each City Commissioner was the head of a separate bureaocracy and each Commissioner served as a legislator and executive within his or her own department. Again, she noted Metro's government had a single bureaucracy on which both the Council and Executive relied.

The city of Gresham was examined as a model for another type of city government. The model was similar because the City Council, Mayor and City Manager relied on one bureaucracy for information. However, that model was different from Metro is that the mayor was fully answerable to the city council. Metro's Executive, she pointed out, was not answerable to the Metro Council.

Multnomah County's government structure, explained Commissioner Miller, was closer to Metro's structure other government models

Metro Council
January 29, 1987
Page 6

others because of the presumed bifurcation of the executive and legislative branches. The County Executive (or Chair of the Commission as the as the position was formerly entitled) was the direct link between the information flow and the decision-making body. That same relationship was shared between Metro's Executive and Council, she said.

Commissioner Miller then discussed Metro's government as being uniquely top-heavy with legislators. As with the Multnomah County Executive, the Metro Executive Officer was the funnel point for information to the Council. Metro's bureaucray, she explained, was unusually thin and highly technical. It was not large enough to sustain much rapid change. She also pointed out the legislative body was part-time and the quality of information given to Councilors in order for them to make decisions was very critical. This unique, delicate ecology required special personnel rules to protect it, she explained.

The Commissioner then referred Councilors to the current grievance procedures of the Personnel Rules. She discussed provisions for a tri-panel to be appointed to hear grievances -- one person chosen by the appellant, one by the Executive Officer and one by both the appellant and the Executive. The Personnel Transition Committee, she explained, had intended that tri-panel to be a third level of appeal above the Executive Officer. She reported when the Committee recommended the Personnel Rules to the Executive Officer and Council, the Executive strongly opposed the tri-panel recommendation. As a compromise, the Council amended the Personnel Rules to include the tri-panel appeal provision at mid-point in the grievance process rather than at the end of the process. Commissioner Miller strongly advised the current Council amend the Rules and move the tri-panel process to the end of the grievance process where it belonged.

In summary, Commissioner Miller emphasized the Personnel Transition Committee had concluded Metro's part-time legislative body was valueless unless it could trust the value of the information from staff. The Personnel Rules eventually adopted by the Council protected the fragile balance of a small, highly technical staff, a full-time elected Executive, and twelve volunteer legislators. The Commissioner recalled the first Metro Council had required staff list out three different alternatives of actions when requesting any action of the Council. She explained this made it easier for the Council to trust the recommendations they had received and to make sound decisions. She encouraged the Council request staff return to that reporting format.

Commissioner Miller acknowledged the public was signaling for Metro to change. But she cautioned the Council to fight to keep the

Metro Council
January 29, 1987
Page 7

Personnel Rules now in place because they had served the agency well and protected the fragile balance of the Metro legislative and executive concerns.

Councilors Kirkpatrick and Collier each thanked Commissioner Miller for her appropriate and thorough presentation.

Councilor Ragsdale said he appreciated the Commissioner's comments because like he had once been, many people were confused about why Metro's government was not modeled similar to the State's. He said the Commissioner had clearly demonstrated why Metro was unique. Finally, he said if the Council moved in the direction suggested by the Executive Officer, it would be a very costly change for Metro.

Debbie Allmeyer, President, Metro Employees' Association.

Ms. Allmeyer explained the Association had conducted a special meeting earlier in the day regarding personnel concerns. She said Metro employees were interested in the recent changes in their working environment. In keeping with Metro's Personnel Rules, the Employees' Association requested an opportunity to review and make comment on any amendments proposed to the Rules. Ms. Allmeyer requested written summaries of any such proposals, as required by the Rules, in order to give employees a chance to discuss the issues prior to decision-making time. The Association, she explained, also expected the existing Personnel Rules to be followed prior to formulation of any amendments. Finally, the Association expressed hope the Council and Executive Officer would be able to reach mutually satisfying and positive agreements quickly.

Councilor Van Bergen said he was amazed the Council had not heard from the Association until this meeting.

Councilor DeJardin agreed. He then referred to the series of recent editorials in The Oregonian on the Metro organization. He said he objected to use of the term "mandate" in those editorials. Application of the term "mandate," he explained, would result in carte blanche authority to upset the balance of power: changes should only be made in concert with the Executive Officer, staff, Council and community.

Presiding Officer Waker referred to the written list of personnel issues (included in the meeting packet) to be discussed at this meeting as a basis for starting a dialogue.

Councilor Van Bergen said he did not agree all issues were listed and that by taking her legislative proposals to Salem without the Council's knowledge or consent, some of the items on that list had been "kicked off the table."

Metro Council
January 29, 1987
Page 8

The Presiding Officer explained it was important for the Council to restate the current rules before changes could be made.

Councilor Van Bergen did not think it necessary to readopt rules everyone should have been following. He also said the Council and Executive Officer were "out of negotiation" because of the Executive's actions. He thought the only item on the table at this meeting was the Executive's proposed Ordinance to amend the Personnel Rules.

Councilor Ragsdale did not think the proposed ordinance could be considered without also considering the Executive's state legislation to define the Executive's authority. The two items, he said, were closely related.

Councilor Van Bergen did not think the Council had a right to cross-examine the Executive about her legislative program. He said the Executive or any Councilor could speak at the legislative hearings. When questioned by the Presiding Officer, the Councilor said he would prefer the Metro officials have a majority voice before the Legislature. Also, referring to The Oregonian editorials, he said to respond to the type of mandate for change discussed in the editorial would require spending more money for Council support staff. The Councilor said he also had a mandate from his constituency and he was not interested in any changes unless it had been demonstrated changes were needed.

John Leahy, member of the Executive Officer's transition team, said he would respond to questions about the Executive's proposed ordinance to change the Personnel Rules. He then reviewed the proposed amendments: 1) clarification of the Executive's role in hiring and firing personnel; 2) expansion of the "exempt" classification of employees to include certain employees of the Executive and Council; and 3) deletion of contested case provisions for certain exempt employees. In summary, Mr. Leahy explained the changes to the Personnel Rules proposed by Executive Officer Cusma would clearly define personnel responsibilities would would give the Executive the authority to make changes in top management personnel.

A discussion followed about the definition of "operating departments" as proposed in the amendment. Mr. Leahy said it was the Executive Officer's intention the Public Affairs Director, the Finance & Administration Director, the Convention Center Project management and the IRC Administrator be included as directors of operating departments.

Councilor Hansen noted if Executive Officer Cusma's legislative program were adopted by the Legislature, the Council would be mandated to change Metro's Personnel Rules. He suggested the

Metro Council
January 29, 1987
Page 9

Council not consider any revisions to the Rules until the outcome of the State legislation were known.

Mr. Leahy urged the Council to proceed with adoption of the Executive's proposed changes to the Personnel Rules. He explained that action would clarify the purpose of the legislative and executive branches of Metro government which were now perceived by the Executive as confused and ambiguous.

Councilor Van Bergen requested Metro's counsel review the effect of a statutory change in personnel policies on Metro's existing union agreement. Eleanore Baxendale, General Counsel, said she did not believe there would be a conflict of interest in her answering that question. If a conflict did exist, she said she would obtain the services of Jonathan Harnish.

Councilor Cooper said he agreed with Caroline Miller's earlier testimony regarding the technical nature of Metro's staff. He said the Executive's proposed amendments to the Personnel Rules seemed like a patronage system he could not support.

Councilor DeJardin agreed with Councilor Cooper and thought the Council should take a firm stand against the changes Executive Officer Cusma was proposing to the State Legislature.

Councilor Collier reported the Executive's legislation was presented to the Council Legislative Planning Committee and the Committee agreed not to take a stand on the issue.

Councilor Ragsdale recommended the Council not separate the issues of Executive Officer Cusma's proposed amendments to the Personnel Rules and her proposed State legislation to clarify her authority. He recommended the Council conduct a deliberative process which would include comments from Metro employees and the public on the two issues simultaneously. Councilor Kirkpatrick concurred, saying her immediate concern was with staff morale.

Motion: Councilor Ragsdale moved, seconded by Councilor DeJardin, the Council conduct public hearings on the changes to the Metro Personnel Rules submitted by the Executive Officer in the form of a draft ordinance and on the legislation the Executive Officer had requested be introduced before the Oregon Legislature and that the Council additionally request the Oregon Legislature defer hearings on the above matter until the Council's public process had been conducted.

A discussion followed about how the Council's wishes would be communicated to the State Legislature. It was generally agreed Kim

Metro Council
January 29, 1987
Page 10

Duncan was authorized to communicate Council adopted policies to the Legislature.

Vote: A vote on the motion resulted in all eleven Councilors present voting aye. Councilor Knowles was absent.

The motion carried.

Councilor Gardner said it should be made clear the Executive Officer could carry her own agenda to the Legislature which would not include the ability to use taxpayers resources for that purpose.

Councilor Kirkpatrick distributed a memorandum from herself to the Council regarding "Transition Discussion Items." She explained negotiations between the Council and the Executive Officer had failed to establish a working relationship with the Council, Executive and staff. As a result, she proposed the following steps be taken:

- "1. Ask the Council Management Committee to review the recent hirings and firings, including contract personnel so we are assured the provisions of the Code (our law) regarding personnel policies are being followed. Have the Committee determine the amount of money being spent for transition and work with the Executive Officer on a plan outlining any continued expenditure of funds.
- "2. Ask the Executive Officer to immediately submit qualifications and request for confirmation of appropriate staff or outline the process for filling vacancies.
- "3. Ask the Executive Officer to share her legislative proposal so the Council can have public hearings and an open discussion of the issue. Request an organizational plan, including budget, that outlines the proposed staff for Executive Management and Council before any testimony is presented in Salem on a bill that would clarify roles of the two arms of government.
- "4. Direct Ray Barker to get contractual estimates for a study of government models on separation of powers. The study would outline Council staff needs and projected expense for this staffing.
- "5. Immediately move department functions under Council direction so work can continue. Ask that staff report to a central person responsible for reporting to the Council in the interim until this situation is solved."

Motion: Councilor Collier moved to Council implement proposal 1 as listed above. Councilor Kirkpatrick seconded the motion.

Councilors Hansen and Gardner concurred it was necessary for the Council to address the Executive's personnel practices as soon as possible in a public forum in order to maintain confidence in Metro's Code of law.

Vote: A vote on the motion resulted in all eleven Councilors present voting aye. Councilor Knowles was absent.

The motion carried to implement proposal 1.

Motion: Councilor DeJardin moved the Council implement proposals 2, 3 and 4 as listed above. Councilor Collier seconded the motion.

Councilor Bonner thought it premature to adopt proposal 4 until more was known about the Executive's proposed State legislation.

Councilor Hansen suggested proposals 2 through 4 be moved individually.

Withdrawal of Motion: Councilors DeJardin and Collier withdrew the previous motion in order for proposals 2, 3 and 4 to be discussed individually.

Motion: Councilor DeJardin moved the Council implement proposal 2 as listed above. Councilor Collier seconded the motion.

In response to Councilor Hansen's question, Councilor Gardner suggested the Personnel Officer and Legal Counsel provide the Management Committee with information necessary to make its findings.

Vote: A vote on the motion resulted in:

Ayes: Councilors Bonner, Collier, Cooper, DeJardin, Gardner, Kelley, Kirkpatrick and Van Bergen

Nays: Councilors Hansen, Ragsdale and Waker

Absent: Councilor Knowles

The motion carried to implement proposal 2.

Metro Council
January 29, 1987
Page 12

Councilor Gardner asked for clarification regarding proposal 2. After discussion, it was agreed staff not requiring Council confirmation be exempt from submitting qualifications to the Management Committee.

Motion: Councilor Ragsdale moved the Council implement proposal 3 as listed above. Councilor Gardner seconded the motion.

Vote: A vote on the motion resulted in all eleven Councilors present voting aye. Councilor Knowles was absent.

The motion carried to implement proposal 3.


Councilor Collier said she was reluctant to implement proposals 4 and 5 at this time. She suggested the Council wait until its annual goal-setting session with the Executive to work out unresolved issues before implementing those proposals.

Councilor Ragsdale did not think proposal 4 was necessary.

Councilor Van Bergen thought the agenda for the future goal-setting session should be limited to selected issues.

There being no further business, Presiding Officer Waker adjourned the meeting at 10:40 p.m.

Respectfully submitted,



A. Marie Nelson
Clerk of the Council

amn
6984C/313-2
02/17/87