

MINUTES OF THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

Regular Meeting
March 12, 1987

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

Councilors Absent: Tom DeJardin and Corky Kirkpatrick

Also Present: Rena Cusma, Executive Officer

Staff Present: Eleanore Baxendale, Richard Engstrom, Chuck
Stoudt, Cathy Thomas, Jennifer Sims, Ray
Barker, Vickie Rocker, Joan Saroka, Dennis
Mulvihill, Carol Nelson, Mike Keele, Sarah
Keele, Bob Porter, Chet Gregg, Gene Leo,
Sylvia Smith, Judy Munro, Cathy Vandehey,
Randy Boose, Jill Hinckley, Neil McFarlane
and Becky Crockett

Presiding Officer Waker called the regular meeting to order at
5:35 p.m.

1. INTRODUCTIONS

None.

2. COUNCILOR COMMUNICATIONS

Presiding Officer Waker read the following statement: "Dan Durig
resigned his employment with Metro effective April 1987.
Mr. Durig's resignation was voluntary and not disciplinary in
nature. Metro appreciates the four and one-half years of service
from Mr. Durig and wishes him well in his future endeavors." The
Presiding Officer requested the statement be released to the press
and posted on employee bulletin boards as soon as possible.

3. EXECUTIVE OFFICER'S REPORT

Disadvantaged Business Enterprise (DBE) Program. Executive Officer
Cusma announced she had named the following individuals to serve on
a Citizen's Organization for the purpose of reviewing Metro's
DBE/WBE Program: Kay Turner, Scott Binge, Jim McNannay and Barry
Philpott. She reported the Organization's first meeting would be
the morning of March 16.

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4. WRITTEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS

None.

5. CITIZEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS

Alayne Woolsey, Oregon City resident, presented each Councilor with an information packet about Oregon City. She referred to a letter in the packet from the Oregon City Mayor and gifts of beaver pins, the emblem of the old Husdon's Bay Company, and Oregon City elevator passes. Also included in the packets were copies of an Oregon City resolution designating the City as the official end of the Old Oregon Trail. The Presiding Officer read into the record State Resolution No. 9 which designated Oregon City as the end of the Trail. Ms. Woolsey explained, however, that ORS 366.905 had stated Seaside was the end of the Trail and she asked the Council to take formal action recommending the Legislature correct the statute to designate Oregon City as the end of the Trail. Ms. Woolsey presented the Council with a copy of State Resolution No. 9 and a framed map officially designating Oregon City as the end of the Old Oregon Trail. She said she hoped the map would be hung on the Council Chamber walls along with the framed replica of the Oregon City plat she had previously presented to the Council.

Motion: Councilor Hansen moved, seconded by Councilor Collier, to refer the matter to the Council's Legislative Planning Committee and for the Committee to make a recommendation to the full Council as soon as possible regarding what, if any, action the Council should take to designate Oregon City as the official end of the Old Oregon Trail.

Responding to Ms. Woolsey's concern that immediate consideration was necessary in order to meet the Legislature's schedule, Councilor Collier explained the Legislative Planning Committee would consider the matter at the morning meeting of March 13.

Vote: A vote on the motion resulted in:

Ayes: Councilors Bonner, Collier, Gardner, Hansen, Kelley, Knowles, Ragsdale, Van Bergen and Waker

Nay: Councilor Cooper

Absent: Councilors DeJardin and Kirkpatrick

The motion carried.

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Connie Hawes, 19920 S.W. Oak Court, Aloha, said seven weeks ago she had addressed the Council regarding her concerns related to the contract transfer to Wastech, Inc. She said she had not received any response to her concerns. She said if Metro wanted to be taken seriously as a governmental unit it should establish a system for responding to citizens' questions. The Presiding Officer said the Executive Officer would be responding to Ms. Hawes' question.

Ms. Hawes was also concerned that Metro was not in compliance with public meeting laws. She questioned whether adequate public notice had been given on Council subcommittee meetings and whether proper records of those meetings had been maintained. Specifically, she had requested copies of Council Legislative Planning Committee minutes and had not received them. She said at a previous Council meeting she had requested all subcommittee meetings be electronically taped. She had been told by the Presiding Officer that Metro's Code required Metro to keep electronic or written records.

Ms. Hawes clarified the Code actually required electronic or stenographic records. Ms. Hawes noted the definition of "stenographic" would require a transcription of actual words or phrases. Meeting minutes, she explained, were not verbatim and therefore, not satisfactory for her purposes. She requested the Council review its policy and consider a change to or clarification of the Code. She thought the Code should clarify that any meetings of the full Council or several members of the Council be electronically taped.

Ms. Hawes said an article had recently appeared in the paper regarding a planned alteration to Metro's Solid Waste Management Plan. She requested the Council, during those deliberations, also officially act to exclude the west transfer station from using the once proposed Progress Road and 217th site.

Ms. Hawes asked the Council about the status of the 1984 update to the Solid Waste Management Plan, specifically the chapter on transfer stations. She said citizens felt "in limbo" because the old plan was obviously not being followed and the update had been ignored. Citizens were at a disadvantage, she explained, because they had been asked to provide alternative ideas to the Plan. She emphasized citizens' groups had to assume, for purposes of proposing legal actions, that the Metro Plan had not been obeyed.

Ms. Hawes noted Presiding Officer Waker had attended a recent community meeting in Banks and had questioned at that meeting why garbage was such issue to local citizens. She explained the issue was not garbage, but due process. The issue was haste and overconfidence, she said, and citizens had no trust that Metro conducted its business carefully enough. Ms. Hawes said the Zoo and Convention Center had been handled very carefully but no trustworthy record had been established for handling solid waste issues. As a

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result, people were fearful mistakes would be made with which they would have to live. Because of Metro's mistakes and because a due process had not been followed, citizens' groups had taken legal actions, she explained. She asked the Council to take more care in carrying out new and controversial programs such a garbage burning and recycling projects.

Ms. Hawes reminded the Council the hearing on the Aloha-Reedville Citizen's Associations' (ARCA) appeal of Washington County's decision regarding Metro's transfer station application had been rescheduled to April 15, 9:00 a.m., at the Hillsboro County Court-house.

In conclusion, Ms. Hawes advised the Council to adopt a more open decision-making process. She explained the Council's subcommittee structure made it very difficult for the public to have input. Meetings were often called without adequate notice and the public had little opportunity to address Councilors at those meetings before decisions were set.

In response to Ms. Hawes final question about who owned the Oregon Convention Center, Presiding Officer Waker explained it was Metro's intent that the tri-county area voters would own the facility through the Metropolitan Service District and that the question would soon be resolved.

Art Laws, 20721 N.E. Interlachen, Troutdale, was introduced to the Council by Judy Dehen of the Columbia Group of the Sierra Club. Mr. Laws addressed the Council about the environmental hazards of garbage burning facilities. He said the worst decision the Council could make was deciding to build a garbage burner. He proposed the Council declare a moritorium of garbage burners until it could be demonstrated that hazardous substances produced by those facilities could be altered or destroyed.

Presiding Officer Waker explained the Council had not decided on what kind of resource recovery facility to build and he assured Mr. Laws the Council would consider environmental concerns before any decision was made. Mr. Laws was concerned that the proposal submitted by Fluor/Southern Electric had not demonstrated they would use the finest emission controls available. The Presiding Officer again explained no decision had been made to award any contract to a proposer. Councilor Ragsdale added the Council would be considering all modes of resource recovery and he invited Mr. Laws and the concerned public to assist the Council by providing workable alternatives and solutions to the garbage disposal problem.

Judy Dehen, 2965 N.W. Verde Vista, Portland, representing the Columbia Group of the Sierra Club, distributed information to the

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Council entitled "Source Separation of Garbage for Composting" and read a statement from the Columbia Group of the Sierra Club concerning the Oregon Legislature's mandated solid waste reduction and disposal hierarchy. She explained the hierarchy was established before a waste stream analysis was done and that an assumption had been made that plastics had little recycle or materials recovery potential. The allocation had also erroneously assumed that food waste could not be source separated, she said. She concluded that "if the Metro Council chooses an incinerator, it will no longer be in the Metro's best interest to work on market development for and recycling of plastics, paper, etc. which will mean that waste reduction through reduce, reuse, recycle will never be maximized." Ms. Dehen said it was her impression the Council had a bias toward mass incineration technology and would build one compost plant.

The Presiding Officer asked Ms. Dehen not to make assumptions about the kind of decision the Council would make. The staff's job was to propose, he explained, but the Council would dispose.

Alan Goetz, 21208 N.E. Interlachen, Portland, testified the East County area was the stepchild of the Metropolitan area in terms of economic development. He did not think a garbage burner would enhance the area. He also explained ten years ago he had been involved with the South Shore Planning Group and the Group discussed the disposition of vacant, agricultural land on the South Shore of the Columbia River. In the process of developing that plan, the Group determined that if development were to take place in East County, that land had to be preserved to accommodate that growth.

Carol Manfriety, a Troutdale resident, addressed Councilor Ragsdale. She asked if any Councilors had been at the workshop sponsored by the Environmental Protection Agency had been held March 4, 5 and 6 on solid waste alternative technology. No Councilors had attended. She was concerned no Metro representatives had attended what she thought was the finest conference on the subject to every take place in Portland. She explained East County had sent representatives because they were concerned about recycling and composting. At the conference she had talked to a national composting representative who had said that composting, rather than mass incineration, was becoming the preferred mode reducing solid waste. She asked Councilor Ragsdale not challenge the public to suggest alternatives when it had been demonstrated East County was working toward solutions.

Councilor Ragsdale explained his intent, when asking the public for help, was to ask those who criticized Metro's process to also offer constructive solutions.

6. CONSIDERATION OF MINUTES

Motion: Councilor Kelley moved the minutes of February 12, 1987, be approved. Councilor Van Bergen seconded the motion.

Vote: A vote on the motion resulted in all ten Councilors present voting aye. Councilor DeJardin and Kirkpatrick were absent.

The motion carried and the minutes of February 12, 1987, were approved.

7. CONSIDERATION OF A CONTRACT WITH BISHOP CONTRACTORS TO CONSTRUCT THE AFRICA BUSH EXHIBIT, PHASES I AND II

Presiding Officer Waker announced the contract item had been on the February 26, 1987, Council agenda. At that meeting the Council heard extensive testimony on the matter. The matter was continued to tonight's meeting for a decision. The Presiding Officer explained although he had received numerous requests from parties wishing to speak at this meeting about the contract award, he wanted to limit testimony to information not previously presented to the Council.

Executive Officer Cusma then addressed the Council. She explained because Ed Stuhr, Grants/Contract Officer, was not able to attend the meeting, she would present staff's report. She referred to a written report to the Council on the subject. She explained at the February 26 meeting, the Council had asked staff to provide answers to two questions. The first question was whether there was reason to believe that EBA Sheetmetal could not perform the work. The Executive Officer said staff had determined there was no reason to believe EBA could not perform the work. The second question was whether EBA was providing a commercially useful function to the project. She answered EBA was providing a commercially useful function.

The Executive Officer then explained the process for staff's investigation. She said Metro's research staff met with or contacted principles of the firms involved, UMTA's civil rights officer, ODOT's civil rights section, ODOT's MBE construction compliance unit, Tri-Met, and the State's Attorney General's Office. Research, she said, had been completed Wednesday, March 11. In conclusion, she said no information had been discovered to suggest any course of action except to continue with the contract award to Bishop Contractors, Inc. Both the Executive and Presiding Officers recalled the Executive had recommended approval of the contract at the February 26 Council meeting.

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Councilor Knowles asked if any person or organization addressing the Council at the February 26 meeting had submitted information to the Executive Officer regarding the contract matter. Executive officer Cusma said no one had contacted her directly but her team had met with representatives of the companies directly involved with the contract. Jennifer Sims, Management Services Director, confirmed that no other information had been received by staff.

Councilor Hansen requested the Council hear additional testimony to give those opposed to the contract award an opportunity to respond to staff's report. Councilors Knowles and Bonner concurred.

Councilor Van Bergen asked that testimony be limited to new material not previously presented to the Council and a time limit be imposed.

Presiding Officer Waker opened the public hearing.

Margaret R. Garza, IMPACT Business Consultants, explained IMPACT was a private management consulting firm serving as a liaison organization between government agencies and minority-owned contractors. Ms. Garza said she wished to discuss conversations IMPACT representatives had on February 11, 1987, with the owner of EBA Sheetmetal, Mr. Aguire, about EBA's participation in the Bishop Contract. Ms. Garza reviewed Mr. Aguire's work history as a sheetmetal worker and provided figures to show he had previously been involved in several small contracting jobs doing business under EBA Sheetmetal.

Ms. Garza reported Mr. Aguire had explained at that meeting he would be in a working arrangement with Pioneer Mechanical because the prime contractor needed assistance in meeting minority goals. Ms. Garza said she asked Mr. Aguire about his understanding of that agreement. He had replied it would be a joint venture and that EBA would be performing \$30,000 worth of work which would involve fabrication of ductwork. Ms. Garza said he told her at that meeting he was not aware Bishop had listed him as providing \$300,000 worth of work but he said he was aware he would be working in a joint venture with Pioneer Mechanical; that he would be entering into a joint venture with Pioneer Mechanical but he was unaware of his percentage of the joint venture; and that Pioneer would be providing \$180,000 contract work in the area of plumbing and HVAC equipment and that Arctic Sheetmetal would be providing \$90,000 worth of insulation and underground work. Ms. Garza questioned whether EBA's arrangement with Pioneer Mechanical was really that of a joint venture.

Ms. Garza said another meeting took place with her and Mr. Aguire at the Metro offices. She had asked Mr. Aguire if he could perform under a \$396,000 contract and he had said he could not. She explained from conversations at that meeting she understood he would

be providing \$124,000 worth of installation and fabrication work. Ms. Garza said she asked Mr. Aguire why he hadn't asked Bishop for a \$124,000 subcontract. Mr. Aguire said he would check on it and Ms. Garza said she had not heard back from Mr. Aguire.

Ms. Garza then distributed a copy of a document entitled "Section 00430: Subcontractors Form." Metro had required prime contractors to submit the completed form to indicate which subcontractors they intended to use. She pointed out Bishop had listed "Pioneer Mechanical/EBA" as performing all mechanical work. Based on the information provided on the form, she questioned whether the arrangement was a joint venture or a pass through. When asked by the Presiding Officer, Ms. Garza did not know whether Bishop was bound to the subcontractors listed on the form.

Ms. Garza then reviewed a document submitted to Metro which provided a breakdown of jobs to be performed by EBA Sheetmetal for Bishop Contractors. She did not distribute copies of this document. Ms. Garza listed out jobs as follows:

Install ductwork and accessories	\$60,686
Labor	69,349
Equipment	159,412
Subcontracted Items for Excavation of Underground Ductwork	3,000
Insulation	21,207
Balancing	3,130
Controls	45,000
Furnish and Install HVAC, etc.	<u>34,616</u>
Total Subcontracting Effort	\$107,053

Ms. Garza said EBA's total subcontract represented 27 percent of the total \$396,000 subcontract effort and 55.5 percent of the total \$396,000 of the materials for the subcontract effort.

Ms. Garza reported that after having reviewed the information, she had concluded that materials were being passed through EBA Sheetmetal in order to fulfill Bishop Contractor's minority business participation goal for the project. She also explained EBA was attempting to operate as a mechanical subcontractor when past work had been limited to sheetmetal subcontracts and pointed out that Pioneer Mechanical was serving as a subcontractor to a subcontractor. She said IMPACT had no problems with the fact that Mr. Aguire's business was minority owned. The problem, she explained, was the nature of his business arrangement with Pioneer Mechanical and Bishop Contractors.

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M. A. Grace Gallegos, 8959 S.W. Barbur Boulevard, Portland, of IMPACT Business Consultants, addressed the Council on its adopted DBE Program policy. She was concerned a violation of Metro's policy had occurred because Mr. Aguire of EBA Sheetmetal had stated in front of Metro's staff, that he could not perform the subcontract work and staff in spite of that fact, Metro had recommended the prime contract be awarded to Bishop. Ms. Gallegos also contended another violation of Metro's procedures had taken place because Bishop Contractors had not submitted their list of subcontractors within five working days after the bids were opened. Finally, she said the situation whereby a subcontract could be awarded to EBA when they were actually performing only 22 percent of the work was an abomination of Metro's process. She urged the Council not to award the contract to Bishop. "Good faith effort," she explained, was defined as actually meeting the contract goals.

Councilor Knowles pointed out at the February 26 meeting he had invited interested parties to submit information to staff that would substantiate claims made at that meeting. Ms. Gallegos said she had tried to meet with staff but had not been successful. She also pointed out she had not had access to staff's report until just before this meeting and therefore, could not prepare a written response to it.

Lynnia Woods, an attorney with Allen, Kilmer, Shrader, Chenowith and Yazbeck, ORBANKO Building, Portland. Ms. Woods said she was representing Emerick Construction Company, the second low bidder on the project, and the minority business coalition. She explained she had been involved with the matter for less than 24 hours and would have to defer some matters to other parties.

Ms. Woods distributed written reports which she said would explain why Bishop's bid was not responsive. She said Bishop had not completed their Disadvantaged Business Utilization form. Bishop had been required to give its commitment on a certain percentage of the contract to DBE's, she explained. Metro's own rules stated that submitted bid documents must contain a fully completed Disadvantaged Business Utilization Form and a statement that good faith efforts had been made to meet the stated goals. Ms. Woods further asserted that Bishop had not submitted their list of DBE subcontractors within the required five days of the bid opening. She said the bid day was February 5 and the list was actually received on February 11 -- one day late.

Ms. Woods read an affidavit from Kevin Spellman, vice-president of Emerick Construction Company. The affidavit explained that Dennis Barstad, Emerick's estimator, received a quote from Pioneer Mechanical. As part of the quote, Pioneer offered to provide a minority contractor to fulfill the DBE requirements for a 1 percent

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increase in its bid. That arrangement was a sale in exchange for minorities, she said.

Ms. Woods suggested the Council delay its decision in order to give parties adequate time to submit evidence or to reject Bishop's bid on the basis it was not responsive and award the contract to Emerick Construction. She said the EBA Sheetmetal arrangement was a mimicry of what was intended to be a system to help businesses that had historically been disadvantaged.

Councilor Hansen requested Eleanore Baxendale, Metro's General Counsel, comment on Ms. Woods statements about the incompleteness of Bishop's bid documents.

Ms. Baxendale said she had not yet examined the entire contract and could not answer that specific question. She said she would examine the contract soon. She thought, however, Bishop's bid was responsive. The bid form specified that failure to fill out the form could be regarded as non-responsive. She said not filling out the bid form would be considered non-responsive depending on what it was the bidder failed to do. She further explained that if Metro could ascertain the dollar amount committed to the Disadvantaged Business Program and if the bid form were signed, the legal requirements would have been met. She said that determination was based on federal cases where certain documents had not been submitted. Ms. Baxendale said Metro had no choice but to find the bid responsive if it could be determined from the forms received the contractor had agreed to be bound by Metro's DBE program. In conclusion, she said she would review the documents and give the Council an answer to the question later in the meeting.

Vernell West, representing Senator William McCoy, State Capital Building, Salem, read a statement in which he questioned whether Metro had complied with its adopted DBE goals. He explained the goals had been established to afford minorities and women -- historically disadvantaged individuals -- an opportunity to participate. He questioned whether EBA Sheetmetal's participation in the Africa Bush project was really a DBE for the purpose of the contract. EBA, he pointed out, had been subcontracted by Bishop to do the HVAC work even though EBA had no background in that area. He explained that if EBA were competent in HVAC work, it would actually receive the total \$396,000 subcontract amount, rather than the \$30,000 worth of work he had been told EBA would actually perform. In conclusion, Mr. West said it was hardly believable that a firm with finances that would only allow it to secure contracts valuing no more than \$60,000 could now successfully bid on a contract more than 10 times the amount it claimed it could handle. He questioned who would actually receive the \$396,000. Some states, he explained, required monthly or quarterly reports to show that the subcontractor actually

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received the funds listed in the bid. He questioned how Metro would monitor the subcontract to ensure all money would actually go to EBA Sheetmetal.

A discussion followed about Metro's procedures to determine whether contractors were qualified to perform the work. The Presiding Officer pointed out that the State of Oregon required no proof of competency other than the contractor/subcontractor be able to secure an adequate bond. Mr. West suggested Metro challenge the State Department of Transportation's (ODOT) DBE certification of EBA Sheetmetal to determine whether EBA was indeed a minority for the purposes of this subcontract.

Harold Williams, President, Pen-Nor, Inc., 132 N.E. Ainsworth, Portland, distributed a letter he had received from Aubrey Davis, Region X Administrator of the U.S. Department of Transportation. He pointed out Mr. Davis had interpreted DBE contracting procedures differently than had Ms. Baxendale, Metro's Counsel, at the Council's meeting of February 26.

Presiding Officer Waker asked Mr. Williams to explain why the information he was about to present was relevant since the project in question would not involve use of federal funds. Mr. Williams explained Metro's Counsel, at the February 26 meeting, had continually referred to the fact that Metro's adopted DBE program was based on Federal Department of Transportation regulations (49 CFR Part 23). He urged the Council not to award the contract to Bishop based on evidence presented in the DOT letter and by people previously testifying that minority contracts had been deliberately violated and manipulated.

Presiding Officer Waker referred to Mr. Davis' letter which read: "If the review discloses that the firm is not capable of performing the work or will not actually be performing the majority of the work, then the recipient would need to take appropriate measures to ensure that the prime contractor adds other DBE contractors to the extent necessary to comply with the DBE level specified in its bid." The Presiding Officer recalled at the February 26 meeting, staff had indicated they would review the contractor's work program and if the contractor was not in compliance with the DBE program, the solution would be the same as referenced by Mr. Davis.

Mr. Williams pointed out Bishop Contractors had not provided the DBE subcontract information within the five days required by Metro.

James Casan, Vice President, Pen-Nor, Inc., 1771 N.E. Bryant, Portland, said it was obvious a problem existed with Metro's DBE program because minority contractors had approached the Council more than once to settle the same problems. He said the intent of the

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law was for minorities to participate in the business mainstream. He questioned why Bishop Contractors had been awarded 18 out of the 20 major contracts awarded for Zoo projects.

Responding to Mr. Casan's last question, the Presiding Officer explained Bishop had continued to submit the lowest, qualified bid.

Alfonso V. Cabrera, Cabrera Construction, Inc., 3430 West 11th, Eugene, testified it was the Council's responsibility to ensure its ordinances were followed. He explained that as a minority contractor, he was tired of hiring an estimator to submit bids for public projects when he would later learn the cards had been marked. He was frustrated because white prime contractors did not play by the rules and were continually awarded contracts. He also pointed out that the Council had a problem if their Counsel interpreted the law governing contract awards differently than the Federal Government. In summary, Mr. Cabrera said he had not bid on the Africa Bush project because he had been told it was "in the bag" and questioned whether a minority contractor could compete in the state of Oregon.

Paul R. Meyer, attorney representing Bishop Contractors, Inc., 900 S.W. 5th Avenue, Suite 1900, Portland. Mr. Meyer explained that in 1957 he was one of a coalition between the American Civil Liberties Union and the NAACP that wrote the public accomodation statues adopted by the Oregon Legislature. In the 1960's, he represented black longshoremen in a federal court action to break open what was a "lily white" union. He explained he did not have a apologize for his or Bishop's position regarding the contract. Mr. Meyer said incredible game playing had occurred on the project. Pen-Nor, Inc. had bid the job \$90,000 higher than the other mechanical contractor, he said. He also noted that Bishop had submitted DBE subcontractor information within five working days of the bids, as provided for by Metro regulations. He noted Ms. Woods had earlier stated the information was due within five days of the bid.

Mr. Meyers reviewed the Contractor's process for securing subcontract bids. He explained Metro, in their instructions to bidders, had indicated they did not wish any subcontractors and materials suppliers selection to be finalized prior to the contract award. He briefly reviewed the process for prime contractors getting bids from subcontractors. Mr. Meyer emphasized that Bishop had specified more minority subcontracts than the second low bidder. This was apparent by comparing bid forms, he explained, and he then reviewed comparative information for the top bidders on the project. He said Bishop's bid reflected a good faith effort including advertisements and direct contacts to secure minority subcontractors. He also pointed out that Bishop had assisted Pen-Nor by loaning them plans for the project. He said Bishop was working with their majority owned subcontractors and urging them to work with minority subcon-

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tractors. As a result of that effort, Pioneer worked with EBA Sheetmetal. Mr. Meyers was puzzled why IMPACT Business Consultants was advocating the Council take action against one minority in favor of another minority.

Mr. Meyer explained the process by which Bishop attempted to meet Metro's DBE program goals. Ethical contractors, he explained, accomplished the task without bid shopping. Post-bid efforts were required to meet Metro's goals. He pointed out there were few minority-owned contractors in the area who had established a track record of performing jobs of a large size. He said in the mechanical field, Pen-Nor was the only such contractor. He said Pen-Nor was 60 percent minority, with a couple of white men in that business helping the blacks accomplish the work. He said part of the objective of the DBE program was to give minorities assistance who had not developed a track record. Mr. Meyer asserted that those opposed to EBA Sheetmetal's participation on the contract were playing the game of some white contractors by keeping minorities out of the project. He said one minority who had proven themselves was saying they did not want other minorities to have that chance, a condition Mr. Meyers called an outrage.

Mr. Meyers said Metro's staff had reviewed the situation and were satisfied that Mr. Aguire of EBA Sheetmetal had 35 years experience in the sheetmetal business. He said Mr. Aguire intended to perform about \$290,000 worth of work, \$70,000 of which was labor, and \$220,000 of which was for purchasing materials. Mr. Aguire would gain experience on how to buy materials, Mr. Meyer explained, as Pen-Nor had once had to learn.

Mr. Meyers testified that Pen-Nor received two sub-bids from sheetmetal subcontractors, one minority owned and one majority owned. Pen-Nor had indicated it would subcontract with the white-owned firm, Mr. Meyers said. He pointed out that when Pen-Nor's bid was broken down by money actually going to minority and majority owned firms, less of Pen-Nor's money would go to minority-owned firms that would EBA's.

In summary, Mr. Meyers outlined the procedures the Council had determined a prime contractor must follow to be awarded a major construction contract. He said if Bishop were willing to take a change on a minority contractor working its way up into the big leagues, then it would be an outrage and a violation of Metro's affirmative action policies to frustrate that arrangement. Mr. Meyers asserted both Bishop Contractors and the Metro staff had determined Mr. Aguire was very capable of performing the work. He suggested the Council not rewrite its rules after the fact.

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Charles Butler, 6385 S.E. Yamhill, testified he was the first black minority in the sheetmetal field and urged the Council not to award a subcontract primarily for HVAC and plumbing work to a sheetmetal contractor.

Chad Debnam, 3802 N.E. Union, Portland, said he hoped the Council would make a fair decision. Mr. Debnam was concerned that staff had not contacted him after the February 26 meeting. He said he was also offended by Council Van Bergen's comments to the press. He said the matter of awarding the contract to Bishop was a violation of the law. He questioned Ms. Baxendale's legal expertise when she had said the federal guidelines were not appropriate in this case. He questioned whether Metro's staff had been properly trained because it appeared they did not understand the law. He explained that if staff did not respond to the public, the public was left out.

Mr. Debnam was especially concerned that the business arrangement between EBA Sheetmetal and Pioneer Mechanical was a front and therefore unfair. He asked the Council to take just action and pointed out Metro had a series of problems surrounding its DBE program policies and administration.

There was no further public testimony on the matter and Presiding Officer Waker gave opportunity for Councilors to ask questions of staff.

Councilor Knowles asked Ms. Baxendale to explain on what basis the Council could reject Bishop's bid. Ms. Baxendale explained the Council could only reject Bishop's bid if it was deemed non-response to Metro's procedures or if Bishop were deemed not qualified to perform the work. She said that having produced a performance bond for the Africa Bush project, Bishop had proven their financial capability to perform the work. Their skill to perform the work had to be judged on the basis of past contract performance.

Councilor Knowles asked if failure to complete the bid documents was a basis for determining the bid was non-responsive. Ms. Baxendale said such failure could be a basis for determining the bid non-responsive. However, she explained, the bid documents could not be determined non-responsive if it were clear, based on the overall bid information submitted, that the contractor was in compliance with Metro's DBE program guidelines. She said the Bishop bid was responsive because one could easily determine the amounts of DBE subcontracts and the documents were properly signed.

Ms. Baxendale further explained there were two ways a bidder could satisfy Metro's DBE program goals. The bidder could actually produce subcontracts to meet the stated goals. Staff had determined Bishop had done this and that the EBA Sheetmetal subcontract was not

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a pass-through arrangement, she said. Given staff's determination, she said the Council would have to decide whose testimony to believe. She said if the Council determined the EBA subcontract was a pass-through arrangement, they would need to decide if Bishop had complied with Metro's good faith effort procedures.

Ms. Baxendale then outlined good faith effort procedures for satisfying Metro's DBE program requirements. A bidder had to demonstrate they had put forth a good faith effort to meet the DBE goals which would require the bidder to produce copies of advertisements for DBE subcontract bids published in newspapers, copies of notifications to DBE's and documentation of followup. She added that when Ms. Woods had made her request for public documents, Ms. Baxendale reviewed the information Ed Stuhr, the Metro Contract Officer, had provided Ms. Woods. Those documents included proof of advertisement in The Skanner and copies of cards mailed out to assumed DBE's from Bishop. She said Mr. Stuhr told her Bishop had met the good faith test in case it were determined the EBA Sheetmetal subcontract arrangement was not approved. She concluded that if a bidder had demonstrated proof of compliance with Metro's good faith effort procedures, as she determined Bishop had, the Council would have to award that bidder the contract.

Councilor Knowles asked if the Council awarded the contract to Bishop and it turned out a DBE subcontract was other than what was represented to Metro officials, could the Council request Bishop bring their contracting into compliance with Metro's requirements. Ms. Baxendale responded the issues would be: 1) was the subcontractor incompetent; and 2) did the prime contractor not live up to meeting the DBE program goals as promised. If it were determined the contractor had not met the goals as promised, Metro would ask the contractor to find another DBE subcontractor or to provide proof of good faith efforts to find another DBE subcontractor.

Councilor Hansen questioned whether Bishop Contractors would have met good faith effort requirements if the Council were to determine Bishop had used a "front" to meet their DBE goals. Ms. Baxendale responded the definition of good faith effort required that if the contractor had not met the DBE goal by producing subcontractors, a mechanical test of producing proof of good faith effort would then be required (copies of advertisements, notifications, and follow-up). Those procedures had nothing to do with a "front" situation, she explained. She advised the Council that call the EBA Sheet arrangement as pass-through was one thing, but to say that Bishop Contractors was making fraudulent representations to the Council was quite another matter. She again explained that the way Metro's code worked was if an arrangement was identified as a pass-through, then staff could not count that subcontract toward meeting the DBE goal. There was not basis under Metro's procedures or under UMTA's review

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of Metro's procedures that Metro had to disqualify Bishop Contractors. She clarified that the Council was now being asked to determine whether Bishop had met Metro's definition of meeting the DBE good faith effort requirement.

Councilor Hansen proposed that if it were determined Bishop had used a pass-through arrangement with EBA Sheetmetal, they could have circumvented the five-day negotiating process with other DBE's they normally would have sought out to meet the goal and therefore limited activity in actively soliciting DBE's. He questioned whether that type of situation would have disqualified Bishop for not meeting the good faith effort.

Ms. Baxendale again asserted it had not been proven the EBA Sheetmetal subcontract was a pass-through arrangement. No statutory violation of good faith efforts existed, she said, and Metro was bound by the provisions of its Code in the matter.

Councilor Collier said she accepted Counsel's definition of good faith effort and the rules by which the Council was bound. She was concerned, however, that no cheating had taken place in trying to meeting Metro's goals. She questioned whether the contract could be rejected on the basis the EBA arrangement was fraudulent, if it turned out to be fraudulent.

Ms. Baxendale explained a pass-through was not an illegal arrangement, it simply did not quality to be counted toward meeting Metro's DBE program goals.

Councilor Collier support the citizens' committee established by the Executive and requested the Committee address the issue of cheating and provide a layman's definition of good faith effort as opposed to a legal definition.

Councilor Kelley asked if, during staff's review of the matter since the February 26 Council meeting, the question was asked regarding whether Mr. Aguire was a licensed plumber and was a guaranteed subcontract in place between Bishop and EBA Sheetmetal. She recalled concerns had been raised that work performed by an unlicensed subcontractor could be challenged at a later date.

Executive Officer Cusma responded she understood that whether Mr. Aguire was a licensed plumber was a moot issue. She did not know if the question was answered or ever asked. Questions were asked about Mr. Aguire's HVAC background and whether he qualified as a DBE. Both questions were answered to the satisfaction of staff, she said.

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Ms. Baxendale responded to Councilor Kelley's question about whether a subcontract was in place. Ms. Baxendale said she had not actually reviewed the subcontract because she had not been involved in the investigation. The bid document, however, bound Bishop Contractors to do the stated work for the price bid. If EBA were found not suitable to do the work, Bishop would have to find another suitable subcontractor. If the subcontractor's price were higher than EBA's, Bishop would be bound to absorb the difference.

An unidentified man said the point he wanted investigated and answered by staff was not whether Mr. Aguire was a licensed plumber but whether he was a licensed heating subcontractor.

Mr. Meyers, Bishop's Attorney, noted a document had been delivered to Metro on February 9, 1987, a statement signed by Mr. Aguire and Bishop Contractors advising that he would be entering into a subcontract for \$396,500 and that if Alternate No. 2 were exercised, an additional \$9,702 would be involved.

An unidentified woman made a statement not using the public address system which was not recorded on the record.

Motion: Councilor Van Bergen moved to award the contract to Bishop Contractors, Inc., as low bidder. There was no second.

The motion died for a lack of a second.

Councilor Van Bergen said the issue before the Council was the Bishop contract. Bishop Contractors, he said, was the low bidder and no one had yet challenged Bishop's ability to perform the contract. They had produced a bond as required. It was clearly Bishop's responsibility to control his own subcontractors, he said. He was convinced that Bishop had met the test of making a good faith effort to meet Metro's DBE requirements. The Executive Officer had reviewed the matter and represented to the Council the bid process was performed with propriety. He questioned which direction the Council would next pursue if it decided not to award the contract to Bishop.

Councilor Knowles expressed his dissatisfaction with Metro's implementation of the DBE requirements and the Executive had reflected that concern by appointing a group to review the matter. He acknowledged, however, the Council had limited grounds for rejecting the Bishop contract. An opportunity had been provided for parties to submit evidence to staff supporting why the contract should not be awarded. Staff had determined there was no pass-through arrangement with the EBA Sheetmetal subcontract and the Council was obligated to carefully consider staff's conclusions. The Council's determination

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could, however, be argued in front of the Council or in court. Councilor Knowles concluded a two-week delay had afforded enough time to reach a reasonable conclusion on the matter and the Council was obligated to accept staff's findings. Staff's findings had concluded Bishop's bid documents were responsive.

Motion: Councilor Knowles moved the approval of the contract with Bishop Contractors, Inc. for construction of the Africa Bush Exhibit, Phases I and II. Councilor Ragsdale seconded the motion.

Councilor Cooper declared he would abstain from voting on the motion due to a conflict of interest. His firm did business with Bishop Contractors and a minority-owned subcontractor proposed to be used by Bishop.

Councilor Bonner said he felt poorly served on the issue. He said it was his experience that if people lost and felt they were treated unfairly, they would not bring matters back to the Council's attention. He asked that in the future, prime contractors make genuine good faith efforts so that all parties could be comfortable.

Councilor Knowles agreed that unless staff enforced Metro's good faith efforts and contractors complied with the rules, nothing would happen. He thought the conclusion reached on this matter was that the contractor had met the letter of the requirements.

Councilor Hansen said he would vote against the motion. He noted the staff report read: "subcontracting specialty elements of the project will be done consistent with normal industry practices." As an experienced plumbing contractor, he did not think it normal industry practice for a sheetmetal contractor to be the prime HVAC contractor. Nor was it normal for a plumber to be under the direction of a sheetmetal contractor. Councilor Hansen was also concerned about conflicting document submittal dates and figures. He could not say with certainty Bishop was in violation of Metro's procedures, especially in Ed Stuhr's absence at this meeting, but too many inconsistencies existed for him to unconditionally approve the contract.

Councilor Gardner said he would vote for the motion to approve the contract. He explained he had made the motion at the February 26 meeting for staff to conduct an investigation of concerns raised by the public and after staff's findings and Council's opinion, he had seen no evidence the rules had been violated. He noted Metro's rules followed the federal guidelines but he hoped staff could do better than meet the minimum requirements and that the Executive's appointed citizens group would suggest ways in which that could be done. In conclusion, he said to reject the contract would delay the

project and expose Metro to legal liability -- expenses that should not have to be bore by taxpayers.

Councilor Ragsdale said he agreed with Councilor Gardner. He was hopeful the Executive's group would make recommendations the Council could discuss as soon as possible.

Vote: A vote on the motion to approve the contract with Bishop Contractors, Inc. resulted in:

Ayes: Councilors Gardner, Knowles, Ragsdale, Van Bergen and Waker

Nays: Councilors Bonner, Collier, Hansen and Kelley

Abstain: Councilor Cooper

Absent: Councilors DeJardin and Kirkpatrick

The motion carried and the contract was approved.

8. ORDINANCES

8.1 Consideration of Ordinance No. 8.1, for the Purpose of Establishing a One Percent for Art Program for the New Construction or Major Alteration of Major District Facilities (Continued Second Reading); and

9.1 Consideration of Resolution No. 87-717, for the Purpose of Establishing Guidelines for Metro's One Percent for Art Program

Presiding Officer Waker announced this was a continued second reading of the Ordinance and the Clerk read the Ordinance by title only.

Neil McParlane, Public Facilities Analyst, reviewed staff's written report and the history of Council and Management Committee Consideration of the Ordinance and companion Resolution since they were first introduced on December 18, 1986. At the Council's request, the Management Committee reviewed the proposed legislation on February 20 in order to recommend resolutions to issues that had not been resolved by the Council. Unresolved issues included:

1) relationship of placement of art to Metro facilities; 2) point during the planning process at which a construction project could be declared exempt from the art program; 3) the Council's role in administration of the program; 4) timing of formation of advisory committee; 5) committee membership; and 6) timing of community input. Mr. McParlane and Management Committee Chair, Councilor Gardner, reported the revised Ordinance and Resolution now before the Council for final consideration reflected the Management Commit-

tee's recommendations. Councilor Gardner urged approval of the legislation.

Motion to Amend Ordinance No. 87-215: Councilor Ragsdale moved, Seconded by Councilor Collier, to amend Section 4, "Dedication," of the Ordinance as follows (deletions are in brackets):

"One percent of the construction cost of Major District Construction Projects shall be set aside for the acquisition of art[, unless the Council, following a public hearing, by resolution, exempts the project from the one percent program. Such an exemption must be approved prior to or at the time a contract for an architect has been entered into, or prior to or at the time a contract to participate financially in a project is entered into by the Council, whichever is earlier]."

Councilor Ragsdale explained no project should be excludable from the art program by resolution. He proposed that funds could be transferred to another project and that any changes to the program be authorized by adoption of an ordinance.

A discussion followed on Councilor Ragsdale's amendment. Councilor Kelley opposed the amendment because she thought the presence of solid waste facilities in neighborhoods should be mitigated by art works. Councilor Van Bergen thought Metro's community image could be improved by better maintenance and enhancement of facilities. Councilor Hansen also opposed the amendment.

Councilor Collier asked if the amendment would preclude art works at landfills. Councilor Ragsdale responded said the amendment would not preclude art works at the site or near the site. It would preclude installing art works elsewhere in the community. Presiding Officer Waker pointed out the public would not have access to the next regional landfill.

Vote on Motion to Amend the Ordinance: The vote resulted in:

Ayes: Councilor Ragsdale

Nays: Councilors Bonner, Collier, Cooper, Gardner, Hansen, Kelley, Knowles, Van Bergen and Waker

Absent: Councilors DeJardin and Kirkpatrick

The motion to amend the Ordinance failed.

Motion to Adopt Ordinance No. 87-215: The motion was made by Councilors DeJardin and Knowles at the meeting of December 18, 1986. It was agreed the Councilors were voting on the revised version of the Ordinance as presented in the Council meeting packet of March 12, 1987.

Vote on the Motion to Adopt the Ordinance: The vote resulted in:

Ayes: Councilors Bonner, Collier, Cooper, Gardner, Hansen, Kelley, Knowles, Van Bergen and Waker

Nay: Councilor Ragsdale

Absent: Councilors DeJardin and Kirkpatrick

The motion carried and Ordinance No. 87-215 was adopted.

Motion to Adopt the Resolution: Councilor Gardner moved, seconded by Councilor Bonner, to adopt Resolution No. 87-717. It was agreed the Councilors were voting on the revised version of the Resolution as presented in the Council meeting packet of March 12, 1987.

Vote on the Motion to Adopt the Resolution: The vote resulted in all ten Councilors present voting aye. Councilors DeJardin and Kirkpatrick were absent.

The motion carried and Resolution No. 87-717 was adopted.

9. RESOLUTIONS

9.1 Consideration of Resolution No. 87-740, for the Purpose of Designating Solid Waste as an Area and Activity Appropriate for Development of a Functional Plan

Becky Crockett, Solid Waste Analyst, reviewed staff's written report. She concluded the findings identified in the Resolution demonstrated that developing a functional plan for solid waste was related to the orderly and responsible development of the metropolitan area. She also explained the Council had adopted Ordinance No. 86-206 on September 11, 1986, in order to define a planning procedure for designating areas and activities which could be subject of a functional plan. The authority for Metro to adopt and implement functional plans was set forth in ORS 298.390.

Ms. Crockett pointed out the solid waste functional plan would not be developed solely for a specific facility or site, but would be a comprehensive management plan for determining the location and need

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for all solid waste facilities in the region. Locational areas and sites for facilities would be determined cooperatively with local governments and community groups through the planning process.

Ms. Crockett reported the Executive Officer's Land Use Transition Committee, Chaired by Jim Sitzman, strongly favored the functional planning concept as a logical way of planning solid waste facilities with greater community support.

In conclusion, Ms. Crockett reviewed the relationship of the functional planning process to the current resource recovery project. She referred to an attachment to staff's report which outlined a proposed calendar of key actions involved in completing the project.

Councilor Gardner, Chair of the Council Solid Waste Committee, recommended adoption of the Resolution.

Motion: Councilor Gardner moved Resolution No. 87-740 be adopted and Councilor Kelley seconded the motion.

Councilor Bonner opposed the Resolution, saying functional planning could be used as a weapon if local governments did not cooperate with Metro in identifying sites for solid waste facilities.

Executive Officer Cusma said she preferred to view the functional planning process as a framework and opportunity to identify land for solid waste facilities with the up-front cooperation of citizens and local government officials rather than Metro picking the site and then reacting to community opposition.

Presiding Officer Waker pointed out that Washington County had initially offered to work with Metro until more specific plans unfolded. He said it would be very difficult to avoid opposition to solid waste facilities, regardless of the process used.

Jim Sitzman, 320 S.W. Stark Street, Room 530, Portland, Chair of the Executive's Land Use Transition Committee, said the Resolution had been brought before the Council at the request of the Executive Officer in a spirit of cooperation with citizens of the region. He explained the preamble of the resolution accentuated the positive approach in working with citizens to accomplish regional solid waste goals. He urged the Council to consider ways of removing the harsh edges from the siting process and for developing a total system. He was encouraged that functional planning could accomplish those goals. Mr. Sitzman then read a letter from Linda Krugen, President of the North Portland Citizen's Organization. The Organization endorsed the plan.

Councilor Ragsdale expressed concern that the functional planning process could delay the resource recovery project. Mr. Sitzman said

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some delays could occur but he did not think they would be damaging to the overall project. He pointed out that if local governments and citizens group resisted a selected site, serious delays could exist. He thought it wise to spend the time to build a constituency in order to reduce the possibility of opposition.

Ardis Stevenson, 902 Abernethy Road, Oregon City, member of the Executive's Land Use Transition Committee and Clackamas County Public Affairs Manager, testified in favor of the Resolution. She was please to recommend a plan in which all players would follow the same rules. She reported Clackams County Commissioner Robert Schumacher asked her to tell the Council that without this type of cooperative effort and plan, the Council would face a much more difficult siting process.

David G. Phillips, 902 Abernethy Road, Oregon City, Clackamas County Solid Waste Administrator, explained that the siting of alternative technology and other types of facilities needed to be done cooperatively and in conjunction with local land use plans. He said functional planning was an excellent approach and that Clackamas County would be happy to participate with Metro in such a process.

Estle Harlan, 2202 Lake Road, Milwaukie, representing the Tri-County Council of six regional solid waste associations, testified she respected the recommendations of Mr. Phillips and Ms. Stevenson. Ms. Harlan pointed out the following language on page 2 of staff's report: "Materials and energy can be most efficiently obtained from solid waste if collected and extracted in strategically located places relative to centers of waste and markets (emphasis added)." She noted the Resolution did not refer to involvement in collection activities and questioned if a better word could be used. She asked for the record that staff state whether the functional plan would address solid waste collection.

Ms. Crockett responded that use of the word "collection" had not been the best word choice and that Metro would not deal with collection or flow control in the solid waste functional plan.

In response to Councilor Van Bergen's question, Eleanore Baxendale, General Counsel, said a copy of the minutes would be included in the Resolution file as a record of staff's response to Ms. Harland's question.

Marilyn Lunner, 2408 Woodhaven Court, West Linn, former Clackamas County Planning Commissioner and member of the Clackamas County Recycling Task Force, supported the functional planning process. She said she had seen the process work and testified it would give planning commissions a chance to examine all siting considerations.

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Linda Peters, Route 1, Box 192, Cornelius, Chair of Citizen's Participation Organization No. 8, endorsed the Resolution. She said functional planning would provide a means of expression for group concerns. She supported any plan would lead to a well-designed solid waste system and a safe and productive use of resources.

Councilor Bonner asked Ms. Peters if functional planning would get people to recycle. She responded that it would help people think about the scope of the entire solid waste system and alternatives to waste disposal.

Connie Hawes, testified she and the citizens she represented were very interested in transfer station siting and the Bacona Road landfill site. She supported solid waste functional planning, saying it was better late than never. She also explained the Land Conservation and Development Commission (LCDC) should have required local areas to identify four sites for solid waste facility use in comprehensive plans. She asked Metro to establish a complete solid waste policy which could include mandating recycling, if necessary, and urging the Legislature to adopt legislation to reduce the amount of plastic's generated by manufacturers. She also suggested establishing a national liaison to help businesses find alternatives to plastic packaging.

Councilor Bonner again expressed his concern that the functional planning process could be used as threat to local governments.

Councilor Hansen commended staff for the speed and quality of their work in outlining a functional planning process. He considered the plan a tremendous move forward. He said the Council had experienced setbacks in siting a landfill, the west transfer station and other solid waste projects and saw the functional planning alternative as better than any previous siting method used.

Councilor Gardner agreed with Councilor Hansen, saying the plan was a positive first step in siting facilities. He agreed it was important to put together a clear plan and to get local governments to buy into it. He cautioned that in past instances, the Council had received assurances from local governments only to have that support evaporate when citizen opposition to a planned solid waste facility eventually developed. He said the Council might need a stronger way to enforce functional planning.

Councilor Kelley supported the plan because she thought it was more workable than supersiting. The process would involve local governments and would give them a chance to discuss land they would designate for solid waste use. She also pointed out that timing would be crucial to get a resource recovery project in place.

Vote: A vote on the motion resulted in:
Ayes: Collier, Cooper, Gardner, Hansen, Kelley, Knowles,
Ragsdale, Van Bergen and Waker
Nay: Councilor Bonner
Absent: Councilors DeJardin and Kirkpatrick

The motion carried and Resolution No. 87-740 was adopted.

9.3 Consideration of Resolution No. 87-739, for the Purpose of
Appointing Members to the Solid Waste Policy Advisory Committee
(SWPAC)

Ray Barker, Council Assistant, summarized staff's written report.
There was no discussion on the Resolution.

Motion: Councilor Bonner moved the Resolution be adopted and
Councilor Hansen seconded the motion.

Vote: A vote on the motion resulted in all ten Councilors
present voting aye. Councilors DeJardin and
Kirkpatrick were absent.

The motion carried and Resolution No. 87-739 was adopted. Jeanne
Roy and Tom Miller were appointed to SWPAC for two-year terms.

10. Consideration of Order No. 87-14, Authorizing the Executive
Officer to Enter into a Sublease Agreement with Pacific Marine
Fisheries Commission for Space at 2000 S.W. First Avenue,
Portland, Oregon

Judy Munro, Support Services Supervisor, summarized staff's written
report.

Motion: Councilor Gardner moved the Order be adopted and
Councilor Cooper seconded the motion.

Vote: A vote on the motion resulted in all nine Councilors
present voting aye. Councilors DeJardin, Kirkpatrick
and Knowles were absent.

The motion carried and Order No. 87-14 was adopted.

11. Report from the Council Management Committee Regarding
Transition Personnel Issues

Councilor Gardner, Chair of the Council Management Committee, noted that at the January 29, 1987, Council meeting, the Council requested the Committee: 1) investigate recent hiring and firings, including contract personnel, so the Council could be assured Code provisions regarding personnel policies were being followed; and 2) determine the amount of money being spent for transition and work with the Executive Officer on a plan outlining any continued expenditure of funds. The Council also requested the Executive submit qualifications and requests for confirmations of appropriate transition staff or an outline of the process for filling vacancies to the Committee. Councilor Gardner explained the Committee met on February 19 and 26 to consider the above issues and their findings and recommendations were contained in the document entitled "Report of Council Management Committee on Personnel Aspects of Executive Officer Transition."

A discussion followed about the process for taking action on the Committee's recommendations. Councilor Gardner advised taking action on recommendations at the March 26 Council meeting. Councilor Hansen urged the Executive to immediately bring forward individuals for Council confirmation. Presiding Officer Waker noted the Council had already requested the Executive take that action at their meeting of January 29. Councilor Gardner suggested the Council repeat their request.

Main Motion: Councilor Gardner moved, seconded by Councilor Hansen, that the Council accept the Management Committee's recommendation and request the Executive Officer to immediately submit for confirmation the names of the Acting Deputy Executive Officer, Acting Solid Waste Director and Acting IRC Administrator.

Amendment to the Main Motion: Councilor Collier moved, seconded by Councilor Knowles, that the main motion be amended to include the Council's endorsement of the following, Management Committee recommendations contained in the Committee's report:

- 1) The Budget Committee and the Council should ensure that the FY 1987-88 budget does not contain staffing levels in excess of those necessary to accomplish the work program.

2) The Council should request the Executive Officer report on plans for recruitment and selection of a permanent Deputy Executive Officer, Solid Waste Director, IRC Administrator, and Government Relations Manager. These plans should also address affirmative action recruitment efforts.

3) The Council should request the Executive officer furnish copies of Mr. Phelps' weekly reports and a copy of the final work product for which Mr. Phelps was paid.

4) The Council should request the Executive Officer explain fully the current status of Ray Phelps and any plans to retain Mr. Phelps as an employee or as an independent contractor.

5) The Council should affirm that they will be guided by legal opinions of Metro Counsel and not outside legal opinions unless the Council itself feels a need for additional opinions.

Vote on the Motion to Amend: The vote resulted in all ten Councilors present voting aye. Councilors DeJardin and Kirkpatrick were absent.

The motion to amend carried.

Vote on the Main Motion as Amended: The vote resulted in all ten Councilors present voting aye. Councilors DeJardin and Kirkpatrick were absent.

The main motion, as amended, carried.

The Presiding Officer asked the Clerk to prepare a summary of the requests made of the Executive Officer and to deliver the requests to the Executive as soon as possible.

12. Consideration of Resolution No. 87-741, for the Purpose of Supporting a Review Commission to Analyze the Structure, Functions and Funding of the Metropolitan Service District

Councilor Collier reported the Council Legislative Planning Committee had introduced the Resolution in order to allow the Council to make deliberate and orderly comment on issues effecting Metro's organization and structure.

Motion: Councilor Collier moved to adopt the Resolution and Councilor Bonner seconded the motion.

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Vote: A vote on the motion resulted in all ten Councilors present voting aye. Councilors DeJardin and Kirkpatrick were absent.

The motion carried and Resolution No. 87-741 was adopted.

After discussion, it was determined that Presiding Officer Waker should present the Resolution to the joint Senate and House hearing on Metro legislation related to organization and structure on March 16.

Presiding Officer Waker adjourned the meeting at 10:15 p.m.

Respectfully submitted,



A. Marie Nelson
Clerk of the Council

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