

MINUTES OF THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

May 12, 1988
Regular Meeting

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

Councilors Absent: None

Others Present: Rena Cusma, Executive Officer
Dan Cooper, General Counsel

Presiding Officer Ragsdale called the meeting to order at 5:35 p.m. He announced the following changes in the Agenda: 1) Items 10.1, 10.2 and 10.3 would be considered at the beginning of the meeting to accommodate staff's schedule; and 2) Item 7.1 was being deferred to May 26 at staff's request.

10. RESOLUTIONS

REFERRED FROM THE PLANNING & DEVELOPMENT COMMITTEE

10.1 Consideration of Resolution No. 88-915, for the Purpose of Supporting an Amendment to the State Statute to Provide for an Elected Council and an Appointed Executive

Councilor Knowles, Chair of the Council Planning & Development Committee, explained Resolution Nos. 88-915, 917 and 916 (Items 10.1, 10.2 and 10.3) had been introduced by the Committee after review of questionnaires completed by Councilors. The resolutions were intended to reflect a consensus of Councilors concerning Metro governance and structure issues. The Councilors' final recommendations would be forwarded to the Interim Committee on Metropolitan Governance.

Motion to Adopt Resolution No. 88-915: Councilor Waker moved, seconded by Councilor Kirkpatrick, to adopt Resolution No. 88-915.

Councilor Knowles announced he would support substitute Resolution No. 88-915A which endorsed Metro's current structure.

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Motion to Adopt Substitute Resolution No. 88-915A: Councilor Knowles moved, seconded by Councilor Van Bergen, to adopt substitute Resolution No. 88-915A.

Presiding Officer Ragsdale opened a public hearing on Resolution Nos. 88-915, 88-915A, 88-917 and 88-916. There was no testimony and the hearing was closed.

Councilor Hansen said he supported Resolution No. 88-915A. He did not support the provision of Resolution No. 88-915 that the Presiding Officer be elected by the District at large. He explained an elected Presiding Officer could be installed that would be out of step with the rest of the Council. Because of the Presiding Officer's power to set agendas, that person could then operate to accomplish his or her own agenda.

Councilor Kirkpatrick did not think the Council should take any action on the resolutions at this meeting. Because the resolutions had been added to the agenda at the last minute, she was concerned the public had not been given an opportunity to comment on the issues. The Councilor said, however, she would not support Resolution No. 88-915A because she thought some type of change in the government structure was needed. The current structure had not worked for many years, she said.

Councilor Waker opposed Resolution No. 88-915A. He disagreed with Councilor Kirkpatrick about the fact that the public had not been given the opportunity to comment on the issues. The public could testify before the Interim Committee on Metropolitan Governance, he explained.

Councilor Gardner thought the present governance system worked fairly well. He was concerned that Resolution No. 88-915A would cost the taxpayers more money in terms of staff time and miscommunication. The agency was too small for independent executive and legislative government branches, he said. He advocated an Executive Officer that would be directly accountable to the Council.

Councilor DeJardin supported Resolution No. 88-915 because the present system was not working well.

Presiding Officer Ragsdale explained Resolution No. 88-915 addressed the issues of selecting the Executive Officer and election of the Presiding Officer District-wide. He was opposed to the District-wide election of the Presiding Officer, explaining the current system for selecting the Presiding Officer worked very well. If the Presiding Officer were elected District-wide, that person would have no accountability to the rest of the Council and the Council could not participate in the selection of its leader. The Presiding

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Officer's election could also be financed by special interests, he said.

Executive Officer Cusma agreed with the Presiding Officer's concerns. She feared a Presiding Officer could be elected who would not serve Metro well. She did advocate an elected Executive Officer, explaining it would be impossible for the electorate to have a big impact on Metro unless they could elect one official at large. The public needed to have the ability to "throw the rascals out," she said.

Vote on the Motion to Adopt Substitute Resolution No. 88-915A:
A vote resulted in:

Ayes: Councilors Bonner, Collier, Cooper, Hansen, Knowles and Ragsdale

Nays: Councilors DeJardin, Gardner, Kelley, Kirkpatrick, Van Bergen and Waker

The motion failed for lack of a majority.

Councilor Kirkpatrick asked if the option of fewer Councilors had been discussed by the Committee. Councilor Knowles responded that the Committee had shaped Resolution No. 88-915 around the majority of responses to the questionnaire on governance issues. Councilor Van Bergen disagreed the resolution reflected a majority consensus. Councilor Collier explained the Committee decided the value of the resolutions was to serve as a vehicle for full Council discussion. It would have been impossible to draft resolutions reflecting an actual Council consensus, she said.

Motion to Amend Resolution No. 88-915: Councilor DeJardin moved, seconded by Councilor Kelley, to amend the resolution by eliminating the recommendation for a Presiding Officer to be elected District-wide.

Councilor Kirkpatrick was concerned the resolution did not address whether Councilors should serve full-time, part-time or the number of members serving on the Council.

Councilor Gardner said he would agree with an amendment to Resolution No. 88-915 to eliminate the District-wide, elected Presiding Officer recommendation. He explained that anyone succeeding in a District-wide election would have to acquire a large, political base which could pose a threat to other local government officials.

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Vote on the Motion to Amend Resolution No. 88-915: The vote resulted in all Councilors except Councilor Knowles voting aye. Councilor Knowles voted nay. No Councilors were absent.

The motion carried.

Vote on the Motion to Adopt Resolution No. 88-915 as amended:
The vote resulted in:

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

Nays: Councilors Bonner, Collier, Cooper, Hansen, Knowles and Ragsdale

The motion failed to carry for lack of a majority.

10.2 Consideration of Resolution No. 88-917, for the Purpose of Supporting an Amendment to the State Statute to Increase the Size of the Council to 13 Members

Motion: Councilor Knowles moved to adopt Resolution No. 88-917. Councilor Bonner seconded the motion.

Councilor Knowles reported the Planning & Development Committee acknowledged, based on results of the questionnaire completed by all Councilors, that Councilors were divided on the issue of how many members should serve on the Council. The majority of Councilors had indicated an odd number should serve in order to avoid tie votes.

Councilor Kelley said she would oppose the resolution because she did not think adding one member to the Council would address the issue of whether fewer, full-time Councilors would better serve the District. She supported seven full-time members, explaining solution would be best for Metro's future. She pointed out that under the present, volunteer Councilor system, most Councilors were volunteering the maximum amount of time available to Metro.

Councilor DeJardin thought adding one more Council position would create reapportionment problems. He was also against any proposal for full-time Councilors because he did not think the Executive Officer and a full-time Council could co-exist.

Councilor Bonner said he would support the resolution as a means of eliminating tie votes.

Councilor Hansen suggested adding the thirteenth Councilor when the next reapportionment would take place. He favored an additional Council position, saying the current Metro districts were too large.

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Councilor Knowles explained the Committee's intent in adding the thirteenth position was to eliminate the possibility of tie votes.

Councilor DeJardin said the City of West Linn's system of the Presiding Officer voting only in cases of ties had worked well. If that system were employed, he said, the number of Councilors would not have to change.

Councilor Collier said she had initially agreed with the solution suggested by Councilor DeJardin but ultimately did not support the idea because the Presiding Officer would, in effect, be disenfranchised from his or her constituency but not voting. Councilor DeJardin responded that by being Presiding Officer of the Council, that Councilor would have additional representation.

Vote: A vote on the motion to adopt Resolution No. 88-917 resulted in:

Ayes: Councilors Bonner, Gardner, Hansen, Ragsdale and Waker

Nays: Councilors Collier, Cooper, DeJardin, Kelley, Kirkpatrick, Knowles and Van Bergen

The motion failed.

10.3 Consideration of Resolution No. 88-916, for the Purpose of Supporting Amendments to the State Statutes to Allow the Metropolitan Service District Council to Reapportion Itself and Allow Full Use of the Voters' Pamphlet for District Measures

Main Motion: Councilor Knowles moved, seconded by Councilor DeJardin, to adopt the resolution.

Councilor Bonner thought the reapportionment recommendation a bad idea. He explained the process was often controversial and time consuming. He preferred the State of Oregon continue to handle reapportionment.

Motion to Amend: Councilor Bonner moved, seconded by Councilor Kelley, to amend Resolution No. 88-916 by eliminating the recommendation that Metro reapportion itself.

Councilor Gardner opposed the amendment, explaining the District was already "vulnerable to legislating meddling." Because reapportionment happened every ten years, he did not believe it would take up too much of the District's time. Any decision to reapportion would also have to meet constitutional tests, he said, and Metro could handle that process rationally.

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Councilor Cooper supported the amendment because Metro could easily be accured by gerrymandering.

Councilor Van Bergen supported the amendment because he thought Metro should have a charter before being charged with reapportionment responsibilities.

Councilor Hansen did not support the amendment. He thought Metro should participate in reapportionment because Metro constituents would have a voice in the process.

Councilor Knowles thought Metro should have reapportionment powers and challenged Metro's legislative liaison to name an elected, local government body not empowered to reapportion its own districts. Greg McMurdo agreed no other government body existed.

Vote on Motion to Amend: A vote on the motion to amend
Resolution No. 88-916 resulted in:

Ayes: Councilors Bonner, Cooper, Kelley and Van Bergen

Nays: Councilors Collier, DeJardin, Gardner, Hansen,
Kirkpatrick, Knowles, Ragsdale and Waker

The motion failed.

Vote on the Main Motion: A vote on the motion to adopt
Resolution No. 88-916 resulted in:

Ayes: Councilors Bonnr, Collier, DeJardin, Gardner, Hansen,
Kirkpatrick, Knowles, Ragsdale and Waker

Nays: Councilors Cooper, Kelley and Van Bergen

The motion carried and Resolution No. 88-916 was adopted.

Later in the meeting it was acknowledged that although Resolution Nos. 88-915, 917 and 916 failed to receive unanimous endorsements, the Councilors' varied opinions would be forwarded to the Task Force on Metropolitan Government for further discussion.

1. INTRODUCTIONS

None.

2. WRITTEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS

None.

3. CITIZEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS

None.

4. EXECUTIVE OFFICER COMMUNICATIONS

None.

5. COUNCILOR COMMUNICATIONS

None.

6. ORDINANCES
SECOND READING

6.1 Consideration of Ordinance No. 88-248, for the Purpose of
Establishing a Builder's Business License Program
(Referred from the Intergovernmental Affairs Committee)

The Clerk read the ordinance a second time by title only.

Main Motion: The motion to adopt the ordinance was made by
Councilors Waker and Hansen on April 14, 1988.

Presiding Officer Waker announced that a first reading of the ordinance was held on April 14. The ordinance was then referred to the Council Intergovernmental Relations Committee for a public hearing, review and recommendation.

Councilor Waker, Chair of the Council Committee, reported the Committee recommended several amendments (which were incorporated in the document before the Council) including a fee of \$110.00 in Section 2.09.100. At the Committee, Councilor Kirkpatrick had recommended setting the fee by resolution. However, it was later determined by Counsel the fee should be set by means of an ordinance. Councilor Waker concurred with that recommendation.

Motion to Amend: Councilor Waker moved, seconded by Councilor DeJardin, to amend Section 2.09.030 of the ordinance to include a \$110.00 fee and to amend Sections 2.09.030 and 2.09.060 as recommended by the Committee.

Councilor Van Bergen was concerned the provisions of Section 2.09.180, authorizing the Executive Officer to establish program regulations, were "open ended." Steve Lee, Local Government Coordinator, responded that the language had been modeled after Code language for Metro's contracting and personnel programs.

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Councilor Waker reported the League of Oregon Cities and the Homebuilders Association supported the ordinance as recommended by the Intergovernmental Relations Committee.

Vote on the Motion to Amend: A roll call vote on the motion to amend Ordinance No. 88-248 resulted in all eleven Councilors present voting aye. Councilor Gardner was absent.

The motion carried and Sections 2.09.030 and 2.09.060 were amended.

Second Motion to Amend: Councilor Van Bergen moved, seconded by Councilor Kirkpatrick, to delete Section 2.09.180 of the ordinance.

Vote on the Second Motion to Amend: A roll call vote resulted in:

Ayes: Councilors Collier, Gardner, Kelley, Kirkpatrick and Van Bergen

Nays: Councilors Bonner, Cooper, DeJardin, Hansen, Knowles, Ragsdale and Waker

The motion failed.

Vote on the Motion to Adopt Ordinance No. 88-248 as Amended: A roll call vote resulted in all twelve Councilors present voting aye.

The motion carried and Ordinance No. 88-248 was unanimously adopted as amended.

7. RESOLUTIONS

REFERRED FROM THE ZOO COMMITTEE

7.1 Consideration of Resolution No. 88-920, for the Purpose of Entering Into an Contract with Guthrie Slusarenko & Associates for the Purpose of Designing and Managing the Construction of the Africa Exhibit, Phase III

As announced earlier in the meeting, consideration of the resolution was deferred to May 26, 1988, at staff's request.

REFERRED FROM THE INTERGOVERNMENTAL RELATIONS COMMITTEE

7.2 Consideration of Resolution No. 88-897, for the Purpose of Amending the Transportation Improvement Program for Transit Capital Improvements

Presiding Officer Ragsdale announced the resolution had initially been on the April 28 Council agenda but had been deferred because of certain objections to one of the funded programs raised by Councilor Waker.

Councilor Waker explained he originally had some minor objections but was now recommending the Council adopt the resolution.

Motion: Councilor Waker moved, seconded by Councilor Knowles, to adopt Resolution No. 88-897.

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

The motion carried and Resolution No. 88-897 was unanimously adopted.

REFERRED FROM THE SOLID WASTE COMMITTEE

7.3 Consideration of Resolution No. 88-866A, for the Purpose of Suspending Memorandum of Understanding Negotiations with Combustion Engineering for a Refuse-Derived Fuel Facility, Pending Approval of a Facility Site

Councilor Hansen, Chair of the Council Solid Waste Committee, reported the resolution expressed a policy that staff had already implemented. The Committee had unanimously recommended the Council adopt the ordinance.

Motion: Councilor Hansen moved adoption of the resolution and Councilor Cooper seconded the motion.

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

The motion carried and Resolution No. 88-866A was unanimously adopted.

7.4 Consideration of Resolution No. 88-867, for the Purpose of Continuing Memorandum of Understanding Negotiations with Riedel Environmental Technologies for a Mass Composting Facility

Councilor Hansen reported the Committee recommended adoption of the resolution.

Motion: Councilor Hansen moved, seconded by Councilor Cooper, to adopt the resolution.

Responding to Councilor Van Bergen's question, Councilor Hansen said the resolution had been reviewed by the Committee on April 20 and Councilor Van Bergen had voted in favor of recommending the Council adopt the resolution.

Motion to Amend: Councilor Gardner moved, seconded by Councilor Kirkpatrick, to amend the first "whereas" clause of the resolution to read: "The Metropolitan Service District has determined, as part of its Solid Waste Reduction Program adopted in Resolution No. 85-611, that up to 48 percent of the municipal solid waste in the Portland tri-county area could be allocated to alternative technology."

Councilor Gardner explained the language would be consistent with the language used in Resolution No. 88-866A and the adopted Solid Waste Reduction Program goals. Councilor Hansen concurred with the amendment.

Councilor Van Bergen asked if the amendment and the percentage requirement would have any bearing on Metro's contract with Oregon Waste Systems to operate the Arlington Landfill. Dan Cooper, General Counsel, said the resolution as amended would have no bearing on that contract.

Vote on the Motion to Amend: A vote resulted in all twelve Councilors present voting aye.

The motion to amend Resolution No. 88-867 carried unanimously.

Vote on the Main Motion as Amended: A vote on the motion to adopt Resolution No. 88-867 as amended resulted in all twelve Councilors present voting aye.

The motion carried and Resolution No. 88-876 was unanimously adopted as amended.

7.5 Consideration of Resolution No. 88-888A, for the Purpose of Evaluating Source Separated Recycling Alternatives

The resolution's co-authors, Councilors Kirkpatrick and Gardner, introduced the resolution and explained its adoption would speed up the process for a recycling feasibility study. The Solid Waste Committee recommended the Council adopt the resolution.

Motion: Councilor Kirkpatrick moved, seconded by Councilor Gardner, to adopt Resolution No. 88-888A.

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In response to Councilor Waker's question, Councilor Kirkpatrick confirmed that adoption of the resolution would not commit the Council to any specific course of action.

Councilor DeJardin thought the resolution unnecessary because it did not commit the Council to take action.

Presiding Officer Ragsdale was concerned that adoption of the resolution could disrupt staff's workload. Councilor Kirkpatrick explained staff was in the process of responding to the Solid Waste Committee's inquiry about how the program would effect staff work. She also noted that staff had declined the Committee's offer for outside assistance.

Judy Dehen, 2965 N.W. Verde Vista, Portland, representing the Columbia Group of the Sierra Club, testified in favor of the resolution. She said there would be no "down side" for Metro if the resolution were adopted. The Council had adopted a waste reduction program in 1985 and no work product had resulted, she explained. Ms. Dehen thought the general public viewed Metro's number one priority for solid waste disposal as alternative technology facilities. Recycling programs had been ignored. She challenged the Council to advance recycling programs.

A discussion followed about whether the 52 percent recycling goal identified in the resolution and the Solid Waste Reduction Program was realistic. Councilor Van Bergen did not think the goal realistic. Councilor Kirkpatrick pointed out the goal had been adopted by ordinance and would not effect Metro's contract with Oregon Waste Systems. Ms. Dehen urged the Council to provide visionary leadership and work to meet the goal.

Vote on the Motion to Adopt Resolution No. 88-888A: A vote on the motion resulted in all Councilors present voting aye except for Councilor DeJardin. Councilor DeJardin voted no. No Councilors were absent.

The motion carried and Resolution No. 88-888A was adopted.

8. ORDERS

8.1 Consideration of Order No. 88-18, in the Matter of Contested Case No. 88-18, a Petition for a Major Amendment to the Urban Growth Boundary by BenjFran Development Company

Presiding Officer Ragsdale announced that at the April 28 Council meeting the Council heard a summary of the Hearings Officer's Report, testimony from the petitioners, testimony from the opponents and the petitioners' rebuttal of the opponents' testimony. The

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Council then deliberated on the matter. A motion made by Councilors Hansen and Van Bergen failed to carry that would have remanded the matter back to the Hearings Officer for further proceedings to establish a basis to support adoption of the proposed Urban Growth Boundary (UGB) amendment (4/6 vote). Another motion made by Councilors Gardner and Kirkpatrick also failed to carry that would have adopted Order No. 88-18 in support of the Hearings Officer's findings (5/5 vote). The Council finally adopted a motion made by Councilors Knowles and DeJardin to defer the matter to the May 12 meeting (7/3 vote). When making the motion, Councilor Knowles requested he be given the opportunity at the May 12 meeting to ask questions of the petitioners and defendants.

Councilor Waker announced he would abstain from voting on the BenjFran matter because his engineering firm could gain financially if the UGB were amended in favor of BenjFran Development Company. The Councilor left the room and did not participate in deliberations concerning the matter.

Motion: Councilor Gardner moved, seconded by Councilor Kirkpatrick, to adopt Order No. 88-18 in support of the Hearings Officer's recommendation to deny BenjFran's petition to amend the UGB.

Councilor Knowles announced he had reviewed the evidence heard at the April 28 meeting and the materials provided by staff. He had no questions of the parties. He concluded the Hearings Officer's recommendation should be adopted. He did not think it proper for the Council to base its decision on whether BenjFran's proposal would create new jobs in the region. He thought the issue was whether land existed inside the UGB that could accommodate the needs proposed by BenjFran. He pointed out that BenjFran preferred the APS type industrial park but they had failed to meet the test of State Land Use Goal 14. The Councilor recalled that Dale Weight, BenjFran's Chief Executive Officer, had testified on April 28 that Metro could use the UGB amendment process to stimulate employment. He explained that if the Council actually made a decision in BenjFran's favor based on that argument, the Boundary would no longer have any meaning. He concluded that both sides had presented excellent arguments and the decision was a difficult one to make. He was very concerned about the uncertainty of the amendment process. No applicant, he said, should have to spend large sums of money and still not have certainty of an outcome.

Councilor Kirkpatrick explained she advocated planned growth but Metro's most recent vacant land inventory had indicated available land within the UGB that could be used by BenjFran. She was not satisfied BenjFran had demonstrated a need for the land in question.

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At Councilor Hansen's request, Dan Cooper, General Counsel, reviewed the Council's options as detailed on page 4 of his memo to the Council dated April 25, 1988. In addition to those options, the Council could direct Counsel to prepare findings to grant BenjFran's request (an option he did not recommend), or the Council could prepare its own findings in support of BenjFran's request. The Council could also recommend the matter be referred back to the Hearings Officer, as suggested by Councilor Kelley on April 28, for the purpose of conducting additional hearings on specific land use issues, he said.

Councilor Hansen said he would vote against the motion on the table. He thought it a bizarre interpretation of the rules to allow for orderly growth by not granting BenjFran's request.

Councilor Van Bergen agreed with Councilor Hansen. He explained the land parcel was unique -- perhaps less unique than the parcels amended into the UGB for Riviera Motors and Kaiser. He thought the argument for orderly growth synonymous with no growth in this case.

Councilor Gardner did not agree with Councilor Hansen and Van Bergen's arguments. He noted that Councilors had been receiving many letters in support of BenjFran's application which urged Councilors to not take an "anti-growth" position by denying BenjFran's request. He strenuously rejected that characterization of the issue. The issue, he explained, was actually whether the request was in compliance with state land use goals, particularly Goal 14. He thought there was a sufficient land inventory within the Boundary to accomodate BanjFran's needs. He explained the Boundary had been broadly drawn and had included an excess of urban land. As stated earlier by Councilor Kirkpatrick, a recent vacant land inventory indicated surplus urban land still existed. Councilor Gardner concluded that BenjFran had not made an effective argument and had only pursued land parcels with single ownership.

Councilor Van Bergen pointed out that in his earlier statements he had not referenced any intended land use for the property in question. He did not think it appropriate for the Council to consider land use.

Vote on the Motion to Adopt Order No. 88-18: A vote on the Motion resulted in:

Ayes: Councilors Bonner, Collier, DeJardin, Gardner, Kirkpatrick and Knowles

Nays: Councilors Cooper, Hansen, Kelley, Ragsdale and Van Bergen

Abstain: Councilor Waker

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The motion carried and Order No. 88-18 was adopted. The order was in support of the Hearings Officer's recommendation to deny BenjFran's petition to amend the UGB.

Presiding Officer Ragsdale called a recess at 7:50 p.m. The Council reconvened at 8:00 p.m.

9. EXECUTIVE SESSION, Held Under the Authority of ORS 192.660(1)(h), for the Purpose of Discussing Litigation Matters with General Counsel Relating to the Clackamas Transfer & Recycling Center (No Action)

The Presiding Officer called the meeting into executive session under the authority of ORS 192.660(1)(h) at 8:00 p.m. All twelve Councilors were present. Others present included Dan Cooper, General Counsel; Richard Owings, Solid Waste Director; Don Carlson, Council Administrator; and Harry Bodine, Oregonian reporter. Mr. Cooper discussed with the Council the recent decision by the Clackamas County Circuit Court that Metro was in violation of the City of Oregon City's conditional use permit. The permit imposed a 700 ton per day limit on waste entering the Clackamas Transfer & Recycling Center (CTRC).

At 8:20 p.m., Presiding Officer Ragsdale called the meeting back into regular session.

Deliberations Concerning CTRC in Regular Session

Councilor Knowles asked Mr. Owings to explain the basis of Executive Officer Cusma's recommendation, from a policy point of view that Metro not appeal the Court's decision. Mr. Owings replied the Executive had concurred with Mr. Cooper's opinion that the odds of winning an appeal would be less than 50 percent.

Councilor Knowles asked staff to explain any plan it might have developed to meet the 700 ton per day limit. Mr. Owings explained staff were in the process of preparing alternatives for the Executive's review. He thought the Executive would make a decision within the next few days. He said the alternatives were to close the CTRC gates when the 700 ton limit was reached; or to eliminate certain classes of haulers from using the facility -- such as commercial or private haulers. He acknowledged there was no good way to resolve the problem.

Councilor Van Bergen advised filing an appeal to the Circuit Court's decision. He thought it unimportant whether the appeal would win or lose. The value of an appeal, he explained, was that the case would be properly reviewed by a court of appeal and Metro owed it to the community to pursue that review.

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Motion: Councilor Van Bergen moved, seconded by Councilor Kirkpatrick, that the Presiding Officer negotiate with the Executive Officer to instruct General Counsel to file an appeal of the Clackamas County Circuit Court's decision concerning the 700 ton per day limit imposed on Metro by the City of Oregon City.

Councilor Kirkpatrick said she still wanted the Solid Waste staff to pursue alternatives for complying with the 700 ton per day. She also requested the Council Solid Waste Committee have input into reviewing alternatives. The Council, she explained, needed to know whether CTRC would be closed down when the limit was reached or whether flow control measures would be exercised. She concurred Metro should pursue the appeal with the realization it probably would not win the case.

Councilor Waker asked whether the Council or the Executive Officer would make decisions regarding how Metro would comply with the limit and whether flow control measures should be taken. Councilor Hansen volunteered to answer the question after Councilor DeJardin made his comments.

Councilor DeJardin support an appeal, explaining he did not like "going down without a fight." He thought Metro owed it to the public to pursue every option available since the impact on the public would be considerable. He said he was also in conflict about whether Metro should spend time and energy trying to soften the impact of the Court's decision. He wanted to make it very clear to the users of CTRC that any inconvenience they were experiencing was due to Oregon City's action.

Councilor Hansen suggested the Solid Waste Committee meet on May 17 to discuss the CTRC tonnage limit. In response to Councilor Waker's earlier question about whether the Council or the Executive Officer should decide how Metro should comply with the limit, he thought the Executive should make the decision. He explained Executive Officer Cusma was in charge of operations. If the Council had problems with how her decisions were implemented, it could then establish specific policies, he said. Because timing was an issue, he thought it appropriate for the Executive to take immediate action and the Council would have opportunity later to concur or change the policy.

Councilor Collier said she wanted very much for the Council to follow Counsel's advice regarding the case. She also advocated working with the City of Oregon City to change the tonnage limit. She opposed being involved in a lawsuit with the City, especially when the odds of winning the suit were not favorable.

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Councilor Kelley agreed with Councilor Collier. She thought an appeal a waste of resources.

Councilor Waker acknowledged the risk of the appeal but also noted the unpleasant consequences of shutting down CTRC to comply with the tonnage limit, such as illegal dumping. Councilor Collier explained that given those problems, the public would then pressure Oregon City to remove the tonnage limit.

Vote: A vote on the motion resulted in:

Ayes: Councilors Bonner, DeJardin, Gardner, Kirkpatrick, Knowles, Ragsdale and Van Bergen

Nays: Councilors Collier, Cooper, Hansen, Kelley and Waker

The motion carried.

Councilor Kirkpatrick said she wanted the opportunity to give the Executive Officer policy direction before any decisions were made concerning CTRC. Presiding Officer Ragsdale thought it appropriate -- due to the politically charged nature of the issue -- for a subcommittee of the Council Solid Waste Committee to monitor the situation and advise the Council as necessary.

Councilor Hansen said he was willing to convene the Solid Waste Committee before May 31 in order to receive testimony from hauling industry representatives.

Councilor Van Bergen urged Council and Executive Officer cooperation because flow control measures could be imposed. He pointed out that Metro had never before employed flow control measures. Councilor Hansen noted that Metro had flow control authority but had not yet adopted legislation on the issue.

10. RESOLUTION NOS. 88-915, 88-917 AND 88-916

The three resolution were considered at the beginning of the meeting.

11. COMMITTEE REPORTS

Councilors reported on the upcoming groundbreaking ceremony for the Convention Center, the canceled May 19 Finance Committee meeting and a time change for the upcoming Planning & Development Committee.

Presiding Officer Ragsdale requested, on behalf of Senator Glenn Otto, that Councilors attend upcoming community meetings concerning the activities of the Interim Task Force on Metropolitan Government.

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The meeting was adjourned at 8:45 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "A. Marie Nelson". The signature is written in dark ink and is positioned below the typed name.

A. Marie Nelson
Clerk of the Council

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