

**MINUTES OF THE COUNCIL
OF THE METROPOLITAN SERVICE DISTRICT**

**Regular Meeting
February 23, 1989**

Councilors Present: Councilors Mike Ragsdale (Presiding Officer), Sharron Kelley (Deputy Presiding Officer), Lawrence Bauer, Roger Buchanan, Tanya Collier, Richard Devlin, Tom DeJardin, Jim Gardner, Gary Hansen, David Knowles, George Van Bergen and Judy Wyers

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

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

1. INTRODUCTIONS

None.

2. CITIZEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS

None.

3. EXECUTIVE OFFICER COMMUNICATIONS

Executive Officer Cusma reported that steel for Convention Center tower structures had arrived and the project was proceeding on schedule. A "topping out" celebration was scheduled for April 1, 1989. She also reported that a hearing of the House Intergovernmental Affairs Committee, chaired by Representative Al Young, was scheduled at Metro on April 7, 1989, to discuss Metro governance issues.

4. COUNCILOR COMMUNICATIONS

4.1 Consideration of Resolution No. 89-1060, in Memory of Polly Casterline and in Appreciation for her Contributions to the Greater Portland Metropolitan Area

Motion: Councilor Hansen moved, seconded by Councilor Kelley, to suspend the Council's rules requiring referral of resolutions to a committee for Resolution No. 89-1060.

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

The motion carried and the rules were suspended for Resolution No. 89-1060.

Motion: Councilor Kelley moved, seconded by Councilor DeJardin, to adopt Resolution No. 89-1060.

Presiding Officer Ragsdale read the resolution and announced that a signed copy of the document would be sent to the Multnomah County Commission and to Ms. Casterline's family.

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

The motion carried and the resolution was unanimously adopted.

5. CONSIDERATION OF MINUTES

Motion: Councilor Gardner moved, seconded by Councilor Wyers, to amend page 1 of the minutes to note that Senate Bill 211 had not been scheduled for a hearing as erroneously stated by Greg McMurdo on January 26.

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

The motion carried. Councilor Gardner also noted a scrivener's error on page 6 of the minutes. The date "February 9" will be changed to read "March 9."

Motion: Councilor Gardner moved, seconded by Councilor Van Bergen, to approve the minutes of January 26, 1989, as amended.

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

The motion carried and the minutes were approved as amended.

6. ORDINANCE, FIRST READING

6.1 Ordinance No. 890-285, for the Purpose of Amending Metro Code Chapter 2.02 by Adding Section 2.02.285 and Establishing a Smoking Policy for the Metro Center Building

The Clerk read the ordinance by title only for a first time. Presiding Officer Ragsdale announced the ordinance had been referred to the Council Internal Affairs Committee.

7. ORDINANCE, SECOND READING

7.1 Consideration of Ordinance No. 89-286, for the Purpose of Amending Metro's Urban Growth Boundary for Contested Case No. 88-4; Bean Property

The Clerk read the ordinance by title a second time. Presiding Officer Ragsdale noted a first reading and public hearing on the ordinance was held on January 26, 1989. The Council had also heard the Hearings Officer's report and recommendation at that meeting. He reminded the Council that it would be considering this case in its capacity as a quasi-judicial board.

Dan Cooper, General Counsel, reported that Mr. Bean, the applicant, was not able to attend this meeting due to an emergency medical problem. He requested if Councilors had any questions that could not be answered by staff, the matter be continued to a date when the applicant could appear.

Motion: Councilor DeJardin moved to adopt the ordinance and Councilor Collier seconded the motion.

There was no discussion or testimony given on the ordinance.

Vote: A roll call vote on the motion to adopt the ordinance resulted in all twelve Councilors present voting aye.

The motion carried and the ordinance was adopted.

8. ORDER

8.1 Consideration of Order No. 89-20, for the Purpose of Denying a Petition to Amend Metro's Urban Growth Boundary in the Matter of Contested Case No. 88-2; Mt. Tahoma Property

Presiding Officer Ragsdale referred Councilors to a letter dated February 23, 1989, from Richard T. Ligon, the applicant's representative, requesting that consideration of the order be deferred to April 27, 1989. In the letter Mr. Ligon explained he was unable to attend this meeting due to a conflict of scheduling. The Presiding Officer asked if any Councilors objected to setting the matter over to April 27.

Councilor Van Bergen said he was reluctant to set the matter over because Mr. Ligon had not provided a pressing reason for the delay.

Dan Cooper, General Counsel, explained the Council had no obligation to grant Mr. Ligon's request. He did not think it a problem to grant

Mr. Ligon's request, however, if none of the parties to the case objected to a deferred consideration date. He said he had conferred with the Presiding Officer on the matter in advance of the meeting.

Councilor Van Bergen again expressed his reluctance to grant the request because Mr. Ligon had not stated a valid reason for delay. The Presiding Officer agreed the Council needed to adopt a procedure for future cases that would allow deferral for emergency situations only. He then asked if there were any formal objections to setting the matter over to April 27. There being no objections, the Presiding Officer announced the matter would be set over to April 27, 1989.

9. RESOLUTIONS

9.1 Consideration of Resolution No. 89-1055, for the Purpose of Expressing Council Intent to Amend Metro's Urban Growth Boundary for Contested Case No. 88-3: St. Francis Property

Presiding Officer Ragsdale announced the Council would be considering the Resolution in its capacity as a quasi-judicial board. Mr. Cooper briefly described the case and introduced Larry Epstein, hearings officer for the case.

Mr. Epstein explained the Council was being asked to adopt Resolution No. 89-1055 which would express the Council's intent to Amend the Urban Growth Boundary (UGB) for the St. Francis case. If the resolution were adopted, the petitioner would need to annex the property to Metro prior to Council action on an ordinance which would formally grant the petition.

In response to Councilor Van Bergen's questions, Mr. Epstein explained that Metro, by State Statute, had the power to expand the existing UGB upon proper petition and findings when the land was within the District's boundaries. When the land in questions was outside the District's boundaries Metro could, by adoption of a resolution, concur with the property owner's petition to the Boundary Commission to annex land into the District after which the land could be amended into the UGB.

In response to Councilor Hansen's request, the Presiding Officer deferred consideration of this matter until later in the meeting because the meeting was running one hour ahead of schedule. Councilor Hansen was concerned there could be parties wanting to testify that had not yet arrived at the meeting.

9.2 Consideration of Resolution No. 89-1052, for the Purpose of Approving the One Percent for Recycling Guidelines and Request for Proposals

The resolution was considered later in the meeting.

9.3 Consideration of Resolution No. 89-1057, for the Purpose of Assessing Local Government Dues for FY 1989-90

Councilor Gardner presented the Intergovernmental Relations Committee's report and recommendation, explaining the Committee had unanimously recommended adoption of the resolution. He reported that the City of Portland and Multnomah County were initially reluctant to support the reassessment due to budget concerns. The two governments were also uncertain that Metro's new regional land information computer system, paid for by dues, would be beneficial to them. The City and the County, however, offered no advice on which services Metro should cut if local government dues were reduced. He also said that Multnomah County Commissioner Gretchen Kafoury thought Metro should be more involved in regional planning activities and less involved in local government coordination activities. He said Commissioner Kafoury later called staff and supported maintaining a 51 cents per capita dues assessment. He also explained that local governments were asked to put specific suggestions in writing about the dues program changes but none were received.

Motion: Councilor Gardner moved, seconded by Councilor Collier, to adopt Resolution No. 89-1057.

Councilor Van Bergen thought Metro should be more involved in regional planning and local government coordination. He cited criminal justice as an area where Metro could be more involved.

Councilor Devlin strongly disagreed with Commissioner Kafoury's opinion that Metro should not be involved in local government coordination efforts. He thought coordination a very appropriate activity for Metro.

In response to Councilor Bauer's question, Councilor Gardner explained the annexation of property from Multnomah County to the City of Portland would not effect the amount of dues assessed since the County was assessed for citizens living in unincorporated areas only.

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

The motion carried and the resolution was adopted.

2.4 Consideration of Resolution No. 89-1048, for the Purpose of Authorizing a Change Order to the Contract with Hoffman/Marmolejo for Construction of Skyview Terraces for the Oregon Convention Center

Councilor Knowles presented the Convention, Zoo & Visitor Facilities Committee's report and recommendation. He explained the Council was being asked to decide whether a change order should be authorized to construct two "skyview terraces" into the towers of the Convention Center building. The decision to construct the facilities could only be made at this time, he said, because they were part of the structural steel contractor's project. If the decision were made not to authorize the change order, the Council would forever preclude adding the facilities to the project.

Councilor Knowles further explained it would cost an additional \$420,000 to add the amenity to the construction contract. The project budget contained enough cash on hand to finance the project but a budget amendment would have to be made at some future time to add funds to the project budget. He said those funds could come from either hotel/motel taxes or from interest earnings on revenue bonds. Councilor Knowles reported the Committee's recommendation to adopt the resolution was unanimous but the Committee also challenged the Metropolitan Exposition-Recreation Commission to develop a detailed business plan for operating the proposed facilities.

In conclusion, Councilor Knowles reported the Advisory Committee on Design and Construction had endorsed the skyview terraces project. He also read a letter from Mary Arnstad, owner of the Heathman Hotel, in support of the project. He agreed with Ms. Arnstad that the terraces would greatly add to the amenities of the Convention Center and would serve to broaden the visitors' interest in Oregon.

Motion: Councilor Knowles moved to adopt the resolution and Councilor DeJardin seconded the motion.

In response to Councilor Bauer's question, Neil McFarlane, Public Facilities Analyst, explained that projections for bond earnings for the Convention Center project were estimated at about \$8.1 million. Due to federal requirements, if earnings exceeded the interest rate paid to bond holders, funds would have to be returned to the Federal government. A net amount of \$7.2 was available for allocation by the Council, he said.

Councilor Collier asked about costs for finishing the terraces. Councilor Knowles said it would cost approximately \$580,000 to complete the project and the facilities could be completed at some point in the future when funds were available.

Councilor Collier suggested, in her capacity as Chair of the Finance Committee, the Council decide on a mode of funding the project at this time. Executive Officer Cusma responded she would be submitting a funding recommendation to the Council as part of her FY 1989-90 budget.

Councilor Van Bergen said he was very comfortable with the Committee's recommendation and reminded the Council this was the only opportunity to consider adding the project to the Convention Center. He assured Councilor Collier her budget concerns had been reviewed.

Presiding Officer Ragsdale said he would be unwilling to use hotel/motel tax funds for the feature because he thought the Council had a public covenant with voters that those funds would be used for other purposes. He disagreed with Councilor Knowles there was a choice of funding modes.

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

The motion carried and the resolution was unanimously adopted.

9.2 Consideration of Resolution No. 89-1052, for the Purpose of Approving the One Percent for Recycling Guidelines and Request for Proposals

Councilor Wyers presented the Solid Waste Committee's report and recommendation for the resolution. She first introduced members of the One Percent for Recycling Advisory Committee present at the meeting as well as Judith Mandt, staff to the Committee. Councilor Wyers discussed the history of the program and the checkpoints in the process of developing recommended guidelines and request for proposals (RFP). She reported if Resolution No. 89-1052 were adopted, proposals would be solicited and ready for Committee evaluation in June.

Motion: Councilor Wyers moved, seconded by Councilor Hansen, to adopt Resolution No. 89-1052.

There was no discussion on the motion.

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

The motion carried and the resolution was unanimously adopted.

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9.5 Consideration of Resolution No. 89-1054, for the Purpose of Authorizing the General Counsel to Intervene on Behalf of the District in 1000 Friends of Oregon vs. Washington County (LUBA No. 88-106, 107, 108)

Presiding Officer Ragsdale reported he had introduced the resolution and requested, because of timing constraints, the Council consider it rather than going through the usual committee process.

Motion: Councilor Gardner moved, seconded by Councilor Devlin, to suspend the Council's rules requiring referral of resolutions to a Council committee for Resolution No. 89-1054.

Vote: A vote on the motion resulted in all twelve Councilors present voting aye except for Councilor Knowles who voted no.

The motion carried and the rules were suspended for consideration of the resolution.

Dan Cooper reviewed a memo dated February 23, 1989, from Metro counsel Larry Shaw concerning the proposed intervention in the Washington County Transportation Plan appeal. Mr. Cooper said he had prepared the resolution at the Presiding Officer's request.

Motion: Presiding officer Ragsdale moved to adopt the resolution and Councilor Devlin seconded the motion.

Councilor Knowles questioned why the resolution was being brought before the Council on an emergency basis since the Council had previously stated its position by adoption of the Southwest Corridor Study as part of the Regional Transportation Plan.

Mr. Cooper explained Metro had indeed adopted the alternatives contained in the Southwest Corridor Study. However, the alternatives needed to be included in Washington County's Comprehensive Plan before the federal government would provide funding for any of the alternatives. 1000 Friends of Oregon appealed Metro's adoption of the Southwest Corridor Study, he said, and it could be desirable to intervene on behalf of the District in order for Metro to explain its position to the Land Use Board of Appeals (LUBA).

Councilor Knowles thought it inappropriate for the Council to adopt this resolution determine land uses for Washington County by adoption of the resolution.

Councilor Devlin thought the issue before the Council went beyond whether the Western Bypass should be included in Washington County's

Comprehensive Plan. The issue, he said, concerned Metro's ability to conduct long-range, regional planning. If Metro had to address all land use issues in advance of adopting plans, nothing would ever be accomplished, he said.

Councilor Bauer thanked the Presiding Officer for placing the Resolution on the Council agenda because he thought the matter was indeed an "act now" issue and that Metro's intervention was necessary to secure approval of Washington County's Comprehensive Plan. Councilor Gardner questioned why Metro should have to intervene in this matter since the Western Bypass option had been adopted by the Council as part of the Regional Transportation Plan.

In response to Councilor Knowles' question, Mr. Cooper said staff had no recommendation on the resolution. Executive Officer Cusma said she concurred with the Presiding Officer that the resolution should be adopted and that Metro was the best possible party to argue its own case before LUBA.

Withdrawal of Motion: Presiding Officer Ragsdale and Councilor Devlin withdrew their motion to adopt Resolution No. 89-1054 as a result of Councilor Van Bergen's challenge that it was inappropriate for the Presiding Officer to make the motion.

Motion: Councilor Devlin moved, seconded by Councilor Bauer, to adopt Resolution No. 89-1054.

Councilor Devlin spoke in favor of adopting the resolution, saying this was the opportunity to protect Metro's interests. If the Council did not act now, all future opportunities would be foreclosed, he said.

Councilor Knowles urged Councilors to oppose the resolution for the following reasons: 1) 1000 Friends of Oregon had filed its brief on February 2 and there had been enough time to consider an intervention via an open, committee process; 2) no Metro technical staff had presented a recommendation; and 3) Washington County was capable of making its own arguments before LUBA.

In response to Councilor Gardner's question, Mr. Cooper said Metro Counsel Larry Shaw had started preliminary work to prepare a brief if the Council should authorize intervention. The brief would include a discussion of the types of land use decisions needed to demonstrate full compliance with all state land use goals. Staff was taking the position that this early stage was not the appropriate time to require full goal findings. The appropriate time should come when the actual plan amendment was made for the alignment, he explained, which would be consistent with past practices.

Councilor Gardner said that staff's position was the same point raised by the Joint Policy Advisory Committee on Transportation (JPACT) and the Council at the time the Council considered making the Westside Bypass part of the Regional Transportation Plan. He recalled that 1000 Friends of Oregon and others had raised their concerns and they were told that by including the Bypass in the RTP, Metro was not making a land use decision. The land use decision would be made later, they had been told. The Councilor said his concern was that when the Council took the position that it could make a transportation decision without concerning itself with land use issues, it would be presupposing that those land use decisions would follow. He said the Council had accomplished its goal of getting the Western Bypass included in the RFP so that it would be eligible for funding for preliminary engineering. However, he said, in this case the issue was whether the facility should exist outside the Urban Growth Boundary. He said he was concerned that Council intervention would result in Metro influencing that land use process. He thought the Council should have a policy regarding whether it could make transportation decisions in advance of land use decisions and advised against intervention in this case.

Councilor Hansen said he had grave concerns about the land use implications of the Western Bypass. He recalled he had been in the minority when he had voted against the Bypass the last time that issue had been before the Council. The issue now before the Council was the protection of a very specific Metro interest to be able to add projects to the RTP and obtain federal funds. He thought it appropriate for Metro to intervene in this case rather than depending on a third party to defend Metro's role.

Councilor Wyers said she was seriously disturbed and somewhat embarrassed about the process by which this resolution was being considered. She said that as a new Councilor she had been told that land use issues were some of the most controversial decisions the Council would be called to make. Therefore, she had pledged to hear those matters fairly, openly and completely. She perceived that Resolution No. 89-1054 was being considered after a suspension of rules, a motion by the chair to adopt the resolution, no technical staff recommendation, and only two members of the public present. The issue had not been before a committee. She was also concerned that Councilors would not be given the opportunity to review the brief prepared by counsel before it was filed with LUBA. For those reasons, Councilor Wyers said she would not support the resolution.

Councilor Bauer favored adoption of the resolution and thought suspension of the rules was a minor consideration given the larger issue of whether Metro should stand behind its planning efforts. He further pointed out the Council had received staff's recommendation from the Executive Officer at this meeting. He thought it Metro's

responsibility as a regional planning agency to intervene in the case in order to provide a regional planning perspective.

Councilor Knowles again pointed out that the Council could have been informed about this matter as early as February 2. Although he supported the Western Bypass project, he said he would not support the resolution because it would be endorsing a process the Council had never before followed.

Councilor Devlin said he concurred with Councilor Bauer's comments. He thought the central issue before the Council was not about the Western Bypass project but about whether it was appropriate for Metro to comment on land use issues after the RTP had been adopted. He agreed with Councilor Bauer that the Council should not foreclose its opportunity to intervene simply because its usual process had not been followed. He said the Council had a responsibility to the region to act in this matter. He pointed out that there had been ample preliminary public discussion on the matter when RTP hearings had been held before JPACT and the Council.

Councilor Gardner said he would support the resolution if he could be convinced that by intervening, transportation planning would proceed land use decisions. However, he said, Councilor Bauer's comments had convinced him that by intervening, Metro would be sending a larger message that it supported Washington County's position in the lawsuit. He pointed out that Metro had taken other steps to protect its regional land use planning role and adoption of the resolution would not serve that purpose.

Vote: A vote on the motion resulted in:

Ayes: Councilors Bauer, Buchanan, Devlin, DeJardin, Hansen, Kelley, Van Bergen and Ragsdale

Nays: Councilors Collier, Gardner, Knowles and Wyers

The motion carried and Resolution No. 89-1054 was adopted.

Under Agenda Item No. 10, "Committee Reports," Councilor Knowles served notice that he would possibly move to have Resolution No. 89-1054 reconsidered. The Presiding Officer ruled the notice out of order.

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9.1 Consideration of Resolution No. 89-1055, for the Purpose of Expressing Council Intent to Amend Metro's Urban Growth Boundary for Contested Case No. 88-3: St. Francis Property

The Council resumed consideration of this item from earlier in the meeting.

Larry Epstein, Hearings Officer for the case, first introduced himself to the Council. Because this was his first presentation to the Council in the capacity as Hearings Officer, Mr. Epstein discussed his background and qualifications.

Mr. Epstein reviewed the document entitled "Report and Recommendation of the Hearings Officer" for the St. Francis case. He first described the site and its surroundings, explaining that the petitioner, Rev. Thomas Cummins for the St. Francis of Assisi Episcopal Church, had applied to have the four acres included within the Urban Growth Boundary (UGB). If the petition was granted, Rev. Cummins would request the property be annexed to the city of Wilsonville. Mr. Epstein concluded that including the land in the Urban Growth Boundary (UGB) would result in an orderly and efficient improvement to urban services. He also explained the site had been part of the impetus for adoption of Ordinance No. 88-261 which had established procedures for identifying protected agricultural land within the UGB.

Mr. Epstein noted the subject property was now served by the Aurora Fire District and if annexed, it would be served by the Tualatin Fire Protection District. The Aurora Fire District Chief testified at a previous hearing that confusion could result for the fire districts and emergency service dispatchers if the land were annexed and under the jurisdiction of the Tualatin Fire Protection District. The Tualatin Fire Protection District, city of Wilsonville, Oregon Department of Transportation and Canby Elementary School District supported the petition. He reported the Canby High School District had filed a conditional recommendation for approval of the petition. Clackamas County filed a statement of "no objection" to the petition, concluding that granting the petition would not affect UGB designations of nearby rural residential or agricultural lands.

Finally, Mr. Epstein said there was no similarly situated land in the area that would result in additional petitions to amend the UGB.

Councilor DeJardin declared himself in conflict of interest because his employer was involved in a major development project in the Spring Ridge and Chamberlain area. However, the Councilor said he would not realize any financial gain due to that connection and he would be voting on the St. Francis matter.

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Earl Lathrup, representing the St. Francis of Assisi Episcopal Church, testified that the Aurora Fire District Chief had argued at the previous hearing that he did not want to lose rural land. Mr. Lathrup thought the land should rightfully be incorporated into the city of Wilsonville.

No one spoke in opposition to the petition.

Motion: Councilor DeJardin moved to adopt Resolution No. 89-1054 and Councilor Gardner seconded the motion.

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

The motion carried and the resolution was adopted.

10. COMMITTEE REPORTS

Councilor Per Diem and Expense Guidelines. Councilor Van Bergen requested the Council review its guidelines for per diem and expense reimbursements to allow Councilors to collect per diem for attending Council committee meetings of which they were not members.

Goals and Objectives Work Session. Councilor Bauer requested a work session be scheduled to reach consensus on major goals and objectives for FY 1989-90.

Discussion of Possible Reconsideration of Item No. 9.5 (Resolution No. 89-1054). Councilor Knowles declared he was serving notice that he might possibly move to have Resolution No. 89-1054 reconsidered. Presiding Officer Ragsdale declared the notice out of order since Councilor Knowles had not voted on the prevailing side of the motion. Councilor Knowles then announced he would change his vote for the purpose of serving notice to have the resolution reconsidered. Dan Cooper, General Counsel, declared that per Roberts' Rules of Order, Revised, the Councilor could not change his vote after the Presiding Officer had declared the result of the vote on Resolution No. 89-1054.

Discussion followed about several instances where Councilors had changed votes after the result of a vote had been announced. The Presiding officer accepted counsel's ruling as it related to Resolution No. 89-1054. He also requested counsel draft an amendment to the Council's procedures which would allow councilors to change votes as long as the votes were changed before proceeding to another agenda item.

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EXECUTIVE SESSION: Held Under the Authority ORS 192.660(1)(h), for the Purpose of Discussing Litigation with Counsel

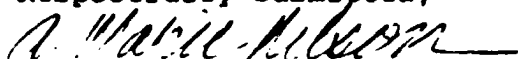
At 8:35 p.m., Presiding Officer Ragsdale called the meeting into executive session. All twelve Councilors were present at the session. Executive Officer Cusma, Dan Cooper and Don Carlson were also in attendance. The meeting was called back into regular session at 8:45 p.m.

Discussion Concerning Metro's Credit Policy to Solid Waste Collectors

The Council discussed the effect of Metro's recent solid waste disposal rate increases on the collection industry. It was acknowledged that some collectors were experiencing financial difficulty as a result of rate increases. It was the consensus of the Council that General Counsel have the authority to proceed with necessary on legal actions concerning solid waste collection problems. General Counsel was also asked to contract with an outside legal firm, if necessary, to ensure that an aggressive collection policy would continue. The Presiding Officer asked counsel to request the Council's assistance if an ordinance or additional approval were needed to pursue a specific course of action.

There was no other business and the meeting was adjourned at 9:00 p.m.

Respectfully submitted,



A. Marie Nelson
Clerk of the Council

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