

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

**April 13, 1989
Regular Meeting**

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

Councilors Absent: Tanya Collier

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 that items 6.4 and 6.5 had been added to the agenda and that an executive session concerning bargaining agreement negotiations might be conducted as part of item 6.5. He also explained that the consideration time for item 6.4 was incorrectly printed in the agenda and would actually occur about one hour earlier.

1. INTRODUCTIONS

None.

2. CITIZENS COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS

None.

3. EXECUTIVE OFFICER COMMUNICATIONS

Executive Officer Cusma reported she would serve on the National Association of Regional Councils' Nomination Committee and that Councilor Ragsdale would be a keynote speaker at the NARC Conference in Houston.

4. CONSENT AGENDA

The Presiding Officer explained that revisions to the minutes had been distributed and that a motion to approve the consent agenda would include the revised version of the minutes.

Motion: Councilor DeJardin moved, seconded by Councilor Devlin, to approve items 4.1 and 4.2 of the consent agenda.

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

The motion carried and the following items were approved:

4.1 Minutes of March 9, 1989.

4.2 Resolution No. 89-1077, Authorizing Easement for Bureau of Water Works, City of Portland, for Construction and Inspection of Water Line on Site of the Oregon Convention Center

5. ORDINANCE, SECOND READING

5.1 Consideration of Ordinance No. 89-292, Amending Ordinance No. 88-247, Revising the FY 1988-89 Budget and Appropriations Schedule for Zoo Operations and AfriCafe Basement Improvements

The clerk read the ordinance a second time by title only. Presiding Officer Ragsdale announced that the ordinance had received a first reading before the Council on March 23, 1989. The ordinance was then referred to the Council Finance Committee and the committee conducted a hearing on April 6.

Councilor DeJardin presented the Committee's report and recommendation explaining support was unanimous for the budget amendment. The Committee agreed that by providing funding for more visitor services workers and improvements for the cafe basement, the Zoo would be in a position to generate additional revenue. He also said the Convention, Zoo and Visitor Facilities Committee had supported the budget amendment.

Motion: Councilor DeJardin moved, seconded by Councilor Knowles, to adopt Ordinance No. 89-292.

Councilor Knowles said the Convention, Zoo and Visitor Facilities Committee had reviewed the contract for improvements to the AfriCafe Basement and had unanimously approved that project.

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

The motion carried and the resolution was unanimously adopted.

6. RESOLUTIONS

6.1 Consideration of Resolution No. 89-1070, Approving a Contract for Construction of the AfriCafe Basement

Councilor Knowles reported earlier in the meeting that the contract had been unanimously recommended for approval by the Convention, Zoo and Visitor Facilities Committee.

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

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

The motion carried and the resolution was unanimously adopted.

6.2 Consideration of Resolution No. 89-906, Supporting the Renaming of Union Avenue as Dr. Martin Luther King, Jr. Boulevard

Councilor Knowles, reporting for the Convention, Zoo and Visitor Facilities Committee, said the Committee recommended adoption of the resolution because it would have a positive effect on the Union Avenue area and would be in keeping with the spirit of Dr. King.

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

Councilor DeJardin concurred with Councilor Knowles remarks and added it was especially important, due to several recent incidents of racially motivated violence, the community honor Dr. King for the big difference he made in bringing people together.

Councilor Devlin noted that in supporting the street name change the Council would also be sending a signal to those in power that it was time to revitalize the area long Union Avenue into a district of which all Portland residents could be proud.

Councilor Hansen agreed with Councilor Devlin that the name change could represent a new start for the Union Avenue area.

Vote: A vote on the motion resulted in all ten Councilors present voting aye. Councilors Collier and Van Bergen were absent.

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The motion carried and the resolution was unanimously adopted.

6.3 Consideration of Resolution No. 89-1061, Approving a Request for Proposals (RFP) to Solicit Private Proposals to Design, Construct, Own and Operate the Metro East Station

The Council briefly discussed whether to proceed with consideration of this item since the Council was ahead of the estimated, printed meeting schedule. Presiding Officer Ragsdale determined the Council would proceed with the item because the agenda had stated that all consideration times were approximate and that the Council might not consider items in the order listed on the agenda.

For the record, Councilor Van Bergen disclosed he owned stock in Oregon Waste Management, Inc. and asked that the disclosure be considered permanent and as applying to all future deliberations of the Council.

Presiding Officer Ragsdale turned over the gavel to Councilor Kelley because he would be presenting a minority report on the item.

Bob Martin, Solid Waste Director, introduced Jim Watkins, Solid Waste Engineer, who reviewed staff's written report and the RFP document. He said proposals would be due to Metro June 13, 1989, after which staff would evaluate the proposals, recommend a contractor and draft contract documents. A recommendation was scheduled for August 23, he said, and the project could begin in November 1989.

Deputy Presiding Officer Kelley opened the public hearing.

Jeanne Robinette, representing Oregonians for Cost Effective Government (OCEG), P.O. Box 384, Lake Oswego, distributed written copies of her testimony which she presented to the Council. She said OCEG applauded Metro's efforts to seek a private enterprise solution for this project because it was the most cost effective way to go. She was concerned, however, that Resolution No. 89-1061A (the Solid Waste Committee's majority recommendation), would unnecessarily limit the number of competitive proposals Metro could receive. She said Metro had already prevented monopoly control of the solid waste system via the language in the RFP document and Resolution No. 89-1061A, by controlling the floor of the transfer station, by tying rates to the Consumer Price Index and by providing economic incentives which would counter any interest the franchise holder might have in shipping and landfilling more waste than necessary. She urged the Council to keep the door open to as many firms as possible and to judge proposals after they were received.

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Phil Dreyer, representing Oregon Fair Share, 742 S.E. 39th Avenue, Portland, advised the Council to protect against vertical integration. He explained that if one organization operated both the transfer station and landfill, there would be incentives to increase tipping fees.

Councilor Ragsdale presented the minority report on the resolution. He supported the amendments to the RFP and resolution as recommended by the Solid Waste Committee:

1. A requirement that vendors show proposal costs with and without a purchase option for the facility;
2. Language stating that the standards in the Mitigation Agreement were minimum standards; and
3. Language providing incentives for the Metro East Station Operator, rather than penalties for failure to meet recycling goals.

Resolution No. 89-1061B included Councilor Ragsdale's recommended amendments.

Motion: Councilor Ragsdale moved, seconded by Councilor Devlin, to substitute Resolution No. 89-1061B for the majority recommendation.

Councilor Ragsdale further explained the Solid Waste Management Plan required Metro to avoid vertical integration. He thought it would pose a serious problem if, after carefully working out a solid waste functional plan, Metro then determined it was not in its own best interests to follow that adopted plan. Integrity, he said, was the central issue. Councilor Ragsdale compared the minority position to not letting Ben Johnson compete in the Olympic Games because it looked like he was using steroids. Metro had to receive and evaluate the proposals before eliminating them, he said.

Councilor Hansen addressed the Council regarding why it should not allow the vertical integration issue to dominate the solid waste disposal system. The Council's decision concerning this issue would have a major impact on future business, he said. He first defined vertical integration as "principal or partial involvement by a private industry in the three primary functions of the solid waste system -- collection, transfer/materials recovery, and land disposal." He explained the definition had been retrieved from Metro's solid waste system glossary. The Council, he said, must use that same definition because it represented adopted policy.

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It would be unfair at this point to determine the definition was too broad or too narrow. Therefore, he explained, the transfer station RFP, the RFP evaluation criteria and the franchise award must reflect that adopted policy.

Councilor Hansen concluded that by any definition of vertical integration, Oregon Waste Management's ownership of the region's only landfill, largest transfer station and its role as a major collector/hauler was a vertical monopoly. Metro's proper role was to avoid the possible vertical monopoly rather than regulate it, massage it, condone it or help it. The Solid Waste Management Plan clearly stated that Metro must avoid a vertical monopoly, the Councilor said. He defined the term "avoid" as meaning "to make void, annul, invalidate or quash." He further pointed out that judges in Washington County and Oregon City had ruled Metro must follow its own Solid Waste Management Plan. He thought awarding a franchise that would complete a vertical monopoly would constitute a clear violation of the Plan. He then questioned why Metro would waste the time to accept a transfer station bid when a vertical monopoly would result.

Councilor Hansen then reviewed the 18-month process for developing the Solid Waste Management Plan which had involved many local government representatives. The key points of discussion during those meetings, he noted, were avoidance of monopoly, whether solid waste services should be privately or publicly owned, and enhancement fees for host communities. One of the major compromises by the Council was allowance of privately owned transfer stations, he recalled. The driving force was that Washington County and many Councilors would not have considered privatization without language in the Plan to prevent unregulated Portland haulers from a "monopolistic grab."

Referring to Councilor Hansen's earlier reference to Ben Johnson, Councilor Hansen said that allowing vendors to bid who would represent a vertical monopoly for the sake of inviting competition was analogous to inviting Ben Johnson to compete in the Olympic Games because Carl Lewis needed the competition. To allow questionable vendors to submit proposals would, at best, confuse the issue, confuse the public, and produce a meaningless RFP, he said. At worst, it would result in those vendors manipulating their opponents.

Councilor Hansen discussed how a vertical monopoly would result in an inherent conflict of interest between transfer station and landfill operations. Using Oregon Waste Management, Inc. (OWM) as a hypothetical example, he pointed out that OWM would be paid on the basis of actual waste disposed in the landfill. The premise of Metro's Waste Reduction Plan was to reduce the amount of waste

landfilled. The transfer station, then, had to serve as a waste reduction tool if the reduction plan was to work. The inherent conflict between the transfer station and landfill had to be avoided. A conflict of interest also existed between the hauler and transfer station operator, he said. He explained it was in Metro's best interest to landfill as little as possible while it would be in OWM's best economic interest to landfill as much as possible. He questioned how -- given the above model -- OWM could serve two masters with two conflicting needs.

In conclusion, Councilor Hansen said that in his last six years as a Councilor, his main consideration in evaluating issues was to determine whether an action was necessary to get a solid waste system on line in a timely manner. In this case, he explained, a monopoly was not needed to complete the solid waste system. Vendors other than OWM were qualified to bid the transfer station project. Metro must keep faith with its regional partners and itself, he said, and he urged Councilors to "just say no" to the possibility of vertical integration.

Councilor Gardner said he shared many of Councilor Hansen's concerns regarding the potential for a monopoly of the District's disposal system. He did not think, however, the minority recommendation would put Metro in jeopardy. He also pointed out that the vertical integration issue was just one of ten unweighted criteria to be taken into consideration when evaluating proposals. He urged the Council to not take a position that would limit companies from submitting proposals and pointed out that proposals from companies already operating or owning disposal sites or transfer stations would be subject to very close scrutiny.

Councilor Devlin agreed with Councilor Ragsdale that the Solid Waste Committee had forwarded a recommendation to the Council that was contrary to the Solid Waste Management Plan. He also thought the Council should debate the issue of potential for vertical integration when proposals were being evaluated. The minority report, he said, reflected the Council's adopted policy.

Councilor Buchanan supported the minority position, explaining it was more equitable to proposers.

Councilor Knowles also supported the minority position because of the fairness of the process. He noted that Metro's evaluation process would be carefully examined and the burden of proof would be with the proposer to demonstrate a monopoly would not exist.

Councilor Kelley did not support the motion, explaining the vertical integration policy had been adopted by the Council to protect a very unique solid waste system. If the minority

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recommendation were adopted, the Council would be forced to deal with the issue again, she said.

Vote: A vote on the motion to substitute Resolution No. 89-1061B for the majority recommendation resulted in:

Ayes: Councilors Bauer, Buchanan, Devlin, DeJardin, Gardner, Knowles and Ragsdale

Nays: Councilors Hansen, Kelley, Van Bergen and Wyers

Absent: Councilor Collier

The motion carried.

Motion: Councilor Knowles moved, seconded by Councilor Devlin, to adopt Resolution No. 89-1061B.

Councilors Van Bergen and Wyers declared that their affirmative votes on the motion did not signify total concurrence with the minority position.

Vote: A vote on the motion resulted in all Councilors present voting aye except for Councilor Hansen and Kelley who voted no. Councilor Collier was absent.

Deputy Presiding Officer Kelley turned the gavel over Councilor Ragsdale.

6.4 Consideration of Resolution No. 89-1073A, Authorizing an Exemption from Competitive Bidding for a Contract Extension with Safety Specialists, Inc.

Presiding Officer Ragsdale declared the Council would deliberate the resolution in its capacity as the Metro Contract Review Board.

Solid Waste Committee Chair Hansen briefly reported that the Committee had reviewed the cost of the proposed contract extension and supported its adoption.

Motion: Councilor Hansen moved, seconded by Councilor DeJardin, to adopt Resolution No. 89-1073A.

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

The motion carried and the resolution was approved.

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The Presiding Officer called a recess at 6:55 p.m. and the Council reconvened at 7:05 p.m.

6.5 Consideration of Resolution No. 89-1081, Ratifying the 1988-91 Collective Bargaining Agreement with the American Federation of State, County and Municipal Employees (AFSCME)

The Presiding Officer presented the Council Internal Affairs Committee's report and recommendation. He first explained that the resolution had been added to the Council agenda one day before the meeting because he had just been made aware that one of the contract negotiation conditions was that the Council would consider the agreement within 14 days after its ratification by the union. He asked the Council to remove the resolution from the Internal Affairs Committee (IAC) and to place it on the Council agenda for consideration at this meeting.

Motion: Councilor DeJardin moved, seconded by Councilor Van Bergen, to removed Resolution No. 89-1081 from the Internal Affairs Committee agenda and to place it on the Council agenda for consideration at this time.

Vote: A vote on the motion resulted in all nine Councilors present voting aye. Councilors Collier, Hansen and Wyers were absent.

The motion carried.

Presiding Officer Ragsdale reported that Councilor Collier had called him earlier in the day to explain she could not attend this meeting because of work conflicts. She had carefully reviewed the agreement and urged Council adoption of the resolution.

Ray Phelps, Finance & Administration Director, presented staff's report and recommendation. He reported that negotiations with the union had concluded on March 30, the employees had approved the agreement, and the Council had until April 14 to ratify it. The contract, he said, included personnel policies previously adopted by the Council in the form of the Local 483 union contract, Metro Personnel Rules, or the Pay and Classification Plan. The agreement would result in a 6.1 percent cost increase to Metro during the first fiscal year. It would also hold the line on health benefits costs due to a "cost containment" clause. Money had been budgeted in the current fiscal year for the proposed 4.09 percent cost of living increase, he said.

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Councilor Buchanan raised numerous questions about the meaning of specific contract language and all questions were answered to his satisfaction by either Larry Shaw, Legal Counsel, or by Mr. Phelps.

Councilor Gardner asked Mr. Phelps to review how the new agreement would relate to the current Metro Personnel Rules. Mr. Phelps responded that he and Personnel staff were currently reviewing the Personnel Rules to determine if they were consistent with the proposed agreement. Recommended Rules revisions would be submitted to the Council for review and adoption, he said.

Executive Officer Cusma urged Council approval of the agreement and commended Metro's management and employee negotiating teams for working out an agreeable contract. Mr. Phelps then introduced members of the teams who were present at the meeting.

In response to Councilor Hansen's and Gardner's questions, Mr. Phelps explained that the agreement would not prohibit a supervisor from hiring an employee at higher than the beginning pay range or from advancing an employee several steps at a time under special circumstances.

Presiding Officer Ragsdale called the meeting into executive session at 7:40 p.m. under the authority of ORS 192.660(1)(d) for the purpose of discussing bargaining agreement negotiations with management. All Councilors except Collier and DeJardin were present at the executive session. Dan Cooper, Larry Shaw, Ray Phelps, Andy Cotugno, Joan Saroka, Dick Engstrom, Don Carlson and Maya Blackmun were also present.

The Presiding Officer called the meeting back into regular session at 8:35 p.m.

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

Councilor Van Bergen requested Mr. Phelps provide Councilors with a report that would indicate instances where the new contract would conflict with the existing Personnel Rules or any other ordinance currently in force.

Councilor Devlin thanked the management negotiation team and Mr. Phelps for their excellent work and for the analysis regarding the economic impact of the agreement. He was concerned, however, the Council had only learned that day it would be taking action on the resolution to approve the contract.

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

The motion carried and the resolution was adopted.

COUNCILOR COMMUNICATIONS & COMMITTEE REPORTS

Councilor Knowles noted that this would be the last meeting for Marie Nelson, Clerk of the Council, because she had been promoted to the position of Assistant Management Analyst in the Solid Waste Department.

Motion: Councilor Knowles moved, seconded by Councilor Buchanan, to direct the Presiding Officer to commemorate Ms. Nelson's service to the Council Department in some appropriate way.

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

The motion carried.

There was no other business and the meeting was adjourned at 8:45 p.m.

Respectfully submitted,



A. Marie Nelson
Clerk of the Council