

MINUTES OF THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

June 22, 1989  
Regular Meeting

Councilors Present: 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

Councilors Absent: Councilors Collier and Wyers

Presiding Officer Mike Ragsdale called the meeting to order at  
5:30 p.m.

1. INTRODUCTIONS

None.

2. CITIZEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS

Ms. T. R. Factor submitted a written request to the Council for a  
copy of a report from Jack Gray Transport indicating the status  
of permits, major equipment and site acquisitions. Ms. Factor  
said the report she referenced was to be submitted to Metro  
withing 30 days after contract award. She also requested a copy  
of the mobilization plans, schedule for equipment and personnel  
and contingency plans which she said were to be submitted by Jack  
Gray Transport within 90 days after contract execution. The  
request has been filed with the meeting record and by reference  
made a part of these minutes.

Presiding Officer Ragsdale said that if the reports Ms. Factor  
had requested were public record, he would assure that she would  
receive a copy of them.

3. EXECUTIVE OFFICER COMMUNICATIONS

None.

4. CONSIDERATION OF MINUTES OF April 27, 1989

Motion: Councilor DeJardin moved, seconded by Councilor  
Hansen to approve the minutes of April 27, 1989.

Councilor Devlin noted that he had submitted a correction to the  
Clerk under item 7.5 (Resolution No. 89-1088), the second  
sentence, deleting "Multnomah" in reference to the cities of  
Washington, Clackamas and Multnomah County. Presiding Officer

Ragsdale said that if there were no objections, the correction would be considered incorporated into the minutes.

Vote: The nine councilors present voted in favor of the motion. Councilors Collier, Van Bergen and Wyers were absent.

The motion carried.

## 5. ORDERS

### 5.1 Order No. 89-21. In the Matter of Contested Case Hearing on the Application on the Venetian Blind Co. District Relocation Claim

The Presiding Officer announced that the Council in its capacity as a quasi-judicial review board would be considering the order. Legal Counsel Monica Little explained that proceedings would be conducted under contested case procedures set out by Metro Code section 2.05.035. Ms. Little said that in conducting its review, the Council may hear from the hearings officer on his findings of fact, opinion and recommendation and the Council could then choose to receive oral argument and rebuttal from the parties, and the Council could then adopt the propose order, revise the order, replace the findings or remand the matter to the hearings officer.

Presiding Officer Ragsdale asked if there were any objections to the hearings officer presenting his findings and the Council then hearing oral argument and rebuttal. There were no objections.

Hearings Officer Samuel Nicholls said that the Venetian Blind Company (Company) had submitted five individual claims for reimbursement and one "omnibus" claim. He said on Claim #1 he had recommended the Company be awarded an additional \$549; Claim #2 was paid in full; Claim #3 slightly exceeded the maximum allowance for telephone and search expenses, and no additional award for those expenses was recommended. Mr. Nicholls said that the primary dispute in Claim #3 involved payment for electrical and plumbing expenses in excess of the low bid obtained by the Portland Development Commission (PDC). He said that because the claimant had failed to provide a written scope of work, the bids had been difficult to compare and there was no evidence in the record to support a higher award. Mr. Nicholls said that the claimant had not provided a written scope of work for plumbing work connected with the move and sought compensation in excess of the low bid, and he had recommended denying the claim. Claim #5 which concerned stationery, Mr. Nicholls recommended be paid in full.

Mr. Nicholls said that Claim #6 appeared to contain some double entries. He said that relocation regulations did not support payment for expenses resulting from building code changes and that the woodworking room was considered real property, and therefore, not eligible for moving compensation. Mr. Nicholls said that although he had asked for supporting documents for amounts listed in Claim #6, he had not received that information.

Councilors Devlin and Kelley asked the hearings officer to explain his findings regarding reimbursement for expenses at the new location to meet building code and OSHA requirements. The hearings officer said that Section 5.3.3(i) of the (relocation) regulations stated that improvements made necessary by code were not compensable. The Hearings Officer said that the Company had been grandfathered in at their former location, and that they had built a bigger and better facility at the new location.

Jeffrey L. Kleinman represented the claimant and said that PDC had obtained bids for plumbing and electrical work from companies that were neither willing (due to short time frame) or able to perform the work. Mr. Kleinman said that the Company had to be moved by January 1, 1988, to meet the Convention Center Construction schedule.

Mr. Kleinman introduced Ms. Judy Post, owner of the Company. Ms. Post said that she was, at that time, the sole owner of a business previously established by her father. She said that she did not feel that she had been fairly compensated for expenses she had incurred associated with relocating the Company. Ms. Post said that she had spoken to representatives of Jack Howk Plumbing and W.R. Grasse and that both representatives had told her that their bids given to PDC had not been based upon expectation of actually performing the work.

Ms. Post also said that because the PDC had previously reimbursed the Company for code upgrade expenses associated with moving an outside building sign from the old location to the new location, she had anticipated that expenses she incurred in regard to a paint room and work room upgrade to code would also be compensable.

Mr. Kleinman said that PDC's actions had been inconsistent and that when language is inconsistent, it should not favor the party that wrote the language.

In answer to questions from councilors, Ms. Post's attorney said that additional documentation could be produced to support claims. In answer to Councilors' queries regarding the paint and woodworking rooms, Ms. Post said that the rooms in the new location had the same work capacity, but however, were larger due

to (building) code requirements. Ms. Post said that the paint and woodworking rooms met minimum (building code) requirements.

Ms. Jeanette Launer, of the PDC, acting in this matter as an agent for the Metropolitan Service District, said that the PDC agreed with the hearings officer's findings and recommendations. She explained that the Company choose to self move and that under those regulations, the Company agrees to accept payments based upon the lowest bids or estimates that are obtained in lieu of the actual cost of moving. Ms. Launer said that PDC determined the two low bids on the plumbing and electrical work in question were acceptable low bids and that there was no collusion involved in obtaining those bids. She also said claimants are required to provide a scope of work and two bids and that no bids for the work in question had been submitted by the claimant. She also noted that the woodworking room was real property, and thus paid for with the acquisition of the building. She said that since Ms. Post was not the owner of the real property, she was not compensated for the woodworking room, but rather the property owner. Ms. Launer said that there had been equipment in the building, of which the cost of moving and reconnecting had been paid as a portion of Claim #1. Ms. Launer said that the metal paint booth Ms. Post had referred to was movable and under the relocation rules, personal property could be moved or substitute equipment procured was compensable at the rate of the lesser of those two options.

Councilor Gardner asked if the paint booth could have been moved and used at the new location. Stan Jones, PDC Chief Relocation Officer, said that there was no evidence submitted that it could not have been used at the new location.

Councilor Devlin asked if there was a process for selecting the self-move option. Ms. Launer said there was, and the claimant had failed to file written notice of self-move as required by the regulations.

Motion: Councilor Knowles moved, seconded by Councilor DeJardin to adopt the hearings officer's report and direct staff to draft a final order.

Vote: Councilors Knowles and Devlin voted aye. Councilors Bauer, Buchanan, Gardner, Hansen, Kelley and Ragsdale voted nay. Councilors Collier, DeJardin, Van Bergen and Wyers were absent.

The motion failed to carry.

Motion: Councilor Knowles moved, seconded by Councilor Gardner to remand the matter of the appeal of the

Venetian Blind Company under Metro's relocation regulations to the hearings officer for submission of further evidence and documentation of costs related to complying with OSHA requirements and whether the paint booth could be used if relocated as personal property under the regulations.

Councilor Buchanan asked if the motion would eliminate other areas being investigated by the hearings officer. Mr. Nicholls advised the Council that the hearings officer's role was to receive and evaluate evidence as it applied to the relocation regulations. He suggested, and Councilor Knowles and Gardner agreed that the intent of the remand motion was to limit the review to additional documentation for the woodworking and paint room expenses.

Motion to Amend: Councilor Hansen moved, seconded by Councilor Buchanan to direct the hearings officer to revise his findings to support payment of electrical and plumbing claims.

Vote on Amendment: Aye: Councilors Buchanan and Hansen  
Nay: Councilors Bauer, Devlin, Gardner, Kelley, Knowles and Ragsdale  
Absent: Councilors Collier, DeJardin, Van Bergen and Wyers

Vote on Main Motion: The eight councilors present all voted in favor of the motion. Councilors Collier, DeJardin, Van Bergen and Wyers were absent.

The motion carried, and the matter was remanded to the hearings officer to receive new evidence.

## 6. ORDINANCES: FIRST READING

### 6.1 Ordinance No. 89-297, For the Purpose of Amending Ordinance No. 89-290 which Revises the 1986 Solid Waste Management Program Waste Reduction Chapter

The Clerk read the ordinance by title only for a first time. The Presiding Officer referred the ordinance to the Solid Waste Committee.

## 7. ORDINANCES: SECOND READINGS

### 7.1 Ordinance No. 89-298, Amending Ordinance No. 88-247 Revising the FY 1988-89 Budget and Appropriations

Schedule for Convention Center Capital Fund Project  
Costs

The Clerk read the ordinance for a second time by title only. The Presiding Officer announced that the ordinance was first read before the Council on June 8 and referred to the Finance Committee who considered the ordinance and June 15 and recommended Council adoption.

Councilor Van Bergen presented the Committee's report and said that the ordinance requested transfer of \$15,000 from underexpended Personal Services to Materials and Services.

Motion: Councilor Van Bergen moved, seconded by Councilor Devlin to adopt Ordinance No. 89-298.

Vote: A roll call vote was taken, resulting in:  
Aye: Councilors Bauer, Devlin, Gardner, Kelley, Knowles, Van Bergen and Ragsdale.  
There were no votes in opposition, and Councilors Buchanan, Collier, DeJardin, Hansen and Wyers were absent.

The motion carried, and the ordinance was adopted.

7.2 Ordinance No. 89-299. Amending Ordinance No. 88-247  
Revising the FY 1988-89 Budget and Appropriations  
Schedule for Zoo Visitor Services Operations

The Clerk read the ordinance by title only for a second time. The Presiding Officer announced that the ordinance was first read before the Council on June 8 and referred to the Finance Committee who held a public hearing on the matter on June 15 and recommended the Council adopt the ordinance.

Councilor Van Bergen presented the Committee's report. He said that projections for attendance at the Zoo indicated the need to hire additional staff to serve the public and additional merchandise for resale.

Motion: Councilor Van Bergen moved, seconded by Councilor Kelley to adopt Ordinance No. 89-299.

Vote: A roll call vote was taken. The eight councilors present voted in favor of the motion. Councilors Buchanan, Collier, DeJardin and Wyers were absent.

The motion carried unanimously.

7.3 Ordinance No. 89-294A, Adopting the Annual Budget for Fiscal Year 1989-90, Making Appropriations and Levying Ad Valorem Taxes

The Clerk read the ordinance by title only for a second time. The Presiding Officer announced that the ordinance was first read before the Council on March 23 and referred to the Finance Committee who held public hearings through the Council Budget Committee commencing on March 29, and on June 15 the Finance Committee recommended the Council adopt the ordinance.

Councilor Gardner gave the Finance Committee report. He referred the Committee to materials that had been provided in their meeting notebooks. He noted that adoption of the ordinance would adopt the FY 1989-90 Budget and Schedule of Appropriations (Attachments 1 and 2 to the Finance Committee Report), levy taxes, approve contract designations (Attachment 3 to the Finance Committee Report) and approve budget footnotes (Attachment 4 to the Finance Committee Report).

Main Motion: Councilor Gardner moved, Councilor Van Bergen seconded to adopt Ordinance No. 89-294A.

Motion to Amend: Councilor Gardner moved, Councilor Hansen seconded to amend Exhibits B and C to Ordinance No. 89-294A to eliminate the proposed changes recommended in the Council staff memo dated June 15, 1989.

Councilor Gardner said the effect of the action would be to restore the budget to level approved by Council on May 4, 1989. Councilor Gardner said that it would eliminate changes to the Councilor per diem rate, restore proposed department budget cuts and restore proposed contingency fund cuts. Councilor Ragsdale said that the intent was not to frustrate the will of the Council to increase Councilor per diem, but would give the Council additional time to notify departments of changes proposed to their budgets.

2nd Motion to Amend: Councilor Devlin moved, seconded by Councilor Buchanan to amend the main motion to indicate that an amount equal to \$23,040 be moved from General Fund Contingency and placed in the line item for Councilor per diem.

Councilor Devlin noted that at the time the resolution (No. 89-1065A) on Councilor per diem came back before the Council, he intended to introduce an amendment to set the Councilor per diem rate at \$50 per day with adjustments based on the CPI. Councilor

Hansen said that he would oppose the second motion to amend because he felt he needed additional review of the matter and he also wanted the matter to be considered when more councilors were in attendance.

Councilor Devlin said that he did not feel that the amendment he had proposed would receive a majority vote and, therefore, withdrew his motion to amend. Councilor Buchanan withdrew his second.

Vote on 1st Motion to Amend: Councilors Bauer, Buchanan, Devlin, Gardner, Hansen, Knowles and Ragsdale voted aye. Councilor Van Bergen voted nay. Councilors Collier, DeJardin, Kelley and Wyers were absent.

The motion to amend carried.

Councilor Devlin asked why the contract for the compactor for Metro South had been designated a type "B" contract. Council Analyst Ray Barker explained that when the contracts had been reviewed by the Solid Waste Committee, the Solid Waste Director had indicated that he would keep the Solid Waste Committee abreast of actions related to the contract and make the Committee aware of the department's intent on award of the contract. Councilor Hansen said the reason for not bringing the contract back before the Council was timing and if the contract had to come back before the Council it would not meet the schedule for delivery of the compactor.

Councilor Van Bergen said that in reviewing the budget process, he recommended that the Budget Committee be enhanced by the entire Council sitting as the Budget Committee, eliminating the citizen members of the Budget Committee and that the functional committees do a more thorough job of reviewing and recommending department budgets. He also said that he had concern with the contracting ordinance and thought that the document was a failure. Councilor Ragsdale agreed with Councilor Van Bergen that the Budget Committee eliminate citizen members and the Council as a whole sit as the Budget Committee. Councilor Hansen said that he also agreed, and said the timeframe for consideration of the budget was too tight, and perhaps some policy development could be done in the Fall. Councilor Devlin noted that the issue of intergovernmental agreements still needed to be resolved.

Vote on Main Motion: A roll call vote was taken; Councilors Bauer, Buchanan, Devlin, Gardner, Hansen, Knowles, Van



Bergen and Ragsdale voted aye.  
Councilors Collier, DeJardin,  
Kelley and Wyers were absent.

The motion carried, and the ordinance was adopted as amended.

8. COUNCILOR COMMUNICATIONS & COMMITTEE REPORTS

8.1 Consolidation Task Force Report

Presiding Officer Ragsdale reported that the task force appointed to address consolidation of operations of the Convention Center, Civic Stadium, Coliseum and Performing Arts Center had reached tentative agreement to merge the facilities under the Metro Exposition-Recreation Commission. He said that a Memorandum of Understanding had been drafted and would be presented to the City and Metro Council.

In other Councilor Communications, Councilor Bauer announced that the Bi-State Committee had met and he would like to schedule a presentation before the Council. Councilor Van Bergen said that he would like to review the Council's conduct as a quasi-judicial body. He said that he felt the Council should adopt rules for the judicial process. Councilor Knowles encouraged Councilors to attend a fund raiser for the Zoo--the Grand Wazoo on July 1. Councilor Hansen announced that he had recently visited the landfill site in Gilliam he was impressed with the expertise and community's reception.

There was no other business, and the meeting was adjourned at 9:10 p.m.

Respectfully submitted,

*Gwen Ware-Barrett*

Gwen Ware-Barrett  
Clerk of the Council

gpwb  
cn622.min