

MINUTES OF THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

June 14, 1990
Regular Meeting

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

Councilors Absent: Ruth McFarland and Mike Ragsdale

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

1. INTRODUCTIONS

None.

2. CITIZEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS

None.

3. EXECUTIVE OFFICER COMMUNICATIONS

(Presented following hearing on Ordinance No. 90-336). Executive Officer Rena Cusma said that a task force had been appointed to advise the Council on relocating the Metro offices. Ms. Cusma said that the task force had met and staff would begin briefing the Council on options they had explored at the next Council meeting.

4. CONSENT AGENDA

The Presiding Officer announced that the following items were on the Consent Agenda for consideration:

4.1 Minutes of May 24, 1990

4.2 Resolution No. 90-1270, Adopting a Procedure for Administration of Grant Funds to Support Waste Reduction Programs for Local Governments

Councilor Van Bergen requested that Resolution No. 90-1270 be removed from the consent agenda. The Presiding Officer announced that the resolution would be considered immediately following second readings of ordinances.

Motion: Councilor Devlin moved, seconded by Councilor DeJardin to adopt consent agenda item no. 4.1, minutes of May 24, 1990.

Vote: The seven councilors present all voted in favor of the motion. Councilors Bauer, Hansen, Knowles, McFarland and Ragsdale were absent.

The motion carried.

5. ORDINANCES, FIRST READING

5.1 Ordinance No. 90-354, For the Purpose of Amending Metro Code Section 4.01.060 to Allow for Increased Fees on Special Admission Days

The Presiding Officer announced that Ordinance No. 90-354 had been referred to the Finance and Zoo Committees.

6. ORDINANCES, SECOND READINGS

6.1 Ordinance No. 90-336, An Ordinance Prohibiting the Sale and Distribution of Laundry Cleaning Agents Containing Phosphorus Within the Metropolitan Service District Boundaries

Presiding Officer Collier announced that Ordinance No. 90-336 had been first read before the Council on May 10 and referred to the Intergovernmental Relations Committee. The Intergovernmental Relations Committee held a public hearing on May 22 and recommended the Council adopt the ordinance as amended. She said that at this meeting, the Council would receive public testimony on the ordinance and if any member of the Council wished to move an amendment to the ordinance, it would be appropriate to do so; however, she said that no final action on the ordinance would be taken before the June 28 council meeting at which time another hearing would be held. Councilor Collier also reported that Councilor Ragsdale, Intergovernmental Relations Committee chair who was absent, had requested that full Council discussion and debate on this item be held at the June 28 meeting, at which time he would present the Intergovernmental Relations Committee's report and recommendations.

Motion: Councilor Gardner moved, seconded by Councilor Devlin to adopt Ordinance No. 90-336.

The public hearing was opened. Mr. Donald Burdick, Lake Oswego, Oregon, said that he was a member of the Board of Directors of the Lake Oswego Corporation and served on their Water Quality Committee. Mr. Burdick testified in favor of the ordinance. He said that for several years the Corporation had been trying to abate algae in Lake Oswego. He said that the Corporation had commissioned studies of the lake and had been working closely with the Unified Sewage Agency (USA). Mr. Burdick said that

Council Meeting June 14, 1990

Page 3

phosphorous had been determined to be a major cause of the growth of algae in the Tualatin River and Lake Oswego. He said that the Corporation had spent \$50,000-60,000 per year to control the growth of algae.

Mr. Burdick said that the Corporation had written 21 letters regarding the proposed phosphorous ban to persons representing government, the soap and detergent industry and grocery stores. He said that twelve responses had been received, all supporting the ban on phosphorous and that no response was received from anyone or group opposed to the ban. He said that the corporation felt that they were not able to preserve and protect Lake Oswego and that the amount of phosphorous imported in the Tualatin basin far exceeded what occurred naturally and that most of the phosphorous resulted from soap and detergent. He said that recent studies show that Lake Oswego was receiving in excess of 16,000 pounds of phosphorous per year, and according to new DEQ regulations, that amount is to be reduced to 861 pounds within five years. Mr. Burdick said that if Metro adopted the ban, it would attack the source of the problem and not just the symptoms.

No other public testimony was offered. The public hearing was closed.

Councilor Devlin noted that during the Intergovernmental Relations Committee's deliberations, the Committee voted to remove all references to the word "laundry." He noted that "laundry" still appeared in the title of the ordinance.

Motion to Amend: Councilor Devlin moved, seconded by Councilor Gardner to delete the word "laundry" in the title of Ordinance No. 90-336.

Vote on Amendment: The nine councilors present voted in favor of the amendment. Councilors Bauer, McFarland and Ragsdale were absent.

The motion carried.

The Presiding Officer announced that the public hearing would be continued on June 28.

4.2 Resolution No. 90-1270. Adopting a Procedure for Administration of Grant Funds to Support Waste Reduction Programs for Local Governments

Councilor Van Bergen noted that in the first recital in the "Be It Resolved" section of the resolution it referred to grants being awarded to local governments upon submitting to Metro

Annual Waste Reduction Program, "approved by the Metro Solid Waste Department." Councilor Van Bergen asked if it was the Department or Executive Officer who had the approval authority. General Counsel Cooper replied that the Executive Officer had approval authority.

Motion: Councilor Devlin moved, seconded by Councilor Hansen to adopt Resolution No. 90-1270.

Motion to Amend: Councilor Hansen moved, seconded by Councilor Devlin to amend the first recital of the "Be It Resolved" section of Resolution No. 90-1270 to delete the words "Solid Waste Department" and replace them with the words "Executive Officer."

Vote on Amendment: The nine councilors present voted aye. Councilors Bauer, McFarland and Ragsdale were absent.

The motion to amend carried.

In response to a question regarding budget impact of the program, Solid Waste Director Bob Martin said that he had anticipated managing the program with existing staff. He said that there would be no additional budget impact.

Vote on Main Motion: The nine councilors present voted in favor of the motion; Councilors Bauer, McFarland and Ragsdale were absent. The motion carried.

6. ORDINANCES, SECOND READING

6.2 Ordinance No. 90-351, For the Purpose of Amending Chapter 5, Section 5.02.045, Regarding User Fees for Self Haulers

Presiding Officer Collier announced that Ordinance No. 90-351 was first read before the Council on May 24 and referred to the Solid Waste Committee. The Committee held a public hearing on the ordinance June 5 and recommended Council adoption.

Motion: Councilor Hansen moved, seconded by Councilor Wyers to adopt Ordinance No. 90-351.

Councilor Hansen presented the Solid Waste Committee's report and recommendations. He said that the purpose of the ordinance was to clarify and confirm the application of Metro user fees to

present regulations for self-haul loads of solid waste delivered to facilities franchised by Metro or accepting Metro waste under agreements with Metro. Councilor Hansen said that self-haul users of the St. Johns Landfill, Metro South Station and Metro East Station required payment of a flat fee for disposal and for self-haul users of franchised facilities or facilities accepting Metro waste under a contractual relationship it would be necessary to specifically provide for the user fee as a discrete component of their rate.

Councilor Van Bergen inquired about the definition of self-haul. Mr. Martin explained that it was any waste delivered in a car or pickup truck three-quarter tons or less. Councilor Wyers asked if the self-haul rates were being subsidized. Mr. Martin replied that they were subsidized by commercial haulers. He said that the self-haul rate was \$15 per load, and that the disposal cost was \$24 per load. He said once Metro went to a scale system for self haulers the system would be more equitable.

Vote: The roll call vote resulted in the ten councilors present voted in favor of the motion. Councilors McFarland and Ragsdale were absent.

The motion carried.

6.3 Ordinance No. 90-353, Authorizing the Issuance of Additional Bonds in Connection with the 1989 Compost Project Bonds

The Presiding Officer announced that Ordinance No. 90-353 was first read before the Council on May 24 and referred to the Finance and Solid Waste Committees. The Solid Waste Committee held a public hearing on the ordinance June 5, and the Finance Committee held a public hearing on the ordinance June 7. Both committees recommended Council adoption. She said that the Council would also consider technical amendments proposed by Bond Counsel and approved by the Finance and Solid Waste Committee.

Motion: Councilor Hansen moved, seconded by Councilor Wyers to adopt Ordinance No. 90-353.

Councilor Van Bergen summarized the Finance Committee's report and recommendations on the ordinance. He explained that Riedel, Metro's contractor for the Metro Composter Project, needed to provide additional equity for the project. He said that adoption of the ordinance would authorize issuance of up to \$5,000,000 additional bonds for the project. Councilor Hansen pointed out that Metro would have no liability for the bonds and would not in any way be underwriting the bonds.

The public hearing was opened and closed. No public testimony was offered.

General Counsel Cooper explained that the Solid Waste Committee had recommended an amendment to satisfy the concerns of Standard and Poors Corporation, the bond rating agency. He said that Metro's bond counsel, Stoel Rives Boley Jones & Grey, had developed additional language for a revised Section 306(a) of the ordinance to address those concerns. That amendment was contained in the agenda packet distributed to Councilors and as an attachment to the Finance Committee's report and recommendations, and is filed with the meeting record and incorporated in these minutes by reference.

Motion to Amend: Councilor Hansen moved, seconded by Councilor Buchanan to amend Section 306(a) of Ordinance No. 90-353 by adopting the language developed by Metro bond counsel and recommended by the Finance and Solid Waste Committees.

Councilor Bauer asked if this action would in any way affect Metro's bond rating. Mr. Ed Einowski, representing Stoel Rives Boley Jones & Grey, replied it would not since repayment of the bonds would be the sole responsibility of the Riedel Company.

Vote on Amendment: The ten councilors present voted in favor of the amendment. Councilors Ragsdale and McFarland were absent.

The motion carried.

Vote on Main Motion: A roll call vote was taken resulting in the ten councilors present voting aye. Councilors Ragsdale and McFarland were absent.

The motion carried.

Mr. Einowski recommended that the Council consider rewriting it's Code provisions regarding bonding to enable bonds to be approved by resolution rather than ordinance. He said that typically issuing bonds required "fine tuning" and that if a resolution could be adopted to authorize the issuance and without specific bonding language, it would streamline the process at the Council level. He said that the majority of government bodies issue bonds in the manner he was suggesting which allowed "fine tuning" to occur up to the point of closing.

7. RESOLUTIONS

7.1 Resolution No. 90-1279, Amending the Solid Waste Disposal Services Contract with Oregon Waste Systems, Inc., to Provide for a Limited Exemption to the Flow Guarantee Provisions in Order to Properly Close the St. Johns Landfill

Motion: Councilor Hansen moved, seconded by Councilor Gardner to adopt Resolution No. 90-1279.

Councilor Hansen presented the Solid Waste Committee's report and recommendations. He said that Metro's agreement with Oregon Waste Systems (OWS) for disposal services required Metro to deliver 90 percent of all waste delivered by Metro to a general purpose landfill to OWS. He said that when the contract with OWS was developed, it was anticipated that the St. Johns Landfill would close on January 1, 1990. However the Landfill closure was now anticipated to be February 1991. In order to properly close and contour the Landfill, it was necessary for Metro to continue to deposit waste at St. Johns. Councilor Hansen said that because Metro was not depositing 90 percent of the waste delivered to a general purpose landfill to OWS, a dispute between OWS and Metro had arisen.

Councilor Hansen said that Resolution No. 90-1279 represented a negotiated settlement between OWS and Metro allowing Metro to deliver less waste to OWS in 1990 and provided payment of a surcharge by Metro to OWS in the approximate amount of \$.28 per ton for ten years as compensation to OWS. He said that the budget impact would be approximately \$150,000 per year for the next ten years, for a total budget impact of \$1.5 million. Councilor Hansen said that the Solid Waste Committee weighed this negotiated settlement against the possible outcome of litigation and voted unanimously to recommend the Council adopt the resolution.

Councilor Van Bergen asked if this surcharge affected any agreements Metro had with the City of Portland regarding St. Johns Landfill closure. General Counsel Cooper replied it did not. Councilor Van Bergen asked why ten years was established as the period of time for repayment. Councilor Hansen replied that the long period of time would minimize the budget impact in any one year. General Counsel Cooper added that OWS had originally demanded a lump sum payment in a higher amount. Councilor Van Bergen asked if the dispute that arose and the proposed surcharge compromise had been necessitated by a mistake that Metro had made in developing the OWS contract. General Counsel replied that it had.

The Presiding Officer stated that in previous meetings regarding the OWS contract, the Council had been repeatedly assured that this situation would not occur. She asked Mr. Martin to explain how the situation had come about. Mr. Martin said that it

appeared that in 1987 the delivery estimates and closure estimates were developed. He said that the contract was awarded in 1989, and it now appeared that the Landfill would not close until 1991. Councilor DeJardin added that since the contract with OWS had been let, the Solid Waste Department had become more aware of what final contours were required and how much material would be needed. He said that he did not feel that the mistake arose from negligence. He said that recycling had also had an impact on the amount of material being landfilled.

Councilor Devlin pointed out that cost for landfilling at St. Johns rather than transferring to Arlington represented a significant cost savings to Metro. He asked Mr. Martin if this would be the last amendment to this contract, and if the St. Johns Landfill would, indeed, close in February 1991. Mr. Martin replied that untimely completion of the Metro East Station could affect the OWS contract. He added that the Metro East property transfer and permit activities seemed to be consistent with Landfill closure plans for February 1991. Mr. Martin cautioned that there were still some problems with the Metro East construction contract that would require the Department to work closely with the contractor, and if there were delays, it could necessitate renegotiations with OWS for waste flow.

Councilor Gardner asked if the amendment would affect Metro's tonnage agreement with Jack Gray Trucking. Mr. Martin said that it would not, because the contract with Jack Gray Trucking reflected that in 1990, the company would truck only tonnage delivered to Metro South.

The Presiding Officer called an Executive Session to discuss threatened litigation with legal counsel pursuant to ORS 192.660(1)(h). The Presiding Officer recessed the Council at 6:40 p.m. and convened the Executive Session in Room 240. In attendance at the Executive Session were Councilors Bauer, Buchanan, Devlin, DeJardin, Gardner, Hansen, Knowles, Van Bergen, Wyers and Collier; Executive Officer Rena Cusma, General Counsel Cooper, Solid Waste Director Bob Martin, Council Analyst Jessica Marlitt and the Clerk of the Council. Councilors and legal counsel reviewed settlement options.

The Presiding Officer reconvened the Council at 6:48 p.m.

Vote: Councilors Bauer, Buchanan, Devlin, DeJardin, Knowles, Van Bergen and Wyers voted aye. Councilor Collier voted nay. Councilors Gardner, Hansen, McFarland and Ragsdale were absent for the vote.

The motion carried.

7.2 Resolution No. 90-1276, For the Purpose of Amending the FY91 Unified Work Program (UWP)

Motion: Councilor Devlin moved, seconded by Councilor DeJardin to adopt Resolution No. 90-1276.

Councilor Devlin presented the Intergovernmental Relations Committee's (IGR) report. He said that the Urban Mass Transit Administration in their FY 1990-91 Section 8 planning funds program had included a national funding set-aside to assist transit agencies in developing historical records of discrimination on which transit authorities' existing minority business set-aside programs must be based. He said that approval of the resolution would approve a new WWP work task to be included in FY 1991 to study minority/women business utilization in public/private contracts. He said that the funds would be a pass-through to Tri-Met amounting to \$20,000. Councilor Devlin said that the Intergovernmental Relations Committee had held a public hearing, and no testimony was offered. He said that the Committee had voted unanimously to recommend Council adoption.

Vote: The ten councilors present voted in favor of the motion. Councilors McFarland and Ragsdale were absent.

The motion carried.

7.3 Resolution No. 90-1289, For the Purpose of Waiving Resolution No. 83-385 and Outlining a Procedure to Fill Council District No. 1 Vacancy

Motion: Councilor Devlin moved, seconded by Councilor DeJardin to suspend the Council's rules requiring resolutions introduced at the Council level to be referred to a committee so that the Council as a whole could consider Resolution No. 90-1289.

Vote: The ten councilors present voted in favor of the motion. Councilors McFarland and Ragsdale were absent.

The motion carried.

The Presiding Officer turned the gavel over to Deputy Presiding Officer Hansen to present the resolution. She said that Councilor Mike Ragsdale had submitted his resignation effective July 1, 1990 and that in order to expedite filling the District 1 vacancy, she was recommending that the Council adopt Resolution No. 90-1289 which would waive requirements of Resolution No. 83-385 and adopt an appointment process whereby the Council would interview candidates directly rather than appoint a citizens'

committee. She additionally stated that she recommended that the Council not appoint one of the two candidates running for the vacant District 1 seat in the November 1990 election.

Councilors Bauer, Knowles and Buchanan said that they did not agree with precluding anyone from appointment. Councilor Devlin pointed out that the IGR Committee was considering a resolution for filling vacancies on the Council which set out a process similar to that outlined in Resolution No. 90-1289. Councilors DeJardin and Devlin pointed out that Councilor Collier's recommendation to exclude the candidates running for the District 1 position was not contained in either Resolution 90-1279 or the exhibit. Councilor Collier said that the reason for the reason for her recommendation to exclude District No. 1 candidates was that she felt that appointing an electoral candidate to the vacancy would give that candidate an unfair advantage in the District election.

Vote: The vote resulted in nine of the ten councilors present voting aye. Councilor Bauer voted nay; and Councilors Bauer and McFarland were absent.

The motion carried. Councilor Hansen turned the gavel back over to Councilor Collier.

7.4 Resolution No. 90-1277, An Amendment to the Contract with SCS Engineers for the Metro South Transfer Station

Presiding Officer Collier announced that the Council in its capacity as a quasi-judicial review board would consider Resolution No. 90-1277. She recessed the Council and convened the Contract Review Board.

Councilor DeJardin presented the Solid Waste Committee's report and recommendations. He said that the original contract with SCS Engineers had been amended four times. He said that three amendments were a result of the Oregon City conditional use permit requirements; a fourth as a result of Metro's decision to rebid the construction contract. He said that the amendment before the Council was as result of input regarding design and equipment from AMFAB, SCS and Jack Gray Trucking which would improve the safety and efficiency of the operation.

Motion: Councilor DeJardin moved, seconded by Councilor Hansen for the Contract Review Board to adopt Resolution No. 90-1277.

Vote: The nine councilors present voted aye. Councilors Gardner, McFarland and Ragsdale were absent.

The motion carried. The Presiding Officer adjourned the Contract Review Board and reconvene the Council.

8. COUNCILOR COMMUNICATIONS & COMMITTEE REPORTS

8.1 Solid Waste Department Request for Proposals

Councilor Wyers said that two RFP documents, one for Design Services for Metro South Station Household Hazardous Waste Facility and the second for Review and Evaluation Services of the St. Johns Landfill Closure Cost Estimates and Construction Documents had been filed with the Clerk of the Council and were considered by the Solid Waste Committee. At the request of the Solid Waste Department the Department had considered the RFP's at their June 7 meeting, but made no recommendation. She said that because the contracts were budgeted in the FY 1990-91 budget, rather than the FY 1989-90 budget, they fell into the Metro Code classification of unanticipated contracts, and therefore needed to be approved under Metro Code provisions 2.04.032(d).

Councilor Wyers said that because both filings occurred after the Solid Waste Committee agenda packets had been printed and mailed, the Committee had not had adequate time to review the documents. She said that in order to prevent release of the documents, the Council would need to take legislative action by ordinance, otherwise, the documents would be released on the fourteenth day after filing.

Other Councilor Communications

Presiding Officer Collier reported that at a previous meeting she had appointed a task force consisting of Councilors Knowles, Gardner and herself to meet with the Metro ERC to meet regarding outstanding budget issues. She reported that as a result of that meeting it was agreed to add an additional budget note that stated that Metro Personnel would be the umbrella personnel office, but Metro ERC would be responsible for the day-to-day supervision of Metro ERC employees. General Counsel Cooper clarified that the Metro Personnel Director would hire the Metro ERC Personnel Manager, who would in turn hire Metro ERC positions within the Metro ERC budget.

Councilors Devlin and Van Bergen raised concerns regarding whether there would be consolidation of two separate, duplicate bureaucracies. Councilor Van Bergen reminded the Council that it had basic authority and that it was not the Council's intent to maintain two autonomous organizations.

Councilor Bauer reported that he felt the recent Council retreat had been successful. He suggested that in the future, the Executive Officer be invited to Council retreats. Presiding

Council Meeting June 14, 1990
Page 12

Officer Collier announced that the next Council retreat would be September 8.

There was no other business and the meeting was adjourned at 7:20 p.m.

Respectfully submitted,

Gwen Ware-Barrett

Gwen Ware-Barrett
Clerk of the Council

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