

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

**June 28, 1990  
Regular Meeting**

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

**Councilors Absent:** Jim Gardner

Presiding Officer Collier called the meeting to order at 5:40 p.m. and announced that Agenda Item No. 7.7: Resolution No. 90-1280 For the Purpose of Purchasing Computer Equipment for Use at Metro Solid Waste Disposal Sites had been removed from the agenda. She said that Resolution No. 90-1280 requested carry-over of \$90,000 from the current fiscal year budget to FY 90-91 to purchase computer equipment for Metro's solid waste disposal sites, however that budget action was included under Agenda Item No. 6.1, Ordinance No. 90-340A, Adopting Metro's FY 90-91 Budget, and therefore, the separate action under Resolution No. 90-1280 was unnecessary. The Presiding Officer also announced that Agenda Item No. 8.1, Water Resources Management Work Plan had also been removed from the agenda in the interest of time.

**1. INTRODUCTIONS**

None.

**2. CITIZEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS**

None.

**3. EXECUTIVE OFFICER COMMUNICATIONS**

None.

**4. CONSENT AGENDA**

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

- 4.1 Resolution No. 90-1268, Authorizing Federal Funds for a Section 16(b)(2) Special Transportation Project and Amending the Transportation Improvement Program
- 4.2 Resolution No. 90-1269, Amending the Functional Classification System and the Federal-Aid Urban (FAU) System

Council Meeting  
June 28, 1990  
Page 2

- 4.3 Resolution No. 90-1275, Transferring \$1,700,000 of Interstate Transfer Funds to the Hawthorne Bridge Project from the Scholls/Skyline Project

Motion: Councilor DeJardin moved, seconded by Councilor McFarland to adopt the Consent Agenda.

Vote: The eight councilors present voted in favor of the motion. Councilors Bauer, Devlin, Gardner and Ragsdale were not present for the vote.

The motion carried.

5. ORDINANCES, FIRST READING

- 5.1 Ordinance No. 90-355, For the Purpose of Amending Metro Code Section 7.01.050 by Exempting Certain Payments to the Metro Washington Park Zoo from the Excise Tax

The clerk read the ordinance for a first time by title only. The Presiding Officer announced that the ordinance had been referred to the Zoo Committee.

6. ORDINANCES, SECOND READING

- 6.1 Ordinance No. 90-340A, For the Purpose of Adopting the Annual Budget for Fiscal Year 1990-91, Making Appropriations, Levying Ad Valorem Taxes and Creating Four New Funds

The clerk read the ordinance by title only for a second time. The Presiding Officer announced that Ordinance 90-340 had been first read March 8 and referred to the Finance Committee. The Finance Committee and Budget Committee held nine public hearings on the ordinance between March 15 and April 17 and recommended that the Council adopt the ordinance as amended. On May 3, the Council adopted Resolution No. 90-1257 establishing the FY 90-91 approved budget and transmitting it to the Tax Supervising and Conservation Commission. On June 21, the Finance Committee developed final recommendations on Ordinance No. 90-340A, including contracts list "A/B" designations. She also noted the Solid Waste Committee had held a special meeting that afternoon to prepare their final contracts list designations, and that information would be presented at this meeting as well.

Jennifer Sims, Metro Financial Manager, reported that the Tax Supervising and Conservation Commission (TSCC) had held a hearing on the Metro Budget on June 14 and had written a letter of that date identifying several recommendations. The Finance Committee considered that letter and prepared a response which was attached

Council Meeting  
June 28, 1990  
Page 3

to the ordinance and identified as Exhibit A. Ms. Sims said that most of the recommendations were technical amendments relevant to carry-over funds. She called particular attention to a reduction in the approved budget amount for the levy to pay the general obligation bonds for the Convention Center debt service. She said the TSCC had advised of changes they would like to see in anticipated revenues to that fund, and upon second review, that levy was reduced by \$862,000. Ms. Sims said that the Metro ERC management pool, the Purchasing Contract Coordinator's salary and fringe was originally budgeted as a 1.0 FTE position, and the Committee recommended the position be budgeted at .5 FTE and the remaining funds be placed in contingency subject to a study that was required by a budget note.

The Presiding Officer opened and closed the public hearing. No testimony was offered.

Councilor Knowles declared a potential conflict of interest and said that his wife's firm had been engaged by the ERC for several years as their attorneys for performing OLCC related legal services. He said that it was possible that some of the funds allocated in the budget may be used to pay for charges made by his wife's firm.

Council staff pointed out that a motion to adopt the ordinance would also adopt the contracts list. Councilor Hansen said that the Solid Waste Committee had met that afternoon and recommended "A" and "B" designations for Solid Waste Department Contracts. Council staff distributed a list of those proposed contracts and designations. That list has been filed with the meeting record and is incorporated in these minutes by reference.

Main Motion: Councilor Van Bergen moved,  
seconded by Councilor DeJardin  
to adopt Ordinance No. 90-340A.

Motion to Amend: Councilor Hansen moved, seconded by  
Councilor Devlin to amend Ordinance No.  
90-340A to include the Solid Waste  
Committee's recommendations for proposed  
contracts in the Solid Waste Department's  
FY 1990-91 budget.

Vote on Amendment: The eleven councilors present voted aye.  
Councilor Gardner was absent.

The motion carried.

Vote on Main Motion: A roll call vote was taken, resulting in the eleven councilors present voting aye. Councilor Gardner was absent.

The motion carried.

6.2 Ordinance No. 90-349, Amending Ordinance No. 89-292A Revising the FY 1989-90 Budget and Appropriations Schedule for Additional Increases in Zoo Operations

The clerk read the ordinance for a second time by title only. The Presiding Officer announced that Ordinance No. 90-349 was first read May 24 and referred to the Zoo and Finance Committees. The Zoo and Finance Committees held public hearings on the ordinance on June 7 and both committees recommended that the Council adopt the ordinance.

Motion: Councilor Van Bergen moved, seconded by Councilor Wyers to adopt Ordinance No. 90-349.

Council staff, Jessica Marlitt, said that the ordinance addressed additional appropriations for FY 1989-90 needed in the Visitor Services and Animal Management Divisions due to greater than predicted attendance and for medical services for the elephants. Ms. Marlitt said that the costs would be more than offset by additional revenue.

The Presiding Officer opened and closed the public hearing. No testimony was offered.

Vote: A roll call vote was taken resulting in the eleven councilors present voted in favor of the motion. Councilor Gardner was absent.

The motion carried.

6.3 Ordinance No. 90-334, Relating to the Reimbursement of Employees for Use of Personal Vehicles for Travel on Official Business of the District

The clerk read the ordinance for a second time by title only. The Presiding Officer announced that Ordinance No. 90-334 was first read February 22 and referred to the Finance Committee. The Finance Committees held a public hearing on the ordinance on June 7 and recommended that the Council adopt the ordinance.

Motion: Councilor Van Bergen moved, seconded by Councilor Buchanan to adopt Ordinance No. 90-334.

Council Meeting  
June 28, 1990  
Page 5

Councilor Van Bergen gave the Finance Committee's report and recommendations. He said that a discrepancy between mileage reimbursement for councilors and staff had been noted. This ordinance would set both rates in accordance with Internal Revenue Service guidelines at \$.26 per mile.

The Presiding Officer opened and closed the public hearing. No testimony was offered.

Vote: A roll call vote was taken resulting in the eleven councilors present voted in favor of the motion. Councilor Gardner was absent.

The motion carried.

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

The Clerk read the ordinance by title only for a second time. The Presiding Officer announced that Ordinance No. 90-336 was first read before the Council May 10 and referred to the Intergovernmental Relations Committee. The Intergovernmental Relations Committee held a public hearing on the ordinance on May 22 and recommended that the Council adopt the ordinance as amended. On June 14, the Council held an additional public hearing and continued consideration to June 28.

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

Councilor Ragsdale presented the Intergovernmental Relations Committee's report and recommendations. Councilor Ragsdale said that adoption of the ordinance would ban sale within the Metro District of cleaning agents containing phosphorus. He said that one major reason Metro was addressing this issue was to reduce pollution in waterways.

Councilor Ragsdale said that there had been questions raised about whether the ordinance would reduce the phosphate level in the Tualatin River. He said that whether or not the ordinance was adopted, phosphate levels in the Tualatin River would be reduced because the Department of Environmental Quality (DEQ) had directed the Unified Sewerage Agency (USA) to meet certain standards in the Tualatin River by 1993. Councilor Ragsdale said, however, passage of the ordinance would make it easier for USA to meet DEQ standards because water treatment facilities would have improved efficiency because the input to those facilities would decrease. Councilor

Council Meeting  
June 28, 1990  
Page 6

Ragsdale said that USA Consultants had estimated that by the year 2000 potential savings in treatment costs would be \$540,000.

Councilor Ragsdale said that the phosphate ban would significantly benefit the Willamette and Clackamas Rivers too. Councilor Ragsdale said that he had carefully researched the legality of Metro's authority to impose a ban and that there were no concerns about Metro's authority.

Motion to Amend: Councilor Ragsdale moved, seconded by Councilor DeJardin to amend Section 2 of the "Penalty" section of the ordinance to amend the ordinance's effective date to February 1, 1992.

The Presiding Officer opened the public hearing. The following testimony was given:

Paul Cosgrove, Portland, Oregon, said that he represented the Soap and Detergent Association. He said that he felt that Councilor Ragsdale had given a comprehensive introduction. Mr. Cosgrove said that the phosphate problem was primarily a Tualatin River issue. He said that DEQ had set nutrient permit levels for the Tualatin River, including phosphorous, that must be met by June 30, 1993.

Mr. Cosgrove said that he felt that the kinds of cost savings that would be realized would be in terms of operational, not capital costs, and that it would be at least five years before the savings would be in the hundreds of thousands of dollars per year. Mr. Cosgrove said he supported Councilor Ragsdale's amendment to delay the ordinance's effective date in order to study methods to remove phosphorous from water. Mr. Cosgrove said that thus far USA had only examined using alum to remove phosphorous and that delaying the ordinance's effective date would afford USA an opportunity to study alternative methods in order to determine the most effective and efficient method. Mr. Cosgrove said that the soap and detergent industry would like to work with USA in examining alternatives.

He said that another reason the Association supported Councilor Ragsdale's amendment to delay the ordinance's effective date was that the State Legislature would consider a state-wide phosphorous ban in 1991 and it may be unwise for the District to have a ban in place prior to that consideration. Mr. Cosgrove said that the delayed effective date would also afford an opportunity to study the effects on the Clackamas and Willamette Rivers.

Councilor Knowles asked Mr. Cosgrove if the Association questioned Metro's authority to impose the ban. Mr. Cosgrove said it did not.

Council Meeting  
June 28, 1990  
Page 7

Councilor Devlin stated that other areas had adopted a similar ban, most recently Spokane, Washington. He asked Mr. Cosgrove if in Spokane's case he knew how long it had been between the ban's adoption and effective date. Mr. Cosgrove replied ninety days, and that the time frame had proved a hardship for the industry. Councilor Devlin pointed out that if the ordinance were not amended, there would be 210 days before the ban would be in force.

Councilor Devlin noted that USA did not have to meet the DEQ standards until 1993 and that those standards had to be met for only part of the year. Councilor Ragsdale said that he was concerned about the impact the ban would have on manufacturers and distributors. Mr. Cosgrove said that the industry was diffuse and that most companies made both phosphorous and non-phosphorous products. He said that most liquid detergents were non-phosphorous because of manufacturing techniques employed, and major selling brands of powdered detergent in the Metro District market were those containing phosphorous because the industry's capacity to manufacture in the Western United States was almost exclusively phosphorous based.

Mr. Cosgrove said that the District, Spokane, Washington, a few small towns in Montana would be the only areas in the Western United States to have a phosphorous ban if the ordinance were adopted. He said that the impact the ban would have on the industry would be that the industry would be required to have a major overhaul to either change the manufacturing processes or the distribution system.

Don Burdick, Lake Oswego, Oregon, said that he supported the ordinance. He said that of 21 letters the Lake Oswego Corporation wrote regarding banning phosphorous in the Metro region, 13 responses were received, none of which were in opposition. Mr. Burdick said that phosphorous was a major contributor to algae growth -- a problem the corporation spent \$80,000 per year to address.

Mr. Burdick said that he felt that in order to stop pollution, it needed to be stopped at the source. He said that he felt it was an incremental problem. He said that most of the phosphorous in the Metro region was imported through soaps and detergents. He said that he thought that manufacturers could convert their production in a matter of weeks because phosphorous was a detergent additive to soften water. He said that the District already had soft water and that the problem for the industry would be to determine the areas where they could and could not distribute phosphorous containing products.

Council Meeting  
June 28, 1990  
Page 8

Mr. Burdick said that he was opposed to the amendment Councilor Ragsdale had proposed because he felt pollution problems needed to be attacked incrementally and that phosphorous was only one pollution problem. He pointed out that the ban prohibited sale, but not distribution, of phosphorous containing cleaning agents.

Mr. Burdick said that he felt the efforts of USA and Washington County officials in cleaning the Tualatin River were laudable. He said that the USA was treating water that came into it; they were not creating the problem, they are trying to take the problem out of the water. He said that if the Council passed the ordinance, it would assist USA in meeting its goals.

Commissioner Bonnie Hays, Washington County and Gary Kraemer, USA

Commissioner Hays said that she was appearing before the Council in the capacity of the chair of the Washington County Board of Commissioners and chair of the board of directors of the Unified Sewerage Agency. She introduced Gary Kraemer, USA General Manager. Commissioner Hays said that Washington County and USA had requested that Metro look into the issue of phosphorous in the waterways and complimented the Council on their speedy action in examining the problem.

Commissioner Hays said that the County and USA wanted to develop a data base in order to formulate their plan to address DEQ's mandate. She said that she felt alternatives to phosphorous detergents were available presently and that any efforts to reduce source pollution would assist USA in developing their plan. Commissioner Hays urged the Council to enact the legislation as soon as possible.

Mr. Kraemer said that USA had hoped that the ban would go into effect in February 1991 in order to give USA two summers to operate their treatment facilities under the ban to determine what other measures would be required to meet DEQ standards. Mr. Kraemer added that he felt another potential cost savings to USA would be in construction of wetlands. He said that there was a possibility that if there were less effluent, there may be a lower number of acreage of wetlands required to be constructed.

Mr. Kraemer also said that alum was used to remove phosphorous from the water and that alum was a product that had salt in it. He said that salt goes into the solution causing a product called total dissolved solids to be in the effluent going out of the treatment plant. Mr. Kraemer said that DEQ was currently looking at establishing limits for total dissolved solids in effluent that



Council Meeting  
June 28, 1990  
Page 9

would be less than USA would be able to meet if they had to use high quantities of alum to treat phosphorous.

There was no other testimony offered. The public hearing was closed.

Councilor Ragsdale said that generally he did not support bans as a technique of government, but found compelling reasons to support this ordinance. He said that he had looked at potential costs to constituents and while he did not have data, he believed that negative impacts would be very minimal. He said that he did not consider the ban to be an impediment to Metro's constituents except in the short range for manufacturers and distributors. He said that in order to minimize any negative effects, he favored delaying the effective date.

Councilor Van Bergen said that he did not believe that the ban would impose a hardship on the industry and was not in favor of the amendment. Councilor Hansen said that he did not support the amendment. He said that he agreed that the ban would be an inconvenience to some of Metro's constituents, however, he said that if he had to choose between the manufacturers and distributors or a local agency facing radical changes to their operation, he favored inconveniencing the manufacturers and distributors.

Councilor Devlin said that the Intergovernmental Relations Committee had considered delaying the effective date, but had recommended that the Council adopt the earlier date. He said that he did not feel that the issue of studies would be affected by the earlier effective date because the studies would proceed regardless. He said that he did not feel the issue of manufacture and distribution was significant because the ordinance as written, allowed 210 days following Council action. Councilor Devlin said that if the measure were effective by February 1, 1991, it may provide impetus for the State Legislature to enact a state-wide phosphate ban. Councilor DeJardin said that he felt that the public would be favorable to the manufacturers of non-phosphate cleaning agents.

Councilor Knowles said that he would support the amendment because the industry had indicated that if they had more time, they might be able to address the phosphate issue in an alternative fashion. He said that he felt that the Council should provide that opportunity.

Vote on Amendment: A roll call vote was taken resulting in three councilors voting aye: Councilors Buchanan, Knowles and Ragsdale. Eight councilors voted nay: Councilors Bauer,

Council Meeting  
June 28, 1990  
Page 10

Devlin, DeJardin, Hansen, McFarland, Van Bergen, Wyers and Collier. Councilor Gardner was absent.

The amendment failed to carry.

Vote on Main Motion: A roll call vote was taken resulting in the eleven councilors present voting aye. Councilor Gardner was absent.

The motion carried, and the ordinance was adopted.

Councilor Ragsdale noted that there were no "Whereas" clauses in the ordinance and urged the Council and Executive Officer to adopt that policy. He also said that he believed that it would be important for Metro staff, Council and USA to continue to monitor opportunities to address phosphates in dishwasher detergents.

The Presiding Officer recessed the Council at 7:10 p.m. and reconvened at 7:35 p.m.

## 7. RESOLUTIONS

### 7.1 Resolution No. 90-1283, For the Purpose of Authorizing an Exemption from Requirements of Metro Code Section 2.04.054(a)(3) for Amendment No. 19 to the Contract with Zimmer Gunsul Frasca for Additional Design Services for the Convention Center Project

Motion: Councilor Knowles moved, seconded by Councilor Buchanan to adopt Resolution No. 90-1283.

Vote: The eleven councilors present voted aye. Councilor Gardner was absent.

Councilor Knowles presented the Convention and Visitor Facilities Committee's report and recommendations. Councilor Knowles said that the exemption from the competitive bidding process would allow the design contract with Zimmer Gunsul Frasca to be amended for additional design services as detailed in Amendment No. 19.

Councilor Ragsdale questioned why some of the design services in Amendment 19 were not considered a part of the original design services contract. He also questioned the general contractor's responsibility to complete the work. Councilor Knowles replied that some of the items in Amendment No. 19 were still under consideration in negotiating a settlement with the general contractor. In response to specific councilor questions regarding

Council Meeting  
June 28, 1990  
Page 11

the window maintenance system, Convention Center Project staff Neil McFarlane replied that the window maintenance system could not be designed until the design and glazing on the towers was decided. In response to questions about whether the system could be installed at a later date, Mr. McFarlane replied that the system was not a window-washing system but rather a maintenance system to, for instance, replace broken glass panes.

Councilor Van Bergen requested an Executive Session. The Council was recessed, and an Executive Session was convened in Conference Room 240 at 7:35 under the authority of ORS 190.660(1)(h). In attendance were: Presiding Officer Tanya Collier; Deputy Presiding Officer Gary Hansen; Councilors Lawrence Bauer, Roger Buchanan, Tom DeJardin, Richard Devlin, David Knowles, Ruth McFarland, Mike Ragsdale and Judy Wyers; Executive Officer Rena Cusma; General Counsel Dan Cooper; Council staff Ray Barker and Jessica Marlitt; Convention Center Project staff Neil McFarlane and Sandy Bradley and the Clerk of the Council. The Council was advised of the status of pending litigation regarding the Oregon Convention Center.

The Presiding Officer reconvened the Council in the Council Chambers at 7:40 p.m.

Motion to Amend: Councilor McFarland moved, seconded by Councilor Ragsdale to amend Resolution No. 90-1283 to remove all "WHEREAS" clauses contained in Resolution No. 90-1283.

Vote on Amendment: The eleven councilors present voted aye. Councilor Gardner was absent.

The motion carried.

Vote on Main Motion: Ten of the eleven Councilors voted aye. Councilor Ragsdale voted nay, and Councilor Gardner was absent.

The motion carried.

7.2 Resolution No. 90-1281, Revising Guidelines for Council Per Diem, Councilor Expense and General Council Materials and Services Account

Councilor Van Bergen presented the Finance Committee's report and recommendations.

Motion: Councilor Van Bergen moved, seconded by Councilor Wyers to adopt Resolution No. 90-1281.

Council Meeting  
June 28, 1990  
Page 12

Councilor Van Bergen presented the Finance Committee's Report and Recommendations. He said that councilors were attending many more meetings than originally anticipated. He said that the resolution would increase the maximum number of Metro-related meetings per month for which a councilor could receive per diem from eight to ten and that the budget impact would be an additional \$15,264.

Councilor Bauer spoke in support of the resolution. Additionally, Councilor Bauer requested that the Council explore seeking legislative approval to have medical insurance available to councilors not already on a group plan. Councilor Knowles said that he objected to item 3(d) in Exhibit A of the resolution which he characterized as "blanket carte blanche" definition of which meetings were reimbursable.

Amendment: Councilor Knowles moved, seconded by Councilor Ragsdale to amend Resolution No. 90-1281 by deleting item 3(d) in Exhibit A.

Councilor McFarland spoke against the amendment. She said that many councilors average more than ten meetings per month and that the cap on the per diem was a control against possible abuse. Councilor DeJardin also spoke against the amendment and reminded the Council that often councilors have more than one Metro-related meeting per day.

Councilor Ragsdale spoke in favor of the motion. He said that he felt item 3(d) allowed abuse and was irresponsible. Councilor Bauer spoke against the amendment. He said that he did not feel any language would preclude abuse. He said that councilors must answer to their constituents. He said that there may be gray areas, but he felt that councilors had a moral responsibility and the matter should be left to the morality of the councilor and the judgement of his or her constituents. Councilor Hansen agreed with Councilor Bauer that there was no language that could prevent intentional abuse.

Councilor Devlin pointed out that councilor per diem records were open to the public. He said that he was opposed to the amendment because he felt councilors should use their own discretion in determining when it was appropriate to claim per diem and that the alternative would be to construct a lengthy document to address all possible instances in which it was appropriate to claim per diem.

Vote on Amendment: A roll call vote was taken resulting in Councilors Knowles, Ragsdale and Collier voting aye. Councilors Bauer, Buchanan, Devlin, DeJardin, Hansen, McFarland, Van

Council Meeting  
June 28, 1990  
Page 13

Bergen and Wyers voted nay. Councilor Gardner was absent.

The amendment failed to carry.

Vote on Main Motion: The eleven councilors present voted aye. Councilor Gardner was absent.

The motion carried unanimously.

7.3 Resolution No. 90-1261, Establishing a Parks & Natural Areas Policy Advisory Committee

Motion: Councilor Devlin moved, seconded by Councilor DeJardin to adopt Resolution No. 90-1282.

Councilor Devlin presented the Intergovernmental Relations Committee's report and recommendations. He said that the Committee had unanimously supported the resolution.

Presiding Officer Collier turned the gavel over to Deputy Presiding Officer Hansen.

Vote: Nine councilors voted in favor of the motion. Councilors Bauer, Collier and Gardner were absent for the vote.

The motion carried.

7.4 Resolution No. 90-1282, Approval in Concept of the Smith and Bybee Lakes Plan

Motion: Councilor Devlin moved, seconded by Councilor DeJardin to adopt Resolution No. 90-1282.

Councilor Devlin presented the Intergovernmental Relations Committee's report and recommendations. He said that the Committee had unanimously supported the resolution. He said that the Committee had raised two issues that had been addressed in a re-write of the resolution: 1) to clarify that the committee being established was a policy advisory committee, and 2) ownership of the St. Johns Landfill. Councilor Devlin said that ownership of the Landfill was not a factor in consideration of Resolution No. 90-1282. He said that it was his understanding that the District was in negotiation with the City of Portland regarding ownership and urged the Council to give guidance to the Executive Officer relative to policy.

The public hearing was opened.

Council Meeting  
June 28, 1990  
Page 14

Jim Sjulín, City of Portland, Park Bureau, read written testimony from the Bureau of Parks and Recreation supporting the Plan. That testimony has been filed with the meeting record and is incorporated in these minutes by reference. Mr. Sjulín said that he felt it important to protect this natural resource. He said that the Bureau felt that ownership by either the City or Metro was not an issue.

There was no other testimony offered, and the public hearing was closed.

Councilors DeJardin and Van Bergen said that they supported the resolution. Councilor Van Bergen requested that at some point the PAC bring forward a plan proposing how the issue of ownership would be decided. He said that his support of the resolution did not indicate support of either the City or Metro owning the St. Johns Landfill.

Vote: The ten councilors present voted aye. Councilors Bauer and Gardner were absent.

The motion carried.

Deputy Presiding Officer Hansen turned the gavel back over to Presiding Officer Collier.

7.5 Resolution No. 90-1265, For the Purpose of Revising the Bylaws of the Water Resources Policy Alternatives Committee

Motion: Councilor McFarland moved, seconded by Councilor Devlin to adopt Resolution No. 90-1265.

Councilor McFarland presented the Intergovernmental Relations Committee's report and recommendations. She said that the resolution would adopt the Committee's current working practices. She said that the IGR Committee had amended the resolution to: add language to establish meetings to occur at least once a quarter, clarify Council appointment of WRPAC officers would occur by resolution and to add a stipulation for amending or repealing the bylaws.

Councilor Ragsdale said that he felt that staff should be complimented for addressing water quality. He said that he felt that the resolution's adoption was a big step toward creating a regional policy advisory board for water quality similar to the Joint Policy Alternatives Committee on Transportation. Councilor Buchanan spoke in favor of the resolution and staff's efforts. Councilor DeJardin commended both staff and Councilor Ragsdale for bringing the issue forward.

Council Meeting  
June 28, 1990  
Page 15

Council staff noted that the IGR Committee's intent was to change the name of the Water Resources Policy Alternatives Committee to the Water Resources Policy Advisory Committee. She advised that an amendment would be in order to amend the Committee's name in the title and the second "Whereas" recital.

Motion to Amend: Councilor McFarland moved, seconded by Councilor Devlin to amend Resolution No. 90-1265 to change the name of the Water Resources Policy Alternatives Committee to the Water Resources Policy Advisory Committee in the resolution's title and in the second "Whereas" recital.

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

The motion carried.

Vote on Main Motion: The ten councilors present voted in favor of the resolution. Councilors Bauer and Gardner were absent.

The motion carried.

7.6 Resolution No. 90-1290, Regional Yard Debris Plan for Submittal to the Department of Environmental Quality

The Presiding Officer announced that in introducing Resolution No. 90-1290, she wanted to highlight that the purpose of the resolution was to submit Metro's draft yard debris plan to DEQ. She said that Metro was legally required to submit the Plan by July 1, 1990 after which DEQ would review the Plan and return it to Metro for final revisions. Metro then would have 90 days to respond to DEQ's comments and adopt a final plan by ordinance, ensuring at least three additional public hearings. She clarified that the action on this resolution was not directed towards the final plan content, but simply would forward the plan to DEQ as required. Presiding Officer Collier advised that staff had distributed a memo from Planning and Development summarizing the public involvement process to date in developing the Yard Debris Plan.

Motion: Councilor Wyers moved, seconded by Councilor Buchanan to adopt Resolution No. 90-1290.

Councilor Wyers presented the Solid Waste Committee's report and recommendations. She said that Metro had worked closely with local

Council Meeting  
June 28, 1990  
Page 16

governments, haulers, yard debris processors and citizens to develop the regional yard debris plan as directed by DEQ. She said that over the preceding 14 months, this group had met numerous times to assure that there was a high degree of public involvement in the process. Additionally, there were four public workshops. Councilor Wyers said that the Solid Waste Committee, the Waste Reduction Subcommittee, the Solid Waste Management Policy Advisory and Technical Committees had unanimously agreed upon the draft plan.

Councilor Wyers said that one of the major issues discussed was that the plan was market driven. She said that there were a number of debates as to what the market was and that the debates and evaluation would continue. She said that it had been agreed that if the market had been underestimated, some of the yard debris collected would be used to finish closure of the St. Johns Landfill. Therefore, Councilor Wyers said the plan had some collection "leeway" in it. She said that she was personally concerned that the plan did not contain a firm directive on how to accelerate or decelerate the plan.

Councilor Wyers said that the plan also outlined collection procedures, and that the collection plan would vary by jurisdiction. She said that the plan contained provisions for self-haul, curbside pickup, depots and user pay. Councilor Wyers said that funding proposal for the plan would be forwarded to the Council at a later date.

Councilor Knowles complimented the planning staff. He asked if the groups had examined the issue of the uniformity of the products. He said that he was concerned that if additional processors became involved and the materials were not of uniform quality, it might undercut the market and thereby diminish Metro's ability to compost and recycle yard debris. Planning and Development Director Rich Carson said that the plan directed Metro to develop product quality standards as part of the process.

Vote: The nine councilors present voted in favor of the resolution. Councilors Bauer, Ragsdale and Gardner were absent.

The motion carried.

7.7 Resolution No. 90-1280, For the Purpose of Purchasing Computer Equipment for Use at Metro Solid Waste Disposal Sites

Removed from the agenda.



Council Meeting  
June 28, 1990  
Page 17

Presiding Officer Collier recessed the Council and convened the District's Contract Review Board.

7.8 Resolution No. 90-1273, For the Purpose of Authorizing Execution of a Contract for the CCTV System for the Oregon Convention Center to Other than the Apparent Low Bidder

Motion: Councilor Knowles moved, seconded by Councilor Buchanan to adopt Resolution No. 90-1273.

Councilor Knowles presented the Convention and Visitor Facilities Committee's report and recommendations. He said that the contract was for a closed circuit security monitoring system at the Oregon Convention Center. Councilor Knowles said that the low bidder on the contract had been National Guardian Security Services Corporation, but their bid had been conditioned on Metro's acceptance of certain contract modifications. He said that project staff had recommended rejection of that bid as non-responsive and award of the contract to the next lowest, responsive bidder-- Entrance Controls.

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

The motion carried.

7.9 Resolution No. 90-1285, For the Purpose of Exempting Oregon Convention Center Follow-on Contract Items from Requirements of Metro Code Section 2.04.041(c) and 2.04.044

Motion: Councilor Knowles moved, seconded by Councilor Buchanan to adopt Resolution No. 90-1285.

Councilor Knowles presented the Convention and Visitor Facilities Committee's report and recommendations. He said that the resolution would approve a number of follow-on contracts. He said that because Metro had decided not to assign any additional work to the general contractor after May 1, it was necessary to award these follow-on contracts in order to complete construction on the Convention Center. He said that all of the items were considered necessary for the efficient and desired operation of the Convention Center. Councilor Knowles said that Metro would be reimbursed by the general contractor for some of the contracts. He said that with the exception of the window maintenance system, all of the contracts were under \$30,000.

Councilor Ragsdale asked if the Council had other alternatives to get the work done without going outside of the general contract. He said that the action felt like a waiver of the general

Council Meeting  
June 28, 1990  
Page 18

contractor's responsibility. Convention Center Project staff commented that if the general contractor performed the work, it would require a time extension. He said that the amount of work to be done did not justify the overhead of the general contractor. It said that it was not uncommon for public construction contracts to be divided into three phases: site preparation, construction and follow on. Mr. McFarlane said that he felt that work could be performed at a lower cost if it were bid by local small contractors. He said that the intent was to finish the project in the most cost-effective manner.

Vote: Nine of the ten councilors present voted aye.  
Councilor Ragsdale voted nay. Councilors Bauer and Gardner were absent.

The motion carried.

The Presiding Officer recessed the Contract Review Board at 8:55 p.m. and reconvened at 9:05 p.m.

7.10 Metro South Modifications Project Bid Protest of Award to Emerick Construction Company Hearing and Council Action on Appeal

The Presiding Officer advised the Council that pursuant to Metro Code Section 2.04.031, the matter was before the Contract Review Board as an appeal of an Executive Officer's decision on a bid award protest. She said that the hearing would be conducted as follows: General Counsel Dan Cooper would provide a short introduction for the Council concerning the subject matter and background of this appeal. Solid Waste Director Bob Martin would then give a short report on behalf of the Executive Officer regarding the decision being appealed. The Contract Review Board would then hear from the appellants, Robinson Construction Company, who would have 30 minutes to present their case. Then Emerick Construction Company would have 30 minutes to make its presentation to the Board. She advised that Robinson could reserve up to 10 minutes of its time for rebuttal.

Presiding Officer Collier said that the Board would then take additional testimony from those present who wished to be heard, that testimony would be limited to three minutes per person. The Board would then discuss and a motion to uphold or reject the appeal would then be in order. Approval of a motion to uphold the appeal would disqualify Emerick's bid. Approval of a motion to reject the appeal would allow the Executive Officer to execute a contract with Emerick.

Council Meeting  
June 28, 1990  
Page 19

General Counsel Cooper said that the Council had adopted Resolution No. 90-1100 which authorized bids for modifications at Metro South Station and authorized the Executive Officer to enter into and execute a contract with the apparent low bidder. He said that the issue of the appeal was compliance with the Disadvantaged Business Enterprise/Women Business Enterprise (DBE/WBE) Metro Code requirements and good faith efforts.

Bob Martin stated that the project goals were 10 percent DBE participation and 3 percent WBE participation. He said that Emerick Construction's bid did not meet the goals but documented good faith efforts. Mr. Martin said that actual efforts of Emerick were 1.7 percent DBE and .7 percent WBE. Mr. Martin said that his staff had reviewed Emerick's good faith efforts and determined that Emerick had materially complied with the requirements. He said that subsequent to issuance of the Notice of Conditional Award, Robinson Construction Company filed an appeal of the bid award contending that Emerick failed to meet the good faith efforts requirement. The Executive Officer denied the appeal.

Mr. Martin said that the Executive Officer's letter of June 6 denying Robinson's appeal detailed and responded to each of Robinson's contentions, but the primary contentions were:

1) Robinson Construction contended that Emerick had failed to break the project down into the most efficient, economically feasible units to increase DBE/WBE participation. He said that Robinson had stated that two of Emerick's identified units of work combined unrelated specialty items and four of their identified units of work combined specialty items that were not typically performed by a single firm. Mr. Martin said that Emerick had identified a total of twenty-eight units of work and of the 15 specialty items that were combined in the six units of work Robinson disputed, Metro determined that effort was made to solicit bids for each specialty item in compliance with the Metro Code.

2) Mr. Martin said that Robinson contended that Emerick solicited bids from DBEs and WBEs whose firms did not appear in the DBE/WBE directory. Mr. Martin said that at the pre-bid conference, bidders were instructed to use the March issue of the directory, and while the firms in question did not appear in the May issue of the directory, they did appear in the March issue.

3) Mr. Martin said that Robinson had alleged that solicitations Emerick mailed had not included details regarding where specifications could be reviewed. He said that Emerick had included in their sub bid solicitation letters three plan centers where specifications could be reviewed. Mr. Martin said that the

Council Meeting  
June 28, 1990  
Page 20

Code did not specify a minimum number of plan centers to be contacted.

In response to councilor questions as to whether new evidence could be offered, General Counsel replied it was up to the discretion of the Council.

Motion: Councilor DeJardin moved, seconded by Councilor Buchanan to prohibit accepting new evidence not already in the record.

Vote: Nine of the ten councilors present voted in favor of the motion. Councilor Hansen voted nay, and Councilors Bauer and Gardner were absent.

The motion carried.

Mr. Larry D. Moomaw, attorney for Robinson Construction, presented Robinson's arguments outlined in Robinson's letter of appeal dated June 13, 1990. Robinson's representatives contended that Emerick failed to meet Code's good faith requirements and merely kept a paper trail. Mr. Moomaw alleged that in one instance an apparent low WBE bid was not used and referenced the affidavit of Audrey Castile contained in the record.

Mr. Kevin Spellman, President, Emerick Construction, said that his company had met the good faith efforts required. He referred to the documentation in the record. Mr. Spellman also read showed a three ring binder, which he said was a complete record of potential bidders contacted. Mr. Spellman denied that there was any intent to exclude DBE/WBE participation.

The Executive Officer said that her review was in accordance to Metro Code provisions, and she did not identify any non-compliance. She said that if there were another standard that should be employed to review compliance, the Council should inform her. Councilor DeJardin stated that the Council's role was a policy-making one, and that the Council should not be reviewing staff's evaluation of bid documents. Councilor Ragsdale said that if the award were overturned, it was the Council's responsibility to clarify the Code and set clear standards.

The Presiding Officer recessed the Contract Review Board at 10:30 p.m. and reconvened the Board at 10:38 p.m. Councilor Knowles raised concerns regarding what effect denial of the award would have on the entire DBE/WBE program. Presiding Officer Collier said that she, too, was troubled by that issue.

Council Meeting  
June 28, 1990  
Page 21

An Executive Session was convened at 10:50 p.m. in Conference Room 24 pursuant to ORS 192.660(1)(h) to discuss pending litigation regarding Metro South Station. In attendance were: Councilors Ragsdale, Collier, Hansen, Buchanan, Wyers, DeJardin, McFarland, Van Bergen, McFarland and DeJardin; Executive Officer Cusma; General Counsel Cooper; Council Analysts Ray Barker and Jessica Marlitt and the Clerk of the Council.

The Contract Review Board reconvened at 10:55 p.m.

**Motion:** Councilor DeJardin moved, seconded by Councilor Van Bergen to uphold the award of the Metro South Modifications contract to Emerick Construction and reject the appeal of Robinson Construction Company.

**Vote:** A roll call vote was taken, resulting in Councilors Buchanan, DeJardin, Knowles, Ragsdale, Van Bergen and Wyers voting aye. Councilors Devlin, Hansen, McFarland and Collier voted nay. Councilors Bauer and Gardner were absent.

The motion carried, and the award was upheld.

#### **COUNCILOR COMMUNICATIONS & COMMITTEE REPORTS**

##### **8.1 Water Resources Management Work Plan**


Removed from the agenda.

##### **Other Councilor Communication**

Councilor Ragsdale whose resignation was tendered effective July 1, 1990 was congratulated and thanked for his efforts and achievements as a councilor and two-term presiding officer.

There was no other business, and the meeting was adjourned at 11:30 p.m.

Respectfully submitted,



Gwen Ware-Barrett, Clerk of the Council

A:\COUN0628.AGN