

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

**September 13, 1990
Regular Meeting**

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

Councilors Absent: Tom DeJardin

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

3.1 Urban Growth Management Briefing

Planning and Development Director Richard Carson and Senior Regional Planner Ethan Seltzer summarized the draft "Regional Urban Growth Goals and Objectives" publication which had been distributed to the Council. Mr. Carson said that the document was a vision of regional planning and a strategic plan for implementation of planning goals.

Mr. Seltzer said that public meetings and workshops would be held to discuss the draft proposal. He also said that all mayors and councils throughout the region had been contacted to set up joint meetings with the councils, planning commissions and Metro representatives. Mr. Seltzer said that meetings with groups interested in urban growth planning were being scheduled as well. He said that the goals and objectives was a component of periodic review activities.

He said that Metro's periodic review was scheduled for October, however, the goals and objectives would not be complete by that time and Metro had requested additional time to complete the review. He distributed a letter dated September 12, 1990 from Susan Brody, Director of the Department of Land Conservation and Development that said the process of developing goals and objectives is important, and if you need some more time, take it.

3.2 Executive Session

The Presiding recessed the Council and convened an Executive Session under the Authority of ORS 192.660(1)(e) for the Purpose of Discussing Real Property Transactions. The Executive Session was convened in Metro Conference Room 240 at 5:55 p.m. In attendance were Councilors Collier, Bauer, Buchanan, Devlin, McFarland, Hansen, Knowles, Gardner, Saucy and Van Bergen; Executive Officer Rena Cusma; General Counsel Dan Cooper; Finance and Administration staff Neil Saling and Jennifer Sims; Council Administrator Don Carlson and brokerage representatives Messrs. Pihas and Marc Madden. During the Executive Session, various proposals for real estate transactions regarding the Sears property were discussed.

The Executive Session was adjourned at 6:30 p.m., and the Council was reconvened at 6:35 p.m.

4. CONSENT AGENDA

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

4.1 Minutes of May 10, 1990

REFERRED FROM CONVENTION AND VISITOR FACILITIES COMMITTEE

4.2 Resolution No. 90-1316, Confirming Appointments to the Public Policy Advisory Committee for Regional Convention, Trade, Performing Arts and Spectator Facilities

REFERRED FROM SOLID WASTE COMMITTEE

4.3 Resolution No. 90-1230, For the Purpose of Confirming the Appointment of Wilbert H. Randle, Jr. to Fill a Vacancy on the 1st for Recycling Advisory Committee and Assigning Terms

Motion: Councilor Saucy, Jr. moved seconded by Councilor Wyers to adopt the Consent Agenda.

Vote: The seven councilors present voted in favor of the motion. Councilors Bauer, Buchanan, Knowles, McFarland and DeJardin were absent for the vote.

The motion carried.

5. ORDINANCES, FIRST READING

5.1 Ordinance No. 90-362, For the Purpose of Creating Chapter 5.07 Adopting a Program to Provide Recycling Credits for Eligible Nonprofit Organizations and Amending Ordinance No. 90-340 Adopting the Fiscal Year 1990-91 Metro Budget and Authorizing Funds for this Program

The Clerk read the ordinance for a first time by title only. The Presiding Officer announced that Ordinance No. 90-362 had been referred to the Solid Waste Committee with a subsequent referral to the Finance Committee.

6. ORDINANCES, SECOND READINGS

6.1 Ordinance No. 90-358, Revising Metro Code Section 4.01.050 to Include Exclusion from Zoo Premises

The Clerk read the ordinance for a second time by title only. The Presiding Officer announced that Ordinance No. 90-358 was first read before the Council on July 26 and referred to the Zoo Committee. The Zoo Committee considered the ordinance on August 2 and recommended technical amendments. On August 16, the Committee held a public hearing on the ordinance August 16 and recommended Council adoption.

Motion: Councilor Saucy, Jr. moved, seconded by Councilor McFarland to adopt Ordinance No. 90-358.

Councilor Saucy, Jr. presented the Zoo Committee's report. He said that the ordinance provided a legal mechanism for excluding persons from Zoo premises for a specific period of time and provided a recourse for persons excluded to appeal the exclusion.

The public hearing was opened and closed, no testimony was offered.

Vote: A roll call vote was taken. Councilor DeJardin was absent; the other eleven councilors present all voted in favor of the motion.

The motion carried unanimously.

7. RESOLUTIONS

7.1 Resolution No. 90-1311, For the Purpose of Approving the One Percent for Recycling Program Criteria and Guidelines and Application for Provision for FY 1990-91

Motion: Councilor Wyers moved, seconded by Councilor McFarland to adopt Resolution No. 90-1311.

Councilor Wyers presented the Solid Waste Committee's report. She said that there were modifications to the criteria and guidelines, but no major changes. Councilor Wyers said that in previous years, grants for the One Percent for Recycling Program had been awarded based on proposals submitted. Resolution No. 90-1311, if adopted, would change the proposal process to a standardized application.

Councilor Wyers said that a public forum had been held to receive input on the program, its criteria, guidelines and process. She said the forum was attended by more than 40 people, and as a result of public comments, it had been determined that the public was substantially satisfied with the program and its operation. Councilor Wyers said additional emphasis on precycling and marketing had been added to the program and that the program would also provide more fiscal accountability.

Councilor Devlin asked how the program would be funded. Councilor Wyers said that the Solid Waste Committee and One Percent for Recycling Advisory Committee would meet to discuss the issue and make a recommendation by November, 1990. Councilor Van Bergen pointed out that the Solid Waste operating budget had grown significantly since the program's inception. He said that the committees should consider whether there should be a set dollar amount for the program or whether it should continue to be funded at 1 percent of the operating fund.

Vote: The vote was taken. Councilor DeJardin was absent; the other eleven councilors present all voted in favor of the motion.

The motion carried unanimously.

7.2 Resolution No. 90-1317, For the Purpose of Approving an Agreement Between Burlington Northern Railroad Company and Metro for Construction and Maintenance of Railroad Crossings at Metro East Station .

Motion: Councilor Wyers moved, seconded by Councilor Devlin to adopt Resolution No. 90-1317.

Councilor Wyers presented the Solid Waste Committee's report and recommendations. She said that the Public Utilities Commission (PUC) had required installation of protective devices at the north and south entrances at the Metro East Station. Councilor Wyers said that Resolution No. 90-1317 would approve an agreement

with Burlington Northern Railroad to construct and maintain the devices at the south entrance of the property. Under separate separate agreement, Trans Industries would pay Metro to construct the devices and would pay Metro maintenance costs for the devices at the north entrance as long as Trans Industries operated the station. She said that the construction costs were estimated to be \$118,000.

Councilor McFarland said that she was uncomfortable with the resolution and considered the site a poor one. She said that she was concerned that other costs may be added as a result of regulatory agency requirements. Councilor Van Bergen asked Solid Waste Director Bob Martin if all necessary permits for the site had been obtained. Mr. Martin said that to his knowledge, they had been, however, staff was continuing to confer with Trans Industries' consultants.

Vote: Ten of the eleven Councilors present voted aye. Councilor McFarland voted nay, and Councilor DeJardin was absent.

The motion carried.

The Presiding Officer announced that the Council in its capacity as the District's Contract Review Board will consider Agenda Items 7.3, 7.4 and 7.5.

7.3 Resolution No. 90-1318, For the Purpose of Authorizing an Exemption to the Requirement of Competitive Bidding Pursuant to Metro Code 2.04.060 and Approving a Sole Source Agreement with CEIP

Motion: Councilor Gardner moved, seconded by Councilor McFarland to adopt Resolution No. 90-1318.

Councilor Gardner presented the Intergovernmental Relations Committee's report and recommendations. He said that the resolution would approve a sole source agreement with CEIP to provide an intern in the Planning and Development for the RLIS program. He said that CEIP would provide an intern to work at Metro to provide data support for the reapportionment project. He said that CEIP would provide the intern at less cost than Metro could by hiring additional staff. Councilor Gardner said that the cost savings would be approximately \$8,000. Councilor Gardner said that there were no other vendors who provided that service.

Vote: The ten councilors present voted aye. Councilors Bauer and DeJardin were absent for the vote.

The motion carried.

The Presiding Officer recessed the Council at 8:00 p.m. and reconvened the Council at 8:11 p.m.

7.4 Appeal of Executive Officer's Decision to Reject the Appeal of AMFAB Resources in the Matter of Awarding a Contract for Design, Manufacture and Installation of a Compaction System at Metro South Station

The Presiding Officer announced that the proceedings would be conducted pursuant to Chapter 2.05 of the Metro Code.

Councilors Knowles declared a potential conflict of interest. Councilors Gardner and Van Bergen disclosed that they had received telephone calls regarding the appeal. The Presiding Officer asked General Counsel Dan Cooper to clarify disclosure requirements. Mr. Cooper said that when a councilor receives information not in the record regarding a Council matter, if that councilor intends to use that information in making a decision on that matter, that information must be disclosed.

Representing AMFAB were Rick Martson and John Stride of law firm Tonkin Torp and Carl Winans, General Manager of AMFAB. At Mr. Martson's request, Councilor Knowles excused himself from the proceedings.

Mr. Martson said that the Shredding Systems Inc. compactor was a two-bale system, while the AMFAB compactor was a single baler. He said that the transport contract with Jack Gray Trucking specified single bales. He alleged that the two-bale system had been evaluated by Wastetech and that Wastetech had recommended that it be rejected.

Mr. Martson objected to the process for awarding the contract. Mr. Marston alleged that Metro staff had informed both Shredding Systems' and AMFAB's that their proposals were tied and invited both companies to comment on the contract proposals. He said that AMFAB General Manager Carl Winans was not aware that these comments would be used to determine the award. Mr. Marston disputed the evaluation points assigned for warranty, company history and indemnification.

Mr. Carl Winans said that the shape of the two-bale system could damage and would cause additional wear on the Jack Gray trucks. He said that the single bale held its shape better than the two bale. He urged the Council to hire an independent consultant to evaluate both compactors.

Solid Waste Director Bob Martin said that staff's request for contract comments was intended to clearly outline the contract provisions acceptable to each party. Mr. Martin said that staff had felt that when the contracts were evaluated, staff felt that while one companies proposal under a certain provision may be preferable to the other company's, staff considered the Shredding System Inc. proposal to be slightly superior to AMFAB's.

Mr. Dan Saltzman and Mr. Thomas Garnier represented Shredding Systems. Mr. Saltzman said that both companies had been instrumental in developing the proposal documents and that Shredding Systems felt that the process had been fair. Mr. Saltzman said his company felt that the Shredding System two-bale system was technically superior to the AMFAB system.

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

The Presiding Officer recessed the Council at 8:00 p.m. and reconvened the Council at 8:11 p.m.

Councilor Wyers presented the Solid Waste Committee's report. She said that the Committee had considered both proposals and had received a presentation from both proposers. She said that the Committee had considered factors of DBE/WBE participation, compatibility, indemnification, warranties and cost. She said that the Committee was satisfied that the process had been fair and complete. Councilor Wyers said that the Committee believed from the testimony offered that the proposers were clear that the contract comments would be used in evaluating the proposals.

Motion: Councilor Wyers moved, seconded by Councilor Gardner to reject the appeal of AMFAB Resources and uphold the Executive Officer's decision.

Councilor Hansen spoke in favor of the motion. Councilor Devlin asked if the Executive Officer's letter to AMFAB dated September 4 should be included in the record. General Counsel Cooper said that the letter should be included as part of the record. Councilor Van Bergen said that he supported the appeal because he felt that the hearing process had been violated because issues outside of the scope of the record had been included in the discussion of the appeal.

Vote: A roll call vote was taken resulting in Councilors Collier, Devlin, Gardner, Hansen and Wyers voting in favor of the motion. Councilors McFarland, Saucy, Jr. and Van Bergen voted against the motion. Councilors Bauer, Buchanan and DeJardin were absent.

for the vote, and Councilor Knowles did not participate in the proceedings.

The motion carried; the appeal was rejected, and the Executive Officer's decision was upheld.

The Presiding Officer adjourned the Contract Review Board and reconvened the Council.

7.5 Resolution No. 90-1310, For the Purpose of Awarding a Contract to Shredding Systems, Inc. for Design, Manufacture and Installation of a Compaction System at Metro South Station

Motion: Councilor Wyers moved, seconded by Councilor Devlin to adopt Resolution No. 90-1310.

Councilor Wyers said that because the contract had been discussed at length during consideration of the appeal of AMFAB. She said however, two amendments had been suggested subsequent to the Solid Waste Committee's review.

Amendment: Councilor Wyers moved, seconded by Councilor Devlin to amend Resolution No. 90-1310 by changing in last line of third "Whereas" the word "preferred" to "most responsive proposer;" and in the "Be It Resolved" section adding "1. That the Council of the Metropolitan Service District, having reviewed the record and considering the criteria established in the Request for Proposals, finds that the proposal submitted by Shredding Systems, Inc. is the most responsive proposal" and renumbering existing "1." to "2."

General Counsel said that the amendment clarified that the Council was making the decision on the merits of the proposal. He said that the amendment clarified that the Council had determined Shredding Systems to have submitted a superior proposal based on the evaluation criteria.

Vote on amendment: The eight councilors present voted in favor of the amendment. Councilors Bauer, Buchanan, DeJardin and Knowles were absent.

The motion to amend carried.

In response to a question raised by Councilor Van Bergen regarding to damage to Jack Gray Transport vehicles. Mr. Martin said that most damage occurs in loading and unloading trucks when debris extends from the baled material. Councilor Van Bergen asked Mr. Martin if the same problem would exist if an alternate truck design had been used. Mr. Martin replied affirmatively.

Councilor Saucy, Jr. asked questions regarding indemnification and financial stability. Mr. Martin replied that both companies were major manufacturers of solid waste equipment with good reputations and appeared to be financially sound. Solid Waste staff Chuck Geyer said that the ability of the contractor to perform on the contract was guaranteed by the performance bond. Councilor Saucy, Jr. asked if Metro would receive payment for downtime from the contractor. Mr. Geyer said Metro would not.

Councilor Hansen said that he felt that it was important that contracts be bid competitively and that cost be a factor. Councilor Wyers asked that the record reflect that the Committee had considered in depth both the merits of the proposals and the process used.

<u>Vote on main motion:</u>	Seven of the eight councilors present voted in favor of the motion. Councilor Saucy, Jr. voted nay, and Councilors Bauer, Buchanan, DeJardin and Knowles were absent for the vote.
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The motion to adopt Resolution No. 90-1310 as amended carried.

7.6 Resolution No. 90-1322, Approving a Contract for Provision of Metro/Tri-Met Merger Services

Motion: Councilor Gardner moved, seconded by Councilor Devlin to adopt Resolution No. 90-1322.

Councilor Gardner presented the Intergovernmental Relations Committee's report and recommendations. Councilor Gardner said that the purpose of the the contract was to provide research and analysis assistance to the Tri-Met Merger Subcommittee. He said that as a result of an RFP process one proposal had been submitted by the deadline date. Staff was directed to contact others who had received proposal documents to determine why they had not responded. Councilor Gardner said that the reasons given were the political sensitivity of the issue and the complex scope of work to be accomplished within a short time frame. Councilor Gardner pointed out that the resolution authorized the Council

Presiding Officer to award the contract since the Tri-Met Merger Subcommittee had been formed by resolution and reported to a Council committee.

Councilor Van Bergen raised concern about whether the report would be objective. In response to a question raised by Councilor Saucy, Jr., Councilor Gardner said funding for the contract would be authorized by adoption of an ordinance transferring \$27,000 from the General Fund Contingency to the Council Miscellaneous Professional Services line item.

Vote: The seven of the eight councilors present voted in favor of the motion. Councilor Van Bergen voted nay and Councilors Bauer, Buchanan, DeJardin and Knowles were absent for the vote.

The motion carried.

8. COUNCILOR COMMUNICATIONS AND COMMITTEE REPORTS

8.1 Tri-Met Merger

Councilor Gardner distributed "Tri-Met Merger Subcommittee Project Outline, Revised Draft, September 4, 1990."

8.2 "Oregon Benchmarks" Report Review Subcommittee

Councilor Devlin referred the Council to the report that had been included in the meeting agenda packet. He said that the Oregon Progress Board had requested Metro assist in setting benchmarks for evaluating the long-term progress of the state in providing a livable environment. Councilor Devlin said that a subcommittee consisting of Councilors DeJardin, Saucy, Jr. and him had met and the report before Council consisted of those recommendations. He said that with the Council's approval, the report would be forwarded to the Office of the Governor.

Motion: Councilor Devlin moved, seconded by Councilor Wyers to forward the "Oregon Benchmarks" report to the Oregon Progress Board.

Vote: The eight councilors present voted in favor of the motion.

The motion carried.

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8.3 Zoo Capital Maintenance Contracts

Councilor McFarland reported that as chair of the Zoo Committee, she had approved release of an unanticipated "A" contract bid documents for "Repair Primate Roof." She said that because of the urgency of the contract due to weather conditions, and since the funds were already budgeted she had not brought the matter before the Council. Council staff will provide Council with Metro Code provisions for unanticipated contracts.

Other Councilor Communications and Committee Reports:

Councilor Wyers announced that Convention Center Grand Opening events scheduled for the upcoming week included recognition of "Good Neighbor Awards" as part of opening ceremonies. She said that there was a possibility that nominations would still be received.

"Celebrate the Future of Light Rail" party September 27, 1990 fund raiser to support the November vote on light rail.

Councilor Devlin clarified a statement he had made at the Council retreat that the Washington County Concept Plan Study would explore retaining the Forest Grove station at current status and adding another facility. Further information has indicated that Forest Grove would eventually be required to have a post collection recovery system. Therefore, he said that the scenarios being evaluated would include that modification to the Forest Grove facility.

There was no other business, and the meeting was adjourned at 9:27 p.m.

Respectfully submitted,



Gwen Ware-Barrett
Clerk of the Council

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