

MINUTES OF THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

October 10, 1991

Council Chamber

Councilors Present: Presiding Officer Tanya Collier, Deputy
Presiding Officer Jim Gardner, Larry
Bauer, Roger Buchanan, Richard Devlin,
Tom DeJardin, Sandi Hansen, David
Knowles, Ruth McFarland, Susan McLain
and Judy Wyers

Councilors Absent: George Van Bergen

Also Present: Deputy Executive Officer Dick Engstrom

Presiding Officer Collier called the regular 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 Presentation of Metro's Sixth Annual Recycling Awards to
Celebrate Recycling Awareness Week

Councilor McLain announced the winners of the Sixth Annual
Recycling Awards. The Model Citizen Award went to Florence
Fleskes; the Individual Recycling Recognition Award to Jeff
Murray; the Organization/School Award to Lewis & Clark College;
the Business Award - Recycling-Related to Edwin O. Ege Sanitary
Service; the Business Award - Non-Recycling Related to Gage
Industries, Inc.; and the Special Projects Recognition Award to
Nor-Mon Distributing.

Presiding Officer Collier called a recess at 5:50 p.m. The
Council reconvened at 5:55 p.m.

3.2 Presentation on End of the Oregon Trail Project

Presiding Officer Collier introduced Clackamas County
Commissioner Darlene Hooley who discussed the End of the Oregon
Trail project and distributed materials on same. Commissioner
Hooley introduced Dr. Steve Beckham of Lewis & Clark College.
He listed the members of the End of the Oregon Trail Foundation

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Executive Committee and the Oregon Trail Foundation Board of Trustees.

Oregon City Mayor Dan Fowler gave a slide show presentation on the historical perspective of the Oregon Trail, the scope of the project, proposed financial planning as well as the proposed work program. Mayor Fowler said project elements would include an interpretive center, living history exhibits, an emigrant park and landscaping and use the adjacent landfill as open space and discussed proposed surrounding commercial facilities. He listed proposed project costs as follows: Project development/management - \$1 million; site assembly and road work - \$8 million; Emigrant Park and landscaping - \$5.2 million; Interpretive Center/Living History - \$29.3 million; and pre-opening expenses - \$3 million; project cost total - \$46.5 million. He explained the End of the Oregon Trail Project would not require ongoing operating revenue from Metro and that funding sources for capital costs would come from a variety of sources. He explained funding sources in the overall state context, the federal role, the private sector role, the commercial element and regional support. He said \$30-40 million would be needed in regional support for capital construction. Mayor Fowler said funding strategies called for support from public and private sources, that one-time only regional support was needed to finance capital costs and no operational support from Metro would be required. He said the benefits included having a center of national significance, be unique on the West Coast, that 40 percent of its visitors would come from out-of-state, that there would be an annual economic value to the economy of \$10 million, and that the center would be an educational and cultural resource for the region.

Commissioner Hooley concluded the End of the Oregon Trail Presentation and discussed the work plan. She said Clackamas County was very supportive of the project. She said Metro could play a role in the project as manager of the region's recreational facilities and said the project would tie into Metro's Greenspaces Program. She said the project needed cooperation from Metro on planning and policy and presenting the best possible package to voters.

Councilor Knowles said he had asked Clackamas County to make this presentation and define further the regional funding package proposed. He asked Presiding Officer Collier to refer consideration of the project to the Regional Facilities Committee for further discussion and work. The Council discussed the End of the Oregon Trail Project further. Presiding Officer Collier referred the Project to the Regional Facilities Committee for further review and discussion.

Presiding Officer Collier called a recess at 6:33 p.m. The Council reconvened at 6:35 p.m.

4. CONSENT AGENDA

4.1 Minutes of September 12, 1991

Motion: Councilor Devlin moved, seconded by Councilor Hansen, for adoption of the Consent Agenda.

Vote: Councilors Bauer, Buchanan, Devlin, Gardner, Hansen, McLain, Wyers and Collier voted aye. Councilors DeJardin, Knowles, McFarland and Van Bergen were absent. The vote was unanimous and the Consent Agenda was adopted.

5. ORDINANCES, FIRST READINGS

5.1 Ordinance No. 91-411, For the Purpose of Amending Chapter 2.09, Builder's Business License Program of the Metro Code

The Clerk read the ordinance for a first time by title only.

Presiding Officer Collier announced Ordinance No. 91-411 had been referred to the Finance Committee for consideration.

6. ORDINANCES, SECOND READINGS

6.1 Ordinance No. 91-427, An Ordinance Amending Ordinance No. 91-390A Revising the FY 1991-92 Budget and Appropriations Schedule for the Purpose of Funding Special District Association Dues for FY 1991-92 (Public Hearing)

The Clerk read the ordinance by title only for a second time.

Presiding Officer announced Ordinance No. 91-427 was first read on September 26 and referred to the Finance Committee for consideration. The Finance Committee considered the ordinance on October 3 and recommended it to the full Council for adoption.

Motion: Councilor Devlin moved, seconded by Councilor Hansen, for adoption of Ordinance No. 91-427.

Councilor Devlin gave the Finance Committee's report and recommendations. He explained Special District Association Dues (SDAO) dues had been previously budgeted in the Support Services Fund primarily to cover liability insurance through SDAO which Metro no longer carried through SDAO. He said that Metro still had a contractual arrangement with SDAO for governmental

relations services and said it would be in the best interests of the District to continue those dues. He said those dues were inadvertently left out of the FY 1991-92 Budget and that this ordinance would amend the budget to add \$1,600 from the General Fund to pay the dues.

Presiding Officer Collier opened the public hearing. No citizens present appeared to testify and the public hearing was closed.

Vote: Councilors Bauer, Buchanan, Devlin, DeJardin, Gardner, Hansen, Knowles, McFarland, McLain, Wyers and Collier voted aye. Councilor Van Bergen was absent. The vote was unanimous and Ordinance No. 91-427 was adopted.

5. ORDINANCES, FIRST READINGS (Continued)

5.2 Ordinance No. 91-430, For the Purpose of Amending Metro Code Chapter Code 2.04 Relating to Disadvantaged Business Enterprises, Women-Owned Business Enterprises and Emerging Small Business Enterprises, Establishing an Effective Date and Declaring an Emergency (Public Hearing)

The Clerk read the ordinance for a first time by title only.

Presiding Officer Collier announced per Metro Code Section 2.01.170(1), Ordinance No. 91-430 had been introduced at this meeting without a committee referral and would receive a first reading only.

Motion to Suspend the Rules: Councilor McFarland moved, seconded by Councilor Buchanan, to suspend the rules requiring ordinances to be referred to committee so that the Council as a whole could consider Ordinance No. 91-430.

Presiding Officer Collier explained the motion to suspend the rules required at least eight votes in favor of the motion for the Council to consider Ordinance No. 91-430.

Vote on the Motion to Suspend the Rules: Councilors Bauer, Buchanan, Devlin, DeJardin, Gardner, Hansen, Knowles, McFarland, McLain, Wyers and Collier voted aye. Councilor Van Bergen was absent. The vote was unanimous and the motion passed.

Main Motion: Councilor Buchanan moved, seconded by Councilor Bauer, for adoption of Ordinance No. 91-430.

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Presiding Officer Collier asked General Counsel Dan Cooper to report on the ordinance.

Mr. Cooper said Councilor Devlin requested he report to the Governmental Affairs Committee the previous week on the status of staff's efforts to update the Disadvantaged Business Enterprise (DBE)/Women-Owned Business Enterprise(WBE) ordinance. He said he and Regional Facilities staff had been working on the ordinance for several months previous to this meeting. He discussed the Ninth Circuit Court of Appeals decision on Carol Construction v. King County given August 8, 1991, that impacted Metro's current DBE/WBE program. He said he had prepared a written opinion which stated the Ninth Circuit's opinion meant current Metro Code language for locally funded contracts was unconstitutional. He noted the United States of America Supreme Court decision on Croson v. the City of Richmond given two years previously. He said he had advised the Council and the Executive Officer at that time that there were doubts with regard to the validity of Metro Code language, but that there were sufficient distinctions between Metro's Code and the Richmond case that arguments could be made to support the Metro Code language. He said at that time the Council chose to continue with the DBE/WBE program while other governmental entities discontinued similar programs. He said the State Legislature amended state law to provide for a different type of program to provide outreach, contracting and subcontracting opportunities for emerging small businesses (ESB) defined in racial and gender-neutral terms. He said an ESB approach eliminated potential constitutional challenges such as those that had defeated the City of Richmond and Multnomah County. He said Metro continued to operate and enforce its programs allowing preferential treatment for racially and gender-based categories despite the Supreme Court's decision. The recent Ninth Circuit decision on Carol left no doubt in his opinion that creation of racial and gender-based categories by a local government had to be subject to strict judicial scrutiny, and that the local government had to establish a compelling interest in adopting such a classification. He said any program it adopted to correct any past instances of past discrimination that was found to exist had to be limited to overcoming the discrimination that had occurred during the period the local government found it to have occurred within, and that any program had to be limited to those entities which were the victims of that discrimination during the time it was found to have occurred.

Mr. Cooper said Metro's current program was not based on any factual findings whatsoever. He said it was adopted during a period of time when the courts were more lenient on the burden of proof a local government had to sustain in order to adopt such

programs. He said judicial standards had subsequently changed since the time Metro's original program was adopted, and that Metro's program had not been examined or revised since. He said because of these reasons, he had given the Executive Officer and the Council his opinion on the constitutionality of the existing ordinance. He said Executive Officer Cusma concluded that, based on his advice, she would discontinue enforcing the program.

Mr. Cooper said Agenda Item No. 7.2 on this meeting's agenda would issue a design/build RFP for the Sears Building. He said because of that resolution, Ordinance No. 91-390 had been drafted to address DBE/WBE program inconsistencies with state law. He said the Sears contract carried significant subcontracting opportunities. He said he prepared the ordinance at the Regional Facilities Committee's request on October 8. He said the ordinance would substitute a new definition of those businesses for locally funded contracts that would list opportunities available to them under Metro's program. He said the ESB definition established by the State Legislature would be used rather than DBE/WBE categories which were defined as "businesses that were owned substantially by members of minorities who were disadvantaged," and women-owned business enterprises which were defined as "businesses owned by women." He said Ordinance No. 91-390 changed those definitions only and continued, as Metro was required to by Congress, to offer subcontracting opportunities for DBE/WBE's.

Mr. Cooper said the courts had upheld the validity of such congressionally mandated programs for federally funded projects and restricted the ability of state and local governments from adopting such programs on their own where they were not directed to do so by Congress. He said with regard to locally-funded programs, an identical administrative program would be substituted for the benefit of ESB's certified as such by the State of Oregon and would establish as the goals for contract participation a percentage equal to the goal percentages for previously defined DBE/WBE's.

Presiding Officer Collier said she believed Metro had the best DBE/WBE program in the State. She said when ESB's were discussed at Committee, she believed the definition could be combined with Metro's current program. She was disappointed when a different opinion was given on dual definitions and said the issues had been complicated by the design/build contract. She had asked Neil Saling, Director of Regional Facilities, to convene Metro's original task force to discuss current Metro Code language but said before they reconvened, the Ninth Circuit Court of Appeals opinion had been given.

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Presiding Officer Collier opened the public hearing.

Harold Williams, 132 NE Ainsworth, chair, Coalition of Black Men, urged the Council to vote nay on the ordinance. He said issues important to people of color and women always seemed to be set aside because of emergency situations such as the timing of the Sears Building design/build contract. He discussed the construction history of the Oregon Convention Center and said many eligible subcontractors were omitted from construction opportunities at that facility. He said what was the law and what was just were not necessarily the same items. He asked the Council not to play the word game and said that African-Americans, women, and other minority contractors did not constitute a large percentage of the population. He admired Councilor McFarland's aggressiveness in dealing with representation issues when she served in the State Senate. He said if Metro and other governmental entities waited for legality, there would be no bills ensuring equal rights for minorities and other groups discriminated against. He said the issues had to do with humanity and fairness rather than actual legality.

Councilor McFarland said the ordinance was drafted so that Metro would be in compliance with the August 8 opinion. Mr. Williams said the Council had the authority to interpret legal rulings to set policy for the region. Councilor McLain noted courts reversed their own rulings.

Clifford Freeman, 5224 NE Rodney St., said he served as the Governor's Advocate for Women and Emerging Small Businesses. He said the State Legislature passed HB 3001 in 1989 which created the State's ESB enterprise category and added the category to MBE/WBE definitions. He said SB 63 amended HB 3001. He said his office had recommended to DBE/WBEs that they become certified ESB's to participate within statutory language and discussed statutory requirements. Regarding the Sears Building project, he suggested Metro require proposers include a plan that would aggressively include MBE/DBE enterprises. He noted Sears Building renovation was a short-term project and would not involve items such as job training programs. He noted the Port of Portland was voluntarily utilizing a job training program.

Presiding Officer Collier asked Mr. Freeman if he supported replacing the DBE/WBE categories. He said the State did not replace their DBE/WBE categories, but only added the ESB category.

Councilor Knowles said the problem with Metro's ordinance was because it contained gender and race-based classifications. Mr.

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Cooper said Metro could have a voluntary program similar to the City of Portland's, but that it would not be enforceable. He said any requirements put in the ordinance would make it similar to the one Metro was currently trying to replace.

Councilor Hansen noted page 25 of the ordinance stated Metro would provide a ESB directory and develop language stating contractors must use the directory. Mr. Cooper said state law allowed a broader program requiring ESB participation and contracts than Metro's ordinance currently allowed for DBE/WBE contractors. Mr. Cooper said the current ordinance only substituted ESB for DBE/WBE. Councilor Hansen asked if the Council could specify a directory be created without categories. Mr. Cooper said that was not possible per state law unless Metro created another category which it had not yet defined.

Councilor McLain asked if Metro could add the ESB category also and asked why the State did so when it was opposed to racially and gender-based terms. Mr. Cooper said the state did so because it had federally funded projects. He said Metro would still keep its federally funded projects under those same categories and that those categories were valid on federally-funded projects because that was what the federal government had mandated what Metro must do. Presiding Officer Collier said she understood the State had faced the same situation Metro was facing now and had had to create its dual program.

Mr. Freeman said MBE/DBE language required contractors to make a good faith effort to inform, negotiate with, counsel with, contact, and advertise to such groups. He said Metro could keep its minority program but could not use numbers and require people to fill those numbers. He said the State had required contractors to use good faith efforts and that Metro could also.

Councilor Knowles asked Mr. Freeman about geographic requirements. Mr. Freeman said agencies could require ESB firms to give to firms located in disadvantaged areas or firms that worked in disadvantaged areas. Councilor Knowles asked if Metro's ordinance could have that stipulation. Mr. Cooper said it could.

Councilor Hansen asked if the State charged business people for certification costs. Mr. Freeman said it did not.

Nathan Proby, 4837 Martin Luther King Jr. Blvd. said numbers had been talked about a great deal and said it was essential to determine what the numbers were. He noted businesses had to pay \$250 to the American Business Association before they could be considered for ESB categories. He asked the Council to look at

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how many disadvantaged firms actually got contracts in the State over the last year.

Councilor Gardner asked if staff knew the percentage of non-required goals fulfilled and the percentage of bids rejected by contractors, especially low bids. He asked, since Metro's program was not based on a strict quota system, if Metro's program had aspects that distinguished it legally from the program King County had that the Ninth Circuit Court of Appeals had ruled invalid.

Mr. Cooper said based on the Ninth Circuit's ruling on Carol, he could not. He said there could be distinctions in the King County ordinance that were not immediately apparent, but believed because of the way the Court characterized the ordinance and the language it used in finding the ordinance subject to strict constitutional scrutiny, he could not. He said the King County ordinance had elements Metro's ordinance did not. He said King County held hearings and made a series of findings based on previous inequities in construction history and had statistical surveys conducted of the construction history in the King County area in an attempt to establish that the minority contracting community was drastically under-represented in the subcontracts and contracts it received in comparison to the non-minority community. He said at Metro, such factors were not involved in this situation. He said Metro's ordinance did not pass muster because of the complete lack of historic record of any past discrimination in the area. He said that was not to say it did not exist or that it could not be developed, but said that data was not developed when the ordinance was adopted and was not available in the event of litigation.

Councilor Gardner asked, if the Council did not adopt the ordinance, whether that would prohibit the Council from considering the Sears Building action. Mr. Cooper said the Council could consider the Sears Building action. He advised the Council not to enforce the existing ordinance in the RFP and the selection process, but said even though Metro's ordinance was not legal, it did not force Metro to adopt a valid ordinance at this time.

Councilor McLain said the issues were too important to be decided hastily. She noted Oregon had ignored the federal definition of wetlands because Oregon had a better definition. She asked the difference between federal and local funds. She said adding a third category was a good idea.

Councilor Hansen said she would find it difficult not to have local contractors participate in Sears Building design/build

contract. She asked that the ordinance be referred to Committee for further review.

Councilor Knowles said the Council could include a good faith effort clause in the RFP. He said two of the potential vendors had good faith clauses, but that it would not be possible to reject a third vendor if they did not have a good faith clause. Mr. Cooper said Councilor Knowles was correct. Councilor Knowles said if all three potential vendors lacked good faith effort language, they could not be rejected either. He asked, if the contract was awarded to a proposer who met all of Metro's good faith requirements, if a contractor who did not could challenge the award. Mr. Cooper said it would be upon Metro to prove that inclusion of good faith effort language was not the deciding factor in awarding the contract.

Councilor Devlin asked if Metro could utilize CRAG's previous contracting history. Mr. Cooper said that could be done, but noted King County as a contracting agency had expended funds on construction projects let to firms that had participated in discriminatory activities. He said CRAG had very little construction history. Mr. Cooper discussed historical considerations further.

Councilor Devlin noted Councilor Knowles' previous questions. He asked when Metro would have the most exposure on the issues. He said the most important consideration for elected officials was the contracts they developed with the public at large. He said the Regional Facilities Committee's biggest concern was that they wanted the people who would be impacted to be involved. He said the ordinance should be referred to the Governmental Affairs Committee for further work.

Councilor McFarland noted Mr. Saling presented the Regional Facilities Committee with a method to process RFBs without having to change the ordinance. Presiding Officer Collier said Mr. Saling's suggestion was to set aside the ordinance, the Committee had argued the ordinance could not be set aside, and the idea then arose to develop a new ordinance to replace DBE/WBE categories with the ESB category to then go back and make the appropriate changes in the original ordinance.

Councilor Wyers she would vote no on the ordinance because the issues were too important. She said the issues could be dealt with creatively and said it was the Council's job to set policy.

Presiding Officer Collier said because of Mr. Freeman's testimony at this meeting, she was ready to test Metro's current ordinance in the courts. She said Metro should proceed with its current

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ordinance, send the ordinance back to committee and convene the original task force to work on the ordinance.

Councilor Buchanan concurred with Presiding Officer Collier. The Council discussed what to do with the ordinance procedurally.

Vote: Councilors Bauer, Buchanan, Devlin, DeJardin, Gardner, Hansen, Knowles, McFarland, McLain, Wyers and Collier voted nay. Councilor Van Bergen was absent. The vote was 11 to 0 against and Ordinance No. 91-390 was not adopted.

Presiding Officer Collier referred Ordinance No. 91-390 to the Governmental Affairs Committee for further review and amendment.

Presiding Officer Collier recessed the Council at 7:50 p.m. The Council reconvened at 8:02 p.m.

6. ORDINANCES, SECOND READINGS (Continued)

6.2 Ordinance No. 91-428, An Ordinance Amending Ordinance No. 91-390A Revising the FY 1991-92 Budget and Appropriations Schedule for the Purpose of Funding Entry into PERS

The Clerk read the ordinance for a second time by title only.

Presiding Officer Collier announced Ordinance No. 91-428 was first read on September 26 and referred to the Finance Committee for consideration. The Finance Committee considered the ordinance on October 3 and recommended the ordinance to the full Council for adoption.

Motion: Councilor Wyers moved, seconded by Councilor Hansen, for adoption of Ordinance No. 91-428.

Councilor Wyers gave the Finance Committee's report and recommendations. She said the ordinance would appropriate sufficient funds to start Metro in the Public Employees Retirement System (PERS). She said Metro agreed to switch to PERS via ratification of the bargaining agreements with the American Federation of State, County and Municipal Employees (AFSCME) and LIU 483 in addition to the recently approved non-represented employee compensation package.

Presiding Officer Collier opened the public hearing. No citizens appeared to testify and the public hearing was closed.

Vote: Councilors Bauer, Buchanan, Devlin, DeJardin, Gardner, Hansen, Knowles, McFarland, McLain, Wyers

and Collier voted aye. Councilor Van Bergen was absent. The vote was unanimous and Ordinance No. 91-428 was adopted.

6.3 Ordinance No. 91-429B, For the Purpose of Amending Metro Code Chapter 5.06 to Allow for Committee Member Reappointment, Staggered Terms, and Establishing Committee Membership Effective as of Confirmation

The Clerk read the ordinance for a second time by title only.

Presiding Officer Collier announced Ordinance No. 91-429 was first read on September 26 and referred to the Solid Waste Committee for consideration. The Solid Waste Committee considered the ordinance on October 1 and recommended it to the full Council for adoption as amended.

Motion: Councilor McFarland moved, seconded by Councilor Devlin, for adoption of Ordinance No. 91-429B.

Councilor McFarland gave the Solid Waste Committee's report and recommendations. She explained the ordinance would amend the Code to allow for committee member reappointment, staggering of terms and establish committee membership effective at the time of confirmation. She noted a Composter Community Enhancement Committee member testified before the Solid Waste Committee, asked for staggered terms, and noted that few potential members would sign on for only a year's membership. She said the Committee would have eight members and because of an emergency clause, would be effective upon passage.

Presiding Officer Collier opened the public hearing.

No citizens present appeared to testify and the public hearing was closed.

Vote: Councilors Bauer, Buchanan, Devlin, Gardner, Hansen, Knowles, McFarland, McLain, Wyers and Collier voted aye. Councilors DeJardin and Van Bergen were absent. The vote was unanimous and Ordinance No. 91-429B was adopted.

6.4 Ordinance No. 91-422B, For the Purpose of Amending the Metro Code to Clarify and Supplement Existing Provisions Related to the Management of Petroleum Contaminated Soils, and Declaring an Emergency

Motion: Councilor Wyers moved, seconded by Councilor Gardner, for adoption of Ordinance No. 91-422B.

Councilor Wyers gave the Solid Waste Committee's report and recommendations. She explained petroleum contaminated soils (PCS) were soils into which gasoline, diesel fuel, bunker oil or other petroleum products had been introduced around many industrial areas. She said such soil could either be landfilled or ventilated, but such methods could cause groundwater problems. She said new technology had been developed to clean up such soils and create clean dirt product. She said the committee discussed licensing and franchising of companies that would use the new technology. She said the committee did not want Metro to issue such licenses unless the Council had approval authority.

Councilor Wyers noted Executive Officer Cusma's memo dated October 10, "Ordinance No. 91-422." Executive Officer Cusma urged the Council to adopt the ordinance as originally written because current franchise Code language was ambiguous. Councilor Wyers noted the letter dated October 9 from Loren Kramer, vice president, Schnitzer Steel Products Co. which addressed whether or not the ordinance would affect or otherwise impact current scrap metal recycling operations. She said the ordinance would not impact such operations.

Presiding Officer Collier opened the public hearing.

No citizens present appeared to testify and the public hearing was closed.

The Council discussed the ordinance. Deputy Executive Officer Engstrom stated Executive Officer Cusma's opposition to Ordinance No. 91-422B and asked the Council to adopt Ordinance NO. 91-422 as written.

Vote: Councilors Bauer, Buchanan, Devlin, DeJardin, Gardner, Hansen, Knowles, McFarland, McLain, Wyers and Collier voted aye. Councilor Van Bergen was absent. The vote was unanimous and Ordinance No. 91-422B was adopted.

6.5 Ordinance No. 91-406A, For the Purpose of Amending Ordinance No. 88-266B Adopting the Regional Solid Waste Management Plan to Incorporate the Illegal Dumping Chapter

Motion: Councilor Wyers moved, seconded by Councilor DeJardin, for adoption of Ordinance No. 91-406A.

Councilor Wyers gave the Solid Waste Committee's report and recommendations and said the chapter would be a great addition to the Regional Solid Waste Management Plan (RSWMP). Councilor McFarland thanked staff for their hard work on the ordinance.

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Presiding Officer Collier opened the public hearing.

No citizens present appeared to testify and the public hearing was closed.

Vote: Councilors Bauer, Buchanan, Devlin, Gardner, Hansen, Knowles, McFarland, McLain, Wyers and Collier voted aye. Councilor Van Bergen was absent. The vote was unanimous and Ordinance No. 91-406A was adopted.

6.6 Ordinance No. 91-416, For the Purpose of Amending Ordinance No. 88-266B Adopting the Regional Solid Waste Management Plan to Incorporate the Metro West Transfer and Material Recovery System

The Clerk read the ordinance for a second time by title only.

Presiding Officer Collier announced Ordinance No. 91-416 was first read on July 25 and referred to the Solid Waste Committee for consideration. The Solid Waste Committee considered the ordinance on October 1 and recommended Ordinance No. 91-416 to the full Council for adoption.

Motion: Councilor DeJardin moved, seconded by Councilor Wyers, for adoption of Ordinance No. 91-416.

Councilor DeJardin gave the Solid Waste Committee's report and recommendations. He said two high grade facilities/transfer stations would be built in Washington County through public/private ownership with Metro issuing the necessary bonds. He said Household Hazardous Waste (HHW) disposal services would be provided at the transfer stations.

Presiding Officer Collier opened the public hearing.

Delyn Kies, Washington County Solid Waste Program Coordinator, said the Steering Committee reviewed and unanimously approved the Plan at its July 1 meeting.

Presiding Officer Collier asked if any other persons present wished to testify. No other persons appeared to testify and the public hearing was closed.

The Council discussed the ordinance. Councilor Gardner noted he did not support the ordinance during Solid Waste Committee deliberations and would not do so at this meeting. He believed a single, smaller transfer station would be more cost-effective and provide management flexibility.

Councilor Devlin asked two questions for the record. He asked about page 37 of the Plan which related to land use siting. He noted the language stated "facility vendors must have local land use permits in hand prior to the procurement process." He asked Mr. Cooper if that meant vendors must be in the process of procuring land use permit applications by the deadline for franchise proposals. Mr. Cooper said the vendors must have begun the process. Councilor Devlin asked, if a local government had given land use approval to a potential franchise proposer and that approval was under appeal, if Metro would consider the proposal viable. Mr. Cooper said the proposal would be considered valid.

Vote: Councilors Bauer, Buchanan, Devlin, DeJardin, Hansen, Knowles, McFarland, McLain, Wyers and Collier voted aye. Councilor Gardner voted nay. Councilor Van Bergen was absent. The vote was 10 to 1 in favor and Ordinance No. 91-416 was adopted.

7. RESOLUTIONS

7.1 Resolution No. 91-1494C, For the Purpose of Authorizing the Execution of a Sale Agreement for the Acquisition of the Sears Facility

Motion: Councilor Knowles moved, seconded by Councilor Hansen, for adoption of Resolution No. 91-1494C.

Councilor Knowles gave the Regional Facilities Committee's report and recommendations. He said the Committee had reviewed the resolution at four separate meetings and the Council had considered it once. He said outstanding issues centered on the payment of interest after September 15 until closing and Metro's exposure for remediation work for hazardous waste. He said the interest payment clause had since been deleted and the remediation provisions now met the instructions given to Metro's negotiating team. He said acquisition of the building represented a good opportunity and would be a good location for Metro's headquarters facility.

Councilor McLain referred to a memo to Mr. Saling from Jennifer Sims, Director of Finance & Management Information, and Chris Scherer, Financial Planning Manager, dated October 8 titled "Financial Information on the Proposed Headquarters Project." Ms. Sims said the memo discussed the impact of transfers to the Building Fund. She said staff wanted to use the most current analysis and said there was no analysis of program impacts. She said staff had gone through primary revenue sources. She said

staff wanted to use the most conservative analysis, said the memo showed current year costs for the building and then, incrementally, possible transfers in 1994 and subsequent years. She said there would be a significant increase to all funds for acquisition of the building. She said part of those increased costs included the additional space projected to be used and also the additional cost per square foot of the building. She said the memo showed the primary fund sources that would support the cost of the building. She noted the tipping fee increase was projected at less than 20 cents per ton. She said MERC revenues would increase by less than 1 percent. She said the Zoo would pay proportionately for its share of the support services it used. She said the current excise tax was levied at approximately \$4 million. She said Metro was not maximizing use of the excise tax at this time.

Councilor Gardner discussed excise tax considerations. Councilor Hansen noted costs for any building Metro built or leased would increase.

Councilor Hansen and Mr. Saling discussed possible future costs. Councilor Hansen asked if the Sears Building purchase was the best deal possible for Metro's future needs. Mr. Saling said it was and that Metro's space needs had increased by 40 percent. She asked if renting the building instead of buying it was a viable option. She stated Metro would have to move in any case and the Sears Building appeared to be the best option.

Councilor Gardner asked Mr. Saling for the record if purchase and renovation of the Sears Building represented the best deal for Metro's projected space needs. Mr. Saling said the building was the best property to meet the relocation criteria, but was not the least expensive option. Councilor Gardner asked if Metro could afford the move. Mr. Saling said staff believed the move was affordable, but that the ultimate decision was a policy decision for the Council to make. Councilor Gardner asked if staff could provide assurances that the financial impact of the purchase and renovation would not negatively impact the District's ability to carry out its present and anticipated functions in an efficient manner. Mr. Saling said such assurances should come from department heads. Mr. Saling said there would be pressure on departments during the budget process to provide for increases in enterprise revenues or revenues from any source because the price of space would go up. He would not guarantee that there would not be some fiscal impact based on increased space costs.

Councilor Gardner said he did not believe Metro had looked at the other alternatives carefully enough. He said staff had focussed

on the Sears Building approximately 18 months and had not fully considered other options. He said information had been developed to prove that the Sears Building was the best option. He said there were unknown costs and said the \$16.50 per square foot minimum cost cited did not include factors such as furniture and fixtures. He said operating costs projected for the new building were much less than the costs for the new building. He said if current costs were factored in, costs per square foot would be at least several dollars higher. He said a lot of organizations operated with less space than they thought they needed. He said in light of Ballot Measure No. 5 and the current political environment, the proposed move was not a good one to make. He said Metro would have several measures before the voters next year including funding for the regional Greenspaces Program, a funding base for the regional recreational facilities, and a permanent Metro charter. He believed to purchase a building that would increase Metro's operating costs would not create a favorable impression with the voters even if it was perceived by staff as a good deal. He said the timing for such a purchase was not good at this time.

Councilor Devlin said the decision had been difficult for him to make but said, although the Council had not voted on criteria, the criteria clearly stated that there was a relatively small area in the region that would meet location criteria and only a few prospective buildings or potential sites that could be utilized within that location. He said a governmental entity in its choice of where to relocate had to evaluate factors beyond the most affordable space during the short term. He said Metro should consider the issue as a long-term issue, and expressed concern because the Council was not provided with all the information available, but said he was not so concerned that he would vote nay on the resolution. He said Metro could obtain another lease, but said that would involve another 18-month process and did not believe Metro could find a deal more financially appealing than the Sears Building acquisition.

Councilor Knowles said purchase of the Sears Building would be a good deal at the right time.

Vote: Councilors Bauer, Buchanan, Devlin, DeJardin, Hansen, Knowles, McFarland, McLain, Wyers and Collier voted aye. Councilor Gardner voted nay. Councilor Van Bergen was absent. The vote was 10 to 1 in favor and Resolution No. 91-1494C was adopted.

*For further information on this vote, see the Council minutes of November 12, 1992, page 5.

7.2 Resolution No. 91-1505C. For the Purpose of Authorizing the Issuance of Metro Headquarters Project Design/Build RFP and Ratifying the Previously Issued RFO

Motion: Councilor McFarland moved, seconded by Councilor Hansen, for adoption of Resolution No. 91-1505C.

Councilor McFarland gave the Regional Facilities Committee's report and recommendations. She said the Committee forwarded the resolution with no recommendation believing that passage of the resolution was dependent on what the Council chose to do with Ordinance No. 91-430. She said Committee issues concentrated on DBE/WBE issues. She recommended adoption of the resolution dependent on deletion of references to ESB categories to be replaced with DBE/WBE language.

Motion to Amend: Councilor McFarland moved, seconded by Councilor Hansen, to remove ESB categories in the resolution and replace them with Metro program DBE/WBE categories.

Vote on Motion to Amend: Councilors Bauer, Buchanan, Devlin, DeJardin, Gardner, Hansen, Knowles, McFarland, McLain, Van Bergen, Wyers and Collier voted aye. Councilor Van Bergen was absent. The vote was unanimous and the motion to amend passed.

Vote on the Main Motion as Amended: Councilors Bauer, Buchanan, Devlin, DeJardin, Gardner, Hansen, Knowles, McFarland, McLain, Van Bergen, Wyers and Collier voted aye. Councilor Van Bergen was absent. The vote was unanimous and Resolution No. 91-1505D was adopted.

Presiding Officer Collier announced that Agenda Item Nos. 7.3, 7.4 and 7.5 were before the Contract Review Board for consideration. She recessed the Council of the Metropolitan Service District and convened the Contract Review Board of the Metropolitan Service District.

7.3 Resolution No. 91-1507A. For the Purpose of Exempting the Headquarters RFO/RFP Process from Competitive Bidding Process Pursuant to Metro Code 2.04.041

Motion: Councilor Buchanan moved, seconded by Councilor Wyers, for adoption of Resolution No. 91-1507A.

Councilor Buchanan gave the Regional Facilities Committee report and recommendations. Councilor Buchanan said Mr. Cooper explained to the Committee that the Metro Code stipulated all

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public contracts be let through competitive bidding, unless the Contract Review Board made findings that an exemption to the process did not encourage favoritism or diminish competition, or that said contract would result in substantial cost savings. Councilor Buchanan said the contract met that criteria.

Vote: Councilors Bauer, Buchanan, Devlin, DeJardin, Gardner, Hansen, Knowles, McFarland, McLain, Wyers and Collier voted aye. Councilor Van Bergen was absent. The vote was unanimous and Resolution No. 91-1507A was adopted.

7.4 Resolution No. 91-1512. For the Purpose of Authorizing an Exemption to the Requirement of Competitive Bidding for Issuance of a Request for Franchise Applications for the Provision of Transfer and Material Recovery Facilities and Services for Western Washington County

Motion: Councilor DeJardin moved, seconded by Councilor Buchanan, for adoption of Resolution No. 91-1512.

Councilor DeJardin gave the Solid Waste Committee's report and recommendations. He explained the Council previously adopted Resolution No. 91-1437B, Establishing Policy for Development of the Washington County Solid Waste System Chapter to the Regional Solid Waste Management Plan on June 13, 1991, and also adopted Ordinance No. 91-416 earlier at this meeting. He said Resolution No. 91-1512 authorized the Request for Franchise (RFF) for the first of the two Washington County transfer station facilities. He said both the Solid Waste Committee and Washington County authorities had reviewed and expressed unanimous support for the resolution.

Councilor Gardner asked as a point of order if Agenda Item No. 7.4 should be considered before Agenda Item No. 7.8. Mr. Cooper explained that the order of consideration was correct. He said since the Executive Officer would actually issue the RFF, the Council could consider both items in either order. He said if the Council itself was to issue the RFF, the exemption should be considered first and then issuance of the RFF.

Councilor Gardner noted the Solid Waste Committee discussed extensively whether the RFF proposal should contain any statement about what the eventual ownership of the franchise should be at the end of the franchise period. He asked if the RFF and/or the franchise agreement should contain language stating Metro would assume ownership of the facility at the end of the franchise period. He stated for the record that the Solid Waste Committee felt there was merit in the question, since publicly financed

bonds would be used to build the facility, that the public should own the facility at the end of the franchise period.

John Houser, Council Analyst, noted the Committee discussion Councilor Gardner referred to was included in the committee report on Resolution No. 91-1513.

Vote: Councilors Bauer, Buchanan, Devlin, DeJardin, Gardner, Hansen, McFarland and Collier voted aye. Councilors Knowles, McLain, Van Bergen and Wyers were absent. The vote was unanimous and Resolution No. 91-1512 was adopted.

7.5 Resolution No. 91-1510, For the Purpose of Authorizing an Exemption to the Competitive Procurement Procedures of Metro Code Chapter 2.04.053, and Authorizing a Change Order to the Design Services Agreement with Parametrix, Inc.

Motion: Councilor Gardner moved, seconded by Councilor DeJardin, for adoption of Resolution No. 91-1510.

Councilor Gardner gave the Solid Waste Committee's report and recommendations. He explained when Parametrix, Inc. was first awarded the contract to close the St. Johns Landfill, the Committee decided to review the contract on an annual basis and then later to rebid the contract on an annual basis to achieve savings and incorporate redesign techniques as the closure continued. He said the change order would compensate Parametrix for the additional work they had to perform because of Metro's decision to let the contract on an annual basis.

Vote: Councilors Bauer, Buchanan, Devlin, DeJardin, Gardner, Hansen, McFarland, McLain and Collier voted aye. Councilors Knowles, Van Bergen and Wyers were absent. The vote was unanimous and Resolution No. 91-1510 was adopted.

7.6 Resolution No. 91-1514, For the Purpose of Authorizing an Exemption to Metro Code Chapter 2.04.041(c), Competitive Bidding Procedures, and Authorizing a Sole-Source Contract with Office Interiors for Purchase of Panels for the Transportation Department

Motion: Councilor Hansen moved, seconded by Councilor Devlin, for adoption of Resolution No. 91-1514.

Councilor Hansen gave the Finance Committee's report and recommendations. She said the resolution would authorize a sole

source contract for the purchase of office panels for use in the Transportation Department's new space.

Vote: Councilors Bauer, Buchanan, Devlin, DeJardin, Gardner, Hansen, McFarland, McLain and Collier voted aye. Councilors Knowles, Van Bergen and Wyers were absent. The vote was unanimous and Resolution No. 91-1514 was adopted.

Presiding Officer Collier adjourned the Contract Review Board and reconvened the Council of the Metropolitan Service District.

7.7 Resolution No. 91-1499A. For the Purpose of Confirming the Appointment of Persons to the Composter Community Enhancement Committee

Motion: Councilor McFarland moved, seconded by Councilor Devlin, for adoption of Resolution No. 91-1499A.

Councilor McFarland gave the Solid Waste Committee's report and recommendations. She explained Ordinance No. 91-429B adopted earlier at this meeting established the procedures appointment, effective dates of service, and staggered terms. She said this resolution would confirm members to the Composter Community Enhancement Committee. Councilor McFarland introduced committee nominees present: Si Kornbrodt, Garland Smith, Si Stanich, Gordon Hunter and Juanita Chereck. The Council thanked those present for their willingness to serve.

Vote: Councilors Bauer, Buchanan, Devlin, DeJardin, Gardner, Hansen, Knowles, McFarland, McLain and Collier voted aye. Councilors Van Bergen and Wyers were absent. The vote was unanimous and Resolution No. 91-1499A was adopted.

7.8 Resolution No. 91-1513. For the Purpose of Authorizing Issuance of a Request for Franchise Applications for the Provision of Transfer and Material Recovery Services for Western Washington County

Motion: Councilor DeJardin moved, seconded by Councilor Devlin, for adoption of Resolution No. 91-1513.

Councilor DeJardin gave the Solid Waste Committee's report and recommendations. He briefly discussed the general obligation bonds Metro would issue, the selection criteria, proposals, and other related issues. Presiding Officer Collier asked if Metro's option to own the facility at the end of the franchise period was

contained in RFF language. Councilor DeJardin said the issue arose during negotiations with potential applicants.

Councilor Gardner said the Committee concluded the issue could be negotiated as part of the franchise agreement once the competitive RFF process was completed. He said the Committee had stated for the record that option be kept open.

Vote: Councilor Bauer, Buchanan, Devlin, DeJardin, Gardner, Hansen, Knowles, McFarland, McLain and Collier voted aye. Councilors Wyers and Van Bergen were absent. The vote was unanimous and Resolution No. 91-1513 was adopted.

7.9 Resolution No. 91-1467A, For the Purpose of Adopting Rules Establishing Procedures Relating to the Conduct of Council Business

Motion: Councilor Devlin moved, seconded by Councilor McFarland, for adoption of Resolution 91-1467A.

Councilor Devlin gave the Governmental Affairs Committee's report and recommendations. He explained the resolution process started February 1991 at a Council retreat. He thanked Councilors Collier, McLain and Wyers and Don Carlson, Council Administrator, for their work on the resolution. He said the Committee held three work sessions on the resolution. He said some changes were made at the request of Councilor Knowles and Presiding Officer Collier.

Vote: Councilors Bauer, Buchanan, Devlin, DeJardin, Gardner, Hansen, Knowles, McFarland, McLain, Wyers and Collier voted aye. Councilor Van Bergen was absent. The vote was unanimous and Resolution No. 91-1467A was adopted.

7.10 Resolution No. 91-1515, For the Purpose of Establishing a Schedule and Process for Council Consideration of the FY 1992-93 Proposed Budget

Motion: Councilor Hansen moved, seconded by Councilor Wyers for adoption of Resolution No. 91-1515.

Councilor Hansen gave the Finance Committee's report and recommendations. She referred to the resolution schedule. She said the budget process would begin in February and the Executive Officer would submit the Proposed FY 1992-93 Budget to the Council on March 5, approximately 10 days earlier than it had been submitted previously. She said the Council asked that the

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Council standing committees become formally involved by reviewing proposed budgets and appearing before the Budget Committee.

Vote: Councilors Buchanan, Devlin, DeJardin, Gardner, Hansen, Knowles, McFarland, McLain, Wyers and Collier voted aye. Councilors Bauer and Van Bergen were absent. The vote was unanimous and Resolution No. 91-1515 was adopted.

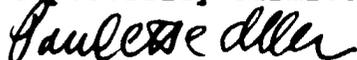
8. COUNCILOR COMMUNICATIONS & COMMITTEE REPORTS

8.1 Arena Task Force Status Report

Councilor Knowles discussed the progress of the Public Policy Committee on Regional Facilities and said their report was almost completed. He noted the booklet distributed at this meeting by Regional Facilities Department staff from the Portland Trail Blazers and discussed the Blazer proposal for the new arena itself. The Council discussed how the Blazer proposal to build and operate the new arena would affect the other regional recreational facilities. Councilor Knowles said the Arena Task Force would issue their recommendations on the proposal by October 22.

There being no further business, Presiding Officer Collier adjourned the meeting at 9:45 p.m.

Respectfully submitted,



Paulette Allen
Clerk of the Council