

MINUTES OF THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

September 24, 1992

Council Chamber

Councilors Present: Presiding Officer Jim Gardner, Deputy
Presiding Officer Judy Wyers, Roger
Buchanan, Ed Gronke, Sandi Hansen, Ruth
McFarland, Susan McLain, George Van
Bergen and Ed Washington

Councilors Excused: Tanya Collier and Richard Devlin

Presiding Officer Gardner called the regular meeting to order at
5:36 p.m.

Presiding Officer Gardner announced an Executive Session had been
added to the agenda and would be held before Agenda Item No. 10,
"Councilor Communications and Committee Reports."

1. CONSIDERATION OF A CANDIDATE FOR VACANT DISTRICT 2 COUNCIL
POSITION

A. Interview of Candidates by Council:

Presiding Officer Gardner announced that due to the September 1,
1992, resignation of District 2 Councilor Larry Bauer, the
Council had been involved in a process to select a person to
serve in that position.

Presiding Officer Gardner announced advertisements for the vacant
seat had been advertised in The Valley Times and in The Oregonian
and that neighborhood associations, business associations and
elected officials were informed of the vacant position. He
announced applications were made available to all interested
citizens beginning September 2, 1992.

Presiding Officer Gardner noted a subcommittee of Councilors
Devlin, Gronke and himself conducted a public hearing in District
2 at Cedar Hills Recreation Center on Monday, September 21, to
hear applicants and receive testimony from interested citizens.
He said Terry Moore and Cal Hamreus were the applicants from that
meeting for consideration by the Council at this meeting.

Presiding Officer Gardner announced the Council would interview
applicants for the vacant Council position per the provisions of
Metro Code Section 2.01.180. He said each applicant would have
up to 15 minutes to respond to the series of five questions they
received in the application packet and to make closing remarks.
He said Councilor questions would not be applied against the
applicants' allotted time.

The Council then interviewed Ms. Moore and Mr. Hamreus separately who were each asked the following five questions:

1. Metro currently provides regional services in the areas of solid waste disposal, transportation planning, urban growth management, and regional facilities management. Should Metro provide other programs or services? If so, what programs and services? If not, why not?
2. What should Metro's relationship be with other governments in the region?
3. Metro Councilors are responsible for setting regional policy and for program and fiscal oversight of the Metropolitan Service District. Explain how your background would enhance the Council's ability to perform these tasks.
4. By assuming this position, you would be appointed to represent a district of approximately 100,000 people. Please share with us your knowledge of the needs and concerns of your district. What experience do you have in working with community organizations, as well as individuals in your district? How would you balance the needs of District 2 with the needs of the region?
5. What do you believe ought to be changed about Metro, if anything?

B. Selection of Candidate for the District 2 Position

Presiding Officer Gardner opened the nominations.

First Nomination: Councilor Buchanan moved, seconded by Councilor Hansen, to nominate Terry Moore.

Second Nomination: Councilor Gronke moved, seconded by Councilor McFarland, to nominate Cal Hamreus.

Presiding Officer Gardner closed the nominations.

The Council as a whole discussed the nominations. Councilor McFarland said the Council was fortunate to have two excellent candidates for consideration, especially for an appointment which would only last for three months. Councilor Van Bergen noted in past appointment processes, the Council had avoided appointing candidates running for Metro office during election periods because it was felt appointment would give that candidate an advantage over his/her opponents in their respective races. He believed that was an unfair prohibition and that Ms. Moore was

eminently qualified to fill the vacancy. Councilor Wyers concurred with Councilor McFarland on the quality of the two candidates.

Presiding Officer Gardner explained per Metro Code Section 2.01.180, Councilors would vote for one candidate and sign their ballots. He said a candidate would be elected if he or she received six or more votes. He said if no one candidate received six votes, a second ballot would be held. He said ballots would continue to be cast until one candidate received six or more votes.

Vote: Councilors Washington, Van Bergen, McLain, Buchanan, Hansen, Wyers, McFarland, and Gardner voted for Terry Moore. Councilor Gronke voted for Cal Hamreus. Councilors Collier and Devlin were absent.

The Council congratulated Ms. Moore on her appointment and thanked Mr. Hamreus for his participation and interest in Metro.

C. Resolution No. 92-1684, For the Purpose of Appointing a Candidate to Fill the Vacant District 2 Council Position

Motion to Suspend Rules: Councilor Wyers moved, seconded by Councilor Wyers, to suspend the Council's rules requiring that resolutions be referred by committee so that the Council as a whole could consider Resolution No. 92-1684.

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

Motion: Councilor McFarland moved, seconded by Councilor Hansen, to adopt Resolution No. 92-1684 with Terry Moore's name incorporated into the resolution.

Vote: Councilors Buchanan, Gronke, Hansen, McFarland, McLain, Van Bergen, Washington, Wyers, and Gardner voted aye. Councilors Collier and Devlin were absent. The vote was unanimous and Resolution No. 92-1684 was adopted.

General Counsel Dan Cooper gave Ms. Moore the oath of office and Ms. Moore was sworn in. Presiding Officer Gardner announced Councilor Moore would be seated at the October 8 Council meeting.

2. INTRODUCTIONS

Councilor Buchanan introduced Muhammed Ghunein, bureau chief, Arabic Bureau, U.S. Voice of America, Aman, Jordan.

3. CITIZEN COMMUNICATIONS TO THE COUNCIL ON NON-AGENDA ITEMS

None.

4. EXECUTIVE OFFICER COMMUNICATIONS

None.

5. CONSENT AGENDA

5.1 Minutes of July 23, August 13 and 27, 1992

Motion: Councilor Gronke moved, seconded by Councilor McLain, for adoption of the Consent Agenda.

Councilor Gronke noted Councilor Washington's name was listed twice in the attendance record of the July 23 minutes and his name was omitted.

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

6. ORDINANCES, SECOND READINGS

6.1 Ordinance No. 92-467A, For the Purpose of Approving the Revision of Metro Code Section 2.02.275, Zoo Visitor Services Employees (Public Hearing)

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

Presiding Officer Gardner announced Ordinance No. 92-467 was first read on July 23 and referred to the Governmental Affairs Committee for consideration. The Governmental Affairs Committee considered it on September 17 and recommended Ordinance No. 92-467A to the full Council for adoption.

Motion: Councilor Gronke moved, seconded by Councilor Buchanan, for adoption of Ordinance No. 92-467A.

Councilor Gronke gave the Governmental Affairs Committee's report and recommendations. He explained the ordinance would clarify rules and regulations for temporary Zoo employees in Metro Code Chapter 4.01 as well as clarify current procedures.

Presiding Officer Gardner opened the public hearing. No persons appeared to testify and the public hearing was closed.

Vote: Councilors Buchanan, Gronke, Hansen, McFarland, McLain, Van Bergen, Washington, Wyers, and Gardner voted aye. Councilors Collier and Devlin were absent. The vote was unanimous and Ordinance No. 92-467A was adopted.

6.2 Ordinance No. 92-466A, For the Purpose of Repealing Metro Code Sections 2.04.100-180, and For the Purpose of Enacting New Provisions Establishing and Governing Metro's Contracting Procedures for Minority, Women and Disadvantaged Business Enterprises (Public Hearing)

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

Presiding Officer Gardner announced Ordinance No. 92-466 was first read on June 25 and referred to the Governmental Affairs Committee for consideration. The Governmental Affairs Committee considered it on July 2 and September 17 and recommended Ordinance No. 92-466A for adoption.

Motion: Councilor Gronke moved, seconded by Councilor Hansen, for adoption of Ordinance No. 92-466A.

Councilor Gronke gave the Governmental Affairs Committee's report and recommendations. He said the ordinance was the result of Council staff working with Legal Counsel and a small task force of interested parties to develop the most liberal program possible that would withstand legal scrutiny. He said the ordinance would establish separate programs for minority and women-owned businesses for locally funded contracts and focussed on good faith efforts by both Metro and prime bidders for construction contracts over \$50,000, and on good faith and outreach efforts by Metro for other contracts.

The Council discussed the ordinance. Councilor Washington asked what the budget impact of the ordinance would be. Casey Short, Council Analyst, said the Regional Facilities Department would

submit a preliminary budget request for sufficient staff to support the program.

Presiding Officer Gardner opened the public hearing. No persons appeared to testify and the public hearing was closed.

Councilor McLain said the ordinance showed a true effort on Metro's part to address inequities. Councilor Wyers concurred and said, because of current case law on the subject matter, the ordinance was the best effort Metro could make at this time.

Vote: Councilors Buchanan, Gronke, Hansen, McFarland, McLain, Van Bergen, Washington, Wyers, and Gardner voted aye. Councilors Collier and Devlin were absent. The vote was unanimous and Ordinance No. 92-466A was adopted.

7. RESOLUTIONS

7.1 Resolution No. 92-1661. For the Purpose of Authorizing the Executive Officer to Execute a Statement in Support of a Predicate/Disparity Study

Motion: Councilor Gronke moved, seconded by Councilor Wyers, for adoption of Resolution No. 92-1661.

Councilor Gronke gave the Governmental Affairs Committee's report and recommendations. He said the resolution would authorize research to see if a final study should be made on percentage goals related to Ordinance No. 92-466A. He said the study was endorsed by Multnomah County and Tri-Met, that both agencies would participate, and that there would be no financial impact to Metro. He said if sufficient evidence was gathered, a predicate study on whether past discriminatory practices had occurred would take place.

Councilor Hansen asked if numbers would be pooled or factored out.

Neil Saling, Director of Regional Facilities, said each agency's staff had to go before their governing bodies to get permission for additional study also.

Councilor Van Bergen asked if the study would result in numbers that were actionable or prosecutable. Mr. Saling said he did not know at this time if facts gathered would result in such action. Councilor Van Bergen said the courts were becoming involved in legislative issues. General Counsel Dan Cooper said the victims, or specific bodies discriminated against, had to be identified

before legal action could take place. Councilor Van Bergen said there was evidence that predicate/disparity studies could cost as much as \$500,000. Councilor Washington asked if there was confirmation the other agencies involved would continue in this action with Metro. Mr. Saling said Metro would sign a non-binding agreement that allowed Metro not to continue if the other agencies did not continue with the study.

Vote: Councilors Buchanan, Gronke, Hansen, McFarland, McLain, Van Bergen, Washington and Gardner voted aye. Councilors Collier, Devlin and Wyers were absent. The vote was unanimous and Resolution No. 92-1661 was adopted.

7.2 Resolution No. 92-1680, For the Purpose of Endorsing Tri-Met's Financing Plan for the Westside Light Rail Projects Which Includes Advancing the Region's Extension Allocated Funds to the 185th Project

Motion: Councilor McLain moved, seconded by Councilor Buchanan, for adoption of Resolution No. 92-1680.

Councilor McLain gave the Transportation and Planning Committee's report and recommendations. Councilor McLain referred the Council to the committee report, Transportation Department staff's report and Be It Resolved language clauses in the resolution. She noted also the draft letter attached to the committee report from Brian Clymer, Federal Transit Administration Administrator to Senator Mark Hatfield received this date. Councilor McLain discussed Committee concerns including: 1) enforcement of the letter attached to the committee report; 2) the differing definitions of what would be enforceable; 3) National Environmental Protection Agency (NEPA) regulations; and 4) the policy commitment based on the letter's favorable response. Councilor McLain said she suggested at Committee the resolution be forwarded with no recommendation until the Council knew what Mr. Clymer's letter said. She said Dick Feeney, Tri-Met Director of Governmental Affairs, said that could be done but stressed the importance of having the Council consider the resolution before or by September 30. She said Councilor Washington asked Mr. Feeney whether such difficulties and complications occurred during development of the eastside MAX project. She said Mr. Feeney said difficulties arose during the MAX project because of the region's inexperience in dealing with the federal government. She said Chair Devlin suggested the Committee forward the resolution with a favorable recommendation contingent on the letter from Mr. Clymer being deemed satisfactory by the Joint Policy Advisory Committee on Transportation (JPACT) and the Council, and that if the response

letter was not satisfactory, the resolution would be returned to JPACT for further work. Councilor McLain said the draft letter received this date now before the Council was satisfactory.

The Council briefly discussed the issues further.

Vote: Councilors Buchanan, Gronke, Hansen, McFarland, McLain, Van Bergen, Washington, Wyers, and Gardner voted aye. Councilors Collier and Devlin were absent. The vote was unanimous and Resolution No. 92-1680 was adopted.

7.3 Resolution No. 92-1667, For the Purpose of Adopting the FY 1993 to Post 1996 Transportation Improvement Program and the FY 1993 Annual Element

Motion: Councilor Washington moved, seconded by Councilor Hansen, for adoption of Resolution No. 92-1667.

Councilor Washington gave the Transportation and Planning Committee's report and recommendations. He explained the resolution would approve the annual Transportation Improvement Program (TIP), the five-year funding element required by the Federal Highway Administration (FHA) to detail how the region should spend its transportation funds. He said the resolution endorsed the TIP for years 1993-1998. He said the resolution would continue past projects and approve the list of new projects in staff's report.

The Council briefly discussed the resolution further.

Vote: Councilors Buchanan, Gronke, Hansen, McFarland, McLain, Van Bergen, Washington, Wyers, and Gardner voted aye. Councilors Collier and Devlin were absent. The vote was unanimous and Resolution No. 92-1667 was adopted.

7.4 Resolution No. 92-1670, For the Purpose of Approving an Amendment to the 1993 Unified Work Program for Transportation and Land Use Modelling Improvements

Motion: Councilor McLain moved, seconded by Councilor Hansen, for adoption of Resolution No. 92-1670.

Councilor McLain gave the Transportation and Planning Committee's report and recommendations. She explained the Transportation Department recently became aware of some discretionary FHA funding that could be available for the Region 2040 project if expended before the end of the federal fiscal year, or September

30. She said the Transportation Policy Alternative Committee (TPAC) and JPACT had both approved the resolution.

The Council and Director of Planning Andy Cotugno, briefly discussed funding mechanisms and the modelling work for which the funds would be used.

Vote: Councilors Buchanan, Gronke, Hansen, McFarland, McLain, Van Bergen, Washington, Wyers, and Gardner voted aye. Councilors Collier and Devlin were absent. The vote was unanimous and Resolution No. 92-1670 was adopted.

Presiding Officer Gardner recessed the Council of the Metropolitan Service District and convened the Contract Review Board of the Metropolitan Service District to consider Agenda Item No. 7.5.

7.5 Resolution No. 92-1671, For the Purpose of Authorizing an Exemption to the Competitive Procurement Procedures of Metro Code Chapter 2.04.053 and Authorizing a Personal Services Agreement with the Oregon Graduate Institute of Science and Technology

Motion: Councilor McFarland moved, seconded by Councilor Wyers, for adoption of Resolution No. 92-1671.

Councilor McFarland gave the Solid Waste Committee's report and recommendations. She explained the original St. Johns Landfill (SJL) closure plan recognized potential research opportunities and that the Oregon Graduate Institute had submitted a proposal for research in three areas: 1) chemical, reactions and migration of soil contaminants; 2) development of computer models related to the surface water and contaminant movement in the Smith and Bybee Lakes area; and 3) soil and vegetation interaction in the landfill cap. She said the sole source contract would cost \$99,999, with \$75,000 to be spent FY 1992-93. She said benefits to Metro from the research included: 1) a data based and computer modeling technology that would assist in cost-effective environmental management of the site; 2) assistance in developing a proper cap for SJL; and 3) development of the site as a "field laboratory" for a variety of educational and environmental uses. Councilor McFarland recommended adoption of the resolution.

The Council briefly discussed the resolution.

Vote: Councilors Buchanan, Gronke, Hansen, McFarland, McLain, Van Bergen, Washington, Wyers, and Gardner voted aye. Councilors Collier and Devlin were absent. The vote was unanimous and Resolution No. 92-1671 was adopted.

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

7.6 Resolution No. 92-1672, For the Purpose of Establishing the District's Intent to Include a Citizen's Bond Sale as Part of Its General Obligation Bond Issuance of \$200 Million for the Regional Greenspaces System

Motion: Councilor Wyers moved, seconded by Councilor Hansen, for adoption of Resolution No. 92-1672.

Councilor Wyers gave the Finance Committee's report and recommendations. She said the program would set aside up to \$3 million of the bond issue in \$1,000 denominations to be administered by a local bank, and would be slightly more costly than a usual program, but with the benefit of being available to more people because of the lower bond face amount. She said the bonds would be advertised via, and tied into, the public information campaign advertising the Greenspaces bond measure.

Jennifer Sims, Director of Finance and Management Information, briefly discussed the resolution.

Vote: Councilors Buchanan, Gronke, Hansen, McFarland, McLain, Van Bergen, Washington, Wyers, and Gardner voted aye. Councilors Collier and Devlin were absent. The vote was unanimous and Resolution No. 92-1672 was adopted.

7.7 Resolution No. 92-1676, For the Purpose of Approving Contract for Performance Audit Services

Motion: Councilor Van Bergen moved, seconded by Councilor Wyers, for adoption of Resolution No. 92-1676.

Councilor Van Bergen gave the Finance Committee's report and recommendations. He said Talbot, Korvala and Warwick did a good job during the interview process and said the department to be audited had not yet been determined. He said if the Metro Charter was adopted, the auditor would take over the contract in 1993, but noted also Metro's contract contained a five-day escape clause.

Vote: Councilors Buchanan, Gronke, Hansen, McFarland, McLain, Van Bergen, Washington, Wyers, and Gardner voted aye. Councilors Collier and Devlin were absent. The vote was unanimous and Resolution No. 92-1672 was adopted.

8. NON-REFERRED RESOLUTIONS

8.1 Resolution No. 92-1681, For the Purpose of Directing the Preparation of Neutral Factual Information Regarding the Proposed Metro Charter (Ballot Measure 26-3)

Motion to Suspend Rules: Councilor Buchanan moved, seconded by Councilor Van Bergen, to suspend the Council's rules requiring that resolutions be referred by committee so that the Council as a whole could consider Resolution No. 92-1681.

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

Main Motion: Councilor Gronke moved, seconded by Councilor Buchanan, for adoption of Resolution No. 92-1681.

Councilor Gronke explained the Governmental Affairs Committee determined it would benefit the voters if a neutral, factual information sheet on the Metro Charter ballot measure was developed.

Councilor Hansen asked if it was necessary for the resolution title to state both "neutral" and "factual."

Motion to Amend: Councilor Hansen moved, seconded by Councilor Gronke, to amend the title of Resolution No. 92-1681 (additional underlined; deleted language bracketed): "Resolution No. 92-1681, For the Purpose of Preparing [~~Directing the Preparation of Neutral Factual~~] Information Regarding the Proposed Metro Charter (Ballot Measure 26-3).

Councilor Wyers said "neutral" and "factual" had different meanings. She had questions about the use of funds.

Vote on Motion to Amend: Councilors Gronke and Hansen voted aye. Councilors Buchanan, McFarland, McLain, Van Bergen, Washington, Wyers and Gardner voted nay. Councilors Collier and Devlin were absent. The vote was 7 to 2 against and the motion failed.

Councilor Gronke asked how much it would cost to prepare the fact sheet. Councilor Van Bergen said mailing costs were prohibitive and the fact sheet could be distributed by hand. Councilor Gronke noted the resolution was in response to his request at the September Councilor retreat. Councilor McLain said she had wanted a fact sheet for use when speaking in the community and had planned to use personal funds for reproduction costs. Councilor Washington said he thought the resolution was intended for Councilors' use only when speaking to the public and asked why the Council had to get permission to expend funds for its own materials. Mr. Cooper explained Oregon law specified no public funds were to be spent to support or oppose ballot measures. He said the law did allow expenditure for the dissemination of neutral, factual information. He said Councilors could discuss any topic they wished. Councilor Wyers said a fact sheet for the Council and a fact sheet for citizens were two separate items. She asked if the fact sheet would talk about the Charter's effect or its provisions. Mr. Cooper said it would not be appropriate to include specific information about effects.

The Council discussed the issues further.

Vote on Main Motion: Councilors Buchanan, Gronke, Hansen, McLain and Gardner voted aye. Councilors McFarland, Van Bergen, Washington and Wyers voted nay. Councilors Collier and Devlin were absent. The vote was 5 to 4 in favor and Resolution No. 92-1681 was adopted.

ADDITIONAL AGENDA ITEM

8.2 Resolution No. 92-1687, For the Purpose of Making Appointments to Council Standing Committees

Presiding Officer Gardner explained Resolution No. 92-1687 would appoint Councilor Moore to the Governmental Affairs and Transportation & Planning Committees.

Motion to Suspend Rules: Councilor Wyers moved, seconded by Councilor Buchanan, to suspend the Council's rules requiring that resolutions be referred by committee so that the Council as a whole could consider Resolution No. 92-1687.

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

Motion: Councilor Wyers moved, seconded by Councilor Buchanan, for adoption of Resolution No. 92-1681.

Vote: Councilors Buchanan, Gronke, Hansen, McFarland, McLain, Van Bergen, Washington, Wyers, and Gardner voted aye. Councilors Collier and Devlin were absent. The vote was unanimous and Resolution No. 92-1681 was adopted.

9. Executive Session Held Under the Authority of ORS 192.660(1)(h) to Consult with Counsel with Regard to Litigation

Presiding Officer Gardner announced the Council would hold an Executive Session under the authority of ORS 192.660(1)(h) to consult with Legal Counsel with regard to litigation.

The Executive Session began at 8:28 p.m. Present: Councilors Gronke, Washington, McFarland, Wyers, Gardner, Hansen, Buchanan, McLain and Van Bergen. Also present: Dan Cooper, Mark Williams, Don Carlson and Casey Short. The Executive Session ended at 8:45 p.m.

10. COUNCILOR COMMUNICATIONS AND COMMITTEE REPORTS

Councilor Gronke noted press coverage of the dedication of the Oregon Trail Interpretative Center.

Councilor Wyers said the Council should be fully informed on all of the issues it was expected to vote on and said the date of a meeting was too late to receive papers the Council was expected to make decisions on. She understood emergency situations did occur at times. Councilor Hansen concurred with Councilor Wyers.

Presiding Officer Gardner adjourned the meeting at 9:05 p.m.

Respectfully submitted,



Paulette Allen
Clerk of the Council