

MINUTES OF THE COUNCIL SOLID WASTE COMMITTEE
OF THE METROPOLITAN SERVICE DISTRICT

June 5, 1990

Council Chamber

Committee Members Present: Gary Hansen (Chair), Larry Bauer (Vice Chair), Roger Buchanan, Tom DeJardin and Judy Wyers

Chair Hansen called the regular meeting to order at 3:35 p.m.

1. Consideration of Ordinance No. 90-353, An Ordinance Enacted as A Supplemental Ordinance to Ordinance Nos. 89-319 and 89-320; Establishing a Plan for Financing the 1989 Compost Project to Serve as a Part of the Metropolitan Service District's Solid Waste Disposal System; Authorizing the Issuance of Additional Bonds in Connection with Its Issuance of the 1989 Compost Project Bonds for Such Purpose; and Establishing and Determining Other Matters in Connection Therewith (Public Hearing)

Dan Cooper, General Counsel, said the ordinance would allow Riedel to borrow additional funds in tax-exempt bonds in Metro's name to allow Riedel to finance additional sums they were required to contribute to the cost of the Composter Project. He noted Metro sold two series of bonds for the original financing. He said the Series A Bonds were issued in the amount of \$25,105,000 and were part of the debt service Metro was required to pay as part of the tip fee calculation for the composter facility through the service agreement. He said Metro was not required to pay the bonds directly, but was obligated to pay indirectly through the debt service agreement. He said the Series B Bonds were sold at the same time in December 1989 so that Riedel could have tax-exempt financing for the equity contribution it made at that time and that amount was \$1,500,000.

He said after Council approval of the ordinance approving the Series B Bonds but before the Bond sale, Riedel determined they needed to contribute additional equity to the composter project and subsequently determined that contribution had to be increased after the bond sale. He said Ordinance No. 90-353 called for issuance of the "1990 Series One Bonds" to differentiate from the 1989 Series B Bonds. He said the 1990 bond sales would 1) allow Riedel to refinance and pay off the Series B Bonds (\$1,500,000); 2) finance an additional \$3,000,000 in equity needed by Riedel to contribute to the project; and 3) cover the cost of issuance which could be as high as \$500,000.

He said Metro would not be financially obligated to pay for the bonds authorized by this ordinance in any form whatsoever.

Mr. Cooper introduced Bob Poznanski, Stoel, Rives, Boley, Jones & Grey; Alex Cross, Riedel; and Mark Aaron from Perkins, Coie representing Riedel. Mr. Cooper noted a memorandum from Stoel, Rives, Boley, Jones & Grey, titled "Failure to Receive Remarketing Proceeds"

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dated June 5, 1990, had been distributed. The memorandum reflected Standard & Poor's request additional language be added to the ordinance under Section 306(a) to ensure that under certain technical circumstances, U.S. National Bank would be obligated to pay for bonds in the event remarketing occurred and the proceeds of remarketing were not sufficient to pay for all outstanding bonds.

Motion to Amend: Councilor Buchanan moved to amend Ordinance No. 90-353 per the language recommended in the memorandum from Stoel & Rives.

Vote on Motion to Amend: Councilors Buchanan, DeJardin and Hansen voted aye. Councilors Bauer and Wyers were absent. The vote was unanimous and the motion passed.

Councilor Buchanan asked what Metro's liability was. Mr. Cooper said Metro had no direct liability to repay the bonds. He said this type of financing meant a governmental body endorsed the bond issue, but the payment fell upon the entity which sponsored the project the bonds were issued for. He said the bonds were not secured in any way by any revenues or assets of Metro and Metro was under no obligation to take action if the bonds defaulted.

Chair Hansen opened the public hearing. No one present appeared to testify and the public hearing was closed.

Main Motion as Amended: Councilor Hansen moved to recommend Ordinance No. 90-353, as amended, to the Finance Committee for their consideration June 7, 1990.

Vote on Main Motion as Amended: Councilors Buchanan, DeJardin and Hansen voted aye. Councilors Bauer and Wyers were absent. The vote was unanimous and the motion passed.

Mr. Cooper said staff would make the same presentation to the Finance Committee June 7. He said if the Finance Committee recommended the ordinance for Council adoption, it would be scheduled for Council consideration June 14. He said a deadline imposed by the State of Oregon to comply with the allocation of private activity bonds meant the bond sale must close by June 23.

2. Consideration of Ordinance No. 90-351, For the Purpose of Amending Chapter 5, Section 5.02.045, Regarding User Fees for Self-Haulers (Public Hearing)

Bob Martin, Director of Solid Waste, explained Ordinance No. 90-351 was a housekeeping measure. He said the ordinance clarified and confirmed the application of Metro User Fees to Self-Haul loads of solid waste delivered to facilities franchised by Metro or those which

accepted Metro waste under agreement with Metro. He said the ordinance amended Metro Code Chapter 5.02, Section 5.02.045(a), regarding fees for self-haulers.

Motion: Councilor DeJardin moved to recommend the full Council adopt Ordinance No. 90-351.

Vote: Councilors Buchanan, DeJardin and Hansen voted aye. Councilors Bauer and Wyers were absent. The vote was unanimous and the motion passed.

3. Consideration of Ordinance No. 90-352, For the Purpose of Repealing Ordinance No. 89-194 Restricting the Use of the St. Johns Landfill; Authorizing Limited Use of Metro Facilities for Disposal of Non-District Solid Waste; and Repeal of Non-District Solid Waste; and Repeal of Section 5.02.055 of the Metro Code Relating to "Out of State Surcharges" (Public Hearing)

Chair Hansen opened the public hearing. No one present appeared to testify and the public hearing was closed.

Mr. Martin said the City of Washougal had requested whether they could utilize Metro South Station for their disposal needs until their transfer station was built in approximately six months to one year from this date. Staff, when researching the issues, found Ordinance No. 90-194 which precluded the use of Metro facilities for out-of-region waste and a Code section which stated out-of-region waste would be charged \$.56 per ton in addition to the regular rate. He said Metro intent when Ordinance No. 89-194 was adopted was to prevent the St. Johns Landfill from filling up before a replacement landfill was sited. He said that concern was no longer an issue because the Columbia Ridge Landfill was now on-line.

He said Ordinance No. 90-352 would allow limited basis authorization for out-of-region waste to go to Metro facilities, but only if Metro facilities had the capacity to handle that waste, and there was no adverse impact on regional rate payers and waste acceptance standards. He said the ordinance would allow Metro to respond to Washougal's and other similar jurisdictional requests. He said the ordinance would allow other jurisdictions to access Metro facilities for no longer than 12 months. He said if a longer period of time was necessary, Council approval would be required. He noted the ordinance might be of interest to the Bi-State Committee. He said the Solid Waste Policy Advisory Committee would meet Friday, June 8, and the ordinance could be of interest to that committee as well.

Main Motion: Councilor DeJardin moved to recommend the full Council adopt Ordinance No. 90-352.

Chair Hansen again opened the public hearing. No one present appeared to testify and the public hearing was closed.

Chair Hansen asked if out-of-state waste had to meet Oregon recycling standards. Mr. Martin said Senate Bill 866 stated those who brought 75,000 tons of solid waste or more into a regional landfill had to demonstrate they had achieved results equal to the Opportunity for Recycling Act. He noted Washougal would not deliver solid waste directly to the landfill, and was therefore exempt, but said Washougal had an aggressive recycling program equal to Oregon's metropolitan region.

Chair Hansen recommended a Section 4 be added to the ordinance to stipulate a tonnage limit on out-of-region waste. Mr. Martin suggested language: "Any permit for a monthly tonnage in excess of 1,000 tons per month must be referred prior to approval." Mr. Martin said Washougal would probably send 500 tons per month.

Councilor Bauer said the ordinance was a gesture of regional cooperation and the Bi-State Committee could review it June 22.

Substitute Main Motion: With Councilor DeJardin's concurrence, Councilor Bauer moved to recommend Ordinance No. 90-352 to the Bi-State Committee for their approval June 22 and to recommend the ordinance, subject to Bi-State Committee approval, for Council adoption after June 22.

Motion to Amend: Councilor Bauer moved to amend Ordinance No. 90-352 with the addition of a new Section 4 as suggested by Mr. Martin above.

Vote on Motion to Amend: Councilors Bauer, Buchanan, DeJardin and Hansen voted aye. Councilor Wyers was absent. The vote was unanimous and the motion passed.

Vote on Substitute Main Motion: Councilors Bauer, Buchanan, DeJardin and Hansen voted aye. Councilor Wyers was absent. The vote was unanimous and the motion passed.

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

Debbie Gorham, Waste Reduction Manager, and Steve Kraten, Senior Solid Waste Planner, explained the "Metro Challenge" funding program for local governments and how they would be administered. Chair Hansen recommended staff make the same presentation to the Solid Waste Policy Advisory Committee June 8.

Motion: Councilor Bauer moved to recommend the full Council adopt Resolution No. 90-1270.

Vote: Councilors Bauer, Buchanan, DeJardin and Hansen voted aye. Councilor Wyers was absent. The vote was unanimous and the motion passed.

6. . . Study of Additional Economic Incentives to Increase Recycling Levels in the Region

Ms. Gorham gave a brief report on the study and its progress. She said staff expected to deliver a recommendation to the Executive Officer for consideration and present it to the Solid Waste Committee in October 1990. Chair Hansen suggested staff prepare a memorandum for the Council on cost impact, current rates, volumes anticipated and over-all scheduling. Mr. Martin noted issues centered more around budget than the rates.

5. Consideration of Resolution No. 90-1277, For the Purpose of Authorizing an Exemption to the Requirements to Solicit Competitive Proposals for Amendment No. 5 to the Contract with SCS Engineers, Inc. that Provides Additional Design Services for the Metro South Modifications

Jim Watkins, Engineering & Analysis Manager, said Metro entered into a contract with SCS Engineers, Inc. in August 1989 for \$198,162 and explained to-date the contract had been amended four times for a total additional contract cost of \$27,050. He said the first three amendments were due to Oregon City requirements and the fourth amendment was due to rebidding the contract. He said the Metro Code prohibited contract amendments for personal services contracts exceeding \$10,000 unless the Council, in its capacity as the Contracts Review Board, specifically exempted the contract amendment from Code competitive procedure requirements. He said SCS submitted a request for nine separate tasks which would cost \$44,299. Staff determined since SCS Engineers, Inc. was familiar with the site and had performed other work on the site, it would be more cost effective to have them perform the nine tasks required. Staff's report quoted Mr. Cooper, "...it is not possible to find that the prices quoted are not interconnected. Absent further information, I do not find that these are in fact discrete amendments."

Councilor Bauer asked what percentage of the original contract cost the total contract amendments represented. Mr. Watkins said all the amendments comprised 30 percent of the total contract cost. Councilor Bauer asked if the amendments were due to factors beyond Metro's control. Mr. Watkins said the amendments could not be anticipated, but would lead to a better product. Councilor Bauer asked if there

were sufficient funds to pay for the fifth contract amendment. Staff said there were.

Councilor DeJardin asked why some items had been overlooked. Mr. Watkins noted when access to the facility was designed, Jack Gray Transport, Inc. (JGT) believed the entry curve was too tight for their trucks to negotiate and SCS had to change the original specifications. He said AMFAB stated the conveyance system, not asked for originally, would be more productive. He said a viewing area was necessary as well as the misting system for dust control. He said the changes were abnormal but necessary, but that the facility was complicated and not an easy one to modify. Mr. Watkins noted staff did not agree with, or accept, all changes SCS had requested.

Motion: Councilor DeJardin moved to recommend the full Council adopt Resolution No. 90-1277.

Vote: Councilors Bauer, Buchanan, DeJardin and Hansen voted aye. Councilor Wyers was absent. The vote was unanimous and the motion passed.

7. Briefing on Proposed Agreement with Gilliam County and Oregon Waste Systems, Inc.

Mr. Martin said the JGT contract provided for the possibility, that if Gilliam County instituted the \$7 per load fee for overweight vehicles, that fee would be a pass-through in JGT's contract with Metro and essentially be part of the fees Metro paid JGT to pass on to Gilliam County. He said Gilliam County had not yet set their fee. He said Gilliam County's current preference was to set a per ton fee on the waste received at the landfill rather than a per load fee on the waste transported through the County. He said the effect of that agreement with Gilliam County was to transfer that expense to the Oregon Waste Systems, Inc. (OWS) contract rather than through the JGT contract. He said the fiscal impact to Metro would be positive because Gilliam County was contemplating \$.20 per ton opposed to \$7 per load which was approximately \$.25 per ton. He said Mr. Cooper was negotiating with Gilliam County, JGT and OWS attorneys on the issues.

Mr. Cooper said on May 16 Gilliam County adopted an ordinance which imposed \$.20 per ton fee on all waste transported into both the OWS Columbia Ridge Landfill and the Chem-Security hazardous waste disposal site. He said Gilliam County imposed the \$.20 per ton fee on the landfill operators themselves rather than charging the \$7 per load fee. He said the funds were dedicated to paying the county's share of the bill to the Oregon Department of Transportation (ODOT) to improve Highway 19 between Arlington and Cedar Springs Road which served as the turn-off for both landfills. He said the ordinance specifically

provided that when the county's share of those costs were paid, the fee would be dropped. Mr. Cooper stated for the record Metro's contract with OWS precluded OWS from passing through to Metro any county-imposed fees because, when Metro bid the original landfill contract, it did not know in which county the landfill would be sited and did not want the host county to unilaterally increase whatever host fees they would collect. He said there was a provision in Oregon law allowing regional disposal sites to collect host fees which Gilliam County took advantage of. He said that in the agreement executed between Metro and Gilliam County, the county agreed not to impose the fee on JGT which would automatically pass through to Metro so long as Metro agreed to amend its contract with OWS so that they could pass through the fee to Metro. He noted Gilliam County would tax all trucks accessing the landfill and the Chem-Security disposal site. Councilor Bauer asked what criteria was used to determine an overweight load. Mr. Cooper said truck trailers could not exceed 80,000 pounds gross vehicle weight except via special Public Utility Commission (PUC) permits. Chair Hansen asked if the net savings were savings for Metro or JGT. Mr. Martin said the issue would not impact JGT at all. Mr. Cooper said the contract paid JGT \$339 per load of which \$7 would be deducted.

8. Executive Session: Held Under the Authority of ORS 192.660(1)(h) for the Purpose of Discussing Threatened Litigation with Legal Counsel

The Executive Session began at 4:41 p.m. Those present were: Councilors Bauer, Buchanan, DeJardin and Hansen; Mr. Cooper; Mr. Martin; and Ray Barker, Council Analyst. Mr. Cooper briefed those present on litigation threatened by Oregon Waste Systems, Inc. The Executive Session ended at 5:05 p.m.

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

Mr. Martin discussed the proposed amendment to Metro's contract with OWS. He said that contract stated OWS would receive 90 percent of all waste to be delivered to a general purpose landfill. He said Metro would deliver in 1990 only the waste processed at the Metro South Station and in 1991 waste processed at Metro East Station as well. He said the question had arisen whether Metro's intent to deliver waste was in conflict with Metro's original contract with OWS and if the issue could be settled amicably. He said after extensive negotiations between Metro and OWS, Metro drafted Resolution No. 90-1279 to resolve the conflict. He said OWS offered to substitute a letter of credit backed by a corporate guarantee for the retainage currently in the

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contract. He said Legal Counsel had reviewed the letter of credit. He said the letter of credit released a retainage fund to OWS, but gave fiscal protection to Metro. Staff determined \$1,500,000 was the settlement amount for the revised tonnage which OWS would receive. Mr. Martin said \$1,500,000 pro-rated over 10 years resulted in a \$.28 cent per ton increase over the contract's current price. He said the contract amendment would remain in effect until OWS received the \$1,500,000. Staff estimated Metro would send 343,000 tons to the Columbia Ridge Landfill which would reduce Metro's commitment to \$1.4 million this year. Staff believed the settlement was equitable and would resolve the apparent discrepancy in the contract provisions.

Motion: Councilor Bauer moved to recommend the full Council adopt Resolution No. 90-1279.

Councilor Bauer said staff's settlement with OWS was equitable. Councilor Buchanan concurred with Councilor Bauer.

Vote: Councilors Bauer, Buchanan, DeJardin, Hansen and Wyers voted aye. The vote was unanimous and the motion passed.

10. General Staff Reports
o Rate Incentives Study

Councilor Wyers noted the Multnomah County Board of Commissioners had drafted a resolution urging Metro to give "thrifths" or "charitable recycling agencies" rate relief.

Acting Chair Bauer opened a public hearing.

Tim Hornbecker, St. Vincent de Paul executive director, introduced Chuck Sunbord, St. Vincent de Paul facilities manager, and noted he served as co-chair for the Coalition for Charitable Non-Profit Recycling Agencies. He asked the Committee to schedule a presentation by St. Vincent de Paul and other charitable recycling agencies in June or July to hear their concerns about higher solid waste rates. He said during the last four years St. Vincent de Paul, Deseret Industries, the Salvation Army, and Goodwill of Oregon Industries had collectively paid \$400,000 in tipping fees. He said charitable recycling agencies should receive rate relief since those agencies had recycled prevented 22 millions pounds of material from going to the landfill. The Committee and Mr. Hornbecker discussed the definition of a charitable recycling agency.

Councilor Wyers said a hearing for charitable recycling agencies should be scheduled for the next regularly Committee meeting June 19. Councilor Wyers noted at that hearing charitable recycling agencies should explain why they did not testify at Metro's rate hearings and further explain fiscal impacts to the agencies and Metro. Councilor

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Wyers noted Representative AuCoin and Senator Hatfield were interested in the issues. Councilor Wyers asked staff how Metro's rate incentives study would address the issue of charitable recycling agencies. Councilor DeJardin and Mr. Hornbecker discussed organizations which did not fall within the "charitable recycling agency" definition. Councilor Wyers noted Multnomah County sought a moratorium on the rates; to examine Metro's policy issues; to adopt long-term relief incentives; and to educate the public on the issues. The Committee thanked Mr. Hornbecker for his testimony. Mr. Martin briefly discussed the issues. He said it would be more desirable to keep gate prices the same for all and then consider who to give disposal credits too. He said staff would assess similar national programs that related the degree of incentives offered to the performance achieved by charitable recycling agencies. Councilor Wyers asked why \$6,000 was funded for an out-of-agency study and whether staff could perform the same study in-house. Mr. Martin said staff believed a budget line item for \$6,000 would show the issues were important and be sufficient to fund a study. Councilor Wyers said staff should bring the study's scope of work before the Committee for its review and approval. Acting Chair Bauer asked staff to give a rate incentives overview at the June 19 meeting. Councilor Wyers concurred. Mr. Martin said staff would distribute materials related to Agenda Item No. 6 to the Committee. Councilor DeJardin asked that available national studies be distributed to the Committee also.

o Unanticipated Contracts

Neil Saling, Acting Director of Finance and Administration, explained he, Jessica Marlitt, Council Analyst, and Don Carlson, Council Administrator, wrote a memorandum "Contract Request for Proposals/Bids (RFP/RFB) Processing Procedures" dated June 5, 1990. He said the memorandum laid out rules and procedures for new and/or unanticipated contracts. He said the memorandum was distributed to the Council this date. He noted Mr. Watkins had two unanticipated contracts for Committee consideration at this meeting.

Acting Chair Bauer asked if the Committee could consider the contracts at the June 19 meeting. Councilor Wyers concurred with Acting Chair Bauer and said she was not prepared to approve or release contracts at this meeting she had not read. Ray Barker, Council Analyst, noted Chair Hansen was made aware of the contracts before the meeting began. He said staff proposed to waive Council approval to release the contracts on the street. Councilor Wyers said Committee approval of the contracts at this meeting would be speedy, but was not necessarily the best procedure. Acting Chair Bauer noted contracts administration issues were sensitive for the Council. He said due process should be taken with regard to contract amendments.

Mr. Watkins said both contracts were approved for FY 1990-91. He said they were considered unanticipated contracts because staff hoped to execute them earlier in FY 1989-90. He said he would only bring such contracts for Committee approval and release because they were non-controversial contracts with no policy implications. He noted one contract would hire a firm to perform a second estimate of the Parametrix's closure costs for the St. Johns Landfill. He said the second RFP would hire a design team to design the Household Hazardous Waste Management facility at Metro South Station. Councilor Wyers noted the Council discussed contracts and their policy implications at the last full Council meeting. Councilor Wyers said the Committee should not be on record as having approved the two contracts without being listed on the agenda and in the absence of the committee chair, simply to save two or three weeks' time. Councilor DeJardin supported approval of the contracts at this meeting. Councilor Wyers said Council review should not be waived. Acting Chair Bauer concurred with Councilor Wyers.

The Committee discussed when the contracts should be reviewed and whether by Committee or the full Council. Mr. Barker noted the committee chair was authorized to determine whether such contracts were placed on an agenda for review and approval, and if not scheduled within 14 days for an agenda, staff could release the contracts on the street. He said RFPs were released for public response 35 days after filing with the Clerk of the Council unless the Council passed an ordinance to prevent such action.

Acting Chair Bauer directed Council staff to place the contracts on the full Council agenda as soon as possible. Councilor Wyers told staff it was essential for the Solid Waste Committee to review contracts. Mr. Saling said the new contracts procedures were developed because contracts had not been moving quickly through the system. Mr. Martin said staff was not trying to circumvent the process, but trying to follow a process that was clearly defined.

Mr. Watkins noted when the Committee recommended Resolution No. 90-1225A to the full Council for adoption, it requested staff inform the Committee of any vendor comments received and that staff clarify the evaluation criteria contained in the RFP. He said to-date, no comments were received by vendors. He said staff prepared a clarification of evaluation criteria for Committee approval and release.

Mr. Saling noted the Metro South contractor achieved their DBE compliance through a good faith effort and a protest would be filed by the second lowest bidder. He said the Executive Officer would address the complaint first and then the Contracts Review Board as part of the appeals process.

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Acting Chair Bauer adjourned the meeting at 6:00 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Paulette Allen".

Paulette Allen
Committee Clerk
SWC90.156