

APPROVED
Date 3-22-94

MINUTES OF THE METRO COUNCIL GOVERNMENTAL AFFAIRS COMMITTEE

March 8, 1994

Council Chamber

Committee Members Present Mike Gates (Chair) George Van Bergen (Vice Chair), Judy Wyers

Committee Members Absent Roger Buchanan

Chair Gates called the meeting of the Governmental Affairs Committee to order at 5.40 p m

1. Consideration of February 22, 1994 Governmental Affairs Committee Meeting Minutes

Motion Councilor Wyers moved to approve the February 22, 1994 Governmental Affairs Committee meeting minutes

Vote Councilors Van Bergen, Wyers and Gates votes aye

The vote was unanimous and the motion passed

2. Communications from Local Governments

No communications

3. Consideration of Draft Resolution No. 94-1906, For the Purpose of Withdrawing Metro's Participation in the Forum on Cooperative Urban Services (FOCUS)

Casey Short, Council Analyst, presented the staff report, and said he drafted the proposed resolution at the direction of the Committee which held the opinion that continuing participation in FOCUS would not be productive for the agency and that the work of FOCUS was not directly related to matters of Metro concern

Greg Chew of McKeever-Morris and staff person to FOCUS addressed the Committee and referenced his letter dated January 11, 1994 and located in the record for this meeting. He noted the letter documented Metro's involvement to date in FOCUS. He referenced also a letter from Chair Gates letter dated February 2, 1994, also found in the record for this meeting. He said since Chair Gates' letter the Steering Committee had asked that Mr. Chew come before the Committee to ask that Metro to maintain membership in FOCUS. In response to Chair Gates, Mr. Chew said FOCUS would definitely be interested in holding their meetings at the Metro Regional Center, and said the only problem in the past had been a scheduling conflict in the monthly membership meetings. Chair Gates asked if FOCUS members would be interested in attendance at Metro Council Committee meetings of particular topic.

In response to Councilor Wyers question regarding possible duplication with Metropolitan Policy Advisory Committee (MPAC) membership, Mr. Chew said any local jurisdiction in the Metropolitan region regardless of size could join FOCUS, whether special district, county or city. He said those jurisdictions were represented on MPAC as specific delegates of the larger body as set out in the Charter.

Councilor McLain discussed the value of participation on the FOCUS Steering Committee, saying she believed it was a forum for topics of regional interest, and she advocated Metro stay involved. She indicated FOCUS was not interested in the dues, per se, but in Metro's involvement.

Councilor Wyers asked Councilor McLain if she felt FOCUS was favorable or negative toward Metro. Councilor McLain felt FOCUS acknowledged some negativity in the past, but felt FOCUS was willing to work on the relationship toward a positive end.

Chair Gates asked if FOCUS would entertain a discussion of the distinctions surrounding Metro dues and FOCUS dues. Mr. Chew indicated that could be done and said FOCUS was interested in Metro's participation.

Councilor Wyers noted Metro had a place at the table for the Portland Institute for Metropolitan Studies, and said she favored withdrawal from FOCUS.

Motion Councilor Wyers moved Resolution No. 94-1906 to the full Council without recommendation.

Councilor Van Bergen indicated he was prepared to move the resolution with recommendation.

Vote Councilors Wyers and Gates voted aye. Councilor Van Bergen voted no.

The motion passed.

4. Ordinance No. 94-523A, Approving the Revision of the Metro Code Chapter 2.02 Personnel Rules

Casey Short, Council Analyst, addressed the Committee, and referenced a memorandum dated March 4, 1994 from Paula Paris, Personnel Director regarding Format Changes to Personnel Code, Ordinance 93-523A. He noted changes were resultant from suggestions made by General Counsel.

Daniel B. Cooper, General Counsel, addressed the Committee and explained the referenced format changes as described in the March 4 memorandum. This document has been made part of the permanent meeting record.

Mr. Cooper discussed what would constitute "reasonable suspicion" with regard to the drug and alcohol policy, a revolving door policy, and the issue of liability exposure for volunteers. He noted Metro carried liability for Metro volunteers, and said such volunteers were considered the agency's agents, under which provision Metro would have Tort liability.

Councilor Wyers noted other entities asked volunteers to sign a waiver of liability and asked whether Metro could do so. Councilor Wyers requested Mr. Cooper provide information to the Committee in that regard.

Councilor Wyers asked about Personnel Rules for Council and Council Staff, and when would the Council have the opportunity to adopt similar rules for the Council Staff. Ms. Paris said she had sent a document containing proposed rules for the Council Office Staff to the Council Office for review, and noted changes were made from Executive Officer to Presiding Officer had been made in each applicable case. She said she removed appointments of some Department heads unless it was necessary for same to have a vote of the Council. She recalled Presiding Officer Wyers' statement previously in which she expressed her desire to maintain the status quo until January, 1995, and said she took that as her direction that Council employees would come under either the represented or the non-represented portion of the Code. Ms. Paris added she thought it advisable to have a statement to the effect that Executive Officer would be replaced with Presiding Officer where applicable. She noted the union has signed off a memorandum of understanding to that effect.

Mr. Short discussed the legislative process, and indicated a resolution regarding Council Office personnel rules could be drafted. He suggested placing such a resolution before the Council in a timely manner so as to be put in effect at the same time as the proposed ordinance would take effect after a waiting period of 90 days after adoption. He noted a resolution would be effective upon adoption without a waiting period, and noted the proposed ordinance, if adopted, would take effect around the end of June. Mr. Cooper concurred.

Councilor Wyers said she was not making any recommendations for changes to the Council Office staffing, or to its current union status, but felt the matter should be considered coincidentally.

Mr. Cooper said the matter could be handled differently. He said the Governmental Affairs Committee could introduce a resolution at the same Council meeting at which the proposed ordinance, if adopted, were on the agenda. He said such a resolution could stipulate its effective date as the same effective date of the ordinance. He said such a resolution could further stipulate that both represented and non-represented employees of the Council Officer would be under these rules except that the Presiding Officer would be substituted for the Executive Officer in the language. He felt that would present a clear package for decision making. Mr. Cooper said the Council could indicate the issue would be reopened in January, 1995 when a new Council of seven Councilors was in place. He said the Council could preserve in the record at this time that any steps taken now were not permanent, and said such language could be stipulated in a resolution.

Councilor Wyers asked why the matter of the rules for the Council Staff should be separated into another resolution rather than fit it into the proposed ordinance. Mr. Cooper said it was possible to have the Council Office personnel rules separated out into a separate section and be included as part of the ordinance.

Councilor Van Bergen discussed Ethical Requirements as described in Section 2.02.470. Mr. Cooper discussed his reading of the statutes and those matters that an elected official was or was not prohibited from being involved in. Mr. Cooper said he did not believe Councilor Van Bergen was in violation of the statute.

Mr. Cooper indicated he planned to provide further information on ethical requirements recently made available to General Counsel.

Councilor Wyers asked if no rules existed for Council Staff at this time. Ms. Paris said her understanding was that Council Staff employees were covered by existing Metro Code Personnel Rules. Mr. Cooper said the Metro Code had been in place since 1982. He said there were no Council Staff employees at the time the Code was written, which, he said, accounted for the fact that no separate category for Council Staff employees at that time. He said the Council passed a resolution in 1988 after the 1987 legislature amended the Metro statutes to provide for the Executive Officer to have a veto, and to clarify that Executive Department heads served at the pleasure, and that Council Staff employees served at the pleasure. He said the Council passed a resolution that said the Council Administrator and the Council Analysts serve at the pleasure of the Council. He said other Council Staff employees were employed subject to the provisions of the Code. He said the case could be made that the Council Analysts and the Council Administrator did not have the just cause protection that was in the Code for discipline and termination that all other Metro employees, including Council Staff employees, had under the current Code. He felt it would be good to clean that area up at the same time the proposed ordinance to the Metro Code was made effective.

Councilor Wyers requested the rules for the Council employees, both represented and non-represented, be drafted for inclusion in the proposed ordinance. Chair Gates concurred, and asked that the inclusions be specifically noted as changes in the staff report and the Committee report.

In response to Councilor Van Bergen, Mr. Cooper said he believed it would be beneficial for the Council by ordinance grant to its Presiding Officer administrative executive authority over staff. He said no definition had never been stipulated in the Metro Code or any other rules he was aware of how the Council was to carry out its administrative executive functions over its own staff collectively. He said that left the potential to resolve matters at the Council level it may not wish to resolve at that level. He suggested he and Ms. Paris could prepare an amendment that would be identified as a separate Code section that would accomplish Councilor Wyers' objective. He said it need not be very detailed, but could say when a Presiding Officer was elected, this power would be delegated to that Presiding Officer.

Councilor Wyers said it was her hope that there would be a potential for protection for Council Staff as changes were seen during the next Council. She felt clearer definition should be in place for the new Council of seven. She said obviously changes would be made, but said it would be best if they could be made in an orderly way as possible. She noted there were non-represented employees who currently worked at will, and said classifications, job titles and responsibilities would have to be worked on then. Councilor Wyers felt it would be beneficial if the process began now in the Code.

Main Motion as Amended

Councilor Van Bergen moved to recommend Ordinance No 94-523A to the full Council for adoption with inclusion of suggested changes as referenced in the March 4, 1994 memorandum

Mr Short noted an omission made in the discussion regarding hiring and firing authority as connected with Council Staff employees was a discussion of the change created by adoption of the Charter, which said that all Council Department employees served at the pleasure of the Council. He said that was a change from the statute. He said Ms Paris had reflected that change in drafting the proposed ordinance in exempting Council Department Staff from the rest of the provisions in the rules. He said a specific set of rules governing the Council Department Staff was necessary. He said it was determined to be permissible to have the Council adopt a resolution governing its handling of its own staff, rather than have it be done by ordinance. Mr Short expressed concern about timing, and said if the proposed ordinance was not adopted by the end of March it would likely be necessary to attach an emergency clause because the provisions dealing with compensation were incorporated into the budget effective, which would be effective July 1st. He said a new provision governing Council Department employees could be written and placed into this Code section in time to bring it before the Committee in two weeks time at the next Committee meeting. He said it could to the Council at its next meeting following the Committee meeting, two days later, without an emergency clause. He said the other option would be to address the Council Department employees by resolution.

Vote

Councilors Van Bergen, Wyers and Gates voted aye

The vote was unanimous and the motion passed

Mr Cooper suggested he prepare a proposed amendment to the ordinance to fit the desires of Councilor Wyers, which she could bring forward to the Council at the time the ordinance was brought forward. He said if a resolution were prepared and passed out of Committee at the next Committee meeting and went to the Council during the same time frame, then Councilor Wyers could opt not to bring up the subject of such an amendment.

Councilor Wyers questioned the potential for creating an instrument out of conformance with the Charter. She said she preferred an ordinance, and said she preferred it come to the Committee for consideration and discussion unless there were no controversy.

Mr Cooper said the language in the Charter concerning "serving at the pleasure of" was similar to existing language in the statute carried forward from an old Metropolitan Services District statute adopted in 1969 to the so-called Metro statute adopted in 1977. He said the Charter adoption was not that significant a milestone on this point. He said he believed that even though the Charter said an employee served at the pleasure, the state collective bargaining law as well as the General Powers clause allowed the Council to not violate the Charter by creating additional rights for Council Department employees making them more than at pleasure employees. He said he believed the Charter said the Executive Officer and the Auditor had no business in supervising Council Department employees. He said an ordinance or a resolution could be developed within those guidelines that would enable the Council with regard to its own employees.

Councilor Wyers suggested a resolution be prepared. Chair Gates requested Mr Short prepared such a resolution to be ready for consideration at the next Governmental Affairs Committee meeting.

There being no further business, the meeting adjourned at 7:18 p.m.

Respectfully yours,



Marilyn E. Geary-Symons
Committee Recorder