

APPROVE

12-2-93

MINUTES OF THE METRO COUNCIL GOVERNMENTAL AFFAIRS COMMITTEE

November 18 1993

Council Chamber

Committee Members Present: Jim Gardner (Acting Chair), Sandi Hansen, Judy Wyers

Committee Members Excused: Mike Gates, Terry Moore

Acting Chair Gardner called the regular meeting of the Governmental Affairs Committee to order at 4:08 p.m.

1. Consideration of November 4, 1993 Governmental Affairs Committee Meeting Minutes

Motion: Councilor Hansen to approve the November 4, 1993 Governmental Affairs Committee meeting minutes as submitted.

Vote: Councilors Hansen, Wyers and Gardner voted aye.

The vote was unanimous and the motion passed.

2. Communications from Local Governments

No communications from local governments.

The Committee agreed in consensus to add a new Agenda Item No. 3.

3. Ordinance No. 93-516, An Ordinance Amending Ordinance No. 93-498A Revising the FY 1993-94 Budget and Appropriations Schedule for the Purpose of Appropriating Funds to Consult with Business and Civic Leaders and Develop Recommendations Regarding Greenspaces Acquisition Capital Improvement and Operations Funding Options

Motion Councilor Wyers moved to remove Ordinance No. 93-516 from the table for the purpose of Committee discussion.

Vote Councilors Hansen, Wyers and Gardner voted aye.

The vote was unanimous and the motion passed.

Andy Cotugno, Planning Director, presented the staff report, and referenced the previous staff report dated October 4, 1993 before the Committee which addressed the purpose of the proposed ordinance, to amend the FY 1993-94 Budget to appropriate \$35,000 from the General Fund Contingency to the Regional Parks and Greenspaces Fund, Miscellaneous Professional Services line item to assist in funding a personal services agreement with a private firm to consult with business and civic leaders in the region and develop recommendations for funding a Greenspaces acquisition and capital improvement program. This document has been made part of the permanent meeting record.

Mr. Cotugno discussed the request to add \$8,500 to the Greenspaces Planning program budget, which he noted had been discussed in the previous Governmental Affairs Committee meeting held November 4, 1993. He noted two tasks were considered to be worthwhile to include in the process, one of which was polling and the suggestion that the sample size be increased to 800. He said the other task would be to provide for at least two FOCUS groups, noting that a size of 15 members was considered normal and from which information could be derived. Mr. Cotugno stressed the need for timeliness.

(Continued)

Acting Chair Gardner referenced a memorandum from Donald E. Carlson, Council Administrator, regarding taking the request for \$8,500 from the Council Department budget and transfer it to the Greenspaces Planning program budget.

Councilor Wyers indicated she believed increasing the polling sample to 800 would be beneficial based on meetings with consultants as part of the interview team. She felt the outcome would be helpful to the Council in decision making in the future relative to Greenspaces, and said because the Council would get good advice to use she felt it appropriate to recommend the expenditure come from the Council Department budget.

Casey Short, Council Analyst, suggested language revisions to Ordinance No. 93-516 to conform with Committee consensus.

Main Motion as Amended: Councilor Wyers moved to amend Ordinance No. 93-516 by substituting the exhibits as attached to Mr. Carlson memorandum and labeled "Revised November 12, 1993," and to direct staff to change the language under Section 1; deleting \$35,000, and adding \$8,500, and to refer Ordinance No. 93-516A to the Finance Committee with a "do pass" recommendation.

Vote on Main Motion as Amended: Councilors Hansen, Wyers and Gardner voted aye.

The vote was unanimous and the motion passed.

Mr. Cotugno proposed that staff proceed with execution of the contract for the full amount of \$35,000. He said the consultant needed to start on the rest of the scope of work. He suggested the consultant be instructed not to proceed on the two extra tasks until further written was provided, and said that written notification would not be provided until the budget amendment was approved by the full Council.

Acting Chair Gardner asked if the original amount of the contract and the original scope could be accomplished without the need for any budget amendments. Mr. Cotugno confirmed that was true. Acting Chair Gardner said it appeared to him that it was appropriate for Mr. Cotugno to proceed with execution of the contract, making sure the contractor knew there was a condition attached for that additional work.

4. Ordinance No. 93-517A. An Ordinance for the Purpose of Adopting a New Chapter to the Metro Code Pertaining to Elections

Acting Chair Gardner opened a public hearing. No citizens appeared before the Committee to testify. Acting Chair Gardner closed the public hearing.

Daniel B. Cooper, General Counsel, addressed the Committee and pointed out revisions to the proposed ordinance as previously discussed and directed by the Committee. The proposed ordinance as revised was printed in the agenda packet for this meeting as Ordinance No. 93-517A. The Committee and Staff discussed the revisions to the proposed ordinance.

In response to Acting Chair Gardner, Mr. Cooper agreed the numbering of the sections should be corrected.

Motion to Amend: Councilor Hansen moved to substitute Ordinance No. 93-517A for Ordinance No. 93-517 with the inclusion of language revisions as printed in the A version and with additional numbering corrections as noted by Councilor Gardner.

Vote on Motion to Amend: Councilors Hansen, Wyers and Gardner voted aye.

The vote was unanimous and the motion passed.

Main Motion as Amended: Councilor Hansen moved to recommend Ordinance No. 93-517A as amended to the full Council for adoption.

Vote of Main Motion as Amended: Councilors Hansen, Wyers and Gardner voted aye.

4. Ordinance No. 93-521. An Ordinance Amending Ordinance No. 93-487A Revising the FY 1993-94 Budget and Appropriations Schedule for the Purpose of Funding an Intergovernmental Agreement with the City of Portland for a Predicate Study, and Declaring an Emergency

Acting Chair Gardner referenced a memorandum from Mr. Short and Mr. Carlson dated November 16, 1993 regarding the proposed Disparity/Predicate Study. This document has been made part of the permanent meeting record.

Neil Saling, Director of Regional Facilities, presented the staff report, and referenced a memorandum from Presiding Officer Wyers dated November 18, 1993 with attached letter from Governor Barbara Roberts to Portland Mayor Vera Katz dated October 21, 1993 as well as a response letter from Mayor Katz to Governor Roberts dated November 17, 1993. These documents have been made part of the permanent meeting record. Mr. Saling noted Governor Roberts' letter expressed concerns regarding the state's participation in such a study, including that the study would only cover construction contractors, when there were other areas in which she felt disadvantaged businesses were grossly impacted by the "Croson decision." Mr. Saling said a ruling of the U. S. Supreme Court, the Croson decision, negated the use of set-aside programs and mandatory goals in public contracting for participation by minority and woman-owned enterprises (MBE/WBE) in regional political subdivisions. He said the basis for conducting a disparity/predicate study would specifically document Metro's "compelling interest," if any, and, if so, what remedies should be utilized to correct present effects of past discrimination. Mr. Saling referenced a multi-jurisdictional feasibility study performed by Cogan and Associates and completed in December, 1992. He said the Cogan study presented the pros and cons of doing a disparity study as well as providing some preliminary statistical information, but, he said, it did not make a specific recommendation. Mr. Saling said a copy of the Cogan study had been made available to Council Department Staff. He commented regarding Metro's disadvantaged business programs dating back to 1979, and said from the period of 1987 to 1991 MBE participation was between 5% and 7%, and WBE participation between 3% and 5%. He said the lack of a statistical base for comparison presented a difficulty in that there was no way to determine whether the percentages were above or below the availability of firms in the region to perform in a particular situation. He said in 1992 the program was re-tooled basing the program on outreach efforts and good faith efforts. Mr. Saling said it was Metro's belief that the current program was successful, and said his staff was working on preparation of facts and figures for review. He said there was no portion of the new program which relied on the correction of past discriminatory practices. Mr. Saling said such a study would identify where discrimination had caused disparity and would recommend remedial programs.

He said the City of Portland believed a disparity study was desirable and had budgeted \$175,000, along with Multnomah County which agreed to provide \$100,000 to the City over a two year period. Mr. Saling said there was an expectation in the minority community that Metro would participate in the disparity study. He said the disadvantages to Metro were cost, how results could be viewed adversely by either Metro or the minority community depending on the outcome, the potential that the study could have a negative impact on unions, the possibility that the study would demonstrate Metro's current programs were adequate and the study would have cost \$100,000. Mr. Saling noted a question regarding the possible scope of work was not resolved.

In response to Councilor Wyers, Mr. Saling he would be prepared to provide answers to the questions contained in her November 18 memorandum at the next meeting of the Governmental Affairs Committee.

In response to Councilor Wyers, Mr. Saling said he felt the current program was both adequate and a model.

In response to Councilor Wyers, Mr. Saling said there was no policy adopted directing Metro to conduct a disparity study. He did not know why the matter had not been budgeted for but felt Metro was interested to find out what the City and the county would do.

Acting Chair Gardner opened a public hearing.

Harold Williams, owner of a company called CH2A, and chair of the Board of Portland Community College, addressed the Committee, and said he ran a program for the City of Portland called First Source. He felt the community was working toward bringing about change, and said the disparity study would look at a historical pattern that had left disadvantaged persons out of the main stream. He said in order to set the record straight so that the future was on a solid foundation such a study was necessary. He said going back to look at the truth could be painful and distasteful to many parties involved, nevertheless, he said, he supported the study and felt the results would be beneficial.

Wendy E. Levy, representing the office of Impact Business Consultants, Inc., 8959 S.W. Barbur Blvd. Suite 102, Portland, Oregon 97219, read a memorandum dated November 18, 1993 from Margaret R. Garza in support of the study. A copy of her testimony was distributed to the Committee and has been entered into the permanent meeting record.

Henry H. Pelfrey, President, Dirt and Aggregate Interchange, Inc., an MBE organization located at 20905 N. E. Sandy Blvd., Troutdale, OR, 97060 testified before the Committee. He said he had worked with Metro staff and committees for a year and a half on behalf of Metro's MBE/DBE/WBE program. He said no feasibility study existed then, and said his organization's recommendation at that time was that money be set aside in the budget for a disparity study, and noted it now a year later without results. He said another committee prior to that worked on the matter for another year and a half. He asked that the disparity study get underway, and said enough time had been spent by people such as himself on Metro committees advising, only to face a newly elected Council and again no study. He noted that with federal funding in place, Metro would have to establish a program at some point.

Acting Chair Gardner noted the feasibility study prepared the way, and acknowledged things appeared to be moving slowly.

Mr. Pelfrey noted the timing was right since other local jurisdictions were planning to be involved financially, which would help lessen the financial burden to Metro.

Shirley Minor, representing S.G. Minor & Associates, a company specializing in plumbing, addressed the Committee and said she felt as though this was her third time around. She said she and Mr. Pelfrey served on the same committee for a couple of years and then on a second committee for a year and a half. She said the committee had reached conclusions that the study was necessary, had requested the monies be reserved for the study, and said she was surprised that had not been done. She said the study would ensure that many qualified proposers would not be overlooked as increased construction occurred in the region. She said her work consisted of 90% public work for the City, OHSU, and some school districts, and said many contractors did not pay attention without goals. Ms. Minor did not understand why there should be disagreement to do the study.

Charles Marmolejo, Vice President, Marmolejo Contractors, Inc., 980 N.W. Wade, Estacada, Oregon, 97023, addressed the Committee, and commented on an article clipping dated September 26, 1992 that stated Metro Council ok's program to diversify contract awards. He noted Metro then went to the good faith effort instead of mandatory goals. Mr. Marmolejo said as of that day his company stopped reviewing Metro projects. He said confrontations had occurred including over the new headquarters building. He disagreed that Metro's current program was a model, and said \$150,000 prime work was terrible. He said his company's bid for state highway work included one lone bid of \$150,000 and a total of over \$1.5 million because they had mandatory goals. He said his company's phones would not ring unless there were mandatory goals but not without them. He said the contractors would find ways to keep them off the jobs, and said he had been told the previous week by an agency in San Francisco that they would not come in with a good faith effort, that they would have to meet the goals or not turn in a bid. He said he wanted to work in Oregon, not take his work to other states as he was now doing, and noted his map showed the company had one job currently in Oregon out of over 20 jobs. He said all of his crew were from Oregon.

Keith Crawford, of Keith Crawford & Associates, management and consulting firm, 4300 N.E. Fremont, Portland, Oregon 97202, addressed the Committee. He said present practices had the effect of locking out companies capable of producing work, and said changing demographics in current times showed that the majority of people entering the work force by the end of the century would be ethnic minorities and women. He said by 2010 the age in the work force would change from today's 37 people working for every 1 person retired to 1 person working for 3 people retired. Mr. Crawford said it was imperative that people received education, learned a trade, and were able to contribute to society. He supported the study and felt it would help open the door for contracting in public agencies. In response to Mr. Crawford, Acting Chair Gardner explained the meetings were noticed in the Oregonian and agendas could be received by being placed on the mailing list. Mr. Crawford requested to be placed on the mailing list.

Bruce Broussard, president, Cad-Tek, 4008 N.E. Martin Luther-King Blvd., Portland, OR 97212, addressed the Committee, and said he did not support the disparity study. He had participated in a disparity study in Washington, and noted he worked with Metro and American General Contractors (AGC) on the formation of a set-aside program, which he said was a model. Mr. Broussard recalled the AGC threatened to file a lawsuit on the set-aside program, but, he said, the lawsuit was never filed. Mr. Broussard contended it would have been productive to give the AGC an opportunity to sue, but, he said, instead Metro carried on with a good faith effort. He was pleased that Mayor Katz established a set aside program of 6% with 40% participation (including eight African-American contractors, four Hispanic contractors, and one Native American) on the Walnut Park project, and said he was not aware of a lawsuit to date. Mr. Broussard noted participation was only to be accepted from minorities, and that white females were left out. He said it was not said, but he felt it should be said, that the concern was often that white females were taking the work. Mr. Broussard suggested setting the \$100,000 aside, find out who would come forward with lawsuits to be filed, watch the participation and the performance on the Walnut Park project and hopefully other agencies would come forward and follow the City's suit.

Acting Chair Gardner characterized Mr. Broussard's approach as a "let's do it, and let them sue us if they don't like it" and felt that appeared to be the direction the City of Portland was taking. He said he was waiting for someone to sue the City when they established a definite set-aside program for the project, and said to his surprise no one did.

Acting Chair Gardner felt action on the proposed ordinance should be postponed. The Committee discussed the question of action on the matter further. Councilor Wyers noted the Finance Committee would consider the budget amendment.

Chip Lazenby, Attorney representing Multnomah County Counsel's Office, addressed the Committee. He noted Multnomah County was a partner in the proposal, and said the Croson decision was intended to stop governmental programs from establishing "set asides," and it established rules of responsibility by local governments to ensure they were not participants in passive discrimination with industries with which they contracted. He said the study would give Metro a picture of the industries receiving public dollars appropriated through Metro. Mr. Lazenby said the study was designed to elicit accurate information to assist Metro in determining whether or not to participate albeit passively in what others perceived as discriminatory. Mr. Lazenby said limitations presented by the Croson decision were geographical, and noted Metro encompassed a large geographical area. He said the City and the County intended to proceed regardless of Metro's decision, but felt the study would be a more accurate portrayal of the regional view should Metro participate. He felt the study would be weakened without Metro's participation by a lack of regional focus.

Councilor Hansen asked if Multnomah County had made an effort to contact Washington and Clackamas counties. Mr. Lazenby said the Washington County and ODOT participated in the previous predicate study.

Madelyn Wessel, Deputy City Attorney for the City of Portland, addressed the Committee and said Mayor Katz had contacted all of the other governments who had participated in the earlier predicate study, but said it was her understanding that neither Washington nor Clackamas County had indicated a commitment.

Mr. Lazenby noted regarding a previous comment that Metro had a set aside program in the past and was not sued by the AGC. He said the reason was the AGC sued the County instead.

Councilor Wyers raised several questions including whether or not Metro would be at the table when the contractor for the study was selected; when the scope of work was determined, and definition regarding the amount of money to be spent.

Ms. Wessel indicated discussions were underway with Metro Staff including Mr. Cooper, Rich Wiley, Procurement Officer, and Amha Hazen, Metro Contracts Administrator, in anticipation of the hope for collaboration and joint consensus.

Councilor Wyers inquired regarding study costs. Ms. Wessel said the City of Portland's dedicated contribution was \$175,000, the County had committed to \$100,000 and said Metro's commitment would be \$100,000. She said rough cost estimates for the study focusing on the greater Metro region would be approximately \$400,000, and anticipated interested parties in the local governments would provide staff support to the study.

In response to Acting Chair Gardner, Ms. Wessel said Tri Met and the Port of Portland were invited to participate, and said the response at this date was negative. She noted Tri Met was largely federally driven and not subject to the same constraints with regard to set asides, and noted under federal regulations set asides were ok. She said the Port of Portland had appropriated funds to alternative programs.

Mr. Lazenby said if Metro did not participate they study would be limited to the Multnomah County area.

Councilor Hansen indicated she was philosophically in favor of the proposed ordinance for the study, however, she said, she wanted to have facts and figures in hand for discussion and recommendation.

The Committee discussed the disparity study proposal further, and discussed the possibility of a joint meeting of the Governmental Affairs Committee and the Finance Committee to consider the proposal.

Councilor Hansen asked the meeting attendants to give a show of hands as to their preference concerning a joint meeting or separate meetings. The consensus from the audience was to have a joint meeting.

Motion Councilor Hansen moved to recommend to the Finance Committee that Ordinance No. 93-521 and Resolution No. 93-1860 be considered at a joint meeting of the Governmental Affairs Committee and the Finance Committee.

Acting Chair Gardner indicated he would discuss the matter with Finance Committee Chair Monroe and request that consideration of Resolution No. 93-1860 be deferred to occur at the joint meeting. Acting Chair Gardner requested advance notice be given to all who testified at this meeting by mail of such a joint meeting.

Vote: Councilors Hansen, Wyers and Gardner voted aye.

The vote was unanimous and the motion passed.

5. Resolution No. 93-1860. For the Purpose of Authorizing the Executive Officer to Execute an Intergovernmental Agreement with the City of Portland for a Predicate Study

Deferred to proposed joint meeting.

6. Work Session to Consider Intergovernmental Agreement with Multnomah County Regarding Transfer of Regional Parks, Expo Center, and other Facilities

Dick Engstrom, Deputy Executive Officer, addressed the Committee, and referenced a document entitled, Intergovernmental Agreement Regarding Transfer of Regional Parks, Natural Areas, Golf Courses, Cemeteries, and

Trade/Spectator Facilities Presently Owned and Operated by Multnomah County to Metro, which was distributed to the Committee. He said a draft resolution and staff report were just completed this date and would be available shortly.

In response to Councilor Wyers, Mr. Engstrom said transfers of employees were being handled with all due diligence to assure that understandings are in order and appropriate.

Councilor Hansen asked Mr. Engstrom to ask that Pat LaCrosse, MERC General Manager, provide a written statement or testimony to the Committee regarding assurances concerning agreement with the Multnomah County Fair representatives.

Acting Chair Gardner referenced the Natural Areas Acquisition Fund on page 10, paragraph 3, and said he understood according to the Memorandum of Understanding that Multnomah County would continue to maintain that fund, and that the monies in that fund would not transfer to Metro. Mr. Engstrom said Metro would work with Multnomah County on an annual basis to develop a budget request with Council approval for an annual appropriation related to the Natural Areas.

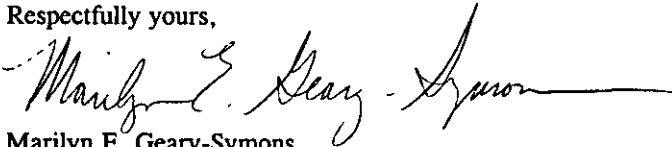
Acting Chair Gardner noted the matter would come before the Committee for further consideration at the next meeting of the Governmental Affairs Committee to be held December 2, 1993.

7. Recognition of Guests

No guests present.

There being no further business, the meeting adjourned at 6:00 p.m.

Respectfully yours,



Marilyn E. Geary-Symons
Committee Recorder