

MINUTES OF THE METRO COUNCIL GOVERNMENTAL AFFAIRS COMMITTEE

November 29, 1994

Council Chamber

Committee Members Present: Mike Gates (Chair), George Van Bergen (Vice Chair), Roger Buchanan, Ruth McFarland, Judy Wyers

Chair Gates called the regular meeting of the Governmental Affairs Committee to order at 4:00 p.m.

1. Consideration of November 8, 1994 Governmental Affairs Committee Meeting Minutes

Motion: Councilor Buchanan moved to approve the November 8, 1994~~5~~ Governmental Affairs Committee meeting minutes as submitted.

Vote: Councilors Buchanan, Wyers and Gates voted aye. Councilors McFarland and Van Bergen were absent.

The vote was unanimous and the motion passed.

2. Communications from Local Governments

None.

3. Ordinance No. 94-580A, For the Purpose of Adding a New Title to the Metro Code Creating An Administration Code, and Declaring an Emergency

Casey Short, Council Analyst, noted the proposed ordinance had been heard at the Governmental Affairs Committee on October 25, 1994 and was recommended for adoption by the full Council. He said the matter was referred back to the Committee at the Council meeting held November 10, 1994 at the request of Executive Officer-elect Mike Burton.

Mike Burton, Executive Officer-elect, addressed the Committee, and asked whether the matters contained in the proposed Administration Code were codified elsewhere within the agency. He noted the a proposal expected in the 1995-96 Zoo budget would eliminate the Education Division. He expressed concern regarding the detail with which the proposed Administration Code would establish departments and divisions, and indicated he understood that should the Executive or a Department make a decision affecting those departments or division, it would be necessary to bring the matter before the Council as an action to change the Administration Code, if adopted. He asked, if such a matter had no budget impact, would the Executive Officer have the ability to make such changes. Executive Officer-elect Burton indicated he felt the process would be cumbersome should this Administration Code be in place.

Executive Officer-elect Burton referenced page 16 of the proposed ordinance, Section 10.18.030, and asked if the duties of the Executive Officer as delineated were in compliance with the Charter and necessary. He noted a difference in the manner in which the function of the Office of the General Counsel and the Office of Public and Government Relations were outlined in the proposed ordinance. He asked why appointment to those offices would be made jointly by the Council and the Executive Officer while removal could be made by either the Executive or by a vote of the majority of the Council.

Chair Gates noted only one month remained this year, December, for the current four Councilor members to sit on the Governmental Affairs Committee. He suggested Staff be sought to address some of the Executive Officer-elect's questions, although, he added, the Committee would give their philosophical viewpoint on the matter. He noted the Committee had unanimously voted to recommend the proposed ordinance to the full Council for adoption, and said the Committee was interested in seeing greater empowerment of the Council involvement in administrative elements.

Donald E. Carlson, Council Administrator, stated the language contained in the proposed ordinance dealing with the Office of General Counsel and the Office of Public and Government Relation was existing Code language. He added that the terminations provisions reflected the intent that those two offices served both the Executive Officer and the Council.

Mr. Carlson said the language in the proposed ordinance was drafted to reflect the existing organizational structure, and he added the budget ordinance enacting the budget and the schedule of appropriation would appropriate funds at the organizational levels reflected in the proposed Administration Code. He said if the Education Division were removed from the Zoo Department, the Administration Code could be amended within the budget ordinance and the Schedule of Appropriations would reflect the level of appropriation at the Zoo. He said the proposed Administration Code reflected organizational structure either in place in the Metro Code, in the Schedule of Appropriations, or in practice as organizational units within the agency. He said, if adopted, major changes in those organizational units would be a matter for discussion between the Executive and the Council. Mr. Carlson said if the appropriation was at the Department level rather than a Division level, this Code would enable the administration to make changes within those departments as long as those changes remained within the appropriation levels.

In response to Councilor Wyers, Mr. Carlson said he believed the language outlining the duties of the Executive Officer were reflective of and conformed with the existing language in the Metro Charter.

Executive Officer-elect Burton commented he was not aware whether organizational structure was encoded in other governmental agencies. He asked the Committee to give him a sense of why this codification of the organizational structure was being undertaken at this time prior to the restructuring of the Council to occur in January, 1995. He commented he was trying to avoid pitfalls he had experienced in the past.

Councilor Van noted he had always recommended that legal counsel not be housed within the walls of Metro, but rather that they be housed elsewhere and contacted in writing for information. He expressed the opinion that a reason for a recent lawsuit disputing authorities between the Council and the Executive was due to legal advice given from a viewpoint that was not separate. He said the proposed ordinance was a product of that history and an attempt to balance the manner of hiring and termination of the positions.

Executive Officer-elect Burton commented that with one Legal Counsel serving both the Executive and the Legislative branches at Metro, the language devised in the proposed ordinance was probably wise. He felt it was beneficial that a legislative body and the executive each have its own counsel. He noted in his experience in the military the prosecutor and the defense were originally housed together in the same office. He added it was realized that did not work, and said they were detached to two separate portions of the base. He said he felt the matter warranted further discussion. He said he understood the rationale with the explanation given.

Councilor Wyers said she intended to support the action for the proposed Administration Code. She felt changes, whether they were in the budget or whether they required Code amendments, would not be that difficult to accomplish. She felt the Executive Officer-elect working together with the new Council would be able to discuss informally with individual Councilors proposed changes. Councilor Wyers said a decision by the Budget Committee was made to place the RIC within the Solid Waste Department. She said when the change did not appear to occur, she asked the Executive Officer about it. Councilor Wyers said the Executive Officer indicated she did not plan to make the change. Councilor Wyers said she was subsequently advised by legal counsel that the budget, although an adopted ordinance, was considered a proposal or a suggestion to the Executive and not necessarily binding. She said the proposed Administration Code was the Council's attempt to codify the organizational structure with compliance by the administration.

Executive Officer-elect Burton asked if there was an assumption that the delineation of Divisions was programmatic. He said at the legislature an appropriation made by the legislative body was not subject to disappropriation by the executive. He said his perception of the budget adopted by ordinance was directive, and noted that perhaps he should discuss with General Counsel the perception that it could be construed as advice rather than being directive. He

questioned whether the proposed Administration Code would accomplish the intent of the Council. He said he understood once an appropriation was made for an activity, it could not be disappropriated for that funded activity. He noted the possibility existed that the activity might be carried out in some other structure. He said the Administration Code appeared to be an organizational chart, and that it did not necessarily mean that the programs would be carried out.

Chair Gates and Councilor Van Bergen discussed the perceived authority of the Council in the budget by the present Executive as one in which budget direction by ordinance was not always strictly observed, adding the proposed Administration Code would add to the authority of the annual budget ordinance. Councilor Van Bergen asked the Executive Officer-elect to continue discussion with the Council in order to reach satisfactory resolution on the matter.

Executive Officer-elect Burton said it was his intent that the directionality would undergo some change with the new Executive Officer in office. He said if the intent was to assure the Council's policy decisions be carried out, particularly in the case of a specific appropriation to fund an activity, that the Council might want to include a clause in the budget ordinance that prohibited disappropriation of any funded activity assuring it would be carried out within a certain period of time. He said in that way the proviso would specifically attach the appropriation to the program of policy issue, and that it would be the Executive's responsibility to see it was carried out. He acknowledged he was aware of that problem occurring within other legislative bodies and said what he termed the "Mannix" amendment was written by a particular legislator to deal with that problem. He added that he had a better understanding of the intent of the Council.

Councilor Wyers was interested in the language proposed by Executive Officer-elect Burton, and said it was her understanding that other governmental agencies utilized such an administration code. She noted the new Council could change the proposed ordinance or repeal it at will, and said she thought it would encourage dialogue and cooperation within the agency that had not always been evident in the past.

Executive Officer-elect Burton said he assumed that the proposed Administration Code had been compared to other Code provisions and to the Charter and had been found to be not in conflict.

Daniel B. Cooper, General Counsel, said the proposed Administration Code had been reviewed and was not found to be in conflict with Metro Code or with the Charter.

Executive Officer-elect Burton acknowledged and said he appreciated the work that had gone into the proposed ordinance, and said it was his hope that the Administration Code, if adopted, would allow the government to operate efficiently and effectively as well as encourage dialogue between the two branches. He said if that were the intent and function, as he came on board he would make sure it worked.

Councilor Wyers expressed serious concerns regarding Legal Counsel representing both the Council and the Executive at the same time, and advised Executive Officer-elect Burton to examine that issue.

Executive Officer-elect Burton said he appreciated Councilor Wyers remarks adding that it placed legal counsel in an awkward position of having to serve two masters. He said the issue of separate legal counsel would be a matter for further discussion, and noted the financial aspects would be a question to consider also.

Councilor Van Bergen noted the agency had four attorneys and felt there could be other ways of dispersing their duties.

Councilor Wyers said she intended in no way that her remarks be considered a negative reflection on Legal Counsel and that she was supportive of Legal Counsel. She noted the problems only occurred when there were major disagreements.

Executive Officer-elect Burton commented on the involvement of the agency's attorneys in the ordinance process; e.g. drafting an ordinance as requested by Council, and then advising Council of the legal implications of that

proposed ordinance. He said it was necessary for the Council to be able to have that kind of advice, and said it was necessary for the Executive to have that same opportunity if the Executive intended to propose an ordinance. He noted a different type of advice would be needed as the Executive would be looking at implementation as well. He felt roles could be better defined, and said he would pointedly explore those options with General Counsel and the Council as he came on board.

Motion: Councilor Wyers moved to recommend Ordinance No. 94-580A to the full Council for adoption.

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

Vote: Councilors Buchanan, Van Bergen, Wyers and Gates voted aye. Councilor McFarland was absent.

The vote was unanimous and the motion passed.

4. Ordinance No. 94-577, Relating to the Portland Metropolitan Area Local Government Boundary Commission Amending Metro Code Section 2.01.190 and Declaring An Emergency

Mr. Cooper presented the staff report, and said the proposed ordinance would provide for termination of six positions to the Boundary Commission effective January 2, 1995 and specify and assign those positions to the reapportioned seven new Council districts created pursuant to the adoption of the 1992 Metro Charter. He noted the current Boundary Commission consisted of 13 members, and that Oregon Law provided that the Boundary Commission would consist of a number of members equal to the number of Metro Councilors.

Councilor Buchanan referenced Section 2.(d), page 3 of the proposed ordinance, and discussed the difficulties he had encountered during the nomination process related to the established term limits.

Motion: Councilor Van Bergen moved to recommend Ordinance No. 94-577 to the full Council for adoption.

Mr. Cooper commented regarding the emergency clause, and said it would ensure the ordinance could go into effect before January 1, 1995.

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

Vote: Councilor Buchanan, McFarland, Van Bergen, Wyers and Gates voted aye.

The vote was unanimous and the motion passed.

5. Consideration of Draft Resolution No. 94-1985, For the Purpose of Requiring Council Confirmation of Appointments to a Committee to Supervise Administration of the Metro Employee Salary Savings Plan

Mr. Short referenced his memorandum date November 21, 1994 which was printed in the agenda packet for this meeting and part of the permanent meeting record. He said the proposed ordinance would give the Council the authority to confirm the appointment of members to the committee charged with the oversight of the Metro Employees Salary Savings Plan. He noted a change from the draft resolution originally considered requiring the committee to meet at least quarterly had been incorporated into the language, and said the a 45 day period for confirmation would be established. Mr. Short noted the resolution provided for the current committee to continue into 1995, but called for five new members to be appointed by the Executive Officer by January 31, 1995.

Motion: Councilor Buchanan moved to recommend Resolution No. 94-1985 to the full Council for adoption.

Vote: Councilor Buchanan, McFarland, Van Bergen, Wyers and Gates voted aye.

The vote was unanimous and the motion passed.

6. Work Session to Consider Draft Resolution No. 1992, For the Purpose of Amending Rules Establishing Procedures Relating to the Conduct of Council Business

Mr. Short presented the staff report, and said the proposed resolution, drafted at Councilor Wyers' request, would require that resolutions be placed on the Council agenda as a matter of notice prior to consideration by a substantive committee.

Councilor Wyers said the proposed resolution would help give the public better prior notice of action items coming before the Council, and noted she had asked whether any departments had voiced objection to the concept. The Committee discussed changes to the Council structure and possible expected changes to procedures in 1995.

Chair Gates announced he did not believe there would need to be any more Governmental Affairs Committee meetings for the remainder of 1994.

Motion: Councilor Van Bergen moved to recommend Resolution No. 1992 to the full Council for adoption.

Councilor Wyers commented that she could present the resolution at the full Council meeting, and noted in terms of process that it would be appropriate for the Presiding Officer to do so and to turn over the Council meeting to the Deputy Presiding Officer at that time.

Vote: Councilors McFarland, Van Bergen, Wyers and Gates votes aye. Councilor Buchanan was absent.

The vote was unanimous and the motion passed.

There being no further business, the meeting adjourned at 5:10 p.m.

Respectfully submitted,

Marilyn E. Geary-Symons
Committee Recorder