

MINUTES OF THE METRO COUNCIL GOVERNMENTAL AFFAIRS COMMITTEE

December 2, 1993

Council Chamber

Committee Members Present: Mike Gates (Chair), Jim Gardner (Vice Chair), Sandi Hansen, Terry Moore and Judy Wye

Councilors Also Present: Richard Devlin, Rod Monroe

Chair Gates called the regular meeting of the Governmental Affairs Committee to order at 4:02 p.m.

1. Consideration of November 18, 1993 Governmental Affairs Committee Meeting Minutes

Motion: Councilor Gardner moved to approve the November 18, 1993 Governmental Affairs Committee meeting minutes as submitted.

Vote: Councilors Hansen, Moore, Wyers, Gardner and Gates voted aye.

The vote was unanimous and the motion passed.

2. Communications from Local Governments

Chair Gates referenced a letter dated November 30, 1993 from Merrie H. Waylett, Office of Government Relations, regarding a request for Attorney General Opinion on Multnomah County Parks Transfer and attached letter dated November 15, 1993 from Ron Parich, City of Gladstone, to Senator Bill Kenemer regarding the potential for Metro assuming parks and recreation functions. This document has been made part of the permanent meeting record.

Councilor Moore reported to the Committee regarding her attendance at the recent FOCUS meeting. She noted there was limited attendance and felt the group appeared to be skewed toward the interests of Washington County, and she expressed concern regarding the expenditure of Metro funds for dues to FOCUS.

Councilor Monroe reported to the Committee regarding several recent meetings with local government officials, which he had attended, dealing with the Tax Study report. He felt the meetings proved to be beneficial. He said it was his impression that FOCUS supported planning and that dues should not be discounted.

3. Resolution No. 93-1880. For the Purpose of Amending a Contract with Talbot, Korvola & Warwick for FY 93-94 Performance Audit Services

Casey Short, Council Analyst, presented the staff report, and said three specific items addressed in the proposed audit were: 1) the extent which Public Affairs provides services to its constituent departments; the satisfaction of those departments with that work; and, the extent to which the allocated costs were accurate in reflecting the amount of work done; 2) whether there was any redundancy in the provision of Public Affairs services between those provided internally by each department vs. those provided centrally by Public Affairs; and, 3) whether it might be appropriate to contract out with the public sector for some of the services done inhouse by Public Affairs. He said the action requested that the Committee authorize filing of the resolution with the Clerk of the Council as sponsored by the Governmental Affairs Committee and that the proposed resolution be forwarded on to Council for action at the next Council meeting.

Mr. Short and Mr. Talbot responded to questions from the Committee. It was noted the amendment would add to the Scope of Work as described in Exhibit A and would increase the maximum amount of the contract to \$95,000.

Councilor Wyers expressed concern regarding the late notice of the matter.

Councilor Gardner asked if the Scope of Work included review of the Public Affairs Department public involvement processes. Mr. Short said he would clarify the matter and report back to the Committee.

Mr. Talbot indicated that Talbot and Korvola would prepare a brief report as defined in Item #g. under Task 2 outlining findings and expanding on the items outlined under Phase II in the Scope of Work.

The Committee discussed the possible Scope of Work further as it related to Public Affairs vs. public affairs at Metro overall.

Motion Councilor Gardner moved to recommend Resolution No. 93-1880 to the full Council for adoption with revisions to language as reflected by the discussion.

The Committee discussed the proposed resolution further. Mr. Talbot responded to Chair Gates concerning the matter of possible expenditures should the Scope of Work be modified to include all public affairs agency wide, and noted costs would be increased.

Mr. Short commented on possible changes to the language to reflect the direction intended by the Committee; and noted the proposed resolution was in draft form only and needed not be amended by Committee action.

Vote Councilors Gardner, Moore, Wyers, Hansen and Gates voted aye.

The vote was unanimous and the motion passed.

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

Daniel B. Cooper, General Counsel, referenced his memorandum dated December 2, 1993 regarding proposed Ordinance No. 93-517A with accompanying revised version of the ordinance, and he reviewed the changes with the Committee. This document has been made part of the permanent meeting record.

Councilor Moore referenced Section 9.02.045 Explanatory Statements: Appeal:, and inquired regarding the use of the word Executive Officer in sub (a). Mr. Cooper said the term Director should have been used instead.

Motion Councilor Moore moved to recommend Ordinance No. 93-517A to the full Council for adoption with correction as noted to 9.02.045(a) to change the words Executive Officer to Director.

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

Vote Councilors Gardner, Moore, Wyers, Hansen and Gates voted aye.

The vote was unanimous and the motion passed.

5. Work Session to Consider Ordinance No. 93-523, For the Purpose of Approving the Revision of the Metro Code Chapter 2.02, Personnel Rules

Paula Paris, Personnel Director, presented the staff report, and described the process to date with regard to the dissemination of the proposed revisions to the Metro Code Chapter 2.02 Personnel Rules. She said no meeting with represented employees had occurred, and noted some employees had expressed dissatisfaction with the revisions. She said the labor union had requested the item be pulled from the agenda, but said no filing of documents by the labor union with the Personnel Office had occurred.

Ms. Paris described the established goals, which were: 1) to provide a distinction between represented and non-represented employees; 2) to include procedure processes in the Personnel Procedures Manual and remove them from Code policy, 3) to bring the Code into compliance with the Charter, 4) to incorporate federal and state statutes into the Code, and 5) to advocate fiscal responsibility in the Code personnel policies.

The Committee received a copy of the staff report prepared by Ms. Paris dated November 1, 1993.

Ms. Paris discussed major policy changes incorporated into the proposed Code revisions as described in the November 1 staff report including 1) that non-represented employees receive annual salary increases based only on performance, 2) that the "just cause" standard for disciplinary actions be removed from the Code for non-represented employees, 3) that a more strict definition of temporary employees be adopted allowing that no benefits other than required by law be paid, 4) that voluntary transfer of sick leave hours from one employee to another be revised so that only a voluntary transfer of vacation leave hours be allowed.

The Committee and Staff discussed the proposed revisions to the Personnel Code further.

Councilor Wyers requested information be made available regarding justification of how the revision of sick leave hours would be "fiscally responsible."

Chair Gates asked that such information be expanded to include methods used by the private as well as the public sector in the matter of sick leave hours.

Ms. Paris discussed the Code provisions pertaining to represented employees, and noted a specific caveat would be applied to sections of the Code where applicable and as listed in the staff report. The caveat would read, "This section shall also apply to employees who are in certified or recognized bargaining units. Where a conflict exists between this section and the terms of a valid collective bargaining agreement, the collective bargaining agreement shall govern."

The Committee and Staff discussed annual pay plan revisions and salary ranges as described in the staff report.

Chair Gates recessed the work session concerning Ordinance No. 93-523. Chair Gates opened consideration of Agenda Item No. 6, Resolution No. 93-1877.

6. Resolution No. 93-1877, For the Purpose of Approving an Intergovernmental Agreement (IGA) Between Multnomah County and Metro Regarding Transfer of Regional Parks, Natural Areas, Golf Courses, Cemeteries, and Trade/Spectator Facilities Presently Owned and Operated by Multnomah County to Metro

Dick Engstrom, Deputy Executive Officer, summarized the staff report, and highlighted the Natural Areas Acquisition and Protection Fund and the Expo/Multnomah County Fair as items of more recent in depth discussion with the negotiating team.

The Committee and Mark Williams, Senior Assistant Counsel, discussed the issue of the "neighborhood parks" involvement in the IGA as well as progress in negotiations between the City of Portland and Multnomah County concerning the "neighborhood parks." Councilor Moore expressed concern regarding Metro involvement with the neighborhood parks including potential related expenditures.

Councilor Devlin noted only a minimal level of maintenance would be required such as mowing the lawn, and said the resolution adopting the Memorandum of Understanding indicated it was anticipated the parks would be transferred to the City of Portland by January 1, 1994. The Committee discussed possible expenditures until transfer to the City of Portland occurred.

Charles Sieko, Multnomah County Parks Services Director, addressed the Committee and said he felt negotiations for the "neighborhood parks" transfer were progressing positively, and that the transfer of the parks to the City of

Portland would be accomplished in the near future. He said, however, he could not guarantee that the City of Portland would accept the parks, and said the City Council would necessarily have to review the matter.

Councilor Gardner suggested a provision in the IGA that would allow the possibility for a short period of time that Metro would become responsible for the minimal level of maintenance necessary after January 1, 1994. He felt such a provision would be a benefit to "good faith" negotiations.

Councilor Wyers expressed concern regarding protection for Metro in the event that negotiations did not progress favorably in Metro's view.

Councilor Moore felt a date certain for the transfer of the "neighborhood parks" to the City of Portland was appropriate and said she was not comfortable without one.

Mr. Williams responded to Councilor Moore's question regarding user fees and excise tax provisions in the IGA, and he noted the provisions were consistent with established Metro policy concerning excise tax.

Councilor Devlin noted some provisions in the IGA were intended to prevent mistakes which occurred when MERC was established.

Mr. Short referenced a memorandum dated December 1, 1993 from Mr. Williams regarding a proposed amendment to the proposed "Metropolitan Concern" ordinance, which memorandum had been distributed to the negotiating team. Mr. Short said the amendment would add to the proposed ordinance a section exempting imposition of the excise tax on these facilities for the remainder of this fiscal year in consistency with the terms of the IGA. The document was not distributed at this meeting. Mr. Short indicated the amendment would be included in the agenda for the next Council meeting.

Councilor Moore inquired regarding the use and definition of the term "undeveloped properties" as connected with acquisition of areas through the Natural Areas fund.

Councilor Devlin said the IGA was intended to reflect the intent of the Council to continue the fund for the purposes for which it had been created. He said it was never expected the fund would be transferred to Metro nor that the county would accept joint approval of the expenditures from this county fund. He said the specific language concerning "developed" vs. "undeveloped" property was concerned with the possibility of difficulties connected with the sale of an existing county facility and a subsequent acquisition of another facility for the same function.

Councilor Moore noted that in Washington County farmland was considered "developed" property.

**Motion** Councilor Gardner moved to recommend Resolution No. 93-1877 to the full Council for adoption.

Councilor Gardner referenced page 22 of the IGA and noted the language was clear that transfer of the parks from the county to the city was explicit in the IGA agreement. Mr. Williams discussed possible optional provisions concerning the parks. The Committee discussed possible language indicating a limited sunset or date certain. Councilor Gardner suggested language setting a date certain or for expenditures to be reimbursed by the county.

Councilor Devlin suggested asking the county whether they would be willing to pay directly up to a limit for the maintenance of the "neighborhood park" areas after a set date certain. Councilor Devlin reiterated he did not anticipate any expenditures for the areas unless, for example, a hazard occurred at one of the parks.

Betsy Williams, Multnomah County Environmental Services, addressed the Committee. She indicated the county was concerned about additional costs for the neighborhood parks. She stated the county was turning over all available county funds and revenue for the operation of the parks and was unwilling to assume additional costs for them. Ms. Williams said reimbursement to Metro would not be acceptable to the county. She was not prepared to address the

option of a date certain, although she felt there could be other possible options she was not prepared to bring any forward at this time.

The Committee discussed possible options further, and Chair Gates noted the IGA could be amended at full Council.

Councilor Hansen suggested a letter be addressed to Mayor Vera Katz requesting expeditious resolution of the matter. Mr. Short agreed to work with Chair Gates on such a letter, and he suggested the letter be addressed to Commissioner Hales. Councilor Hansen suggested the letter be so addressed and cc:'d appropriately. Councilor Devlin suggested other options be discussed further with Councilor Moore, Mr. Engstrom, Mr. Williams and Ms. Williams to find an avenue that would meet both the needs of the county and Metro. Ms. Williams responded to Councilor Devlin's question regarding county approval of the IGA, and said it was scheduled for the week following Metro Council approval.

Councilor Devlin indicated the questions regarding the IGA arising from discussion at the Metro Policy Advisory Committee had been dealt with.

Vote: Councilors Devlin, Hansen, Wyers and Gates voted aye.

The vote was unanimous and the motion passed.

Chair Gates reconvened the work session on proposed Ordinance No. 93-523.

Scott Higgins, Senior Transportation Planner, addressed the Committee and inquired if, as a represented employee, he could testify in good faith without jeopardy. Paula Paris indicated she believed the process should not be considered an adversarial process and would hold an employee harmless who wished to comment to the Committee. Presiding Officer Wyers supported Ms. Paris' comments. Mark Williams, Senior Assistant Counsel, stated according to state law that during a period of bargaining both the employer and the union should deal with each other only through their designated representatives. He said if this was not considered a period of labor negotiations no restrictions would apply. Chair Gates said this was a legislative matter, not a labor negotiation.

Mr. Higgins expressed appreciation for a spirit of good faith evident in the proceedings. He noted his tenure with Metro was over 13 years. He noted the matter was before the Committee in the context of a work session. Mr. Higgins noted a copy of the proposed revisions had been received by the union November 10, 1993. He expressed concern that issues were addressed in the proposed revision to the Personnel Rules that were not specifically addressed in the collective bargaining contract. He noted the sick leave transfer issue was one not currently addressed in the union contract, but said it was one that was important to both represented and non-represented employees of Metro, and asked should the rule revision be adopted would it affect represented employees also. He felt it was an important issue, and would adoption of the rule revision mean that represented employees went by the old Personnel Code revision rules and non-represented employees were under the new rules. He asked the Council to consider that matter carefully. Mr. Higgins reviewed the current policy for allowable transfer of sick leave to a fellow employee who may be in need due to a major illness, for example, and he noted restrictions in place to ensure that the policy could not be abused, such as approval by the Executive Officer and the power of the Executive Officer to limit the total number of hours given to another employee. He noted under the current policy no transfer was allowed unless the donating employee held over 200 hours in sick leave. He said he was not certain it was current policy, but noted it had been a previous rule that no one employee could donate more than 40 hours sick leave. Mr. Higgins felt the policy demonstrated a compassionate philosophy, and said in his experience he had been appreciative of being able to transfer sick leave to a fellow employee undergoing cancer treatment, for instance. He emphasized the transfer of sick leave was coming from an employee's personal accrued account. Mr. Higgins said a number of Metro employees wanted to express their dissatisfaction with the possible revision and were not supportive. He said the general feeling among many employees was that it was not a good idea to revise the rules that employees would have to give up vacation time to make such a transfer, that vacation time was very important to the general well being of Metro employees. He presented the Committee with signed petitions of over 150 employees at Metro Regional Center, comprised of both represented and non-represented employees. He noted the question appeared not to be

divided among the two groups, and that it appeared Metro employees felt very strongly about wanting to help each other out. At the request of the Chair, Mr. Higgins placed the signed petitions into the public record. This document has been made a part of the permanent meeting record. Mr. Higgins referenced page 2.02 - 5, and noted language called for specific timing for posted notification of proposed changes to Personnel Code. Chair Gates emphasized the work session at hand was part of that notification process to bring the conversation forward with the intent to develop more questions than answers.

Tim Collins, Associate Transportation Planner, testified before the Committee, and also felt revisions to the Personnel Rules would change working conditions and included issues which had never been discussed in collective bargaining. He said it was not his intent to by pass any future bargaining process, and felt such Personnel issues should be bargained with the union prior to coming before the Council for discussion and approval, and felt such a process was a more peaceable approach. He referenced 2.02-27 which addressed probationary periods, and noted the change had not been discussed in collective bargaining. Mr. Collins referenced page 2.02 - 63 regarding drug testing, and questioned the use of language indicating drug testing could be employed when Metro reasonably suspected an employee had consumed or was under the influence of alcohol. He expressed concern that no further restraints were apparent in the language. Mr. Collins, an employee of Metro for about seven years, said he was active with the union and would be interested in what the record showed in such sick leave transfers. He said he felt the current policy was both reasonable and compassionate, had become a past practice at Metro and was a cherished tradition.

In response to Councilor Wyers, Mr. Collins said his intent was to remain within the spirit of a work session in good faith, but that he would be happy to provide the Council with information on areas which had not been previously bargained.

Ms. Paris felt the comments of the employees underscored the need for goal #1, which was to make a clear distinction between represented and the non-represented issues. She said, whereas in the past, employees had the opportunity to comment on any and all changes in the Personnel Code, the Public Employees Collective Bargaining Act (PECBA) and the employee's decision to become represented changed the relationship by law. Ms. Paris said had Metro gone directly to the employees rather than provide 10 day notice to the unions' designated bargaining representatives Metro would have under the law committed an unfair labor practice. Ms. Paris noted no demand to bargain had been received from the union, and said Metro had the right to develop and/or change their policies as deemed appropriate. Ms. Paris perceived the relationship developed under the law as one in which management acts, the labor union reacts.

In response to Councilor Wyers, Ms. Paris said if a subject of bargaining had been bargained to successful conclusion within a collective bargaining agreement, that contract prevailed.

Chair Gates understood the union should file with the Personnel Department regarding issues of concern connected with the proposed Personnel Code revisions affecting represented employees. He further understood that non-represented employees would be served by the Council policy decisions related to the proposed Code revisions.

Mr. Higgins said it was the understanding of represented employees and their interpretation of PECBA, that should Metro management wanted to implement the proposed changes it would be necessary to notify the union. He further understood that the subject at hand was a matter of discussion only, not one of implementation.

Chair Gates understood Ms. Paris to say that in adopting revisions, should a matter not already be under consideration under the collective bargaining agreements, that the Personnel Department was not required to go to the union to amend that collective bargaining agreement. He further understood the only time the Personnel Department would necessarily go to the union to amend the collective bargaining agreement would be to change something already collectively bargained.

Ms. Paris and Mr. Higgins agreed that was the case, if the matter changed hours, wages or working conditions. Mr. Higgins pointed out that some revisions proposed changed working conditions. Ms. Paris said the Personnel

artment had put the union on notice that it was the intent of Metro management to make these changes. She said the union needed to present a demand to bargain, and said once the demand to bargain was received, Metro could not unilaterally implement any of the changes as related to represented employees without a bargaining process. Mr. Higgins said the notification was received November 10, 1993. He said the proposed revisions were currently under review.

Councilor Gardner clarified that matters of the Personnel Code to which the bargaining did not speak there was no conflict, unless a demand was made by the union to bargain on that matter. Ms. Paris said should the union not disagree with a matter it would also apply.

Ms. Paris emphasized the outcome could be that different rules could be established for represented and non-represented employees.

In response to Mr. Short, Ms. Paris clarified that the union could demand to bargain on any changes in policy or on any new policy affecting hours, wages and working conditions.

Councilor Hansen remarked concerning the fact that a change in Personnel Code had not occurred since 1981, and emphasized Chair Gates' comment that two conversations would be carried forward from this point: 1) with represented employees on the one hand and 2) with non-represented employees on the other. Ms. Paris emphasized that once a period of negotiations was entered into, Metro was mandated to go through the designated bargaining representatives at risk of committing an unfair labor practice. The Committee discussed the matter further.

Ann Zeltmann, Senior Transportation Planner, addressed the Committee and commented on a personal crisis occurring in the Planning Department related to an employee in which other members of the Planning Staff had an opportunity to assist their fellow employee with voluntary transfer of sick leave. She commented on the hours of uncompensated time employees donated, as well the good of the agency. She said she felt the proposed change in the rule seemed unnecessarily harsh, and it should not be adopted.

Councilor Hansen asked for information concerning the financial impact of either keeping the transfer of sick leave or removing it from the revisions.

Chair Gates noted it might be beneficial to set up a group to continue to work with Ms. Paris on the matter, which he continued for consideration at a future work session.

7. Resolution No. 93-1878, For the Purpose of Amending the Pay Schedule and Classifications for the Laborers International Union, Local 483 Contract

Ms. Paris presented the staff report, and said the Intergovernmental Agreement between Metro and Multnomah to transfer the County Parks and Expo facilities and employees necessitated the continuations of specific classifications as contained in the record, and said adoption of Resolution No. 93-1878 was recommended by the Executive Officer.

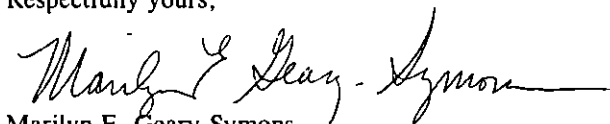
Motion Councilor Hansen moved to recommend Resolution No. 93-1878 to the full Council for adoption.

Vote Councilors Gardner, Wyers, Hansen and Gates voted aye.

The vote was unanimous and the motion passed.

There being no further business, the meeting adjourned at 7:21 p.m.

Respectfully yours,



Marilyn E. Geary-Symons  
Committee Recorder