

MINUTES OF THE COUNCIL GOVERNMENTAL AFFAIRS COMMITTEE
AND THE COUNCIL FINANCE COMMITTEE
(Joint Meeting)

December 16, 1993

Council Chamber

Governmental Affairs Committee Members Present: Chair Mike Gates, Vice Chair Jim Gardner, Sandi Hansen, Terry Moore and Judy Wyers

Councilors Absent: None

Finance Committee Members Present: Chair Rod Monroe, Roger Buchanan, Jon Kvistad and Judy Wyers

Councilors Absent: Councilor Van Bergen

Other Councilors Present:
Ed Washington and Susan McLain

Chair Gates called the joint meeting to order at 4:02 p.m.

GOVERNMENTAL AFFAIRS COMMITTEE CONSIDERATION OF TWO ITEMS BELOW

1. Consideration of Ordinance No. 93-521, 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

Rich Wiley, Procurement Officer, gave staff's report. He referred to, and discussed, staff's report as well as former Director of Regional Facilities Neil Saling's November 30, 1993, memorandum "Questions Regarding Proposed Disparity/Predicate Study (both documents printed in agenda packet). He briefed the Committee on staff's activities to-date and said all parties interested in the study had been contacted and were aware of the proposed action.

Councilor Moore noted staff referred to the "region as a whole" and asked if that term would be true if not all county and city agencies participated in the study. She expressed concern that the study would not be all-encompassing if, Washington County for example, did not participate. Mr. Wiley said Metro would study non-participating jurisdictions via the construction industry and activities within the industry which did involve the Port of Portland (Port) and other jurisdictions. He said non-participating jurisdictions would not be able to utilize the information Metro gathered because the study would not be specific enough to their own activities/needs to use to establish their own study/program. Councilor Hansen said Metro would study the industry and its own data and consolidate the information it gathered.

Councilor Moore asked whether broadening the scope of work to include businesses outside the construction industry would increase the cost of the study. Mr. Wiley said the scope of the study would be limited because the City of Portland and Multnomah County had isolated the construction industry as the target of the study, and because legal precedent required focus on specific industries to qualify for implementation of strictly defined remedies.

Chair Monroe said he was concerned only Portland and Multnomah County had agreed to participate in the study when other cities and counties and districts, including Tri-Met and the Port, had chosen not to participate. He expressed concern also that other jurisdictions might perceive Metro as being too closely-aligned with Portland. He also expressed concern about the study's cost when the public expected governments to practice fiscal restraint.

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Chair Gates opened the public hearing.

Jack Nelson, Associated General Contractors community relations director, introduced Kim Mingo, also of Associated General Contractors (AGC), and he said that AGC had attempted to assess participation in the area and around the state. He said this particular study would not result in specifics for businesses to follow to fulfill the mandate of the study. He said the expenditure called for was too high. He said direct services such as bonding and technical assistance should be provided at the end of the study so that business could remain competitive and fulfill a role in the industry. He discussed apprentice and journeyman statistics and considerations. He said a big issue in Oregon was ensuring there were viable firms which were able to get a trained work force. He hoped current efforts could be defined to get more women and minorities involved via smaller contracting efforts, such as building sidewalks. He suggested smaller contracts be given to MBE/WBE contractors and that participation in, and support for, the Port's Mentor Program be given.

Ms. Delimbo said the AGC's goals were to ensure viability of MBE/WBE construction firms and discussed their cooperative efforts with local government. She said the construction field as an industry was high-risk. She said there was an effort underway to create a statewide council to provide support services to MBE/WBE businesses. She said without experience and technical training, many businesses failed. She said disparity studies did not necessarily address minority contracting issues, particularly in the financing and bonding areas.

Madelyn Wessel, City of Portland deputy city attorney, addressed questions related to the scope of the study. She said Metro's participation would allow the study to look at the construction industry throughout the region. She said without Metro's participation, the study would be limited to Portland and Multnomah County. She said other jurisdictions could use the information gathered from the study, but would not be able to use it to design remedies for past discrimination in the industry. She said the scope of the study could cover issues such as supplies and professional services within the construction industry, but said it could not go beyond a specific industry due to the constraints of case law. In response to Councilor Moore's question, Ms. Wessel said the study would review companies performing work for public agencies, even if the company was not located within the jurisdiction's boundaries.

Councilor Monroe asked Ms. Wessel why other jurisdictions including Tri-Met and the Port did not wish to participate in the disparity study. Ms. Wessel said she understood that Tri-Met was already governed by federal guidelines. She said the Port had decided to invest its efforts in their Mentor program. She noted Portland was also investing in other programs, including mentor, training and clearinghouse programs.

Jeff Rogers, Portland City Attorney, said the purpose of the study was not to assign guilt or to look backwards, but to give government a tool the Supreme Court had taken away. He said that tool was to help minorities and women participate fully in the economic life of the region. He said it was important for Metro to participate to demonstrate the issue was regional in scope and to show that government was willing to take steps to resolve the issues. He said a lack of participation by other governments should not be a reason for Metro not to participate, but said Metro's participation would distinguish itself from other governments and send a message to other governments about partnership.

Councilor Moore asked if other jurisdictions such as Washington County could use the study's results to institute their own mandatory, set-aside programs. Mr. Rogers said such results would be of assistance, but would not be sufficient to allow the institution of programs that Metro or Portland could enact.

Councilor Devlin asked what range of remedies could emerge from the study. Mr. Rogers said the remedies could include declining to award a contract to an apparent low bidder who failed to meet required set-aside percentages.

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of minorities or women. He said other, more voluntary measures could also be applied, but said without the study, there would be no way for governments to compel the participation that reflected the percentages of women and minorities in the community. He said it was up to each jurisdiction to implement its own remedies.

Robert Phillips, State of Oregon Affirmative Action Officer and member of the Oregon Commission on Black Affairs, encouraged support of the disparity study, and cited the Commission's report and recommendations (report filed with the record of this meeting).

Henry Pelfrey, Dirt & Aggregate Interchange president, said he had served on two different Metro advisory committees set up to work on these issues. He said the final advisory committee he served on had determined Metro needed to do a study to prove that discrimination had taken place. He said agencies only had to do MBE/WBE programs if federal dollars were involved. He said Metro's old program had been a really good one. He noted Dirt & Aggregate Interchange was the minority contractor in the King County case and that AGC had filed that lawsuit. He said Metro's involvement and participation in the study was very important. He said he also served on Portland's advisory committee. He said if Portland did its own study, that would not be cost-effective. He said it was Metro's job to help and that Metro's help was needed. He said his firm was licensed in 14 states and that it was an insult to be offered sidewalk repair jobs.

Margaret Garza, Impact Business Consulting, 8959 SW Barbur Blvd., Portland, said she served with Mr. Pelfrey on the same advisory committees. She said she began working with Metro on these issues in 1981. She said MBE/DBE firms needed a helping hand from Metro to tell contractors they had to ensure minority participation. She discussed the Port's Mentor program. She said with regard to bonding assurances and financing issues, minority firms needed some kind of window of opportunity in order to be competitive.

Chip Lazenby, Multnomah County Counsel's Office, discussed technical considerations. He noted Councilor Moore's questions about the scope of the study, and said Metro's participation as the regional governmental was critical to the study's success. He cited King County's experience and said a study performed there was invalidated because it used evidence gathered in Pierce County. He said the issue was not so much about finding a tool to solve the problems, but more about finding and using all the tools available to address the problems of under-representation by women and minorities in the construction industry. He said Multnomah County's experience was that participation had been high when it had a set-aside program, but that participation dropped after it was invalidated. He asked to leave the record open to allow the inclusion of a pending letter on the issues from Multnomah County Commission Chair Beverly Stein.

Councilor Moore said Metro should participate in the study, but said she wanted other jurisdictions to participate also and suggested delaying Council consideration of legislation to allow time to invite other jurisdictions to participate.

Chair Gates asked if any other persons present wished to testify. No other persons appeared to testify and the public hearing was closed.

Motion: Councilor Hansen moved to recommend Ordinance No. 93-521 to the full Council for adoption.

Councilor Moore suggested delaying consideration of the ordinance and related resolution for one month to allow other jurisdictions time to participate.

Councilor Gardner said Metro's old program had worked. He said that program called for set-asides or documented, aggressive good-faith efforts. He said after that program had been ruled invalid, the Council committed at that time to institute a similar program in the future when it was possible. He said a disparity study

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would help achieve that commitment. He said he was troubled other jurisdictions were not participating in the study, but said participation was a policy decision for each individual jurisdiction. He said Metro should participate because it was good public policy. Councilor Moore asked if other jurisdictions had been formally invited to participate. Councilor Gardner said it was his understanding they had and Ms. Wessel concurred with Councilor Gardner.

The Committee discussed the issues further. Councilor Hansen said she did not wish to delay the legislation. She said this was a policy decision for the Metro Council to make. Councilor Wyers concurred with Councilors Gardner and Hansen and said she had initially been concerned about whether or not the study would benefit Metro and citizens, but was now convinced there would be a direct benefit. Councilor Devlin said a previous Council had committed to return to a more aggressive program when the good faith program was adopted. He said, although he was concerned about the lack of participation by jurisdictions which should be involved, as well as budgetary issues, that the current Council should honor the previous Council's commitment. He recommended the ordinance be amended to provide all funding from the Support Service Fund, rather than split funding between the Support Service Fund and the General Fund. Councilor McLain concurred with Councilor Devlin. Chair Gates asked Councilor Devlin for clarification on his suggestion on the source of funding. Councilor Devlin said the funding source was an issue for the Finance Committee to decide. He said Metro would not know how much money was required until the scope of work was developed.

Mr. Short distributed his and Council Administrator Don Carlson's memorandum dated December 16, 1993, "Disparity Study Funding Source" which stated the funding should come from the Support Service Fund only.

Councilor Moore said she could not support the ordinance at this time because wanted to invite other jurisdictions to take part in the study and wanted to give them ample time to do so. Councilor Kvistad concurred with Councilor Moore and said he would vote nay also.

Motion to Amend: Councilor Gardner moved to amend Ordinance No. 93-521 to fund the study solely from the Support Service Fund and to stipulate that it state "up to \$50,000" in each of the two fiscal years. (This motion to amend was accepted as a friendly amendment to Councilor Hansen's main motion given previously.)

Councilor Devlin supported the ordinance and also supported Councilor Moore in wanting to send a letter to other jurisdictions. He said he would sign such a letter, but said his support for the study was not dependent on whether other jurisdictions wanted to participate or not.

Councilor Gardner also supported Councilor Moore's idea to formally invite other jurisdictions and suggested the letter be from the full Council or from all Councilors interested in supporting the letter.

Vote on Main Motion as Amended: Councilors Gardner, Gates, Hansen and Wyers voted aye. Councilor Moore voted nay. The vote was 4/1 in favor and Ordinance No. 93-521A was referred to the full Council for consideration dependent upon Finance Committee consideration at this meeting.

2. Consideration of Resolution No. 93-1860, Authorizing the Executive Officer to Execute an Intergovernmental Agreement with the City of Portland for a Predicate Study

Motion: Councilor Gardner moved to recommend Resolution No. 93-1860 to the full Council for recommendation.

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Mr. Short said it should be determined which Metro staff person(s) would provide support for the study. Councilor Wyers asked if it was possible to designate staff from the Office of Legal Counsel. Mr. Short said that would be possible, but that the Office should be consulted first. He said staff from both the Regional Facilities and the Legal Departments should discuss staffing and determine which would be the appropriate department to provide staff support.

Vote: Councilors Gardner, Gates, Hansen and Wyers voted aye. Councilor Moore voted nay. The vote was 4/1 in favor and Resolution No. 93-1860A was recommended to the full Council for adoption. (Note: The motion to amend Ordinance No. 93-521 also amended language in the Intergovernmental Agreement by specifying "up to" \$50,000 per fiscal year would be spent.)

FINANCE COMMITTEE CONSIDERATION OF AGENDA ITEM NO. 1

Chair Gates turned the gavel over to Chair Monroe.

Motion: Councilor Devlin moved for adoption of Ordinance No. 93-521A.

Vote: Councilors Devlin and Monroe voted aye. Councilor Kvistad voted nay. Councilors Buchanan and Van Bergen were absent. The vote was 2/1 and Ordinance No. 93-521A was recommended to the full Council for adoption.

Chair Monroe turned the gavel back over to Chair Gates.

3. Communications from Local Governments

Chair Gates removed Agenda Item No. 3.

4. Consideration of Draft Resolution No. 93-1882, Accepting a Fifth Group of Nominees to the Metro Committee for Citizen Involvement

Judy Shioishi, Council Analyst, gave staff's report. She noted changes were made to the draft resolution to incorporate new appointments received after the agenda packet was printed and explained same.

Chair Gates asked if Councilors were advised of appointments in the relevant districts and Ms. Shioishi said they were. Councilor Gardner endorsed the nominee representing his district. Councilors Gardner and Moore said the Multnomah and Washington County citizen involvement committees had done a good job in forwarding nominees for appointment.

Motion: Councilor Gardner moved to recommend the full Council adopt Resolution No. 93-1882.

Vote: Councilors Gardner, Gates, Hansen, Moore and Wyers voted aye. The vote was 5/0 and the motion passed.

5. Consideration of Resolution No. 93-1881, Creating a Pioneer Cemeteries Study Committee

Councilor Hansen briefed the committee on the resolution. She said her district (District 12) contained a pioneer cemetery that was not within Multnomah County's boundaries and wanted to determine how to manage it as well as determine whether or not there were alternatives to public management of cemeteries. She explained amendments

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had been drafted to provide for the Executive Officer to consult with her when making appointments to the committee and to delay the committee beginning its work until March 1994. She said the latter amendment was meant to give staff time to make the transition from Multnomah County to Metro.

Councilor McLain asked if the six months requested to complete the work was appropriate since the entire transition period for the Multnomah County parks system would be for two years. She said distinctions between ownership and management should be addressed. Councilor Hansen said the committee would investigate ownership and legal issues on all pioneer cemeteries. She said those issues needed to be resolved before management issues were addressed. She said the goal was to make the cemeteries self-supporting without relying on parks system revenue. She said the second year of the transition period could be spent implementing management changes identified in the first study phase.

Councilor Gates asked if a representative from the Oregon Historical Society would serve on the committee. Councilor Hansen said Dale Archibald, Oregon Historical Society curator, had agreed to serve.

Motion: Councilor Gardner moved to recommend Resolution No. 93-1881 as amended to the full Council for adoption.

Vote: Councilors Gardner, Gates, Hansen, Moore and Wyers voted aye. The vote was 5/0 and Resolution No 93-1881A was recommended to the full Council for adoption.

Chair Gates called a recess at 6:05 p.m. The Committee reconvened at 6:15 p.m.

6. Report on Activities of the Metro Office of Government Relations

Merrie Waylett, Senior Management Analyst, gave the report (a written copy of which was printed in the agenda packet).

The Committee and Ms. Waylett briefly discussed the report.

7. Consideration of Ordinance NO. 93-523, Approving the Revision of the Metro Code Chapter 2.02., Personnel Rules (Public Hearing)

Chair Gates opened the public hearing.

No persons present appeared to testify and the public hearing was closed.

Mr. Short reviewed his memorandum dated December 2, 1993, "Personnel Code Revision."

The Committee and Mr. Short discussed and proposed revisions to ordinance language with Paula Paris, Personnel Manager.

The Committee noted this meeting was the last time the Governmental Affairs Committee with its current membership would meet for calendar year 1994 and discussed whether or not the Committee should hold a special meeting before the end of the year to finish work on the Personnel Code. Committee consensus was that a special meeting would not be held and that this item be continued to 1994.

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All business having been attended to, Acting Chair Gardner adjourned the regular meeting at 7:05 p.m.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Paulette Allen", written in black ink.

Paulette Allen
Clerk of the Council
GA35093.MIN