

MINUTES OF THE COUNCIL MANAGEMENT COMMITTEE  
OF THE METROPOLITAN SERVICE DISTRICT

December 17, 1987

Committee Members Present: Councilors Tanya Collier, Larry Cooper, Jim Gardner, Gary Hansen and Sharron Kelley

Committee Members Absent: Councilors Tom DeJardin\* and David Knowles\*

Other Councilors Present: Councilors Corky Kirkpatrick and George Van Bergen

Also Present: Dan Cooper, General Counsel

Chairman Gardner called the meeting to order at 5:30 p.m.

1. Consideration of Minutes

Motion: Councilor Kelley moved, seconded by Councilor Cooper, to approve the minutes of November 19 and 24, 1987.

Vote: A vote on the motion resulted in all five Councilors present voting aye.

The motion carried and the minutes were approved.

2. Consideration of Auditor's Letter to Management Prepared by Peat Marwick Main & Co., for Recommendations for Improvements in Information and Efficiency

Ray Phelps, Director of Finance and Administration, introduced Don Cox, Accounting Manager, and Joe Hoffman and Roger Rowe, partners with the accounting firm of Peat Marwick Main & Co. Mr. Phelps noted Councilors had received the auditor's letter to management recommending certain actions be taken to improve the agency's fiscal accountability. Metro management's response to that letter was included in the meeting agenda packet.

Mr. Hoffman reviewed highlights of the auditor's letter to management. He noted the auditors had discovered no material weakness in Metro's accounting procedures. The improvements had been recommended to strengthen and enhance the good system already in place. Following the auditor's presentation, Mr. Phelps summarized management's written response to the auditor's letter to management.

\* NOTE: Alternates' attendance is not required unless a three-member quorum is needed. Absent alternate members are not listed in voting records.

Councilor Cooper suggested staff perform more surprise audits of disposal operations not owned by Metro. In response to Councilor Van Bergen's question, Mr. Cox said that solid waste staff accompanied accounting staff on such audits to provide technical information and advice.

Chairman Gardner thanked the auditors for presenting clear and complete information to the Council. Councilor Van Bergen said he was pleased with staff response to the letter.

4. Consideration of Ordinance No. 88-237, Establishing an Office of General Counsel to Provide Legal Advice and Assistance to the Metropolitan Service District

Mr. Phelps reported that because in-house and contracted legal work had increased substantially, staff recommended legal staff be increased. Additional staff could perform more work in-house at significant cost savings. Dan Cooper, General Counsel, had drafted an ordinance creating an Office of General Counsel which would strengthen staff's opportunity to do a professional job.

Councilor Collier reported that because of issues raised concerning the Clackamas Transfer & Recycling Center and possible, related litigation, she and Councilor Van Bergen had served on a task force appointed by the Presiding Officer to investigate who in the organization had the authority to initiate certain legal actions. Before the task force had formed a recommendation concerning litigation issues, staff had requested the Council adopt Resolution No. 88-828 which would add a new Legal Counsel position. As a result of that request and questions about who should appropriately initiate litigation, Councilors Collier and Van Bergen had drafted another ordinance creating an Office of General Counsel.

A discussion followed about the similarities and differences between the ordinances drafted by staff and Councilors Collier and Van Bergen. Mr. Cooper explained both ordinances were roughly based on the City of Portland organizational model. The relationship between elected officials and staff would be the same as that between attorney and client: The burden was on the attorney to fairly represent the entire agency. Don Carlson further explained the two ordinances differed on how the General Counsel could be terminated and on approval of instigating litigation.

Motion: Councilor Collier moved, seconded by Councilor Kelley, to recommend the Council adopt the ordinance introduced by Councilors Collier and Van Bergen.

After extensive discussion, the Committee recommended the following provisions:

1. that all employees in the Office be employed subject to the Personnel Rules;
2. that the General Counsel be appointed by the Executive Officer subject to the Council's confirmation;
3. that either the Executive Officer or a majority of the Council can terminate the General Counsel;
4. that other attorneys in the Office shall serve at the pleasure of the General Counsel;
5. that the Office of General Counsel is not a Metro department and, therefore, the provisions of Senate Bill 629 would not apply to the appointment and termination of the General Counsel;
6. that the General Counsel shall defend or appeal litigation on behalf of the District only with the mutual agreement of the Council and Executive Officer as long as the General Counsel agrees that the action is necessary to protect the interest of the District; and
7. that the General Counsel submit a formal, quarterly report of all suits or actions in which the District was a party.

Regarding item 4 above, Mr. Cooper explained it would be awkward if staff attorneys could only be dismissed for just cause under Metro's Personnel Rules. Confidential or sensitive information concerning legal cases might be revealed and/or the General Counsel could be forced to work with an attorney in which he had no confidence. Most other jurisdictions granted General Counsel's the freedom to terminate attorneys if it was apparent the General Counsel had no confidence in the employee, he said.

Regarding item 5 above, Councilors were concerned the General Counsel not be terminated solely by the Executive Officer under the provisions of Senate Bill 629 because the Counsel reported to both the Executive Officer and Councilors.

Revision of Motion: Councilor Gardner moved, seconded by Councilor Kelley to recommended the Council adopt the Collier/Van Bergen ordinance to include the above provisions.

Vote on the Motion: A vote on the motion resulted in all three Councilors present voting aye. Councilors Cooper and Collier were absent.

The motion carried.

Mr. Phelps explained the Executive Officer might not support the amended version of the ordinance relating to the instigation of certain legal actions. It was possible she might suggest other language at the January 14 Council meeting.

3. Consideration of a Lease Contract with First Municipal Leasing for a Printer for the Main Accounting System; Consideration of a Lease Contract with Hewlett-Packard Corporation for Maintenance of the Printer

LeRoy Nollette, Data Processing Manager, and Audrey Lloyd, Systems Analyst, reviewed staff's written report.

Chairman Gardner noted the lowest bidder, Finzer, had submitted a bid far lower than the other two and asked if its bid had been responsive. Ms. Lloyd answered the bid was not responsive, explaining the system proposed by Finzer had no potential for growth and the cost of supplies for the system was extremely high. The proposal had failed to meet Metro's specifications, she said.

In response to Chairman Gardner's question, Mr. Nollette said it was desirable to lease, rather than to buy, the equipment because maintaining flexibility was a prime concern at this time.

Mr. Phelps noted that the second page of the lease agreement, "Lessee's Responsibilities," had been amended at the request of the Metro Contracts Officer to provide for payment to the Lessor "which resulted from Lessee's acts or failure to act arising out of or in connection with the ownership, selection, possession, leasing, renting, operating, control, use, maintenance, delivery, and/or return of the equipment. . ." (new language underlined).

Motion: Councilor Hansen moved, seconded by Councilor Kelley, to approve the contracts with First Municipal Leasing and with Hewlett-Packard Corporation.

Vote: A vote on the motion resulted in all three Councilors present voting aye. Councilors Cooper and Collier were absent.

The motion carried and the contract was approved.

5. Consideration of Resolution No. 88-828, for the Purpose of Adding a Legal Counsel Position to the Executive Management Department

Don Carlson referred the Committee to a memo from Ray Barker, Council Assistant, dated December 17, 1987, which provided an analysis of the budget impact of the new position. Mr. Carlson asked staff

to explain whether the new Legal Counsel position would replace the existing Contracts Officer position.

Mr. Phelps said the new Legal Counsel position would be in addition to the existing Contract Officer position. He discussed areas where legal and contract workloads had greatly increased including a more ambitious Disadvantaged Business Enterprise (DBE) program, the Convention Center project and continued Zoo construction. In addition, there were jobs that needed doing and the Contracts Officer would now be free to do including producing a purchasing manual, producing a contract procedures manual, ensuring better DBE participation and monitoring contractor performance.

Mr. Cooper added that the new Legal Counsel position would upgrade the contract office. Many new areas of responsibility had been recently added to Metro's scope of duties: the solid waste resource recovery project, the solid waste functional planning process, landfill bids, Metropolitan Exposition-Recreation Commission work, the Urban Growth Boundary periodic review, the new passport business licensing program and the Interim Task Force on Metropolitan Regional Government.

Motion: Councilor Hansen moved, seconded by Councilor Kelley, to recommend the full Council adopt Resolution No. 88-820.

At Chairman Hansen's suggestion, staff agreed to place the resolution on the January 14, 1988, Council meeting agenda along with the second reading of Ordinance No. 88-237 which created the Office of General Counsel.

Mr. Carlson said staff would revise the Legal Counsel job description and proposed budget for presentation on January 14.

Vote: A vote on the motion resulted in all three Councilors present voting aye. Councilors Cooper and Collier were absent.

The motion carried.

There was no further business and the meeting adjourned at 8:40 p.m.

Respectfully submitted,



A. Marie Nelson  
Clerk of the Council