



METRO
Metro Council Regional Facilities Committee
Minutes of the Meeting of
January 21, 1997

Council Chamber

Committee Members Present:

Chair Ruth McFarland, Vice Chair Patricia McCaig, Councilor Lisa Naito

CALL TO ORDER AND ROLL CALL:

Chair McFarland called the Meeting to order at 10:37 a.m.

1. **Introductions**

None.

2. **Consideration of the Minutes of the November 2, 1996, December 2, 1996 and December 16, 1996 Metro Regional Facilities Committee Meetings**

Motion: *Councilor McCaig moved acceptance of the Minutes of the November 2, 1996, December 2, 1996 and December 16, 1996 Metro Regional Facilities Committee Meetings.*

Vote: *The vote was 3-0 (unanimous) to accept the Minutes of the November 2, 1996, December 2, 1996 and December 16, 1996 Metro Regional Facilities Committee Meetings.*

Chair McFarland yielded the gavel to Vice Chair McCaig

3. **Ordinance No. 97-677: For the Purpose of Amending Metro Code Chapters 2.04 and 6.01 and Declaring An Emergency.**

Motion: *Councilor McCaig moved, Councilor Naito seconded for approval of Ordinance No. 97-677 for forwarding to the full Metro Council with a do-pass recommendation.*

Councilor McFarland proposed a four-part Amendment to Ordinance No. 97-677. The details are covered under First Amendment to Ordinance No. 97-677, a copy of which is filed with the permanent record of these proceedings in the Metro Council Office.

Councilor McFarland gave light to **Part A.** of her proposed Amendment. This has to do with technical suggestions brought forth by Jennifer Simms who believes the proposed language better expresses what was attempted. Councilor McFarland is in agreement with Ms. Simms. This part of the proposed Amendment simply speaks to the proposed accomplishment of accounting using generally accepted

accounting budget law allowing for audit. Others are in agreement this language better provides for the desired resultant goal.

Part B. of the Amendment provides for submission of the Commission Budget to Metro. In the original ordinance changing the Code, ten working days were allowed. Executive Officer Burton and staff asked that thirty calendar days be allotted which is now being proposed via Amendment.

Part C. is a technical suggestion from Jennifer Simms having to do with budget description and content. The intent of the change is for clarification purposes.

Part D. was a concern originally expressed to Councilor McFarland by Executive Officer Burton and subsequently expressed by two or three staff members including Ms. Simms. In this there is a commitment to hearing a report from MERC no less than once quarterly with appropriate criterion with respect to MERC progress and goal-reaching. MERC's Business Plan is the measure against which the reports are to be aligned.

Vice Chair McCaig acknowledged Ordinance 97-677 as moved and seconded, along with the Amendment brought forward by Councilor McFarland. Vice Chair McCaig sought Councilor McFarland's pleasure on the disposition of the previously discussed Amendment and Ordinance 97-677.

Motion:	<i>Councilor McFarland moved Amendments consisting of parts A, B, C, and D forward for inclusion in Ordinance No. 97-677, establishing the ordinance as Ordinance No. 97-677A Councilor Naito provided a second.</i>
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Vote:	<i>The vote was 3-0 (unanimous) in favor of inclusion of the Amendments consisting of parts A, B, C, and D forward for inclusion in Ordinance No. 97-677, establishing the ordinance as Ordinance No. 97-677A.</i>
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Councilor McFarland provided background, saying the Metro Council has received resolutions passed by Multnomah County and the City of Portland. The County controls the Hotel/Motel Tax. This designation was put into the resolutions. Metro has no authority over the Hotel/Motel Tax. Therefore, what is done with the Hotel/Motel Tax is at the discretion of Multnomah County. Multnomah County had the distribution commonly called the Ridgely Plan which the Metro Council earlier on reviewed and adopted. This is a plan with which everyone can live, although enthusiasm for the plan is lacking. Multnomah County adopted the plan and passed it.

The City of Portland owns the PCPA Complex and the Civic Stadium and has agreed to pass on to Metro \$600,000 per year (\$3 million for five years) if Metro would meet certain criteria established. Both the City of Portland and Multnomah County incorporated into their resolutions these guidelines and parameters for Metro. Ninety days were allotted in which to accomplish this, beginning December 19, 1996.

This ordinance basically changes the Metro Code. It meets the requirements the City of Portland asks Metro to do for additional flexibility in contracting and in dealing with the public. This is set up so that when the MERC Commission passes a resolution, it is accomplished. Their method of advising the public in advance of an agenda is the same as is Metro's. Their agenda must not also be sent in advance to the Metro Council, but to the twenty-four governments encompassed in the Metro region. If an item must be presented as an emergency, each Member of the Metro Council must be notified

twenty-four hours in advance by fax and phone call. This provides the Metro Council with the opportunity to speak to any resolution the MERC Commission wishes to pass prior to actual passage. The MERC Commission finds this to be reasonable because they wish to play a more responsible role. In turn, they must be responsible to the general public and to Metro, as a parent company. In analyzing MERC's reports to the Metro Council, the language points out that Council uses MERC's Business Plan as the measurable criteria.

Vice Chair McCaig provided a briefing, saying this is the result of an intergovernmental agreement which was due to come forward. As a result of negotiations, the three major partners are Multnomah County, the City of Portland, Metro, and MERC as a subsidiary of Metro. Until this point the recent negotiations have resulted in a satisfactory "dollar deal" from Multnomah County and with the City of Portland which had not been particularly satisfactory up until the most recent negotiations. Until this point, the Convention Center would have received about \$4.8 million dollars, but will actually receive about \$3.8. In receiving a smaller amount, PCPA is going to go from about \$600,000 up to about \$1.2 million, which has been a real issue. Additionally, a new thing called "Cultural Tourism" will have \$200,000 applied to it. RAC which has received \$200,000, will now receive \$100,000.

Mark Williams, MERC General Manager, advised the Committee RAC had actually been receiving \$100,000, but will now receive \$200,000 with half of it designated toward neighborhood art.

Vice Chair McCaig continued saying this is the Multnomah County package that has received a universal nod. The City package indicates more money will be forthcoming than has been historically, to the tune of \$300,000 a year for five years.

Mark Williams mentioned the City will actually contribute \$600,000 a year for five years, with a \$3 million total. Half of this amount is dedicated exclusively toward user fee correction for the principal main profit tenants of the Portland Center for the Performing Arts. The other half is for any use at the City-owned facilities the MERC Commission may designate.

Vice Chair McCaig said this places it into the lap of the Metro Council for final buyoff. This has to do with the perceived, or real, issue people have with the way the facilities are governed. The ordinance currently before the Committee has specific recommendations on how the Metro Council alters governance of MERC in order "clench the deal." If the current proposal is adopted by the Metro Council, the money will be disbursed in such a way that meets all of the goals all three of the entities have identified. The Metro Council has ninety days to buyoff on this.

There are a couple of items being asked to occur at the Council level that definitely distances the Council from the direct decisionmaking of MERC. Vice Chair McCaig indicated she wishes to be satisfied that she understands the process. As well, to be comprehended is the potential result of dollars if MERC decides to contract out some Support Services. Vice Chair McCaig feels, from her perspective, there is serious ground to cover.

Councilor Naito acknowledged the information she had just received, saying she appreciated the overview. She indicated she is willing to come up to speed on her own time, excusing Mark Williams from the need to provide further background. Councilor Naito commented on the lack of explanation in the written material which would shed light on how a change in the process would be any more efficient or flexible than the status quo. Ultimately she will have to weigh this to determine if it is more flexible and more businesslike. Secondly, she will have to conclude whether it is a good policy decision in terms

of the other effects it might have on the structure and governance of Metro. This is the filtering process she has established for herself.

Councilor McFarland, having worked with this for some time, has an understanding of the proceedings. However, she wished to speak to two particulars:

- If the Metro Council, indeed, does not adopt some type of policy which meets with the approval of both Multnomah County and the City of Portland, the facilities will be split. PCPA and the Civic Stadium will go back to the City of Portland. The other two facilities will, of course, remain with Metro.
- The money received has been for services. If there is no longer a need to provide the services, the personnel involved in those services is simply eliminated. There would be no ultimate loss to Metro. On the other hand, this is indeterminable if adopted until the bid process has concluded.

Vice Chair McCaig resists going through this section by section because some of it housekeeping. There are those elements, however, which fundamentally change the pattern by which the working relationship exists. She asked the possibility of shifting rapidly to the point where the areas changing the reporting requirement between the Council and MERC as the Executive and MERC begin.

Executive Officer Burton commented this has been a long time in process, with Councilor McFarland and others putting a great deal of effort forward. He is very appreciative of this effort and the amendments effectively addressing a lot of the questions.

MERC was initially set up as a separate commission with the idea of being able to operate independently in order to be able to contract for services and to deal with personnel matters in a way allowing more enterprising and entrepreneurially established. MERC does receive services from Metro, with the greatest cost to Metro in terms of Risk Management costs. The MERC facilities are Metro's highest risk costs. Through pooling risk services throughout the agency, a good rate is attainable. MERC receives attorney services as a flat rate as opposed to on a per hour basis. Accounting and computer information services are also made available. It is not known if these services could be purchased elsewhere in the same manner as provided by Metro. The option should exist to discern this. This is the part of the purpose of the amendments.

The way in which the budget is presented to Metro establishes an expenditure and a revenue appropriation level rather than a detailed budget for the operation. Metro is the government of record, ultimately holding the financial responsibility for any revenue bonds or outstanding debt resultant. This does not go away with the adoption of the amendments. The Council's oversight and budget approval authority needs to remain. The fiscal responsibility needs clarification. These amendments provide these needs.

Executive Officer Burton said the Charter requires the Executive Officer to submit a budget. The accountability remains with the Metro Council. The ability for MERC to present a work plan through a business plan makes a great deal of sense to Executive Officer Burton. This provides the Metro Council with overall review. The changes, in his opinion, require more effort on the part of MERC and the Metro Council to coordinate their views and observe occurrences. The ability for the Metro Council to review proposed actions by MERC prior to implementation is a positive point and proactive opportunity. The

MERC Commission should be permitted to make decisions that are final. However, the Metro Council needs to have the occasion for preview.

These amendments alter the way MERC is presently administered, but will allow MERC to go forward. This does not affect the option the Metro Council has to ensure revenue is directed according to existing intergovernmental agreement. The relationship changes in the manner in which the budget is presented to Metro by having an appropriations level rather than a detailed budget. This permits the MERC Commission the freedom to look for outside options to adjust the manner in which it conducts business in the services received from Metro. Initially, the opinion and suggestion of the Executive Officer was to contract the facilities out to a private operator. There was concern this would not be effective due to the level of public interest. This decision now rests with MERC. The Metro Council yet has overall review of the MERC budget. This is a good move and accelerates resolution.

Vice Chair McCaig asked Mr. Williams to discuss the existing relationship between the Metro Council, the Executive Officer, and MERC. As well, she asked him to discuss areas of substantive change, timing of information or decisionmaking.

Mark Williams responded he would address major changes in the relationship and how that changes from existing practice. One of the best things he is able to comment on about the ordinance is not something ordinarily considered a compliment. There is not a single, original idea in the ordinance. The ordinance contains nothing which has not been discussed, debated and voted on in a series of public meetings for many years. Some of the material not only goes back to the transition team, the consolidation committee, but some goes back to the original Cliff Carlson committee which studied the need for regional facilities many years ago. This ordinance is representative of an attempt to distill these ideas into one action by the Metro Council.

Section One of the ordinance is Findings.

Section Two is not part of the Metro Code dealing specifically with MERC. It is the Metro-wide contracting procedures. Huge portions of it are set out verbatim. There are only a couple of small sections dealing specifically with MERC, with only one that particularly matters.

Mr. Williams referenced page five of the ordinance, **Section Ten**. This would raise the exemption from formal, sealed bid procedures for MERC contracts, only, from \$31,000 to \$100,000. This amount would be adjusted annually for the CPI.

- The current exemption is \$31,000 currently in the Metro Code and applies to MERC. The history is this was the figure coming to Metro from the City of Portland's old ERC. Originally there was an ERC which ran the City facilities. When regionalization was agreed upon, Metro created a Metro ERC and adopted many of the procedures the old ERC followed. That number for exemption came over at the time, but not coming over was the City-attached CPI figure increasing that number periodically. This was originally done in the 1980s and this figure has not been increased since that juncture.
- The reason for the proposed change is to recognize these facilities operate in a fast moving, competitive market. Purchases need to be made and things needing to be accomplished sometimes on an immediate basis not lending themselves well to the sealed bid process. This is not to say a competitive selection process will not be used. MERC's procedures require competitive selection

processes. It does mean MERC could go through a process such as an RFP process which is more informal than is sealed bidding. This does permit MERC to consider qualitative factors. MERC would still have to use sealed bidding above \$100,000 where required by law and/or come to the Metro Council for an exemption of a particular contract. The Metro Council remains MERC's Public Contract Review Board. This is the entire change in this portion of the Metro Code.

Councilor Naito sought exemplification from Mr. Williams relative to the types of instances arising which have been problematic to this juncture. She asked him, *"Why not go with just a set number and then revisit that periodically in terms of cost, ceiling rather, or floor, the hundred thousand dollars so that it's right there in the ordinance. Anyone can look at it, rather than having to see what it's been adjusted to in a given year. . . . I just have a problem sometime with this whole CPI and I think it alienates the public sometime from knowing exactly who's covered, who's not covered. They'd have to then figure out what the CPI is rather than just saying just saying one hundred thousand, that's it. One way or another, you're in or you're out and then we'll revisit as needed down the road in a years and update it if appropriate. Could you respond to that?"*

Mark Williams' response was: *"The first thing that comes to mind in answering the first part of your question first is: We recently had a project to reupholster seats at Civic Auditorium That process fell above \$31,000, so it had to be done through a sealed bid procedure or we had to go to this Council for a fairly lengthy process to get a formal exemption from competitive bidding. Problems arose because as it turned out, there were very few providers that were actually able to provide that service. Then, that got complicated because Civic Auditorium, as I'm sure you know, operates at near capacity right now. There are small windows of opportunity for what we call dark days when a contractor can get in the hall, do the work, leave it in a presentable situation and then leave in time for the curtain for that evening. That created a situation where we weren't getting bids. The people who were providing us particular, unique theater-related service were in many cases small entrepreneurs who took a look at a great big stack of government documents that a sealed bid looks like and just said, 'Forget it. It's not worth the business.' We had to go through two or three permutations of bidding before we finally got a contractor who was able to do this and able to bid and able to meet all the requirements of forma sealed bid bidding. Frankly, we wound up paying a higher price for that service than if we had been able to use a more informal selection process. That's a case where the whole idea for competitive bidding is that the public gets the best price for the best service and there are occasions when that kind of can work backwards. So, that's the example that comes most readily to mind. I'm sure that staff has others which we can bring forward.*

"As far as adjusting for CPI, you're correct. Obviously, there's two different ways to do it. One is to build in a CPI adjustment here. If the Council decided to that, what I would envision is that we would simply publish an adjusted number each year and send it out to our stakeholders and to the elected officials so that it next year comes out to \$103,000 'cause there's three percent CPI. That would simply be sent out so that everybody would know. As you point out, another alternative is to put in a set number and come back to the Council every year seeking an adjustment. Whether the Council wants to revisit that issue every year is something that you folks would have to decide whether that's desirable or not."

Councilor Naito: *"Yeah. We can discuss that at another time. I guess I don't believe that you may need to do it every year. But I think what we're trying to balance here would be the need to give you greater flexibility but also the need to keep the public, and obviously to provide the best cost for the public. However, there is a huge perception in the public that contracts and deals are often given to people and other people are excluded from participating in the process for various reasons. So, there is*

an openness that I think we have to be mindful of as we go forward and so that any individual can know where to look and see what the rules are.

"I guess my other question, if I might, would be: What type of process, then, do you go through for the bids under this amount of \$100,000? I'm concerned about minority access, women businesses, other kinds of potential bidders who may not be involved with the traditional sort of process. What kind of outreach is done so that people know these contracts are available and can make bids on them?"

Mark Williams: *"What MERC currently has, and this is one thing to remember as we go through this is that MERC has, as a sort of sub-government of Metro, if you will, it has its own formal resolutions which are published and filed and it has a purchasing policy. Under your current Code, current Metro Code, MERC is directed and permitted to have its own contracting procedures distinct from Metro. What those procedures say now is that purchases above \$31,000 are still required to go through a competitive process. The real distinction here is, by permitting a higher exemption from formal bidding, is that you would be permitting MERC to use an RFP process in most cases rather than sealed bidding. That's the real distinction. It's not that there would not be an open, competitive process, it's just that it would be something which is more amenable to the types of goods and services that MERC often has to buy. That, I think, only answers part of your question.*

"In terms of affirmative action, minority contracting, and those matters, MERC is somewhat unique and a little bit distinct from Metro in that area in that MERC has an additional responsibility called the Target Area which was contained in the original state legislation which authorized funding for the Convention Center. That is one of MERC's primary responsibilities is to provide outreach to a defined area within the north-northeast section of Portland which was defined as the impact area for the construction of the Convention Center. So, if anything, it would under the current situation, MERC has additional requirements for Target Area contracting. Even now, for example, when we go out for a contract under \$2,500, we're required to get three bids and we have to include in that a minority-owned business, a women-owned, and a Target Area business. In some cases, one business may meet all those requirements, but in some cases it will not. So, that's an example of the kind of things that already exist within MERC's contracting procedures. Undoubtedly, those could be strengthened and made better. That's something I would anticipate taking place by MERC resolution.

Vice Chair McCaig asked Michael Morrissey to keep a list of areas Councilor Naito continues to flag. On checking with General Counsel, Daniel Cooper, Vice Chair McCaig had been told Metro's level is \$25,000 for all of the departments and agencies within Metro. A formal bid must be set forth for anything over \$25,000. Vice Chair McCaig revealed she is a big believer in the competitive bid process for the record. She said, *"I'd like to flag that, again, it's not significant enough to undo a deal, but I think uping it to \$100,000 with some of the other changes that we're going to see about the Council's relationship and the flexibility with which MERC is going to be able to enact that provision makes me cautious."*

Executive Officer Burton said he wished to make two comments on this: *"One is the understanding about competitive bidding and a sealed bid process which, as Mark pointed out, a lot of times, minority businesses are literally frightened away by the process of the sealed bid process. So, I think some further discussion about that is warranted. About the CPI question, it is my intent to bring to the Council, and I have not discussed with Council how to do this is, but one of the problems we have is this particular Code, if you look at, really was written in 1989 and you had pieces added to it. There needs to really be an annual review of this, the same thing with our waste codes, all of our codes should be*

reviewed by this Council on an annual basis. So, you don't go through these horrendous reviews which would allow for a CPI adjustment to be made at that point if you do that. I think we've got a number of codes in place that have been way out of date because simply the Executive in the past hasn't brought those to the Council to update on an annual basis. That will be occurring for review as the Council wishes and it may take care of your CPI question."

Mark Williams: *" . . . The principal difference between sealed bid and RFP procedures is that in a sealed bid, you really only can consider the price once you've set the standards. In an RFP process, you can consider the quality of the service as well."*

Vice Chair McCaig informed Mr. Williams, referring to page seven, she was a little concerned that by removing something from the definition, an individual was prohibited from appealing directly to the Council. She sought clarification.

Mark Williams advised her that her assumption is correct and he had planned to address this later on under the whole issue of Council review.

Councilor Naito asked two questions about page seven. *"Is this change, with the addition of, it says 'operate and manage,' is that simply a technical change or is that a bigger change at the top of page seven for my information's sake? The other is, in the last sentence, it says, 'Shall be liberally construed.' Perhaps this is a question of Legal Counsel. What, exactly, is the effect of that sentence?"*

Daniel Cooper: *"That sentence would be directing the court to take a liberal construction of this ordinance if any particular piece of it was being litigated. It's typical to put that language in ordinances though there is already a section in the Metro Code in the very beginning that says the whole Code is supposed to be liberally construed. I won't accuse Mr. Williams of a Higbeeism, but those of you who sat through the first session heard things sometimes get dropped in there that aren't necessary that are probably there anyway. I don't think it's particularly a significant sentence, legally."*

Vice Chair McCaig: *"And then, to the 'manage?"*

Mark Williams: *"That's really simply intended to better describe what MERC does. I don't view that as any big substantive change."*

Councilor Naito: *"On page seven then, under the deletion of the definition of an aggrieved person, that's all going to be dealt with?"*

Mark Williams: *"Under current practice, there are three different ways for Commission resolutions to be reviewed by the Council. With a few exceptions, there's about four exceptions listed in the Code whether Commission resolutions are final upon adoption. Those deal with certain purchases that have already been approved in the budget, hiring and firing employees, things like that. The current setup gives three avenues of review. One is that any individual who appears in front of the Commission who is in certain defined areas can hold up the entire Commission action by appealing to the Council. The action, therefore, does not become final until the Council takes action however long that may be. The next avenue of review is for the Executive Officer to request review of a Commission resolution. The third current provision is for any three Metro Councilors acting together to request review. Once review is requested, the resolution is ineffective and nothing happens until further Council action. . . . sets out*

what happens after that, that's simply a matter for Council procedure. What this ordinance would do is eliminate Council review of MERC resolutions in that manner.

"The resolutions would be final as adopted, or, at such other time as the MERC Commission designated. It substitutes, in other sections of the ordinance, provisions providing for more advance notification by the Commission to both Metro elected officials and the governments within the region of pending MERC actions so that those officials can take notice of those actions and communicate their desires on those things if they choose. This is a matter that was discussed many times in prior committees. It was addressed in the consolidation committee and I believe this was actually part of a proposal that was taken from Councilor Ed Washington's letter during the last negotiating process with the City."

Councilor Naito: *"So, you're deleting all three of the avenues of review and it would be substituted for a notification process upon which then would it only then for a majority of the Council that would be able to come in later and undo something if the Metro Council felt that a particular action was appropriate. So it would require a sort of positive action from the Council and then for the time period between which you had adopted it and the Council took action, your actions would, nonetheless be valid. Is that correct?"*

Mark Williams: *"Councilor Naito, you might want to address this question to Mr. Cooper, but I can just you my take on it. This is an ordinance that you're passing here. The Metro Council always has the power to act by ordinance. If you got notice of a pending MERC action, and it was something that, boy, if we have proposed to give each Commissioner a million dollars to build a summer home, for example. You could convene a meeting of the Council and pass an ordinance prohibiting such a resolution from being enacted prior to our action."*

Councilor Naito: *"I guess I'm just trying to get the framework so I could see the potentials of what might happen. It would take then . . . it will take a proactive response and perhaps even upon emergency nature if there is something the Council decides is inappropriate. I'm just trying to get the framework of how this might arise. . . . Then if you had adopted it in an emergency situation, it would, nonetheless, be effective until it was undone."*

Vice Chair McCaig: *". . . That is a significant change from the way we currently operate and that is at the heart of, from my perspective in reading the ordinance, the shift of power. . . . that is that the responsibility and the burden is on the Council to initiate a change that, up until this point, MERC has not enacted its ordinances. There's been a waiting period for the Council to take an affirmative action if they wanted to. I believe a ten-day period where they would pass a resolution or an ordinance, it would sit for ten days and notice would be served. If someone from the Council wanted to initiate an action, you would have an opportunity to do that in one of those three categories, an individual or three Councilors. That is what is being amended out of the process and included now is that they will have the flexibility to take the actions enacted and the exchange is that we will have early notice that they're going to do it."*

Councilor McFarland: *". . . I believe Mr. Burton and I talked about this particular point of view about what if, ultimately, there was something that we really didn't want them to do and MERC Commission went ahead and passed something to which we objected. My answer was that would be their last action before they jumped off the cliff. Because, what we can do immediately is lower the boom on them. We still have the control. It is my experience and my absolute belief that if a Member of this Council were to call Mar, anybody, any Member of the MERC Commission, and say 'I have a concern about this resolution,' (by the way, I don't believe they pass ordinances, I think they pass resolutions) but if I have a*

concern about it, it would absolutely happen. I can't imagine them going against the concerns of the parent company until we resolved our concern about it."

Councilor Naito: ". . . None of us might be here in a couple of years . . . and the whole structure at MERC may change and the personalities involved. I guess my position is it's nothing personal at all, but we're here changing the structure, or looking at changes in the structure. . . . I'm just very concerned about how that is ultimately going to play out. I agree there are some real concerns on my part with respect to the difference between a proactive action. . . . It might be inappropriate in the example you used even for them to delay action based on one Member of the Council. I think you're talking about a majority of the Council as being the relevant decisionmaking body. We can move forward. I flagged this as an issue that I really want to look at. I actually don't have a problem with the first two eliminations. In fact, individual persons or the Executive Officer, but I do have some concerns with that shift with respect to the Council."

Vice Chair McCaig: "That is the cornerstone by which some of the other pieces are developed in the rest of this ordinance. I share your concerns about that piece, but let's go ahead and see how the rest of this balances out and see what we end up at the end with."

Mark Williams: "I would add that when we are speaking of cornerstones that that section is also a cornerstone of the City and County actions in terms of the financial arrangements which require more flexibility on MERC's part."

Councilor Naito: "Let me ask you then, specifically, if I might. In their charge to us or to you, what specifically have they mandated? I know my understanding is they've mandated in more flexible, efficient operation. I understand that you're bringing this to us as a proposal for that, but have they specifically mandated a increased, oh, a different change in the delegation of decisionmaking or your ability to enact ordinances?"

Councilor McFarland: "Councilor Naito, I believe absolutely that the problem with them having after they've passed their resolution and having it come over and having to wait ten days. While I don't remember but about once in the four or five years I've been involved with them that the Council here actually said 'Wait, we want to look at this.' But they can't move forward with what they're doing and that is one of the primary things that was a concern for the City. Particularly, well maybe with all of facilities, and I deal it is a deal breaker. That is my personal opinion that should we renege on allowing that level of flexibility that it would be a deal breaker. My question to you is do you have a copy of the resolution from the County and the City? If you do not, I would be glad to furnish you copies of that. They were passed out earlier and you may not yet have been on the Council, but I'm going to instruct Mr. Morrissey to be sure that you get those. My opinion, and I've really worked quite a bit with Gretchen Kafoury and Tanya Collier, particularly, is that this would be a deal breaker if we did not do it."

Mark Williams: "This is a big change and this a change which was specifically called for in both the City and County resolutions in the consolidation committee report and in many other groups that have studied this issue. Essentially what this would do is give MERC the ability to determine the services that it needs in order to function in a competitive and entrepreneurial market and the ability to buy those services where it gets the best value for them. That's basically what it says. It does require that if the Commission is to purchase a service outside of Metro that it previously purchased from Metro, that it would have to do so by a duly adopted resolution in a public meeting which finds that the provision of

such services by other means is cost effective and results in a net benefit. That, in a nutshell, is the services issue."

Councilor McFarland: *"I gave each of you a copy of our staff report prepared by Mr. Morrissey in which he more or less looked at what would be a worse case scenario if all those services were purchased other than from Metro. I think that we've talked about that just a little bit already today. The reality is the chances are very good because Metro has been doing this for some time. They really understand the needs of MERC. They may very well be the low bidder for any or all of these services. So, this does not automatically mean that we go somewhere other than Metro."*

Councilor Naito: *". . . These services are currently provided by Metro. This would then give the flexibility to either continue that arrangement or look outside for a better price, is that correct?"*

Vice Chair McCaig: *"There were three things we got beat up for: One is that the Council and/or the Exec(utive) interfered too much in the day to day operations of MERC. Whether it's true or not, I don't have a clue, but that's one of the raps. The second one is that our support services, the list of things that you see listed there, were services that MERC could buy less expensively someplace else. That they felt that they were too costly and as a result they were impeding their ability to provide services the facilities and to the taxpayers of the region in an efficient and effective way. . . . The third was that we had promised that we would look for a regional funding source to provide adequate funding for these facilities, and that we didn't do that. So, in the context of the world negotiations, those were the three things that we supposedly had not addressed.*

"So, we took care of the first one which you're seeing through here . . . trying to distance us in some way. The second one was whether in fact our support services were services they could provide and buy less expensively out there. That was a big sticking point. So, this is the segment which deals with giving MERC the flexibility to buy the services from us if we're cheaper and other entities as well. The downside to that is that as a government we spread those support service costs across all of our other agencies. So if they don't buy them from us, this is the question that Councilor McFarland and I were wrangling with, then there potentially may be a loss at Metro or an increase in the support services for some of our other departments. I've been anxious to get a read on what may do to planning, what that may do to parks, if their support services go up. So, what's the cost associated with that? Was that your question, am I in a ballpark?"

Councilor Naito: *"That's exactly it. I have a specific one later, but . . ."*

Executive Officer Burton: *"In my tenure here, which has been two years, there's been two items on MERC agendas that I've asked to be pulled off. Both of those concern financial issues.*

"One of them regarded the purchase of computers which related in fact to the whole question here about whether we would provide those computer services here and the number of computers that were needed by MERC. The second one revolved around an agreement with Fine Host to borrow some money from them which I said should be pulled back and looked at for our ability to do that. In fact, we were criticized. The only management note we got in our last audit was because of the action that MERC took which should not have happened. So, there are times when those things are looked at in that sense.

"Secondly, when I first got into office, Mr. LaCrosse, who was the General Manager at the time, asked to go forward with a study to look at those support services costs. I asked him to do that which he did. The result of that was a report back when then my staff looked at to try to figure out what the reality was of the numbers that were coming up. There was a \$600,000 figure used that became kind of a mantra for everybody to say, 'We could save \$600,000 if we could just turn MERC loose.' My view of that, that was cherry picking for a start. The reality of that in a second look at that was not in fact some of those service costs. For instance, I'll give you a specific example of that. In the budget that I will submit to you next month, on the allocation of costs for risk management, basically if we allocated those costs directly out, MERC's cost would be probably anywhere from, depending on how you do it, \$175,000 additional support service costs against which we will buy down from them. In other words, that's a cost that they will avoid because we're able to take dollars that we have in savings from allocations to buy that down for them. If they were to purchase that directly, they'd probably have to pay that additional amount. So, by using the entire budget in Metro, we're able to provide services that I think wouldn't be realized.

"Mr. Williams and Heather and others with my staff are working on all these things to figure out the best way to do it. I think this won't change in that. We'll be able to work through if there are actual savings that can realized it would be there. The impact, then, about what would not be available as an allocated cost would have to be looked at . . . and we can give you all those numbers. You can take a support service cost off and figure out what the hit is against any of the other agency costs. The way though to look at it is what is the hit against MERC's cost if it has to pick it up as a whole cost rather than an allocated cost which if you would do if you had it through the support service side. So, those are the things that we're going to look at, that you look at all the time, you look at when the budget comes through."

Councilor Naito: *"Well, a little more confused than I was, but I guess maybe that part of it would be answered in just the terminology here. So, the change would be that the district and the commission would then agree upon the services. So that would involve some sort of, I mean it's almost an intergovernmental except that they're sort of a subsidiary type of thing. Is that what you're speaking about with respect to that you don't want them to be able to say, 'We can pick off this one piece, we can do it cheaper here, but the rest of it we want from you because you provide us a benefit there.' And if taking that one piece has an effect on some of our other budgets it would be this cherry picking approach?"*

Executive Officer Burton: *"Well, I think those are the things that need to be negotiated between MERC and ourselves and discussed. For example, if you're going to purchase certain types of services outside that then affects the needs for instance an attorney's support cost to it and the support cost of the attorney goes with it, that diminishes the ability of us to provide attorney services elsewhere because we do a flat office basis. In other words, you have x number of attorneys providing service. If MERC goes out and does some business elsewhere, then the question is are they still willing to pay for their support service requests for the legal fees that might be in here at net. Those are a whole lot of questions that have to be worked through that I think are here. But it does allow, if there's a justification and an ability to show that, for them to make those kind of purchases outside. I don't think I have a problem with that.*

"The real savings, I would argue, for all of this will come in personnel costs, total personnel costs, both to us and to MERC. Where they purchase those services. They employees are still Metro employees. They still will receive Metro benefits. That means PERS retirement. That's the same thing with the

stage hands downtown at the PCPA. Real savings might be realized elsewhere that the decisions to do that will have to be made now by the MERC Commission. Does it want to change the status of its personnel? This does not allow them to do that as far as the staff goes, but it does allow them to contract services at a different rate."

Mark Williams: "I just wanted to point out the concern that this would be a budget loss to Metro I think there's a couple of things to consider: Metro would not be the first government to allow some of its bureaus to contract for services. I believe the City of Portland, in some cases, allows it. The City of Portland is run in a different fashion. It is not necessarily the best model, but they do have inter agreements between City bureaus for provision of certain services. In some cases, services are purchased from another City bureau, and some cases they are purchased outside. I think that's one aspect of this. This is not something where we're inventing something brand new here. This was, as Councilor McCaig pointed out, a very fundamental aspect of what every commission which has studied this issue has said for many years.

"The other part to remember is that if you just pick a service and you're talking about is MERC going to buy this service x from Metro. If MERC does not purchase that service x, a cost to your Metro budget of having to put that on other departments only occurs if you presume that Metro maintains the same staff in that particular service provision department even though it is no longer providing that service. So, presumably, there are at least some areas where it the service is no longer provided. My old position at Metro General Counsel is one example. It, in fact, MERC were to purchase legal services elsewhere, then there's at least a half time or three quarter attorney that you might not need. It comes to mind that legal services and risk management which Mr. Burton has referred to, are two issues where it may very well turn out that MERC cannot do better in the market. But those are the things that we need to look at. I hope that answers the questions."

Councilor Naito: "I just flagged this as an issue that I need to look into more. Partly because, like any business, and I mean since this is government . . . so is Metro trying to run like a business, we have certain fixed costs that go into your overhead. . . . If we're talking about letting staff go, I think that should also be of concern to the Council Members. So, I mean it's one thing to weigh into this. And my only other concern is this process of agreeing, I mean is this another sort of bureaucratic, will this add a whole another level of just another bureaucratic kind of step from the public's eyes of here they are spending all these government hours trying to agree on these kind of like a contract provision that you know has a certain set way and maybe we should just make it a certain set way. The language to agree upon rather than a clear line of authority of who has the ability to require what is one that I flag as something that I need to mull over."

Vice Chair McCaig: "My reading of this was that the Council wasn't involved in it. That the Commission ultimately makes that decision. That it is not a negotiation and maybe I misunderstood you but it is not a negotiation between the Commission and the Council. The Commission will review their books, review their services, and determine which of those that they're going to be willing to go out and bid on and we don't have much to do with that. Is that right?"

Mark Williams: "That is correct. I don't view this as creating some gigantic bureaucratic process. I simply view it as MERC being able to shop around for the best price for the best services."

Vice Chair McCaig: "And that the Council will be arm's length from all of that?"

Councilor Naito: *"I had just read that the district and the Commission may agree upon and I hadn't assumed the Council would decide but rather the Executive Director would probably be the one agreeing on this."*

Vice Chair McCaig: *". . . I would weight it more toward the Commission and MERC with diminishing degrees of involvement from the Executive and then the Council. The Council being the farthest away in the involvement. Is that right?"*

Executive Officer Burton: *"The question here may be in actually in the language Councilor Naito is referring to and I believe up at the top of page nineteen where it says: 'Provided by the Commission to the district as the district and the Commission.' Maybe the definition is the question, what is meant by the district and who does that action to do the agreeing upon. I would defer to Council. That's language that was currently existent I guess. Because it's actually no longer the district effectively. That's old language. And by way, I believe he was Assistant City Counsel when this original stuff was written, so."*

Daniel Cooper: *"Not when this was written. I was working for Metro when this was written."*

Vice Chair McCaig: *"So, can in twenty-five seconds answer the question on whether district intends that there is an involvement from either the Executive or the Council in determining which services will be potentially contracted out, yes or no?"*

Mark Williams: *"No."*

Vice Chair McCaig: *"Then why don't we flag that this has a couple of different issues for us if that's okay with Councilor Naito. The first is understanding clearly what involvement if any the Executive, the Council has in it, if any. Secondly, the broader question of support services and contracting out and the role that plays in understanding that that was important to us. Again, no specific amendments to it at this time. We're going to continue to move on with the proposal. Are there other questions about the support services? Okay."*

Mark Williams: *"With that . . . I'm going to move forward to the budget and accounts which is another change. I'm going to ask Heather Teed, MERC's finance director, to assist me with this. Just giving you an overview, every commission which studied this issue called for MERC to be given what was termed a global budget. A global budget meaning a MERC-wide series of appropriations for those categories of funds which are required by local budget law. The reason for that is not necessarily to lump all the funds together and allow us to spend one group of funds on another institution. We would still maintain those categories by resolution and by internal budget controls."*

"The problem here is where we budget. MERC has always tried to budget very tightly to its appropriation levels and very accurately. What that has resulted in is where something blows up on the top of Civic Auditorium. . . . There is coolant being blown out on the street and hitting pedestrians. We need to go back to the Council for an ordinance for a budget change. Now, in a situation like that what a global budget does for you is it sets an appropriation level for that category for all MERC buildings. So, there would be appropriated money, (at an) appropriated level so that we could make that emergency purchase without violating our budget law and without going over our appropriation. It still doesn't mean that we'd be shifting money from another building to that necessarily. But it does mean that we wouldn't have to go through an ordinance procedure in order to do actions that need to be done. That's sort of

the general statement of that and I think Heather can help you out more on the specifics of the budget if you have further questions."

Vice Chair McCaig: *"Any further questions? Do we get it? Do we like it? We'll move on."*

Mark Williams: *"I'm moving then to pages twenty-two through twenty-three."*

Vice Chair McCaig: *"Again, that was also where we had the amendment to change . . . instead of ten days it's thirty days?"*

Mark Williams: *"That is correct. That deals with the amendment that you just approved. Ten working days has been increased to thirty calendar days."*

Vice Chair McCaig: *" . . . Other departments, what timeline are required to submit their budgets in?"*

Executive Officer Burton: *"We start the budget process early in September, and working through department by department. So, I'm submitting those budgets, this year has been particularly difficult because of Ballot Measure 47 adjustments and this question really getting this resolved. So everything has been a little out of whack. Normally, the initial budgets from the departments are required considerably ahead of that. It takes awhile to put all of this together. So, thirty days is a minimum, really."*

Vice Chair McCaig: *"And the Executive usually presents the budget to us the first or second week of February. . . ."*

Executive Officer Burton: *"And my assumption here is that there would be discussion going on prior to that in any case because of the allocation costs. There's a lot of working that goes on anyway. It's just the formal document . . ."*

Mark Williams: *"The idea here is to get MERC closer to its business cycle, and Heather can explain that better. It is difficult because MERC operates in a business environment and is an enterprise fund and we don't generally rely on any general fund appropriations. We have to get closer to our business cycle of our buildings' receipts and expenditures in order to budget more accurately. That's the major intent here is to try and get closer to that. Pages twenty-two and twenty-three, these are methods to enhance public notice of MERC potential actions."*

Vice Chair McCaig: *"Balancing to the other part which is removing the Council's earlier involvement. "*

Mark Williams: *"Correct, that is correct. . . . In the budget section that we just went over, there's an additional feature here. MERC was not under a previous requirement to take public testimony on matters. Although that is customary. Your body here and most other public bodies are required by their own ordinances to accept public testimony. MERC was not. It never was even when it was the City ERC, it was not, although it was customary. We wrote into the budget procedure a requirement that MERC accept testimony from interested persons. That's part of the recognition that there's a lowered timeframe in submitting the budget over here. We wanted to make sure there was a public process that went on with notice prior."*

Councilor Naito: *"In looking at it, so what effectively we're doing on the public testimony part is taking away the standing of an 'aggrieved person' and substituting an ability to testify. Is that what we're doing?"*

Mark Williams: *"That's two different concepts. The budget part of it is where people are being given a clear ability to come in and make their case. With respect to the review process, the review process didn't apply really to the budget at all. No individual ever had a right to request Council review of the MERC budget. The MERC budget is simply in reality a request to the Metro Council. The Metro Council still has the full power to do whatever it wants with the MERC budget. You don't have to just adopt it 'cause MERC adopted it. It comes to you as a request.*

"In terms of notice, the new requirements are that the Commission provide notice, written notice of its agenda for each meeting, five working days prior to each regular meeting. And that that notice be sent not only to all elected Metro officials, but to each city and county in the Metro region which is a practice the Metro Council follows I'm told. In the event of a special meeting, MERC is required to provide each Metro elected official with a copy of the proposed agenda twenty-four hours in advance, either by fax or hand delivery and a telephone call. That's to make sure that you are all aware of what the agenda is prior to the meeting."

Vice Chair McCaig: *"And again, this is replacing the notice . . . this is replacing (unintelligible) MERC has taken an action and before the action (unintelligible) enacted that the Council has ten days to which (unintelligible). Okay?"*

Mark Williams: *"The remaining where you see a lot of struck out language, we've already gone over that, that's the whole review process being struck in pages twenty-four through twenty-nine which I've already discussed unless you have further questions on that subject.*

"The remaining changes occur on page twenty-nine and that actually you should refer to your amendment because you changed it just now, second page of the amendment package, paragraph D. What you would do now is require MERC to have business plans for each of its facilities and to update those plans as needed. Business plans would be sent to all Metro elected officials, and in all likelihood it would have a far wider distribution than that, to all our stakeholders. The last time MERC went through a business plan process, it was a very expensive process. There was input from all quarters. That's not to say that every constituent group was happy with every single aspect of it, but there was a tremendous amount of discussion on that basis. The Commission's reporting requirements to this Council through the Regional Facilities Committee would include reporting on its progress on its business plans on at least a quarterly basis or more frequently as directed by the Committee. The idea here again is to operate more like a business to report, to have a valid business plan for each of our facilities, and to report at least quarterly to our parent body on how we're doing, or, more often as necessary."

Councilor McFarland: *"Madame Chair, I don't mean to jump the gun on this, but it seems to me we've covered everything in here. I would like to speak to one thing you brought up as our third rap, so to speak, in reference to what we have been something remiss. That has to do with our commitment to regional funding. There are a few places in here to which it's referred obliquely, but it is my intent, (and indeed I'm going to talk to a representative from the City later today, Commissioner Kafoury) to bring that resolution forward to deal with that in a way that both the Council (and the City particularly was the one who asked for this) is comfortable and not have it a part of this . . . ordinance, but to make it its own*

separate piece that we address before this Council. I might add that we still have until March 19 to do that."

Councilor Naito: "There's a lot to learn here, but I'm just struck one thought I had which is: I think one of the difficulties I have with delegating the amount of authority that I think we would be delegating to you is I have no clear understanding of what exactly you might do with that. And it just strikes me that what might work for me is something more where the business plan is adopted and moved forward and approved by the Council and then the flexibility to operate within that plan is then delegated to you. And that might be a little different structure that I would be sort of interested in exploring as I think we're going to meet tomorrow or something so we could talk about it then."

Executive Officer Burton: "... Initially, Councilor McFarland and I and Mark sat down and I suggested a contract arrangement where we might contract with MERC. On second analysis, I think it's a little cumbersome to do that specifically and so the business plan is something that works because they do a business plan anyway and they have those in place in order to give us some ability to understand what we're measuring and I think that's a good track to take. That ought to be looked at a little further.

"On the question of regional funding, let me just make a comment about that. We need to remember, of course, that when we're talking about funding we're talking about facilities on the one case and you're going to operate them. There's a huge capital needs against the facilities over which we are potentially going to continue to manage here. At both the Performing Arts Center and at the Civic Stadium there are huge capital needs that need to be addressed. Those capital needs are such that there may be options to look at revenue bonds against those. My guess is that they're going to be general obligation bonds potentially to get to that point. Those are about facilities.

"Then there's a question of funding arts which is a different question. So, we need to make, I think, as we go forward with these things, to make certain we're addressing both of those issues for the commitment that seems to be here for us to try to help the arts generally which are the functions that go on inside those facilities and to deal with the ability to take care of the buildings themselves which has been the problem in the past. One of the reasons why we are right now is because there hasn't been attention paid to the capital nature of those facilities which in several cases are getting very old. So, we've got to address both funding causes."

Motion: Councilor McFarland moved to pass Ordinance No. 97-677A on to the Council.

Councilor McFarland said she would leave it up to Vice Chair McCaig when this ordinance would be presented to the full Council, based on Vice Chair McCaig's potential vote. She would like to pass it on to the Council, but the Committee does not have to attach a do pass recommendation. Councilor McFarland pointed out this Committee is the place where amendments should take place, however there is nothing that circumvents amendments at the full Council level.

Councilor Naito: "I would resist the motion to send it on. I think there are some real good ideas here. I'm interested in working on them further. I think we could address some of the concerns I have and with a bit more work on the package. So, I would be voting not to forward it on 'cause I think the work should be done here in Committee and the amendments worked on as well."

Vice Chair McCaig asked Councilor McFarland if she would consider and expedited Committee meeting scheduled for this. She felt the level of discussion had that day had been pretty good. She thinks the

Committee is struggling with some of the right questions and she thinks seeing seven struggle that way 'isn't particularly pretty' and maybe the Committee could work through a few more of the items. This is in order to make a collective recommendation to the Council which would be stronger.

Councilor McFarland agreed with an additional meeting to continue discussion. She invited the staff to come before the Committee again. Councilor McFarland agreed there would certainly be more questions when dealing with the full Council.

Daniel Cooper replied, in response to Mr. Morrissey's inquiry, the only notice needed to be given for the meeting is the normal notice given for a special meeting of the Committee. This would be at least twenty-four hours, but as much as is possible.

Councilor Naito: *"The scope of some of the changes here, realizing there are a lot of people who have been watching this, I just wonder whether it would also not be a good idea to have at least a time for public input at the next meeting. If no one comes to testify, that's fine, but there may be people who are extremely interested in some of the provisions, pro or con, or having us work on them. I think they should be given an opportunity to be heard if there are people in that position."*

Councilor McFarland: *"This is an ordinance. We have to have public hearings on ordinances. We don't even have an option. It certainly would be my intent to give people an opportunity to speak anytime they wanted to . . . Sometimes we open a public hearing when we don't have anybody who wants to speak just in case somebody decides to. The answer is we have to, we have no option."*

Vice Chair McCaig: *"Would the other Councilors be available at the regularly scheduled meeting time next Monday? I think it might be an advantage to let people in the audience know if we could right now. Is that too tough?"*

Councilor McFarland declared a Special Meeting of the Committee for Monday, January 27, 1997 at 3:30 p.m. for the purpose of continued Committee discussion of Ordinance No. 97-677A. She invited those present to speak at the Special Meeting if they wished and also to talk with individual Members of the Committee prior to the Special Meeting.

Vice Chair McCaig: *"I really hope that you don't leave this room feeling panic stricken, that this really was our first opportunity to walk through this. I think it serves us well to do this before we take this to the full Council. So, indulge us for at least a week to mull over some of this stuff. Thank you."*

Chair McFarland reassumed the gavel.

4. **Ordinance No. 96-670: An Ordinance Amending the FY 1996-97 Budget and Appropriations Schedule in the Zoo Capital Fund by Transferring \$103,206 from Contingency to Materials and Services to Pay for September Election Expenses and Declaring an Emergency.**

Chair McFarland stated it to be her belief this had been discussed in Finance Committee as well as previously in this Committee.

Motion: *Councilor McCaig moved for approval of Ordinance No. 97-670 for forwarding to the full Metro Council with a do-pass recommendation. Councilor Naito provided a second.*

Vote: *The vote was 3-0 (unanimous) in favor of moving forward Ordinance No. 97-670 to the Metro Council with a do-pass recommendation.*

Councilor McCaig carries the Motion.

5. Adjourn

There being no further business to come before the Committee, Chair McFarland declared the Meeting adjourned at 12:13 p.m.

Prepared by,

Cora Elizabeth Mason
Council Assistant