

## MINUTES OF THE METRO COUNCIL MEETING

February 4, 1999

Council Chamber

Councilors Present: Rod Monroe (Presiding Officer), Susan McLain, Ed Washington, Rod Park, Bill Atherton, David Bragdon, Jon Kvistad

Councilors Absent:

Presiding Officer Monroe convened the Regular Council Meeting at 2:06 p.m.

### 1. INTRODUCTIONS

None.

### 2. CITIZEN COMMUNICATION

None.

### 3. EXECUTIVE OFFICER COMMUNICATIONS

**Councilor Kvistad** expressed concern about comments that were in the Oregonian concerning negotiations that Metro was in on a solid waste contract. It was the policy of this agency and a long standing practice of the agency not to talk to the press about these negotiations under any circumstances, whether to confirm or not to confirm. To do so was a violation of what Councilor Kvistad cared about and what we should be doing here. He wanted to address this directly to the Executive Officer. He noted that a certain reporter happened to be sitting in those executive sessions and knew all of the negotiations. To confirm or deny when Metro was in negotiations with a company of any kind, he found inappropriate. He said that he had received the letter from the Executive Officer concerning the article. He reinforced that we should not be talking about this issue to the press, it was inappropriate. He felt talking to the press at all, particularly someone who had sat in on the executive sessions concerning the negotiations, was a real problem for Councilor Kvistad. He felt it was a bad precedent to set and caused him a great deal of discomfort.

**Executive Officer Burton** said he wasn't sure what it was that caused the difficulty. Metro was in negotiations with that group. Nothing that was discussed in that article that emanated from him was anything regarding the negotiations. He said that Mr. Nokes had interviewed him concerning infrastructure. At the end of the discussion, Mr. Nokes indicated he had been to Salem, talked to several legislators who indicated to him that Metro was indeed backing off of our position because of the pressure that they had brought against Metro due to the jobs in that they had in that area. Mr. Burton had asked Mr. Nokes which legislators that he had talked to and Mr. Nokes indicated that he could not tell Mr. Burton. Mr. Burton then informed Mr. Nokes that there was a legislator that had called him indicating his concern about the constituents who worked in that region. He said if you read the last paragraph of the article, that was all he had said. The rest of the information Mr. Nokes gleaned and was speculative on. Mr. Burton acknowledged that he could have said, 'I refuse to answer that question'. Mr. Nokes would have written something anyway. Mr. Burton said that he thought it was important to clarify for the media exactly what the question was about the legislative role and what was going on. This was all he had done. He said

he had calls from reporters who had indicated to him that they had been called by council members on other matters.

**Councilor Kvistad** acknowledged that it would be very rare that a reporter would get a call from him but he did understand.

**Mr. Burton** indicated that Mr. Nokes and the reporter from the Daily Journal of Commerce had both indicated that Councilor Kvistad had called them about Expo. He noted that sometimes the story started out being about one thing and ended up being about something else. He said he had a responsibility to deal with the negotiations in an executive manner and they were doing that. His concern, and the reason he had written a note to the council, was to indicate to the Council that as far as he was concerned no one had changed their mind and he had not changed his mind either which was the way the story read. He thought the story was very misleading and thought it was an embarrassment to the Oregonian that they would have that sort of story out there. Mr. Burton reiterated that to tell the Oregonian that he had not comment usually meant that they were going to print something anyway and so he felt that any misinformation should be clarified.

**Councilor Kvistad** noted that he had just wanted this on the record.

**Executive Officer Burton** said he would be participating in the legislative update later in the agenda.

#### 4. AUDITOR COMMUNICATIONS

None.

#### 5. MPAC COMMUNICATION

**Councilor McLain** said they had not had an MPAC meeting since the last update. The Council was sponsoring Local Partner Forums, Wednesday evening and Saturday morning, to work through some local issue. She announced that there would be a coordinating committee this next week.

#### 6. METRO LEGISLATIVE UPDATE

**Dan Cooper, General Counsel**, noted materials before council on legislative matters. He added that the council and the executive officer had been working on some general principles for the lobbyist to follow in support or opposition to bills in general and what Metro's position was at the legislature. He indicated the lobbyist was unable to meet with council due to a scheduling conflict. He suggested the council review the materials and follow up with discussion during the Tuesday Council Executive Officer Informal meeting concerning agreement and endorsement of those principles. The lobbyist would be present at the next regularly schedule meeting, February 11th. He suggested that council might wish to start talking about some specific bills and take some formal positions even if that position was a position of neutrality. One such bill was SB 87, the 20 year land supply for retail, industrial and commercial uses within urban growth boundaries. This issue was probably the hottest issue at the moment that council should be aware of. He said that Mr. Stone's handout included the staff's review of that bill and reaction to how it effects Metro.

**Councilor Atherton** clarified, if the council waited until next Tuesday for discussion at the Informal Meeting, would that be enough time to weigh in on this question?

**Mr. Cooper** responded that in his conversation with Mr. Phelps, Mr. Phelps had said that the Senate committee would hold another hearing on this bill and the committee would probably be taking action on it in the near future but this had not been set yet. He thought it would not be set before the Informal Meeting on Tuesday. The bill did have a hearing a week or so ago and at that time Mr. Phelps testified because there was interest in what Metro's position was. Mr. Phelps described what Metro had done in the past and had indicated that the Council and the Executive had yet to take a position on the bill and therefore, he had no position to convey. The proponents of the bill were looking for a Metro endorsement, the opponents of the bill were looking for Metro support in opposition to the bill. This was an active land use topic in Salem right now and we obviously had a big impact on land use with the urban growth boundary, there was an anticipation that the Council would take some position, even if that position was that they were neutral.

**Presiding Officer Monroe** noted the staff recommendation in the packet. He asked Mr. Cooper if he was recommending that the Council not take action today.

**Mr. Cooper** said that Mr. Phelps had asked about the opportunity to speak about this. He felt it would probably be prudent to hear from him as to what he thought was going on in Salem. Mr. Cooper would defer to Mr. Phelps' judgment on this issue. He noted that no matter what position the council took, they could not get sued.

**Mr. Burton** said that the bill was brought up on rather fast fashion before the committee and what Metro did, without taking a position on it, was to raise some question about the bill. Mr. Burton said the concern he had with the measure was the definition of what was meant by the amount of land we have to have. Metro forecasted out 20 year land supply for residential and employment purposes. Employment was a very broad description and his concern was specific types of industrial, retail or commercial use, it was difficult to measure the amount of employment that might go on a specific piece of property. You might have a retail area that had five people or one that had thirty people. It seemed to him that the same people that were proposing that we have these definitions in this land supply might be actualizing their own worst possibility where a local jurisdiction said because we want to get certain types of employment density and certain types of properties we were going to designate that only certain types of retail could be built in certain types of places which was an anathema of the same people that wanted this. The broader the definition generally was a better track and the issues he would raise around this would be how did it really help us with land use planning vs. what did it do to economic development issues which may not necessarily be the same thing.

**Jeff Stone**, Chief of Staff, suggested the councilors pay attention to, and read over the weekend, the general principles which the Presiding Officer and the Executive Officer had established and which gave the lobbyists at least a blue print of the first month. He encouraged the councilors to read that and see if there was anything they would like to change. Secondly, how the bills were reviewed was important. He noted the last part of SB 87 allowed amendments, so the support or opposition listed by staff was their position at the staff level but council could also ask for amendments.

**Mr. Burton** added that those principles were begun last year with Councilors Kvistad and McLain.

**Councilor Washington** realized that the Executive Officer had every right to say what he wished to the press. However, he suggested that the Presiding Officer and the Executive Officer talk

about this on behalf of the council. He felt as the whole legislative process moved forward there would be times when things would happen quickly. He said as Chair of the Solid Waste Committee, he treated the issue very confidentially when it came up because they were in negotiations. He felt the negotiating team should handle it, and they would let him know when it was okay to talk about. He was concerned about the Oregonian article and felt this was critical and sensitive.

**Mr. Burton** clarified that the Executive Officer was responsible for the negotiations and was the negotiating team.

**Councilor Atherton** said if there was agreement that they would be discussing this at the informal meeting on Tuesday so they could come to some resolution with Mr. Phelps.

**Presiding Officer Monroe** responded yes and Mr. Phelps had asked for the opportunity to weigh in and then the public would have the opportunity to comment about SB 87 and what should or should be done about it at the next council meeting.

## 7. CONSENT AGENDA

7.1 Consideration meeting minutes of the January 28, 1999 Regular Council Meeting.

**Motion:** **Councilor McLain** moved to adopt the meeting minutes of January 28, 1999 Regular Council Meeting.

**Seconded:** **Councilor Washington** seconded the motion.

**Vote:** The vote was 7 aye/ 0 nay/ 0 abstain. The motion passed unanimously.

**Councilor Park** commented that the minutes should reflect on behalf of Councilor Atherton and himself that they were glad that what took place last time in jest and good fun was over and now they could get to serious work.

**Councilor Kvistad** reminded Councilor Park that they would be freshman councilors for a whole year and Councilor Park reminded him that the most junior councilor, by loss of the coin toss, was Councilor Bragdon.

## 8. RESOLUTIONS

8.1 **Resolution No. 99-2743**, For the Purpose of Recognizing a bad debt write off related to invoice #53814, issued to Associate Marketing Research.

**Motion:** **Councilor McLain** moved to adopt Resolution No. 99-2743.

**Seconded:** **Councilor Kvistad** seconded the motion.

**Councilor McLain** said this item was before council because it was a financial issue. The resolution talked about writing off a bad debt in the amount of \$28,506. She said Metro Code section 5.0.2.06(h) provided the Executive Officer and staff, in pursuit of accounts receivable, and in the likelihood that the debt did not justify future collection costs, could write off the debt. She said this debt would cost more than would be collected.

**Dick Bolen** said the company collected data for Metro for several years. They took vacant land data and remarketed it themselves. The distinction here was that the actual cost to Metro of what was provided was a little over \$3,000 which was the printing of the reports. The \$28,000 represented a loss of revenue. Metro actually netted about \$1,400.

**Councilor Park** asked for an estimate of staff time involved.

**Mr. Bolen** said the data sets were data sets Metro already had so that would amount to the time to create the maps and accompanying data sets. He guessed staff time would be in the \$4,000 - \$5,000 range.

**Councilor Park** noted that a net loss to Metro of \$4,000 - \$8,000 would be more accurate. Mr. Bolen agreed if staff time was added there would be a net loss.

**Councilor Atherton** asked if there was a policy for working with collection agencies.

**Carrie Gilbreth** said there was. The collection agency they currently used could be assigned to that agency. Because of the size of the balance it had been sent to in-house legal counsel to attempt to collect it. What they found was that Associated Marketing Resources was virtually bankrupt and had \$180,000 in outstanding liabilities.

**Councilor Atherton** asked if the unsold atlases had been recovered and was told they had been recovered in July 1996.

**Councilor Kvistad** commented that writing off a bad debt was an uncomfortable area for him but there were certain times when there were no assets and no other resources to collect. He said this was a rare occurrence and he did not want it to reflect poorly on the department.

**Councilor McLain** said she felt that this was good practice and it was time to cut the loss.

**Vote:** The vote was 7 aye/ 0 nay/ 0 abstain. The motion passed unanimously.

8.2 **Resolution No. 99-2751A**, For the Purpose of Appointing Nominee Ted Kyle to the Metro Committee for Citizen Involvement (MCCI).

**Motion:** **Councilor Washington** moved to suspend the rules for consideration of Resolution No. 99-2751A.

**Seconded:** **Councilor Bragdon** seconded the motion.

**Councilor Atherton** said generally he did not find suspending the rules a good thing to do unless it was done for a very good purpose. He felt in this case there was controversy and acrimony which he felt needed to be used creatively to bring clarity to the situation. He said it should never be to beat up on an individual, obfuscate, confuse or destroy. He said perhaps this was a good time to suspend the rules.

**Vote:** The vote was 7 aye/ 0 nay/ 0 abstain. The motion to suspend the rules passed unanimously.

**Motion:** **Councilor McLain** move to adopt Resolution No. 99-2751A.

**Seconded:**      **Councilor Washington** seconded the motion.

**Councilor McLain** said it was her honor to bring forward Ted Kyle for the MCCI nomination. She said this candidate had shown an interest over a long period of time and had been chosen from a field of 10 appropriate candidates. The nomination had been passed from committee with a 3-0 recommendation. She felt it was time to let Mr. Kyle do the good work he suggested he was ready to do. She appreciated the cooperation and coordination that had been needed with MCCI and staff.

**Councilor Kvistad** said he wanted to be sensitive to Councilor Atherton's concerns about a MCCI representative in his district. He said a couple of years ago he had concerns about an appointment he had not been involved in. He said he would vote in favor of this but said the council had a role to play here and this was partly due to the transition of counselors.

**Vote:**              The vote was 6 aye/ 1 nay/ 0 abstain. The motion passed with Councilor Atherton voting no.

**Presiding Officer Monroe** recessed the regular council meeting and convened the contract review board.

## **9.      CONTRACT REVIEW BOARD**

9.1      Deliberation on Appeal by Hattenhauer Distributing Company of Executive Officer's Rejection of Appeal of Award of contract for Provision of Diesel Fuel to Devin Oil Company, Inc.

**Marv Fjordbeck**, Senior Assistant Counsel, reviewed the final appeal of Hattenhauer Distributing Company of the Executive Officer's rejection of a previous appeal involving the award of contract for diesel fuel. He explained the procedure. He said the council approved a resolution on November 12, 1998 to authorize a RFB for the provision of diesel fuel. He explained the process that had resulted in Devin getting the bid and Hattenhauer being rejected.

**Councilor Atherton** declared an ex parte contact from riding the bus to the Arlington dumpsite and observing the sites.

**Councilor Park** claimed the same contact plus visual contact from about 5,000'.

**Councilor Bragdon** said he had also been on that bus but had no contact with the appellant or Devin Oil.

**Presiding Officer Monroe** asked the appellant to come forward. He was not present.

**Mr. Fjordbeck** suggested hearing from legal and REM staff to complete the record in this matter.

**Councilor Washington** asked legal staff if Mr. Hattenhauer had been notified of this hearing.

**Mr. Fjordbeck** said the OGC had in fact taken extra measures to be sure he knew of the hearing by informing him ahead of time and telling him of the types of material he could file and the time of the hearing. Additionally, it was on the regular council agenda that was released last week. He

said it appeared that legal counsel for the appellant was aware of the upcoming appeal because they had filed an additional letter with the Presiding Officer's office which was received in OGC yesterday.

**Mr. Fjordbeck** continued that Hattenhauer was in front of Council as the disappointed bidder and disagreed with the specifications for the purchase of diesel fuel which the Metro Council approved last November. Having at least 3 times previously failed to convince the Metro Council and the REM committee that the specifications were unnecessary, he now brought this appeal and failed to appear. He appeared now to have abandoned 4 of his 8 grounds for appeal because they relied at least in part on the Attorney General's model of public contracting rules. He asked if the council desired background on this.

**Presiding Officer Monroe** said since the appellant had not showed it would probably not be necessary for the full background to be presented.

**Councilor McLain** said the package they had been given as privileged communication between client and staff enabled them to see much of the past work.

**Mr. Fjordbeck** continued with the 4 remaining areas of appeal. First, the selection of Devin was not made impartially, that the branded fuel requirement that was in the specifications deterred competition. He asked Mr. Geyer to address the need for the specifications and how they came about.

**Chuck Geyer, REM Planner**, briefed the council on why Hattenhauer's bid was rejected. He distributed copies of the letter sent to Hattenhauer Distributing (a copy of which can be found with the permanent record of this meeting) describing the 5 reasons why his bid was rejected.

**Presiding Officer Monroe** opened a public hearing.

**Doug Devries, STS**, 32234 11th Ave SW, Federal Way, WA 98023 clarified why they had insisted on some of the specifications. 1) Location: he felt the location on Highway 19 between Arlington and the landfill was of the highest benefit to both Metro and STS. He also noted that STS had a desire to be a good neighbor and felt this was an out of the way facility which would not intrude on the environment. 2) branded fuel had fewer impurities which could cause potential engine problems and service disruptions. 3) vehicle cueing: when trucks left or returned to the landfill close together as a result of conditions beyond their control, they sometimes needed the room to "bunch up" to keep the public safe. 4) it was the position of STS that non-commercial customers but in the interest of safety they should use a separate pump island. He noted that STS had 10 years of experience which led to these conclusions.

**Presiding Officer Monroe** asked if the trucks that sat overnight in Portland were also "topped off".

**Mr. Devries** said yes, they were topped off at fueling sites near the transfer stations in Portland.

**Councilor Atherton** asked what the difference in cost to fuel Gilliam County versus Portland on a per gallon basis.

**Mr. Devries** did not know off hand. He did not think it was that significant however.

**Presiding Officer Monroe** closed the public hearing.

**Motion:** **Councilor Kvistad** moved to reject the appeal of Hattenhauer Distributing Company and affirm the contract with Devin Oil Company.

**Seconded:** **Councilor Park** seconded the motion.

**Councilor Park** commented that not having water in the diesel fuel was important. He also commented on the amount of room needed to maneuver the trucks in the fueling bays.

**Vote:** The vote was 7 aye/ 0 nay/ 0 abstain. The motion passed unanimously.

## 10. COUNCILOR COMMUNICATION

**Councilor Park**, referring to the MCCI nomination resolution, said he did not believe time was a factor of the resolution, but that it was just a question of making it expedient. He said an MCCI member in his district had spoken to him and they were comfortable with the process and felt it was fair. Other comments he had heard that being in a certain occupation disqualified the candidate seemed strange in that they wanted citizens to bring their expertise in other areas so there was a nice mix. He felt that one person out of 27 would not have undue influence one way or the other. He wanted the public to be aware that they were not trying to rush anything through or hide anything by this action today.

**Councilor McLain** added that her experience as liaison with MCCI showed them to be diligent in making sure their nomination and selection process was clean, concise and efficient. She noted a comment from Ms. Woodruff, MCCI, that they would be willing to do more in the way of advertising for the position if they had the budget to do so.

**Councilor Washington** asked Mr. Morrissey to continue work on the Ethics Code next Tuesday and Wednesday.

**Michael Morrissey, Senior Council Analyst**, said the Operations Committee was scheduled next Wednesday at 4 PM in Room 274.

**Councilor McLain** said she would be happy to be of assistance at that committee but could not attend at that scheduled time.

**Presiding Officer Monroe** said the informal meeting would have an update but it was possible to have a session to work on it after the informal meeting. After discussion a work session for the Metro Operations Committee to meet Tuesday after the informal meeting and Wednesday about the same time to take up once again consideration of the ethics code. They would then take it up again at their regularly scheduled meeting the following week if they did not complete their work

**Councilor Kvistad** requested that a retreat or work session to talk about general policy be set as soon as could be scheduled.

**Presiding Officer Monroe** asked Mr. Stone to note that.

**Councilor Atherton** seconded the request for a Goal Setting meeting. He pointed out that at the last MPAC meeting they had indicated they wanted to do the same thing to bring their wish list to council.



**Presiding Officer Monroe** said the time available was pretty well blocked in but it would happen in the next couple of weeks or so for just the council to meet.

**Councilor Bragdon** hoped nothing would deter Councilor McLain in terms of moving ahead with the coordination of the work plan with the urban growth report.

**Councilor Washington** said nothing would slow down Councilor McLain.

## 11. ADJOURN

There being no further business to come before the Metro Council, Presiding Officer Monroe adjourned the meeting at 3:21 p.m.

Prepared by,

Chris Billington  
Clerk of the Council

Document Number	Document Date	Document Title	TO/FROM	RES/ORD
020499c-01	2/4/99	Senate Bill 87 email	TO: Jeff Stone, Time Raphael and Dan Cooper FROM: Ray Phelps, Pacwest	
020499c-02	2/4/99	Legislature packet	TO: Metro Councilors and Mike Burton FROM: Jeff Stone Chief of Staff	
020499c-03	12/1/98	Letter concerning bid on RFB for the provision of diesel fuel to Metro	TO: Doug Hattenhauer FROM: Chuck Geyer, Project Manager	
020499c-04	2/2/99	Letter concerning Hattenhauer appeal	TO: Metro Council FROM: Foster, Peachey and Young	