

MINUTES OF THE METRO OPERATIONS COMMITTEE MEETING

Wednesday, February 3, 1999

Metro Council Chamber

Members Present: Ed Washington (Chair), Bill Atherton (Vice Chair), Jon Kvistad

Others Present: Rod Monroe, Susan McLain, David Bragdon, Rod Park

Chair Washington called the meeting to order at 3:36 PM.

1. INTRODUCTIONS

None.

2. CITIZEN COMMUNICATIONS

None.

3. CONSIDERATION OF MINUTES OF THE METRO GOVERNMENT AFFAIRS COMMITTEE, NOVEMBER 16, 1998

Chair Washington asked for a motion to accept the minutes rather than approve them, as none of the current members of this committee was on the Government Affairs Committee last year.

Motion:

Chair Washington moved to accept into the record the minutes of the Government Affairs Committee of November 16, 1998.

Vote:

Chair Washington and Councilors Atherton and Kvistad voted aye, and the motion passed unanimously.

4. CONSIDERATION OF MINUTES OF THE METRO OPERATIONS COMMITTEE, JANUARY 20, 1999.

Motion:

Chair Washington moved to approve the minutes of the Metro Operations Committee of January 20, 1999.

Vote:

Chair Washington and Councilors Atherton and Kvistad voted aye, and the motion passed unanimously.

5. RESOLUTION NO. 99-2751A, FOR THE PURPOSE OF APPOINTING NOMINEE TED KYLE TO THE METRO COMMITTEE FOR CITIZEN INVOLVEMENT (MCCI)

[Editor's note: this resolution had been passed out of this committee on January 20, 1999. It was considered at Council on January 28, 1999, but sent back to committee for reconsideration in response to concerns expressed by Councilor Atherton.]

Councilor Atherton said he understood the MCCI bylaws to require that open positions be advertised and that the elected official from that district be contacted to do outreach to recruit potential applicants. He said in this case the position had not been advertised and only one person had been considered. He requested that the appointment be delayed to allow time to advertise and to actively recruit applicants. He noted that there had been a change in Metro Council representation since the position opened.

Councilor Kvistad said he had met with MCCI members and read a memo from Councilor Bragdon on this subject. He expressed concern about the process that led the committee to this situation. He noted that a few years ago he had

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objected to an appointment, not because of the nominee's qualifications, but because he as the Metro representative of that district had not been consulted. He suggested addressing the process issue.

Councilor Bragdon, current Council liaison to MCCI, said Councilor McLain was the liaison to MCCI when the position first opened. He asked her for her comments.

Councilor McLain said that Metro has bylaws covering the nomination of new members. She said in making this nomination, all bylaws and all committee processes had been followed. She said there was a transition issue, in that Mr. Atherton was not on the Council when the process began. She said he was made aware of the nomination out of courtesy and was asked to review it. She said in addition, all committee processes had been followed. The resolution received unanimous approval from this committee on January 20, 1999, and was sent on to Council. She said she and Mr. Bragdon had attended the MCCI meeting on January 21, 1999, and congratulated Mr. Kyle on his pending appointment, thanking him for attending even before his official confirmation. She then learned that Councilor Atherton wanted to remove the nomination. She said she believed Councilor Atherton had had the opportunity to review the nomination. She said that the chair of this committee had brought the nomination back to committee out of courtesy to Councilor Atherton, who is the current Metro representative of that district. She urged the committee to now proceed with a vote.

Councilor McLain said in her view MCCI has done a commendable job attracting a wide variety of people for membership. That has not always been easy. MCCI does press releases and asks the appropriate Metro Councilor to help with the recruiting. but the well of applicants often runs dry. In her district, for example, two positions have been open for some time. She said in this case the process had been followed and it is now time to vote on a worthy candidate.

Councilor Bragdon explained the memo he had distributed in support of the procedure that brought the nominee before the committee. He noted that the nominee has been attending MCCI meetings and that came well-recommended. He noted that all committee members had had an opportunity to review the nominee's qualifications before the previous vote. It has come before this committee again out of courtesy to the Councilor who had reservations about it. He urged the committee to proceed with a vote.

Councilor Atherton said the bylaws require that the position be advertised. He did not believe the advertising had been done more recently than 1994 or 1995. He said a number of applications had been received in the interim, the most recent from Mr. Kyle, in 1997. He did not believe that met the test of advertising for the position. He said MCCI had simply reviewed the applications already on file and chosen the one that happened to be most recent. He said this was strictly a process problem. He apologized for not catching the problem the first time it came before the committee. He said the frequency of required advertising needed to be clarified in the MCCI bylaws, and he suggested that the bylaws be changed to require advertising every time an opening occurs.

Chair Washington recognized Aleta Woodruff, Chair of the MCCI nominating committee.

Aleta Woodruff, 2143 NE 95th Place, Portland, chair of the MCCI nominating committee, said 10 applicants were on file for District 2. She said time was not a factor in selecting nominees. She noted that some of MCCI's most active members had waited a long time for a vacancy to occur in their district, as the terms of office are three years with the possibility of another three-year renewal. She said if newspaper advertising were required, MCCI would need a larger budget. She said she had requested at every nominating committee meeting for a newspaper advertisement to all areas. She said this request had never been approved because of lack of funds. She said in lieu of that, MCCI had requested a one-inch addendum to the Council's regular announcement that appears in the Oregonian. That addendum would notify citizens of openings and invite them to attend a meeting and fill out an application.

Ms. Woodruff said the bylaws had been followed precisely in making this nomination in that MCCI has a current list of all applicants who might be available in every district. Mr. Kyle's application, regardless of the date it was received, was by far the best. He was by far the most qualified. She said MCCI did not advertise for this particular position because it had 10 people already on file. She said the bylaws say "if needed" for newspaper advertisements.

Councilor Atherton said he understood the budget problems. He asked for clarification on the phrase, "if needed." Ms. Woodruff said that was the wording in the bylaws.

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Councilor Monroe said he was concerned about how this process has made Mr. Kyle feel. He said Mr. Kyle has been an applicant for some time and was found to be the most able of the applicants. He said a strong MCCI with quality members is important to Metro. MCCI's input is critical to Metro's success. He said he hoped Mr. Kyle would not consider what has happened with this process as a slap, and that he hoped Mr. Kyle was still willing to serve. He urged the committee's approval.

Councilor Atherton said he had not intended this to be a slap at Mr. Kyle. He had intended to question the process. He suggested a change in the bylaws to require advertising whenever an opening occurs. He questioned the wording of the bylaws. He asked for time to check on the exact wording.

Chair Washington called for a three-minute recess so Councilor Atherton could verify the wording of the bylaws.

Councilor Atherton read the wording, "Metro will advertise openings on the Metro CCI as needed through the year, to citizens of the region and will notify recognized neighborhood association and citizen participation organizations of openings on the Metro CCI." He agreed that the wording was there, but he disagreed with the process.

Councilor Washington said the problem lay in the transition as a result of the recent election. He said in the future, care will be taken to avoid this kind of problem.

Motion:

Councilor Kvistad moved to send Resolution No. 99-2751A to a meeting of the full Council with no recommendation.

Vote:

Chair Washington and Councilors Kvistad and Atherton voted aye. The vote was 3/0 in favor, and the motion passed unanimously.

Councilor Monroe said this resolution would be considered by the full Council on Thursday, February 4, 1999. No carrier was assigned at this time.

6. ORDINANCE NO. 99-795, FOR THE PURPOSE OF ADOPTING A CODE OF ETHICS FOR METRO OFFICIALS AND REQUIRING REGISTRATION OF LOBBYISTS

Councilor McLain asked Dan Cooper, Metro General Counsel, to provide a two-minute summary of this ordinance.

Mr. Cooper said this ordinance adds new provisions applicable to Metro officials and employees that do not now exist in the Metro Code nor in state Law. In doing so, it wraps up some provisions that already exist in the Metro code. In summary, the ordinance does the following:

- prohibits any Metro employee or official from receiving gifts from anybody who is reasonably known to have a legislative or administrative interest in Metro. It creates two minor exceptions to the State's definition of "gift," by allowing plaques and mementos with little or no intrinsic value as well as ceremonial gifts received by Metro officials on behalf of Metro that subsequently become Metro property.
- recognizes and endorses a provision that is already in state law on "whistle-blowing."
- requires Metro officials to file financial reports with the Metro Council. Elected officials are already required to file those reports. This extends that requirement to Metro department heads and MERC commissioners.
- places greater restrictions that contained in state law on receipt of meals and entertainment by Metro. Metro officials means elected officials, department heads, and MERC commissioners. The limitation allows meals, but places a dollar limit on each meal, tied to IRS regulations. There is a prohibition in general against the receipt of any form of entertainment or tickets to events, with a couple of narrow exceptions for events held at Metro facilities.
- bans receipt of reimbursement for the cost of travel to and attending events, except in cases where Metro would have paid for attendance anyway. That applies only to Metro officials.
- restates and clarifies state law that applies to Metro employees and officials that prevents abuse of office by making personal use of offices or property of Metro.

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- carries over an existing prohibition against Metro's doing business with Metro officials either while they are employed or in office, or for one year thereafter.
- holds Metro employees to a higher standard of disclosure of their personal interests on anything relating to Council policy.
- requires paid lobbyists to register with the Council and disclose whom they represent.

Chair Washington said he would like to proceed with consideration of this ordinance by addressing each amendment in order. He asked Michael Morrissey, Council Analyst, to explain the materials he had prepared.

Michael Morrissey, Council Analyst, called the committee's attention to a table he had prepared that summarizes all the amendments he had received as of yesterday. Another packet contained the amendments as written. A third packet, which Mr. Morrissey had just received and handed out, contained Councilor Park's version of the entire ordinance. (All of this material is attached to the meeting record.)

Chair Washington said he would soon open a public hearing. After the hearing he would ask Councilors McLain and Monroe to explain the proposed ordinance, as they were the Councilors who developed it.

Chair Washington opened a public hearing on Ordinance No. 99-795 at 4:15 PM.

Robert Liberty, 1000 friends of Oregon, 534 SW Third Ave., Suite #300, Portland, OR 97204, said he supports Metro's having an ethics code. He supports the prohibition against receiving gifts and the disclosure of interest of lobbyists. He strongly recommended adding a provision addressing receipt of political contributions. He said political contributions constitute the primary means of influencing. He also suggested including a provision that applies to family relationships in addition to business relationships.

He suggested that the focus of the ordinance be on the actions of employees and officials, not on those of lobbyists. He objected to a proposed provision that required lobbyists to report expenditures on lobbying efforts. His objection did not arise from the fact that his organization could not easily provide those records; he questioned the value of the records in providing useful information on the effectiveness of the lobbying effort. Referring to Section 2.17.090, (a) (1) of Councilor Park's version of the ordinance, which proposes reporting requirements for lobbyist's expenses, he noted that salary was not on the list of things that needed to be reported. He described a potential application of that requirement, which would require a fairly sizable annual report but in his view would not produce any information of value regarding ethical behavior. He also said those reports would not reveal any relationship between lobbying expenditures and Council decisions. He asked whether ethical behavior might be more accurately determined by what the Council actually did rather than how much money the lobbyist spent trying to influence the Council.

Mr. Liberty noted that lobbyists and lobbying are regulated by the State, and the definitions are different from those of the Internal Revenue. He said the different definitions would produce confusion. He reiterated his support for disclosure and for a strong ethics system. But he questioned the value of this information in achieving that goal. He urged the Council to "maintain the appearance of ethical behavior" by looking to things that might create a conflict of interest--i.e., gifts, family relationships, business relationships, and campaign contributions. On campaign contributions, he said violations of the standard according to the amendment Councilor Atherton had submitted depends in part on how the person votes. If, for example, a Councilor received money as a campaign contribution but voted against the contributor, no one would question the ethics of the Councilor.

Councilor Park asked Mr. Liberty whether a possible change to the State's regulation, which would put a \$25 limit on each expenditure, would address his concern.

Mr. Liberty said no. He offered the example that the value of his time testifying today would be enough to require him to file a report. Mr. Park said that the Senate Bill would exempt travel time and not include pay. Mr. Liberty said that Mr. Park's amendment stated "the total amount of all moneys expended by the lobbyist for the purpose of lobbying." Following that is a definition of lobbying. Under that definition, his testimony today would be considered lobbying. He said he had spent more than \$25 in salary, payroll taxes, and benefits testifying today. He said the question is whether the amount of time the lobbyist spends trying to influence legislation provides a good way of measuring the amount of influence. He said under another scenario, a company might not spend much time lobbying directly but spend time and

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money doing other things to influence a vote. He said part of the problem is that the public thinks of expenditures as "winning and dining"--actually spending money on the Councilor. But, he said, the ordinance is not drafted that way--it is drafted as "lobbying activities," which would include giving testimony as we was doing right them.

Councilor Atherton called attention to an amendment he offered regarding campaign contributions. He asked Mr. Liberty to review his language to see if it conveyed the principle he was also concerned about. Mr. Liberty said Councilor Atherton's version did not include business relationships. He said he understood the concern to have a monetary limit, which might be melded with that concept. But he thought other things were also missing, such as disclosure requirements by the Metro Councilors. The second was a requirement of recusal. The third is an enforcement provision, which if the decision is subject to timely challenge, the decision would be void. The timely challenge part prevents someone from bringing a charge five years after the fact. He said all decisions would be subject to appeal, which he believed would be much more effective than thinking the government ethics commissions would prosecute a person.

Councilor Atherton explained that his amendment had been prepared quickly and with the advice of counsel. He said counsel had suggested more specific language that would offer a test that would be easier to follow. Mr. Liberty said the test could be used to narrow the scope of things that might be questionable. However, he said he believed other pieces had been left out of the redraft that are important.

Liz Callison, 6039 SW Knightsbridge Drive, Portland, said she supports Mr. Liberty's and Councilor Atherton's amendments. She said she had send e-mail amendments to several Councilors and she hoped they had had a chance to review them. She wondered why her suggested amendments had not been included in the key to amendments. She said she knew the committee did not want to discourage public comment, so she suggested including public input like this on the matrices. She said she had seen no other key for the public's comments.

She said that at the Growth Management Committee meeting the previous day, Presiding Officer Monroe reflected the sentiments of many when he described the continuing need to defend regionalism. She said she was interested in a defense of regionalism, but she thought people might have different ideas of what regionalism means. She said Metro's reputation would improve when it improved its ability to involve more citizens in its decisions. She said she hoped that the Council would see that although Metro's goals might seem to be in sync with what the citizens want, Metro's methods were often perceived to be at odds with many who live in this district. She asked the committee to consider the amendments she had submitted. The first relates to financial disclosure of campaign contributions. She said councilors who have taken contributions from contractors must declare those contributions and excuse themselves from negotiating or voting on such contracts. Metro councilors who have received campaign contributions from prospective Metro land-use applicants must excuse themselves from voting on urban growth boundary amendments or other land uses that could affect those applicants. Consultant or contractors with Metro should not be appointed as voting members of Metro's policy advisory committees or citizen advisory committees. She said she would like to see those people as non-voting members. But she did not think it would be appropriate for them to vote. She thought government employees or private consultants and contractors ought to have voting membership on Metro's technical advisory committees and represent their governmental jurisdictions on MPAC. Finally, she said that in the code there was a prohibition against doing business with certain Metro officials. She noted that the provision had a number of exceptions. She asked the committee to reconsider those exceptions. She thought the exceptions weakened the code.

Chair Washington explained to Ms. Callison that when amendments are sent by citizens to the Council, a Councilor had to introduce them. If amendments come in but are not introduced by a Councilor, no action can be taken on them.

Ms. Callison asked if that meant citizen's amendments should not be included in a key. Chair Washington said he was not necessarily saying that; he was saying that if a Councilor felt the amendment was something he or she wanted to bring forward, it would have been included.

Chair Washington asked if anyone else wished to testify. No one came forward, so he closed the public hearing at 4:30 PM. He invited Presiding Officer Monroe and Councilor McLain to introduce their ordinance.

Presiding Officer Monroe said this measure responds to the public concern that Metro adopt an ethics. He the subject of an ethics code was brought up last year, and it received a great deal of publicity. This was before he was on the Council. He believes it is in the best interest of the Council to approve a workable ethics code. He said the day he was elected

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Presiding Officer, he promised to make this a priority. He said the proposed ordinance represents the beginning structure for such a code. Like any piece of legislation, it needs more work. Amendments and adjustments are appropriate, and that is why it has been submitted to the committee. He urged every member of the Council to proceed in a positive vein to continue crafting a workable code for Metro. He does not believe Metro should rely on the state ethics code. He believed Metro should have a higher standard. He would like Metro to be more reflective of the public will and make its business dealings more credible than they would be if they followed only state guidelines. He urged the committee to proceed. He said he was flexible on the details. His goal is to have a code that works and one that goes beyond the state's meager attempts.

Councilor McLain addressed the main themes of the ordinance. One theme is that this code would cover the entire agency--Metro officials, employees, and staff. The reason for that is that after three years of discussing this, it became clear that the people believe it is not just the elected officials that need to project an ethical image, but everyone who works for Metro. She said this did not come about as a result of any great number of unethical instances, but it did arise because Metro staff members have been involved with the same lobbyists and same consultants as the Council.

Another theme is that there are two or three different ways to approach ethical behavior that provides the public with opportunities for review. First, you can put limits on yourself in the areas of gifts or mementos. Those who testified had addressed the issue of gifts and reporting. She said more than two years had been spent talking about which approach to take and two different ones have emerged: 1) no gifts, no meals, no entertainment; or 2) limiting gifts, meals, and entertainment.

The second approach recognizes that public officials attend many events and ceremonies where meals are served and mementos given. It also recognizes there needs to be a limit on the value of those things. She said this also addresses Metro expense accounts and identifies appropriate charges to those accounts. Another area is that of family and business relationships. She said the proposed ordinance had addressed that area many different ways, including using terminology and providing definitions to cover those relationships. She said an example of how this approach had addressed some of the concerns Mr. Liberty brought up could be found on the second page of the proposed ordinance, item (b).

She said elections had not been covered in the proposed ordinance, partly because the elections code already governs those issues. After discussing this with others, including the Metro auditor, it seemed that trying to work the elections code into an ethics code would muddy the waters and make the document less workable.

Councilor McLain noted that several amendments had been drafted for the proposed ordinance, including two she had written. She said some are word-smithing and others strengthen the language put forth in the document.

Finally, she addressed the issue of reporting. She said if most types of gifts or meals or tickets to entertainment are not allowed, there should not be much to report. The reason the reports and reporting are listed as they are is to make this chore as simple as possible for everyone. She said she understood there would be another approach proposed, and she looked forward to hearing it.

Councilor Park said his packet was not an amendment; rather it was a complete rewrite of the ordinance based on a different philosophical approach. He said that he had reviewed the previous work done by the Council as well as the proposed ordinance. Then, drawing upon his own background as a businessman, he concluded that enforcement is key to making any of the provisions meaningful. He then approached a rewrite from the point of view that Metro needs a strong enforcement section. His version proposes that enforcement be through the Oregon Government Standards and Practices Commission. He tried to provide for reporting, so the public could see what has been expended on lobbying, whom the lobbyist represent and where their interests lie. He said he believed his version could be refined to address the concerns raised by Mr. Liberty. He said the numbers could be worked so as to not make the reports amount to a pile of minutiae.

He said another part addresses flexibility. He said he understands Councilor McLain's concerns about gifts and entertainment. But he said all the Councilors are also members of the private sector and many situations that routinely arise demand more flexibility that provided by strict prohibitions. He said after having discussions with other Councilors, he believed reporting would provide the flexibility.

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He said he believed that using the state Standards and Practices Division would help move beyond the state guidelines, as Presiding Officer Monroe had requested. He read from the lobbying portion referring to the Standards and Practices Division: "The purpose of Oregon's Lobbying regulation laws is not to restrict lobbying, but rather to ensure that the public is informed." He thought that was the key to the whole issue.

Councilor McLain asked Dan Cooper, Metro Legal Counsel, whether Metro can ask the Government Standards and Practices Commission to be the agency to which Metro officials report. She asked what would asking that Commission to do that work would entail and where the budget for that review would come from.

Mr. Cooper said Councilor Park's intent offers two routes. One would be to enter into an intergovernmental agreement with the Commission for them to take on this responsibility and to reimburse them for the cost of doing that. He said he and Jeff Stone, Council Chief of Staff, had been trying to contact the Executive Director of the Commission to further investigate that possibility. They had not yet been successful in reaching him. The second route would be seek legislation to expand the duties of the Commission to include the local level.

Chair Washington announced that he did not expect to be able to wrap up the discussion on this ordinance at this meeting. He was therefore postponing agenda items 7 and 8. He excused any staff who were there to present those items.

7. RESOLUTION NO. 99-2753, FOR THE PURPOSE OF AUTHORIZING THE METRO EXECUTIVE OFFICER TO SIGN NEIGHBOR CITY INTERGOVERNMENTAL AGREEMENTS WITH THE CITIES OF SANDY AND CANBY, CLACKAMAS COUNTY AND OREGON DEPARTMENT OF TRANSPORTATION

Consideration postponed until February 17, 1999.

8. AN ANNUAL REPORT TO COUNCIL SHOWING UTILIZATION OF MINORITY, WOMEN AND EMERGING SMALL BUSINESS WITH METRO FOR FY 1997-1998 AND OTHER CONTRACTING/PURCHASING ACTIVITIES

Consideration postponed until February 17, 1999.

6. ORDINANCE NO. 99-795, FOR THE PURPOSE OF ADOPTING A CODE OF ETHICS FOR METRO OFFICIALS AND REQUIRING REGISTRATION OF LOBBYISTS (continued)

Councilor Park addressed the issue of including all of Metro under this code. He said he did not think employees other than department heads needed to be included, because he thought issues involving them could be handled administratively. He thought the focus should remain on elected officials and on department heads.

Councilor McLain asked Mr. Cooper to explain the difference between addressing employee issues administratively compared with doing so under the code.

Mr. Cooper said the Executive Officer had adopted by executive order an ethics code for the employees of the executive office and other departments. He said that order covers activities, expectations of behavior, and principles that should guide behavior. They supplement rather than supersede the current limitations of state law. The question as to how that is administered lies with the Executive Officer and his appointees. It sets strong principles, but it does not create strong prohibitions. It is not a matter of law. Covering the behavior in an ordinance, on the other hand, does make it a matter of law.

Councilor McLain said she did not think asking all employees to adhere to these regulations was setting too high a standard.

Councilor Kvistad asked for clarification of the amendments and supporting materials.

Mr. Morrissey said whereas most of the Councilors had submitted amendments to the draft ordinance drawn up by Presiding Officer Monroe and Councilor McLain, Councilor Park had submitted an entirely new version of the ordinance.

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He said the matrix he had created as a guide had parceled out the key elements from Councilor Park's ordinance and woven them in with the amendments.

Chair Washington clarified that Councilor Park's ordinance was an entirely new and different version, not just amendments to the version drawn up by Presiding Officer Monroe and Councilor McLain. He also clarified that all of Councilor Park's ideas had been included in Mr. Morrissey's matrix.

Councilor Park referred to page 9 of the draft of his proposed ordinance. He noted said two parts shown on that page were amendments. Those parts are 2.17.120 (2.17.140 in the Monroe/McLain draft) and 2.17.130 (2.17.150 in the Monroe/McLain draft). He said those came out of ORS code 171.090 and 171.092. They simply take the strengths of the enforcement actions and put them in the Oregon Government's Standards and Practices Commission, so that any violations must be reported to that commission and action taken by it. That removes controversy from Metro and puts the investigation in Salem.

Councilor Kvistad suggested the Committee take Councilor Park's version of the ordinance as the working document and substitute it for the Monroe/McLain version, then proceed to amend it.

Chair Washington asked Mr. Morrissey how that procedure would fit with the materials he prepared.

Mr. Morrissey said his materials had used the Monroe/McLain document as the basis and keyed the amendments to that document. He noted that in discussing with Councilors how they wished to proceed, he had noted several amendments that were not controversial. He had listed those first, to enable the Committee to begin with those if it so chose. He noted that Councilor Park's version contains substantial deletions and has a different philosophical approach. He said he did not know how amendments made with the Monroe/McLain version in mind would fit if the Park version were used as the base document.

Councilor McLain suggested proceeding by considering each issue, then voting on whether to accept Councilor Park's approach--i.e., a requirement to report the activity to the state Standards and Practices Commission--or the Monroe/McLain approach--i.e., to prohibit the activity.

Councilor Park explained that when he developed his document, he had preserved as much state language as possible, then added in those sections specific to Metro. He had avoided the questions of how to deal with meals, because the state's definition differs from that provided by the IRS. He did not have a clear idea of how to deal with that and hoped the committee would take that on. He requested staff look at both documents and provide a side-by-side comparison.

Councilor Monroe suggested that the committee amend and clean up his version first, then decide whether to replace it with Councilor Park's approach. He thought that would provide an opportunity to consider a clean version of each approach. He said the final vote on this might be made by the full Council.

Chair Washington said he preferred to use the Monroe/McLain document as the base document, given that the staff work had been organized around that version.

Mr. Morrissey said he understood that the first six amendments shown on his matrix were relatively non-controversial and would apply to either version of the ordinance. The middle section of the matrix presents the amendments that would be affected by the two different approaches, with the differences placed side by side. The final section present those amendments that would be affected by decisions made on those in the middle section.

Councilor Atherton suggested the committee deal with differences surrounding the underlying issues first, such as the difference between reporting and prohibition and the issue of enforcement.

Councilor Kvistad recommended beginning with the amendments that apply to either version, then working through those that relate to differences in approach. He suggested beginning with amendments 1 through 6, then moving on to amendments 15 -18, then going back to the others.

Chair Washington agreed. He asked Mr. Morrissey to introduce the first amendment.

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Michael Morrissey, Council Analyst, introduced the first amendment item in the packet he had prepared. This would amend the title to Chapter 2.17, adding the words "for Metro Officials." It would then read, "Code of Ethics for Metro Officials and Requirements for Lobbyists."

Councilor McLain asked Mr. Cooper whether a vote to accept this amendment was a vote to exclude employees from these requirements, as spelled out in the amendment.

Mr. Cooper said that by approving this, the committee would imply that employees might be exempt from the regulations that apply to officials. However, that was not necessarily so. He said the next motion will be the first substantive amendment that spells this out. He said Councilor McLain was calling the Committee's attention to the fact that there are a series of amendments that are all tied together. If the Committee makes one decision to accept Councilor Park's amendments that exclude employees, then it would be logical to make others that are related logically consistent manner. However, that does not preclude the possibility of making a different decision on another issue. He said the important things was to be aware of problems that might result from making logically inconsistent decisions, but there might be cases where the committee would like to do that.

Councilor Park said the key issue here is whether all Metro employees would be treated the same as Metro officials--that is, those who are elected; the heads of departments, who are approved by the Council; and the MERC commissioners. He said he did not believe that all staff needed to be subjected to the same manner of enforcement. He said most of the employees were hired and fired by the department heads, the Executive Officer, and the Council. Ethical questions could be handled administratively through training, reprimand, or termination. On the other hand, the voting public hires and fires Metro officials except for the department heads. He thought there was no need to include employees who can be disciplined administratively in this code.

Councilor Monroe asked Mr. Cooper to define "Metro official."

Mr. Cooper referred the Committee to the base document, which defines Metro officials as elected officials, department heads, and MERC commissioners.

Presiding Officer Monroe said that is what he supports. He intended for his ordinance to apply only to Metro officials as defined, not all Metro employees. He said adding the words "for Metro Officials" meets the intent of his approach.

Chair Washington called for a motion.

Motion to Amend #1:

Councilor Kvistad moved to amend Ordinance No. 99-795 by adding to the title of Chapter 2.17 the words "for Metro Officials." The chapter title would then read "Code of Ethics for Metro Officials and Requirements for Lobbyists."

Vote on Motion to Amend #1:

Chair Washington and Councilors Kvistad and Atherton voted aye. The vote was 3/0, and the motion passed unanimously.

Chair Washington asked Mr. Morrissey to explain the second amendment, to Section 2.17.010.

Councilor Atherton said he thought the verbiage contained in the code language itself was unclear.

Mr. Morrissey said that the code language to which Councilor Atherton referred was a separate issue from this amendment. This amendment submitted by Councilor Park specifically exempts Metro employees from the requirements of this ordinance.

Motion to Amend #2:

Councilor Kvistad moved to amend Ordinance No. 99-795, Section 2.17.010, subsections (2) and (3), by deleting the term "and Metro employees" in both instances.

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Vote on Motion to Amend #2:

Chair Washington and Councilors Kvistad and Atherton voted aye. The vote was 3/0, and the motion passed unanimously.

Chair Washington asked Councilor Bragdon to explain his amendment to Section 2.17.050, Financial Reporting.

Councilor Bragdon said his amendment refers to the State's "Statement of Economic Interest" form elected officials already must fill out. It refers to interest in purchase or sale of real property within the district you serve and adds the words "or adjacent to." He said many decisions the Metro Council makes involve properties immediately adjoining but not yet technically part of a jurisdiction. The concept is to require disclosure of economic interest in properties immediately adjoining the jurisdiction served.

Councilor Park asked how far away from the boundary Councilor Bragdon envisioned this to cover.

Mr. Cooper said Councilor Bragdon's amendment is conceptual in present form, and before it could be added to the Code it would need to be clarified by adding specific language.

Chair Washington asked if more work needed to be done before considering this amendment.

Mr. Cooper said the work could be done after a vote, but it would be preferable to do it before.

Councilor Kvistad suggested that Councilor Bragdon work with legal counsel and Councilor Park to refine this amendment before bringing it back for a vote. Councilor Bragdon agreed.

Mr. Morrissey said the next amendment, to Code Section 2.17.090, would amend the title of the section only by striking the words "Certain Former" from the title. If amended, it would read, "Prohibition Against Doing Business with Metro Officials."

Mr. Cooper said the change would make the original intent clearer. He recommended making the change.

Motion to Amend #3:

Councilor Kvistad moved to amend Ordinance No. 99-795 by deleting the words "Certain Former" from the title to Code Section 1.17.090. The title would then read "Prohibition Against Doing Business with Metro Officials."

Vote on Motion to Amend #3:

Chair Washington and Councilors Atherton and Kvistad voted aye. The vote was 3/0, and the motion passed unanimously.

Mr. Morrissey said the next group of amendments, including some proposed by Councilor Park and some by Councilor McLain, would delete the entire Section 2.17.100 from the Code. One amendment by Councilor Bragdon would delete only some of the wording.

Motion to Amend #4:

Councilor Kvistad moved to amend Ordinance No. 99-795 by deleting all of Section 2.17.100 from the Code.

Councilor McLain said the reason she had proposed to delete this section is because she would like Metro employees to be treated the same way as Metro officials, and she has proposed language in another amendment to do that.

Councilor Park said the reason he had proposed to delete this section was because it fit logically with his philosophical approach to this entire document.

Councilor Bragdon said he would prefer to delete the entire section, also. He therefore withdrew his amendment from consideration in favor of this.

Vote on Motion to

Chair Washington and Councilors Atherton and Kvistad voted aye. The vote

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Amend #4: was 3/0, and the motion passed unanimously.

Councilor Bragdon asked Mr. Morrissey to identify which of Councilor McLain's amendments proposed language relevant to the section just deleted.

Mr. Morrissey said that languages appears in amendments to definitions.

Motion to Amend #5: Councilor Kvistad moved to amend Ordinance No. 99-795, Section 2.17.030, by specifying the prohibition refers to "registered Metro lobbyist."

Councilor Park suggested revisiting the issue of which of the two basic approaches--prohibition or reporting. He thought that how they proceed on amendments 14-18 would depend on how they proceed on 7-13.

Councilor Kvistad said this version would go with either approach.

Councilor McLain said she would support Councilor Kvistad's amendment to this Section if restrictions on gifts and money were retained. Her position is that Metro needs to put limits on what can be accepted. She said Mr. Park's approach allows anyone to accept anything up to the limits allowed by the state, as long as it is reported.

Councilor Park noted that Councilor Kvistad's amendment omitted the words "or entertainment."

Councilor Kvistad said his amendment only refers to this section. The third section still exists--the one that covers accepting gifts from others that belong to Metro.

Presiding Officer Monroe said that voting on amendments to the Monroe/McLain version now would not preclude accepting the Park version at a later date.

Councilor Atherton asked about the word "indirectly."

Councilor Kvistad said that by stating "directly or indirectly," situations in which lobbyists might try to influence a vote by providing something of value indirectly, that would be prohibited. The wording just makes that explicit.

Mr. Cooper clarified that Councilor Kvistad's motion was to make the textual changes to Section 2.17.030, not to delete the section. In response to Councilor Atherton's concern, he said the language "directly or indirectly" was derived from current state law, which prohibits direct or indirect gifts of more than \$100. That language was retained in Metro's code, but the \$100 exemption was eliminated. He said that language has been defined and used by the ethics commission over the years.

Chair Washington asked Councilor Kvistad to read his amendment.

Councilor Kvistad read, 1) " No Metro official or Metro employee shall solicit or receive, whether directly or indirectly, a gift from any registered Metro lobbyist who could reasonably be known to have a legislative or administrative interest in Metro over which the Metro official or Metro employee exercises an official authority. 2) No registered Metro lobbyist shall offer any gift to any Metro official or Metro employee."

Councilor Atherton said the key issue is this refers to registered Metro lobbyist, not just any person.

Chair Washington asked Mr. Cooper to clarify what employees may or may not do. He noted that employees were excluded from some references but not here.

Mr. Cooper said this is an example of the difficulty of dealing with two separate approaches to this ordinance. He said Councilor Kvistad's amendment does not apply to the Park version; it applies to the Monroe/McLain version. By the time the Committee has voted on all the amendments, it will have the opportunity of deciding whether this applies to just Metro officials or also to Metro employees.

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Councilor Atherton asked why employees are included in this amendment now.

Councilor Kvistad said this amendment would give a message to the lobbyists that they are prohibited from going to employees as well as Councilors. In this case, the restriction is on the lobbyist, not the employee.

Vote on Motion to Amend #5:

Chair Washington and Councilors Kvistad and Atherton voted aye. The vote was 3/0, and the motion passed unanimously.

Chair Washington opened discussion on the proposed amendment to Section 2.17.060, Restrictions on Meals and Entertainment.

Councilor McLain said the Committee had three choices. One was to delete this section, one was to retain the current Code, or change to the language she proposed, adding "however subject to the limits of ORS Chapter 244, Metro Officials may attend fundraising events benefiting non-profit, tax-exempt entities as guests of persons who have legislative or administrative interests in Metro. Persons who have legislative or administrative interest may pay the cost of Metro officials attending such fundraising events." She said the purpose of that was to clean up the fact that many times Metro officials are either requested to attend events in which Metro also has an interest. An example would be an invitation to sit at the SOLV table because Metro is a partner with SOLV, and Metro sponsors recycling. It would allow officials to do that in their official capacity.

Chair Washington asked Councilor McLain why the code should differentiate between for-profit and non-profit entities when it comes to gifts. Councilor McLain said because no one makes money on these events. They are for non-profit organizations.

Mr. Cooper said state law defines gifts as anything of any value, and that definition had been used here for consistency. He said being taken out to a benefit dinner for a non-profit has value. The statutory scheme allows people to take officials out to dinner. The Monroe/McLain ordinance allows Metro officials to be taken out to dinner, but the dinner cannot cost more than \$20. If tickets are \$100, the ordinance would prohibit it. Councilor McLain is attempting to allow a lobbyist or person with an interest to write the check for \$100 to the \$20 dinner. The ultimately beneficiary would be the charity.

Councilor Kvistad said this is standard practice. Every elected officials does this--goes to a specific event in an official capacity to benefit a non-profit. It's not like being invited to a private fund-raiser for someone running for president and someone writes a \$500 check so you can go and hob-nob. He said that although he would prefer to delete the entire section, he would move the McLain amendment to fix the section being considered, reserving the right to delete the entire section if the Park amendments pass on other sections.

Councilor Monroe said to be consistent, the wording should be changed from "any person who has a legislative or administrative interest in Metro" to "a registered lobbyist." He offered that as a friendly amendment.

Motion to Amend #6:

Councilor Kvistad moved to amend Ordinance No. 99-795, Section 2.17.060, Restrictions on Meals and Entertainment as amended by a friendly amendment to substitute "registered lobbyist" for "any person who has a legislative or administrative interest in Metro."

Chair Washington asked if any of the Councilors had questions.

Councilor Atherton asked if there was a need to define "entertainment."

Mr. Cooper said the term "entertainment" comes out of state law. It is not defined, but it has been administered as interpreted by the Oregon Standards and Practices Commission. He said an amendment could be developed to define entertainment. In practice it has meant ticketed events. He said that could be further narrowed.

Vote on Motion to Amend #6:

Chair Washington and Councilors Kvistad and Atherton voted aye. The vote was 3/0, and the motion passed unanimously.

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Chair Washington said the committee would reconvene to consider just this issue at 4:00 PM on February 10.

9. COUNCILOR COMMUNICATIONS

There being no more business to come before the committee, Chair Washington adjourned the meeting at 6:12 PM.

Prepared by,

Pat Emmerson
Council Assistant

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ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF FEBRUARY 3, 1999

The following have been included as part of the official public record.

ORDINANCE/RESOLUTION	DOCUMENT DATE	DOCUMENT DESCRIPTION	DOCUMENT NUMBER
Ordinance No. 99-795	2/2/99	Packet of proposed amendments	02039mop-1
	[no date]	Amendment to Code Section 2.17.030, proposed by Councilor Kvistad	02039mop-2
	2/3/99	Key to Amendments Submitted for consideration of Ordinance 99-795 at Metro Operations Committee, 2/3/99	02039mop-3
	2/3/99	Suggested amendments to the Ethics Code drafted by Liz Callison	02039mop-4

Testimony Cards

Robert Liberty, 1000 Friends of Oregon

Liz Callison, West Multnomah SWCD

Aleta Woodruff, MCCI