

MINUTES OF THE METRO OPERATIONS COMMITTEE MEETING

Tuesday, February 9, 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 3:59 PM.

1. INTRODUCTIONS

None.

2. CITIZEN COMMUNICATIONS

None.

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

Michael Morrissey, Council Analyst, said the base document, marked "Draft," now contains the amendments adopted at the meeting on February 3. It would be the working document for today's meeting. He called the committee's attention to a summary sheet showing the status of each amendment. Finally, he said the committee had a packet containing the actual amendments arranged in alphabetical order by originating Councilor. (All of this material is attached to the meeting record.) He suggested beginning the discussions with Councilor Bragdon's proposed amendment to Section 2.17.050, which had been discussed briefly in the February 3 meeting.

Councilor Bragdon explained that his amendment would make changes to the information required by the State Economic Disclosure form elected officials fill out each year. The state form currently asks elected officials to disclose property owned that lies within Metro's boundaries. Metro makes legislation that expands Metro's boundaries. This proposed change would amend Section 2.17.050, subsection (c), to require disclosure of ownership of real property outside the Metro boundary but within the three counties of Metro's jurisdictions.

Dan Cooper, Metro General Counsel, said the most recent draft of the ordinance contains the current version of 2.17.050. Councilor Bragdon's amendment would amend that language by adding a new subsection--subsection (c).

Councilor Park asked if the question of jurisdiction was not already covered by ORS 244.060, section 5 (a).

Mr. Cooper said the word "jurisdiction" is read by the state commission as being the jurisdictional boundary of Metro, which is a particular line. Metro has jurisdiction beyond that under the rules for moving the urban growth boundary. However, language specifying all three counties would make the requirement clear.

Councilor Park asked how this provision would affect land owned in Washington.

Mr. Cooper said that if a decision made by a Metro Councilor were to affect economic interests in the State of Washington, that Councilor would be well-advised to disclose those interests on the record at the time of the decision in response to the a separate conflicts-of-interest statute. That, however, is not the same as the disclosure of real property inside the jurisdictional boundary required by state law for the financial statement.

Councilor Kvistad said he would move this amendment, but he wanted to make a friendly amendment to remove the words "and Metro Commissioners," from subsection (b) as redundancies.

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Mr. Cooper clarified that under the effect of the language as just passed would be to require the MERC Commissioners as well as Metro department heads to file the same financial statement to the state already required of the Executive Officer and the Councilors in subsection (a). Deleting the words "and Metro Commissioners" would delete the requirement that the MERC Commissioners file that statement. Neither department heads nor Metro Commissioners are currently required to file that statement.

Councilor Kvistad said he would drop the friendly amendment and move Councilor Bragdon's amendment.

Motion to Amend #7:

Councilor Kvistad moved to amend Section 2.17.050 to add subsection (c), requiring that ownership of real property be disclosed if it lies anywhere in Multnomah, Washington, and Clackamas Counties.

Vote on Motion to Amend #7:

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

Councilor Kvistad expressed his desire to separate out MERC from this ethics code. He said he would like to see MERC develop its own code that mirrors many of the same elements of this code, but would prefer MERC operate as independently as possible. He therefore does not support adding MERC commissioners into Metro's code. Councilor Bragdon agreed.

Councilor Atherton disagreed. He said MERC is currently under Metro's aegis. He said MERC could address the issue of its own ethics code when and if the issue of an autonomous MERC is taken up. Councilor McLain agreed with Councilor Atherton.

Councilor Bragdon added that people who are appointed to commissions are appointed because of their industry connections and expertise. He said he would recommend exempting all commissioners from this code.

Mr. Cooper said the ordinance does not apply to any advisory committees. The term "commissioner" as it appears in the ordinance means MERC commissioner only.

Bragdon said even if the language in the code was clarified to specify MERC commissioner, he would still question the intent. For example, would a MERC commissioner who is the general manager of a hotel be able to go to a dinner sponsored by the Portland Oregon Visitor's Association?

Mr. Cooper said that with the amendments made as of February 3, there would be no prohibition unless the person paying for the ticket was a registered Metro lobbyist. Then the meal restriction in the version currently before the committee would kick in. POVA has an economic and administrative interest in what MERC does, as MERC authorizes a \$1 million contract for POVA. State law allows someone to go to a meal with someone who has the interest as long as the person paying for the meal is present.

Councilor McLain said one of the issues with Metro is that it deals with people who wear a lot of different hats. She said this code should not in any way restrict those people's business or connections. However, this is a public agency, and this code should not send the lobbyists from here to the MERC commissioner instead of talking with the Councilors. She said this restriction might encourage that. She said Gary Conkling, for example, was the chair of the MERC Commission and he is a lobbyist. He will be registered with Metro if this passes. However, she believed Mr. Conkling would agree that he has a responsibility to let people know which hat he is wearing. She said he has done an exemplary job of that.

Motion to Amend #8:

Councilor Atherton moved to amend Section 2.17.020, subsection (o) to specify that "Metro commissioners" means MERC commissioners.

Vote on Motion to Amend #8:

Chair Washington and Councilor Atherton aye. Councilor Kvistad voted nay. The vote was 2/1, and the motion passed.

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Motion to Amend #9:

Councilor Kvistad moved to amend Section 2.17.050, subsection (b) to delete "and Metro commissioners."
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Councilor McLain asked whether Councilor Kvistad's motion was the antithesis of the motion just passed.

Mr. Cooper said no. The first motion clarifies a definition. Councilor Kvistad's motion removes reference to MERC commissioners only for this purpose. It would make a substantive change to the ordinance. If it is adopted and the ordinance is adopted, the MERC commissioners would no longer need to file the financial statements every year that they currently must file.

Councilor Kvistad said his intention is to remove the MERC commission from this entire ordinance wherever it appears. He believes the MERC commission has a very different function and should have a different set of guidelines. His objections is not to having MERC commissioners file financial disclosures; rather, it is to the basic idea of treating the MERC commission the same as Metro. That would not preclude encouraging MERC to develop an ethics code for itself.

Councilor Park asked Mr. Cooper whether the MERC commissioners would remain subject to the ORS 244 statutes if this amendment were adopted.

Mr. Cooper said yes. However, they would not be subject to the financial reporting provisions of ORS 244.060. As public officials, they would remain subject to the code of ethics provisions of 244.040, the conflict of interest disclosure on the record, and recusal requirements. ORS 244 has two separate pieces: 1) general rules that apply to all public officials regarding prohibitions against accepting gifts, using public office for private gain, and required disclosure of potential and actual conflicts of interest before taking action. 2) a financial disclosure requirements that apply to Metro elected officials but to no one else connected with Metro. The effect of this ordinance is to, by code, make those requirement on Metro department heads and the Metro Commission. Since the Metro Commissioners are not now required to file under state law unless it makes its own requirement, Commissioners would not be required to file an annual financial disclosure statement.

Councilor Park asked whether this situation would create any potential problems.

Mr. Cooper said the policy requiring that level of disclosure arose from an initiative in 1973. Many if not most of those who file those forms disclose items that are of little interest to anyone. Every once in a while someone reveals a potential conflict of interest. The purpose of the statute was to cast a wide net over those in the public's eye. He said it was a policy decision best left to the Council to decide whether removing this provision would cause any problems.

Councilor Park referred to ORS 244, Section 6 (a), which talks about reporting food, lodging, etc. when in excess of \$100. If the MERC Commissioners are not longer subject to that, would that create concern?

Councilor McLain said the purpose of this entire endeavor was to create the highest standard possible for Metro itself and for those who work on Metro business. She said there is a difference between advisory committees and actual MERC Commissioners. MERC Commissioners fashion, review, and amend a budget that spends public dollars. She did not believe Metro would be creating a higher standard if MERC Commissioners are removed from this reporting requirement. She said that MERC most likely has more situations that would bring this requirement into play than does Metro. She thought financial reporting would be even more important for them.

Councilor Kvistad said that the MERC Commissioners are appointed by the Council. They must first apply for the position, be reviewed, appointed, and confirmed by the Council. They serve a limited tenure, after which they must apply for reappointment or they are replaced. The Council has direct oversight over their service. They can be removed by the Council for cause. In terms of the budget, the Council reviews the MERC budget. He said the question is not about having the highest possible standard. It is rather whether MERC, which is in the entertainment service business and whose job it is to attract business by courting customers, should be subject to the same guidelines. He said it is not a matter of requiring that MERC develop ethical guidelines tailored to its particular function.

Councilor Atherton said he had not heard anything from the MERC officials on this. He suggested that the MERC officials be informed of this issue, then be allowed to review the document and suggest changes.

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Councilor Kvistad said he had discussed this with MERC officials. Without pretending to reflect their view, he said he understood they had concerns about this. He said they had been reluctant to comment out of concern for how that might be perceived. He suggested Councilor Atherton call a couple of the officials himself to get a sense of how they feel. He said the point was not to make MERC Commissioner unaccountable, but to recognize their very different role. He reiterated his intention of removing the MERC Commissioners from this document wherever they appear.

Councilor Atherton said he would follow up on contacting MERC officials.

Councilor McLain said the Council no longer has the same budget review responsibilities as it has had in the past. She added that she did not know how the Council would know to remove MERC Commissioners financial reporting is not required of them.

Councilor Park asked Mr. Cooper with whom the responsibility would lie to address an apparent ethical conflict at MERC.

Mr. Cooper said the current Metro code does not provide for any review of any decision made by the MERC Commission. MERC has been delegated full responsibility to make and administer its own decisions and those decisions are final. In the past there has been a provision that delayed many decisions from going into effect for 10 days, and the Council could call those decisions up for review during that time. Those provisions were amended out several years ago. Now the MERC Commission has the authority to make final decisions. If anyone disagrees with a decision, have the opportunity to seek legal or legislative remedies.

Chair Washington commented that this represents one of those situations that prompted his call for MERC officials to come before this committee to talk about support services. After that, he would like to see a committee consisting of Mr. Cooper, Mr. Burton, Mr. Williams, Ms. Sims, and perhaps a representative from Council to discuss the code regarding MERC. He said to many aspects of the relationship remain unclear. He said he planned to vote to keep MERC in this document pending the outcome of these meetings.

Vote on Motion to Amend #9:

Councilor Kvistad voted aye. Chair Washington and Councilor Atherton voted nay. The vote was 1/2 and the motion failed.

Mr. Morrissey said that in the section on definitions, subsection "r," Councilor McLain has an amendment to add "employees of the Council" to the definition of "Metro Official." This follows upon removing the section relating to Council Staff.

Councilor McLain said currently, subsection (r) reads: "Metro official means any department director, elected official, or Metro Commissioner." This amendment would make this read: "Metro official means any department director, elected official, employee of the Council, or Metro Commissioner." The reason for this is an accompanying amendment removes an entire section on Metro Council employees. This would those employees into the definition of Metro officials, giving Council employees the same responsibilities as agents of the Councilors and of the Council office as those currently included in that definition.

Councilor Kvistad voiced his opposition to this amendment. He believes this would onerous on the Council staff. If this requirement is placed on Council staff, it should also be placed on every person who works in this building. He said the staff is hired to do a particular job. He thought that singling out Council staff and subjecting them to greater overview than that on the rest of the agency's staff would set a bad precedent.

Councilor Atherton agreed.

Councilor Park said that he did not believe the intent of this code was to add employees to the reporting requirements. He believed any problems with employees could be handled administratively.

Councilor McLain asked Mr. Cooper to clarify whether employees would be added to the reporting section. She understood they would not. However, she thought they would be included in the limitations on gifts and meals. She said the concern was that lobbyists could influence the Councilors through gifts to their staff.

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Mr. Cooper said the term "Metro official" is used substantively in the prohibition on gifts, meals, entertainment, and doing business with people while they are in office and for one year after. The financial reporting section does not use the term "Metro official."

Councilor Washington said he does not support this. He does not believe employees need to be held to this level of accountability. He called for a motion.

The amendment died for lack of a motion.

McLain said she would bring this to a meeting of the full Council. She said in the past two and a half years she had heard complaints not only about the behavior of lobbyists with Councilors, but also about their behavior with Council employees and department heads. She said she was trying to respond to citizen input. She added she had talked with members of Council staff who felt that the section deleted at the last meeting was the section they were concerned about, not this one.

Councilor Kvistad said he was the Presiding Officer over the past three years, and he had not received one single complaint from anyone about the Council staff. He said the staff was exemplary, and he would be concerned about losing good people if this were implemented. He said people have private lives outside this agency. He said if the Council had received complaints, he had not heard them. Certainly nothing had been put in writing, and he had not had to reprimand any staff in the past three years.

Chair Washington asked about amendments written by Councilor Monroe, who could not be present at this meeting.

Mr. Morrissey said these amendments cover 2.17.020, 2.17.030, and 2.17.060.

Councilor McLain explained the ramifications of these amendments. She said these amendments apply to definitions that affect these sections. The intent is to make these restrictions apply to lobbyists as well as employers of lobbyists. She said amendments made so far apply only to lobbyists.

Councilor Kvistad said he does not support this. He said lobbyists are those who must register with Metro. Employers of lobbyists could mean any member of an association who pays dues. He said the net that this casts would make it difficult to do business. He said if restrictions apply only to registered lobbyists, the list of people to whom the restrictions apply is clear. He believed that leaving this ambiguous would create unintended problems.

Chair Washington asked for an example of "employer of a lobbyist".

Mr. Cooper gave Waste Management as an example. He said if Waste Management employed a lobbyist, that lobbyist would need to register. This amendment would put the company under the same restrictions on gifts, meals, etc. as those that fall on its lobbyist.

Kvistad said this opens up associations as well. He said opening the net wider creates real problems. He said it is difficult to comply with restrictions without a clear list of individuals who are identified as lobbyists.

Chair Washington asked Mr. Cooper to clarify the effects of this amendment.

Mr. Cooper said that this language works in the case of a corporation. If the individual who lobbies for Waste Management has registered, this would also mean that no Councilor could go to a basketball game with the Vice President of Waste Management as well as with the lobbyist. The same thing would apply to gifts and meals.

Councilor Park asked how this would affect him as a member of the Oregon Association of Nurserymen. That association hires a lobbyist, and as a member of the Association of Nurserymen, he is the lobbyist's employer. He wondered how this amendment would affect how this restriction is applied.

Mr. Cooper said he did not believe this language accomplishes the effect of requiring the individual members of an association to be subject to the same limitations as the association itself is. To the extent that the association has a bank account that pays for its lobbyist, this language would apply to funds that pass through the association's bank account, but

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not on the individual member's accounts. This is one of those instances where redundancies written into the law help clarify things.

Councilor Park asked how far up the chain of command in an association one could one go without being considered an employer?

Mr. Cooper said if the association were incorporated and you are an officer of the corporation, people might legitimately question whether money being spent by you was really being spent on behalf of the corporation. If your own interests were closely identified with those of the association, you might begin to wonder if you should register as a lobbyist on your own behalf. He said there is a lot of gray area, which is typical when you begin to legislate. A lawyer would prefer to distinguish clearly between the acts of individuals and those of the associations to which they belong.

Chair Washington asked that consideration of this amendment be postponed until after Councilors had had an opportunity to talk with Councilor Monroe, who wrote this amendment. He wanted to make certain that the code was not written in such a way that someone could do something wrong without knowing it. He suggested proceeding to the next amendment at this time.

Mr. Morrissey suggested proceeding with definitions by considering subsection "m."

Councilor Kvistad said he would like to move his amendment, changing the definition of "lobbyist" to specify "lobbyist registered with Metro." This would delete extraneous definitions throughout the document that do not meet this definition and tie in with all the other changes made so far.

Motion to Amend #10:

Councilor Kvistad moved to amend Section 2.17.020, subsection (m), to specify that "lobbyist" means "lobbyist registered with Metro."

Councilor Atherton asked for Councilor McLain's comments.

Councilor McLain said this would be consistent with the work already done.

Mr. Cooper said he had not had a chance to review this with Councilor Kvistad. He expressed concern that the term "lobbyist" might be self-defined without defining who a lobbyist is. State law provides a broader definition of "lobbyist" that contained in this code. The intent in the beginning was to ensure that Metro's definition of "lobbyist" did not include all the citizens who are required to register in Salem, because their activities constitute lobbying even though they are not paid for it. He warned the committee about passing this and broadening the definition more that they intend.

Kvistad said that is why he would have it read "registered at Metro as a lobbyist." That means they would need to meet Metro's definition of lobbyist as contained in this document. That would allow Metro to have a list of individuals to whom those restriction apply.

Mr. Cooper said what has been accomplished in substantive sections has the effect that if a person who was supposed to register but has not, the penalty is that they must register. It is not that you are unknowingly caught up in any prohibitions, because you might not have known they should have been registered. The substantive provisions are now written so they only deal with the actual, registered lobbyist. If you delete this definition and make it circular back to those who are registered, you end up without a definition of lobbyist. Therefore, all lobbyists--now an undefined term--are required to register. Then there are sections that exclude certain activities from being required to register. Those exclusions are written in such a way that implies that people who spend more than five hours here and do more than just talk to the Council during meetings and testimony could be considered to be lobbyists. That is what could be set up here.

Councilor Kvistad said the intent is to be able to draw up a limited list of people whom we know to be coming in to the Council office to lobby. If that clarity will make the definition more expansive, then he would prefer to withdraw his motion at this time.

Vote on Motion to Amend #10:

No vote taken. Councilor Kvistad withdrew his motion.

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Mr. Cooper said he understands the intent. He believed that intent is expressed in the current language, but he would meet with Councilor Kvistad to make certain.

Councilor Kvistad withdrew his amendment and said he would work with Mr. Cooper. If refinements are made, he would bring the amendment back for consideration.

4. COUNCILOR COMMUNICATIONS

There being no more business to come before the committee, Chair Washington adjourned the meeting at 5:17 PM.

Prepared by,

Pat Emmerson
Council Assistant

ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF FEBRUARY 10, 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	2/3/1999	Key to Action Taken on Amendments Submitted for consideration of Ordinance 99-795	02099MOP-1
	2/3/1999	Adopted Amendments as of 2/3/1999	02099MOP-2
	(various)	Amendments to Ordinance (by Councilor)	02099MOP-3