

MINUTES OF THE METRO OPERATIONS COMMITTEE MEETING

Wednesday, February 10, 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 4:07 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

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

Mr. Morrissey suggested beginning with Councilor Park's amendment to section 2.17.110, dealing with registration of lobbyists.

Councilor Kvistad asked Mr. Cooper if he had been able to draft language defining lobbyists.

Mr. Cooper said he had thought about it but had not yet drafted the language.

Councilor Park said his amendment would change Code section 2.17.110 (a) (5). He asked Mr. Cooper to explain what that would do.

Mr. Cooper said that in the current version of the ordinance, lobbyists must register with the Chief of Staff of the Metro Council. This amendment would instead require lobbyists to register with the Oregon Government Standards and Practices commission and file a copy with the Chief of Staff of the Metro Council. This would carry through in several other places where other filings are required. Two sections in the back deal with the fact that the Oregon Standards and Practices Commission does not currently have jurisdiction to be Metro's enforcement and registering arm. Thus, there would be a transition time until Metro either had an agreement with the Commission to do that work or state law is changed requiring them to do that work. The filings during that interim would be with the Council.

Councilor Bragdon asked how long that interim might be.

Mr. Cooper said he had asked Pat Hearn, who heads the Commission, whether an intergovernmental agreement could be drawn up now or whether it would require legislation. Mr. Hearn thought that although there might be a possibility of getting legislation considered this session that would require the Commission to impose some degree of greater restrictions on gifts, meals, entertainment, etc. If this passes, it could eliminate the need for Metro to have a separate ordinance. However, he did not think it likely. As to registration of lobbyists, Mr. Hearn was checking on whether the Commission might be able to do that for Metro, given there would be only about 20 lobbyists.

Mr. Park asked if the implication was that only 20 lobbyists was not enough to worry about.

Mr. Cooper thought Mr. Hearn meant that only 20 lobbyists would not overburden the Commission.

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Chair Washington asked Councilor Park to read his amendment.

Councilor Park read the proposed amendment, section 217.110 (a) (5): "Each lobbyist shall register with the Oregon Government standards and Practices commission by filing with the Commission and Council a statement containing the following information..."

Chair Washington asked Councilor Park about the next amendment.

Councilor Park said that section 217.110 (d) would require lobbyists to reregister every year.

Chair Washington asked Mr. Cooper about Code section 2.17.120, where the code section 2.17.140 is underlined.

Mr. Cooper explained that that section would create some exemptions to the requirements. He said Councilor Park is also recommending two more sections pertaining to additional requirements for lobbyists. That change accounts for the fact that there are now four affected sections rather than two.

Councilor Park said the reason for his amendments is that the State Standards and Practices Commission already has the ability to deal with ethical questions. Using it for enforcement would avoid Metro's reinventing the wheel and at the same time give credibility to the ethics code.

Councilor Atherton asked what the advantages might be to keeping enforcement in-house.

Mr. Cooper said the main reason was cost. He said no one knows at this point how much the Commission would charge for taking on this responsibility. Councilor Park's view was that by having enforcement lie outside the agency, it would appear neutral and to be administered evenhandedly. If it is done inside, the question of who does it becomes an issue, although this problem could be dealt with. Mr. Cooper added that if the Commission could not or would not accept this responsibility, then enforcement would of necessity be in-house.

Chair Washington asked Mr. Cooper whether, in the event the Commission agrees to take on these duties but charges \$200,000 a year, the Council could opt to do the enforcement in-house even if this amendment passes.

Mr. Cooper said yes.

Motion to Amend #11:

Councilor Atherton moved to amend Code section 2.17.110, subsection (a) (5) and subsection (4) (d), to place registration of lobbyists with the Oregon Standards and Practices Commission and requires yearly registration.

Councilor Monroe said that in his experience serving in the legislature, he would expect this would be a fiscal matter, and as such it would be referred to the Ways and Means Committee. He doubted if the Commission would be willing to assume the cost of this. He anticipates a fee would be attached.

Vote on Motion to Amend #11:

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

Councilor Park introduced his amendment to section 2.17.130, adding a new section (7), relating to requirements for statements of lobbyists expenses. This addresses concerns raised by Robert Liberty about the level of reporting required by lobbyists. This amendment would obtain the information needed without being overly burdensome. Councilor Park read his proposed amendment (attached to the meeting record.) He said the reason for the \$5.00 limitation proposed in this amendment is to avoid having to report every cup of coffee. Other amendments proposed by Councilors McLain and Monroe dealing with meals and entertainment kick in for amounts over \$5.00. He said he did not believe any Councilor could be bought for \$5.00.

Councilor Park then read a new proposed section (8) to 2.17.140 (attached to the meeting record.) This section spells out when lobbyists must file expenditure reports and what those reports should contain.

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Mr. Cooper noted that the cross reference to section 2.17.070 was a typo. The reference in that section should be to section 2.17.030. This section would pick up expenditures not reported by the lobbyist.

Councilor Kvistad asked what was meant by "expenditures not reported up by the lobbyist."

Mr. Cooper said these provisions are parallel to state law. Mr. Park has pared the level of detail down that would have been required to report to the state. Rather than asking that lobbyists report gross totals as well as broken out by individuals, this would borrow two provisions from state law and put them in here.

Councilor Kvistad asked whether the sentence in section (8) ought to read "Any person which employees a lobbyist who is registered." rather than "who was registered..."

Mr. Cooper said because the reference was to the previous year, the sentence as written is correct.

Councilor Monroe said this amendment flies in the face of his intent to create an ethics code that would be simple, straightforward, understandable, and not onerous. He believes this would be onerous. That is why his version prohibits gifts, etc., above a certain amount, rather than requiring this detailed reporting. This would require a lobbyist to report the gift of a hat, for example, if it cost more than \$5.00. He said he did not think people are concerned about such small items. He thought people were concerned about bigger things, like Trail Blazer tickets and junkets. Those were the types of things he wanted to prohibit. He said the more details you include, the more expensive the monitoring would be. He urged the committee not to pass these amendments.

Councilor Park said these amendments go to the heart of the issue in terms of the checks and balances. He did not envision any paperwork needing to be done beyond the reporting unless someone had a complaint. He said if this portion were not accepted, he did not see why the Government Standards and Practices Commission should be involved at all.

Councilor Monroe said he did not endorse using the Government Standards and Practices Commission. He did not think it would work. He said the reason his version required lobbyists to register with the Council's Chief of Staff and specified reasonable prohibitions on what can be accepted from either lobbyists or their employers was to keep the code simple. He believed the simpler and more straightforward, the easier the code would be for Metro officials to follow and for the public to understand. He said he hoped his amendment requiring employers of lobbyists to be under the same restrictions would be accepted, also. He said he had plugged that hole at the suggestion of Metro's auditor, Alexis Dow, and Mr. Cooper. He said he believed the code should prohibit those things the public had expressed concern about, and that was Trail Blazer tickets and junkets.

Councilor Atherton said the reason for having these requirements was because every time they thought they had a reasonable prohibition, someone thought of an exception and things became unreasonable.

Councilor Kvistad said he did not support the entire code of ethics. He thought this represented a public relations exercise that had nothing to do with the ethics of the Council. He does not think it is needed. He said Councilors are part-time employees of this government. They have a public responsibility to be accountable, honest, and to have some integrity. He said he had that. He is honest, has integrity, and has been up front. He said he wanted to say for the record that this whole thing offends him. He was trying to limit its intrusion into his business and personal life while still keeping it functional. He said the Blazer ticket incident that began this effort was a campaign set-up to drive that person out of office. Although that might be an acceptable tactic, he did not think it should drive the business of the Council. He said to minimize ambiguity, he wanted a list of people he could or could not talk to. He said he could deal with that. But he saw this getting out of hand. He liked the idea of having the State Commission on Standards and Practices deal with filing. But defining gifts and so forth becomes unwieldy. He said he puts on a croquet tournament every year to which people contribute. Would those contributions now be considered gifts and would his tournament now be prohibited? He said he does business outside of this agency with a variety of people and organizations, and this code causes deep concern. He thought developing this code implies that he has acted unethically. He said if the code could be simplified, he would accept it. He said the key issue is that Metro Councilors are not full-time. He thought that deserved more consideration. He is not here because this is his primary employment.

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Councilor Atherton said he is in the same boat as Councilor Kvistad is. He said Metro Councilors are not regular business people. But the problem of what constitutes a gift causes considerable confusion. He said ethics is something you do when no one is looking. The trouble is, everyone is looking at the elected officials. He tended to follow Councilor Park's lead. He said he understood where Presiding Officer Monroe and Councilor McLain were coming from, but he feared the result.

Chair Washington said he did not support this effort, either, but not because of the restrictions. He said even the most severe restrictions would not change the way he does business. He said he certainly does not make his living on gifts from anybody or on lunches provided by others. He said if the Council prohibits all lunches, gifts, or plaques, it would change nothing for him. He said he did not believe it was necessary to tie a rock around everyone's neck. He believes in the common sense and integrity of all the Councilors. He said it was unfortunate that what happened a year ago was driving this effort. He believed that the ethics lie within the person and no regulation would change that. He urged creating a document that would not strike fear in everyone's heart nor send them to consult with legal counsel over every little thing. He said if the Park amendment would move toward a simple, workable code, then he urged the committee to proceed. He asked about the \$5.00 amount proposed by Councilor Park.

Councilor Park reiterated that other restrictions take over beyond the \$5.00 limit.

Councilor Kvistad said the problem never ends. He said in his business he sells lists to other elected officials and to pollsters. He said he does not ask who the pollsters work for. He said this code points too many potential guns at his head. He said he had talked with people at *The Oregonian* and they have said that as long as the Council does something, they will be fine with it. He asked what that implied. Does that mean the Oregonian is more interested in forcing the Council to do something than they are in what or how it is being done? He reiterated his willingness to go along with something that is clear and simple.

Councilor Atherton said he has no problem with the gifts. He pays for his own lunches. He said it is the rest of the stuff that he does not know how to deal with.

Chair Washington asked Mr. Cooper how the Councilor's other employment would be affected by this. What are the potential conflicts?

Mr. Cooper said the ordinance has two pieces. One piece deals with lobbyists--registration of and reporting by lobbyists. The other piece deals with elected officials. The two are connected by amendments to the code that deal with gifts, entertainment, meals, etc., offered to Metro officials by lobbyists. State limits gifts from persons with administrative or legislative interests in Metro to a total of \$100 in any one year. State law contains further exceptions that allow you to be entertained by those same people as long as they are in your presence when you go to some ticketed event or go out to dinner. There are limits on the value of those meals or tickets, and there are reporting requirements for them. If you have been on a junket, you have to report that. There is no limit, but you have to report that.

Mr. Cooper also said that state law already provides exceptions to accommodate the fact that officials have other jobs. He said the challenge now is how to put greater limits in terms of gifts and the value of gifts that can be received.

Chair Washington closed discussion on this agenda item to allow time to discuss the potential for adding another building at the Expo Center. He said discussion of the ethics code would be resumed at the next meeting of the Metro Operation Committee, on February 17. He said he would like to have more conversations with Mr. Cooper before then.

4. EXPO FINANCING

Chair Washington invited Mark Williams to begin the discussion on Expo financing.

Mark Williams, Director of MERC, said the Expo needs a new building. It was part of the original plan and one of the reasons for building the first building. As to financing, MERC thought that out of operations and cash that Expo generates, it could bear about \$800 to \$850 thousand a year in debt service. When the finance committee met, they discussed whether Expo could bear more than that. Their concerns for bearing more center on whether they have adequate operating reserves for the facility. He said the financial plan everyone is relying on calls for MERC to first

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exhaust its current reserves in order to pay down the Intel debt. That would bring the reserve to a low point--running bare-even borrowing some from the Convention Center fund for about a year, then replenishing it. All of the pro formas call for the enhanced revenue they expect to get from increased business and increased rates. These should go for capital maintenance, to avoid immediately building up deferred maintenance on a new building and then to help build up capital reserves.

From their point of view, when they begin talking about the Hall bearing more than that number, that is when they began thinking about the concept of can they get a contribution--not of the existing excise tax--but of the incremental growth in that tax over the years. The reason that gives them a higher level of comfort over what was a "big gulp" number is that it provides some relief to the Expo's operating obligations. If you take the \$850,000/year as a base, as the business grows, Expo would generate additional dollars in excise tax. If those additional dollars go back into the annual debt service each year, it will would work to reduce over time, what Expo is bearing each year from its operating revenues. The ramp-up period is a good idea--it gives us four to five years to make the existing payments out the current revenues, then build up various revenue-enhancement techniques, probably making the users pay more--to get up where they need to be. It would also provide time to build up what the incremental excise tax would cover. MERC staff believes this is a workable plan, with the growth in the incremental excise tax thrown into the debt service each year as part of the financing plan. Without that feature, they would be concerned about a lack of ability to maintain the halls and build up adequate operating reserves.

Mr. Williams said MERC would not want to repeat what happened with the buildings when they belonged to the county. When they belonged to Multnomah County, whenever the buildings made money, the money was spent on other programs rather than being put into a replacement fund. He said the other programs were worthwhile and needy, but sacrificing building maintenance was not, in his view, prudent.

Chair Washington asked Jennifer Sims to comment on how Mr. Williams's presentation compares with the one the Executive department made during the Executive/Council work session the previous day.

Jennifer Sims, Metro Director of Administrative Services, said she was not prepared to talk about financing. She thought the committee would be addressing whether the project should proceed or not. She said she had the proposal from the Executive and she thought it would work with the plan being presented here.

John Houser, Council Analyst, said he had spent an hour with MERC staff that morning going over the numbers he had presented during that work session. As a result of that meeting, he was making some adjustment to those numbers designed primarily to meet Mr. William's concerns about the ability to meet capital spending needs at the facility. He recalled that at the meeting the previous day he had proposed that over the life of the forecast, they would have the opportunity to spend about \$300,000/year. Under the scenario he is currently running, for the next three years, instead of \$200,000, they would spend \$300,000. The year after that it would be \$275,000, then \$250,000, then \$225,000. That would give them in excess of \$400,000 in additional capital spending funding. He also agreed to include in that scenario, increases in the starting points for both personal services and materials and supplies at the facilities. Also there was a need for an adjustment to next year's proposed budget. In that budget there was another revenue line item of \$316,000. It was somewhat unclear before today what was included in that \$316,000. He found out this morning that it included an assumption that Metro would be making an excise tax contribution of \$263,000 to help pay for debt service. He has taken that out of the equation, because at this point the proposal the executive presented does not include that type of contribution. Rerunning those numbers on the most conservative scenario--the 10% scenarios--would result in fund balances that are obviously lower. There is one problem with the fiscal year 2002-2003, the year in which they propose spending about \$2 million to make seismic and other structural improvements to the remaining three buildings. During that fiscal year, according to Mr. Houser's scenario, there would be a negative fund balance of about \$80,000. In every other year forecast, this predicts to a minimum fund balance of at least \$420,000. In the final year, the forecast ending balance would be about \$1.7 million.

Chair Washington asked when Mr. Houser would have his revised figures.

Mr. Houser said he hoped to have them ready by Friday, February 12.

Chair Washington asked Mr. Houser how far apart the figures would be from those presented by the executive yesterday.

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Mr. Houser said that he believed if he made those adjustments in his forecast, it would go a long way if not all the way of meeting the concerns of the MERC staff at three critical issues: personal services, materials and supplies, and capital spending. He believed the MERC staff felt comfortable with the scenario constructed that morning in its ability to meet their needs in those areas. He said his scenarios still assume that the revenue streams from the facilities would pick up all the debt service tab.

Mr. Williams said the problem from MERC's standpoint, is that when they try to raise prices on users to pay for debt service, unless the incremental excise tax is put back into debt service, they have to raise rental costs 12-1/2% in order to get 5% for the debt service. That is a big hit for the users. If, on the other hand, they raise the price on rental 12-1/2% and that whole amount goes back into the pot to pay the annual debt service, it is a whole lot easier to accomplish the goal. They have very serious concerns about a plan that does not include that feature.

Mr. Houser said that MERC would receive 92-1/2% of any incremental increase they made. If they raise \$100,000, they could keep \$92,500 of that.

Mr. Williams said that is correct. But if they raise their prices, the first 7-1/2% of everything they raise will not go into the project. The question is when you raise prices to try to pay the debt service, are you in fact returning that money to the debt service or are you using it for other purposes.

Councilor Kvistad said the plan that came out was better than what he had expected. He thought it was solid except for the down-the-pipeline moneys. He agreed with Mr. Williams about leaving the excise tax Metro is currently receiving. Then take the revenue starting next year--everything over a set amount--take the incremental increases down the pipeline money to go back into the project is fiscally responsible. He thought they could build some quality fund balances to go into other projects at Expo, such as some required landscaping and some needed work on the parking area.

Councilor Kvistad requested that a funding package be presented to this committee and a public hearing held. He would like to move it out of this committee by the second week in March and to Council by mid-March. The funding would be discussed in the process. He said he thought the package was solid but thin. His amendment to any resolution would be for the facility to keep the incremental excise.

Councilor Atherton said he looks at this as an enterprise. He said Expo doesn't pay property taxes. He said this was the public's enterprise. The public deserves a return on their investment to get a quality product. The excise tax, which comes off of this, is in effect a property tax. He said he expects his business to increase its output over time, so he hates to have a cap on the excise tax. But what troubles him most has to do with deferred maintenance. He asked how deep are the books showing that. He would like the facilities brought up to where you don't have that, to where you have maintenance reserves. He said Ms. Sims brought up in her presentation an \$18.6 million contingency fund. He asked if that might be used to go forward with a funding package, to get the maintenance reserves, so that what we have a deep pocket. We have that contingency to use.

Councilor Kvistad said there is the fund at the Expo, which is X amount of dollars, and there is the general fund contingency at MERC in the OCC fund. They are two different funds. You don't want to raise the OCC fund, because we have a separate track going with those funds for the OCC possible expansion/completion project.

Councilor Atherton asked why the two could not be treated as a single enterprise, so they could switch funds back and forth.

Councilor Kvistad said he was trying to differentiate between the two projects. He wanted to avoid mixing those two. He wouldn't limit the excise tax. It would continue. The increase over time because of increased business would remain there instead of flowing into Metro's general fund. He thought that was a better way to do rather than dipping into an existing pot of money that may already be encumbered or that might need to be used.

Councilor Atherton disagreed in the sense that he thought they would want an increased return on his investment and he would also want maintenance taken care of. He gave an example of how he owns office buildings. He wants each to be self-supporting, but while he's working toward that he borrows from one and gives to the other.

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Councilor Kvistad said that is his vision, too. But we have just been taking from the Expo. Now it is time to give back. Before that, the County did that. How you do that is to cap the excise tax, but allow excess to go back into the building.

Ms. Sims clarified that the contingency fund shown in the presentation today, the \$18 million, is the contingency fund for all of Metro. Every contingency is restricted to its particular fund. Solid waste contingency cannot be used for this. It must go back into Solid Waste.

Mr. Williams said these buildings came from the County. They had for year used every bit of revenue from these buildings to meet other needs. Those needs were pressing--kids with tuberculosis and bridges--everything. But when Metro took over the building, it was without any cash to address the depreciation. MERC had used \$9 million of OCC's fund balance to build the new hall, and that new hall has been maintained. But there are problems with the other buildings out there that would require \$3 or \$4 million regardless.

Mr. Houser said they need to remember that whether the proposal includes the excise tax or not, it will include a pledge of the excise tax as a potential source of revenue to pay off the bonds.

Ms. Sims said that is not necessarily the case. The executive's proposal does not include that. The primary proposal is to pledge only Expo revenues. Then, depending on how well that markets--what kind of rate can be obtained --if that isn't sellable, then the excise tax would be pledged as a back-stop. However, to be on the record, putting excise tax specifically into this deal will call Metro's entire general credit into question. That is something Metro's financial advisor has specifically pointed out as a red flag for the credit agencies. It is also a precedent credit agencies would be zeroing in on when they look at our overall rating.

Councilor Kvistad said they wouldn't the amount were capped.

Ms. Sims said no. Using any general discretionary revenue to pay for a specific operational capital project would question all Metro's revenue credit.

Mr. Williams said you cannot have it both ways. You cannot say there is adequate revenue from the halls to cover all of the debt service, then say that the financial markets will freak out over issuing bonds on this project even if you add revenue to it. He thought if they are right that you can fund the debt service only on revenues--and the disagrees--then the financial market ought to be happy because MERC would will pledge its general revenues to pay it off. If the pro formas show there is enough revenue in it, the credit agencies ought to be happy.

Councilor Atherton said your are right if you are only looking at MERC. But this could jeopardize other operations at Metro.

Mr. Williams did not agree.

Chair Washington said all the arguments have been duly noted. He said he would make sure all concerns are addressed.

Mr. Williams said if you were worried about that, instead of pledging the excise tax into the bond part, you could put the excise tax back into the operations part. Then you wouldn't be giving the bond market any jitters.

Councilor Kvistad asked if the timeline he had suggested for moving this issue on to Council would work.

Chair Washington said tentatively it would. He said he would need more information before making a commitment.

Mr. Morrissey asked if he wanted this on next week's agenda.

Chair Washington said it would be on for information only.

Councilor Kvistad said then the following meeting it could be acted upon. Chair Washington agreed.

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Councilor Bragdon said he would like Mr. Houser to provide dollar figures for how much would be coming from incremental income tax. His understanding was that it would be some \$30,000 for the first year.

Mr. Houser said between \$30 and \$40,000 that first year--not a lot.

Councilor Kvistad said that is why he thought they could just keep it.

Mr. Morrissey asked if someone would be developing a resolution.

Chair Washington said he would determine that after he has had more discussions with MERC and the executive. He committed to doing that as quickly as possible. He said in compromise situations like this, no one gets everything they want, but everyone gets something.

5. COUNCILOR COMMUNICATIONS

There being no more business to come before the committee, Chair Washington adjourned the meeting at 5:25 PM.

Prepared by,

Pat Emmerson
Council Assistant

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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