

MINUTES OF THE METRO OPERATIONS COMMITTEE MEETING

Monday, February 22, 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 4:39 PM.

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

Chair Washington requested that the committee move fairly rapidly through the agenda. He said he hoped to finish the committee's work on this ordinance today. He invited Councilor Atherton to introduce his amendment.

Councilor Atherton said his amendment recognizes Robert Liberty's concern that the largest gifts to elected officials are campaign contributions. He said people are very concerned about the influence large contributors have on Metro legislation and not so much about Blazer's tickets. His amendment addresses their concern. It gives the code substance and would demonstrate to the public that Metro is serious about its ethics code. He said his amendment would require disclosure of campaign contributions as well as recusal from voting on decisions that could benefit campaign donors.

Councilor Kvistad said he would not support this amendment.

Motion to Amend #14:

Councilor Atherton moved to amend Code Section 2.17, creating a new subsection to require disclosure of campaign contributions in excess of \$50.00 and recusal from voting under specified circumstances.

Vote on Motion to Amend #14:

Councilor Atherton voted aye. Chair Washington and Councilor Kvistad voted no. The vote was 1/2 opposed, and the motion failed.

Chair Washington asked Councilor Bragdon to explain his amendment relating to campaign contributions.

Councilor Bragdon said he understood the intent of Councilor Atherton's amendment, but he thought it would have unintended consequences. He said his own amendment would address the problem, but in a more practical way. He said he recognized that campaign finance causes problems at all levels of politics. However, he said that elections fall under the state's and county's jurisdiction, not Metro's. He said he feared that regulating campaign contributions would simply drive money underground, but it would not affect the cost of running a campaign. The outcome would be that only wealthy people would be able to run. He opposes that outcome.

Councilor Bragdon said he was concerned that an approach such as the one proposed by Councilor Atherton might keep elected officials from voting in support of good legislation. For an example, he said he had received a campaign contribution from 1000 Friends of Oregon. If the previous amendment were in force, he would not be able to vote in favor of legislation that supports the position of 1000 Friends. Councilor Bragdon said his alternative approach would require disclosure of campaign contributions over \$500. It would then be left to the press and the people to pass judgment on the effects of that. Responsibility for collecting the information on campaign contributions would then remain where it is now, with the county and the Secretary of State.

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Councilor Atherton said his amendment would require recusal from voting only on very specific issues that could benefit very specific individuals. He did not think his amendment would have the consequences Councilor Bragdon described.

Councilor Park asked if this discussion was about the defeated motion or Councilor Bragdon's amendment.

Councilor Atherton said the discussion centered on which amendment better deals with the problems that arise from campaign contributions. He said he believed his did, and he did not believe it would have unintended consequences. He did not believe disclosure, as proposed by Councilor Bragdon, would address the problem. He thought his approach went to the heart of the matter.

Councilor Park asked why Councilor Bragdon had chosen \$500 as the limit and not some other figure. He noted that any contribution over \$50 must currently be reported. He was not certain why this amendment proposed a higher figure. Councilor Bragdon said the amount was not important and could be changed.

Councilor Monroe said his concern with this amendment is that unless officials keep a very careful record of who contributed how much, they could inadvertently violate the law. He said in the past he has left the problem of campaign contributions up to his campaign treasurer. He has not been aware of who had contributed what amount to his campaign.

Councilor Kvistad said he would not support this.

Chair Washington called for a motion. No motion was made, so the amendment died.

Councilor Kvistad introduced his amendment to Section 2.17.150, which makes it clear that if a person has not registered as a lobbyist with Metro but should have, Metro officials would not be sanctioned for accepting meals, gifts, etc., from that person.

Councilor Atherton asked Mr. Cooper whether this language would be redundant or whether it would add something to the document.

Mr. Cooper said this amendment would clarify the circumstance wherein a person who should have registered as a lobbyist but failed to do so entertains a Metro official. Without this amendment, that situation has some ambiguity. He believed this would clarify the original intent.

Motion to Amend #15:

Councilor Kvistad moved to amend Section 2.17.150 to specify that no Metro official would be sanctioned for accepting gifts, meals, or entertainment from a person if that person is not currently registered as a lobbyist or is the employer of a person who is not registered as a lobbyist.

Vote on Motion to Amend #15:

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

Chair Washington asked Councilor Park to introduce and explain his amendments.

Councilor Park said his amendment to section 2.17.010 would add a new section (c), making it clear that Metro's Code of Ethics is connected with ORS 244.040; amend Section 2.17.020 of Ordinance 99-795, subsection (i) to clarify the definition of "gift;" and strike subsection (q), which includes "Metro employee" in the definition of "Metro Official."

Motion to Amend #15:

Councilor Kvistad moved to amend Section 2.17.020, subsection (i) clarifying the definition of "gift;" and deleting subsection (q), which would include Metro employees in the definition of "Metro officials;" to amend section 2.17.140 and

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2.17.150, placing reporting and enforcement with the Oregon Government Standards and Practices Commission; and to add a new section describing what happens if the Commission does not assume reporting and enforcement responsibilities.

Mr. Cooper explained that in presenting Councilor Park's amendments, he had separated out those that are consistent with motions the committee has already. These were placed under Park Amendment #1. Park Amendment #2 deals with a separate policy decision the committee could make that would not necessarily follow motions already adopted.

Under Park Amendment #1, proposed subsection (c) restates what the committee has already determined, and that is it would stick with the State Code of Ethics, ORS 244.040, as the primary document. Subsection (i) is just a small piece that cleans up the definition of "gift". Striking subsection (q) is consistent with a motion previously adopted, where in all but one instance the word "Metro employee" has been removed. References to 2.17.140 and 2.17.150 parallels section 2.17.110. New proposed section 2.17, "Pending Enforcement by Oregon Government Standards and Practices Commission," states what would happen if the State Standards and Practices Commission does not assume reporting and enforcement responsibility.

Mr. Cooper said that although he had grouped these actions into two amendments, each part could be voted on separately.

Councilor Park said all the amendments reflect his basic premise, and that is to comply with the state code. He said Mr. Cooper summarized the effects of the amendments well.

Councilor Kvistad said he did not support the amendment to 2.17.010 that would add subsection (c). He said he believes it is redundant and that the purpose of the policy speaks for itself.

Vote on Motion to Amend #15:

Councilors Kvistad and Washington voted aye. Councilor Atherton voted no. The vote was 2/1 in favor, and the motion passed.

Councilor Park said he proposed adding subsection (c) to 2.17.010 so the public would know where to find the code. There are no other references to the state code at the beginning of the document. He said Metro officials are subject to the state code, regardless. This would provide the public with a reference point.

Councilor Atherton said he agrees with and supports this amendment.

Motion to Amend #16:

Councilor Atherton moved to amend Section 2.17.010 to add a new section (c), providing a policy statement that Metro officials must comply with ORS 244.040.

Vote on Motion to Amend #16:

Chair Washington and Councilor Atherton voted aye. Councilor Kvistad voted no. The vote was 2/1 in favor and the motion passed.

Chair Washington asked Mr. Cooper to summarize the group of amendments in Park Amendment #2.

Mr. Cooper said this group of amendments would insert into the code two new sections, sections 2.17.130 and 2.17.140. These new sections would not replace the sections that currently bear those numbers. Rather, they would be inserted before those sections, changing the numbering of the subsequent sections. These new sections would require that lobbyists and the employers of lobbyists file annual expense statements with the Commission and the Council. Those statements would need to report paying for Metro officials to attend fundraising events for non-profit, tax-exempt entities as a guest of the lobbyist or the employer of the lobbyist, if the employer paid the expense.

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Councilor Park said these kinds of activities have been allowed in the Metro code. This lets the public know which events their elected officials attend. He noted that of the estimated 25 lobbyists who would be required to register, only about five events would need to be reported. He said this type of reporting helps reassure the public about the activities in which their elected officials participate and allows the public to judge the worth of those activities. This parallels state code.

Councilor Atherton asked whether this would apply to trips and junkets.

Mr. Cooper said no. This would apply, for example, if a lobbyist were to pay for a table at a fundraising event that a Metro official were to attend as his or her guest. Trips must be reported, however. The current Metro code requires they be reported on the annual financial disclosure statement. This would add a reporting requirement for attending a fundraising event as the guest of a registered lobbyist or the employer of a lobbyist.

Councilor Atherton asked if the event would need to be reported if the elected official were a guest of a person who was not a lobbyist and the meal cost more than \$19.

Mr. Cooper said there was no reporting requirement for meals, but a limit on the amount. State law allows an elected official to accept a meal if the person who is paying for the meal is present. Entertainment at the expense of lobbyists or their employers, on the other hand, must be reported under state law but is prohibited under this code. On the other hand, state law includes under persons who are not paid lobbyists but who have legislative or administrative interests. Metro's code does not include those people if they are not paid lobbyists.

Councilor Kvistad said he understood Councilor Park's intent, but he believes the implication of the amendment is that elected officials are guilty unless the public has some means of keeping them honest. He said he is honest and this code would not change that. He did not see the need for this language. He said he does not believe Metro has an ethics problem.

Councilor Park said that in his view, reporting would not only provide reassurance to the public, it would also protect Metro officials. If, for example, they were accused of something they did not do, the record would be there to defend them.

Councilor Kvistad said he was also concerned about the rules for accepting invitations. He said he had been invited to an event put on by the Homebuilder's Association at which a Metro Councilor was to receive an award. He did not accept the invitation because this issue was on the table, although he thought it entirely appropriate that someone from this agency be present. He asked Mr. Cooper if that activity would be permitted or banned by the current document.

Mr. Cooper said it would be permitted. He said having the cost of attending an event in an official capacity--travel, meals and lodging--would be permitted subject to the test of whether Metro could have and would have been properly authorized to expend funds for that event. In the case of a Councilor, the annual expense account can be used to attend events like that. If you can document that the Presiding Officer would have approved your using your expense account to attend an event as being Metro-related, it would be appropriate to have a third party save Metro the cost by paying your expenses.

Councilor Kvistad asked who would be the judge of appropriate expenditures in the case of the Executive Officer.

Mr. Cooper said the Executive Officer would be required to report those types of expenses on his annual financial statement. He said Councilor Park's amendment does not speak to the situations Councilor Kvistad had suggested, but they were covered by state law.

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Councilor Monroe said he did not believe Councilor Park's amendment, if passed, would hurt the overall document. However, he noted that elected officials were sometimes considered celebrities. As such, they were sometimes invited to attend charitable events to help sell tickets. They attend because they support the charity, not because they are close friends with the sponsor of the event. He was concerned that reporting the event might give the false impression that the elected official had accepted a gift from the sponsor because of a relationship with the sponsor rather than with the charity.

Councilor Bragdon asked for clarification. He asked whether they would need to report attendance at events sponsored by organizations that do not have a lobbyist registered with Metro.

Councilor Monroe said no.

Councilor Atherton said he did not see what this amendment would add.

Councilor Kvistad asked that action on this item be postponed until after he had presented his amendment. Chair Washington agreed.

Councilor Kvistad proposed to amend section 2.17.080, subsection (a), which deals with use of office equipment under the abuse of office section. He would like to add that de minimis use of office equipment was acceptable. He said Councilors are part-timers, who occasionally must send a fax, make a phone call, or make a copy for outside work. It would not be a matter of avoiding personal expense; it would be a matter of occasional necessity.

Councilor Monroe asked Councilor Kvistad why Metro employees had been included.

Councilor Kvistad said he would prefer to delete the entire section, but recognizing de minimis use would clarify this section.

Councilor Park asked Mr. Cooper if state law would cover this issue if this section were removed. Mr. Cooper said state law does not deal with these details. State law prohibits the use of public office for personal financial gain.

Councilor McLain said she supports this section and would argue at the full Council to retain it. She believed de minimis use is covered in the subsection as it now stands.

Mr. Cooper said state law has been interpreted to cover avoiding incurring personal expense as part of abuse of office. He said this section was written to clarify that intention by making it clear that, for example, a Metro official or employee cannot avoid paying for a personal Internet connection by using the one at work.

Councilor Kvistad asked about subsection (b), which he felt was even worse. That subsection prohibits Metro official or employees from remaining at their place of work at other than normal work hours unless authorized to do so. He said that was ridiculous, and those who worked through the land-use decisions last year would recognize that. He said the land-use work required work on Saturdays, Sunday, and evenings.

Motion to Amend #17:

Councilor Kvistad moved to amend the code by removing Section 2.17.080 from the ordinance.
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Councilor McLain said this section had been drafted in response to the auditor's report, which noted that employees had used Metro facilities for non-Metro purposes. When a former Councilor requested to use part of the Metro building for a non-Metro purpose, it was unclear as to whether that would be permitted. This was drafted in response to those instances.

Councilor Atherton said he would like to have subsection (b) removed.

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Councilor Kvistad said that an outside person had used Metro facilities in the past, but in his view that situation could and should be handled administratively. Likewise, any situation involving employees could be handled administratively.

Vote on Motion to Amend #17:

Chair Washington and Councilor Kvistad voted aye. Councilor Atherton voted no. The vote was 2/1 in favor, and the motion passed.

Councilor Washington said for the record, he would prefer to see these situations handled administratively. He returned to discussions of Councilor Park's amendment to add new sections 2.17.130 and 2.17.140 to the Metro Code. These sections address statements of expenses required of lobbyists and employers of lobbyists.

Councilor Kvistad asked why Metro employees were not included in the reporting requirements. Councilor Monroe said because employees are not normally invited to attend fund-raisers as celebrities.

Councilor Atherton suggested that reporting requirements might discourage lobbyists from inviting elected officials to charitable fund-raisers.

Motion to Amend #18:

Councilor Atherton moved to add new sections 2.17.130 and 2.17.140 to the Metro Code, specifying certain reporting requirements for lobbyists and employers of lobbyists in connection with fund-raising events for non-profit organizations.

Vote on Motion to Amend #18:

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

Chair Washington said that completes the votes on suggested amendments to the code. He called for a vote on the main motion.

Councilor Kvistad said he had several questions about details in the code. He asked about the value of ceremonial gifts.

Mr. Cooper explained that gifts received on behalf of Metro could be accepted. Councilor Kvistad asked whether clarifying language could be added to section 2.17.020 to make it clear that elected officials could keep small ceremonial tokens.

Councilor Park asked for clarification of the term lobbyist.

Mr. Cooper gave several examples, which included time spent sitting in committee meetings even if no testimony is offered, if the person sitting there is a paid lobbyist and the intention is to influence legislation.

Councilor Monroe suggested that Councilor Kvistad work with Mr. Cooper to clarify the section on mementos.

Chair Washington asked Mr. Cooper if the main motion could be voted upon and clarifying language be added later.

Motion on the Main Motion as Amended:

Councilor Kvistad moved to forward to Council Ordinance No. 99-795 without recommendation.

Vote on the Main Motion as Amended:

Chair Washington and Councilor Atherton voted aye. Councilor Kvistad abstained. The vote was 2/0/1 in favor and the motion passed.

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Chair Washington asked that all clarifying language be submitted to Mr. Morrissey in the next two days.

Mr. Cooper said that clarifying amendments can be adopted by the Council along with the Ordinance. New provisions or substantive changes would need to be proposed separately.

Chair Washington thanked everyone for their hard work. He said he realized not everyone would get everything he or she wanted, but everyone should find something to support. He said this document would not change the way the Council office operates whether it passes or not.

2. COUNCILOR COMMUNICATIONS

There being no more business to come before the committee, Chair Washington adjourned the meeting at 5:55 PM.

Prepared by,

Pat Emmerson
Council Assistant

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ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF FEBRUARY 17, 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	2/19/1999	Latest version of Ordinance No. 99-795 with most recent amendments from Councilors Park, Kvistad, Bragdon	022299MOP-1
	2/9/1999	Amendment proposed by Councilor Bragdon adding a new section to Code Chapter 2.17 addressing disclosure of campaign contributions	022299MOP-2
	2/11/1999	Amendment proposed by Councilor Atherton creating a new code section to @.17, addressing disclosure of campaign contributions and recusal from voting.	022299MOP-2