

BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

AN ORDINANCE AMENDING ORDINANCE )  
NO. 91-390A REVISING THE FY 1991-92 )  
BUDGET AND APPROPRIATIONS )  
SCHEDULE FOR THE PURPOSE OF )  
FUNDING UNANTICIPATED COSTS FOR )  
THE USE OF THE LEXIS SYSTEM FOR )  
LEGAL RESEARCH )

ORDINANCE NO. 92-460

Introduced by Rena Cusma,  
Executive Officer

WHEREAS, The Council of the Metropolitan Service District has reviewed and considered the need to transfer appropriations within the FY 1991-92 Budget; and

WHEREAS, The need for a transfer of appropriation has been justified; and

WHEREAS, Adequate funds exist for other identified needs; now, therefore,

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

1. That Ordinance No. 91-390A, Exhibit B, FY 1991-92 Budget, and Exhibit C, Schedule of Appropriations, are hereby amended as shown in the column titled "Revision" of Exhibits A and B to this Ordinance for the purpose of transferring \$5,000 from the Support Service Fund Contingency appropriation to Materials and Services to fund unanticipated costs for use of the LEXIS system by the Office of General Counsel.

2. This Ordinance being necessary for the immediate preservation of the public health, safety and welfare, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Council of the Metropolitan Service District this 11th day of  
June, 1992.

  
\_\_\_\_\_  
Jim Gardner, Presiding Officer

ATTEST:

  
\_\_\_\_\_  
Clerk of the Council

**EXHIBIT A  
ORDINANCE NO. 92-460**

ACCT #	DESCRIPTION	CURRENT		REVISION		PROPOSED	
		FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
<b>SUPPORT SERVICE FUND:Office of General Counsel</b>							
<b>Total Personal Services</b>		6.00	372,714	0.00	0	6.00	372,714
<b>Materials &amp; Services</b>							
521100	Office Supplies		2,600		0		2,600
521110	Computer Software		700		0		700
521290	Other Supplies		2,330		0		2,330
521310	Subscriptions		4,620		5,000		9,620
521320	Dues		1,681		0		1,681
525640	Maintenance & Repairs Services-Equipment		735		0		735
526310	Printing Services		210		0		210
526410	Telephone		210		0		210
526420	Postage		158		0		158
526440	Delivery Services		315		0		315
526500	Travel		1,155		0		1,155
526800	Training, Tuition, Conferences		4,200		0		4,200
529500	Meetings		420		0		420
529800	Miscellaneous		210		0		210
<b>Total Materials &amp; Services</b>			19,544		5,000		24,544
<b>Total Capital Outlay</b>			2,955		0		2,955
<b>TOTAL EXPENDITURES</b>		6.00	395,213	0.00	5,000	6.00	400,213

**EXHIBIT A  
ORDINANCE NO. 92-460**

ACCT #	DESCRIPTION	CURRENT		REVISION		PROPOSED	
		FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
<b>SUPPORT SERVICE FUND:General Expenses</b>							
<b>Interfund Transfers</b>							
581513	Trans. Indirect Costs to Bldg. Fund		314,646		0		314,646
581615	Trans. Indirect Costs to Insur. Fund-Gen'l		47,177		0		47,177
581615	Trans. Indirect Costs to Insur. Fund-Workers' Comp		54,245		0		54,245
<b>Total Interfund Transfers</b>			<b>416,068</b>		<b>0</b>		<b>416,068</b>
<b>Contingency and Unappropriated Balance</b>							
599999	Contingency						
	* General		138,095		(5,000)		133,095
	* Builders License		7,848		0		7,848
<b>Total Contingency and Unapp. Balance</b>			<b>145,943</b>		<b>(5,000)</b>		<b>140,943</b>
<b>TOTAL SUPPORT SERVICES FUND</b>		<b>78.60</b>	<b>5,825,205</b>	<b>0.00</b>	<b>0</b>	<b>78.60</b>	<b>5,825,205</b>

**NOTE: This amendment assumes adoption of Ordinance No. 92-459, funding upgrades and enhancements to the financial management system and the purchase of a high capacity tape drive.**

**EXHIBIT B  
ORDINANCE NO. 92-460  
SCHEDULE OF APPROPRIATIONS**

	Current Appropriation	Revision	Proposed Appropriation
<b>SUPPORT SERVICES FUND</b>			
Finance and Management Information			
Personal Services	1,668,149	0	1,668,149
Materials & Services	904,286	0	904,286
Capital Outlay	157,757	0	157,757
<b>Subtotal</b>	<b>2,730,192</b>	<b>0</b>	<b>2,730,192</b>
Regional Facilities			
Personal Services	450,252	0	450,252
Materials & Services	317,966	0	317,966
Capital Outlay	40,500	0	40,500
<b>Subtotal</b>	<b>808,718</b>	<b>0</b>	<b>808,718</b>
Personnel			
Personal Services	439,618	0	439,618
Materials & Services	62,310	0	62,310
Capital Outlay	1,227	0	1,227
<b>Subtotal</b>	<b>503,155</b>	<b>0</b>	<b>503,155</b>
Office of General Counsel			
Personal Services	372,714	0	372,714
Materials & Services	19,544	5,000	24,544
Capital Outlay	2,955	0	2,955
<b>Subtotal</b>	<b>395,213</b>	<b>5,000</b>	<b>400,213</b>
Public Affairs			
Personal Services	682,391	0	682,391
Materials & Services	136,040	0	136,040
Capital Outlay	7,485	0	7,485
<b>Subtotal</b>	<b>825,916</b>	<b>0</b>	<b>825,916</b>
General Expenses			
Interfund Transfers	416,068	0	416,068
Contingency	145,943	(5,000)	140,943
<b>Subtotal</b>	<b>562,011</b>	<b>(5,000)</b>	<b>557,011</b>
<b>Total Support Services Fund Requirements</b>	<b>5,825,205</b>	<b>0</b>	<b>5,825,205</b>

**ALL OTHER APPROPRIATIONS REMAIN AS PREVIOUSLY ADOPTED**

**NOTE: This amendment assumes adoption of Ordinance No. 92-459, funding upgrades and enhancements to the financial management system and the purchase of a high capacity tape drive.**

FINANCE COMMITTEE REPORT

ORDINANCE NO. 92-460 AMENDING ORDINANCE NO. 91-390A REVISING THE FY 1991-92 BUDGET AND APPROPRIATIONS SCHEDULE FOR THE PURPOSE OF FUNDING UNANTICIPATED COSTS FOR THE USE OF THE LEXIS SYSTEM FOR LEGAL RESEARCH

Date: June 11, 1992

Presented by: Councilor Van Bergen

COMMITTEE RECOMMENDATION: At it's June 4, 1992 meeting the Committee voted unanimously to recommend Council adoption of Ordinance No. 92-460. All Committee members were present and voting.

COMMITTEE DISCUSSION / ISSUES: Dan Cooper, General Counsel, presented the staff report. He indicated when the current year budget was put together and adopted by the Council, his office did not have a good understanding as to the amount of use of the Lexis System for Legal Research. Experience to date shows that his office has used this system more than they had anticipated. He pointed out the benefits his office has obtained from using this system in providing faster and more comprehensive research on matters with which they have dealt. The request is to transfer \$5,000 from the Support Service Contingency to the Materials and Services category in the Office of General Counsel budget.

## STAFF REPORT

### CONSIDERATION OF ORDINANCE NO. 92-460 AMENDING ORDINANCE NO. 91-390A REVISING THE FY 1991-92 BUDGET AND APPROPRIATIONS SCHEDULE FOR THE PURPOSE OF FUNDING UNANTICIPATED COSTS FOR USE OF THE LEXIS SYSTEM FOR LEGAL RESEARCH

---

Date: May 18, 1992

Presented by: Dan Cooper

This Ordinance would authorize the transfer of \$5,000 in appropriations for the Office of General Counsel from Contingency within the Support Services Fund. The request is to cover unanticipated costs for using the LEXIS system for legal research during Fiscal Year 1991-92.

#### BACKGROUND AND ANALYSIS

Acquisition of computer modems and software in order to allow the use of national computerized data base as a legal research tool for the Office of General Counsel was approved by Council in the FY 1990-91 budget. The Data Processing Division accomplished the conversion of the Office of General Counsel's computers to make them compatible with a national data base system in the last quarter of FY 1990-91. During the time period that the FY 1991-92 budget was being prepared, the Office of General Counsel had not had any experience in using the data bases in order to determine what an appropriate level of expected usage would be and costs associated therewith in order to accurately project financial needs for FY 1991-92.

The LEXIS system is one of two national computerized legal research tools available. As a relatively small user in relation to law firms utilizing this service, it was determined by the Office of General Counsel that the LEXIS system, purchased on a time share basis through the Multnomah Bar Association, was the most cost-effective means of acquiring access to a national data base for legal research. The alternative was to either purchase LEXIS directly from the system, or to purchase the West Law service, its chief competitor. A direct purchase of either LEXIS or West Law would have required the payment of a minimum guaranteed amount for access to the system and then making payments for actual usage on a service and time basis. By purchasing LEXIS through Multnomah Bar Association, as a subuser, the Office of General Counsel was able to avoid monthly minimum charge and make the most cost-effective access to the system, much as other smaller law firms in Multnomah County.

The advantages of using the LEXIS system are two-fold. First, material not available in the Office of General Counsel library on Oregon case law is readily available on the LEXIS system. The subscription for Oregon cases in the Office of General Counsel was initiated during the tenure of the first General Counsel. The library collection contains all Oregon cases decided after that point in time, but does not contain any previous Oregon decisions.

To fully research any issue of Oregon law without LEXIS would require a trip to the Multnomah County Law Library. Further, the Office of General Counsel has never developed a law library containing any other court cases other than the recent Oregon cases. Thus, any legal research done requiring review of federal court decisions or decisions of other states would also require a trip to the Law Library.

The use of the LEXIS system avoids these time-consuming trips and provides instant access. In addition, the computerized research methods are much faster than the manual methods previously utilized by attorneys. (Note: Live comparison testing by a small law firm in Sacramento resulted in search by computer taking 15 minutes, traditional search manually took 1.4 hours.) An additional advantage of avoiding a trip out of the Office to the Law Library to conduct research is that the attorneys are available in the Office while they are researching matters. This cuts down on delays in communication in returning telephone calls and scheduling future matters, and makes the attorneys much more efficient overall.

Usage levels during FY 1991-92 have been higher than those on which budget estimates were made in projecting for the FY 1991-92 budget. In FY 1991-92 the Office projected only a modest increase in the Subscription line item (\$1,300 over prior fiscal year) to cover the cost of LEXIS. Based on the data of usage so far, and projected needs for the remainder of the fiscal year, this sum has proved to be insufficient to cover the cost of utilizing this service and an additional appropriation of \$5,000 is requested to cover this cost.

Attached to the Staff Report are internal memoranda from the Office of General Counsel staff members detailing usage of the LEXIS system during the past year, and anticipated usage during the remainder of the fiscal year.

#### EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Ordinance No. 92-460 transferring \$5,000 from the Support Service Fund Contingency to Materials and Services in the Office of the General Counsel.



**METRO**

2000 S.W. First Avenue  
Portland, OR 97201-5398  
503/221-1646

# Memorandum

Date: May 8, 1992

To: Daniel B. Cooper, General Counsel

From: Todd Sadlo, Senior Assistant Counsel *TS*

Regarding: USE OF LEXIS  
Our file: 6.§17

---

The following is a summary of the LEXIS research I have conducted within the last fiscal year. This is a partial list:

1. With Larry Shaw: Research regarding compatibility obligation imposed by ORS 197.180(1). (State agency consistency with acknowledged comprehensive plans.)
2. With Larry Shaw: Research regarding rights of adjacent owners or neighborhood groups in condemnation action, transportation corridor.
3. Prevailing wages on public works projects: Midway decision, and impact on Oregon prevailing wage law; access to Federal Regulatory Code (CFR) for definition of "site of work;" etc.
4. Research on Highway Division authority related to issuing access permits. (Division insisted that we must purchase surplus land as condition for receiving access permit.)
5. Research of prevailing wage law as it applies to salvage workers, removing materials from a public building.
6. Research on authority of Metro Council to adopt ordinance for issuing subpoenas and compelling testimony.
7. Research to establish legal definition of hazardous waste generator, for purpose of determining whether Metro or WMO must sign manifests for shipments of hazardous waste inadvertently accepted at Metro South. Accessed federal regulatory codes, Federal Register, cases.



Daniel B. Cooper  
Page 2  
May 8, 1992

8. Research of federal rules related to transport of household hazardous waste, to answer liability questions for household hazardous waste chapter of RSWMP; accessed federal regulatory codes.
9. NEXIS research--of firms submitting proposals for landfill gas development contract. This search provided useful background for review of an alternative technology proposal (landfill gas into diesel fuel) and viability of proposer. (Proposal ultimately rejected.)
10. Public bidding requirements, alternative procurement for Sears building. Researched case law and Attorney General opinions.
11. Research on Historic Landmark/Statewide Planning Goal 5 cases in context of review of proposals for transfer station in Forest Grove. Questions included whether historic landmark review is a discretionary land use decision, likelihood and nature of appeals.
12. Research on retainage statute, and question of whether Metro could claim interest on payments made to fraudulent companies; how calculated; etc, in context of \$1.5 million retainage/withholding account under BFI contract.
13. Development of landfill gas contract: research of federal tax credits available for landfill gas extraction, non-conventional fuel development--cases, publications, access to Internal Revenue Code.
14. SCS Engineers claim for \$150,000 in additional compensation: research of quantum meruit cases to formulate response.
15. Research of question related to Riedel payments: If no "offset" clause in contract, could we offset from payments due, amounts owed to us by Riedel? Reviewed cases.
16. Change in law research--OWS and JGT, Inc. to determine if any cases related to contractual change in law provisions.
17. Research of RFP and other alternatives to public bidding, related to RFF's for Washington County.
18. For solid waste land use project, research on Statewide Planning Goal 14, development outside of UGB.

Daniel B. Cooper  
Page 3  
May 8, 1992

**Predicted Use for Remainder of Fiscal Year.**

I have averaged \$240 in user fees over an eight-month period between August, 1991, and March, 1992. My use of the system has generally been to answer questions that arise day-to-day, not in relation to planned projects. Some research that I may need to use LEXIS for between now and the end of the fiscal year includes:

1. Franchise Code revisions: May need to supplement existing research by reviewing and Shepardizing cases cited in texts.
2. Related to petroleum contaminated soils, ability to regulate or prevent flow of waste to landfill in Washington state.
3. Subtitle D, federal regulations related to landfill closure. We are missing the preamble, which may contain important explanatory information.
4. Research related to DEQ authority to regulate landfill closure and to impose different monitoring requirements on different landfills.

Please let me know if you have further questions regarding this matter.

dr  
1127




**METRO**

2000 S.W. First Avenue  
Portland, OR 97201-5398  
503/221-1646

# Memorandum

Date: May 8, 1992

To: Daniel B. Cooper, General Counsel

From: Mark B. Williams, Senior Assistant Counsel 

Regarding: USE OF LEXIS  
Our file: 6.§17

---

You asked for a summary of recent projects on LEXIS.

1. Trademark issues for convention center.

The question involved whether a public body can hold and enforce a trademark. Interestingly enough, the cases that came up involved mostly cigar companies whose property (including trademarks) were expropriated as a result of the Cuban revolution. I never would have found these cases with conventional research.

2. "Zoolympics."

Can the Zoo lawfully use the term "Zoolympics" without getting in trouble with the U.S. Olympic Organizing Committee. The answer, which is "no," was obtained almost instantly via LEXIS, since the word search almost immediately produced the definitive U.S. Supreme Court case on the precise issue.

3. Wage and Hour Issues at PCPA.

By using the wage and hour library on LEXIS, I was able to combine various word combinations in order to figure out whether a public employer is subject to the "joint employer" doctrine of the FLSA (Fair Labor Standards Act).

4. Use of Dedicated Tax Proceeds for Other Purposes.

This search involved searching through Oregon cases and Oregon Attorney General opinions for any type of precedent regarding the use of dedicated tax funds for other purposes, i.e., the use of convention center funds for the

Daniel B. Cooper  
Page 2  
May 8, 1992

PCPA. Although the case law could have been found manually, the Attorney General opinions are not available in our office, and would have necessitated a trip to the library. The only precedent of any value turned out to be an AG opinion. This project was accomplished on a tight time frame due to LEXIS.

5. Future Plans.

I am clearly a beginner at LEXIS, but I am starting to use it more and more. The more you become accustomed to computer word searches, the easier it becomes. As an "old lawyer" who learned only manual research, long before the days of the computer or the word processor, LEXIS was a little terrifying at first. But the more you get used to using word combinations instead of time-consuming manual research, the quicker you become. I have an issue at civic stadium, involving leaking oil from an adjacent property, which will eventually have to be researched. I realize already that I will feel more comfortable researching this topic on LEXIS than I would the old fashioned way. It is definitely the wave of the future.



**METRO**

2000 S.W. First Avenue  
Portland, OR 97201-5398  
503/221-1646

# Memorandum

Date: May 8, 1992  
To: Daniel B. Cooper, General Counsel  
From: *LSS*  
Larry Shaw, Senior Assistant Counsel  
Regarding: USE OF LEXIS  
Our file: 6.§17

---

## Past Use of LEXIS

Since a good part of my legal research is done on slip opinions from LUBA and Oregon Administrative Rules which may not be on the State computer research system, as well as not on LEXIS, the limited use of LEXIS has been for (1) Shepardizing cases, (2) reading Oregon cases older than the books in our law library, (3) statutory research in another state, and (4) one instance of Oregon Administrative Rules research that was on the system.

The most helpful part of the service has clearly been the ability to Shepardize both cases and statutes from the desktop.

## Future Use of LEXIS

Clearly the highest priorities for future use of LEXIS by me will be continued, regular use of Shepards for preparation and litigation, statutes from other states, and Oregon and other states' administrative rules as they are added to the system. Specific situations for predicted use of LEXIS:

1. Public Records Advisory Council - Review of proposed legislation affecting RLIS public records exemptions.
2. State Agency Coordination - The series of Oregon Administrative Rules relating to major state agencies' State Agency Coordination programs certified by LCDC.
3. Greenspaces Bond Measure - Assist in research for litigation on ballot title.
4. Model Illegal Dumping Ordinance - Assist in research.
5. Acknowledgment of Urban Growth Boundary - Assist in research.

dr  
1413



**METRO**

2000 S.W. First Avenue  
Portland, OR 97201-5398  
503/221-1646

# Memorandum

Date: May 8, 1992

To: File

From: Daniel B. Cooper, General Counsel *DBC*

Regarding: USE OF LEXIS  
Our file: 6. §17

---

Following is a partial list of legal research conducted by General Counsel Daniel Cooper during the past fiscal year and anticipated needs for the future:

1. Reapportionment. Extensive use of the LEXIS system was made to research the legal criteria for reapportioning the Council into districts of approximately equal size. Research conducted examined (a) Oregon case law regarding the statutory provisions for redistricting of the Metropolitan Service District, (b) Oregon case law on Oregon constitutional issues involved in redistricting, and (c) federal case law on federal constitutional issues as well as federal statutory issues related to the civil rights act protection of minority representation during reapportionment.
2. Hazardous Waste. Ongoing research and identification of latest trends in hazardous waste liability, particularly for municipalities owning, operating or sending material into landfills.
3. Research was conducted on the authority of Metro to exercise its "police power" functions in relation to a proposal to create a Metro sports authority.
4. Extensive research was conducted on issues related to Minority Business Enterprises, Disadvantaged Business Enterprises, and Women Business Enterprises in locally funded contracts.
5. The LEXIS system was utilized extensively to research issues related to the change in owner of the Riedel compost facility in regards to reviewing applicable law regarding "lender liability" and possible legal theories that could have made Metro vulnerable to payment of the outstanding \$26,000,000 in bonds.

Anticipated use during the end of the fiscal year includes continuing review of new case law being developed in the DBE/MBE area; review of Oregon home rule issues related to the

Memo to File  
Page 2  
May 8, 1992

preparation of the Metro Charter, and other related matters, including financing; as well as possible legal issues to be examined in developing responses to questions anticipated from both the Council and the Executive Officer related to the Tri-Met merger possibility.

gl  
1562



**METRO**

2000 S.W. First Avenue  
Portland, OR 97201-5398  
503/221-1646

# Memorandum

DATE: June 12, 1992

TO: Rena Cusma, Executive Officer

FROM: Paulette Allen, Clerk of the Council

RE: TRANSMITTAL OF ORDINANCE NOS. 92-457, 92-458, 92-459, 92-460  
AND 92-462

Attached for your consideration are true copies of the ordinances referenced above adopted by the Council on June 12, 1992.

If you wish to veto any of the ordinances referenced above, I must receive a signed and dated written veto message from you no later than 5:00 p.m., Thursday, June 18, 1992. The veto message, if submitted, will become part of the permanent record. If no veto message is received by the time and date stated above, these ordinances will be considered finally adopted.

-----

I, Unette Norley, received this memo and true copies of Ordinance Nos. 92-457, 92-458, 92-459, 92-460 and 92-462 from the Clerk of the Council on 6-12-92.