

MINUTES

Toxics Board
Training Conference Room – Fire and EMS Headquarters
1705 West 2nd Avenue

March 30, 2004
3 p.m.

PRESENT: Marylee Bowman, Chair; David Monk, Vice Chair; Clyde Carson, Brian Allen, Paula Holloway, Steve Johnson, Jennifer Gleason, members; Glen Potter, Fire & Emergency Medical Services; Kathryn Brotherton, City Attorney's Office; Terry Connolly, Ken Luse, Andy Poynter, Amos Heifner, guests.

1. Approval of Agenda/New Items

Ms. Bowman called for additions to the agenda. There were none.

2. Public Comment

Andy Poynter circulated a memorandum entitled *Items Used in Manufacturing and Materials Balance*. He wished to come to an agreement regarding substances that were no longer used by a company. He asserted that it was time consuming and costly to inventory such substances.

In response to a question from Ms. Bowman, Mr. Poynter stated that companies wished to exempt such substances from reporting.

Mr. Carson noted that this issue had come up in previous years. He said he had been of the opinion that a substance that was not for use in manufacturing should not be required to be inventoried. At the time of the debate Toxics Board-member Mary O'Brien had countered that a substance not used for manufacturing in one year could be used in a subsequent year. He related that Ms. O'Brien felt that this potentiality made all substances meet the criteria for reporting. He felt, however, that materials that were no longer used should not be required to be reported unless they were in large quantities.

Mr. Poynter concurred and suggested that there be a threshold, e.g., less than 50 pounds of something, that would determine whether it needed to be reported.

Mr. Potter recommended asking for an analysis of the issue. He noted that 2003 reports were due on the following day.

Mr. Carson supported asking for further analysis. He felt it needed to be discussed and could be part of a larger effort to evaluate the Charter Amendment.

Mr. Johnson felt that a substance not used within a timeframe needed to be taken into consideration. He suggested the board look at some living examples of such items. He added that should the board follow the letter of the law, it would require reporting on everything, paints and solvents included.

Ken Luse opined that a product in one's inventory that was not used should not be required to be reported.

Mr. Luse commented that it was time-consuming to speciate substances. Mr. Carson pointed out that one only had to speciate a product once.

It was decided to request further analysis on the issue and bring it back for future discussion.

3. Approval of the Minutes from January 15, 2004

Mr. Carson, seconded by Mr. Monk, moved to approve the minutes from the meeting of the Toxics Board held on January 15, 2004, as written. Ms. Bowman deemed them, without objection, approved.

4. Staff Report

- **Council Hearing/Action on 2004 Fees**

Mr. Potter reported that the City Council had held its public hearing on the issue. He said 14 people testified in favor of the recommended fee scale for 2004, two people testified in opposition, and the City Council had received six to eight e-mails and letters in opposition to the fee change. He stated that the 2004 fees had been approved by the City Council 7:1, with Councilor Solomon voting in opposition. He related that she had opined the fees were too high. He said the council then voted to ask the Toxics Board to address the inequities of the fee structure. This passed by a vote of 4:3. The council then discussed whether or not to limit the board to ordinances or whether to let it recommend changes to the charter. He reported that the council voted 4:3 to allow the Toxics Board to recommend Charter changes.

- **2003 Reporting**

Mr. Potter stated that reporting was not complete and he anticipated there would be a flurry of reports on the following day because of the deadline. He stressed that the Toxics Board did not mean to be punitive and he would make a few reminder calls as he had time on the following day.

- **2004 Invoices**

Mr. Potter reported that invoices had been sent a week ago. He said he knew people had received them by the increase in phone calls. Some companies apparently had not been tracking the changes and the public hearing and were surprised by the increase. He commented that people had been accepting of the information he had to share and they now knew that the issue had been brought back to the Toxics Board for a recommendation.

5. Response to City Council Request

Ms. Bowman introduced City Attorney Kathryn Brotherton.

Ms. Brotherton read the council motion, as follows:

“To direct the Toxics Board to return to council in time for implementation by the 2005 billing cycle a proposal to address the fee inequities and concerns caused by legislative action and court decisions while preserving the general intent of the voters in adopting the program.”

She explained that the board had two choices: it could return to the council with a recommendation for the adoption of an ordinance or it could return to the council with a recommendation for a charter amendment. She recommended the board decide within 30 to 45 days which it would choose to pursue, as a charter amendment would require that the City Council not receive the recommendation later than July in order to get it on the ballot for November 2004. She added that an ordinance, while being simpler to process, allowed less flexibility. She said it could expand the program as long as it was consistent with the Charter Amendment.

Ms. Brotherton related that some councilors said they did not want two programs existing simultaneously for the same purpose, so an ordinance would have to complement the Charter. Mr. Potter clarified that the real desire was for the Toxics Program to be fair and cheap. He said some elected officials felt it was a drawback to have it in the Charter because they could not alter it, while others felt it was a good thing it was embedded in the Charter so that it could not be tampered with.

Mr. Carson thought the courts had prohibited the City from using anything but the hazardous substance user fees to support the program. He said the only way the fee question could be addressed would be to change the Charter.

Ms. Gleason felt there were ways to do it. She commented that the City Council had not indicated that there could not be two different systems.

Ms. Brotherton stated that there were certain things the board could not do if it did not amend the Charter and it could end up with two different systems, so long as it did not

drop below the requirements established by the Charter. She reiterated that the essence of the Council motion was to come back with an idea of how the fee inequities could be addressed.

Mr. Potter clarified that the courts had struck down the quantity threshold for purposes of fees. He said the council then adopted an ordinance, for purposes of fees, that had a different definition of hazardous substance user than that contained in the Charter.

Mr. Carson asserted that the Charter governed who paid the fee. He questioned whether an ordinance could be enacted.

Mr. Johnson remarked that the fee issue was a money issue. He averred that there was nothing that prevented the City from having another program that helped to pay. He felt the portion paid by the Charter side of it could be small. He thought the fidelity to the Charter could be maintained with both an ordinance and the Charter. He added that changing the Charter would cause implementing ordinances to be enacted. He thought changing the Charter might just add to the problems the board was experiencing.

Ms. Brotherton said multiple changes could be made through an ordinance as long as it did not contradict the charter.

Mr. Johnson remarked that the cost for an election was not trivial. Mr. Potter said \$30,000 was the estimate for May of 2005 and it was estimated to be much less if it was on the ballot for November as it would piggyback on other ballot issues.

Ms. Brotherton stated that there were things in the Charter that were outdated and that the Toxics Board might wish were no longer there. She said once the board came up with ideas, the City Attorney's office would be able to assess them and would be involved in order to help the board get through the processes.

Mr. Carson asked if it would be possible to craft a clarifying ordinance. Ms. Brotherton replied that she would look into it.

Mr. Carson noted companies were required to file a complete and accurate report. He felt it was unclear what it was. He thought the Charter could be made so the business community would not challenge it.

Mr. Johnson thought a discussion on who should report and how accurate it should be could take a year. He felt it could cost money in attorney's fees as well.

Mr. Potter encouraged the board to consider the politics of the whole matter as well. He added that an issue placed before the electorate would also require a campaign, and if the campaign failed the program would be back where it was in the beginning.

Mr. Johnson felt an agreement on something that was merely housekeeping could possibly pass as a Charter amendment. He averred that anything else would present problems

and leave the board in the same place it already was. He thought any ordinance forwarded to the City Council would pass in a unanimous vote.

Mr. Potter opined that a board vote of 4:3 would not necessarily be beneficial.

Mr. Monk related that Councilor Poling made the motion. He felt Councilor Poling did not want an amendment to the charter.

Ms. Gleason suggested the definition of qualifying businesses be broadened to include businesses with less than ten employees.

Mr. Johnson thought the reporting base was too narrow. He advocated for learning as much as possible about toxics use in the community.

Mr. Potter noted that more reporting would require more government resources. He predicted that this could offset the fee savings the City Council asked for.

Ms. Bowman suggested the board bring proposals to the next meeting.

Mr. Allen asked what would happen if changes were made to the Charter. Ms. Brotherton replied that the Charter supersedes ordinances.

Mr. Carson remarked that he would prefer to think on it. He said ideally he would like to get rid of the existing Charter Amendment and approach monitoring toxics via ordinances. He added that he was unclear as to how an ordinance could redefine language in the Charter.

Ms. Brotherton clarified that maintaining consistency with the language of the Charter would allow expansion of the language through ordinances.

Mr. Carson surmised, then, that an ordinance had to be a subset of the Charter. He said he would like to confer with more people and get feedback on this, but thought most likely he would choose to pursue an ordinance due to the lack of time.

Mr. Allen expressed his preference for “going after the Charter” but did not think the Toxics Board could narrow its focus and agree on specifics. He suggested that board members bring their ideas to the next meeting.

Mr. Johnson commented that it was different politics as an ordinance went before the City Council compared to presenting a Charter amendment to the voters. He thought either side would find it difficult to make a change through the latter avenue.

Mr. Monk said the board already had the definitions of what the substances were and just needed to expand who should report. He felt the fee inequity could be addressed through an ordinance. He conveyed his concern that a Charter amendment might take all year for the board to agree upon.

6. Schedule Next Meeting/Agenda Items

Mr. Potter suggested the meeting be held at 2 p.m. on Thursday, April 29, 2004, at the Singer Room in the Eugene Public Library. The board concurred.

The meeting adjourned at 4:06 p.m.

(Recorded by Ruth Atcherson)