MINUTES OF THE METRO COUNCIL MEETING

October 17, 1996

Council Chamber

Councilors Present: Jon Kvistad (Presiding Officer), Susan McLain, Ruth McFarland, Ed Washington, Patricia McCaig, Rod Monroe, Don Morissette

Councilors Absent: None

Presiding Officer Jon Kvistad called the meeting to order at 2:08 p.m.

1. INTRODUCTIONS

None.

2. CITIZEN COMMUNICATIONS

Dave Nadal, 2014 SE 12th, #304, Portland, OR 97214, appeared before the Council to ask if regular citizens would be permitted to testify at the public hearing scheduled for next week. Presiding Officer Kvistad said the public hearing would be open to anyone wishing to testify on the Functional Plan. Mr. Nadal expressed his wish that the October 24 Council meeting had been scheduled for 7:00 PM.

Mr. Nadal then said that in reading the RUGGOs, he came upon a rule that any legislation to be acted on had to be presented in its final form three days prior to being acted on; and he pointed out that the Functional Plan legislation before the Council had been in a state of change up until the start of the meeting.

Presiding Officer Kvistad responded that the process of adopting the Functional Plan was an ongoing process and had been on the agenda for more than a month. He further stated that after the amendment process was complete, Ordinance No. 96-647A would become the final version, Ordinance No. 96-647B, and the final version would be voted on according to the established process.

3. EXECUTIVE OFFICER COMMUNICATIONS

None.

4. CONSENT AGENDA

4.1 Consideration of Minutes for the October 10, 1996 Metro Council Regular Meeting

Motion:	Councilor Washington moved approval of the consent agenda.
Vote:	Councilors McCaig, Monroe, Washington, McLain, Morissette, McFarland, and Kvistad voted aye. The vote was 7/0 in favor and the motion passed unanimously.

5. ORDINANCES - SECOND READING

5.1 Ordinance No. 96-647A, For the Purpose of Adopting a Functional Plan for Early Implementation of the 2040 Growth Concept

The Council then considered Ordinance No. 96-647A, which would adopt a Functional Plan for Early Implementation of the 2040 Growth Concept. Presiding Officer said the Council would be acting on amendments proposed by individual councilors, and he gave a brief description of how the amendment process would proceed for the remainder of the meeting.

According to Presiding Officer Kvistad, the following amendments were approved at the Council meeting of October 3, 1996: Kvistad Amendment No. 2, Kvistad Amendment No. 3, McLain Amendment No. 4, and the Morissette Amendment No. 3. The following amendments were approved at the Council meeting of October 10, 1996: McLain Amendment Title 1 Amendment, and the Monroe Amendment No. 1.

Presiding Officer Kvistad said Councilor Morissette's amendment to Title 1 would be distributed and added to the list of amendments to be considered. He asked Councilor McLain about a letter received from Doug Bollam, and asked if Mr. Bollam's concerns were addressed in her amendment. Councilor McLain said Larry Shaw, Assistant General Counsel, had reviewed McLain Amendment 2A, and both she and Mr. Shaw believed the "and development" language suggested by Mr. Bollam was included.

Mr. Shaw said language appeared in McLain Amendment 2A, which included the definitions for all Titles, and which clarified McLain Amendment No. 2. He said McLain Amendment No. 2 made extensive amendments to Titles 1 and 8. Included in the definitions found in 2A was the definition of the term "development". Mr. Shaw said he had worked with Mr. Bollam, and had reached agreement as to the exact words of the definition. However, Councilor McLain pointed out that Mr. Bollam referred to "or development", while she used the phrase "and development". She asked Mr. Bollam to speak to his request.

Mr. Bollam, 3072 Lakeview Blvd., Lake Oswego, appeared before the Council to discuss the language in question. He said in McLain Amendment No. 2, on line 46 the words "and development" had been struck. He said deletion of this language would preclude citizens who had a residence within the present water quality and flood management area from adding to their driveway, widening it, or from putting more than one load of gravel or asphalting their driveway. He recommended that the "and development" language not be struck from the document.

Mr. Shaw referred to discussions with Mr. Bollam, stating he thought Mr. Bollam had agreed that his purpose in making his request was to protect existing structures. Mr. Shaw said existing structures were protected because the development definition that began on line 38 was all-inclusive. He said if the word "development" was left in, you would have water quality and flood management areas that were broader than the current structure. Therefore, people would be able to make changes to their driveway and other parts of their property that were included in the word "development" that were not structures even though it would encroach on the water quality and flood management area. Mr. Shaw said it was his understanding Mr. Bollam had agreed this was not a good idea; and this was why the word was left out.

Mr. Bollam responded that he thought Mr. Shaw had been referring to the "accessory uses" aspect that was being added. He said he did not realize his proposed language had been interpreted as being development in the broad scale sense of the text itself.

Councilor McLain distributed a letter from Mr. Bollam for consideration at the appropriate time.

Presiding Officer Kvistad asked Michael Morrissey, Council Analyst, to discuss the amendment packets. Mr. Morrissey said the amendments would be considered in title order. Copies of all of the proposed amendments discussed in the following pages are included as part of the meeting record.

TITLE 1, MCLAIN AMENDMENT NO. 2

Mr. Morrissey pointed out that McLain Amendment No. 2 amended Title 1, "Requirements for Housing and Employment Accommodation"; Title 8, "Compliance Procedures"; and Title 10, "Definitions". It was decided to consider the amendment as it dealt with each Title individually.

Motion:	Councilor McLain moved, seconded by Councilor Monroe to amend Title 1 of the Functional Plan as set forth in her amendment entitled McLain Amendment No. 2.

Councilor McLain said her amendment set forth certain wordsmithing changes and added language regarding the development of a set of region-wide community development code provisions, standards and other regulations to help implement the 2040 Growth Concept and Functional Plan.

Councilor Morissette said his problem with this portion of the Functional Plan had to do with the 80% minimum densities. He said the chart at the end of Councilor McLain's amendment meant that minimum densities had been raised to a point where there would not be options available to local jurisdictions, or the ability to provide the housing types necessary. Therefore, he would not support the amendment.

Vote:	Councilors McCaig, Monroe, Washington, McLain, and McFarland voted aye. Councilors Morissette and Kvistad voted nay. The vote was 5/2 in favor and the motion passed.

TITLE 1, MCLAIN AMENDMENT NO. 8A

Mr. Morrissey said McLain Amendment No. 8A was a substitute for her amendment No. 8.

Motion:	Councilor McLain moved, seconded by Councilor McFarland to amend Title 1 of the Functional Plan as set forth in her amendment entitled McLain Amendment No. 8A.

Councilor McLain said the proposed language would offer a more specific definition for minimum densities that would not limit creativity or the ability to deal with open spaces, areas outside the Urban Growth Boundary (UGB), and areas designated as unbuildable. John Fregonese, Director of Growth Management, said the purpose of the amendment was to provide that minimum density standards would not be applied throughout Metro's jurisdiction, only in the appropriate places. He

pointed out Metro has large areas of jurisdiction outside the UGB. He said the maximum zoned density does not include the density bonus for zones that allow them.

Richard Rodgers, 2429 SE Brooklyn, Portland, Or. 97202, legislative analyst to Councilor Morissette, appeared before the Council to ask about Title 1, line 87, with regard to full time and part time jobs as they relate to Table 1 in the Functional Plan. He asked if full time and part time jobs would be counted as equal equivalents in meeting the target numbers. Mr. Fregonese responded that Metro's job estimates were for total jobs, not full time equivalents (FTE). He said only 75% of the jobs listed in the job capacity were full time jobs. Mr. Rodgers asked if this represented a deviation from the initial assumption, or if it was a clarification of an existing understanding. Mr. Fregonese said it was a clarification.

Vote: Councilors Monroe, Washington, McLain, Morissette, McFarland, McCaig, and Kvistad voted aye. The vote was 7/0 in favor and the motion passed unanimously.

TITLE 1, MCLAIN AMENDMENT NO 9

Councilor McLain pointed out that two competing amendments were before the Council, her Amendment No. 9 and Councilor Morissette's unnumbered amendment. She asked that they be considered together.

Motion: Councilor McLain moved, seconded by Councilor McFarland to amend Title 1 of the Functional Plan as set forth in her amendment entitled McLain Amendment No. 9.

Councilor McLain said her amendment provided clarification to the portion of the Functional Plan dealing with accessory units. Councilor Morissette said he felt the amendment that was approved earlier needed additional clarification. He said he feared the amendment proposed by Councilor McLain could prohibit potential good uses for accessory units, however, it would not go as far as to prohibit creation of duplex zones in single family residential areas.

Councilor Monroe asked Councilor McLain if the language she proposed would allow local jurisdictions to prohibit a kitchen or a range and refrigerator as part of the accessory unit. Councilor Monroe said he was concerned that the language would permit local jurisdictions to act in such a way as to negate the intent of the proposed language. Mr. Fregonese said a dwelling unit was defined in the state building code as having separate sanitation and cooking facilities. He said the language stating that regulations "may include, but are not limited to...." was intended to allow discretion for local jurisdictions to place reasonable regulations to ensure accessory units would fit in with single family neighborhoods. These regulations might pertain to off-street parking requirements, type of structure, size limitations, and other requirements.

Mr. Shaw said the word "reasonable" was intended to relate to the word "prohibit".

Councilor Morissette spoke to his proposed amendment, specifically addressing the language he proposed adding to the end of paragraph two, section "D" which read "....inside the Metro urban growth boundary. Cities and counties may make reasonable regulations on accessory units provided restrictions are not made that prohibit rental occupancy, separate access, and full kitchens in the accessory units. Minimum square footage restrictions for accessory units may be

enacted provided that minimums are no higher than 800 square feet." In response to a concern of Councilor McLain, he said he would have no problem with excluding the language pertaining to square footage. However, he said he would be concerned with having too large a unit next to the house, as it could move the property into duplex zoning.

Councilor McLain asked if Councilor Morissette would be willing to eliminate the term "unit" that followed the language, "single family dwelling" in paragraph 2 to his amendment. If he would do so, she felt his proposed language would accomplish the purpose of her amendment language.

Councilor McFarland said she would resist inclusion of Councilor Morissette's proposed language at the end of paragraph 2, because it placed too many restraints on local jurisdictions. She said Council should ensure that local jurisdictions could not prohibit accessory units, but at the same time allow them flexibility in determining the types of accessory units to permit. She referred to the assurance of legal counsel that the language proposed by Councilor McLain would prohibit local jurisdictions from passing regulations that would essentially exclude these types of buildings.

Councilor McLain said she had no problem with Councilor Morissette's intent language, which was the first paragraph in section "D".

Councilor Monroe said he felt Councilor Morissette's proposed language, "separate access" was more clear than Councilor McLain's proposed language, "entrances". Councilor Monroe asked if Councilor McLain's language would permit separate access to be denied. Mr. Fregonese said the McLain could conceivably not be a clear prohibition. Mr. Fregonese said his opinion was that no jurisdiction would write an accessory unit ordinance would prohibit separate entrances. Councilor Monroe said he wanted to ensure that reasonable regulations would not prohibit separate access.

Motion to Amend Main Motion:	Councilor Monroe moved, seconded by Councilor McFarland to amend McLain Amendment No. 9 by deleting the period after the word "occupancy", and adding, "but, shall not prohibit rental occupancy, separate access, and full kitchens in the accessory units."

Councilor McLain asked for clarification that the language would include size, lighting, entrances, and owner occupancy as general issues; and specific issues that would be called out as being not acceptable would be prohibitions regarding rental occupancy, separate access, and full kitchens.

Mr. Fregonese suggested that the wording, "of the primary unit" be added following the language, "owner occupancy", and the words, "of the accessory unit" be added following the language "rental occupancy".

Councilor Monroe, the mover, and Councilor McFarland, the seconder agreed to accept this language as a friendly amendment to Councilor Monroe's amendment. The amendment under consideration then read:

"Cities and counties shall not prohibit the construction of at least one accessory unit within any [~~allowed~~] detached single family dwelling [~~unit~~] that is permitted to be built in any zone inside the urban growth boundary. Reasonable regulations of accessory units may include, but are not limited to, size, lighting, entrances and owner occupancy[~~.~~] of the primary unit, but shall not prohibit rental occupancy of the accessory unit, separate access, and full kitchens in the accessory units."

Councilor Washington asked how the Council would ensure that local jurisdictions were complying with these provisions. Presiding Officer Kvistad responded that if it was discovered local jurisdictions were having compliance problems, the Council would have to address those problems at that time. Mr. Fregonese concurred with Presiding Officer Kvistad, and added that the provisions would be required to be in the local jurisdiction's code, and they could not prohibit something their code allowed.

Vote on Motion to Amend Main Motion:	Councilors Washington, McLain, Morissette, McFarland, McCaig, Monroe, and Kvistad voted aye. The vote was 7/0 in favor and the motion passed unanimously.

Mayor McRobert asked that "or detached garage be added after "detached single family dwelling". She requested after the words "detached single family dwelling" add the word "or detached
garage" or at least not to prohibit them. The language on the table does not prohibit the garage option.

Presiding Officer Kvistad asked Mr. Cooper what those changes would mean to the intent of what was in the document.

Dan Cooper, replied from what he understood from the request from Mayor McRobert, the words written currently would require the local governments to allow the accessory units within the existing dwelling units. What she had requested if there were a detached garage, that was not part of that dwelling unit, that the local jurisdiction could have the option of either /or as the location of the accessory unit. The current language would prohibit that.

Councilor Monroe asked if the Gussie Amendment were added, would that allow local jurisdictions to prohibit accessory units except in detached garages.

Mr. Cooper replied if there were a detached garage it would. If there were not detached garages and the jurisdiction said you had to have a detached garage then he thought it would prohibit it.

Councilor Monroe stated he did not want to do that, but he had no problem allowing local jurisdictions the authority to allow them to be cited and detached garages. He did not want to give them the authority to prohibit them in the main structure.

Mr. Cooper stated they did not need to be given authority to allow them attached garages, they already had that authority. What was being done here was setting a minimum standard for what they must allow.

Councilor Monroe asked for Mayor McRobert to come back up. He asked Mayor McRobert to intervene and clarify his line of questioning.

Mayor McRobert stated the intent was it did not work to do it within the single family dwelling and if there was a detach garage that they not be prohibited from doing that.

Councilor Monroe commented what was also being said was that if a builder, developer or individual homeowner wanted to convert within the building to one, that they would want to allow that.

Mayor McRobert commented if that were the case then why would they need this at all. If it was not mentioned, then she saw no point in the whole amendment.

Councilor Monroe stated the purpose was there were local jurisdictions that prohibited accessory units and granny flats, the Council was trying to stop that.

Mr. Cooper reiterated his previous statement. It was requiring them not to prohibit it in either structure.

Presiding Officer Kvistad stated as he understood this, right now local jurisdictions could do whatever they wanted to. With this there were certain jurisdictions, that do not allow any of it. He told Mayor McRobert that in her jurisdiction it would make no difference whether or not the garage was in there or not. It was in other communities that it was an issue as to whether this should be set up or not.

Mr. Cooper concurred with Presiding Officer Kvistad's comment that this did not prohibit local jurisdictions from allowing accessory units and garages.

Presiding Officer Kvistad clarified that any jurisdiction had the authority within their boundary to make those changes.

Councilor Washington asked if now they could have them detached in the garage or over the garage wherever they wanted and as many units as they wanted.

Presiding Officer Kvistad replied that any jurisdiction could make the determination.

Councilor Monroe clarified in respect to the prohibition of these units, was mandatory but with respect to whether or not such units were allowed in garages would remain permissive.

Jim Jacks, Planning Director, City of Tualatin, said as the discussion showed this issue was not as simple as the concept that was in the amendment. He thought the idea was in the concept form but did not know how it was going to work out case by case at the local level and had simply not had enough discussion or thought behind it. He felt more work needed to be done on this and it might be reasonable for local jurisdictions to run it by their planning commission, city councils or staff to see how it would work. He felt this could lead to additional parking problems.

Councilor McLain stated that what was being done today was to pass the amendments that they had general agreement and support for, so the jurisdictions could take an opportunity to review the entire document.

Presiding Officer Kvistad gave a timeline of October 24 for a public hearing then vote it forward to legal counsel for review, then on November 14 that document would come back to the Council for final action. This would allow for a complete public hearing on the 24th as well as final action and it would allow the communities more time to react to specific portions of this document.

Stacy Fowler, stated it seemed to her that the Council wanted to allow persons the opportunity to have an accessory structure. She did not think that the intent was necessarily within the house, within the garage or next to the house. She felt the intent was one accessory dwelling for each

structure, making an amendment that deleted the words "within any" changing the language to "for each", would allow it to be permissive.

Councilor McLain asked Mr. Cooper or Mr. Shaw if by reading that it did not change the intent of her amendment but made it clearer.

Mr. Cooper replied the language written in Councilor McLain's amendment was pretty narrow because it referred to within the dwelling unit. If the intention was simply as Ms. Fowler stated, to allow one per dwelling unit, then what she suggested was a very reasonable thing to do.

Councilor McLain commented about not being a prohibition by any jurisdiction on adopting at least one accessory unit per detached dwelling, this did the same thing. It would allow for Mayor McRobert's situation to take place within the language and she did not see that it would do damage.

Councilor Monroe felt it would be appropriate for local jurisdictions to prohibit the actual building of a second house on each residential lot. He would hate to prohibit a local jurisdiction from having some control over whether or not people could actually build a second house on each residential lot.

Councilor McLain stated Councilor Monroe was persuasive but would not amend that.

Presiding Officer Kvistad stated he did not hear a motion on that amendment and unless he heard a motion to amend the language they would be moving forward.

Vote on Main Motion as Amended:	Councilors Morissette, McFarland, McCaig, Monroe, Washington, McLain, and Kvistad voted aye. The vote was 7/0 in favor and the motion passed unanimously.

TITLE 1, MCLAIN AMENDMENT NO. 10

Motion:	Councilor McLain moved, seconded by Councilor Monroe to amend Title 1 of the Functional Plan as set forth in her amendment entitled McLain Amendment No. 10.

Councilor McLain said Mr. Fregonese talked about some of the issues relating to the difference between residential and employment. The difference needed to be identified as far as when looking at the historic density for housing and for employment that it was very different. What this would do would require to increase capacity of recent development at low density and it applied only to the residential and it took out the employment section in it.

Presiding Officer Kvistad asked Mr. Fregonese to explain his concern of the "all cities and counties shall" language and wondered what kind of costs and burdenance could be put on local jurisdictions.

Mr. Fregonese stated this was part of the compliance procedure to determine if they had the activity in the recent past. There were cases in the region where the zoning would permit high density but the pattern of approval had been for low density. This was also required for

compliance to 2709 that they look at the previous five years actual density permitted, so that work had to be done by Metro or by the local governments.

Councilor McCaig stated she did not think this was a technical amendment. She asked if this had been reviewed by MPAC, because they were the ones who would ultimately either like this or not.

Mr. Fregonese said it had not been reviewed but the difference between permitted and maximum zoned densities was a technical amendment that Mr. Cooper initiated to ensure there was consistent wording and they both meant the same thing.

Mr. Cooper said both terms meant the same thing. When the review was first done, there were a lot of different terms for density. What was new about the amendment was not the requirement to do the calculation and not that cities and counties had to do it. It would change the previous requirement that was included in the Functional Plan that those calculations be done for housing and employment, and simply make it a requirement for doing the calculations for housing only. This was why it was not a technical amendment and why it was not included in the technical re-write because that was a policy decision. The deletion of employment calculations was the change, the rest was technical clean up.

Councilor McCaig asked why this was done.

Mr. Fregonese replied the only requirement of House Bill 2709 was for residential use. Actually measuring employment densities was very difficult because employees come and go depending upon the business cycle, housing units tend to stay fixed and don't tend to vary much. It would be nearly impossible to do with any accuracy, and not required by any law to be met.

Councilor McLain added the policy elements of that, were simply left out of the amendment making process, she thought it had been done, it had not and that was what was being done now.

Rich Rodgers stated by removing employment it would not have to do anything to prove it had met employment targets. Removing this requirement then essentially said that a local jurisdiction had the carte blanche that they would be able to meet the target even if it was not based on anything from experience.

Mr. Cooper replied he understood the testimony, if one did not go back and look at what jurisdictions did for providing employment building opportunities and see what their track record was, you wouldn't know how they zoned the ground. The issue was, when reviewing what local jurisdictions did to their comprehensive plans and zoning maps to meet the employment targets in Table 1, how would you make a judgment call as to whether or not they achieved that or not.

Mr. Fregonese responded the method used to determine compliance with the Functional Plan would be the key here. Under the revisions Section 6, it said they had to meet the overriding Performance Standard. All those Performance Standards applied both to employment and housing. He believed the overriding Performance Measures covered the instance, he thought it would be very difficult to go through the section recommended to be deleted.

Mr. Rodgers responded to Mr. Fregonese's point that it was difficult to measure employment densities, the 1992 Technical Appendix contained measurement of both housing and employment densities for all 2040 design types. He thought this change took the measurement capacity

measurement process, to allow the local jurisdictions to base their goals more on abstract ideas than on actual experiences.

Mr. Fregonese replied that employment could be measured by wage and salary data retrieved from the Labor Division, but was non-disclosure, confidential information that could not be disclosed at a small enough geography so that if could be determine how the employment had occurred. Therefore it could not be published the level of detail that would be required of this, it would be against the law to get the number of employees a particular business had and put it out in a publication. For that reason employment densities could be measured on an area wide basis. It's different with dwelling units, it was a public record which could be published freely.

Mayor McRobert was concerned about what was previously brought up. This was all based on change and his idea would not allow change.

Vote:	Councilors McFarland, McCaig, Monroe, Washington, McLain, and Kvistad voted aye. Councilor Morissette voted nay. The vote was 6/1 in favor and the motion passed.

TITLE 2, MCCAIG AMENDMENT NO. 1

Motion:	Councilor McCaig moved, seconded by Councilor McFarland to amend Title 2 of the Functional Plan as set forth in her amendment entitled McCaig Amendment No. 1.

Councilor McCaig stated this was to establish parking ratios. To change the exception process in zone A to a variance, to make it a more stringent process, rather than an adjustment, inasmuch an exception process in zone B were relaxed. Local jurisdictions would have a tighter perimeter to allow amendments for exceptions to the parking ratios that had been established under zone A.

Councilor McLain commented she thought Councilor McCaig's amendment was excellent and supported it.

Robert LeFeber, International Council of Shopping Centers, 50 SW Pine Street, #400, Portland, Or. 97204, stated there were significant differences between an adjustment and a variance. He saw a problem with wanting desirable major employers to locate in the well served areas but yet they may not be able to do it because they had some conflicts like multiple shifts. If they could not come in and meet this hardship test, they would be driven out into zone B where they would not be served by transit. He felt this was counter productive.

Councilor McCaig thought the hardship test had not changed a bit. It was just the availability of the local jurisdiction to have a different decision as a result of the hardship test. If the hardship test was established in statute, then what was being done was helping the local jurisdiction enact and make a decision based on a review of those performance measurements.

Mr. LeFeber replied the way it was written now it already talked about that in very well served areas with transit that should be taken into account whether not an adjustment was given and that it was a case by case determination. He did not know if any of the instances he recited would meet a variance test.

Mark Whitlow, Bogle and Gates for Retail Task Force, 222 SW Columbia #1400, Portland, Or. 97201, stated the variance procedure did not give local government any flexibility when they wanted to approve something. The standards for adjustment were written often times to work off a purpose statement and if they could not meet the standards, then develop something that was equal or better than the regulations in meeting those standards. He commented on zone A 20 minute service at peak hours, was really not very good service at all, and felt until those standards were built up for better service then there would be a need for parking.

Mayor McRobert supported this amendment. Variances have in addition to the hardships of showing that you could get by with the minimum required change, and it should be hard to get in zone A. She thought there were other alternatives to using land wisely.

Jim Jacks, City of Tualatin, P.O. Box 369, Tualatin, Or. 97062, referred to the proposed language in the amendment on lines 278-279 that spoke to parking ratios and the minimum parking ratios. He stated if there were the minimum, why would you want a company to go through a variance process if they said they only needed 2 1/2 spaces per thousand. If the idea were to encourage less parking, why put them through a variance to put in less than what the typical requirement would be. He touched on the proposed amendment in line 771, he said those then in a local regulation would become approval criteria. He felt that hidden in the definition of variance was two more approval criteria, and felt those should be put in line 771. He stated he did not support using a variance process when other processes could work.

Peggy Lynch, 3840 SW 102nd Avenue, Beaverton, Or. 97005, expressed the goal of the amendment was good but was concerned that there were local jurisdictions that did not have variance processes, and would now be required to create a new process in their code. The entire discussion about this whole Title had been on its relevance to transit service. The other area that was worked on was pedestrian accessibility and pedestrian performance. She was concerned for the Council to remember when talking about the entire Title that it was not just talking about 20 minute bus service or transit service. The goal was trying to create communities that had a pedestrian performance that was greater than before.

Councilor McCaig stated she had no difficulty with deleting in lines 278-279 the " or and minimum parking ratios".

Mr. Morrissey made a technical comment, he pointed out that there was an addition to Title 10 and wanted to be clear that was part of the motion.

Presiding Officer Kvistad stated if it passed it would become part of the definitions. He expressed concern about variance, family wage jobs that further restriction on people being able to get to and from employment was not something he was comfortable with and would be a "no" vote on this item.

Councilor McCaig closed stating that was not what this item did. She did not believe this would restrict family wage jobs.

Vote:	Councilors McCaig, Monroe, Washington, McLain, and McFarland voted aye. Councilors Morissette and Kvistad voted nay. The vote was 5/2 in favor and the motion passed.

TITLE 2, MCLAIN AMENDMENT NO. 7

Motion:	Councilor McLain moved, seconded by Councilor McCaig to amend Title 2 of the Functional Plan as set forth in her amendment entitled McLain Amendment No. 7.

Councilor McLain stated there were suggestions of making the language in this Title more understandable. If 20 minute bus service had been available in the area within the one-quarter mile walking distance, some items were added to deal with some of the issues pertaining to the walking issues. She stated there were three major types of amendments in Title 2 for clarification. One, legal clarification, two, consistency clarifications and three, making sure it was parallel with transportation rule and the RFP work.

Robert LeFeber, International Council of Shopping Centers, 50 SW Pine Street, #400, Portland, Or. 97204, appreciated the change of zone B to becoming a recommendation. He stated some concerns with zone A and the extent of it. There had been several cities that said 20 minute peak hour service was inadequate for zone A standards, and thought it should be more restrictive.

Mark Whitlow, Bogle and Gates for Retail Task Force, 222 SW Columbia #1400, Portland, Or. 97201, commented he agreed with Mr. LeFeber's statement. From a retail point of view if a person were to wait 20 minutes for a bus they would choose other modes. Consistency in the region and state was good and did appreciate the efforts of the Council but at the same time the state was re-examining reduction of parking for a requirement under the Transportation Planning Rule. He recommended that the Council see what findings the study provided, and to put this off until next year for implementation of the Functional Plan.

Mayor McRobert asked if in section 2-A-1 that cities and counties shall require more parking than the minimums and was that really what was wanted to be said.

Mr. Cooper replied that the "no" should stay in.

Mayor McRobert further asked if zone B had been eliminated instead of making it optional.

Councilor McLain stated it was the understanding that those requirements were only in zone A and would not have them both on the maps for both zone A and zone B.

Mayor McRobert reiterated that there was no zone B on the map at all and that it had in fact been eliminated.

Mr. Fregonese replied that zone A was on the map and everything else was zone B.

Mayor McRobert commented that she continued to rise above the local arguments about parking. She stated there was a lot of reliance on the Council. The businesses in zone A were going to be at an economic disadvantage if their competitor could be in zone B and have more parking. New businesses would not be allowed in zone A, they would have to go to zone B. This was important because parking was part of the Ozone Maintenance Plan. The responsibility had shifted from that of the automobile owner to that of the factory industry.

Councilor Monroe commented on Mayor McRobert's discussion of ozone attainment and non-attainment. There had been a discussion on this at JPACT and if they were to go into non-

attainment one of the possible solutions was the requirement to use reformed fuels which would be much more expensive to the user. He said her point on ozone attainment was well taken.

Presiding Officer Kvistad added that the JPACT comments that 55% of the non-attainment was auto related and of that 80% of the pollution and emissions came from 20% of the vehicles.

Peggy Lynch, 3840 SW 102nd Avenue, Beaverton, Or. 97005, discussed section 2-A-2, and thanked the Council for the last sentence on how to deal with pedestrian access on map, but needed to know if the map that had been part of that package had been adjusted to ensure that those areas would be a part of the map of zone A. She had received information from DEQ in the Hillsboro area where there were two industries asking for DEQ permits. This was an issue about jobs and the economy and was why this needed to be done. It was not an issue about whether there would be another Costco for example, it was an issue of how Costco would be built so it could provide those kinds of services.

Mr. Fregonese replied to Ms. Lynch's previous question stating the map would remain as it was unless it was ordered to be amended, the current map did have pedestrian areas as well as other areas.

Councilor McLain closed that they went to zone A and zone B, because it tried to make sure that it was as strong and was trying to help with the Air Shed and the Ozone Maintenance Plan as much as possible. She was convinced after looking at the information that it was a combination of Title 2 with Title 4 and a lot of the other titles, and the whole 2040 Growth Concept as implemented under the Regional Framework Plan that would cause them to stay within the Air Shed Ozone Maintenance Proposal.

Vote:	Councilors McCaig, Monroe, Washington, McLain, and McFarland voted aye. Councilors Morissette and Kvistad voted nay. The vote was 5/2 in favor and the motion passed.

Councilor Morissette briefed that with parking restrictions, he saw a different vision out of some of the things being discussed. He could envision some people getting out of their cars, getting into busses and other modes. But he saw a lot more congestion with this and believed there would be an air quality problem. Not just from the density but from the sprawl of people commuting because they could not afford a house in the city. It seemed to him that best way to solve the problem was to put things people need closet to them so they did not have to commute long distances. He saw some of the goals happening but he did not see purer air with the densities of people.

Presiding Officer Kvistad announced that following a brief recess, Resolutions No. 96-2388, 96-2393A, and 96-2401 would be heard out of order in order to accommodate staff schedules.

6. RESOLUTIONS

6.1 Resolution No. 96-2388, For the Purpose of Authorizing the Release of a Request for Proposals (RFP) to Develop and Design an Interactive Multi-Media Environment for a Mobile Information System, also Known as Metro Information on Long-Range Transportation (MILT), Authorizing the Executive Officer to Enter Into a Multi-Year Contract

Motion:	Councilor McLain moved, seconded by Councilor Monroe for adoption of Resolution No. 96-2388.

Councilor McLain stated this resolution gave an opportunity to approve the release of a request for the development of a multi-media project including program, troubleshooting and bus design. She referred to attachment A which described exactly what the proposal included. The Council would allow The Executive to enter into multi-year agreement subject to the final contract. If it substantially differed from the original RFP and did not exceed funds for this project, the Transportation Committee requested that come back to the Committee to see what it looked like to see if it was representative of what the Committee gave them the license to do.

John Houser Council Analyst stated that staff had submitted a revised project schedule. The revision pushed back the timeline for all activities by about two to three weeks.

Councilor Morissette stated it was very important, when going through this process, to be careful with the analysis of the questions that they asked to find the results. This kind of information could be very helpful if given a broad scope of pros and cons to each one of the choices.

Vote:	Councilors Monroe, Washington, McLain, Morissette, McFarland, McCaig, and Kvistad voted aye. The vote was 7/0 in favor and the motion passed unanimously.

6.2 Resolution No. 96-2393A, For the Purpose of Authorizing the Release of a Request for Proposals for the Commodity Flow Data Collection and Analysis Project and Council Approval of the Contract

Motion:	Councilor Monroe moved, seconded by Councilor Washington for adoption of Resolution No. 96-2393A.

Councilor Monroe asked Mr. Houser to describe a change to the document.

John Houser referred to the memo from Dick Walker. On Tuesday afternoon, staff provided him with a revised copy of the RFP document that addressed concerns from the Transportation Planning Committee. The principal issue dealt with the amount of funding for the proposed project, at the Committee meeting there was discussion that the funding level could range anywhere between $250,000 to $350,000 which would include $250,000 already in the budget plus an estimated carry-over of up to $100,000. Since the Committee meeting the staff had determined that carry-over was in fact only $12,000 and therefore was now proposing to take out of the RFP in the specific amount of $262,000. They also made some clarification in some of the wording with regard to what the perspective vendors would be requested to provide to Metro. He further asked Mr. Cooper if the revisions to the RFP document was sufficient enough to require that they go back to JPACT for reconsideration by that body.

Councilor Monroe stated the $262,000 did fall within the range of $250,000 - $350,000 that had been discussed in the Committee. This came through JPACT because it was RFP for a Commodity Flow Data Collection Project, to determine commodity flows within the Metro Region which would have an impact on infrastructure decision for freight movement in the 2040 process.

Mr. Cooper replied that the contracting issue was simply a Metro Council issue. If those decisions were made at Council then they would not have to go back to JPACT.

Councilor Monroe commented that the Transportation Planning Committee added an amendment to this Resolution that said the final proposed project scope of work and budget would be subject to review and approval by the Council Transportation Planning Committee. That language had been added as a part of the resolution and was why it was 96-2393A.

Mr. Cooper replied normally that was something that would require Council approval but something like a report back to the Committee was one thing but should go to the Council for the authority to bind. He suggested want to do that for getting it approval for the final project it ought to come back to the Council not the Committee. What ever was added should be at the Council level.

Councilor Monroe asked if it should be at the Transportation Planning Committee and the Council, subject to review and approval by the Metro Council.

Mr. Cooper replied it should be just the Council and then referred to the Transportation Planning Committee.

Motion to Amend Main Motion:	Councilor Monroe moved, seconded by Councilor Washington to amend Resolution No. 96-2393A as shown in the preceding
Vote on Motion to Amend Main Motion:	Councilors Washington, McLain, Morissette, McFarland, McCaig, Monroe, and Kvistad voted aye. The vote was 7/0 in favor and the motion passed unanimously.

Councilor Monroe stated that the Commodity Flow Analysis Project was something that was badly overdue. Passenger Transportation Mobility, bicycle mobility, pedestrian mobility was studied, but there was no comprehensive study of Freight Movement, a Commodity Movement within this region. It was something that the Port of Portland had been urging to be done for some time. It was very needed if there was to be a whole system that worked to move people and goods. He hoped that there would be more money than the $262,000 and hoped they would be able to get a usable study. If not the Council would have final say and final review of whether or not that job could be done for that amount of money and could terminate the project at that time or add additional money from another source if it was decided it needed to be enhanced.

The resolution as amended then became Resolution No. 96-2393B.

Vote on Main Motion as Amended:	Councilors McLain, Morissette, McFarland, McCaig, Monroe, Washington, and Kvistad voted aye. The vote was 7/0 in favor and the motion passed unanimously.

6.3 Resolution No. 96-2401, For the Purpose of Reappointing Monica Hardy and Steve Schwab to the Solid Waste Rate Review Committee

Motion:	Councilor McFarland moved, seconded by Councilor Washington for adoption of Resolution No. 96-2401.

Councilor McFarland briefed there was an Advisory Committee that was a seven member committee with rather specific kinds of groupings. Monica Hardy represented the general public and had been very active and recommended that she be reappointed for a four year term and

Steve Schwab represented the haulers and asked that he come back for a one year term. His area of interest and concern was of the rates and wanted to address them after the staff report of rates had been published. Councilor McFarland recommended that the Council endorse both of these members to the terms recommended that they serve.

Vote:	Councilors Morissette, McFarland, McCaig, Monroe, Washington, McLain, and Kvistad voted aye. The vote was 7/0 in favor and the motion passed unanimously.

5. ORDINANCES - SECOND READING (cont.)

5.1 Ordinance No. 96-647A, For the Purpose of Adopting a Functional Plan for Early Implementation of the 2040 Growth Concept (cont.)

TITLE 4, KVISTAD AMENDMENT NO. 4A

Presiding Officer Kvistad commented his concern had been due to the conflict there was on the Retail Community, that there be further discussions to see if there could be some common ground. His suggestion was to move this ordinance to accept the draft, move the draft to legal counsel, have the legal counsel give their interpretations for final action on November 14. He requested the chair of the Committee to have further discussion with members of the Retail Community. At this time he would not move his amendment.

Mr. Cooper clarified his discussions with the Presiding Officer, which had been regarding the need for legal review for the preparation of findings and not just review of text. The primary purpose was to come back to the Council with the findings to attach to the Ordinance before the final vote.

Presiding Officer Kvistad commented he spoke to the findings portions the first time when dealing with Title 2. In the time frame before final adoption, thought it may be possible to come up with some language that would suit the retail community as well as the members of the Council.

Councilor McCaig asked about the schedule and if the Functional Plan would be reviewed in a Public Hearing and a final vote would be taken with no amendments at that time or Public Testimony. She further clarified that the listening posts were not in place of the Council Meetings.

Presiding Officer Kvistad reiterated that the Public Testimony would occur on the 24th and the draft as testified to with any points of clarification would be acted upon as a final draft on the 14th. If there were amendments they could be passed at any time up until the final vote. Presiding Officer Kvistad also affirmed that the listening posts were in addition to the regular Council meetings.

TITLE 4, MCFARLAND AMENDMENT NO. 2

Motion:	Councilor McFarland moved, seconded by Councilor Monroe to amend Title 4 of the Functional Plan as set forth in her amendment entitled McFarland Amendment No. 2.

Councilor McFarland briefed this amendment changed the map and the Multnomah Kennel Club would be moved out of an employment area designation and then would be redesignated as part

of "Fairview" Towncenter. All that was being done at this time was taking it off the map. When it was to be put into something else it had to be addressed through the RUGGOs.

Presiding Officer Kvistad clarified this was similar to what was done with the gravel quarry in the towncenter of Murrayhill.

Mr. Cooper replied that was correct.

Vote:	Councilors McFarland, McCaig, Monroe, Washington, McLain, Morissette, and Kvistad voted aye. The vote was 7/0 in favor and the motion passed unanimously.

TITLE 4, MCLAIN AMENDMENT NO. 6

Motion:	Councilor McLain moved, seconded by Councilor McFarland to amend Title 4 of the Functional Plan as set forth in her amendment entitled McLain Amendment No. 6.

Councilor McLain indicated that out of all of the work done on the Functional Plan there was not one Title or paragraph that had more scrutiny than Title 4. The difference of opinion on this title was what kind of regulation should be used, if any, to regulate retail in trying to put together an overall concept or 2040 community plan. An agreement had been reached on to break out industrial and employment. Industrial should be a stand alone with the same exceptions and the same process with industrial and employment. Section 1 of the intent had been changed to "very little" to "supportive". One of the areas of debate was how large of a retail building or business would be allowed in an employment area. The second issue was better language had been described for Section 2b. The new language indicated under exceptions that those exceptions was a standard for the employment areas only, that it may be included in the local compliance plans. This would give an opportunity if there were exceptions out there that they have an exceptions process to work through. Councilor McLain touched on retail uses, section C. One of the reason this was put in was because there were some local retail people who came and talked about the differences between store sizes and market areas. She asked for Mr. Fregonese to come forward and present some of the information gathered to support this amendment technically.

Mr. Fregonese discussed the memo Councilor McLain referred to regarding big box retail. He stated this was not a ban on big box retail or a ban on retail in industrial areas. It would attempt to ban the kind of retail that generated a lot of traffic and to put that in areas that were designed to handle traffic associated with big box retail. He referred to the memo sent to Councilor Washington. The first point was specific square foot regulations, some questions were asked why the use of 50,000 to 60,000 square feet. The reason square footage was being used was although it was imperfect it did approximate different kinds of stores and their market area. Recent construction trends showed there was a big difference between stores like grocery stores that had less than 60,000 square feet and large retail uses that were the classic big box, such as Costco and Home Depot. He stated he would like to enter into the record a map that showed all of the grocery stores in the region, and pointed out the radiuses and sizes of the stores. It was believed that the 50,000 to 60,000 square feet was a good average way of determining what was appropriate for an employment area and what was not. There were exceptions made to allow a market area determination to be used for the small draw business. One of the main concerns in allowing big box retail in employment area was the large amount of traffic they generated as well as, retail wages being the lowest in that sector. What happens when retail goes into an industrial or

employment area that was often built and set aside sometimes with public funds, to form the economic base of a region. Retail use would use up capacity which was intended for freight for retail employees. In exchange for the higher wage, industrial and manufacturing uses to displace those with low retail wages. He stated retail was needed but in the right places. Retail in industrial displaces both higher wage jobs and traffic capacity and crosses jurisdictional lines. There was 4,043 acres of vacant land within centers and corridors inside the current UGB. All those could be available for big box retail development. In addition when 2040 Means Business looked at almost 8,000 specifically, in the time between September 1994 and the summer of 1996, 292 acres of industrial land had been lost to retail or residential use.

Councilor Washington thanked Mr. Fregonese for his information.

Councilor McLain stated she asked both Hillsboro and Gresham to give her a take on Amendment 6. She indicated that Mayor McRobert favored Amendment 6 over the original MPAC language. She also talked to the City of Hillsboro and the head planner Wink Brook, he indicated they felt much more comfortable with Amendment 6, Title 4 than they had on any of the other versions. She did not believe this particular Title would find a puzzle or solution that would be 100% acceptable to everyone. She felt that Amendment 6 addressed both local jurisdiction and retail issues as best as possible and gave an opportunity to go forward to keep the Air Shed and Maintenance Plan on Air Quality and to do what they would do originally with 2040.

Councilor McCaig stated she understood in McLain Amendment 6, the distinction between employment and industrial. The next item was the requirement of local jurisdictions, that they be required to amend their local comprehensive plans in order to accommodate in employment areas to prohibit in employment and industrial areas 60,000 square foot, she thought there was some discussion at some point about a "may" , the possibility of allowing local jurisdictions to have more flexibility to review extenuating circumstances and provide exceptions to this. The weight of this was now on the "shall require" versus continuing to allow come facilities to exist.

Mr. Fregonese replied the change made in the exceptions process Title 4 Section 3-B was pretty broad. If they had substantially developed retail which had proposed to be or had been locally designated but not acknowledged retail. It could be done in employment areas only if there was adequate transportation facilities. The higher burden of proof was, if that was going to be done, make sure there was the road capacity to handle the extra traffic. He thought this was a tougher standard but there was a rational nexus to that standard. The Section 3-B was a fairly broad standard because it said it either existed or it needed to be proposed. It was a wide open door to propose it in employment but it needed to be shown there were facilities to accommodate it.

Councilor McCaig stated, looking at the original MPAC recommendation, besides the difference in the feet between 50,000 and 60,000 under Section 2, she asked Mr. Fregonese to tell her specifically what the differences were between the original recommendation and Amendment 6, and wanted to know what the net effect would be.

Mr. Fregonese stated that Section 2 in both of them was the prohibition. McLain 6 was very much longer and more detailed. Section 2 just said to amend the plans to ban it. Section 3 was generally the exceptions clause in both, this one would allow development in retail centers but did not require a showing of transportation adequacy. The MPAC draft did not require that, the new draft did.

Councilor McCaig referred to item C under 3, which was the 2.5 mile radius. She stated this was actually not supported by Fred Meyer and asked why that would be included.

Mr. Fregonese replied that Fred Meyer did raise the issue of large stores which draw from small areas. This would allow a large store to go through a different kind of landuse promise, but allowed local governments to permit large stores that draw from the small area, like Fred Meyer which tend to be bulky in size but tend to draw basically from the area immediately around the employment area.

Councilor McCaig stated if she was able to tell what the three differences were between the MPAC proposal and McLain Amendment #6, it would be that it separated employment and industrial, that it was more specific in the prohibitions, but the prohibitions were not broader, there were more specific and it was broader in the kinds of exceptions, and she would not support the third exception.

Mr. Fregonese stated that the difference between A and B was that the McLain draft was a tougher exception clause because it did require showing of transportation facilities, the MPAC proposal did not.

Councilor McCaig affirmed it was 3C on the exceptions of the 2.5 mile radius.

Councilor McLain commented on the exceptions process. A number of hours had been spent with Fred Meyer to give an indication of what they wanted. They wanted Title 4 to be gone. What C did was to give creditability, as findings were built, that the exception type store was not being ignored that seemingly had a different square footage need and a different market need. As Mr. Fregonese said, there was something that could be done at the counter and some areas, but in the exception allowed them on a case by case basis to make their case. It was specifically given a requirement of what was most interested in, which was the requirement to do better with Transportation.

Councilor McCaig stated to Councilor McLain that at one point she considered in the prohibition category removing the “shall” to a “may”, but decided against that by the amendment she put forward and asked if she could explain why she concluded it should continue to be “shall” and not “may”.

Councilor McLain responded that from what she remembered of that conversation, was that the reason “shall” should remain and not “may” was, with the “may” it was not giving direction to what was really wanted to be created in those employment areas, with the “shall” it was asking them to create their own exception issues which would be reviewed to make sure that they fit. She felt that it strengthened the design type for the plan, and was actually making a better, stronger statement of what was wanted in those areas to accomplish for the overall community and the plan. She was convinced that “may” would not do that.

Chuck Martin, President-Alliance of Portland Neighborhood Business Associations, 3030 NW 29th Avenue, Portland, Or. 97210 asked for a change in the Employment and Industrial area map. One of the industrial sanctuaries was the Brooklyn Industrial Sanctuary which surrounded the Southern Pacific Railroad yards and their intermodal terminal. He stated that about a year ago he saw that industrial sanctuary as an employment zone. He called it to the attention of the businesses in the area and the Southern Pacific Railroad in San Francisco. Southern Pacific was going to send a team of people here to start working with the City and Metro to try and hold that as an industrial

zone. The railroad did not want employment zones around rail switching yards and they felt those were prime industrial areas. At the time Charlie Hales' office was contacted, Mr. Hales stated this was going to be changed from an employment zone back into an industrial zone. Mr. Martin was suspicious if in fact the City had moved Metro on this area, so he contacted Mr. Fregonese and was told that it was being changed back into an industrial zone. He was confused to the fact that the current map showed the Brooklyn Industrial Sanctuary around that railroad yard was still being shown as an employment zone. He wanted to know what needed to be done to get that industrial sanctuary changed to industrial on the maps.

Presiding Officer Kvistad replied that one of the key things was to call a Metro Councilor that had a vote and could direct them rather than the City of Portland. He asked Mr. Fregonese to make that change.

Mr. Martin, stated there were 15 square blocks between Thurman and Lovejoy and between 12th and 15th that were zoned industrial in the River District Plan. They were contiguous with other industrial zoning that reached into Northwest Portland. He was concerned about that property because the Northwest Industrial Business Association was driven by development oriented people who had little respect for industrial property and his group had been encouraging them to adopt those 15 square blocks and keep it industrial consistent with the zoning that it now had which was general industrial. He thought it was shown as an employment zone on the map. He thought the staff at Metro should be directed to communicate with the City of Portland to see if in fact those 15 blocks as well should keep their character as industrial. He stated he was working very hard to keep an industrial base in the city as well as in the Metro Region.

Councilor McLain asked Mr. Martin to let her know the specific description of the 15 square block property he referred to.

Wendy Kellington, Halton Company, 111 SW 5th Avenue, #3200, Portland, Or., felt that Amendment #6 moved in the right direction, and appreciated the specific exemption for the consumptive but low traffic generating kinds of uses. She thanked the Council for the sensitivity to the industrial areas and industrial sanctuaries where most of their businesses were located.

Robert Lefeber, International Council of Shopping Centers, 50 SW Pine Street, #400, Portland, Or. 97204, agreed with Councilor McLain that there had been a lot of process on this item and appreciated the fact that he had been able to participate. He was concerned that the resulting language was too restrictive and unclear. Their basic presumption was that they would be facing a major shortage of retail in this community as they continue to develop over time. Currently he disagreed with Mr. Fregonese's memo that there was 5,000 acres available for development in corridors and towncenters. The 2040 Means Business did a study, they looked at the land that was zoned, they determined that there was approximately 1,000 acres. They determined it to be about a 5 to 7 year supply of zoned available and developable retail land within the community. In addition they determined that most of the parcels were too small for any big box type development. Big box development tends to bring a lot of consumer goods to the community, it was a very efficient use of land, the sales per square foot were extremely high, prices were low and the community wanted them. He felt this amendment would get in the way of what the community wanted and felt it would create problems long term. The transportation elements of this item was the biggest concern. Requiring concurrency, establishing that there was sufficient transportation capacity on the road systems in order to allow a larger retail user within an employment area was something that should be done. What if there were a problem in the existing road networks, which was known to be true, there would be no way of meeting that

standard. He felt the Council was literally down zoning a large amount of general commercial land in this community that would never be allowed to be developed as retail. He pondered the existing developments that had been built that were bigger than 60,000 in industrial areas and what would happen to those. He pointed out that there were over a million square feet of retail that could be declared a non-conforming use because they could not establish there would be adequate transportation capacity to serve those uses now. Mr. LeFeber further stated that Wink Brooks in Hillsboro had numerous concerns with this. RUGGOs did not require this, the employment area definition allowed for creating exceptions for certain areas. In addition, the employment area definition had literally changed midstream throughout this entire process. When Mr. LeFeber got involved, a lot of local jurisdictions had no idea that the employment areas were prohibited from retail. He thought this would lead to a lot more congestion, sprawl and an increase of trips as people drive to the suburbs to get to those big retailers and felt it was counter productive to what was trying to be achieved.

Presiding Officer Kvistad asked Mr. LeFeber if he had reviewed Kvistad Amendment #5 and if that was something that would be more restrictive or more or less acceptable.

Mr. LeFeber replied that Kvistad Amendment #5 was wonderful for its brevity but yet he had a lot of questions. He thought the mapping was something that was always anticipated in being done. He preferred a thinking process, local jurisdictions needed to be able to make changes over time, not just in their compliance plan.

Mr. McCathy wanted to thank the Council for recognizing the value of industrial property in the Metro area. He supported Title 4 initially by keeping big box retailers out of industrial areas and McLain Amendment #6 was very much to his liking. He hoped that the industrial companies that were here would continue to make capital improvements and continue to have family wage jobs close to the city.

Councilor Morissette asked that in the plans it was not just looking at retail uses potentially in industrial zones but also housing in industrial zones. If they were worried about retail users going into industrial sanctuaries would they also be worried about housing going into industrial sanctuaries.

Mr. Fregonese replied that housing was not permitted in industrial sanctuaries only in employment areas. It was industrial areas that had zero allocations for households.

Councilor Morissette reiterated that was why it was being divided. It was employment areas that would have some allocations. He stated he had not seen the map in detail and asked if the 3,000 acres in Hillsboro was industrial.

Mr. Fregonese showed Councilor Morissette the map in question. He explained the map referring to the industrial and employment areas.

Councilor Morissette reiterated that the retail task force wanted to go into the those industrial areas along with the employment areas.

Mr. Fregonese clarified that the retail task force basically agreed with the industrial sanctuary there, the main concern was going into the employment areas.

Councilor Morissette clarified that by voting on this, he was voting on a process to restrict retail from going into employment areas. The testimony heard at this meeting was in favor of excluding it from industrial areas but this went a little further from the commercial areas over 60,000 square feet size.

Mr. Fregonese clarified that McLain #6 was a clear ban in industrial areas, there were no exceptions.

Councilor Morissette asked if the retailers were in agreement to that.

Mr. LeFeber affirmed that the retailers were generally in favor of staying out of the industrial areas. Those retailers that were in industrial areas could be carved out and be made employment areas if necessary so that those uses could continue and didn't think that could be prohibited by what this amendment was doing.

Councilor Morissette summarized that generally Mr. LeFeber was in favor other than the burden that the commercial areas were placing on the transportation points in the process of this amendment.

Mr. LeFeber affirmed that was correct. He said it was a very difficult burden to meet for larger retailers to go within those employment areas.

Peggy Lynch, 3840 SW 102nd Avenue, Beaverton, Or. 97005, stated that comp plan reviews would be done within the local jurisdictions. Those concerns about the lack of commercial property that she heard from the 2040 Means Business Committee, those people would have the opportunity as they look at the entire comp plans, including the discussion about densifying and housing, they get to talk about commercial needs of the citizens. Hillsboro had an opportunity to talk about its vacant land that it had and to decide whether or not it was currently zoned industrial property might be better served for commercial uses to serve its nearby residents. She said that was part of the process that she hoped Mr. LeFeber and his group would assist in saying this was a market area and when doing rezoning this was what would be needed in a community for those reasons. She approved this amendment, and there was an important role for Metro to have in this process.

Councilor Morissette commented he supported the idea of separating the industrial areas so that it be kept in industrial sanctuaries. He also believed that in this amendment it was inadequate in the amount of retail capacity that there would be and ultimately drive up prices.

Presiding Officer Kvistad stated he had some problems with this Title, but felt there were a great many things in it that made a lot of sense including the industrial comments. He had concern with what this would mean for retail and for consumers. He felt that larger retailers would mean lower prices and it would help low and medium income families and didn't feel it dealt with an analysis of the effect of facility size, product prices and the effect it had on consumers. Without doing that and to have this kind of restriction, he did not think as an agency they were prepared to do that or have the skills or expertise to do that.

Vote:	Councilors McCaig, Washington, McLain, and McFarland voted aye. Councilors Morissette and Kvistad voted nay. Councilor Monroe was absent. the vote was 4/2 in favor and the motion passed.

Councilor McCaig stated to Mr. LeFeber that he had been a creative player in all of this and understood that he did not feel like he had made a lot of head way. Her understanding and appreciation for the issue and employment issues in employment areas was much better at this time than it was five weeks ago. She supported Councilor Kvistad's interest in trying to work with the definitions dealing with employment areas but thought it needed to moved along.

TITLE 4, KVISTAD AMENDMENT NO. 5

Presiding Officer Kvistad stated he would not be moving forward Amendment No 5. at this time.

TITLE 4, WASHINGTON AMENDMENT NO. 2

Councilor Washington asked to add some additional language to this amendment. He was asked to add language regarding the Brooklyn Rail yards. It was asked to add roughly SE Steele Street extend on the south, Powell Boulevard on the north, SE 17th on the west and SE 28th on the east. This would change that from Employment to Industrial and would be a map change.

Motion:	Councilor Washington moved, seconded by Councilor McLain to amend Title 4 of the Functional Plan as set forth in his amendment entitled Washington Amendment No. 2.

Councilor Washington stated this would change the Brooklyn Yard from employment to industrial and the other technical change was the employment area north and west of the St. John Bridge in the vicinity of Linton was also changed from an industrial. It was a mapping mistake and this amendment was to correct it.

Elana Emlen, Portland Bureau of Planning, 1120 SW Fifth Avenue, Room 1002, Portland, Or. 97204, stated the Linton Amendment clarified the map error and make the map more consistent. The only change that the bureau would like to add would be at the end of the sentence would be to add the word "except" between 107th and 112th.

Councilor McFarland asked why there needed to be this suggested change from Ms. Emlen.

Ms. Emlen replied that the area they would like to remain industrial was the part that had a lot of the big tanks and areas that would not be considered employment areas. Between 107th and 112th the Linton area took on different characteristics and was more conducive to be an employment area.

Motion to Amend Main Motion:	Councilor Washington moved, seconded by Councilor Morissette to amend Washington Amendment No. 2 to add the word "except" between 107th and 112th.
Vote on Motion to Amend Main Motion:	Councilors Washington, McLain, Morissette, McFarland, McCaig, and Kvistad voted aye. Councilor Monroe was absent. The vote was 6/0 in favor and the motion passed.
Vote on Main Motion as Amended:	Councilors Washington, McLain, Morissette, McFarland, McCaig, and Kvistad voted aye. Councilor Monroe was absent. The vote was 6/0 in favor and the motion passed.

TITLE 6, MONROE AMENDMENT NO. 2

Motion:	Councilor McLain moved, seconded by Councilor McFarland to amend Title 6 of the Functional Plan as set forth in the amendment entitled Monroe Amendment No. 2.

Councilor McLain stated this amendment to include no cul-de-sac dwelling units on closed in street systems except where topographical barriers such as railroads, freeways or environmental constraints such as a major stream or river prevent street extensions. The second part, while spacing between connections of no more than 330 feet except topographical barriers such as railroads or freeways or environmental constraints would prevent street extensions.

Councilor Washington asked if she meant instead of saying not including cul-de-sacs it meant to say no.

Mr. Cooper stated it was self explanatory, it was made to make the exception of not leaving any room to deal with reality.

Vote:	Councilors McLain, Morissette, McFarland, McCaig, Washington, and Kvistad voted aye. Councilor Monroe was absent. The vote was 6/0 in favor and the motion passed.

TITLE 7, WASHINGTON AMENDMENT NO. 1

Motion:	Councilor Washington moved, seconded by Councilor McFarland to amend Title 7 of the Functional Plan as set forth in his amendment entitled Washington Amendment No. 1.
Vote:	Councilors Morissette, McFarland, McCaig, Washington, McLain, and Kvistad voted aye. Councilor Monroe was absent. The vote was 6/0 in favor and the motion passed.

TITLE 8, MCCAIG AMENDMENT NO. 2

Motion:	Councilor McCaig moved, seconded by Councilor Morissette to amend Title 8 of the Functional Plan as set forth in her amendment entitled McCaig Amendment No. 2.

Councilor McCaig discussed that this had to do with the compliance procedures for local governments as well as the opportunity for citizens to participate in this process in terms of reviewing compliance with local governments. Section 5 was new language and dealt specifically with local jurisdictions. It would allow local jurisdictions to have a relationship with the Council and with the agency prior to putting their plans together to get some specific feedback on their proposals. It was an attempt to provide an additional process that would allow the relatively easy problems to be ironed out before they got to the Council. Section 6 was unfinished and it was assumed in all of this a citizen process. Assumed within this process was at the time the Metro Council reviewed these different plans, a local citizen might come to the hearing and make their issue known to the full Council. If after the Council arrived at a conclusion the citizen did not support, the citizen then could appeal it to LUBA. That would be implicit in its process, it was the

current law. If the Council did nothing further then to simply state that in this section she would be happier. Simply describing this process for them, would be a signal on where and how an individual might participate. The second issue would be whether to provide an opportunity for citizens and the Council to be more proactive, providing citizens the same opportunity as provided to local jurisdictions. Or a second alternative might be that a citizen could in fact petition the Metro Council and with a majority of votes have the Metro Council refer it to this intermediate process. Those were both alternatives for providing citizens a more direct route to the Council. She stated the question she was putting before the Council was did they want to have that profile on those decisions. She was concerned that it might be an appropriate role as a Regional Government to be seen by citizens as the place to come to resolve these kinds of issues. If not she would be satisfied by simply detailing the options the citizen had in resolving those issues if they were uncomfortable with a local government decision.

Councilor McLain stated she thought the work done on section 4 and 5 was good work. The concern she had with section 6 was that it paralleled the Boundary Commission discussion and also the review of how to use a hearings officer with the Urban Growth Boundary amendment process. She stated she could go with section 6 outlining the process but could not do the other two options without having some discussion with the legal staff on how to compare those.

Councilor McCaig stated her understanding was that if a citizen wanted to take something to LUBA, they had to be in on the front end and testify to the issue at the agenda item at the local level. She was suggesting that in Section 6 that a citizen could not have participated at anywhere else and come in at Metro first hand, they had to have built a record of involvement before they came before Metro.

Presiding Officer Kvistad asked in terms of the hearing officer process, who would pay for that, what fees were leveled and how would that process work.

Councilor McCaig replied that in Section 5 the hearing officer fee would be covered by a filing fee.

Mr. Cooper pointed out that the legal staff had been working with Councilor McCaig to get all of those things flushed out and rather than have the Council vote on anything, it would be worth while to allow a few more days to craft some more detailed language before taking a vote. The hearings officer process was very similar to the one that was in the UBG Amendments. If the Council was initiating the interpretation as provided in section 5, the money would have to be found some place in the budget to cover the cost of all those things.

Presiding Officer Kvistad stated he was kind of there on concept and did not see all the ends tied together and wanted Councilor McCaig to affirm that they would be or they could be.

Councilor McCaig thought that the burden would be on an individual citizen who had testified and participated at the local level to find a majority of Councilors to support their partition but for the Council to take it up was a hurdle. That might be an acceptable way to detail a citizen getting involved separate than the hearings officer process that a local government could file a fee and go through a hearings officer.

Presiding Officer Kvistad affirmed there would be restriction on the Council member side. He wanted to make sure that some sort of restriction was built in.

Councilor McCaig stated she did not want to take up any more time but wanted to know if there was interest in trying to pursue a separate kind of process to provide citizen input and if there wasn't interest to do that whether she could get the go ahead to put in the current process for a citizen who wanted to be involved in reviewing this process.

Councilor McFarland responded that she would be interested in seeing something put in the present procedure and would not be adverse to seeing some way the Council could be more accessible then presently.

Councilor McLain stated she hoped the Council could act on something so there would be something to be put forward. She would be willing to vote for Section 6 as putting in the detail process of what was there. She said if Councilor McCaig and Mr. Cooper then wanted to work on this and amend this on the 24th that would be agreeable with her.

Councilor Washington stated that he appreciated the freeze frame stuff. He thought this was one item that the Council should give its best shot.

Mr. Cooper stated after discussing this with Councilor McCaig and recognizing that it could be improved, if it was desired to have something in the document that would be sent out after today that said it was here, he suggested to add the words in Section 6, after ... "initiate a compliance interpretation." That would fit with what he understood Councilor McCaig was trying to get written when this was prepared. Then Councilor McCaig would be free to come back with further amendments to this section to make it clearer, but there would be at least the principal of it in the ordinance.

Councilor McLain stated she would be willing to vote yes on that with the understanding that Mr. Cooper would be having the conversation with Councilor McCaig and other Councilors with how this paralleled the detail of the Boundary Commission work and possible changes there and possible changes with the Urban Growth Boundary Amendment process. She believed they were overlapping.

Mr. Cooper stated all of those things were something that would be taken into account.

Presiding Officer Kvistad stated he was conceptually there on this and would leave it up to Councilor McCaig to decide. This would be a technical amendment that would be dealt with at the 24th meeting or if it was desired could be acted on at this meeting.

Councilor McCaig stated she would be at the very least prepared to bring the detailed version of how the current process worked. She stated they would bring a proposal on an additional process and see whether the Council liked it or not and if they didn't like it then it would not be moved.

Presiding Officer Kvistad stated this was something that could be adopted anytime up until the final adoption of the Functional Plan as an amendment to the Framework Plan or an amendment to the Functional Plan at any time following its completion.

Mr. Cooper stated that was true. Procedurally it would be simpler to do it as part of this Functional Plan, to lay forth the policies so the Functional Plan wouldn't have be amended to further define what the actual procedures were.

Presiding Officer Kvistad stated that they could put in a place holder stating that there would be a section having to do with citizen involvement.

Mr. Cooper suggested that on the 24th put something in before the final adoption on the 14th, that further refined it. It would be in the safe harbor that it was an amendment but it was not a substantial revision. Making the final version of this appear in the ordinance for the very first time on November 14th would be a problem.

Councilor McCaig thought that having Section 6 dealing with the citizen review process would be something that would be used to help clarify what citizens opportunities would be for lobbying.

Presiding Officer Kvistad asked if Councilor McCaig would like to move this forward now knowing that there would be amendments and adjustments.

Councilor McCaig added with the amended compliance interpretation.

Presiding Officer Kvistad asked Councilor Morissette who seconded the motion if that was acceptable.

Councilor Morissette replied affirmatively.

Peggy Lynch, 3840 SW 102nd Avenue, Beaverton, Or. 97005, asked the Council to move forward with the Functional Plan. She addressed Section 5 and the intent by Councilor McCaig to provide some sort of mediation opportunity. She also read this to say that this would be an opportunity to ask for interpretation of what would be the policy, the Functional Plan. She did not understand how a hearings officer could have the responsibility of interpreting the policy. If it was desired to have a mediation procedure then a mediation procedure should be written. It was desired to have the ability of a jurisdiction to come to the Metro Council and ask for an interpretation of the Council's policy, then they need to be able to come directly to the Council. She did not see that the hearings officer idea was appropriate in this instance and would appreciate legal counsel addressing that. The same thing would apply to the citizen review process.

Councilor McCaig closed that herself and Mr. Cooper would be reviewing the comments Ms. Lynch made to see if there was something different that could be brought forward.

Vote:	Councilors McFarland, McCaig, Washington, McLain, Morissette, and Kvistad voted aye. Councilor Monroe was absent. The vote was 6/0 in favor and the motion passed.

TITLE 8, MCLAIN AMENDMENT NO. 2

Motion:	Councilor McLain moved, seconded by Councilor McCaig to amend Title 8 of the Functional Plan as set forth in her amendment entitled McLain Amendment No. 2.

Councilor McLain stated this Title was straight forward and self explanatory.

Vote:	Councilors McCaig, Washington, McLain, Morissette, McFarland, and Kvistad voted aye. Councilor Monroe was absent. The vote was 6/0 in favor and the motion passed.

TITLE 9, MCCAIG AMENDMENT NO. 3

Motion:	Councilor McCaig moved, seconded by Councilor Morissette to amend Title 8 of the Functional Plan as set forth in her amendment entitled McCaig Amendment No. 3.

Councilor McCaig stated this was not a work in progress, it was basically done. She stated in lines 840-846 there were no substantive changes, she simply broke out the way it was written in the document so that it was clearer. On line 867, Councilor Morissette had requested four additions to the Performance Measurements that would be used in this process. She was comfortable with accepting two of those, number 7 and 8. Currently 10 and 8 were being worked on. She was comfortable recommending the additions of number 7 and 8 and stopping at that.

Councilor Washington asked if Councilor McCaig meant 9, and 7 instead of 7 and 8.

Councilor McCaig stated that was correct. They took number 7 and 9 from Councilor Morissette and made them 7 and 8. She added lines 875-876, were all dependent upon when it would be asked for the information and the review to be presented back to Council. Originally it would be March 1st of every other year, beginning March 1st of 1998. She suggested this be amended to 1999, primarily because 1998 would be an election year and thought it would be better to be done in an odd number of years and not during an election cycle.

Councilor McLain stated she had no problems with lines 840-846 and was happy to embrace lines 875-876. She did have a problem with the middle line. Her thought was that there was 6 items that Council had asked Mr. Fregonese and the Executive Officer to look at in the way of performance measures. What would be done here was adding 7 and 8. When she asked questions about related issues in Committee on items dealing with 7 and 8, for example cost of land based on lot prices according to jurisdiction, one of the comments that was made at that time was were they just looking at the cost of land in a void, versus in a contextual way with other related variables and issues. She was not comfortable with calling it a performance measure. If the work for the general type ones were reviewed she might become comfortable.

Councilor McCaig stated she remembered those conversations but remembered them as they related to the Urban Growth Report, not as related to performance measurements. She stated she talked to Mr. Fregonese and he responded this was more do-able for the performance measurements.

Mr. Fregonese replied that this could be measured. In review, redevelopment land costs would be difficult to capture and there were a lot of factors that effect land costs. It might be more of an indicator performance, and thought it was an important factor to watch.

Councilor McLain stated her issue was that staff gave her 90% certainty that they could gather information. But as a performance measurement, she thought they had to do more than gather the information, it had to be known what it was meant and how it would be used. She did not feel that those things were known. She was uncomfortable with putting that in the Functional Plan as

a measurement. She would not be adverse giving direction to staff to put that on the list of things informally to review and come back with some ideas.

Councilor Morissette commented on land prices and thought this was a very important performance measure because it had some connection to the planning process. Performance measures were good for balancing economic factors.

Councilor McCaig asked if the Council could take a vote on the amendment before the Council and if it did not pass, could she amend it to eliminate it and go forward.

Councilor McFarland stated that if it was voted down, she would like to check with Mr. Cooper on the proper procedure.

Mr. Cooper replied if the motion was passed, it was passed. If the motion was defeated, another motion could be made by leaving out the problem section and voted on again and could go for a quick vote on the second motion and so on.

Presiding Officer Kvistad preferred to have this happen in an election year to politicize it so it would actually become something that would be given attention to.

Councilor Morissette affirmed this discussion referred to the Functional Plan and did not relate to a boundary movement, this was the gathering of data.

Presiding Officer Kvistad replied that was correct.

Peggy Lynch commented on item 7, the 2040 map was a bigger picture than jurisdictional. There were 2040 designations such as towncenters that crossed jurisdictional lines, if in fact the information that was brought forward as a result, she was not sure that the Council would get the information needed to be able to make whatever decision or policy adjustment with the phraseology in this item. She touched on land prices and how they are being driven up.

Vote:	Councilors Washington, Morissette, McFarland, McCaig, and Kvistad voted aye. Councilor McLain voted nay. Councilor Monroe was absent. The vote was 5/1 in favor and the motion passed.

TITLE 10, MCLAIN AMENDMENT NO. 2

Motion:	Councilor McLain moved, seconded by Councilor McCaig to amend Title 10 of the Functional Plan as set forth in her amendment entitled McLain Amendment No. 2A.

Councilor McLain stated the definitions came from Transportation, Growth Management and legal staff. She referred to a letter from Mr. Bollam referring to at lines 45-47. Mr. Bollam had asked that in replacement, addition and alteration and accessory uses for existing structure, that the word "and development" be left in. He believed that by taking out "and development" it did not allow people to do things like re-pave their driveways. She thought this item did not cause a problem because it could not do more damage then anything that was already there.

Doug Bollam, 3072 Lakeview Blvd, Lake Oswego, Or. 97035, stated Metro had to acknowledge existing development. He addressed specifically Title 3, there were some home and structures

presently existing within the Water Quality and Flood Management Area and the Fish and Wildlife Habitat Conservation Area. He felt those area had be acknowledged. He felt if a person lived within one of those areas, they should be able to, upkeep and maintain their home. He was asking for the language to be clear and give equity for people presently residing in those areas. He referred to the letter he submitted. He asked for the Council to look forward to the future and acknowledge this area.

Mr. Fregonese stated he agreed with Mr. Bollam that it made sense to leave in "and development" because one of the things development meant was paving. If you replace the word development with paving in the next section 45-47, it would not make sense leaving out the "and development". He did not believe that the Fish and Wildlife Quality Area needed to be included because it was not effective under the Functional Plan.

Doug Bollam concurred with Mr. Fregonese except for the fact that in the future if this particular language was not included in the Fish and Wildlife Habitat Conservation Area, in turn what was being passed here could negate someone that already had an existing structure.

Councilor Washington stated he could not imagine something being put together that would do what Mr. Bollam said it would do. He stated that was not the objective of this Plan.

Mr. Fregonese replied that was correct and was not the intention. He agreed with Mr. Bollam that it made more sense and the intent was the same, not to prohibit people from re-paving an existing driveway.

Councilor McLain stated that she would put the question raised by Mr. Bollam about the fish and wildlife issue on a list for discussion. She felt there were other issues about that and thought it needed more input before it could be done. She asked Mr. Cooper if that could be done at a later date when the map was done.

Mr. Cooper replied that could be done.

Doug Bollam commented that in talking to Councilor McLain about this amendment, she was very open and he believed that she did intend to acknowledge existing development. He touched on the notion of accessory uses and thought if there were people who wanted to build a home or studio if this would apply and be permitted.

Mr. Cooper replied that it would apply but any additions or accessory uses which could be new construction would still be subject, and did not encroach into the Water Quality and Flood Management Area more than the existing structure.

Motion to Amend Main Motion:	Councilor McLain moved, seconded by Councilor McFarland to amend line 46 of McLain Amendment No. 2, by leaving in the words "and development", and line 48 of McLain Amendment No. 2 by replacing the incorrect acronym "DHB" with the correct acronym "DBH".
Vote on Motion to amend Main Motion:	Councilors McLain, Morissette, McFarland, McCaig, Washington, and Kvistad voted aye. Councilor Monroe was absent. The vote was 6/0 in favor and the motion passed.
Vote on Main Motion	Councilors Morissette, McFarland, McCaig, Washington, McLain, and

as Amended:

Kvistad voted aye. Councilor Monroe was absent. The vote was 6/0 in favor and the motion passed.

Presiding Officer Kvistad gave the procedure from this point forward, there being a public hearing on November 24th which would be open for amendments. Prior to the public hearing would be a review of the new language to be brought forward by Councilor McCaig on the item currently under draft. Following the public hearing a vote would be taken to move the item to legal counsel for legal review at which point information would be back to the Council and final action on the 14th.

7. COUNCILOR COMMUNICATIONS

None.

There being no further business before the Council, Presiding Officer Kvistad adjourned the meeting at 6:51 PM.

Prepared by,

Lindsey Ray
Council Assistant
i/minutes/1996/oct/101796c.doc

Millie Brence
Council Assistant

*Addendum/Attachments
A copy of the originals of the following documents can be found filed with the Permanent Record of this Meeting, in the Metro Council Office.

Document Number	Document Origination/Originator	Doc. Date
101796-1	Robert D. Van Brocklin Stoel Rives LLP Attorneys Standard Insurance Center 900 SW Fifth Avenue, Suite 2300 Portland, Or. 97204-1268	10-17-96
101796-2	Shiela M. Ritz, City Administrator City of Wood Village 2055 NE 238th Drive Wood Village, Or. 97060-1095	10-17-96
101796-3	Douglas W. Bollam 3072 Lakeview Blvd. Lake Oswego, Or. 97035	10-17-96