

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF SUBMITTING ) RESOLUTION NO. 00-2988  
TO THE VOTERS ON MAY 21, 2002, AN )  
AMENDMENT TO THE METRO )  
CHARTER TITLED "PROHIBITS, )  
REPEALS METRO HOUSING DENSITY )  
REQUIREMENTS; REQUIRES NOTICE; ) Introduced by Presiding Officer  
AND AMENDS CHARTER" ) David Bragdon

WHEREAS, the Metro Elections Officer on August 24, 2000, certified that an initiative petition to amend the 1992 Metro Charter titled "Prohibits, Repeals Metro Housing Density Requirements; Requires Notice; Amends Charter" had been submitted and contained the required 33,327 signatures necessary to refer the measure to the ballot; and

WHEREAS, pursuant to Metro Code Section 9.02.070(a) and applicable state law, the Council must submit this measure to the voters no later than the next available general or primary election date that is not sooner than the 90<sup>th</sup> day after the date of the certification which would be the primary election to be held on May 21, 2002; and

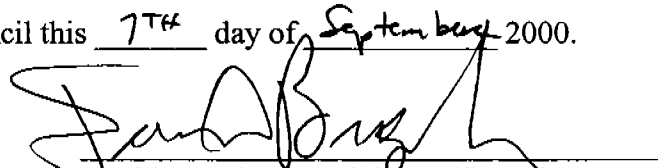
WHEREAS, the Council desires to submit the measure to the voters on May 21, 2002; now, therefore,

BE IT RESOLVED,


1. That the Metro Council hereby submits to the qualified voters of the district the question of amending the 1992 Metro Charter titled "Prohibits, Repeals Metro Housing Density Requirements; Requires Notice; Amends Charter," as filed with the Elections Officer; and

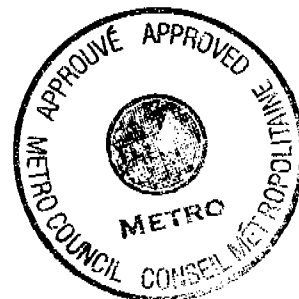
2. That the measure should be placed on the ballot for the regularly scheduled Primary Election to be held on May 21, 2002.

ADOPTED by the Metro Council this 7<sup>TH</sup> day of September 2000.

  
David Bragdon, Presiding Officer

Approved as to Form:

  
Daniel B. Cooper, General Counsel



## STAFF REPORT

### CONSIDERATION OF RESOLUTION NO. 00-2988 FOR THE PURPOSE OF SUBMITTING INITIATIVE ENTITLED "PROHIBITS, REPEALS METRO HOUSING DENSITY REQUIREMENTS; REQUIRES NOTICE; AMENDS CHARTER" TO METRO VOTERS IN THE MAY 2002 ELECTION

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Date: September 7, 2000

Prepared By: Daniel B. Cooper

#### FACTUAL BACKGROUND AND ANALYSIS

On August 24, 2000, the Multnomah County Director of Elections provided Metro with a certificate verifying that the Metro petition entitled "Prohibits, Repeals Metro Housing Density Requirements; Requires Notice; Amends Charter" contains the required 33,327 valid signatures necessary to refer the measure to the region's voters for a vote.

On August 28, 2000, the Neighborhood Preservation Committee, a political action committee, filed a mandamus proceeding against Metro in Multnomah County Circuit Court. The Neighborhood Preservation Committee's lawsuit asks the court to order Metro to submit the initiative to voters on the November 7, 2000 ballot.

In its court filings, the Neighborhood Preservation Committee argues that state law—specifically ORS 285.185—governs Metro's decision regarding when to submit the initiative to the region's voters. The Neighborhood Preservation Committee argues that state law requires Metro to submit this initiative to voters on the November 7, 2000 ballot. The deadline for Metro to submit this initiative to the Multnomah County Director of Elections in order to include this initiative on the November 7, 2000 ballot is today, September 7, 2000.

In Metro's written response to the court, we explained that Metro's code expressly governs when Metro is required to submit an initiative to voters. Metro Code 9.02.070(a) provides:

Upon receiving the director's certificate that a petition has been filed with sufficient qualified signatures to require an initiative or referendum to be submitted to the electors under section 9.03.060, the Metro council shall call an election for submission of the measure to the electors. The Metro council shall call the election no later than the next available general or primary election date that is not sooner than the 90<sup>th</sup> day after the date of the director's certificate certifying sufficient signatures, but may call the election in its discretion at an earlier election date available under state law for which the filing deadlines may be met.

Under this code section, Metro is required to submit the initiative to voters in the May 2002 election.

Multnomah County Circuit Court Judge Sidney Galton held a hearing on the Neighborhood Preservation Committee's request for a writ of mandamus this morning, September 7, 2000. The Neighborhood Preservation Committee is asking the Court to decide which election date is required—either November 2000 or May 2002.

At the hearing, Judge Galton decided that the case is not properly before him until after today's Council meeting, when Metro could consider whether to submit this initiative to the Multnomah County Elections Director today for inclusion on the November 7, 2000 ballot. The judge scheduled the remainder of the hearing on the Neighborhood Preservation Committee's request for today at 4:00 p.m., in order to give the Metro Council the opportunity to decide when to refer this initiative to the region's voters.

Resolution No. 00-2988 will submit this initiative to the region's voters in the May 2002 election. There is no dispute that this ordinance has the sufficient number of signatures to qualify it for submission to the region's voters.

This resolution is consistent with Metro Code 9.02.070(a). Metro Code 9.02.070(a) requires Metro to submit an initiative to the voters "no later than the next available general or primary election date *that is not sooner than the 90<sup>th</sup> day after the date of the director's certificate certifying sufficient signatures[.]*" Metro received the director's certificate on August 24, 2000. Ninety days after August 24, 2000 is November 22, 2000. The first available general or primary election date after November 22, 2000 is May 2002.

This resolution is also consistent with Metro's interpretation of Chapter 9 of the Metro Code. Metro Code 9.02.090 provides that Metro's code provisions regarding elections prevail over state law unless there is a "direct and irreconcilable conflict" between state law and the Metro Code. Metro interprets Metro Code 9.02.090 to mean that the Metro Code's provisions regarding elections govern unless the Oregon Legislature specifically provides that state law prevails over the code. In this situation, there is no conflict between state law and the Metro Code, and no statement by the Oregon Legislature that state law should prevail over the Metro Code. Therefore, Metro Code 9.02.070 governs when the initiative must be submitted to voters.

The 90-day period in Metro Code 9.02.070 allows the public an opportunity to discuss and debate an initiative. Submitting this initiative to the voters in May 2002 will allow the public the greatest opportunity to review, discuss, and debate the initiative.

On the other hand, placing the initiative on the November 7, 2000 ballot would be detrimental to public debate and consideration. The 90-day time period in Metro Code 9.02.090 allows members of the public to prepare statements for the voter's pamphlet. The deadline for members of the public to submit statements for the voter's pamphlet for the November 7, 2000 election is Monday, September 11, 2000. If this initiative is placed on the November 7, 2000 ballot, the short time period available for the public to submit statements to the voter's pamphlet is insufficient to allow meaningful public debate.

In addition, the May 2002 election will include Metro races and other possible Metro measures. Thus, the May 2002 election is likely to be accompanied by a more comprehensive public debate about issues relating to Metro than will likely occur with the November 2000 election. This inclusion of this initiative on the May 2002 ballot, as allowed by Metro Code 9.02.070, will therefore allow for a greater opportunity for public discussion and debate about the initiative's impact on Metro's charter and mission.