

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING) ORDINANCE NO 98-727C
ORDINANCES NO. 96-647C AND NO.)
97-715B, THE URBAN GROWTH) Introduced by Councilor McLain
MANAGEMENT FUNCTIONAL PLAN,)
TO CLARIFY COMPLIANCE ISSUES)

WHEREAS, the Regional Urban Growth Goals and Objectives were amended in Ordinance No. 95-625A to add the 2040 Growth Concept to Metro's regional goals and objectives; and

WHEREAS, the Urban Growth Management Functional Plan was adopted in Ordinance No. 96-647C to begin implementation of that 2040 Growth Concept; and

WHEREAS, the Regional Framework Plan included the Urban Growth Management Functional Plan in Appendix A, and codified the Functional Plan in Metro Code Chapter 3.07; and

WHEREAS, the Functional Plan became effective on February 19, 1997, and compliance plans demonstrating how each city and county plans comply with the Functional Plan are due in August, 1998; and

WHEREAS, questions about the meaning of "compliance" have been raised as city and county planning continues; and

WHEREAS, the Metro Council desires to clarify compliance issues to assist cities' and counties' preparation of compliance plans; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1. Compliance procedures in Title 8 of the Urban Growth Management Functional Plan at Metro Code 3.07.820 and in Ordinances No. 96-647C and No. 97-715B, Appendix A amended for the first sentence to read as follows:

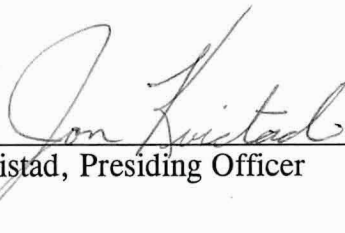
"E. Compliance with requirements of this plan shall be substantial compliance which shall not require cities or counties to violate federal or state law, including state-wide land use goals."

Section 2. Compliance procedures in Title 8 of the Urban Growth Management Functional Plan at Metro Code 3.07.830A and in Ordinances No. 96-647C and No. 97-715B, Appendix A is amended to read as follows:

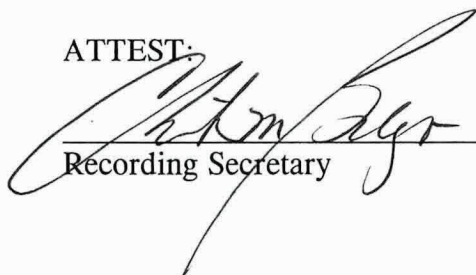
“A. After February 19, 1997, any amendment of a comprehensive plan or implementing ordinance shall be consistent with the requirements of this functional plan.

Section 4. This Ordinance being necessary for the public health, safety and welfare of the Metro area, an emergency is hereby declared to exist because compliance plans from local jurisdictions are due by August 17, 1998, and no benefit would be derived by delaying the effective date of this Ordinance. This Ordinance shall take effect upon its passage.

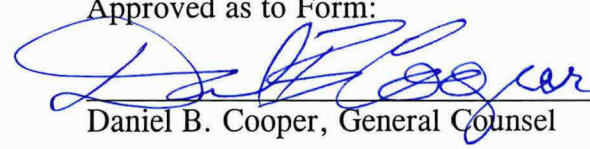
ADOPTED by the Metro Council this 23RD day of July 1998.



Jon Kvistad, Presiding Officer

ATTEST:



Recording Secretary

Approved as to Form:


Daniel B. Cooper, General Counsel



METRO

Date: July 23, 1998
To: Susan McLain, Metro Council
From: Daniel B. Cooper, General Counsel 
Subject: Ordinance 98-727B

You have asked us to review this ordinance which would amend the Urban Growth Management Functional Plan.

The provisions of Ordinance 98-727 were drafted by this office over six months ago in response to several concerns that had been raised by local governments. Those concerns were: 1) the substantial compliance requirement for the Urban Growth Management Functional Plan, 2) a request that guidance be given by the Metro Council regarding what was meant by the terminology "consistent with the Urban Growth Management Functional Plan;" and 3) an exemption for certain small cities from the reporting requirements of the Urban Growth Management Functional Plan.

The ordinance was heard at MPAC earlier in the year and MPAC recommended that the exemptions for the five small cities be deleted.

Subsequently, the Council adopted the Title 3 amendments to the Urban Growth Management Functional Plan. At the time the Title 3 provisions were adopted by the Council, an amendment was made to the Urban Growth Management Functional Plan adding the definition of the term "substantial compliance."

In order to bring Ordinance 98-727B into conformity with the already adopted provisions of the Functional Plan it is our recommendation that the definition of "substantial compliance" contained in ordinance 98-727B be deleted because this term is already defined in the Functional Plan in a more complete, yet slightly inconsistent, manner. Second, we recommend that the explanation of the meaning of the term "consistency" also be deleted because the term "substantial compliance" as defined in the current provisions of the Functional Plan make this explanation redundant. Third, we recommend that an emergency clause be added in order that the insertion of the term "substantial compliance" into the Functional Plan be effective immediately so that local governments could have certainty when they submit their compliance plans by the August 17, 1998, deadline.

DBC/kms

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Councilor McLain Motion

I move to substitute Ordinance 98-727C for Ordinance 98-727B.

1. This motion would have the effect of deleting the proposed definition of "substantial compliance" in Ordinance 98-727B. This definition is made unnecessary because the Urban Growth Management Functional Plan now contains a definition of "substantial compliance" which was inserted into the Functional Plan by the Council when the Title 3 requirements were recently adopted.
2. The substitution would eliminate the explanation of the term "consistency" that is proposed in Ordinance 98-727B. This explanation is no longer necessary because of the definition of the term "substantial compliance" already contained in the functional plan.
3. The substitution would add an emergency clause to the ordinance so it can become effective immediately in order to allow local governments certainty when they submit their compliance plans by the deadline of August 17, 1998.
4. The result of this substitution would be to limit the purpose of this ordinance to adding the term "substantial compliance" into Title 8 of the Functional Plan so that substantial compliance with all provisions of the Functional Plan would be the guideline for local jurisdictions.
5. The Office of General Counsel has reviewed these amendments and advises that they are technical in nature and that this ordinance may be voted on and adopted today after the amendments are made.



METRO

DATE: January 8, 1998

TO: Councilor Naito, Chair
Growth Management Committee

FROM: *LSS*
Larry Shaw
Office of General Counsel

SUBJECT: "Substantial Compliance" and "Consistency" and Small Cities

Substantial Compliance and Consistency

There has been great interest in the concept of "substantial compliance" with functional plan requirements in the development of Title 3 amendments to accompany the Title 3 Model Ordinance. The Council's resolution on preserving open spaces recognizes the potential for some conflict among Functional Plan requirements. Therefore, application of a new Title 10 definition of "substantial compliance" (developed in the Title 3 process) based on state law and clarification of "consistency" may ease the August, 1998 compliance plan process.

Attached is a proposed definition of "substantial compliance" which comes from the definition in ORS 197.747 for city and county comprehensive plan compliance with statewide land use goals. The issue is whether the purpose of the requirements have been met as a whole. This definition would apply to all Titles of the Functional Plan by the Title 8 amendment.

Questions have arisen about Functional Plan "consistency" for comprehensive plan amendments, generally. Cities have asked about the extent of the Title 8 requirement that all comprehensive plan and land use regulations must be "consistent" with Functional Plan requirements when full compliance is not due until February, 1999 after review of compliance plans in August, 1998. There is a difference between ultimate "compliance" and "consistency" with the Functional Plan prior to full compliance. Discussions have focused on the principle that current amendments at least preserve the status quo, rather than "go backwards," or make later compliance infeasible. Attached is proposed language to add that explanation to the Functional Plan.

Small Cities Partial Exemption

The very small cities in the proposed exemption have very small household and job targets that make the additional calculations and planning burdensome. Growth Management staff recommends this partial exemption to avoid that planning burden while keeping other requirements applicable when plan changes are made, particularly at periodic review of their plans.

Attachment

LSS/pm

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SMALL CITIES Selected Issues

Allocations from Table 1

Jurisdiction	Dwelling Units 2017 allocation	Jobs 2017 allocation	Existing Population, 1995 est.
Durham	262	498	1510
Johnson City	168	180	615
King City	182	241	2170
Maywood Park	27	5	790
Rivergrove	(-15)	41	272
Total	624	965	5357

Issues

- These allocations equal .2 percent of the dwelling units and jobs allocated in the region. The combined area of these five cities is 725 acres which represents 0.3% of the region.
- King City has a town center designation for its commercial area along Highway 99, bordering Tigard - perhaps they should not be grouped with the other small cities? 55 dwelling units and 184 jobs are allocated to the King City Town Center. The total allocation for the four other cities, less King City, would be 442 dwelling units and 724 jobs.
- Durham was allocated a relatively large number of jobs. They have some designated employment area which adjoins the growing business/power center of Tigard at the Boones Ferry exit of I-5.

Areas

Title 4: Both Johnson City and Rivergrove have some Employment Area.

Title 2: Maywood Park has some Zone A, along Prescott, but only 2 commercial properties. King City also has some Zone A, around the shopping center along Highway 99.

Some functional plan requirements which will apply to already built out areas:

Title 1 - Not prohibiting accessory dwelling units in residential zones

Allowing subdivision of large lots

Title 2 - Not requiring more than one parking space for residential (redev/infill)

Title 3 - Not encroaching on wet areas

Title 4 - Amend code to require land use decision for big boxes (Johnson City and Rivergrove)

Vacant Land

Jurisdiction	Gross Vacant acres developed, 1992 - 1995	Percent vacant land remaining	Total acres in the jurisdiction (approximate)
Durham	40	0.1%	268
Johnson City	not listed	not listed	44
King City	0	0.0%	255
Maywood Park	0	0.0%	116
Rivergrove	0	0.1%	42
Total			725

- From Baseline Urban Growth Data - DRAFT

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GROWTH MANAGEMENT COMMITTEE REPORT

**CONSIDERATION OF ORDINANCE 98-727B, FOR THE PURPOSE OF
AMENDING ORDINANCES NO. 96-647C AND NO. 97-715B, THE URBAN
GROWTH MANAGEMENT FUNCTIONAL PLAN, TO CLARIFY COMPLIANCE
ISSUES**

Date: July 9, 1998

Presented by: Councilor McLain

Committee Action: At its July 7, 1998 meeting, the Growth Management Committee unanimously voted to recommend Ordinance No. 98-727B to Council for adoption.

Voting in favor: Councilors Kvistad, Monroe and Morissette.

Committee Issues/Discussion:

A technical amendment was accepted in Committee to make a grammatical change.

Councilor McLain explained that the small cities exemption which was included in the "A" version of the ordinance was deleted at MPAC's request.

There were no other substantive concerns expressed by the Committee.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING) ORDINANCE NO 98-727C
ORDINANCES NO. 96-647C AND NO.)
97-715B, THE URBAN GROWTH) Introduced by Councilor McLain
MANAGEMENT FUNCTIONAL PLAN,)
TO CLARIFY COMPLIANCE ISSUES)

WHEREAS, the Regional Urban Growth Goals and Objectives were amended in Ordinance No. 95-625A to add the 2040 Growth Concept to Metro's regional goals and objectives; and

WHEREAS, the Urban Growth Management Functional Plan was adopted in Ordinance No. 96-647C to begin implementation of that 2040 Growth Concept; and

WHEREAS, the Regional Framework Plan included the Urban Growth Management Functional Plan in Appendix A, and codified the Functional Plan in Metro Code Chapter 3.07; and

WHEREAS, the Functional Plan became effective on February 19, 1997, and compliance plans demonstrating how each city and county plans comply with the Functional Plan are due in August, 1998; and

WHEREAS, questions about the meaning of "compliance" have been raised as city and county planning continues; and

WHEREAS, the Metro Council desires to clarify compliance issues to assist cities' and counties' preparation of compliance plans; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1. Compliance procedures in Title 8 of the Urban Growth Management Functional Plan at Metro Code 3.07.820 and in Ordinances No. 96-647C and No. 97-715B, Appendix A amended for the first sentence to read as follows:

"E. Compliance with requirements of this plan shall be substantial compliance which shall not require cities or counties to violate federal or state law, including state-wide land use goals."

Section 2. Compliance procedures in Title 8 of the Urban Growth Management Functional Plan at Metro Code 3.07.830A and in Ordinances No. 96-647C and No. 97-715B, Appendix A is amended to read as follows:

~~“A. After the effective date of this ordinance~~ February 19, 1997, any amendment of a comprehensive plan or implementing ordinance shall be consistent with the requirements of this functional plan.

Section 4. This Ordinance being necessary for the public health, safety and welfare of the Metro area, an emergency is hereby declared to exist because compliance plans from local jurisdictions are due by August 17, 1998, and no benefit would be derived by delaying the effective date of this Ordinance. This Ordinance shall take effect upon its passage.

ADOPTED by the Metro Council this _____ day of _____ 1998.

Jon Kvistad, Presiding Officer

ATTEST:

Approved as to Form:

Recording Secretary

Daniel B. Cooper, General Counsel

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING) ORDINANCE NO 98-727BC
ORDINANCES NO. 96-647C AND NO.)
97-715B, THE URBAN GROWTH) Introduced by Councilor McLain
MANAGEMENT FUNCTIONAL PLAN,)
TO CLARIFY COMPLIANCE ISSUES)

WHEREAS, the Regional Urban Growth Goals and Objectives were amended in Ordinance No. 95-625A to add the 2040 Growth Concept to Metro's regional goals and objectives; and

WHEREAS, the Urban Growth Management Functional Plan was adopted in Ordinance No. 96-647C to begin implementation of that 2040 Growth Concept; and

WHEREAS, the Regional Framework Plan included the Urban Growth Management Functional Plan in Appendix A, and codified the Functional Plan in Metro Code Chapter 3.07; and

WHEREAS, the Functional Plan became effective on February 19, 1997, and compliance plans demonstrating how each city and county plans comply with the Functional Plan are due in August, 1998; and

WHEREAS, questions about the meaning of "compliance" and "consistency" have been raised as city and county planning continues; and

~~WHEREAS, five small cities, Table 1 allocations are about .2 of the housing and jobs about 0.3% of the region's land area; and~~

WHEREAS, the Metro Council desires to clarify compliance issues to assist cities' and counties' preparation of compliance plans; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

~~Section 1. The definition of "substantial compliance" is added to Title 10 of the Urban Growth Management Functional Plan at Metro Code 3.07.1000(xx) and in Ordinances 96-647C and No. 97-715B, Appendix A as follows, and the existing alphabetical definitions thereafter are renumbered:~~

~~"(xx) Substantial Compliance means the comprehensive plans and regulations, on the whole, conform with the purposes of the functional plan requirements and any failure to meet individual functional plan requirements is minor in nature."~~

~~Section 2.~~ Compliance procedures in Title 8 of the Urban Growth Management Functional Plan at Metro Code 3.07.820 and in Ordinances No. 96-647C and No. 97-715B, Appendix A amended for the first sentence to read as follows:

“E. Compliance with requirements of this plan shall be substantial compliance which shall not require cities or counties to violate federal or state law, including state-wide land use goals.”

~~Section 32.~~ Compliance procedures in Title 8 of the Urban Growth Management Functional Plan at Metro Code 3.07.830A and in Ordinances No. 96-647C and No. 97-715B, Appendix A is amended to read as follows:

~~“A. After the effective date of this ordinance February 19, 1997, any amendment of a comprehensive plan or implementing ordinance shall be consistent with the requirements of this functional plan. The purpose of this consistency requirement is to ensure that substantial compliance with the requirements of this functional plan is feasible with the new comprehensive plan provisions or land use regulations. Accordingly, a city or county comprehensive plan or land use regulation meets this consistency requirement if it retains the ability of the city or county to substantially comply with housing and employment targets, other requirements and by designating 2040 design type boundaries which substantially comply with the 2040 Growth Concept Map.~~

~~Section 4. Title 8, Section 1 in Ordinance No. 96-647C and No. 97-715B, Appendix A is hereby amended to renumber the existing Section 1 as Section 1.A. and add the following new paragraph:~~

~~“B. Notwithstanding Section 1.A. of this title, the small cities of Durham, Johnson City, King City, Maywood Park and Rivergrove shall be exempt from the requirements of Title 1, Sections 2, 4, 5 and 6 and Title 8, Section 1.A. and 2. The Table 1 Target Capacities and The Design Type Densities for these cities shall continue to be recommendations. The remaining requirements of this functional plan shall be applicable to any comprehensive plan and implementing ordinance amendments by these cities.~~

ADOPTED by the Metro Council this _____ day of _____ 1998.

Jon Kvistad, Presiding Officer

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BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING) ORDINANCE NO 98-727AB
ORDINANCES NO. 96-647C AND NO.)
97-715B, THE URBAN GROWTH) Introduced by Councilor McLain
MANAGEMENT FUNCTIONAL PLAN,)
TO CLARIFY COMPLIANCE ISSUES)

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WHEREAS, the Regional Framework Plan included the Urban Growth Management Functional Plan in Appendix A, and codified the Functional Plan in Metro Code Chapter 3.07; and

WHEREAS, the Functional Plan became effective on February 19, 1997, and compliance plans demonstrating how each city and county plans comply with the Functional Plan are due in August, 1998; and

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WHEREAS, five small cities, Table 1 allocations are about .2 of the housing and jobs about 0.3% of the region's land area; and

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“E. Compliance with requirements of this plan shall be substantial compliance which shall not require cities or counties to violate federal or state law, including state-wide land use goals.”

Section 3. Compliance procedures in Title 8 of the Urban Growth Management Functional Plan at Metro Code 3.07.830A and in Ordinances No. 96-647C and No. 97-715B, Appendix A is amended to read as follows:

“A. ~~After the effective date of this ordinance, February 19, 1997,~~ any amendment of a comprehensive plan or implementing ordinance shall be consistent with the requirements of this functional plan. The purpose of this consistency requirement is to ensure that substantial compliance with the requirements of this functional plan is feasible with the new comprehensive plan provisions or land use regulations. Accordingly, a city or county comprehensive plan or land use regulation meets this consistency requirement if it retains the ability of the city or county to substantially comply with housing and employment targets, and other requirements and by designating 2040 design type boundaries which substantially comply with the 2040 Growth Concept Map.

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ADOPTED by the Metro Council this _____ day of _____ 1998.

Jon Kvistad, Presiding Officer

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ATTEST:

Approved as to Form:

Recording Secretary

Daniel B. Cooper, General Counsel

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July 8, 1998

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING) ORDINANCE NO 98-727A
ORDINANCES NO. 96-647C AND NO.)
97-715B, THE URBAN GROWTH) Introduced by Councilor McLain
MANAGEMENT FUNCTIONAL PLAN,)
TO CLARIFY COMPLIANCE ISSUES)

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ADOPTED by the Metro Council this _____ day of _____ 1998.

Jon Kvistad, Presiding Officer

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ATTEST:

Approved as to Form:

Recording Secretary

Daniel B. Cooper, General Counsel

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February 5, 1998

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING) ORDINANCE NO 98-727
ORDINANCES NO. 96-647C AND NO.)
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ADOPTED by the Metro Council this _____ day of _____ 1998.

Jon Kvistad, Presiding Officer

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ATTEST:

Approved as to Form:

Recording Secretary

Daniel B. Cooper, General Counsel

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