

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO CODE )  
TITLE 8 (COMPLIANCE PROCEDURES) AND TITLE 1 )  
(REQUIREMENTS FOR HOUSING AND )  
EMPLOYMENT ACCOMMODATION) OF THE URBAN ) ORDINANCE NO. 01-925E  
GROWTH MANAGEMENT FUNCTIONAL PLAN AND )  
SECTION 7.5 OF THE REGIONAL FRAMEWORK )  
PLAN ORDINANCE 97-715B TO REVISE THE )  
PROCESS FOR ADJUDICATION AND )  
DETERMINATION OF CONSISTENCY OF LOCAL )  
COMPREHENSIVE PLANS WITH THE URBAN ) Introduced by Community  
GROWTH MANAGEMENT FUNCTIONAL PLAN, AND ) Planning Committee  
TO REVISE THE PROCESSES AND CRITERIA FOR )  
EXCEPTIONS FROM AND EXTENSIONS TO COMPLY )  
WITH THE FUNCTIONAL PLAN; AND DECLARING )  
AN EMERGENCY )

WHEREAS, the success of the 2040 Growth Concept depends upon local government compliance with the Urban Growth Management Functional Plan; and

WHEREAS, Chapter II, Section 5(2)(e) of the Metro Charter requires, and ORS 268.390(5) authorizes, Metro to adopt by ordinance a program for determining the consistency of local comprehensive plans with the Regional Framework Plan; and

WHEREAS, Metro's current code provisions for determining consistency of local plans with the Urban Growth Management Functional Plan do not provide Metro with all of the tools necessary to ensure overall compliance by cities and counties with the plan and accomplishment of the 2040 Growth Concept; and

WHEREAS, Objective 5.3 of the Regional Urban Growth Goals and Objectives ("RUGGO"), which provides a process for resolution of inconsistencies between local comprehensive plans and functional plan requirements, was incorporated with all of the RUGGO into the Regional Framework Plan by Ordinance 97-715B; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Sections 3.07.810 to 3.07.860 of Title 8, Compliance Procedures, of the Urban Growth Management Functional Plan are hereby amended as indicated in Exhibit "A", attached and incorporated into this ordinance, in order to provide Metro with a full range of tools to ensure overall local government compliance with the functional plan and to consolidate compliance procedures into a single title.

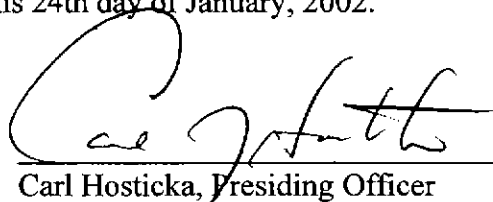
2. Sections 3.07.870 to 3.07.890, as indicated in Exhibit "B", attached and incorporated into this ordinance, are hereby added to Title 8, Compliance Procedures, of the Urban Growth Management Functional Plan in order to provide Metro with a full range of tools to ensure overall local government compliance with the functional plan and to consolidate compliance procedures into a single title.

3. Section 7.5 of the Regional Framework Plan Ordinance 97-715B is hereby amended as indicated in Exhibit "C", attached and incorporated into this ordinance, in order to allow Metro to grant exceptions to the Urban Growth Management Functional Plan.

4. Section 3.07.150E of Title 1 (Requirements for Housing and Employment Accommodation) of the Urban Growth Management Functional Plan is hereby repealed in order to consolidate compliance procedures into Title 8.

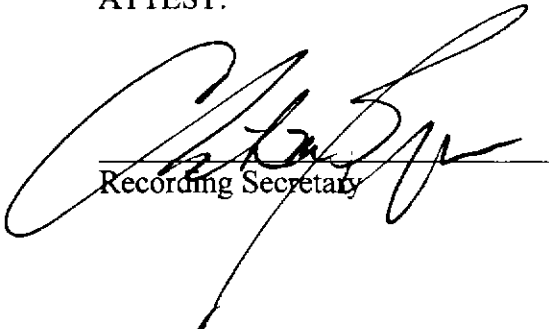
5. This ordinance is necessary for the immediate preservation of public health, safety and welfare because a large number of requests for exceptions from requirements in the Urban Growth Management Functional Plan is pending before the Council. This ordinance is essential to speed implementation of the functional plan and to ensure its implementation. An emergency is therefore declared to exist. This ordinance shall take effect immediately, pursuant to Metro Charter section 39(1).

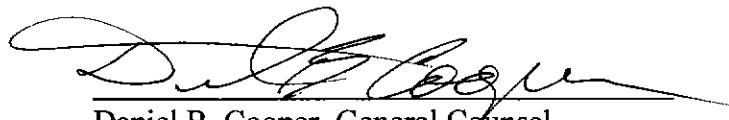
ADOPTED by the Metro Council this 24th day of January, 2002.

  
\_\_\_\_\_  
Carl Hosticka, Presiding Officer

ATTEST:

Approved as to Form:

  
\_\_\_\_\_  
Recording Secretary

  
\_\_\_\_\_  
Daniel B. Cooper, General Counsel



**Exhibit A to Ordinance No. 01-925E**  
**January 24, 2001**

Amend sections 3.07.810 to 3.07.860 of Title 8 of the Urban Growth Management Functional Plan as follows:

3.07.810 Compliance with the Functional Plan

- A. The purpose of this section is to establish a process for determining whether city or county comprehensive plans and land use regulations comply with requirements of the Urban Growth Management Functional Plan. The Council intends the process to be efficient and cost-effective and to provide an opportunity for the Metro Council to interpret the requirements of its functional plan. Where the terms “compliance” and “comply” appear in this title, the terms shall have the meaning given to “substantial compliance” in 3.07.1010(rrr).
- B. Cities and counties shall amend their comprehensive plans and land use regulations to comply with the functional plan within two years after its acknowledgement by the Land Conservation and Development Commission, or after such other date specified in the functional plan. The Executive Officer shall notify cities and counties of the compliance date.
- C. Notwithstanding subsection A of this section, cities and counties shall amend their comprehensive plans and land use regulations to comply with sections 3.07.310 to 3.07.340 of Title 3 of the Urban Growth Management Functional Plan by January 31, 2000, and with the requirements in sections 3.07.710 to 3.07.760 of Title 7 of the Urban Growth Management Functional Plan by January 18, 2003.
- D. Cities and counties that amend their comprehensive plans or land use regulations after the effective date of the functional plan shall make the amendments in compliance with the functional plan. The Executive Officer shall notify cities and counties of the effective date.
- E. Cities and counties whose comprehensive plans and land use regulations do not yet comply with a functional plan requirement adopted or amended prior to December 12, 1997, shall make land use decisions consistent with that requirement. If the functional plan requirement was adopted or amended by the Metro Council after December 12, 1997, cities and counties whose comprehensive plans and land use regulations do not yet comply with the requirement shall, after one year following acknowledgment of the requirement, make land use decisions consistent with that requirement. The Executive Officer shall notify cities and counties of the date upon which functional plan requirements become applicable to land use decisions at least 120 days before that date. The notice shall specify which functional plan requirements become applicable to land use decisions in each city and county. For the purposes of this subsection, “land use decision” shall have the meaning of that term as defined in ORS 197.015(10).

- F. An amendment to a city or county comprehensive plan or land use regulation shall be deemed to comply with the functional plan if no appeal to the Land Use Board of Appeals is made within the 21-day period set forth in ORS 197.830(9), or if the amendment is acknowledged in periodic review pursuant to ORS 197.633 or 197.644. If an appeal is made and the amendment is affirmed, the amendment shall be deemed to comply with the functional plan upon the final decision on appeal. Once the amendment is deemed to comply with the functional plan, the functional plan shall no longer apply to land use decisions made in conformance with the amendment.
- G. An amendment to a city or county comprehensive plan or land use regulation shall be deemed to comply with the functional plan as provided in subsection F only if the city or county provided notice to the Executive Officer as required by section 3.07.820(A).

3.07.820 Compliance Review by The Executive Officer

- A. At least 45 days prior to the first evidentiary hearing on an amendment to a comprehensive plan or land use regulation which a city or county must submit to the Department of Land Conservation and Development pursuant to ORS 197.610(1) or OAR 660-025-0130(1), the city or county shall submit the proposed amendment to the Executive Officer. The Executive Officer shall review the proposed amendment for compliance with the functional plan. The Executive Officer may request, and if so the city or county shall submit, an analysis of compliance of the amendment with the functional plan. If the Executive Officer submits comments on the proposed amendment to the city or county, the comment shall include analysis and conclusions on compliance and a recommendation with specific revisions to the proposed amendment, if any, that would bring it into compliance with functional plan requirements. The Executive Officer shall send a copy of its analysis and recommendation to those persons who have requested a copy.
- B. If the Executive Officer concludes that the proposed amendment does not comply with the functional plan, the Executive Officer shall advise the city or county that it may (1) revise the proposed amendment as recommended in the Executive Officer's analysis; (2) seek an extension of time, pursuant to section 3.07.850, to bring the proposed amendment into compliance with the functional plan; or (3) seek review of the noncompliance by MPAC and the Metro Council, pursuant to sections 3.07.830 and 3.07.840.

3.07.830 Review of Compliance by Metropolitan Policy Advisory Committee

- A. A city or county may seek review of the Executive Officer's conclusion of noncompliance under section 3.07.820B by MPAC and the Metro Council. The city or county shall file an application for MPAC review on a form provided for that purpose by the Executive Officer. Upon receipt of a completed application, the Executive Officer shall set the matter on the MPAC agenda and notify those persons who request notification of MPAC reviews.

- B. The Executive Officer may seek review of city or county compliance with a functional plan requirement by MPAC and the Metro Council after the deadline for compliance with that requirement. The Executive Officer shall file an application for MPAC review on the form described in subsection A and shall set the matter on the MPAC agenda. The Executive Officer shall notify the city or county and those persons who request notification of MPAC reviews.
- C. MPAC may hold a public hearing on the issue of compliance. If MPAC holds a hearing, any person may testify. MPAC shall attempt to resolve any apparent or potential inconsistency between the proposed amendment and the functional plan. MPAC shall prepare a report to the Metro Council that sets forth reasons for the inconsistency. The Executive Officer shall send a copy of the report to the city or county and those persons who request a copy.

3.07.840 Review by Metro Council

- A. Upon receipt of a report from MPAC under section 3.07.830, the Executive Officer shall set the matter for a public hearing before the Metro Council and notify the city or county and those persons who request notification of Council reviews.
- B. A person who requested a copy under section 3.07.820A may seek review by the Metro Council of an Executive Officer conclusion of compliance of a proposed amendment with the functional plan. The person shall file an application for Council review on a form provided for that purpose by the Executive Officer. The Executive Officer shall set the matter for a public hearing before the Council and notify the city or county, the Department of Land Conservation and Development and those persons who request notification of Council reviews.
- C. The Council shall hold a public hearing on the matter within 90 days after receipt of a report from MPAC under subsection A or within 90 days after the filing of a complete application under subsection B. Any person may testify at the hearing. The Council shall issue an order of compliance or noncompliance with its analysis and conclusion and send a copy to the city or county, MPAC, the Department of Land Conservation and Development and those persons who participated in the proceeding.
- D. If the Council finds that the proposed amendment does not comply with the functional plan, the Council shall advise the city or county that it may (1) revise and adopt the proposed amendment as recommended in the Council order; (2) seek an extension of time, pursuant to section 3.07.850, to bring the proposed amendment into compliance with the functional plan; or (3) seek an exception from the functional plan, pursuant to section 3.07.860. If the Council determines that an amendment of the functional plan is necessary to resolve the noncompliance, the Council shall include that determination in its order.

- E. The city or county or a person who participated in the proceeding may seek review of the Council's order as a land use decision described in ORS 197.015(10)(a)(A).

3.07.850 Extension of Compliance Deadline

- A. A city or county may seek an extension of time for compliance with the functional plan. The city or county shall file an application for an extension on a form provided for that purpose by the Executive Officer. Upon receipt of an application, the Executive Officer shall set the matter for a public hearing before the Metro Council and shall notify the city or county, MPAC, the Department of Land Conservation and Development and those persons who request notification of applications for extensions.
- B. The Metro Council shall hold a public hearing to consider the extension. Any person may testify at the hearing. The Council may grant an extension if it finds that: (1) the city or county is making progress toward accomplishment of its compliance work program; or (2) there is good cause for failure to meet the deadline for compliance.
- C. The Metro Council may establish terms and conditions for the extension in order to ensure that compliance is achieved in a timely and orderly fashion and that land use decisions made by the city or county during the extension do not undermine the ability of the city or county to achieve the purposes of the functional plan requirement or of the region to achieve the 2040 Growth Concept. A term or condition must relate to the requirement of the functional plan to which the Council grants the extension. The Council shall incorporate the terms and conditions into its order on the extension. The Council shall not grant more than two extensions of time to a city or a county. The Council shall not grant an extension of time for more than one year.
- D. The Metro Council shall issue an order with its conclusion and analysis and send a copy to the city or county, MPAC, the Department of Land Conservation and Development and those persons who participated in the proceeding. The city or county or a person who participated in the proceeding may seek review of the Council's order as a land use decision described in ORS 197.015(10)(a)(A).

3.07.860 Exception from Compliance

- A. A city or county may seek an exception from compliance with a functional plan requirement by filing an application on a form provided for that purpose by the Executive Officer. An application for an exception to the requirement in subsection 3.07.150D to increase dwelling unit and job capacity to the targets set forth in Table 3.07-1 must be filed between March 1 and March 31 of each calendar year in order to allow the Metro Council to consider the application concurrently with other such applications. Upon receipt of an application, the Executive Officer shall set the matter for a public hearing before the Metro Council and shall notify MPAC, the Department of Land Conservation and Development and those persons who request notification of requests for exceptions.

- B. The Metro Council shall hold a public hearing to determine whether the exception meets the following criteria:
- (1) Except as provided in paragraph (2) of this subsection, the Council may grant an exception if it finds:
    - (a) it is not possible to achieve the requirement due to topographic or other physical constraints or an existing development pattern;
    - (b) this exception and likely similar exceptions will not render the objective of the requirement unachievable region-wide;
    - (c) the exception will not reduce the ability of another city or county to comply with the requirement; and
    - (d) the city or county has adopted other measures more appropriate for the city or county to achieve the intended result of the requirement.
  - (2) The Council may grant an exception to the requirement in subsection 3.07.150D to increase dwelling unit and job capacity to the targets set forth in Table 3.07-1 if it finds:
    - (a) the city or county has completed the analysis of capacity for dwelling units and jobs required by subsections 3.07.150A, B and C;
    - (b) it is not possible to achieve the targets due to topographic or other physical constraints, an existing development pattern that precludes achievement of the 2040 Growth Concept, or protection of environmentally sensitive land; and
    - (c) this exception and other exceptions to the targets will not render the targets unachievable region-wide.
- C. The Council may establish terms and conditions for the exception in order to ensure that it does not undermine the ability of the region to achieve the 2040 Growth Concept. A term or condition must relate to the requirement of the functional plan to which the Council grants the exception. The Council shall incorporate the terms and conditions into its order on the exception.
- D. The Council shall issue an order with its conclusion and analysis and send a copy to the city or county, MPAC, the Department of Land Conservation and those persons who have requested a copy of the order. The city or county or a person who participated in the proceeding may seek review of the Council's order as a land use decision described in ORS 197.015(10)(a)(A).

**Exhibit B to Ordinance No. 01-925E**  
**January 24, 2002**

Add the following sections 3.07.870, 3.07.880 and 3.07.890 to Title 8 of the Urban Growth Management Functional Plan:

3.07.870      Enforcement of Functional Plan

- A.      The Metro Council may initiate enforcement proceedings under this section if a city or county has failed to meet a deadline in an extension granted pursuant to section 3.07.850 or if it has good cause to believe that a city or county is engaging in a pattern or a practice of decision-making that is inconsistent with the functional plan or local ordinances adopted by the city or county to implement the plan, or with the terms or conditions in an extension. The Council may consider whether to initiate enforcement proceedings upon the request of the Executive Officer or a councilor. The Council shall consult with the city or county before it determines there is good cause to proceed to a hearing under subsection B of this section.
  
- B.      If the Metro Council concludes that there is good cause pursuant to subsection A of this section, the Executive Officer shall set the matter for a public hearing before the Council within 90 days of its conclusion. The Executive Officer shall publish notice of the hearing in a newspaper of general circulation in the city or county and send notice to the city or county, MPAC, the Department of Land Conservation and Development and any person who requests a copy of such notices.
  
- C.      The Executive Officer shall prepare a report and recommendation on the pattern or practice, with a proposed order, for consideration by the Metro Council. The Executive Officer shall publish the report at least 14 days prior to the public hearing and send a copy to the city or county and any person who requests a copy.
  
- D.      If the Metro Council concludes that the city or county has not engaged in a pattern or practice of decision-making that that is inconsistent with the functional plan or local ordinances adopted by the city or county to implement the plan or with terms or conditions of an extension granted pursuant to section 3.07.850, the Council shall enter an order dismissing the matter. If the Council concludes that the city or county has engaged in such a pattern or practice of decision-making, the Council shall issue an order that sets forth the noncompliance and directs changes in the city or county ordinances necessary to remedy the pattern or practice. The Council shall issue its order, with analysis and conclusions, not later than 30 days following the public hearing on the matter. The Executive Officer shall send a copy of the order to the city or county, MPAC, the Department of Land Conservation and Development and any person who requests a copy.



3.07.880 Compliance Report and Order

- A. The Executive Officer shall submit a report to the Metro Council by December 31 of each calendar year on compliance by cities and counties with the Urban Growth Management Function Plan. The report shall include an accounting of compliance with each requirement of the functional plan by each city and county in the district. The report shall recommend action that would bring a city or county into compliance with the functional plan requirement and shall advise the city or county whether it may seek an extension pursuant to section 3.07.850 or an exception pursuant to section 3.07.860. The report shall also include an evaluation of the implementation of this chapter and its effectiveness in helping achieve the 2040 Growth Concept.
- B. Upon receipt of the compliance report, the Metro Council shall set a public hearing for the purpose of receiving testimony on the report and determining whether a city or county has complied with the requirements of the functional plan. The Executive Officer shall notify all cities and counties, the Department of Land Conservation and Development and any person who requests notification of the hearing of the date, time and place of the hearing. The notification shall state that the Council does not have jurisdiction (1) to determine whether previous amendments of comprehensive plans or land use regulations made by a city or county comply with functional plan requirements if those amendments already comply pursuant to subsections F and G of section 3.07.810 or (2) to reconsider a determination in a prior order issued pursuant to subsection C that a city or county complies with a requirement of the functional plan. Any person may testify, orally or in writing, at the public hearing.
- C. Following the public hearing, the Metro Council shall enter an order that determines with which functional plan requirements each city and county complies. The order shall be based upon the Executive Officer's report submitted pursuant to subsection A and upon testimony at the public hearing pursuant to subsection B, with which functional plan requirements each city and county complies. The order may rely upon the report for its findings of fact and conclusions of compliance with a functional plan requirement. If the Council receives testimony during its public hearing that takes exception to the report on the question of compliance, the order shall include supplemental findings and conclusions to address the testimony. The Executive Officer shall send a copy of its order to cities and counties and any person who testifies, orally or in writing, at the public hearing.
- D. Omission from the order of recognition by the Council of compliance by a city or county with a functional plan requirement shall not constitute a determination under section 3.07.870A that the city or county has engaged in a pattern or practice of decision-making that is inconsistent with the requirement.
- E. A city or county or a person who testified, orally or in writing, at the public hearing, may seek review of the Council's order as a land use decision described in ORS 197.015(10)(a)(A).

3.07.890 Citizen Involvement in Compliance Review

- A. Any citizen may contact Metro staff or the Executive Officer or appear before the Metro Council to raise issues regarding local functional plan compliance, to request Executive Officer participation in the local process, or to request the Metro Council to appeal a local enactment for which notice is required to be given to the Executive Officer pursuant to section 3.07.870A. Such contact may be oral or in writing and may be made at any time during or at the conclusion of any city or county proceeding to amend a comprehensive plan or implementing ordinance for which notice is required to be given to the Executive Officer. All such requests to participate or appeal made in writing shall be forwarded to the Metro Council.
- B. In addition to considering requests as described in A above, the Metro Council shall at every regularly scheduled Council meeting provide an opportunity for citizens to address the Council on any matter related to this functional plan. The Executive Officer shall maintain a list of persons who request notice of reviews and copies of reports and orders and shall send requested documents as provided in this chapter.
- C. Cities, counties and the Metro Council shall comply with their own adopted and acknowledged Citizen Involvement Requirements (Citizen Involvement) in all decisions, determinations and actions taken to implement and comply with this functional plan. The Executive Officer shall at least annually publish and distribute a Citizen Involvement fact sheet, after consultation with the Metro Committee for Citizen Involvement, that fully describes all opportunities for citizen involvement in Metro's Regional Growth Management Process as well as the implementation and enforcement of this functional plan.

**Exhibit C to Ordinance No. 01-925E**  
**January 24, 2001**

Amend section 7.5 of the Regional Framework Plan Ordinance 97-715B as follows:

**7.5 Functional Plans**

Functional plans are limited purpose plans, consistent with this Framework Plan, which address designated areas and activities of metropolitan concern. Functional plans are established in state law as a way Metro may recommend or require changes in local plans. This Framework Plan uses functional plans as the identified vehicle for requiring changes in local plans in order to achieve consistence and compliance with this Framework Plan.

Those functional plans or functional plan provisions containing recommendations for comprehensive planning by cities and counties may not be final land use decisions. If a provision in a functional plan, or an action implementing a functional plan require changes in an adopted and acknowledged comprehensive plan, then the adoption of a provision or action will be a final land use decision. If a provision in a functional plan, or Metro action implementing a functional plan require changes in an adopted and acknowledged comprehensive plan, then that provision or action will be adopted by Metro as a final land use action required to be consistent with statewide planning goals. In addition, Regional Framework Plan components will be adopted as functional plans if they contain recommendations or requirements for changes in comprehensive plans. These functional plans, which are adopted as part of the Regional Framework Plan, will be submitted along with other parts of the Regional Framework Plan to LCDC for acknowledgment of their compliance with the statewide planning goals. Because functional plans are the way Metro recommends or requires local plan changes, most Regional Framework Plan components will probably be functional plans. Until Regional Framework Plan components are adopted, existing or new functional plans will continue to recommend or require changes in comprehensive plans.

- Existing Functional Plans. Metro shall continue to develop, amend and implement, with the assistance of cities, counties, special districts and the state, statutory-required functional plans for air, water and transportation, as directed by ORS 268.390(1) and for land use planning aspects of solid waste management as mandated by ORS Ch. 459.
- New Functional Plans. New functional plans shall be proposed from one of two sources:
  - MPAC may recommend that the Metro Council designate an area or activity of metropolitan concern for which a functional plan should be prepared; or
  - the Metro Council may propose the preparation of a functional plan to designate an area or activity of metropolitan concern and refer that proposal to MPAC.

The matters required by the Charter to be addressed in the Regional Framework Plan shall constitute sufficient factual reasons for the development of a functional plan under ORS 268.390. However, the actual adoption of a functional plan will be subject to the procedures specified above.

Upon the Metro Council adopting factual reasons for the development of a new functional plan, MPAC shall participate in the preparation of the plan, consistent with these goals and objectives

and the reasons cited by the Metro Council. After preparation of the plan and seeking broad public and local government consensus, using existing citizen involvement processes established by cities, counties and Metro, MPAC shall review the plan and make a recommendation to the Metro Council. The Metro Council may act to resolve conflicts or problems impeding the development of a new functional plan and may complete the plan if MPAC is unable to complete its review in a timely manner.

The Metro Council shall hold a public hearing on the proposed plan and afterwards shall:

- adopt the proposed functional plan; or
- refer the proposed functional plan to MPAC in order to consider amendments to the proposed plan prior to adoption; or
- amend and adopt the proposed functional plan; or
- reject the proposed functional plan.

The proposed functional plan shall be adopted by ordinance and shall include findings of consistency with these goals and objectives.

- **Functional Plan Implementation and Conflict Resolution.** Adopted functional plans shall be regionally coordinated policies, facilities and/or approaches to addressing a designated area or activity of metropolitan concern, to be considered by cities and counties for incorporation in their comprehensive land use plans. If a city or county determines that a functional plan requirement should not or cannot be incorporated into its comprehensive plan, then Metro shall review any apparent inconsistencies by the following process:
  - Metro and affected local governments shall notify each other of apparent or potential comprehensive plan inconsistencies.
  - After Metro staff review, MPAC shall consult the affected jurisdictions and attempt to resolve any apparent or potential inconsistencies.
  - MPAC may conduct a public hearing and make a report to the Metro Council regarding instances and reasons why a city or county has not adopted changes consistent with requirements in a regional functional plan.
  - The Metro Council shall review the MPAC report and hold a public hearing on any unresolved issues. The Council may decide to:
    - amend the adopted regional functional plan; or
    - initiate proceedings to require a comprehensive plan change; or
    - find there is no inconsistency between the comprehensive plan(s) and the functional plan; or
    - grant an exception to the functional plan requirement.

BEFORE THE METRO COUNCIL

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TITLE 8 (COMPLIANCE PROCEDURES) AND TITLE 1	)	
(REQUIREMENTS FOR HOUSING AND	)	
EMPLOYMENT ACCOMMODATION) OF THE URBAN	)	ORDINANCE NO. 01-925D
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PROCESS FOR ADJUDICATION AND	)	
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TO REVISE THE PROCESSES AND CRITERIA FOR	)	
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WITH THE FUNCTIONAL PLAN; AND DECLARING	)	
AN EMERGENCY	)	

WHEREAS, the success of the 2040 Growth Concept depends upon local government compliance with the Urban Growth Management Functional Plan; and

WHEREAS, Chapter II, Section 5(2)(e) of the Metro Charter requires, and ORS 268.390(5) authorizes, Metro to adopt by ordinance a program for determining the consistency of local comprehensive plans with the Regional Framework Plan; and

WHEREAS, Metro’s current code provisions for determining consistency of local plans with the Urban Growth Management Functional Plan do not provide Metro with all of the tools necessary to ensure overall compliance by cities and counties with the plan and accomplishment of the 2040 Growth Concept; and

WHEREAS, Objective 5.3 of the Regional Urban Growth Goals and Objectives (“RUGGO”), which provides a process for resolution of inconsistencies between local comprehensive plans and functional plan requirements, was incorporated with all of the RUGGO into the Regional Framework Plan by Ordinance 97-715B; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Sections 3.07.810 to 3.07.860 of Title 8, Compliance Procedures, of the Urban Growth Management Functional Plan are hereby amended as indicated in Exhibit "A", attached and incorporated into this ordinance, in order to provide Metro with a full range of tools to ensure overall local government compliance with the functional plan and to consolidate compliance procedures into a single title.

2. Sections 3.07.870 to 3.07.890, as indicated in Exhibit "B", attached and incorporated into this ordinance, are hereby added to Title 8, Compliance Procedures, of the Urban Growth Management Functional Plan in order to provide Metro with a full range of tools to ensure overall local government compliance with the functional plan and to consolidate compliance procedures into a single title.

3. Section 7.5 of the Regional Framework Plan Ordinance 97-715B is hereby amended as indicated in Exhibit "C", attached and incorporated into this ordinance, in order to allow Metro to grant exceptions to the Urban Growth Management Functional Plan.

4. Section 3.07.150E of Title 1 (Requirements for Housing and Employment Accommodation) of the Urban Growth Management Functional Plan is hereby repealed in order to consolidate compliance procedures into Title 8.

5. This ordinance is necessary for the immediate preservation of public health, safety and welfare because a large number of requests for extensions of time for compliance with the Urban Growth Management Functional Plan is pending before the Council. This ordinance is essential to speed implementation of the functional plan and to ensure its implementation during the extensions. An emergency is therefore declared to exist. This ordinance shall take effect immediately, pursuant to Metro Charter section 39(1).

ADOPTED by the Metro Council this \_\_\_\_\_ day of January, 2002.

\_\_\_\_\_  
Carl Hosticka, Presiding Officer

ATTEST:

Approved as to Form:

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
Daniel B. Cooper, General Counsel

**Exhibit A to Ordinance No. 01-925D**  
**January 16, 2001**

Amend sections 3.07.810 to 3.07.860 of Title 8 of the Urban Growth Management Functional Plan as follows:

**3.07.810 Compliance with the Functional Plan**

- A. The purpose of this section is to establish a process for determining whether city or county comprehensive plans and land use regulations comply with requirements of the Urban Growth Management Functional Plan. The Council intends the process to be efficient and cost-effective and to provide an opportunity for the Metro Council to interpret the requirements of its functional plan. Where the terms "compliance" and "comply" appear in this title, the terms shall have the meaning given to "substantial compliance" in 3.07.1010(rrr).
- B. Cities and counties shall amend their comprehensive plans and land use regulations to comply with the functional plan within two years after its acknowledgement by the Land Conservation and Development Commission, or after such other date specified in the functional plan. The Executive Officer shall notify cities and counties of the compliance date.
- C. Notwithstanding subsection A of this section, cities and counties shall amend their comprehensive plans and land use regulations to comply with sections 3.07.310 to 3.07.340 of Title 3 of the Urban Growth Management Functional Plan by January 31, 2000, and with the requirements in sections 3.07.710 to 3.07.760 of Title 7 of the Urban Growth Management Functional Plan by January 18, 2003.
- D. Cities and counties that amend their comprehensive plans or land use regulations after the effective date of the functional plan shall make the amendments in compliance with the functional plan. The Executive Officer shall notify cities and counties of the effective date.
- E. Cities and counties whose comprehensive plans and land use regulations do not yet comply with a functional plan requirement adopted or amended prior to December 12, 1997, shall make land use decisions consistent with that requirement. If the functional plan requirement was adopted or amended by the Metro Council after December 12, 1997, cities and counties whose comprehensive plans and land use regulations do not yet comply with the requirement shall, after one year following acknowledgment of the requirement, make land use decisions consistent with that requirement. The Executive Officer shall notify cities and counties of the date upon which functional plan requirements become applicable to land use decisions at least 120 days before that date. The notice shall specify which functional plan requirements become applicable to land use decisions in each city and county. For the purposes of this subsection, "land use decision" shall have the meaning of that term as defined in ORS 197.015(10).

- F. An amendment to a city or county comprehensive plan or land use regulation shall be deemed to comply with the functional plan if no appeal to the Land Use Board of Appeals is made within the 21-day period set forth in ORS 197.830(9), or if the amendment is acknowledged in periodic review pursuant to ORS 197.633 or 197.644. If an appeal is made and the amendment is affirmed, the amendment shall be deemed to comply with the functional plan upon the final decision on appeal. Once the amendment is deemed to comply with the functional plan, the functional plan shall no longer apply to land use decisions made in conformance with the amendment.
- G. An amendment to a city or county comprehensive plan or land use regulation shall be deemed to comply with the functional plan as provided in subsection F only if the city or county provided notice to the Executive Officer as required by section 3.07.820(A).

3.07.820 Compliance Review by The Executive Officer

- A. Prior to adoption of an amendment to a comprehensive plan or land use regulation which a city or county must submit to the Department of Land Conservation and Development pursuant to ORS 197.610(1) or OAR 660-025-0130(1), the city or county shall submit the proposed amendment to the Executive Officer at the same time it submits the amendment to the department. The Executive Officer shall review the proposed amendment for compliance with the functional plan. The Executive Officer may request, and if so the city or county shall submit, an analysis of compliance of the amendment with the functional plan. If the Executive Officer submits comments on the proposed amendment to the city or county, the comment shall include analysis and conclusions on compliance and a recommendation with specific revisions to the proposed amendment, if any, that would bring it into compliance with functional plan requirements. The Executive Officer shall send a copy of its analysis and recommendation to those persons who have requested a copy.
- B. If the Executive Officer concludes that the proposed amendment does not comply with the functional plan, the Executive Officer shall advise the city or county that it may (1) revise the proposed amendment as recommended in the Executive Officer's analysis; (2) seek an extension of time, pursuant to section 3.07.850, to bring the proposed amendment into compliance with the functional plan; or (3) seek review of the noncompliance by MPAC and the Metro Council, pursuant to sections 3.07.830 and 3.07.840.

3.07.830 Review of Compliance by Metropolitan Policy Advisory Committee

- A. A city or county may seek review of the Executive Officer's conclusion of noncompliance under section 3.07.820B by MPAC and the Metro Council. The city or county shall file an application for MPAC review on a form provided for that purpose by the Executive Officer. Upon receipt of a completed application, the Executive Officer shall set the matter on the MPAC agenda and notify those persons who request notification of MPAC reviews.



- B. The Executive Officer may seek review of city or county compliance with a functional plan requirement by MPAC and the Metro Council after the deadline for compliance with that requirement. The Executive Officer shall file an application for MPAC review on the form described in subsection A and shall set the matter on the MPAC agenda. The Executive Officer shall notify the city or county and those persons who request notification of MPAC reviews.
- C. MPAC may hold a public hearing on the issue of compliance. If MPAC holds a hearing, any person may testify. MPAC shall attempt to resolve any apparent or potential inconsistency between the proposed amendment and the functional plan. MPAC shall prepare a report to the Metro Council that sets forth reasons for the inconsistency. The Executive Officer shall send a copy of the report to the city or county and those persons who request a copy.

3.07.840 Review by Metro Council

- A. Upon receipt of a report from MPAC under section 3.07.830, the Executive Officer shall set the matter for a public hearing before the Metro Council and notify the city or county and those persons who request notification of Council reviews.
- B. A person who requested a copy under section 3.07.820A may seek review by the Metro Council of an Executive Officer conclusion of compliance of a proposed amendment with the functional plan. The person shall file an application for Council review on a form provided for that purpose by the Executive Officer. The Executive Officer shall set the matter for a public hearing before the Council and notify the city or county, the Department of Land Conservation and Development and those persons who request notification of Council reviews.
- C. The Council shall hold a public hearing on the matter within 90 days after receipt of a report from MPAC under subsection A or within 90 days after the filing of a complete application under subsection B. Any person may testify at the hearing. The Council shall issue an order of compliance or noncompliance with its analysis and conclusion and send a copy to the city or county, MPAC, the Department of Land Conservation and Development and those persons who participated in the proceeding.
- D. If the Council finds that the proposed amendment does not comply with the functional plan, the Council shall advise the city or county that it may (1) revise and adopt the proposed amendment as recommended in the Council order; (2) seek an extension of time, pursuant to section 3.07.850, to bring the proposed amendment into compliance with the functional plan; or (3) seek an exception from the functional plan, pursuant to section 3.07.860. If the Council determines that an amendment of the functional plan is necessary to resolve the noncompliance, the Council shall include that determination in its order.

- E. The city or county or a person who participated in the proceeding may seek review of the Council's order as a land use decision described in ORS 197.015(10)(a)(A).

3.07.850 Extension of Compliance Deadline

- A. A city or county may seek an extension of time for compliance with the functional plan. The city or county shall file an application for an extension on a form provided for that purpose by the Executive Officer. Upon receipt of an application, the Executive Officer shall set the matter for a public hearing before the Metro Council and shall notify the city or county, MPAC, the Department of Land Conservation and Development and those persons who request notification of applications for extensions.
- B. The Metro Council shall hold a public hearing to consider the extension. Any person may testify at the hearing. The Council may grant an extension if it finds that: (1) the city or county is making progress toward accomplishment of its compliance work program; or (2) there is good cause for failure to meet the deadline for compliance.
- C. The Metro Council may establish terms and conditions for the extension in order to ensure that compliance is achieved in a timely and orderly fashion and that land use decisions made by the city or county during the extension do not undermine the ability of the city or county to achieve the purposes of the functional plan requirement or of the region to achieve the 2040 Growth Concept. A term or condition must relate to the requirement of the functional plan to which the Council grants the extension. The Council shall incorporate the terms and conditions into its order on the extension. The Council shall not grant more than two extensions of time to a city or a county. The Council shall not grant an extension of time for more than one year.
- D. The Metro Council shall issue an order with its conclusion and analysis and send a copy to the city or county, MPAC, the Department of Land Conservation and Development and those persons who participated in the proceeding. The city or county or a person who participated in the proceeding may seek review of the Council's order as a land use decision described in ORS 197.015(10)(a)(A).

3.07.860 Exception from Compliance

- A. A city or county may seek an exception from compliance with a functional plan requirement by filing an application on a form provided for that purpose by the Executive Officer. Upon receipt of an application, the Executive Officer shall set the matter for a public hearing before the Metro Council and shall notify MPAC, the Department of Land Conservation and Development and those persons who request notification of requests for exceptions.
- B. The Metro Council shall hold a public hearing to determine whether the exception meets the following criteria:

(1) Except as provided in paragraph (2) of this subsection, the Council may grant an exception if it finds:

- (a) it is not possible to achieve the requirement due to topographic or other physical constraints or an existing development pattern;
- (b) this exception and likely similar exceptions will not render the objective of the requirement unachievable region-wide;
- (c) the exception will not reduce the ability of another city or county to comply with the requirement; and
- (d) the city or county has adopted other measures more appropriate for the city or county to achieve the intended result of the requirement.

(2) The Council may grant an exception to the requirement in subsection 3.07.150D to increase dwelling unit and job capacity to the targets set forth in Table 3.07-1 if it finds:

- (a) the city or county has completed the analysis of capacity for dwelling units and jobs required by subsections 3.07.150A, B and C;
- (b) it is not possible to achieve the targets due to topographic or other physical constraints, an existing development pattern, or protection of environmentally sensitive land; and
- (c) this exception and other exceptions to the targets will not render the targets unachievable region-wide.

- C. The Council may establish terms and conditions for the exception in order to ensure that it does not undermine the ability of the region to achieve the 2040 Growth Concept. A term or condition must relate to the requirement of the functional plan to which the Council grants the exception. The Council shall incorporate the terms and conditions into its order on the exception.
- D. The Council shall issue an order with its conclusion and analysis and send a copy to the city or county, MPAC, the Department of Land Conservation and those persons who have requested a copy of the order. The city or county or a person who participated in the proceeding may seek review of the Council's order as a land use decision described in ORS 197.015(10)(a)(A).

**Exhibit B to Ordinance No. 01-925D**  
**January 16, 2002**

Add the following sections 3.07.870, 3.07.880 and 3.07.890 to Title 8 of the Urban Growth Management Functional Plan:

3.07.870      Enforcement of Functional Plan

- A.     The Metro Council may initiate enforcement proceedings under this section if a city or county has failed to meet a deadline in an extension granted pursuant to section 3.07.850 or if it has good cause to believe that a city or county is engaging in a pattern or a practice of decision-making that is inconsistent with the functional plan or local ordinances adopted by the city or county to implement the plan, or with the terms or conditions in an extension. The Council may consider whether to initiate enforcement proceedings upon the request of the Executive Officer or a councilor. The Council shall consult with the city or county before it determines there is good cause to proceed to a hearing under subsection B of this section.
  
- B.     If the Metro Council concludes that there is good cause pursuant to subsection B of this section, the Executive Officer shall set the matter for a public hearing before the Council within 90 days of its conclusion. The Executive Officer shall publish notice of the hearing in a newspaper of general circulation in the city or county and send notice to the city or county, MPAC, the Department of Land Conservation and Development and any person who requests a copy of such notices.
  
- C.     The Executive Officer shall prepare a report and recommendation on the pattern or practice, with a proposed order, for consideration by the Metro Council. The Executive Officer shall publish the report at least 14 days prior to the public hearing and send a copy to the city or county and any person who requests a copy.
  
- D.     If the Metro Council concludes that the city or county has not engaged in a pattern or practice of decision-making that that is inconsistent with the functional plan or local ordinances adopted by the city or county to implement the plan or with terms or conditions of an extension granted pursuant to section 3.07.850, the Council shall enter an order dismissing the matter. If the Council concludes that the city or county has engaged in such a pattern or practice of decision-making, the Council shall issue an order that sets forth the noncompliance and directs changes in the city or county ordinances necessary to remedy the pattern or practice. The Council shall issue its order, with analysis and conclusions, not later than 30 days following the public hearing on the matter. The Executive Officer shall send a copy of the order to the city or county, MPAC, the Department of Land Conservation and Development and any person who requests a copy.

3.07.880 Compliance Report and Order

- A. The Executive Officer shall submit a report to the Metro Council by December 31 of each calendar year on compliance by cities and counties with the Urban Growth Management Function Plan. The report shall include an accounting of compliance with each requirement of the functional plan by each city and county in the district. The report shall recommend action that would bring a city or county into compliance with the functional plan requirement and shall advise the city or county whether it may seek an extension pursuant to section 3.07.850 or an exception pursuant to section 3.07.860. The report shall also include an evaluation of the implementation of this chapter and its effectiveness in helping achieve the 2040 Growth Concept.
- B. Upon receipt of the compliance report, the Metro Council shall set a public hearing for the purpose of receiving testimony on the report and determining whether a city or county has complied with the requirements of the functional plan. The Executive Officer shall notify all cities and counties, the Department of Land Conservation and Development and any person who requests notification of the hearing of the date, time and place of the hearing. The notification shall state that the Council does not have jurisdiction (1) to determine whether previous amendments of comprehensive plans or land use regulations made by a city or county comply with functional plan requirements if those amendments already comply pursuant to subsections F and G of section 3.07.810 or (2) to reconsider a determination in a prior order issued pursuant to subsection C that a city or county complies with a requirement of the functional plan. Any person may testify, orally or in writing, at the public hearing.
- C. Following the public hearing, the Metro Council shall enter an order that determines, based upon the Executive Officer's report submitted pursuant to subsection A and upon testimony at the public hearing pursuant to subsection B, with which functional plan requirements each city and county complies. The order may rely upon the report for its findings of fact and conclusions of compliance with a functional plan requirement. If the Council receives testimony during its public hearing that takes exception to the report on the question of compliance, the order shall include supplemental findings and conclusions to address the testimony. The Executive Officer shall send a copy of its order to cities and counties and any person who testifies, orally or in writing, at the public hearing.
- D. Omission from the order of recognition by the Council of compliance by a city or county with a functional plan requirement shall not constitute a determination under section 3.07.870A that the city or county has engaged in a pattern or practice of decision-making that is inconsistent with the requirement.
- E. A city or county or a person who testified, orally or in writing, at the public hearing, may seek review of the Council's order as a land use decision described in ORS 197.015(10)(a)(A).

3.07.890 Citizen Involvement in Compliance Review

- A. Any citizen may contact Metro staff or the Executive Officer or appear before the Metro Council to raise issues regarding local functional plan compliance, to request Executive Officer participation in the local process, or to request the Metro Council to appeal a local enactment for which notice is required to be given to the Executive Officer pursuant to section 3.07.870A. Such contact may be oral or in writing and may be made at any time during or at the conclusion of any city or county proceeding to amend a comprehensive plan or implementing ordinance for which notice is required to be given to the Executive Officer. All such requests to participate or appeal made in writing shall be forwarded to the Metro Council.
  
- B. In addition to considering requests as described in A above, the Metro Council shall at every regularly scheduled Council meeting provide an opportunity for citizens to address the Council on any matter related to this functional plan. The Executive Officer shall maintain a list of persons who request notice of reviews and copies of reports and orders and shall send requested documents as provided in this chapter.
  
- C. Cities, counties and the Metro Council shall comply with their own adopted and acknowledged Citizen Involvement Requirements (Citizen Involvement) in all decisions, determinations and actions taken to implement and comply with this functional plan. The Executive Officer shall at least annually publish and distribute a Citizen Involvement fact sheet, after consultation with the Metro Committee for Citizen Involvement, that fully describes all opportunities for citizen involvement in Metro's Regional Growth Management Process as well as the implementation and enforcement of this functional plan.

**Exhibit C to Ordinance No. 01-925D**  
**January 16, 2001**

Amend section 7.5 of the Regional Framework Plan Ordinance 97-715B as follows:

**7.5 Functional Plans**

Functional plans are limited purpose plans, consistent with this Framework Plan, which address designated areas and activities of metropolitan concern. Functional plans are established in state law as a way Metro may recommend or require changes in local plans. This Framework Plan uses functional plans as the identified vehicle for requiring changes in local plans in order to achieve consistence and compliance with this Framework Plan.

Those functional plans or functional plan provisions containing recommendations for comprehensive planning by cities and counties may not be final land use decisions. If a provision in a functional plan, or an action implementing a functional plan require changes in an adopted and acknowledged comprehensive plan, then the adoption of a provision or action will be a final land use decision. If a provision in a functional plan, or Metro action implementing a functional plan require changes in an adopted and acknowledged comprehensive plan, then that provision or action will be adopted by Metro as a final land use action required to be consistent with statewide planning goals. In addition, Regional Framework Plan components will be adopted as functional plans if they contain recommendations or requirements for changes in comprehensive plans. These functional plans, which are adopted as part of the Regional Framework Plan, will be submitted along with other parts of the Regional Framework Plan to LCDC for acknowledgment of their compliance with the statewide planning goals. Because functional plans are the way Metro recommends or requires local plan changes, most Regional Framework Plan components will probably be functional plans. Until Regional Framework Plan components are adopted, existing or new functional plans will continue to recommend or require changes in comprehensive plans.

- Existing Functional Plans. Metro shall continue to develop, amend and implement, with the assistance of cities, counties, special districts and the state, statutory-required functional plans for air, water and transportation, as directed by ORS 268.390(1) and for land use planning aspects of solid waste management as mandated by ORS Ch. 459.
- New Functional Plans. New functional plans shall be proposed from one of two sources:
  - MPAC may recommend that the Metro Council designate an area or activity of metropolitan concern for which a functional plan should be prepared; or
  - the Metro Council may propose the preparation of a functional plan to designate an area or activity of metropolitan concern and refer that proposal to MPAC.

The matters required by the Charter to be addressed in the Regional Framework Plan shall constitute sufficient factual reasons for the development of a functional plan under ORS 268.390. However, the actual adoption of a functional plan will be subject to the procedures specified above.

Upon the Metro Council adopting factual reasons for the development of a new functional plan, MPAC shall participate in the preparation of the plan, consistent with these goals and objectives

and the reasons cited by the Metro Council. After preparation of the plan and seeking broad public and local government consensus, using existing citizen involvement processes established by cities, counties and Metro, MPAC shall review the plan and make a recommendation to the Metro Council. The Metro Council may act to resolve conflicts or problems impeding the development of a new functional plan and may complete the plan if MPAC is unable to complete its review in a timely manner.

The Metro Council shall hold a public hearing on the proposed plan and afterwards shall:

- adopt the proposed functional plan; or
- refer the proposed functional plan to MPAC in order to consider amendments to the proposed plan prior to adoption; or
- amend and adopt the proposed functional plan; or
- reject the proposed functional plan.

The proposed functional plan shall be adopted by ordinance and shall include findings of consistency with these goals and objectives.

- **Functional Plan Implementation and Conflict Resolution.** Adopted functional plans shall be regionally coordinated policies, facilities and/or approaches to addressing a designated area or activity of metropolitan concern, to be considered by cities and counties for incorporation in their comprehensive land use plans. If a city or county determines that a functional plan requirement should not or cannot be incorporated into its comprehensive plan, then Metro shall review any apparent inconsistencies by the following process:
  - Metro and affected local governments shall notify each other of apparent or potential comprehensive plan inconsistencies.
  - After Metro staff review, MPAC shall consult the affected jurisdictions and attempt to resolve any apparent or potential inconsistencies.
  - MPAC may conduct a public hearing and make a report to the Metro Council regarding instances and reasons why a city or county has not adopted changes consistent with requirements in a regional functional plan.
  - The Metro Council shall review the MPAC report and hold a public hearing on any unresolved issues. The Council may decide to:
    - amend the adopted regional functional plan; or
    - initiate proceedings to require a comprehensive plan change; or
    - find there is no inconsistency between the comprehensive plan(s) and the functional plan; or
    - grant an exception to the functional plan requirement.



## **COMMUNITY PLANNING COMMITTEE REPORT**

CONSIDERATION OF ORDINANCE NO. 01-925D, FOR THE PURPOSE OF AMENDING METRO CODE TITLE 8 (COMPLIANCE PROCEDURES) AND TITLE 1 (REQUIREMENTS FOR HOUSING AND EMPLOYMENT ACCOMMODATIONS) OF THE URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN AND SECTION 7.5 OF THE REGIONAL FRAMEWORK PLAN ORDINANCE 97-715B TO REVISE THE PROCESS FOR ADJUDICATION AND DETERMINATION OF CONSISTENCY OF LOCAL COMPREHENSIVE PLANS WITH THE URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN, AND TO REVISE THE PROCESSES AND CRITERIA FOR EXCEPTIONS FROM AND EXTENSIONS TO COMPLY WITH THE FUNCTIONAL PLAN; AND DECLARING AN EMERGENCY

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Date: January 17, 2002

Presented by: Councilor Park

**Committee Action:** At its January 15, 2002 meeting, the Community Planning Committee voted 4-0 to recommend Council adoption of Resolution 01-925D. Voting in favor: Councilors Atherton, Hosticka, McLain and Park.

**Background:** Ordinance 01-925D amends Title 8, Compliance Procedures, of the Urban Growth Management Functional Plan and Chapter 7, Section 7.5, Functional Plans, of the Regional Framework Plan. The Community Planning Committee began work on the ordinance in September, 2001, and amended it several times in response to feedback from MPAC, MTAC and others.

At issue is clarification of how Metro ensures compliance with Metro's Urban Growth Management Functional Plan, including extension and exception procedures, and how affected parties know the compliance status of local jurisdictions.

- Existing Law: As stated, the ordinance amends Title 8 of the Urban Growth Management Functional Plan and the Regional Framework Plan. MPAC review is required. MPAC is expected to make final recommendations on January 23, 2002. A required 45 day notice post-acknowledgement notice was sent to DLCD.
- Budget Impact: No budget impact is anticipated.

**Committee Issues/Discussion:** On January 15, 2001, the committee considered amendments to Ordinance 01-925C, recommended by MTAC. Dick Benner in the Office of General Counsel walked the committee through the amendments. Some examples include:

307.810 Compliance With Functional Plan (E): clarifies that amendments to city or county comprehensive plan amendments comply with Metro's functional plan, not only if not appealed to LUBA within 21 days, but also if it/they are acknowledged in periodic review.

3.07.820 Compliance Review By Executive Officer (A): clarifies with greater precision what documents must be submitted to Metro when a city or county notifies DLCD of a proposed comprehensive plan or land use regulation change.

3.07.860 Exceptions From Compliance (B): now contains separate criteria for considering exceptions from Title 1 housing and employment targets of the functional plan, as distinct from the other functional plan titles. All three criteria relating to Title 1 exceptions must be met in order for the Council to consider the exception. The committee discussed aspects of what constitutes an “existing development pattern” as it relates to a local jurisdiction showing inability to meet Title 1 requirements. While demonstrating some discomfort with this phrase, ultimately it was accepted.

The committee felt it was also important that a local jurisdictions demonstrate that an exception to Title 1 targets not harm region-wide compliance to Title 1 by all jurisdictions collectively.

The committee approved the amendments in their entirety 5-0.

## **STAFF REPORT**

FOR THE PURPOSE OF AMENDING METRO CODE TITLE 8 (COMPLIANCE PROCEDURES) AND TITLE 1 (REQUIREMENTS FOR HOUSING AND EMPLOYMENT ACCOMMODATION) OF THE URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN AND SECTION 7.5 OF THE REGIONAL FRAMEWORK PLAN ORDINANCE 97-715B TO REVISE THE PROCESS FOR ADJUDICATION AND DETERMINATION OF CONSISTENCY OF LOCAL COMPREHENSIVE PLANS WITH THE URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN, AND TO REVISE THE PROCESSES AND CRITERIA FOR EXCEPTIONS FROM AND EXTENSIONS TO COMPLY WITH THE FUNCTIONAL PLAN; AND DECLARING AN EMERGENCY

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Date: January 9, 2002

Presented by: Richard Benner

## **DESCRIPTION**

This ordinance would amend provisions of the Metro Regional Framework Plan (Title 8 of the Urban Growth Management Functional Plan) and parallel provisions of the Metro Code on compliance review, extensions of time, exceptions and enforcement.

## **PROPOSED REVISIONS TO ORDINANCE NO. 01-925C**

Metro staff met twice with MTAC and twice with a subcommittee of MTAC to consider remaining concerns with the draft ordinance. The version of the ordinance that accompanies this report includes proposed revisions to respond to those concerns. With two exception noted below, the text underlined or lined out are these revisions. Each is discussed briefly, below.

Attached to this description of proposed changes is an updated version of the November 15, 2001, section-by-section explanation of the ordinance to reflect revisions adopted by the Council and these proposed revisions.

### 1. Subsection 3.07.810F

The revision makes clear that a local amendment that is submitted to DLCD in periodic review will be deemed to comply with the functional plan if it is acknowledged by the agency.

### 2. Subsection 3.07.810G

This revision changes the reference to 3.07.820A, where the requirement to submit proposed amendments lies, given the proposed elimination of 3.07.870A (see below).

### 3. Subsection 3.07.820A

The first revision would clarify which local proposed plan or regulation amendments must be submitted to Metro by reference to state law requirements for submission of proposed amendments to the Department of Land Conservation and Development.

4. The second revision changes the current code requirement that a local government submit, with the proposed amendment, an analysis of how it complies with the functional plan. If adopted, a local government would submit an analysis only if requested by the Executive Officer. Cities and counties will not have to submit an analysis if the Metro staff has no concerns with a proposed amendment.

5. Subsection 3.07.840B

This is a clarifying revision.

6. Subsection 3.07.860B

The first revision establishes a separate set of criteria for exceptions from the housing and employment targets in Title 1 of the Urban Growth Management Functional Plan. Unlike the general criteria for exceptions in B(1), the criteria for exceptions from the targets in B(2) would not require a demonstration that the exception will not reduce the ability of another city or county to comply with a target. But the local government would have to show that it had completed the capacity analysis required by Title 1.

7. The second revision clarifies the overall burden to show that a functional plan requirement cannot be met.

8. Subsection 3.07.870A

The revision would eliminate this subsection. It would no longer be needed given clarification of the requirement to submit proposed amendments that would result from revision of 3.07.820A.

9. Subsection 3.07.870B

The revision would require the Council to consult with a local government before concluding that good cause exists to hold a hearing on possible violation if the Council hears of the possible violation from a citizen.

10. Section 3.07.880

The revisions to this section would change the character of the Council's order, entered following its annual hearing on compliance with functional plan requirements. The Council's order would set forth the compliance of each city and county with plan requirements. It would not set forth instances of non-compliance.

11. Subsection 3.07.880B

This revision would clarify that the annual order of the Council cannot address city or county amendments already deemed to comply with the functional plan, through the LUBA appeal process or through periodic review.

12. Subsection 3.07.880D

This new subsection expresses the implied proposition that omission from the Council's annual compliance order does not trigger automatic enforcement for non-compliance.

Corrections

1. Ordinance, point 4: this is a correction of the reference to Title 1 of the functional plan.

2. Subsection 3.07.810C: this is a correction to include the compliance date with Title 7 (Affordable Housing), omitted from earlier versions of Title 8.

RB/OGC

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BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO CODE )  
 TITLE 8 (COMPLIANCE PROCEDURES) AND TITLE 1 )  
 (REQUIREMENTS FOR HOUSING AND )  
 EMPLOYMENT ACCOMMODATION) OF THE URBAN ) ORDINANCE NO. 01-925C  
 GROWTH MANAGEMENT FUNCTIONAL PLAN AND )  
 SECTION 7.5 OF THE REGIONAL FRAMEWORK )  
 PLAN ORDINANCE 97-715B TO REVISE THE )  
 PROCESS FOR ADJUDICATION AND )  
 DETERMINATION OF CONSISTENCY OF LOCAL )  
 COMPREHENSIVE PLANS WITH THE URBAN ) Introduced by Community  
 GROWTH MANAGEMENT FUNCTIONAL PLAN, AND ) Planning Committee  
 TO REVISE THE PROCESSES AND CRITERIA FOR )  
 EXCEPTIONS FROM AND EXTENSIONS TO COMPLY )  
 WITH THE FUNCTIONAL PLAN; AND DECLARING )  
 AN EMERGENCY )

WHEREAS, the success of the 2040 Growth Concept depends upon local government compliance with the Urban Growth Management Functional Plan; and

WHEREAS, Chapter II, Section 5(2)(e) of the Metro Charter requires, and ORS 268.390(5) authorizes, Metro to adopt by ordinance a program for determining the consistency of local comprehensive plans with the Regional Framework Plan; and

WHEREAS, Metro’s current code provisions for determining consistency of local plans with the Urban Growth Management Functional Plan do not provide Metro with all of the tools necessary to ensure overall compliance by cities and counties with the plan and accomplishment of the 2040 Growth Concept; and

WHEREAS, Objective 5.3 of the Regional Urban Growth Goals and Objectives (“RUGGO”), which provides a process for resolution of inconsistencies between local comprehensive plans and functional plan requirements, was incorporated with all of the RUGGO into the Regional Framework Plan by Ordinance 97-715B; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Sections 3.07.810 to 3.07.860 of Title 8, Compliance Procedures, of the Urban Growth Management Functional Plan are hereby amended as indicated in Exhibit "A", attached and incorporated into this ordinance, in order to provide Metro with a full range of tools to ensure overall local government compliance with the functional plan and to consolidate compliance procedures into a single title.

2. Sections 3.07.870 to 3.07.890, as indicated in Exhibit "B", attached and incorporated into this ordinance, are hereby added to Title 8, Compliance Procedures, of the Urban Growth Management Functional Plan in order to provide Metro with a full range of tools to ensure overall local government compliance with the functional plan and to consolidate compliance procedures into a single title.

3. Section 7.5 of the Regional Framework Plan Ordinance 97-715B is hereby amended as indicated in Exhibit "C", attached and incorporated into this ordinance, in order to allow Metro to grant exceptions to the Urban Growth Management Functional Plan.

4. Section ~~3.01.160(E)~~ 3.07.150E of Title 1 (Requirements for Housing and Employment Accommodation) of the Urban Growth Management Functional Plan is hereby repealed in order to consolidate compliance procedures into Title 8.

5. This ordinance is necessary for the immediate preservation of public health, safety and welfare because a large number of requests for extensions of time for compliance with the Urban Growth Management Functional Plan is pending before the Council. This ordinance is essential to speed implementation of the functional plan and to ensure its implementation during the extensions. An emergency is therefore declared to exist. This ordinance shall take effect immediately, pursuant to Metro Charter section 39(1).

ADOPTED by the Metro Council this \_\_\_\_\_ day of January, 2002.

\_\_\_\_\_  
\_\_\_\_\_, Presiding Officer

ATTEST:

Approved as to Form:

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
Daniel B. Cooper, General Counsel

**Exhibit A to Ordinance No. 01-925C**  
**January 2, 2001**

Amend sections 3.07.810 to 3.07.860 of Title 8 of the Urban Growth Management Functional Plan as follows:

3.07.810 Compliance with the Functional Plan

- A. The purpose of this section is to establish a process for determining whether city or county comprehensive plans and land use regulations comply with requirements of the Urban Growth Management Functional Plan. The Council intends the process to be efficient and cost-effective and to provide an opportunity for the Metro Council to interpret the requirements of its functional plan. Where the terms "compliance" and "comply" appear in this title, the terms shall have the meaning given to "substantial compliance" in 3.07.1010(rrr).
- B. Cities and counties shall amend their comprehensive plans and land use regulations to comply with the functional plan within two years after its acknowledgement by the Land Conservation and Development Commission, or after such other date specified in the functional plan. The Executive Officer shall notify cities and counties of the compliance date.
- C. Notwithstanding subsection A of this section, cities and counties shall amend their comprehensive plans and land use regulations to comply with sections 3.07.310 to 3.07.340 of Title 3 of the Urban Growth Management Functional Plan by January 31, 2000, and with the requirements in sections 3.07.710 to 3.07.760 of Title 7 of the Urban Growth Management Functional Plan by January 18, 2003.
- D. Cities and counties that amend their comprehensive plans or land use regulations after the effective date of the functional plan shall make the amendments in compliance with the functional plan. The Executive Officer shall notify cities and counties of the effective date.
- E. Cities and counties whose comprehensive plans and land use regulations do not yet comply with a functional plan requirement adopted or amended prior to December 12, 1997, shall make land use decisions consistent with that requirement. If the functional plan requirement was adopted or amended by the Metro Council after December 12, 1997, cities and counties whose comprehensive plans and land use regulations do not yet comply with the requirement shall, after one year following acknowledgment of the requirement, make land use decisions consistent with that requirement. The Executive Officer shall notify cities and counties of the date upon which functional plan requirements becomes applicable to land use decisions at least 120 days before that date. The notice shall specify which functional plan requirements become applicable to land use decisions in each city and county. For the purposes of this subsection, "land use decision" shall have the meaning of that term as defined in ORS 197.015(10).

- F. An amendment to a city or county comprehensive plan or land use regulation shall be deemed to comply with the functional plan if no appeal to the Land Use Board of Appeals is made within the 21-day period set forth in ORS 197.830(9), or if the amendment is acknowledged in periodic review pursuant to ORS 197.633 or 197.644. If an appeal is made and the amendment is affirmed, the amendment shall be deemed to comply with the functional plan upon the final decision on appeal. Once the amendment is deemed to comply with the functional plan, the functional plan shall no longer apply to land use decisions made in conformance with the amendment.
- G. An amendment to a city or county comprehensive plan or land use regulation shall be deemed to comply with the functional plan as provided in subsection F only if the city or county provided notice to the Executive Officer as required by ~~section 3.07.870(A)~~ 3.07.820(A).

### 3.07.820 Compliance Review by The Executive Officer

- A. Prior to adoption of an amendment to a comprehensive plan or land use regulation which a city or county must submit to the Department of Land Conservation and Development pursuant to ORS 197.610(1) or OAR 660-025-0130(1), ~~a~~ the city or county shall submit the proposed amendment to the Executive Officer at the same time it submits the amendment to the department. The Executive Officer shall review the proposed amendment for compliance with the functional plan, ~~and submit copies of its analysis and conclusion to the city or county and those persons who have requested a copy.~~ The Executive Officer shall, where appropriate, The Executive Officer may request, and if so the city or county shall submit, an analysis of compliance of the amendment with the functional plan. If the Executive Officer submits comments on the proposed amendment to the city or county, the comment shall include analysis and conclusions on compliance and a recommendation with specific revisions to the proposed amendment, if any, that would bring it into compliance with functional plan requirements. The Executive Officer shall send a copy of its analysis and recommendation to those persons who have requested a copy.
- B. If the Executive Officer concludes that the proposed amendment does not comply with the functional plan, the Executive Officer shall advise the city or county that it may (1) revise the proposed amendment as recommended in the Executive Officer's analysis; (2) seek an extension of time, pursuant to section 3.07.850, to bring the proposed amendment into compliance with the functional plan; or (3) seek review of the noncompliance by MPAC and the Metro Council, pursuant to sections 3.07.830 and 3.07.840.

### 3.07.830 Review of Compliance by Metropolitan Policy Advisory Committee

- A. A city or county may seek review of the Executive Officer's conclusion of noncompliance under section 3.07.820B by MPAC and the Metro Council. The city or county shall file an application for MPAC review on a form provided for that purpose by



the Executive Officer. Upon receipt of a completed application, the Executive Officer shall set the matter on the MPAC agenda and notify those persons who request notification of MPAC reviews.

- B. The Executive Officer may seek review of city or county compliance with a functional plan requirement by MPAC and the Metro Council after the deadline for compliance with that requirement. The Executive Officer shall file an application for MPAC review on the form described in subsection A and shall set the matter on the MPAC agenda. The Executive Officer shall notify the city or county and those persons who request notification of MPAC reviews.
- C. MPAC may hold a public hearing on the issue of compliance. If MPAC holds a hearing, any person may testify. MPAC shall attempt to resolve any apparent or potential inconsistency between the proposed amendment and the functional plan. MPAC shall prepare a report to the Metro Council that sets forth reasons for the inconsistency. The Executive Officer shall send a copy of the report to the city or county and those persons who request a copy.

#### 3.07.840 Review by Metro Council

- A. Upon receipt of a report from MPAC under section 3.07.830, the Executive Officer shall set the matter for a public hearing before the Metro Council and notify the city or county and those persons who request notification of Council reviews.
- B. A person who ~~qualifies~~ requested a copy under sections 3.07.820A may seek review by the Metro Council of an Executive Officer conclusion ~~on~~ of compliance of a proposed amendment with the functional plan. The person shall file an application for Council review on a form provided for that purpose by the Executive Officer. The Executive Officer shall set the matter for a public hearing before the Council and notify the city or county, the Department of Land Conservation and Development and those persons who request notification of Council reviews.
- C. The Council shall hold a public hearing on the matter within 90 days after receipt of a report from MPAC under subsection A or within 90 days after the filing of a complete application under subsection B. Any person may testify at the hearing. The Council shall issue an order of compliance or noncompliance with its analysis and conclusion and send a copy to the city or county, MPAC, the Department of Land Conservation and Development and those persons who participated in the proceeding.
- D. If the Council finds that the proposed amendment does not comply with the functional plan, the Council shall advise the city or county that it may (1) revise and adopt the proposed amendment as recommended in the Council order; (2) seek an extension of time, pursuant to section 3.07.850, to bring the proposed amendment into compliance with the functional plan; or (3) seek an exception from the functional plan, pursuant to section 3.07.860. If the Council determines that an amendment of the functional plan is

necessary to resolve the noncompliance, the Council shall include that determination in its order.

- E. The city or county or a person who participated in the proceeding may seek review of the Council's order as a land use decision described in ORS 197.015(10)(a)(A).

### 3.07.850 Extension of Compliance Deadline

- A. A city or county may seek an extension of time for compliance with the functional plan. The city or county shall file an application for an extension on a form provided for that purpose by the Executive Officer. Upon receipt of an application, the Executive Officer shall set the matter for a public hearing before the Metro Council and shall notify the city or county, MPAC, the Department of Land Conservation and Development and those persons who request notification of applications for extensions.
- B. The Metro Council shall hold a public hearing to consider the extension. Any person may testify at the hearing. The Council may grant an extension if it finds that: (1) the city or county is making progress toward accomplishment of its compliance work program; or (2) there is good cause for failure to meet the deadline for compliance.
- C. The Metro Council may establish terms and conditions for the extension in order to ensure that compliance is achieved in a timely and orderly fashion and that land use decisions made by the city or county during the extension do not undermine the ability of the city or county to achieve the purposes of the functional plan requirement or of the region to achieve the 2040 Growth Concept. A term or condition must relate to the requirement of the functional plan to which the Council grants the extension. The Council shall incorporate the terms and conditions into its order on the extension. The Council shall not grant more than two extensions of time to a city or a county. The Council shall not grant an extension of time for more than one year.
- D. The Metro Council shall issue an order with its conclusion and analysis and send a copy to the city or county, MPAC, the Department of Land Conservation and Development and those persons who participated in the proceeding. The city or county or a person who participated in the proceeding may seek review of the Council's order as a land use decision described in ORS 197.015(10)(a)(A).

### 3.07.860 Exception from Compliance

- A. A city or county may seek an exception from compliance with a functional plan requirement by filing an application on a form provided for that purpose by the Executive Officer. Upon receipt of an application, the Executive Officer shall set the matter for a public hearing before the Metro Council and shall notify MPAC, the Department of Land Conservation and Development and those persons who request notification of requests for exceptions.

B. The Metro Council shall hold a public hearing to ~~consider~~ determine whether the exception meets the following criteria:-

(1) Except as provided in paragraph (2) of this subsection, The Council may grant an exception if it finds:

~~(1a) it is not possible to achieve the requirement either because (a) due to topographic or other physical constraints render achievement impracticable, or (b) an existing development pattern allows no practicable opportunity to make progress toward achievement of the requirement;~~

~~(2b) this exception and likely similar exceptions will not render the objective of the requirement unachievable region-wide;~~

~~(3c) the exception will not reduce the ability of another city or county to comply with the requirement; and~~

~~(4d) the city or county has adopted other measures more appropriate for the city or county to achieve the intended result of the requirement.~~

(2) The Council may grant an exception to the requirement in subsection 3.07.150D to increase dwelling unit and job capacity to the targets set forth in Table 3.07-1 if it finds:

(a) the city or county has completed the analysis of capacity for dwelling units and jobs required by subsections 3.07.150A, B and C;

(b) it is not possible to achieve the targets due to topographic or other physical constraints, an existing development pattern, or protection of environmentally sensitive land; and

(c) this exception and other exceptions to the targets will not render the targets unachievable region-wide.

C. The Council may establish terms and conditions for the exception in order to ensure that it does not undermine the ability of the region to achieve the 2040 Growth Concept. A term or condition must relate to the requirement of the functional plan to which the Council grants the exception. The Council shall incorporate the terms and conditions into its order on the exception.

D. The Council shall issue an order with its conclusion and analysis and send a copy to the city or county, MPAC, the Department of Land Conservation and those persons who have requested a copy of the order. The city or county or a person who participated in the proceeding may seek review of the Council's order as a land use decision described in ORS 197.015(10)(a)(A).

**Exhibit B to Ordinance No. 01-925C**  
**January 2, 2002 .**

Add the following sections 3.07.870, 3.07.880 and 3.07.890 to Title 8 of the Urban Growth Management Functional Plan:

3.07.870      Enforcement of Functional Plan

- ~~A.~~ — ~~A city or county that proposes to amend its comprehensive plan or land use regulations shall notify the Executive Officer at least 45 days prior to the first public hearing held by the city or county to consider the amendment. The city or county shall submit to the Executive Officer an analysis of compliance of the proposed amendment with applicable functional plan requirements at least one week prior to the public hearing.~~
- BA.    The Metro Council may initiate enforcement proceedings under this section if a city or county has failed to meet a deadline in an extension granted pursuant to section 3.07.850 or if it has good cause to believe that a city or county is engaging in a pattern or a practice of decision-making that is inconsistent with the functional plan or local ordinances adopted by the city or county to implement the plan, or with the terms or conditions in an extension. The Council may consider whether to initiate enforcement proceedings upon the request of ~~Metro~~ the Executive Officer or a councilor. The Council shall consult with the city or county before it determines there is good cause to proceed to a hearing under subsection B of this section.
- CB.    If the Metro Council concludes that there is good cause pursuant to subsection B of this section, the Executive Officer shall set the matter for a public hearing before the Council within 90 days of its conclusion. The Executive Officer shall publish notice of the hearing in a newspaper of general circulation in the city or county and send notice to the city or county, MPAC, the Department of Land Conservation and Development and any person who requests a copy of such notices.
- DC.    The Executive Officer shall prepare a report and recommendation on the pattern or practice, with a proposed order, for consideration by the Metro Council. The Executive Officer shall publish the report at least 14 days prior to the public hearing and send a copy to the city or county and any person who requests a copy.
- ED.    If the Metro Council concludes that the city or county has not engaged in a pattern or practice of decision-making that that is inconsistent with the functional plan or local ordinances adopted by the city or county to implement the plan or with terms or conditions of an extension granted pursuant to section 3.07.850, the Council shall enter an order dismissing the matter. If the Council concludes that the city or county has engaged in such a pattern or practice of decision-making, the Council shall issue an order that sets forth the noncompliance and directs changes in the city or county ordinances necessary to remedy the pattern or practice. The Council shall issue its order, with analysis and conclusions, not later than 30 days following the public hearing on the

matter. The Executive Officer shall send a copy of the order to the city or county, MPAC, the Department of Land Conservation and Development and any person who requests a copy.

3.07.880 Compliance Report and Certification Order

- A. The Executive Officer shall submit a report to the Metro Council by December 31 of each calendar year on compliance by cities and counties with the Urban Growth Management Function Plan. The report shall include an accounting of compliance with each requirement of the functional plan by each city and county in the district. The report shall ~~explain each instance of noncompliance and~~ recommend action that would bring the a city or county into compliance with the functional plan requirement and shall advise the city or county whether it may seek an extension pursuant to section 3.07.850 or an exception pursuant to section 3.07.860. The report shall also include an evaluation of the implementation of this chapter and its effectiveness in helping achieve the 2040 Growth Concept.
- B. Upon receipt of the compliance report, the Metro Council shall set a public hearing for the purpose of receiving testimony on the report and determining whether a city or county has ~~fully~~ complied with the requirements of the functional plan. The Executive Officer shall notify all cities and counties, the Department of Land Conservation and Development and any person who requests notification of the hearing of the date, time and place of the hearing. The notification shall ~~specify state that it is not the purpose of the hearing the~~ Council does not have jurisdiction (1) to determine whether previous amendments of comprehensive plans or land use regulations made by a city or county comply with functional plan requirements if those amendments already comply pursuant to subsections F and G of section 3.07.810 ~~and that no testimony on such previous amendments will be heard~~ or (2) to reconsider a determination in a prior order issued pursuant to subsection C that a city or county complies with a requirement of the functional plan. Any person may testify, orally or in writing, at the public hearing.
- C. Following the public hearing, the Metro Council shall enter an order that determines compliance order. ~~The order shall set forth, based upon the Executive Officer's report submitted pursuant to subsection A and upon testimony at the public hearing pursuant to subsection B, whether with which functional plan requirements each city and county complies, with each functional plan requirement.~~ The order may rely upon the report for its findings of fact and conclusions of compliance ~~or noncompliance unless with a functional plan requirement.~~ If the Council receives testimony during its public hearing that takes exception to the report on the question of compliance or noncompliance with a functional plan requirement. ~~If the Council receives such testimony,~~ the order shall include supplemental findings and conclusions to address the testimony. The Executive Officer shall send a copy of its order to cities and counties and any person who testifies, orally or in writing, at the public hearing.
- D. Omission from the order of recognition by the Council of compliance by a city or county with a functional plan requirement shall not constitute a determination under

section 3.07.870A that the city or county has engaged in a pattern or practice of decision-making that is inconsistent with the requirement.

- DE. A city or county or a person who testified, orally or in writing, at the public hearing, may seek review of the Council's order as a land use decision described in ORS 197.015(10)(a)(A).

3.07.890 Citizen Involvement in Compliance Review

- A. Any citizen may contact Metro staff or the Executive Officer or appear before the Metro Council to raise issues regarding local functional plan compliance, to request Executive Officer participation in the local process, or to request the Metro Council to appeal a local enactment for which notice is required to be given to the Executive Officer pursuant to section 3.07.870A. Such contact may be oral or in writing and may be made at any time during or at the conclusion of any city or county proceeding to amend a comprehensive plan or implementing ordinance for which notice is required to be given to the Executive Officer. All such requests to participate or appeal made in writing shall be forwarded to the Metro Council.
- B. In addition to considering requests as described in A above, the Metro Council shall at every regularly scheduled Council meeting provide an opportunity for citizens to address the Council on any matter related to this functional plan. The Executive Officer shall maintain a list of persons who request notice of reviews and copies of reports and orders and shall send requested documents as provided in this chapter.
- C. Cities, counties and the Metro Council shall comply with their own adopted and acknowledged Citizen Involvement Requirements (Citizen Involvement) in all decisions, determinations and actions taken to implement and comply with this functional plan. The Executive Officer shall at least annually publish and distribute a Citizen Involvement fact sheet, after consultation with the Metro Committee for Citizen Involvement, that fully describes all opportunities for citizen involvement in Metro's Regional Growth Management Process as well as the implementation and enforcement of this functional plan.

**Exhibit C to Ordinance No. 01-925C**  
**January 2, 2001**

Amend section 7.5 of the Regional Framework Plan Ordinance 97-715B as follows:

**7.5 Functional Plans**

Functional plans are limited purpose plans, consistent with this Framework Plan, which address designated areas and activities of metropolitan concern. Functional plans are established in state law as a way Metro may recommend or require changes in local plans. This Framework Plan uses functional plans as the identified vehicle for requiring changes in local plans in order to achieve consistence and compliance with this Framework Plan.

Those functional plans or functional plan provisions containing recommendations for comprehensive planning by cities and counties may not be final land use decisions. If a provision in a functional plan, or an action implementing a functional plan require changes in an adopted and acknowledged comprehensive plan, then the adoption of a provision or action will be a final land use decision. If a provision in a functional plan, or Metro action implementing a functional plan require changes in an adopted and acknowledged comprehensive plan, then that provision or action will be adopted by Metro as a final land use action required to be consistent with statewide planning goals. In addition, Regional Framework Plan components will be adopted as functional plans if they contain recommendations or requirements for changes in comprehensive plans. These functional plans, which are adopted as part of the Regional Framework Plan, will be submitted along with other parts of the Regional Framework Plan to LCDC for acknowledgment of their compliance with the statewide planning goals. Because functional plans are the way Metro recommends or requires local plan changes, most Regional Framework Plan components will probably be functional plans. Until Regional Framework Plan components are adopted, existing or new functional plans will continue to recommend or require changes in comprehensive plans.

- Existing Functional Plans. Metro shall continue to develop, amend and implement, with the assistance of cities, counties, special districts and the state, statutory-required functional plans for air, water and transportation, as directed by ORS 268.390(1) and for land use planning aspects of solid waste management as mandated by ORS Ch. 459.
- New Functional Plans. New functional plans shall be proposed from one of two sources:
  - MPAC may recommend that the Metro Council designate an area or activity of metropolitan concern for which a functional plan should be prepared; or
  - the Metro Council may propose the preparation of a functional plan to designate an area or activity of metropolitan concern and refer that proposal to MPAC.

The matters required by the Charter to be addressed in the Regional Framework Plan shall constitute sufficient factual reasons for the development of a functional plan under ORS 268.390. However, the actual adoption of a functional plan will be subject to the procedures specified above.

Upon the Metro Council adopting factual reasons for the development of a new functional plan, MPAC shall participate in the preparation of the plan, consistent with these goals and objectives

and the reasons cited by the Metro Council. After preparation of the plan and seeking broad public and local government consensus, using existing citizen involvement processes established by cities, counties and Metro, MPAC shall review the plan and make a recommendation to the Metro Council. The Metro Council may act to resolve conflicts or problems impeding the development of a new functional plan and may complete the plan if MPAC is unable to complete its review in a timely manner.

The Metro Council shall hold a public hearing on the proposed plan and afterwards shall:

- adopt the proposed functional plan; or
- refer the proposed functional plan to MPAC in order to consider amendments to the proposed plan prior to adoption; or
- amend and adopt the proposed functional plan; or
- reject the proposed functional plan.

The proposed functional plan shall be adopted by ordinance and shall include findings of consistency with these goals and objectives.

- **Functional Plan Implementation and Conflict Resolution.** Adopted functional plans shall be regionally coordinated policies, facilities and/or approaches to addressing a designated area or activity of metropolitan concern, to be considered by cities and counties for incorporation in their comprehensive land use plans. If a city or county determines that a functional plan requirement should not or cannot be incorporated into its comprehensive plan, then Metro shall review any apparent inconsistencies by the following process:
  - Metro and affected local governments shall notify each other of apparent or potential comprehensive plan inconsistencies.
  - After Metro staff review, MPAC shall consult the affected jurisdictions and attempt to resolve any apparent or potential inconsistencies.
  - MPAC **may** shall conduct a public hearing and make a report to the Metro Council regarding instances and reasons why a city or county has not adopted changes consistent with requirements in a regional functional plan.
  - The Metro Council shall review the MPAC report and hold a public hearing on any unresolved issues. The Council may decide to:
    - amend the adopted regional functional plan; or
    - initiate proceedings to require a comprehensive plan change; or
    - find there is no inconsistency between the comprehensive plan(s) and the functional plan; or
    - grant an exception to the functional plan requirement.



Ordinance No. 01-925C\* on Compliance Review  
**Section-by-Section Analysis**  
January 3, 2002

**I. Why Revise Title 8 (Compliance Procedures)?**

The Council wants a more complete, less confusing system for review and enforcement of compliance with the Urban Growth Management Functional Plan than Title 8 currently provides. Missing from Title 8 are authorization for conditions on extensions and exceptions and enforcement tools required by Metro's charter. Missing from the Regional Framework Plan is authority to grant exceptions to functional plan requirements. There is redundancy in the current code among criteria for exceptions. Those criteria are scattered around the code in a manner that is not "user-friendly." Missing also from Title 8 is a mechanism for a Council determination that existing city and county comprehensive plans and land use regulations comply with the functional plan, even without local amendments. Metro Charter, Chapter II, section 5(2)(e)(2), calls for such a mechanism; Ordinance No. 01-925C provides it.

**II. Why Now?**

There are requests for exceptions pending before Metro. The Council wants to be certain that it has all the authorities it needs to ensure its decisions on extensions and exceptions can be defended. The Council also wants a more complete compliance review and determination system to be in place as soon as possible.

**III. How Does Ordinance No. 01-925C Change Current Provisions of Title 8?**

New subsection 3.07.810A adds a purpose statement, calling for an efficient and cost-effective compliance review process. A purpose section helps local government and participants understand the intent of the Council in the Title 8 compliance review process.

New Subsection 3.07.810B: Current subsection 3.07.810A tells local governments that they must amend their comprehensive plans and land use regulations to comply with the Urban Growth Management Functional Plan. New subsection B repeats this requirement.

New Subsection 3.07.810C: Current subsection 3.07.810B tells local governments that they must amend their comprehensive plans and land use regulations to comply with the Title 3 of the Urban Growth Management Functional Plan by January 31, 2000. New subsection C repeats this requirement.

New Subsection 3.07.810D: Current subsection 3.07.830A requires that local amendments to comprehensive plans and land use regulations made after February 19, 1997, be consistent with the functional plan. Ordinance No. 01-925C moves this requirement to new subsection 3.07.810D.

New Subsection 3.07.810E: Current subsection 3.07.830D states that local land use decisions inconsistent with the functional plan are subject to appeal. Ordinance No. 01-925C restates this

provision in new subsection 3.07.810E, limiting it (in time) to more accurately reflect the sources of authority, ORS 268.390(5)(c) and Metro Charter, Chapter II, section 5(2)(e)(3). The new subsection also establishes a requirement that the Executive Officer notify cities and counties 120 days before a functional plan requirement becomes applicable to local land use decisions.

New Subsection 3.07.810F: Current subsection 3.07.830C provides that a local amendment to a plan or land use regulation is deemed to comply with the functional plan 21 days after the time specified in ORS 197.830(8) (the statutory reference should be to ORS 197.830(9)). Ordinance No. 01-925C repeats this proposition in new subsection 3.07.810F. The new subsection extends the protection to local amendments that are acknowledged through periodic review.

New Subsection 3.07.810G: Current subsection 3.07.830D provides that the consistency deemed in current subsection 3.07.830C, described above, takes place only if the local government gave Metro timely notice of its proposed amendment. Ordinance No. 01-925C repeats this provision in new subsection 3.07.810G.

New Subsection 3.07.820A: Current subsection 3.07.820A requires evaluation by local governments of work needed to comply with the functional plan. Ordinance No. 01-925C does not carry this subsection forward because the work has been largely done. Current subsection 3.07.830B requires cities and counties to notify Metro of proposed amendments to local plans and implementing ordinances and to submit an analysis to Metro of every such amendment. Ordinance No. 01-925C places these two requirements in new subsection 3.07.820A and reduces the scope of the current code to require local analysis only if asked for it by the Executive Officer.

New Subsection 3.07.820B: Current subsection 3.07.820B authorizes exceptions to functional plan requirements, through the MPAC process set forth in section 7.5 of the Regional Framework Plan. It also sets forth criteria for certain types of exceptions. Ordinance No. 01-925C revamps the exception process and moves it to new section 3.07.860 (see below). New subsection 3.07.820B requires the Executive Officer to explain the courses of action available to a local government if the Executive Officer comments under subsection A that a proposed amendment does not comply with a functional plan requirement.

Subsection 3.07.820C of the current code authorizes the Council to grant extensions of deadlines for compliance with functional plan requirements and sets forth two criteria (“substantial progress” or “good cause” for failure to meet the deadline) for the extensions. Ordinance No. 01-925C repeats the criteria, lays out a more complete process for treatment of extension requests, and moves the process and criteria to new section 3.07.850.

Subsection 3.07.820D of the current code allows local governments to use the conflict resolution process in RUGGO, Goal 1. Ordinance No. 01-925C moves the MPAC review to new subsection 3.07.830A (see below).

Subsection 3.07.820E of the current code states that compliance with the functional plan “shall be substantial compliance....” The code elsewhere defines “substantial compliance” as conforming on the whole with the purposes of the plan, differences being “technical or minor in

nature.” Section 3.07.1010(rrr). Ordinance No. 01-925C restates this provision in new subsection 3.07.810A.

Subsections 3.07.820F and G of the current code require local hearings and evaluation by local governments of work needed to comply with sections 3.07.310 to 3.07.340 of Title 3 of the functional plan. Ordinance No. 01-925C does not carry these subsections forward because the work has been largely done.

New Subsection 3.07.830A: Current subsection 3.07.830A requires local amendments to comprehensive plans and implementing ordinances adopted after February 19, 1997, to comply with the functional plan. Ordinance No. 01-925C moves this requirement to new subsection 3.07.810D. New section 3.07.830 reformulates the MPAC dispute resolution process, currently found in section 3.07.820D. New subsection 3.07.830A commences the MPAC review.

New Subsection 3.07.830B: Current subsection 3.07.830B requires local governments to give notice to Metro of proposed amendments to plans and land use regulations, with an analysis of the proposal’s consistency with the functional plan. Ordinance No. 01-925C repeats these requirements in more limited form in new subsection 3.07.820A. New subsection 3.07.830B authorizes the Executive Officer to seek MPAC review of compliance of a local government with a functional plan requirement. This provides a way for MPAC and the Council to determine that a local government complies with the functional plan between annual reviews by the Council under new section 3.07.880.

New Subsection 3.07.830C: Current subsection 3.07.830C sets forth the circumstances in which city and county amendments to comprehensive plans and implementing ordinances are deemed to comply with the functional plan. Ordinance No. 01-925C restates this proposition in new subsection 3.07.810F. New subsection 3.07.830C provides for MPAC review of local compliance and authorizes MPAC to hold a public hearing as part of its review.

New Subsection 3.07.830D: Current subsection 3.07.830D states that a local amendment is deemed to comply with the functional plan under current 3.07.830C only if the local government has given appropriate notice to Metro. Ordinance No. 01-925C restates this proposition in new subsection 3.07.810G.

Section 3.07.840 of the current code was intended to provide for Metro assistance to local governments in their evaluation of their plans and land use regulations for compliance with the functional plan. Ordinance No. 01-925C does not repeat the section because the current code set timelines for the assistance that have long passed, and because such assistance by Metro has become practice. New section 3.07.040 sets forth the process for Council review of an MPAC recommendation pursuant to new section 3.07.830. Both sections implement Regional Framework Plan Policy 7.5 on conflict resolution.

New subsection 3.07.840A requires the Executive Officer to place an MPAC report issued under new section 3.07.830 on the Council agenda.

New subsection 3.07.840B allows an eligible person to seek Council review of an Executive Officer's comment under new section 3.07.820A that a proposed local amendment complies with the functional plan. If such a request is filed, the Executive Officer must set the matter on the Council agenda.

New subsection 3.07.840C sets the rules for the Council hearing and resulting order on compliance.

New subsection 3.07.840D requires the Council to set forth options for a city or county if the Council concludes that the proposed city or county amendment does not comply with the functional plan. The subsection also provides that the Council may conclude that the functional plan should be amended.

New subsection 3.07.840E states that a party to the Council proceeding may appeal the Council order to the Land Use Board of Appeals (LUBA).

Section 3.07.850 of the current code prescribes opportunities for public involvement in compliance activities and requires local governments to comply with their own citizen involvement requirements. Ordinance No. 01-925C moves this section to new section 3.07.890. New section 3.07.850 sets forth procedures and criteria for extensions of time to comply with functional plan requirements.

New subsection 3.07.850A authorizes extensions of time and prescribes a hearing before the Council to consider a request for an extension.

New subsection 3.07.850B contains the criteria for extensions. They are the same criteria as those found in current section 3.07.820C.

New subsection 3.07.850C authorizes the Council to set terms and conditions for an extension of time. The subsection also limits extensions to two per city or county, none longer than one year.

New subsection 3.07.850D requires the Council to issue an order with its decision on the extension and specifies that the order may be appealed to LUBA.

Section 3.07.860 of the current code addresses enforcement of the functional plan. Ordinance No. 01-925C moves enforcement provisions to new section 3.07.870. New section 3.07.860 provides greater detail to the process for exceptions to functional plan requirements currently at 3.07.820B.

New subsection 3.07.860A authorizes cities and counties to request exceptions from compliance with functional plan requirements and prescribes a hearing before the Council to consider an exception.

New subsection 3.07.860B provides two sets of criteria for exceptions, condensed from current criteria scattered through the code at 3.07.820B(1), 3.07.150E and 3.07.430B(4). One set applies to exceptions from housing and employment targets, the other to all other exceptions.

New subsection 3.07.860C authorizes the Council to set terms and conditions for an exception.

New subsection 3.07.860D requires the Council to issue an order with its decision on the exception and specifies that the order may be appealed to LUBA.

New section 3.07.870 authorizes the enforcement procedures required by Metro Charter, Chapter II, section 5(2)(e)(3) and authorized by ORS 268.390(5)(d).

New subsection 3.07.870A prescribes the circumstances in which the Council may initiate enforcement proceedings against a city or county for engaging in a pattern or practice of decision-making that violates the functional plan or for failing to meet a compliance deadline.

New subsection 3.07.870B requires the Council to hold a public hearing on the matter if it concludes there is good cause to believe a local government is engaging in a pattern or practice of decision-making that violates the functional plan or a compliance deadline.

New subsection 3.07.870C requires the Executive Officer to submit a report on the alleged noncompliance to the Council for its consideration at the hearing.

New subsection 3.07.870D requires the Council to issue an order with its decision on the pattern or practice.

New section 3.07.880 requires the Metro staff to make an annual report to the Council on compliance by local governments with the functional plan. It also establishes an annual process to respond to the charter requirement “to adjudicate and determine the consistency of” local plans with the Regional Framework Plan. Charter, Chapter II, section 5(2)(e)(2). The outcome is an annual order of the Council determining with which functional plan requirements each city and county complies.

New subsection 3.07.880A prescribes the contents of the Metro staff report on local government compliance.

New subsection 3.07.880B requires the Metro Council to hold a public hearing on the staff report. The subsection states explicitly that the Council does not have jurisdiction to determine compliance of city and county amendments to comprehensive plans and land use regulations already deemed to comply with the functional plan pursuant to new sections 3.07.810F and G, or to reconsider its own determinations of compliance in previous orders under this section.

New subsection 3.07.880C requires the Council to issue an order with its decision on city and county compliance.

New subsection 3.07.880D states that a Council omission from the order of recognition of compliance by a city or county with a functional plan requirement does not result in initiation of enforcement proceedings under section 3.07.870.

New subsection 3.07.880E states that a party to the Council's hearing may appeal the Council's order to LUBA.

New section 3.07.890 provides opportunities for citizen involvement in the process of review of local government compliance with functional plan requirements. These opportunities repeat the opportunities provided in section 3.07.850 of the current code.

New subsection 3.07.890A repeats the authorization in current section 3.07.850A for citizens to raise compliance issues before the Council.

New subsection 3.07.890B repeats the requirement in current section 3.07.850B that the Council provide an opportunity at every regular meeting for citizens to raise compliance issues. The subsection establishes a new requirement that the Executive Officer maintain a list of persons who request notice of Metro reviews, reports and orders prepared under this chapter.

New subsection 3.07.890C repeats the requirement in current section 3.07.850C that Metro and local governments comply with their citizen involvement programs, and that the Executive Officer publish annually a citizens fact sheet that describes opportunities for involvement.

Policy 7.5, Regional Framework Plan: Ordinance No. 01-925C adds authorization for Metro to grant exceptions to functional plan requirements. Policy 7.5 does not currently authorize such exceptions.

\*January 3, 2002 version, with amendments recommended by MTAC, not yet adopted by Council

## **STAFF REPORT**

FOR THE PURPOSE OF AMENDING METRO CODE TITLE 8 (COMPLIANCE PROCEDURES) AND TITLE 1 (REQUIREMENTS FOR HOUSING AND EMPLOYMENT ACCOMMODATION) OF THE URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN AND SECTION 7.5 OF THE REGIONAL FRAMEWORK PLAN ORDINANCE 97-715B TO REVISE THE PROCESS FOR ADJUDICATION AND DETERMINATION OF CONSISTENCY OF LOCAL COMPREHENSIVE PLANS WITH THE URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN, AND TO REVISE THE PROCESSES AND CRITERIA FOR EXCEPTIONS FROM AND EXTENSIONS TO COMPLY WITH THE FUNCTIONAL PLAN; AND DECLARING AN EMERGENCY

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Date: January 9, 2002

Presented by: Richard Benner

## **DESCRIPTION**

This ordinance would amend provisions of the Metro Regional Framework Plan (Title 8 of the Urban Growth Management Functional Plan) and parallel provisions of the Metro Code on compliance review, extensions of time, exceptions and enforcement.

## **PROPOSED REVISIONS TO ORDINANCE NO. 01-925C**

Metro staff met twice with MTAC and twice with a subcommittee of MTAC to consider remaining concerns with the draft ordinance. The version of the ordinance that accompanies this report includes proposed revisions to respond to those concerns. With two exception noted below, the text underlined or lined out are these revisions. Each is discussed briefly, below.

Attached to this description of proposed changes is an updated version of the November 15, 2001, section-by-section explanation of the ordinance to reflect revisions adopted by the Council and these proposed revisions.

### **1. Subsection 3.07.810F**

The revision makes clear that a local amendment that is submitted to DLCD in periodic review will be deemed to comply with the functional plan if it is acknowledged by the agency.

### **2. Subsection 3.07.810G**

This revision changes the reference to 3.07.820A, where the requirement to submit proposed amendments lies, given the proposed elimination of 3.07.870A (see below).

### **3. Subsection 3.07.820A**

The first revision would clarify which local proposed plan or regulation amendments must be submitted to Metro by reference to state law requirements for submission of proposed amendments to the Department of Land Conservation and Development.

4. The second revision changes the current code requirement that a local government submit, with the proposed amendment, an analysis of how it complies with the functional plan. If adopted, a local government would submit an analysis only if requested by the Executive Officer. Cities and counties will not have to submit an analysis if the Metro staff has no concerns with a proposed amendment.

5. Subsection 3.07.840B

This is a clarifying revision.

6. Subsection 3.07.860B

The first revision establishes a separate set of criteria for exceptions from the housing and employment targets in Title 1 of the Urban Growth Management Functional Plan. Unlike the general criteria for exceptions in B(1), the criteria for exceptions from the targets in B(2) would not require a demonstration that the exception will not reduce the ability of another city or county to comply with a target. But the local government would have to show that it had completed the capacity analysis required by Title 1.

7. The second revision clarifies the overall burden to show that a functional plan requirement cannot be met.

8. Subsection 3.07.870A

The revision would eliminate this subsection. It would no longer be needed given clarification of the requirement to submit proposed amendments that would result from revision of 3.07.820A.

9. Subsection 3.07.870B

The revision would require the Council to consult with a local government before concluding that good cause exists to hold a hearing on possible violation if the Council hears of the possible violation from a citizen.

10. Section 3.07.880

The revisions to this section would change the character of the Council's order, entered following its annual hearing on compliance with functional plan requirements. The Council's order would set forth the compliance of each city and county with plan requirements. It would not set forth instances of non-compliance.

11. Subsection 3.07.880B

This revision would clarify that the annual order of the Council cannot address city or county amendments already deemed to comply with the functional plan, through the LUBA appeal process or through periodic review.

12. Subsection 3.07.880D

This new subsection expresses the implied proposition that omission from the Council's annual compliance order does not trigger automatic enforcement for non-compliance.

Corrections

1. Ordinance, point 4: this is a correction of the reference to Title 1 of the functional plan.

2. Subsection 3.07.810C: this is a correction to include the compliance date with Title 7 (Affordable Housing), omitted from earlier versions of Title 8.

RB/OGC

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BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF FOR THE PURPOSE OF ) ORDINANCE NO. 01-925~~ABC~~  
AMENDING METRO CODE TITLE 8 (COMPLIANCE )  
PROCEDURES) AND TITLE 1 (REQUIREMENTS FOR )  
HOUSING AND EMPLOYMENT ACCOMMODATION) ) Introduced by Community  
OF THE URBAN GROWTH MANAGEMENT ) Planning Committee  
FUNCTIONAL PLAN AND SECTION 7.5 OF THE )  
REGIONAL FRAMEWORK PLAN ORDINANCE 97- )  
715B TO REVISE THE PROCESS FOR ADJUDICATION )  
AND DETERMINATION OF CONSISTENCY OF )  
LOCAL COMPREHENSIVE PLANS WITH THE URBAN )  
GROWTH MANAGEMENT FUNCTIONAL PLAN, AND )  
TO REVISE THE PROCESSES AND CRITERIA FOR )  
EXCEPTIONS FROM AND EXTENSIONS TO COMPLY )  
WITH THE FUNCTIONAL PLAN; AND DECLARING )  
AN EMERGENCY )

WHEREAS, the success of the 2040 Growth Concept depends upon local government compliance with the Urban Growth Management Functional Plan; and

WHEREAS, Chapter II, Section 5(2)(e) of the Metro Charter requires, and ORS 268.390(5) authorizes, Metro to adopt by ordinance a program for determining the consistency of local comprehensive plans with the Regional Framework Plan; and

WHEREAS, Metro's current code provisions for determining consistency of local plans with the Urban Growth Management Functional Plan do not provide Metro with all of the tools necessary to ensure overall compliance by cities and counties with the plan and accomplishment of the 2040 Growth Concept; and

WHEREAS, Objective 5.3 of the Regional Urban Growth Goals and Objectives ("RUGGO"), which provides a process for resolution of inconsistencies between local comprehensive plans and functional plan requirements, was incorporated with all of the RUGGO into the Regional Framework Plan by Ordinance 97-715B; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Sections 3.07.810 to 3.07.860 of Title 8, Compliance Procedures, of the Urban Growth Management Functional Plan are hereby amended as indicated in Exhibit "A", attached and incorporated into this ordinance, in order to provide Metro with a full range of tools to ensure overall local government compliance with the functional plan and to consolidate compliance procedures into a single title.

2. Sections 3.07.870 to 3.07.890, as indicated in Exhibit "B", attached and incorporated into this ordinance, are hereby added to Title 8, Compliance Procedures, of the Urban Growth Management Functional Plan in order to provide Metro with a full range of tools to ensure overall local government compliance with the functional plan and to consolidate compliance procedures into a single title.

3. Section 7.5 of the Regional Framework Plan Ordinance 97-715B is hereby amended as indicated in Exhibit "C", attached and incorporated into this ordinance, in order to allow Metro to grant exceptions to the Urban Growth Management Functional Plan.

4. Section 3.01.160(E) of Title 1 (Requirements for Housing and Employment Accommodation) of the Urban Growth Management Functional Plan is hereby repealed in order to consolidate compliance procedures into Title 8.

5. This ordinance is necessary for the immediate preservation of public health, safety and welfare because a large number of requests for extensions of time for compliance with the Urban Growth Management Functional Plan is pending before the Council. This ordinance is essential to speed implementation of the functional plan and to ensure its implementation during the extensions. An emergency is therefore declared to exist. This ordinance shall take effect immediately, pursuant to Metro Charter section 39(1).

ADOPTED by the Metro Council this \_\_\_\_\_ day of December, 2001.

\_\_\_\_\_  
David Bragdon, Presiding Officer

ATTEST:

Approved as to Form:

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
Daniel B. Cooper, General Counsel

Amend sections 3.07.810 to 3.07.860 of Title 8 of the Urban Growth Management Functional Plan as follows:

3.07.810 Compliance Required with the Functional Plan

- A. All cities and counties within the Metro boundary are hereby required to amend their comprehensive plans and implementing ordinances to comply with the provisions of this functional plan within twenty four months of the effective date of this ordinance. Metro recommends the adoption of the policies that affect land consumption as soon as possible. The purpose of this section is to establish a process for determining whether ~~an amendment to a city or county comprehensive plans or and~~ **land use regulations intended by a city or county to carry out a** ~~comply with~~ requirements of the Urban Growth Management Functional Plan ~~complies with the plan~~. The Council intends the process to be efficient and cost-effective ~~for local governments and Metro~~ and to provide an opportunity for the Metro Council to interpret the requirements of its functional plan. **Where the terms "compliance" and "comply" appear in this title, the terms shall have the meaning given to "substantial compliance" in 3.07.1010(rrr).**
- B. Notwithstanding subsection A of this section, cities and counties are required to amend their comprehensive plans and implementing ordinances to comply with sections 3.07.310-340 of Title 3 by January 2000. Cities and counties shall amend their comprehensive plans and land use regulations to comply with the functional plan within two years after its acknowledgement by the Land Conservation and Development Commission, or after such other date specified in the functional plan. ~~Metro~~ **The Executive Officer** shall notify cities and counties of the compliance date.
- C. Notwithstanding subsection A of this section, cities and counties shall amend their comprehensive plans and land use regulations to comply with sections 3.07.310 to 3.07.340 of Title 3 of the Urban Growth Management Functional Plan by January 31, 2000.
- D. Cities and counties that amend their comprehensive plans or land use regulations after the effective date of the functional plan shall make the amendments in compliance with the functional plan. ~~Metro~~ **The Executive Officer** shall notify cities and counties of the effective date.
- E. Cities and counties whose comprehensive plans and land use regulations do not yet comply with a functional plan requirement adopted or amended prior to December 12, 1997, shall make land use decisions consistent with that requirement. If the functional plan requirement was adopted or amended by the Metro Council after December 12, 1997, cities and counties whose comprehensive plans and land use regulations do not yet comply with the requirement shall, after one year following acknowledgment of the requirement, make land use decisions consistent with that requirement. The Executive Officer shall notify cities and counties of the date upon

which functional plan requirements becomes applicable to land use decisions at least 120 days before that date. The notice shall specify which functional plan requirements become applicable to land use decisions in each city and county. For the purposes of this subsection, "land use decision" shall have the meaning of that term as defined in ORS 197.015(10).

F. An amendment to a city or county comprehensive plan or land use regulation shall be deemed to comply with the functional plan if no appeal to the Land Use Board of Appeals is made within the 21-day period set forth in ORS 197.830(9). If an appeal is made and the amendment is affirmed, the amendment shall be deemed to comply with the functional plan upon the final decision on appeal. Once the amendment is deemed to comply with the functional plan, the functional plan shall no longer ~~apply~~ **apply** ~~applies~~ to land use decisions made in conformance with the amendment.

G. An amendment to a city or county comprehensive plan or land use regulation shall be deemed to comply with the functional plan as provided in subsection F only if the city or county provided notice to the Executive Officer as required by section 3.07.870(A).

3.07.820 Compliance Procedures Review by ~~Metro~~ **The Executive Officer**

A. ~~On or before six months prior to the 24 month deadline established in section 3.07.810(A), cities and counties shall transmit to Metro the following:~~

- ~~1. An evaluation of their local plans, including public facility capacities and the amendments necessary to comply with this functional plan;~~
- ~~2. Copies of all applicable comprehensive plans and implementing ordinances and public facility plans, as proposed to be amended;~~
- ~~3. Findings that explain how the amended city and county comprehensive plans will achieve the standards required in Titles 1 through 6 of this functional plan.~~

~~In developing the evaluation, plan and ordinance amendments and findings, cities and counties shall address the Metro 2040 Growth Concept, and explain how the proposed amendments implement the Growth Concept. Prior to adoption of an amendment to a comprehensive plan or land use regulation ~~intended to implement the functional plan,~~ a city or county shall submit the proposed amendment to ~~Metro~~ **The Executive Officer. Metro-The Executive Officer shall review the proposed amendment for compliance with the functional plan and submit copies of its analysis and conclusion to the city or county and those persons who have requested a copy. MetroThe Executive Officer shall, where appropriate, include a recommendation with specific revisions to the proposed amendment that would bring it into compliance with functional plan requirements.**~~

B. ~~Exceptions to any of the requirements in the above titles may be granted by the Metro Council, as provided for in the Regional Urban Growth Goals and Objectives, Section 5.3, after MPAC review. Requests for an exception should include a city or county~~

~~submittal as specified in this section. The Metro Council will make all final decisions for the grant of any requested exception.~~

~~1. Population and Capacity. An exception to the requirement contained in Table 3.07-1 of Title 1 that the target capacities shall be met or exceeded may be granted based on a submittal which includes, but is not limited to, the following:~~

- ~~a. A demonstration of substantial evidence of the economic infeasibility to provide sanitary sewer, water, stormwater or transportation facilities to an area or areas; or~~
- ~~b. A demonstration that the city or county is unable to meet the target capacities listed in Table 3.07-1 because substantial areas have prior commitments to development at densities inconsistent with Metro target; or~~
- ~~e. A demonstration that the dwelling unit and job capacities cannot be accommodated at densities or locations the market or assisted programs will likely build during the planning period.~~

~~As part of any request for exception under this subsection, a city or county shall also submit an estimate of the amount of dwelling units or jobs included in the capacity listed in Table 3.07-1 that cannot be accommodated; and a recommendation which identifies land that would provide for the unaccommodated capacity located outside the urban growth boundary and near or adjacent to the city or county.~~

~~In reviewing any request for exception based on the financial feasibility of providing public services, Metro, along with cities and counties, shall estimate the cost of providing necessary public services and compare those with the estimated costs submitted by the city or county requesting the exemption.~~

~~2. Parking Measures. Subject to the provisions of Title 2, cities or counties may request an exception to parking requirements. Metro may consider a city or county government request to allow areas designated as Zone A to be subject to Zone B requirements upon the city or county establishing that, for the area in question:~~

- ~~a. There are no existing plans to provide transit service with 20 minute or lower peak frequencies; and~~
- ~~b. There are no adjacent neighborhoods close enough to generate sufficient pedestrian activity; and~~
- ~~c. There are no significant pedestrian activity within the present business district; and~~

d. ~~That it will be feasible for the excess parking to be converted to the development of housing, commerce or industry in the future.~~

~~The burden of proof for a variance shall increase based on the quality and timing of transit service. The existence of transit service or plans for the provision of transit service near a 20 minute or lower peak frequency shall establish a higher burden to establish the need for the exception.~~

3. ~~**Water Quality and Flood Management Areas.** Cities and counties may request areas to be added or deleted from the Metro Water Quality and Flood Management Area Map based on a finding that the area identified on the map is not a Water Quality and Flood Management Area or a Fish and Wildlife Habitat Conservation Area, as defined in this functional plan. Areas may also be deleted from the map if the city or county can prove that its deletion and the cumulative impact of all deletions in its jurisdiction will have minimal impact on the water quality of the stream and on flood effects. Findings shall be supported by evidence, including the results of field investigations.~~

4. ~~**Retail in Employment and Industrial Areas.** Subject to the provisions of Title 4, cities and counties may request a change in the Employment and Industrial Areas Map. Metro may consider a city or county request to modify an Employment Area to exempt existing or locally designated retail areas, unacknowledged by the date of this Functional Plan, where they can demonstrate that~~

a. ~~The Employment and Industrial Areas Map included lands within Employment Areas having a substantially developed existing retail area or a locally designated retail area pursuant to a comprehensive plan acknowledged by the date of this Functional Plan which allowed retail uses larger than 60,000 square feet of gross leasable area per building or business; or~~

b. ~~The requested retail area in an Employment Area has been found to be appropriate for an exception based upon current or projected needs within the jurisdiction and the city or county can demonstrate that adequate transportation facilities capacity exists for that retail area.~~

5. ~~**Regional Accessibility.** Cities or counties may request an exception to the requirements of Title 6, Regional Accessibility, where they can show that a street system or connection is not feasible for reasons of topographic constraints or natural or built environment considerations. **If Metro the Executive Officer concludes that the proposed amendment does not comply with the functional plan, Metro the Executive Officer shall advise the city or county that it may (1) revise the ordinance proposed amendment as recommended in the Metro Executive Officer's analysis; (2) seek an extension of time, pursuant to section 3.07.850, to bring the proposed amendment into compliance with the functional plan; or (3)**~~

seek review of the noncompliance by MPAC and the Metro Council, pursuant to sections 3.07.830 and 3.07.840.

- C. ~~The Metro Council may grant an extension to time lines under this functional plan if the city or county has demonstrated substantial progress or proof of good cause for failing to complete the requirements on time. Requests for extensions of the compliance requirement in section 3.07.810 of this title should accompany the compliance transmittal required in section 3.07.820(A) of this title. **If Metro concludes that the proposed amendment complies with the functional plan, any person who received a copy of Metro's analysis may seek review of the conclusion by the Metro Council, pursuant to section 3.07.840.**~~
- D. ~~In addition to the above demonstrations, any city or county request or determination that functional plan policies should not or cannot be incorporated into comprehensive plans shall be subject to the conflict resolution and mediation processes included within the RUGGO, Goal I, provisions prior to the final adoption of inconsistent policies or actions. Final land use decisions of cities and counties inconsistent with functional plan requirements are subject to immediate appeal for violation of the functional plan.~~
- 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. Conflicting interpretations of legal requirements may be the subject of a compliance interpretation and conflict resolution under RUGGO Objective 5.3.~~
- F. ~~On or before six months prior to the 18 month deadline established in section 3.07.810(B), cities and counties shall schedule their first hearing on the ordinance to implement sections 3.07.310 .340 of Title 3, or a hearing on implementation of Title 3, if no code amendments are proposed to comply with Title 3, and transmit notice of that hearing and a copy of the proposed ordinance to Metro at least 30 days prior to the hearing.~~
1. ~~Metro shall prepare and mail a notice of the city or county hearing to each affected property owner.~~
  2. ~~The Metro notice shall include the date, time, location and the title and number of any local ordinance; an explanation of the general requirements of Title 3, and an explanation of the implementation in the local ordinance, if no code amendments are proposed to comply with Title 3.~~
  3. ~~Metro shall review any amendments to Title 3 proposed by cities and counties based on the testimony of property owners.~~
- G. ~~On or before six months prior to the 18 month deadline established in section 3.07.810(B), cities and counties shall transmit to Metro the following:~~
1. ~~An evaluation of their local plans, including any relevant existing regulations and the amendments necessary to comply with Title 3 of this functional plan;~~

2. ~~Copies of all applicable comprehensive plans, maps and implementing ordinances as proposed to be amended;~~
3. ~~Findings that explain how the amended city and county comprehensive plans, maps and implementing ordinances will achieve the standards required in Title 3 of this functional plan.~~

~~In developing the evaluation, plan and ordinance amendments and findings, cities and counties shall address the Metro 2040 Growth Concept, and explain how the proposed amendments implement the Growth Concept.~~

3.07.830 Any Comprehensive Plan Change Must Comply ~~Review of None~~ Compliance by Metropolitan Policy Advisory Committee

- A. ~~After February 19, 1997, any amendment of a comprehensive plan or implementing ordinance shall be consistent with the requirements of this functional plan.~~ A city or county may seek review of Metro's Executive Officer's conclusion of noncompliance under section 3.07.820B by MPAC and the Metro Council. The city or county shall file an application for MPAC review on a form provided for that purpose by Metro's Executive Officer. Upon receipt of a completed application, Metro's Executive Officer shall set the matter on the MPAC agenda and notify those persons who request notification of MPAC reviews.
- B. The Executive Officer may seek review of city or county compliance with a functional plan requirement by MPAC and the Metro Council after the deadline for compliance with that requirement. The Executive Officer shall file an application for MPAC review on the form described in subsection A and shall set the matter on the MPAC agenda. The Executive Officer shall notify the city or county and those persons who request notification of MPAC reviews.
- BC. ~~In addition to any transmittal required by section 3.07.820 of this title, in the process of amending any comprehensive plan provision or implementing ordinance, a city or county shall give notice to Metro as required herein. At the same time any notice is given to the director of the Department of Land Conservation and Development pursuant to ORS 197.610 or 197.615, a copy shall be sent to Metro's Executive Officer. In addition to the content of the notice required by ORS 197.610 or 197.615, the notice furnished to Metro should include an analysis demonstrating that the proposed amendments are consistent with this functional plan, if available. If the analysis demonstrating consistency with the functional plan is not included in the initial notice, a report containing the analysis shall be delivered to Metro no later than fourteen (14) days before the city or county conducts a final hearing on the proposed amendment.~~ MPAC shall may hold a public hearing on the noncompliance issue of compliance. If MPAC holds a hearing, Any person may testify at the hearing. MPAC shall attempt to resolve any apparent or potential inconsistency between the proposed amendment and the functional plan. MPAC shall prepare a report to the Metro Council that sets forth reasons for the inconsistency.



~~Metro~~The Executive Officer shall send a copy of the report to the city or county and those persons who request a copy.

- C. ~~If no notice of intent to appeal is filed within the 21-day period set out in ORS 197.830(8), an amendment to a city or county comprehensive plan or land use regulation to implement this functional plan shall be deemed to be in compliance with this functional plan. If the city or county amendment is appealed pursuant to ORS 197.830 to 197.855 and is ultimately affirmed on appeal, the amendment shall be deemed to be in compliance with the functional plan upon the date that the appellate decision becomes final. This functional plan shall not apply to land use decisions made in conformance with city or county comprehensive plans or land use regulations deemed in compliance with this functional plan pursuant to this subsection.~~
- D. ~~An amendment to a city or county comprehensive plan or land use regulation shall not be deemed in compliance with this functional plan as provided in subsection C of this section unless notice has been given to Metro as provided in subsection B of this section.~~

3.07.840 Compliance Plan Assistance Review by Metro Council

- A. Any city or county may request of Metro a compliance plan which contains the following:
- ~~1. An analysis of the city or county comprehensive plan and implementing ordinances, and what sections require change to comply with the performance standards.~~
  - ~~2. Specific amendments that would bring the city or county into compliance with the requirements of Titles 1 to 8, if necessary.~~
- Upon receipt of a report from MPAC under section 3.07.830, ~~Metro~~**The Executive Officer** shall set the matter for a public hearing before the Metro Council and notify the city or county and those persons who request notification of Council reviews.
- B. ~~Cities and counties must make the request within four months of the effective date of this ordinance. The request shall be signed by the highest elected official of the jurisdiction. A person who qualifies under sections 3.07.820A may seek review by the Metro Council of an ~~Metro~~**Executive Officer** conclusion on compliance of a proposed amendment with the functional plan. The person shall file an application for Council review on a form provided for that purpose by ~~Metro~~**The Executive Officer**. ~~Metro~~**The Executive Officer** shall set the matter for a public hearing before the Council and notify the city or county, the Department of Land Conservation and Development and those persons who request notification of Council reviews.~~
- C. ~~Metro shall deliver a compliance plan within four months of the request date. The compliance plan shall be a recommendation from the Executive Officer. The compliance plan shall be filed with the Metro Council two weeks before it is transmitted, for possible review and comment. The Council shall hold a public hearing on the matter within 90~~

days after receipt of a report from MPAC under subsection A or within 90 days after the filing of a complete application under subsection B. Any person may testify at the hearing. The Council shall issue an order of compliance or noncompliance with its analysis and conclusion and send a copy to the city or county, MPAC, the Department of Land Conservation and Development and those persons who participated in the proceeding.

- D. If the Council finds that the proposed amendment does not comply with the functional plan, the Council shall advise the city or county that it may (1) revise and adopt the proposed amendment as recommended in the Council order; (2) seek an extension of time, pursuant to section 3.07.850, to bring the proposed amendment into compliance with the functional plan; or (3) seek an exception from the functional plan, pursuant to section 3.07.860. If the Council determines that an amendment of the functional plan is necessary to resolve the noncompliance, the Council shall include that determination in its order.
- E. The city or county or a person who participated in the proceeding may seek review of the Council's order as a land use decision described in ORS 197.015(10)(a)(A).

### 3.07.850 Citizen Involvement Process Extension of Compliance Deadline

- A. Any citizen may contact Metro staff or the Metro Executive Officer or appear before the Metro Council to raise issues regarding local functional plan compliance, to request Metro participation in the local process, or to request the Metro Council appeal a local enactment for which notice is required to be given to Metro pursuant to section 3.07.830 of Title 8. Such contact may be either oral or in writing and may be made at any time during or at the conclusion of any city or county proceeding to amend a comprehensive plan or implementing ordinance for which notice is required to be given to Metro pursuant to section 3.07.830 of Title 8. All such requests to participate or appeal made in writing shall be forwarded to the Metro Council. A city or county may seek an extension of time for compliance with the functional plan. The city or county shall file an application for an extension on a form provided for that purpose by Metro. Upon receipt of an application, Metro shall notify the Metro Council, MPAC, the Department of Land Conservation and Development and those persons who request notification of requests for extensions. A city or county may seek an extension of time for compliance with the functional plan. The city or county shall file an application for an extension on a form provided for that purpose by Metrothe Executive Officer. Upon receipt of an application, Metrothe Executive Officer shall set the matter for a public hearing before the Metro Council and shall notify the city or county, MPAC, the Department of Land Conservation and Development and those persons who request notification of applications for extensions
- B. In addition to considering requests as described in (A) above, the Metro Council shall at every regularly scheduled Council meeting provide an opportunity for citizens to address the Council on any matter related to this functional plan. Metro may grant an extension of time if it finds that (1) the city or county is making progress toward accomplishment of

~~its compliance work program, or (2) there is good cause for failure to meet the deadline for compliance. Metro shall issue an order with its conclusion and analysis and send a copy to the city or county, the Metro Council, MPAC, the Department of Land Conservation and Development and those persons who have requested a copy of the order. The Metro Council shall hold a public hearing to consider the extension. Any person may testify at the hearing. The Council may grant an extension if it finds that: (1) the city or county is making progress toward accomplishment of its compliance work program; or (2) there is good cause for failure to meet the deadline for compliance.~~

- C. ~~Cities, counties and Metro shall comply with their own adopted and acknowledged Citizen Involvement Requirements (Citizen Involvement) in all decisions, determinations and actions taken to implement and comply with this functional plan. The Executive Officer shall at least annually publish and distribute a Citizen Involvement fact sheet after consultation with the Metro Committee for Citizen Involvement, that fully describes all opportunities for citizen involvement in Metro's Regional Growth Management Process as well as the implementation and enforcement of this functional plan. Metro may establish terms and conditions for the extension in order to ensure that compliance is achieved in a timely and orderly fashion and that land use decisions made by the city or county during the extension do not undermine the ability of the city or county to achieve the purposes of the functional plan requirement or of the region to achieve the 2040 Growth Concept. Metro shall incorporate the terms and conditions into its order on the extension. Metro shall not grant more than two extensions of time to a city or a county. Metro shall not grant an extension of time for more than one year. The Metro Council may establish terms and conditions for the extension in order to ensure that compliance is achieved in a timely and orderly fashion and that land use decisions made by the city or county during the extension do not undermine the ability of the city or county to achieve the purposes of the functional plan requirement or of the region to achieve the 2040 Growth Concept. A term or condition must relate to the requirement of the functional plan to which the Council grants the exception extension. The Council shall incorporate the terms and conditions into its order on the extension. The Council shall not grant more than two extensions of time to a city or a county. The Council shall not grant an extension of time for more than one year.~~

- D. ~~The Metro Council shall issue an order with its conclusion and analysis and send a copy to the city or county, MPAC, the Department of Land Conservation and Development and those persons who participated in the proceeding. The city or county or a person who participated in the proceeding may seek review of the Council's order as a land use decision described in ORS 197.015(10)(a)(A).~~

- D. ~~The city or county or any person who received a copy of the order may seek review of the order by the Metro Council by filing an application for review on a form provided for that purpose by Metro. Upon receipt of an application, Metro shall notify the city or county and those persons who have requested a copy of the order. The Metro Council shall issue an order with its conclusion and analysis and send a copy to the city or county, MPAC, the Department of Land Conservation and Development and those persons who participated in the proceeding. The city or county or a person who participated in the~~

~~proceeding may seek review of the Council's order as a land use decision described in ORS 197.015(10)(a)(A).~~

~~E. If an application for review of an extension order is filed, the Metro Council shall hold a public hearing to consider the extension. Any person may testify at the hearing. The Council shall issue an order with its conclusion and analysis and send a copy to the city or county, the applicant for review, MPAC, the Department of Land Conservation and Development and those persons who participated in the Council proceeding. The city or county or a person who participated in the proceeding may seek review of the Council's order as a land use decision described in ORS 197.015(10)(a)(A).~~

3.07.860 Enforcement Exception from Compliance

- A. ~~Prior to a final decision to amend a comprehensive plan or implementing ordinance, a city or county determination that a requirement of this functional plan should not or cannot be implemented may be subject to a compliance interpretation and the conflict resolution process provided for in RUGGO, Goal I at the request of the city or county. A city or county may seek an exception from compliance with a functional plan requirement by filing an application on a form provided for that purpose by Metro the Executive Officer. Upon receipt of an application, Metro the Executive Officer shall set the matter for a public hearing before the Metro Council and shall notify MPAC, the Department of Land Conservation and Development and those persons who request notification of requests for exceptions.~~
- B. ~~City or county actions to amend a comprehensive plan or implementing ordinance in violation of this functional plan at any time after the effective date of this ordinance shall be subject to appeal or other legal action for violation of a regional functional plan requirement, including but not limited to reduction of regional transportation funding and funding priorities. The Metro Council shall hold a public hearing to consider the exception. The Council may grant an exception if it finds: (1) it is not possible to achieve the requirement either because (a) topographic or other physical constraints render achievement impracticable, or (b) an existing development pattern allows no practicable opportunity to make progress toward achievement of the requirement; (2) this exception and likely similar exceptions will not render the objective of the requirement unachievable region-wide; (3) the exception will not reduce the ability of another city or county to comply with the requirement; and (4) the city or county has adopted other measures more appropriate for the city or county to achieve the intended result of the requirement.~~
- C. ~~Failure to amend comprehensive plans and implementing ordinances as required by section 3.07.810 of this title shall be subject to any and all enforcement actions authorized by law. The Council may establish terms and conditions for the exception in order to ensure that it does not undermine the ability of the region to achieve the 2040 Growth Concept. A term or condition must relate to the requirement of the functional plan to which the Council grants the exception. The Council shall incorporate the terms and conditions into its order on the exception.~~

D. The Council shall issue an order with its conclusion and analysis and send a copy to the city or county, MPAC, the Department of Land Conservation and those persons who have requested a copy of the order. The city or county or a person who participated in the proceeding may seek review of the Council's order as a land use decision described in ORS 197.015(10)(a)(A).

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Add the following sections 3.07.870, 3.07.880 and 3.07.890 to Title 8 of the Urban Growth Management Functional Plan:

3.07.870 Enforcement of Functional Plan

- A. A city or county that proposes to amend its comprehensive plan or land use regulations shall notify ~~Metro~~**The Executive Officer** at least 45 days prior to the first public hearing held by the city or county to consider the amendment. The city or county shall submit to ~~Metro~~**The Executive Officer** an analysis of compliance of the proposed amendment with applicable functional plan requirements at least one week prior to the public hearing.
- B. The Metro Council may initiate enforcement proceedings under this section if a city or county has failed to meet a deadline in an extension granted pursuant to section 3.07.850 or if it has good cause to believe that a city or county is engaging in a pattern or a practice of decision-making that is inconsistent with the functional plan or local ordinances adopted by the city or county to implement the plan, or with the terms or conditions in an extension. The Council may consider whether to initiate enforcement proceedings upon the request of Metro or a councilor.
- C. If the Metro Council concludes that there is good cause pursuant to subsection B of this section, ~~Metro~~**The Executive Officer** shall set the matter for a public hearing before the Council within 90 days of its conclusion. ~~Metro~~**The Executive Officer** shall publish notice of the hearing in a newspaper of general circulation in the city or county and send notice to the city or county, MPAC, the Department of Land Conservation and Development and any person who requests a copy of such notices.
- D. ~~Metro~~**The Executive Officer** shall prepare a report and recommendation on the pattern or practice, with a proposed order, for consideration by the Metro Council. ~~Metro~~**The Executive Officer** shall publish the report at least 14 days prior to the public hearing and send a copy to the city or county and any person who requests a copy.
- E. If the Metro Council concludes that the city or county has not engaged in a pattern or practice of decision-making that that is inconsistent with the functional plan or local ordinances adopted by the city or county to implement the plan or with terms or conditions of an extension granted pursuant to section 3.07.850, the Council shall enter an order dismissing the matter. If the Council concludes that the city or county has engaged in such a pattern or practice of decision-making, the Council shall issue an order that sets forth the noncompliance and directs changes in the city or county ordinances necessary to remedy the pattern or practice. The Council shall issue its order, with analysis and conclusions, not later than 30 days following the public hearing on the matter. ~~Metro~~**The Executive Officer** shall send a copy of the order to the city or county, MPAC, the Department of Land Conservation and Development and any person who requests a copy.

3.07.880 Compliance Report and Certification3.07.880 Compliance Report and Certification

- A. ~~[[Metro]]~~ The Executive Officer shall submit a report [annually] to the Metro Council by December 31 of each calendar year on compliance by cities and counties with the Urban Growth Management Function Plan~~[, including the implementation of this chapter and its effectiveness in helping achieve the 2040 Growth Concept. [[Metro]] The Executive Officer shall make its report to the Metro Council by December 31 of each calendar years].~~ The report shall include an accounting of compliance with each requirement of the functional plan by each city and county in the district. The report shall explain each instance of noncompliance and recommend action that would bring the city or county into compliance with the functional plan requirement. The report shall also include an evaluation of the implementation of this chapter and its effectiveness in helping achieve the 2040 Growth Concept.
- B. Upon receipt of the compliance report, the Metro Council shall set a public hearing for the purpose of receiving testimony on the report and determining whether a city or county has fully complied with the requirements of the functional plan. ~~[[Metro]]~~ The Executive Officer shall notify all cities and counties, the Department of Land Conservation and Development and any person who requests notification of the hearing of the date, time and place of the hearing. The notification shall specify that it is not the purpose of the hearing to determine whether previous amendments of comprehensive plans or land use regulations made by a city or county comply with functional plan requirements if those amendments already comply [by operation of law (because no appeal of the amendment was made to the Land Use Board of Appeals or because any appeal has been finally decided)] pursuant to subsections F and G of section 3.07.810 and that no testimony on such previous amendments will be heard. Any person may testify, orally or in writing, at the public hearing.
- C. Following the public hearing, the Metro Council shall enter a compliance order. The order shall set forth, based upon the ~~[[Metro]]~~ Executive Officer's report submitted pursuant to subsection A and upon testimony at the public hearing pursuant to subsection B, whether each city and county complies with each functional plan requirement. The order may rely upon the [[Metro]] report for its findings of fact and conclusion of compliance or noncompliance unless the Council receives testimony during its public hearing that takes exception to the report on the question of compliance or noncompliance with a functional plan requirement. If the Council receives such testimony, the order shall include supplemental findings and conclusions to address the testimony. [[Metro]] The Executive Officer shall send a copy of its order to cities and counties and any person who testifies, orally or in writing, at the public hearing.
- D. A city or county or a person who testified, orally or in writing, at the public hearing, may seek review of the Council's order as a land use decision described in ORS 197.015(10)(a)(A).

3.07.890 Citizen Involvement in Compliance Review

~~Metro shall facilitate citizen involvement in compliance review. Metro shall provide widespread public notice of Metro review of city and county comprehensive plans and land~~

~~use regulations for compliance with functional plan requirements. Metro shall maintain a list of persons who request notice of reviews and copies of reports and orders and shall send requested documents as provided in this chapter. Metro shall provide an opportunity at regular Council meeting for citizens to bring matters of compliance before the Council."~~

- A. ~~Any citizen may contact Metro staff or the Executive Officer or appear before the Metro Council to raise issues regarding local functional plan compliance, to request Executive Officer participation in the local process, or to request the Metro Council to appeal a local enactment for which notice is required to be given to the Executive Officer pursuant to section 3.07.870A. Such contact may be oral or in writing and may be made at any time during or at the conclusion of any city or county proceeding to amend a comprehensive plan or implementing ordinance for which notice is required to be given to the Executive Officer. All such requests to participate or appeal made in writing shall be forwarded to the Metro Council.~~
- B. ~~In addition to considering requests as described in A above, the Metro Council shall at every regularly scheduled Council meeting provide an opportunity for citizens to address the Council on any matter related to this functional plan. The Executive Officer shall maintain a list of persons who request notice of reviews and copies of reports and orders and shall send requested documents as provided in this chapter.~~
- C. ~~Cities, counties and the Metro Council shall comply with their own adopted and acknowledged Citizen Involvement Requirements (Citizen Involvement) in all decisions, determinations and actions taken to implement and comply with this functional plan. The Executive Officer shall at least annually publish and distribute a Citizen Involvement fact sheet, after consultation with the Metro Committee for Citizen Involvement, that fully describes all opportunities for citizen involvement in Metro's Regional Growth Management Process as well as the implementation and enforcement of this functional plan.~~



BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF FOR THE PURPOSE OF )  
AMENDING METRO CODE TITLE 8 (COMPLIANCE )  
PROCEDURES) AND TITLE 1 (REQUIREMENTS FOR )  
HOUSING AND EMPLOYMENT ACCOMMODATION) ) ORDINANCE NO. 01-925C  
OF THE URBAN GROWTH MANAGEMENT )  
FUNCTIONAL PLAN AND SECTION 7.5 OF THE )  
REGIONAL FRAMEWORK PLAN ORDINANCE 97- )  
715B TO REVISE THE PROCESS FOR ADJUDICATION )  
AND DETERMINATION OF CONSISTENCY OF )  
LOCAL COMPREHENSIVE PLANS WITH THE URBAN ) Introduced by Community  
GROWTH MANAGEMENT FUNCTIONAL PLAN, AND ) Planning Committee  
TO REVISE THE PROCESSES AND CRITERIA FOR )  
EXCEPTIONS FROM AND EXTENSIONS TO COMPLY )  
WITH THE FUNCTIONAL PLAN; AND DECLARING )  
AN EMERGENCY )

WHEREAS, the success of the 2040 Growth Concept depends upon local government compliance with the Urban Growth Management Functional Plan; and

WHEREAS, Chapter II, Section 5(2)(e) of the Metro Charter requires, and ORS 268.390(5) authorizes, Metro to adopt by ordinance a program for determining the consistency of local comprehensive plans with the Regional Framework Plan; and

WHEREAS, Metro's current code provisions for determining consistency of local plans with the Urban Growth Management Functional Plan do not provide Metro with all of the tools necessary to ensure overall compliance by cities and counties with the plan and accomplishment of the 2040 Growth Concept; and

WHEREAS, Objective 5.3 of the Regional Urban Growth Goals and Objectives ("RUGGO"), which provides a process for resolution of inconsistencies between local comprehensive plans and functional plan requirements, was incorporated with all of the RUGGO into the Regional Framework Plan by Ordinance 97-715B; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Sections 3.07.810 to 3.07.860 of Title 8, Compliance Procedures, of the Urban Growth Management Functional Plan are hereby amended as indicated in Exhibit "A", attached and incorporated into this ordinance, in order to provide Metro with a full range of tools to ensure overall local government compliance with the functional plan and to consolidate compliance procedures into a single title.
2. Sections 3.07.870 to 3.07.890, as indicated in Exhibit "B", attached and incorporated into this ordinance, are hereby added to Title 8, Compliance Procedures, of the Urban Growth Management Functional Plan in order to provide Metro with a full range of tools to ensure overall local government compliance with the functional plan and to consolidate compliance procedures into a single title.
3. Section 7.5 of the Regional Framework Plan Ordinance 97-715B is hereby amended as indicated in Exhibit "C", attached and incorporated into this ordinance, in order to allow Metro to grant exceptions to the Urban Growth Management Functional Plan.
4. Section ~~3.01.160(E)~~ 3.07.150E of Title 1 (Requirements for Housing and Employment Accommodation) of the Urban Growth Management Functional Plan is hereby repealed in order to consolidate compliance procedures into Title 8.
5. This ordinance is necessary for the immediate preservation of public health, safety and welfare because a large number of requests for extensions of time for compliance with the Urban Growth Management Functional Plan is pending before the Council. This ordinance is essential to speed implementation of the functional plan and to ensure its implementation during the extensions. An emergency is therefore declared to exist. This ordinance shall take effect immediately, pursuant to Metro Charter section 39(1).

ADOPTED by the Metro Council this \_\_\_\_\_ day of December, 2001.

\_\_\_\_\_  
David Bragdon, Presiding Officer

ATTEST:

Approved as to Form:

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
Daniel B. Cooper, General Counsel

**Exhibit A to Ordinance No. 01-925C  
December 20, 2001**

Amend sections 3.07.810 to 3.07.860 of Title 8 of the Urban Growth Management Functional Plan as follows:

3.07.810 Compliance with the Functional Plan

- A. The purpose of this section is to establish a process for determining whether city or county comprehensive plans and land use regulations comply with requirements of the Urban Growth Management Functional Plan. The Council intends the process to be efficient and cost-effective and to provide an opportunity for the Metro Council to interpret the requirements of its functional plan. Where the terms “compliance” and “comply” appear in this title, the terms shall have the meaning given to “substantial compliance” in 3.07.1010(rrr).
- B. Cities and counties shall amend their comprehensive plans and land use regulations to comply with the functional plan within two years after its acknowledgement by the Land Conservation and Development Commission, or after such other date specified in the functional plan. The Executive Officer shall notify cities and counties of the compliance date.
- C. Notwithstanding subsection A of this section, cities and counties shall amend their comprehensive plans and land use regulations to comply with sections 3.07.310 to 3.07.340 of Title 3 of the Urban Growth Management Functional Plan by January 31, 2000.
- D. Cities and counties that amend their comprehensive plans or land use regulations after the effective date of the functional plan shall make the amendments in compliance with the functional plan. The Executive Officer shall notify cities and counties of the effective date.
- E. Cities and counties whose comprehensive plans and land use regulations do not yet comply with a functional plan requirement adopted or amended prior to December 12, 1997, shall make land use decisions consistent with that requirement. If the functional plan requirement was adopted or amended by the Metro Council after December 12, 1997, cities and counties whose comprehensive plans and land use regulations do not yet comply with the requirement shall, after one year following acknowledgment of the requirement, make land use decisions consistent with that requirement. The Executive Officer shall notify cities and counties of the date upon which functional plan requirements becomes applicable to land use decisions at least 120 days before that date. The notice shall specify which functional plan requirements become applicable to land use decisions in each city and county. For the purposes of this subsection, “land use decision” shall have the meaning of that term as defined in ORS 197.015(10).

- F. An amendment to a city or county comprehensive plan or land use regulation shall be deemed to comply with the functional plan if no appeal to the Land Use Board of Appeals is made within the 21-day period set forth in ORS 197.830(9). If an appeal is made and the amendment is affirmed, the amendment shall be deemed to comply with the functional plan upon the final decision on appeal. Once the amendment is deemed to comply with the functional plan, the functional plan shall no longer apply to land use decisions made in conformance with the amendment.
- G. An amendment to a city or county comprehensive plan or land use regulation shall be deemed to comply with the functional plan as provided in subsection F only if the city or county provided notice to the Executive Officer as required by section 3.07.870(A).

3.07.820 Compliance Review by The Executive Officer

- A. Prior to adoption of an amendment to a comprehensive plan or land use regulation which a city or county must submit to the Department of Land Conservation and Development pursuant to ORS 197.610(1), a the city or county shall submit the proposed amendment to the Executive Officer at the same time it submits the amendment to the department. The Executive Officer shall review the proposed amendment for compliance with the functional plan, and submit copies of its analysis and conclusion to the city or county and those persons who have requested a copy. The Executive Officer shall, where appropriate, The Executive Officer may request, and if so the city or county shall submit, an analysis of compliance of the amendment with the functional plan. If the Executive Officer submits comments on the proposed amendment to the city or county, the comment shall include analysis and conclusions on compliance and a recommendation with specific revisions to the proposed amendment that would bring it into compliance with functional plan requirements. The Executive Officer shall send a copy of its analysis and recommendation to those persons who have requested a copy.
- B. If the Executive Officer concludes that the proposed amendment does not comply with the functional plan, the Executive Officer shall advise the city or county that it may (1) revise the proposed amendment as recommended in the Executive Officer's analysis; (2) seek an extension of time, pursuant to section 3.07.850, to bring the proposed amendment into compliance with the functional plan; or (3) seek review of the noncompliance by MPAC and the Metro Council, pursuant to sections 3.07.830 and 3.07.840.

3.07.830 Review of Compliance by Metropolitan Policy Advisory Committee

- A. A city or county may seek review of the Executive Officer's conclusion of noncompliance under section 3.07.820B by MPAC and the Metro Council. The city or county shall file an application for MPAC review on a form provided for that purpose by the Executive Officer. Upon receipt of a completed application, the Executive Officer shall set the matter on the MPAC agenda and notify those persons who request notification of MPAC reviews.

- B. The Executive Officer may seek review of city or county compliance with a functional plan requirement by MPAC and the Metro Council after the deadline for compliance with that requirement. The Executive Officer shall file an application for MPAC review on the form described in subsection A and shall set the matter on the MPAC agenda. The Executive Officer shall notify the city or county and those persons who request notification of MPAC reviews.
- C. MPAC may hold a public hearing on the issue of compliance. If MPAC holds a hearing, any person may testify. MPAC shall attempt to resolve any apparent or potential inconsistency between the proposed amendment and the functional plan. MPAC shall prepare a report to the Metro Council that sets forth reasons for the inconsistency. The Executive Officer shall send a copy of the report to the city or county and those persons who request a copy.

3.07.840 Review by Metro Council

- A. Upon receipt of a report from MPAC under section 3.07.830, the Executive Officer shall set the matter for a public hearing before the Metro Council and notify the city or county and those persons who request notification of Council reviews.
- B. A person who qualifies under sections 3.07.820A may seek review by the Metro Council of an Executive Officer conclusion on compliance of a proposed amendment with the functional plan. The person shall file an application for Council review on a form provided for that purpose by the Executive Officer. The Executive Officer shall set the matter for a public hearing before the Council and notify the city or county, the Department of Land Conservation and Development and those persons who request notification of Council reviews.
- C. The Council shall hold a public hearing on the matter within 90 days after receipt of a report from MPAC under subsection A or within 90 days after the filing of a complete application under subsection B. Any person may testify at the hearing. The Council shall issue an order of compliance or noncompliance with its analysis and conclusion and send a copy to the city or county, MPAC, the Department of Land Conservation and Development and those persons who participated in the proceeding.
- D. If the Council finds that the proposed amendment does not comply with the functional plan, the Council shall advise the city or county that it may (1) revise and adopt the proposed amendment as recommended in the Council order; (2) seek an extension of time, pursuant to section 3.07.850, to bring the proposed amendment into compliance with the functional plan; or (3) seek an exception from the functional plan, pursuant to section 3.07.860. If the Council determines that an amendment of the functional plan is necessary to resolve the noncompliance, the Council shall include that determination in its order.
- E. The city or county or a person who participated in the proceeding may seek review of the Council's order as a land use decision described in ORS 197.015(10)(a)(A).

3.07.850 Extension of Compliance Deadline

- A. A city or county may seek an extension of time for compliance with the functional plan. The city or county shall file an application for an extension on a form provided for that purpose by the Executive Officer. Upon receipt of an application, the Executive Officer shall set the matter for a public hearing before the Metro Council and shall notify the city or county, MPAC, the Department of Land Conservation and Development and those persons who request notification of applications for extensions.
- B. The Metro Council shall hold a public hearing to consider the extension. Any person may testify at the hearing. The Council may grant an extension if it finds that: (1) the city or county is making progress toward accomplishment of its compliance work program; or (2) there is good cause for failure to meet the deadline for compliance.
- C. The Metro Council may establish terms and conditions for the extension in order to ensure that compliance is achieved in a timely and orderly fashion and that land use decisions made by the city or county during the extension do not undermine the ability of the city or county to achieve the purposes of the functional plan requirement or of the region to achieve the 2040 Growth Concept. A term or condition must relate to the requirement of the functional plan to which the Council grants the extension. The Council shall incorporate the terms and conditions into its order on the extension. The Council shall not grant more than two extensions of time to a city or a county. The Council shall not grant an extension of time for more than one year.
- D. The Metro Council shall issue an order with its conclusion and analysis and send a copy to the city or county, MPAC, the Department of Land Conservation and Development and those persons who participated in the proceeding. The city or county or a person who participated in the proceeding may seek review of the Council's order as a land use decision described in ORS 197.015(10)(a)(A).

3.07.860 Exception from Compliance

- A. A city or county may seek an exception from compliance with a functional plan requirement by filing an application on a form provided for that purpose by the Executive Officer. Upon receipt of an application, the Executive Officer shall set the matter for a public hearing before the Metro Council and shall notify MPAC, the Department of Land Conservation and Development and those persons who request notification of requests for exceptions.
- B. The Metro Council shall hold a public hearing to ~~consider~~ determine whether the exception meets the following criteria:-
  - ~~(1) Except as provided in paragraph (2) of this subsection, the Council may grant an exception if it finds: (1a) it is not possible to achieve the requirement either because (ai) topographic or other physical constraints render achievement impracticable, or (bii) an~~

existing development pattern allows no practicable opportunity to make progress toward achievement of the requirement; (2b) this exception and likely similar exceptions will not render the objective of the requirement unachievable region-wide; (3c) the exception will not reduce the ability of another city or county to comply with the requirement; and (4d) the city or county has adopted other measures more appropriate for the city or county to achieve the intended result of the requirement.

(2) The Council may grant an exception to the requirement in subsection 3.07.150D to increase dwelling unit and job capacity to the targets set forth in Table 3.07-1 if it finds: (a) the city or county has completed the analysis of capacity for dwelling units and jobs required by subsections 3.07.150A, B and C; (b) it is not possible to achieve the targets because (i) topographic or other physical constraints render achievement impracticable, or (ii) an existing development pattern allows no practicable opportunity to make progress toward achievement of the requirement; and (c) this exception and other exceptions to the targets will not render the targets unachievable region-wide.

- C. The Council may establish terms and conditions for the exception in order to ensure that it does not undermine the ability of the region to achieve the 2040 Growth Concept. A term or condition must relate to the requirement of the functional plan to which the Council grants the exception. The Council shall incorporate the terms and conditions into its order on the exception.
- D. The Council shall issue an order with its conclusion and analysis and send a copy to the city or county, MPAC, the Department of Land Conservation and those persons who have requested a copy of the order. The city or county or a person who participated in the proceeding may seek review of the Council's order as a land use decision described in ORS 197.015(10)(a)(A).

**Exhibit B to Ordinance No. 01-925C  
December 20, 2001**

Add the following sections 3.07.870, 3.07.880 and 3.07.890 to Title 8 of the Urban Growth Management Functional Plan:

3.07.870 Enforcement of Functional Plan

- ~~A.~~ ~~A city or county that proposes to amend its comprehensive plan or land use regulations shall notify the Executive Officer at least 45 days prior to the first public hearing held by the city or county to consider the amendment. The city or county shall submit to the Executive Officer an analysis of compliance of the proposed amendment with applicable functional plan requirements at least one week prior to the public hearing.~~
- BA. The Metro Council may initiate enforcement proceedings under this section if a city or county has failed to meet a deadline in an extension granted pursuant to section 3.07.850 or if it has good cause to believe that a city or county is engaging in a pattern or a practice of decision-making that is inconsistent with the functional plan or local ordinances adopted by the city or county to implement the plan, or with the terms or conditions in an extension. The Council may consider whether to initiate enforcement proceedings upon the request of Metro or a councilor. The Council shall consult with the city or county before it determines there is good cause to proceed to a hearing under subsection B of this section.
- CB. If the Metro Council concludes that there is good cause pursuant to subsection B of this section, the Executive Officer shall set the matter for a public hearing before the Council within 90 days of its conclusion. The Executive Officer shall publish notice of the hearing in a newspaper of general circulation in the city or county and send notice to the city or county, MPAC, the Department of Land Conservation and Development and any person who requests a copy of such notices.
- CC. The Executive Officer shall prepare a report and recommendation on the pattern or practice, with a proposed order, for consideration by the Metro Council. The Executive Officer shall publish the report at least 14 days prior to the public hearing and send a copy to the city or county and any person who requests a copy.
- CD. If the Metro Council concludes that the city or county has not engaged in a pattern or practice of decision-making that that is inconsistent with the functional plan or local ordinances adopted by the city or county to implement the plan or with terms or conditions of an extension granted pursuant to section 3.07.850, the Council shall enter an order dismissing the matter. If the Council concludes that the city or county has engaged in such a pattern or practice of decision-making, the Council shall issue an order that sets forth the noncompliance and directs changes in the city or county ordinances necessary to remedy the pattern or practice. The Council shall issue its order, with analysis and conclusions, not later than 30 days following the public hearing on the



matter. The Executive Officer shall send a copy of the order to the city or county, MPAC, the Department of Land Conservation and Development and any person who requests a copy.

3.07.880 Compliance Report and Certification Order

- A. The Executive Officer shall submit a report to the Metro Council by December 31 of each calendar year on compliance by cities and counties with the Urban Growth Management Function Plan. The report shall include an accounting of compliance with each requirement of the functional plan by each city and county in the district. The report shall ~~explain each instance of noncompliance and~~ recommend action that would bring the a city or county into compliance with the functional plan requirement and shall advise the city or county whether it may seek an extension pursuant to section 3.07.850 or an exception pursuant to section 3.07.860. The report shall also include an evaluation of the implementation of this chapter and its effectiveness in helping achieve the 2040 Growth Concept.
- B. Upon receipt of the compliance report, the Metro Council shall set a public hearing for the purpose of receiving testimony on the report and determining whether a city or county has ~~fully~~ complied with the requirements of the functional plan. The Executive Officer shall notify all cities and counties, the Department of Land Conservation and Development and any person who requests notification of the hearing of the date, time and place of the hearing. The notification shall specify that it is not the purpose of the hearing to determine whether previous amendments of comprehensive plans or land use regulations made by a city or county comply with functional plan requirements if those amendments already comply pursuant to subsections F and G of section 3.07.810 and that no testimony on such previous amendments will be heard. Any person may testify, orally or in writing, at the public hearing.
- C. Following the public hearing, the Metro Council shall enter an order that determines compliance order. ~~The order shall set forth, based upon the Executive Officer's report submitted pursuant to subsection A and upon testimony at the public hearing pursuant to subsection B, whether with which functional plan requirements each city and county complies, with each functional plan requirement.~~ The order may rely upon the report for its findings of fact and conclusions of compliance ~~or noncompliance unless~~ with a functional plan requirement. ~~If the Council receives testimony during its public hearing that takes exception to the report on the question of compliance or noncompliance with a functional plan requirement. If the Council receives such testimony, the order shall include supplemental findings and conclusions to address the testimony. The Executive Officer shall send a copy of its order to cities and counties and any person who testifies, orally or in writing, at the public hearing.~~
- D. Omission from the order of recognition by the Council of compliance by a city or county with a functional plan requirement shall not constitute a determination under section 3.07.870A that the city or county has engaged in a pattern or practice of decision-making that is inconsistent with the requirement.

- DE. A city or county or a person who testified, orally or in writing, at the public hearing, may seek review of the Council's order as a land use decision described in ORS 197.015(10)(a)(A).

3.07.890 Citizen Involvement in Compliance Review

- A. Any citizen may contact Metro staff or the Executive Officer or appear before the Metro Council to raise issues regarding local functional plan compliance, to request Executive Officer participation in the local process, or to request the Metro Council to appeal a local enactment for which notice is required to be given to the Executive Officer pursuant to section 3.07.870A. Such contact may be oral or in writing and may be made at any time during or at the conclusion of any city or county proceeding to amend a comprehensive plan or implementing ordinance for which notice is required to be given to the Executive Officer. All such requests to participate or appeal made in writing shall be forwarded to the Metro Council.
- B. In addition to considering requests as described in A above, the Metro Council shall at every regularly scheduled Council meeting provide an opportunity for citizens to address the Council on any matter related to this functional plan. The Executive Officer shall maintain a list of persons who request notice of reviews and copies of reports and orders and shall send requested documents as provided in this chapter.
- C. Cities, counties and the Metro Council shall comply with their own adopted and acknowledged Citizen Involvement Requirements (Citizen Involvement) in all decisions, determinations and actions taken to implement and comply with this functional plan. The Executive Officer shall at least annually publish and distribute a Citizen Involvement fact sheet, after consultation with the Metro Committee for Citizen Involvement, that fully describes all opportunities for citizen involvement in Metro's Regional Growth Management Process as well as the implementation and enforcement of this functional plan.

**Exhibit C to Ordinance No. 01-925C  
December 20, 2001**

Amend section 7.5 of the Regional Framework Plan Ordinance 97-715B as follows:

**7.5 Functional Plans**

Functional plans are limited purpose plans, consistent with this Framework Plan, which address designated areas and activities of metropolitan concern. Functional plans are established in state law as a way Metro may recommend or require changes in local plans. This Framework Plan uses functional plans as the identified vehicle for requiring changes in local plans in order to achieve consistence and compliance with this Framework Plan.

Those functional plans or functional plan provisions containing recommendations for comprehensive planning by cities and counties may not be final land use decisions. If a provision in a functional plan, or an action implementing a functional plan require changes in an adopted and acknowledged comprehensive plan, then the adoption of a provision or action will be a final land use decision. If a provision in a functional plan, or Metro action implementing a functional plan require changes in an adopted and acknowledged comprehensive plan, then that provision or action will be adopted by Metro as a final land use action required to be consistent with statewide planning goals. In addition, Regional Framework Plan components will be adopted as functional plans if they contain recommendations or requirements for changes in comprehensive plans. These functional plans, which are adopted as part of the Regional Framework Plan, will be submitted along with other parts of the Regional Framework Plan to LCDC for acknowledgment of their compliance with the statewide planning goals. Because functional plans are the way Metro recommends or requires local plan changes, most Regional Framework Plan components will probably be functional plans. Until Regional Framework Plan components are adopted, existing or new functional plans will continue to recommend or require changes in comprehensive plans.

- Existing Functional Plans. Metro shall continue to develop, amend and implement, with the assistance of cities, counties, special districts and the state, statutory-required functional plans for air, water and transportation, as directed by ORS 268.390(1) and for land use planning aspects of solid waste management as mandated by ORS Ch. 459.
- New Functional Plans. New functional plans shall be proposed from one of two sources:
  - MPAC may recommend that the Metro Council designate an area or activity of metropolitan concern for which a functional plan should be prepared; or
  - the Metro Council may propose the preparation of a functional plan to designate an area or activity of metropolitan concern and refer that proposal to MPAC.

The matters required by the Charter to be addressed in the Regional Framework Plan shall constitute sufficient factual reasons for the development of a functional plan under ORS 268.390. However, the actual adoption of a functional plan will be subject to the procedures specified above.

Upon the Metro Council adopting factual reasons for the development of a new functional plan, MPAC shall participate in the preparation of the plan, consistent with these goals and objectives

and the reasons cited by the Metro Council. After preparation of the plan and seeking broad public and local government consensus, using existing citizen involvement processes established by cities, counties and Metro, MPAC shall review the plan and make a recommendation to the Metro Council. The Metro Council may act to resolve conflicts or problems impeding the development of a new functional plan and may complete the plan if MPAC is unable to complete its review in a timely manner.

The Metro Council shall hold a public hearing on the proposed plan and afterwards shall:

- adopt the proposed functional plan; or
- refer the proposed functional plan to MPAC in order to consider amendments to the proposed plan prior to adoption; or
- amend and adopt the proposed functional plan; or
- reject the proposed functional plan.

The proposed functional plan shall be adopted by ordinance and shall include findings of consistency with these goals and objectives.

- **Functional Plan Implementation and Conflict Resolution.** Adopted functional plans shall be regionally coordinated policies, facilities and/or approaches to addressing a designated area or activity of metropolitan concern, to be considered by cities and counties for incorporation in their comprehensive land use plans. If a city or county determines that a functional plan requirement should not or cannot be incorporated into its comprehensive plan, then Metro shall review any apparent inconsistencies by the following process:
  - Metro and affected local governments shall notify each other of apparent or potential comprehensive plan inconsistencies.
  - After Metro staff review, MPAC shall consult the affected jurisdictions and attempt to resolve any apparent or potential inconsistencies.
  - MPAC **may** shall conduct a public hearing and make a report to the Metro Council regarding instances and reasons why a city or county has not adopted changes consistent with requirements in a regional functional plan.
  - The Metro Council shall review the MPAC report and hold a public hearing on any unresolved issues. The Council may decide to:
    - amend the adopted regional functional plan; or
    - initiate proceedings to require a comprehensive plan change; or
    - find there is no inconsistency between the comprehensive plan(s) and the functional plan; or
    - grant an exception to the functional plan requirement.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF FOR THE PURPOSE OF	)	ORDINANCE NO. 01-925 <u>AB</u>
AMENDING METRO CODE TITLE 8 (COMPLIANCE	)	
PROCEDURES) AND TITLE 1 (REQUIREMENTS FOR	)	
HOUSING AND EMPLOYMENT ACCOMMODATION)	)	Introduced by Community
OF THE URBAN GROWTH MANAGEMENT	)	Planning Committee
FUNCTIONAL PLAN AND SECTION 7.5 OF THE	)	
REGIONAL FRAMEWORK PLAN ORDINANCE 97-	)	
715B TO REVISE THE PROCESS FOR ADJUDICATION	)	
AND DETERMINATION OF CONSISTENCY OF	)	
LOCAL COMPREHENSIVE PLANS WITH THE URBAN	)	
GROWTH MANAGEMENT FUNCTIONAL PLAN, AND	)	
TO REVISE THE PROCESSES AND CRITERIA FOR	)	
EXCEPTIONS FROM AND EXTENSIONS TO COMPLY	)	
WITH THE FUNCTIONAL PLAN; AND DECLARING	)	
AN EMERGENCY	)	

WHEREAS, the success of the 2040 Growth Concept depends upon local government compliance with the Urban Growth Management Functional Plan; and

WHEREAS, Chapter II, Section 5(2)(e) of the Metro Charter requires, and ORS 268.390(5) authorizes, Metro to adopt by ordinance a program for determining the consistency of local comprehensive plans with the Regional Framework Plan; and

WHEREAS, Metro’s current code provisions for determining consistency of local plans with the Urban Growth Management Functional Plan do not provide Metro with all of the tools necessary to ensure overall compliance by cities and counties with the plan and accomplishment of the 2040 Growth Concept; and

WHEREAS, Objective 5.3 of the Regional Urban Growth Goals and Objectives (“RUGGO”), which provides a process for resolution of inconsistencies between local comprehensive plans and functional plan requirements, was incorporated with all of the RUGGO into the Regional Framework Plan by Ordinance 97-715B; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Sections 3.07.810 to 3.07.860 of Title 8, Compliance Procedures, of the Urban Growth Management Functional Plan are hereby amended as indicated in Exhibit "A", attached and incorporated into this ordinance, in order to provide Metro with a full range of tools to ensure overall local government compliance with the functional plan and to consolidate compliance procedures into a single title.

2. Sections 3.07.870 to 3.07.890, as indicated in Exhibit "B", attached and incorporated into this ordinance, are hereby added to Title 8, Compliance Procedures, of the Urban Growth Management Functional Plan in order to provide Metro with a full range of tools to ensure overall local government compliance with the functional plan and to consolidate compliance procedures into a single title.

3. Section 7.5 of the Regional Framework Plan Ordinance 97-715B is hereby amended as indicated in Exhibit "C", attached and incorporated into this ordinance, in order to allow Metro to grant exceptions to the Urban Growth Management Functional Plan.

4. Section 3.01.160(E) of Title 1 (Requirements for Housing and Employment Accommodation) of the Urban Growth Management Functional Plan is hereby repealed in order to consolidate compliance procedures into Title 8.

5. This ordinance is necessary for the immediate preservation of public health, safety and welfare because a large number of requests for extensions of time for compliance with the Urban Growth Management Functional Plan is pending before the Council. This ordinance is essential to speed implementation of the functional plan and to ensure its implementation during the extensions. An emergency is therefore declared to exist. This ordinance shall take effect immediately, pursuant to Metro Charter section 39(1).

ADOPTED by the Metro Council this \_\_\_\_ day of December, 2001.

\_\_\_\_\_  
David Bragdon, Presiding Officer

ATTEST:

Approved as to Form:

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
Daniel B. Cooper, General Counsel

i:\7.4.3.701-925.001  
OGC\RPB\kvw (11/01/01)

Council \NDepts\2001 Legislation\01-925B

Amend sections 3.07.810 to 3.07.860 of Title 8 of the Urban Growth Management Functional Plan as follows:

3.07.810 Compliance Required with the Functional Plan

- A. ~~All cities and counties within the Metro boundary are hereby required to amend their comprehensive plans and implementing ordinances to comply with the provisions of this functional plan within twenty-four months of the effective date of this ordinance. Metro recommends the adoption of the policies that affect land consumption as soon as possible. The purpose of this section is to establish a process for determining whether an amendment to a city or county comprehensive plans or and land use regulations intended by a city or county to carry out a~~ **comply with requirements of the Urban Growth Management Functional Plan complies with the plan.** ~~The Council intends the process to be efficient and cost-effective for local governments and Metro and to provide an opportunity for the Metro Council to interpret the requirements of its functional plan. Where the terms "compliance" and "comply" appear in this title, the terms shall have the meaning given to "substantial compliance" in 3.07.1010(rrr).~~
- B. ~~Notwithstanding subsection A of this section, cities and counties are required to amend their comprehensive plans and implementing ordinances to comply with sections 3.07.310-340 of Title 3 by January 2000. Cities and counties shall amend their comprehensive plans and land use regulations to comply with the functional plan within two years after its acknowledgement by the Land Conservation and Development Commission, or after such other date specified in the functional plan. Metro-The Executive Officer shall notify cities and counties of the compliance date.~~
- C. ~~Notwithstanding subsection A of this section, cities and counties shall amend their comprehensive plans and land use regulations to comply with sections 3.07.310 to 3.07.340 of Title 3 of the Urban Growth Management Functional Plan by January 31, 2000.~~
- D. ~~Cities and counties that amend their comprehensive plans or land use regulations after the effective date of the functional plan shall make the amendments in compliance with the functional plan. Metro-The Executive Officer shall notify cities and counties of the effective date.~~
- E. ~~Cities and counties whose comprehensive plans and land use regulations do not yet comply with a requirement of the functional plan shall, after one year following acknowledgement of the functional plan by the Land Conservation and Development, make land use decisions consistent with that requirement of the functional plan. Metro-The Executive Officer shall notify cities and counties of the acknowledgement date. For the purposes of this subsection, "land use decision" shall have the meaning of that term as defined in ORS 197.015(10).~~

- F. An amendment to a city or county comprehensive plan or land use regulation shall be deemed to comply with the functional plan if no appeal to the Land Use Board of Appeals is made within the 21-day period set forth in ORS 197.830(9). If an appeal is made and the amendment is affirmed, the amendment shall be deemed to comply with the functional plan upon the final decision on appeal. Once the amendment is deemed to comply with the functional plan, the functional plan shall no longer apply applies to land use decisions made in conformance with the amendment.
- G. An amendment to a city or county comprehensive plan or land use regulation shall be deemed to comply with the functional plan as provided in subsection F only if the city or county provided notice to the Executive Officer as required by section 3.07.870(A).

3.07.820 Compliance Procedures Review by MetroThe Executive Officer

- A. ~~On or before six months prior to the 24 month deadline established in section 3.07.810(A), cities and counties shall transmit to Metro the following:~~
- ~~1. An evaluation of their local plans, including public facility capacities and the amendments necessary to comply with this functional plan;~~
  - ~~2. Copies of all applicable comprehensive plans and implementing ordinances and public facility plans, as proposed to be amended;~~
  - ~~3. Findings that explain how the amended city and county comprehensive plans will achieve the standards required in Titles 1 through 6 of this functional plan.~~
- ~~In developing the evaluation, plan and ordinance amendments and findings, cities and counties shall address the Metro 2040 Growth Concept, and explain how the proposed amendments implement the Growth Concept. Prior to adoption of an amendment to a comprehensive plan or land use regulation **intended to implement the functional plan**, a city or county shall submit the proposed amendment to **Metrothe Executive Officer**. **MetroThe Executive Officer** shall review the proposed amendment for compliance with the **functional** plan and submit copies of its analysis and conclusion to the city or county and those persons who have requested a copy. **MetroThe Executive Officer** shall, where appropriate, include a recommendation with specific revisions to the proposed amendment that would bring it into compliance with functional plan requirements.~~
- B. ~~Exceptions to any of the requirements in the above titles may be granted by the Metro Council, as provided for in the Regional Urban Growth Goals and Objectives, Section 5.3, after MPAC review. Requests for an exception should include a city or county submittal as specified in this section. The Metro Council will make all final decisions for the grant of any requested exception.~~
- ~~1. Population and Capacity. An exception to the requirement contained in Table 3.07-1 of Title 1 that the target capacities shall be met or exceeded may be granted based on a submittal which includes, but is not limited to, the following:~~



- a. ~~A demonstration of substantial evidence of the economic infeasibility to provide sanitary sewer, water, stormwater or transportation facilities to an area or areas; or~~
- b. ~~A demonstration that the city or county is unable to meet the target capacities listed in Table 3.07-1 because substantial areas have prior commitments to development at densities inconsistent with Metro target; or~~
- c. ~~A demonstration that the dwelling unit and job capacities cannot be accommodated at densities or locations the market or assisted programs will likely build during the planning period.~~

~~As part of any request for exception under this subsection, a city or county shall also submit an estimate of the amount of dwelling units or jobs included in the capacity listed in Table 3.07-1 that cannot be accommodated; and a recommendation which identifies land that would provide for the unaccommodated capacity located outside the urban growth boundary and near or adjacent to the city or county.~~

~~In reviewing any request for exception based on the financial feasibility of providing public services, Metro, along with cities and counties, shall estimate the cost of providing necessary public services and compare those with the estimated costs submitted by the city or county requesting the exemption.~~

- 2. ~~Parking Measures. Subject to the provisions of Title 2, cities or counties may request an exception to parking requirements. Metro may consider a city or county government request to allow areas designated as Zone A to be subject to Zone B requirements upon the city or county establishing that, for the area in question:~~
  - a. ~~There are no existing plans to provide transit service with 20-minute or lower peak frequencies; and~~
  - b. ~~There are no adjacent neighborhoods close enough to generate sufficient pedestrian activity; and~~
  - c. ~~There are no significant pedestrian activity within the present business district; and~~
  - d. ~~That it will be feasible for the excess parking to be converted to the development of housing, commerce or industry in the future.~~

~~The burden of proof for a variance shall increase based on the quality and timing of transit service. The existence of transit service or plans for the provision of~~

~~transit service near a 20-minute or lower peak frequency shall establish a higher burden to establish the need for the exception.~~

- ~~3. Water Quality and Flood Management Areas. Cities and counties may request areas to be added or deleted from the Metro Water Quality and Flood Management Area Map based on a finding that the area identified on the map is not a Water Quality and Flood Management Area or a Fish and Wildlife Habitat Conservation Area, as defined in this functional plan. Areas may also be deleted from the map if the city or county can prove that its deletion and the cumulative impact of all deletions in its jurisdiction will have minimal impact on the water quality of the stream and on flood effects. Findings shall be supported by evidence, including the results of field investigations.~~
- ~~4. Retail in Employment and Industrial Areas. Subject to the provisions of Title 4, cities and counties may request a change in the Employment and Industrial Areas Map. Metro may consider a city or county request to modify an Employment Area to exempt existing or locally designated retail areas, unacknowledged by the date of this Functional Plan, where they can demonstrate that
  - ~~a. The Employment and Industrial Areas Map included lands within Employment Areas having a substantially developed existing retail area or a locally designated retail area pursuant to a comprehensive plan acknowledged by the date of this Functional Plan which allowed retail uses larger than 60,000 square feet of gross leasable area per building or business; or~~
  - ~~b. The requested retail area in an Employment Area has been found to be appropriate for an exception based upon current or projected needs within the jurisdiction and the city or county can demonstrate that adequate transportation facilities capacity exists for that retail area.~~~~
- ~~5. Regional Accessibility. Cities or counties may request an exception to the requirements of Title 6, Regional Accessibility, where they can show that a street system or connection is not feasible for reasons of topographic constraints or natural or built environment considerations. If Metro the Executive Officer concludes that the proposed amendment does not comply with the functional plan, Metro the Executive Officer shall advise the city or county that it may (1) revise the ordinance proposed amendment as recommended in the Metro Executive Officer's analysis; (2) seek an extension of time, pursuant to section 3.07.850, to bring the proposed amendment into compliance with the functional plan; or (3) seek review of the noncompliance by MPAC and the Metro Council, pursuant to sections 3.07.830 and 3.07.840.~~

- ~~C. The Metro Council may grant an extension to time lines under this functional plan if the city or county has demonstrated substantial progress or proof of good cause for failing to complete the requirements on time. Requests for extensions of the compliance~~

requirement in section 3.07.810 of this title should accompany the compliance transmittal required in section 3.07.820(A) of this title. If Metro concludes that the proposed amendment complies with the functional plan, any person who received a copy of Metro's analysis may seek review of the conclusion by the Metro Council, pursuant to section 3.07.840.

- D. ~~In addition to the above demonstrations, any city or county request or determination that functional plan policies should not or cannot be incorporated into comprehensive plans shall be subject to the conflict resolution and mediation processes included within the RUGGO, Goal I, provisions prior to the final adoption of inconsistent policies or actions. Final land use decisions of cities and counties inconsistent with functional plan requirements are subject to immediate appeal for violation of the functional plan.~~
- 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. Conflicting interpretations of legal requirements may be the subject of a compliance interpretation and conflict resolution under RUGGO Objective 5.3.~~
- F. ~~On or before six months prior to the 18 month deadline established in section 3.07.810(B), cities and counties shall schedule their first hearing on the ordinance to implement sections 3.07.310-340 of Title 3, or a hearing on implementation of Title 3, if no code amendments are proposed to comply with Title 3, and transmit notice of that hearing and a copy of the proposed ordinance to Metro at least 30 days prior to the hearing.~~
1. ~~Metro shall prepare and mail a notice of the city or county hearing to each affected property owner.~~
  2. ~~The Metro notice shall include the date, time, location and the title and number of any local ordinance; an explanation of the general requirements of Title 3, and an explanation of the implementation in the local ordinance, if no code amendments are proposed to comply with Title 3.~~
  3. ~~Metro shall review any amendments to Title 3 proposed by cities and counties based on the testimony of property owners.~~
- G. ~~On or before six months prior to the 18 month deadline established in section 3.07.810(B), cities and counties shall transmit to Metro the following:~~
1. ~~An evaluation of their local plans, including any relevant existing regulations and the amendments necessary to comply with Title 3 of this functional plan;~~
  2. ~~Copies of all applicable comprehensive plans, maps and implementing ordinances as proposed to be amended;~~

3. Findings that explain how the amended city and county comprehensive plans, maps and implementing ordinances will achieve the standards required in Title 3 of this functional plan.

In developing the evaluation, plan and ordinance amendments and findings, cities and counties shall address the Metro 2040 Growth Concept, and explain how the proposed amendments implement the Growth Concept.

3.07.830 Any Comprehensive Plan Change Must Comply Review of NonCompliance by Metropolitan Policy Advisory Committee

- A. After February 19, 1997, any amendment of a comprehensive plan or implementing ordinance shall be consistent with the requirements of this functional plan. A city or county may seek review of Metro's the Executive Officer's conclusion of noncompliance under section 3.07.820B by MPAC and the Metro Council. The city or county shall file an application for MPAC review on a form provided for that purpose by Metro the Executive Officer. Upon receipt of a completed application, Metro the Executive Officer shall set the matter on the MPAC agenda and notify those persons who request notification of MPAC reviews.
- B. The Executive Officer may seek review of city or county compliance with a functional plan requirement by MPAC and the Metro Council after the deadline for compliance with that requirement. The Executive Officer shall file an application for MPAC review on the form described in subsection A and shall set the matter on the MPAC agenda. The Executive Officer shall notify the city or county and those persons who request notification of MPAC reviews.
- BC. In addition to any transmittal required by section 3.07.820 of this title, in the process of amending any comprehensive plan provision or implementing ordinance, a city or county shall give notice to Metro as required herein. At the same time any notice is given to the director of the Department of Land Conservation and Development pursuant to ORS 197.610 or 197.615, a copy shall be sent to Metro's Executive Officer. In addition to the content of the notice required by ORS 197.610 or 197.615, the notice furnished to Metro should include an analysis demonstrating that the proposed amendments are consistent with this functional plan, if available. If the analysis demonstrating consistency with the functional plan is not included in the initial notice, a report containing the analysis shall be delivered to Metro no later than fourteen (14) days before the city or county conducts a final hearing on the proposed amendment. MPAC shall may hold a public hearing on the noncompliance issue of compliance. If MPAC holds a hearing, Aany person may testify at the hearing. MPAC shall attempt to resolve any apparent or potential inconsistency between the proposed amendment and the functional plan. MPAC shall prepare a report to the Metro Council that sets forth reasons for the inconsistency. Metro The Executive Officer shall send a copy of the report to the city or county and those persons who request a copy.

- C. ~~If no notice of intent to appeal is filed within the 21-day period set out in ORS 197.830(8), an amendment to a city or county comprehensive plan or land use regulation to implement this functional plan shall be deemed to be in compliance with this functional plan. If the city or county amendment is appealed pursuant to ORS 197.830 to 197.855 and is ultimately affirmed on appeal, the amendment shall be deemed to be in compliance with the functional plan upon the date that the appellate decision becomes final. This functional plan shall not apply to land use decisions made in conformance with city or county comprehensive plans or land use regulations deemed in compliance with this functional plan pursuant to this subsection.~~
- D. ~~An amendment to a city or county comprehensive plan or land use regulation shall not be deemed in compliance with this functional plan as provided in subsection C of this section unless notice has been given to Metro as provided in subsection B of this section.~~

3.07.840 Compliance Plan Assistance Review by Metro Council

- A. Any city or county may request of Metro a compliance plan which contains the following:
1. ~~An analysis of the city or county comprehensive plan and implementing ordinances, and what sections require change to comply with the performance standards.~~
  2. ~~Specific amendments that would bring the city or county into compliance with the requirements of Titles 1 to 8, if necessary.~~
- Upon receipt of a report from MPAC under section 3.07.830, ~~Metro~~the Executive Officer shall set the matter for a public hearing before the Metro Council and notify the city or county and those persons who request notification of Council reviews.
- B. ~~Cities and counties must make the request within four months of the effective date of this ordinance. The request shall be signed by the highest elected official of the jurisdiction. A person who qualifies under sections 3.07.820A may seek review by the Metro Council of an ~~Metro~~Executive Officer conclusion on compliance of a proposed amendment with the functional plan. The person shall file an application for Council review on a form provided for that purpose by ~~Metro~~the Executive Officer. ~~Metro~~The Executive Officer shall set the matter for a public hearing before the Council and notify the city or county, the Department of Land Conservation and Development and those persons who request notification of Council reviews.~~
- C. ~~Metro shall deliver a compliance plan within four months of the request date. The compliance plan shall be a recommendation from the Executive Officer. The compliance plan shall be filed with the Metro Council two weeks before it is transmitted, for possible review and comment. The Council shall hold a public hearing on the matter within 90 days after receipt of a report from MPAC under subsection A or within 90 days after the filing of a complete application under subsection B. Any person may testify at the hearing. The Council shall issue an order of compliance or noncompliance with its~~

analysis and conclusion and send a copy to the city or county, MPAC, the Department of Land Conservation and Development and those persons who participated in the proceeding.

- D. If the Council finds that the proposed amendment does not comply with the functional plan, the Council shall advise the city or county that it may (1) revise and adopt the proposed amendment as recommended in the Council order; (2) seek an extension of time, pursuant to section 3.07.850, to bring the proposed amendment into compliance with the functional plan; or (3) seek an exception from the functional plan, pursuant to section 3.07.860. If the Council determines that an amendment of the functional plan is necessary to resolve the noncompliance, the Council shall include that determination in its order.
- E. The city or county or a person who participated in the proceeding may seek review of the Council's order as a land use decision described in ORS 197.015(10)(a)(A).

3.07.850 Citizen Involvement Process Extension of Compliance Deadline

- A. Any citizen may contact Metro staff or the Metro Executive Officer or appear before the Metro Council to raise issues regarding local functional plan compliance, to request Metro participation in the local process, or to request the Metro Council appeal a local enactment for which notice is required to be given to Metro pursuant to section 3.07.830 of Title 8. Such contact may be either oral or in writing and may be made at any time during or at the conclusion of any city or county proceeding to amend a comprehensive plan or implementing ordinance for which notice is required to be given to Metro pursuant to section 3.07.830 of Title 8. All such requests to participate or appeal made in writing shall be forwarded to the Metro Council. A city or county may seek an extension of time for compliance with the functional plan. The city or county shall file an application for an extension on a form provided for that purpose by Metro. Upon receipt of an application, Metro shall notify the Metro Council, MPAC, the Department of Land Conservation and Development and those persons who request notification of requests for extensions. A city or county may seek an extension of time for compliance with the functional plan. The city or county shall file an application for an extension on a form provided for that purpose by Metro the Executive Officer. Upon receipt of an application, Metro the Executive Officer shall set the matter for a public hearing before the Metro Council and shall notify the city or county, MPAC, the Department of Land Conservation and Development and those persons who request notification of applications for extensions
- B. In addition to considering requests as described in (A) above, the Metro Council shall at every regularly scheduled Council meeting provide an opportunity for citizens to address the Council on any matter related to this functional plan. Metro may grant an extension of time if it finds that (1) the city or county is making progress toward accomplishment of its compliance work program, or (2) there is good cause for failure to meet the deadline for compliance. Metro shall issue an order with its conclusion and analysis and send a copy to the city or county, the Metro Council, MPAC, the Department of Land

Conservation and Development and those persons who have requested a copy of the order. The Metro Council shall hold a public hearing to consider the extension. Any person may testify at the hearing. The Council may grant an extension if it finds that: (1) the city or county is making progress toward accomplishment of its compliance work program; or (2) there is good cause for failure to meet the deadline for compliance.

- C. Cities, counties and Metro shall comply with their own adopted and acknowledged Citizen Involvement Requirements (Citizen Involvement) in all decisions, determinations and actions taken to implement and comply with this functional plan. The Executive Officer shall at least annually publish and distribute a Citizen Involvement fact sheet after consultation with the Metro Committee for Citizen Involvement, that fully describes all opportunities for citizen involvement in Metro's Regional Growth Management Process as well as the implementation and enforcement of this functional plan. Metro may establish terms and conditions for the extension in order to ensure that compliance is achieved in a timely and orderly fashion and that land use decisions made by the city or county during the extension do not undermine the ability of the city or county to achieve the purposes of the functional plan requirement or of the region to achieve the 2040 Growth Concept. Metro shall incorporate the terms and conditions into its order on the extension. Metro shall not grant more than two extensions of time to a city or a county. Metro shall not grant an extension of time for more than one year. The Metro Council may establish terms and conditions for the extension in order to ensure that compliance is achieved in a timely and orderly fashion and that land use decisions made by the city or county during the extension do not undermine the ability of the city or county to achieve the purposes of the functional plan requirement or of the region to achieve the 2040 Growth Concept. A term or condition must relate to the requirement of the functional plan to which the Council grants the exception extension. The Council shall incorporate the terms and conditions into its order on the extension. The Council shall not grant more than two extensions of time to a city or a county. The Council shall not grant an extension of time for more than one year.
- D. The city or county or any person who received a copy of the order may seek review of the order by the Metro Council by filing an application for review on a form provided for that purpose by Metro. Upon receipt of an application, Metro shall notify the city or county and those persons who have requested a copy of the order. The Metro Council shall issue an order with its conclusion and analysis and send a copy to the city or county, MPAC, the Department of Land Conservation and Development and those persons who participated in the proceeding. The city or county or a person who participated in the proceeding may seek review of the Council's order as a land use decision described in ORS 197.015(10)(a)(A).
- E. If an application for review of an extension order is filed, the Metro Council shall hold a public hearing to consider the extension. Any person may testify at the hearing. The Council shall issue an order with its conclusion and analysis and send a copy to the city or county, the applicant for review, MPAC, the Department of Land Conservation and Development and those persons who participated in the Council proceeding. The city or

county or a person who participated in the proceeding may seek review of the Council's order as a land use decision described in ORS 197.015(10)(a)(A).

3.07.860 EnforcementException from Compliance

- A. Prior to a final decision to amend a comprehensive plan or implementing ordinance, a city or county determination that a requirement of this functional plan should not or cannot be implemented may be subject to a compliance interpretation and the conflict resolution process provided for in RUGGO, Goal I at the request of the city or county. A city or county may seek an exception from compliance with a functional plan requirement by filing an application on a form provided for that purpose by Metrothe Executive Officer. Upon receipt of an application, Metrothe Executive Officer shall set the matter for a public hearing before the Metro Council and shall notify MPAC, the Department of Land Conservation and Development and those persons who request notification of requests for exceptions.
- B. City or county actions to amend a comprehensive plan or implementing ordinance in violation of this functional plan at any time after the effective date of this ordinance shall be subject to appeal or other legal action for violation of a regional functional plan requirement, including but not limited to reduction of regional transportation funding and funding priorities. The Metro Council shall hold a public hearing to consider the exception. The Council may grant an exception if it finds: (1) it is not possible to achieve the requirement either because (a) topographic or other physical constraints render achievement impracticable, or (b) an existing development pattern allows no practicable opportunity to make progress toward achievement of the requirement; (2) this exception and likely similar exceptions will not render the objective of the requirement unachievable region-wide; (3) the exception will not reduce the ability of another city or county to comply with the requirement; and (4) the city or county has adopted other measures more appropriate for the city or county to achieve the intended result of the requirement.
- C. Failure to amend comprehensive plans and implementing ordinances as required by section 3.07.810 of this title shall be subject to any and all enforcement actions authorized by law. The Council may establish terms and conditions for the exception in order to ensure that it does not undermine the ability of the region to achieve the 2040 Growth Concept. The Council shall incorporate the terms and conditions into its order on the exception.
- D. The Council shall issue an order with its conclusion and analysis and send a copy to the city or county, MPAC, the Department of Land Conservation and those persons who have requested a copy of the order. The city or county or a person who participated in the proceeding may seek review of the Council's order as a land use decision described in ORS 197.015(10)(a)(A).



Add the following sections 3.07.870, 3.07.880 and 3.07.890 to Title 8 of the Urban Growth Management Functional Plan:

3.07.870 Enforcement of Functional Plan

- A. A city or county that proposes to amend its comprehensive plan or land use regulations shall notify ~~Metro~~**The Executive Officer** at least 45 days prior to the first public hearing held by the city or county to consider the amendment. The city or county shall submit to ~~Metro~~**The Executive Officer** an analysis of compliance of the proposed amendment with applicable functional plan requirements at least one week prior to the public hearing.
- B. The Metro Council may initiate enforcement proceedings under this section if a city or county has failed to meet a deadline in an extension granted pursuant to section 3.07.850 or if it has good cause to believe that a city or county is engaging in a pattern or a practice of decision-making that is inconsistent with the functional plan or local ordinances adopted by the city or county to implement the plan, or with the terms or conditions in an extension. The Council may consider whether to initiate enforcement proceedings upon the request of Metro or a councilor.
- C. If the Metro Council concludes that there is good cause pursuant to subsection B of this section, ~~Metro~~**The Executive Officer** shall set the matter for a public hearing before the Council within 90 days of its conclusion. ~~Metro~~**The Executive Officer** shall publish notice of the hearing in a newspaper of general circulation in the city or county and send notice to the city or county, MPAC, the Department of Land Conservation and Development and any person who requests a copy of such notices.
- D. ~~Metro~~**The Executive Officer** shall prepare a report and recommendation on the pattern or practice, with a proposed order, for consideration by the Metro Council. ~~Metro~~**The Executive Officer** shall publish the report at least 14 days prior to the public hearing and send a copy to the city or county and any person who requests a copy.
- E. If the Metro Council concludes that the city or county has not engaged in a pattern or practice of decision-making that that is inconsistent with the functional plan or local ordinances adopted by the city or county to implement the plan or with terms or conditions of an extension granted pursuant to section 3.07.850, the Council shall enter an order dismissing the matter. If the Council concludes that the city or county has engaged in such a pattern or practice of decision-making, the Council shall issue an order that sets forth the noncompliance and directs changes in the city or county ordinances necessary to remedy the pattern or practice. The Council shall issue its order, with analysis and conclusions, not later than 30 days following the public hearing on the matter. ~~Metro~~**The Executive Officer** shall send a copy of the order to the city or county, MPAC, the Department of Land Conservation and Development and any person who requests a copy.

3.07.880 Compliance Report and Certification

3.07.880 Compliance Report and Certification

- A. ~~[Metro]~~ The Executive Officer shall submit a report ~~[annually]~~ to the Metro Council by December 31 of each calendar year on compliance by cities and counties with the Urban Growth Management Function Plan ~~[, including the implementation of this chapter and its effectiveness in helping achieve the 2040 Growth Concept. [Metro] The Executive Officer shall make its report to the Metro Council by December 31 of each calendar years]~~. The report shall include an accounting of compliance with each requirement of the functional plan by each city and county in the district. The report shall explain each instance of noncompliance and recommend action that would bring the city or county into compliance with the functional plan requirement. The report shall also include an evaluation of the implementation of this chapter and its effectiveness in helping achieve the 2040 Growth Concept.
- B. Upon receipt of the compliance report, the Metro Council shall set a public hearing for the purpose of receiving testimony on the report and determining whether a city or county has fully complied with the requirements of the functional plan. ~~[Metro] The Executive Officer shall notify all cities and counties, the Department of Land Conservation and Development and any person who requests notification of the hearing of the date, time and place of the hearing. The notification shall specify that it is not the purpose of the hearing to determine whether previous amendments of comprehensive plans or land use regulations made by a city or county comply with functional plan requirements if those amendments already comply [by operation of law (because no appeal of the amendment was made to the Land Use Board of Appeals or because any appeal has been finally decided)] pursuant to subsections F and G of section 3.07.810 and that no testimony on such previous amendments will be heard. Any person may testify, orally or in writing, at the public hearing.~~
- C. Following the public hearing, the Metro Council shall enter a compliance order. The order shall set forth, based upon the ~~[Metro] Executive Officer's~~ report submitted pursuant to subsection A and upon testimony at the public hearing pursuant to subsection B, whether each city and county complies with each functional plan requirement. The order may rely upon the ~~[Metro]~~ report for its findings of fact and conclusion of compliance or noncompliance unless the Council receives testimony during its public hearing that takes exception to the report on the question of compliance or noncompliance with a functional plan requirement. If the Council receives such testimony, the order shall include supplemental findings and conclusions to address the testimony. ~~[Metro] The Executive Officer shall send a copy of its order to cities and counties and any person who testifies, orally or in writing, at the public hearing.~~
- D. A city or county or a person who testified, orally or in writing, at the public hearing, may seek review of the Council's order as a land use decision described in ORS 197.015(10)(a)(A).

3.07.890 Citizen Involvement in Compliance Review

~~Metro shall facilitate citizen involvement in compliance review. Metro shall provide widespread public notice of Metro review of city and county comprehensive plans and land use regulations for compliance with functional plan requirements. Metro shall maintain a~~

~~list of persons who request notice of reviews and copies of reports and orders and shall send requested documents as provided in this chapter. Metro shall provide an opportunity at regular Council meeting for citizens to bring matters of compliance before the Council."~~

- A. Any citizen may contact Metro staff or the Executive Officer or appear before the Metro Council to raise issues regarding local functional plan compliance, to request Executive Officer participation in the local process, or to request the Metro Council to appeal a local enactment for which notice is required to be given to the Executive Officer pursuant to section 3.07.870A. Such contact may be oral or in writing and may be made at any time during or at the conclusion of any city or county proceeding to amend a comprehensive plan or implementing ordinance for which notice is required to be given to the Executive Officer. All such requests to participate or appeal made in writing shall be forwarded to the Metro Council.
- B. In addition to considering requests as described in A above, the Metro Council shall at every regularly scheduled Council meeting provide an opportunity for citizens to address the Council on any matter related to this functional plan.
- C. Cities, counties and the Metro Council shall comply with their own adopted and acknowledged Citizen Involvement Requirements (Citizen Involvement) in all decisions, determinations and actions taken to implement and comply with this functional plan. The Executive Officer shall at least annually publish and distribute a Citizen Involvement fact sheet, after consultation with the Metro Committee for Citizen Involvement, that fully describes all opportunities for citizen involvement in Metro's Regional Growth Management Process as well as the implementation and enforcement of this functional plan.

Amend section 7.5 of the Regional Framework Plan Ordinance 97-715B as follows:

### **7.5 Functional Plans**

Functional plans are limited purpose plans, consistent with this Framework Plan, which address designated areas and activities of metropolitan concern. Functional plans are established in state law as a way Metro may recommend or require changes in local plans. This Framework Plan uses functional plans as the identified vehicle for requiring changes in local plans in order to achieve consistence and compliance with this Framework Plan.

Those functional plans or functional plan provisions containing recommendations for comprehensive planning by cities and counties may not be final land use decisions. If a provision in a functional plan, or an action implementing a functional plan require changes in an adopted and acknowledged comprehensive plan, then the adoption of a provision or action will be a final land use decision. If a provision in a functional plan, or Metro action implementing a functional plan require changes in an adopted and acknowledged comprehensive plan, then that provision or action will be adopted by Metro as a final land use action required to be consistent with statewide planning goals. In addition, Regional Framework Plan components will be adopted as functional plans if they contain recommendations or requirements for changes in comprehensive plans. These functional plans, which are adopted as part of the Regional Framework Plan, will be submitted along with other parts of the Regional Framework Plan to LCDC for acknowledgment of their compliance with the statewide planning goals. Because functional plans are the way Metro recommends or requires local plan changes, most Regional Framework Plan components will probably be functional plans. Until Regional Framework Plan components are adopted, existing or new functional plans will continue to recommend or require changes in comprehensive plans.

- Existing Functional Plans. Metro shall continue to develop, amend and implement, with the assistance of cities, counties, special districts and the state, statutory-required functional plans for air, water and transportation, as directed by ORS 268.390(1) and for land use planning aspects of solid waste management as mandated by ORS Ch. 459.
- New Functional Plans. New functional plans shall be proposed from one of two sources:
  - MPAC may recommend that the Metro Council designate an area or activity of metropolitan concern for which a functional plan should be prepared; or
  - the Metro Council may propose the preparation of a functional plan to designate an area or activity of metropolitan concern and refer that proposal to MPAC.

The matters required by the Charter to be addressed in the Regional Framework Plan shall constitute sufficient factual reasons for the development of a functional plan under ORS 268.390. However, the actual adoption of a functional plan will be subject to the procedures specified above.

Upon the Metro Council adopting factual reasons for the development of a new functional plan, MPAC shall participate in the preparation of the plan, consistent with these goals and objectives and the reasons cited by the Metro Council. After preparation of the plan and seeking broad public and local government consensus, using existing citizen involvement processes established

by cities, counties and Metro, MPAC shall review the plan and make a recommendation to the Metro Council. The Metro Council may act to resolve conflicts or problems impeding the development of a new functional plan and may complete the plan if MPAC is unable to complete its review in a timely manner.

The Metro Council shall hold a public hearing on the proposed plan and afterwards shall:

- adopt the proposed functional plan; or
- refer the proposed functional plan to MPAC in order to consider amendments to the proposed plan prior to adoption; or
- amend and adopt the proposed functional plan; or
- reject the proposed functional plan.

The proposed functional plan shall be adopted by ordinance and shall include findings of consistency with these goals and objectives.

- **Functional Plan Implementation and Conflict Resolution.** Adopted functional plans shall be regionally coordinated policies, facilities and/or approaches to addressing a designated area or activity of metropolitan concern, to be considered by cities and counties for incorporation in their comprehensive land use plans. If a city or county determines that a functional plan requirement should not or cannot be incorporated into its comprehensive plan, then Metro shall review any apparent inconsistencies by the following process:
  - Metro and affected local governments shall notify each other of apparent or potential comprehensive plan inconsistencies.
  - After Metro staff review, MPAC shall consult the affected jurisdictions and attempt to resolve any apparent or potential inconsistencies.
  - MPAC shall conduct a public hearing and make a report to the Metro Council regarding instances and reasons why a city or county has not adopted changes consistent with requirements in a regional functional plan.
  - The Metro Council shall review the MPAC report and hold a public hearing on any unresolved issues. The Council may decide to:
    - amend the adopted regional functional plan; or
    - initiate proceedings to require a comprehensive plan change; or
    - find there is no inconsistency between the comprehensive plan(s) and the functional plan; or
    - grant an exception to the functional plan requirement.

## STAFF REPORT

CONSIDERATION OF ORDINANCE 01-925AB, FOR THE PURPOSE OF AMENDING METRO CODE TITLE 8 (COMPLIANCE PROCEDURES) AND TITLE 1 (REQUIREMENTS FOR HOUSING AND EMPLOYMENT ACOMMODATION) OF THE URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN AND SECTION 7.5 OF THE REGIONAL FRAMEWORK PLAN ORDINANCE 97-715B TO REVISE THE PROCESS FOR ADJUDICATION AND DETERMINATION OF CONSISTENCY OF LOCAL COMPREHENSIVE PLANS WITH THE URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN, AND TO REVISE THE PROCESS AND CRITERIA FOR EXCEPTIONS FROM AND EXTENSIONS TO COMPLY WITH THE FUNCTIONAL PLAN; AND DECLARING AN EMERGENCY

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Date: November 1, 2001

Prepared by: Michael Morrissey

**Proposed Action:** Ordinance 01-925B amends Metro code and the regional Framework Plan to provide consistency and clarity to Metro's capacity to assess local jurisdictions compliance with the Urban Growth Management Functional Plan and to enhance Metro's options for ensuring that compliance.

**Factual Background and Analysis:** The Urban Growth Management Functional Plan for early adoption of the 2040 Growth Concept was adopted in November of 1996, by ordinance. A deadline for compliance with the titles of the functional plan was established as February 1999, and jurisdictions were required to report progress on compliance, six months prior to that deadline. A process was established to allow for Council approval of time extensions for jurisdictions to complete their work, and also allowed for exception requests. Council has granted extensions to local jurisdictions on several occasions.

At this time, local compliance with the several titles of the functional plan is estimated to be over 85%. Title 1 capacity for dwelling units is estimated to be more than 93%, and for jobs at over 100% based on compliance to-date. The compliance work is important to Metro in that it indicates progress in implementing the 2040 Growth Concept generally, and assists in meeting requirements of periodic review specifically.

The council is considering a last round of extension requests extending into 2002, and finds that clarifications to metro code are required to clarify the extension and exception process. Specifically the code does not currently authorize or provide guidance for conditions Metro may wish to attach to extensions. This is now addressed in Exhibit A, section 3.07.850. Sub-section .850 also allows for a maximum of two extensions, of no more than 1 year each.

The recommended code amendments revise the criteria for exception requests, and allow for the establishment of terms or conditions to an exception. Exhibit C to ordinance 01-925B amends the Regional Framework Plan by adding the granting of an exception to a functional plan

requirement, to the options available to the council in the event of a unresolved issue with a local jurisdiction with regard to compliance to the Functional Plan.

Certain confusing or redundant sections of the code have been clarified throughout, specifically with regard to criteria for exceptions. Further, the current code does not address application of a functional plan requirement to local land use decisions. This is now addressed in exhibit A section 3.07.810.

**Existing Law:** Ordinance 01-925B amends Metro Code sections 3.07.810 to 3.07.860, 307.870, 307.880 and 307.890 to Title 8 of the Functional Plan, Compliance Procedures. Section 7.5 of the Regional Framework Plan is also amended.

**Budget Impact:** There is no budget impact associated with passage of this ordinance.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF FOR THE PURPOSE OF )           ORDINANCE NO. 01-925  
AMENDING METRO CODE TITLE 8 (COMPLIANCE )  
PROCEDURES) AND TITLE 1 (REQUIREMENTS FOR )  
HOUSING AND EMPLOYMENT ACCOMMODATION) )           Introduced by Community  
OF THE URBAN ) GROWTH MANAGEMENT )                           Planning Committee  
FUNCTIONAL PLAN AND SECTION 7.5 OF THE )  
REGIONAL FRAMEWORK PLAN ORDINANCE 97- )  
715B TO REVISE THE PROCESS FOR ADJUDICATION )  
AND DETERMINATION OF CONSISTENCY OF )  
LOCAL COMPREHENSIVE PLANS WITH THE URBAN )  
GROWTH MANAGEMENT FUNCTIONAL PLAN, AND )  
TO REVISE THE PROCESSES AND CRITERIA FOR )  
EXCEPTIONS FROM AND EXTENSIONS TO COMPLY )  
WITH THE FUNCTIONAL PLAN )

WHEREAS, the success of the 2040 Growth Concept depends upon local government compliance with the Urban Growth Management Functional Plan; and

WHEREAS, Chapter II, Section 5(2)(e) of the Metro Charter requires, and ORS 268.390(5) authorizes, Metro to adopt by ordinance a program for determining the consistency of local comprehensive plans with the Regional Framework Plan; and

WHEREAS, Metro’s current code provisions for determining consistency of local plans with the Urban Growth Management Functional Plan do not provide Metro with all of the tools necessary to ensure overall compliance by cities and counties with the plan and accomplishment of the 2040 Growth Concept; and

WHEREAS, Objective 5.3 of the Regional Urban Growth Goals and Objectives (“RUGGO”), which provides a process for resolution of inconsistencies between local comprehensive plans and functional plan requirements, was incorporated with all of the RUGGO into the Regional Framework Plan by Ordinance 97-715B; now, therefore,



THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Sections 3.07.810 to 3.07.860 of Title 8, Compliance Procedures, of the Urban Growth Management Functional Plan are hereby amended as indicated in Exhibit "A", attached and incorporated into this ordinance, in order to provide Metro with a full range of tools to ensure overall local government compliance with the functional plan and to consolidate compliance procedures into a single title.
2. Sections 3.07.870 to 3.07.890, as indicated in Exhibit "B", attached and incorporated into this ordinance, are hereby added to Title 8, Compliance Procedures, of the Urban Growth Management Functional Plan in order to provide Metro with a full range of tools to ensure overall local government compliance with the functional plan and to consolidate compliance procedures into a single title.
3. Section 7.5 of the Regional Framework Plan Ordinance 97-715B is hereby amended as indicated in Exhibit "C", attached and incorporated into this ordinance, in order to allow Metro to grant exceptions to the Urban Growth Management Functional Plan.
4. Section 3.01.160(E) of Title 1 (Requirements for Housing and Employment Accommodation) of the Urban Growth Management Functional Plan is hereby repealed in order to consolidate compliance procedures into Title 8.

ADOPTED by the Metro Council this \_\_\_\_\_ day of November, 2001.

\_\_\_\_\_  
David Bragdon, Presiding Officer

ATTEST:

Approved as to Form:

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
Daniel B. Cooper, General Counsel

i:\7.4.3 701-925.001  
OGC/RPB/kvw (11/01/01)

Council \NDepts\2001 Legislation\01-925

Amend sections 3.07.810 to 3.07.860 of Title 8 of the Urban Growth Management Functional Plan as follows:

3.07.810 Compliance Required with the Functional Plan

- A. All cities and counties within the Metro boundary are hereby required to amend their comprehensive plans and implementing ordinances to comply with the provisions of this functional plan within twenty four months of the effective date of this ordinance. Metro recommends the adoption of the policies that affect land consumption as soon as possible. The purpose of this section is to establish a process for determining whether an amendment to a comprehensive plan or land use regulation intended by a city or county to carry out a requirement of the Urban Growth Management Functional Plan complies with the plan. The Council intends the process to be efficient and cost-effective for local governments and Metro and to provide an opportunity for Metro to interpret the requirements of its functional plan.
- B. Notwithstanding subsection A of this section, cities and counties are required to amend their comprehensive plans and implementing ordinances to comply with sections 3.07.310-.340 of Title 3 by January 2000. Cities and counties shall amend their comprehensive plans and land use regulations to comply with the functional plan within two years after its acknowledgement by the Land Conservation and Development Commission, or after such other date specified in the functional plan. Metro shall notify cities and counties of the compliance date.
- C. Notwithstanding subsection A of this section, cities and counties shall amend their comprehensive plans and land use regulations to comply with sections 3.07.310 to 3.07.340 of Title 3 of the Urban Growth Management Functional Plan by January 31, 2000.
- D. Cities and counties that amend their comprehensive plans or land use regulations after the effective date of the functional plan shall make the amendments in compliance with the functional plan. Metro shall notify cities and counties of the effective date.
- E. Cities and counties whose comprehensive plans and land use regulations do not yet comply with the functional plan shall, after one year following acknowledgement of the plan by the Land Conservation and Development, make land use decisions consistent with the plan. Metro shall notify cities and counties of the acknowledgement date.

3.07.820 Compliance Procedures Review by Metro

- A. On or before six months prior to the 24 month deadline established in section 3.07.810(A), cities and counties shall transmit to Metro the following:
  - 1. An evaluation of their local plans, including public facility capacities and the amendments necessary to comply with this functional plan;

~~2. Copies of all applicable comprehensive plans and implementing ordinances and public facility plans, as proposed to be amended;~~

~~3. Findings that explain how the amended city and county comprehensive plans will achieve the standards required in Titles 1 through 6 of this functional plan.~~

~~In developing the evaluation, plan and ordinance amendments and findings, cities and counties shall address the Metro 2040 Growth Concept, and explain how the proposed amendments implement the Growth Concept. Prior to adoption of an amendment to a comprehensive plan or land use regulation intended to implement the functional plan, a city or county shall submit the proposed amendment to Metro. Metro shall review the proposed amendment for compliance with the plan and submit copies of its analysis and conclusion to the city or county and those persons who have requested a copy. Metro shall, where appropriate, include a recommendation with specific revisions to the proposed amendment that would bring it into compliance with functional plan requirements.~~

B. ~~Exceptions to any of the requirements in the above titles may be granted by the Metro Council, as provided for in the Regional Urban Growth Goals and Objectives, Section 5.3, after MPAC review. Requests for an exception should include a city or county submittal as specified in this section. The Metro Council will make all final decisions for the grant of any requested exception.~~

~~1. Population and Capacity. An exception to the requirement contained in Table 3.07-1 of Title 1 that the target capacities shall be met or exceeded may be granted based on a submittal which includes, but is not limited to, the following:~~

~~a. A demonstration of substantial evidence of the economic infeasibility to provide sanitary sewer, water, stormwater or transportation facilities to an area or areas; or~~

~~b. A demonstration that the city or county is unable to meet the target capacities listed in Table 3.07-1 because substantial areas have prior commitments to development at densities inconsistent with Metro target; or~~

~~c. A demonstration that the dwelling unit and job capacities cannot be accommodated at densities or locations the market or assisted programs will likely build during the planning period.~~

~~As part of any request for exception under this subsection, a city or county shall also submit an estimate of the amount of dwelling units or jobs included in the capacity listed in Table 3.07-1 that cannot be accommodated; and a recommendation which identifies land that would provide for the unaccommodated capacity located outside the urban growth boundary and near or adjacent to the city or county.~~

~~In reviewing any request for exception based on the financial feasibility of providing public services, Metro, along with cities and counties, shall estimate the cost of providing necessary public services and compare those with the estimated costs submitted by the city or county requesting the exemption.~~

~~2. Parking Measures. Subject to the provisions of Title 2, cities or counties may request an exception to parking requirements. Metro may consider a city or county government request to allow areas designated as Zone A to be subject to Zone B requirements upon the city or county establishing that, for the area in question:~~

- ~~a. There are no existing plans to provide transit service with 20-minute or lower peak frequencies; and~~
- ~~b. There are no adjacent neighborhoods close enough to generate sufficient pedestrian activity; and~~
- ~~c. There are no significant pedestrian activity within the present business district; and~~
- ~~d. That it will be feasible for the excess parking to be converted to the development of housing, commerce or industry in the future.~~

~~The burden of proof for a variance shall increase based on the quality and timing of transit service. The existence of transit service or plans for the provision of transit service near a 20-minute or lower peak frequency shall establish a higher burden to establish the need for the exception.~~

~~3. Water Quality and Flood Management Areas. Cities and counties may request areas to be added or deleted from the Metro Water Quality and Flood Management Area Map based on a finding that the area identified on the map is not a Water Quality and Flood Management Area or a Fish and Wildlife Habitat Conservation Area, as defined in this functional plan. Areas may also be deleted from the map if the city or county can prove that its deletion and the cumulative impact of all deletions in its jurisdiction will have minimal impact on the water quality of the stream and on flood effects. Findings shall be supported by evidence, including the results of field investigations.~~

~~4. Retail in Employment and Industrial Areas. Subject to the provisions of Title 4, cities and counties may request a change in the Employment and Industrial Areas Map. Metro may consider a city or county request to modify an Employment Area to exempt existing or locally designated retail areas, unacknowledged by the date of this Functional Plan, where they can demonstrate that~~

- a. ~~The Employment and Industrial Areas Map included lands within Employment Areas having a substantially developed existing retail area or a locally designated retail area pursuant to a comprehensive plan acknowledged by the date of this Functional Plan which allowed retail uses larger than 60,000 square feet of gross leasable area per building or business; or~~
- b. ~~The requested retail area in an Employment Area has been found to be appropriate for an exception based upon current or projected needs within the jurisdiction and the city or county can demonstrate that adequate transportation facilities capacity exists for that retail area.~~
- ~~5. Regional Accessibility. Cities or counties may request an exception to the requirements of Title 6, Regional Accessibility, where they can show that a street system or connection is not feasible for reasons of topographic constraints or natural or built environment considerations. If Metro concludes that the proposed amendment does not comply with the functional plan, Metro shall advise the city or county that it may (1) revise the ordinance as recommended in the Metro analysis; (2) seek an extension of time, pursuant to section 3.07.850, to bring the proposed amendment into compliance with the functional plan; or (3) seek review of the noncompliance by MPAC and the Metro Council, pursuant to sections 3.07.830 and 3.07.840.~~
- C. ~~The Metro Council may grant an extension to time lines under this functional plan if the city or county has demonstrated substantial progress or proof of good cause for failing to complete the requirements on time. Requests for extensions of the compliance requirement in section 3.07.810 of this title should accompany the compliance transmittal required in section 3.07.820(A) of this title. If Metro concludes that the proposed amendment complies with the functional plan, any person who received a copy of Metro's analysis may seek review of the conclusion by the Metro Council, pursuant to section 3.07.840.~~
- D. ~~In addition to the above demonstrations, any city or county request or determination that functional plan policies should not or cannot be incorporated into comprehensive plans shall be subject to the conflict resolution and mediation processes included within the RUGGO, Goal I, provisions prior to the final adoption of inconsistent policies or actions. Final land use decisions of cities and counties inconsistent with functional plan requirements are subject to immediate appeal for violation of the functional plan.~~
- 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. Conflicting interpretations of legal requirements may be the subject of a compliance interpretation and conflict resolution under RUGGO Objective 5.3.~~
- F. ~~On or before six months prior to the 18 month deadline established in section 3.07.810(B), cities and counties shall schedule their first hearing on the ordinance to~~

EXHIBIT A to Ordinance No. 01-925  
November 1, 2001

implement sections 3.07.310-340 of Title 3, or a hearing on implementation of Title 3, if no code amendments are proposed to comply with Title 3, and transmit notice of that hearing and a copy of the proposed ordinance to Metro at least 30 days prior to the hearing.

1. ~~Metro shall prepare and mail a notice of the city or county hearing to each affected property owner.~~
2. ~~The Metro notice shall include the date, time, location and the title and number of any local ordinance; an explanation of the general requirements of Title 3, and an explanation of the implementation in the local ordinance, if no code amendments are proposed to comply with Title 3.~~
3. ~~Metro shall review any amendments to Title 3 proposed by cities and counties based on the testimony of property owners.~~

G. ~~On or before six months prior to the 18 month deadline established in section 3.07.810(B), cities and counties shall transmit to Metro the following:~~

1. ~~An evaluation of their local plans, including any relevant existing regulations and the amendments necessary to comply with Title 3 of this functional plan;~~
2. ~~Copies of all applicable comprehensive plans, maps and implementing ordinances as proposed to be amended;~~
3. ~~Findings that explain how the amended city and county comprehensive plans, maps and implementing ordinances will achieve the standards required in Title 3 of this functional plan.~~

~~In developing the evaluation, plan and ordinance amendments and findings, cities and counties shall address the Metro 2040 Growth Concept, and explain how the proposed amendments implement the Growth Concept.~~

3.07.830 Any Comprehensive Plan Change Must Comply  
Review of Noncompliance by Metropolitan Policy Advisory Committee

- A. After February 19, 1997, any amendment of a comprehensive plan or implementing ordinance shall be consistent with the requirements of this functional plan. A city or county may seek review of Metro's conclusion of noncompliance under section 3.07.820B by MPAC and the Metro Council. The city or county shall file an application for MPAC review on a form provided for that purpose by Metro. Upon receipt of a completed application, Metro shall set the matter on the MPAC agenda and notify those persons who request notification of MPAC reviews.
- B. ~~In addition to any transmittal required by section 3.07.820 of this title, in the process of amending any comprehensive plan provision or implementing ordinance, a city or county~~

~~shall give notice to Metro as required herein. At the same time any notice is given to the director of the Department of Land Conservation and Development pursuant to ORS 197.610 or 197.615, a copy shall be sent to Metro's Executive Officer. In addition to the content of the notice required by ORS 197.610 or 197.615, the notice furnished to Metro should include an analysis demonstrating that the proposed amendments are consistent with this functional plan, if available. If the analysis demonstrating consistency with the functional plan is not included in the initial notice, a report containing the analysis shall be delivered to Metro no later than fourteen (14) days before the city or county conducts a final hearing on the proposed amendment. MPAC shall hold a public hearing on the noncompliance. Any person may testify at the hearing. MPAC shall attempt to resolve any apparent or potential inconsistency between the proposed amendment and the functional plan. MPAC shall prepare a report to the Metro Council that sets forth reasons for the inconsistency. Metro shall send a copy of the report to the city or county and those persons who request a copy.~~

- ~~C. If no notice of intent to appeal is filed within the 21-day period set out in ORS 197.830(8), an amendment to a city or county comprehensive plan or land use regulation to implement this functional plan shall be deemed to be in compliance with this functional plan. If the city or county amendment is appealed pursuant to ORS 197.830 to 197.855 and is ultimately affirmed on appeal, the amendment shall be deemed to be in compliance with the functional plan upon the date that the appellate decision becomes final. This functional plan shall not apply to land use decisions made in conformance with city or county comprehensive plans or land use regulations deemed in compliance with this functional plan pursuant to this subsection.~~
- ~~D. An amendment to a city or county comprehensive plan or land use regulation shall not be deemed in compliance with this functional plan as provided in subsection C of this section unless notice has been given to Metro as provided in subsection B of this section.~~

### 3.07.840 Compliance Plan Assistance Review by Metro Council

- A. Any city or county may request of Metro a compliance plan which contains the following:
- ~~1. An analysis of the city or county comprehensive plan and implementing ordinances, and what sections require change to comply with the performance standards.~~
  - ~~2. Specific amendments that would bring the city or county into compliance with the requirements of Titles 1 to 8, if necessary.~~
- Upon receipt of a report from MPAC under section 3.07.830, Metro shall set the matter for a public hearing before the Metro Council and notify the city or county and those persons who request notification of Council reviews.
- B. ~~Cities and counties must make the request within four months of the effective date of this ordinance. The request shall be signed by the highest elected official of the jurisdiction.~~A

person who qualifies under sections 3.07.820A may seek review by the Metro Council of a Metro conclusion on compliance of a proposed amendment with the functional plan. The person shall file an application for Council review on a form provided for that purpose by Metro. Metro shall set the matter for a public hearing before the Council and notify the city or county, the Department of Land Conservation and Development and those persons who request notification of Council reviews.

- C. Metro shall deliver a compliance plan within four months of the request date. The compliance plan shall be a recommendation from the Executive Officer. The compliance plan shall be filed with the Metro Council two weeks before it is transmitted, for possible review and comment. The Council shall hold a public hearing on the matter within 90 days after receipt of a report from MPAC under subsection A or within 90 days after the filing of a complete application under subsection B. Any person may testify at the hearing. The Council shall issue an order of compliance or noncompliance with its analysis and conclusion and send a copy to the city or county, MPAC, the Department of Land Conservation and Development and those persons who participated in the proceeding.
- D. If the Council finds that the proposed amendment does not comply with the functional plan, the Council shall advise the city or county that it may (1) revise and adopt the proposed amendment as recommended in the Council order; (2) seek an extension of time, pursuant to section 3.07.850, to bring the proposed amendment into compliance with the functional plan; or (3) seek an exception from the functional plan, pursuant to section 3.07.860. If the Council determines that an amendment of the functional plan is necessary to resolve the noncompliance, the Council shall include that determination in its order.
- E. The city or county or a person who participated in the proceeding may seek review of the Council's order as a land use decision described in ORS 197.015(10)(a)(A).

3.07.850 Citizen Involvement Process Extension of Compliance Deadline

- A. Any citizen may contact Metro staff or the Metro Executive Officer or appear before the Metro Council to raise issues regarding local functional plan compliance, to request Metro participation in the local process, or to request the Metro Council appeal a local enactment for which notice is required to be given to Metro pursuant to section 3.07.830 of Title 8. Such contact may be either oral or in writing and may be made at any time during or at the conclusion of any city or county proceeding to amend a comprehensive plan or implementing ordinance for which notice is required to be given to Metro pursuant to section 3.07.830 of Title 8. All such requests to participate or appeal made in writing shall be forwarded to the Metro Council. A city or county may seek an extension of time for compliance with the functional plan. The city or county shall file an application for an extension on a form provided for that purpose by Metro. Upon receipt of an application, Metro shall notify the Metro Council, MPAC, the Department of Land Conservation and Development and those persons who request notification of requests for extensions.



- B. In addition to considering requests as described in (A) above, the Metro Council shall at every regularly scheduled Council meeting provide an opportunity for citizens to address the Council on any matter related to this functional plan. Metro may grant an extension of time if it finds that (1) the city or county is making progress toward accomplishment of its compliance work program, or (2) there is good cause for failure to meet the deadline for compliance. Metro shall issue an order with its conclusion and analysis and send a copy to the city or county, the Metro Council, MPAC, the Department of Land Conservation and Development and those persons who have requested a copy of the order.
- C. Cities, counties and Metro shall comply with their own adopted and acknowledged Citizen Involvement Requirements (Citizen Involvement) in all decisions, determinations and actions taken to implement and comply with this functional plan. The Executive Officer shall at least annually publish and distribute a Citizen Involvement fact sheet after consultation with the Metro Committee for Citizen Involvement, that fully describes all opportunities for citizen involvement in Metro's Regional Growth Management Process as well as the implementation and enforcement of this functional plan. Metro may establish terms and conditions for the extension in order to ensure that compliance is achieved in a timely and orderly fashion and that land use decisions made by the city or county during the extension do not undermine the ability of the city or county to achieve the purposes of the functional plan requirement or of the region to achieve the 2040 Growth Concept. Metro shall incorporate the terms and conditions into its order on the extension. Metro shall not grant more than two extensions of time to a city or a county. Metro shall not grant an extension of time for more than one year.
- D. The city or county or any person who received a copy of the order may seek review of the order by the Metro Council by filing an application for review on a form provided for that purpose by Metro. Upon receipt of an application, Metro shall notify the city or county and those persons who have requested a copy of the order.
- E. If an application for review of an extension order is filed, the Metro Council shall hold a public hearing to consider the extension. Any person may testify at the hearing. The Council shall issue an order with its conclusion and analysis and send a copy to the city or county, the applicant for review, MPAC, the Department of Land Conservation and Development and those persons who participated in the Council proceeding. The city or county or a person who participated in the proceeding may seek review of the Council's order as a land use decision described in ORS 197.015(10)(a)(A).

### 3.07.860 Enforcement Exception from Compliance

- A. Prior to a final decision to amend a comprehensive plan or implementing ordinance, a city or county determination that a requirement of this functional plan should not or cannot be implemented may be subject to a compliance interpretation and the conflict resolution process provided for in RUGGO, Goal I at the request of the city or county. A city or county may seek an exception from compliance with a functional plan

**EXHIBIT A to Ordinance No. 01-925**  
**November 1, 2001**

requirement by filing an application on a form provided for that purpose by Metro. Upon receipt of an application, Metro shall set the matter for a public hearing before the Metro Council and shall notify MPAC, the Department of Land Conservation and Development and those persons who request notification of requests for exceptions.

- B. City or county actions to amend a comprehensive plan or implementing ordinance in violation of this functional plan at any time after the effective date of this ordinance shall be subject to appeal or other legal action for violation of a regional functional plan requirement, including but not limited to reduction of regional transportation funding and funding priorities. The Metro Council shall hold a public hearing to consider the exception. The Council may grant an exception if it finds: (1) it is not possible to achieve the requirement either because (a) topographic or other physical constraints render achievement impracticable, or (b) an existing development pattern allows no practicable opportunity to make progress toward achievement of the requirement; (2) this exception and likely similar exceptions will not render the objective of the requirement unachievable region-wide; (3) the exception will not reduce the ability of another city or county to comply with the requirement; and (4) the city or county has adopted other measures more appropriate for the city or county to achieve the intended result of the requirement.
- C. Failure to amend comprehensive plans and implementing ordinances as required by section 3.07.810 of this title shall be subject to any and all enforcement actions authorized by law. The Council may establish terms and conditions for the exception in order to ensure that it does not undermine the ability of the region to achieve the 2040 Growth Concept. The Council shall incorporate the terms and conditions into its order on the exception.
- D. The Council shall issue an order with its conclusion and analysis and send a copy to the city or county, MPAC, the Department of Land Conservation and those persons who have requested a copy of the order. The city or county or a person who participated in the proceeding may seek review of the Council's order as a land use decision described in ORS 197.015(10)(a)(A).

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**Amendment No. 1 to Exhibit A  
to Ordinance No. 01-925**

November 9, 2001

Revise Section 3.07.830 in Ordinance No. 01-925, as follows

1. Change subsection B to C.
2. Add new subsection B, as follows:

“Metro may seek review of city or county compliance with a functional plan requirement by MPAC and the Metro Council after the deadline for compliance with that requirement. Metro shall file an application for MPAC review on the form described in subsection A of this section and shall set the matter on the MPAC agenda. Metro shall notify the city or county and those persons who request notification of MPAC reviews.”

**Amendment No.2 to Exhibit A  
to Ordinance No. 01-925**

November 6, 2001

Alternative to Section 3.07.850 in Ordinance No. 01-925 ordered by Metro Community Planning Committee

Section 3.07.850 Extension of Compliance

- A. A city or county may seek an extension of time for compliance with the functional plan. The city or county shall file an application for an extension on a form provided for that purpose by Metro. Upon receipt of an application, Metro shall set the matter for a public hearing before the Metro Council and shall notify the city or county, MPAC, the Department of Land Conservation and Development and those persons who request notification of applications for extensions.
- B. The Metro Council shall hold a public hearing to consider the extension. Any person may testify at the hearing. The Council may grant an extension if it finds that: (1) the city or county is making progress toward accomplishment of its compliance work program; or (2) there is good cause for failure to meet the deadline for compliance.
- C. The Metro Council may establish terms and conditions for the extension in order to ensure that compliance is achieved in a timely and orderly fashion and that land use decisions made by the city or county during the extension do not undermine the ability of the city or county to achieve the purposes of the functional plan requirement or of the region to achieve the 2040 Growth Concept. The Council shall incorporate the terms and conditions into its order on the extension. The Council shall not grant more than two extensions of time to a city or a county. The Council shall not grant an extension of time for more than one year.
- D. The Metro Council shall issue an order with its conclusion and analysis and send a copy to the city or county, MPAC, the Department of Land Conservation and Development and those persons who participated in the proceeding. The city or county or a person who participated in the proceeding may seek review of the Council's order as a land use decision described in ORS 197.015(10)(a)(A).

Add the following sections 3.07.870, 3.07.880 and 3.07.890 to Title 8 of the Urban Growth Management Functional Plan:

3.07.870 Enforcement of Functional Plan

- A. A city or county that proposes to amend its comprehensive plan or land use regulations shall notify Metro at least 45 days prior to the first public hearing held by the city or county to consider the amendment. The city or county shall submit to Metro an analysis of compliance of the proposed amendment with applicable functional plan requirements at least one week prior to the public hearing.
- B. The Metro Council may initiate enforcement proceedings under this section if a city or county has failed to meet a deadline in an extension granted pursuant to section 3.07.850 or if it has good cause to believe that a city or county is engaging in a pattern or a practice of decision-making that is inconsistent with the functional plan or local ordinances adopted by the city or county to implement the plan, or with the terms or conditions in an extension. The Council may consider whether to initiate enforcement proceedings upon the request of Metro or a councilor.
- C. If the Metro Council concludes that there is good cause pursuant to subsection B of this section. Metro shall set the matter for a public hearing before the Council within 90 days of its conclusion. Metro shall publish notice of the hearing in a newspaper of general circulation in the city or county and send notice to the city or county, MPAC, the Department of Land Conservation and Development and any person who requests a copy of such notices.
- D. Metro shall prepare a report and recommendation on the pattern or practice, with a proposed order, for consideration by the Metro Council. Metro shall publish the report at least 14 days prior to the public hearing and send a copy to the city or county and any person who requests a copy.
- E. If the Metro Council concludes that the city or county has not engaged in a pattern or practice of decision-making that that is inconsistent with the functional plan or local ordinances adopted by the city or county to implement the plan or with terms or conditions of an extension granted pursuant to section 3.07.850, the Council shall enter an order dismissing the matter. If the Council concludes that the city or county has engaged in such a pattern or practice of decision-making, the Council shall issue an order that sets forth the noncompliance and directs changes in the city or county ordinances necessary to remedy the pattern or practice. The Council shall issue its order, with analysis and conclusions, not later than 30 days following the public hearing on the matter. Metro shall send a copy of the order to the city or county, MPAC, the Department of Land Conservation and Development and any person who requests a copy.

3.07.880 Compliance Report

**EXHIBIT B to Ordinance No. 01-925**  
**November 1, 2001**

Metro shall report annually on compliance by cities and counties with functional plan requirements, including the implementation of this chapter and its effectiveness in helping achieve the 2040 Growth Concept. Metro shall make its report to the Metro Council by December 31 of each calendar year.

3.07.890 Citizen Involvement in Compliance Review

Metro shall facilitate citizen involvement in compliance review. Metro shall provide widespread public notice of Metro review of city and county comprehensive plans and land use regulations for compliance with functional plan requirements. Metro shall maintain a list of persons who request notice of reviews and copies of reports and orders and shall send requested documents as provided in this chapter. Metro shall provide an opportunity at regular Council meeting for citizens to bring matters of compliance before the Council.”

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Amend section 7.5 of the Regional Framework Plan Ordinance 97-715B as follows:

### **7.5 Functional Plans**

Functional plans are limited purpose plans, consistent with this Framework Plan, which address designated areas and activities of metropolitan concern. Functional plans are established in state law as a way Metro may recommend or require changes in local plans. This Framework Plan uses functional plans as the identified vehicle for requiring changes in local plans in order to achieve consistence and compliance with this Framework Plan.

Those functional plans or functional plan provisions containing recommendations for comprehensive planning by cities and counties may not be final land use decisions. If a provision in a functional plan, or an action implementing a functional plan require changes in an adopted and acknowledged comprehensive plan, then the adoption of a provision or action will be a final land use decision. If a provision in a functional plan, or Metro action implementing a functional plan require changes in an adopted and acknowledged comprehensive plan, then that provision or action will be adopted by Metro as a final land use action required to be consistent with statewide planning goals. In addition, Regional Framework Plan components will be adopted as functional plans if they contain recommendations or requirements for changes in comprehensive plans. These functional plans, which are adopted as part of the Regional Framework Plan, will be submitted along with other parts of the Regional Framework Plan to LCDC for acknowledgment of their compliance with the statewide planning goals. Because functional plans are the way Metro recommends or requires local plan changes, most Regional Framework Plan components will probably be functional plans. Until Regional Framework Plan components are adopted, existing or new functional plans will continue to recommend or require changes in comprehensive plans.

- Existing Functional Plans. Metro shall continue to develop, amend and implement, with the assistance of cities, counties, special districts and the state, statutory-required functional plans for air, water and transportation, as directed by ORS 268.390(1) and for land use planning aspects of solid waste management as mandated by ORS Ch. 459.
- New Functional Plans. New functional plans shall be proposed from one of two sources:
  - MPAC may recommend that the Metro Council designate an area or activity of metropolitan concern for which a functional plan should be prepared; or
  - the Metro Council may propose the preparation of a functional plan to designate an area or activity of metropolitan concern and refer that proposal to MPAC.

The matters required by the Charter to be addressed in the Regional Framework Plan shall constitute sufficient factual reasons for the development of a functional plan under ORS 268.390. However, the actual adoption of a functional plan will be subject to the procedures specified above.

Upon the Metro Council adopting factual reasons for the development of a new functional plan, MPAC shall participate in the preparation of the plan, consistent with these goals and objectives and the reasons cited by the Metro Council. After preparation of the plan and seeking broad public and local government consensus, using existing citizen involvement processes established

by cities, counties and Metro, MPAC shall review the plan and make a recommendation to the Metro Council. The Metro Council may act to resolve conflicts or problems impeding the development of a new functional plan and may complete the plan if MPAC is unable to complete its review in a timely manner.

The Metro Council shall hold a public hearing on the proposed plan and afterwards shall:

- adopt the proposed functional plan; or
- refer the proposed functional plan to MPAC in order to consider amendments to the proposed plan prior to adoption; or
- amend and adopt the proposed functional plan; or
- reject the proposed functional plan.

The proposed functional plan shall be adopted by ordinance and shall include findings of consistency with these goals and objectives.

- **Functional Plan Implementation and Conflict Resolution.** Adopted functional plans shall be regionally coordinated policies, facilities and/or approaches to addressing a designated area or activity of metropolitan concern, to be considered by cities and counties for incorporation in their comprehensive land use plans. If a city or county determines that a functional plan requirement should not or cannot be incorporated into its comprehensive plan, then Metro shall review any apparent inconsistencies by the following process:
  - Metro and affected local governments shall notify each other of apparent or potential comprehensive plan inconsistencies.
  - After Metro staff review, MPAC shall consult the affected jurisdictions and attempt to resolve any apparent or potential inconsistencies.
  - MPAC shall conduct a public hearing and make a report to the Metro Council regarding instances and reasons why a city or county has not adopted changes consistent with requirements in a regional functional plan.
  - The Metro Council shall review the MPAC report and hold a public hearing on any unresolved issues. The Council may decide to:
    - amend the adopted regional functional plan; or
    - initiate proceedings to require a comprehensive plan change; or
    - find there is no inconsistency between the comprehensive plan(s) and the functional plan; or
    - grant an exception to the functional plan requirement.



## **STAFF REPORT**

CONSIDERATION OF ORDINANCE 01-925, FOR THE PURPOSE OF AMENDING METRO CODE TITLE 8 (COMPLIANCE PROCEDURES) AND TITLE 1 (REQUIREMENTS FOR HOUSING AND EMPLOYMENT ACCOMODATION) OF THE URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN AND SECTION 7.5 OF THE REGIONAL FRAMEWORK PLAN ORDINANCE 97-715B TO REVISE THE PROCESS FOR ADJUDICAITON AND DETERMINATION OF CONSISTENCY OF LOCAL COMPREHENSIVE PLANS WITH THE URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN, AND TO REVISE THE PROCESS AND CRITERIA FOR EXCEPTIONS FROM AND EXTENSIONS TO COMPLY WITH THE FUNCTIONAL PLAN

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Date: November 1, 2001

Prepared by: Michael Morrissey

**Proposed Action:** Ordinance 01-925 amends metro code and the regional Framework Plan to provide consistency and clarity to Metro's capacity to assess local jurisdictions compliance with the Urban Growth Management Functional Plan and to enhance Metro's options for ensuring that compliance.

**Factual Background and Analysis:** The Urban Growth Management Functional Plan for early adoption of the 2040 Growth Concept was adopted in November of 1996, by ordinance. A deadline for compliance with the titles of the functional plan was established as February 1999, and jurisdictions were required to report progress on compliance, six months prior to that deadline. A process was established to allow for Council approval of time extensions for jurisdictions to complete their work, and also allowed for exception requests. Council has granted extensions to local jurisdictions on several occasions.

At this time, local compliance with the several titles of the functional plan is estimated to be over 85%. Title 1 capacity for dwelling units is estimated to be more than 93%, and for jobs at over 100% based on compliance to-date. The compliance work is important to Metro in that it indicates progress in implementing the 2040 Growth Concept generally, and assists in meeting requirements of periodic review specifically.

The council is considering a last round of extension requests extending into 2002, and finds that clarifications to metro code are required to clarify the extension and exception process. Specifically the code does not currently authorize or provide guidance for conditions Metro may wish to attach to extensions. This is now addressed in Exhibit A,

section 3.07.850. Sub-section .850 also allows for a maximum of two extensions, of no more than 1 year each.

The recommended code amendments revise the criteria for exception requests, and allow for the establishment of terms or conditions to an exception. Exhibit C to ordinance 01-925 amends the Regional Framework Plan by adding the granting of an exception to a functional plan requirement, to the options available to the council in the event of a unresolved issue with a local jurisdiction with regard to compliance to the Functional Plan.

Certain confusing or redundant sections of the code have been clarified throughout, specifically with regard to criteria for exceptions. Further, the current code does not address application of a functional plan requirement to local land use decisions. This is now addressed in exhibit A section 3.07.810.

**Budget Impact:** There is no budget impact associated with passage of this ordinance.

**Existing Law:** Ordinance 01-925 amends Metro Code sections 3.07.810 to 3.07.860, 307.870, 307.880 and 307.890 to Title 8 of the Functional Plan, Compliance Procedures. Section 7.5 of the Regional Framework Plan is also amended.