

A G E N D A

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**METRO**

**Agenda**

MEETING: METRO COUNCIL REGULAR MEETING  
DATE: January 24, 2002  
DAY: Thursday  
TIME: 2:00 PM  
PLACE: Metro Council Chamber

**CALL TO ORDER AND ROLL CALL**

**1. INTRODUCTIONS**

**2. CITIZEN COMMUNICATIONS**

**3. MPAC COMMUNICATIONS**

**4. CONSENT AGENDA**

4.1 Consideration of Minutes for the January 10, 2002 Metro Council Regular Meeting.

**5. ORDINANCES - SECOND READING**

5.1 **Ordinance No. 01-925D**, 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. Park

**6. RESOLUTIONS**

6.1 **Resolution No. 02-3148**, For the Purpose of Authorizing the Executive Officer to Enter into an Intergovernmental Agreement with the City of Gresham to Provide Metro Real Estate Services. Nat'l Resource Committee

**7. COUNCILOR COMMUNICATION**

# ADJOURN

## Cable Schedule for Week of January 24, 2002

	Sunday (1/27)	Monday (1/28)	Tuesday (1/29)	Wednesday (1/30)	Thursday (1/24)	Friday (1/25)	Saturday (1/26)
<b>CHANNEL 11</b> (Community Access Network) (most of Portland area)		4:00 PM				2:00 PM (previous meeting)	
<b>CHANNEL 21</b> (TVCA) (Washington Co., Lake Oswego, Wilsonville)					1:00 AM		
<b>CHANNEL 30</b> (TVCA) (NE Washington Co. - people in Wash. Co. who get Portland TCI)					1:00 AM		
<b>CHANNEL 30</b> (CityNet 30) (most of City of Portland)	8:30 P.M.	8:30 PM					
<b>CHANNEL 30</b> (West Linn Cable Access) (West Linn, Rivergrove, Lake Oswego)	4:30 PM			5:30 AM	1:00 PM 5:30 PM	3:00 PM	
<b>CHANNEL 33</b> (ATT Consumer Svcs.) (Milwaukie)		10 AM 2 PM 9 PM					

**PLEASE NOTE THAT ALL SHOWING TIMES ARE TENTATIVE BASED ON THE INDIVIDUAL CABLE COMPANIES' SCHEDULES. PLEASE CALL THEM OR CHECK THEIR WEB SITES TO CONFIRM SHOWING TIMES.**

<b>Portland Cable Access</b>	<a href="http://www.pcatv.org">www.pcatv.org</a>	<b>(503) 288-1515</b>
<b>Tualatin Valley Cable Access</b>	<a href="http://www.tvca.org">www.tvca.org</a>	<b>(503) 629-8534</b>
<b>West Linn Cable Access</b>	<a href="http://www.ci.west-linn.or.us/CommunityServices/htmls/wltskcd.htm">www.ci.west-linn.or.us/CommunityServices/htmls/wltskcd.htm</a>	<b>(503) 722-3424</b>
<b>Milwaukie Cable Access</b>		<b>(503) 654-2266</b>

Agenda items may not be considered in the exact order. For questions about the agenda, call Clerk of the Council, Chris Billington, 797-1542. Public Hearings are held on all ordinances second read and on resolutions upon request of the public. Documents for the record must be submitted to the Clerk of the Council to be considered included in the decision record. Documents can be submitted by email, fax or mail or in person to the Clerk of the Council. For assistance per the American Disabilities Act (ADA), dial TDD 797-1804 or 797-1540 (Council Office).

**Consideration of the January 10, 2002 Regular Metro Council Meeting minutes.**

**Metro Council Meeting  
Thursday, January 24, 2002  
Metro Council Chamber**

# MINUTES OF THE METRO COUNCIL MEETING

January 10, 2002

Metro Council Chamber

Councilors Present: Carl Hosticka (Presiding Officer), Susan McLain, Rex Burkholder, Rod Park, Bill Atherton, Rod Monroe, David Bragdon

Councilors Absent: None

Presiding Officer Hosticka convened the regular council meeting at 2:05 p.m.

## 1. INTRODUCTIONS

Presiding Officer Hosticka introduced Mayor Charlotte Lehan, City of Wilsonville.

## 2. CITIZEN COMMUNICATIONS

There were none.

## 3. EXECUTIVE OFFICER COMMUNICATIONS

There were none.

## 4. AUDITOR COMMUNICATIONS

There were none.

## 5. MPAC COMMUNICATIONS

Presiding Officer Hosticka said they elected Michael Jordon as Chair, Tom Hughes as first vice chair and Larry Cooper as second vice chair. They set up a system of subcommittees to accommodate council decisions in the future.

## 6. CONSENT AGENDA

6.1 Consideration of Minutes for the December 13, 2001 and January 3, 2002, Metro Council Regular Meetings.

**Motion:** Councilor Bragdon moved approval of the minutes of December 13, 2001 and January 3, 2002.

**Vote:** The vote was 7 aye/ 0 nay/ 0 abstain. The motion passed with no changes.

## 7. RESOLUTIONS

7.1 Resolution No. 02-3151, For the Purpose of Approving Funds for the Sunnyside Road and Boeckman Road Projects.

**Motion:**                    **Councilor Atherton** moved to adopt Resolution No. 02-3151.

**Second:**                   **Councilor Monroe** seconded the motion.

**Councilor Atherton** spoke to Resolution No. 02-3151 and each of the sites, Boeckman Road and Sunnyside Road. He asked Mike Hoglund to explain further.

**Mike Hoglund**, Director of Regional Planning, explained the history of the resolution, the funding, and regional equity concerns. The State of Oregon had given guidance to JPACT concerning project funding. JPACT suggested a group from Clackamas County, ODOT, Metro and JPACT come up with a proposal to get both projects funded or decide which should be funded. He noted how important both projects were to the region. They proposed that each entity contribute \$2 million, Wilsonville, ODOT, Clackamas County and Metro to fund both projects. He spoke to the specifics of Exhibit A that addressed future funding and the timeframe. He reported JPACT's discussion this morning on the resolution and further detailed the resolves in the resolution. He addressed down stream issues discussed at JPACT. They unanimously adopted the program.

**Councilor Atherton** asked about "be it resolved" number 5 in the staff report.

**Mr. Hoglund** said this did not commit Metro to funding in a particular way or funding for a particular project.

**Councilor Burkholder** asked about "be it resolved" number 2.

**Mr. Hoglund** responded that it would be included in the entire program, it would be noted that this represented the commitment to that particular funding.

**Councilor Burkholder** asked for further clarification about Metro's share.

**Mr. Hoglund** said the program was plan-driven. He explained the message from the federal government concerning geographic issues.

**Councilor Park** said there was a concern about the commitment of future dollars that had not been received yet. The particular concern about these projects had to do with future commitments to these projects specifically. Adjustments would have to be made in the future. Metro was trying to use the funding to avoid future problems and to fix current ones. He said the four parties also agreed that there would be equal financial commitments, if there were a reduction in cost, the savings would be split evenly.

**Councilor Bragdon** said he shared councilors concerns. He was supportive of this project with the understanding that in the future MTIP would be looked at far more strategically.

**Councilor Monroe** spoke to the history of the process for funding these projects as well as regional issues and projects that had already been funded in Washington and Multnomah County. He noted that the Oregon Transportation Commission was scheduled to meet on January 16, 2003 to make their final decision so that was why JPACT and Council were considering the issue this week. He urged support.

**Mayor Charlotte Lehan**, City of Wilsonville, said she thought it was a good process with a good solution. She noted that each project scored high in the process.

**Councilor Atherton** said he appreciated Wilsonville's contribution and asked how they were going to pay for this.

**Mayor Lehan** said it would be funded mostly out of urban renewal and SDCs.

**Councilor Atherton** said Commissioner Kennemer said they would be raising SDC's to pay for the project as well.

**Councilor Burkholder** said he would be supporting this resolution. This was a good project, he shared Councilor Bragdon's concerns about the way they got there. He had concerns about how this would be done in the future. We needed to look at changes in how we invested our dollars, they needed to encourage the 2040 vision.

**Councilor McLain** supported the resolution as well. She noted the reservation about future monies and process. Transportation system funding needed to stay at the top of Metro's priorities.

**Councilor Atherton** closed by saying he appreciated the discussion among the councilors and urged an aye vote. The MTIP process needed to be changed.

**Vote:** The vote was 7 aye/ 0 nay/ 0 abstain, and the motion passed.

**8. EXECUTIVE SESSION HELD PURSUANT TO ORS 192.660(1)(e).  
DELIBERATIONS WITH PERSONS DESIGNATED TO NEGOTIATE  
REAL PROPERTY TRANSACTIONS.**

**8.1 Resolution No. 02-3150, For the Purpose of Authorizing the Executive Officer to Purchase the Steele Foundation Property in the Tonquin Geologic Target Area.**

Starting Time: 2:41 p.m.

Members Present: Charlie Ciecko, Jim Desmond, Mike Burton, other parks staff, members of the media, Dan Cooper

Ending Time: 2:52

**Motion:** Councilor McLain moved to adopt Resolution No. 02-3150.

**Second:** Councilor Bradgon seconded the motion.

**Councilor McLain** presented the resolution and recognized that Mayor Lehan from the City of Wilsonville was here to speak on this issue. She spoke to the vision of Regional Park system and livability. She noted the unusual circumstances issue. This property was on the essential list.

**Mayor Lehan** appreciated the work on this property. Coffee Lake, from a habitat standpoint, was extremely important, connecting to the Sherwood Wildlife area.

**Councilor Bragdon** felt this was a good purchase. He asked about local share.

**Jim Desmond** said there was no local share with this purchase.

**Councilor Bragdon** asked if this purchase met all of the criteria for purchase of open spaces laid out in the resolution that council just adopted.

**Mr. Desmond** reviewed why the property met the criteria.

**Councilor Atherton** said Wilsonville had contributed funds to this area.

**Mayor Lehan** said a big part of the Dammasch planning area would abut this property.

**Councilor McLain** said this was another piece of property that demonstrated the fantastic staff we had.

**Vote:** The vote was 0 aye/ 0 nay/ 0 abstain, and the motion.

**Mayor Lehan** said she had attended a "coffee talk" last night and was very impressed with the process for the talk.

## 9. COUNCILOR COMMUNICATIONS

**Councilor Atherton** reported that he had sent a letter to the Executive Officer concerning a Title 3 Wetland issue in Clackamas County. The executive would be sending staff to that site for review.

**Councilor Park** highlighted the concern about the weight limitation on the Farmer Market Bridge.

**Councilor McLain** talked about water and flooding issues.

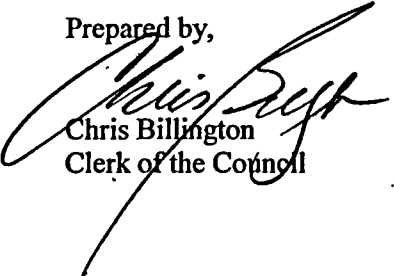
**Councilor Bragdon** said this was a reminder of storm water as well.

**Presiding Officer Hosticka** suggested to council that if they wanted legislation drafted, they needed to have these drafted through Jeff Stone. Council would not be meeting next week, the next meeting would be January 23, 2003.

## ADJOURN

There being no further business to come before the Metro Council, Presiding Officer Hosticka adjourned the meeting at 3:05 p.m.

Prepared by,

  
Chris Billington  
Clerk of the Council

ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF JANUARY 10, 2002

<b>DOCUMENT NUMBER</b>	<b>DOCUMENT DATE</b>	<b>DOCUMENT DESCRIPTION</b>	<b>AGENDA ITEM</b>
010302C-01	1/3/02	MINUTES OF COUNCIL MEETING OF 1/3/02	
010302C-02	1/10/02	RESOLUTION CONCERNING SUNNYSIDE AND BOECKMAN ROADS	RES. No. 02-3151



**Ordinance No. 01-925D, 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..**

***Second Reading***

**Metro Council Meeting  
Thursday, January 24, 2002  
Metro Council Chamber**

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. 01-925D  
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 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.

## **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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**Agenda Item Number 6.1**

**Resolution No. 02-3148, For the purpose of Authorizing the Executive Officer to Enter into an Intergovernmental Agreement with the City of Gresham to Provide Metro Real Estate Services.**

**Metro Council Meeting  
Thursday, January 24, 2002  
Metro Council Chamber**



BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE ) RESOLUTION NO 02-3148  
EXECUTIVE OFFICER TO ENTER INTO AN )  
INTERGOVERNMENTAL AGREEMENT WITH ) Introduced by Mike Burton,  
THE CITY OF GRESHAM TO PROVIDE METRO ) Executive Officer  
REAL ESTATE SERVICES )

WHEREAS, at the election held on May 16, 1995, the Metro area voters approved the Open Spaces, Parks and Streams Ballot Measure 26-26 (the "Metro Open Spaces Bond Measure") that authorized Metro to issue \$135.6 million in general obligation bonds to finance land acquisition and capital improvements; and

WHEREAS, Metro has in its service negotiators and paralegal staff necessary to implement the Metro Open Spaces Bond Measure; and

WHEREAS, the Metro Policy Advisory Committee's Parks Report dated April 4, 2001, encouraged Metro to provide technical assistance to local governments in acquiring local parks and related lands; and

WHEREAS, the city of Gresham (the "City") has requested land acquisition technical assistance, and has agreed to reimburse the Metro Open Spaces Bond Measure fund for all costs associated with the negotiator and paralegal services provided to the City; and

WHEREAS, Metro and the City wish to enter into an Intergovernmental Agreement to provide for the responsibilities and obligations of the parties with respect to the provision by Metro of real estate negotiation and paralegal services to the City for purposes of the City's acquisition of local parks and related lands; and

WHEREAS, the Intergovernmental Agreement attached to this resolution as Exhibit A sets forth the roles and responsibilities of the City and Metro for the agreed upon work; and

WHEREAS, Metro can provide the aforesaid technical assistance and still fulfill its obligations to the voters regarding acquiring properties for the Metro Open Spaces Bond Measure; now therefore

BE IT RESOLVED,

That the Metro Council authorizes the Metro Executive Officer to enter into the Intergovernmental Agreement with the City of Gresham as identified in Exhibit A.

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

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

Approved as to Form:

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

CITY OF GRESHAM AGREEMENT NO. 1196

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE CITY OF GRESHAM and METRO REGIONAL SERVICES  
REGARDING LAND ACQUISITION SERVICES**

This agreement is entered into on October 16, 2001, by and between the City of Gresham, Oregon (Gresham) and Metro Regional Services (Metro).

**RECITALS**

WHEREAS, the goal of this intergovernmental agreement is to provide land acquisition services for the City of Gresham, Department of Environmental Services (DES), by Metro Regional Services and;

WHEREAS, the City of Gresham, Department of Environmental Services (DES) prepared a Fairview Creek Master Plan, conducted Fairview Creek Basin stormwater modeling, and Federal Emergency Management Agency prepared flood plain maps for the areas in question; and

WHEREAS, the results of the FEMA flood plain documents indicate that over 45 acres and 30 homes, within the City of Gresham, are in the 100 year flood plain in and immediately downstream of the project area; and

WHEREAS, the results of stormwater modeling and associated engineering evaluation indicates that the impacts from this flooding could be substantially reduced if the Gresham had area to temporarily hold back peak flood flows and thereby reduce the adverse downstream impacts; and

WHEREAS, the City of Gresham has, in the past, acquired about 9 acres for these and other purposes, which are available for this project; and

WHEREAS, acquisition of additional properties, adjacent to or nearby the existing City of Gresham property, would provide additional project area to reduce flood impacts to a more acceptable level; and

WHEREAS, there are additional projects which require land acquisition services in relation to parcel and easement purchases which may involve other DES Divisions; and

WHEREAS, at least one of these other projects, the North of Chase Road Storm Drain, require land acquisition services this fiscal year; and

WHEREAS, the DES does not have the in-house staff to perform these land acquisition services; and

WHEREAS, the purpose of this Agreement is to identify the responsibilities, compensation and land acquisition services to be provided by Metro to the City of Gresham.

NOW THEREFORE, the parties agree to the following:

1. SCOPE OF METRO'S SERVICES

A. Metro shall provide to the City of Gresham services as shown in the attached Scope of Work (Exhibit A). In addition, each project shall require a project specific scope of work (consistent with this Agreement) and a written notice to proceed from Gresham prior to commencing work.

2. SCOPE OF GRESHAM'S SERVICES

A. Gresham shall be responsible to review, provide comments and accept all refined products prepared by Metro.

3. COMPENSATION

The City of Gresham shall reimburse Metro promptly for costs incurred in accordance with Section 5 STATEMENT AND PAYMENT PROCEDURE. Gresham shall pay Metro within 60 days of being invoiced. It is not anticipated that land acquisition service costs would exceed \$65,000 during FY01-02.

Gresham shall pay Metro for land acquisition services according to the following hourly rates:

Real Estate Negotiator	\$90.00 per hour
Paralegal Services	\$75.00 per hour

4. EFFECTIVE AND TERMINATION DATES

This agreement shall be effective as of the date it is signed by all parties and shall terminate as of June 30, 2002.

5. STATEMENT AND PAYMENT PROCEDURE

Metro's statement and Gresham's payment procedures shall be as set out below.

Within 60-days of land acquisition services, Metro shall submit to Gresham a detailed statement describing the services performed. The statement shall include all land acquisition costs related to this Agreement. Metro will furnish Gresham such statements or reports of expenditures as may be needed to satisfy fiscal requirements.

Payment of the amounts set out in paragraph 3 above shall be made to Metro, no later than 60 days of being invoiced, and shall be sent to:

Metro Accounts Receivable  
600 NE Grand Ave  
Portland, Oregon 97232

Res. 02-3148  
Exhibit A, page 2

6. EARLY TERMINATION OF AGREEMENT

- A. Metro and Gresham, by mutual written agreement, may modify, amend, or terminate this Agreement at any time.
- B. Either Metro or Gresham may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and of the party's intent to terminate. If the party has not cured the breach within thirty (30) days of the notice, then the party giving the notice may terminate the Agreement at any time thereafter by giving a written notice of termination.
- C. This Agreement is expressly conditioned upon Metro Council approval and City of Gresham Council approval.

7. INDEMNIFICATION

To the extent permitted by the Oregon Tort Claims Act, Metro agrees to indemnify, defend, and hold harmless Gresham from any and all claims, demands, suits, and actions (including attorney fees and costs) resulting from or arising out of the acts of Metro and its officers, employees, and agents in performance of this intergovernmental agreement. To the extent permitted by the Oregon Tort Claims Act, Gresham agrees to indemnify, defend, and hold harmless Metro from any claims, demands, suits, and actions (including attorney fees and costs) resulting from or arising out of the acts of Gresham and its officers, employees, and agents in performance of this intergovernmental agreement.

8. FUNDS

Gresham certifies that sufficient funds are available during the 2001-2002 fiscal year and that these funds are authorized for expenditure to finance the 2001-2002 costs of the Agreement. Funds for projects in subsequent fiscal years are subject to City of Gresham Council budget approval.

9. PROJECT MANAGER

Metro's project manager shall be Nancy Chase, unless designated otherwise. Gresham's project manager shall be James Soli, unless designated otherwise by the manager.

METRO REGIONAL SERVICES

By: \_\_\_\_\_  
Mike Burton, Executive Director  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Charles Cisko, Parks Director  
Date: \_\_\_\_\_

APPROVED as to form:  
Joel Morton, Assistant  
Counsel for Metro

By: \_\_\_\_\_

CITY OF GRESHAM

By: Charles J. Becker  
Mayor Charles J. Becker  
Date: Oct 18, 2001

By: Bonnie Kraft  
Bonnie Kraft, City Manager  
Date: Oct 22, 2001

David Ris, Attorney  
for the City of Gresham, Oregon

By: David R. Ris

# EXHIBIT A

to Resolution 02-3148, Exhibit A  
City of Gresham Agreement No. 1196

## SCOPE OF WORK

All products and work descriptions, unless noted otherwise, are the responsibility of Metro.

### TASK 1 Preliminary and General Services

**Objective:** Initiate project and provide services in a coordinated and efficient manner. Facilitate mutual understanding of the work to be done.

**Description:** Meet with the City, on a project-by-project basis, for a “kick off meeting” to confirm roles, responsibilities and expectations for each specific project in relation to the Intergovernmental Agreement. Establish clear lines of communication. Discuss project goals and identify specific concerns. Review the project and the land acquisition schedule.

Request City Project Manager review and approval of all written correspondence prior to distribution to property owner or other parties.

Coordinate activities with the City and other firms, as appropriate.

**Metro Products:** Propose project specific budget and schedule. Correspondence.

**City Products:** Project specific goals and target properties. Key project deadlines and milestones. Schedule and host project specific “kick off meeting”. Review and approve project specific budget and schedule.

**Assumptions:** City will obtain legal review of all documents, as appropriate.

### TASK 2. Acquisition Services

**Objective:** Acquire properties targeted by the City for acquisition. Conduct Acquisition Negotiations.

**Description:** METRO will perform acquisition negotiations. Steps to be taken include the following activities:

1. Set up negotiation files to preserve documents and a record of the negotiations. Propose the organization, form, and content of the negotiation files before conducting acquisition negotiations.
2. Paralegal review of title reports, title exception documents, vesting deed legal description and other documents, writing a report and recommendations in memo form submitted to the Negotiator, Project Manager and City Attorney.
3. Set up and maintain diaries documenting property owner contacts. The diaries may be handwritten and kept on sequential contact sheets, including date and time of correspondence or conversation and material substance of conversation or contact;

4. Prepare the appropriate documents, for Project Managers and City Attorney review, which shall consist of Gresham's standard form Purchase and Sale Agreement, modified or supplemented with property-specific detail and legal descriptions and other documents, as needed;
5. Prepare offer letters and other communications required to establish contact with property owners;
6. Explain the offer to the property owner or a representative and provide an understanding of the acquisition process;
7. Advise and coordinate with the City Project Manager.

**Metro Products:** Negotiation file recommendations. Property specific negotiation file including diaries, offer letters, and documentation of other communications. Transaction Specific Preparation of the Purchase and Sale Agreement, and other documents, as needed.

**City Products:** City will provide legal services, engineering, appraisals, environmental site assessments, survey services and other required studies and will provide the names, addresses and tax identification information, which is available.

**Assumptions:** The files shall conform substantially to Metro Open Space Acquisition Program standards.

### **TASK 3. Purchase and Closing Services/Escrow Liaison**

**Objective:** Conduct escrow and closing services.

**Description:** Metro shall perform the following services:

1. Negotiate with property owners, or their representatives, in a timely and professional manner.
2. Open escrow
3. Prepare escrow instructions
4. Place documents in escrow
5. Coordinate payments between the City and the Title Company
6. Assist in obtaining releases, if necessary
7. Review closing statements, including deeds and make recommendations to the City.
8. Deliver documents for recording and track the recording process to ensure that recording has occurred.

**Metro Products:** Escrow instructions, Escrow account set up, documents placed in escrow, payment coordination, closing statements, recorded documents. Recorded documents to the City with book and page numbers.

**City Products:** Legal review of appropriate documents.

**Assumptions:** City will pay for the cost of the escrow fees, recording fees, title insurance premiums and for any title endorsements or special reports required by the City, including escrow cancellation fees.

**Staff Report**

**CONSIDERATION OF RESOLUTION NO. 02-3148 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF GRESHAM TO PROVIDE METRO REAL ESTATE SERVICES.**

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**Date: January 8, 2002**

**Presented by: Charles Ciecko  
Jim Desmond**

**DESCRIPTION**

Resolution No. 02-3148, requests authorization for the Executive Officer to execute an Intergovernmental Agreement (IGA) with the City of Gresham, Bureau of Environmental Services, enabling the Open Spaces Acquisition Division of Metro's Regional Parks and Greenspaces Department to provide real estate acquisition services, including negotiation and paralegal services, to the City of Gresham for the purposes of acquiring local parks and related lands.

**EXISTING LAW**

Metro Code § 2.04.026 (a) (2) requires that the Executive Officer obtain the authorization of the Metro Council prior to entering into certain agreements, including Intergovernmental Agreements, pursuant to ORS Chapter 190.

**BACKGROUND AND ANALYSIS**

The city of Gresham's Bureau of Environmental Services (the "City") has requested technical assistance from Metro to help in the acquisition of private property from willing sellers. The properties in question are targeted for parks and open space use, including wetland construction for water quality projects. Currently the City does not have staff available with real estate expertise to negotiate and process the acquisition of these properties.

This request is in accordance with the recommendations set out in the final report of the Metro Policy Advisory Committee's Parks Report, dated April 4, 2001. Some of the relevant portions of the report related to the use of Metro technical assistance for local governments are as follows:

Local park providers in the region face chronic constraints in securing adequate, stable funding for local parks and related lands and facilities. Metro should expand its mission to assist its local partners in this policy area in a variety of ways, most importantly by providing technical and financial assistance. [Page (i)]

**Specific Recommendations**

2.1.D. Technical and financial assistance should be aimed at both (I) assisting local park providers with planning, acquiring, and developing local parks and related lands and facilities for the public uses and intrinsic values they provide...



2.1.E. Metro should continue its work towards creating an integrated Regional System of regional-scale parks and related lands and facilities regardless of their ownership.

The IGA with the City proposes a multi-year contract for real estate services, to be provided by Metro to the City on an as-needed basis. This multi-year agreement is subject to annual budget approval by both the City and Metro and the availability of Metro staff. At this point in the Open Spaces program, small blocks of Open Spaces program staff time may be available for technical assistance to other jurisdictions. However, because the Metro Open Spaces bond measure funds are restricted to expenses related to open space acquisitions and related expenses authorized by the bond measure and subsequent Council action, all time spent on non-bond local jurisdiction projects must be reimbursed by the local government. Accordingly, the City has agreed to reimburse Metro for staff time at a predetermined rate set by Metro, based on, but not limited to salary, benefits, transportation and administrative overhead.

### **FINDINGS**

This IGA between Metro and the City is recommended based on the following:

- Entering into the IGA will allow for the efficient use of public money and services.
- The City has signed the IGA and committed funds for the current fiscal year for real estate services.
- Approval of the IGA is consistent with the recommendations of the Metro Policy Advisory Committee's Parks Report.
- The IGA will relieve Metro's Open Spaces bond measure fund of some of its staff and administrative expenses.

### **BUDGET IMPACT**

None. Costs of administering the IGA are covered by the rate charged for Metro real estate services.

### **OUTSTANDING QUESTIONS**

None.

### **Executive Officer's Recommendation**

The Executive Officer recommends passage of Resolution No. 02-3148.

**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 DLCDC.
- 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.

MTAC Amendments to Ordinance No. 01-925D  
From MTAC Meeting, January 16, 2002

1. Amend section 3.07.820A to read as follows to clarify the timing of submission of local amendments to Metro:

At least 45 days [P]prior to [adoption of an] 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 [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.

2. Consider the following revisions to section 3.07.860 to change the treatment of proposed exceptions to the housing or employment targets in Table 3.07-1 of Title 1:

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 others 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.

3. Amend section 3.07.880C to make it more reader-friendly:

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.

**NATURAL RESOURCES COMMITTEE REPORT****CONSIDERATION OF RESOLUTION NO. 02-3148, FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF GRESHAM TO PROVIDE METRO REAL ESTATE SERVICES**

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Date: January 24, 2002

Presented by: Councilor Park

**Committee Action:** At its January 16, 2002 meeting, the Natural Resources Committee voted 4-0 to recommend Council adoption of Resolution 02-3148. Voting in favor: Councilors Bragdon, Hosticka, Park and McLain.

**Background:** Charlie Ciecko and Jim Desmond, Regional Parks and Greenspaces Department director and manager gave the staff presentations. Resolution 02-3148 authorizes the Executive Officer to enter into an intergovernmental agreement with the City of Gresham. Under the terms of the IGA, Metro Open Spaces Acquisition staff will provide real estate acquisition, negotiation and paralegal services to the City of Gresham in their efforts to purchase parks and related lands. Gresham's own staff capacity has been reduced due to budget cuts. However, Gresham will fully recompense Metro for our staff time.

The contract expires at the end of the current fiscal year.

- Existing Law: Metro code 2.04.026(a)(2) requires that the Executive officer obtain the authorization of the Council prior to entering Intergovernmental Agreements, pursuant to ORS chapter 190.
- Budget Impact: None. Costs of administering the IGA are covered by charges for staff. This arrangement does stretch out the expenditure of Open Spaces bond funds that pay for staffing of Metro's Open Spaces program.

**Committee Issues/Discussion:** This agreement is consistent with an MPAC parks subcommittee recommendation that urged that Metro's expertise in acquisitions be made available to local jurisdictions. In response to a committee question, Mr. Desmond said that it is possible that more agreements like this one could be forthcoming, and that this specific agreement could be renewed with Gresham in the next fiscal year. Staff also clarified that the requirements of our own acquisitions program come first, and that staff will be made available to Gresham on that basis.