

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING) Ordinance No. 02-953A
CHAPTER 2.08 OF THE METRO)
CODE TO CREATE THE OFFICE OF) Introduced by the Council Governmental
METRO ATTORNEY) Affairs Committee at the request of the
) Metro Transition Advisory Task Force

WHEREAS, on November 7, 2000, the electors of Metro approved Ballot Measure 26-10 amending the Metro Charter; and

WHEREAS, the Metro Charter amendments, adopted on November 7, 2000, require the Metro Council to create the office of Metro Attorney and to define the duties and responsibilities of the Metro Attorney; and

WHEREAS, the Executive Officer and the Presiding Officer created a Metro Transition Advisory Task Force consisting of 12 members for the purpose of advising the Executive Officer and Council on issues related to the transition to the new charter provisions adopted in November 2000; and

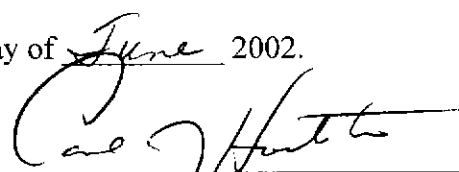
WHEREAS, the Transition Advisory Task has recommended that the Metro Council amend the provisions of Metro Code Chapter 2.08 Office of General Counsel to conform to the creation of the office of the Metro Attorney, as provided for in Section 26 (2) of the newly created Metro Charter; and

WHEREAS, the Executive Officer and Presiding Officer recommend that the Metro Council implement this recommendation; now therefore,

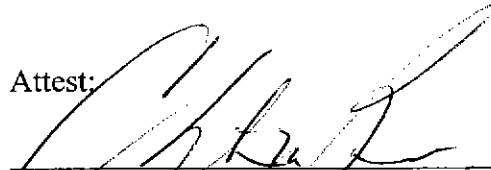
THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The office of Metro Attorney is created and the duties and responsibilities of the Metro Attorney shall be as described as set forth in Metro Code Chapter 2.08, attached hereto as Exhibit A.
2. The amendments to the Metro Code adopted by this ordinance shall take effect on January 6, 2003.

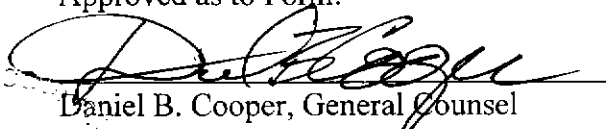
ADOPTED by the Metro Council this 27th day of June 2002.



Carl Hosticka, Presiding Officer

Attest:


Christina Billington, Recording Secretary

Approved as to Form:


Daniel B. Cooper, General Counsel

EXHIBIT A

METRO CODE AMENDMENT CREATING THE
OFFICE OF METRO ATTORNEY

CHAPTER 2.08

OFFICE OF METRO ATTORNEY GENERAL COUNSEL

[BECOMES EFFECTIVE JANUARY 6, 2003]

SECTIONS	TITLE
2.08.010	<u>Creation of Office Purpose</u>
2.08.020	<u>Appointment and Removal General Counsel Office Created</u>
2.08.030	Powers
2.08.040	Duties
2.08.050	Records
2.08.060	Attorney-Client Relationship
2.08.070	Employment of Outside <u>Legal Counsel</u>
2.08.080	Opinions
2.08.090	<u>Compensation</u>
2.08.100	<u>Vacancy</u>

2.08.010 Creation of Office Purpose

(a) The office of Metro Attorney is hereby created pursuant to Metro Charter, Section 26 (2). The office of Metro Attorney shall include the Metro Attorney and such subordinate employees as the Council may provide. Subordinate attorneys shall serve at the pleasure of the Metro Attorney. The purpose of this chapter is to establish an Office of General Counsel to provide legal services to Metro.

(b) Neither the Council nor any of its members shall direct or request the appointment of any person to, or removal from office, by the Metro Attorney of any of the Metro Attorney's subordinate employees.

(b) There is hereby created an Office of General Counsel consisting of the general counsel and such subordinate employees as the Council may provide. Subordinate attorneys

~~shall serve at the pleasure of the General Counsel. The General Counsel shall be appointed by the Council President subject to the confirmation of a majority of the members of the Council. The General Counsel may be removed by the Council President or by a vote of a majority of the members of the Council. In the event the Council President removes the General Counsel, the Council President shall report the occurrence to the Council at the next regularly scheduled Council meeting. A decision to remove the General Counsel shall not be subject to review by any court or tribunal.~~

2.08.020 Appointment and Removal General Counsel Office Created

(a) The Metro Attorney shall be appointed by the Council President subject to confirmation by the Council by resolution. The Council President shall involve the Council in all aspects of the hiring process. The Metro Attorney shall be chosen solely on the basis of legal ability and qualifications with special reference to actual experience in or knowledge of the duties of the office of the Metro Attorney. At the time of the Metro Attorney's appointment, and at all times while holding office, the Metro Attorney shall be an active member in good standing of the Oregon State Bar and authorized to practice law in the State of Oregon and the Federal District Court for Oregon. During the Metro Attorney's tenure of office the Metro Attorney shall reside within Metro's corporate boundaries.

(b) The Metro Attorney serves at the pleasure of the Council and is subject to removal by the Council President with the concurrence of the Council by resolution.

2.08.030 Powers

The Metro Attorney general counsel shall have:

(a) General control and supervision of all civil actions and legal proceedings in which the district may be a party or may be interested.

(b) Full charge and control of all the legal business of all departments and commissions of the district, or of any office thereof, which requires the services of an attorney or counsel in order to protect the interests of the district. No district officer, board, council, commission, or department shall employ or be represented by any other counsel or attorney at law except as may be provided for in this chapter.

2.08.040 Duties

The Metro Attorney general-counsel shall have the following duties:

(a) Give legal advice and opinions orally and in writing and prepare documents and ordinances concerning any matter in which the district is interested in when requested by the Council, the ~~executive officer~~Chief Operating Officer, the Auditor, or any Metro commission.

(b) Review and approve as to form all written contracts, ordinances, resolutions, executive orders, bonds, or other legally binding instruments of the district;

(c) Except as provided by any insurance policy obtained by the district, appear for, represent, and defend the district, and its departments, officers, commissions and employees and other persons entitled to representation under the Oregon Tort Claims Act in all appropriate legal matters except legal matters involving persons who after investigation by the office of Metro Attorney general-counsel, are found by the Metro Attorney general-counsel to have been acting outside the scope of their employment or duties or to have committed malfeasance in office or willful or wanton neglect of duty.

(d) Submit to the Council, ~~executive officer~~Chief Operating Officer and Auditor annually quarterly a formal report of all suits or actions in which the district is a party. The report shall state the name of each pending suit or action and a brief description of the suit or action and the status of the suit or action at the date of the report. The report shall also state the name of each suit or action closed during the preceding calendar year and a brief description of the suit or action and the disposition of the suit or action including the amount of any money paid

by the ~~district~~District. At any time the ~~Metro Attorney general counsel~~ shall at the request of the ~~Ceouncil~~Council, the ~~executive officer~~Chief Operating Officer, or the ~~A~~Auditor, report on the status of any or all matters being handled by the ~~Metro Attorney general counsel~~.

(e) Appear, commence, prosecute, defend or appeal any action, suit, matter, cause or proceeding in any court or tribunal when requested by the ~~Ceouncil~~Council, the ~~executive officer~~Chief Operating Officer, or any Metro commission when, in the discretion of the ~~Metro Attorney general counsel~~, the same may be necessary or advisable to protect the interests of the district.

2.08.050 Records

(a) The ~~Metro Attorney general counsel~~ shall have charge and custody of the office of the ~~Metro Attorney general counsel~~ and of all legal papers pertaining thereto; which shall be arranged and indexed in such convenient and orderly manner as to be at all times readily accessible.

(b) The ~~Metro Attorney general counsel~~ shall keep in the office a complete docket and set of pleadings of all suits, actions, or proceedings in which the district, the ~~Ceouncil~~Council, the ~~executive officer~~Chief Operating Officer, the ~~A~~Auditor, or any Metro commission or employee thereof is a party, pending in any court or tribunal, unless the suits, actions, or proceedings are conducted by ~~outside private~~ legal counsel retained by the district in which case the ~~Metro Attorney general counsel~~ shall keep those records as the ~~Metro Attorney general counsel~~ deems advisable.

(c) The ~~Metro Attorney general counsel~~ shall keep and record all significant written opinions furnished to Metro and shall keep an index thereof; and shall keep a file including all opinions and correspondence of the office.

2.08.060 Attorney-Client Relationship

The relationship between the office of ~~the Metro Attorney general counsel~~ and Metro shall be an attorney-client relationship, with Metro being entitled to all benefits thereof. For the purpose of this chapter, Metro is recognized as a single entity whose elected officials and appointed officers and commissioners collectively perform and exercise Metro's duties and authority. The Metro Attorney general counsel shall maintain a proper attorney-client relationship with the elected officials of the district so long as such officials are acting within the scope of their official powers, duties and responsibilities.

2.08.070 Employment of Outside Legal Counsel

(a) When in the judgment of the ~~Metro Attorney general counsel~~ the Metro Attorney general counsel deems it necessary or appropriate to do so the ~~Metro Attorney general counsel~~ may employ outside legal counsel on behalf of Metro to handle such matters as the Metro Attorney general counsel deems advisable. Employment of outside legal counsel is subject to the general requirements of this chapter and Code Chapter 2.04 Metro Contract Policies.

(b) The Metro Attorney is authorized to waive on behalf of the district potential conflicts of interest of outside legal counsel retained by the district if the Metro Attorney determines the waiver to be in the district's interest.

~~(Ordinance No. 88-237, Sec. 1. Amended by Ordinance No. 95-601B, Sec. 1)~~

2.08.080 Opinions

(a) The ~~Metro Attorney general counsel~~ shall prepare formal written opinions regarding interpretations of federal and Oregon law, the Metro Charter, and Metro ordinances. These opinions shall be official guidance to the district except as superseded by courts of law, legislative action administrative rules, or actions of other superior tribunals or bodies. ~~Formal opinion requests may be made by any Metro elected official. All requests for opinions shall be in writing. Upon receipt of a written request for a formal opinion the~~ Metro Attorney general

~~counsel shall furnish a copy of the request to the executive officer~~Chief Operating Officer, the ~~A~~Auditor, and all members of the ~~C~~Council. Upon completion, copies of all formal opinions shall be furnished to the executive officer~~C~~Chief Operating Officer, the ~~A~~Auditor, and all members of the ~~C~~Council.

(b) Neither the ~~executive officer~~Chief Operating Officer nor any member of the ~~C~~Council shall directly or indirectly by suggestion or otherwise attempt to influence or coerce the ~~Metro Attorney~~general counsel in the preparation of any requested opinion. The ~~Metro Attorney~~general counsel shall not be removed because of the rendering of any opinion. Nothing in this section prohibits, however, the ~~executive officer~~Chief Operating Officer or the ~~C~~Council from fully and freely discussing with the ~~Metro Attorney~~general counsel the legal affairs of Metro.

~~(Ordinance No. 90-347A, Sec. 2. Amended by Ordinance No. 95-601B, Sec. 1)~~

2.080.090 Compensation

The Metro Attorney shall receive such compensation as the Council shall fix from time to time by contract.

2.080.100 Vacancy

Any vacancy in the office of the Metro Attorney shall be filled with all due speed. During any vacancy or incapacity, the Council President may appoint an acting Metro Attorney subject to confirmation by the Council by resolution.

GOVERNMENTAL AFFAIRS COMMITTEE REPORT

CONSIDERATION OF ORDINANCE NO. 02-942A, FOR THE PURPOSE OF ADDING A NEW CHAPTER TO THE METRO CODE CREATING THE OFFICE OF CHIEF OPERATING OFFICER

CONSIDERATION OF ORDINANCE NO. 02-953A, FOR THE PURPOSE OF AMENDING CHAPTER 2.08 OF THE METRO CODE TO CREATE THE OFFICE OF METRO ATTORNEY

CONSIDERATION OF ORDINANCE NO. 02-954A, FOR THE PURPOSE OF AMENDING CHAPTER 2.01 OF THE METRO CODE TO REFLECT THE CREATION OF THE OFFICE OF METRO COUNCIL PRESIDENT

CONSIDERATION OF ORDINANCE NO. 01-955A, FOR THE PURPOSE OF AMENDING CHAPTER 2.19 OF THE METRO CODE TO CONFORM TO THE CHARTER AMENDMENTS ADOPTED ON NOVEMBER 7, 2002

CONSIDERATION OF RESOLUTION NO. 02-3205A, FOR THE PURPOSE OF AUTHORIZING THE ISSUANCE OF A REQUEST FOR PROPOSALS FOR A PERSONAL SERVICES CONTRACT FOR THE RECRUITMENT OF A CHIEF OPERATING OFFICER AS SET FORTH IN METRO CODE CHAPTER 2.20

Date: June 26, 2002

Presented by: Governmental Affairs Committee

Committee Recommendation: At its June 26 meeting, the committee considered Ordinances 02-942A, 02-953A, 02-954A, 02-955A and Resolution 02-3205A and voted unanimously to send the ordinances and resolution, as amended, to the Council for adoption. Voting in favor: Councilors Burkholder and Monroe and Chair Bragdon.

Background:

The Metro Charter amendments approved by the voters at the 2000 general election created the offices of Council President and Metro Attorney and abolished the office of Executive Officer. The amendments further require that the Council establish the Office of Chief Operating Officer (COO) and describe the duties and functions of the office prior to the January 6, 2003 effective date of the charter amendments. The Presiding Officer and Executive Officer established a transition advisory task force (TATF) to make recommendations concerning the implementation of the charter amendments. Four ordinances were drafted to address the requirements of the charter amendments and the recommendations of the TATF. In addition, a separate resolution was drafted to authorize the release of an RFP to obtain the assistance of an executive search firm related to the initial hiring of a COO.

The four ordinances and one resolution are being brought forward from the Governmental Affairs Committee as the initial package of Metro Code and other changes that will need to be addressed as part of the transition process. It is anticipated that additional ordinances will be drafted that address how the transition will effect Metro Code provisions related to contracting and purchasing, elections, the role of COO related to growth management and functional planning and an omnibus ordinance that make technical and grammatical changes related to the creation and abolition of certain offices.

This committee report outlines the committee's review of this initial package of proposed transition-related legislation.

Committee Discussion:

The Governmental Affairs Committee considered various drafts of the proposed ordinances and resolution over a period of five meetings from April 25 through June 26. The committee's review resulted in numerous amendments to the original drafts. The following committee discussion summarizes these amendments and the current language of the ordinances and resolution as they were passed out of committee.

ORDINANCE 02-942A

The following specific provisions are included in the proposed ordinance.

Chapter 2.20.010. Establishes the office of Chief Operating Officer pursuant to Section 26 of the Metro Charter.

Chapter 2.20.020. Establishes procedures related to the appointment and removal of the Chief Operating Officer. As per the charter, the appointment of the COO would be made by the Council President subject to confirmation by the Council. The Council President would be "involve" the Council in the hiring process. The COO would be required to live within the Metro boundary during his or her tenure in office. The COO would serve at the pleasure of the Council and could be removed by the Council President with the concurrence of the Council.

Chapter 2.20.030. Sets forth the general powers and duties of the Chief Operating Officer. These would include:

- 1) Appoint, supervise, discipline or remove all officers and employees of Metro
- 2) Prepare the annual budget of behalf of the Council President and under the direction of the Council
- 3) Prepare and submit an annual report on the finances and administrative activities of Metro and the end of each fiscal year
- 4) Advise the Council on the financial condition and future needs of Metro
- 5) Make organizational and staffing adjustments with the approval of the Council
- 6) Devote full time to the discharge of all official duties
- 7) Perform such other duties as required by the Council

It is anticipated that the powers and duties related to areas such as contracting and personnel will be outlined in additional ordinances that specifically address the relevant chapters of the Metro Code.

Chapter 2.20.040 Sets forth the relationship between the COO and the Council related to the appointment, removal and management of staff. The section provides that the Council or its members may not direct or request the hiring or firing of a specific person. It also permits Councilor involvement in the assignment and performance review of Council staff.

Chapter 2.20.050 Gives the COO the authority to enter into contracts or make purchases in the event of a public emergency and requires a prompt accounting of such actions to the Council.

Chapter 2.20.060 Provides that the Council shall contractually fix the compensation for the COO.

Chapter 2.20.070 Provides that any vacancy in the Office of the Chief Operating Officer must be filled with all due speed and that the Council President may appoint an acting COO subject to confirmation by the Council.

Committee Amendments. Committee amendments to the original proposed ordinance addressed the following areas:

*Clarification that the Council confirmation of the COO and Council concurrence in the removal of the COO would be by resolution.

*Providing that the Council President will “involve” the Council in the COO hiring process, while leaving it to the Council President, the full Council, and individual councilors to define the level of involvement that would occur. The Council’s power of confirmation is its ultimate involvement.

*Deleting several of the proposed duties of the COO that were derived from a model ordinance related to the establishment of a city manager’s position. The deleted provisions included:

--Recommendations related to employee pay scales. The committee assumed that the role of the COO related to Metro’s personnel system will be outlined in greater detail in a soon to be drafted ordinance dealing with transition-related changes in Metro’s personnel code.

--Recommendations related to health, safety and welfare and improvements in administrative services.

--Direct and supervise the administration of all departments, offices and agencies of Metro

--Attend all meetings of the Metro Council

--Supervision of the purchasing system.. The committee assumed that the role of the COO related to Metro’s purchasing system will be outlined in greater detail in a soon to be drafted ordinance dealing with transition-related changes in Metro’s purchasing and contracting code.

--Authorization to conduct real property transactions.

--Work with the Metro Attorney to ensure enforcement of all laws and ordinances.

--Investigate the affairs of Metro or any Metro department or division.

- Eliminated the bonding requirement for the COO, based on advice from legal counsel that Metro’s existing insurance policies address the same concerns that would be addressed by bonding the COO

The committee concluded that deleted provisions were either unnecessary, potential subjects to be addressed in the employment contract of the COO, or will be addressed in future legislation.

ORDINANCE 02-953A

The proposed ordinance uses the existing Metro Code Chapter 2.08 as the basis for creating the Office of Metro Attorney. The duties, functions and record keeping activities of the new Metro Attorney's office are identical to those of the current Office of General Counsel. The attorney-client relationship provisions of the existing Code also are retained. New provisions added to Chapter 2.08 include:

- 1) Specific reference to the creation of the Office of Metro Attorney under the provisions of Section 26(2) of the amended Metro Charter.
- 2) Provisions for the appointment and removal of the Metro Attorney by the Council President subject to confirmation or concurrence by resolution adopted by the full Council.
- 3) Provisions for filling a vacancy in the office of Metro Attorney including the appointment of an acting Metro Attorney.
- 4) Establishment of general job qualifications including state bar membership and residence within the boundaries of Metro.
- 5) Placing in the Code the historic authority of the General Counsel to waive potential conflicts of interest of outside legal counsel hired by Metro.

Technical changes to the chapter include the removal of references to the Executive Officer and the addition of references to the new Chief Operating Officer where appropriate.

Committee Amendments. The committee made few changes to the original proposed draft. The changes approved by the committee included: 1) making the language related the Council President's involvement of the Council in the hiring of the Metro Attorney identical to that for the hiring of the COO, 2) requiring that Council confirmation or concurrence in the hiring or removal of the Metro Attorney be by resolution, and 3) streamlining the process for the preparation of written opinions by the Office of Metro Attorney to reflect actual current practice.

ORDINANCE 02-954A

The proposed ordinance uses the existing Metro Code Chapter 2.01 as the basis for implementing the charter amendment related to the Office of Council President. The ordinance recognizes the creation of Office of Council President under the provisions of the amended Metro Charter and that the charter also prescribes the general powers and duties of the office. The ordinance also would eliminate code references to the Council Presiding Officer and replaces them with the new Office of Council President. In addition, the ordinance gives the Council discretionary authority to adopt a resolution establishing committees and gives the Council President the authority to appoint committee members and chairs subject to confirmation by the full Council.

The former deputy presiding officer position would be identified as the Deputy. The Deputy would be a councilor elected by a majority of the full Council at the first Council meeting of each calendar year. The ordinance also specifies that the provisions of Metro Code Chapter 9.01 would govern the selection of a new Council President in the event of a vacancy in that office. Because the Office of the Council President will be a regionally elected office, the current code provision which permitted the removal of the presiding officer by an affirmative vote of two-thirds of the Council would be repealed.

Committee Amendments. Committee discussion of this ordinance focused on three main areas: 1) vacancies, absences, and incapacitation affecting the office of the Council President, 2) whether the deputy, when serving as the Acting Council President due to a vacancy in the Office of Council President

would receive the Council President's salary, and 3) the role of the Council President in submitting the annual agency budget.

The committee addressed the issue of a temporary absence or incapacity of the Council President by providing that the Deputy would temporarily serve as the Council President. In the event of a vacancy in the Office of Council President, the Deputy would serve as the Acting Council President until a new Council President is elected or appointed under the provisions of Metro Code Chapter 9.01. In the event of the absence or incapacity of both the Council President and the Deputy, the Council President could designate a Councilor to act as the Temporary Council President. The committee amended the ordinance to clarify that the Deputy, when serving as the Acting Council President, would not receive the Council President's salary. The Council President also would be designated as the district budget officer and be required to submit the annual budget to the full Council.

ORDINANCE 02-955A

The proposed ordinance addresses the need to make technical changes in the appointment authority and administration of the advisory committees subject to the provisions of Metro Code Chapter 2.19. The ordinance would transfer most committee appointment authority from the abolished position of Executive Officer to the newly created Council President position. Other various administrative functions related to the operation of the committees would be transferred from the Executive Officer to the new Chief Operating Officer. The Council President would be responsible for the administration of the committee membership recruitment process. In addition, the ordinance provides that the MPAC, JPACT, and MCCI would report directly to the Council and the Council President.

Committee Amendments. The committee amendments were technical in nature, correcting grammatical and spelling errors and inadvertent omissions, such as adding the Metro Committee for Citizen Involvement to the list of committees in the definitions section of the ordinance.

RESOLUTION 02-3205A

Due to the importance of the newly created COO position, the Council has determined that it will be useful to contract with an outside firm to assist in the recruitment process to provide the highest quality applicant pool for the selection of the initial COO. Funds were authorized in the FY 02-03 budget for this purpose. The proposed resolution would authorize the release of a Request for Proposals to solicit and executive search firm to provide recruitment assistance.

The scope of work for the contract envisions that the vendor would assist in identifying desired qualifications, the timing and scope of the recruitment and the compensation package. The vendor also would prepare a recruitment plan and arrange for the placement of recruitment ads in various publications. The selected firm also would review resumes, conduct initial screening and perform background checks on prospective candidates.

Committee Amendments. The process for hiring the initial COO will be administered by the Council Office. Therefore, the committee concluded that it is more appropriate for the Council Presiding Officer to execute the contract with the successful vendor as recommended by the Chair of the Governmental Affairs Committee, in consultation with the committee. Language to reflect this process was added to the "Be it Resolved" provisions of the proposed resolution.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING) Ordinance No. 02-953
CHAPTER 2.08 OF THE METRO)
CODE TO CREATE THE OFFICE OF) Introduced by the Council Governmental
METRO ATTORNEY) Affairs Committee at the request of the
) Metro Transition Advisory Task Force

WHEREAS, on November 7, 2000, the electors of Metro approved Ballot Measure 26-10 amending the Metro Charter; and

WHEREAS, the Metro Charter amendments, adopted on November 7, 2000, require the Metro Council to create the office of Metro Attorney and to define the duties and responsibilities of the Metro Attorney; and

WHEREAS, the Executive Officer and the Presiding Officer created a Metro Transition Advisory Task Force consisting of 12 members for the purpose of advising the Executive Officer and Council on issues related to the transition to the new charter provisions adopted in November 2000; and

WHEREAS, the Transition Advisory Task has recommended that the Metro Council amend the provisions of Metro Code Chapter 2.08 Office of General Counsel to conform to the creation of the office of the Metro Attorney, as provided for in Section 26 (2) of the newly created Metro Charter; and

WHEREAS, the Executive Officer and Presiding Officer recommend that the Metro Council implement this recommendation; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The office of Metro Attorney is created and the duties and responsibilities of the Metro Attorney shall be as described as set forth in Metro Code Chapter 2.08, attached hereto as Exhibit A.
2. The amendments to the Metro Code adopted by this ordinance shall take effect on January 6, 2003.

ADOPTED by the Metro Council this _____ day of _____ 2002.

Carl Hosticka, Presiding Officer

Attest:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, General Counsel

EXHIBIT A

METRO CODE AMENDMENT CREATING THE
OFFICE OF METRO ATTORNEY

CHAPTER 2.08

OFFICE OF METRO ATTORNEY GENERAL COUNSEL

[BECOMES EFFECTIVE JANUARY 6, 2003]

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(b) Neither the Council nor any of its members shall direct or request the appointment of any person to, or removal from office, by the Metro Attorney of any of the Metro Attorney's subordinate employees.

(b) There is hereby created an Office of General Counsel consisting of the general counsel and such subordinate employees as the Council may provide. Subordinate attorneys shall serve at the pleasure of the General Counsel. The General Counsel shall be appointed by the Council President subject to the confirmation of a majority of the members of the Council. The General Counsel may be removed by the Council President or by a vote of a majority of the members of the Council. In the event the Council President removes the General Counsel, the Council President shall report the occurrence to

the Council at the next regularly scheduled Council meeting. A decision to remove the General Counsel shall not be subject to review by any court or tribunal.

2.08.020 Appointment and Removal General Counsel Office Created

(a) The Metro Attorney shall be appointed by the Council President subject to confirmation by the Council by resolution. The Council President shall keep the Council informed in all aspects of the hiring process. The Metro Attorney shall be chosen solely on the basis of legal ability and qualifications with special reference to actual experience in or knowledge of the duties of the office of the Metro Attorney. At the time of the Metro Attorney's appointment, and at all times while holding office, the Metro Attorney shall be an active member in good standing of the Oregon State Bar and authorized to practice law in the State of Oregon and the Federal District Court for Oregon. During the Metro Attorney's tenure of office the Metro Attorney shall reside within Metro's corporate boundaries.

(b) The Metro Attorney serves at the pleasure of the Council and is subject to removal by the Council President with the concurrence of the Council by resolution.

2.08.030 Powers

The Metro Attorney general-counsel shall have:

(a) General control and supervision of all civil actions and legal proceedings in which the district may be a party or may be interested.

(b) Full charge and control of all the legal business of all departments and commissions of the district, or of any office thereof, which requires the services of an attorney or counsel in order to protect the interests of the district. No district officer, board, council, commission, or department shall employ or be represented by any other counsel or attorney at law except as may be provided for in this chapter.

2.08.040 Duties

The Metro Attorney general-counsel shall have the following duties:

(a) Give legal advice and opinions orally and in writing and prepare documents and ordinances concerning any matter in which the district is interested in when requested by the Council, the ~~executive officer~~Chief Operating Officer, the Auditor, or any Metro commission.

(b) Review and approve as to form all written contracts, ordinances, resolutions, executive orders, bonds, or other legally binding instruments of the district;

(c) Except as provided by any insurance policy obtained by the district, appear for, represent, and defend the district, and its departments, officers, commissions and employees and other persons entitled to representation under the Oregon Tort Claims Act in all appropriate legal matters except legal matters involving persons who after investigation by the office of Metro Attorney general counsel, are found by the Metro Attorney general counsel to have been acting outside the scope of their employment or duties or to have committed malfeasance in office or willful or wanton neglect of duty.

(d) Submit to the Council, ~~executive officer~~Chief Operating Officer and Auditor annually ~~quarterly~~ a formal report of all suits or actions in which the district is a party. The report shall state the name of each pending suit or action and a brief description of the suit or action and the status of the suit or action at the date of the report. The report shall also state the name of each suit or action closed during the preceding calendar year and a brief description of the suit or action and the disposition of the suit or action including the amount of any money paid by the ~~district~~District. At any time the Metro Attorney general counsel shall at the request of the Council, the ~~executive officer~~Chief Operating Officer, or the Auditor, report on the status of any or all matters being handled by the Metro Attorney general counsel.

(e) Appear, commence, prosecute, defend or appeal any action, suit, matter, cause or proceeding in any court or tribunal when requested by the Council, the ~~executive officer~~Chief Operating Officer, or any Metro commission when, in the discretion of the Metro Attorney general counsel, the same may be necessary or advisable to protect the interests of the district.

2.08.050 Records

(a) The Metro Attorney general counsel shall have charge and custody of the office of the Metro Attorney general counsel and of all legal papers pertaining thereto, which shall be arranged and indexed in such convenient and orderly manner as to be at all times readily accessible.

(b) The ~~Metro Attorney general counsel~~ shall keep in the office a complete docket and set of pleadings of all suits, actions, or proceedings in which the district, the ~~C~~ouncil, the ~~executive officer~~ Chief Operating Officer, the ~~A~~uditor, or any Metro commission or employee thereof is a party, pending in any court or tribunal, unless the suits, actions, or proceedings are conducted by outside private legal counsel retained by the district in which case the Metro Attorney general counsel shall keep those records as the Metro Attorney general counsel deems advisable.

(c) The ~~Metro Attorney general counsel~~ shall keep and record all significant written opinions furnished to Metro and shall keep an index thereof; and shall keep a file including all opinions and correspondence of the office.

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The relationship between the office of the ~~Metro Attorney general counsel~~ and Metro shall be an attorney-client relationship, with Metro being entitled to all benefits thereof. For the purpose of this chapter, Metro is recognized as a single entity whose elected officials and appointed officers and commissioners collectively perform and exercise Metro's duties and authority. The Metro Attorney general counsel shall maintain a proper attorney-client relationship with the elected officials of the district so long as such officials are acting within the scope of their official powers, duties and responsibilities.

2.08.070 Employment of Outside Legal Counsel

(a) When in the judgment of the Metro Attorney general counsel the Metro Attorney general counsel deems it necessary or appropriate to do so the Metro Attorney general counsel may employ outside legal counsel on behalf of Metro to handle such matters as the Metro Attorney general counsel deems advisable. Employment of outside legal counsel is subject to the general requirements of this chapter and Code Chapter 2.04 Metro Contract Policies.

(b) The Metro Attorney is authorized to waive on behalf of the district potential conflicts of interest of outside legal counsel retained by the district if the Metro Attorney determines the waiver to be in the district's interest.

~~(Ordinance No. 88-237, Sec. 1. Amended by Ordinance No. 95-601B, Sec. 1)~~

2.08.080 Opinions

(a) The ~~Metro Attorney general counsel~~ shall prepare formal written opinions regarding interpretations of federal and Oregon law, the Metro Charter, and Metro ordinances. These opinions shall be official guidance to the district except as superseded by courts of law, legislative action administrative rules, or actions of other superior tribunals or bodies. ~~Formal opinion requests may be made by any Metro elected official. All requests for opinions shall be in writing. Upon receipt of a written request for a formal opinion the Metro Attorney general counsel shall furnish a copy of the request to the executive officer~~Chief Operating Officer, the Auditor, and all members of the Council. ~~Upon completion, copies of all formal opinions shall be furnished to the executive officer~~Chief Operating Officer, the Auditor, and all members of the Council.

(b) Neither the ~~executive officer~~Chief Operating Officer nor any member of the ~~Council~~ shall directly or indirectly by suggestion or otherwise attempt to influence or coerce the ~~Metro Attorney general counsel~~ in the preparation of any requested opinion. The ~~Metro Attorney general counsel~~ shall not be removed because of the rendering of any opinion. Nothing in this section prohibits, however, the ~~executive officer~~Chief Operating Officer or the ~~Council~~ from fully and freely discussing with the ~~Metro Attorney general counsel~~ the legal affairs of Metro.

(Ordinance No. 90-347A, Sec. 2. Amended by Ordinance No. 95-601B, Sec. 1)

2.080.090 Compensation

The Metro Attorney shall receive such compensation as the Council shall fix from time to time by contract.

2.080.100 Vacancy

Any vacancy in the office of the Metro Attorney shall be filled with all due speed. During any vacancy or incapacity, the Council President may appoint an acting Metro Attorney subject to confirmation by the Council by resolution.

STAFF REPORT

CONSIDERATION OF ORDINANCE NO. 02-953, FOR THE PURPOSE OF AMENDING CHAPTER 2.08 OF THE METRO CODE TO CREATE THE OFFICE OF METRO ATTORNEY

Date: May 31, 2002

Presented by: Council Governmental Affairs Committee

Background

The Metro Charter amendments approved by the voters at the 2000 general election require that the Council establish the Office of Metro Attorney and prescribe the duties and functions of the office prior to the January 6, 2003 effective date of the charter amendments. The Presiding Officer and Executive Officer established an advisory task force to make recommendations concerning the implementation of the charter amendments. An original draft ordinance was prepared to implement the task force recommendations relating to the Office of the Council President. This draft was reviewed by the Council Governmental Affairs Committee which made several amendments to the draft.

Analysis/Information

Legal Background. Provisions of the current Metro Code Chapter 2.08 create and outline the duties and functions of the existing Office of General Counsel. The chapter also establishes procedures for the appointment and removal of the General Counsel and the legal working relationship between the General Counsel and the Metro Executive Officer and the Metro Council. In addition to requiring the establishment of an Office of Metro Attorney, the charter amendments adopted in 2000 eliminated the elected Executive Officer position and require the creation of a Chief Operating Officer position. Thus, the legislation creating the Office of Metro Attorney also needs to remove references to the Executive Officer and establish a working relationship with the newly created Chief Operating Officer.

Anticipated Effect. The proposed ordinance uses the existing Metro Code Chapter 2.08 as the basis for creating the Office of Metro Attorney. The duties, functions and record keeping activities of the new Metro Attorney's office are identical to those of the current Office of General Counsel. The attorney-client relationship provisions of the existing Code also are retained. Technical changes to the chapter include the removal of references to the Executive Officer and the addition of references to the new Chief Operating Officer where appropriate. New provisions added to Chapter 2.08 include:

- 1) Specific reference to the creation of the Office of Metro Attorney under the provisions of Section 26(2) of the amended Metro Charter.
- 2) Provisions for the appointment and removal of the Metro Attorney by the Council President subject to confirmation or concurrence by resolution adopted by the full Council.
- 3) Provisions for filling a vacancy in the office of Metro Attorney including the appointment of an acting Metro Attorney.
- 4) Establishment of general job qualifications including state bar membership and residence within the boundaries of Metro.
- 5) Placing in the Code the historic authority of the General Counsel to waive potential conflicts of interest of outside legal counsel hired by Metro.

Known Opposition. None.

Budget Impact. None, other than minor costs associated with new stationary and business cards associated with the change in the title of the office.

Recommended Action. Council adoption of the proposed ordinance.