

A G E N D A

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736
TEL 503 797 1542 | FAX 503 797 1793



METRO

Agenda

MEETING: METRO COUNCIL REGULAR MEETING – *Revised 4/06/2005*
DATE: April 7, 2005
DAY: Thursday
TIME: 2:00 PM
PLACE: Metro Council Chamber

CALL TO ORDER AND ROLL CALL

1. INTRODUCTIONS

2. CITIZEN COMMUNICATIONS

3. CONSENT AGENDA

3.1 Consideration of Minutes for the March 24, 2005 Metro Council Regular Meeting.

4. ORDINANCES – FIRST READING – PUBLIC HEARING

4.1 **Ordinance No. 05-1074**, For the Purpose of Adopting the Annual Budget For Fiscal Year 2005-06, Making Appropriations, and Levying Ad Valorem Taxes, and Declaring an Emergency.

5. ORDINANCES - SECOND READING

5.1 **Ordinance No. 05-1075**, Confirming the Re-adoption of Metro Code 7.03 (Investment Policy) Burkholder

6. RESOLUTIONS

6.1 **Resolution No. 05-3569**, For the Purpose of Confirming Metro Council Representatives to the Eastside and Lake Oswego/Portland Transit Alternatives Analysis Steering Committee and Identifying other Representative Categories to the Committee. Park

6.2 **Resolution No. 05-3574**, Establishing a Regional Habitat Protection, Restoration and Greenspaces Initiative Called Nature in Neighborhoods
(*For Introduction Only; No Final Action*)

7. **OREGON LEGISLATIVE UPDATE**
8. **CHIEF OPERATING OFFICER COMMUNICATION**
9. **COUNCILOR COMMUNICATION**

ADJOURN

Television schedule for April 7, 2005 Metro Council meeting

Clackamas, Multnomah and Washington counties, and Vancouver, Wash. Channel 11 -- Community Access Network www.yourtvtv.org -- (503) 629-8534 2 p.m. Thursday, April 7 (live)	Washington County Channel 30 -- TVTV www.yourtvtv.org -- (503) 629-8534 11 p.m. Saturday, April 9 11 p.m. Sunday, April 10 6 a.m. Tuesday, April 12 4 p.m. Wednesday, April 13
Oregon City, Gladstone Channel 28 -- Willamette Falls Television www.wftvaccess.com -- (503) 650-0275 Call or visit website for program times.	West Linn Channel 30 -- Willamette Falls Television www.wftvaccess.com -- (503) 650-0275 Call or visit website for program times.
Portland Channel 30 (CityNet 30) -- Portland Community Media www.pcatv.org -- (503) 288-1515 8:30 p.m. Sunday, April 10 2 p.m. Monday, April 11	

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- 6.2 **Resolution No. 05-3574**, For the Purpose of Establishing a Regional Habitat Restoration Program Called Nature in Neighborhoods Bragdon/
(*For Introduction Only; No Final Action*) Hosticka

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Agenda Item Number 4.1

Consideration of Minutes of the March 24, 2005 Regular Council meeting.

Metro Council Meeting
Thursday, April 7, 2005
Council Chamber

MINUTES OF THE METRO COUNCIL MEETING

Thursday, March 24, 2005
Metro Council Chamber

Councilors Present: David Bragdon (Council President), Susan McLain, Robert Liberty, Rex Burkholder, Carl Hosticka, Rod Park, Brian Newman

Councilors Absent:

Council President Bragdon convened the Regular Council Meeting at 2:00 p.m.

1. INTRODUCTIONS

There were none.

2. CITIZEN COMMUNICATIONS

Michael Hammons, 20320 SE Hwy 212, Damascus, Oregon 97015 said his main concern was with Ordinance No. 02-969B. He was looking for direction. He felt that the local jurisdictions didn't seem to be working well together concerning the proposed annexation of Happy Valley. His question was, was it up to Clackamas County or Metro to coordinate the effort? Council President Bragdon said Metro was not a party in the Land Use Board of Appeals (LUBA) case. Councilor Park asked Mr. Hammons if his intent was to keep a separation of cities. Mr. Hammons said yes. Councilor Park said he believed it was a separation of town centers not cities. Mr. Hammons said they were trying to figure out where those town centers should be. He spoke to natural features. Council President Bragdon said his recollection was that the boundary would be east of 172nd. He knew that was part of the dispute. He thought this issue was playing out through LUBA. He thought that Michael Jordan, Chief Operating Officer, might have an awareness of the issue.

Mr. Jordan said the intent of Exhibit M of Ordinance No. 02-969B was the separation of town centers not cities. His understanding was that this was under dispute. There was a meeting tonight to discuss this issue. Councilors asked questions concerning the issue and the dispute. Mr. Hammons concluded by saying that his hope was that Metro, Happy Valley, Clackamas County and Damascus work this out together.

Carolyn Jones, 2818 S. Poplar Way, Lake Oswego, OR 97034 said she was strongly speaking out against Metro's Goal 5 proposal. The Goal 5 proposal was another layer of protection for the region. She felt that the program was based on fraud. There was no protection at all. The lake front owners of Lake Oswego had no regulation. She raised the question, what was the point of regulating stream corridor when the primary points of pollution were at the waterfront. She talked about Mayor Hammerstad's comments about Lake Oswego being a big bathtub. Ms. Johnson said twice voters had sent messages that they didn't want interference with their property. She asked Council to cease and desist until they had a plan to pay the property owners.

3. GOVERNMENT FINANCE OFFICERS ASSOCIATION DISTINGUISHED BUDGET PRESENTATION AWARD

Bill Stringer, Chief Financial Officer, said he was pleased today to present to the Metro Council their finance department's eleventh annual award. They had met the criteria that Government

Financial Officers Association (GFOA) had set forth. He expressed particular appreciation to the Financial Planning staff.

5. QUARTERLY FINANCIAL REPORT

Bill Stringer, Chief Financial Officer, said the quarterly report contained for the first time the auditor's recommendations and the status of those recommendations (a copy of the power point presentation is included in the meeting record). The Office of the Chief Financial Officer would be responding to the audit reports. They would also present to Council any change in status. Councilor Liberty wanted to know what "other" meant. Mr. Stringer explained the "other" category. Mr. Stringer gave an overview of the audit recommendations and provided an update on those audit items. He then gave an overview of the excise tax. There had been an increase in tonnage, which had permitted Solid Waste to totally fund their portion of the excise tax. He noted that the Oregon Convention Center (OCC) excise tax was up by about 19.8%. Councilor Newman asked about the Zoo excise taxes status. Councilor Park asked about tonnage. Mr. Stringer responded to their question. He reminded the Council that this report was for the first two quarters.

He provided an overview of all funds over the past four years. He then provided details on expenditures. He felt the revenue versus expenditure was good news for 2005. He highlighted the various departmental fund balances. Councilor Newman asked about the budgeted fund balance. Kathy Rutkowski, Budget Manager, responded to his question. Councilors asked about the up turns in OCC's business. Mr. Stringer felt there were challenges involved in Metropolitan Exposition Recreation Commission's (MERCs) budget over the next few years but food revenues were up this year. Council President Bragdon noted that food revenues were sensitive to economic changes. Mr. Stringer then provided an overview of the Planning fund. Councilor Liberty asked questions about the grant funding. Ms. Rutkowski responded by talking about the tracking and billing system for grants. Mr. Stringer added that they were developing a new grants billing system.

Mr. Stringer noted that the Parks Department revenues were down primarily because of weather. Councilor Newman asked what was the spike of expenditures in November. Ms. Rutkowski responded to his question. Mr. Stringer provided an overview of Zoo revenues and expenditures. He spoke to exit incentives and the effects on the Zoo.

Mr. Stringer provided a summary of the Capital Improvement Program (CIP) for solid waste, parks, MERC and the Zoo. Councilor Newman asked about MERC not choosing to be part of the CIP and was that allowed under the Code? Dan Cooper, Metro Attorney, said the Council amended the Code for MERC to allow for a total MERC budget, but they could move revenue around. Councilor McLain talked about the history of the Code changes. She felt Councilor Newman brought up a good point. They had asked for updates from MERC. She felt there needed to be a joint meeting between MERC and Council so there was coordination concerning the budget and the CIP. Council President Bragdon said he had talked with the new general manager about the capital planning. They were scheduling a joint meeting in early May. Councilor Newman requested one-on-ones with the new general manager.

Mr. Stringer continued talking about the Zoo's CIP. Councilor Liberty asked about the support service fund. Deputy Council President Burkholder noted that they had not had a chance to review the documents and suggested asking questions about the report at a future date. Mr. Stringer said they would present additional detail at next Tuesday's work session. Ms. Rutkowski responded to Councilor Liberty's questions about the support service fund.

4. FIVE YEAR FINANCIAL OUTLOOK

Bill Stringer, Chief Financial Officer, provided an overview of the agency's five-year financial forecast. He reminded that on March 29th they would meet in work session to discuss the report in detail. The forecast assumed the status quo. It didn't presume any changes in programs or policies. He talked specifically about the Planning Department. Councilor Hosticka asked for a brief description of a reserve and an ending balance. Council President Bragdon asked about the consolidation of the general fund and how they would look at the differences from previous times. Councilor McLain talked about the renewal and replacement account. Ms. Rutkowski responded to the Councilors questions. Mr. Stringer continued with his report on the financial conditions with respect to the Parks Department. Councilor Burkholder talked about expenditures growing faster than revenues. The reason was that many of the costs were rising faster than revenues such as health care and retirement costs. These were expenses beyond Metro's control.

Councilor Newman asked how disciplined these projections were over time. Mr. Stringer said these were based on current services, which reflected medical costs increases, increases in retirement contribution even without consideration of the court case as well as known changes in funding such as the Visitors Development Fund and grant funding. It was generally a current service projection. He briefed the Council on the Zoo forecasts. The current service level was unsustainable. Brad Stevens, Financial Department, talked about the Zoo fund balances. Councilor McLain said she was interested in the model for the five-year projections. Mr. Stringer provided the MERC forecasts. Councilor Liberty asked about the increasing costs. Ms. Rutkowski said personal services costs were ever increasing and were the primary reason for the costs rising faster than the revenues. Mr. Stringer detailed the Solid Waste and Recycling forecast. He was available to answer questions next Tuesday at the work session. Councilor McLain suggested talking about the strategic planning processes and how they applied those goals and objectives with the current presentation.

6. CONSENT AGENDA

6.1 Consideration of minutes of the March 17, 2005 Regular Council Meetings.

Motion:

Councilor Burkholder moved to adopt the meeting minutes of the March 17, 2005 Regular Metro Council.

Vote:

Councilors Burkholder, McLain, Liberty, Park, Newman, and Council President Bragdon voted in support of the motion. The vote was 6 aye, the motion passed with Councilor Hosticka abstaining from the vote.

7. ORDINANCES – FIRST READING

7.1 Ordinance No. 05-1075, Confirming the re-adoption of Metro Code 7.03 (Investment Policy)

Council President Bragdon assigned Ordinance No. 05-1075 to Council.

8. ORDINANCES – SECOND READING

8.1 **Ordinance No. 05-1076**, For the Purpose of Amending the FY 2004-05 Budget And Appropriations Schedule by transferring \$90,250 from Contingency To Materials and Services in the Zoo Operating Fund for Expenses Associated With an Additional Concert.

Motion:	Councilor Newman moved to adopt Ordinance No. 05-1076.
Seconded:	Councilor McLain seconded the motion

Councilor Newman said this ordinance would amend the budget to allow for an additional concert, Lyle Lovett would be performing at this concert. He spoke to costs and revenues and the net gains. He encouraged support of the ordinance.

Council President Bragdon opened a public hearing on Ordinance No. 05-1076. No one came forward to testify. Council President Bragdon closed the public hearing.

Vote:

Councilors Park, Hosticka, Burkholder, McLain, Newman, Liberty and Council President Bragdon voted in support of the motion. The vote was 7 aye, the motion passed.

Mr. Jordan acknowledged Sarah Chisholm's service to Metro and to the Oregon Zoo. Councilors acknowledged her contributions.

9. RESOLUTIONS

9.1 **Resolution No. 05-3529**, For the Purpose of Allocating \$62.2 Million of Transportation Priorities Funding for the Years 2008 and 2009, Pending Air Quality Conformity Determination.

Motion:	Councilor Burkholder moved to adopt Resolution No. 05-3529A.
Seconded:	Councilor Park seconded the motion

Councilor Burkholder briefed the Council on Resolution No. 05-3529A. He said this resolution was just approved at Joint Policy Advisory Committee on Transportation (JPACT) this morning. He spoke to the technical changes having to do with the Springwater Trail and the Cully Boulevard projects. Council did not object to these two changes in the document. Councilor Burkholder briefed the Council on the decisions made at JPACT this morning and the process they had gone through to come to this decision. Most of the projects met the criteria that Council had laid out. They were over budget by about \$900,000. There was a base package and several additions that occurred this morning at JPACT. He talked about the adds to the package (a copy of these changes were included in the record) which made up the bulk of the \$900,000. He talked about the detailed conditions applied to the categories. He thanked staff and JPACT for their efforts. He urged support.

Councilor McLain asked what they were estimating from TEA-21. Councilor Burkholder responded to her question. Councilor Newman thanked his colleagues Councilors Burkholder and Park for their efforts. He felt it was a good process. He also thanked staff for their work. Councilor Park also acknowledged the staff. He felt they had upheld the wishes of the Council. Councilor Liberty also thanked his colleagues. He was very happy with the projects on the list. He felt this represented much more of a balance. Council President Bragdon echoed the Council's comments. He felt that Councilor Burkholder's diligence and the other two Councilors who served on JPACT were instrumental in moving the process along and sticking to the criteria.

Councilor Burkholder said he had learned from the master, Councilor Park. He relied a lot on Councilor Park's negotiation skills and guidance. He summarized the process.

Vote:

Councilors Park, Hosticka, Burkholder, Newman, McLain, Liberty, and Council President Bragdon voted in support of the motion. The vote was 7 aye, the motion passed.

9.2 **Resolution No. 05-3557**, Authorizing the Chief Operating Officer to sign the second addendum to Metro's 2002 Intergovernmental Agreement (IGA) with the Tualatin Basin Natural Resources Coordinating Committee.

Motion:	Councilor McLain moved to adopt Resolution No. 05-3557.
Seconded:	Councilor Hosticka seconded the motion

Councilor McLain said this resolution was the second addendum to the IGA with Tualatin Basin Natural Resources Coordinating Committee. She acknowledged the work of the Committee on Nature in Neighborhoods. She said Tualatin Basin was going to try to make their decision by March 28th. Councilor Hosticka added that by adopting this resolution, it reinforced Metro's need to finish the work.

Vote:

Councilors Park, Hosticka, Burkholder, Newman, McLain, Liberty, and Council President Bragdon voted in support of the motion. The vote was 7 aye, the motion passed.

9.3 **Resolution No. 05-3559**, For the Purpose of Authorizing the Chief Operating Officer to Enter into an Intergovernmental Agreement Between Metro and TriMet for the Implementation of the Regional Funding Plan and A Multi-Year Funding Commitment of Metropolitan Transportation Improvement Program Funds.

Motion:	Councilor Burkholder moved to adopt Resolution No. 05-3559.
Seconded:	Councilor Liberty seconded the motion

Councilor Burkholder summarized the resolution and why we must adopt an IGA. The action would allow TriMet to issue the bonds and keep on schedule. He urged adoption.

Vote:

Councilors Park, Hosticka, Burkholder, Newman, McLain, Liberty, and Council President Bragdon voted in support of the motion. The vote was 7 aye, the motion passed.

9.4 **Resolution No. 05-3560**, For the Purpose of Appointing Wayne Kingsley, Charlie DiGregorio, and David Whitehead as Members of the Ballot Measure 37 Task Force.

Motion:	Councilor Liberty moved to adopt Resolution No. 05-3559.
Seconded:	Councilor Hosticka seconded the motion

Councilor Liberty said this resolution would add several business community members to the Task Force and provide a variety of perspectives. He urged support.

Vote:

Councilors Park, Hosticka, Burkholder, Newman, McLain, Liberty, and Council President Bragdon voted in support of the motion. The vote was 7 aye,

the motion passed.

9.5 Resolution No. 05-3564, For the Purpose of Reviewing the Decision of the Transit Oriented Development (TOD) Steering Committee for the North Flint Avenue Project.

Motion:	Councilor Liberty moved to adopt Resolution No. 05-3564.
Seconded:	Councilor Newman seconded the motion

Councilor Liberty said they had discussed this resolution in executive session last week. He spoke to Council's concern. He explained the North Flint project. He felt the area had potential. He noted that this was a very small project. They would be discussing criteria at the April 14th Council meeting. He suggested that they needed a discussion about how they spread projects over the landscape. Council President Bragdon explained why this was on the agenda. Councilor Burkholder said having the policy discussion was a good idea. He supported this project. It was good to review the criteria for these investments of public dollars. Councilor Newman echoed the Councilors comments. Councilor Park said he would be supporting this project but this did not mean he supported the criteria. He looked forward to that bigger discussion. Council President Bragdon explained his no vote.

Vote:

Councilors Park, Hosticka, Burkholder, Newman, McLain, Liberty voted in support of the motion. The vote was 6 aye/1 nay, the motion passed with Council President Bragdon voting no.

10. CONTRACT REVIEW BOARD

10.1 Resolution No. 05-3543, For the Purpose of Authorizing the Release of Request-for – Proposals No. 05-1142-SWR For Phase 2 of the Remedial Investigation and Feasibility Study of St. Johns Landfill.

Motion:	Councilor Burkholder moved to adopt Resolution No. 05-3543.
Seconded:	Councilor McLain seconded the motion

Councilor Burkholder said Metro owned the St. Johns Landfill. He provided the history of the landfill. Metro had the responsibility to the State and to our citizens to make sure we protected them. He explained the proposal to start the second phase. He talked about the financial impact. He urged support. Councilor McLain said Metro and Department of Environmental Quality (DEQ) had been working on this for the last 15 years. They were trying to be responsible stewards. Councilors talked about the environmental threats and the need to take care of the long-term health and safety of the citizens of the region.

Vote:

Councilors Park, Hosticka, Burkholder, Newman, McLain, Liberty, and Council President Bragdon voted in support of the motion. The vote was 7 aye, the motion passed.

10.2 Resolution No. 05-3534, For the Purpose of Authorizing the Chief Operating Officer to enter into a Contract with the Clackamas River Basin Council to Control Japanese Knotweed in the Clackamas River Basin.

Motion:	Councilor Hosticka moved to adopt Resolution No. 05-3534.
Seconded:	Councilor Park seconded the motion

Councilor Hosticka talked about the project to control Japanese Knotweed. Metro had received a grant, which they anticipated would be awarded to Clackamas River Basin Council so they could do the work. He supported the project and the resolution.

Vote:

Councilors Park, Hosticka, Burkholder, Newman, McLain, Liberty, and Council President Bragdon voted in support of the motion. The vote was 7 aye, the motion passed.
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11. OREGON LEGISLATIVE UPDATE

Mr. Cooper suggested Council report on yesterday's hearing on Senate Bill (SB) 720. Council President Bragdon reported on SB 720. Michael Jordan reported on SB 240. Councilor McLain reported on SB 900. Councilors talked about equity issues and revenue sharing. Mr. Cooper added that SB 431 moved out of committee which had to do with land use decisions and which issues went to Land Conservation and Development Commission (LCDC) and which issues went to LUBA. It eliminated the double filing of appeals. They felt this was vast improvement over the current law. Mr. Jordan talked about SB 963 and that they would be testifying on that bill next Tuesday.

12. CHIEF OPERATING OFFICER COMMUNICATION

Michael Jordon, COO, had nothing further to say.

13. COUNCILOR COMMUNICATION

Councilor Hosticka reported on the Metro Policy Advisory Committee (MPAC) meeting, which spent most of its time on Nature in Neighborhoods.

Councilor Park talked about Damascus and the process they were currently going though to become a city.

Council President Bragdon said Council would not be held next week but there was another Get Centered event in Gresham on March 31st. He and Mr. Jordan had also gone to a meeting to discuss home rule.

14. ADJOURN

There being no further business to come before the Metro Council, Council President Bragdon adjourned the meeting at 4:20 p.m.

Prepared by

Chris Billington
Clerk of the Council

**ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF MARCH 24,
2005**

Item	Topic	Doc Date	Document Description	Doc. Number
6.1	Minutes	3/17/05	Minutes of the Metro Council Meeting of March 17, 2005	032405c-01
9.4	Resolution	3/24/05	Resolution No. 05-3560 (name change from resolution in the packet)	032405c-02
9.5	Resolution	3//24/05	Resolution No. 05-3564, For the Purpose of Authorizing the Chief Operating Officer to Enter into Agreements to fund the North Flint Avenue/TOD Frequent Bus Project	032405c-03
9.1	Resolution	3/24/05	Resolution No. 05-3529A, For the Purpose of Allocating \$62.2 Million of Transportation Priorities Funding for the Years 2008 and 2009, Pending Air Quality Conformity Determination.	032405c-04
9.1	MTIP action	3/24/05	To: Metro Council From Ted Leybold, Planning Department Re: MTIP action taken by JPACT March 24 th	032405c-05
5.0	Quarterly Report	Oct-Dec 2004	To: Metro Council From: Bill Stringer, CFO Re: Second Quarter Fiscal Year 2004-05 Financial Report	032405c-06
4.0	5-Year Forecast	March 2005	To: Metro Council From: Bill Stringer, CFO Re: Department Five-Year Financial Forecasts	032405c-07
4.0	Power Point Presentation	3/24/05	To: Metro Council From: Bill Stringer, CFO Re: Power point presentation on financials	032405c-08

Agenda Item Number 5.1

Ordinance No. 05-1074, For the Purpose of Adopting the Annual
Budget For Fiscal Year 2005-06, Making Appropriations, and
Levying Ad Valorem Taxes, and Declaring an Emergency.

First Reading – Public Hearing

Metro Council Meeting
Thursday, April 7, 2005
Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ADOPTING THE)
ANNUAL BUDGET FOR FISCAL YEAR 2005-)
06, MAKING APPROPRIATIONS, AND)
LEVYING AD VALOREM TAXES, AND)
DECLARING AN EMERGENCY)

ORDINANCE NO 05-1074

Introduced by
David Bragdon, Council President

WHEREAS, the Multnomah County Tax Supervising and Conservation Commission held its public hearing on the annual Metro budget for the fiscal year beginning July 1, 2005, and ending June 30, 2006; and

WHEREAS, recommendations from the Multnomah County Tax Supervising and Conservation Commission have been received by Metro (attached as Exhibit A and made a part of the Ordinance) and considered; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The "Fiscal Year 2005-06 Metro Budget," in the total amount of TWO HUNDRED SEVENTY MILLION SEVEN HUNDRED EIGHTY TWO THOUSAND FIVE HUNDRED TWENTY SIX (\$270,782,526) DOLLARS, attached hereto as Exhibit B, and the Schedule of Appropriations, attached hereto as Exhibit C, are hereby adopted.

2. The Metro Council does hereby levy ad valorem taxes, as provided in the budget adopted by Section 1 of this Ordinance, at the rate of \$0.0966 per thousand dollars of assessed value for operations and in the amount of EIGHTEEN MILLION EIGHT HUNDRES SEVENTY TWO THOUSAND SEVEN HUNDRED SEVENTY SEVEN (\$18,872,777) DOLLARS for general obligation bond debt, said taxes to be levied upon taxable properties within the Metro District for the fiscal year 2005-06. The following allocation and categorization subject to the limits of Section 11b, Article XI of the Oregon Constitution constitute the above aggregate levy.

SUMMARY OF AD VALOREM TAX LEVY

	Subject to the General Government <u>Limitation</u>	Excluded from <u>the Limitation</u>
Operating Tax Rate Levy	\$0.0966/\$1,000	
General Obligation Bond Levy		\$18,872,777

3. The following funds are hereby consolidated into the General Fund – the Support Services Fund, the Building Management Fund, the Zoo Operating Fund, the Regional Parks Operating Fund, and the Planning. Balances remaining in the funds are consolidated with the General Fund effective July 1, 2005.

4. The Metro Capital Fund is hereby created for the purpose of accounting for major capital improvement and renewal and replacement reserves for Metro facilities. Major revenue sources for the fund include but are not limited to grants, donations, excise tax contributions from the General Fund, and other revenues or contributions identified for capital purpose. In the event of the elimination of this fund, the fund balance shall revert to any fund(s) designated for similar purpose.

5. The following funds are hereby consolidated into the Metro Capital Fund – the Regional Parks Special Accounts Fund, the Regional Parks Capital Fund, and the Zoo Capital Fund. Balances remaining in these funds are consolidated with the Metro Capital Fund effective July 1, 2005.

6. The Convention Center Project Capital Fund is hereby eliminated. No balance remains in the fund as of June 30, 2005.

7. In accordance with Section 2.02.040 of the Metro Code, the Metro Council hereby authorizes positions and expenditures in accordance with the Annual Budget adopted by Section 1 of this Ordinance, and hereby appropriates funds for the fiscal year beginning July 1, 2005, from the funds and for the purposes listed in the Schedule of Appropriations, Exhibit C.

8. The Chief Financial Officer shall make the filings as required by ORS 294.555 and ORS 310.060, or as requested by the Assessor's Office of Clackamas, Multnomah, and Washington Counties.

9. This Ordinance being necessary for the health, safety, or welfare of the Metro area, for the reason that the new fiscal year begins July 1, 2005, and Oregon Budget Law requires the adoption of a budget prior to the beginning of the fiscal year, an emergency is declared to exist and the Ordinance takes effect upon passage.

ADOPTED by the Metro Council on this _____ day of June, 2005.

David Bragdon, Council President

ATTEST:

Approved as to Form:

Chris Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

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STAFF REPORT

CONSIDERATION OF ORDINANCE NO. 05-1074 ADOPTING THE ANNUAL BUDGET FOR FISCAL YEAR 2005-06, MAKING APPROPRIATIONS AND LEVYING AD VALOREM TAXES, AND DECLARING AN EMERGENCY

Date: March 15, 2005

Presented by: David Bragdon
Council President

BACKGROUND

I am forwarding to the Council for consideration and approval my proposed budget for fiscal year 2005-06.

Council action, through Ordinance No. 05-1074 is the final step in the process for the adoption of Metro's operating financial plan for the forthcoming fiscal year. Final action by the Council to adopt this plan must be completed by June 30, 2005.

Once the budget plan for fiscal year 2005-06 is adopted by the Council, the number of funds and their total dollar amount and the maximum tax levy cannot be amended without review and certification by the Tax Supervising and Conservation Commission. Adjustments, if any, by the Council to increase the level of expenditures in a fund are limited to no more than 10 percent of the total value of any fund's expenditures in the period between Council approval in early May and adoption in June.

Exhibits B and C of the Ordinance will be available at the public hearing on April 7, 2005.

ANALYSIS/INFORMATION

1. **Known Opposition** – Council hearings will be held on the Proposed Budget during the month of April 2005. Several opportunities for public comments will be provided. Opposition to any portion of the budget will be identified during that time.
2. **Legal Antecedents** – The preparation, review and adoption of Metro's annual budget is subject to the requirements of Oregon Budget Law, ORS Chapter 294. Oregon Revised Statutes 294.635 requires that Metro prepare and submit its approved budget to the Tax Supervising and Conservation Commission by May 15, 2005. The Commission will conduct a hearing during June 2005 for the purpose of receiving information from the public regarding the Council's approved budget. Following the hearing, the Commission will certify the budget to the Council for adoption and may provide recommendations to the Council regarding any aspect of the budget.
3. **Anticipated Effects** – Adoption of this ordinance will put into effect the annual FY 2005-06 budget, effective July 1, 2005.
4. **Budget Impacts** – The total amount of the proposed FY 2005-06 annual budget is \$270,782,526 and 649.99 FTE.

RECOMMENDED ACTION

The Council President recommends adoption of Ordinance No. 05-1074.

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Ordinance No. 05-1075, An ordinance Confirming the Re-Adoption of Metro Code 7.03 (Investment Policy).

Second Reading

Metro Council Meeting
Thursday, April 7, 2005
Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AN ORDINANCE)	ORDINANCE NO. 05-1075
CONFIRMING THE RE-ADOPTION OF METRO)	
CODE 7.03 (INVESTMENT POLICY))	Introduced by Michael Jordan, Chief Operating Office in concurrence with Council President Bragdon

WHEREAS, Metro Code Section 7.03 contains the investment policy which applies to all cash-related assets held by Metro; and

WHEREAS, the Investment Advisory Board reviews and approves the Investment Policy for submission to Metro Council; and

WHEREAS, the Investment Advisory Board recommends re-adoption of the Investment Policy in the format recommended by the Oregon State Treasury and the Government Finance Officers Association, and,

WHEREAS, the Investment Advisory Board proposes no change to the basic policy; and ,

WHEREAS, the Investment Manager proposes no change to the basic policy; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

That Metro Code Chapter 7.03 is re-adopted as written in Exhibit A.

ADOPTED by the Metro Council this _____ day of _____, 2005.

David Bragdon, Council President

Attest:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

CHAPTER 7.03

INVESTMENT POLICY**

SECTIONS	TITLE
7.03.010	Scope
7.03.020	General Objectives
7.03.030	Standards of Care
7.03.040	Safekeeping and Custody
7.03.050	Suitable and Authorized Investments
7.03.060	Investment Parameters
7.03.070	Reporting
7.03.080	Policy Adoption and Re-Adoption
7.03.090	List of Documents Used in Conjunction with this Policy

**Former Chapter 2.06 (readopted April 9, 1998; amended December 10, 1998; readopted April 15, 1999; readopted April 27, 2000; readopted December 11, 2001; readopted October 3, 2002; renumbered by Ordinance No. 02-976, Sec. 1; readopted June 12, 2003).

Note: Shading indicates wording taken from the Oregon State Treasury's Sample Investment Policy, which is based on the Government Finance Officers Association Sample Investment Policy.

7.03.010 Scope

These investment policies apply to all cash-related assets included within the scope of Metro's audited financial statements and held directly by Metro.

Other than bond proceeds or other segregated revenues, the total of funds pooled for investments ranges from \$60 million to \$100 million with an average of \$80 million. Funds held and invested by trustees or fiscal agents are excluded from these policies; however, such funds are subject to the regulations established by the State of Oregon.

Funds of Metro will be invested in compliance with the provisions of ORS 294.035 to 294.048; ORS 294.125 to 294.145; ORS 294.810; and other applicable statutes. Investments will be in accordance with these policies and written administrative procedures. Investment of any tax-exempt borrowing proceeds and of any debt service funds will comply with the 1986 Tax Reform Act provisions and any subsequent amendments thereto.

(Ordinance No. 90-365. Amended by Ordinance No. 97-684, Sec. 1; Ordinance No. 02-976, Sec. 1.)

7.03.020 General Objectives

Due to Metro's fiduciary responsibility, safety of capital and availability of funds to meet payment requirements are the overriding objectives of the investment program. Investment yield targets are secondary.

- 1) Safety. Investments shall be undertaken in a manner that seeks to ensure the preservation of principal in the overall portfolio and security of funds and investments. The objective will be to mitigate credit risk and interest rate risk.

- a) Credit Risk. Metro will minimize credit risk, the risk of loss due to the financial failure of the security issuer or backer, by:

- Limiting exposure to poor credits and concentrating the investments in the safest types of securities.
- Pre-qualifying the financial institutions, broker/dealers, and advisers with which Metro will do business.
- Diversifying the investment portfolio so that potential losses on individual securities will be minimized. For securities not backed by the full faith and credit of the federal government, diversification is required in order that potential losses on individual securities would not exceed the income generated from the remainder of the portfolio.
- Actively monitoring the investment portfolio holdings for ratings changes, changing economic/market conditions, etc.

- b) Interest Rate Risk. Metro will minimize the risk that the market value of securities in the portfolio will fall due to changes in general interest rates, by:

- Structuring the investment portfolio so that securities mature to meet cash requirements for ongoing operations, thereby avoiding the need to sell securities on the open market prior to maturity.
- Investing operating funds primarily in shorter-term securities or short-term investment pools.

- 2) Liquidity. The investment officer shall assure that funds are constantly available to meet immediate payment requirements including payroll, accounts payable and debt service.
- 3) Yield. The investment portfolio shall be designed with the objective of regularly exceeding the average return on 90-day U.S. Treasury Bills. The investment program shall seek to augment returns above this level, consistent with risk limitations described in this policy and prudent investment principles.

This policy shall not preclude the sale of securities prior to their maturity in order to improve the quality, net yield, or maturity characteristic of the portfolio.

- 4) Legality. Funds will be deposited and invested in accordance with statutes, ordinances and policies governing Metro.

Ordinance No. 87-228, Sec. 3. Amended by Ordinance No. 90-365; Ordinance No. 02-976, Sec. 1.)

7.03.030 Standards of Care

- 1) Prudence. The standard of prudence to be applied by the investment officer shall be the "prudent investor" rule: "Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived." The prudent investor rule shall be applied in the context of managing the overall portfolio.

(Ordinance No. 87-228, Sec. 1. Amended by Ordinance No. 90-365; Ordinance No. 02-976, Sec. 1.)

- 2) Delegation of Authority. The Chief Operating Officer is the investment officer of Metro. The authority for investing Metro funds is vested with the investment officer, who, in turn, designates the investment manager to manage the day-to-day operations of Metro's investment portfolio, place purchase orders and sell orders with dealers and financial institutions, and prepare reports as required.
- 3) Investment Advisory Board (IAB). There shall be an investment advisory board composed of five (5) members.
 - a) Terms of Service. The term of service for citizens appointed to the IAB shall be three (3) calendar years. The term of appointment shall be staggered so that not more than two (2) members' terms expire in any calendar year.
 - b) Appointment. The investment officer shall recommend to the Council for confirmation, the names of persons for appointment to the IAB.
 - c) Duties. The IAB shall meet quarterly. The IAB will serve as a forum for discussion and act in an advisory capacity for investment strategies, banking relationships, the legality and probity of investment activities and the establishment of written procedures for the investment operations.
- 4) Quarterly Reports. At each quarterly meeting, a report reflecting the status of the portfolio will be submitted for review and comment by at least 3 members of the IAB. Discussion and comment on the report will be noted in minutes of the meeting. If concurrence is not obtained, notification will be given to the investment officer including comments by the IAB.

(Ordinance No. 87-228, Sec. 1. Amended by Ordinance No. 90-365; Ordinance No. 94-538; Ordinance No. 97-684, Sec. 1; Ordinance No. 02-976, sec. 1.)

- 5) Monitoring the Portfolio. The investment manager will routinely monitor the contents of the portfolio comparing the holdings to the markets, relative values of competing instruments, changes in

credit quality, and benchmarks. If there are advantageous transactions, the portfolio may be adjusted accordingly.

(Ordinance No. 97-684, Sec. 1. Amended by Ordinance No. 02-976, Sec. 1.)

- 6) Indemnity Clause. Metro shall indemnify the investment officer, chief financial officer, investment manager, staff and the IAB members from personal liability for losses that might occur pursuant to administering this investment policy.

The investment officer, acting in accordance with written procedures and exercising due diligence, shall not be held personally responsible for a specific security's credit risk or market price changes, provided that these deviations are reported to the council as soon as practicable.

(Ordinance No. 87-228, Sec 1. Amended by Ordinance No. 97-684, Sec. 1; Ordinance No. 02-976, Sec. 1.)

- 7) Accounting Method. Metro shall comply with all required legal provisions and Generally Accepted Accounting Principles (GAAP). The accounting principles are those contained in the pronouncements of authoritative bodies, including but not necessarily limited to, the American Institute of Certified Public Accountants (AICPA); the Financial Accounting Standards Board (FASB); and the Government Accounting Standards Board (GASB).

(Ordinance No. 90-365. Amended by Ordinance No. 97-684, Sec. 1; Ordinance No. 02-976, Sec. 1.)

7.03.040 Safekeeping and Custody

- 1) Authorized Financial Dealers and Institutions. The investment officer shall maintain a listing of all authorized dealers and financial institutions that are approved for investment purposes. Financial institutions must have a branch in Oregon. Any firm is eligible to apply to provide investment services to Metro and will be added to the list if the selection criteria are met. Additions or deletions to the list will be made by the investment officer and reviewed by the IAB. At the request of the investment officer, the firms performing investment services for Metro shall provide their most recent financial statements or Consolidated Report of Condition (call report) for review. Further, there should be in place, proof as to all the necessary credentials and licenses held by employees of the broker/dealers who will have contact with Metro as specified by but not necessarily limited to the National Association of Securities Dealers (NASD), Securities and Exchange Commission (SEC), etc. At minimum, the investment officer and the IAB shall conduct an annual evaluation of each firm's qualifications to determine whether it should be on the authorized list.

(Ordinance No. 87-228, Sec. 1. Amended by Ordinance No. 90-365; Ordinance No. 97-684, Sec. 1; Ordinance No. 98-790, Sec. 1; Ordinance No. 02-976, Sec. 1.)

Securities dealers not affiliated with a Qualified Financial Institution, as defined in ORS 294.035, will be required to have headquarters located in the State of Oregon, Washington or Idaho and, if not headquartered in the State of Oregon, to have an office located in Oregon. Notwithstanding the above, securities dealers who are classified as primary dealers with the New York Federal Reserve Bank are also eligible.

- 2) Internal Controls. The investment officer shall maintain a system of written internal controls, which shall be reviewed annually by the IAB and the independent auditor. The controls shall be designed to prevent loss of public funds due to fraud, error, misrepresentation or imprudent actions.

Metro's independent auditor at least annually shall audit investments according to generally accepted auditing standards and this ordinance.

(Ordinance No. 90-365. Amended by Ordinance No. 02-976, Sec. 1.)

- 3) Delivery vs. Payment. All securities purchased pursuant to this investment policy will be delivered by either book entry or physical delivery to a third party for safekeeping by a bank designated as custodian. Purchase and sale of all securities will be on a payment versus delivery basis. Delivery versus payment will also be required for all repurchase transactions and with the collateral priced and limited in maturity in compliance with ORS 294.035(11).
- 4) Safekeeping. The trust department of the bank designated as custodian will be considered to be a third party for the purposes of safekeeping of securities purchased from that bank. The custodian shall issue a safekeeping receipt to Metro listing the specific instrument, rate, maturity and other pertinent information.

Notwithstanding the preceding, an exception to the delivery versus payment policy is made when purchasing State and Local Government Series Securities (SLGS) from the United State Treasury's Bureau of Public Debt to satisfy arbitrage yield restriction requirements of the Internal Revenue Code for tax-exempt bond issues.

7.03.050 Suitable and Authorized Investments

(Definitions of terms and applicable authorizing statutes are listed in the "Summary of Investments Available to Municipalities" provided by the State Treasurer.)

- 1) Investment Types. The following investments are permitted by this policy and ORS 294.035 and 294.810.
- a) U.S. Treasury Bills, Notes, Bonds, Strips (Separate Trading of Registered Interest and Principal of Securities) and/or State and Local Government Series Securities (SLGS)
 - b) Securities of U.S. Government Agencies and U.S. Government Sponsored Enterprises
 - c) Certificates of Deposit (CD) from commercial banks in Oregon and insured by the Federal Deposit Insurance Corporation (FDIC)
 - d) Repurchase Agreements (Repo's)
 - e) Banker's Acceptances (BA)

- f) Commercial Paper (CP) Issued by a financial institution, commercial, industrial or utility business enterprise.
 - g) State of Oregon and Local Government Securities with A ratings or better
 - h) State of Oregon Investment Pool
 - i) Market Interest Accounts and Checking Accounts
- 2) Collateralization. Deposit-type securities (i.e., Certificates of Deposit) shall be collateralized through the state collateral pool as required by ORS 295.015 and ORS 295.018 for any amount exceeding FDIC coverage, recognizing that ORS 295.015 requires only 25 percent collateralization and ORS 295.018 requires 110 percent collateralization when the institution is notified by the state treasurer.

(Ordinance No. 87-228, Sec. 1. Amended by Ordinance No. 97-684, Sec. 1; Ordinance No. 01-932, Sec. 1; Ordinance No. 02-976, Sec. 1.)

7.03.060 Investment Parameters

- 1) Diversification by Maturity. Only investments which can be held to maturity shall be purchased. Investments shall not be planned or made predicated upon selling the security prior to maturity. This restriction does not prohibit the use of repurchase agreements under ORS 294.135(2). Maturity limitations shall depend upon whether the funds being invested are considered short-term or long-term funds. All funds shall be considered short-term except those reserved for capital projects (e.g., bond sale proceeds.)

a) Short-Term Funds.

- a. Investment maturities for operating funds and bond reserves shall be scheduled to meet projected cash flow needs. Funds considered short-term will be invested to coincide with projected cash needs or with the following serial maturity:

25% minimum to mature under three months
75% minimum to mature under 18 months
100 % minimum to mature under five years

- b. Investments may not exceed five years. Investment maturities beyond 18 months may be made when supported by cash flow projections which reasonably demonstrate that liquidity requirement will be met. Maturities beyond 18 months will be limited to direct U.S. Treasury obligations.

b) Long-Term Funds

- a. Maturity scheduling shall be timed according to anticipated need. ORS 294.135 permits investment beyond 18 months for any bond proceeds or funds

accumulated for any purpose that the district is permitted by state law to accumulate and hold funds for a period exceeding one (1) year. The maturities should be made to coincide as nearly as practicable with the expected use of the funds.

- b. Investment of capital project funds shall be timed to meet projected contractor payments. The drawdown schedule used to guide the investment of the funds shall evidence the approval of the investment officer and review of the Chief Financial Officer.

2) Diversification by Investment

The investment officer will diversify the portfolio to avoid incurring unreasonable risks inherent in over-investing in specific instruments, individual financial institutions, or maturities.

The maximum percentages of the portfolio and the maximum maturities for investments are as follows:

Security	Maximum Percent of Portfolio	Maximum Maturity
U.S. Treasury Bills, Notes, Bonds, Strips and/or State and Local Government Series (SLGS)	100%	
Securities of U.S. Government Agencies and U.S. Government Sponsored Enterprises	100%	
Certificates of Deposit (CD) Commercial Banks in Oregon Insured by FDIC	100%	
Repurchase Agreements (Repos)	50%	90 Day maturity
Bankers Acceptances (BA)	100%	
Commercial Paper (CP) – Issued by a financial institution, commercial, industrial, or utility business enterprise. For a corporation headquartered in Oregon For a corporation headquartered	35%	 A-1 and P-1 only, 90-day maturity; A-2 and P-2, A-1/P-2, or A-2/P1, 60-day maturity A-1 and P-1 only; 90-day maturity

outside of Oregon		
State of Oregon and Local Government Securities with A ratings or better	25%	
State of Oregon Investment Pool	100%	
Market Interest Accounts and Checking Accounts	Minimum necessary for daily cash management efficiency	

3) Diversification by Financial Institution.

- a) Qualified Institutions. The investment officer shall maintain a listing of financial institutions and securities dealers recommended by the IAB. Any financial institution and/or securities dealer is eligible to make an application to the investment officer and upon due consideration and approval hold available funds.

A listing of the eligible institutions shall be held by the investment officer and provided any fiduciary agent or trustee.

- b) Diversification Requirements. The combination of investments in Certificates of Deposit and Banker's Acceptances invested with any one institution shall not exceed 25 percent of the total available funds or 15 percent of the equity of the institution.

The following limitations avoid over-concentration in securities from a specific issuer or business sector:

Type of Security	Limitation
U.S. Government Treasuries	No limitations
U.S. Government Agencies	Securities of U.S. Government Agencies and U.S. Government Sponsored Enterprises as defined under ORS 294.035 and/or 294.040. No more than 40 percent of the portfolio in any one agency.
Certificates of Deposit – Commercial Banks	No more than the lesser of 25 percent of the total available funds or 15 percent of the equity of the financial institution may be invested with any one institution.
Repurchase Agreements	May be purchased from any qualified institution provided the master repurchase agreement is effective and the safekeeping requirements are met. All repurchase agreements will be fully collateralized by general obligations of the U.S. Government, the agencies and instrumentalities of the United States or enterprises sponsored by the United States government, marked to

	market.
	The investment officer shall not enter into any reverse repurchase agreements.
Bankers Acceptances	<p>Must be guaranteed by, and carried on the books of, a qualified financial institution whose short-term letter of credit rating is rated in the highest category by one or more nationally recognized statistical rating organizations.</p> <p>Qualified institution means:</p> <ul style="list-style-type: none"> i) A financial institution that is located and licensed to do banking business in the State of Oregon; or ii) A financial institution located in the states of California, Idaho, or Washington that is wholly owned by a bank holding company that owns a financial institution that is located and licensed to do banking business in the State of Oregon. <p>No more than the lesser of 25 percent of the total available funds or 15 percent of the equity of the financial institution may be invested with any one institution.</p>
Commercial Paper	No more than 5 percent of the total portfolio with any one corporate entity.
State and Local Government Securities	No more than 15 percent of the total portfolio in any one local entity.
State of Oregon Investment Pool	Not to exceed the maximum amount established in accordance with ORS 294.810, with the exception of pass-through funds (in and out within 10 days)

4) Total Prohibitions. The investment officer may not make a commitment to invest funds or sell securities more than 14 business days prior to the anticipated date of settlement of the purchase or sale transaction, and may not agree to invest funds or sell securities for a fee other than interest. Purchase of standby or forward commitments of any sort are specifically prohibited.

5) Adherence to Investment Diversification. Diversification requirements must be met on the day an investment transaction is executed. If due to unanticipated cash needs, investment maturities or marking the portfolio to market, the investment in any security type, financial issuer or maturity spectrum later exceeds the limitations in the policy, the investment officer is responsible for bringing the investment portfolio back into compliance as soon as is practical.

(Ordinance No. 87-228, Sec. 1. Amended by Ordinance No. 90-365; Ordinance No. 93-501: Ordinance No. 97-684, Sec. 1; Ordinance No. 98-734, Sec. 1; Ordinance No. 02-976, Sec. 1.)

6) Competitive Selection of Investment Instruments. Before the investment officer invests any surplus funds, a competitive offering solicitation shall be conducted orally. Offerings will be requested from financial institutions for various options with regards to term and instrument. The investment officer will

accept the offering, which provides the highest rate of return within the maturity required and within the prudent investor rule. Records will be kept of offerings and the basis for making the investment decision.

(Ordinance No. 87-228, Sec. 1. Amended by Ordinance No. 90-365; Ordinance No. 97-684, Sec. 1; Ordinance No. 02-976, Sec. 1.)

7.03.070 Reporting

- 1) Methods. A transaction report shall be prepared by the investment manager not later than one business day after the transaction, unless a trustee, operating under a trust agreement, has executed the transaction. The trustee agreement shall provide for a report of transactions to be submitted by the trustee on a monthly basis.

Quarterly reports shall be prepared for each regular meeting of the IAB to present historical information for the past 12-month period. Copies shall be provided to the Chief Operating Officer and the Metro Council.

((Ordinance No. 90-365. Amended by Ordinance No. 97-684, Sec. 1; Ordinance No. 076, Sec. 1.)

- 2) Performance Standards. The overall performance of Metro's investment program is evaluated quarterly by the IAB using the objectives outlined in this policy. The quarterly report which confirms adherence to this policy shall be provided to the Metro Council as soon as practicable.

The performance of Metro's portfolio shall be measured by comparing the average yield of the portfolio at month-end against the performance of the 90-day US Treasury Bill issue maturing closest to 90 days from month-end and the Local Government Investment Pool's monthly average yield.

(Ordinance No. 90-365. Amended by Ordinance No. 97-684, Sec. 1; Ordinance No. 02-976, Sec. 1.)

7.030.080 Policy Adoption and Re-adoption.

- 1) The investment policy must be reviewed by the IAB and the Oregon Short-Term Fund Board prior to adoption by the Metro Council. Adoption of this policy supersedes any other previous Council action or policy regarding Metro's investment management practices.

(Ordinance No. 90-365. Amended by Ordinance No. 97-684, Sec. 1; Ordinance No. 02-976, Sec. 1.)

- 2) This policy shall be subject to review and re-adoption annually by the Metro Council in accordance with ORS 294.135.

(Ordinance No. 90-365. Readopted by Ordinance No. 93-501; Ordinance No. 94-555, Sec. 1; Ordinance No. 97-684, Sec. 1; Ordinance No. 98-734, Sec. 1; Ordinance No. 99-799, Sec. 1; Ordinance No. 00-856, Sec. 1; Ordinance No. 01-932, Sec. 1; Ordinance No. 02-961. Amended by Ordinance No. 02-976, Sec. 1.)

7.030.090 List of Documents Used in Conjunction with this Policy

The following documents are used in conjunction with this policy and are available from the investment manager upon request:

- List of Authorized Brokers and Dealers
- List of Primary Dealers
- Calendar of Federal Reserve System Holidays
- Calendar of Local Government Investment Pool Holidays
- Broker/Dealer Request for Information
- Oregon State Treasury's Summary of Liquid Investments Available to Local Governments for Short-Term Fund Investment
- Oregon State Treasury's U.S. Government and Agency Securities for Local Government Investment Under ORS 294.035 and 294.040
- Oregon State Treasury's List of Qualified Depositories for Public Funds
- Attorney General's letter of advice: Certificates of Deposit, ORS 294.035 and ORS 295
- Oregon Revised Statute Chapter 294 – County and Municipal Financial Administration
- Oregon Revised Statute Chapter 295 – Depositories of Public Funds and Securities
- Government Finance Officers Association Glossary of Cash Management Terms

CHAPTER 7.03

INVESTMENT POLICY**

SECTIONS	TITLE
7.03.010	Scope
7.03.020	Objectives
7.03.030	Responsibility
7.03.040	Prudence
7.03.050	Investment Diversification
7.03.060	Competitive Selection of Investment Instruments
7.03.065	Monitoring the Portfolio
7.03.070	Qualifying Institutions
7.03.090	Safekeeping and Collateralization
7.03.100	Indemnity Clause
7.03.110	Controls
7.03.120	Accounting Method
7.03.130	Reporting Requirements
7.03.140	Performance Evaluation
7.03.150	Policy Adoption
7.03.160	Policy Readoption

**Former Chapter 2.06 (readopted April 9, 1998; amended December 10, 1998; readopted April 15, 1999; readopted April 27, 2000; readopted December 11, 2001; readopted October 3, 2002; renumbered by Ordinance No. 02-976, Sec. 1; readopted June 12, 2003).

Code Reference in 2005 Readoption7.03.010 Scope

These investment policies apply to all cash-related assets included within the scope of Metro's audited financial statements and held directly by Metro. Other than bond proceeds or other segregated revenues, the total of funds pooled for investments ranges from \$60 million to \$100 million with an average of \$80 million. Funds held and invested by trustees or fiscal agents are excluded from these policies; however, such funds are subject to the regulations established by the State of Oregon.

7.03.010

Funds of Metro will be invested in compliance with the provisions of ORS 294.035 through 294.048; ORS 294.125 through 294.155; ORS 294.810; and other applicable statutes. Investments will be in accordance with these policies and written administrative procedures. Investment of any tax exempt borrowing proceeds and of any debt service funds will comply with the 1986 Tax Reform Act provisions and any subsequent amendments thereto.

7.03.010

(Ordinance No. 90-365. Amended by Ordinance No. 97-684, Sec. 1; Ordinance No. 02-976, Sec. 1.)

7.03.020 Objectives

(a) Safety. Investments shall be undertaken in a manner that seeks to ensure the preservation of principal in the overall portfolio and security of funds and investments. For securities not backed by the full faith and credit of the federal government, diversification is required in order that potential losses on individual securities would not exceed the income generated from the remainder of the portfolio.

(b) Liquidity. The investment officer shall assure that funds are constantly available to meet immediate payment requirements including payroll, accounts payable and debt service.

(c) Yield. The investment portfolio shall be designed with the objective of regularly exceeding the average return on 90-day U.S. Treasury Bills. The investment program shall seek to augment returns above this level, consistent with risk limitations described in this policy and prudent investment principles.

Due to Metro's fiduciary responsibility, safety of capital and availability of funds to meet payment requirements are the overriding objectives of the investment program. Investment yield targets are secondary.

(d) Legality. Funds will be deposited and invested in accordance with statutes, ordinances and policies governing Metro.

7.03.020

Ordinance No. 87-228, Sec. 3. Amended by Ordinance No. 90-365; Ordinance No. 02-976, Sec. 1.)

7.03.030 Responsibility

(a) Investment Officer. The Chief Operating Officer is the investment officer of Metro. The authority for investing Metro funds is vested with the investment officer, who, in turn, designates the investment manager to manage the day-to-day operations of Metro's investment portfolio, place purchase orders and sell orders with dealers and financial institutions, and prepare reports as required.

7.03.030, 2)

(b) Investment Advisory Board (IAB). There shall be an investment advisory board composed of five (5) members.

- (1) Terms of Service. The term of service for citizens appointed to the IAB shall be three (3) calendar years. The term of appointment shall be staggered so that not more than two (2) members' terms expire in any calendar year.
- (2) Appointment. The investment officer shall recommend to the Council for confirmation, the names of persons for appointment to the IAB.
- (3) Duties. The IAB shall meet at least quarterly. The IAB will serve as a forum for discussion and act in an advisory capacity for investment strategies, banking

relationships, the legality and probity of investment activities and the establishment of written procedures for the investment operations.

7.03.030, 3)

(c) Quarterly Reports. At each quarterly meeting, a report reflecting the status of the portfolio will be submitted for review and comment by at least 3 members of the IAB. Discussion and comment on the report will be noted in minutes of the meeting. If concurrence is not obtained, notification will be given to the investment officer including comments by the IAB.

7.03.030, 4)

(Ordinance No. 87-228, Sec. 1. Amended by Ordinance No. 90-365; Ordinance No. 94-538; Ordinance No. 97-684, Sec. 1; Ordinance No. 02-976, sec. 1.)

7.03.040 Prudence

The standard of prudence to be applied by the investment officer shall be the "prudent investor" rule: "Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived." The prudent investor rule shall be applied in the context of managing the overall portfolio.

7.03.030, 1)

(Ordinance No. 87-228, Sec. 1. Amended by Ordinance No. 90-365; Ordinance No. 02-976, Sec. 1.)

7.03.050 Investment Diversification

(Definitions of terms and applicable authorizing statutes are listed in the "Summary of Investments Available to Municipalities" provided by the State Treasurer.) The investment officer will diversify the portfolio to avoid incurring unreasonable risks inherent in over investing in specific instruments, individual financial institutions, or maturities.

(a) Diversification by Investment

	Percent of Portfolio (Maximum)
(1) U.S. Treasury Bills, Notes, Bonds, Strips and/or State and Local Government Series (SLGS)	100%
(2) Securities of U.S. Government Agencies and U.S. Government Sponsored Enterprises	100%

- | | | |
|-----|---|------|
| (3) | Certificates of Deposit (CD)
Commercial Banks in Oregon insured
by FDIC | 100% |
| (4) | Repurchase Agreements (Repo's)
Maximum 90-day maturity | 50% |
| (5) | Banker's Acceptances (BA) | 100% |
| (6) | Commercial Paper (CP)
Issued by a financial institution, commercial, industrial or utility
business enterprise. | 35% |

For a corporation headquartered in Oregon; A-1 and P-1 only,
maximum 90-day maturity; A-2 and P-2, A-1/P-2, or A-2/P-1
only, maximum 60-day maturity.

For a corporation headquartered outside Oregon; A-1 and P-1 only;
maximum 90-day maturity

- | | | |
|-----|---|------|
| (7) | State of Oregon and Local Government
Securities with A ratings or better | 25% |
| (8) | State of Oregon Investment Pool | 100% |
| (9) | Market Interest Accounts and Checking
Accounts Minimum necessary for daily
cash management efficiency | |

7.03.060, 2)

(b) Diversification by Financial Institution

- (1) Qualified Institutions. The investment officer shall maintain a listing of financial institutions and securities dealers recommended by the IAB. Any financial institution and/or securities dealer is eligible to make an application to the investment officer and upon due consideration and approval hold available funds.

7.03.060, 3)a)

A listing of the eligible institutions shall be held by the investment officer and provided any fiduciary agent or trustee.

- (2) Diversification Requirements. The combination of investments in Certificates of Deposit and Banker's Acceptances as outlined individually at 7.03.050(b)(2)(A) and (C) invested with any one institution shall not exceed 25 percent of the total available funds or 15 percent of the equity of the institution.

(A) Certificates of Deposit - Commercial Banks

No more than the lesser of 25 percent of the total available funds or 15 percent of the equity of the financial institution may be invested with any one institution.

(B) Repurchase Agreements

May be purchased from any qualified institution provided the master repurchase agreement is effective and the safekeeping requirements are met. All repurchase agreements will be fully collateralized by general obligations of the U.S. Government, the agencies and instrumentalities of the United States or enterprises sponsored by the United States government, marked to market.

The investment officer shall not enter into any reverse repurchase agreements.

(C) Banker's Acceptances

Must be guaranteed by, and carried on the books of, a qualified financial institution whose short-term letter of credit rating is rated in the highest category by one or more nationally recognized statistical rating organizations.

Qualified institution means:

- (i) A financial institution that is located and licensed to do banking business in the State of Oregon; or
- (ii) A financial institution located in the States of California, Idaho, or Washington that is wholly owned by a bank holding company that owns a financial institution that is located and licensed to do banking business in the State of Oregon.

No more than the lesser of 25 percent of the total available funds or 15 percent of the equity of the financial institution may be invested with any one institution.

(D) Commercial Paper

No more than 5 percent of the total portfolio with any one corporate entity.

(E) State and Local Government Securities

No more than 15 percent of the total portfolio in any one local entity.

(F) State of Oregon Investment Pool

Not to exceed the maximum amount established in accordance with ORS 294.810, with the exception of pass-through funds (in and out within 10 days).

(G) U.S. Government Agencies

Securities of U.S. Government Agencies and U.S. Government Sponsored Enterprises as defined under ORS 294.035 and/or 294.040. No more than 40 percent of the total portfolio in any one agency.

(H) U.S. Government Treasuries

No limitations

7.03.060, 3)

(c) Diversification by Maturity. Only investments which can be held to maturity shall be purchased. Investments shall not be planned or made predicated upon selling the security prior to maturity. This restriction does not prohibit the use of repurchase agreements under ORS 294.135(2).

7.03.060, 1)

This policy shall not preclude the sale of securities prior to their maturity in order to improve the quality, net yield, or maturity characteristic of the portfolio.

7.03.020, 3)

Maturity limitations shall depend upon whether the funds being invested are considered short-term or long-term funds. All funds shall be considered short-term except those reserved for capital projects (e.g., bond sale proceeds).

7.03.060, 1)

(1) Short-Term Funds

(A) Investment maturities for operating funds and bond reserves shall be scheduled to meet projected cash flow needs. Funds considered short-term will be invested to coincide with projected cash needs or with the following serial maturity:

25% minimum to mature under three months

75% minimum to mature under 18 months

100% minimum to mature under five years

- (B) Investments may not exceed five years. Investment maturities beyond 18 months may be made when supported by cash flow projections which reasonably demonstrate that liquidity requirements will be met. Maturities beyond 18 months will be limited to direct U.S. Treasury obligations.

7.03.060, 1)a)

(2) Long-Term Funds

- (A) Maturity scheduling shall be timed according to anticipated need. ORS 294.135 permits investment beyond 18 months for any bond proceeds or funds accumulated for any purpose which the district is permitted by state law to accumulate and hold funds for a period exceeding one (1) year. The maturities should be made to coincide as nearly as practicable with the expected use of the funds.

- (B) Investment of capital project funds shall be timed to meet projected contractor payments. The drawdown schedule used to guide the investment of the funds shall evidence the approval of the investment officer and review of the Chief Financial Officer.

7.03.060 1)b)

(d) Total Prohibitions. The investment officer may not make a commitment to invest funds or sell securities more than 14 business days prior to the anticipated date of settlement of the purchase or sale transaction, and may not agree to invest funds or sell securities for a fee other than interest. Purchase of standby or forward commitments of any sort are specifically prohibited.

7.03.060, 4)

- (d) Adherence to Investment Diversification. Diversification requirements must be met on the day an investment transaction is executed. If due to unanticipated cash needs, investment maturities or marking the portfolio to market, the investment in any security type, financial issuer or maturity spectrum later exceeds the limitations in the policy, the Investment Officer is responsible for bringing the investment portfolio back into compliance as soon as is practical.

7.03.060, 5)

(Ordinance No. 87-228, Sec. 1. Amended by Ordinance No. 90-365; Ordinance No. 93-501; Ordinance No. 97-684, Sec. 1; Ordinance No. 98-734, Sec. 1; Ordinance No. 02-976, Sec. 1.)

7.03.060 Competitive Selection of Investment Instruments

Before the investment officer invests any surplus funds, a competitive offering solicitation shall be conducted orally. Offerings will be requested from financial institutions for various options with regards to term and instrument. The investment officer will accept the offering which provides the highest rate of return within the maturity required and within the prudent investor rule. Records will be kept of offerings and the basis for making the investment decision.

7.03.060, 6)

(Ordinance No. 87-228, Sec. 1. Amended by Ordinance No. 90-365; Ordinance No. 97-684, Sec. 1; Ordinance No. 02-976, Sec. 1.)

7.03.065 Monitoring the Portfolio

The investment manager will routinely monitor the contents of the portfolio comparing the holdings to the markets, relative values of competing instruments, changes in credit quality, and benchmarks. If there are advantageous transactions, the portfolio may be adjusted accordingly.

7.03.030, 5)

(Ordinance No. 97-684, Sec. 1. Amended by Ordinance No. 02-976, Sec. 1.)

7.03.070 Qualifying Institutions

The investment officer shall maintain a listing of all authorized dealers and financial institutions which are approved for investment purposes. Written procedures and criteria for selection of financial institutions will be established by the investment officer. Financial institutions must have a branch in Oregon. Any firm is eligible to apply to provide investment services to Metro and will be added to the list if the selection criteria are met. Additions or deletions to the list will be made by the investment officer and reviewed by the IAB. At the request of the investment officer, the firms performing investment services for Metro shall provide their most recent financial statements or Consolidated Report of Condition (call report) for review. Further, there should be in place, proof as to all the necessary credentials and licenses held by employees of the broker/dealers who will have contact with Metro as specified by but not necessarily limited to the National Association of Securities Dealers (NASD), Securities and Exchange Commission (SEC), etc. At minimum, the investment officer and the IAB shall conduct an annual evaluation of each firm's qualifications to determine whether it should be on the authorized list.

Securities dealers not affiliated with a Qualified Financial Institution, as defined in ORS 294.035, will be required to have headquarters located in the State of Oregon, Washington or Idaho and, if not headquartered in the State of Oregon, to have an office located in Oregon. Notwithstanding the above, securities dealers who are classified as primary dealers with the New York Federal Reserve Bank are also eligible.

7.03.040, 1)

(Ordinance No. 87-228, Sec. 1. Amended by Ordinance No. 90-365; Ordinance No. 97-684, Sec. 1; Ordinance No. 98-790, Sec. 1; Ordinance No. 02-976, Sec. 1.)

7.03.090 Safekeeping and Collateralization

All securities purchased pursuant to this investment policy will be delivered by either book entry or physical delivery to a third party for safekeeping by a bank designated as custodian. Purchase and sale of all securities will be on a payment versus delivery basis. The trust department of the bank designated as custodian will be considered to be a third party for the purposes of safekeeping of securities purchased from that bank. The custodian shall issue a safekeeping receipt to Metro listing the specific instrument, rate, maturity and other pertinent information.

Delivery versus payment will also be required for all repurchase transactions and with the collateral priced and limited in maturity in compliance with ORS 294.035(11).

7.03.040, 3), 4)

Notwithstanding the preceding, an exception to the delivery versus payment policy is made when purchasing State and Local Government Series Securities (SLGS) from the United State Treasury's Bureau of Public Debt to satisfy arbitrage yield restriction requirements of the Internal Revenue Code for tax-exempt bond issues.

7.03.040, 4)

Deposit-type securities (i.e., Certificates of Deposit) shall be collateralized through the state collateral pool as required by ORS 295.015 and ORS 295.018 for any amount exceeding FDIC coverage, recognizing that ORS 295.015 requires only 25 percent collateralization and ORS 295.018 requires 110 percent collateralization when the institution is notified by the state treasurer.

7.03.050, 2)

(Ordinance No. 87-228, Sec. 1. Amended by Ordinance No. 97-684, Sec. 1; Ordinance No. 01-932, Sec. 1; Ordinance No. 02-976, Sec. 1.)

7.03.100 Indemnity Clause

(a) Metro shall indemnify the investment officer, chief financial officer, investment manager, staff and the IAB members from personal liability for losses that might occur pursuant to administering this investment policy.

(b) The investment officer, acting in accordance with written procedures and exercising due diligence, shall not be held personally responsible for a specific security's credit risk or market price changes, provided that these deviations are reported to the council as soon as practicable.

7.03.030, 6)

(Ordinance No. 87-228, Sec 1. Amended by Ordinance No. 97-684, Sec. 1; Ordinance No. 02-976, Sec. 1.)

7.03.110 Controls

The investment officer shall maintain a system of written internal controls, which shall be reviewed annually by the IAB and the independent auditor. The controls shall be designed to prevent loss of public funds due to fraud, error, misrepresentation or imprudent actions.

Metro's independent auditor at least annually shall audit investments according to generally accepted auditing standards and this ordinance.

7.03.040, 2)

(Ordinance No. 90-365. Amended by Ordinance No. 02-976, Sec. 1.)

7.03.120 Accounting Method

Metro shall comply with all required legal provisions and Generally Accepted Accounting Principles (GAAP). The accounting principles are those contained in the pronouncements of authoritative bodies, including but not necessarily limited to, the American Institute of Certified Public Accountants (AICPA); the Financial Accounting Standards Board (FASB); and the Government Accounting Standards Board (GASB).

7.03.030, 7)

(Ordinance No. 90-365. Amended by Ordinance No. 97-684, Sec. 1; Ordinance No. 02-976, Sec. 1.)

7.03.130 Reporting Requirements

(a) A transaction report shall be prepared by the investment manager not later than one business day after the transaction, unless a trustee, operating under a trust agreement, has executed the transaction. The trustee agreement shall provide for a report of transactions to be submitted by the trustee on a monthly basis.

(b) Quarterly reports shall be prepared for each regular meeting of the IAB to present historical investment information for the past 12-month period. Copies shall be provided to the executive officer and the Metro Council.

7.03.070, 1)

(Ordinance No. 90-365. Amended by Ordinance No. 97-684, Sec. 1; Ordinance No. 076, Sec. 1.)

7.03.140 Performance Evaluation

The overall performance of Metro's investment program is evaluated quarterly by the IAB using the objectives outlined in this policy. The quarterly report which confirms adherence to this policy shall be provided to the Metro Council as soon as practicable.

The performance of Metro's portfolio shall be measured by comparing the average yield of the portfolio at month-end against the performance of the 90-day U.S. Treasury Bill issue maturing closest to 90 days from month-end and the Local Government Investment Pool's monthly average yield.

7.03.070, 2)

(Ordinance No. 90-365. Amended by Ordinance No. 97-684, Sec. 1; Ordinance No. 02-976, Sec. 1.)

7.03.150 Policy Adoption

This investment policy must be reviewed by the IAB and the Oregon Short-Term Fund Board prior to adoption by the Metro Council. Adoption of this policy supersedes any other previous Council action or policy regarding Metro's investment management practices.

7.03.080, 1)

(Ordinance No. 90-365. Amended by Ordinance No. 97-684, Sec. 1; Ordinance No. 02-976, Sec. 1.)

7.03.160 Policy Readoption

This policy shall be subject to review and readoption annually by the Metro Council in accordance with ORS 294.135.

7.03.080, 2)

(Ordinance No. 90-365. Readopted by Ordinance No. 93-501; Ordinance No. 94-555, Sec. 1; Ordinance No. 97-684, Sec. 1; Ordinance No. 98-734, Sec. 1; Ordinance No. 99-799, Sec. 1; Ordinance No. 00-856, Sec. 1; Ordinance No. 01-932, Sec. 1; Ordinance No. 02-961. Amended by Ordinance No. 02-976, Sec. 1.)

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 05-1075 FOR THE PURPOSE OF CONFIRMING THE RE-ADOPTION OF METRO CODE 7.03 (INVESTMENT POLICY)

Date: March 10, 2005

Prepared by: Brian Williams

BACKGROUND

Metro Code, Chapter 7.03 contains the Investment Policy that applies to all cash-related assets held by Metro. This Investment Policy is being submitted to Council for review and re-adoption in accordance with Section 7.03.160 of Metro Code. The proposed policy is shown as Exhibit A.

No change to investment policy is proposed as a part of this re-adoption.

The layout of the policy, however, has been changed. Some sections and their respective headings have been modified. This has been done because Metro has re-formatted its investment policy to conform to Oregon State Treasury's Sample Investment Policy for Local Governments. Oregon Treasury's Sample Policy is, in turn, patterned after the Government Finance Officers Association's (GFOA) Sample Investment Policy. Although Oregon Treasury does not require local governments to adopt this format, it suggests the standardized format be adopted at a local government's convenience. Except where noted by shading in Schedule A, the wording of this policy was copied verbatim from existing policy.

For reference, Metro's current Investment Policy is shown as Exhibit B. At the right hand margin are code numbers that reference where the sections appear in the proposed re-adoption.

The re-formatting will provide future value. Metro's policy will be able to be readily compared to investment policies of other local governments that have adopted the same GFOA format. The Oregon Short-Term Fund Board, which under Oregon Statute must review Metro's investment policy prior to any policy change, encourages Oregon municipalities to adopt the GFOA format.

Some wording from GFOA's Sample Investment Policy was incorporated into this document but only when it mirrored existing Metro procedure. The Investment Advisory Board, the citizens oversight committee that reviews Metro's investment policies and procedures, supports Metro's re-adoption of investment policies in the GFOA format.

ANALYSIS/INFORMATION

1. **Known Opposition:** None.
2. **Legal Antecedents:** N/A
3. **Anticipated Effects:** N/A
4. **Budget Impacts:** N/A

RECOMMENDED ACTION: The Chief Operating Officer recommends re-adoption of Metro Code Chapter 7.03 by Ordinance No. 05-1075.

Agenda Item Number 7.1

Resolution No. 05-3569, For the Purpose of Confirming Metro Council
Representatives to the Eastside and Lake Oswego/Portland Transit
Alternatives Analysis Steering Committee and Identifying other
representative categories to the Committee.

Metro Council Meeting
Thursday, April 7, 2005
Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF CONFIRMING METRO)
COUNCIL REPRESENTATIVES TO THE)
EASTSIDE AND PORTLAND/LAKE OSWEGO)
TRANSIT ALTERNATIVES ANALYSIS
STEERING COMMITTEE AND IDENTIFYING
OTHER REPRESENTATIVE CATEGORIES TO
THE COMMITTEE

RESOLUTION NO. 05-3569

Introduced by
Chief Operating Officer Michael
Jordan in concurrence with Council
President David Bragdon

WHEREAS, increased population and employment will require additional transit capacity and innovative measures to ensure mobility in and around the Portland Central City districts and between Lake Oswego and the South Waterfront area and the Central City; and

WHEREAS, Metro is leading two federal Alternative Analysis Studies to study the purpose and need for the project, to evaluate alternatives and to recommend the selection of a Locally Preferred Alternative; and

WHEREAS, the Metro Council will be the adopting body for the selection of the Locally Preferred Alternatives; and

WHEREAS, the main goal of the study is to develop and evaluate transit options and trail alternatives that respond to the specific needs and issues arising from both the Eastside and Portland/Lake Oswego corridors; and

WHEREAS, the geographic and political representation for these two studies overlaps considerably; and

WHEREAS, an Eastside and Portland/Lake Oswego Transit Alternatives Analysis Steering Committee is being formed to provide project oversight, make policy recommendations and ensure on-going public input into the study process. The steering committee will also make final study recommendations on narrowing of alternatives, and carry them forward for approval from the appropriate local, regional and state bodies; and

WHEREAS, Metro Council representation and representation for local jurisdictions are needed on a project steering committee level to provide direction to the project; and

Whereas, Metro is the project lead for the alternatives analysis and project partners include the City of Portland, Multnomah County, Clackamas County, the City of Lake Oswego, TriMet, the Oregon Department of Transportation (ODOT), and Portland Streetcar Inc.; and

WHEREAS, the areas impacted by the Eastside and Portland/Lake Oswego studies lie primarily within Metro District Five and Metro District Two; and

WHEREAS, the Eastside and Portland/Lake Oswego Alternatives Analyses Steering Committee is scheduled to begin meeting in April 2005, now therefore;

BE IT RESOLVED, that the Metro Council hereby confirms the appointment of Councilor Rex Burkholder and Councilor Brian Newman to serve as co-chairs of the steering committee and confirms that the following jurisdictions and organizations shall each select a representative to serve on the steering committee, beginning in April 2005:

City of Portland
City of Lake Oswego
Multnomah County
Clackamas County
TriMet
ODOT
Portland Streetcar Inc.
Eastside Project Advisory Committee
Lake Oswego Project Advisory Committee

ADOPTED by the Metro Council this _____ day of April 2005.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 05-3569, FOR THE PURPOSE OF CONFIRMING METRO COUNCIL REPRESENTATIVES TO THE EASTSIDE AND PORTLAND/LAKE OSWEGO TRANSIT ALTERNATIVES ANALYSIS STEERING COMMITTEE AND IDENTIFYING OTHER REPRESENTATIVE CATEGORIES TO THE COMMITTEE

Date: April 7, 2005

Prepared by: Sharon Kelly

BACKGROUND

Metro is beginning the process of two simultaneous Federal Transit Alternatives Analyses studies. One will look at transit alternatives on the Eastside of the Portland Central City, and the other will examine transit and trail alternatives in the Portland to Lake Oswego Corridor. These two Federal Alternatives Analyses studies will examine a variety of alternatives and lead to the selection of a Locally Preferred Alternative. This Steering Committee that would be created if this resolution is approved will guide the studies and eventually make project related recommendations to the Local Jurisdictions and Metro Council.

ANALYSIS/INFORMATION

1. Known Opposition:

There is no known opposition to this resolution.

2. Legal Antecedents:

In accordance with Metro Ordinance No. 00-860A (For the purpose of adding a new chapter to the Metro Code relating to Advisory Committees – approved 11/9/00), the Metro Council President has the authority to appoint advisory committees of a limited duration.

3. Anticipated Effects:

If the Metro Council adopts this resolution, a combined Steering Committee will be formed to guide these two Alternatives Analyses Studies.

4. Budget Impacts:

Activities in support of this task are included in the Eastside AA Budget and the Portland to Lake Oswego AA Budget. No additional funding would be required for this task. The funding for both of these studies is included in the adopted Metro Budget.

RECOMMENDED ACTION

Metro Staff recommends adoption of this resolution.

Agenda Item Number 6.2

Resolution No. 05-3574, Establishing a Regional Habitat Protection, Restoration
and Greenspaces Initiative Called Nature in Neighborhoods
(For Information Only; No Final Action)

Metro Council Meeting
Thursday, April 7, 2005
Metro Council Chamber

Measure 37

Proposed by initiative petition to be voted on at the General Election, November 2, 2004.

Ballot Title

37

GOVERNMENTS MUST PAY OWNERS, OR FORGO ENFORCEMENT, WHEN CERTAIN LAND USE RESTRICTIONS REDUCE PROPERTY VALUE

RESULT OF "YES" VOTE: "Yes" vote requires that governments pay owners, or forgo enforcement by repealing, changing, not applying restrictions, when certain land use restrictions reduce owners' property value.

RESULT OF "NO" VOTE: "No" vote rejects requiring that governments pay owners or forgo enforcement by repealing, changing, not applying restrictions, when certain land use restrictions reduce property value.

SUMMARY: Currently, Oregon Constitution requires government(s) to pay owner "just compensation" when condemning private property or taking it by other action, including laws precluding all substantial beneficial or economically viable use. Measure enacts statute requiring that when state, city, county, metropolitan service district enacts or enforces land use regulation that restricts use of private real property or interest thereon, government must pay owner reduction in fair market value of affected property interest, or forgo enforcement. Governments may repeal, change, or not apply restrictions in lieu of payment; if compensation not timely paid, owner not subject to restrictions. Applies to restrictions enacted after "family member" (defined) acquired property. Creates civil right of action including attorney fees. Provides no new revenue source for payments. Certain exceptions. Other provisions.

ESTIMATE OF FINANCIAL IMPACT: The measure would require state administrative expenditures to respond to claims for compensation of between \$18 million and \$44 million per year.

The measure may require compensation to landowners. The amount of state expenditures needed to pay claims for compensation cannot be determined.

There is no financial effect on state revenues.

The measure would require local government administrative expenditures to respond to claims for compensation of between \$46 million and \$300 million per year.

The measure may require compensation to landowners. The amount of local government expenditures needed to pay claims for compensation cannot be determined.

The effect of the measure on local government revenues cannot be determined.

Text of Measure

The following provisions are added to and made a part of ORS chapter 197:

(1) If a public entity enacts or enforces a new land use regulation or enforces a land use regulation enacted prior to the effective date of this amendment that restricts the use of private real property or any interest therein and has the effect of reducing the fair market value of the property, or any interest therein, then the owner of the property shall be paid just compensation.

(2) Just compensation shall be equal to the reduction in the fair market value of the affected property interest resulting from enactment or enforcement of the land use regulation as of the date the owner makes written demand for compensation under this act.

(3) Subsection (1) of this act shall not apply to land use regulations:

(A) Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law. This subsection shall be construed narrowly in favor of a finding of compensation under this act;

(B) Restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;

(C) To the extent the land use regulation is required to comply with federal law;

(D) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing. Nothing in this subsection, however, is intended to affect or alter rights provided by the Oregon or United States Constitutions; or

(E) Enacted prior to the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first.

(4) Just compensation under subsection (1) of this act shall be due the owner of the property if the land use regulation continues to be enforced against the property 180 days after the owner of the property makes written demand for compensation under this section to the public entity enacting or enforcing the land use regulation.

(5) For claims arising from land use regulations enacted prior to the effective date of this act, written demand for compensation under subsection (4) shall be made within two years of the effective date of this act, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner of the property, whichever is later. For claims arising from land use regulations enacted after the effective date of this act, written demand for compensation under subsection (4) shall be made within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

(6) If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under this act, the present owner of the property, or any interest therein, shall have a cause of action for compensation under this act in the circuit court in which the real property is located, and the present owner of the real property shall be entitled to reasonable attorney fees, expenses, costs, and other disbursements reasonably incurred to collect the compensation.

(7) A metropolitan service district, city, or county, or state agency may adopt or apply procedures for the processing of claims under this act, but in no event shall these procedures act as a prerequisite to the filing of a compensation claim under subsection (6) of this act, nor shall the failure of an owner of property to file an application for a land use permit with the local government serve as grounds for dismissal, abatement, or delay of a compensation claim under subsection (6) of this act.

(8) Notwithstanding any other state statute or the availability of funds under subsection (10) of this act, in lieu of payment of just compensation under this act, the governing body responsible for enacting the land use regulation may modify, remove, or not to apply the land use regulation or land use regulations to allow the owner to use the property for a use permitted at the time the owner acquired the property.

(9) A decision by a governing body under this act shall not be considered a land use decision as defined in ORS 197.015(10).

(10) Claims made under this section shall be paid from funds, if any, specifically allocated by the legislature, city, county, or metropolitan service district for payment of claims under this

37

Measure 37

act. Notwithstanding the availability of funds under this subsection, a metropolitan service district, city, county, or state agency shall have discretion to use available funds to pay claims or to modify, remove, or not apply a land use regulation or land use regulations pursuant to subsection (6) of this act. If a claim has not been paid within two years from the date on which it accrues, the owner shall be allowed to use the property as permitted at the time the owner acquired the property.

(11) Definitions – for purposes of this section:

(A) "Family member" shall include the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members or the owner of the property.

(B) "Land use regulation" shall include:

(i) Any statute regulating the use of land or any interest therein;

(ii) Administrative rules and goals of the Land Conservation and Development Commission;

(iii) Local government comprehensive plans, zoning ordinances, land division ordinances, and transportation ordinances;

(iv) Metropolitan service district regional framework plans, functional plans, planning goals and objectives; and

(v) Statutes and administrative rules regulating farming and forest practices.

(C) "Owner" is the present owner of the property, or any interest therein.

(D) "Public entity" shall include the state, a metropolitan service district, a city, or a county.

(12) The remedy created by this act is in addition to any other remedy under the Oregon or United States Constitutions, and is not intended to modify or replace any other remedy.

(13) If any portion or portions of this act are declared invalid by a court of competent jurisdiction, the remaining portions of this act shall remain in full force and effect.

Explanatory Statement

Ballot Measure 37 adds a new statute to ORS chapter 197. As specified in the measure, the owner of private real property is entitled to receive just compensation when a land use regulation is enacted after the owner or a family member became the owner of the property if the regulation restricts the use of the property and reduces its fair market value.

If a property owner proves that a land use regulation restricts the use of the owner's property, and reduces its value then the government responsible for the regulation will have a choice: pay the owner of the property an amount equal to the reduction in value or modify, change or not apply the regulation to the owner's property.

The measure allows the state, county, city or metropolitan service district to adopt procedures for processing claims for compensation, but prohibits those procedures from being treated as a prerequisite to the filing of a claim in circuit court.

The measure does not apply to commonly and historically recognized public nuisances, public health and safety regulations, regulations required to comply with federal law, and regulations restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing.

The measure specifies that compensation is due if the regulation remains in force 180 days after the owner makes written demand for compensation. After that time, the present owner may file an action in the circuit court in the county in which the property is located. The measure also specifies that the present owner is entitled to reasonable attorney fees, expenses, costs and other disbursements reasonably incurred to collect compensation.

The measure provides no new revenue source for payments, if any, required under this measure.

The measure defines several terms that are used in the statute including "family member" which is defined as wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members or the owner of the property.

Committee Members:

David Hunnicutt
Dale Riddle
Bernie Bottomly
Patricia McCaig
Jack Roberts

Appointed by:

Chief Petitioners
Chief Petitioners
Secretary of State
Secretary of State
Members of the Committee

(This committee was appointed to provide an impartial explanation of the ballot measure pursuant to ORS 251.215.)



City Attorney's Office

Council Report

To: Judie Hammerstad, Mayor
Members of Lake Oswego City Council
Doug Schmitz, City Manager

From: David Powell, City Attorney *DP*

Date: March 30, 2005

Subject: Ordinance No. 2407
Procedure for Claims filed under 2004 Ballot Measure 37

Attached is proposed Ordinance No. 2407, which establishes a process for handling claims filed against the City pursuant to 2004 Ballot Measure 37.

SUMMARY OF MEASURE 37

Measure 37 provides that, if a government entity enacts or enforces a new land use regulation, or enforces an existing land use regulation, that restricts the use of real property and has the effect of reducing the value of the property, the government must either pay the property owner for the reduction in value or must "modify, remove or not apply" the land use regulation so as to allow the owner to use the property for a use that was permitted at the time the owner acquired the property.

① The compensation option relates to any land use regulation enacted prior to the date of acquisition by the present owner or any family member of the current owner (going back as far as grandparents). However the "modify, remove or not apply" option requires the government to allow the property to be used by the current owner for a use that was allowed at the time the current owner (not family member) acquired the property. *Misrepresentation*

② In the case of cities, "land use regulation" includes "comprehensive plans, zoning ordinances, land division ordinances and transportation ordinances." Measure 37 does not apply to land use regulations that prohibit common law public nuisances, that restrict activities for the protection of public health and safety (such as fire and building codes, health, sanitation and pollution regulations, etc.), that are required by federal law or that restrict nude dancing or the sale of pornography. *Omits (il) LCDC*

ORDINANCE NO. 2407

Following is a summary of the provisions of attached Ordinance No. 2407, which adds a new article to Chapter 12 of the Lake Oswego Code establishing a procedure for claims filed under Measure 37.

Pre-filing Conference

Similar to the pre-application conference required for certain land use permits, Ordinance No. 2407 requires Measure 37 claimants to attend a pre-filing conference, and to pay a conference fee. The fee will be established in Resolution 05-31 (recommended to be \$256 – the same as pre-application conference fees for regular development review permits).

The purpose of the pre-filing conference is to create an opportunity for the owner and staff to share information relating to the potential claim, the desired development opportunities, relevant regulations, claim processing procedures and filing requirements.

Filing Requirements

The ordinance provides for a filing fee to be established by resolution (proposed Resolution 05-31 establishes a filing fee in the recommended amount of \$750).

Claims must be filed on forms provided by the City, which require information including identification of all parties having an interest in the property, proof of current ownership, identification of the challenged regulation (plus the regulations in effect at the time of enactment of the challenged regulation), a description of how the regulation has restricted the use of property and how that restriction has reduced the value, a site plan and drawings showing the proposed use of the property if the challenged regulation is waived and a statement of the relief being sought by the owner.

The owner also must supply a title report showing the title history and the current ownership, and specifying any recorded restrictions on the use of the property.

If the amount of the claim is \$10,000 or more, the owner must supply a full appraisal by a certified general appraiser, showing the reduction in fair market value caused by the challenged regulation. If the claim is for less than \$10,000, the owner may submit an appraiser's summary report rather than a full appraisal.

Within 15 days of the initial filing, the City Manager must advise the owner of any submittals necessary to make the filing complete. If the owner does not complete the filing requirements within the following 30 days, the claim will not be accepted for filing. The City Manager has the option of notifying the owner that the City will nevertheless proceed to process the claim in spite of the missing information.

The ordinance states that the 180-day time period for processing Measure 37 claims begins when the claim is accepted for filing (or when the City Manager notifies the owner that the claim will be processed despite an incomplete filing).

See
Measure
37
Text

Notice of the Claim

Upon acceptance of the claim the City Manager must send notice of the claim by mail to all property owners within 300 feet of the site (the notice area will be expanded as necessary to notify the owners of at least 50 properties). Notice must also be mailed to the neighborhood association whose boundaries include the site, plus all adjacent neighborhood associations, DLCD, Metro and any other entity that the City Manager believes would be affected by a waiver of the challenged regulation.

Staff Review and Recommendation; City Council Hearing

If City staff determines that the owner is not eligible for relief under Measure 37, the owner will be mailed a notice of the denial of the claim. The owner will have 15 days to request a City Council hearing on the denial.

If staff determines that the owner is eligible for relief, a City Council hearing will be scheduled to review the staff recommendation and to take final action on the claim.

Notice of City Council Hearing

Notice of the City Council hearing will be mailed, at least 20 days before the hearing, to all parties who were entitled to mailed notice of the claim. Notice of the hearing will also be posted on the property.

City Council Hearing Procedure

The City Council hearing will be conducted similar to quasi-judicial land use hearings, with the staff report followed by the owner's presentation, testimony in favor of the claim, testimony in opposition, rebuttal, deliberation and a tentative decision. The decision will be finalized upon adoption of written findings, conclusions and an order.

The property owner will have the burden of proof, by a preponderance of the evidence.

City Council Decision

If the City Council finds that the owner is entitled to relief under Measure 37, it will have the following options:

- Award compensation in the amount of the reduction in the fair market value of the property resulting from the challenged land use regulation;
 - A compensation award may be conditioned upon receiving a defined amount of contributions from third parties by a specified date. This will give neighbors and others the opportunity to avoid waiver of the challenged regulation by providing funds to compensate the owner.
- Order that the challenged regulation be modified, removed or not applied so as to allow the owner to use the property for a use that was permitted at the time the owner acquired the property;
- Acquire the property through a negotiated purchase or condemnation.

Transferability

The ordinance states that any "waiver" of the challenged land use regulation by the City Council is personal to the owner-claimant and may not be sold or otherwise transferred to another party. Furthermore the waiver will not run with the land – meaning that it extinguishes once the property is sold or is otherwise transferred to a different owner.

If a use or structure is established and used or maintained continuously by the claimant-owner under a Measure 37 "waiver," it will become nonconforming following the sale of the property to another party. The Community Development Code determines the duration of the nonconforming status. The Code currently provides that, if a nonconforming use is discontinued for six months or more, further use of the property must comply with current Code requirements. If a nonconforming structure is damaged or destroyed to the extent that the cost of rebuilding the damaged portions exceeds 50% of the replacement cost of the entire structure, the reconstruction must comply with current Code requirements.

Attorney Fees

The ordinance provides that the City will be awarded its attorney fees (including the cost

of in-house legal counsel) if it prevails on any appeal or other legal proceeding challenging the City's decision on a Measure 37 claim.

Private Cause of Action

The ordinance also creates a private cause of action whereby other property owners may sue the Measure 37 claimant-owner if the "waiver" of regulations pursuant to the claim reduces the value of their property. If the suit is successful the plaintiff may recover an amount equal to the loss of value of the plaintiff's property plus attorney fees and court costs.

RECOMMENDATION

It is recommended that the City Council enact Ordinance No. 2407

ORDINANCE NO. 2407

AN ORDINANCE OF THE LAKE OSWEGO CITY COUNCIL AMENDING CHAPTER 12 OF THE LAKE OSWEGO CODE BY ADDING NEW ARTICLE 12.55 RELATING TO CLAIMS MADE PURSUANT TO 2004 BALLOT MEASURE 37

The City of Lake Oswego ordains as follows:

Section 1. The Lake Oswego Code, Chapter 12, is hereby amended to add Article 12.55 as follows:

“Article 12.55 Review of Claims for Compensation under ORS Chapter 197 (as amended by 2004 Ballot Measure 37).

12.55.010 Purpose.

The purpose of this Article is to accomplish the following regarding claims for compensation under ORS Chapter 197, as amended by Ballot Measure 37, adopted November 2, 2004:

Process claims for compensation quickly, openly, thoroughly and consistently with the law; enable real property owners making claims for compensation to have an adequate and fair opportunity to present their claims to the City; provide the City with the factual and analytical information necessary to adequately and fairly consider claims for compensation and take appropriate action under the alternatives provided by law; preserve and protect limited public funds; and preserve and protect the interests of the community by providing for public input into the process of reviewing claims.

12.55.020 Definitions.

For purposes of this Article, the following definitions shall apply:

1. Appraisal shall mean a written statement prepared by a certified general appraiser certified by the Appraiser Certification and Licensure Board of the State of Oregon pursuant to ORS Chapter 674.

2. City Manager shall mean the City Manager of Lake Oswego or his or her designee.

3. Claim shall mean the written demand for compensation made by an owner of property in accordance with ORS Chapter 197, as amended by Ballot Measure 37 passed November 2, 2004.

4. Exempt Regulation shall mean:

a. A regulation restricting or prohibiting activities commonly and historically recognized as public nuisances under common law;

b. A regulation restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;

c. A regulation required for compliance with federal law, to the extent that it is so required;

d. A regulation restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing; or

e. A regulation enacted prior to the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first.

5. Family Member shall mean the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members or the owner of the property.

6. Land Use Regulation shall mean any comprehensive plan, zoning ordinance, land division ordinance or transportation ordinance of the City of Lake Oswego. "Land use regulation" shall not include any exempt regulation.

7. Owner shall mean the present owner of property that is the subject of a Claim, or any interest therein.

8. Property shall mean any private real property or interest therein. It includes only a single parcel or contiguous parcels in single ownership. It shall not include any parcels that are under different ownerships, regardless of contiguity. "Property" does not include public property, personal property or easements affecting public property. "Property" also does not include a franchise issued by the City to place or erect public or private utility facilities within or along a public right of way or other public property.

9. Measure 37 shall mean those amendments to Oregon Revised Statutes Chapter 197 made by Oregon Ballot Measure 37, adopted on November 2, 2004.

12.55.030 Pre-filing Conference.

1. Before submitting a claim, the owner must schedule and attend a pre-filing conference with the City Manager to discuss the claim. The pre-filing conference shall follow the procedure set forth by the City Manager. The owner shall pay the applicable pre-filing conference fee as established by a resolution of the City Council.

2. The purpose of the pre-filing conference is for the owner to provide a summary of the claim to the City Manager, and for the City Manager to provide information to the owner about regulations that may affect the claim. The City Manager may provide the owner with a written summary of the pre-filing conference within 10 days after it is held.

3. Any omission or failure by staff to recite to an owner all applicable regulations will not constitute a waiver or admission by the City.

4. A pre-filing conference is valid for six months from the date it is held. If no claim is filed within six months of the conference, the owner must schedule and attend another conference before the City will accept a claim.

5. The City Manager may waive the pre-filing conference requirements if, in the City Manager's sole determination, a pre-filing conference would serve no purpose.

12.55.040 Claim Requirements.

1. Form, Completeness and Review Period.

a. A claim shall be submitted and accepted for review only upon forms established by the City Manager. A claim shall consist of all materials required by this Article. A claim will

accepted until found to be complete by the City Manager after all materials required by Article have been submitted.

b. The City Manager shall conduct a completeness review within 15 days after submittal of the claim and shall advise the owner, in writing, of any material remaining to be submitted. The owner shall submit the material needed for completeness within 30 days of the written notice stating that additional material remains to be submitted. If the owner fails to provide the materials necessary to make the claim complete within the 30-day period, the claim shall not be accepted for filing. If the City Manager believes that there is doubt under Measure 37 as to whether the additional information can be required as a condition of acceptance of the claim, the City Manager may notify the owner in writing that, although the City Manager considers the claim incomplete, the City Manager nevertheless will proceed to process the claim.

c. The 180-day period required before accrual of a cause of action in Circuit Court under Measure 37 shall commence on the date the City Manager deems the claim complete and accepts it for filing, or on the date that the City Manager notifies the owner that the claim will be processed despite being incomplete.

2. Claim Requirements. A claim will not be accepted for filing without all of the following:

a. Application Fee. Payment of an application fee, in an amount established by a resolution of the City Council.

b. Claim Form. A completed claim on a form provided by the City Manager.

c. Identification of Owner and Other Interest Holders. Identification of the name(s), address(es) and telephone number(s) of the owner making the claim and all other owners, including anyone with any interest in the property, including, without limitation, lien holders, trustees, renters, lessees, and a description of the ownership interest of each.

d. Property Description. The address, tax lot number, and legal description of the property that is the subject of the claim.

e. Proof of Current Property Ownership. Proof, acceptable to the City Manager, that the property is in the exclusive fee simple ownership of the owner or that the owner has the consent of all owners of the Property.

f. Title Report. A report from a licensed title company, including the title history, a statement of the date the owner acquired the property, and the ownership interests of all owners. The report must also specify any restrictions on use of the property unrelated to the land use regulation including, but not limited to, any restrictions established by Covenants, Conditions and Restrictions (CC&Rs), other private restrictions, or other regulations, restrictions or contracts.

g. Existing Regulation. Identification of the land use regulation that the owner making the claim believes restricts the use of the property, or interest therein, and that has had the effect of reducing the fair market value of the Property, including the date the Owner claims the land use regulation was first enacted, enforced or applied to the Property.

h. Prior Regulations. Identification of the land use regulations in existence and applicable to the property when the owner and any of the owner's family members acquired the property, and the land use regulations in existence immediately before the enactment of the regulation listed in Subsection (2)(g) of this Section.

i. Appraisals. If the amount of the claim is \$10,000 or more, a copy of a written uniform standard professional appraisal by a certified general appraiser, certified in the State of Oregon, stating the amount of the alleged reduction in the fair market value of the property by

showing the difference in the fair market value of the property before and after enactment, enforcement or application of the land use regulation identified pursuant to Subsection (2)(g) of this Section, and explaining the rationale and factors leading to that conclusion. If the claim is for less than \$10,000, a copy of a summary report may be substituted for a uniform standard professional appraisal.

j. Narrative. A narrative describing the history of the owner and any family member's ownership of the property, and describing how the enactment, enforcement or application of the land use regulation restricts the use of the Property, or any interest therein, and has the effect of reducing the fair market value of the Property, or any interest therein.

k. Regulation; Date of Acquisition. A statement explaining how the land use regulation identified pursuant to Subsection (2)(g) of this Section was enacted prior to the date of the acquisition of the property by the Owner, or prior to acquisition by a family member of the owner who owned the property prior to the acquisition or inheritance by the owner [if "family member" status is claimed, it must also be addressed in the report required by Subsection 2(f) of this Section].

l. Enforcement. A statement describing any City "enforcement" of the land use regulation that the owner relies upon to support the claim.

m. Site Plan and Drawings. A copy of a site plan and drawings in a legible 8½ by 11 inch format showing the proposed use of the property if the land use regulation is modified, removed or not applied.

n. Statement of Relief Sought. A statement of the relief sought by the owner.

12.55.050 Notice of Claim.

1. Upon acceptance of a claim as complete, the City Manager shall mail notice of the claim by regular first-class mail to:

a. All owners of real property located within 300 feet of the property that is the subject of the notice, as listed on the most recent property tax assessment roll. If there are less than 50 properties within 300 feet of the property, the notice area shall be expanded, by 10-foot increments outward from the 300-foot boundary, until at least 50 properties are included within the notice area;

b. Any recognized neighborhood associations(s) whose boundaries either contain part or all of the property;

c. All adjacent recognized neighborhood associations (adjacent recognized neighborhood associations are those associations that share boundaries with the neighborhood(s) identified in Subsection (1)(c) of this Section and additionally those recognized neighborhood associations that are separated from the neighborhood associations(s) identified in Subsection (1)(c) by a street or stream).

d. The Oregon Department of Land Conservation and Development;

e. Metro;

f. Any local, state or federal agency, or other entity, that the City Manager believes would be affected by a waiver of the land use regulation.

2. The notice under Subsection (1) of this Section shall:

a. Explain the nature of the claim, including the name of the owner, the amount of the claim, and the relief sought;

b. Set forth the street address, if available, or other easily understood reference to the location of the property;

- c. Include a summary of the procedure for processing Measure 37 claims under this Article.

12.55.060 Review of Claim for Eligibility; Recommendation.

1. The City Manager shall assess any complete claim and make a determination as to whether or not the owner is eligible for relief under Measure 37 and the provisions of this Article.

2. The City Manager may, in the City Manager's discretion, retain the services of an appraiser to appraise the Property and evaluate the claim in order to assist in determining the validity of the claim.

3. If the City Manager determines that the owner is not eligible for relief, the City Manager shall mail written notice of denial of the claim to the owner, stating the reasons for the denial and informing the owner that the City Manager's decision shall become final unless the owner files with the City Recorder a written request for a hearing before the City Council within fifteen calendar days of the date of the notice. If the owner files a timely written request for a hearing, the City Council shall hold a public hearing and take final action on the claim pursuant to Section 12.55.070 of this Article. If a timely written request for a hearing is not filed, the City Manager's denial of the claim shall be final.

4. If the City Manager determines that the owner is eligible for relief, the City Manager shall make a recommendation to the City Council as to:

- a. Whether and how the land use regulation should be removed, modified, or not applied;
- b. Whether the claimant should be compensated, and in what amount; or
- c. Whether the claim should be resolved in another manner not inconsistent with this Article Measure 37, possibly including City acquisition of the property by condemnation.

12.55.070 Notice of Hearing; Posting.

1. Upon determining that the owner is eligible for relief, or upon the filing of a timely request for a hearing pursuant to Subsection 12.55.060 (3), the City Manager shall mail notice of the hearing by regular first-class mail to:

- a. The owner;
- b. All owners of real property located within 300 feet of the property that is the subject of the notice, as listed on the most recent property tax assessment roll. If there are less than 50 properties within 300 feet of the property, the notice area shall be expanded, by 10-foot increments outward from the 300-foot boundary, until at least 50 properties are included within the notice area;
- c. Any recognized neighborhood associations(s) whose boundaries either contain part or all of the property;
- d. All adjacent recognized neighborhood associations (adjacent recognized neighborhood associations are those associations that share boundaries with the neighborhood(s) identified in Subsection (1)(c) of this Section and additionally those recognized neighborhood associations that are separated from the neighborhood associations(s) identified in Subsection (1)(c) by a street or stream).
- e. The Oregon Department of Land Conservation and Development;
- f. Metro;

g. Any local, state or federal agency, or other entity, that the City Manager believes would be affected by a waiver of the land use regulation.

2. The notice under Subsection (1) of this Section shall:

a. Explain the nature of the claim, including the name of the owner and the amount of the claim, and the relief sought;

b. List the applicable criteria under Measure 37 and this Article;

c. List the land use regulation that is the subject of the claim;

d. Set forth the street address, if available, or other easily understood reference to the location of the property;

e. State the date, time and location of the hearing at which the City Council will consider the claim;

f. State that interested persons may testify orally or in writing at the City Council hearing;

g. Include a general explanation of the requirements for submission of testimony and the procedure for the City Council hearing;

h. Include the name and telephone number of the City staff person to contact for additional information;

i. State that a copy of the claim, and all documents and evidence submitted by the applicant, are available for inspection at no cost and that copies will be provided at a reasonable cost.

j. State that a copy of the any staff report will be available for inspection at no cost at least two days before the hearing, and that copies will be provided at a reasonable cost.

3. The notice shall be mailed at least 20 days before the hearing unless the City Manager determines that a shorter notice period is required in order to assure that the claim is resolved within the 180-day period required by Measure 37.

4. At the time notice is mailed pursuant to subsection (1) of this section, a notice shall be posted on the property at a location readily visible from a public right-of-way, if available. The posted notice shall state that the property is subject to a claim under Measure 37 and shall state the date, time and location of the hearing at which the City Council will consider the claim. The posted notice shall also include the telephone number of the City department to call for further information about the claim.

5. The failure of a person entitled to notice to receive notice as provided in this Section shall not invalidate proceedings conducted pursuant to this Article. The notice provisions of this Section shall not restrict the giving of notice by other means, including newspaper publication, radio and television, or other electronic means.

12.55.080 City Council Hearing; Decision.

1. The City Council shall conduct a public hearing pursuant to a timely request for hearing under Section 12.55.060 (3), or before taking final action on a recommendation from the City Manager under Section 12.55.060 (4).

2. At the commencement of the hearing, City Council members shall disclose any ex parte contacts, conflicts of interest or bias, and shall provide an opportunity for challenges.

3. The Council hearing shall proceed in the following general order: staff report, claimant's presentation, testimony in favor of the claim, testimony in opposition to the claim, claimant's rebuttal, deliberation and tentative decision, adoption of final writing findings, conclusions and an order.

The Mayor may establish and enforce time limits on testimony.

The criteria for the City Council decision shall include whether:

- a. The claim is complete;
- b. The claim has been filed within the time limitations of Measure 37;
- c. The claimant is a qualifying owner under Measure 37;
- d. The subject property is located within the City and is subject to the land use regulation that is the basis of the claim;
- e. The land use regulation restricts the use of the private property;
- f. The land use regulation is a comprehensive plan, zoning ordinance, land division ordinance, or transportation ordinance of the City of Lake Oswego;
- g. The land use regulation is not an exempt regulation;
- h. The land use regulation was enacted after the date of acquisition of the property by an owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first;
- i. The fair market value of the property has been reduced by the enforcement (for regulations enacted prior to December 4, 2004) or by the enactment or enforcement (for regulations enacted on or after December 4, 2004) of the land use regulation;
- j. The owner is otherwise entitled to compensation under Measure 37.

6. The owner shall bear the burden of proof as to the claim, the devaluation of the property and the entitlement to just compensation. The standard of proof shall be by a preponderance of the evidence.

7. At the conclusion of the public hearing, the City Council shall deliberate and announce its tentative decision. The decision shall not be considered final until the City Council has adopted written findings, conclusions and an order in support of its decision. Unless waived or extended by the claimant, the final decision shall be rendered within 180 days from the date the claim was deemed complete.

8. If the City Council finds that all of the criteria established in this Section and Measure 37 have been met, and that the owner is entitled to compensation under Measure 37, it shall have the following options:

- a. The City Council may enter an order awarding compensation to the owner in the amount of the reduction in fair market value of the owner's property interest resulting from the enactment or enforcement of the land use regulation as of the date of the claim.

- b. If the City Council finds that the public burden of paying the required compensation, considering the City's financial resources for the payment of such claims, outweighs the loss of public benefit derived from maintaining the imposition of the land use regulation on the property, the City Council shall enter an order modifying, removing or not applying the land use regulation, so as to allow the owner to use the property for a use permitted at the time the owner acquired the property.

- c. In taking action under Subsection 8(a) of this Section the City Council may make its decision to pay just compensation conditional upon the City receiving a defined amount of contributions by others by a specified date. If by the specified date the defined amount of contributions has been received, the compensation shall be paid and the land use regulation shall continue to apply to the property. If the defined amount of contributions has not been received by the specified date, the City shall issue an order under Subsection 8(b) of this Section, and all contributions received shall be returned to the contributors.

d. The City Council may acquire the property through a negotiated purchase or condemnation;

e. The City Council may take such other action as the Council deems to be appropriate and consistent with the requirements of Measure 37.

f. The City Council may impose any condition of approval that it deems necessary or appropriate to implement the Council's decision.

12.55.090 Notice of Decision.

Notice of the City Council's decision shall be mailed to the owner and to each individual or entity that participated in the hearing either orally or in writing.

12.55.100 Compliance with Conditions of Approval; Revocation of Decision.

1. Failure to comply with any condition of approval is grounds for revocation of the approval of the claim, grounds for recovery by the City of any compensation paid and grounds for revocation of any other action taken under this Article.

2. In the event that the owner or a successor in interest fails to fully comply with all conditions or approval, the City Manager may initiate a revocation or modification proceeding before the City Council under the same general process as for City Council review of a claim.

12.55.110 Transferability; Nonconforming use.

A decision by the City Council to modify, remove or not apply the land use regulation to allow the owner to use the property for a use permitted at the time the owner acquired the property shall be personal to the owner and shall not be transferable or run with the land. Upon transfer of any ownership interest in the subject property, any continuous use of the property or any structure that was allowed pursuant to a modification, removal or non-application of a land use regulation pursuant to this Article, and that is inconsistent with current regulations, shall be deemed to be a nonconforming use or structure, and all laws and City ordinances relating to nonconforming uses and structures shall apply.

12.55.120 Attorney Fees.

If an owner commences suit or action against the City to collect compensation pursuant to Measure 37, or if any party initiates an appeal, writ of review, or any other proceeding challenging a decision or an act of the City pursuant to this Article, if the City is the prevailing party in such suit, action, or proceeding then the City shall be entitled to any sum that a court, including any appellate court, may adjudge reasonable as attorney's fees. In the event the City is the prevailing party and is represented by "in-house" counsel, the prevailing party shall nevertheless be entitled to recover reasonable attorney fees based upon the reasonable time incurred and the attorney fee rates and charges reasonably and generally accepted in the Portland, Oregon metropolitan area.

12.55.130 Private Cause of Action.

If the City Council's approval of a claim by modifying, removing or not applying a land use regulation causes a reduction in value of other property located in the vicinity of the property, the owner(s) of the other property shall have a cause of action in Circuit Court to recover from the owner(s) of the property subject to the claim the amount of the reduction in value. A person who recovers for a reduction in value of property under this section shall also be entitled to recover

...s fees and disbursements from the Owner(s) of the property subject to the claim. This ... does not create a cause of action against the City of Lake Oswego, its Council, officers, employees or agents. Nor shall any party have a right to a third-party claim against the City of Lake Oswego related to the cause of action created by this Section, whether based upon indemnity or any other legal theory.

12.55.140 Availability of Funds to Pay Claims.

Compensation shall only be paid under this Article based on the availability and appropriation of funds for this purpose.

12.55.150 Severability.

If any phrase, clause, or other part or parts of this Article is found to be invalid by a court of competent jurisdiction, the remaining phrases, clauses and other part or parts shall remain in full force and effect.

12.55.160 Applicable State Law.

For all claims filed with the City of Lake Oswego, the applicable state laws are those portions of Oregon Revised Statutes 197 added or made a part of that Chapter by Measure 37, passed on November 2, 2004, and as amended, modified or clarified by subsequent amendments or regulations adopted by the Oregon State Legislature or Oregon State Administrative Agencies. Any claim that has not been processed completely under this Article shall be subject to any such amendments, modifications, clarifications or other actions taken at the state level and this Article shall be read in a manner so as not to conflict with such amendments, modifications, clarifications or other actions taken at the state level. This Article is adopted solely to address claims filed under the authority of those provisions of Measure 37. Except as expressly provided in Section 12.55.130, no rights independent of said provisions are created by adoption of this Article."

Section 2. Pending Claims. All claims based upon 2004 Ballot Measure 37 that have been made, have been attempted to be made, or are otherwise pending against the City of Lake Oswego on the effective date of this Ordinance shall be subject to the provisions of this Ordinance, to the same extent as those claims that are made after its effective date.

Section 3. Severability. The provisions of this ordinance are severable. If any portion of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

Read for the first time by title only and enacted at the regular meeting of the City Council of the City of Lake Oswego held on the _____ day of _____, 2005.

AYES:

NOES:

ABSTAIN:

EXCUSED:

Judie Hammerstad, Mayor

Dated: _____

ATTEST:

Robyn Christie, City Recorder

APPROVED AS TO FORM:



David Powell
City Attorney

M:\Ord\2407-Measure37.doc

**CITY OF LAKE OSWEGO
AGENDA REPORT SUMMARY**

7.4.1

04/05/05

MEETING DATE: April 5, 2005

SUBJECT: RESOLUTION 05-31. A RESOLUTION OF THE LAKE OSWEGO CITY COUNCIL ESTABLISHING FEES FOR PROCESSING OF CLAIMS UNDER 2004 BALLOT MEASURE 37

RECOMMENDED ACTION: Move to adopt Resolution 05-31

ESTIMATED FISCAL IMPACT: STAFF COST: \$ BUDGETED: Y____ N____ FUNDING SOURCE:	ATTACHMENTS: <ul style="list-style-type: none">• March 30, 2005 Council Report (Powell)• Resolution 05-31	NOTICED (Date): <div></div>
		Ordinance no.: <u>No. 2407</u> Resolution no.: <u>05-31</u> Previous Council consideration: <div></div>


CITY ATTORNEY

3-30-05
signoff/date


CITY MANAGER

31 MARCH 05
signoff/date



City Attorney's Office

Council Report

To: Judie Hammerstad, Mayor
Members of Lake Oswego City Council
Doug Schmitz, City Manager

From: David Powell, City Attorney

Date: March 30, 2005

Subject: Resolution 05-31 Fees for 2004 Ballot Measure 37 Claims (Ordinance No. 2407)

Proposed Ordinance No. 2407, which establishes procedures for handling Ballot Measure 37 claims, calls for a filing fee for claims and a pre-filing conference fee to be established by a resolution of the City Council.

Attached Resolution 05-31 establishes a pre-filing conference fee of \$256. This is the same amount charged for Planning Department pre-application conferences for regular design review applications. The Resolution also establishes a filing fee of \$750, the same as that established in the City Council's interim policy on Measure 37 claims. Neither of these proposed fees exceeds the City's anticipated average actual costs of conducting pre-filing conferences and processing claims.

RECOMMENDATION

If the City Council enacts Ordinance No. 2407, it is recommended that the City Council adopt Resolution 05-31 establishing a pre-application conference fee and a filing fee for Measure 37 claims.

RESOLUTION 05-31

A RESOLUTION OF THE LAKE OSWEGO CITY COUNCIL ESTABLISHING FEES FOR PROCESSING OF CLAIMS UNDER 2004 BALLOT MEASURE 37

WHEREAS the City Council has enacted Ordinance No. 2407, establishing procedures for processing claims under 2004 Ballot Measure 37; and

WHEREAS Ordinance No. 2407 provides for a pre-filing conference fee and a filing fee to be established by resolution of the City Council; and

WHEREAS the City Council finds that a pre-filing conference fee of \$256 and a filing fee of \$750 are appropriate and do not exceed the City's anticipated average actual costs in conducting pre-filing conferences and processing 2004 Ballot Measure 37 claims.

BE IT RESOLVED by the City Council of the City of Lake Oswego that:

Section 1. There is hereby established a pre-filing conference fee of \$256 and a filing fee of \$750 for claims made against the City pursuant to 2004 Ballot Measure 37 (Ordinance No. 2407).

Section 2. Subsection J (5) (Other Planning Fees) of Section 11 (Planning) of the City of Lake Oswego Master Fees and Charges Schedule is hereby amended by deleting the text shown by ~~strikeout~~ and adding new text shown in **bold** and double underline as follows:

“5) ~~Measure 37 claim application fee (Resolution 04-86)~~

Fees for claims under LOC Article 12.55 (Resolution 05-31)
(2004 Ballot Measure 37 Claims)

Pre-filing conference fee **\$256**

Filing Fee **\$750**”

Section 3. This Resolution shall be effective immediately upon passage.

Considered and enacted at the meeting of the City Council of the City of Lake Oswego on the 5th day of April, 2005.

AYES:

NOES:

EXCUSED:

///

ABSTAIN:

Judie Hammerstad, Mayor

ATTEST:

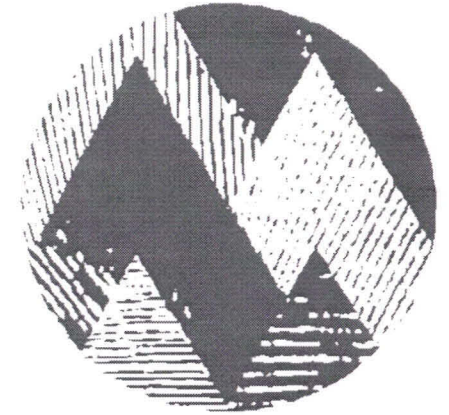
Robyn Christie, City Recorder

APPROVED AS TO FORM:



David Powell, City Attorney

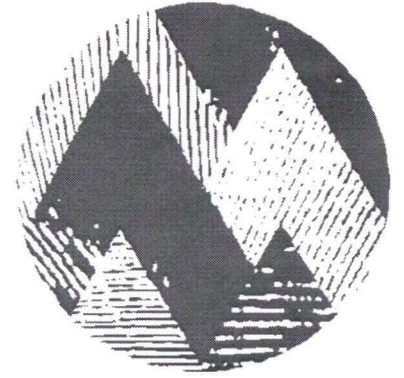
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METRO BUDGET

Fiscal Year 2005-06

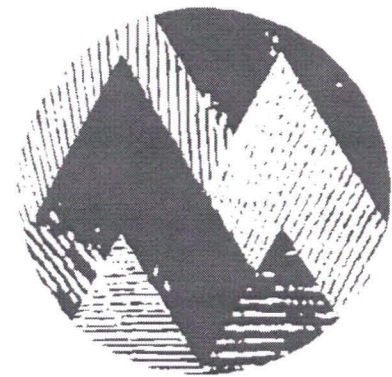
OVERVIEW



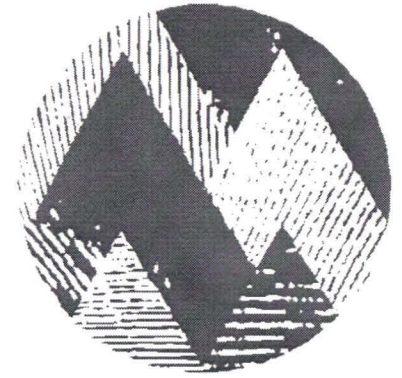
- **Fiscal environment**
- **2005-06 budget priorities and solutions**
- **Institutional redirection**
- **Management solutions**

OVERVIEW

- **Fiscal Environment**



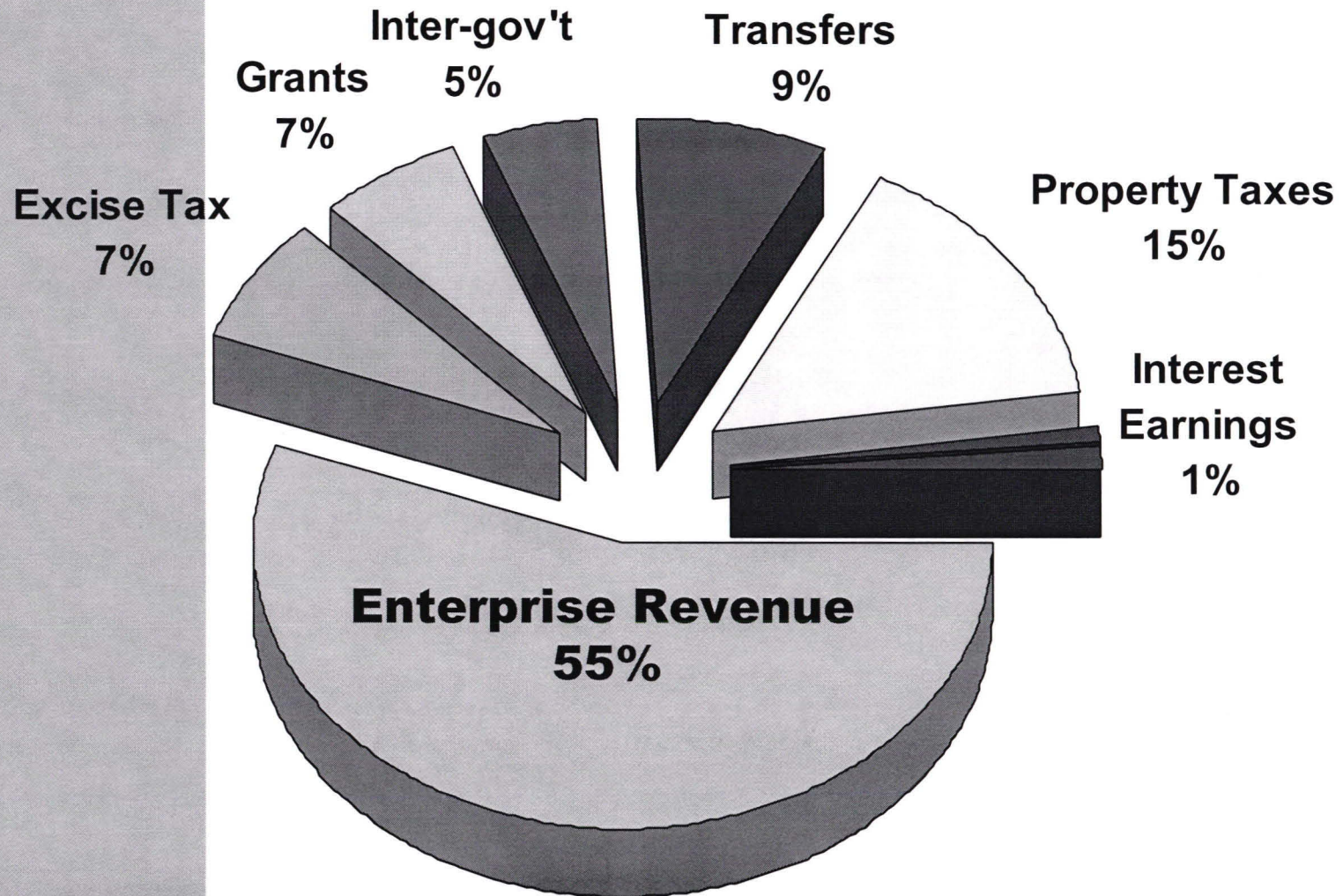
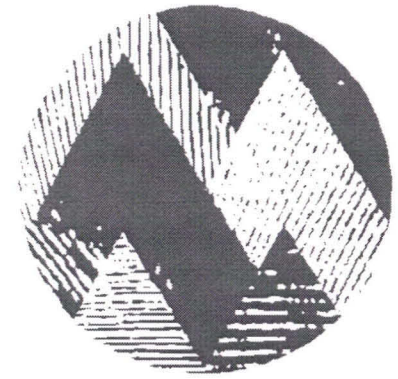
Fiscal Environment



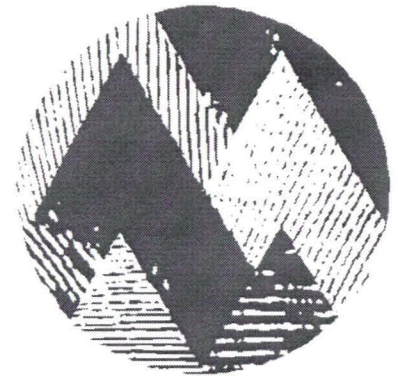
- Flat revenues
- Increasing expenses
- Cost reductions

Fiscal Environment

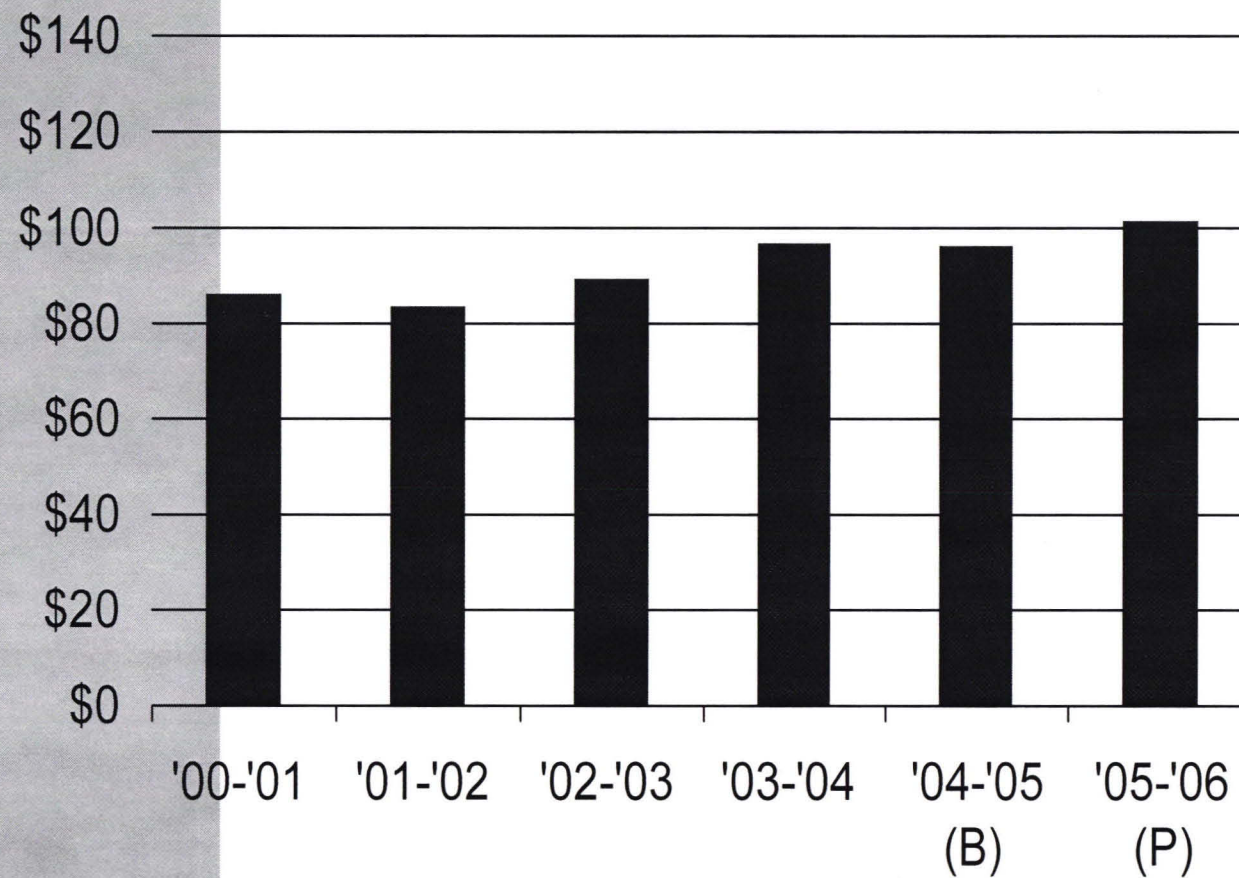
Revenue Generation



Fiscal Environment Enterprise – Revenue



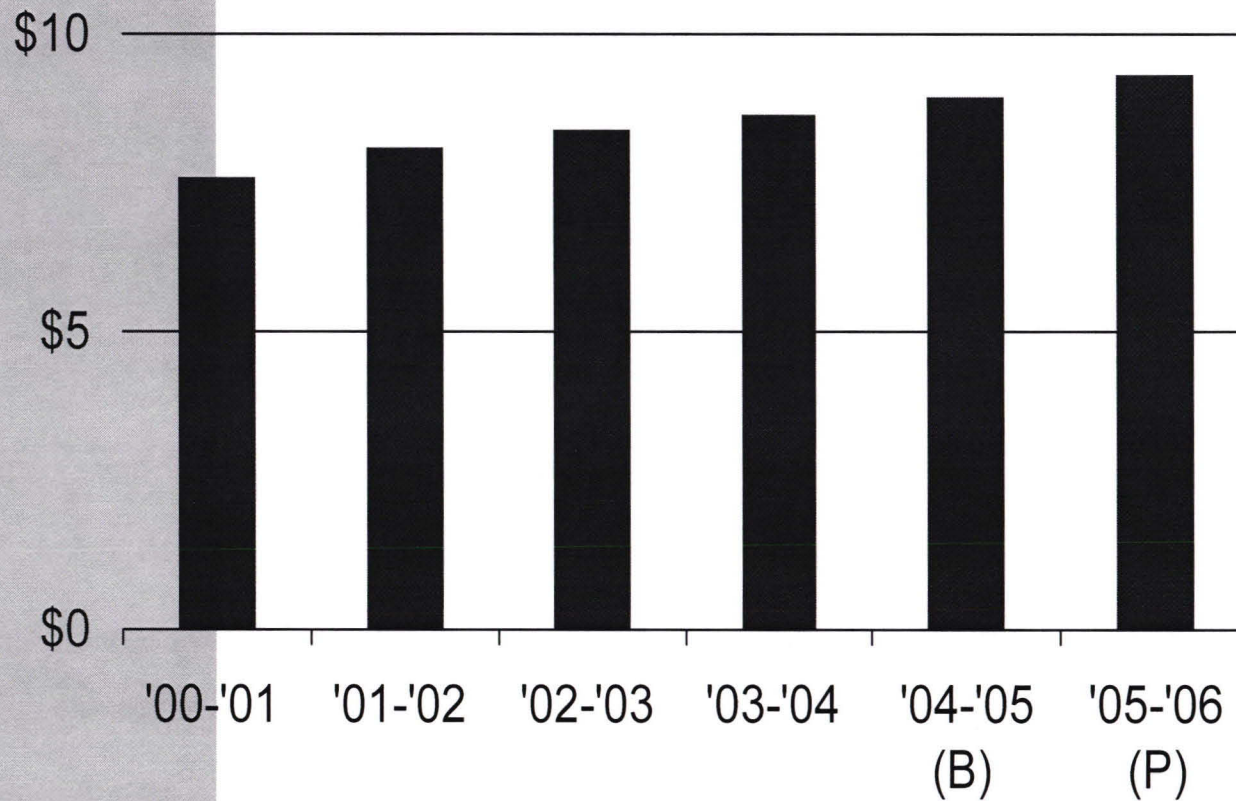
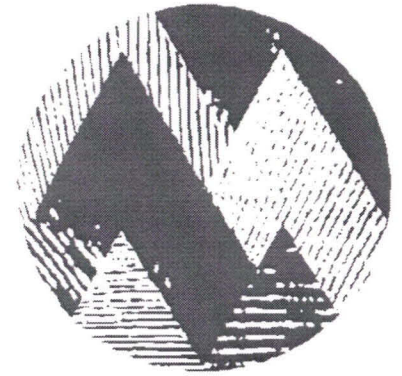
Millions



Fiscal Environment

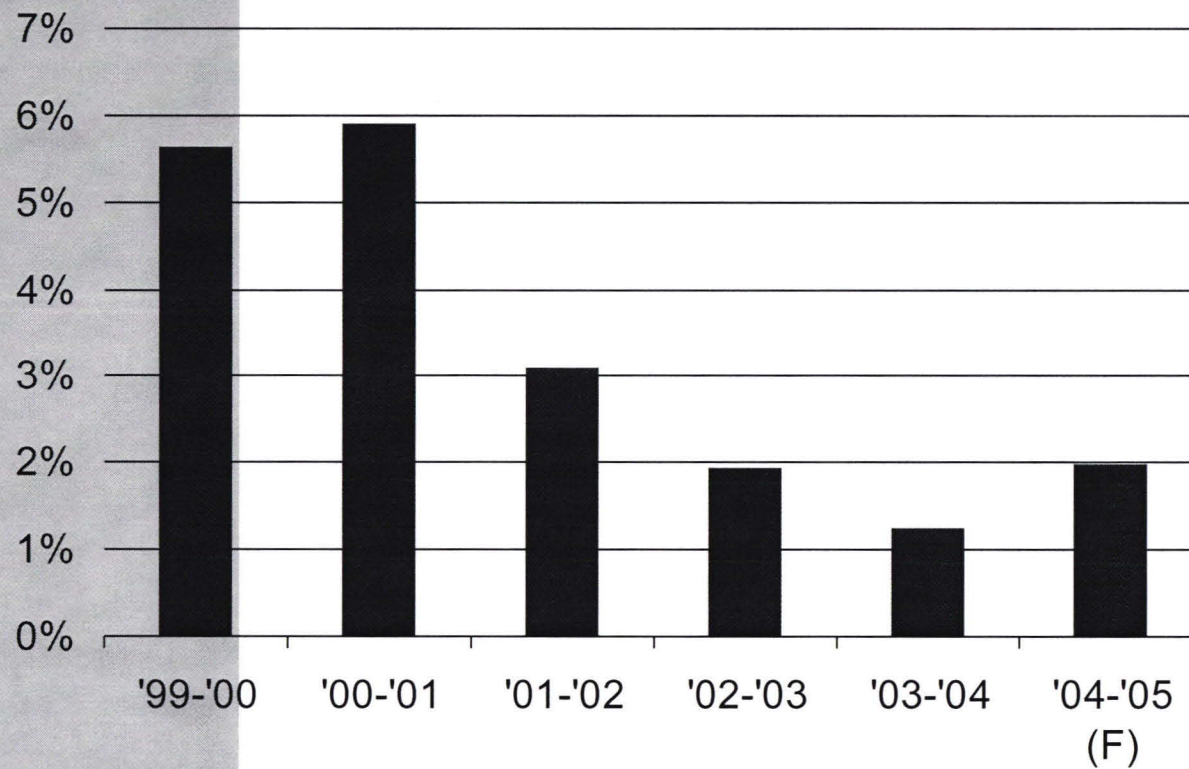
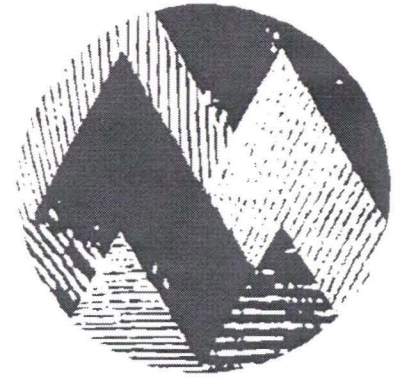
Property Tax – Revenue

Millions



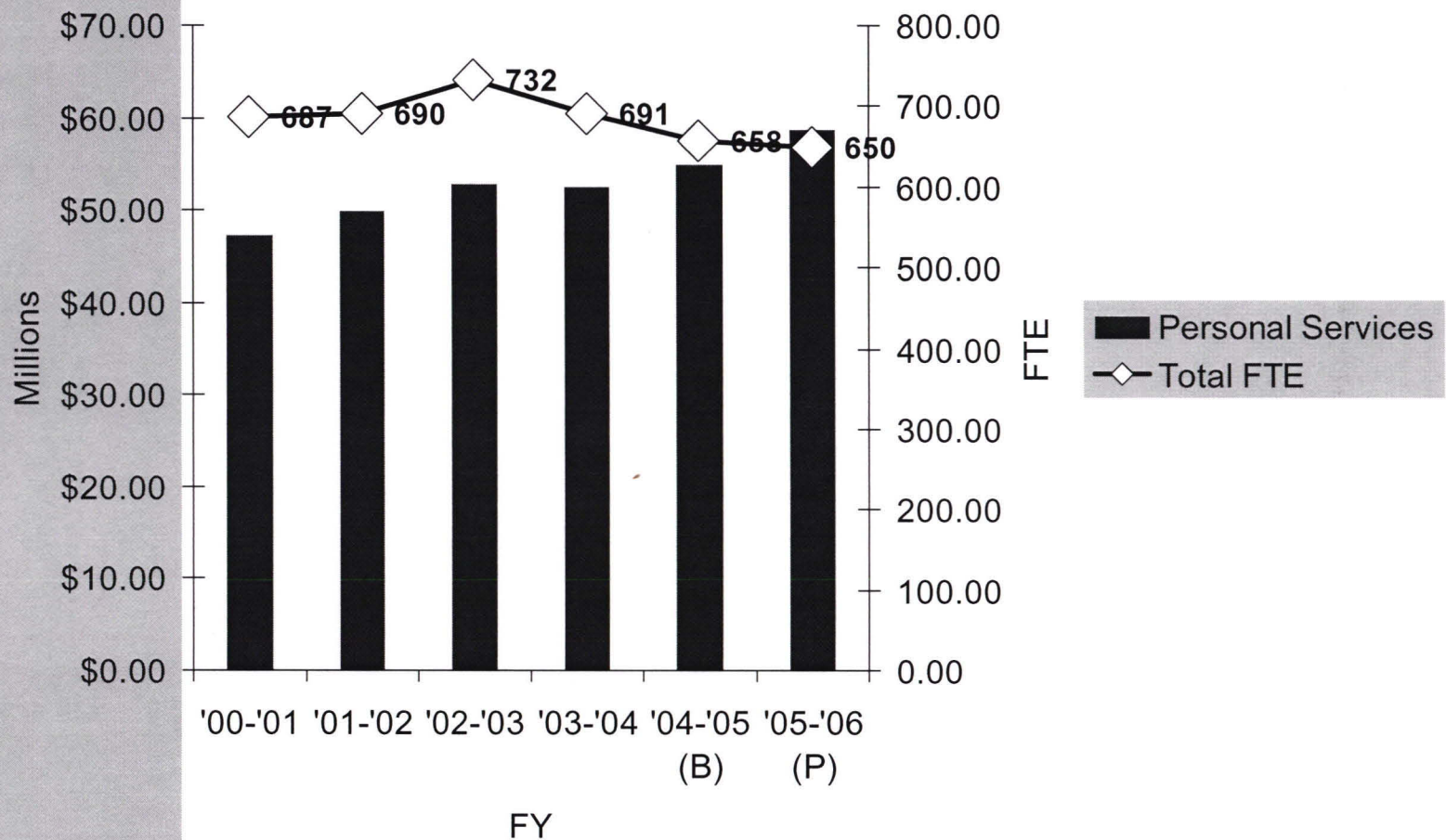
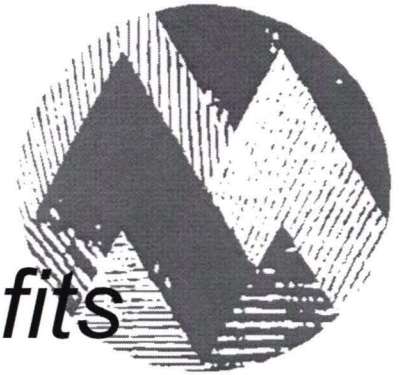
Fiscal Environment

Yields on Reserves



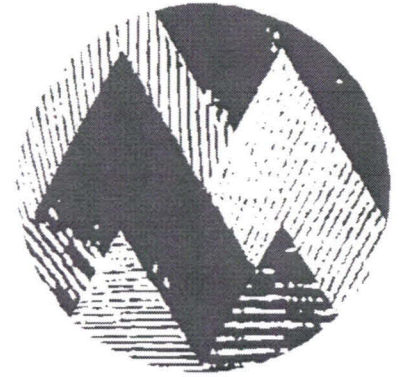
Fiscal Environment

Historical Wages/Salaries/Benefits



Fiscal Environment

Wages/Salaries/Benefits



■ **Base Fringe Rate Issues**

■ **PERS increases**

- 4.66% effective July, 2005
- 4.66% effective July, 2007

■ **PERS Reserve**

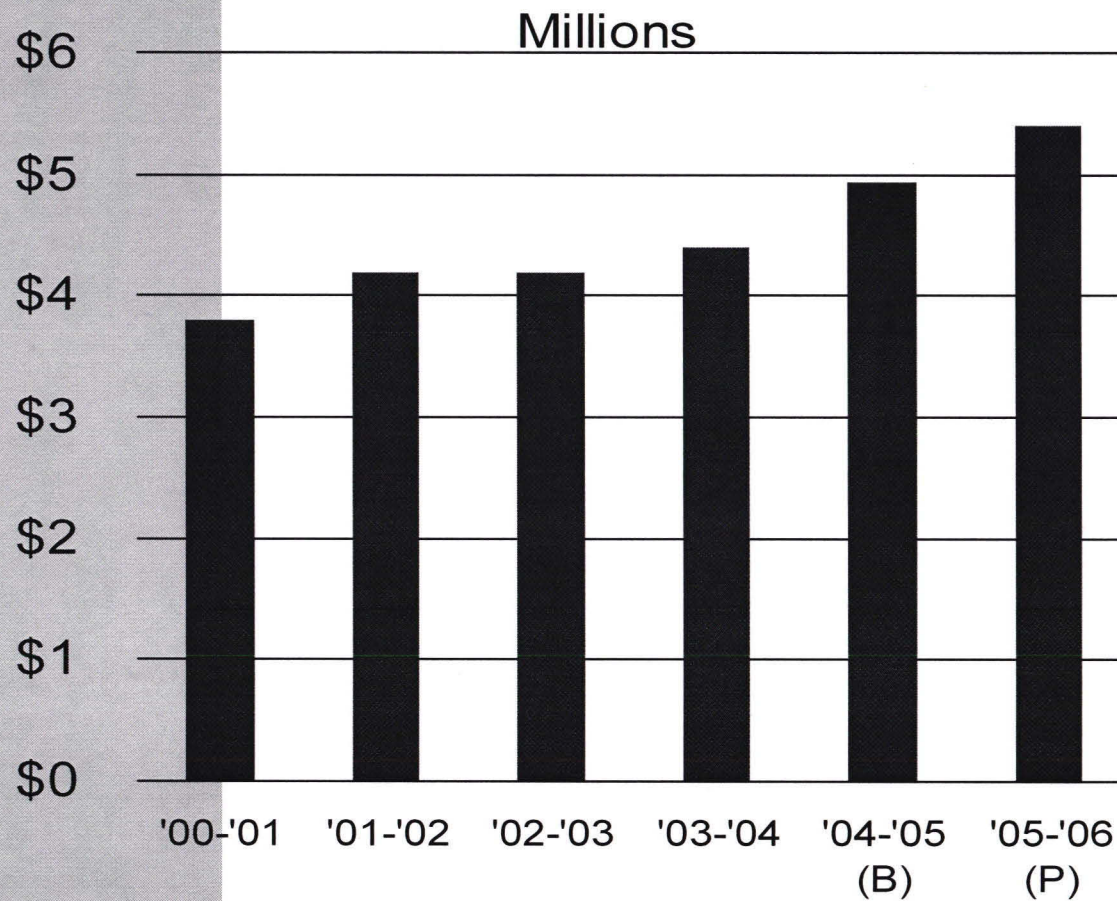
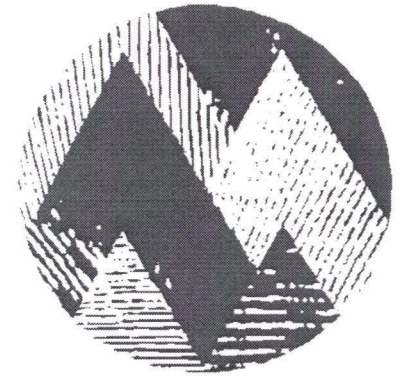
- 6.65% reserved
- \$2.4 million for '05-'06

■ **Health Increase**

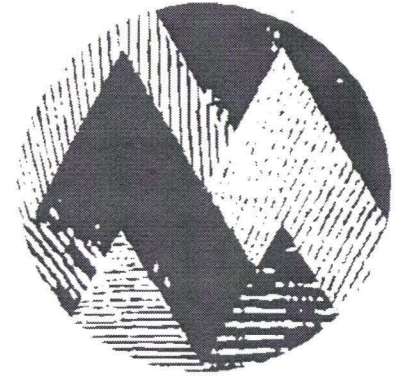
- Increase in Metro contribution is 10%
- \$5.4 million total cost

Fiscal Environment

Health Care Contributions

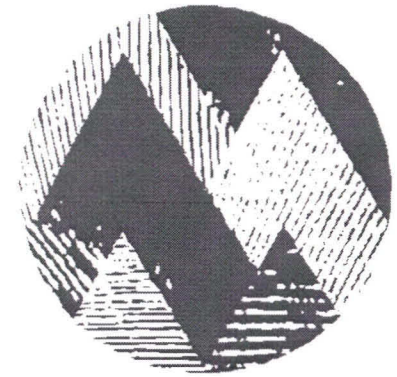


Fiscal Environment Review



- **Flat Revenues**
- **Increased expenditures**
 - Primarily Wages/Salaries/Benefits costs
- **Reduced staffing**
 - Over 81 FTE since '02-'03

Fiscal Environment Department Summaries



■ Zoo

- Property taxes and revenues not able to keep up with increased benefits and utilities

■ MERC

- Expiration of VDI agreement

■ Parks

- Stabilized
- Capital Development Initiative

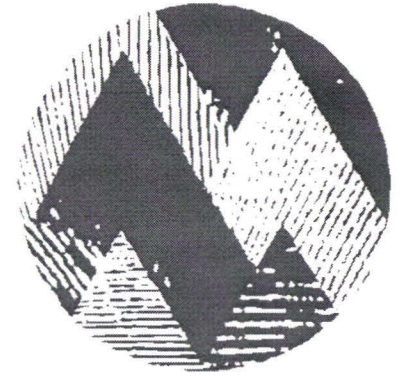
■ Planning

- Wages/Salaries/Benefits outpacing grants

■ SW & R

- Stabilized
- New rate determined in April

OVERVIEW



- **Fiscal Environment**
- **2005-06 budget priorities and solutions**

Metro Council Critical Success Factors

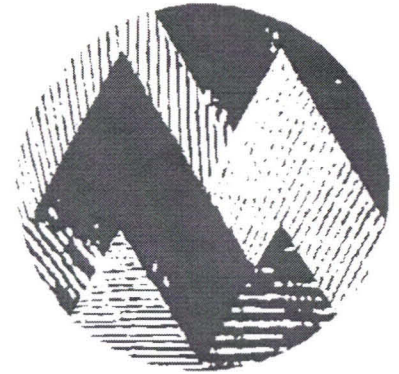
December, 2004

1. Financial and Operational Excellence

2. Workforce Excellence

3. Communications and Leadership Excellence

2005-06 Council Budget Advisory – Dec 15, 2004



■ **Organizational Priorities**

- **Reduce overhead costs**
- **Increase productivity/ knowledge through training**
- **Eliminate duplication**
- **Leverage internal synergies**
- **Establish priority setting environment**
- **Empower Council for better policy making**

Metro Council Goals

December, 2004

1. Great Places

Goal: Residents of the region enjoy vibrant, accessible and physically distinct places to live, work and play.

2. Environmental Health

Goal: The region's wildlife and people thrive in a healthy urban ecosystem.

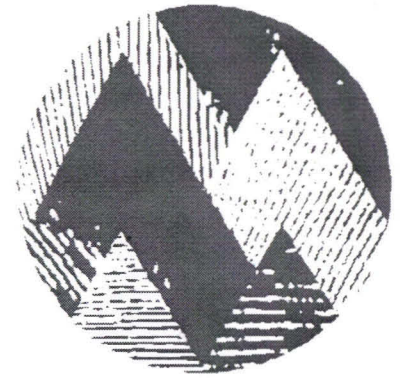
3. Economic Vitality

Goal: Residents and businesses benefit from a strong and equitable regional economy.

4. Smart Government

Goal: Metro leads a fiscally sound, efficient and congruent system of governance where public services are funded appropriately and provided by the most suitable units of government.

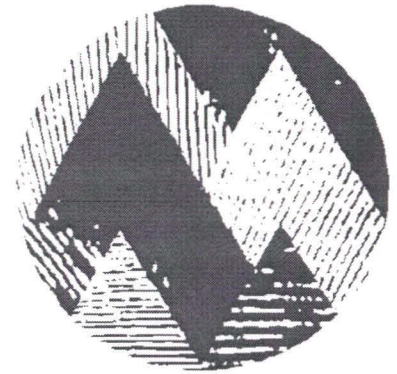
2005-06 Council Budget Advisory – Dec 15, 2004



■ **Programmatic Priorities**

- **Effective centers and corridors**
- **Economic vitality**
- **Housing options**
- **Enhanced Natural Areas**
- **New Metro leadership model**

2005-06 SOLUTIONS



■ Initiate Management Change

- Organizational redesign
- Exit incentive
- Programmatic budget
- Capacity building; commitment to training
- Strategic solutions vs. incremental loss

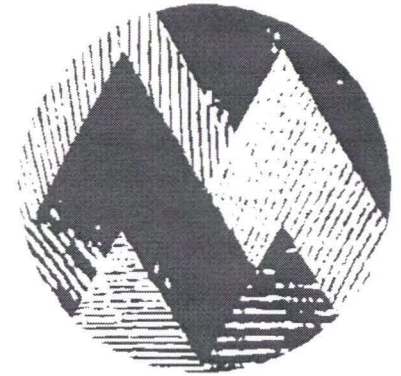
■ Move from Planning to Investment

■ Nature in Neighborhoods Model

- Regional cooperation
- Multifaceted, interdepartmental

2005-06 SOLUTIONS

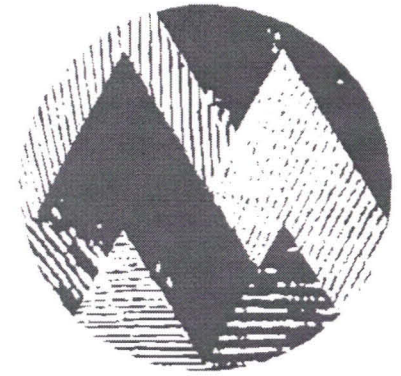
Budget Implications



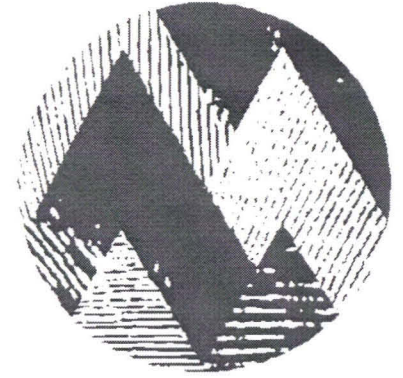
- **Reorganization within departments**
- **Planning to implementation**
- **Maximizing opportunities at the Zoo**
 - Paid parking
 - Utility conservation
 - Summer concerts
- **Pursue phase II bond measure**
- **Solid waste delivery system plan**

Overview

- **Fiscal environment**
- **2005-06 priorities and solutions**
- **Institutional redirection**

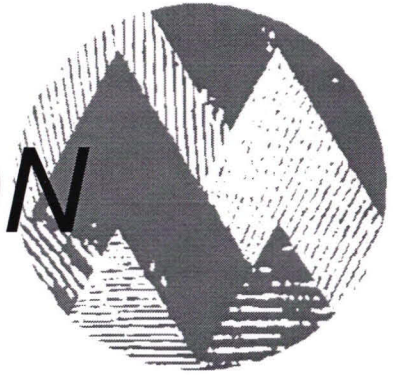


Institutional Redirection



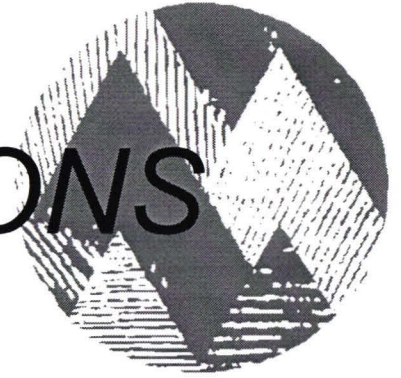
- Link all Metro work with regional needs
- Improve business functions
- Connect programs to council goals
- Create policy latitude for council

BUDGET PRESENTATION



- **Fiscal environment**
- **2005-06 problems and solutions**
- **Institutional redirection**
- **Management solutions**

MANAGEMENT SOLUTIONS



■ Council budget requests

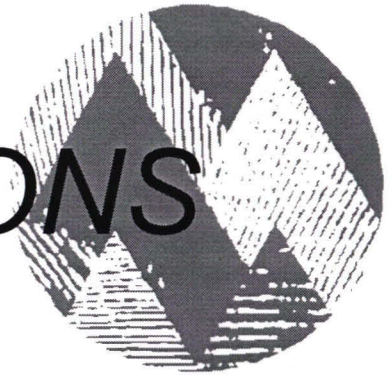
- Enhanced policy discussions
- Opportunity to prioritize across departments
- Initiate performance measures

■ Budget evolution

- Link to strategic direction
- Multi year budget approach
- Budget by programs
- Implement Performance budgeting

MANAGEMENT SOLUTIONS

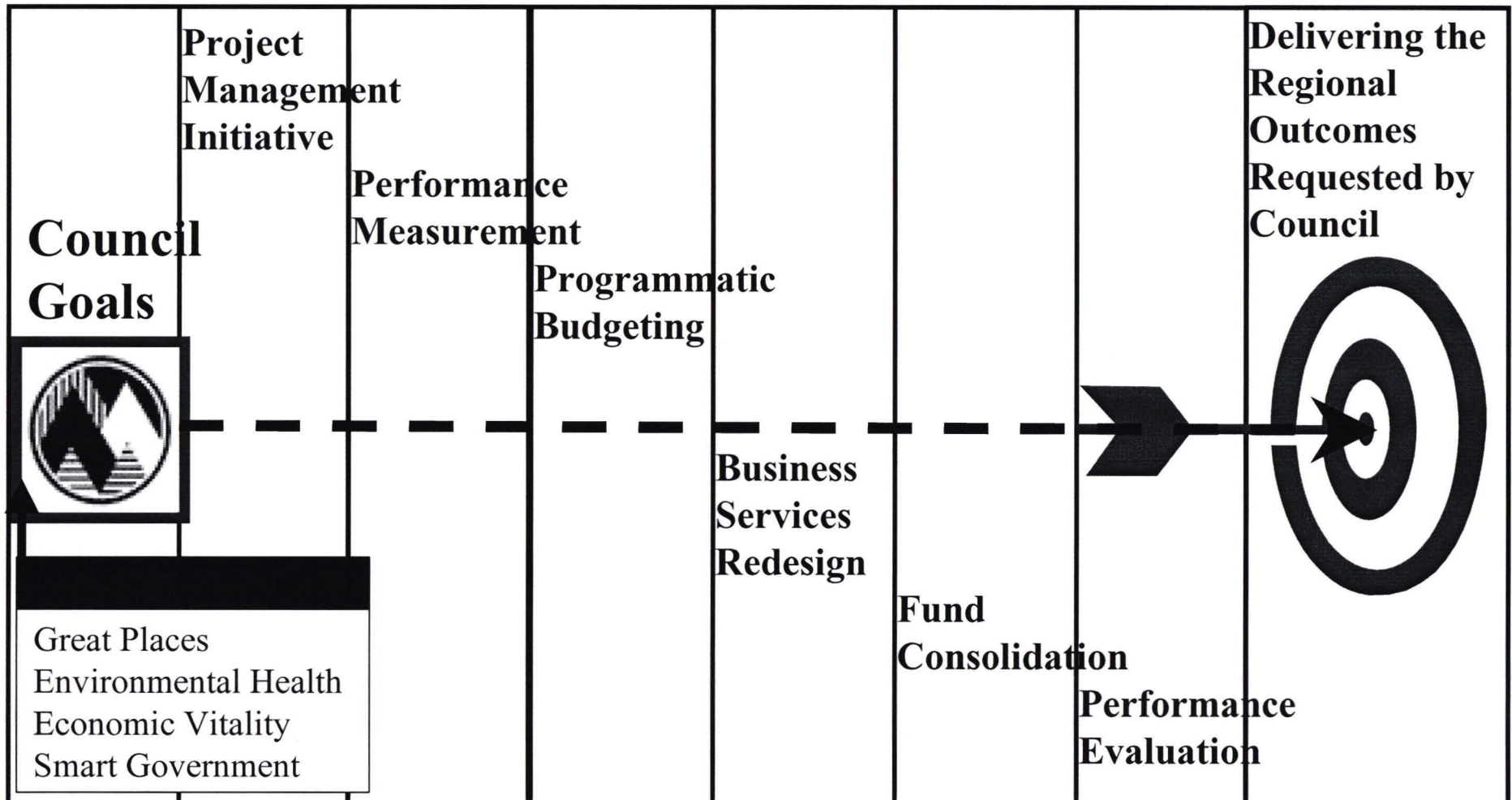
Change Initiatives



- Consolidating funds
- Strategic Plan
- Business Service centralization
- ESAP
- Functional Reviews
- Strategic Budgeting
- Performance evaluation
- F.A.S.T
- Exit Incentive
- Reduce support costs
- Performance measures
- Performance budgeting
- Program budgeting

STRATEGIC BUDGET INITIATIVE

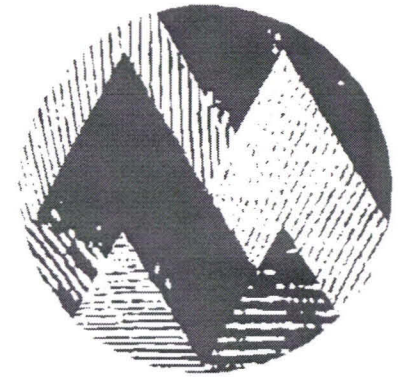
Improving the Line of Sight from Council Goals to Regional Outcomes



2006-07 STRATEGIC BUDGET CYCLE



2005-06 Council Budget Advisory – Dec 15, 2004



■ **Organizational Priorities**

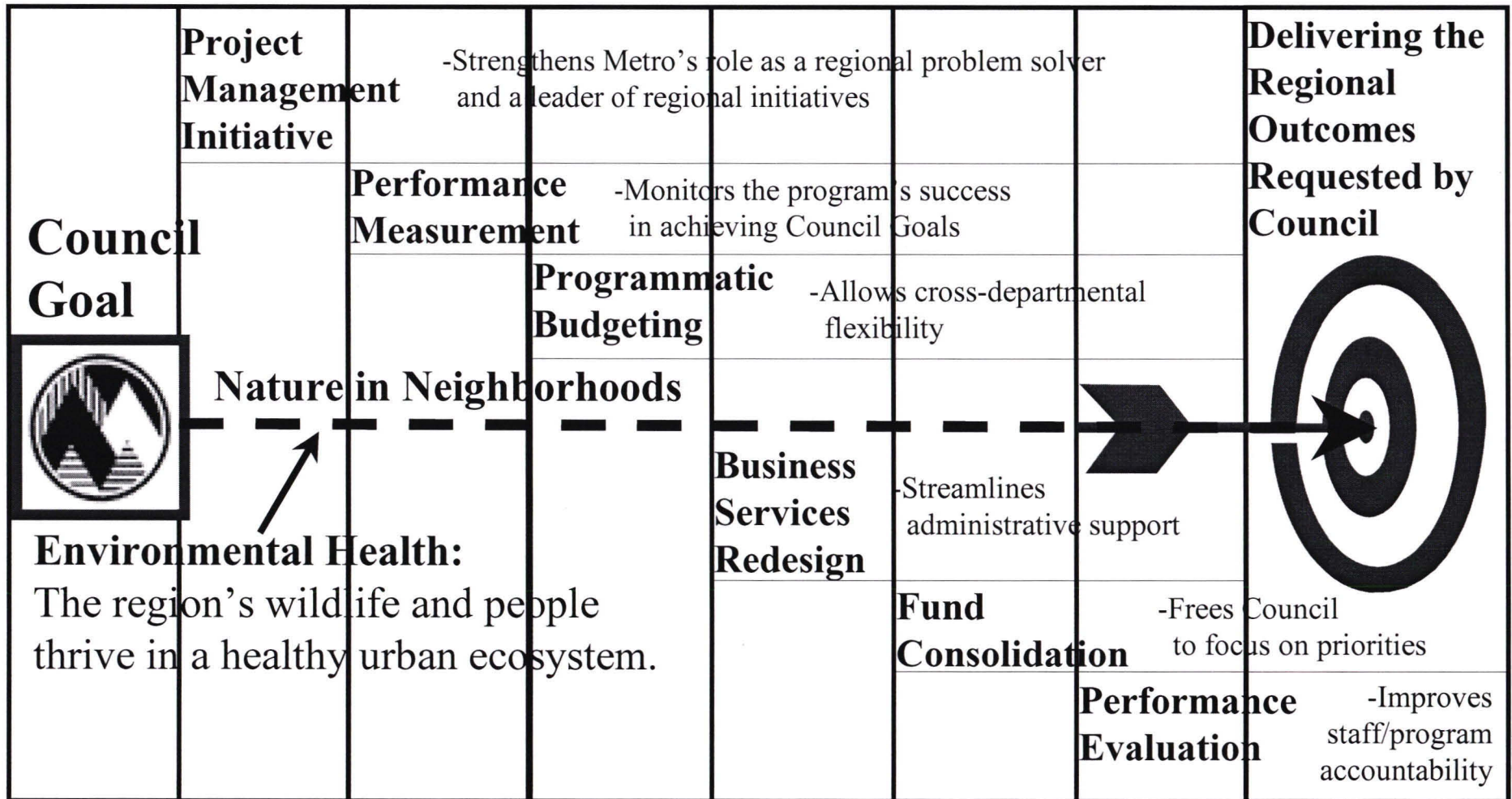
- Reduce costs
- Increase training
- Eliminate duplication
- Leverage internal synergies
- Establish priority setting environment
- Empower Council for better policy making

■ **Programmatic Priorities**

- Effective centers and corridors
- Economic vitality
- Housing options
- Enhanced Natural Areas
- New Metro leadership model

STRATEGIC BUDGET INITIATIVE

Improving the Line of Sight from Council Goals to Regional Outcomes



STRATEGIC BUDGET INITIATIVE

Improving the Line of Sight from Council Goals to Regional Outcomes

