

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING TITLE) ORDINANCE NO 97-691C
8 ON COUNCIL INTERPRETATION OF THE)
URBAN GROWTH MANAGEMENT) Introduced by Growth Management
FUNCTIONAL PLAN; AND DECLARING AN) Committee, Metro Council
EMERGENCY)

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1. Ordinance No. 96-647C, Exhibit A, the Urban Growth Management Functional Plan, Title 8, Section 3 is hereby amended to read as follows:

Section 3. Any Comprehensive Plan Change Must Comply

- A. After the effective date of this ordinance, any amendment of a comprehensive plan or implementing ordinance shall be consistent with the requirements of this functional plan.
- B. In addition to any transmittal required by Section 2 of this Title, in the process of amending any comprehensive plan provision or implementing ordinance, a city or county shall give notice to Metro as required herein. At the same time any notice is given to the director of the Department of Land Conservation and Development pursuant to ORS 197.610 or 197.615, a copy shall be sent to Metro's Executive Officer. In addition to the content of the notice required by ORS 197.610 or 197.615, the notice furnished to Metro should include an analysis demonstrating that the proposed amendments are consistent with this functional plan, if available. If the analysis demonstrating consistency with the functional plan is not included in the initial notice, a report containing the analysis shall be delivered to Metro no later than fourteen (14) days before the city or county conducts a final hearing on

the proposed amendment.

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

Section 2. Ordinance No. 96-647C, Exhibit A, the Urban Growth Management Functional Plan, Title 8, Section 5 is hereby repealed.

Section 3. Ordinance No. 96-647C, Exhibit A, the Urban Growth Management Functional Plan, Title 8, Section 6 is hereby renumbered as Section 5 and amended to read as follows:

Section 5. Citizen Involvement Process

- A. Any citizen may contact Metro staff or the Metro Executive Officer or appear before the Metro Council to raise issues regarding local functional plan

compliance, to request Metro participation in the local process, or to request the Metro Council appeal a local enactment for which notice is required to be given to Metro pursuant to Section 3 of Title 8. Such contact may be either oral or in writing and may be made at any time during or at the conclusion of any city or county proceeding to amend a comprehensive plan or implementing ordinance for which notice is required to be given to Metro pursuant to Section 3 of Title 8. All such requests to participate or appeal made in writing shall be forwarded to the Metro Council.

- B. In addition to considering requests as described in A above, the Metro Council shall at every regularly scheduled Council meeting provide an opportunity for citizens to address the Council on any matter related to this functional plan.
- C. Cities, counties and Metro shall comply with their own adopted and acknowledged Citizen Involvement Requirements (Citizen Involvement) in all decisions, determinations and actions taken to implement and comply with this functional plan. The Executive Officer shall at least annually publish and distribute a Citizen Involvement fact sheet after consultation with the Metro Committee for Citizen Involvement, that fully describes all opportunities for citizen involvement in Metro's Regional Growth Management Process as well as the implementation and enforcement of this functional plan.

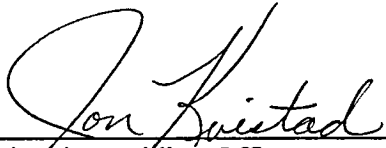
Section 4. Ordinance No. 96-647C, Exhibit A, the Urban Growth Management Functional Plan, Title 8, Section 7 is hereby renumbered as Section 6.

Section 5. Article 10 (Definitions) of the Functional Plan is amended by amending the definition of "Implementing Regulations" to read:

“Implementing Ordinances or Regulations means any city or county land use regulation as defined by ORS 197.015(11) which includes zoning, land division or other ordinances which establish standards for implementing a comprehensive plan.”

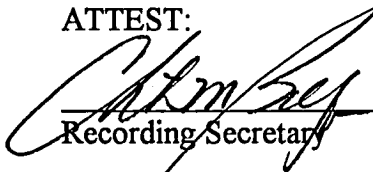
Section 6. This Ordinance is necessary for the health, safety or welfare of the Metro region, because immediate adoption of these amendments to the existing functional plan is necessary to ensure Metro’s ability to require compliance with the functional plan; therefore, an emergency is declared to exist, and this Ordinance shall be effective immediately upon passage.

ADOPTED by the Metro Council this 25th day of September 1997.



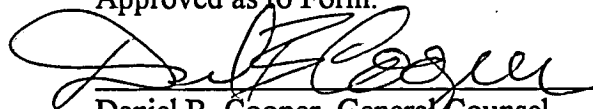
Jon Kvistad, Presiding Officer

ATTEST:



Recording Secretary

Approved as to Form:



Daniel B. Cooper, General Counsel

DBC:kaj/kms
FAR-O97-691C.CLN
9/24/97

**PROPOSED AMENDMENTS TO
ORDINANCE NO. 97-691B**

(Title 8, Urban Growth Management Functional Plan)

Amendment No. 1 - Proposed by local government attorneys and planning staff:

Amend proposed Section 3(B) of Title 8 to read as follows:

- “B. In addition to any transmittal required by Section 2 of this Title, in the process of amending any comprehensive plan provision or implementing ordinance, a city or county shall give notice to Metro as required herein. At the same time any notice is given to the director of the Department of Land Conservation and Development pursuant to ORS 197.610 or 197.615, a copy shall be sent to Metro's Executive Officer. In addition to the content of the notice required by ORS 197.610 or 197.615, the notice furnished to Metro ~~shall~~ should include an analysis demonstrating that the proposed amendments are consistent with this functional plan, if available. If the analysis demonstrating consistency with the functional plan is not included in the initial notice, a report containing the analysis shall be delivered to Metro no later than seven days before a final hearing is considered on the proposed amendment.”

The purpose of this amendment is to allow local governments that do not prepare detailed staff reports at the same time notice is given to DLCD 45 days before action is taken on a proposed comprehensive plan or implementing ordinance amendment additional time to provide the “analysis of consistency with the Metro functional plan” required by this section. The major substantive effect of this section is the giving of actual notice to Metro of a proposal to amend a comprehensive plan or implementing ordinance. In those instances where the analysis is not available when the notice is given Metro staff will need to monitor the proceedings to ensure Metro has a timely opportunity to participate if necessary.

Amendment No. 2 - Proposed by local government attorneys and planning staff:

Amend the proposed language for Section 5(A) by deleting existing Section 5(A) in Ordinance No. 97-691B and substituting the following:

- “A. Any citizen may contact Metro staff or the Metro Executive Officer or appear before the Metro Council to raise issues regarding local functional plan compliance, to request Metro participation in the local process, or to request the Metro Council appeal a local enactment for which notice is required to be given to Metro pursuant to Section 3 of Title 8. Such contact may be either oral or in writing and may be made at any time during or at the conclusion of any city or county proceeding to amend a

comprehensive plan or implementing ordinance for which notice is required to be given to Metro pursuant to Section 3 of Title 8. All such requests to participate or appeal made in writing shall be forwarded to the Metro Council.”

The purpose of this amendment is to de-formalize the Metro Council’s process by which it would act on a citizen request to Metro to participate in or appeal any local government amendment to a comprehensive plan or implementing ordinance. The language that would be substituted is a paraphrase of the first paragraph of the language proposed in Ordinance No. 97-691B for Section 5(A). The amendment would also eliminate the procedural steps set forth in the second paragraph of Section 5(A). This would not alter the Metro Council’s ability to act on a citizen’s request. The amendment is intended to eliminate the formality of this decision and thus ensure that the decision to participate or appeal does not turn into a proceeding that looks and feels like a Metro Council decision on the issue of whether the proposed amendment is or is not consistent with the functional plan.

Amendment No. 3 - Suggested by Metro’s Office of General Counsel:

Amend Article 10 (Definitions) of the Functional Plan by amending the definition of “Implementing Regulations” to read:

“**Implementing Ordinances or Regulations** means any city or county land use regulation as defined by ORS 197.015(11) which includes zoning, land division or other ordinances which establish standards for implementing a comprehensive plan.”

The purpose of this amendment is to retain internal consistency between the term “Implementing Ordinances” as used in Title 8 and the intended definition that was adopted in Title 10 but which was mistitled.

DBC:kaj
PAR-097-691B.AMD

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING TITLE 8) ORDINANCE NO 97-691C
ON COUNCIL INTERPRETATION OF THE)
URBAN GROWTH MANAGEMENT) Introduced by Growth Management
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EMERGENCY)

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1. Ordinance No. 96-647C, Exhibit A, the Urban Growth Management Functional Plan, Title 8, Section 3 is hereby amended to read as follows:

Section 3. Any Comprehensive Plan Change Must Comply

A. After the effective date of this ordinance, any amendment of a comprehensive plan or implementing ordinance shall be consistent with the requirements of this functional plan. ~~Metro shall assist cities and counties in achieving compliance with all applicable functional plan requirements. Upon request, Metro will review proposed comprehensive plan and implementing ordinances for functional plan compliance prior to city or county adoption.~~

B. In addition to any transmittal required by Section 2 of this Title, in the process of amending any comprehensive plan provision or implementing ordinance, a city or county shall give notice to Metro as required herein. At the same time any notice is given to the director of the Department of Land Conservation and Development pursuant to ORS 197.610 or 197.615, a copy shall be sent to Metro's Executive Officer. In addition to the content of the notice required by ORS 197.610 or 197.615, the notice furnished to Metro should include an analysis demonstrating that the proposed amendments are consistent with this functional plan, if

available. If the analysis demonstrating consistency with the functional plan is not included in the initial notice, a report containing the analysis shall be delivered to Metro no later than fourteen (14) days before the city or county conducts a final hearing on the proposed amendment.

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

D. An amendment to a city or county comprehensive plan or land use regulation shall not be deemed in compliance with this functional plan as provided in subsection C of this section unless notice has been given to Metro as provided in subsection B of this section.

Section 2. Ordinance No. 96-647C, Exhibit A, the Urban Growth Management Functional Plan, Title 8, Section 5 is hereby repealed.

Section 3. Ordinance No. 96-647C, Exhibit A, the Urban Growth Management Functional Plan, Title 8, Section 6 is hereby renumbered as Section 5 and amended to read as follows:

Section 56. Citizen Involvement Process

~~A citizen who has presented written or oral testimony to a city or county on an issue of application of this functional plan may petition the Metro Council to initiate a functional plan interpretation or conflict resolution action. After hearing the citizen petition and any response from any affected cities and counties, the Metro Council may, as it considers necessary, decide to:~~

- ~~1. Interpret the functional plan; or~~
- ~~2. Initiate a functional plan interpretation using the process in Section 5 of this Title; or~~
- ~~3. Initiate the conflict resolution process of RUGGO Objective 5.3 for any apparent or potential inconsistencies between comprehensive plans and this functional plan; or~~
- ~~4. Postpone consideration of the issue to an appropriate time when compliance with a functional plan requirement is scheduled.~~

A. Any citizen may contact Metro staff or the Metro Executive Officer or appear before the Metro Council to raise issues regarding local functional plan compliance, to request Metro participation in the local process, or to request the Metro Council appeal a local enactment for which notice is required to be given to Metro pursuant to Section 3 of Title 8. Such contact may be either oral or in writing and may be made at any time during or at the conclusion of any city or county proceeding to amend a comprehensive plan or implementing ordinance for which notice is required to be given to Metro pursuant to Section 3 of Title 8. All such requests to participate or appeal made in writing shall be forwarded to the

Metro Council.”

B. In addition to considering requests as described in A above, the Metro Council shall at every regularly scheduled Council meeting provide an opportunity for citizens to address the Council on any matter related to this functional plan.

C. Cities, counties and Metro shall comply with their own adopted and acknowledged Citizen Involvement Requirements (Citizen Involvement) in all decisions, determinations and actions taken to implement and comply with this functional plan. The Executive Officer shall at least annually publish and distribute a Citizen Involvement fact sheet after consultation with the Metro Committee for Citizen Involvement, that fully describes all opportunities for citizen involvement in Metro's Regional Growth Management Process as well as the implementation and enforcement of this functional plan.

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Section 6. This Ordinance is necessary for the health, safety or welfare of the Metro region, because immediate adoption of these amendments to the existing functional plan is

necessary to ensure Metro's ability to require compliance with the functional plan; therefore, an emergency is declared to exist, and this Ordinance shall be effective immediately upon passage.

ADOPTED by the Metro Council this _____ day of _____ 1997.

Jon Kvistad, Presiding Officer

ATTEST:

Approved as to Form:

Recording Secretary

Daniel B. Cooper, General Counsel

DBC:kaj/kms
IAR-097-691C916
9/17/97

STAFF REPORT

IN CONSIDERATION OF ORDINANCE 97-691B, FOR THE PURPOSE OF AMENDING TITLE 8 ON COUNCIL INTERPRETATION OF THE URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN; AND DECLARING AN EMERGENCY

Date: September 11, 1997

Prepared by: Michael Morrissey

BACKGROUND

Several iterations of amendments to this ordinance, amending Title 8 have been to the Growth Management Committee and MPAC, after its initial introduction in April, 1997. At the August 5 Growth Management Committee, Dan Cooper, Metro General Counsel, submitted revisions to the ordinance, dated July 30, 1997. Subsequently, three additional amendments were prepared by Mr. Cooper, dated August 19, 1997. This package of material received positive review by MCCI at their August meeting, and was discussed by the Growth Management Committee on September 2, which chose to wait for comment by MPAC before taking final action.

The ordinance and its proposed amendments was therefore presented to MPAC September 10, with overview by Mr. Cooper, and by Mike McKeever representing the point of view of attorneys for several local governments. Several MPAC members commented that they were sensitive to wanting a process which would not unduly hold up implementation of the Functional Plan or the 2040 concept, but would allow for citizen input. The package, including the August 19th amendments, was approved for recommendation to the Metro Council with two recommended changes. One change requires a local government staff report delivered to Metro fourteen (14) days prior to a final hearing, instead of seven (7) days (section 3(B)). The other amends section 5 to correctly identify the Metro Committee for Citizen Involvement (MCCI). The MPAC recommendations are attached to this packet, dated September 11, 1997.

ANALYSIS AND RECOMMENDED ACTION

These amendments clarify actions which can be taken by citizens, and requested of Metro. They also clarify notice which must be given by local governments to Metro when they intend to modify their comprehensive plans or implementing ordinances. More detailed analysis of these recommendations are provided by Mr. Cooper in this package (see for example Cooper July 30 memo to Chair McLain).

Having heard from citizens, local governments, MPAC and MCCI, the Growth Management Committee can now make a recommendation to the Metro Council on this Ordinance.

GROWTH MANAGEMENT COMMITTEE REPORT:

CONSIDERATION OF ORDINANCE NO. 97-691C, FOR THE PURPOSE OF AMENDING TITLE 8 ON COUNCIL INTERPRETATION OF THE URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN; AND DECLARING AN EMERGENCY.

Date, September 17, 1997

Presented by Councilor McLain

Committee Recommendation: At the September 16th meeting, the committee voted unanimously to recommend Council adoption of Ordinance 97-691C. Voting in favor: Councilors McFarland, Naito and McLain.

Committee Issues/Discussion: Dan Cooper, Metro General Counsel presented the B version of this ordinance and four additional amendments recommended by the Metro Policy Advisory Committee (MPAC). Several city or county attorneys spoke in favor of 97-691B, and particularly recommendation #2, which delineates the citizen involvement process of Title 8.

Regarding that same amendment, Mr. Peterson of SW Portland said that his neighborhood association preferred to leave language in 97-691 B which set forth a sequence of events allowing citizens to request that Metro appeal a city or county amendment of a comprehensive plan change, or implementing ordinance, to the Land Use Board of Appeals. He also preferred that analysis from a local jurisdiction, seeking to make such a change, be available to Metro and the public 45 days prior to a final decision, rather than 14 days, which MPAC recommended.

Committee members were supportive of the new language concerning citizen involvement, acknowledging that it is compromise language, and not perfect. The ordinance requires that jurisdictions give Metro 45 day notice of a comprehensive plan or implementing ordinance change, same as must be sent to DLCDC. In addition, staff analysis must be sent to Metro 14 days prior to a final hearing. Local citizens may still approach Metro to "raise issues regarding local functional plan compliance, to request Metro participation in the local process or to request the Metro Council appeal a local action for which notice is required..."

Mr. Cooper also clarified that the Executive Officer will retain his authority to take appeals to LUBA for violation of Metro ordinances, and that if need be, do so without seeking further approval of the Metro Council.

The above discussion involves primarily the first two MPAC recommendations. The second two were housekeeping measures. All four were approved unanimously.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING TITLE 8) ORDINANCE NO 97-691B
ON COUNCIL INTERPRETATION OF THE)
URBAN GROWTH MANAGEMENT) Introduced by Growth Management
FUNCTIONAL PLAN; AND DECLARING AN) Committee, Metro Council
EMERGENCY)

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Section 1. Ordinance No. 96-647C, Exhibit A, the Urban Growth Management Functional Plan, Title 8, Section 3 is hereby amended to read as follows:

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B. In addition to any transmittal required by Section 2 of this Title, in the process of amending any comprehensive plan provision or implementing ordinance, a city or county shall give notice to Metro as required herein. At the same time any notice is given to the director of the Department of Land Conservation and Development pursuant to ORS 197.610 or 197.615, a copy shall be sent to Metro's Executive Officer. In addition to the content of the notice required by ORS 197.610 or 197.615, the notice furnished to Metro shall include an analysis demonstrating that the proposed amendments are consistent with this functional plan.

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

D. An amendment to a city or county comprehensive plan or land use regulation shall not be deemed in compliance with this functional plan as provided in subsection C of this section unless notice has been given to Metro as provided in subsection B of this section.

Section 2. Ordinance No. 96-647C, Exhibit A, the Urban Growth Management Functional Plan, Title 8, Section 5 is hereby repealed.

Section 3. Ordinance No. 96-647C, Exhibit A, the Urban Growth Management Functional Plan, Title 8, Section 6 is hereby renumbered as Section 5 and amended to read as follows:

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~~A citizen who has presented written or oral testimony to a city or county on an issue of application of this functional plan may petition the Metro Council to initiate a functional plan interpretation or conflict resolution action. After hearing the citizen petition and any~~

~~response from any affected cities and counties, the Metro Council may, as it considers necessary, decide to:~~

- ~~1. Interpret the functional plan; or~~
- ~~2. Initiate a functional plan interpretation using the process in Section 5 of this Title; or~~
- ~~3. Initiate the conflict resolution process of RUGGO Objective 5.3 for any apparent or potential inconsistencies between comprehensive plans and this functional plan; or~~
- ~~4. Postpone consideration of the issue to an appropriate time when compliance with a functional plan requirement is scheduled.~~

A. A citizen may request that Metro appear and participate in any city or county proceeding to amend any comprehensive plan provision or implementing ordinance for which notice is required to be given to Metro pursuant to Section 3 of this Title 8. If Metro has appeared and participated in a proceeding, a citizen may request that Metro appeal a city or county amendment of a comprehensive plan provision or implementing ordinance. The citizen's request shall be given in writing and delivered to the Executive Officer. The request shall give the reasons why Metro should appear and participate in, or appeal the decision, explaining why the amendment may violate the functional plan. The Executive Officer shall forthwith, upon receipt of any request, furnish a copy thereof to the city or county that is the subject of the request.

The Executive Officer shall, within ten days of receipt of the request, either take action on behalf of Metro to appear and participate in the proceeding, or appeal as

requested, or transmit the request to the Council with a recommendation. The Council shall schedule the request at its next available meeting that will allow Council action on the request in a timely manner. The Council shall notify the requesting citizen and the city or county that is the subject of the request of the time and place of the meeting at which the request will be considered. After considering the request, the Council may request the General Counsel to appear and participate in the proceeding or to appeal the decision.

B. In addition to considering requests as described in A above, the Metro Council shall at every regularly scheduled Council meeting provide an opportunity for citizens to address the Council on any matter related to this functional plan.

C. Cities, counties and Metro shall comply with their own adopted and acknowledged Citizen Involvement Requirements (Citizen Involvement) in all decisions, determinations and actions taken to implement and comply with this functional plan. The Executive Officer shall at least annually publish and distribute a Citizen Involvement fact sheet after consultation with the Metro Citizen Involvement Committee, that fully describes all opportunities for citizen involvement in Metro's Regional Growth Management Process as well as the implementation and enforcement of this functional plan.

Section 4. Ordinance No. 96-647C, Exhibit A, the Urban Growth Management Functional Plan, Title 8, Section 7 is hereby renumbered as Section 6.

Section 5. This Ordinance is necessary for the health, safety or welfare of the Metro region, because immediate adoption of these amendments to the existing functional plan is

necessary to ensure Metro's ability to require compliance with the functional plan; therefore, an emergency is declared to exist, and this Ordinance shall be effective immediately upon passage.

ADOPTED by the Metro Council this ____ day of _____ 1997.

Jon Kvistad, Presiding Officer

ATTEST:

Approved as to Form:

Recording Secretary


Daniel B. Cooper, General Counsel

DEC:kaj
I.R.-O97-691B.724
7/30/97

**METRO**

Date: July 30, 1997

To: Councilor Susan McLain, Chair
Growth Management Committee

From: Daniel B. Cooper, General Counsel 

Regarding: Revisions to Title 8 of the Urban Growth Management Functional Plan
(Ordinance No. 97-691B)

At your request, I have prepared a revised version of Ordinance No. 97-691, which would make amendments to the provisions of the Urban Growth Management Functional Plan in Title 8 to accomplish the following objectives.

Section 3 of Title 8 would be amended to delete language referring to Metro assistance and review of proposed comprehensive plan and implementing ordinances being considered by cities and counties, and instead substitute requirements that cities and counties must give notice to Metro of their intentions to amend any comprehensive plan provision or implementing ordinance, at the same time notice is required to be given to the Director of the Department of Land Conservation and Development, pursuant to ORS 197.610 or 197.615. This notice must be given to the Department of Land Conservation and Development no later than 45 days before the adoption of any amendments to a comprehensive plan provision or implementing ordinance. The purpose of this provision is to ensure that Metro receives timely notice at least 45 days prior to any city or county adoption of an amendment to a comprehensive plan or land use ordinance.

A new subsection C would also be added to Section 3, to clarify that if city or county decision to amend a comprehensive plan or land use ordinance is not appealed within the 21 days provided for by state law, it shall be deemed to be in compliance with the Functional Plan. Decisions that are appealed, and that are affirmed on appeal, would also be deemed to be in compliance. Language is also added to clarify that the Functional Plan does not directly apply to land use decisions made with city or county comprehensive plans or land use regulations which have been found to be in compliance with the Functional Plan.

Subsection D would be added to Section 3 to provide that if the city or county fails to give notice to Metro as required, then the provisions which would deem the decisions to be in compliance with the Functional Plan would not apply.

Section 5 of Title 8, which currently provides for the Metro Council to interpret functional plans at the request of cities and counties, would be deleted.

Councilor Susan McLain

July 30, 1997

Page 2

Current provisions of Section 6 of Title 8, relating to citizen involvement, would be amended by deleting the reference to citizens requesting "interpretations" of the functional plan, and instead substitute a provision that would clarify that a citizen may request that Metro appear and participate in any city or county proceeding to amend a comprehensive plan provision or implementing ordinance for which it receives the 45-day notice required by Section 3 of Title 8. If Metro has appeared and participated in the proceeding and thus has standing to appeal, a citizen may request that Metro make an appeal of any city or county amendment for violation of the Functional Plan.

The mechanics of this section reflect that, pursuant to Section 17(2) of the Metro Charter, it is the duty of the Metro Executive Officer to enforce Metro ordinances. In the context of Metro's Functional Plan, one method for enforcing the ordinance would be to appeal to LUBA any decision by a city or county that is in violation of the Functional Plan.

The revisions to the citizen involvement process also reflect that if the Executive Officer felt it was necessary to obtain a formal interpretation of the Metro Functional Plan, in order to seek guidance as to whether or not to appeal a decision, the Executive Officer could refer the matter to the Council. In addition, the Executive Officer may determine that the request to appeal from a citizen should not be agreed to. In either event, the ordinance establishes a procedure to allow the Council to review the Executive Officer's recommendation either to appeal or not to appeal, and after giving notice to citizens and the affected local government, make a decision to have the Office of General Counsel appear and participate in the decision or appeal the decision on behalf of the Council.

The revisions to the citizen involvement process would also restate the Council's existing rule that citizens may address the Council at any meeting regarding any matter related to the Functional Plan, or any other matter, and would also direct the MCCI and Executive Officer to publish and distribute a citizen involvement fact sheet that would fully describe all opportunities for citizen involvement in the growth management planning process.

Lastly, the ordinance as revised contains an emergency clause, which would render it effective immediately, so that the provisions which require notice to Metro of any local government decision could become effective immediately, to ensure Metro's ability to monitor compliance with the existing Functional Plan provisions.

Attachment

cc: Mike Burton
John Fregonese
Michael Morrissey

DBC:jep
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BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING TITLE 8) ORDINANCE NO 97-691A
ON COUNCIL INTERPRETATION OF THE)
URBAN GROWTH MANAGEMENT) Introduced by Growth Management
FUNCTIONAL PLAN) Committee, Metro Council

WHEREAS, the Metro Council and MPAC recommended that the Office of General Counsel meet with interested legal representatives of cities and counties to review the legal effect of the interpretation processes in Title 8 of the Urban Growth Management Functional Plan; and

WHEREAS, the group of attorneys recommended an alternative approach to avoid multiple, lengthy appeals of the same interpretation issue; and

WHEREAS, the alternative approach is a substantive change that adds Metro Council action on the proposed compliance plans of all cities and counties; and

WHEREAS, the new process addresses the cities' and counties' primary issues by replacing the processes of Metro Council interpretations of issues brought to them with one review of the entire compliance plan and one final, appealable Metro Council decision at the time a city or county adopts its comprehensive plan changes; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1. Ordinance No. 96-647C, Exhibit A, the Urban Growth Management Functional Plan, Title 8 is hereby amended to omit Sections 5 and 6 and renumber Section 7 entitled "Enforcement" to Section 6 entitled "Enforcement."

Section 2. Ordinance No. 96-647C, Exhibit A, the Urban Growth Management Functional Plan, Title 8, Section 2 is hereby amended to add the following new subsections F and G:

"F. The Council will review compliance plan proposals submitted under Section 2.A and 2.B of this Title by the following process:

1. Upon receipt by Metro of the material submitted by a city or county pursuant to Sections 2.A and 2.B of this Title, the Executive Officer shall review the material and make a recommendation to the Council as to whether the proposed city or county action complies with the provisions of this functional plan.
2. The Council shall consider the Executive Officer recommendation after conducting a public hearing on the matter. Notice of the public hearing shall be given to the city or county.
3. The Council action on a preliminary determination of compliance shall be by resolution expressing intent to approve or disapprove the proposed city or county action if and when the proposed actions are adopted.
4. The Council may consider amendments to the resolution at the request of a city or county upon receipt by Metro of additional material pursuant to Sections 2.A and 2.B, including material in support of reconsideration.
5. The Council shall take final action within 30 days of the earlier of (a) February 1, 1999, or (b) notice from the city or county of adoption of its ordinances to comply with the functional plan. Council action shall follow the opportunity to comment orally to the Council on the proposed ordinance. Parties shall be notified of their right to review before the Land Use Board of Appeals pursuant to state law.

G. After the Council's final determination that a city or county comprehensive plan and implementing ordinances are in compliance with this functional plan, all land use decisions made pursuant to the adopted comprehensive plan and implementing ordinances shall be deemed to be in compliance with this functional plan."

H. The Executive Officer will review partial compliance plan proposals submitted at any time with the plan evaluation proposed ordinances and findings required in Section 2 of this Title by the following process:

1. Upon receipt of the required material submitted by a city or county with a request for partial compliance approval, the Executive Officer shall provide an opportunity for written submission to parties opposed to partial compliance approval.
2. The Executive Officer shall make a determination of partial compliance in writing to all parties which made a written submission within 60 calendar days of receipt of a complete request for partial compliance approval.

3. Parties which made a written submission on partial compliance approval to the Executive Officer, including the city or county requesting partial compliance approval, may appeal the Executive Officer determination on partial compliance by written notice of appeal to the Council Clerk within ten (10) calendar days of the Executive Officer's determination.
4. The Council shall consider the Executive Officer determination of partial compliance after conducting a public hearing on the matter with notice to parties which made a written submission to the Executive Officer.
5. The Council action on a preliminary determination of partial compliance shall be by resolution expressing intent to approve or disapprove the proposed city or county action if and when the proposed actions are adopted.
6. The Council may consider amendments to the resolution at the request of a city or county upon receipt by Metro of additional material pursuant to Section 2.A, including material in support of reconsideration.
7. The Council shall take final action within 30 days of notice from the city or county of adoption of its ordinances to comply with the functional plan. Council action shall follow the opportunity to comment orally to the Council on the proposed ordinance. Parties shall be notified of their right to review before the Land Use Board of Appeals pursuant to state law.
8. Determination of partial compliance approval shall be included with the complete compliance plan submitted under Sections 2.A and B of this Title."

Section 3. Ordinance No. 96-647C, Exhibit A, the Urban Growth Management

Functional Plan, Title 8, Section 3 is hereby amended to read as follows:

- "A. After the effective date of this ordinance, and until the Council's final determination of compliance, any amendment of a comprehensive plan or implementing ordinance shall be consistent with the requirements of this functional plan. ~~Metro shall assist cities and counties in achieving compliance with all applicable functional plan requirements. Upon request, Metro will review proposed comprehensive plan and implementing ordinances for functional plan compliance prior to city or county adoption.~~
- B. Amendments to a comprehensive plan or implementing ordinance after the Council's final determination of compliance shall be consistent with the requirements of this functional plan. Prior to amending any comprehensive plan provision or implementing ordinance, a city or county shall cause a copy of any notice given to the director of the Department of Land Conservation and Development pursuant to ORS 197.610 and 197.615 to be also sent to Metro's Director of Planning at the same time notice is given pursuant to ORS 197.610 and 197.615. Upon request, Metro will review proposed

comprehensive plan and implementing ordinances for functional plan compliance prior to city or county adoption."

ADOPTED by the Metro Council this ____ day of _____ 1997.

Jon Kvistad, Presiding Officer

ATTEST:

Approved as to Form:

Recording Secretary

Daniel B. Cooper, General Counsel

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BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING TITLE 8) ORDINANCE NO 97-691
ON COUNCIL INTERPRETATION OF THE)
URBAN GROWTH MANAGEMENT) Introduced by Growth Management
FUNCTIONAL PLAN) Committee, Metro Council

WHEREAS, the Metro Council and MPAC recommended that the Office of General Counsel meet with interested legal representatives of cities and counties to review the legal effect of the interpretation processes in Title 8 of the Urban Growth Management Functional Plan; and

WHEREAS, the group of attorneys recommended an alternative approach to avoid multiple, lengthy appeals of the same interpretation issue; and

WHEREAS, the alternative approach is a substantive change that adds Metro Council action on the proposed compliance plans of all cities and counties; and

WHEREAS, the new process addresses the cities' and counties' primary issues by replacing the processes of Metro Council interpretations of issues brought to them with one review of the entire compliance plan and one final, appealable Metro Council decision at the time a city or county adopts its comprehensive plan changes; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1. Ordinance No. 96-647C, Exhibit A, the Urban Growth Management Functional Plan, Title 8 is hereby amended to omit Sections 5 and 6 and renumber Section 7 entitled "Enforcement" to Section 6 entitled "Enforcement."

Section 2. Ordinance No. 96-647C, Exhibit A, the Urban Growth Management Functional Plan, Title 8, Section 2 is hereby amended to add the following new subsections F and G:

"F. The Council will review compliance plan proposals submitted under Section 2.A and 2.B of this Title by the following process:

1. Upon receipt by Metro of the material submitted by a city or county pursuant to Sections 2.A and 2.B of this Title, the Executive Officer shall review the material and make a recommendation to the Council as to whether the proposed city or county action complies with the provisions of this functional plan.
2. The Council shall consider the Executive Officer recommendation after conducting a public hearing on the matter. Notice of the public hearing shall be given to the city or county.
3. The Council action on a preliminary determination of compliance shall be by resolution expressing intent to approve or disapprove the proposed city or county action if and when the proposed actions are adopted.
4. The Council may consider amendments to the resolution at the request of a city or county upon receipt by Metro of additional material pursuant to Sections 2.A and 2.B, including material in support of reconsideration.
5. The Council shall take final action within 30 days of the earlier of (a) February 1, 1999, or (b) notice from the city or county of adoption of its ordinances to comply with the functional plan. Council action shall follow the opportunity to comment orally to the Council on the proposed ordinance. Parties shall be notified of their right to review before the Land Use Board of Appeals pursuant to state law.

G. After the Council's final determination that a city or county comprehensive plan and implementing ordinances are in compliance with this functional plan, all land use decisions made pursuant to the adopted comprehensive plan and implementing ordinances shall be deemed to be in compliance with this functional plan."

Section 3. Ordinance No. 96-647C, Exhibit A, the Urban Growth Management

Functional Plan, Title 8, Section 3 is hereby amended to read as follows:

- "A. After the effective date of this ordinance, and until the Council's final determination of compliance, any amendment of a comprehensive plan or implementing ordinance shall be consistent with the requirements of this functional plan. ~~Metro shall assist cities and counties in achieving compliance with all applicable functional plan requirements. Upon request, Metro will review proposed comprehensive plan and implementing ordinances for functional plan compliance prior to city or county adoption.~~
- B. Amendments to a comprehensive plan or implementing ordinance after the Council's final determination of compliance shall be consistent with the requirements of this functional plan. Prior to amending any comprehensive plan provision or implementing

ordinance, a city or county shall cause a copy of any notice given to the director of the Department of Land Conservation and Development pursuant to ORS 197.610 and 197.615 to be also sent to Metro's Director of Planning at the same time notice is given pursuant to ORS 197.610 and 197.615. Upon request, Metro will review proposed comprehensive plan and implementing ordinances for functional plan compliance prior to city or county adoption."

ADOPTED by the Metro Council this ____ day of _____ 1997.

Jon Kvistad, Presiding Officer

ATTEST:

Approved as to Form:

Recording Secretary

Daniel B. Cooper, General Counsel