

**METRO
CHARTER
COMMITTEE**

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AGENDA

DATE: December 12, 1991
MEETING: Full Committee
DAY: Thursday
TIME: 6:00 p.m.
PLACE: Room 335, Metro, 2000 SW First Avenue, Portland

6:00 Call meeting to order.

Correct and adopt minutes from November 21 meeting
(previously distributed).

6:10 Consideration of potential Charter provisions relating
to other powers/functions of Metro.

7:00 Discussion of principles to be used in consideration of
Metro structure.

9:00 Adjourn meeting.

MINUTES OF THE CHARTER COMMITTEE
OF THE METROPOLITAN SERVICE DISTRICT

December 12, 1991

Metro Center, Room 334

Committee Members Present: Hardy Myers (Chair), Judy Carnahan, Ron Cease, Larry Derr, Jon Egge, Charlie Hales, Frank Josselson, Ned Look, John Meek, Wes Myllenbeck, Ray Phelps, Isaac Regenstreif, Bob Shoemaker, Mary Tobias, Mimi Urbigkeit

Committee Members Absent: Matt Hennessee

Chair Myers called the regular meeting to order at 6:05 p.m.

1. Correction and adoption of minutes.

Chair Myers asked for corrections to the November 21, 1991 minutes.

Motion: Jon Egge moved, Ron Cease seconded, to approve the minutes as distributed.

Vote on the Main Motion: All present voted aye. The vote was unanimous and the minutes were approved.

2. Consideration of potential Charter provisions relating to other powers/functions of Metro.

Chair Myers asked the Committee to move to *marketing of geographical data*.

Motion: The motion was to include the provision on *marketing of geographical data* in the draft outline.

Jon Egge said that he had no objection but he is concerned that the provision would limit marketing to geographical data and not leave it open to the marketing of other goods.

Chair Myers said that would be a potential modification. He suggested that it be left to work its way out in the review process.

Jon Egge said that would be fine, but he would like to discuss it sometime.

Charlie Hales said that he understood the provision to be an exemption from public record law which allows Metro to sell regional land information center data that people could demand at no charge, but would cost a great deal to produce.

Larry Shaw, Metro Senior Assistant Counsel, said that ORS 268 is an exemption to the public records law that allows a public-private partnership to keep the benefits of its investment.

Chair Myers said that the ultimate question is whether, if the legislature has enacted a provision, the charter needs to address it at all as a matter of public records law. He said the question of expansion and necessity can be addressed later.

Vote on the motion:

There was Committee consensus to include the provision on *marketing geographical data* in the draft outline.

Chair Myers asked the Committee to move to the *contracts* provision. He explained that the provision has two separate parts. The first is that *a district may contract with any public or private agency for the agency to operate any facility or perform any function that the district is authorized to operate or perform*. The second part states that *by contract, the district may assume any function of any public corporation, city or county in the district that the district has the power to assume under ORS 268*.

John Meek said that he is concerned that this provision is contradictory because there are sections in the draft outline where the functions are local powers if they are not granted specifically to the regional government, yet the *contracts* provision states that the regional government can assume any function of a public corporation, city or county by contracting.

Larry Derr said that there needs to be a distinction between the local governments having the power and having their authorization.

Chair Myers suggested that the Committee separate the two issues for the discussion, starting with the first part of the provision first. He said that John Meek's point deals with the second part of the provision.

Jon Egge said that he does not want to limit the regional government's ability to subcontract or contract for services to any facility or perform any function because it might leave the illusion that they could not subcontract for parts of a function or a facility. The ability to contract for services should be unrestricted.

Chair Myers asked if Jon Egge was suggesting that the provision be amended to include that it could contract to operate any facility or perform any function or any part of any facility or any function.

Jon Egge said that was correct.

Ron Cease asked what the contracts that Metro has with Portland for the Coliseum and other facilities come under. He asked what the current power was under the contract.

Ray Phelps said that they are intergovernmental agreements--contracts between governments--and do not have legislative authority. He said that the work in an intergovernmental agreement is transferable if the intergovernmental agreement is mutual.

Ron Cease asked if, under the current legislation, Metro could contract for anything if the locals want.

Ray Phelps said that they could. It is the nature of an intergovernmental agreement.

Frank Josselson said that ORS chapter 190 contains an expressed grant of authority to local governments to enter into intergovernmental agreements. Pursuant to the intergovernmental agreements, local governments may transfer functions, activities, property, and employees. He said that he did not know if Metro is considered a local government under chapter 190. If it is, then chapter 190 would allow it to enter into intergovernmental agreements.

Janet Whitfield said that ORS chapter 268 allows Metro to enter into intergovernmental agreements and they are considered to be a municipality under certain conditions.

John Meek said that the first sentence contains expressed functions that Metro can perform. Given

that function, they can contract out to have it performed or they may be able to do a portion of it and have a portion contracted out.

Ned Look asked why there is a need to change the provision to add parts of the function or facility. He said that it reads with flexibility to do some of the things it has been authorized to do. He asked if there had been any abuse of the provisions.

Larry Shaw, Metro Senior Assistant Counsel, said that it may be redundant with ORS chapter 190. He said that the second provision on contracting deals with the ability to contract with local government for a local, not a metropolitan, aspect. It goes beyond what ORS chapter 190 can do. The two provisions are related and the writers' intent was to make the contracting ability as flexible and wide as possible.

Motion: The motion was to include, in the draft, the sentence *a district may contract with any public or private agency for the agency to operate any facility or perform any function that the district is authorized to operate or perform* with the modification to make clear that the authority to contract extends to a part of any facility or function.

Frank Josselson asked if the word *agency* allowed for contracting with an individual.

Chair Myers suggested changing the phrase *private agency* to *private party*.

Vote on the motion: There was Committee consensus to accept the motion.

Motion: The motion was to modify the phrase *private agency* to read *private entity* in the first sentence of the *contracts* provision.

Ron Cease asked if *private agency* is defined in the statute.

Chair Myers said that he did not know.

Vote on the motion: There was Committee consensus to accept the motion.

Chair Myers asked the Committee to move on to the second sentence of the provision.

John Meek said that it mentions that the district has power to assume. He said that he implies that it has to be a power that is granted through the charter.

Chair Myers said that was correct.

Jon Egge said that it could also be a power that has been acquired through the process.

Frank Josselson said that the district has the power to assume any power that is of metropolitan significance and that is not much of a limitation.

Jon Egge said that power should be replaced with authorized. Then the ability to perform a particular function will be unlimited, providing that they will have gone through a process. They would only assume these under contract after they had the authority to do so.

Larry Derr said that the first sentence says that. He said that the second sentence does what Jon Egge is suggesting should not be authorized. It is a question of whether the agency will be able to get

into an area by contract that it had not had been able to gain authorization for because it was not expressly granted in the charter or had gone through a subsequent process to acquire it. It would be able to circumvent that authorization process through the means of an intergovernmental agreement.

Charlie Hales said that he thought that it is a grant of authority to enter into intergovernmental agreements. He asked if it was more than that.

Larry Derr said that it could be anything that the agency has the power to do, whether or not it has obtained the authorization. He said that he understood the provision to mean that Metro could contract with a public corporation, city, or county for things that it did not have voter approval for.

Chair Myers said that he is not sure that the intergovernmental agreement authority is not broader than this provision. He said that he is not sure that the intergovernmental agreement authority is restricted to functions that the district has powers to assume.

Frank Josselson said that ORS chapter 190 expressly provides that, by contract, the functions of one agency can be transferred to another providing that one of the contracting agencies has the authority to do it.

Chair Myers said that if the change in the second sentence was made to limit that provision to a function which the district has assumed by whatever mechanism the charter provides, then it is redundant of the first sentence and is not needed. The question is whether or not the Committee wants to include the second provision which allows contracting with various public entities for power which the charter authorizes the district to obtain, but which has not been obtained as a whole.

Larry Derr said that it should be deleted and a note made that research needs to be done to determine if the agency, through ORS chapter 190, has the authority to do it.

Ron Cease suggested that the General Counsel speak to the Committee on the different aspects.

Frank Josselson asked if, as a matter of principle, the regional government should be able to enter into a contract with the local government which authorizes the regional government to perform functions that the charter does not expressly grant.

Larry Derr said that the intent of deleting it would be to say that the regional government should not be allowed to.

Motion: Frank Josselson moved, Jon Egge seconded, that the charter prohibit regional government from undertaking, by contract or otherwise, any functions or activities that it is not expressly authorized to undertake under the charter.

Charlie Hales said that he assumes the motion implies that *not expressly authorized* includes those functions which it would obtain under the provisions under ORS 268.312. It would not allow circumvention by the electorate.

Janet Whitfield asked if the motion was stating that if it is not listed in the charter, it cannot be done, even with voter approval.

Chair Myers said that it can be done, but it has to go through the process of bringing it into the active power of the district by whatever the mechanism may be. At that point, it falls under the first sentence of the provision.

Ron Cease said that he is bothered with the term activities because it covers a lot of things. He said that he would prefer to leave it out.

Ned Look asked what would happen if a city or county asks the regional government to do it.

Chair Myers said that they cannot do it either way.

Isaac Regenstreif said that there are a variety of services that cities request the regional government to do. He said that there are a variety of informational activities that are not full functions that should not be precluded if both parties entering into the contract are willing.

Ron Cease said that it is one thing to say that the regional government cannot contract for a function that it does not have authorization for, but planning to do something, such as a study, should not be precluded.

Amendment to the motion:

The motion was amended to convert the sentence into a prohibition against the district assuming, by contract, any function of any public corporation, city or county in the district that the district has power to assume but has not yet been granted according to the procedures in the charter.

Ron Cease asked if a bond issue was taken to the voters, for which the regional government has no authority to do the function, would the issue taken to the voters authorize the bond issue and the function.

Jon Egge said that he would assume the answer would be yes.

Ron Cease said that he will support the motion with the understanding that there needs to be clarity of the language.

Mary Tobias said that by the nature of the language, two agreeing parties are needed to have anything at all. She said that a change in the language is not needed because if there are two parties agreeing that something ought to be done differently for those two parties, then the charter should give them the power to do it differently.

Larry Derr said that there are more than those two players that could be affected. If the local government and the regional government agree that the regional government should take over a function, that does not mean that the voters will agree. He said that this would be a way to circumvent the process if the voters in the region get to choose what the district does.

Mary Tobias said that Larry Derr is saying that it goes to an affirmation by the electorate. She said that the motion does not say that.

Chair Myers said that the motion is directed to contracting for the performance of those functions which in the charter are potentially available to the district, but which the charter requires a process to be gone through in order to obtain them.

Mary Tobias said that until there is a process, it is better to leave the provision the way it is for now. After getting to the process section, the Committee could come back and review it.

Vote on the motion:

Larry Derr, Jon Egge, Frank Josselson, John Meek, Bob

Shoemaker, and Mimi Urbigkei voted aye. Judy Carnahan, Ron Cease, Charlie Hales, Ned Look, Wes Myllenbeck, Ray Phelps, Isaac Regenstreif, Mary Tobias, and Chair Myers voted nay. The vote was six to nine and the motion failed.

Motion: Ron Cease moved, Charlie Hales seconded, to carry the second sentence of the *contracts* provision, as it is, into the draft.

Bob Shoemaker suggested putting off the issue until the Committee is through discussing the process and structure. If the Committee votes this in and then later decides that the voters must approve the assumption of a new function, this provides a way to avoid that responsibility of the electors. It would allow the Council to circumvent the purpose of the charter.

Jon Egge said that he agreed.

Chair Myers said that, if the provision is left in, there would be an asterisk by it to signify that the Committee will need to come back to it. He said that there probably is sentiment on the Committee not to allow what is in the provision. The problem is that the preclusion is broader than the principle that is trying to be enforced.

Jon Egge said that if the footnote is added, he would be comfortable with moving it forward.

Bob Shoemaker said that if the distinction is made in the first sentence about the function or part of a function, then, if the second sentence talked about giving the district power to assume any function, then it is indicated that they can take over the entire function. It needs to be worded so that the whole function cannot be taken over without a vote of the people.

Frank Josselson said that if there are specific things--information gathering, technical assistance, coordinating functions--that the Committee wants to grant the regional government, they should be granted.

Charlie Hales said that he does not see that the problem exists with the concept. The provision says that the district may assume any function that it *has power to assume under this chapter*. For example, the power to assume for libraries requires a vote of the people. Therefore, it is not a circumvention. The concept that is more important is allowing Metro to assist and advise rather than the expressed authority to assume the functions.

Chair Myers said that the threshold question is whether or not to include in the draft the second sentence of the provision, interpreting it to mean that it extends contracting authority to functions which the charter stipulates are potential activities of the government but which it has not yet acquired.

Mary Tobias said that Bob Shoemaker implied that the language would be carried into the charter. She said that her understanding was that none of the votes taken have represented what actually will be in the charter, only what is going out for public comment.

Chair Myers said that she was correct.

Ron Cease said that, even if the motion passes, he still has some issues with it. He said that he would like to know what the provision really means, in terms of activities, or is it Metro undertaking a study of a function. He said that he would like to know what the limitations are because they are not clear. If it is taken out, then there are questions without answers. He said that a legal interpretation is

needed.

Bob Shoemaker said that although nothing is final, the public will not pick up on everything in the draft. It is not appropriate for the Committee to say that it is not the final version therefore it is okay because it will be revisited. If the Committee does that, the process will take a long time. The Committee needs to act after it has had its discussions because it is not reasonable to think that the Committee will return to each one of the details to the extent that the Committee is going over them now.

Jon Egge asked if, in the motion, powers was the same as authorization--something that they have the clear authorization to perform.

Larry Derr said that it is not clear what a yes or no vote would mean.

John Meek said that the Committee has lost track of the powers to assume. The power to assume functions may be granted in the charter but they may take a vote. This would allow them to contractually assume the authority.

Chair Myers said that was the interpretation that he thought the Committee had agreed upon for purposes of whether or not it should be taken into the draft.

Jon Egge said that the 'powers to assume' is different than 'authorized to perform'. He said that his original thought was to replace 'power to assume' with 'has been authorized to perform'. He said that there will be a process for adding powers that are not actually listed in the charter. He said that it would allow a detour around the front door. If it is clear that is what is not being done, then the words do not matter.

Larry Derr said that it is clear that is what is being done.

Chair Myers said that one might disagree with the characterization of it in terms of values, but, functionally, that is what this does.

Ron Cease said that the Committee does not know what the legal interpretation of it is. When it goes out for public comment, groups will come back with detailed comment on every word that is written.

Chair Myers said that he thinks the Committee knows what is intended by the language for purposes of carrying it into the draft or not. He said that he understands the principle to be that it authorizes assumption by contract of any function which the district may acquire under the charter but has not been given by whatever mechanism it may be.

Charlie Hales gave the example of libraries. If Metro were to take over the libraries of Beaverton, the protection allowed by the statute for the citizens of Beaverton is that there has to be a vote first. This provision allows the Beaverton city council to act on behalf of the citizens in entering into an intergovernmental agreement with Metro.

Larry Derr said that a yes vote would allow Metro to enter into that agreement.

Ron Cease asked what would happen if the motion was defeated.

Chair Myers said that he would invite a motion to develop a modification of the second sentence which would address the concern that Isaac Regenstreif raised. It would not be an outright preclusion, but it would be in part a prohibition, but it would leave room for the activity that Isaac Regenstreif was

mentioning.

Ron Cease said that he would withdraw his motion because he would prefer that concept.

Motion: Ron Cease moved, Larry Derr seconded, to revise the second sentence of the *contracts* provision in order to permit activity which is short of the function itself. The intent of the motion is to allow the district to have certain forms of involvement, to be named later, with the functions that the district has the power to assume, but has not assumed, which is less than the full assumption of the function.

Charlie Hales said that if Metro could not cherry-pick and take on the libraries of Beaverton without a vote of the people, the people of Beaverton could ask Metro to study the cost effectiveness of regional provision of libraries in Washington County.

Ron Cease said that the charter should not preclude cooperation between the local governments and the regional government. The ability for the regional government and a local government to work together without assuming the entire function needs to be there.

Frank Josselson said that if the Committee is going to be rigorous about what the regional government should do, then it should specifically identify the things that Metro should do and expressly authorize them to do it.

Ron Cease said that he has heard people saying that Metro should not be studying this or looking at that because Metro currently does not have any authority over it. He said that he does not understand how Metro is suppose to discuss anything with another jurisdiction if they are suppose to have the function first. It may be that Metro should not have the function but they would like to look at it and study it region wide.

Frank Josselson suggested adding a provision which says that the regional government may have the authority to conduct studies of regional significance.

Chair Myers said that it is a drafting problem.

Larry Derr said that information gathering is a topic that has already been agreed to. It is not hard to identify those areas and make them broad enough to cover the issue.

Isaac Regenstreif asked if, as a matter of protocol, the procedure for the Committee is that people will be recognized by the chair before they speak or if there will be discussion back and forth. It seems as if different people operate under different rules of protocol within the Committee.

Chair Myers said that he would appreciate it if people would be recognized before the speak.

Isaac Regenstreif said that the discussion gets back to an earlier question of whether the charter will deal with specific grants of authority or general grants of authority. He said that he is uncomfortable dealing with specific authorities in a document that is suppose to have a long life. He said that it does not seem possible, for drafting purposes, to distinguish between a function and an activity. He said that he likes the language in the provision now, but also wonders why the charter has to address the intergovernmental contractual agreement.

Ray Phelps said that another example would be the End of the Oregon Trail in Clackamas County. He said that he would understand the provision to mean that Metro would be precluded from assisting

Clackamas County.

Charlie Hales said that he agreed with Ray Phelps and brought up the topic of the sale of bonds. If Metro were asked to do a bond sale, would this approach preclude that from happening? If that is true, he would support Ron Cease's original motion.

Ray Phelps said that, at a minimum, he would like to see that Metro have the same contracting privileges that an 18 year old would have.

Mary Tobias said that she does not see any reason to go beyond the language as it originally stood. She said that she understood the statute to mean that the regional government has the authority to contract. The provision limits it to contracting with things which are available to it as functions. She said that two-thirds of the provisions are *may* provisions and half of those are voter approval required. There has not been a discussion about circumventing the voters' approval requirement. She said that any corporation ought to have the ability to contract for services or to do a contract that provides them as the provider of the service.

Vote on the motion:

Ron Cease, Larry Derr, Jon Egge, Frank Josselson, and Bob Shoemaker voted aye. Judy Carnahan, Charlie Hales, Ned Look, Wes Myllenbeck, Ray Phelps, Isaac Regenstreif, Mary Tobias, Mimi Urbigkeit, and Chair Myers voted nay. The vote was 5 to 9 and the motion failed.

Motion:

Ron Cease moved, Ray Phelps seconded, to include, in the draft, the second sentence of the *contracts* provision in its original form.

Vote on the motion:

Ron Cease, Charlie Hales, Ned Look, Wes Myllenbeck, Ray Phelps, Isaac Regenstreif, Mary Tobias, and Chair Myers voted aye. Judy Carnahan, Larry Derr, Jon Egge, Frank Josselson, Bob Shoemaker, and Mimi Urbigkeit voted nay. The vote was 8 to 6 and the motion failed.

Chair Myers said that the first sentence, with its modifications, of the *contracts* provision will be added to the draft. He asked the Committee to move on to *police authority*. He said that the term police power is used in the terms of regulation, not police. He said that the question is whether or not there should be a provision in the charter authorizing adoption of ordinances considered necessary for the proper functioning of the district.

Ron Cease said that it is necessary. It is the same type of police power given to cities. It is the broad notion that it is the power that they need to carry out the functions. It gives them an added protection. He said that any home rule charter has a police power provision.

Charlie Hales suggested that *regulatory* be used in place of *police* since there was confusion among the Committee members as to what the provision meant. It would make it clear that Metro has the ability to exercise regulatory power under the scope of its functions. It would eliminate confusion by not having the word police appear in the charter.

Jon Egge agreed.

Ray Phelps said that this was the authority that Metro acted under to ban phosphates. There are other circumstances like that. He said that police authority is a term that has a long tradition in case law.

Larry Derr said that *enforcement* would be a better synonym.

Motion: Charlie Hales moved, Jon Egge seconded, to include in the draft the *police authority* provision with the substitution of the word *enforcement* for the word *police*.

Wes Myllenbeck said that police powers means authorization. It is a public administration term. It is a general grant to carry on the functions.

Isaac Regenstreif said that police power does have meaning. He asked if Metro's authority to implement or enforce the statutes would be changed if the word enforcement was substituted.

Larry Shaw said it would significantly change the authority of Metro. The word enforcement may be limited to when Metro has adopted something that is directly regulatory that would then be enforced. Police power has a long tradition and a long history of local government case law for which Metro has parallels in this particular regard. Police power is broader than enforcing a particular regulation. It is a necessary and proper clause.

Chair Myers said that without any specific reference to police power, nothing is added or detracted. The district has the authorities that are granted to it. He said that he understood this section to be a necessary and proper clause. He said that the main part of the provision is the adoption of ordinances necessary for the proper functioning of the district.

Ron Cease said that it would create confusion if the regional government did not have police power in its charter when the cities and counties have police powers in their charters.

Charlie Hales said that the Committee is adopting outline language and not charter language. The intent of his motion is to make it clear in the charter that Metro has the ability to enforce and adopt regulations under the powers granted in the charter but that Metro cannot hire police.

Amendment to the motion: Charlie Hales restated his motion to carry the *police authority* provision into the draft. The language will be worded to make it clear that the intent is that Metro has the ability to enforce and adopt regulations under the powers granted in the charter but that Metro cannot hire police.

Vote on the motion: Frank Josselson objected. There was Committee consensus to pass the motion.

Chair Myers asked the Committee to move to the *acquisition of property* provision.

Motion: Ron Cease moved, Ned Look seconded, to carry the *acquisition of property* provision into the draft.

Vote on the motion: There was Committee consensus to pass the motion.

Chair Myers asked the Committee to move to the *additional functions* provision. He said that this would be the description of the mechanism that would be attached in the document to describe the procedure by which those authorities not granted outright or reserved for local governments could be obtained.

Larry Derr said that *additional functions* includes that as well as the ability to change the governing structure. A broader statement is the method by which the charter can be amended. Eventually, the Committee will have to decide if separate processes are needed for all three or if one process will work.

Chair Myers suggested deleting the reference to *the number, qualifications and manner of selecting members* in the provision. He said that should be subsumed under a larger amendment process. He said that he would prefer to center the discussion around the mechanism by which additional powers would be obtained by the district. This approach assigns that authority to the electors.

Jon Egge said that the provision states that it is the *electors of a district*. He said that could be the electors of a water district.

Chair Myers said that, in the context of the statute, it is referring to the Metropolitan Service District.

Bob Shoemaker asked if the assumption of additional functions is limited to those with metropolitan significance.

Chair Myers said that is correct. Metropolitan significance would be a qualifier.

Frank Josselson asked if the governing body would have to make a finding that it is a matter of metropolitan significance before it would be referred to the voters.

Bob Shoemaker said that the Constitution amendment limits it. The only jurisdiction that Metro will have is over matters of metropolitan concern.

Ron Cease said that there are two types of functions that Metro will deal with. One function is where Metro might have a piece of it and the local governments might have a piece of it. A distinction can be made between the parts that are regional and local responsibilities. There are other areas where the function has been given to Metro. There is a provision that states that *local aspects of the functions authorized may be assumed only on the basis of agreements between the district and other public corporations, cities or counties*. If the local governments want to, by contract, give up the local aspect of a function to Metro, they could. A function could be totally run by the regional government. He asked if the Committee wants to preclude the voters from putting a function on the ballot and having it run by the regional government.

Chair Myers asked if the function would be without regional significance.

Ron Cease said that maybe a piece is and a piece is not.

Larry Derr said that it would be helpful to have legal review of this area. He said that Ron Cease's comments reminds him that, currently, Metro is a creature of statute and the state legislature can divide up functions between local governments and Metro any way it wants to. The Committee is bringing it back to dealing under a charter amendment that is limited to areas of metropolitan significance. There could be an agency that is carrying out its charter functions and statutory functions. He said that there is no way of predicting what the legislature will do. He said that the only things the Committee can control are the things that are granted in the Constitution and the legislature could give it something broader.

Chair Myers asked if Larry Derr was proposing that the Committee leave the question open.

Larry Derr said that it may not be appropriate in the charter to deal with areas beyond metropolitan significance, or perhaps there could be a mechanism by which the legislature continues those

authorities that the district could carry out.

Ron Cease said that there are several different kinds of functions. In most cases, there is reference to regional or metropolitan significance. In a couple cases, there is no reference to that at all. There are several where a vote is needed regardless of whether or not it is of regional significance. In terms of the current statutes, the *additional functions* provision refers to anything beyond that. The *additional functions with local aspects* modifies the *additional functions* provision. They could take on the local aspects by contract if they have the regional responsibility.

Chair Myers said that the Committee needs to resolve a mechanism by which the regional government can assume those functions of metropolitan significance which are not granted outright in the charter and are not reserved to local government.

Motion: Frank Josselson moved, Jon Egge seconded, that the Committee carry into the draft a provision that the process for assuming additional functions will involve a vote of the electors of the district.

Vote on the motion: There was Committee consensus to pass the motion.

Chair Myers said that the question for the Committee is whether the provision should stop at that point or if more should be said.

Bob Shoemaker said that nothing more needs to be said because the Constitutional amendment reserves the rights of initiative and referendum to the people for amendment of the charter. The charter would need to be amended if the regional government decided to take on an additional function.

Ron Cease said that he would feel more comfortable if the Committee made it clear that there is not a single function that the regional government cannot take on if it wants to. He suggested that there be a section in the draft, in reference to *additional functions*, that makes it clear what they can do and the process if they do it. He said that it seems awkward to amend the whole charter to take on a function.

Bob Shoemaker said that if a function is taken on by initiative or referral that is not eluded to in the charter, unless that is done by an amendment to the charter, the Committee will be creating the possibility of a confused and enabling document. The charter will have most of the functions and then there will be another document with additional functions voted on by the people.

Ron Cease said that it is more difficult than simply passing a statute to change the charter. The Committee will have to decide the initiative requirement to amend the charter. The region ought to be free to add to the list of functions without a special requirement for amendment of the charter. More signatures will probably be needed to get a Constitutional amendment on the ballot than a statutory ordinance.

Chair Myers said that if the Committee is settled on the proposition that it will take a vote of the electors in regards to acquiring functions that are not granted outright but are part of a collection within the charter, the Committee ought to revisit this question when it goes back and works through the way in which it describes the authorities which are outright versus those that are subject to being acquired. It could be dealt with as a whole in that setting.

Chair Myers suggested that the function provisions regarding *service district establishment* and *commission creation* be dealt with in the structure discussion.

Bob Shoemaker said that he reads the *additional functions with local aspects* provision to be different than the initiative, referral, and referendum discussion that the Committee just finished. He suggested that the Committee deal with it now because *the local aspects of the functions authorized may be assumed only on the basis of agreements* does not deal with the initiative or referendum process.

Motion: Bob Shoemaker moved, Ned Look seconded, to include, in the draft, the provision regarding *additional functions with local aspects*.

Larry Derr said that he sees it as a statement of limitation rather than authorization, which he agrees with. He said that he would like to get advise as to whether or not the regional government can get into those kinds of things. He suggested getting advise on the inter-relationship between the regional government that will be created by the charter and whether there will still be some relationship between that organization and things that the legislature might direct that it do or not do.

Chair Myers said that if the motion is adopted, it will be with the understanding that there will be follow-up on those concerns.

Jon Egge said that Larry Derr is referring to the earlier question about the conflict between the Constitutional amendment.

Bob Shoemaker said that Larry Derr has a good point by asking if the regional government has the authority to take on local aspects of functions with metropolitan concern. Does the Constitutional amendment give that authority?

Vote on the motion: There was Committee consensus to pass the motion.

Isaac Regenstreif asked if the function outline, along with the regional plan, will be put before the public for comment.

Chair Myers said that it forms part of the total functions piece.

Isaac Regenstreif asked if the Committee will vote on the regional plan and the function outline before it goes out for public comment or if it will go out and then the Committee will get input.

Chair Myers said that, in relation to the meeting on January 18, the process should be structured in relation to a pending work product to which comments and criticisms can be addressed. He suggested that, before January 18, the Committee have before them, for Committee approval, a form of summary explanation of the starting concepts in the function and structure areas which will be taken to the public for comment. He said that Frank Josselson is working on a summary explanation. He said that Frank Josselson asked him, at the November 21st meeting, if he would be agreeable to Frank Josselson spending time trying to translate and explain the outline, up to that point, for further consideration by the Committee and the public.

Isaac Regenstreif asked about the regional planning piece.

Chair Myers said that it is considered a part of the functions piece.

Wes Myllenbeck said that he would assume that the writing of the summary explanation that Frank Josselson is doing should be a staff function.

Chair Myers said that he is viewing any member's involvement as a contribution of effort that the staff is and will be involved with and the Committee will also be involved.

Chair Myers said that he will be striving to have a form of explanation of the Committee work through structure and functions that will be part of the onset of the public comment process. He said that the Committee will be reviewing it, accepting it and modifying it through the process.

Isaac Regenstreif asked if he understood correctly that there will be a vote.

Chair Myers said yes.

Charlie Hales said that he is not clear on the Committee's position on the boundary commission. He said that he would like a list of three categories of shall, may, and can and the functions that fall under each category.

Chair Myers said that Janet Whitfield will distribute the revised function outline before the next meeting.

Jon Egge said that the minutes of December 5, 1991 enumerate the Committee's discussion on the boundary commission.

Mary Tobias said that she would like the narrative that Frank Josselson is preparing to be distributed to the Committee at the next meeting. The Committee needs to see the document as soon as possible in order to agree on the text of the narrative and get it into the public arena before January 18th so that the invited organizations will have enough time to analyze the document. It will be unfair to the process if the Committee does not have the document next week to begin to look over it.

3. Discussion of principles to be used in consideration of Metro structure.

Janet Whitfield distributed an outline entitled *Metro Structure*.

Chair Myers suggested that the Committee begin discussing structure by laying out the various alternative structure proposals that the Committee would like to discuss. Those alternatives would be used as the framework to organize the discussion, organization of the principles, and the articulations of the positives and negatives of each structure form.

Jon Egge suggested that the Committee members get copies of the National League of Cities charter provisions which outlines the positives and negatives of each form.

Ron Cease said that the National League of Cities model is made for medium size cities and is not an appropriate model for a regional, tri-county government.

Jon Egge said that he recognizes that, but it is a starting place for the Committee.

Chair Myers said that one approach for the structure, which is the current structure, is to have a legislative body whose members are elected from single member districts and exercise the legislative authority of the district as provided for in the charter. A separately elected executive elected from the entire district would have the administrative authority as the charter defines it. The organization and performance of the various responsibilities of the government would be left to the decision of the legislative body. The internal organization is a political responsibility of the governing body. Another variation would be a substitution of a regional manager in place of the separately elected executive. The manager would be appointed by the legislative body. The overall framework would remain the same. There might be a provision for the presiding officer of the council to be elected from the entire district. He said that the model suggested by the Portland Chamber is another model to discuss.

Mary Tobias said that there are some things that the Committee could agree to as a preliminary step. She said that the regional government should be a legislative body--the body that runs the government is an elected body and is not appointed by a higher being. She said that the Committee needs to decide on the guiding principles before they decide how to implement them.

Ron Cease said that it might be helpful to take a look at where the current organization came from. He said that there were three or four basic principles, which still exist today, when the structure was adopted by the legislature. One is that the regional governments be consolidated into one--CRAG and Metropolitan Service District became one with the marriage clause of Tri-Met. The idea behind an elected board by district and an elected executive by the entire region is that the region as a whole is only represented in the elected executive. The concept of the elected board by district is that the members will bring in the opinion of their districts and there will be an indirect regional concept. He said that the model is an aspect of the strong mayor-council form of government.

Mary Tobias said that one principle of the regional government should be to actively promote the partnership between the regional and local government. She said that it will lead to consolidation in a proactive way. She suggested that the principles for the regional government should be that it is committed to promote the regional and local government partnership, efficiency and effectiveness, and have a direct connection to the governed. She said that the structure needs to be based on principles. Once the principles are defined, then the Committee will be better able to address what the governing body will look like and what powers it will exercise.

Bob Shoemaker said that he agreed that there needs to be an elected region-wide person. He said that person could be, in reference to Ron Cease's statement about needing a region-wide elected person, the presiding officer who could also be elected by the region. He said that he thinks that the Committee will agree that the council should be elected from single member districts. He said that an alternative would be to have a mixture of members elected by single member districts and members selected by constituent governments.

Jon Egge said that another alternative would be to have no district wide elected official.

Chair Myers said that the four principles that Mary Tobias proposed were to promote partnership of local government, efficiency, effectiveness, and a direct connection to the electors--accountability.

Mary Tobias said that accountability needs to be a goal for Metro because for many people, Metro is an invisible government. The only people that are truly aware of it are the local governments. There needs to be a stronger citizens' connection.

Bob Shoemaker suggested that visibility could describe the principle of finding a solution for an invisible government.

Frank Josselson said that it is important to have a structure that protects the people against bad officers. It should be structured so that an askew person can do the least damage. He added four more characters to the list that Mary Tobias already suggested--visible, publicly accountable, regionally represented as a whole, and responsibility to the constituency. He said that these four characteristics together can limit bad officials.

Chair Myers said that one issue the Committee will have to discuss is how far the structure can go, beyond the scrutiny and power of the press and the recall power of the people, to insulate itself against a bad egg.

Ron Cease said that structure is a philosophical issue. He said that the Portland Chamber of

Commerce concept is interesting because it says that they do not trust the elected officials nor do they trust the people. The people select and elect dumb, rotten, corrupt, and inefficient people. He said that the concept says that the only way to protect people is to put in the system enough things to fragment it and to provide that each interest group has its own control so that the definition of accountability is lost. Accountability defined as accountability to the people in a direct way is one thing. Accountability to the business community, or to the parks district having accountability to the park system, or libraries to the library system or any functional activity to the people have a particular interest in accountability to a certain type of interest group and not to the people. The notion is that it is put together in such a way for the most direct accountability to the larger public and local governments because they are a constituent group and have a partnership arrangement with Metro. He said that it should not be fragmented so that one cannot get a larger picture or so that the public does not know what is going on but each little interest group is happy because that interest group is controlling it without reference to the larger public at all. Accountability to the public is not supported in the Chamber proposal because they do not trust the public.

Wes Myllenbeck said that another option could be to have the councilors reside in their district, but be voted regionwide.

Ray Phelps said that another concept is the idea of full time compared to part time councilors. He said that he has often heard that Metro councilors are "mystery" people--low voter identity and name familiarity. In order to try and provide more name recognition for the councilors, he suggested that the Committee discuss the size of the council districts which could determine what the size of the council should be. He said that, in respect to electing or not electing anyone, Oregon voters like to elect their leaders and they have shown in the past that they will not eliminate elected offices. He said that compensation will also need to be discussed.

Charlie Hales said that the size of districts is an open ended question. He said that there are options as to whether the council consists of members who are all elected by district or elected at large or a mixture of the two.

Ron Cease said that the size of the government does not necessarily determine if it is visible or not. The existence of Metro in relation to other governments in the region--state or local--does determine the visibility of Metro. The more governments, commissions, or boards that are created, the more difficult it is for there to be real accountability to the larger public. It becomes more invisible. Through the Governor's task force, there is the message of more efficiency, less overlapping and duplication, and less complication because there are currently too many pieces and people do not understand it. He said that it is part of the Committee's task to make it as clear as possible and not fragment it. It is part of the Committee's responsibility to make it as understandable as possible.

Mary Tobias said that it also deals with how people access government. Unless the Committee is willing to take on the challenge of abolishing one or more units of local government, then it seems most effective and efficient to build on that and make sure that the charter creates a good clear process that interconnects them for those things of metropolitan significance. If the committee prescribes a philosophy or process that people know, then access to their existing governments provides access to the regional government. If nothing else is done with this charter but to re-instill confidence that there are people who care about government, then the Committee will have gotten somewhere for the benefit of the region.

Chair Myers said that what lies ahead is to work toward an agreement on a structure that matches up with what Mary Tobias is describing. He said that access ability might be a principle that the Committee will want to add.

Ron Cease said that one of the issues that Metro is battling with is that it is a hybrid organization--it is trying to be a coordinator of intergovernmental things and a direct service provider. Being directly accountable to the public that elects the board is not the same thing as having a direct and cooperative arrangement with the local governments. When there is a hybrid arrangement to capture two principles, it usually ends up not being a good response to either one of them. The problem with a board that consists of some that are chosen by constituents and some that are elected is that there are two separate creatures. Those who are directly elected by the people will have the most clout on the council. In an effort to make it simple and accountable, it may run against the notion of a partnership. The principles of having a partnership and being accountable to the public both need to be done but it is not easy.

Chair Myers asked the Committee to reflect on the principles for the next meeting. He said that he would like to lay out other basic approaches to organization. He said that the discussion around the principles could be better organized if there are basic features that the members favor considering. The Committee can then begin to work toward consensus around pieces or elements to put together.

4. Discussion regarding the January 18, 1992 day of invited testimony.

After discussing whether the testimony for January 18, 1992 would be open to anyone who would like to speak or invited testimony only, the Committee decided that it would be better to have invited comments only in order to give the groups that have been following the work of the Committee enough time to respond to the issues, answer questions, and have a dialogue with the Committee. The Committee discussed the possibility of having another hearing after the day of invited testimony for the purpose of allowing other organizations that would like to come speak to the Committee the opportunity to speak. There was Committee consensus that the Metro Service District, Tri-Met, Regional Governance Committee, Portland Chamber of Commerce, Multnomah County, and Portland would be asked to testify on the 18th of January. Portland and Multnomah County were added separately from the RGC because they are not members of the RGC and represent a large part of the population within Metro's boundary. There was consensus that the groups would be asked to follow a strict time schedule.

Mary Tobias suggested that the Committee incorporate 15 minutes of public testimony into the last part of every full committee meeting.

Chair Myers adjourned the meeting at 9:40 p.m.

Respectfully submitted,



Kimi Iboshi
Committee Clerk

Reviewed by,



Janet Whitfield
Committee Administrator