

**METRO
CHARTER
COMMITTEE**

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AGENDA

DATE: April 2, 1992
MEETING: Full Committee
DAY: Thursday
TIME: 6:00 p.m.
PLACE: Room 440, Metro, 2000 SW First Avenue, Portland

6:00 Meeting called to order.

Correction and adoption of minutes from March 5 and 12 meetings.

6:10 Completion of Charter drafting decisions for treatment of specific powers and functions to be initially authorized for the regional government.

6:30 Adoption of Charter drafting instructions relating to structure of the regional government.

10:00 Meeting adjourned.

MINUTES OF THE CHARTER COMMITTEE
OF THE METROPOLITAN SERVICE DISTRICT

April 2, 1992

Metro Center, Room 440

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

Committee Members Absent: John Meek

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 March 5, 1992 minutes.

Motion: Matt Hennessee moved, Ned Look seconded, to approve the March 5 minutes as distributed.

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

Chair Myers asked for corrections to the March 12, 1992 minutes.

Motion: Ned Look moved, Norm Wyers seconded, to approve the March 12 minutes as distributed.

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

2. Charter drafting decisions for treatment of the Boundary Commission.

Charlie Hales suggested establishing a subcommittee to recommend a charter provision regarding the Boundary Commission. It would meet one time and bring back a proposal to the Committee at the next meeting. He suggested that Dick Benner, LCDC Director, and Burton Weast, of the Special Districts Association, be invited to participate.

Motion: Charlie Hales moved, Jon Egge seconded, to give the chair authority to appoint a subcommittee to discuss the charter treatment of the Boundary Commission.

Chair Myers said that the subcommittee would consist of two Committee members from each county. All members would get notice of the meeting.

Vote on the motion: Judy Carnahan, Ron Cease, Larry Derr, Jon Egge, Charlie Hales, Matt Hennessee, Frank Josselson, Ned Look, Wes Myllenbeck, Ray Phelps, Bob Shoemaker, Mary Tobias, Mimi

Urbigkeit, Norm Wyers, and Chair Myers voted aye. John Meek was absent. The vote was unanimous and the motion passed.

Chair Myers asked that those members who are interested in participating let him know. He reminded the Committee that any member can participate even if not a member of the subcommittee.

3. Charter drafting instructions relating to the structure of the regional government.

Chair Myers suggested that the Committee deal with structure by discussing alternative concepts that involve how the legislative and executive authorities would be addressed.

Larry Derr said that, when he made the motion a couple weeks ago for planning to be the primary function of the government, he did it with the structure discussion in mind. He said that, personally, whatever structure the Committee decides on, it has to be one that everyone is comfortable with and that will create a regional government that has a capacity to deal with planning, growth management and additional policy making functions. Those need to be the primary functions of the government. There are definitely service delivery functions that need to be done at the regional level. The hardest decision to make is to come up with a structure that assures that the more nebulous planning and policy decisions are dealt with well. It is a lot easier to deal with service delivery. He said that, for months, some members have been discussing the structural ideal of separating the service delivery from the planning functions through commissions for service delivery. The Portland Chamber of Commerce's proposal goes further than that by having a regional government with no service provisions and only provides oversight to other service delivery agencies. He said that he is not convinced that much separation is necessary or that it will work. He said that he would first look at the governing body and what it should be. He said that the governing body should be relatively small so that time is not spent on internal politics and coalition making but in one on one, eyeball discussions of the issues so that those on the council will get to know the opinions of each other on the individual issues. He suggested that the number of councilors be seven. It should be less than the current council and definitely not more. The issue of full or part time depends on the degree of importance of the council which will be driven by the Committee's personal views and what they think the public will be able to handle. He said that there needs to be some kind of internal organization, such as a presiding officer. He suggested leaving that decision to the governing body after it has been selected by single member districts. He said that it would get around some of the concerns of the existing councilors regarding the need for flexibility of the governing body in the selection of the presiding officer. The primary functions assigned to the government should be the planning, policy making, budgetary, and revenue raising functions. Those functions should be the only functions of the regional governing body. If that concept is accepted, then the question becomes how to deal with the service delivery without getting bogged down. The idea of commissions is one way to do that, but there are many arguments against them. They tend to separate the constituents from the people who are making the decisions by another level of government--it adds another layer of bureaucracy. On the other hand, someone other than the regional governing body can deal with the day to day details of running a service organization. Within the existing structure, there is something which would do just as well. If that line of division remains clear, he said that he would be willing to maintain the existing structure with an elected executive. He said that it could remain the way it is, but made clear that the service delivery is under the executive branch, headed by an elected executive, and is going to be only service delivery and not policy making. One of the specific changes that would need to occur would be the elimination of the executive veto power. It is a cross over between the service delivery and the policy functions. He said that the current system would be strengthened because the council would have policy making authority and does not cross over to the executive. The council does not have to second guess the executive and the veto with policy decisions. There would probably need to be some

form of budgetary oversight after the governing body decides how to raise the money and approves the budget. He said that he thinks the proposal is simplistic and goes a long way in bringing together diverse views and identifies where the priorities are.

Chair Myers asked if the executive officer would have the responsibility to propose a budget for the entire organization, including the proposed allocation of resources as between planning and service.

Larry Derr said that the key is that the governing body would have control over its budget and revenue sources for its allocated functions. The charter should either identify the revenue source or insure that it comes about through a process. It should be beyond the scope of concern of the executive. The Committee has gone back and forth determining what is land use planning, functional, and what is planning in the broader sense. An easy way to solve that would be to say that planning functions, including functional plans, would be under the governing body. The execution of the plans would be on the executive side as service delivery. If gray areas are avoided and lines are drawn to separate the two, it keeps it simple. An example is solid waste planning. It would be funded, budgeted, and managed on the governing body side with the execution on the executive side.

Ron Cease said that the basic question is what is the appropriate role and relationship of the executive officer to the council. He said that it is important for the organization that both the executive officer and the council both be strong members of the organization. He said that he would put aside the question of getting strong people through the election process. He said that he disagrees on the issue of planning being a prime responsibility. He said that he supports Metro doing more planning, but it also needs to do the operational functions. He said that, pragmatically, it is impossible to completely separate planning from service functions. There is not much in the statute creating Metro that talks about the policy role of the executive officer. As a practical matter, the executive officer plays a substantial policy role. Regarding the budget for the entire organization, a small legislative body is incapable of making the executive's judgement in developing a budget for the organization. It needs to come from the executive side with the legislative side disposing of it as it sees fit. Legislative bodies, as a rule, are poor vehicles to do some policy things, but certainly poor vehicles to put budgets together and to take a look at the larger organization. They are good vehicles of disposing of and resolving the budget question. The original proposal for Metro contained a veto and there was a problem with it as it was going through the legislative process so the veto was taken out. A few years ago, after Rena Cusma became Executive Officer, the veto power was added. He said that he understands that it has never been used, although it has been a threat. The executive officer and the council need to be talked about in conjunction. He said that the Committee needs to discuss what makes sense and what is politically possible. He said that it might make sense to have full time councilors, but it would not be wise to recommend that in the current environment. He said that he does not believe that the current council is as weak as some people say that it is. There are some weak members, but there are some who work hard and are strong. He said that he does not know if it would be stronger if it was a smaller body. There is little argument for making it bigger. If it was smaller, the districts would be larger, but the representation issue may not be an issue. There might be merit in providing that the presiding officer, who must be selected by the members of the council and not separately elected, ought to be either full time or part time and paid. That would condition who would be selected because some of the councilors may not want to give up some of the things that they do. A strong presiding officer probably does spend a lot of his/her time working with the organization. He said that he does not want an appointed executive officer. If the Committee suggested that the one person that the public elects at large is taken away, it would not be politically smart. There are two major roles of the executive officer. One is the political role--the person is the political voice of the region in the way that the individual members of the council cannot perform. Secondly, there is the administrative role of the position. There is no guarantee, and there are examples, that the person who is elected will be a good administrator. There could be a provision by which the executive officer could hire someone to perform some of the management tasks as an assistant or deputy. An elected executive officer, as with

a manager, would not say publicly that he/she is making policy because it is not what the form provides. An effective manager is the major policy maker in a local government. They are policy makers because the nature of the beast requires that they be so. It is possible to put a provision in the charter relating the executive officer and his/her staff to the council which would account for that. It is true that, looking at the statutes, the policy role is laid out as belonging to the council. That role is appropriate as long as there is not an effort to cut off the executive from performing his/her role as the needs require it. He said that the commission idea is all wet, although the Committee has already gone on record as using it for Tri-Met. It is fine to use them for an advisory or regulatory purpose. If they are being used for an operational purpose, they cannot be held accountable if they are not elected. In a legal, political sense, anyone who is elected has some creature of accountability attached to the obligation. Under the Chamber of Commerce proposal, boards and commissions are used and they are allowed to raise revenue for that function. The whole process is being further fragmented and no one would be responsible to the larger public. The public will always have a problem with the accountability issue for a government of this size which is removed from the public. When the Committee gets through, there is a major piece that needs to be worked on, which is how to provide for some assessment and evaluation of performance of the organization. Not limiting it to a financial audit, the public should be satisfied that it has as much periodic assessment or evaluation and openness as possible.

Larry Derr said that he did not disagree with anything that Ron Cease said. He said that he intended it all to be in there, although it might be phrased differently. The executive side will be where the big dollars and staffs are. Whoever is in that position, whether elected or appointed, will have major impacts on the region. That is policy regardless. It is not bad, whether or not there is choice. The Committee can make sure that it does not undercut the ability of the planning functions by making sure that they are fully funded and not dependent on the service side. At that point, they are equally important, although in different ways. By definition, the regional government will not be providing a service unless it is of regional significance, which makes it important. On the other hand, planning functions will have more emphasis, which will make it important.

Bob Shoemaker said that a combination of Ron Cease's and Larry Derr's comments sound promising. He said that the Committee could emerge with two strong leaders within Metro that would both have a great deal of public accountability. One is the elected executive officer and the other is the full time presiding officer who is selected by his/hers peers. Both would personify Metro and would be a nice balance of personal power. He said that Ron Cease was concerned that if the elected executive is insulated from the budget setting and policy making roles, it might make the position unattractive to the type of people that it should be attracting. He said that giving the elected executive the ability to recommend the budget for both the administrative and legislative sides, but leaving it to the legislative body to set, would balance the budget adequately. To give the elected executive the responsibility to recommend a program to the council annually puts that person in the policy making role in terms of proposing what the elected executive believes is important for the year ahead. It would formally stop at that point and the council would be on its own to go ahead with the agenda. He said that he agrees with Larry Derr that the number of councilors should be seven. He said that if the presiding officer, selected by peers, was full time and paid while the other councilors were part time and not compensated, it would probably encourage some dynamic people to run for the council who would work to be selected as presiding officer. Leaving the control in the council for the position would allow for those who become too powerful to be dumped. He said that it offers promise of a good balance.

Mary Tobias said that the Committee should be a little pragmatic given the times in which the charter is being created. If the charter is going to be structured for the real world, there are some things out there that the Committee should not set aside as an argument for being creative. She said that the voters' discontent and the constraints of taxing ability is very present. On the other hand, the highest level of satisfaction in the United States is with the smallest local government--the one that they see

and understand day to day. In most cases, it is the city, and the county in some cases. They understand it, know the key people, and know where to go when they are discontent. She said that she is worried about this part of the charter more than any other. If the Committee tries to create something that the people do not understand, they will be weakening their ability of having the charter passed at all. The commission idea is one which the people would not understand. It is foreign to what they see and experience. She said that when people vote for someone, they expect that person to be a policy maker. It would be politically foolish and damaging to create something that people are not familiar with. She said that she did some straw vote surveys and found that about two out of three of the fifteen people she spoke with said that they do not like Metro and do not want another layer of government. When asked what they know about it, they said that they did not know anything, they did not care, and they want it abolished. The people have been totally unresponsive to an explanation to what Metro is and what it does. She said that "I don't know who they are" is probably the number one thing that people on the street would say. The Committee is really talking about those types of people when they are talking about the passage of the charter. If the voters recognize the government that the Committee is constructing and fits with what they are familiar with, they are more apt to support it. The smaller council makes them more recognizable. She said that she does not favor a council where they select their own presiding officer because it is an identity issue. To elevate the government, the players need to be clear at the time of the election as when they leave office. The people have a right to know what the candidate's position is going to be when they vote for them. If the council is always free to fill that slot, more problems are created. She said that she is uncomfortable with Larry Derr's proposal because it is foreign to the people.

Ron Cease said that there has not been a question of whether or not the selection of the presiding officer should be done by peers. The question has been whether the person should be full time or part time and how to strengthen that position. The election would not be any different than it is now. The problem with electing the presiding officer is that someone could get elected who has name familiarity, but does not work well with the council. People are going to work together in a council and need the comfort of having a presiding officer who they trust. He said that he has historically spoken against reducing the size of the council and is troubled by what it would mean to redistricting. He said that an argument can be made for the smaller size that does not do damage to the representation issue. He said that seven is too small a number and that nine seems more appropriate. Even with nine, the districts would be over 100,000. The whole notion to reduce it is to make it more accountable and manageable. If the councilors are not full time, there is still an issue. The concern with the size is a major issue. To reduce it to the size to where it becomes really manageable, but throw out the representation issue would be a mistake.

Chair Myers said that there are other considerations in the issue of size. Assuming that the Committee will stay with a part time body, one issue is the amount of work that must be divided among the members. If Larry Derr's proposal is adopted, he said that he did not know the ramifications for the amount of work done. There is the size of the districts themselves and the cost of communication and the costs of running for office. There is the issue of manageability and the ability to form consensus.

Judy Carnahan said that another issue is that the Committee is only looking at the current number of constituents that each person represents. With the projected growth for the area and if density levels continue to rise, the region will be approaching an overload of the system. She suggested looking beyond the number that are represented by each councilor currently.

Larry Derr said that the type of representation that a regional councilor would have would be different from a city councilor. By its very nature, the perspective of a member of this body needs to be regional. It cannot be parochial and do the job. Therefore, he is not uncomfortable with large districts. He said that a case can be made that it is a positive factor because it will reduce the

narrower "I need to look at what is good for my district" point of view and force more of a regional perspective. There are major distinctions between east side, west side, and Portland, but a seven or nine person council would not create districts too large to obscure those differences. Regarding workload, previous testimony before the Committee said that the workload, in terms of hours, was heavy. He said that he got the impression that the heavy workload was due to the amount of attention given to detail. He said that his proposal would leave that type of detail to the executive branch who would be open to the possibility of appointing advisory boards or committees as it sees necessary. A lot of the council work would be big picture work--it would be visionary to anticipate future problems.

Matt Hennessee said that he was, and still is, against the vote for planning to be the major focus of the regional government. He said that vote has lead to the Committee being short sighted in its deliberations. By saying that the regional government is primarily a planning and growth management organization, the Committee is getting soft in the service area. It is short sighted for the Committee to look at a smaller number of councilors when there is the recognition that the smaller communities will feel left out of what has always been said to be representative government. When talking about the ability of a council to get along with the executive officer, there needs to be as much opportunity as possible for the executive officer and council to get along. The moment that the powers of authority are increased, the Committee is raising concerns and causing future conflicts to occur. He gave the example of giving budgetary authority to the legislative body and the executive officer staying out of it. He said that the government does not work well with the basis of power divided in that way. He said that he has strong feelings that the council should be the same size that it is currently. Regarding the workload, it may be the case that some council members are paying too much attention to detail, but there is a lot of work to be done if the councilors are going to represent their districts. Anyone sitting at the table will represent his or her district anyway that they have to. He said that he would prefer that the council remain part time with the presiding officer selected by the council. The executive officer should run separately and have the budgetary and administrative authority and deal with the legislative authority as it does now.

Mary Tobias asked Matt Hennessee if he worked under an elected executive officer when he worked for the government.

Matt Hennessee said that he worked under two systems--one where the mayor was selected by the council and one where the mayor was elected directly.

Mary Tobias asked Matt Hennessee if he was the city manager under the mayor that was elected directly.

Matt Hennessee said yes.

Mary Tobias asked if the mayor had direct administrative authority.

Matt Hennessee said no.

Mary Tobias asked if it would have worked well with an elected official having administrative authority with Matt Hennessee's job being the next in line.

Matt Hennessee gave the example of San Diego where there is an elected mayor and an elected full time council and a hired professional city manager. The charter reads that the mayor and council are to be involved with the policy making and not the day to day operations of the city. He said that, based on his experience, the lines get fluid a lot. He said that it gets difficult to carry out the job if the mayor and council take on the administrative functions.

Mary Tobias said that, when she was mayor of Sherwood, there were six months when she acted as city manager because they did not have one. She said that it was a very difficult job, especially dealing with other jurisdictions in the region because no one knew which hat she was wearing and there needed to be a separation. She said that she had to exercise a great deal of self restraint to avoid not taking the job of city manager further once a city manager had been appointed.

Ron Cease said that, in any system, there will be an executive, either appointed or elected, who will perform as a major policy maker. He said that the legislative body is inescapable of doing the budget because of the nature of the beast. On the other hand, the system provides that the legislative body that disposes of the budget. If they do not do a good job, then the question is how to strengthen their ability to perform. They should not be the operational entity because they cannot perform that role well. He said that when the state legislature has been made an operational body with the authority to implement things over time, other than policy or monitoring the system, it has been a mistake because they are not geared to do that. He said that the council and executive officer should be held accountable, in a performance sense, for what they do. The government entity is somewhat removed from the people, so there needs to be a way to make it more visible and accountable. He said that Metro used to have a citizens budget committee and it was useful to bring someone else into the picture and have more visibility. He said that it would be a mistake to try to make the council into something that it cannot effectively be because it cannot substitute as the executive. The council has major responsibilities of appropriating and raising money, passing the budget, and holding the executive accountable. If that is a problem, then the council should be given tools to be more effective.

Matt Hennessee said that he has worked in systems where there were citizens budget committees, which are good, but they are managed. They should not be a charter provision. People come to city hall and let their opinions be known when the issue is in their back yard. He said that he has been with councils that have passed budgets from \$8 million to \$52 million and, during the budget process and on budget passing night, there is not a soul out there except the two or three people who are always out there. He said that the important thing that Ron Cease is getting at is the mechanism in place so that there is accountability. People will not come to budget hearings or the budget passing meeting unless there is something that will get into their back yard.

Ray Phelps asked that the Committee get a legal opinion in regard to downsizing the number of districts. He said that it might encourage a civil rights action in regards to changing the representation and thereby disbanding some minority communities of interest. He said that it is a real problem and concern and he believes strongly that it will be a result if the districts are changed.

Ned Look said that he has long felt that an appointed manager is the way to go, but he has been intrigued by the blending together of the comments so far. He said that he agrees with Ray Phelps and the public viewpoint that representation will be taken away. He said that Glenn Otto's task force wanted to break the number of councilors from an even to an odd number. The argument that the task force got into was whether to eliminate one seat and cut it down to 11 or add a seat and take it to 13. The task force chose to add one to make it 13. It would be difficult to cut seats because of the perception of cutting down representation and because of the turmoil it would cause in redistricting. If there can be a balance of powers and a clear distinction of who is in charge, the discussion that has occurred so far tonight can be put together into something that is acceptable to the Committee and to the public. He said that he would like to further discuss the power of veto to see if it can be eliminated. He said that is authority that should be left to the council. He said that it should be the council's authority to appoint an outside auditor which will report back to the council. He said that he agrees with Ron Cease and Matt Hennessee that the preparation of the budget should remain with the executive officer and the amendment and approval of the budget should remain with the council. The presiding officer should be selected by the peer group and, if possible, there should be a term limitation to provide for a certain amount of rotation. He said that the presiding officer should be visible in the

community. With the projected, and very probable, increase in population, it makes no sense to cut the number of councilors. He said that he has an obligation to the cities in Multnomah County, whom he represents, and has made it clear to them that he represents them and listens to them carefully but is not necessarily, when the Committee gets to the point of voting, be in agreement with them.

Charlie Hales said that a decent number of voters know who the executive officer is and one could make the case that they made a choice of some quality when they elected Rena Cusma and replaced Rick Gustafson. He said that he is concerned that the region is no where near that standard with the Metro councilors because the awareness of the office is so low. He asked how the accountability and visibility of the Metro councilors could be improved. He said that one possible solution might be to increase Metro's functions rather than change the structure.

Larry Derr said that he started out thinking about an at large elected presiding officer for the council and doing away with the executive. A part of that package was to have service provisions coming from another location, such as commissions. If the service provisions are kept under the executive branch with one person at the head, the next thought would be that if the head is appointed by the council, that person is directly accountable to the governing body. This comes around to where it was before that the governing body, through that conduit, has the inclination and obligation to oversee the work of the appointed executive. If the executive is going to be directly accountable for service provision, then it should be separated from the council.

Ned Look asked what role the council would have in monitoring the executive officer in the execution of the services.

Larry Derr said that the only monitoring would be to make sure that the budget that is adopted is followed. It would be the auditing function. The council would also make sure what is being done is consistent with the policy decisions made through the planning process, such as urban growth and land use planning. He said that the role of the governing body does not need to include the way in which the policy is executed--that should be the role of the executive.

Ned Look asked if the executive officer could add or delete services independently of the council.

Larry Derr said that, up to a certain point, the existing services are being expanded and the budget controls that. Beyond that, it is a new service and one of the processes that the Committee already adopted controls it.

Chair Myers asked if Larry Derr's proposal envisions that the legislative body will have the ultimate responsibility to assure that the performance of the government under the executive officer complies with standards of accountancy, is lawful, and is administratively sound. He said that the oversight function of any legislative body comprehends those areas. He asked if this legislative body would have any other responsibilities.

Larry Derr said that he did not think so. He asked how it happens in the state model.

Chair Myers said not very well.

Ron Cease said that it is not that the entity does not have the authority.

Chair Myers said that he is talking about the authority and responsibility. The question of whether it lives up to it is another issue. He wanted to make sure that he was not hearing that the proposal would cut off this body from being ultimately responsible for the oversight of the operation of this government.

Bob Shoemaker said the Committee calls for a performance auditor.

Chair Myers said that he is talking about ultimate responsibility not only with performance but also compliance with law and standards of accountancy.

Bob Shoemaker said that a performance auditor who is an arm of the council could help accomplish that. A performance auditor could get at what happens out there better than the legislature does.

Larry Derr said that it is not his intention to say that the executive branch is totally autonomous and can do anything it wants to. He said that the only reason he hesitated to answer Chair Myers' question is that he is not familiar enough with the processes with which the authority would be exercised to know at what point it starts to become doing the administrative function.

Mary Tobias said that the Committee seems to agree that the council is the policy making body for the government and should have the ultimate seat of responsibility for the big picture of how the government performs its duties. Moving to the day to day operations of the government and the implementation of the policy, if the current model continues where the person who heads that is elected and is a strong enough person to be a true policy maker, and not just shapes policy, and acts autonomously, you have no way to clip that person's wings. Just saying that you are setting the budget will not do it because the authority for carrying out the budget rests with that person. If the administrative person is doing all kinds of things that are not tracking with the policy makers' intent, the policy makers have no way to remove him/her. That person can only be removed at the next election and only if the electorate recognizes that the person was not doing the job right. The person in charge of administration needs to be held accountable for taking things in a direction that is not necessarily the policy of the elected governing body.

Motion: Mary Tobias moved, Ned Look seconded, that the charter state that the council is the policy making body for the government and is the ultimate authority for the performance of the government and applications of standards and compliance with the law.

Ron Cease said that councils and commissions are commonly referred to as policy making boards, not governing boards. He said that does not change the fact that the executive officer also does policy.

Mary Tobias said that she did not want to deal with anything beyond the council.

Ray Phelps said that state audit law requires an annual audit and the municipal auditor must be a certified public accountant and check for appropriate disbursement of money against policy. TSCC is the organization that looks at the budget with regard to how future expenditures comply with state law. He said that Mary Tobias' motion takes policy and administration and makes them the same thing. He said that they are in charge of policy and in seeing that the government runs.

Mary Tobias said that she meant that they are the policy mark and the ultimate, buck stops here place, but that is not day to day administration.

Ray Phelps said that it has been commonly used, understood and applied that way, based on those words. He said that his personal experience at Metro is that the statement causes the problem of the separation of the responsibilities and performance of each individual components of the organization. By that statement, the executive officer has been set off and the policy and administrative responsibilities have been given to the council.

Mary Tobias said that she wants it to be clear that the day to day administration of the organization is

not any part of the intent of the motion.

Ned Look asked that the motion be rephrased to state that.

Chair Myers said that he understood the proposal to be that the charter would make clear that the council was vested with the policy making responsibility and the ultimate responsibility for assuring the compliance of the government to standards of accountancy, law, and performance auditing. Those ultimate responsibilities, in terms of the operational government, rest with the legislative body, where they rest with any government. He said that he did not interpret it to be the day to day administration.

Ray Phelps said that they do not do that in the state legislature.

Larry Derr said that it is another element of the administrative executive branch that has that charge.

Chair Myers asked if Ray Phelps was talking about the Secretary of State.

Ray Phelps said that the equivalent would be to have the legislature do both of those tasks. The council might state that because it is their responsibility to make sure that the outcome occurs, the elements going into that final result melt their policy. In effect, the council is running it.

Chair Myers said that the conception is similar to the relationship between Congress and the operation of the federal executive. These responsibilities are held by the Congress. One may argue that, day to day, Congress is too involved in the operation of the administrative branch, but those functions are carried out by the assistance of the controller, by hearings, and by calling representatives.

Ray Phelps said that it is still the executive's responsibility to see that it happens. He suggested that the current statute be followed which talks about the council being a policy making body and the policies are expressed by ordinances.

Chair Myers said that is what he understood the proposal to be. He asked if the issue that Ray Phelps is raising is the question of the council's role in terms of the functioning of it measured against standards of law, accountancy, and performance.

Ray Phelps said yes. You will invite an intrusion back through the flow until such time that the council feels compelled to run it to insure the outcome. Otherwise, the outcome does not comport with what it should have and some councilors would say that they have not discharged their oath or responsibility and they will increase their authority to see that it does not happen again.

Ron Cease said that you cannot tie down the separation between policy and administration. He said that the current statute is a good way to go. The statute separates the legislative and executive functions with the council as clearly as a legislative body. The executive, even a manager, would perform some policy roles because the manager could suggest or recommend ordinances. It would be very difficult to make a separation between policy and administration. The legislative role includes policy, appropriations, monitoring, and the responsibility of making sure that the executive body performs according to law. If the legislative body would perform that role more effectively than it does, there would not be the problems that there are.

Frank Josselson said that the word *executive* is derived from the word *execute*--to execute the policy or laws established by the legislative branch of government. He said that does not imply that there is no policy making left once the legislative body is done. The implementation requires some significant policy making. Larry Derr's proposal talks about the distinction between the enactment of major policy

and the execution which involves operational policy. The true nature of the executive, which is lacking under the current structure, is to carry out the law and policies that have been established by the legislative branch of government. Obviously, there is a lot of latitude for the executives to make policy decisions, although they are not the major decisions. The major decisions will still occur at the regional legislative level. He said that the motion makes a good point that the major policy making should be done by the legislative branch and the execution of those policies should be by the executive with the recognition that the execution will require operational policy making.

Charlie Hales said that he is not comfortable voting on a motion for the powers and structure of the council without resolving, at the same time, the powers and functions of the executive officer.

Mary Tobias withdrew the motion with Ned Look's agreement.

Charlie Hales said that his proposal does not include the number on the council because he would like to deal with that issue separately. He said that his proposal is similar to the status quo, with an elected executive and elected council, with four responsibilities directly assigned to the council. First, the formulation of regional plans and policies. Second, adoption of the budget. Third, administration of performance and financial auditing. Fourth, appointment of advisory body and commission members.

Mary Tobias asked what Charlie Hales meant by *plans* in the phrase *plans and policies*.

Charlie Hales said plans, policies, and ordinance making authority. Regional framework plan would be an example of a plan. A recycling policy is an example of a policy.

Matt Hennessee said that, in reference to law making, the term *formulate* seems to be different than *adopt*. If the word *formulate* is used rather than *adopt*, it is talking about two different things.

Charlie Hales said that he would restate the first responsibility to state the adoption of regional legislation, plans, and policies.

Ron Cease said that, in order to make it clear that the council is the legislative body, it should be stated and then go on to describe its responsibilities. He asked if it would preclude the executive officer from proposing a plan or policy.

Charlie Hales said that change would be fine. It could be a preamble statement saying that the council is the legislative body for the regional government and the legislative body would include the four responsibilities. The responsibilities are additions or amplifications of the conventional legislative authority. The planning authority needs to be clearly vested in the legislative government. The budget responsibility is a conventional budget process by where the executive department proposes and the council disposes by the adoption of a budget. He said that he likes the idea of having an audit function in the charter without going all the way to elect an auditor. The entity that adopts the budget should also carry out the auditing function. The council needs to appoint the advisory bodies and commission members, including those that the Committee has created. He said that it would be excessive to invest all appointment authority in the executive officer. He said that the executive officer would have the ability to propose policy.

Chair Myers asked if Charlie Hales felt the same way if the appointments were done by the executive and subject to council confirmation.

Charlie Hales said that he would feel less so, but it should remain in the council.

Ron Cease said that, in reference to operational committees, the council should be involved at least with confirmation and the executive officer should not have complete authority over the appointments. However, it is questionable to exclude the executive officer completely.

Charlie Hales said that he understood Ron Cease's point. He said that his experience with confirmations tells him that it is very rare when they are interactive. It is really the executive officer's call and the legislative body is either approving or denying the executive's call.

Ron Cease said that there is always negotiation and discussion going on before the proposals get to the body. Just looking at what the body is doing will not give a true picture of what is happening. He said that there are times when the legislative body is not doing its job effectively for the confirmation.

Bob Shoemaker suggested breaking that out as a separate question.

Larry Derr asked if he understood correctly that the legislative body would be responsible for the formation and adoption of policies and plans.

Charlie Hales said that he would state it as *adoption* with the understanding that, in some cases, it would be formulation and, in other cases, it would be approval of the formulation created by the regional vision body that the Committee has suggested or a policy of the administration.

Larry Derr said that the administration can always propose. He said that the key to his initial idea was that the legislative branch would have the authority and capacity to formulate as well as adopt plans and policies. It should not be dependent on the executive branch to generate plans, which is why *formulation* is a key word.

Matt Hennessee said that he argued against formulation being in there because nothing prohibits the legislative body from making recommendations to the administration. The fact of the matter is that if the issue does not come back to the legislative body the way that they want it, they will not vote for it. The belief is that there is a great deal of negotiation and discussion that goes on between the executive and legislative branches when it comes to the formulation of policy. He said that he views the motion as saying, regardless of who formulates it, the executive does not have the right to adopt anything—it is the legislative body that has the right of adoption.

Larry Derr said that Matt Hennessee's concept is one in which policies are staffed, generated, formulated and initiated on the executive side with the adoption or rejection on the legislative side. He said that he wants to avoid that type of concept. He does not want that to be the only way in which policy making can happen. The governing body has to have, within its own control, the ability to initiate policies that it ultimately adopts.

Matt Hennessee said that he does not see anywhere in the provision that would limit the legislative body from making suggestions of any kind.

Larry Derr said that the legislative body has the ability to suggest to the administrative branch that they can do their work and generate something for the legislative branch to look at.

Matt Hennessee said that the group is volunteer and part time. He said that there is nothing in Charlie Hale's proposal prohibiting the legislative body from doing its deal when it comes to formulation of the policy. It still says that it has plan approval when it comes to adoption.

Ron Cease said that if it is legislative, it has the ability to formulate.

Charlie Hales said that he would rather leave it silent on that issue.

Bob Shoemaker said that if the charter is silent on that for the executive side, the responsibility falls to the legislative side.

Charlie Hales proposed three responsibilities for the executive officer. First, execution of regional policy and legislation as established by the council. Second, administration of service functions assigned to Metro by the charter or subsequently by the council according to the charter. Three, expenditure of the funds and hiring of the staff and other routine administrative responsibilities. He said that the questions of who appoints advisory body and commission members and who hires the council staff are questions that are not answered in the proposal.

Ron Cease said that it would be better to generalize and amplify the legislative and executive roles. He said that he is concerned that the Committee is being too specific and working its way in too a box where some things could be left out. On the appointment side, the heads of the departments should probably be confirmed by the council. The executive should have the ability to appoint all other staff under the policies and personnel rules adopted by the council. The role of the executive is to carry out policy, but the policies may not only be coming from the council.

Mary Tobias asked for an explanation of the difference between the executive responsibility of executing regional policy and legislation as established by the council and the administration of service functions assigned to Metro by the charter or subsequently by the council according to the charter.

Charlie Hales said that the first is the execution of the policy. He gave the example of the regional governing body adopting an environmental policy which requires a public relation campaign and phosphate bans. The second responsibility is the administration of service functions which would mean that the regional government has a solid waste department. He said that he is trying to ratify what the current regional government is with some minor changes.

Mary Tobias said that if having a service function is a policy of the district, and if the policy is being executed, it is being carried through. She said that it seems to be an unnecessary redundancy.

Charlie Hales said that he thinks there is a difference, but he does not know if it needs to be articulated in the charter in this way or not. There is a difference between telling the administrative arm to carry out a policy and go administer this program.

Ron Cease asked why not execute the law. He said that the kinds of policy that Charlie Hales is talking about will be done by ordinance or resolution--it is all law. He said that the main responsibility of the executive is to execute the law.

Charlie Hales said that he wants to articulate it in the charter because of the concern that the council has, in the past, spent too much time with administrative detail that, in many people's opinions, they should not have dealt with. He gave the example of the Convention Center glassware as a reason to clearly state the responsibility of the administrative arm. He said that the charter should clearly state that the council should make policy and not deal with administration.

Motion:

Charlie Hales moved, Bob Shoemaker seconded, that the charter include a preamble statement saying that the council is the legislative body for the regional government. The charter would also state the three responsibilities of the legislative body--adoption of regional plans and policies; adoption of the budget; and administration of performance and financial auditing.

Larry Derr asked if one of the three responsibilities of the executive officer was the formulation of the budget, as opposed to the adoption.

Charlie Hales said that proposal of the annual budget should be added as a fourth responsibility of the executive officer.

Larry Derr said that the formulation of policy should be in the legislative responsibilities since the formulation and adoption of the budget are both being dealt with. If they are not parallel, the Committee is telegraphing what is meant.

Ron Cease asked if there would be legislative and executive interaction.

Charlie Hales said yes.

Larry Derr asked Ray Phelps if the language in the motion regarding performance and financial audits runs afoul with the notion of when to stop auditing and start controlling because of a responsibility or is it purely oversight.

Ray Phelps said that the responsibility would be fine since the practice is being done now.

Bob Shoemaker asked if the notion forecloses the ability to have an elected performance auditor.

Charlie Hales said that he envisioned it would. He said that the audit function would be invested in the council and the council would contract out the function by hiring outside auditors. He said that he cannot justify electing another auditor.

Bob Shoemaker said that he agrees with Charlie Hales and wanted it to be clear. He said that it seems appropriate to him because there is a clear separation between the legislative and administrative bodies. Having the audit function in the legislative side protects against manipulation. There will not be any auditing of the legislative side by the same auditors, but he said that he did not know if there needed to be.

Matt Hennessee asked how that responsibility is worded.

Charlie Hales said that it reads *the administration of performance and financial auditing*.

Ron Cease asked if it would be better to refer to the oversight function and refer to such things as the performance and financial audit functions. He said that the broad issue is oversight.

Charlie Hales said that he would rather speak clearly and provide for the auditing function rather than a general oversight function.

Ron Cease said that both are needed.

Chair Myers said that he thought that the intention is to capture the notion that the legislative body has the ultimate authority in respect to the operation of the government measured by accountancy, law, efficiency, and performance. How they carry it out would be their decision unless it is spelled out or is law, such as the case with financial auditing.

Ron Cease said that he understood that the Committee wanted it to be clear that the legislative body are required to provide adequate oversight.

Larry Derr asked why the elected executive was not responsible for that. If not, why elect the person?

Ron Cease said that the body that is making the law and has the appropriating responsibility also has the responsibility to make sure that the oversight function is performed.

Larry Derr said that the executive officer has the responsibility to see that the funds that were appropriated are being spent as appropriated. He said that he understands that the auditing function does that. He said that he is concerned that, when the next step is taken, the line is crossed between the legislative and the executive bodies.

Chair Myers asked what the next step would be.

Larry Derr said that the legislature, by being responsible through the oversight function, makes sure that the executive function is lawful and must assume responsibility for everything that the executive does and, thus, becomes the executive.

Charlie Hales said that is beyond the audit function.

Chair Myers said that the legislative body can assess the quality of the performance of the administrative body.

Ray Phelps suggested that it be stated that way instead of getting into the additional words which, in reality and application, is exactly what has been going on at Metro for the last eight years.

Chair Myers said that he is not hung up on the specific formulation at this point. He said that he is talking conceptually about who is responsible, to assure that the government operates according to standards of accounting and law.

Ray Phelps said that the executive and legislative parties are ultimately responsible.

Chair Myers said that the executive should not be left in sole control of judging that question.

Ray Phelps said no, but the executive should be an equal partner and free to do the job correctly as he/she sees fit. The language invites an intrusion.

Charlie Hales said that the Committee is assigning the execution of policy of the administration of services to the executive, which creates a balance.

Ray Phelps said that he would not have a problem with the motion if performance and financial auditing are defined by the terms used by professionals as a means to accomplish the product that Charlie Hales described. He said that Chair Myers goes beyond that point.

Charlie Hales said that it would be better, in some cases, to have a not so specific statement which is why he came up with language for the administration of the performance and fiscal auditing.

Frank Josselson asked if Charlie Hales' proposed structure differs from existing metropolitan government. If so, how?

Charlie Hales said that he would expect it to differ from the status quo in the involvement of the council in routine operations. The bifurcation in the assignment of responsibilities would be more clear. Secondly, there would be a more conventional process by which the budget is proposed by the administration and adopted by the legislative body.

Frank Josselson said that he thought that is the way that it is done now.

Charlie Hales said that he was under the impression that there is a budget committee within the council that spends a great deal of time on the formulation of the budget. He asked to what extent the council is involved in the budget formulation now.

Ray Phelps said that the council writes the guidelines under which they would like the executive officer to follow, which is similar to the separation process. The executive officer then responds or not. The council then judges it and determines whether or not the funds are available. The executive officer cannot propose a tax increase, but can propose a rate increase or service charge. He said that it is a fairly typical separation budget process.

Charlie Hales said that the answer to Frank Josselson's question is not much difference.

Matt Hennessee said that the proposal was different in that it includes performance auditing.

Ray Phelps said that the council has been doing performance auditing for the last couple years so even that is on track with the status quo.

Frank Josselson asked what the difference is between Charlie Hales' proposal and the current structure.

Charlie Hales said that the difference is the clarity of the assignment, that the administration of service functions resides in the executive branch. He said that it currently appears to leak over to the council to a greater extent than he would like to see. That is, the involvement of council subcommittees in executive administrative processes.

Frank Josselson said that he was prepared to go through with the construct tonight rather than what he has been proposing from the beginning--the commission form where services are spun off--because the construct that Larry Derr laid out at the beginning of the meeting does effectuate a distinct separation between policy making, planning and service delivery. The danger which he sees himself being led into, given the course of the discussion, is the model which he vigorously opposed and is the same as the one that he perceived at the time of his original proposal. He said that he sees no difference between what is being proposed and what the region currently has. He said that because he perceives the current structure as very poor government, he opposes the motion.

Ray Phelps said that he might have mislead the Committee. When he looks at the expenditure of funds, he intends that it means once those funds are budgeted and the items for which they have been allocated are approved, the executive can disperse the funds accordingly without having to cycle back through multi-approval processes. He said that would be different than the current government.

Chair Myers said that what has been described so far is not inconsistent with what Larry Derr has described, but does not yet comprehend it. He said that he does not know that it is intended to exclude it. He said that he is not sure that what is on the table now does not have to be proposed in any event.

Larry Derr said that he thinks Chair Myers statement is accurate, but he is concerned that it would be an easy place to stop. He said that if the Committee plans to stop there, he will not support it.

Chair Myers said that if what he said is true, it makes sense to adopt what the Committee will have to deal with anyway on the legislative side and then pick up Larry Derr's proposal before turning to the executive branch.

Larry Derr said that the place for the parting of the ways under his proposal would be the motion to grant all the service provision functions to the executive without adding provisions on the legislative side to make it clear that they have the staff, budget, revenue, and ability to spend those funds without having to go back to the executive, just as the executive should not have to go back to the legislative body to spend executive budgeted funds. He said that is different because, in a sense, it has a service provision, if planning and policy making are taken as a service, solely within the legislative side.

Ron Cease asked if, for practical purposes, the legislative budget is accepted.

Ray Phelps said yes. The executive accepts that budget on the condition that the council accepts hers.

Ron Cease asked, at the state level, does the legislative budget go to the Governor at all.

Chair Myers said yes.

Charlie Hales said that his proposal is trying to put the conventional, or traditional, budget requirements into play and see if that is the starting point. He said that he agrees that the Committee will need to decide how much further they should go in each case.

Bob Shoemaker said that the Senate's staff is directly responsible to the Senate. The House of Representatives' staff is part of the administrative arm of government. There is a big difference between the two. The Senate is more in control of who works for them than the House side is. He said that he prefers the Senate model.

Ron Cease said that the legislative body needs to be as independent as possible. On the other hand, if you look at the larger issue of expenditure of money, it does not make sense to say that the legislative budget should not be reviewed in balance with everything else as the budget for running the government. There needs to be a review in total. He asked if Larry Derr assumed that the budget for the planning function and vision be in the staff of the legislature.

Larry Derr said yes, the staff and administration would be under the legislature.

Charlie Hales said that if the budget is adopted by the council, then all components of the budget are adopted by the council.

Ray Phelps said that all components of the budget, with the exception of the small piece for the council, are executed by the executive.

Ron Cease said that Larry Derr is suggesting that the staff for the planning function and operation of the planning function would be under the direction of the council.

Chair Myers said that what has been laid out so far seeks to resolve matters which need to be resolved in any event. What Larry Derr is proposing is a further modification or elaboration of this, which can stand as a discrete question and the fate of which may affect votes of members as to other matters. If the Committee agrees with the motion on the floor, the Committee should then take up Larry Derr's proposal. Chair Myers said that he would like to also resolve the confirmation authority of the body. He said that he would prefer not to have the council be in the position of appointing bodies. He suggested that the legislative body be vested with the confirmation authority over certain boards and level of administration.

Ray Phelps said that the appointment to advisory bodies and/or boards could be by the executive with

confirmation by the council. The hire and fire authority could be vested in the executive with the confirmation of hiring by the council at the department head level. He said that the deputy executive officer should not be required to be confirmed because it is now the circumstance and creates a difficult situation. Currently, the general counsel is hired by the executive and confirmed by the council. The executive may dismiss the general counsel or a vote of seven councilors could also dismiss the Counsel. He said that issue should be cured.

Chair Myers said that the general counsel is a tricky position because it serves both parts of the government. He said that, as long as there is the same general counsel advising the legislative and executive branches, the legislative body should have confirmation authority. He said that the dismissal question is an issue, but the Committee should not deal with it now because it muddies the waters.

Charlie Hales said that he would be willing to add the council confirmation authority for appointments to advisory bodies and boards and department heads to the motion.

Ray Phelps asked if the deputy executive officer would be excluded from confirmation.

Charlie Hales said no.

Frank Josselson said that what is being proposed is an at-large, regionally elected official to carry out the service delivery functions of the government.

Chair Myers said that is not part of this motion. It is part of the next motion.

Frank Josselson said that part of this motion is for the council to have the authority of confirmation for executive appointments. He said that he is opposed to that because, if there is an at-large elected executive charged with the responsibility to execute the laws and policies of the district, there is no reason to restrict the executive with the advise and consent of the legislative body. He said that the Committee has complained when he has suggested restricting the government and now the Committee is suggesting that the person that is delivering the services will be restricted by the council in his/her appointments as to who runs the departments. He said that the council should not be involved--that is what the voters and elected executive are for.

Chair Myers said that the effort to help assure a high quality appointment by the executive is a legitimate legislative function.

Frank Josselson said that this is not the United States government. It is a unit of government with three service delivery functions and one major planning function. The federal model is an inappropriate model for what is being attempted.

Chair Myers said that the model is not restricted to the federal government. He asked if there was confirmation at the local level.

Matt Hennessee said that it is not unusual at the local level.

Mary Tobias said that it is not this process.

Frank Josselson asked for an example of a local government that has an elected executive officer.

Janet Whitfield said that King County, Snohomish County, and Pierce County in Washington have elected executive officers.

Chair Myers suggested not including it in the motion and dealing with it as a separate issue.

Mary Tobias said that it seems that the Committee is making this too complicated. She said that she agrees with Frank Josselson that the Committee is not creating a federal government nor is it creating a state legislature. The Committee is creating a local government. It may not be a local government like a city or county, but it is a local government. It makes no sense to attempt to create a legislature that will represent over half of the population of the state. It makes sense to create a regional local government that functions in concert with existing local governments to carry out the needs of half of the population of the state. What the Committee wants is a regional council that will convene to set regional policy and will adopt a budget to carry that policy out. It is the policy set by the charter or the policy that is required in the next 250 years to deal with things that the Committee does not envision.

Charlie Hales said that he is trying to clarify, pretty closely, the existing structure of Metro. He said that he only sees two choices in the construct of the government. One is the council formulation and the other is a structure that currently exists. The other reason he would argue to include confirmation as a responsibility of the council is because he does not want to invest all of the populist function of the government in the RPAC. There ought to be some role for the council members. The council members ought to be able to say when an appointment is not acceptable. He said that he is not willing to invest all the grassroots contact in RPAC. Having confirmation authority with the council is a populist mechanism.

Larry Derr asked if there is no intent, by adopting the motion, the Committee is limiting the legislative authority to these items. It is saying that, at a minimum, these are the authorities and functions of the regional legislative body.

Charlie Hales said that he would not say that the Committee is not limiting it. By saying that the council is being vested with the administration of the performance and financial audit, it is limiting in a way.

Chair Myers said that there will be a general description of legislative power in the council. He said that the vote on the motion will not preclude Larry Derr's proposal. If this motion is adopted, the confirmation power and Larry Derr's proposal will be addressed before the executive branch is addressed.

Vote on the motion:

Judy Carnahan, Ron Cease, Larry Derr, Jon Egge, Charlie Hales, Matt Hennessee, Ned Look, Ray Phelps, Bob Shoemaker, Mary Tobias, Mimi Urbigkeit, Norm Wyers, and Chair Myers voted aye. Frank Josselson abstained. John Meek and Wes Myllenbeck were absent. The vote was 13 ayes and 1 abstention and the motion passed.

Chair Myers said that he would like to postpone the discussion regarding Larry Derr's proposal until after and if Frank Josselson, Jon Egge, and Mimi Urbigkeit return and are able to participate in the discussion. He said that he realizes that it seems awkward since all the topics build on each other and are incremental.

Mary Tobias said that she would like to be clear about what is occurring. She asked if the three members left because of the way that the last vote went and they are in objection to the action taken--although two members supported it--and, therefore, the Committee should just proceed as if they had other business away from this body as the Committee does when other members cannot attend a meeting. She said that she does not understand.

Correction to the April 2, 1992 minutes. See correction below.

Charlie Hales said that he is also confused.

Matt Hennessee said that he agrees with Mary Tobias. He said that he respects and appreciates that there are times when members do not win around the table. Everyone has been in that seat. He said that he respects Chair Myers responsibility to try to hold the group together. He said that the Committee also has a responsibility to continue with the work.

Chair Myers asked the group to move on to the confirmation authority of the legislative body.

Ron Cease proposed that the legislative body have confirmation authority over board and commission appointments and department head appointments made by the executive officer. He said that the motion does not include advisory bodies. Executive appointments to advisory bodies should not have to be second guessed by the council.

Ray Phelps said that he would like to take boards and commissions as one question and department heads as a second question. He agrees with taking advisory groups out.

Motion: Ron Cease moved, Ray Phelps seconded, that the charter provide that the executive officer appoint boards and commissions, subject to council confirmation. Advisory boards and commissions do not need council confirmation.

Mary Tobias said that she understands the motion if the executive is elected. She asked if the ~~executive appointments~~ would still make the appointments if the executive officer is appointed.

Ron Cease said that is an issue.

Chair Myers said that the motion only goes to confirmation. It stands apart from where the ultimate appointment authority is vested.

Larry Derr said that the motion states that the executive makes the appointments.

Chair Myers said that it just focuses on the confirmation authority of the council.

Ron Cease said that if there is an elected executive officer, the appointments would be made there and the confirmation would be by the council if the motion passes. If there is an appointed manager, the manager should probably not have all the appointment authority.

Chair Myers said that the motion could be free-standing by just focusing on what the legislative body's confirmation authority was. The question of who appointed could be resolved by the elected executive or perhaps the presiding officer if there is not an elected executive. Either way, the motion deals with what the council does to confirm.

Mary Tobias asked why advisory boards were not included.

Ron Cease said that advisory boards cover a lot--they can be big or little. As long as they are advisory, the executive officer ought to be able to make appointments.

Charlie Hales said that advisory boards will generally be advisory to the council. The motion would make it so that they do not have to confirm their own people.

Mary Tobias said that she agrees with Judie Hammerstad's statement that everyone is most

comfortable with the model within which they have worked. If the council is in a position of giving a formal action or notice that they are aware that an advisory board is in existence and if there is confirmation, then everyone is more aware of what the body is there for. It helps to restrain the desire to form groups.

Ron Cease said that it is the legislative model. He said that the confirmation process would be carried too far when talking about advisory committees. A particular advisory committee may be very influential and play a strong role, but advice is quite different than a board that deals with policy or operation or regulations. Those boards are performing a major operation of the government. The advisory can be very important, but does not directly affect the operations of the system.

Janet Whitfield asked where the RPAC falls. Is it a board or is it advisory?

Charlie Hales said that it is separately provided for in the charter.

Matt Hennessee said that he is intrigued by the advisory board being separated only because the number of citizen boards and commissions tend to proliferate in order to deal with issues and to get people involved in the process. Boards are never told when their job is over. If the council is consenting on advisory boards, there will be a proliferation of advisory boards and it is difficult to get rid of them. Without the confirmation, it is easier to tell the group that their work is complete.

Mary Tobias asked why there should be a distinction at this level of government between a confirmation and an approval of appointment.

Ron Cease said that it is the same thing.

Mary Tobias said that she does not think they are the same. In local government, there is a broad campaign asking people to apply for the ad hoc committees and applications come in from the citizens. The council looks at those applications, reviews them, selects the appointee, and then there is an up and down vote. As a rule, people are not called in to testify or go through a lengthy process.

Ron Cease said that he is not assuming that it is a lengthy process. It really means that the council has to accept the appointments. He said that he is not talking about a confirmation hearing.

Mary Tobias said that she would rather use the term *approval*.

Friendly amendment to the motion: Ron Cease amended the motion to replace *confirmation* with *approval*.

Judy Carnahan asked if the Committee would vote on the advisory boards later.

Charlie Hales said that he would assume that the charter could be left silent on that issue.

Chair Myers said that it could be raised as a further separation.

Larry Derr asked what the boards and commissions are. He said that he would rather worry about what they are and who is going to appoint them before worrying about who is going to confirm the appointment.

Ray Phelps said that they include the MERC, Solid Waste Rate Committee, different transportation committees like TPACT, and Tri-Met if Tri-Met comes under Metro.

Larry Derr said that it would run the gamut from groups that are basically advisory to something like Tri-Met. Implicit in the motion is the fact that the governing body would not be making those appointments.

Ray Phelps said that someone would have to designate the appointments and the members of the other governing body would have to agree regardless of how they are appointed.

Ron Cease said that it is a middle ground because there are people who say that they want the council to make the appointments and others who would be comfortable with the executive officer making the appointments with no confirmation. He said that the role of the executive and legislative is that no part of government ought to be allowed to operate without some oversight and review by some other piece or by the voters. It is common to have the executive make the appointment to boards and commissions, but councils some times do that. He said that he excluded advisory because there are different kinds which serve different people. Commissions like the MERC, Boundary Commission, or Tri-Met should have confirmation by the council if appointment is made by the executive.

Ray Phelps said that it has been his observation that the interplay between the appointing person and the council creates a bind so that, down the line when choices are made, there is not a yours and mine setup. It might come down to being a lousy choice for appointment, but it is not "your appointment" or "my appointment". It gets at the issue quicker and closer than at the personality. It tends to dilute or remove, to a great degree, the personality, once there is the designation and acceptance. It also causes the appointing person to sharpen up the appointments and still get the kind of person that he/she wants. Often, you do not get who you want and that is not necessarily a bad thing. You would not move forward a person that will get clobbered because you do not want to embarrass them.

Matt Hennessee said that his experience is that an elected executive would have the right to make the appointments. An appointed executive should not have the same authority. There is a lot of discussion that goes on between the legislative body and the elected executive before the appointments are made.

Ron Cease said that if there is a concern about whether advisory should be included or not, it could be dealt with in the next motion. The major question is confirmation.

Mary Tobias asked if it would make sense, since the Committee is probably not ready to call out a lot of specific boards and commissions, to have the motion go a little further and say *approve the appointment of boards and commissions, unless specific boards are addressed in another matter*. The motion leans toward the generic board and commission that maybe have not been thought of yet. The separate process for specific commissions, such as RPAC or MERC, may come into being as the charter is shaped.

Chair Myers asked if Mary Tobias meant that it would apply to boards and commissions except as otherwise provided by the charter.

Mary Tobias said that is correct.

Friendly amendment to the motion:

Ron Cease agreed to amend the motion to include *unless otherwise addressed in the charter*.

Ray Phelps said that it might create a comfort level and to get around the business of boards and commissions and advisory groups is to say that it would apply to those boards and commissions established by ordinance. Advisory bodies will not be established by ordinance. If it is worth the effort to create an ordinance to prescribe it by law, there is some reasonable expectation to have a certain amount of operation authority.

Janet Whitfield asked what would happen if Metro took over the Boundary Commission. It would not be by an ordinance, but a vote of the people, if it were to stay the way that it is.

Ray Phelps said that the operation of it would still have to be done by ordinance.

Bob Shoemaker said that the charter may embody some commissions. To limit the motion to commissions created by ordinance would not be enough. Commissions created by the charter would also need to be included.

Chair Myers said that it may be that the charter ultimately will separately address the issue of confirmation when it specifies the creation of bodies.

Friendly amendment to the motion:

Ron Cease agreed to amend the motion to read: The charter will provide that the executive officer appoint the boards and commissions *provided for by ordinance or in the charter*, subject to council approval, unless otherwise addressed in the charter.

Vote on the motion:

Judy Carnahan, Ron Cease, Larry Derr, Jon Egge, Charlie Hales, Matt Hennessee, Ned Look, Ray Phelps, Bob Shoemaker, Mary Tobias, Norm Wyers, and Chair Myers voted yes. Frank Josselson abstained. John Meek, Wes Myllenbeck, and Mimi Urbigkeit were absent. The vote was 12 ayes and 1 abstention and the motion passed.

Motion:

Judy Carnahan moved, Ray Phelps seconded, that persons appointed to advisory bodies be confirmed by the council.

Judy Carnahan said that the Committee has spent a great deal of time discussing government dragging things on whether they are needed or not, which is a reason for sunset clauses. When an advisory committee is set up, it ought to be stated clearly what the advisory committee is for and how long it is expected to be needed. Otherwise, things just continue.

Mary Tobias agreed.

Matt Hennessee asked if a sunset clause was part of the motion.

Judy Carnahan said that it is not a part of the motion. It is a reason for the motion. She said that experience has taught her that things can get out of hand and drag on forever unless the purpose of the committee is very clearly defined in the beginning. The people taking on the responsibility should also know what is expected of them.

Matt Hennessee said that the motion does not embody the issues that he finds attractive.

Judy Carnahan said when she brought up the possibility of the motion earlier, that was her specific thinking. She said that it would be agreeable if someone wanted to reword the motion so that if the formation of any advisory committees were proposed, the proposed advisory committee would go before the council for a vote of approval.

Chair Myers asked if the creation of the advisory committee itself would get approval.

Judy Carnahan said yes.

Jon Egge said that it sounds as if it contemplates that the executive is going to appoint advisory committees and then the council is going to confirm that. He said that he thought the council would appoint advisory committees.

Ron Cease said that there are examples where it happens in both cases. He said that a lot of the advisory bodies are appointed by the council and so be it. Confirmation would be redundant because they are making the appointment. He said that he can perceive of a situation where a department

would like to appoint a citizen's committee. He said that they should not have to go through the confirmation process to do that.

Ray Phelps said that the neighborhood improvement groups are appointed and have council approval of them. The council creates those bodies and they recommend the uses of a certain portion of the tipping fees for the betterment of the community. He said it is a body that is solely generated by the council, but the entire council signs off on it although only certain councilors from the affected area will propose who might serve. The executive does not get into it.

Friendly amendment to the motion: Judy Carnahan agreed to substitute the following for the original motion: The establishment of advisory committees must be approved by the council.

Bob Shoemaker asked why that is needed. He said that if the Committee is trying to get after advisory committees hanging around forever, maybe there should be a motion stating that no advisory committee will last no longer than a year without confirmation by the council. It would have an automatic sunset. If it is a commission that will go on for a while, it would go to the council.

Mary Tobias said that no committees, including advisory committees, are free. They all require an expenditure of funds. She said that it would be unlikely for a department of the government to say that they want an advisory committee without the advisory committee having a substantive job to do. People working in the departments will not have time to sit around and think of having advisory committees for the fun of it. The council could be called upon to sign off on the creation of advisory committees and, at that time, call for the mission to be outlined and a sunset clause evoked. The government is not going to go around and create advisory bodies just for the fun. They are going to do it because there is a substantive job to be done.

Bob Shoemaker said that a department might want an advisory body to help the executive officer implement a policy that was created by the council. He said that he is disinclined to ask the advisory committee to go back to the council for it to decide whether it makes sense or whether the people are right. That responsibility has been given to the executive. A sunset on any advisory committee, absent council approval, would protect against abuse.

Mary Tobias asked where TPAC, for Region 2040, would fall. She asked if it would be council confirmation as a board or commission or does it fall under the executive for carrying it out. It is not created by ordinance--it was carried forward by RUGGO's.

Betsy Bergstein, Metro staff, said that there is a TPAC connected to JPACT. It was advertised for and appointed by the council.

Charlie Hales said that the more he listens, the farther he thinks the Committee has gone out on a limb. It would be better to be silent on the issue of advisory committees. He said that he likes the dividing line of being created by ordinance or mandated by charter because that means that it is real and has greater potential authority than any advisory committee.

Judy Carnahan said that she disagrees. She said that it is important in the formation of the charter to address such issues. It would make sure that communication be enhanced, guarantee that there be better control of the budget, and better controls on the life of advisory committees. She said that people would be more willing to participate in advisory committees if they knew that there was a beginning and an end.

Vote on the motion: Judy Carnahan, Ray Phelps, Mary Tobias, and Chair Myers voted aye. Ron Cease, Larry Derr, Jon Egge, Charlie Hales, Matt Hennessee, Frank Josselson, Ned Look, Bob Shoemaker, and Norm Wyers voted nay. John Meek, Wes Myllenbeck, and

Mimi Urbigkeit were absent. The vote was 4 ayes and 9 nays and the motion failed.

Ray Phelps suggested that there be no confirmation of the appointment of the department heads.

Chair Myers said that, unless there is a motion to include it, it will be excluded.

Ron Cease asked for Ray Phelps' reasoning.

Ray Phelps said that Frank Josselson makes a good point that there is an elected or hired executive and that person is brought in under a contract with certain elements of performance that will grade their ability, either through a vote or by performance appraisal, to continue their employment. To the fullest extent possible, that individual banking his/her future employment on his/her ability to pull the job together should also have all the ability to rise or fall with the people that they bring in. If you have all the other confirmation processes going on, the individual can be severely handicapped if the approval occurs at the end of the hiring stage. The individual would not be given the best terms to perform. He said that he has seen that used and abused at Metro several times.

Ron Cease said that the Committee is arguing that there needs to be a closer relationship between the executive and the council. Asking for confirmation by the legislative body of the major appointments, recognizing that those people make policy, makes sense. He said that there does not have to be approval to remove those people. The initial confirmation is useful.

Ray Phelps said that the budget is a more subtle methodology of approving commissions. The council has the ultimate authority over the budget. He said that it is possible to implement something in budget process that may not be able to be accomplished. If the appointing person is running rough shot over the council, just wait for the budget cycle. In the meantime, if there is performance and financial auditing and the executive can appoint the department heads, then the executive should have the full opportunity to rise or fall on their own.

Mary Tobias said that she endorses Frank Josselson's earlier statement on this topic.

Chair Myers asked the Committee to return to the proposal that Larry Derr outlined.

Larry Derr summarized, given the direction that the Committee has gone and the focus on narrow issues, what his proposal now means. He said that his proposal was a broad look at putting some functions in the legislative side of things and some functions on the executive side of things. In so doing, it further empowers the existing executive structure. Inherent in that was the concept of separating not only the adoption of the planning documents, but also the creation. He said that area seems to be where there is the strongest difference of opinion. There were several questions raised about how it would functionally work. He said that his proposal looks like what Charlie Hales' motion on the face of it, which is an approval of the existing structure. He said that he totally opposes the existing structure. If you eliminate any possibility of interplay between the governing body and the executive body getting in the way of doing long range planning and policy making, then there is nothing wrong with having a strong executive. The executive will be carrying out service provision functions with respect to policy, such as enforcement issues. The staff, budget authority and creation and adoption of the project of the planning functions would be on the legislative side. He said that he was asked if he means more than land use planning and other planning that are pure planning or things that are functional planning where the regional government also provides the service that it is planning for. He said that there could be a distinction drawn there because you could create a situation where, in one agency, there would be a duplication of planning functions. If there is a separation and the planning for the carrying out of a function was under the governing body, but the execution would be under the executive and they would have to do some planning functions on their own, it would not make sense. In the case of Tri-Met as a separate body, Metro is only doing pure planning and is not carrying out the implementation of the transportation plan. He said the current

Tri-Met function and the Regional Framework Plan are the kinds of things that would not be under the administrative at all. They would be under the legislative side.

Frank Josselson said that Ron Cease earlier said he would like to bring the executive and the council in to a closer relationship. He said that is the exact opposite of what he would like to see.

Ron Cease said that there is some sense that the council is too weak, does not have enough authority, and that the council and executive do not work closely enough together. For a long time, the council did not have a staff of its own and were dependent on the staff to come in from the executive branch, which was very frustrating. The staff was trying to respond to the council, executive, and department heads at the same time. Now, the council has their own staff. He said that performance auditing, oversight, and accountability does not apply, in most cases, directly to the legislative body. Another bureaucracy is created under the legislative body outside of the control of anyone, but the council. He said that he agrees with Larry Derr in that you end up with the function and activity that is partly in the council and partly in the executive. It gets back to the question of bifurcating the planning from functions and operations. He said that he does not think that it could be done--it is not a pure science. Essentially, beyond the technical aspect, it is a political process. He asked if there were any examples of where planning has been completely separated from the operations and functions.

Charlie Hales said that Larry Derr's suggestion has some merit. He said that there is not an example and it is different. It is different because it does not talk about planning for a function or service that Metro provides--it is regional land use planning. There is not going to be the traditional governmental planning and administration for planning issues such as transportation planning. Planning will be done at Metro and the administration is going to be done by other agencies, mainly local governments. Metro is never going to get in the position of doing zoning for Beaverton. The Committee has vested the creation of the Future Vision and the formulation and adoption of the Regional Framework Plan in the council, so it makes some sense to have staff of the council held closely by the council rather than be under the administrative structure primarily to administrate services.

Ron Cease said that, if you think it through, legislative bodies are given staffs to handle the legislative process and oversight. The proposal would give the legislative branch the staff to perform the planning function, which is both a legislative and executive function.

Larry Derr said that it is much closer to the legislative side than the executive because law is being adopted.

Charlie Hales said that it is like the regional planning commission and having the planning staff report to the planning commission.

Jon Egge said that the planning commission, in this case, happens to be the elected regional body.

Frank Josselson said that it is unique. It needs to be something unique to avoid the consequences of growth that has destroyed the major cities on the West Coast.

Mary Tobias said that she does not like that example because it is erroneous and is being accepted to be fact.

Jon Egge said that it has not been disproven to be fact. There is no bigger issue, in terms of policy for this region, than the issue of growth management. It is logical to have the elected governing body do that work. There is no logic at all to have an elected, or appointed, executive undertake to do any function of the planning.

Bob Shoemaker said that if you want to prevent the executive from dominating the council, there is some concern that is what we have today. If you want to allow domination, let the executive control the staff. Larry Derr's model is a way to prevent that from happening.

Matt Hennessee said that he gets the impression that Larry Derr sees that the staff of the legislative body has no role in working with the administrative body, which seems erroneous. When talking about the planning function being carried out by the legislative body, it sounds like the legislative body has a planning department separate from the administrative body having a planning function.

Larry Derr said that is a concern. The only reason that the model could work is that it can be an either/or. Certain kinds of planning can be on the executive side that have to do with implementing the work. Certain parts of planning, the executive will never have to deal with because it does not deal with the executive's work. If you can do that, you avoid that problem.

Chair Myers said that the discussion has raised questions about trying to refine or clarify. It might be useful for Larry Derr to work out a written description that would address the demarkation. He said that the model will be the first issue on next week's agenda.

Matt Hennessee asked if Larry Derr's model has the legislative body responsible for the Future Vision process. He asked if that was something that the legislative body, and not the executive, would do.

Ray Phelps said that he would be curious to know how the concept plays out through the function outline and the decisions that the Committee has made so far.

Larry Derr said that his concept is one that is evolving as he explains it.

Chair Myers asked if there was a way to describe, in a working manner, what planning responsibilities would be under an executive officer and what would be under the council. He said that it might be a demarkation between growth management and planning around the actual service delivery responsibilities.

Mary Tobias asked Larry Derr to explain how the RPAC and planning process meshes with Larry Derr's model.

Larry Derr said that he thinks that it will mesh together.

4. Additional business

Ned Look said that when the Committee passed Charlie Hales' motion, he thought that the Committee was passing something that was pretty routine and not in conflict with anything. He understood that, after it passed, the Committee was going to come back and look at Larry Derr's proposal, which it did. He said that the passage of the motion caused a real division in the Committee which was not his intention. He said that he did not realize to what extent, if any, the Committee passed jeopardized the model.

Chair Myers said that the members of the Boundary Commission subcommittee are Charlie Hales and Ron Cease from Multnomah County, Jon Egge and Frank Josselson from Clackamas County, and Mary Tobias and Larry Derr from Washington County. The chair of the subcommittee will be Charlie Hales.

Chair Myers adjourned the regular meeting at 10:10 p.m.

Respectfully submitted,

Kimi Iboshi
Committee Clerk

Reviewed by,