

**METRO
CHARTER
COMMITTEE**

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AGENDA

DATE: June 2, 1992
MEETING: Drafting Sub-Committee
DAY: Tuesday
TIME: 5:00 p.m.
PLACE: Metro, Room 440, 2000 SW 1st Avenue, Portland

5:00 Consideration of Charter elements which have been drafted. Discussion of recommendations to be made to the full Committee on additional Charter provisions.

(**DATE:** June 4, 1992)
MEETING: Drafting Sub-Committee
DAY: Thursday
TIME: 8:00 a.m.
PLACE: Metro, Room 145, 2000 SW 1st Avenue, Portland

8:00 Consideration of Charter elements which have been drafted. Discussion of recommendations to be made to the full Committee on additional Charter provisions.

MINUTES OF THE CHARTER DRAFTING SUBCOMMITTEE
OF THE METROPOLITAN SERVICE DISTRICT

June 4, 1992

Metro Center, Room 240

Subcommittee Members Present: Hardy Myers (Chair), Ron Cease, Matt Hennessee, Mary Tobias

Subcommittee Members Absent: Larry Derr, Frank Josselson, Ray Phelps

Full Committee Members Present: Ned Look

Chair Myers called the meeting to order at 8:15 a.m.

1. Consideration of Charter elements which have been drafted.

Tim Sercombe, drafter of the charter, said that Chapter 3 of the draft describes the form of the government for the region. There are in subsequent chapters more specific provisions relating to how the region council works and how other officers work together and what their authority is. Chapter 3 is designed to set an outline of the structure of the government. The first section deals with the region council and sets up the notion that the regional executive is a member of the council and is nominated and elected from the region at large. Individual councilors come from districts. The next paragraph deals with the obligation to reapportion the district within a certain period of time after census information indicates that the boundaries deny equal protection of the law. There is a provision to apportion the district to 14 districts after the census data from the year 2000 becomes known. This section refers to the factors set out in section 21 as being relevant to reapportionment. Those factors come from the statute as it is now. It requires that the region council give consideration to current districts and to historical and traditional communities and counties. The region council may need not follow city or special district boundaries or the boundaries of election districts for state officers, except as political boundaries coincide with natural boundaries. That description was used when the district was reapportioned from 12 to 13 councilors. It isn't necessary to be in the charter, but it is the political judgement of the factors in the district previously. For discussion purposes, the last sentence of section 13 was put in but it isn't necessary: *In the event the region council does not respecify the boundaries within this time, the boundaries shall be set by the region executive.* He said he isn't really recommending the sentence, but he put it there to focus on what happens if the region council cannot agree on a plan of reapportionment.

Chair Myers asked what the situation is now.

Tim Sercombe said that there is no back up now. There is a process in the statute for appealing a reapportionment plan to the Supreme Court, but there is not fall back authority. There are other entities that could play the back up role. It would have to be some officer under the charter. It could be--depending on the officers or commissions set up in the charter--the region executive, region manager, RPAC, or any sort of entity of the region.

Ron Cease asked, in order for the Secretary of State to do it, if state law would have to accommodate it.

Tim Sercombe said yes, or the Secretary of State would have to agree by contract to do it.

Dan Cooper, Metro General Counsel, said that Metro's first two reapportionments were done by the Secretary of State. The third was done by the council.

Tim Sercombe said he put the last sentence in for purposes of focusing thought on whether there should be a stalemate breaker.

Ron Cease said there needs to be a process. If the council can't resolve it, to put it on the executive's back doesn't enhance their relationship.

Dan Cooper said there was considerable discussion on a political level when the first council apportionment was done by the Secretary of State. It was over the issue of following the county boundaries as one of the factors. The Legislature changed the statute in 1980--after Henry Kane brought and lost a challenge to the 1978 apportionment--to insert following county boundaries as being one of the factors. When the council did the reapportionment this last year, dividing it into 13 boundaries, they took a lot of public testimony that said following the boundaries to the extent possible would be very desirable. The boundaries that will go into effect in January--with one minor exception, unavoidable because of equal population requirements--leave Washington and Clackamas County with districts that don't overlap the Multnomah County line. They had to have one district split between Clackamas and Washington Counties and left Multnomah County pretty much intact.

Tim Sercombe said that the draft, as written, is a reiteration of the statutory factors, both for new apportionment--when you increase the membership--and for reapportionment. It refers to counties as a factor in setting boundaries.

Matt Hennessee said that the subcommittee could recommend that the Secretary of State handle the fall back reapportionment or there could be some other sort of process.

Chair Myers said that the charter could say that reapportionment--in case of no agreement being reached--shall be conducted as provided by law.

Matt Hennessee said that he partly likes the idea of the executive serving as the back up, but that could set up some real problems among the group, and the executive could have trouble on an issue like this.

Chair Myers said he thinks it would be a political mistake to put the responsibility on the regionally elected official. On the other hand, the charter shouldn't specify that it be done by somebody who wouldn't be able to do it. There will have to be a more generic reference.

Tim Sercombe suggested leaving the provision out. Then a state law could be adopted, if a state officer was desired for that function.

Dan Cooper said if the provision is left out, and the charter just provides for the council to do it within three months, if they don't do it, the courts will do it. And they are neutral. They are used to it and will only do it if someone brings a lawsuit to challenge it on one man/one vote. Then the courts will have to step in and do the reapportionment.

Ron Cease said that the charter should say that if the council doesn't accomplish reapportionment, it will be resolved as provided by law.

Matt Hennessee agreed.

Tim Sercombe said that section 14 sets out the general provisions regarding councilors. It says: *The initial region council shall consist of the members of the Metropolitan Service District whose term of office continues or begins in January, 1993.* Those terms continue. The charter draft sets out the requirement that one-half, or as nearly as possible, of the number of councilors be elected for a four-year term at each general election. Section 15 repeats much the same for the region executive. This needs to be changed because the committee probably doesn't want the name of Rena Cusma included, and it is incorrect to say that at each general election after the adoption of the charter, the executive shall be elected. The term of office is every four years, not every two years. The first sentence will probably be something like: *The regional executive shall be the executive officer whose term is in existence at the time of the effective date of the charter.*

Chair Myers said the name of this official will occasion some discussion at the committee meeting because, the way the office is configured now in the outline, it definitely has executive responsibilities.

Tim Sercombe said the relationship between the region executive and region manager is a point where the committee may want to focus again on who has administrative authority. The structure the way it is set up now leaves that a little uncertain.

Mary Tobias said, after the general election in November of 1994, the initial executive portion described in section 15 is going to be moot. Doesn't it make more sense to move the transition to the end of Chapter III, and actually begin the chapter with the description of the election of that executive as it will be in perpetuity? It seems that the way it is placed now is a reversal of the priority.

Tim Sercombe said that the future election of the executive is intended to be treated in the second sentence of section 15. The second sentence, though, could be moved up first.

Mary Tobias said the real importance is going to be the ongoing election of that executive. Not the transition.

Ron Cease said that for the rest of Chapter III, it gets into the executive, council and administrative officer. It is really getting into the issue of the appropriate roles. The committee adopted this compromise. It seems that the committee made clear, that in the questions and answers part of it, that they want a strong, elected executive, whatever the title. After reading the draft, you end up with a pretty weak person. It looks like a presiding officer of the council and not a strong political figure that the compromise clearly intended. The votes supporting this indicated that the individual would be a strong political figure. The draft says: *A majority of the council may appoint and remove officers and members of commissions.* It doesn't provide a role for the executive. On the distribution of powers it says: *...all powers of the Region are vested in the region council.* If the executive is a member of the council, maybe that statement stands as all right. But certainly there are powers vested in the executive. In section 22--with the appointment of the region manager, the issue of the budget and who makes it--the way it is stated now, the budget would be presented to the council by the executive and done by the manager. So all the executive would be is a conduit, and not do anything.

Matt Hennessee said the charter should make a major distinction. The compromise was a tough one to get. The executive is the political head of the government, whether people like it or not. That's the only full-time elected person in that group. Secondly, all the executive powers of the government rest with that executive. That person may delegate powers to the manager, and that is clearly the executive's determination and no one else's. The executive is not only the political head, but clearly has responsibility for the presentation of the budget. He said he doesn't think the charter should be spelling that out as the responsibility of the manager, but clearly that of the executive. If the executive delegates that role to the manager, that's no problem. But the charter is talking about

political matters and accountability. The accountability, from the budgetary stand point, is still that of the executive's. He said, as he remembers it, the department heads would be appointed by the executive without the approval of the council.

Chair Myers said he thinks it was contemplated that the charter would describe the responsibilities of the regional manager. The departmental heads would be a manager's responsibility.

Janet Whitfield said that there was no provision for the executive appointing department heads. It may have been discussed but it was not part of the motion.

Ron Cease said that, at this point, there is an issue. If there is a manager who has any authority, presumably they have to have some control over the department heads. On the other hand, if that appointment of the department heads includes no confirmation, then there is a problem.

Mary Tobias said she thought the confirmation was left with the manager, after the committee arrived at the compromise.

Tim Sercombe said the outline says that the manager will hire staff, and that is the only thing in the adopted motions.

Janet Whitfield said that there were some things which were not discussed with the motion. Maybe some assumptions were made, but, looking at the minutes for that meeting, there doesn't appear to be anything said about the appointment of the department heads.

Ron Cease asked, in a system where there are a strong elected executive and an administrative officer, who appoints the department heads.

Matt Hennessee said it works in different ways. There are times when the administrator may do it, but there also cases where the elected executive does it. They understand that they have to work together. The administrator is the staff's boss on a day-to-day basis.

Ron Cease asked if there is usually confirmation by the council of chief department heads.

Matt Hennessee said that also varies.

Mary Tobias said with her first council she had two people on the council. One of them wanted to fire the chief of police and the other wanted to fire the director of public works. Neither had a majority of the council and it wasn't the council's job to do it. It is the manager's job. In the charter it wasn't clear that the manager had the day-to-day operations authority. The two councilors were in city hall daily harassing staff and the manager was totally hamstrung.

Ron Cease said at Metro there would be a full-time, regionwide elected officer who is going to be there on a daily basis, as is the manager. The role of those two people is modified from the Sherwood situation by the fact that the executive officer appoints the manager. Even with that, looking at the ongoing relationship, there could be a conflict.

Mary Tobias said it is important to say that there is a political person who is important to the focus of the region. That person's duty is to be sure that the manager is doing the manager's duties properly. At that point it is the manager's job to make sure the people below do theirs.

Tim Sercombe said that section 17 says that unless the charter provides a different rule, it is the function of the council to create, abolish and combine officers and commissions. They can delegate that

authority to others.

Ron Cease said that leaves open the question of whether the executive is in the position to propose changes. The executive should make the appointments subject to the confirmation of the council.

Mary Tobias asked what is meant by region offices. Is that the department of transportation, land use, or is that a free-standing, ad hoc committee working on the management of say, gorilla breeding?

Tim Sercombe said that officers tend to be persons who perform public duties and who also take an oath. The definition is a bit vague. They tend to be people like the region recorder, the region attorney, or the treasurer. They are distinguished from other employees in that they have more public duties and they are typically sworn to abide by the provisions of the charter. It allows for the council to delegate to the region executive or region manager the authority to appoint an officer, or they can do it themselves.

Chair Myers said the subcommittee should discuss whether it is the intention of the full committee to vest the regionally elected person with the appointive power. He said he understood that the committee intended the appointive power to rest with the regionally elected official.

Ron Cease agreed.

Tim Sercombe concluded that the region executive would appoint the members of offices--the region attorney, recorder, treasurer, and so on.

Ron Cease said there should be a distinction made between boards and commissions and other officers. Clearly, the understanding was that the executive would appoint the members of boards and commissions, subject to confirmation by the council. The appointment of other offices is unclear.

Janet Whitfield said that in the outline the council provides confirmation of boards and commissions.

Tim Sercombe asked if the confirmation process would be a required vote of the council to put a person into office.

Ron Cease said yes.

Tim Sercombe concluded that the region executive would nominate and the council would appoint.

Ron Cease said it would be appointment by the executive and confirmation by the council.

Tim Sercombe said that sometimes it is expressed as nominate and confirm. Saying appointed creates a little ambiguity.

Ron Cease said suppose that the executive makes an appointment and it turns out that the council doesn't approve. Does that person ever take office? He said he would prefer to use the terms that are commonly used. The common terms are appoint and confirm.

Chair Myers asked if a separate section on offices and commissions is needed in the charter. There is already a general assignment of authority to council and the charter spells out separately the authority of the regionally elected official to appoint members.

Tim Sercombe said he thinks the charter needs to have a general rule. If there is one it should be stated in the general structure of the government. It is sort of a basic choice. That can be that the

council can create or abolish commissions; it can organize the government, in terms of its structure, in whatever way it sees fit. This goes to the issue of whether or not a commission has administrative control over a function versus the manager. It goes to the question of what advisory commission the council wants, and it goes to the issue of who are the officers of the cooperation, and who appoints them. The way the charter is written now, the council can make those structural decisions, except to the extent that a specific commission or officer is discussed in the charter, as would be the case for the region manager and the RPAC and possibly the mass transit board, where the government is required to maintain the board. That would be in the Chapter V in the charter that talks about officers and commissions. Section 17 states the general rule, that except for those things where there is a specific rule, the council is the one that creates and appoints and removes members of the commissions. If the committee goes to a system where there is a general rule that the region executive appoints and the council confirms members of the commissions, then that would be stated better in section 17 as well. The charter could get into specifics later on.

Chair Myers said he understands the committee's action that the regionally elected official is to have the appointive power over the positions described in section 17, subject to confirmation.

Tim Sercombe asked if that would be true for officers--the attorney, recorder and treasurer--and members of any commission.

Mary Tobias said that the committee needs to have a discussion on what happens when the council refuses to confirm an appointee. That will occur.

Chair Myers asked if Mary Tobias means that the council doesn't confirm, or just doesn't act on the appointment.

Mary Tobias said you can get stalemate or you can get the executive making an appointment, but the council absolutely refuses to approve. Does that automatically mean the appointment is dead in the water? That is what Tim Sercombe was getting to, the difference between appoint and nominate. They are two different actions.

Ron Cease said that if the executive makes an appointment and can't get the votes, then the executive may dicker for the votes or withdraw the name and appoint somebody else. There is a time frame that may be needed, but if the time frame disappeared the executive would have no choice but to make another appointment.

Tim Sercombe said he is assuming that the intent is that the region executive appoints members of commissions and offices. Upon completion of an action, the appointed person would take office. Then the council could or would have to confirm that appointment presumably within a particular period of time.

Ron Cease said it would seem to be better that the person does not take office until actually confirmed.

Matt Hennessee agreed. There are too many problems allowing them to take office before confirmation.

Ron Cease said he has to leave, but wants to address an issue in section 19, *Meetings of the Region Council* and section 20, *Quorum*. In looking at the votes required by the council, there should be a majority of the members of the entire body rather than a majority of those present. If you are electing 13 people, you need to make sure that when they pass an ordinance, that the vote represents a majority of the members who are elected.

Tim Sercombe asked Ron Cease if he wants to distinguish between actions on ordinances and actions on other things. The committee may want to have a part in the charter that deals with ordinances and the adoption of legislation and there require a greater number of councilors to take that action.

Ron Cease said he doesn't have a problem of applying it to actions that have a force of law. At the Legislature they can pass a resolution, which is simply a majority of those who are on the floor if there is a quorum. In order to pass a bill there has to be a majority of the total body passing it. Confirmation of officers and those sorts of things need a majority vote of the body present.

Matt Hennessee said he isn't supportive of a distinction being made.

Ron Cease said it would be all right to not make a distinction.

Tim Sercombe said, as an example, in the land use side of the charter, the organization has been given some adjudicative responsibilities, in terms of determining whether or not local plans are consistent with goals, or individual land use decisions are consistent with the framework plan. It is possible that the region council may be deciding individual land use decisions. Would the committee want a seven-member vote necessary in order to allow or deny a land use acquisition? If they cannot get that vote, in effect it would be a denial. This is a compelled decision process.

Ron Cease asked for an example of what happens in cases where governments have this majority vote necessary.

Dan Cooper said it is a problem when there is council stalemate, or they fail to reach a majority decision because of a requirement for adopted findings for supporting even a denial in a quasi-judicial, decision-making process. They have to have those findings as to why they did it for purposes of appeal to LUBA. If the governing body hasn't made an affirmative decision, but has simply reached no decision at all, what the record becomes upon appeal in finding the votes to decide the issue is a problem. Metro has had several decisions where Urban Growth Boundary amendments have wandered back and forth. The amendments are ordinances, requiring seven votes under state law, because they are amending legislative action that was originally adopted by ordinance. Failing to get the seventh vote has meant the amendment was denied. Metro has managed to work those out as a practical matter so that the result was a majority vote of the council.

Chair Myers said that no matter how the vote requirement is constituted in the charter, there will be the same problem if findings are required. The placement of the line between what requires a true majority of all the members of the council, and a majority of those voting--a quorum being present--is the line the subcommittee is trying to fix. Is that line fixed now? Are there any actions which the Metro council takes by less than a majority of all the members?

Dan Cooper said that the rules now are for adoption of an ordinance or amending the council's rules, it takes a majority vote of the entire council. Anything else can be done by a majority of those present, if there is a quorum.

Tim Sercombe said that seems to be a reasonable distinction.

Chair Myers concluded that confirmation of appointments now could occur by a 4-3 vote.

Dan Cooper said that is right.

Tim Sercombe said that confirmation of appointments is a separate issue.

Dan Cooper said that Metro has two different types of adjudication it does right now. One is for UGB amendments which require ordinances, and therefore require seven affirmative votes. If there are contested case hearings, which Metro is required to do under law for certain purposes, those could be decided by a simple majority of those being present.

Ken Gervais said it could be fairly complicated if there are members of the council who remove themselves from a quasi-judicial process.

Matt Hennessee said that seven votes on the charter-described council is not a majority.

Tim Sercombe said the charter would move the majority up to eight.

Chair Myers said that on the side of the line that requires a majority of the whole council, it was the committee's expectation that all actions by ordinance would require a majority for passage.

Tim Sercombe asked what would happen if there is a vacancy in the council. Is it a majority of the possible positions on the council or a majority of the remaining members who have office that would decide an issue?

Chair Myers said it would be considered on the number of possible positions. He said he would think the vacancy wouldn't affect the requirement.

Matt Hennessee agreed.

Tim Sercombe said that other actions made by the council would include confirmation of appointments, rules of the council, filling of council vacancies, adoption of administrative policy (resolutions), and decisions on adjudications.

Chair Myers asked if it is the subcommittee's sense that the rules of the council would be adopted by a majority of the entire body.

Matt Hennessee said yes.

Chair Myers summarized that a majority vote of the entire council would be required for ordinances and rules of the council.

Mary Tobias said that by requiring every vote to require a majority vote of the entire council puts the onus on the people. It is impossible for everyone to be at every meeting. On the other hand, it doesn't dilute that responsibility at all.

Tim Sercombe said that the biggest problem is in adjudications. If a land use advocate or opponent goes before the council, and there is an individual issue before the council on appeal and, say, that night 12 councilors are there, and the land use person prevails in terms of seven to five, but the person actually loses because the council is required to take action by an eight-person vote. Should there be that kind of system for adjudications?

Dan Cooper said, because of that problem on UGB amendments, Metro has in place a provision that says if an ordinance fails to get enough positive votes to pass, but hasn't received enough votes to be surely defeated, it is continued. If it ends up with enough negative votes that it would not have passed, then it is defeated.

Tim Sercombe said that applying this rule to almost any action of the council, it would keep things

indefinitely on their agenda.

Dan Cooper said that Metro only applies it to ordinances.

Tim Sercombe summarized that most land use adjudications, except for a UGB amendment, are done through orders and not ordinances.

Dan Cooper said that is right.

Tim Sercombe suggested, that for purposes of the draft charter, it should include the majority rule for ordinances and rules of the council.

Matt Hennessee said the current procedure is in council rules, and it could be the same after the charter is in effect.

Chair Myers said, if it is agreeable to the subcommittee, the draft should be drawn so that ordinances and rules of the council would require the approval of a majority of the full body. Then the full committee will take up the question about whether they want to broaden that to embrace appointments and perhaps some other decisions.

Tim Sercombe said the way that it might flesh out is that it might not mean much difference in the way section 19 reads. What it would mean is that in the part of the charter dealing with ordinances, that the absolute majority rules will be there and in the part where rules will have to be adopted by ordinances.

Dan Cooper said he doesn't see in the draft a discussion of the removal of appointees and officers and who has the authority to do that. If the treasurer, attorney or a commission member has been appointed by the executive and confirmed by the council, who is going to have the authority to make the removal decision? Is it going to be left as simply the appointing authority or is there going to be a check on that? Metro has had to deal with situations like that, where the law and the ordinances have been silent. The charter could leave that to be decided by the council or maybe something could be said about it.

Matt Hennessee asked if it would be possible for Tim Sercombe to give the committee a draft of something to discuss in that vein.

Tim Sercombe said that the present draft allows the council to remove officers.

Chair Myers said he believes the committee wants the appointive and removal authority to be with the council president, subject to council confirmation. Certainly the committee vested the regionally elected official with the power to fire the regional manager with no involvement of council.

Matt Hennessee asked if Metro currently has rules on how to remove people from office.

Dan Cooper said that prior to his being Metro counsel, there was a very convoluted process for removing the general counsel that basically gave the position civil service status subject to being terminated by the executive. The rules were rewritten to provide that general counsel is appointed by the executive, confirmed by the council, but may be removed by either council or executive. That provision has eliminated the distrust of the general counsel's opinions favoring the firing party. It is an example of something that was worked out and which is now provided for by ordinance.

Mary Tobias said that the structure proposed by the charter, where the executive officer is on the

council, would not need distinction.

Dan Cooper said that Multnomah County, under a previous charter, had a strong executive who also chaired the county commission. They in effect had two lawyers serving the county. One was an attorney within the executive department. The other was an outside law firm that was hired by a majority of the county commission, over the opposition of the chair. He said he doesn't know whether you can guard against that, or just deal with it.

Chair Myers said his sense of where the committee might expect this to wind up is that the regionally elected official will have the authority to appoint the kinds of offices and commissions that are being described in section 17 and the regional manager, subject to confirmation by the council. The regionally elected official will have the authority to remove positions that he or she had the original authority to appoint.

Tim Sercombe said that for people of the organization, whether they be officers or employees, the committee may want to think about treating them differently than commission members who are appointed for terms. That would be like for a Tri-Met board. There may be a difference about who may remove those persons--such as the process for removing someone from the Tri-Met board versus the process for replacing the region attorney. The way that the charter reads now is to leave it to the council in some ways. That is, the council could set up a process where it creates offices and appoints the identity to those offices, or creates a system where the region executive does that, or creates a mixture of both. It could be done by ordinance and that function could be assigned to the region executive or the region manager. He said he left it open because he didn't know what the committee wants.

Mary Tobias suggested, in section 17, omitting: *A majority of the region council may appoint and remove officers and members of commissions...and retaining: Except as this charter provides to the contrary, a majority of the members of the region council may create, abolish and combine appointive Region offices and commissions. The region council may delegate the authority to appoint and remove officers.*

Tim Sercombe said he didn't know about adding commissions to that. He said he made a distinction between appointing commission members versus appointing officers of the corporation.

Chair Myers said he isn't sure that is consistent with where the committee may want to end up.

Tim Sercombe said he isn't saying that it is, rather, it is the current draft and it could be changed, or he could put some other language in, that would go along with what has been said so far. He may offer optional language as to appointive and local power, and distinguish between employees and commissions.

Chair Myers said he isn't sure about how much time Tim Sercombe needs to spend on actually drafting alternative language at this point, as much as working to make sure that the subcommittee clearly identifies the major policy choices for full committee discussion.

Matt Hennessee said that the committee too often gets stuck on points that could keep the discussion going forever. If there are some options that are drafted, the committee could focus on those without focusing out in the world.

Chair Myers said he is trying to minimize the time spent drafting until the decisions are made.

Matt Hennessee said he feels the committee works better when there are clear things to point to.

Otherwise the committee goes everywhere.

Tim Sercombe said that Ron Cease may have misstated his description of section 18. What it is saying is that it is a residual power. Except where the charter gives to somebody else, the residual powers reside in the council. It is like the issue of general powers versus special powers. It is intended to make sure that somebody in the organization has the authority to do something if there is any question. The model is to delineate the particular powers of the region executive or the manager or whatever commission is created. The second sentence comes from a direction that the council cannot delegate certain things. They have to take final action on *region plans and legislation*. The word in the committee outline was *policies*, but he said he substituted *legislation* because there could be a number of policies that would not be of council significance, such as administrative policies. The manager may want to set up personnel rules on office attire. That would be a policy. He said he thought the intent was legislation, and that is a policy of general applicability that has some permanence.

Matt Hennessee said he remembers committee discussion about legislation sounding to someone like it was state government stuff. He said, however, the subcommittee understands the explanation and will have to work with that.

Mary Tobias said the council should not delegate and the enabling language should come out. It is difficult to read. If you simply say that *the regional council shall adopt region plans and legislation*, and so on, you have accomplished the same thing in a much more straightforward fashion.

Tim Sercombe suggested wording that would say *only the region council shall regional plans*. The idea is not that they shall adopt them, but it is an exclusive function to them.

Mary Tobias asked who else would do it.

Tim Sercombe said it could be the region executive or the region manager or a commission set up by the region council.

Mary Tobias said she thought those are actions that require the vote of the council. She said she doesn't see how you could possibly do them without the council voting. How could you have a regional plan without the council voting?

Tim Sercombe said it is not that they have all the legislative power. The sentence is not needed for them to take legislative action. The sentence is needed if the committee intends to say that only the council can adopt legislation and they can't delegate it down to the Tri-Met board or the region executive, or whatever.

Mary Tobias said that saying: *Only the region shall adopt...* makes it much easier to understand.

Tim Sercombe said he would have to look at the notes again. There may have been an intent that not only must the council be the entity that oversees performance and financial audits, but that they shall do that function as well. In section 19, the third sentence might be amended to say that the *council shall prescribe rules by ordinance*. The last sentence allows for a certain number of councilors less than a majority to call a special meeting of the council.

Matt Hennessee said he can't recall that the committee ever had a discussion about that.

Janet Whitfield said that the committee decided that the executive could set the agenda.

Tim Sercombe said he has a question about the meaning of *set the agenda*. Tim Sercombe said if the meaning of that is that nobody can put anything on the council agenda but the executive, then there may not be the need for the last sentence: *The region executive or five councilors may call special meetings of the region council in a manner prescribed by ordinance*. Unless the region executive wanted to have a council meeting to talk about something, there wouldn't be any point in the councilors having a special meeting.

Mary Tobias said the sentence should be there in case the region executive drops dead.

Matt Hennessee said he doesn't have a problem with a special meeting, his question is the number. He has worked for councils of seven, nine and eleven members, where a special meeting always required the consent of the mayor and two councilors. He said he doesn't know what Metro's current requirement is.

Dan Cooper said he doesn't know if there is a rule for special meetings. It is probably just the presiding officer calling the meeting.

Tim Sercombe said five is arbitrary.

Chair Myers said that for the wording to be consistent with what the committee decided, would be to have the region executive to call the special meeting.

Tim Sercombe said the third sentence functions to allow for some portion of the council to call a meeting, when that meeting is opposed by the region executive, or when the region executive is away.

Matt Hennessee asked if it isn't something that could be taken care of in the rules of the council and not have to be in the charter.

Tim Sercombe said it could be taken up in the council rules.

Matt Hennessee said that is probably the better place for it to be, for that group to decide how they want to handle special meetings.

Tim Sercombe said, unless the subcommittee wants to recommend a choice that guarantees that five councilors may call a special meeting because of whatever sort of balancing of powers is wanted, it can be dealt with through the rules.

Chair Myers suggested that it be set up as an issue for discussion. He said he thinks the third sentence should be taken out.

Tim Sercombe referred to section 20. The second sentence allows for a quorum or lesser number of council members to meet and compel the attendance of absent members. He said he put that in because it is sort of standard in charters. He said, however, he has never heard of situations where it has been used. It is something that happens on a national level. If a majority of the council members were required for adoption of ordinances, it might become more important than if only a majority of a quorum is required. If there were a faction of the council that decided to sit out and not vote on certain things, in order to accomplish some agenda, this could force them to be there to vote.

Chair Myers said he has no problem with section 20.

Tim Sercombe said that section 21, is largely a reiteration of the statute that was used to increase the council's membership from 12 to 13.

Dan Cooper said there is language in section 13, that refers to reapportionment, where the census is used to show that Metro may be out of compliance in one man/one vote representation, which could trigger a requirement for reapportionment. Is there a reason for using the estimated census? He said he is concerned that the way the rules and statutes work now, you simply do it every 10 years after the federal census and you don't have any obligation to do it in the intervening time. The courts have generally approved of that. If there are major annexations or estimated shifts in population in the middle of the 10-year cycle, he said he is concerned that the language in section 13, referring to an estimated census, might trigger a mid-cycle reapportionment issue coming up.

Chair Myers said that he believes the committee would only want reapportionment after every decennial census. He said he believes that is what the language does.

Tim Sercombe said section 13 talks about an official census or census estimate. The intent there is that it an official census estimate. Census data may come out preliminarily as to what the census may say and then officially. If the preliminary data indicates a need to reapportion it would trigger that obligation. But it is tied to an official census estimate.

Mary Tobias said that the word *official* should be inserted again to make it clear. She asked if, in section 21, second paragraph, any consideration should be given to the issue of county boundaries.

Tim Sercombe said that it is in the first sentence: *In apportioning districts the region council shall give consideration to the current districts and historical and traditional communities and counties.*

Chair Myers said it is a recapitulation of what the criteria are now.

Tim Sercombe said that is correct.

Tim Sercombe said section 22, gets to the heart of the discussion of the duties of the region executive. The first question he said he has is about the meaning of determining the agenda of the council meetings. He said he phrased it in terms of *determine the order of business and agenda of region council meetings...* He said he isn't sure that is what the committee's thoughts were. If the thought was that there is a presiding officer who will determine when something is discussed in a meeting or the order of business, that's one thing. If it goes beyond that to say that a councilor needs to get the region executive's permission to raise an issue at a meeting or to introduce a bill, that is a different thing.

Chair Myers said that he thinks that the latter is what the committee wound up with, but isn't probably where the committee will stay. When the committee was working with the overall structural arrangement, it was trying to resolve tension between members who favor the current structure and those who want the council-manager form. This regionally elected official, combined with a manager, is the sort of compromise between those two points of view. As part of that, it was accepted that this regionally elected official would have clear, strong authority in combination with a regional manager. Part of that authority was to control the business of the council.

Mary Tobias said she agrees with Chair Myers' assessment.

Tim Sercombe said the structure may affect the text of other provisions of the charter, say, in terms of having to consider an ordinance at a meeting and whether the region executive can control that.

Chair Myers said that currently the committee has vested the regionally elected official with absolute control over the agenda.

Dan Cooper said, for purposes of the discussion, if the committee's intent was to combine the powers of the present executive officer and present presiding officer, the way the council's rules are set—done by ordinance and not by statute—the presiding officer of the council presently has broad discretion to determine what goes on in any particular agenda, what ordinances or resolutions go to what committees, and so on. But those powers are also subject to being overruled by a two-thirds vote of the council. There is a check to it.

Chair Myers said he thinks that would more likely describe the way the issue will come out, but that isn't where the committee is right now.

Tim Sercombe said he will need to change the text to more accurately reflect what Chair Myers has said. Determining the council agenda subject to rules of the council is not the intent of the committee. Actually, in saying that the executive sets the agenda, it needs to be more clear that what the committee is talking about is not the arrangement of matters on an agenda, but the actual determination of what the council talks about. That needs to be clearer.

Chair Myers said that as long as the subcommittee doesn't agree, there should be a draft in that form.

Tim Sercombe said the next sentence is about preparing the proposed budget for consideration. It was not clear from the outline. The instructions state that the manager is to prepare the budget for presentation and the council chair proposes the budget. There is the operation of the budget committee under local budget law that, in a very strict sense, proposes the budget for council adoption. How these two entities work, vis a vis the budget committee and the council, is unclear in the instructions. He said he assumed it would be the budget committee to consider the budget, and that the council chair presents the budget to the budget committee.

Chair Myers said that there was discussion on whether the budget was prepared by the manager or prepared by the politically accountable official. He said he thinks the committee's decision was that the budget would be prepared by the politically accountable official. The thrust is that the budget belongs to the leader. To what extent that involves other provisions of law that intersect with government wasn't spoken to. The committee is essentially saying that the budget is going to be done the way it is done now. Rena's function now in preparing and submitting the budget is what the committee expects this future executive to do.

Janet Whitfield said the original motion had eliminated certain things and the committee gave back certain duties. That included the budget writing authority.

Chair Myers said he doesn't think the current language needs to be changed.

Tim Sercombe said he wants to contrast the language with the manager's section where it is the manager's duties to *prepare and transmit to the region executive an annual budget*. The manager proposes to the region executive and the region executive prepares it for consideration by the appropriate body. In the outline instructions for the duties of the administrative officer that person *prepares budget under the direction of the council chair*. He said he concluded that the manager will prepare the budget for the council chair and the council chair will prepare it for the next entity.

Chair Myers said he thinks that would be the committee's intentions.

Mary Tobias said that the draft says *prepares*, and the committee had the executive *proposing* the budget.

Ken Gervais, Metro staff, said that the instructions say that the manager prepares the budget *under*

the direction of the council chair. It is to be the executive's budget. The executive doesn't have to argue with the manager about what should be in the budget.

Chair Myers said he doesn't view the committee's decision as being one that would preclude the manager from having responsibility for actually formulating the budget for consideration of the regionally elected official.

Tim Sercombe said, when the subcommittee gets to the duties of the manager, there should be discussion on having the manager prepare and transmit to the executive a draft budget or something like that. One way would be to leave it off.

Chair Myers said it seems that the dominating point is that the regional manager is not going to be submitting the budget directly to the council and bypassing the regional executive.

Tim Sercombe said he wrote language so that the region executive will nominate a region manager who shall be confirmed by the region council. He said he is confused by the word *appoint*--the way that Ron Cease was using it, that the manager shall appointed by the executive but confirmed by the council. He said, to him, *appoint* means the person takes office. That is traditionally the way that *appoint* is used. If the process is that the manager is nominated by the executive and confirmed by the council--which really becomes the appointment--then it should be stated that way. Is the function just a nomination function and then the nomination has to be acted upon by the council, and the council really decides up or down whether or not this person is going to be the manager?

Chair Myers asked if the term *appoint* is used in other contexts, even when it is subject to confirmation?

Tim Sercombe said he is less familiar with the federal constitution.

Chair Myers said it applies even at the state level. Governors' designations of positions are subject to Senate confirmation. Aren't they called appointments?

Dan Cooper agreed. The distinction is probably more semantic than in real terms describing where the power lies. It comes from the federal model which is picked up in most state constitutions as well. There is case law talking about powers of the legislature versus powers of the executive, where you have a strong separation. Where the executive has made the appointment it is permissible to have a limitation on that appointment power to require the confirmation of the executive body. But it is clear that the person is the delegate of the executive who has reserved all of the executive power, while the legislative body simply has legislative powers and no administrative powers. Tim Sercombe is reflecting the local government model where the governing body has all of the power. City managers are an example of how some of that delegation is done in the city charter. But it is all reserved back to this one entity that has all of the legislative, administrative and any other power that the body possess, except that which is specifically reserved elsewhere.

Tim Sercombe said that *appoint* may be a better word because it is correct that sometimes the power to appoint implies the power also to fire, to take away or to remove. If the notion here is that the region executive appoints the manager, subject to confirmation by the council, as a way of increasing the thought that this region manager works under the direction of the region executive, then *appoint* probably lends more weight to that thought. He said he was confused about whether or not *appoint* means taking office pending some action by the legislature.

Chair Myers asked what happens under current practice.

Dan Cooper said it is an appoint/confirm process.

Chair Myers asked if officers can take office before confirmation.

Dan Cooper said they can be acting but not permanent. The ordinance prescribes that acting is only for a limited time period, after which they are no longer eligible to be acting. You would then go to another acting person.

Chair Myers said he thinks that *appoint* resonates much more strongly. He said he would ask that it be used, so long as it is otherwise clear what positions are going to be subject to confirmation by the legislative body.

Tim Sercombe said the charter could say that the manager *shall take office when confirmed by the council* or something like that, to make that clear and to keep the word in there.

Ned Look said he was appointed to the Charter Committee through city and county functions. He was asked if appointed, would he serve. He said he figures he was confirmed by the time he got the official letter. He said he is thinking along the same lines as Tim Sercombe: if somebody is appointed they are there and have to be removed.

Chair Myers said it doesn't necessarily mean that, if you are otherwise subjecting that appointment to confirmation by the legislative body.

Tim Sercombe said he understands that the intent is to use the word *appointment* for purposes of an emphasis of power, but to make clear in the text that the person doesn't hold the duties of the manager office or the commissions, or whatever there is later on, until that person is confirmed by the council and they wouldn't be performing the function until then.

Mary Tobias said that she understands the debate over the national-state model versus local government model, and the semantics back and forth, but because the other uses of terms have been perpetuated in almost an archaic sense in other types of documents, there is no reason why the committee has to perpetuate it here. Why can't the charter say *hired*?

Tim Sercombe said that is even further away from nominate. That is even stronger than appoint. It creates more of a suggestion that the person is actually on the job and working, and the council can take their time in confirming.

Mary Tobias said that the outline says, very specifically, *hires the administrative officer with the consent of the council*.

Tim Sercombe said it also comes in later: *hired by the council chair with approval by the council*.

Mary Tobias said she doesn't know why the charter has to perpetuate the use of terms that the committee doesn't understand what they are meaning. If the committee is going to perpetuate these terms, then there should be a glossary attached. The committee is talking about nomination and other people, because of other models, want to say appointment. There has been that problem all the way through with this committee. The committee is not obligated to continue to use language that isn't saying precisely what it is intended to say because of other meanings that it has taken on. It seems that this is one of those cases. If the committee wants to say that the regional executive hires the administrative officer, with the council's consent, that's the way it should be said.

Tim Sercombe asked if the substance of what Mary Tobias is saying is that the region executive would

go to the council and say, "I've got this great person as a manager, and she's available to start March 1, and I move that you give me authority to hire her." Then if the council approves the appointment then the region executive would go forward. Maybe that is what everyone was thinking, that it is just the region executive checking with the council and saying, "Here's the person's resume, what do you think, and is it okay if I hire this person?" The other option would be that the executive would go to the council and say "I would like to appoint this person," and maybe the council would interview that person and then maybe they would approve.

Mary Tobias said the committee as a whole said the region executive would do the prior option. She thinks it is a poor way to handle it but that was the authority deemed to be giving this person a lot of power. The whole council ought to hire. It is foolish to try to hire a person in a position like the manager without the council being involved.

Chair Myers said, having passed that point, he doesn't know that what the committee envisions happening would be different than whether the word *hires* or *appoints* is used. If the committee's preferred choice is *hires*, and unless there is a serious problem with that, the important issue is that it is subject to confirmation. Whether it is *hires* or *appoints*, the status of that person, pending confirmation, is the same in both cases. If there needs to be a provision, respect to interim appointment pending confirmation, the use of the one word versus the other doesn't change the role of the council in terms of when that individual actually takes the position.

Tim Sercombe said *appoints* gives a little bit of the inference that the person is actually on the job working pending confirmation, but he said he isn't wedded to anything.

Chair Myers said the important thing is to make clear that it is subject to confirmation.

Tim Sercombe referred to the last sentence in section 22 which states that the region executive shall serve full time. He said he can't remember if the outline instructed that the person not be employed by any other person or entity while serving as a region executive, or whether or not that came from the existing statutes.

Ken Gervais asked about the language requiring the region executive to *perform such duties as the region council may prescribe*. Could the council require the executive to stand on the corner of Third and Broadway for three days?

Tim Sercombe said they could. It basically says that the region executive is subject to ordinances of the council that prescribe duties of the parts of the organization. Those ordinances would be subject to the terms of the charter, to the extent that the charter architecture makes those ordinances unconstitutional. That might occur. You could always use a very ridiculous example of what the council may require the executive to do, but the council may do that.

Mary Tobias asked if the charter could say *the business of the region* may require the executive to perform certain duties.

Tim Sercombe said he thinks that could be a completely different thought. It would create different problems than what is being discussed.

Chair Myers said he isn't sure if this is or isn't consistent with what the committee envisioned. It shouldn't be taken out yet, but rather flagged for later discussion.

Tim Sercombe said, in section 23, the *region council president* is a term he used in place of the outline's *council vice chair*. It is sometimes called the *president of the council* in other models. The

section is very straight forward: an annual term, functions as the executive when the region executive is absent.

Ken Gervais asked if that means the council president could terminate the manager in the absence of the executive for a week.

Tim Sercombe said that should be made clear.

Ken Gervais said it looks like a possibility for mischief.

Mary Tobias said, in the case that the council declares a vacancy in the office of the executive, then it needs to apply.

Chair Myers said the succession of the council president to the role of the regional office, if there is a vacancy, is dealt with separately.

Tim Sercombe said, if there is a vacancy in the office, it could be filled by a pro-tem appointment of the council. But a vacancy in the region executive office is filled in the same manner as a vacancy in the region council--by vote of the majority of the council. In section 23 he proposed clarifying that the council president shall function as the region executive *in the council meetings* when the region executive is absent.

Mary Tobias said the intent was that the council president would just preside.

Tim Sercombe asked if it would be just preside, and not set the agenda and other stuff.

Mary Tobias said she thinks that is what the committee intended.

Janet Whitfield said she doesn't recall that the committee discussed it.

Mary Tobias said she thinks that *presides* was what was used in all of the discussions.

Tim Sercombe said that the outline says that the president *chairs council meetings if council chair is absent*. Maybe the section should be written more narrowly.

Mary Tobias said that the draft says that the region council *shall appoint a president*. The intent there is process more than anything. They will elect from the members.

Chair Myers said that *elect* would be a better word.

Tim Sercombe said the legal effect of *appoint* in that section is to elect. The earlier section says that for the council to do anything it has to be by vote of a majority of the members present at the quorum. But certainly *elect* could be used. He said that section 24 is a list of the occurrences that would create a vacancy in office. It applies to both the council and region executive. There are three situations where no action of the council would be necessary in order for the vacancy to exist: death, adjudicated incompetency or recall. There are lists of a number of things which would require a declaration by the council of a vacancy. The first is the failure to qualify for office within 10 days. Generally, the principle qualification--since the charter requires the person be an elector--is that the person be registered to vote. There is a one-year residency requirement, so that if the person weren't a resident in that period of time, then the office could be declared vacant. Subparagraph (b) was written without instruction from the committee. This deals with declaring an office vacant if the holder is away from the region or away from all meetings. It is a typical provision, although the days vary. Some charters

use shorter time frames, some longer. The intent is to be able to get rid of a councilor or executive when the person is not in the district hearing the views of constituents or coming to meetings. Ken Gervais asked if the order of the sentence should be changed so that *without the region council's consent* would apply to both conditions. As it reads now, it applies only to the absence of an official.

Tim Sercombe said it could be done that way.

Chair Myers said there could be someone who is hospitalized for 90 days, who is being excused from the meetings while still in the region.

Tim Sercombe said all the subset things require a declaration by the council of a vacancy. The intent is that it requires the council's consent in advance of absence from the region and--with the addition--it would also require council consent in advance of missing the meetings. Structurally the council has to declare a vacancy.

Chair Myers said the committee doesn't want to empower them to declare a vacancy, but to clarify when they can declare a vacancy. But the consent excuses absences not only from the region, but also from the meetings.

Tim Sercombe said the next two subparagraphs talk about ceasing to reside, ceasing to be a qualified elector, and conviction.

Ken Gervais asked if it was Tim Sercombe's intent that the officials don't have to reside in their districts after election.

Tim Sercombe said that he thinks that there is another provision in the charter that the council members must continue to reside in the region.

Dan Cooper said that the present statute requires them to remain residents of the subdistrict from which they were elected.

Chair Myers said the provision needs to differentiate between the regional resident requirement of the regionally elected official and the subdistrict requirement for councilors.

Janet Whitfield said the draft only provides for the officials to be elected from the region.

Mary Tobias concluded that the officials would only have to be elected from the region, not live there.

Tim Sercombe read from section 29: *A councilor shall be a resident of the district from which the councilor is elected or appointed during the twelve months before the councilor's term of office begins.*

Chair Myers said that Tim Sercombe should clarify subsection(c) in section 24 to differentiate between the disqualification of the regional official and the councilor.

Mary Tobias said that the qualifications and compensation should be brought into the council section so that it is all tied together. It appears that way in the office and employee section.

Tim Sercombe said that it could be pushed up, as opposed to the chapter on officers, commissions and employees. The issue of compensation is broader than just the compensation of the region executive and region councilors, and so is the oath. There could be other region officers that could be created and that would be subject to the compensation provisions.

Mary Tobias said that there shouldn't be a concern about saving paper with the charter. It wouldn't hurt to have the compensation and oath provisions provide in each of the two chapters.

Tim Sercombe said he could move the qualifications and compensation up, but keep the oath in the later chapter.

Dan Cooper said that in listing reasons for vacancies to exist, and the councilors' role in declaring it, there should be a discussion on what level of discretion the council should be exercising. The question of ceasing to reside in the region, ceasing to be a qualified elector--there may be factual issues there to make it worthy to declare that. The way the charter is written, it is probably an automatic decision to do so, and there wouldn't be much discretion. But *conviction of a federal or state offense punishable by loss of liberty* could be a driving-while-suspended or driving-under-the-influence violation or some other crime that may be viewed by the council as not pertaining at all to the qualifications of the office. Other charters have references to the commission of a crime related to the office, and don't have jail time as part of the criteria. By making the crime related to the office, with an automatic removal, it is not one that the council needs to declare on its own.

Larry Shaw, Metro Senior Assistant Counsel, said the draft description is pretty extreme. Offensive littering is a misdemeanor, punishable by loss of liberty. The statutes still provide that punishable by jail time is a state offense. It hands over a lot of discretion to the district attorney.

Tim Sercombe said that all the latter categories of section 24 require a declaration by the region council which would have some discretion about what to declare. Any time there is a category that involves some sort of conviction for an offense or crime, there is going to be some controversy. There would be questions of what are crimes related to the office. If you limit it that way, there are none-the-less other crimes where there is no discretion to take out a councilor who has been convicted of burglary or some sexual offense or where that person's position becomes controversial.

Chair Myers said that section 24 should be one that describes a no-discretion type situation. There may be back issues about a particular removal to occur, but there are concerns about leaving it to the council to remove or not remove someone who left his or her district.

Tim Sercombe said the reasons why the responsibility is given to the council is to prevent someone from seeking a mandamus from the court.

Chair Myers said he would envision that a mandamus should be available under a provision like this.

Tim Sercombe said it would apply only if the categories are really clear. There is often controversy about whether someone who maintains more than one residence is a resident within the district. These issues are often politicized. If you make this a council determination, the same way the council has powers to determine the qualifications of its members when they come into office, you remove the possibility of political opponents going to the courts and claiming that an official is now living at another residence and therefore not residing in the district and should be removed. If you make it a council determination, they may or may not choose to do something at that moment.

Chair Myers said he assumed, in this section, that the council would have the initial role in determining the extent to which a fact is disputed. He said he is concerned about leaving it up to the council to actually take action if the facts are undisputed. Technically, you could have the council not acting in regard to one of the categories. That is different from whether the standard to which facts are to be tested is clear enough. The crime provision is probably way too broad and should be narrowed. How would the provision qualify a councilor now in terms of criminal conviction?

Tim Sercombe said that crimes related to the office would basically be bribery, receiving payments, and so on.

Chair Myers asked if there is a provision now in the statutes that disqualifies a councilor.

Larry Shaw said he isn't sure. He proposed that for removal, the council would make a declaration, then they make a determination if one of the things has happened. If they come to the determination that the provision has happened, then they may be mandamus'd if they don't take action.

Tim Sercombe said that the issue of requiring a declaration from the council, technically before an elected position can become vacant, requires a balance of how clear the terms are for effecting a disqualification. If they are indeterminate in some ways and you make it mandatory and allow it to be done somewhat by a court, the committee may want to have the council more involved. If it is very clear, it would be easy to create the vacancy upon the event.

Chair Myers said he thinks the provision should be very clear. He asked if the residency provision is as clear as it can be made.

Tim Sercombe said that later in the charter there is an issue of residency that makes that more clear. Residency is sort of vague in a legal context and it often deals with a person's intent, in terms of the way it is decided, and you get into problems where a person is actually living someplace but intending to keep a permanent residence. So the rule proposed later on in the draft is a physical occupation a majority of the time. It is designed to remove the intent issue. Most of the fights about this area deal less with the offense side, and more the residency side. This fight is largely going to be about the residency issue.

Mary Tobias suggested that in section 24, paragraph two, read: *The region council shall declare a vacancy upon findings of fact of the incumbents.* She said she has no problem with subsection (a) and the revisions to (b). In (c) it should read: *Ceasing to qualify as a resident.* Subsection (d) is all right, but something should happen to (e) to make it more presentable.

Tim Sercombe said that is one model and is an amplification on the structure as it presently exists. There should be another section that explains when these events occur the council shall fill the office. If the committee narrows the crime issue, as has been suggested, and there is a definition of residency it can be made more specific. He said he has a slight reservation on the intervention of courts into the process.

Mary Tobias said she is uncomfortable with the charter saying *crimes related to office.* There are examples of congressmen staying in office while they are sitting in jail. That kind of situation shouldn't be able to occur with Metro.

Tim Sercombe said the provision can be narrowed in two ways. It can be narrowed by talking about a further sub-category of offense, such as a certain class of crime. Or it can be narrowed in a subject-matter sense to talk about the offense relating to some types of things. The committee may not want to have it as broad as what is written, but maybe not so narrow as only relating to official conduct.

Chair Myers asked if there is any kind of analogous provision in state law or charters that pertain to officials at other levels of government.

Tim Sercombe said his provision stemmed from the model city charter. He said he isn't aware of what the state constitution does. He said he would come back with a more narrow, not-so-narrow suggestion. In section 24, *Filling Vacancies*, he said he may tinker with it some more because he isn't

sure about a vacancy occurring 120 days before the first general election. The notion is that the remainder of a term, where there is a vacancy, would be filled by appointment, unless there is time to elect a replacement at a November general election. In practice, if there is a four-year term, and a vacancy occurs, somewhere before the first year and two-thirds, or thereabouts, it could be filled at the following November election that would occur in the second year of a four-year term. But if the vacancy occurs after the November election the appointment would run for the remainder of the term and not be filled by election. The alternative model is to have no election for the remainder of the term and allow for an appointment, even if made early in the term, to continue for the remaining two or three years of the term without the need for an election. The reason why special elections are typically not found in charters, to fill remaining terms, is because of statutory requirements--constitution in the case of cities, statutory in the case of districts--that governing body members of those entities be elected at a general election. The option for election is either to do it at the first biennial election in the term or do it by appointment. It can be an appointment that would last until the person is elected to fill the term, or a successor comes into place. That is the model in place in section 24. He said he isn't sure about how long before the November election do you have to nominate and put someone on the ballot for a region council position.

Mary Tobias said she thought the committee had decided that the councilors would be appointed to fill the office until the January following the next general election.

Tim Sercombe said that is the way that it is written.

Mary Tobias said it isn't that easy to understand.

Chair Myers said the section should be left as it is to give people more of a chance to reflect on it. In the last paragraph he asked for clarification: *During a council member's disability to serve or during a member's absence from the Region, a majority of the other council members may by appointment fill the vacancy pro tem.*

Tim Sercombe said that is just suggested.

Chair Myers asked, if an elected member of the council were out of the region for two weeks, and there is a meeting, even if the member is excused, would the council be able to technically appoint someone to sit in that seat to vote.

Tim Sercombe said the intent is that if the time is long enough that a councilor misses meetings, even with the council's permission, a loss of representation occurs. It could then be filled on a pro tem basis.

Chair Myers said there is declaration of vacancy if the incumbent is absent for 60 days.

Tim Sercombe said that this is a different situation. The councilor, on behalf of the region, wants to go on a trade mission for two months. This is a process by which a substitute councilor can be appointed.

Chair Myers said he very seriously questions whether that has been discussed.

Tim Sercombe said it is not a result of discussion.

Mary Tobias said something like that could happen and the seat would sit empty for six months. It isn't beyond the possible. The question is whether you want it to be empty or not give the councilor permission to be gone.

Tim Sercombe said this comes up mostly in terms of hospitalization and disabilities that are short term and don't result in incompetency or death. It may be even more significant if there is a requirement that a majority of the members of the council take action on certain things. If there is an eight-person vote requirement for passing an ordinance, and a couple councilors are hospitalized and not available for council business for several months, it may be important to have someone there in order to gain the necessary votes. He said that section 25, *Limitations of Terms of Office*, is to apply to terms of office that begin in or after January 1995, after the first officers take office under the charter. Section 26, *Region Manager*, has a broader list of duties, for purposes of discussion about whether these are the things the manager should be doing or whether the committee wants the executive to do them, or both. These are the kinds of things that are often assigned to the manager when the function is created by a charter. They are not necessarily assigned when there is a region executive and a manager.

Chair Myers asked if it is clear that the regional executive appoints the manager. Paragraph one says that the manager *shall be appointed*, but is it clear elsewhere that it is the executive who appoints the manager?

Tim Sercombe said that comes up in section 22, *Region Executive*.

Ken Gervais asked if there is a reason for stating that the manager *may be removed by the region executive with or without cause*.

Tim Sercombe said that makes it even more clear that removal can be done without cause.

Mary Tobias said she doesn't think the committee talked about the removal in terms of it being with or without cause. She said she wouldn't want the removal to take place without cause.

Tim Sercombe said that suggesting that--requiring it to be for cause--sets up a different dynamic in terms of hearing and due-process rights. It takes forever to get rid of someone if you do that. It is very standard to say *with or without cause*.

Mary Tobias said the statement from the draft, that a region manager *shall be appointed for a definite or indefinite term*, is weird.

Tim Sercombe said some organizations may wish to appoint an officer for a definite term. It is an option-giving sort of phrase.

Mary Tobias said, because the committee is giving the executive the hiring and firing authority, the charter ought to say that the manager should be hired on an employment contract with the region. That person needs some protection against arbitrary political whim or just personality clash. The way it is constituted now the manager has no protection.

Chair Myers asked if Mary Tobias is talking about the cause issue.

Tim Sercombe said the subcommittee is also talking about a definite or indefinite term. What Mary Tobias is talking about is the essence of a contract, except for how much money they are getting paid.

Mary Tobias said she understands the reason to not change *with or without cause*, but it does seem that if the manager is appointed for a definite term which may be reviewed, or if the manager has an employment contract, there is protection from both sides.

Tim Sercombe said, either the person can be fired on a whim, with no redress, or the person can only

be fired for cause, that is for performing the job improperly or not to some standard in the contract. There is nothing in between.

Chair Myers said, whether there is a definite or indefinite term of service, there is the prerogative to remove the person without cause. There isn't any greater protection with one or the other. Assuming there is a for-cause or without-cause standard, a definite term will require a reappointment and scrutiny of that person by the council. You would have to redesignate that person at the end of the term. Would it have any other significance?

Mary Tobias said it is an issue she would like to have raised. The committee needs to protect the district from the chaos that could ensue. How arbitrary should the dismissal power be? It will affect the district's ability to hire really good people. A top notch person is going to want a contract. That person is going to want to know that there is some stability.

Tim Sercombe said, further on in section 26, the region executive and region manager will fill a vacancy if it occurs within the office of region manager. That is consistent with the appoint and confirm provisions, but he said he may want to reemphasize that again.

Chair Myers said it could sound like there is a co-appointing responsibility.

Tim Sercombe said the next subsection is for discussion purposes and goes beyond the directions of the committee. It pertains to the duties of the manager. The committee instructions are for the manager to hire staff, implement policies of the council and prepare the budget under the direction of the council chair. Then it talks about a non-interference clause in order to minimize council involvement in operational matters. That suggests that there was some thought that the manager would have functions over operational management. He said he put the manager's duties as administering functions of the council, and administering the operational side of it and transmitting a budget. The key issue is going to be the organization of the department structure--the appointment, removal and describing the duties of appointive personnel--as to whether that is a shared function of the manager or whether it is an exclusive function of the manager, or whether it is exclusive or shared with the council.

Chair Myers said right now the structure of the government is prescribed by ordinance.

Tim Sercombe said it could be. Department structure is perhaps peculiar in this government because there are going to be subject-area as well as functional departments.

Chair Myers said that the committee should note that as issues to be discussed. He said that he wonders whether (e) *Organize and reorganize the departmental structure of the Region* is going to be consistent with what the committee believes that authority should be.

Tim Sercombe said he put it there just to raise the issue, not to recommend a solution. He explained (3) of section 26. If the committee wants to make the duties of the manager exclusive from either the region executive or the council, this is where it will be described. As drafted, the duties of the manager *are exclusive except for those duties assigned by ordinance to the region executive or to a commission exercising authority over a function or service of the Region*. That is an important caveat to the department structure issue. The next item is that the manager cannot control judges or hearings officers, in terms of how they dictate the results of their decisions, or appointive personnel of the region who the region manager does not appoint. That could be if the region executive or the council appoint members of commissions. The next subsection (4) is very standard about sitting with the council, taking part in discussions. He said he added that the manager could take part in discussions or with any commission appointed by the region council. Subsection (5) talks about a pro

tem appointment in the advent the manager is absent or disabled. It limits that to six months.

Mary Tobias said a search for a good manager is going to take anywhere from a year to two years. Any search for a manager of this government will be a nationwide search. By the time they relocate it is at least a year. What if there is a pro tem manager who is very good? It doesn't speak to the issue of them being reappointed. If the council is happy with what they are doing at the end of six months, you don't want to disrupt the government, so can you reappoint that person as the pro tem.

Tim Sercombe said it relates to an earlier provision in section 26 that requires the region executive to fill the vacancy within six months after the vacancy occurs. If the committee thinks that six months is not enough time to fill a vacancy, then that should be extended. That should be the same period for how long a pro tem manager can stay in place. The intent is not to have a pro tem manager in there for a non-pro tem basis.

Mary Tobias said she understands the intent, but by the time you advertise the vacancy is at least two months into the process. By the time you set a deadline for response you are four months in, by the time you interview, wine and dine, and have maybe a second set of interviews, you are six months into the process, and you will have not met the standard.

Tim Sercombe said, if there are going to be a lot of situations where the manager is dismissed or leaves without forewarning, the committee may want to move the six-month process up. More typically, you have at least a couple months' notice before the person is gone. A lot of times when managers are removed for incompetence, it is usually done behind closed doors, and they are allowed to stay for a few months in order to get their affairs together, and to make it less embarrassing.

Mary Tobias said she is thinking of a situation in which the manager will be recruited away. You may or may not have more than 30 days notice.

Chair Myers said the subcommittee can either put a blank in, or leave it at six months--understanding that it is still an issue.

Ken Gervais said a third option would be to allow the council to extend it.

Tim Sercombe said it is really how quickly do you have to fill the office. He said he would flag that as an issue. The non-interference clause is in subsection (6). It is a very strongly written non-interference clause. He said he wanted to find out what people meant when they put it in the outline. What he wrote is based on the Eugene charter. It says that except in a public setting, in a region council meeting, or in immediate response to solicitation of advice by the region manager, no councilor may attempt to influence the hiring issue or property or contracts issues of the region. Decisions are to be made in a council meeting about those issues and not privately between the councilor and the region manager, with respect to personnel, property or contracts. If there is a violation of that, the person can be removed from office upon suit of the region manager, member of the council or elector. The provision does not include the region executive. It didn't seem to be consistent with the region executive being the administrative head. He said, again, he wrote the provision for purposes of discussion.

Mary Tobias asked how broad are the manager's decisions in regard to property or contracts.

Tim Sercombe said it is fairly broad. You can limit it further by talking about purchase decisions of goods or supplies. There is some protection here for the manager that is not typically in other dynamics. The manager may be fired by the region executive and not by the council. So there is more for an independence of the manager from the council, than is the case where you have the manager

accountable to the council. There may be less of a need for this provision because of that.

Mary Tobias said the one thing she wants to see happen to protect this government is that she doesn't want Metro subject to the things her government (Sherwood) was subject to. There, a councilor felt, because they had been elected, they had the right to walk into a department and interfere directly with the running of that department. It isn't fair for the employees of the region to not know who their supervisor is. When the committee talked about this government being responsible for policy, the non-interference clause was part of that discussion.

Tim Sercombe said the difficulty in setting rules of conduct for councilors is that, on the other hand, a councilor will get a constituent call to explain a situation that involved the organization. The councilor may want to call up the appropriate administrative person for an explanation. So you can't really say that councilors can't talk to administrative staff or to the manager. There may be some constitutional problems with limiting the subject matter of their discussions. This provision is written so that the councilor cannot try to influence in terms of a personnel, property or contract transaction.

Ken Gervais said that when he was a department head he had elected officials call him and tell him to put a load of rock in a certain street, after a constituent had called. Right now, Metro is set up so that the executive protects the employees in the executive branch from that kind of interference. You may not have that in this kind of government.

Mary Tobias said she wants to make sure it does, that the manager is the buffer.

Ken Gervais said the non-interference clause refers to contracts and personnel. It doesn't prevent an elected official from calling a department head and ordering them to do something. You have to have a way of protecting them from that or you have no way of making them accountable.

Ned Look said council members can ask questions but they can't give answers.

Mary Tobias said the process needs to be clear.

Tim Sercombe said there are other parts of the charter that will talk about the duties of appointive personnel. Right now it is set up so that those duties are set by the manager. The committee may want to put them with the region executive, but it should be somebody besides the council. Somebody besides the council is going to be responsible for the hiring and termination of those appointed personnel. That is the charter protection for councilors calling up employees and telling them what to do. This non-interference clause is a limitation on the council trying to influence the manager in the making of decisions regarding property, contracts or personnel of the region. Most often it deals with the appointment and removal of administrative personnel. If the committee goes into other things in the charter, such as preventing the council from addressing certain things with employees or talking about certain areas with employees, it is likely the charter would run into constitutional problems.

Chair Myers said, unless there is a specific direction, he said the subcommittee should submit the provision as it is.

Mike McKeever, Regional Governance Committee, asked if in subsection (6) the term *councilor* includes the executive person.

Tim Sercombe said no.

Mike McKeever said he doesn't think that is consistent with the vote of the committee.

Ken Gervais asked Mike McKeever if he thinks the executive should be able to fire somebody but can't talk to them.

Mike McKeever said that the committee's document called the regionally elected person the council chair. The non-interference clause, as approved by the committee, said that the council may not interfere with the behavior of the administrative officer. He said he doesn't think the committee meant to segment off council chair and say that it is okay for that person to interfere but it is not okay for the council to do it.

Janet Whitfield asked how the council chair could prepare the budget if that person can't deal with the manager.

Mike McKeever said the question is what does non-interference pertain to. The vote of the committee doesn't give much direction in that regard.

Tim Sercombe said it isn't specified in the instructions. He said it would be his strong recommendation that the committee not include the region executive in the non-interference clause because it won't work. It is an invitation for that to be violated and for there to be controversy. He said that section 27, dealing with the Regional Policy Advisory Committee, is not recommendations. He said he wanted to raise a few issues about variables on that. That would include terms for appointment, who appoints, who nominates, whether or not the committee wants to put into the charter any ethical limitations, any occupational limitations, whether or not the committee wants to give an option that the council could change the structure of RPAC, by ordinance, within four years after the charter is adopted. That would be so that it could be changed without charter amendment if the arrangement didn't work out. The last is a portion on the duties of RPAC, as understood from the instructions, and whether or not other duties are wanted or different types of duties are wanted.

Chair Myers said he hopes the subcommittee can resolve recommended detail for the RPAC for consideration by the full committee.

Tim Sercombe said at a previous meeting the subcommittee talked about a provision for a municipal judge, section 28. He said he can't remember whether he was to remove the provision or not.

Chair Myers said it was to be taken completely out. He said, as far as duties of the RPAC, at least some of them will be set forth earlier in connection with describing the process that additional matters of the regional framework plan might be included or new functions assumed by the government. There may be a question about restating those duties in section 27.

Tim Sercombe said it was intended to be a restatement and then to have a catch-all provision. The committee may want a statement that the RPAC will perform such duties as the charter directs or as the council directs by ordinance. Section 29 deals with qualifications. It requires that a councilor will be a 12-month resident of his/her district before the election. He said he added that if the boundaries of district are reapportioned, residency shall include residency in the former district with substantial area in that district. He said he was concerned because there is a reapportionment to increase the number of councilor districts as well as the normal reapportionment. There could be a situation where someone is apportioned out of his/her district. The district from which they were apportioned out is largely contained in the new district, but they wouldn't qualify for office because of the 12-month residency requirement. He said he therefore wrote the provision so that residency in the subdistrict includes the area of the former district, if a substantial part of it is in the new district.

Chair Myers said he isn't sure what *substantial* would actually mean, but the thrust of it is reasonable.

Mary Tobias said, to be really technical about what is said in subsection (1), and again in (2) about the region executive, this technically says that they only have to have been a resident of their district prior to election. It says nothing about continuing to reside.

Tim Sercombe that section 29 is about qualifications for the office. He said he would check to make sure the provision is stated in the charter.

Mary Tobias asked if there should be a requirement for the manager to live in the region.

Tim Sercombe said some municipal charters do that and some require department heads to reside in the area. There has been litigation about requiring city employees to reside in the city. He read from (3): *No person shall be a candidate at a single election for more than one elective office of the Region.* That is a provision often found in charters. It would prevent someone from running for a council position and a regional elected position. He said he isn't sure of the second sentence: *An elected officer of the Region shall not hold any other elected office during his or her term of office.* Should it be kept in for discussion purposes or is it inconsistent with some decision of the committee previously? That is, you cannot have other elected officials serving as elected councilors.

Chair Myers said that is consistent.

Ken Gervais said there was also a notion that a councilor couldn't run for the executive without resigning that seat.

Tim Sercombe said that subsection (4) is fairly standard about the council being the judge of its members' qualifications. Subsection (5) may need to be changed, depending on what the committee does with the issue of who sets the qualifications for appointive officers--treasurer, attorney type functions. If that is a function of the region executive it will need to be changed.

Mary Tobias said she wants to refer back to subsection (4). Is there a way to define what is meant by *qualifications*? If you get a council that would be very prescriptive, could they determine among themselves what exact qualifications would be?

Tim Sercombe said the only qualifications in a charter would be continuous residency and elector status.

Chair Myers said the only qualifications this refers to are the qualifications of law.

Tim Sercombe said that is right. It would be covered by the qualifications in the charter. He said because the charter states the qualifications, there are no other qualifications. If the council tries to supply additional qualifications it would be contrary to the charter. He said that section 30 is *Compensation*. The notes said that the present system would be used. He said he varied from the present system, because he wasn't exactly sure what it meant--whether that meant the present statutory system or the present actual system. He said he provided that the council may prescribe a plan for reimbursing councilors for expenses incurred. The statute allows for per diem. If the committee wants to do what the statute presently does, that will be put in.

Janet Whitfield said there was a motion about making their pay a flat salary per year so as to limit expenses.

Ken Gervais said that Ray Phelps said that the charter would do away with the per diem and have a flat rate to cover. It has very serious implications for taxing, and other things. Some councilors could not serve under those conditions. They would have to resign their jobs if they received another salary.

Chair Myers said the committee did not approve that concept. He said he thought the committee decided to provide for the treatment of the members as far as per diem and expenses, as the present law allows.

Tim Sercombe said there is a risk that per diem can be abused and increased to what becomes a salary. He said that he wrote a provision that the salary of the region executive *not be less than that of a district court judge* and asked if that was the intent of the committee. It is the present statutory provision. The duties in the statutes of the current executive may be different than in the charter and the committee may or may not want to extend that level of compensation as the minimum. The last sentence says: *The region council shall determine the compensation of other officers of the Region.* This typically occurs if the region council creates those offices. It may more properly be a region executive function to determine the compensation. In section 31, the oath is relatively uncontroversial. He said he added in that the officers have to agree to perform and support the charter and the laws of the region. In Chapter VI, *Elections*, the general rule is that state law controls actions unless an ordinance prescribes to the contrary. There would be home rule power to have your own elections, although the extent of that power is unclear. Section 33, *Nominations*, provides for persons to be nominated in a manner described by ordinance. In section 34, *Election of Region Officers*, this system is run on the primary system and the top two vote getters run off in November. He said he varied from the instructions slightly. They say that you need a majority of the votes cast in order to take office. If that were the case, and there were two people on the ballot in November and a write-in vote, what would be the situation then? If the charter said that there had to be a majority of the votes cast and the statutes say that a person needs to be elected at a general election, there may be a conflict. Since there is a situation where the primary functions to weed out everybody but two to be placed on the November ballot, he said he provided that the person who is elected will be the person at the November ballot who receives the greatest number of votes cast.

Janet Whitfield said, when the committee voted on it, they expressed the intent that it would follow state and federal law. Whatever you see in the outline came from state law.

Ken Gervais asked if state law requires that a person who receives a majority of the votes in the primary must also appear on the general ballot.

Tim Sercombe said that part is not state law. State law does require that they be elected at the November ballot. The instructions talked of requiring a majority of the votes. The system that best accommodates that is where there are two people running, as opposed to a number of people running for a position.

Chair Myers asked if state law would allow the charter to provide for a primary, where a candidate receives a majority of all the votes cast, and then that person is considered elected to the office.

Tim Sercombe said no.

Chair Myers concluded that something has to appear on the November ballot.

Janet Whitfield said it could be just one name.

Tim Sercombe said yes.

Janet Whitfield said there could then be one or two write-ins to syphon off names.

Tim Sercombe said if a person gets a majority of the votes in the primary their name alone would go on the November ballot. There could be write-ins there too.

Mary Tobias asked, if state law allows a Ross Perot-type candidate to bypass the primary and only be on the ballot for the general election, would that be allowed for this government, too.

Tim Sercombe said no. In order to be on the ballot, he said he thinks that the person would have to run in the primary. This is a non-partisan position.

Mary Tobias said, if someone were to mount a nominating convention campaign to place themselves on the ballot in November, they can bypass the primary.

Tim Sercombe asked if that would be for local elections. He said he doesn't think that is the case but will check it. He said, in section 35, recall is allowed. The only reason for putting it into the charter is because the constitution allows the charter to prescribe the term of office for its officers. Therefore, there is an argument that the state constitution provision on recall wouldn't apply. Section 36 puts it into the bailiwick of the council the initiative and referendum processes and does not describe particular benchmarks and controls in that process. The most controversial issue about initiative and referendum is the number of signatures required and how you calculate that. There is somewhat of an issue here legally because the initiative and referendum powers available to county voters also apply to this district. The county statutes that implement that allow the county board of commissioners to set up a different process in terms of numbers. There is a question about whether the region council could do the same. Where there is some discretion it is often resolved in ordinances of the locality and the issues are what percentage of the voters do you use to gain referendum. There is a constitutional cap on it and what base is used for calculating.

Janet Whitfield asked if ORS Chapter 268 provides for a base set by the number of gubernatorial votes in the region.

Tim Sercombe said the charter amendment part of the constitution also talks about initiative and referendum and may give you more discretion than what is in ORS 268. He said that he provided that they are reserved and subject to the provisions of state law and the ordinances of the council.

Chair Myers said there is a provision in the enabling legislation that states some requirement with respect to the content of the charter. Is that a prospective issue for referendum?

Tim Sercombe said the draft is compliant with the constitutional provision. He said that section 37 is very basic. It says: *The region council may refer, and the Region votes may initiate, amendment to this charter.* It says an amendment will embrace one subject only and *matters properly connected therewith.* If there were a number of parts to the charter that people wanted to amend they would have to do it in separate submissions. The constraint is that if you are going to affect a number of sections of the charter, in effect a rewrite to the charter, it cannot be done by a single enactment and a single proposal. It's done by initiative. If you were going to revise the charter, you would have to do it in separate initiative measures or go through a charter revision. The charter revision process is how the council shall prescribe it in ordinance. The council could provide for any process but they may want to prescribe a more narrow process of something that has more public collaboration for what a revised charter would look like. That's the purpose for distinguishing between a process for amending and a process for revising the charter. In section 38, the ordaining clause is sort of boiler plate. He said it is something he made up and different from the typical process. The standard provision in charters--for counties and cities at least--talks about two things in terms of the formalities of adopting an ordinance. They talk about reading an ordinance in public and waiving a requirement that it be read, and they talk about a vote on those readings and the number of votes necessary on those readings before an ordinance can take affect. A lot of cities have two readings, some counties have three readings, and sometimes cities have provisions that both readings may occur on the same day if a super-majority or unanimous part of the council votes to allow for both readings to occur. The issue is

how much time does it take to adopt an ordinance, as a matter of course, and historically that has been a function of the lack of communication technology. Historically, there is a requirement that you consider an ordinance first on one week, and you cannot adopt it until the next meeting or the next meeting of the council. Then the ordinance can be disseminated after it has been introduced. There is less of a need for that now, given that there are a number of processes that the charter otherwise requires or that the adoption of certain kinds of assumption functions and planning ordinances require preconsultation with RPAC or concurrence, or require a process after the ordinance is adopted. Secondly, there is state law that requires agendas and notification that are more direct than the formal requirement for readings. He said he thought the key thing would be that meetings in which ordinances are to be considered require advanced notice of the agenda as to what the ordinance is about, that copies of the ordinance be available for public inspection for some period of time before it is adopted, and that the ordinance be the same, relatively speaking, as it was when people were given notice of it. If it is revised it should be adopted at a different meeting. You could waive those requirements if there were a need for quick emergency action by the council, so as to allow by unanimous consent an ordinance to be adopted without there being notice on the agenda. Finally, to the extent that the reading format is something that is political in nature, as opposed to communicative to constituents, there would be a process by which a faction of the council could postpone a final vote of an ordinance by request. He said he proposes that ordinances be allowed to be postponed once to the next regional council meeting. That postponement would require a request by four councilors prior to a vote on the adoption of an ordinance. If the committee wants a more traditional ordinance adoption process, one less direct on more current issues, the traditional model talks about reading the ordinance in full, when you can waive that, and it talks about voting on readings of the ordinance, and having a separation of time between those votes to allow for a more prolonged process. It doesn't go directly to the issues of actually making copies of the ordinance available, giving notice of it, and allowing for longer consideration if a faction of the council wants it.

Janet Whitfield asked, if the committee decides to require, on every action, a majority approval vote of the entire council, and also provide for a continuance provision if a majority isn't obtained on a vote, would one-postponement allowance put a limit on it.

Tim Sercombe said yes it would. The intent was not that this would be the only way that a vote could be postponed. It was that if it is postponed at the request of four councilors, it may only be postponed once.

Ken Gervais asked if there is a potential for mischief if two-thirds of the people on the other side of the issue are absent from the next meeting.

Tim Sercombe said yes.

Mary Tobias said the most common charges elected officials are ever subject to are that they haven't had time to study an issue. You get beat up with it and held hostage to it and elected out of office because you don't tell people what's going on. She said that every city she has worked with is bending over backwards to make sure that public notice is long. She said she doesn't think that the prescribed readings-in-full make sense. That is very archaic. The time lines are way too short and will have every public official in the world getting beat up on it. It will be perceived as doing business without the public knowing about it.

Tim Sercombe said the provision is not a requirement that you cannot give longer notice. It just says that for any species of ordinance, whether or not people are interested in it, here is the minimum requirement for adoption. The committee, however, wants a longer minimum.

Chair Myers said, from the committee discussion, he doesn't think the committee will have a problem

in dispensing meeting requirements. The way the provision is structured it will probably be viewed as more responsive to the concerns or comments of the public. Whether minimum time lines should be longer is one issue.

Mary Tobias said another issue is whether ordinances should appear on more than one agenda. There is real merit in making sure they do.

Tim Sercombe said the practical difficulty is that, if the text of legislation is reversed, and you get all your public input, and then you have another couple weeks before you can take action. The time for action typically doesn't prolong the public input process, it prolongs the adoption process. The committee may want to say that you have to have public hearings on all ordinances on a number of meeting dates.

Mary Tobias said she doesn't want to set the government up to be bashed all the time. What if there were a process that the ordinances are put on an agenda, not for purposes of engrossing, but for background. Then they go to public hearing and then to adoption. Then there is plenty of time for the public to become aware of the issues that are raised.

Tim Sercombe said it would be like having two readings of the ordinance prior to public hearing. The text of the ordinance would be available longer in advance and it would be introduced on the council agenda two weeks before it is to be voted on. That would allow for longer time to be on the council table. The practical difficulty is that there may be time, up until the public hearing, for people who want to make changes.

Mary Tobias said the advantage to that is it gets a lot more people trying to adsorb the ordinance.

Ken Gervais said that doesn't seem to take cognisance of the committee system that Metro now uses. An ordinance typically has a reading, goes to committee and comes back.

Mary Tobias said that doesn't involve the public.

Ken Gervais said it does.

Mary Tobias said committee meetings aren't as public as the full council.

Tim Sercombe said the provision allows the council to go through the adoption process--which is separate from the hearing process or getting advice of committees--in a shorter time than possible with a reading process, that goes on commonly. It doesn't preclude or require any advice process by committees before that adoption occurs. It might be best to leave the judgement to the council, through ordinance, the processes that protect them politically.

Mary Tobias said the advantage to any council vote, if the charter states the process, is that as political factions ebb and flow, the council can always refer back to the charter which prescribes the process.

Chair Myers asked Mary Tobias what she wants the charter to do.

Mary Tobias said the provision allows for the adoption process of an ordinance in one meeting. An ordinance may be proposed and adopted at one meeting as long as it has been advertised in the agenda. An entire interested public may never know what's happening. There may be special interest groups and the council may think they represent the whole public. It needs to be exposed for a longer period and the charter should require it. It needs to be on an agenda for at least a couple meetings.

Chair Myers said, mechanically, what Mary Tobias is proposing is that the charter would require that the matter be on the agenda of two consecutive meetings.

Mary Tobias said it would have to be consecutive meetings.

Chair Myers asked if there needs to be a provision by which the period may be shortened.

Tim Sercombe said he provided that unanimously the council could shorten the existing requirements. The charter could say that the title of the ordinance would go into the agenda, the agenda is publicized, the ordinance is publicized at a council meeting--or something like that. It could retain the capacity that the council, by unanimous action, could take action on an emergency basis without having to go through the publicizing at an earlier council meeting or placing it on the agenda.

Chair Myers said to capture that change it really amounts to including at least the title of the ordinance in the agenda of two meetings.

Tim Sercombe said yes.

Mary Tobias said the ordinance itself should have been available for two meetings.

Chair Myers said Tim Sercombe should adapt that in order to pick up Mary Tobias' concept, and then the full committee will consider it.

Tim Sercombe said the other control is that for public participation there will be hearings on certain types of ordinances and certain notice of those hearings will be given. That may be another alternative.

Mary Tobias asked what happens if something is tabled. Is that considered a final action?

Tim Sercombe said the provision would have just one type of postponement that is mandatory. The last sentence may be unnecessary if the committee goes with Mary Tobias' example, saying that the ordinance has to be available at previous council meetings, the title reflected in the agenda and so on.

Chair Myers said that Tim Sercombe should delete the last sentence: *Final action by the region council on the subject matter of an ordinance may be postponed once to the next region council meeting if a postponement is requested by four councilors prior to a vote on adoption of the ordinance.* He said he doesn't sense any committee intention to allow less than the number that would otherwise be required under applicable procedure to postpone action.

Tim Sercombe said the provision was added because if you could pass an ordinance at one meeting, it would be a political check. If you can't do that at one meeting there is no need for the political check. He said that section 41, *Effective Date of Ordinances*, includes the emergency clause portion. It requires that an ordinance state an earlier effective date if it is necessary for the health, safety and welfare of the region. The reason why this is so must be stated in the emergency clause. It requires approval of two-thirds of the members of the region council for adoption of an emergency clause. That would be 10 votes. The provision for an ordinance assuming a function allowed by the charter needs to be recrafted. A function-assumption ordinance for a tax could not contain an emergency clause, but the function alone hasn't been decided by the committee.

Chair Myers said that function assumption wasn't included as a prohibition for an emergency clause. There was a prohibition on an ordinance taking over Tri-Met.

Tim Sercombe asked if he should take the function portion of that sentence out. When the committee comes back to the discussion, will there be enough function assumptions, for which a process is not described, that they would want that in there? Most of the additional functions are going to require subsequent action by RPAC or vote of the people, so the emergency clause prohibition is really superfluous. If there isn't that process for a number of functions, it could still be important to have the opportunity for referendum.

Chair Myers said he doesn't think the committee has imposed that restriction. It should come out, except as to taking over Tri-Met. Ordinances assuming the mass transit district may not contain an emergency clause.

Tim Sercombe said that the content of ordinances, section 42, must embrace one subject. In section 43, *Procedures by General Ordinances*, the provisions are typically put in charters so as to reduce the temptation to make individual deals. Section 44 is about transition. It provides for continuing claims, proceedings, rulings on property and so on. The effective date of the charter, in section 44, is January 1, 1993. The severability clause, section 45, is very standard and required by the legislation.

Mary Tobias said the committee talked a lot about having conforming legislation. Is this a charter that provides for a government under ORS Chapter 268, or is it a general purpose government? It doesn't appear that the charter is continuing a special services district as defined by statute. If that isn't true, what is it?

Chair Myers asked if the constitutional amendment refers to a charter for a metropolitan service district.

Tim Sercombe said yes, but it gives a broader jurisdiction, as to matters of metropolitan concern for that district. This chartered entity could have a broader mission than what is mentioned in Chapter 268. Whether or not it is broad enough to call it a general purpose government, it wouldn't be that because it would have a jurisdictional limitation. But it is allowed to be broader than a district.

Mary Tobias said she believes the charter is going to be the basis for a tremendous amount of government consolidation. That consolidation of government isn't going to be a special service district. In light of what the governor is proposing right now, with the new special task force to try to do away with duplication of service, if indeed there is paring back of things, there is only one place to do that and that is at Metro. That is not a special service district. When it is time to have a public vote on a regional government charter, it needs to be decided what is being done. Maybe the committee is not doing what the constitutional amendment provides, maybe something totally different is done. Is this a whole new regional government that is not a special service district that is not subject to ORS 268?

Janet Whitfield said special districts and service districts are discussed in separate chapters and then there is a metropolitan service district which is something else.

Mary Tobias said she isn't sure this charter creates something that is none of the above.

Tim Sercombe said the charter isn't like a Chapter 198 special district or a Chapter 271 service district. It is not like a Chapter 268 metropolitan service district. It is different than all of the statutory creatures because it is a chartered entity and because its jurisdiction is self appointed. It is limited by the over-arching principle over whether or not it deals with matters of metropolitan concern.

Janet Whitfield asked if that can create problems in the courts. Is a city a city under the statutes?

Tim Sercombe said there are unique conflicts of regulation issues here that would be created by this

layer of government.

Janet Whitfield asked if a chartered city is still a city under the statutes.

Tim Sercombe said there is a lurking legal issue about, once there is a charter whether or not the organization would remain a metropolitan service district organized under the Chapter 268. He said he concluded yes for purposes of drafting the charter, because the statute itself provides for chartering of an entity. He said certain powers of the metropolitan service district--such as taking over the mass transit district--are limited to those metropolitan service districts created under Chapter 268. He said that would include Metro once chartered.

Mary Tobias said, between all the attorneys on the committee, Metro's legal counsel and the counsel of the cities and counties, there should be some time spent thinking this issue through. What is really being created here?

Janet Whitfield asked what would happen if the charter was challenged because it doesn't follow ORS 268.

Tim Sercombe said there is no question that this entity may be created by charter--it is allowed for in the constitution--and that it can empower itself over matters of metropolitan concern to some degree. As to those matters within the structure, it is very clear that it can be determined by charter, and it can be done without regard to most of the provisions of ORS 268.

Janet Whitfield asked, if Metro is no longer under ORS 268, how would the Legislature force Metro to do something. Would they address it as a municipality?

Tim Sercombe said it would be probably be done through ORS 268. There are some provisions in ORS 268 that do apply to the provisions of this charter. It talks about, not only a statutory Metropolitan Service District, but a chartered one in terms of the description of what things it can do to other entities, such as the mass transit district and the boundary commission.

Janet Whitfield concluded that ORS 268 also applies to things that are created in the charter.

Tim Sercombe said yes. He said that is the intent currently in the way statutes are written. That would be something to be taken care of if there is to be curative legislation.

Ned Look asked if the charter proposes any changes in state statutes.

Tim Sercombe said it will require several changes.

Chair Myers adjourned the meeting at 12:05 p.m.

Respectfully submitted,

Janet Whitfield
Committee Administrator