

**METRO
CHARTER
COMMITTEE**

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AGENDA

DATE: July 2, 1992
MEETING: Full Committee
DAY: Thursday
TIME: 6:00 p.m.
PLACE: Metro, Room 440, 2000 SW 1st Avenue, Portland

6:00 Correction and adoption of minutes from June 11.

6:15 Discussion and decisions on Charter issues.

10:00 Meeting adjourned.

MINUTES OF THE CHARTER COMMITTEE
OF THE METROPOLITAN SERVICE DISTRICT

July 2, 1992

Metro Center, Room 440

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

Committee Members Absent: none

*Vern Shahan was appointed by the cities in Washington County to replace Mary Tobias who resigned on June 30, 1992.

Chair Myers called the regular meeting to order at 6:15 p.m.

1. Discussion of Committee Workplan

The Committee had an open discussion of the Committee's direction and whether or not the Committee would continue work toward a final product. After agreeing to continue to work toward completion of a charter, the Committee developed a new workplan through the end of July. The following comments are regarding areas of substantive concern.

Ron Cease said that he thought the Regional Framework Plan had problems. The compromise with the structure and revenue resulted in a hybrid that is less than satisfactory. He said that the point of the charter is to strengthen Metro, but this draft weakens it. He said that the way the Committee was appointed was a mistake.

Norm Wyers said that the Committee should be discussing the charter under consideration and not the current Metro officials. The Committee is suppose to be drafting a charter for the next 50 to 100 years and not being so critical of any people in government right now.

Charlie Hales said that the Committee should take the testimony from the public hearings and incorporate them into the charter. The hearings were not conducted just to trot out a document and have it subjected to input and then proceed with what the Committee already planned to do anyway.

Bob Shoemaker said that there are some fundamental differences among the Committee about the direction the government should take. The Committee needs to decide whether a majority wants a government with broad powers that can over time emerge as the metropolitan government replacing the counties or a government that is nothing more than a service district which takes on particular functions.

Frank Josselson said that one of the virtues of the draft is that it provides methods that allow it to evolve over time if the direction of the region is toward a Willamette County. He said that he sees a real division in the Committee over the structure and finance of the government.

Matt Hennessee said that the real question is whether the Committee can take the draft hybrid and make it work with 16 members supporting it. He said that the Committee ought to revisit the structure issue and consider an elected auditor. He said that this is very different from a city--this is a

regional government that is going to deal with a number of regionally elected people. He said that he is bothered that the Committee allowed themselves to get pulled and twisted in so many different directions.

Chair Myers said that the Committee should conduct the discussion policy plane that avoids insulting other members of the Committee.

Ray Phelps asked that legal counsel attend all meetings because a decision or attitude turns on the need for some sort of legal perspective.

Larry Derr suggested that members write down their concerns and possible amendments so that there is an overview of where members are coming from.

Chair Myers said that the charter must be submitted to the director of elections by August 6th.

Ron Cease said that the elected auditor concept by itself makes sense.

The Committee decided that the next meeting will be July 9. From that point on, they will meet every Tuesday and Thursday evening, as well as Saturday, July 18, through July. The target date for a final vote is July 23, or a date soon after when the entire Committee can be present. Members should hold July 28 and 30 if needed.

Jon Egge said that he is concerned about taking crucial votes when there are absent members. It would be better to take the substantive votes on nights when more members can be present.

Frank Josselson said that if the proceedings from this point on are the same as up to this point, there will be no charter. If people are willing to make concessions, then the charter could be done in one night.

2. Committee discussion on issues to be revisited

Larry Derr said that 1000 Friends raised the issue of the boundary of the district. He asked if, with the Metro boundary basically stopping at the present UGB, there is any capacity for this organization to exercise planning control where it counts most, which is in the urbanized area. That leads to the larger question of whether or not Metro needs a larger boundary, or a larger boundary for a limited purpose of planning.

Norm Wyers asked Frank Josselson to specify some of the issues he thinks the Committee needs to resolve.

Frank Josselson said that it would be a simple matter to make a matrix of the issues--structure, functions, finance--on which the Committee is divided. When everyone can see where the issues lay, members can give and take on the various issues. If the Committee wants a charter, they will get there. He said that this Committee has lacked any opportunity to caucus in small groups, horse-trade, or to be candid about differences and identify those that are the important differences. It is because of that failure in the process that the development of the charter has been like pushing a rock up a hill. The Committee knows what issues divide them. The basic question is how badly the members want a charter. He said that he wants a charter bad and he is prepared to do a lot of things that he was not earlier prepared to do.

Bob Shoemaker identified the principle problems that the Committee does not agree on as: the cap on the ability to raise money; MPAC being a consenting authority or an advisory authority; Metro's ability

to make intergovernmental agreements; a Metro executive who is not a member of the council; if there is an elected executive, the necessity of a strong council chair, and; elected auditor.

Janet Whitfield said that the issue most people commented on in the public hearings was the regional framework plan and whether it is a comprehensive plan and whether the detail was appropriate.

Charlie Hales said that is more of a drafting matter than a philosophical matter. There is not much disagreement around the table that there should be a framework plan. The question is whether it is a comprehensive plan--whether land use decisions in the short run would be subject to dual review. He said that was the issue in the public hearings and not whether or not there ought to be a requirement that Metro carry out a regional plan.

Janet Whitfield said that there was a comment that something of that detail does not belong in the charter.

Ned Look said that another issue to revisit is the Future Vision--whether the Future Vision should be in the charter in view of the 2040 plan. He said that he would like to know the difference between the two and the ramifications if it is taken out of or left in the charter.

Tom Brian asked if the cap on taxes issue that Bob Shoemaker raised includes the question of at what point Metro needs to go out for a vote of the people. He asked if that issue came up in the hearing.

Bob Shoemaker said that is still an issue, although there may be a consensus that the niche taxes should not have to go out to the people.

Ray Phelps asked if there is a requirement of a vote if Metro wanted to exceed the cap of \$12.6 million plus inflation.

Bob Shoemaker said that a tax could break out of the cap by going to a vote. That revenue raising device would not be within the cap. The question is whether or not there ought to be a cap.

Ron Cease said that he thought that another issue with the cap is whether the cap is too high.

Frank Josselson said that there is also the question of whether any revenues ought to be dedicated to a particular purpose, such as planning, and if enterprise revenues could be used for functions other than the ones connected to it being raised. He said that there is a lingering issue about the size of the council. Included in the question of the presiding officer is the question of his/her powers--ability to fire the manager, ability to do the agenda, prepare the budget, or whether that person is no different than the other councilors.

Bob Shoemaker said that if the decision is to go with an elected executive and get that person out of the council, then the question of agenda and hiring/firing becomes mute.

Ned Look said that the need for an MPAC should be revisited.

Wes Myllenbeck said that he thought the issue of the need for an MPAC had been resolved.

Jon Egge said that the Committee needs to discuss having citizen involvement in the charter.

Matt Hennessee said that he would like to raise the issue of juxtaposing the citizen involvement process along with the MPAC process. It seems that when there is a citizen process, along with a MPAC process, it creates a certain dynamic that makes it difficult for the council relative to its decision

making process. He said that the Committee takes too many pieces without looking at it as a whole. The Committee can take the piece of citizen involvement and decide that they like it, but if they also like the piece of the MPAC process, it creates a problem.

Jon Egge said that if the MPAC is toned down, particularly with its consent power with respect to planning functions, the MPAC process will be fairly limited with respect to input. The Committee might tone down the MPAC and bring up a little citizen involvement. He said that the entire proposal presented by the citizen involvement group at the public hearing is too involved. He agreed that if the charter is too cumbersome, the government cannot move.

Matt Hennessee said that the Committee should also revisit the greenspaces issue and the Boundary Commission.

Ron Cease asked if there were other function areas that were testified to at the public hearings.

Janet Whitfield said that there was references to RUGGO's and Tri-Met. She said that a couple people testified that Tri-Met should have a separately elected board.

Chair Myers said that the largest issue raised with respect to functions would be the preference of Metro to have a much more unspecific investment of authority. He said that the Committee did not hear a lot of dispute about the description of the powers as they exist in the charter, except for the greenspaces.

Ned Look said that the Committee should also deal with the conformance with existing state legislation. He asked to what extent the Committee wants to ask for legislative changes and what is the time schedule to make the changes.

Janet Whitfield said that the RGC proposed that the charter not go into effect unless all legislation was enacted.

Ned Look said that his question is whether or not the Committee wants to make many changes in state legislature.

Chair Myers said that a related issue is the possible postponement of an effective date of the charter.

Matt Hennessee said that if the Committee takes up the issue of elected auditor, term limitations for the auditor should be discussed.

Jon Egge said that the Committee should discuss the Tri-Met issue and the financing that goes with it.

Ron Cease said that there are several pieces to state law. One would be things that the legislature has to do to mechanically permit the charter to take effect. He said that some of those are not controversial. The whole issue of what authority the agency will have over planning outside its boundaries will have to be settled by state law. He asked for a more specific reading on the kinds of things that state law will have to respond to.

Frank Josselson said that the Committee recognizes that the charter will require conforming legislation. Either they get it or they do not. He said that the Committee needs to figure out what to do if they get it, and what to do if they do not get it, and put that into the charter.

Ron Cease said that he would like to know what areas conforming legislation is needed so that the Committee can get a sense of what that means in reference to final resolution of the charter.

Chair Myers said that Dan Cooper's analysis provides an inventory of where a changes in state law are necessary. He said that he would like Tim Sercombe to review it and see if he has a different view of the conforming legislation.

Ron Cease said that whether there is a charter or not, if Metro is to have effective planning authority, it has to be able to do something beyond its boundaries. There needs to be some extra-territorial planning authority.

Larry Derr said that it already does since it has oversight of county and city plans throughout the region.

Mimi Urbigkeit added the need for term limitations to the list of issues.

Ray Phelps asked if the implementation recommendation, dealing with the effectiveness of charter provisions, was a clause on specific charter provisions or a clause on the entire charter.

Chair Myers said that he thought the proposal was to make the effective date of the charter January 1994.

Ray Phelps said that it would be better to have the severability process in reverse where it would key certain elements of the charter dependent upon state law rather than delay the entire charter. He said the implementation clause should be an issue to be revisited.

Chair Myers said that one version is to delay the effective date of the charter. The objective of that is to provide an opportunity to seek legislative changes, but the question of whether there are other individual provisions that are keyed off a change occurring or not occurring is dealt with internally in the charter.

Ray Phelps said that it is a mischief maker if all of the legislative changes have to occur before the entire charter goes into effect. He said that he was more concerned about the planning function than structure.

Larry Derr said that, during the first year of the charter, the Future Vision commission is going to do its work. For the next two and a half years, the framework plan is developed. It is not until four or five years out that any of it becomes binding. He said that the charter should go into effect in its entirety and those things that need changes should be identified.

Charlie Hale said that he would divide the testimony into two categories--constructive/specific or hyperbolic. He said that the Committee has to be careful in sorting out the testimony that the witnesses were referring to the current draft of the charter and that the members are referring to the current draft. He said that the Committee heard very emotional testimony that said certain things were conflicting, such as Future Vision and 2040, but the witnesses did not say how they were conflicting or what could be changed to solve the problem.

Frank Josselson said that, regarding the ruse that the framework plan is a comprehensive plan, if there were any question about that, it would be very simple to put in the charter a statement that the framework plan is not a comprehensive plan.

3. Discussion of the greenspaces provision

Motion: Matt Hennessee moved, Norm Wyers seconded, that the draft charter provision, Section 6(4), regarding *greenspaces* be amended to read: ~~Acquisition~~

~~of regional greenspaces.~~ Acquire, develop, maintain and operate a system of parks, open space and recreational facilities of metropolitan significance.

Ron Cease asked if the language is identical to that proposed at the public hearings.

Janet Whitfield said yes.

Jon Egge said that this particular language bothers him because "metropolitan significance" is tagged on the end and it is not clear how "metropolitan significance" affects parks, open space and recreational facilities. He said that it could be construed to allow the government to operate a system of parks that were not of metropolitan significance. He said that he would like to clarify it to make "metropolitan significance" apply to all areas.

Chair Myers said that it is intended to do that. He said that the spirit of the motion is that "metropolitan significance" is intended to modify all of the facilities or spaces.

Larry Derr said that Metro is going to have a measure on the ballot allowing Metro to do what the motion proposes, and more, as well as provide funding. If the charter just has empowerment without funding, it creates confusion. He said that he prefers an enabling provision that would say that if the separate measure is adopted, then it is deemed appropriate in the charter. In other words, the charter does not get in the way of it and the charter does not provide a different signal. It leaves the issue fully before the voters.

Ron Cease said that he would like the charter wording to dovetail whatever is on the ballot so that if they both pass, they do not hurt each other. If the greenspaces measure fails, Metro should not be precluded from coming back with it again if they want to do it.

Larry Derr said that they could come back with it through the process in the draft.

Ron Cease asked what the revenue side of the ballot measure is.

Frank Josselson said that it is general obligation bonds.

Ron Cease asked, as long as they have the authorization to get general obligation bonds and they are given the authorization to acquire a function, does reference have to be made to the funding part of that function.

Jon Egge said that the Committee has gone beyond ORS.268. In ORS 268, this provision says that Metro may, by a vote of the people, undertake to acquire, operate, and maintain a system of greenspaces. The Committee goes a half step beyond that and includes the acquisition of greenspaces on an outright authority and limits the maintenance of it with an understanding that with a vote of the people, they could maintain greenspaces. He said that he is willing to say that if the voters approve the measure, operation and maintenance can be included. It would make it so that the passage of the greenspaces measure would allow them to do it in the charter. He said that he does not agree with the motion because it is an outright authorization.

Chair Myers said that the threshold question is whether it should be a free-standing on-going grant of authority which is quite independent of what might happen to the pending ballot measure.

Jon Egge said that if the charter does not say anything about greenspaces, then it allows the vote to stand.

Larry Derr said that it is safer to acknowledge that, on the same ballot, there is a measure that, if adopted, will be incorporated in the charter.

Bob Shoemaker said that if the ballot measure should fail, Metro should not be foreclosed from acquiring and maintaining greenspaces.

Frank Josselson said that they can add anything they want to through the process.

Ron Cease said that it should be made clear to the voters that if they approve it, it will be incorporated into the charter. He said that the point is to make sure that whatever happens to the charter and the greenspaces measures on the November ballot will not cause difficulty.

Frank Josselson said that he supports Larry Derr's amendment, but he would prefer to specifically prohibit this government from getting into the parks department business. He said that he does not want a regional parks department when the city and county parks departments are perfectly capable of doing the job.

Matt Hennessee withdrew his motion.

Motion: Larry Derr moved, Norm Wyers seconded, that the draft charter provision, Section 6(4), regarding the *acquisition of regional greenspaces*, be deleted. At an appropriate place in the charter, there would be a provision that makes it clear that if the independent ballot measure relating to greenspaces on the November ballot is adopted, it becomes a part of the charter.

Bob Shoemaker said that the motion would mean that if the voters voted the issue down, Metro could not acquire or maintain any greenspaces without going through the new function process. He asked if it is true that Metro does not currently have the power to acquire greenspaces. He said that the charter was drafted as if they do have that authority. If they do have that authority, the charter should not deny that to them.

Tim Sercombe said that the ORS talks about requiring approval by the electors for the function of acquiring, developing, maintaining and operating greenspaces.

Bob Shoemaker said that the Committee was in error when they included that as an existing function because it is not. He said that he supports the motion.

Ray Phelps asked, with respect to putting the greenspaces measure on the ballot in November, how that can be considered an amendment to the charter.

Tim Sercombe said that one possibility would be to list, in the allowed functions, any function approved by the voters in the November 1992 election.

Ray Phelps encouraged the Committee to start thinking about the charter as they would like it to be in 50 years, and not as a reaction to something in the next couple months. He said that the Committee should deal with whether they want a greenspaces authorization irrespective of the current greenspaces issues.

Ned Look agreed with Ray Phelps. He said that he would vote against this motion, but will support Matt Hennessee's original motion.

Charlie Hales said that the only thing the Committee is forgoing is the fairly unlikely event that some

unforeseen financial source appears. He gave the example of a conservancy acquiring land in the Portland area and deeds it all to Metro along with a grant to maintain it. If the vote fails, they would have to go through the process in order to do that. The council could not take and manage the land on their own. He said that he is more in favor of the outright authority to acquire, develop, and maintain.

Frank Josselson said that this debate illustrates part of the problem that the Committee has talking about individual items in isolation. He said that in the course of this discussion, the Committee has assumed that MPAC approval will be required before the function can be taken on. He said that the Boundary Commission is left as it is so that Boundary Commission approval would be needed before Metro took on an additional function. He said that it is absurd for a regional government to have to ask an unelected Boundary Commission to do something that it determines to be of metropolitan significance.

Ron Cease said that he agrees Section 6 should be reworded to remove the word "continue" so that it reads "Metro is authorized to exercise..." and then replace 6(4) with the new language. If the issue passes, there is no problem. If it fails, they would still have the function, but they would have to find a way to finance it.

Chair Myers said that is the choice the Committee needs to resolve--a free standing, on-going authority added to the functions list or contingent on a future vote of the region.

Larry Derr said that he would be willing to amend his motion to leave section 6(4) *acquisition of regional greenspaces* in the charter, but stop there. It would also have the language regarding the November election. He said that would take care of Charlie Hales' concern.

Bob Shoemaker asked what would happen to land that has been acquired, but Metro cannot do anything with it.

Larry Derr said that he was solving for the issue Charlie Hales raised regarding an endowment.

Tom Brian suggested amending Larry Derr's motion to exclude gifted land. He asked if Charlie Hales was intending to expand the authority *carte blanche* or only in the incidence of a gift.

Charlie Hales said that he was intending to extend it *carte blanche*.

Ron Cease said that if it is a gift, Metro would eventually have to find a way to fund it after the gift runs out. If Metro has the authority, they would be free to find other means of funding. He said that he would prefer to allow it to do that. He said that if the issue fails in November, it will likely be on the financial side. He suggested turning down this motion and then returning to the original motion.

Matt Hennessee said that a yes vote on this motion would basically be saying let the voters decide in the fall.

Chair Myers said that the language may be drafted more broadly than that. It may refer to some reference to voter approval beyond this election. He said that essentially, Matt Hennessee's interpretation is correct.

Motion to close debate: Frank Josselson moved, Matt Hennessee seconded, to terminate debate and vote immediately on the motion.

Vote to close debate: A voice vote was taken and all present voted aye.

Vote on the motion: Tom Brian, Larry Derr, Jon Egge, Frank Josselson, and Mimi Urbigkeit voted aye. Judy Carnahan, Ron Cease, Charlie Hales, Matt Hennessee, Ned Look, Wes Myllenbeck, Ray Phelps, Vern Shahan, Bob Shoemaker, Norm Wyers, and Chair Myers voted nay. The vote was 5 ayes and 11 nays and the motion failed.

Motion: Matt Hennessee moved, Jon Egge seconded, that Section 6, *other assigned functions* be amended as follows:

Section 6, preamble: "*Metro is authorized to ~~continue to~~ exercise...*"

Section 6(4), "~~Acquisition of regional green spaces.~~ Acquire, develop, maintain and operate a system of parks, open space and recreational facilities of metropolitan significance."

Bob Shoemaker said the motion, by deleting "continue" is restrictive of any other functions. He suggested adding language to the preamble stating "Metro is authorized to exercise the following functions of the Metropolitan Service District and such other functions as shall be authorized as provided in the charter".

Amendment to the motion: Bob Shoemaker suggested, Matt Hennessee and Jon Egge accepted, the amendment to their motion in the preamble of Section 6. It now reads: "*Metro is authorized to ~~continue to~~ exercise the following functions of the Metropolitan Service District and such other functions as shall be authorized as provided in the charter*".

Chair Myers said that Bob Shoemaker's amendment will be taken in substance with the understanding that it might have to be refined.

Bob Shoemaker asked if the proper wording is "metropolitan significance" or "metropolitan concern". He said that the authority that the Committee is operating under gives jurisdiction to Metro regarding matters of metropolitan concern. He asked if there is going to be a distinction in the charter between "concern" and "significance".

Chair Myers said that he thinks the amendment proposed inadvertently lapsed into the use of the other term. He said that they probably meant to use the constitutional term.

Amendment to the motion: Matt Hennessee amended, Jon Egge agreed, to amend the motion to substitute "metropolitan concern" for "metropolitan significance".

Restatement of the motion: The motion is to amend Section 6, *other assigned functions*, as follows:

Section 6, preamble: "*Metro is authorized to ~~continue to~~ exercise the following functions of the Metropolitan Service District and such other functions as shall be authorized as provided in the charter*."

Section 6(4), "~~Acquisition of regional green spaces.~~ Acquire, develop, maintain and operate a system of parks, open space

and recreational facilities of metropolitan concern."

Bob Shoemaker said that his concern is that included in this list of functions is one that Metro does not now perform so to use the term "continue" is inappropriate. By taking "continue" out and saying "Metro is authorized to exercise the following functions" and listing five functions, it leaves the question of whether it can exercise any other functions at any time.

Chair Myers said that it will be clear that they can later in the charter and the amendment just previews that.

Vote on the amended motion: Tom Brian, Judy Carnahan, Ron Cease, Larry Derr, Jon Egge, Charlie Hales, Matt Hennessee, Frank Josselson, Ned Look, Wes Myllenbeck, Ray Phelps, Vern Shahan, Bob Shoemaker, Mimi Urbigkeit, Norm Wyers, and Chair Myers voted aye. All present voted aye and the motion passed.

4. Discussion of the MPAC approval for planning

Motion: Frank Josselson moved, Bob Shoemaker seconded, that Section 8 of the draft charter be amended to read: *"Except for the matters listed in section 7, no other matter may be included in the regional framework plan without the consultation and advice of MPAC. ~~unless the question of its inclusion is approved by a majority of the members of the MPAC or by a majority of the votes cast by the voters of Metro in an election on the proposition. This approval may occur either through adoption of a referred measure authorizing the regional planning function or by approval of a measure relating to Metro finances which authorizes financing or identifies funds to be used for the exercise of that regional planning function.~~"*

Tim Sercombe said that, structurally, the only reason for section 8 is because there are some other things that could be included in the framework plan if the advice of MPAC was received. Anything beyond those, MPAC approval or voters approval is needed. If that concept is going to take out the concept in section 8, then it makes sense to not have a specific list of things that can be included with the advice of MPAC, but to have a general provision stating that anything else can be included with the advice and consultation of MPAC. It would call into question the list of those areas in which Metro can address the metropolitan concern aspects of the functions. The issues on that list can be included in the framework plan after obtaining advice and consultation of MPAC. If anything else can be added, there is no reason to list those things.

Bob Shoemaker suggested that, rather than get hung up on how and where it is said, the Committee agree on the matter of policy and leave it to Tim Sercombe to put it where it belongs in the charter.

Ron Cease said that the motion is really saying that Metro can add any planning issue just by seeking the advice and consultation of MPAC. MPAC does not have to approve anything. He said that he does not think the Committee wants to do that.

Jon Egge said that everything is limited to metropolitan concern because of the ballot title. He said that the charter is not getting into local planning. He said that he does not see Metro, or the Committee's mandate by ballot title, getting into the local aspects of planning.

Ron Cease said that it gets into the definition of what is metropolitan. If the council wants to get into a planning area and makes a determination of metropolitan concern, and the MPAC does not support

it, Metro is still free to adopt it. He said that he wants to have a strong organization, but it should not have the world at its fingers.

Frank Josselson said that he would amend his motion to add that if the MPAC does not provide approval, or disapproves, of the new planning, then two-thirds vote of the council will be required to add the function.

Charlie Hales suggested tabling the motion. He said that tonight is not the time to get into the thicket of planning. It would be better to wait until members have prepared holistic amendments to the planning section of the draft.

Frank Josselson withdrew his motion.

Bob Shoemaker said that Frank Josselson was trying to get at the question of policy--does the Committee want MPAC required to consent to broadening the planning function?

5. Discussion of the revenue raising limitation provision.

Ron Cease said that there are some mechanical problems with the way that the cap is put together. Metro has also raised some potential policy issues in terms of what might happen to revenue sources related to solid waste. He said that the policy question is whether there should be a cap of any kind. If they do want a cap, the step is determining whether it will be a dollar figure or a limitation on certain kinds of taxes.

Motion: Ron Cease moved, Ray Phelps seconded, to delete the cap requirement.

Ron Cease said that his motion is simply the policy question, and not the exact cap limit.

Jon Egge said that the cap is tied to how much power is given to the government with respect to raising revenues without a vote of the people. If Metro is given a lot of power to raise revenue by ordinance, then the cap becomes important. If the Committee changes the charter so that more revenue issues have to go to a vote of the people, the cap is not so important. He said that, regarding the cap all by itself, there should be a cap that is meaningful or none at all. The current cap is not meaningful. If the cap was between \$6.6 and \$8 million, then it would be meaningful. \$12.6 million is almost laughable when the government is only spending \$5 million. The \$12.6 million figure was not reached rationally.

Ron Cease said that he would like to amend the motion to say that there should be some kind of cap.

Ray Phelps did not agree.

Bob Shoemaker said that the recommendation of the subcommittee was that there be no cap and that all taxes, other than the general application taxes, be available via ordinance. He said that is the question that should be addressed.

Chair Myers said that the effect of the motion is to restore the full finance subcommittee recommendation.

Charlie Hales asked for the philosophical reason for the cap.

Ron Cease said that his personal preference, on the policy side, would be to give Metro the same kind of taxing authority that cities have, except that there would have to be a vote on income tax, sales tax,

etc. In terms of the niche taxes, Metro would have broad authority to use them by ordinance. The concept of the cap is that, as a pragmatic matter, there is a better chance of getting support if there is a cap. The Committee is giving Metro some revenue authority beyond what they currently have, even though there is a cap. As a practical matter, the sales tax, income tax and property tax options will not be available to Metro in the near future, but they should be in the charter with a vote attached. The taxing authority will have to come in the niche tax area. He said that the testimony and complaints have been about the specific nature and mechanics of this cap. The cap is an arbitrary figure, just as any dollar amount would be. He said that the Committee took that route because they did not want to exclude Metro's authority in the niche area. He said that the cap will be effective over time--the compromise is not suggesting that Metro will have \$12.6 million available to it at the point the charter would be approved. The charter does not give Metro any money, it just says that Metro has the authorization over time to do that. He said that \$12.6 million will be, in a couple years, a small amount of money, particularly if they got into parks and recreation. In an area with 1.2 million people, \$12.6 million is not a lot of money. It looks like a lot in terms of what they are currently doing. He said that the local governments are nervous about it, but they want to give Metro a narrow window. Taking the two extremes--a narrow window and no limit at all--there needs to be a middle ground.

Frank Josselson said that Metro is, with one exception, a fee for service government. The government runs its general overhead, planning functions, and other related functions to the services that it provides out of enterprise revenues and excise taxes. With the fee for services and excise taxing authority, this government has grown from total assets of \$50 million in 1986 to total assets of \$343 million in 1990. He said that it is the only government in the state that is not subject to Ballot Measure Five, with the exception of the Zoo. He said that planning is the only thing that Metro does that it does not charge a fee for or in connection with. Conceptually, this is not a government that needs the power to tax except for the planning functions. He suggested that there be a cap and that the cap be a specific dollar amount that the Committee determines is necessary to fund the planning functions. He suggested that the cap be in the neighborhood of \$7.5 million to accommodate the \$5.5 million that Metro is now collecting on property taxes and to allow for growth. The taxes that are not approved by the people should be directed only to planning.

Bob Shoemaker said that it brings the Committee to a critical point about what type of government they are talking about and what kind of government they want to have for the next 50 to 100 years. He said that Frank Josselson stated eloquently the point of view that this government should be a government of limited powers that should have fees for particular services and planning. He said that he does not agree. This government needs to be one that can be there for the future to deliver to the people those services of metropolitan concern that the people need as time goes on. An immediate example of that is the need to provide for the arts. There will be other needs as the region grows and Metro should be given the authority to meet those needs, which means that they have to be given the authority to raise money. He said that the political process itself will restrain the government from over-using that authority. It is a tough thing to vote to tax. There is a constraint in the legislative form of government, which is what exists now, to prevent abuse. The government must be able to meet the legitimate needs of the metropolitan concerns of this region.

Larry Derr said that he shares the goal of empowering this government to be able to do the things that it may decide in the future that the Committee is not deciding now. He said that he is concerned that the area of taxation the Committee is talking about is not a broad based taxation, which is why it is called a niche tax.

Ray Phelps said that during the period of 1987 to 1990, he was the chief financial officer of Metro. He said that the information that Frank Josselson provided is not correct and is misleading. This government operates with more than two sources of revenue and the growth of Metro's financial status has been directly attributed to the vote of the people. It has been assigned many tasks and has

had to take on the responsibility and the cost associated with the tasks. He gave the example of the solid waste agenda--the contract to handle solid waste over 20 years has been estimated to be nearly a billion dollar public works contract. He said that the \$65 million Convention Center was approved by the voters in 1986 and it increased the assets and values by \$91 million and increased the size of the payroll because of the additional personnel. He said that there are many other examples of things that were not in place in 1986 but have since been assigned to Metro causing an increase in the costs. If the government's ability to operate is restricted, they will not be able to have the flexibility to meet the needs.

Ned Look agreed with Bob Shoemaker and Ray Phelps.

Larry Derr said that Ray Phelps' comments missed the point of Frank Josselson's comments. He said that Frank Josselson's point was not specific dollars, but the fact that it was all done without having unlimited taxation power and it worked.

Frank Josselson said that if his figures were wrong, Metro gave him the wrong information. He said that he is not talking about restricting this governments ability to tax. He said that he is talking about restricting Metro's ability to tax without a vote of the people. He said that his proposal is an additional \$2 to \$2.5 million cap within which the regional government could tax without a vote of the people for the planning functions. That does not imply that this government cannot raise niche taxes beyond that cap. He said that he would consider putting \$6 million in the cap dedicated to arts. He said that a cap of \$12.6 million is \$7 million over the current authority is the same as not having a cap.

Charlie Hales asked how the cap would affect the revenues for functions that were transferred, by a source other than by a vote of the people, if the function came with a tax source. He gave the example of a function coming through an intergovernmental agreement.

Tim Sercombe said that, as drafted, the cap is just a limit on revenues obtained through taxation.

Chair Myers said that it is unclear whether it would be under the cap or not.

Charlie Hales said that he does not see how the cap would expand to deal with that issue as it is drafted.

Frank Josselson said that if ORS 190 remains as it is today, then the power to tax can be transferred from one unit of local government to another.

Ray Phelps questioned the ability to transfer the taxing authority. He gave the hotel/motel tax as an example.

Chair Myers said that if the Committee retains the concept of a limit, then the question of how to deal with transferred authority could be addressed as a separate matter.

Ron Cease said that if there is a cap, the mechanics become a real problem.

Charlie Hales said that he is not persuaded that the Committee could craft a cap in the charter that is either tight enough to be meaningful, but loose enough not to screw something up in the near future or that accommodates every contingency.

Jon Egge said that he is going back to the question of what is the overall concept. He said that the matrix makes some sense because the cap does not mean as much if he can be confident that the structure, because of its visibility and accountability, is such that he can intrust them to make that

decision about how far they go. He said that he is not currently confident that the structure is there which makes him apprehensive about voting on the cap.

Bob Shoemaker asked if there was some way the Committee could deal with that because it will come up on all the important questions.

Chair Myers said that unless it is made explicit in a motion, it is difficult to link votes to other issues. He said that it may have to be done on the basis that any decision, if it is disconnected, is going to be open for reconsideration if some later decision arouses a change of position for a majority of the Committee.

Bob Shoemaker said that should be a fundamental ground rule--the Committee can always return to a question for a motion to reconsider.

Jon Egge said that he does not want to just reconsider because it is someone's particular issue that he/she keeps hammering at. If it affects someone's viewpoint on how the government is coming down, then it is legitimate to revisit.

Frank Josselson said that his reluctance to go along with the cap is based on his sense that the draft structure of the government is unaccountable and not responsible.

Bob Shoemaker asked if the motion could be amended to include that the question of the cap will be reconsidered after the Committee decides on the structure so that they do not have to gain a new majority to reconsider.

Ron Cease said that it is a philosophical question of whether there should be a cap on revenue that Metro raises, regardless of its functions or structure. If the Committee wants a cap, then it can be crafted.

Bob Shoemaker said that he thinks the Committee will decide that they do not want a cap, but he would like the opportunity to revisit the issue based on the outcome of the structure issue.

Ray Phelps said that the Committee can always revisit an issue, but they do not want to keep revisiting. He suggested a provision identifying the revenue source of the proposed function--either through an intergovernmental agreement or outright request--be coupled with the request for the function. It would be a fiscal impact component that would become its own leveler and it does not get swept into the cap business.

Ron Cease said that concept is currently in the law. There are functions listed which Metro could take on, but the funding source has to be made clear.

Ray Phelps said that his point is that the cap concept does not have to leave the Committee. It could come back as the idea of when adding functions, they would be required to identify the revenue source. He said that it would be more purposeful and direct to get at the issue this way because it requires a more specific response.

Tom Brian said that, ultimately, voter approval is needed and a cap is going to be important. He said that some of the concerns can be taken care of saying that it is not withstanding state and federal transfers or revenues from intergovernmental agreements.

Larry Derr said that he is going to vote to keep the cap in because it will force the Committee to deal with it.

Frank Josselson said that it is possible to have a cap without a dollar figure by saying that the government, without a vote of the people, may tax for the following purposes.

Vote on the motion:

Judy Carnahan, Ron Cease, Jon Egge, Charlie Hales, Matt Hennessee, Frank Josselson, Ned Look, Wes Myllenbeck, Ray Phelps, Bob Shoemaker, Mimi Urbigkeit, Norm Wyers, and Chair Myers voted aye. Tom Brian, Larry Derr, and Vern Shahan voted nay. The vote was 13 ayes to 3 nays and the motion passed.

6. Discussion on the structure provisions

Frank Josselson suggested that the structure have a seven person council--six part-time members elected from districts, one full-time presiding officer elected at-large. The presiding officer presides at meetings and otherwise has no greater powers than the other members of the council. There would be an appointed chief of staff, responsible for the day-to-day operations, who serves at the pleasure of the council. There would be an elected auditor.

Ron Cease said that he does not understand why someone should be required to run in an at-large election for a position that has no additional authority except to preside. That person should have more authority. He said that 13 members may not be the right size for a council, but seven is too small. He suggested a council of nine members with an elected executive officer and a provision for an administrative officer similar to Wes Myllenbeck's earlier proposal. He said that the executive officer function is a greater function than simply the administrative side of things. He said that he understands the concern that there would be an executive officer who is not an administrator and could not be effective. He said that the organization may get big enough that hiring an administrative officer would make sense which is why he suggested having a provision in the charter to have an administrative officer. That would require the executive officer to play more of a political function by getting out there and talking with local governments and constituents. He said that he does not have problem with nine people, but the argument to change it from 13 to nine is not overwhelming. If the council is to be made stronger, a presiding officer should not be forced on them. The council should be allowed to select their own presiding officer because the relationship between the body and the presiding officer is a healthier relationship. He said that if there is an at-large presiding officer, solid people will not run because the role is not substantial enough. Having the presiding officer selected by the body has immense merit.

Jon Egge asked if Ron Cease's proposal eliminates the veto for the executive officer.

Ron Cease said that the veto has never been used, although Rena Cusma has threatened to use it. The ability of the executive officer to threaten to use it is probably an important power. He said that if that becomes the main issue, he would support eliminating it.

Jon Egge said that the veto is a huge issue for him with this model. He said that there is still a gap in elevating the council and part of the elevation of the council is accomplished by cutting the knot. He said that it seems to him that the presiding officer of the council, elected from within, now becomes a little more important, under this model, and ought to be part-time paid at least.

Ron Cease said that he agrees with that. He said that the council could be given a bigger role in the contracting area. There are several areas where the council could legitimately be brought into it. He said that he has never operated on the basis that he has a commitment to Rena Cusma that he would support everything in the status quo. He said that he believes in the concept of a strong elected executive officer because there needs to be a strong regional political figure. The hybrid that is now in

the draft creates all kinds of problems, including weakening the council. In order to make the presiding officer a strong political figure, a number of authorities and functions of the council have been taken away. He said that the council's authority needs to be added to.

Jon Egge said that the veto is very important to him because it puts the executive officer at an unusual advantage in terms of policy. He said that ORS 268 says that the district business shall be administered and district rules and orders shall be enforced by an executive officer. When the veto is injected into that, the executive officer is in the policy arena and is always hanging over the government for every action that they take.

Ray Phelps said that the veto was added because of the difficult transition from one executive to the next. The government ceased to operate without the veto because the executive had no manner, method, or form to gain the attention of 12 people who were running by the executive showing total disregard for the position. The veto made the executive a co-equal as a dually elected person of the region. He said that without the veto, the executive officer position is a joke because there is no political method for the executive person to speak for the people of the region when the council is vote-trading.

Chair Myers asked how many votes it takes to override the veto.

Ray Phelps said that it takes two-thirds.

Larry Derr said that five full-time council members and an elected executive, with a veto, comes close to balancing. He gave an example of the difference between full-time and part-time councils. The Clackamas County Commission, who are full-time, were at the Governmental Affairs Committee today, after hearing about it yesterday, to express their views on Rena Cusma's consolidation proposal. The one full-time Washington County commissioner is out of the country and the other part-time commissioners were not present to express their views.

Ray Phelps said that when the numbers on the Metro council are reduced, people in Washington County and Clackamas County are going to lose the opportunity for better representation. Half of the population of this region is in Multnomah County, but that dynamic is changing. As growth occurs, Washington and Clackamas counties are gaining population much faster than Multnomah County. Reduced numbers gives more power to Multnomah County. He said that the breakdown of districts would occur so that there would be three totally in Multnomah County, one and some portion in Washington County, and a little more than one in Clackamas County. He said that would undermine the entire philosophy that was put into the bill with regard to having the districts which was to balance the 12 councilors between Portland and the rest of the region. Having six councilors shifts the political power back to Multnomah County, specifically Portland.

Mimi Urbigkeit asked at what point is a political corner turned and people start thinking regionally and electing people who run on the basis of being regional thinkers, instead of being people hanging on to their territory.

Ray Phelps asked if Mimi Urbigkeit is suggesting that all seven councilors run region-wide.

Mimi Urbigkeit said yes.

Jon Egge said that an effective government is more important than a perfect balance of representation in each neighborhood. He said that it looks like the Committee will continue some form of the MPAC process in this government which leaves the comfort that the government can be turned over to a regional perspective. He said that he is not sure this government is ever intended to operate with

specific little fief-domes coming together and trading--that is what made CRAG such a poor model.

Ron Cease said that you cannot avoid having specific agendas. It can be moderated and controlled, but the nature of the political process is that people will dicker positions. He said that the question of larger versus small is not really a question of one being better than the other. It is a question of one having one set of values and the other having another set. He said that a legitimate claim of a smaller group is that it is easier to manage. Representation-wise, there is a different problem and the same problem exists in the three counties. When there are at-large elections, people who run tend to have a larger view of the whole unit which is desirable in many respects. The negative side of that is that they lose track of the people in the communities. With elections by districts, there is a greater likelihood of knowing the people but those elected tend to forget the larger region. Those elected at-large tend to feel that they are better than those elected by districts because they represent more people.

Chair Myers said that the Committee should consider the realities of the election process--the bigger the districts, the more expensive it is to run which is a significant factor over who can and will run.

Frank Josselson said that in the next 20 years there will be half a million people added to the region. If there are nine people on the council instead of seven, it is not going to make a difference 20 years from now. The problem with smaller districts is that there are larger councils. He said that, based on the Committee's experience, the decision making dynamics of a large group are very cumbersome. If there is an at-large elected, full-time person, when the rest of the councilors are part-time, the fact that he/she is full-time and at-large is a gigantic advantage. He said that a veto, control over hiring and firing of the chief of staff, or control over the agenda do not have to be added. The fact that person is full-time is an advantage. He said that he does not like that. He said that his personal preference is to have all the people be full-time because there is enough work for this government to do for them all to be full-time. He said that there are other disadvantages with seven councilors, including representation of communities and broader representation. Once there is a larger council, there tends to be more local interests as opposed to regional interests reflected in the composition of the council. The smaller the districts, the more likely the influence by local and neighborhood interests, which is not what is desired for a regional government. He said that this is a regional government to do regional things, not a regional government to do local things. The size of the district is going to influence the pressures and interests that influence the individual representatives. He said that he strongly recommends a seven member council--he would prefer five, but seven is a compromise. He said that Rena Cusma is buying into this to some extent because her consolidation proposal includes a council or not more than nine. The larger the council, the more subject it is to local influences, the less regional its outlook, the less accountable and the less visible.

Judy Carnahan said that, at the Committee's retreat in the fall, they set out a couple of goals for Metro in the charter. One was a higher visibility throughout the region and greater accountability. She said that she does not think that it is realistic, under any circumstances, to expect part-time unpaid people, especially where there are only six, to take on that type of responsibility and that level of representative responsibility. As long as those positions are voluntary and unpaid, it is far more important to have more districts and to spread the responsibility and enhance the communication back into those districts.

Frank Josselson said that Judy Carnahan's argument is a good argument in favor of making the other positions full-time, but it is not a good argument in favor of a larger council. The larger council, using Metro council as an example, does not have 12 part-time officials who have spread the work so that they have more time. It has resulted in subcommittees with two or three councilors and the rest of the council rubberstamps the subcommittee decisions in virtually every case. He said that the councilors have testified that when they are not on the subcommittee, they do not know what they are voting on.

Judy Carnahan asked how decreasing the number of councilors will improve that situation. The councilors are still part-time.

Larry Derr said that the responsibility is spread when there are more people, but he thinks it creates irresponsibility. If there is a larger council, it lessens the authority and ability to get things done for each one of the people because it is spread over more people. Elections will cost more with bigger districts, but perhaps with more responsibility that comes with a smaller group, there will be people who can attract the funds and the people attracted to those campaigns that have prior experience and background to carry the larger responsibility. He asked that the Committee discuss the possibility of selling five full-time councilors.

Matt Hennessee said that Larry Derr is right that the Committee has made an assumption that they could not sell full-time councilors, but he does not know how deeply the Committee has had that discussion. He said that the idea of a smaller full-time council makes some sense, at least for discussion.

Chair Myers asked what number of part-time councilors are required to do the work of this government. He said that one aspect on the size of the council is having enough people to do the work.

Frank Josselson said that the government has 2,200 employees and it does a variety of things. It is a complicated government with a lot of tasks to do. He said that it does not necessarily follow that when there are a lot of tasks and more people are added it is more likely that the work will get done. He said that his experience has been that the more people added, the less likely it is that the work will get done because each person has the sense that he/she is not responsible and is just a member of the crowd. Larger is not necessarily better. He said that the seven member part-time council is one that he does not necessarily like, but he can live with. He said that he likes the five member full-time council.

Charlie Hales asked what the full-time councilors do, absent a commissioner system where they have managerial responsibilities and site-specific land use decisions. The Committee must be able to answer that question before deciding on a full-time body.

Mimi Urbigkeit said that they could get out in the region and see what is actually going on.

Charlie Hales said that he would suspect that Metro councilors would say that they are spending all of their time being Metro councilors and have no time to spend out in the region.

Mimi Urbigkeit said that is part of the reason that they are invisible and unknown.

Larry Derr said that as a part-time councilor, he/she cannot devote time to know everything so the council spends a lot of in subcommittees. A small council would not necessarily have subcommittees and everyone would know what is going on.

Judy Carnahan said that she is not adverse to looking at the possibility of fewer Metro councilors if they are full-time. She said that she has a real concern about representation, realistically, if the council members remain part-time and the number is decreased. It is too much if it is part-time.

Bob Shoemaker said that he is not adverse to a smaller full-time council. He said that Multnomah County is an example of a five member full-time council, although the structure is different. He said that he does not think that they have enough to do and, as a result, the cream of the crop do not run

for the positions.

Frank Josselson said that there are five commissioners in Multnomah County to take care of 2000 people who live in the unincorporated area of Multnomah County. In Clackamas County, there are three commissioners who deal with 100,000 people who live in unincorporated areas. Clackamas County also does not do land use decisions. The Clackamas County Commission is able to do planning and look at their departmental structures and fix them. They get out of the building to see the constituents and see what is happening in the region. There is no shortage of time for them to fill. He said that the Committee has an opportunity to do something that will preserve Oregon's livability and inspire the people. It will take a lot of time and thought to do the planning that needs to be done to keep the region livable.

Jon Egge said that the Committee does not have to go all the way, one way or another, on this issue. There might be some middle ground that reflects reality more and gives the government the ability to grow into what it might become. He said that he could envision nine partially paid individuals accomplishing all of the things that the Committee discussed. He said that he is nervous about having six full-time paid councilors for a variety of reasons, particularly if they are paid well because it will kill the charter.

Frank Josselson said that the Committee either needs to do something that does what they want it to do or do something because it will pass the voters. He said that he would rather be able to defend the structure rather than say that he compromised on it.

Ron Cease said that, on the issue of going part way, it could be possible to have nine members who would be paid half time and then have a clause in the charter stating that in five years, there would be some sort of a transition to convert those positions to full-time, if merited. If these people are partially paid, the need for a larger council is obviated.

Matt Hennessee said that the Committee has had some thought provoking discussion about structure that says that the Committee is more open than they thought they were. He said that a full-time smaller council is an opportunity.

Chair Myers said that he would like the Committee to consider positions on two options. The first is nine part-time and partially salaried councilors with the rest of the configuration the same. The second is five or seven full-time paid councilors with the same configuration.

Matt Hennessee said that there are also other issues involved. He said that he is concerned that the Committee takes issues separately without thinking about the impact of the other things. He said that he concerned about how the role of the MPAC will play with the structure. Other issues that are very important in the structure question are whether or not to have a veto and whether it will be a limited or broad grant of power. He said that he is concerned about taking the structure in a vacuum and leaving the other issues out.

Frank Josselson said that is why the Committee was able to vote as it did on the cap. If the Committee can get through this issue, the remaining decisions to be made will be easier. He said that a lot of the Committee's problems with the existing draft and structure decisions is that no one likes them. He said that the Committee should do something that the majority of the Committee likes and then let the voters decide.

Matt Hennessee said that he just wants to make sure that the Committee looks at the whole picture.

Chair Myers suggested that the Committee take a sentiment vote on two alternative approaches--nine

part-time partially paid councilors elected by districts versus five full-time paid councilors.

Ron Cease said that five members seems small.

Frank Josselson said that the Committee is talking about people deciding regional issues and having a big picture.

Chair Myers said that the basic question is part-time versus full-time.

Ron Cease asked if the part-time option has the option for the council to eventually become full-time. If the executive officer is maintained and there is an elected auditor with a fully or partially paid council, there will be a lot of costs.

Bob Shoemaker said that another issue to consider is that the charter might replace the three counties.

Charlie Hales said that the Committee keeps going between what would be a good model and what would pass. He said that it is possible that there would be a reduction in staff if there were full-time councilors.

Ray Phelps said that there are currently eight or nine staff persons with a budget of \$500,000 in the council office.

A straw vote was taken on the following two structure alternatives:

1. A five person, plus or minus, full-time compensated council.
2. A nine person, plus or minus, partly compensated council.

Ron Cease asked whether the executive officer was included in the alternatives. He said that he would be more willing to accept a smaller council with an elected executive.

Frank Josselson said that he could live with an executive officer that was an executive officer and not a super policy maker. He said that his preference is an appointed manager because the likelihood of getting a professional manager is greater.

Larry Derr said that he thought the elected executive was in the five full-time option because it created a balance of power.

Matt Hennessee said that he prefers five plus, ideally seven, councilors that are full-time with a separately elected executive and an elected auditor.

Ron Cease said that he would prefer a nine part-time council with some ability to go to full-time some time in the future. He said that if there is a regionally elected executive, he could accept seven full-time councilors. He said that he does not know how to sell the full-time council. He said that there might not be enough now for a full-time council to do, but there will be in the future.

Vern Shahan said that he would prefer to have nine part-time councilors with the option to move part or all of the council to a full-time basis as growth occurs. Five full-time paid individuals is not the best way to spend government dollars.

Jon Egge said that he prefers nine part-time councilors.

Frank Josselson said that he prefers five full-time councilors.

Bob Shoemaker said that he prefers nine part-time councilors with an elected executive and elected auditor. He said that the part-time people are more involved in the community as citizens and the full-time people become too bureaucratized.

Larry Derr said that he prefers the five full-time councilors.

Norm Wyers said that he prefers the five full-time councilors. He said that he does not know who would run for the nine councilor option.

Judy Carnahan said that she would prefer to stay with 13 councilors. She said that if she were a dreamer, she would go with the nine part-time people, but that is not realistic because it would bring negative votes from the public.

Ned Look said that he would prefer to stick with 13 councilors who receive expenses only.

Ray Phelps said that he prefers 13 councilors, although he would like to see more councilors.

Tom Brian said that he prefers five councilors because it will prepare Metro for the future and the larger role that it will probably play.

Charlie Hales said that he prefers five full-time councilors. If Metro wants to be put on par with other local governments to start assuming local government functions, it is hard for a part-time council to negotiate with a full-time board of commissioners, such as Multnomah County.

Chair Myers said that he prefers nine part-time councilors because the government is not to the point where it is ready to have full-time politicians. The region is too big and has too many talented people. The opportunity to serve the policy making of this government should be left available without having to make the choice to become a full-time politician.

Mimi Urbigkeit said that she prefers five full-time councilors because it would be very visible and accountable.

Seven committee members preferred the five full-time council option. Five members preferred the nine part-time council. Three members preferred maintaining the current 13 member council. Wes Myllenbeck was absent.

Frank Josselson said that the Committee assumed that there would be an elected executive officer. He said that if that elected executive officer has any legislative authority, as opposed to executive, including the veto power, then he would oppose the nine member council option because it will lead to the current situation. He said that an elected executive with veto power along with a full-time council would be okay.

A straw vote was taken on the following two structure alternatives:

1. A five person, plus or minus, full-time compensated council. An executive elected at-large with a veto.
2. A nine person, plus or minus, partly compensated council. An executive elected at-large without a veto.

Both options include a presiding officer selected from within the council.

Chair Myers asked if any members who preferred a larger part-time council would insist on having an executive with a veto in conjunction with a larger part-time council.

Ron Cease and Ray Phelps said that they would.

The following members prefer to have a five person, plus or minus, full-time compensated council and an executive elected at-large with a veto:

Tom Brian, Charlie Hales, Matt Hennessee, Frank Josselson, Mimi Urbigkeit, and Norm Wyers

The following members prefer to have a nine person, plus or minus, partly compensated council and an executive elected at-large without a veto:

Ron Cease, Larry Derr, Jon Egge, Bob Shoemaker, and Chair Myers

The following members abstained:

Judy Carnahan, Ned Look, Ray Phelps, and Vern Shahan

Wes Myllenbeck was absent.

A straw vote was taken on a seven full-time council and an elected executive with veto power.

The following members would support a seven full-time council and an elected executive with veto power:

Ron Cease, Larry Derr, Charlie Hales, Matt Hennessee, Frank Josselson, Vern Shahan, Bob Shoemaker, and Norm Wyers

The following members would not support a seven full-time council and an elected executive with veto power:

Tom Brian, Judy Carnahan, Jon Egge, Ned Look, Ray Phelps, Mimi Urbigkeit, and Chair Myers

Wes Myllenbeck was absent.

Chair Myers adjourned the meeting at 10:50 p.m.

Respectfully submitted,

Kimi Iboshi

Kimi Iboshi
Committee Clerk

Materials following this page represent
Attachments to the Public Record



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June 30, 1992

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Rena Cusma

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District 4

Edward P. Gronke
District 5

George Van Bergen
District 6

Ruth McFarland
District 7

Tanya Collier
District 9

Roger Buchanan
District 10

Ed Washington
District 11

Sandi Hansen
District 12

The Honorable Jim Gardner
Presiding Officer, Metro Council
Metropolitan Service District
2000 S. W. First Avenue
Portland, OR 97201-5398

Dear Executive Officer and Presiding Officer:

Re: Draft 1992 Metro Charter from Charter Committee

Attached hereto is a detailed review and analysis prepared by this Office regarding the Draft 1992 Charter dated June 17, 1992, submitted by the Metro Charter Committee.

Our first level of review was to identify what we believe will be significant legal issues if the Charter is adopted by the voters in this form. Those legal issues arise from conflicts between the Charter and existing provisions of Oregon law. The Charter, as drafted, deviates from Oregon law in significant areas where the Legislature has, in our view, adopted provisions that express the intent to preempt local laws. Second, there are provisions in the Charter that, even if not preempted by existing State law, are at significant variance with the definitional and procedural requirements in existence in State law. In particular, these provisions would add a new layer of regulation to land use activities in the region. We believe there will be considerable litigation and uncertainty as these matters are interpreted given the present language in the Charter. Thirdly, there are conflicts between different sections of the Charter as drafted which result in possible conflicting interpretations as to what the Charter is intended to do and how it should be construed. This is aggravated by an almost complete lack of definitions for the terms used in the Charter, combined with the fact that many of the terms used in the Charter are not

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derived from existing law so there is no ability to cross-reference existing terms that have been defined by the courts or the Legislature and read those definitions into the Charter.

A second area of our analysis has been to attempt to point out where the Draft Charter makes significant variances between what authority Metro has now and what the provisions of the Charter would provide. As you are aware, there are some significant variances in this area. While some of these differences are obvious and already the subject of much public discussion, other areas identified in this analysis may be not known to members of the Charter Committee.

A third area of our attention has been to focus on places where we believe the Draft Charter varies considerably from the intent expressed by the Charter Committee itself in preparing its drafting instructions as it went through its process in the preceding months.

The attached analysis is of necessity lengthy. Some of our most significant conclusions are:

1. The provisions of the Charter related to the future of the Boundary Commission may disrupt if not totally halt any future boundary change proposals in the region until the courts resolve the matter;
2. All land use decisions by local governments after the adoption of the Charter would similarly be at risk of reversal until the courts resolve the validity and interpretation of the Charter provisions providing for a regional framework plan;
3. The Charter may preclude Metro from performing any function not specifically mentioned in the Charter pursuant to an intergovernmental agreement. This may result in a substantial reduction of the Data Resource Center function and would have prevented Metro's participation in the Smith and Bybee Lakes Management Plan;
4. The current solid waste system regional User Fee of \$19 per ton could not be amended without voter approval and would be subject to compression along with the current Metro excise tax so that total revenues from both sources could not exceed \$12.6 million;

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5. "Niche taxes" such as a hotel/motel tax, or any other tax measured by the dollar volume of a transaction, would require voter approval;

6. The Metro President would have no administrative powers and the powers of the Metro Manager would be considerably weaker than the current administrative powers of the Executive Officer; and

7. There is a large degree of ambiguity over how three members of the MPAC would be selected because no definition of "special service district" is included in the Charter.

Attached also hereto is a draft of a charter that this Office has prepared at the request of yourselves and members of the Metro Council. This draft charter is not an attempt to critique or rewrite the Draft Charter prepared by the Charter Committee. It is rather one example of how a charter could be drafted in a way that would eliminate much of the uncertainty as to its meaning under State law, as well as to carry out the District's goals for a charter which were adopted by the Council and the Executive Officer over a year ago. This draft of a charter has been reviewed by the Council Governmental Affairs Committee and contains recommendations made by that body. I believe you will find it to be a useful benchmark for comparison between what a charter could be and what the Charter Committee has prepared. One word of caution is that while it may be possible to "improve" the Charter Committee Charter by recommending certain sections or language contained in the draft prepared by this Office as substitutes for various provisions contained in the Charter Committee Charter, any attempt to do so should be viewed with great caution. The draft charter prepared by this Office should be considered as a whole and not on a piece-by-piece basis. Likewise, any attempt to substitute words out of it into the Draft Committee Charter would run the risk of introducing new terms that would possibly conflict with other sections of the Draft Charter prepared by the Committee leading to greater confusion and uncertainty, not less.

Yours very truly,



Daniel B. Cooper,
General Counsel

gl1583/2.87
Attachments

All comments are to June 17, 1992, Charter Committee Draft Charter.1. Section 3. **"* * * November 3, 1992"**

The use of November 3, 1992, as the date to determine the existing boundaries of Metro, is a confusing choice of a transition date with possible serious consequences. In that it is possible that the boundaries of Metro may be legally changed pursuant to existing law after November 3, 1992, and before January 1, 1993, effective date of the charter, the choice of this date creates possible ambiguity as to the affect on the adoption of the charter to any annexation that occurred during this period.

2. Section 3. **"* * * Changes to the boundaries of METRO shall not be effective unless approved by a non-emergency ordinance. No change to the boundaries of METRO shall require the approval of a local government boundary commission or any other state agency."**

These two sentences are contrary to state law. Metro lacks authority to change its boundary directly. The Boundary Commission is the body that takes these actions. Assuming Metro is granted the power to change its boundaries, the prohibition against doing so by emergency ordinance leaves open questions that could be litigated regarding the rights of residents of territory annexed to Metro to place the issue on the ballot. A new statutory scheme may be necessary to provide for Metro boundary changes. As is discussed below in the comment on language contained in Section 9(4) (Note 17 below) this draft charter contains confusing provisions regarding its intent on continuing or eliminating the existing Boundary Commission.

3. Section 4. **"* * * matters of metropolitan concern"**

This draft charter is totally lacking in any definition of "matters of metropolitan concern." Article XI, § 14(4) of the Oregon Constitution implies that the charter should "set forth" what are matters of metropolitan concern. The failure of the charter to do so is further aggravated by the seemingly interchangeable use of the terms "function," "planning function," "service function," and "matters."

4. Section 4. **"* * * for assuming functions"**

This language equates matters of metropolitan concern with the assumption of a function. The two are not necessarily equivalent. (Note 12 below.)

5. Section 5. **"* * * functions related to the management of growth"**

The use of this broad phrase "functions related to the management of growth" limits Metro's ability to determine that growth management requires a more proactive role

than that called for by the draft charter sections dealing with the Regional Framework Plan. For example, this may preclude Metro from being involved in a Joint Regional Development Authority with Tri-Met as proposed by the Tri-Met Board. If growth management functions are only matters of metropolitan concern as authorized by the procedures set forth in this draft charter Metro can do nothing for growth management except the regional framework plan which apparently only regulates land use decisions of local government. (Note 11 below.) Metro would be precluded from any role other than planning if the function was found to relate to growth management.

6. **Section 6. " * * * Provision of facilities for, and disposal of, solid and liquid wastes of the region;"**

This ignores and therefore limits the solid waste management planning role of Metro presently required by state law.

7. **" * * * Acquisition of regional greenspaces"**

This section should use the existing statutory language "acquire, develop, maintain, and operate a system of parks, open space, and recreational facilities of metropolitan significance" otherwise a problem will result because a vote authorizing broader functions may be held before the draft charter is effective, but would be inconsistent with charter. The implication of this provision is that even if Metro secures voter approval to operate the Greenspaces system it won't be able to do so after the effective date of the charter unless a separate approval pursuant to the charter occurs.

8. **" * * * Development and marketing of geographic data"**

This provision is extremely specific and by implication eliminates authority for other activities of the existing Data Resource Center functions of Metro. The use of the term "geographic data" is directly borrowed from ORS 268.357 which authorizes an exemption from the public records act for Metro's RLIS system. The functions of the Data Resource Center are broader. Many of these activities carried out by Metro at present are pursuant to intergovernmental agreements. The draft charter's failure to include intergovernmental agreements as a source of power to perform a function together with a narrow reference to only one segment of the Data Resource Center's functions could result in Metro no longer being empowered to carry out many of its existing activities that benefit state and local government agencies.

9. **Section 6. "In Its Entirety"**

Because of narrow language used, draft charter would seemingly eliminate all present activities not specifically included on list. This includes elimination of any study of the exercise of a potential function even though these activities are authorized at

present. The draft charter makes no mention of state or federally mandated functions other than state or federally mandated planning functions. This brings into question the present Builder's Business License Program.

10. Section 7. "(1) Future Vision"

The 50-year "Conceptual statement" requiring review by a citizen commission does not conflict with Metro's mandatory land use planning, so long as it remains nonbinding on the "Framework Plan." However, LUBA and the courts may find jurisdiction to review the Future Vision because it may have a "significant impact" on land use decisions.

"(2) Regional Framework Plan"

This is not a term defined in the state's mandatory land use program. It seems to come from Washington County's comprehensive plan outline. Here it combines several of Metro's mandatory land use planning duties into one document that seems to include more than land use planning. It includes land use planning matters, but it is not defined as a "land use" framework plan. The following conflicts with Metro's mandated land use authorities would make the charter provision invalid without amendments to state law:

- (1) Omission of functional plans for air and water quality conflicts with ORS 268.390(1)(a),(b). Metro's planning authorities mandated by state law require these two functional plans.
- (2) "Protection" of lands outside the UGB is more than designation of urban reserve areas (OAR 660-21-020) and coordination of county comprehensive plans [ORS 197.190(1); 268.385(1)] consistent with the UGB [ORS 268.390(3)] conflicts with state law. Counties must enact specific regulatory "protection" under ORS 197.175(2)(b).
- (3) "Benchmarks for performance" which are not adopted as part of functional plans under ORS 268.390(2) are not authorized by state law.
- (4) "Federal and state mandated planning functions" planned by Metro to include benchmarks and functional plans conflict with state law. The "land use planning development activities of the Federal Government * * * and any agency of this state * * * " are only to be coordinated by Metro under ORS 268.380(4) unless some "aspect" is identified for a functional plan by the Metro Council under ORS 268.390(2).

- The definitional problems created because the "Framework Plan" does not follow mandatory state land use laws become focused by the May 1, 1994, adoption

deadline. Combined with "The regional framework plan may be adopted in components," it is unclear which "components" must be adopted by the deadline.

- The list of "matters" to add to the mandatory portions of the "Framework Plan" seems to conflict with ORS 268.390(2) in that it is limited. That mandatory statute unconditionally authorizes the Metro Council to identify "other aspects of metropolitan area development" for additional functional plans.

- The draft charter uses "metropolitan concern" rather than "significant impact upon the orderly and responsible development of the metropolitan area," in ORS 268.390(1), further confusing functional plan authority within a "Framework Plan."

- The list of seven possible new functional plans contains legally confusing descriptions:

- (1) "Water sources and storage" seems to be similar to an omitted general power at ORS 268.310(3), not a land use functional plan.
- (2) "Greenspaces" is a legally undefined program name used with the existing Metro authority to "Acquire, develop, maintain and operate a system of parks, open space, and recreational facilities of metropolitan significance." Under § 4(4), only acquisition by Metro would be authorized.
- (3) "Siting and operation" of regional facilities seems to mix Metro general powers and land use powers, again. Operation of regional facilities is not an appropriate subject for a land use functional plan or a land use "Framework Plan."
- (4) "Regional disasters" is undefined. Inclusion of a regional disaster planning function for Metro as part of the Regional Framework Plan adds complications. First, as noted above, this is a non-land use planning area; including a disaster planning component in what is otherwise considered to be a comprehensive plan under purposes of State law, and subject to the Statewide Goals for land use planning as well as the enforcement procedure set out in the draft charter for the land use plan is confusing at best. Second, it should be noted that currently Emergency Management and Services (if that is what is meant by "Regional Disasters") is by statute a State function that in turn has been delegated to other local governments. (ORS ch. 401). Metro's role currently, while highly visible in the area of earthquake preparedness planning, has been derived solely from its ability to enter into intergovernmental agreements and share the database it has been developing, as part of its Data Resource Center, with the planning

agencies who are with the local government and state agencies who are responsible under State law for this function.

"Sighting [sic] of significant land use developments" covers more than standards or benchmarks. This conflicts with the fundamental relationship between Metro powers and city and county land use regulations. To the extent that this means site specific zoning requirements, this conflicts with ORS 197.175(2)(b), 268.380(2), 268.390(4) and would be invalid without statutory changes.

- The draft charter statement that Metro Council determinations " * * * shall describe respective planning roles of regional and local governments * * * " is much too broad. State land use planning laws describe the roles, Metro coordinates under ORS 197.190(1) and 268.385, and "recommends or requires" local plan changes consistent with regional goals and objectives and functional plans.

- "The regional framework plan requirement that it must be consistent with state standards applicable to local comprehensive plans * * * " is inconsistent with current state law. ORS 197.015(1). It would require statutory amendments to authorize acknowledgment of a Metro plan that is not a comprehensive plan. Only the UGB has been treated by the courts as a comprehensive plan provision. LWV v. Metro, (1989).

- It is unclear whether model standards, mandatory parts of the "Framework Plan," must be adopted by May 1994.

- There is no concept of "regional framework plan" in state law. Absent statutory amendments to create a process or a "reviewing agency," this charter provision providing for review would be inoperable.

- Requiring immediate consistency of local land use decisions with the "Framework Plan" conflicts with the flexibility in ORS 268.380(2) (regional goals and objectives) and 268.390(4) (functional plans) to "recommend or require * * * as (the Metro Council) considers necessary * * * " (Emphasis added.) Therefore, this provision would be invalid, absent amendments to the statutory scheme. Regardless of the validity of this provision, the lack of certainty created by its existence may result in considerable disruption in the process of land use approvals and reviews. Many major and minor development proposals may be halted until this matter is resolved.

- Requiring the Metro Council to "adjudicate and determine the consistency" of local plans conflicts with ORS 268.380(2) and ORS 268.390(4) to the extent that "adjudication," (implying quasi-judicial procedures, record and findings) is the exclusive, mandatory method of review. Again, the lack of certainty created by the inclusion of this provision may result in a defacto moratorium on development.

12. Section 8. " * * * Except for the matters listed in section 7"

Referring additional land use matters for inclusion in the "Framework Plan" (new functional plans under current law) to Metro PAC or the voters conflicts with ORS 268.390(2) which authorizes the Metro Council to identify new functional plan areas. However, Section 7 includes, as part of the Regional Framework Plan, mandatory provision for federal and state mandated functions. Current Oregon law on land use planning mandates that Metro perform existing statewide land use functions for regional goals and objectives (RUGGOS), Urban Growth Boundary management, and functional planning power over all aspects of metropolitan area development the Council may identify. Because of the draft charter's confusing interchangeable use of the terms matter, function, and matter of metropolitan concern it is unclear what the affect of Section 8 exactly is in terms of whether it limits the ability of the Metro Council to add additional functional plans to the Regional Framework Plan over areas not specifically listed in Section 7. Discussion in the Charter Committee has indicated that it was the intent of the Committee that no new functional plan be adopted by Metro other than in the areas specifically listed in the second series of (a) through (g) contained in Section 7(2) without either MPAC or voter approval. However, because of the inclusion of state mandated planning functions as a mandatory portion of the Regional Framework Plan and the fact that the state presently mandates that Metro adopt functional plans over any matter it determines to be a matter of metropolitan significance this interpretation is highly questionable. The probable result is that no MPAC or voter approval would be required for Metro to exercise any of its current authority for land use planning under the existing statutory framework. If the Legislature amends the statute subsequent to the adoption of the charter, then the language of the new state law rather than the provisions of the charter again would control. However, as presently drafted given the addition of new "matter" to Regional Framework Plan can only be construed as being matters other than land use planning matters. This raises the question of if the Regional Framework Plan is intended to be a land use plan, as is set forth in many of the references to it, what role would it play in planning for non-land use planning matters. How would these provisions be enforced, and what applicability would they have? Would they apply to Metro or to local governments, etc.? All of these questions could be the subject for potential litigation and voter confusion. In particular, if the new matters are not related to land use planning how can they be reviewed for consistency with statewide land use goals?

13. Section 9. "Additional functions"

Additional functions of Metro are distinguished from additions to the land use "Framework Plan." New land use functional plans are part of Metro's existing land use planning function mandated by state law. Therefore, the requirements of § 7 and § 8, as they would seemingly apply to new land use planning functions, are erroneously included in the new ordinance and findings requirement in 9(1) before

undertaking any "additional function." Including new functional plans from § 7(2) in this "metropolitan concern" findings requirement conflicts with ORS 268.390(2) which authorizes the Metro Council to "identify" new functional plan areas without findings. Therefore, as to § 7(2) and § 8 this subsection would be invalid without statutory amendment.

- As to Metro's "continued functions" in § 6, the findings of "metropolitan concern" are a new limitation on existing unconditional Metro authorities in ORS 268.310.

14. Section 9(1). "Function"

9(1) utilizes the word "function." There is no definition of what is intended by the term "function." It is not clear whether a function is to be considered a "matter of metropolitan concern" or a subset thereof or some other lesser level of activity on the part of Metro. Given the absence of any provision in the charter referring to the statutory powers of the Metropolitan Service District, as well as all other local governments, to enter into intergovernmental agreements (ORS ch. 190) and the stated intent given in the Charter Committee discussion that Metro should not be allowed to assume new "functions" or take on activity pursuant to intergovernmental agreements unless the "function" had been determined to be an appropriate function of Metro pursuant to the limitations set forth in the charter, it is possible to conclude that the affect of this section, given the extremely limited language contained in Section 5, would be to preclude Metro from carrying on any of the functions of its Data Resource Center that are currently authorized pursuant to intergovernmental agreements, with either state agencies or local governments, other than the very narrow function of continuing to carry on the RLIS system. The only reference in Section 5 to the Data Resource Center function is a paraphrase of the existing statutory provision in ORS ch. 268 which was adopted by the Legislature as an exemption from the Public Records Act requirement that public documents be made available at nominal charges.

15. Section 9(2). "Local Government Services"

9(2) which limits Metro's ability to perform services currently provided by a local government is lacking in definition. It does not fully address the question of whether it is actually a limit on Metro to preclude it performing any facet of a category of service, if one facet of that category of service is currently being provided by a local government. Given the composition of MPAC and a fact that there are no criteria for MPAC to follow in making its decision as to whether to approve or disapprove of the exercise of the Metro function, and the lack of definition of what is intended by a function or a service, it is possible that the charter could be construed by a court to limit Metro from performing any activity no matter how narrowly construed, i.e., entering into an agreement with local governments for an interjurisdictional courier service or sharing of motor vehicle fleets, equipment, etc., on a pool basis, or risk

management pool, etc., without approval through the charter process. The possibility that the MPAC, which is comprised of representatives of mostly relatively small jurisdictions representing a population base that is a minority of the District would deny such a request, could require extensive and expensive utilization of ballot measures to allow the will of the majority of the electors of the District to be expressed on even relatively minor administrative matters. The lack of any standard or criteria and no definition of matters of metropolitan concern at all for MPAC approval, pursuant to this section, gives no guidance to the MPAC members other than the potential for an arbitrary and capricious decision for which there would be no meaningful relief. Further, the lack of criteria may mean that aggrieved parties (i.e., dissenting local governments) in the event of a positive MPAC decision could successfully appeal to the courts based on perceived flaws in the decision-making process.

16. Section 9(3). "Mass Transit"

Mass transit district assumption seemingly requires the creation of a new commission which will include the members of the existing Tri-Met commission. However, the charter does not establish or limit the number of members of the commission as long as it is more than seven, nor does it specify what the commission's duties will be in administering mass transit functions. This rather liberal version is considerably different than the outline draft prepared by the Charter Committee for drafting instructions. The Council could create a large new commission and ensure that the existing seven members of the Tri-Met commission would not constitute a voting majority of the new commission. The commission could be established with considerably more limited powers than the powers of the Tri-Met commission presently hold. It is unclear whether this change is a conscious decision by the Charter Committee to soften the approach it had originally taken on the Tri-Met function assumption, or whether it is language prepared by the drafter of the charter without direction from the Charter Committee.

17. Section 9(4). "Boundary Commission Functions"

As discussed above, the charter provisions related to the Boundary Commission are at variance with state law. Sections 4(a),(b), and (c) imply that the Council has the authority to assume the duties, functions, and powers of the Boundary Commission by the adoption of a assumption of powers ordinance as provided for in Section 9(1) after following the procedures required therein. The last sentence of Section 9(4), however, would constitute the approval required under state law for the abolishment of the Boundary Commission and the transfer of all its duties, functions, and powers directly to the Council as of the effective date of the charter. Inclusion of this language in the charter, if approved by the voters, would raise serious questions as to the validity of any annexation that was adopted by the Boundary Commission after the effective date of the charter. One consequence would be that until the matter was

finally resolved by the courts, no boundary changes could occur within the Metro region.

18. Section 9(5). "function related to a matter of metropolitan concern"

Here again, the draft charter mixes its metaphors between functions, matters, and matters of metropolitan concern. The question is whether a function could be defined to be an entire matter of metropolitan concern, or whether a function is considered to be a specific action. The significance of these issues becomes clear when one considers the example of the phosphate detergent ban adopted by Metro previously. Metro adopted that ban under its existing statutory authority to control the flow and regulate surface waters in streams, which is presently an existing power of Metro pursuant to ORS 268.310(3). Under the charter the exact path to be followed in the adoption of this ordinance is questionable. It is not clear whether it would be sufficient for the Council simply to adopt the ban ordinance, which would be one measure, or whether the Council would first need to adopt an ordinance setting forth that regulation of surface water was a matter of metropolitan concern, and then adopt the subsequent ordinance regulating the detergents. Because the regulation and control of surface water is currently one which some local governments perform, it becomes unclear as to whether such an ordinance would have required MPAC or voter approval, or whether the question of Metro also exercising regulatory authority over this area would also be subject to a separate approval process. The provision in Section 9(5) restricting the assumption or termination of regional planning functions to the procedures and limitations of Sections 7 and 8 of the charter must be considered in light of the discussion above regarding the affect of Section 8, given the inclusion in Section 7 of all state mandated planning functions which should be considered to include all existing land use planning powers of the District. Seemingly, the provision of the last section require MPAC approval of any service function that is not a local government service implies that there are some functions that are not service functions that would not require MPAC consultation. It is unclear entirely what is intended by this.

19. Section 10. "General Grant of Powers to Carry Out Functions; Construction of Specified Powers"

This is a very cleanly written section that is modeled on existing charters and the recommended model charters for both cities and counties. As such, its meaning is relatively clear under Oregon law because similar paragraphs in other charters have been construed by the courts over time. However, the defect in this section is that never has there been a charter containing such a provision that also contains all of the limitations and lack of definitions and complex procedural requirements that are included in this draft charter. All of the provisions of Sections 5, 6, 7, 8, and 9 contain severe limitations on how Section 10 will be construed and it should not be

assumed that Section 10 cleaning grants Metro a general grant of powers to do what it says.

20. Section 11. "Limitations on Taxing Powers"

This section contains numerous and potentially cumbersome restrictions on Metro's ability to adopt taxes. The requirement in Section 11(1) that "any ordinance imposing or providing an exception from taxes on all or part of the income, payroll, property, sales, or gross receipts of a class of persons or entities" receive voter approval contains limitations that were not in the original recommendation made by the Finance Committee or discussed by the Charter Committee. The inclusion of the requirement that any ordinance providing an exception from taxes would mean that relatively minor amendments to previously voter-approved ordinances could not be adopted without voter approval. This could be cumbersome.

Secondly, the reference to "gross receipts tax" on "any class of persons or entities" virtually eliminates the ability of Metro to adopt taxes that have been referred to in the Charter Committee discussions as "niche taxes." This language would preclude the adoption of a hotel/motel tax, admission tax, construction excise tax, or any other tax that was based on the dollar volume of any transaction. The understanding that the Charter Committee's Finance Subcommittee had that was reflected in the original outline prepared by the Charter Committee was that only broad based income, payroll, property, and sales tax of general applicability would be subject to the voter requirement.

A second major problem with Section 11(1) is the provision that seemingly exempts existing Metro charges, particularly the solid waste system charges, from this limit. The draft charter language says "For purposes of this subsection, "taxes" shall not include any charge for the provision of goods, services or property by METRO, franchise fees or any assessment." This language would seemingly by its silence imply that changes to or increases in the existing solid waste "User Fees" collected by Metro on franchisees and other facilities not owned by Metro in the solid waste system would be subject to the requirement of voter approval. In that Metro also collects these User Fees at its own facilities and the dollar volume of these User Fees presently exceed the \$12.6 million cap contained in Section 11(3)a., adoption of the draft charter could possibly result in litigation successfully rolling back Metro's current solid waste revenue fees structure which would have a severe impact on Metro's ability to pay its bonded indebtedness and to carry out its solid waste program.

Section 11(2) seemingly requires prior consultation with an undefined committee may be moot in that there are very few taxes that would not be subject to the limitation of Section 11(1) as currently drafted.

Section 11(3) contains a \$12.6 million adjusted revenue limitation. In addition to the problem with the solid waste User Fee identified above, this limitation would also preclude Metro adopting taxes on a regionwide basis that would be passed through back to local governments without voter approval if the amount of revenue raised was more than the \$12.6 million cap. This is a real impediment given that under the current provisions of the Memorandum of Understanding approved by the City of Portland and Metro, any admissions tax imposed by Metro on the new Blazer Arena and the old Coliseum must be passed through to the City of Portland. Thus, the limitation would limit Metro's ability to collect a tax that it was passing on to a local government. However, to the extent the existing language of Section 11(1) stays in the charter, there may be little effect on Metro other than the problem with the solid waste User Fees because most taxes would require voter approval anyway.

21. Section 12. "Limitations on Authority to Contract"

Metro adherence to or restatement of this reservation of the right to contract out for services would violate public employee collective bargaining statutes. That conflict makes any such "limitation on authority to contract" invalid. It is axiomatic that charters cannot limit mandatory, good faith collective bargaining on this subject. 2 McQuillan, Municipal Corporations, § 9.08b.

As originally conceived by the Charter Committee this provision was to be a direct limitation on the ability of Metro to enter into labor agreements that restricted its ability to contract for services with persons and entities who were not employees of Metro. As drafted, it includes the limiting phrase "to the greatest extent possible." Under current provisions of Oregon Collective Bargaining Law this provision is of no validity. In fact, there are several interpretations of existing collective bargaining law which would lead to the conclusion that any Council member or other officer of Metro who even publicly mentioned the existence of this provision in the context of a collective bargaining session would be committing an unfair labor practice.

22. Section 13. "Regulatory Powers"

This grants relatively broad authority to Metro to adopt regulations to carry out its powers over any authorized function. As written, it is a useful adjunct to Section 10 discussed above. However, given the limitations in the draft charter over what any authorized function of Metro may be, this section may be of little practical use.

Chapters III, IV, and V, "Form of Government"

These chapters provide for a Council form of government with a unique feature of the Council's presiding officer being given the title of Metro President, being elected on an at-large basis, and seemingly being given some but not all of the powers of the

existing Executive Officer. Because these sections are so interwoven it is appropriate to review certain features of these sections as they interrelate.

23. Section 19. "Distribution of Powers"

This section clearly vests all powers in the Council, not just legislative powers. The Metro President is not specifically vested with any administrative powers, rather, the administrative powers of the District are vested in the Metro Manager described in Section 29. The powers of the Metro Manager described in Section 29 do not include all of the powers of the Executive Officer presently described in ORS 268.180 and 268.190. A combination of these provisions together with the grant of power to the Council pursuant to Section 18 to create additional offices means that the Council has the ability to considerably dilute the powers of the Metro Manager to be far less than those presently held by the Executive Officer. The powers would not fall to the Metro President, but rather would be held by whatever office the Council created to perform these functions. Section 18 also provides that appointments, confirmations, and removals of officers by the President are all subject to approval of the Council. Two problems exist in this area. First, the fact that Section 18 requires approval of removals is not explicitly restricted in any provision related to the Metro Manager, though seemingly it is implied by the Committee's discussion. As drafted right now, it is unclear whether the Metro Manager may be removed by the Metro President without the Council having the ability to review the removal. Second, for any other officer appointed by the Metro Executive, pursuant to Council creation of the office, removal would be subject to the removal approval of the entire Council.

Numerous other ambiguities exist in these general sections. The provisions of Section 29(2)b require the Metro Manager to administer the provisions of all ordinances and "the directions of the Council." The provision for the Manager to administer by directions of the Council imply that the Council has a direct supervisory role over the Manager, notwithstanding the fact that other provisions of the draft charter imply that the Manager is solely supervised by the Metro President, and not the entire Council.

24. Section 30. "METRO Policy Advisory Committee (MPAC)"

Metro PAC is a permanent structural advisory committee consistent with current practice under ORS 268.170 and the Regional PAC under Regional Urban Growth Goals and Objectives, Goal I, Objective 2, and its Bylaws.

The draft charter provides that three members of MPAC shall be appointed jointly by the governing bodies of special service districts within the territory of each of the three counties within the Metro area (Multnomah, Washington, Clackamas), and must be a member of the governing bodies of those special service districts. The draft charter does not define "special service district" for this purpose. ORS ch. 198 contains several different definitions of a service district or special district. The term

special service district is not used in Oregon law. Both Tri-Met and Metro are included in some, but not all, of the definitions of special districts. Does the draft charter intend that Metro and Tri-Met, in addition to having the powers to appoint the members to MPAC specifically provided therein, also have a voice in the selection of the special service district representatives to MPAC?

Secondly, under some definitions of "special district," county service districts created pursuant to ORS ch. 451, are considered to be special districts. The governing body of a county service district is the county board of commissioners. Does the draft charter intend that each county service district in existence in the Metro region have a cumulative vote for the county board of commissioners in selecting the special service representatives? This may result in the unintended affect, in the case of some counties, of giving control over the appointment of the special service district representative of that county to the county board of commissioners, as well as the power to appoint their own representative.

- One Person One Vote. Questions have been raised regarding the validity of the MPAC given the federal constitutional requirement for one person one vote. No court has to date construed the one person one vote principle to apply to the appointment of members of a body even if the appointment is made directly by elected officials from their ranks. Cunningham v. Municipality of Metropolitan Seattle, 751 F Supp 885 (1990), (U.S. District Court, Western District Washington). However, the policy reasons for the one person one vote principle are of considerable applicability here. The structure of MPAC, as included in the draft charter, shifts control of a majority of the votes of MPAC to a relatively small minority of the voters of the region, depending on how the various provisions are interpreted, particularly related to special service districts, as noted above. If by special service district are meant only those service districts whose governing body is locally elected (not the county commissions), then nine votes are controlled by the smallest cities (two from each county other than the City of Portland), and one by the smallest county, a third of whose voters who elect the county commission thereof do not reside within the Metro boundary. A resident of a small city that is also served by more than one special district, i.e., water district, park and recreation district, and fire district, has a much greater influence on the selection of the MPAC members. From a constitutional analysis the fact that MPAC decisions may be in effect overridden by the voters as a whole, may have little merit to saving the structure of MPAC in that under Oregon law, any legislative body is subject to having its decisions overridden by the voters as a matter of law.

25. Section 42. "Effective Date of Ordinances"

This section prescribing an effective date of ordinances is at variance with the existing provision of State law, in that it requires a two-thirds vote of the members of the Council to make an effective date earlier than 90 days after the adoption of the ordinance, and requires that the ordinance specify the reasons for the inclusion of an Emergency Clause. Existing law simply requires that a majority of members of the Council declare an emergency exists in order for the ordinance to be effective sooner than 90 days after its adoption. The existing provisions are exactly parallel to existing law authorizing the Oregon Legislature to put an emergency clause on a bill and advance its effective date. These provisions have been in existence for a long time and are familiar to the courts. The inclusion of a requirement for a statement of the reasons why an emergency exists invites judicial review by any party who seeks to contest this in order to determine whether the reasons stated are sufficient. Presently the courts consider the declaration of emergency to not be a matter subject to their review.

26. Section 45. "Transition Provisions"

This contains two separate sentences continuing in force and effect actions of the existing Metropolitan Service District. The language in the first sentence of "All legislation, orders, rules and regulations" is very broad. It seemingly would include the matters described in the second sentence. This leads to the conclusion that the second sentence is intended to accomplish a different purpose than the first sentence. The inclusion of the phrase "enactments of the Metropolitan Service District affecting * * * the provision of governmental or utility services" and the requirement that those provisions stay in effect until changed or repealed by ordinance adopted under Section 7, which is the Regional Framework Plan, creates the implication that Metro's existing enactments regarding the provision of its governmental services are subject to the requirements of Section 7 of the charter. This interpretation is not consistent with the rest of the language of the Regional Framework Plan which implies it is a planning document affecting regional activities and not intended to be the document by which Metro would adopt its own regulations of the solid waste system, etc., i.e., establishment of rates, etc. Is this section intended to require that Metro include in its Regional Framework Plan all of provisions it has adopted pursuant to ordinance regulating the administration and carrying out of its own solid waste functions? Are changes to the structure of Metro ERC subject to review and approval pursuant to the Regional Framework Plan process?

27. Section 48. "State Legislation"

This section directs the Council to seek "that legislation necessary for all parts of this charter to have operative effect." This direction contained in the draft charter, given the present state of ambiguity of the charter provisions as discussed above, is virtually

impossible to interpret or carry out. In that the charter contemplates, as discussed above, the inclusion of all state mandated planning functions in the Regional Framework Plan, it is possible to conclude that no changes in state land use planning law are contemplated by the charter. This is, of course, contradicted by other sections of the charter. This is just one example of the ambiguity created by the inclusion of many provisions which may or may not conflict with State law, depending on how the charter is interpreted. It does give a clear direction to the new Council to seek legislation in some form. Its inclusion is probably relatively meaningless other than as a political statement.

gl

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PROPOSALS FROM PUBLIC HEARINGS

Held June 25, 29 & 30

7/2

NOTE: The Charter Analysis written by Dan Cooper, Metro Counsel, is not included in this summary. It is very long and detailed, however, it does follow the charter draft sequentially, section by section, and can be studied in tandem with the proposals below.

CHAPTER I--NAMES AND BOUNDARIES

Section 3. *Boundaries.*

Metro should be extended to the county lines.

Easton Cross

CHAPTER II--FUNCTIONS AND POWERS

Section 4. *Jurisdiction of Metro.*

The charter should not limit, but instead enhance the ability of Metro to respond to matters of regional significance.

Multnomah County Commissioners

Matters of metropolitan concern should be clearly defined. There should be a strong regional government, not one with diminished capacity.

Rena Cusma, Metro Exec

The charter shouldn't necessarily limit Metro to performing regional functions. The council should determine what is regional.

Ed Einowski, attorney

Section 6. *Other Assigned Functions.*

There is no way for Metro to address future matters of metropolitan concern. It needs a general grant of authority to make decisions.

Tanya Collier, Metro Council

Metro should be provided the authority to maintain as well as acquire greenspaces.

RGC, Rob Mitchell, Tualatin Valley Water District

Should be amended to authorize Metro to: Acquire, develop, maintain and operate a system of parks, open space and recreational facilities of metropolitan significance.

Paul Ketcham, Audubon Society

Alan Goodman, The Friends of Jackson Bottom

Steve Schell, Portland Future Focus

Mike Houck, Urban Streams Council

Nora Shumaker, Audubon Society

Section 7. *Regional Planning Functions.*

The entire section is totally unnecessary.

Tanya Collier, Metro Council

The land use provisions are a nightmare and open to litigation. It ignores state law and brings turf protection back to the fore.

Rena Cusma, Metro Exec

(1) The Future Vision.

It does what Region 2040 is already doing. The Future Vision adds another layer of cost and bureaucracy.

Tanya Collier, Metro Council

The Future Vision is a redundancy for Region 2040.

Susan McLain, Metro Council

Appears to duplicate the process and substance of Region 2040 which is already substantially underway. No mention of a relationship between Future Vision and RUGGO's.

Paul Ketcham, Audubon Society

Add greenspaces to items addressed in the Future Vision.

Nora Shumaker, Audubon Society

The charter shouldn't try to determine what type of long range planning, and on what topics, Metro should engage in. The Future Vision should be replaced with a general grant of authority.

1000 Friends, Mary Kyle McCurdy, staff attorney

There needs to be a creative tension between the Future Vision, RUGGOs and state law.

Steve Schell, Portland Future Focus

The Future Vision Commission should not include a member from outside the jurisdiction.

Tom Tucker

The Future Vision committee won't have time to interpret data.

Jim Gardner, Metro Presiding Officer

The Future Vision should be expanded beyond 50 years, then 500 years.

Tom Tucker

(2) Regional Framework Plan.

Reduce the amount of detail for current planning functions.

RGC, Gussie McRobert, Gresham

Make sure the regional framework plan is not interpreted to be a comprehensive plan.

RGC, Jeff Condit, Lake Oswego city attorney

The land use provisions are a nightmare. They will stop the region in its tracks. The regional framework plan is a comprehensive plan.

Jim Gardner, Metro Presiding Officer

Protection of greenspaces should be placed on equal footing with planning for highways, transit, water and sewer lines and other basic public services.

Paul Ketcham, Audubon Society

Steve Schell, Portland Future Focus

Mike Houck, Urban Streams Council

There should be a reference to RUGGO's. The regional framework plan should not only comply with statewide planning goals but must also be fully consistent with RUGGO's.

Paul Ketcham, Audubon Society

The specific list of topics addressed in regional framework plan should be abandoned and replaced with a general grant of authority to plan for and regulate land use, transportation, greenspaces, and other services and facilities. It doesn't list LCDC's Transportation Planning Rule as a required activity. Nowhere is Metro empowered to engage in regional land use planning, except outside the UGB. Nor is it authorized to coordinate land use designations, densities and designs with transportation planning. The list cripples Metro's ability to be a leader by requiring a vote or MPAC approval to engage in other activities.

1000 Friends, Mary Kyle McCurdy, staff attorney

Listing specifics in the regional framework plan will make it a static document.

Susan McLain, Metro Council

Page 4, *a*, requires local government comprehensive plans to be consistent with the regional framework plan within three years of its adoption or by the next state general review, *whichever is longer*. At the current pace, that could be 10 years before some jurisdictions get around to complying. Language should be changed so that it says ~~whichever is longer~~ *whichever is shorter*.

1000 Friends, Mary Kyle McCurdy, staff attorney

Page 4, *d*, empowers Metro to review *local government land use decisions for consistency with the regional framework plan*. This would create an unnecessary layer of additional land use approvals and turn Metro into a land use hearings body. Endless debates could occur on otherwise meritorious development applications.

Sunset Corridor Assn., Jack Orchard

There is no justification for superseding land use law.

Henry Kane

Section 8. *Addition of Other Matters to Regional Framework Plan.*

Metro was created to vest the region's authority with the citizens, not local government.

Rena Cusma, Metro Exec

Provide a third method for adding planning functions: If less than a simple majority of MPAC agrees on implementing the function, the Metro Council may override them by 2/3 vote.

RGC, Gussie McRobert, Gresham

Opposed to language to delegate authority to the MPAC. It caters to parochial interests.

Paul Ketcham, Audubon Society

This section places authority to determine areas that the government may regulate in the hands of the MPAC and not in the hands of the directly elected council. The MPAC will be dominated by local governments whose interests are often inconsistent with regional interests. Local governments have parochial interests and a natural tendency to zealously guard their own turf.

1000 Friends, Mary Kyle McCurdy, staff attorney

This kind of delegation of authority is inappropriate and encourages turf battles over matters that should best be dealt with in a regional context. The MPAC process serves as an impediment to Future Focus' recommendation to consolidate the counties.

Steve Schell, Portland Future Focus

The charter should provide for local jurisdictions to present their views to Metro, but they should not have veto power over Metro actions.

Arnold Polk, attorney & CPA

Ed Einowski, attorney

Section 9. Assumption or Termination of Additional Functions.

(1) Adoption of Assumption Ordinance.

There should be no assumption of additional functions by ordinance. To endorse a charter that allows the government to expand itself merely by ordinance is antithetical to the entire history of our government.

Marilyn Wall, attorney

Metro should be able to undertake those functions that the council deems appropriate.

Ed Einowski, attorney

(2) Assumption of Local Government Services Function.

The section works against efforts to consolidate government service by establishing unnecessary and unreasonable barriers to the assumption of local government services by Metro. Amend the section to allow local government services to be assumed by Metro based on a majority vote of the councils of Metro and of the affected local government body.

Steve Schell, Portland Future Focus

There should be no assumption of local government service functions without the approval vote of the local government unit affected.

Marilyn Wall, attorney

The MPAC process is an idea that will run amuck.

Jim Gardner, Metro Presiding Officer

(3) Assumption of Functions and Operations of Mass Transit District.

Supports the status quo in the charter, except that the assumption of Tri-Met should not be allowed by an emergency clause, a provision that was in the original outline.

Tom Walsh, Tri-Met General Manager

Remove the provision that the council may take over Tri-Met *at any time*. Metro Council may not have the time to serve as a supervising mass transit board.

Sunset Corridor Assn., Jack Orchard

Discontinue Metro's ability to take over Tri-Met.

Marilyn Wall, attorney

Metro should take over Tri-Met, which should have a separately elected board.
Joe Ross, candidate for Metro & Tri-met employee

The current board has no accountability. An elected body should be making decisions.
Tanya Collier, Metro Council

(4) Assumption of Boundary Commission Functions.

Concern for the advisability of including a Boundary Commission takeover as part of the charter.
RGC, Jeff Condit, Lake Oswego city attorney

Take over of the Boundary Commission should be consistent with state law.
Tanya Collier, Metro Council

Section 10. General Grant of Powers to Carry Out Functions; Construction of Specified Powers.

Metro should have the same broad grant of authority to provide services and raise revenue as is possessed by other home rule governments.
Multnomah County Commissioners

Metro should have a broad grant of powers so that it will be able to respond quickly to change in the future.
Arnold Polk, attorney & CPA

The charter shouldn't override the legislative powers of the government.
Ed Einowski, attorney

Section 11. Limitations on Taxing Powers.

The tax base is unrealistic.
Rena Cusma, Metro Exec

Metro should have the same powers to tax as other local governments. With the current limitation, how would pass-through revenue (such as that from the state and federal governments) be accounted for?

Tanya Collier, Metro Council

The limit on revenue is short-sighted.
Jim Gardner, Metro Presiding Officer

It will not take long for the council to determine that all it has to do is call an imposition an assessment or service provision fee and then it isn't a tax and is not subject to a limitation.
Marilyn Wall, attorney

Urge greater fiscal constraints on the \$12.6 million lid. It would more than double Metro's current taxing authority. Voters won't accept it. If the \$12.6 million cap is maintained, the taxation committee of local government, business and citizen representatives should be institutionalized in the charter.
RGC, Judie Hammerstad, Clackamas County Commissioner

The taxing proposal is too complicated. There may need to be education for the general public.
Susan McLain, Metro Council

It is inappropriate to place a revenue cap within a charter. The revenue generating capacity should be decided by the council through public hearing and election processes.

Steve Schell, Portland Future Focus

The charter should give Metro the power to raise revenue necessary to carry out its purposes. These powers should not be limited.

Arnold Polk, attorney & CPA

The payroll tax provision should be expanded to include other taxes Tri-Met is authorized to use.

Tom Walsh, Tri-met General Manager

The provision is ripe for years of litigation over what it means and what the government can have.

Marilyn Wall, attorney

Revenues raised for enterprise funds should be dedicated for use by that particular enterprise.

RGC, Kent Squires, Oak Lodge Sanitary District, manager

Revenues from ordinance-enacted taxes should be dedicated to planning and policy-making functions and to general government operations. Taxes devoted to service delivery should be approved by the voters.

RGC, Kent Squires, Oak Lodge Sanitary District, manager

Restrict the use of general fund revenues with the language: Revenues under the limitation imposed by Section 11, shall be used exclusively to carry out the legislative powers, functions and duties of the council and for governmental administrative operations.

Portland Chamber, John Russell

Add the following provision to limit Metro's use of a lodging tax and dedicating its use to tourism:

1. Metro is authorized to impose by ordinance a tax on gross rent received for lodging by the owner or operator of any hotel, motel, apartment or any other place utilized for lodging occupancy for any period less than monthly. This tax shall not apply to hospitals, convalescent or nursing homes, or public institutions, or places of permanent occupancy as defined by ordinance. The tax shall be based upon rent charged by the operator. The rate of the tax shall not exceed the rate in effect in any jurisdiction within the district on the effective date of the charter.

2. Any person subject to payment or collection of a tax under this section shall be entitled to a credit against the payment of the tax in the amount due any incorporated city or county within Metro for a lodging tax for the same occupancy made taxable by an act of Metro.

3. Metro revenues from such taxes shall be credited to a fund which is separate and distinct from the general fund of Metro. Expenditures of lodging tax revenues from the fund shall be dedicated exclusively to the promotion, solicitation, procurement and service of convention business and tourism.

Tri-County Lodging Association, Phil Peach

The charter does not address types of user fees and other charges Metro might use. These amount to niche taxes. There should be a process established for setting fees and the dedication of revenues derived.

Sunset Corridor Assn., Jack Orchard

Limit the use of service fees and charges with the language:

- (a) The service funds and accounts of each service shall be separate from other accounts and funds of the district and treated as separate district operations.
- (b) Service account funds may not be transferred to a general fund account nor to any other special fund which is unrelated to the service. However, transfers between funds within a service account may be made.

Portland Chamber, John Russell

All taxes should require a vote of the people.

Tom Tucker

John Ayer

The support for the performing arts is inadequate.

Leigh Stephenson, Portland Opera

The arts need an adequate funding base.

Robert Bailey

Section 12. *Limitations on Authority to Contract.*

There should be no provision that interferes with the process of collective bargaining.

Multnomah County Commissioners

Delete section. Encourages contracting out without consideration of the appropriateness of the situation. As written, the section encourages a single delivery method whether appropriate or not. The efficient performance of services is provided through a mix of government employees and contracts with private firms, depending on the service rendered.

AFSCME Local 3580, Chuck Geyer, President

The section ignores public employee bargaining practices. It ignores what makes sense in bargaining.

Tanya Collier, Metro Council

Section 13. *Regulatory Powers.*

Providing Metro with regulatory precedence where substantive *social, economic or regulatory objectives* are involved is dangerous and may be misused or result in endless wrangling. Metro's ordinances should not have superiority over a potential broad range of jurisdictions' activities.

Sunset Corridor Assn., Jack Orchard

Is against inconsistent land use standards.

Henry Kane

CHAPTER III--FORM OF GOVERNMENT

The existing structure should not be changed.

Rena Cusma, Metro Exec

Metro's current structure, with a separation of powers, is excellent. Some things in the charter have been developed in fear of Metro having too much power.

Ralph Gilbert, in the solid waste business

There will be tensions in the new structure.
Susan McLain, Metro Council

The structure could prevent the council from having staff.
Jim Gardner, Metro Presiding Officer

The separation of powers should be maintained.
Jack Talbot

Section 14. Council.

Having the executive sit on the council will ruin the balance of power.
Tanya Collier, Metro Council

The president shouldn't also be the presiding officer.
Susan McLain, Metro Council

Section 18. Appointive Offices and Commissions.

The by-laws for the Metro Committee on Citizen Involvement should be included in the charter.
Jacqueline Tommas, CCI member
Gail Cerveney, CCI member

There should be wording to guarantee the continuation of the Metro Committee on Citizen Involvement. The following wording from the Multnomah County charter was proposed:

- (1) The Office of Citizen Involvement is hereby established. The Office of Citizen Involvement shall develop and maintain citizen involvement programs and procedures designed for the purpose of facilitating direct communication between the citizens and the board of county commissioners.
 - (2) A citizens' committee and the structure of the citizen involvement process shall be established by ordinance.
 - (3) The board of county commissioners shall appropriate sufficient funds for the operation of the office and the committee.
 - (4) The citizens' committee shall have the authority to hire and fire its staff.
- Peggy Lynch, Metro Committee on Citizen Involvement

CHAPTER IV--COUNCIL

Section 23. METRO President.

All executive and administrative authority should be placed under an elected official who is not a member of the legislative council, as with the current structure.
Multnomah County Commissioners

Giving the president the power to determine the council agenda is unnecessary and allows for abuse. Provide a requirement that the full council must establish bylaws which address how agendas will be set.

RGC, Pat Reilly, Tigard city manager

An elected executive empowers the people.
Don Clark

Section 26. *Vacancies in Office.*

In a conviction of a felony or state or federal offense, omit *pertaining to his or her office.*
Henry Kane

Section 28. *Limitations of Terms of Office.*

With term limitation there won't be institutional memory. Only two councilors have served beyond two terms anyway.
Tanya Collier, Metro Council

CHAPTER V--OFFICERS, COMMISSIONS AND EMPLOYEES

Section 29. *Metro Manager.*

The council should be involved in the decision to fire the manager. It will make sure that the president must work with the council to secure support to replace the manager.
RGC, Pat Reilly, Tigard city manager

The manager should be fired only with council approval.
Jim Nicolai, Tigard Chamber

Policy will be controlled by the bureaucracy. The non-interference clause will prevent councilors from commenting on the implementation of policy.
Jim Gardner, Metro Presiding Officer

Not enamored with the council-manager form of government. The manager is always counting votes to keep his/her job and will be trying to manipulate the council.
Don Clark

Section 30. *METRO Policy Advisory Committee.*

The proposed role of the MPAC is inconsistent with the principle of proportional representation and its authority should only be advisory. Oppose any methods designed to give certain voters or local government officials disproportionate influence.
Multnomah County Commissioners

Accountability is lost in making local government a co-conspirator to repress voter rights.
Marilyn Wall, attorney

The MPAC will turn Metro into a council of governments. It doesn't recognize that Metro's constituency is the voters. Local government approval will hold the voters hostage. There is no way for the voters to abolish the MPAC membership.
Tanya Collier, Metro Council

Against the CRAG structure. The MPAC should be designed by a citizens' group or Metro council.
Easton Cross

Members of the MPAC will not be able to provide a regional overview because they represent local governments. Three special district representatives will not provide complete representation for the many special districts. School districts are also special districts. Would they be represented? The MPAC should be advisory only.

Susan McLain, Metro Council

The MPAC would turn Metro into a council of governments.

The citizens on the MPAC should not be appointed by the president.

Jim Nicolai, Tigard Chamber

The MPAC goes beyond consultation, advice and cooperation.

Jim Gardner, Metro Presiding Officer

Section 31. Compensation.

Councilors should have no salary, only expenses.

Henry Kane

CHAPTER VI--ELECTIONS

CHAPTER VII--ORDINANCES

CHAPTER VIII--MISCELLANEOUS PROVISIONS

Section 46. Time of Effect.

Change effective date to until after next legislative session.

RGC, Jeff Condit, Lake Oswego city attorney

Make the effective date January 1, 1994, to allow for statutory change.

Henry Kane

Section 48. State Legislation.

Condition the implementation of the charter on passage of the needed state legislation. Most of the needed conforming legislation can be achieved by simply eliminating any ties between ORS Chapter 268 and METRO.

RGC, Jeff Condit, Lake Oswego city attorney

Add a sentence to the charter that says that its passage should be seen as a mandate from the voters of this region for the legislature to pass the needed conforming legislation.

RGC, Jeff Condit, Lake Oswego city attorney

ADDITIONAL

Add an elected, certified, independent auditor.

Gary Blackmer, Multnomah County Auditor
Jewel Lansing, former Multnomah County & Portland auditor
Alan Percell, Washington County Auditor

Auditor should have a guaranteed salary.

Jewel Lansing

A term limit for an auditor is less appropriate than for other positions. The auditor is more of a career position and there aren't that many people qualified.

Jewel Lansing

An elected auditor will provide good tension and keep the managers on their toes.

Don Clark

An audition function should be addressed.

Ross Hall, Oregon Graduate Institute

Do not delay charter election.

RGC, Steve Stolze, Tualatin

Postpone vote of charter until May 1993.

Hillsboro Chamber, Flo Rhea

A simply worded charter which embodies easily understood concepts of government structure.

Multnomah County Commissioners

The charter is vague and will unquestionably be a full employment act for lawyers for the next three decades.

Marilyn Wall, attorney

The charter is a violation of state law.

Henry Kane

The draft isn't fixable.

Rena Cusma, Metro Exec

The draft ties up Metro. It doesn't enable it to solve big problems. Metro will be a toothless tiger.

Don Clark

The charter should be an enabling document. This charter has a narrow focus. It should allow the agency to develop and grow.

Ed Einowski, attorney

The counties should be combined and Metro dissolved into them.

William White

The Metro Charter Committee
Hardy Myers, Chair
P.O. Box 9236
Portland, OR 97207

RE: DRAFT 1992 METRO CHARTER

With Ballot Measure 1, the voters determined that a study and proposal should be done of the structure and functions of the Metropolitan Service District, METRO, as it is currently constituted. In response to this voter dictated review, this Charter Committee was appointed to discharge that review and if appropriate, submit for the voters' consideration a new charter, or constitution as it is referred to in the cover page of the draft. Irrespective of Ms. Cusma's testimony to the Committee that nothing was broken so she did not know what the voters were trying to fix, the voters have determined that there are areas of Metro that need to be fixed.

You have all spent a considerable amount of your time over the last year attempting to reach a workable, improved regional government framework. You are to be commended for your dedication to this project. Unfortunately, this draft does not reflect a resolution to the problems that exist with Metro. It is vague and will unquestionably be a full employment act for lawyers for the next three decades. It is usually said that compromise will yield the best product. If everyone is unhappy with the document, then it is probably a good resolution. This is not the case here. In substance and form, this charter will provoke more discontent and alienation of the people from the government than the existing form.

Late last summer, the Charter Committee held public hearings to determine what the people conceived were the problems with the regional government as it stands. The trilogy that was heard repeatedly from the public was: accountability; visibility; and responsibility particularly in the fiscal area. This Charter draft fails to resolve any of these concerns. Accountability is lost in making local government a co-conspirator to repress voter rights through the MPAC arrangement; visibility is not enhanced by continuing the practices of the past relating to the great powers seated in the President of the Council; and responsibility particularly in the fiscal area is completely shunted aside by giving the regional government enhanced powers to pick the pockets of the electorate without any vote or responsible accounting for the spending. These are the key objections to this draft:

1. Section 9. There should be no assumption of additional functions by ordinance. The government should be structured so that the people know exactly what the government can and can not do. To endorse a draft Charter that allows the government to expand itself merely by ordinance is antithetical to the entire history of our government.

There also should be no assumption of local government service functions without the vote of the local government unit approving it. We have long held the principal that it is government by the people and for the people not by the government for the government and that is the result of this proposal. Local government, if it cannot fund something that it determines the voters should have, will turn to Metro and give it to the function and then the voters will have it whether they wish it or not. Of course this will be touted as the greater vision. If the local voters lack "vision" perhaps that translates into restraint in spending. To allow an end run around the voters by having MPAC, an entity with a clear conflict of interest, is a true breach of all duties of responsibility in government.

There should also be no assumption of the mass transit district functions and operations. Although this power exists in Metro's current statutes, it should not be continued. The so-called "marriage clause" was a responsible idea when Metro's finances were in a different arrangement. Under the legislative changes that have occurred since the original grant of the marriage clause, the adverse financial impact on the voters is tremendous if the marriage is allowed under the proposed financial package. Finally, the assumption of any other function that is a matter "of metropolitan concern" is nothing less than a naked grant of total power in the regional government to seize all functions to itself. Not only is this concept repellant, the drafting will cause nothing less than decades of dissension as to what is a matter of "metropolitan" concern. Is this different than a regional concern? Both terms seem to be intermingled in the draft Charter again creating misunderstanding and spawning litigation. The purpose of the Charter should be to resolve issues and clarify the powers, functions and duties. This Charter draft only exacerbates the existing problems and creates a panoply of new ones.

The assumption of functions section is, without exception a complete disservice to the concept of participatory government. Have we gone so far that the elite among the government people feel that only they can properly determine what the masses should have or not have and that the masses have no right to self governance? This draft Charter guarantees government by the government and destroys the checks and balances that should exist in a governmental system. The use of initiative and referendum is not a sufficient response to this stealing of the people's rights to control the government. The only check and balance system that these powers insure is that the regional government will write the checks and the people will balance its budget from their pockets.

2. Section 11. Taxing powers. The financial provision for any government are of key importance. This draft Charter fails to even attempt to protect the people from the improvidence and overspending of the regional government. In Section 11 (1), it will not take the regional government long to determine that all it has to do is call an imposition an assessment or service provision fee and then it isn't a tax and is not subject to the limitation.

A limit is a limit and there should be no exceptions. Further, the limitation can only be called that in the most loose of terms. The proposed "limit" is far greater than the existing budget of the regional government. This provision, particularly in Section 11 (3)a. is ripe for years of litigation over what it means and what the government can have. All of us would like to have cost of living increases each year (COLA). However, the private sector is not granted such prerogatives and neither should the government be given automatic pay raises just because the economic indices may indicate that there is an increase in the costs of goods and services. Government should not be on a better financial foot than the voters. The exact wording in the second sentence of that section is so vague as to be nonsense. There are hundreds of consumer price indices, not just one in the goods and services areas. There is also an index for Portland. Why then should the regional government be able to shop around for a rate that it likes better and that has no relationship to the economic conditions in the market in which it is operating? If the concept is to be fair to the regional government, then use the proper index. Do not allow the regional government to pick Los Angeles, San Francisco or somewhere else as a measure. There is no definition of what a "major" city is and no definition of what is the western United States. Is it west of the Rockies, west of the Mississippi or west of the Potomac? To intentionally create vagueness in a critical aspect of the regional government defeats the purpose of a charter. Clarity and certainty should be the goals.

There is no sound reason why all of the items in Section 11 (3) c. should be excluded from the limitation. All of these items are important revenues and should be charged against the limitation.

There is also missing from the financial provisions the restrictions on the feeding frenzy that the regional government has engaged in stripping the service monies from the services for which they are intended and using the monies for other purposes. The Sears Building fiasco has received tacit approval by the Committee failing to deter this form of garrotting. It is not possible to anticipate all tricks that could be pulled but the Committee knows of this one and to fail to address it is irresponsible.

4. Chapter III. Form of Government. This draft does not resolve any of the key problems that the public testified existed in the Metro framework: the power to fire the manager lying solely in the President; the budget and agenda initiating there; and the lack of a full time, properly compensated council remain.

In conclusion, the time you have remaining is short but it is not impossible to produce a document that is clear and addresses the rights of the people not the rights of the regional government. The people wish to have control over the government and that is the mandate under which you serve. You must not neglect or ignore that responsibility in favor of special interests or theories of government not supported by the general populous. You can relive the anger and cynicism of the voters by proposing a charter that

will reform, revamp and reinvigorate regional government.

Respectfully submitted,



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