

**METRO  
CHARTER  
COMMITTEE**

P.O. Box 9236 • Portland • Oregon 97207  
Phone 503-273-5570 • Fax 503-273-5554

AGENDA

**DATE:** July 9, 1992  
**MEETING:** Full Committee  
**DAY:** Thursday  
**TIME:** 6:00 p.m.  
**PLACE:** Metro, Room 440, 2000 SW 1st Avenue, Portland

6:00 Discussion and decisions on Charter issues.

10:00 Meeting adjourned.

MINUTES OF THE CHARTER COMMITTEE  
OF THE METROPOLITAN SERVICE DISTRICT

July 9, 1992

Metro Center, Room 440

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

Committee Members Absent: Tom Brian, Bob Shoemaker, Mimi Urbigkeit

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

1. Discussion and decisions on pending Charter issues

Chair Myers asked for changes in the first 10 sections in the draft charter.

Charlie Hales proposed amending section 6, *other assigned functions*, to provide a broader authority. He suggested adding, to section 6(4), the greenspaces language proposed in the public hearing. It would read: "acquisition, development, ownership and operation of a system of parks, open spaces and recreational facilities of metropolitan concern of regional greenspaces." He suggested adding "other data" under section 6(5), the development and marketing of geographic data, based on the recommendation by Dan Cooper, Metro counsel. He suggested adding a section 6(6) which clarifies that other functions can be assigned to the district by the voters, by action of the state or federal government, or by intergovernmental agreements prior to the effective date of the charter.

Ron Cease asked how section 6(6) would apply to action by the state or federal government assigned after the effective date of the charter.

Charlie Hales said that he meant to say that functions can be assigned now or later by the voters, state or federal government or pre-existing contracts with local governments. He said that he was persuaded by the public testimony that section 7 of the draft, dealing with the Future Vision, is too specific, but specifics do need to be laid out. He said that the Metro council ought to be the planning body and he suggested that the provision regarding the broad-gauged Future Vision commission be deleted. He said that the deletion of the commission also reduces the conflict between the Future Vision and the 2040 plan because an argument could be made that the 2040 plan is part of the Future Vision. Under section 7, he suggested adding that the Future Vision would not be cited in judicial review of individual land use decisions because there was concern in testimony that the charter would open the door to dual review of land use decisions. He said that he thought the Committee's philosophy was to have Metro take a visionary look at the region and enact the Regional Framework Plan that governs local planning, but does not get into the business of being an appeal body. He said that, because the testimony on the Regional Framework Plan suggested that the Committee move to a broad grant of authority due to the limiting language, he took a middle approach and tied the framework plan closer to the Future Vision by saying that the framework plan's purpose is to seek to implement the Future Vision in land use plans and regulations. He suggested adding, to the list of items to be addressed in the framework plan, *housing densities and urban design; parks, open spaces and recreational facilities; and coordination, to the extent feasible, of growth management and planning policies of Metro with those of Clark County Washington.* Housing densities and urban

design and greenspaces--redefined as parks, open space and recreational facilities--were moved from the list of those with metropolitan aspects. Housing densities and urban design were moved because the Metropolitan Housing Rule already envisions a Metro role in allocating housing densities around the region. The new transportation rule envisions Metro taking a role in urban design to reduce auto dependency in local zoning. He suggesting deleting the list of items of which the metropolitan aspects can be addressed in the framework plan and making it a general provision which allows the framework plan to address other matters which the council, with the advice of MPAC, determines to be of metropolitan concern. He also suggested deleting the paragraph which calls for the prioritizing of the list of metropolitan aspects because it does not make sense with a general grant of authority. He suggested having the statement regarding the model standards and procedures in the framework plan being permissive rather than mandatory. Regarding the requirement that local government comprehensive plans be consistent with the Regional Framework Plan, he suggested that it state that the local comprehensive plans shall comply with the framework plan to clarify the point. He said that the plan will be adopted by May 1, 1994. As of May 1, 1995, local governments would have to make the local land use decisions consistent with the plan. By May 1, 1997, or some time after that, the local government would have to change the plan to be consistent. He suggested that the time frame be shortened from whichever is later--May 1, 1997 or general review of the comprehensive plan--to whichever is sooner. He also suggested inserting the exact dates to avoid ambiguity. He suggested, in section 7(2)(d) under the adoption of ordinances, to replace "decisions" with "regulations" to avoid the dual review problem. He suggested deleting section 8, *addition of other matters to the Regional Framework Plan*, because it is covered by the broader grant of authority. In section 9, he suggested adding a provision which provides a streamline process for Metro to enter into intergovernmental agreements or to receive authority from state government to start assuming services or functions of county government. He said that this provision is based on the assumption that the people or the legislature will direct Metro to start doing some of what county government now does or that Multnomah County will approach Metro and ask that some areas be run by Metro. Under the Boundary Commission section, he suggested that the assumption of duties, functions and powers of the Boundary Commission by Metro be done by ordinance to clarify that approval of the charter constitutes voter approval of the authority to assume the functions of the Boundary Commission.

Larry Derr said that he does not think that the charter is as much of an empowering piece as he originally thought. He said that the constitutional amendment does not empower the creation of a district. It talks about taking an existing district created by the legislature and prescribing its structure and method of governance which is at the core of any home rule authority. It talks about the officers and representatives of the district created by the charter exercising powers and responsibilities which are mandated by state statute. The amendment also empowers the district to do things of metropolitan concern. He said that it does not get that far with respect to boundaries. He suggested, in section 3, eliminating the non-emergency clause language because the operative act is that of the Boundary Commission or of Metro acting as the Boundary Commission, not a Metro ordinance initiating the process. He suggested that, in section 3, the prohibition of State involvement is being beyond the authority of the charter and should be eliminated. He said that the provision in the charter, regarding the approval of the charter constituting the approval of the authority for Metro to assume the Boundary Commission functions which may or may not be implemented some time in the future, is not what the statute says and may not be exercising the authority of the statute. He said that if Metro, by reason of adoption of the charter, assumed the Boundary Commission functions and then delegated them to a commission which would look, act, and feel exactly like the Boundary Commission, then it has fully implemented that power. At its leisure, it can examine the process of the Boundary Commission and all of the related changes that may be going on from a statutory standpoint and come up with any or no suggestions for change in the future. He suggested an exception so that the council would deal with Metro boundary changes directly rather than delegate them.

Chair Myers asked if Larry Derr's approach still makes the charter adoption a vote to transfer the

Boundary Commission functions.

Larry Derr said yes. He said that his changes do not change the policy that the Committee was striving for.

Chair Myers said that Larry Derr's approach would still have integrity functionally even if the Committee decides to remove the charter vote as the vote to transfer.

Larry Derr said that is correct--they could be viewed as independent components.

Ron Cease asked if the vote for the assumption of Boundary Commission functions is a vote only within Metro.

Tim Sercombe said that the current statute talks about referral of a proposition on Boundary Commission assumption by the governing body of Metro.

Ron Cease asked if that creates a problem in reference to the fact that the Boundary Commission has authority over local governments within the three counties.

Larry Derr said that if it does, it is a problem the legislature created and was not created by the charter. He said that in section 4 jurisdiction, Dan Cooper had an expansive statement of describing Metro powers from a policy standpoint saying that Metro will be, to the extent possible, a general purpose government as far as authority goes. It will take unto itself, through the charter, all powers which it can have. It will be up to the council to decide which ones to exercise. The Committee's approach has been to take a limited purpose government with the options of adding to its power and expand on that. He said that a significant expansion is to say Metro does not have to go to the voters for most of the remaining additional powers. He said that the way that it is worded in section 4 is probably more limited than intended. He said that Metro has additional powers in functions mandated by state law and functions permitted by state law. He suggested rewriting section 4 so that it states: *"Metro has jurisdiction over matters of metropolitan concern. Metro has jurisdiction over and shall exercise those powers and duties imposed upon it by the Constitution and laws of this state. Metro has jurisdiction over and may exercise those powers and duties granted to it by the Constitution and laws of this state. The Metro Council shall determine by ordinance whether a subject area is a matter of metropolitan concern and to what extent Metro should exercise its jurisdiction over such matters, subject to the additional requirements of this Charter. The Metro Council shall determine by ordinance to what extent Metro should exercise its jurisdiction over powers and duties granted to it by the Constitution and laws of this state, subject to the additional requirements of this Charter."*

Ron Cease asked if the statute is clear that the charter can contain things such as the MPAC which constrain, limit, or prevent Metro from jurisdiction over areas of metropolitan concern.

Larry Derr said that the function of a charter can be to constrain, but not to expand the powers that are granted to it by the Constitution.

Tim Sercombe said that the statutes say that Metro shall have jurisdiction over matters of metropolitan concern as set forth in the charter of the district. The charter can be constricting or limiting.

Larry Derr said that it does nothing to restrain the potential authority of metropolitan concern. The Committee has only provided some processes for implementing them.

Chair Myers asked what are the ramifications of these changes for the ensuing sections.

Larry Derr said that by focusing on the three sources of jurisdiction, as the Committee goes through the rest of the charter trying to avoid some of the traps and ambiguities, it will be easier to search through it. He recommended that there be a provision for intergovernmental contracting, with the caveat that the transfer of the authority has to carry with it the transfer of full funding. It should be an assurance of funding for the direct costs and the allocated overhead costs.

Tim Sercombe said that Metro does have intergovernmental contracting powers under the direct provisions of ORS 190 which includes metropolitan service districts in the type of governments which can contract. He said that the Committee should be careful that the charter does not limit the contracting power if they want Metro to have it.

Larry Derr suggested that the charter have an explicit statement that none of the charter is limiting the authority to contract, subject to the full funding caveat. He said that in sections 5 through 9, the assignment of functions, the Committee has empowered not limited Metro's authority. The Committee has not given Metro total carte blanche to do whatever it wants to do without asking. The Committee has not limited Metro's potential authority, but has included a process. Going through the lists, some road blocks and dead ends have unintentionally been created. He suggested two changes: simplifying the lists of subject areas at the risk of overbroadening the immediate empowerment and authorizing activities through intergovernmental agreements outside of the otherwise applicable approval processes. He said that the real question is authority today versus authority tomorrow.

Chair Myers asked what Larry Derr meant by simplifying the lists of subject areas.

Larry Derr said that, with respect to the planning area, he liked Charlie Hales' approach to call out the fact that Future Vision needs to exist and the general approach it ought to take. He said that he would fall back from having a subject matter list of what ought to go into it. He said that, regarding the framework plan, he is not ready to state, as Dan Cooper proposed, that "to the fullest extent allowed by law, Metro shall provide for regional urban growth management including, but not limited to adopting regional goals and objectives for land use planning, coordination of local land use plans, urban growth management, and functional planning". He said that as the local governments work with Metro and the more responsible structure they see out of the charter, the more comfort they will have in not tying down the kinds of planning Metro could do. He said that he would be willing to say that within the total planning powers that Metro has under its metropolitan concern, state mandate and state grant, they can do any of that subject matter by getting the advice and consent of MPAC. He said that explanation eliminates the need to list the subject matter. The other major component is a dictate that something get done. He said that he is not willing to turn loose of that because if what has to be done is not outlined in detail, it is harder to say that it has to be done by a certain date. He said that the Committee needs to figure out a way to assure that the kinds of things that Metro has already embarked on lead to tangible results in a measurable period of time. If that is done, it is not critical to write out in the charter what the content of all those results will be. He said that the Committee should keep in mind whether or not Metro can dictate to other branches of government in the planning area. He said that Metro currently has planning authority dictating to local governments because it was given by the legislature, not through the implicit home rule powers of the charter. Even though a lot of what Metro does is of metropolitan concern, that by itself is not enough for Metro to plan. When it comes to implementation, if it can do itself, that is fine. If the only way it can implement the plan is to tell a city or county what to do, then it probably does not have that authority under home rule--the legislature has to give it that authority. The Committee will have to work within the existing statutory framework and try to fine tune it from time to time.

Ron Cease asked what all of that means in reference to the provision that states that Metro has jurisdiction over things of metropolitan concern. He asked what in planning is and is not of metropolitan concern. He asked what the regional plan means in reference to what local governments

do on their plan and their relationship to the regional side.

Larry Derr said that there could be a Metro ordinance that says that no property owner or individual can use their land for this purpose. As long as Metro can show that carries out a matter of metropolitan concern, there is no hesitation to say that would work. If an ordinance says that cities and counties shall adopt plans that tell the citizens that no one shall do that, it might be questionable.

Ray Phelps asked if Larry Derr is suggesting that the idea of the Future Vision and framework plan might be suspect. He asked how the functional planning interacts.

Larry Derr said that they are not suspect. He said that the Committee cannot envision all of the interactions between the kind of planning work that Metro would do under this charter. To the extent that the Committee moves in the direction of saying this is the dictated result, the more opportunity there is that they have said something that will not pan out. The less that is said about dictating results, the less danger there is and the less teeth that have been put in it. He said that there is some compromise ground that falls back a step from what is in the charter that still keeps some teeth in it and has less opportunity for legal conflicts. He said that functional planning is a creature of statute.

Ray Phelps asked if Larry Derr would offer up the notion that functional planning, even if provided by the charter, would be an area of question.

Larry Derr said that if there were not functional planning statutes on the books and the charter said that there will be a functional plan that tells the cities and counties what they will do, that might be overstepping the authority in the charter.

Jon Egge asked when the charter is enacted, will it repeal parts of ORS 268 or does the legislature have to repeal parts of ORS 268.

Chair Myers said that the legislature will have to repeal parts of it.

Larry Derr said that there are two kinds of counties in the state--general law and home rule. He said that the Oregon statutes that prescribe the structure and operation of the counties do not go away, but the home rule charter supersedes. He said that it will not work to repeal ORS 268 because the mandated things in ORS 268 that Metro could probably not do without.

Jon Egge said that there is not any way to leave the entire ORS 268 because the charter walks on a lot of parts of ORS 268. There will have to be a legislative instruction to ask for some sections to be repealed.

Larry Derr said that for those areas where the charter has the authority to control, it would be cleaner not to look at a special purpose piece of legislation and find something in conflict. From a legal empowerment point of view, it makes no difference because the charter will control. In some areas, the Committee is saying that they want to do some things that the charter cannot do by itself and conforming legislation is needed.

Frank Josselson said that the conforming legislation may not be a volume of code, but it may be a single sentence which says that Oregon state law is amended to the extent necessary to enable the regional government to carry out the functions prescribed in the Metro charter.

Ron Cease said that it will not pass if the legislation is as broad as Frank Josselson suggests. He said that the charter will require some constitutional amendments with the potential of broad powers. He suggested redoing the planning section so that it does not create the legal problems that are suggested.

He said that not everyone needs to agree with the charter 100%. He said that the charter should state the Future Vision issue in such a way that it does not create problems with Region 2040. He said that he is loath to get off the idea of a citizens commission, although they will end up doing it anyway. He said that the big argument about the commission was whether the work of the commission would be subject to revision by the Council. He said that it makes sense to give the Council the final responsibility to adopt the Future Vision. He said that the whole process, from the commission work to the public hearings in front of the council regarding the adoption, should be in front of the public.

Frank Josselson said that the Committee should continue to work on the principle under which it has always operated which is that if what the Committee does makes sense, then the conforming legislation will come. The legislature is not going to deny the region the authority to do a Future Vision or a Regional Framework Plan nor will they contract the existing planning functions of Metro.

Larry Derr said that he is not suggesting that the Committee back off on any planning program. He suggested that the Committee back off on some of the charge words and still keep the substance.

Jon Egge asked if one of the charge concepts that the local plans shall conform to the Regional Framework Plan. He said that he is not ready to back away from that because there would not be any planning authority.

Ron Cease said, at that point, there really is no relationship necessarily between the regional plan and the local plans so there is no point for the framework plan.

Chair Myers said that he understood Larry Derr to say that the concept is one of those areas where an omission of any reference in the charter would be better and letting the results of state law operate in terms of producing that interaction.

Larry Derr said that he does not have a well formed opinion on it. The starting point is that it is going to stand and fall on what the legislature says. One can either say that the legislature has already says that Metro is suppose to plan for the region and local governments are suppose to conform to it. He said that the charter could either say that Metro will plan and local governments must conform and then assume that the legislation will remain to back that up or the Committee could not make that statement in the charter, recognizing that having stated it in the charter does not make it so.

Ron Cease said that there needs to be a tie in the language that the conforming legislation has to relate to the fact that the Regional Framework Plan is based on an issue of metropolitan concern. It should be clear that the charter does not force them on the local governments when they have no authority.

Chair Myers said that the Committee should consider the political ramifications of one choice versus another in terms of the possible fate of the charter.

Ron Cease said that if there is a conflict with state law, it does not mean that state law will prevail.

Larry Derr said that if the ultimatum came that the Committee had to vote on the language tonight in the planning and functions area, he would, without hesitation, vote for what the charter now says because he does not think that the conflicts with state law are not as broad as some people think they are. But, in the process of fine tuning, some of the problems can be avoided.

Chair Myers asked what the ramifications were regarding the enumeration of other functions.

Larry Derr said that he would like to come up with some language that does not do much more than

call out the area of getting into functions being performed by local government. Beyond that, if the statutory language is used where there is present service delivery, little else may need to be said. He said that the way it is written now, ambiguity has been created. He said that mandated functions do not need to be mentioned in the charter because they are mandated. References to federal can be eliminated because the federal government cannot mandate a unit of local government to do anything-- it must come through the state.

Ray Phelps asked about storm water and transportation planning. He said that they are both federally mandated.

Larry Derr said that he understands that the federal government tells the state that these are programs they must carry out and then the state picks the agencies to do it.

Chair Myers asked if Larry Derr's proposal for section 6 envisions the elimination of the enumeration. He asked if it would just be revisions of the wording.

Larry Derr said that the list has to be there.

Charlie Hales said that he wrote section 6(6) which would get Metro in the position of being a repository for functions or powers assigned by state or federal government because it would do no harm if it were never used and because the Committee may not think of everything.

Larry Derr said that it is probably one of the provisions that may not make a lot of difference and probably will not mean anything. He said that in his description of powers, he tried to make it clear that one of the areas of jurisdiction that Metro has is over those functions that are mandates of authority.

Charlie Hales said that if the Committee adopts Larry Derr's language for section 4, his proposal for section 6(6) is not needed.

Frank Josselson reminded the Committee that one of the principles that they developed was the basic overriding concept of the necessity of having cooperative regional and local government operations to develop, to the extent possible, a partnership co-equal governments with the regional government doing the regional things and the local governments doing the things that the local governments ought to do, with some slight exceptions and processes for the regional government to take on local functions. He said that the areas in which the Committee has had success in terms of acceptance are the areas where they have developed a working relationship that the local governments feel comfortable with. He proposed that, based on Rena Cusma's consolidation proposal and the recognition that all three counties serve different functions and have different needs, the charter delegate within two years to find local solutions to service provisions and the elimination of Multnomah County. He said that would be done by Metro finding local service providers able to provide necessary public facilities and services to unincorporated portions of Multnomah County. He suggested that the Committee formally ask the Metro Council to not put the consolidation proposal on the ballot.

Chair Myers asked the Committee to hold discussion on Rena Cusma's consolidation proposal until the end of the meeting. He asked Frank Josselson if he could provide specific language around the Multnomah County proposal at the next meeting. He said that he would like the Committee to have the specifics before they vote on the issues.

Frank Josselson said that he would prepare the amendment for the next meeting.

Charlie Hales said that he does not think it is the same thing to remain silent on an issue and confer



by default standard powers on Metro from state government or to spell it out in the charter and it does not conflict with state law. He said that stating the issue makes a difference because it says that it is an important task of the government rather than saying they can do it when they get around to it.

Matt Hennessee said that, regarding Frank Josselson's proposal, he finds it more constructive to bring forward proposals that really look at the region rather than being specific to a particular county. The regional government ought to be in a position to study the region from a regional standpoint and not focus in on a county. He said that he would prefer it if Frank Josselson's proposal was brought back to the Committee in a broad fashion.

Jon Egge asked if Matt Hennessee is saying that if the issue is mentioned generically and could apply to any situation, then it has merit. If it is mentions Multnomah County and Portland specifically, then it probably does not belong in the charter.

Matt Hennessee said yes.

Ron Cease said that in the sales tax proposal, there was a provision that would have allowed counties to have a sales tax up to four-tenths of a percent. He said that if there is to be a sales tax by county, it should be at the same level in the whole region. He said that the Committee ought to discuss the possibility of having local taxes being at a constant rate throughout the region either through intergovernmental agreements or through Metro. Metro may be the vehicle for local government for cooperation on taxes and other matters. He said that he would work on the specific language.

Chair Myers said that, in section 3, Dan Cooper raised the issue of the date for Metro's existing boundaries. The charter date is November 3, 1992, but Dan Cooper feels that creates ambiguity as to the effect on the adoption of the charter to any annexation that occurred during the period of the charter approval to the charter effective date. He said that he disagrees with Dan Cooper's concern because the charter is clear that the area of government includes all territory as of the specified date together with any territory thereafter annexed or subjected to its governance under state law.

Tim Sercombe concurred with Chair Myers' analysis.

Chair Myers said that Larry Derr's proposal is to excise from the provisions of section 3 all reference to the potential role of any Metro ordinance or any reference to any role or absence of rule of approval of the local government Boundary Commission or any other state agency.

Charlie Hales asked if Larry Derr wanted to delete the following sentences from 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."

Larry Derr said that it is necessary to delete the third sentence dealing with the changes to the boundaries of Metro not requiring approval because he does not think that the charter can dictate that resolve. He said that he does not feel strongly about the sentence regarding the non-emergency ordinance. The idea was to be sure that the action was taken in a way that would allow the greatest public scrutiny and would allow the opportunity for referendum. He said that there is value in having it in there.

Frank Josselson said that it is very important for the regional government to have total control over its own boundaries. He said that the principle is important enough to have in the charter to assure that there is conforming legislation. He said that he would oppose its deletion.

Larry Derr said that his changes to section 9(4) would allow the same result.

Chair Myers suggested tying in section 9(4) with section 3.

Ray Phelps asked if, currently, Metro can, by ordinance, eliminate the Boundary Commission and assume those duties.

Tim Sercombe said no. He said that it requires approval of the proposition by referral from the Metro council.

Ray Phelps asked what would occur if the people were to approve the proposition.

Tim Sercombe said that Metro would have the power to take over the functions of the Boundary Commission.

Ron Cease said that he understood that Metro would have no authority to change state law in reference to the specific ways of changing boundaries which are prescribed by state law.

Tim Sercombe said that is correct. He said that Metro would administer ORS 199.

Ron Cease said that Metro, currently, would have to go to the Boundary Commission to change its own boundaries. He said that he does not think that the state will go along with allowing the region to change its boundaries at will by ordinance. It would have to go through the state law process.

Ray Phelps said that Boundary Commissions are unique in Portland and Eugene. The rest of the governments in the state follow a different procedure.

Ron Cease said that the processes for changing boundaries are close, if not identical, with or without a Boundary Commission. He said that the assumption for creating the Boundary Commission was that the boundaries of local government are so important that they could not be left totally to the local governments.

Motion: Larry Derr moved, Ray Phelps seconded, to delete the following sentence in section 3, *boundaries: "No change to the boundaries of Metro shall require the approval of a local government Boundary Commission or any other state agency."*

Larry Derr said that he does not think the sentence would be operative without conforming legislation. He proposed that section 9(4) be changed to allow the Boundary Commission function so that the council act as the Boundary Commission with respect to its own boundary.

Amendment to the motion: Larry Derr amended the motion to include the reworking of section 9(4) to provide a present assumption of the Boundary Commission by Metro, but provide that Metro will at the same time delegate the function, except for Metro boundary changes, to a commission appointed by Metro. The functions will be left otherwise unchanged until the study and considerations now described in 9(4) are undertaken.

Larry Derr said that his thought is that the charter would mandate that kind of a study at the end of which the Metro council could choose to leave the process as is or do whatever would be necessary to implement desirable changes.

Ron Cease said that the current draft of the charter says that the Boundary Commission structure and functions would remain as they are until a certain point when state planning happens and Metro would have the authority to decide what they want to do with it.

Larry Derr said that the problem is that it may not be an effective exercise of the present statutory authority to take over the Boundary Commission function. It may not achieve the desired purpose because it is a two step process before the actual takeover will occur.

Tim Sercombe said that the voter approval of the charter may not be consistent with the approval required by state statute to take over the functions of the Boundary Commission. He said that the state statutes says that the electors, by initiative or by approving a proposition referred to them by the governing body of the district, which is the council, can authorize a transfer of all the functions, duties, and powers of a local government Boundary Commission. He said that this charter is a referral to the voters from the Charter Committee, not from the Metro council, nor is it a proposition, which normally denotes a singular topic which is put up for a vote as opposed to something that is contained with a number of things. He said that his judgement is that the approval of the charter would not constitute giving Metro the power to assume the Boundary Commission functions.

Chair Myers asked if the provisions of the charter could be structured around the Boundary Commission such that they will have integrity even if the Committee next decides to delete the provisions that purport to make the charter vote a vote on the assumption of the Boundary Commission functions. He said that the two questions are separable.

Frank Josselson said that this is another issue that, to the extent that there is a legal dispute, it is hard to imagine the legislature not approving this charter provision if it is adopted by the voters because the Boundary Commission functions are clearly regional. He said that it does not make sense to have an unelected body, with no expertise, have the authority over the boundaries of the regional planning agency. He said that he supports Larry Derr's motion and if it requires conforming legislation, so be it.

Chair Myers asked if, by "conforming legislation", Frank Josselson means legislation that purports to retroactively say that the vote on the charter will act as a vote to transfer authority.

Larry Derr said that the legislature would have to say that it is hereby transferred.

Janet Whitfield said that Metro currently appoints the Boundary Commission members. She said that the charter proposal would cause a pause while the issue is being studied. She asked if, after the study, the commission members would be reappointed or if a new commission would be appointed.

Larry Derr said that his intent was for there to be no pause at all. While the study goes on, life continues as before with the exception that Metro would function as the Boundary Commission with respect to its own boundary. He said that the formality would be that the old Boundary Commission went away and a new Boundary Commission is created, but it could be the same people sitting in the same seats.

Ron Cease said that the statute currently says that the council, by its own action, can put the question before the voters. He said that the charter should be built around that to avoid any confusion. He said that the regional body should be able to decide when they want to put it before the voters and they can then absorb it. He said that as the charter goes before the voters, the question of what the Boundary Commission is as part of the larger issue is not going to have much discussion.

Frank Josselson said that the existence of the Boundary Commission creates a tension with local

governments that is unnecessary. Local governments have done a good job of consolidating on their own when appropriate. He said that he believes the Boundary Commission has outlived its usefulness and he would like to see it taken over by Metro.

Ray Phelps asked how Ron Cease would feel about the charter stating that Metro will submit by May 1994 the question regarding the Boundary Commission and everything else will be done at the same time.

Ron Cease said that he does not have a problem with that. He said that the significance of the Boundary Commission is beside the point. The point is that there is currently authority for Metro to take it over and that authority should be protected. Metro should decide when and how to take over the Boundary Commission.

Ray Phelps proposed adding to the motion a submission date of May 1994 for the question of Metro takeover of the Boundary Commission.

Larry Derr said that he is trying to have an immediate transition to the circumstance in which Metro is the master of its own boundary without second-guessing what might happen to the Boundary Commission functions.

Ron Cease said that is a different issue and should be handled separately. He said that the whole question of what to do with the Boundary Commission and when is one issue and how to deal with Metro's boundaries is another issue.

Ray Phelps said that he does not think that they can get conforming legislation.

Larry Derr said that his proposed change for section 9(4) would also need conforming legislation. He suggested going back to the more direct approach of leaving section 3 as is and have it be an item in the package of conforming legislation and it would require the legislature to say that Metro is the master of its own boundary without getting into the thicket of whether there should be a Boundary Commission, either elected or unelected. He said that he withdraws his motion.

Tim Sercombe said that even though the intent of the third sentence of section 3 is to express the desire for conforming legislation, if there are Metro boundary changes that occur between the time of the charter effective date and the time that any conforming legislation may come into place, it may create some issues about whether or not those Metro boundary changes are lawful or not if the charter says that no change shall require the approval of the Boundary Commission. If the legislative history is clear that it is an expressive desire for implementing legislation, it may be okay.

Chair Myers said that he is uncomfortable with straightforward provisions that appear to be unqualified and which are going to be ineffective. As stated, these two provisions are contrary to state law.

Tim Sercombe said that the third sentence is contrary to state law. He said that the sentence "changes to the boundaries of Metro shall not be effective unless approved by Metro ordinance" is consistent with state law. He said that this local government would have the power to condition annexations upon its own approval together with whatever approval is required by state law.

Charlie Hales said that section 48 is very generalized in that it says that the council shall seek legislation for all parts to have operative effect. He suggested keeping the third sentence in section 3, delete "to the extent allowed by law" in section 9, and have a request in section 48 which states that the legislature is requested to repeal the statute requiring the vote of the people and transfer the

authority for the operation of the Boundary Commission to Metro. He said that the hurdle the Committee is trying to get over is the piece of state law that predates a regional government with a home rule charter.

Ron Cease said that the fact that Metro will have a home rule charter does not remove it from the jurisdiction of the state for boundary changes. He said that Metro should not be excluded from state law.

Frank Josselson said that this sentence only says that Metro is not required to have the approval of the Local Government Boundary Commission. He said that he cannot imagine an issue more of metropolitan concern than the Boundary Commission.

Ron Cease said that at the point that Metro takes over the Boundary Commission functions, it, in effect, takes over the jurisdiction, by way of state process, of its own boundaries as well.

Larry Derr said that is a much bigger decision than just deciding to take over the jurisdiction within its own boundaries. He said that they are groping for a way to separate the two issues.

Ron Cease said that he has no problem separating the issues, but he does not know how to legally provide separate processes. He suggested writing a provision that relates how Metro should deal with its own boundaries, but avoids potential conflict with state law.

Frank Josselson said that he does not think there is any conflict because a double majority would still be required for the other procedures in ORS 199. The only thing that would not be required is an approval by the Boundary Commission, but the other requirements would have to be followed.

Larry Derr said that one of the major things that boundary commissions are suppose to do is look at the interrelationships of governments. There is no other regional government that this one could tread on the toes of.

Ron Cease asked what the process would be if there was a proposal to annex a piece a property to Metro with the Boundary Commission in place as it currently is and with the passage of the charter so that the Boundary Commission's jurisdiction over Metro boundary changes is under Metro.

Larry Derr said that the process would be the same as it is under the boundary change statutes as opposed to the Boundary Commission statutes as defined in the preliminary authority to initiate the change. The final step under the Boundary Commission--the stamp of approval--would be eliminated. He said that the final step is an overlay step which does not exist in the majority of the state.

Ron Cease said that he would not have a problem with that if legal counsel agrees that the process would move that way without a lot of conflict. He said that, normally, the governing body of a local government cannot say that an area is annexed without taking it to an election. He said that he does not have a problem with the concept if, in most cases, an annexation to Metro goes to an election. One advantage of a Boundary Commission is that a proposal can go to the Boundary Commission through various channels and the commission can approve it and it will go into effect without an election. That option would not be available if the Boundary Commission is removed as a vehicle for changing Metro's boundaries.

Tim Sercombe said that he understood the proposal to be that in taking over the functions of the Boundary Commission, the processes of ORS 199 would stay in place. If that is true, and Metro took over the Boundary Commission, it would follow the ORS 199 processes and not use the ORS 198 or ORS 222 processes.

Ron Cease said that his question was if the charter is approved with the provision that the Boundary Commission does not apply to Metro boundary changes, and the statute remains that Metro can put the issue of the Boundary Commission on the ballot, what would the process be. He said that the process would be, presumably, that Metro could change its boundaries in the same way that special districts and cities change their boundaries in the parts of the state where there are not boundary commissions.

Tim Sercombe said that he is a strong believer that state law preempts any thing in the charter with respect to boundary changes and the sentence would have no effect without implementing legislation. He said that the impact of the statement that changes would only be effective only if approved by an ordinance is that it would require the Metro council to approve a boundary change and not allow them to delegate it to a commission. The effect of the second sentence is to require that the Metro council be the one to approve Metro boundary changes without regard to whatever processes are additionally required under state law.

Chair Myers asked if it would be acceptable to delete the third sentence, and then modify section 9(4) as Larry Derr has proposed, but have it worded so that it does not speak to a present assumption of the Boundary Commission, but relate it to either a vote to authorize transfer or a separate submission for a vote. He said that the Committee would vote separately on whether they want to take out the provisions that purport to make the charter vote the vote to authorize transfer.

Larry Derr said that he would couch the second decision more broadly to see if the Committee wants to try to do something to try to force a quicker transition to Metro controlling its own boundaries. He said that Chair Myers' description is a more leisurely pace to get there.

Ron Cease said that the Committee needs to avoid conflict with state law. He said that if Metro gives itself authority over its own boundary, it has authority that no other unit in the tri-county area has.

Frank Josselson said that he is really only concerned that the Boundary Commission has no authority over Metro's boundary. He said that Metro is not going to want to absorb the functions of the Boundary Commission. It may want to absorb the functions to eliminate the commission, but it will not absorb them because that would put Metro at odds with the local governments with whom it is in a partnership.

Janet Whitfield asked Tim Sercombe if he agrees with Dan Cooper's interpretation that approval of the charter constituting approval of taking over the Boundary Commission would put into question some Boundary Commission decisions.

Tim Sercombe said that it would create a legal issue about whether or not that is the case. He said that he has heard the concern that Metro be the master of its own destiny in terms of its boundaries. He said that could be solved by keeping the second sentence which requires that any boundary changes to Metro be approved by an ordinance of the council. He said that another concern is that no one else should have a say about the boundaries of Metro. He said that is a different issue. If there is a requirement that Metro must approve the boundary changes by ordinance, it gives them a veto power over what the Boundary Commission has done. He said that it is a different thought to change state law to get rid of the Boundary Commission or to make it so that it cannot decide a Metro boundary change.

Janet Whitfield asked if the Boundary Commission was not approving Metro's boundary changes, would the counties get involved.

Tim Sercombe said that if the Boundary Commission was abolished for this area, there would likely be legislation adopted on how Metro boundary changes are done, otherwise it would be subject to

provisions of ORS 198 which deal with how special district boundaries change in general. If that is the case, some of the boundary changes could occur just by Metro's ordinance. He said that a lot of the processes are similar to those used by the Boundary Commission.

Motion: Larry Derr moved, Frank Josselson seconded, to amend the draft charter as follows:

Section 3: Delete the following sentence: "*No change to the boundaries of Metro shall require the approval of a local government Boundary Commission or any other state agency.*"

Section 9(4): Modify to provide that upon assumption of the Boundary Commission functions by Metro, Metro must delegate the function, except for Metro boundary changes, to a commission appointed by Metro. Leave the functions otherwise unchanged until the study and considerations now described in 9(4) are undertaken.

Tim Sercombe said that he reads Larry Derr's recommendation as when an assumption of the Boundary Commission occurs, the council shall provide for the boundary changes and other business of the Boundary Commission will be done by a commission, except that the Metro council shall be the sole deciding authority on changes to its boundary. Section 9(4) would say that when the functions of the Boundary Commission are given to Metro by state law, the effective would be that the council could not assume the Boundary Commission role itself. The only thing the council can assume is the power to change its own boundaries. He asked if that is the intent.

Larry Derr said that is the intent until the study is completed after which it could do what it wanted.

Tim Sercombe said that it is an uncharter-like thing to say that until they have completed a study, they have to delegate it to a commission, but once they have studied it, they can take it back. Larry Derr said that all the motion is trying to do is to get at a situation that has the charter expressing the desired end result of the council not being second guessed on its boundary changes by the Boundary Commission, recognizing that however it is done, it will take some conforming legislation. The charter would either say that Metro will take over the Boundary Commission, but only exercise that narrow function, and then get legislative approval, or take the direct approach to say that the Boundary Commission cannot effect the boundary change by Metro and get legislative approval.

Chair Myers asked if the authority of the Boundary Commission is transferred to Metro by vote, would further legislation be needed in order for this provision to be operative--that is, Metro delegate everything to a commission except its own boundaries. He asked if Metro would be free to make that decision itself as long as the procedures for making the boundary decisions were complied with.

Larry Derr said that Metro would not have to go back to the legislature to make it operative. He said that Chair Myers prefaced his statement by assuming that it would be valid.

Ron Cease asked what the significance is for the latter part of the motion dealing with the study.

Charlie Hales said that the process laid out in section 9(4) says that before the Boundary Commission is taken over, there needs to be a study. He said that he is going to vote no on the motion. Conforming legislation is required either way. He said that the Committee should figure out the way that they want it to work and hope that they get conforming legislation.

Jon Egge said that he is going to vote no on the motion because there is a lot of unnecessary confusion.

on this issue and it is not as difficult as some have led the Committee to believe.

Vote on the motion: Frank Josselson, Ray Phelps, and Chair Myers voted aye. Judy Carnahan, Ron Cease, Larry Derr, Jon Egge, Charlie Hales, Matt Hennessee, Ned Look, Wes Myllenbeck, Vern Shahan, and Norm Wyers voted nay. Tom Brian, Bob Shoemaker, and Mimi Urbigkeit were absent. The vote was 3 ayes to 10 nays and the motion failed.

Motion: Ron Cease moved, Ray Phelps seconded, to amend the draft charter as follows:

Section 3: Delete the following sentence: *"No change to the boundaries of Metro shall require the approval of a local government Boundary Commission or any other state agency."*

Remove any reference to the fact that approval of the charter would also constitute approval of the assumption of the Boundary Commission.

Ron Cease said that the only thing the Committee would have to clear up is the question of Metro's boundaries. Everything else would proceed as current law provides.

Charlie Hales said that the Committee should write for the desired outcome. He said that his desired outcome is to have approval of the charter constitute transfer of the authority for the assumption of the Boundary Commission's functions to Metro at the council's action by ordinance. He said that the provisions in section 9(4) are restrictions on the current authority. Under state law, only the vote of the people would be needed--MPAC would not need to be consulted. He said that those restrictions make no sense absent the charter approval being the approval to assume the Boundary Commission.

Ron Cease said that he does not believe adoption of the charter will assume that function because there needs to be a specific proposal put before the voters on the issue. He said that it would be smarter to separate the issue of handling Metro's boundaries and not jeopardize the basic function of the commission. He said that the Committee should try to avoid raising a legal question that may or may not be resolved.

Charlie Hales said that he agrees that there is a good chance that the language in section 9(4) will not function, but there is a chance that it might or that the legislature might conform state law to it. If it does not function, the region is back where it is under current state law so nothing is lost. He said that he does not agree with the theory that the Boundary Commission still is needed.

Jon Egge said that he agrees with Charlie Hales.

Vote on the motion: Judy Carnahan, Ron Cease, Matt Hennessee, Ned Look, Wes Myllenbeck, Ray Phelps, and Chair Myers voted aye. Larry Derr, Jon Egge, Charlie Hales, Frank Josselson, Vern Shahan, and Norm Wyers vote nay. Tom Brian, Bob Shoemaker, and Mimi Urbigkeit were absent. The vote was 7 ayes to 6 nays and the motion failed.

Motion: Frank Josselson moved, Jon Egge seconded, to replace the current section 4 with the following language: *"Metro has jurisdiction over matters of metropolitan concern. Metro has jurisdiction over and shall exercise those powers and duties imposed upon its by the Constitution and laws of this state. Metro has jurisdiction over and may exercise those powers and duties granted to it by the Constitution and laws of this state. The Metro Council shall*



*determine by ordinance whether a subject area is a matter of metropolitan concern and to what extent Metro should exercise its jurisdiction over such matters, subject to the additional requirements of this Charter. The Metro Council shall determine by ordinance to what extent Metro should exercise its jurisdiction over powers and duties granted to it by the Constitution and laws of this state, subject to the additional requirements of this Charter."*

Chair Myers said this vote would be subject to the understanding that Tim Sercombe would be authorized to submit recommended changes.

Frank Josselson said that he proposed the amendment because it is a more accurate statement of the constitutional charge of the government and contains a more accurate distinction between the jurisdiction, powers and authorities of the government.

Jon Egge asked if this reinserts all of the "shall" and "may" statements from ORS 268 that the Committee has set aside. He asked if not, why is that so if ORS 268 is not going to be repealed by anything the Committee does.

Frank Josselson said that it has nothing to do with ORS 268.

Jon Egge said that "functions permitted by state law that Metro may carry out" are all the "mays" in ORS 268 in his mind.

Larry Derr said that they are subject to the additional requirements of the charter. He said that it is intended to include them, with the procedural provisions.

Tim Sercombe said that there is an ambiguity. He said that some of the powers of Metro are outright and some of the functions it does are mandated and some are discretionary. There are several powers which require voter approval. He asked if this part of the charter confers on Metro powers to do things. If so, are those powers limited by the current statutory scheme requirements?

Ray Phelps asked if "the additional requirements of the charter" is the MPAC.

Larry Derr said yes, and the other requirement that ends up in the charter. He said that this paragraph is only in lieu of the current section 4, it is not in lieu of the other empowering provisions in the charter. He said that he thinks the statement is a broader statement of power, not a narrower one than in the current draft.

Frank Josselson said that the current section 4 limits the jurisdiction to those matters which are expressly spelled out or are assumed pursuant to the MPAC and other procedures. He said that the motion is a broader statement of the jurisdiction of Metro and a clearer statement of the authorities that Metro will exercise.

Tim Sercombe said if that is the intent, it can be stated more simply by saying that Metro has jurisdiction over matters of metropolitan concern and matters of metropolitan concern include those functions that are authorized under current or future state law and those that are approved by the council.

Larry Derr said that is what Dan Cooper's draft says and it is not accurate. There are matters which are in the state statute that are not necessarily matters of metropolitan concern.

Ron Cease asked if it was the motion's intent to cover all the pieces in this particular section.

Larry Derr said that the motion is intended to drag everything possible in and the limitations are listed elsewhere.

Frank Josselson said that Tim Sercombe should only make editorial changes to the motion and not to the substance of the motion.

Tim Sercombe asked if the intent of the motion is to include into matters of metropolitan concern all of the functions that it may perform under ORS 268.

Larry Derr said that Metro has jurisdiction over more than matters of metropolitan concern.

Tim Sercombe said that at a minimum, it includes matters of metropolitan concern. He asked if there is an intent to exclude anything so that the effect is that there is no reason to argue whether or not something is of metropolitan concern if it is currently in the statute. The only issue is whether or not it should assume that function later on under the function assumption part of the charter.

Larry Derr said that if it is in the statute, that is its source of authority. If it is not in the statute, it would have to be a matter of metropolitan concern.

Ron Cease said that Larry Derr's point is that under the charter, it can take on functions only if they are matters of metropolitan concern. If the state wants to give them a function that has nothing to do with the metropolitan area, it would have to do that.

Tim Sercombe asked if the thought is that Metro has jurisdiction to perform any function authorized to the Metropolitan Service District under current or future state law as well as those matters of metropolitan concern which are deemed by the council to be matters of metropolitan concern.

Larry Derr said yes.

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

Chair Myers said that Dan Cooper suggested that section 5 be amended to broaden the applicability of growth management functions beyond the Regional Framework Plan.

Charlie Hales said that the Committee has already expanded the growth management functions beyond the plan because the regulatory authority associated with the plan is in the charter.

Tim Sercombe said that he understands the issue to be that Metro believes that the framework plan is purely a process that relates to land use and land use controls on local comprehensive plans. He said that Metro believes, if that is the case, that if Metro is authorized to exercise functions relating to the management of growth specified by section 7 and 8, then it precludes them from exercising functions relating to growth management except through that land use process.

Ray Phelps asked what would cure Dan Cooper's concern and not do violence to the concept.

Larry Derr suggested figuring out a way to clearly state that it talks about land use planning and that any of the processes are in respect to land use planning. It should be clear that Metro can plan for anything else it wants to when it wants to. He said that there should not be any limitation or

addressing of other kinds of planning.

Tim Sercombe said that, under that option, section 5 would be eliminated. He said that there is no technical reason for having it.

Motion: Frank Josselson moved, Ray Phelps seconded, deleting section 5, *growth management functions*.

Chair Myers said that if section 5 is eliminated, then the charter would move directly into the description of the functions other than the regional land use planning functions.

Ray Phelps asked if section 5 is removed, does that address Dan Cooper's concerns and does not do harm to the product.

Tim Sercombe said it improves the product.

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

Motion: Frank Josselson moved, Matt Hennessee seconded, to modify section 6, *other assigned functions*, as follows:

Use the existing statutory descriptions for current functions of Metro that are being continued in section 6 and substitute those descriptions for the current draft charter provisions section 6(1-5).

Add section 6(6): Any other functions assigned to the Metropolitan Service District by:

- (a) approval of the voters;
- (b) action of state or federal government; or
- (c) agreements with local governments made prior to the effective date of this charter.

Move section 6 behind the current draft charter section 8. Renumber sections 7 and 8 as sections 6 and 7 respectively.

Frank Josselson said that he would like to have the charter show the planning functions first to show the relative importance.

Charlie Hales said that he will make motions with respect to the amendments he has proposed after this motion. He said that Frank Josselson's motion deals with the separate issue of how to state the current powers of Metro. He said that his proposed amendments to section 6 are not only the current powers of Metro, but also some enhanced powers, some of which the Committee already agreed on. He said that his section 6, regarding those functions assigned by the voters, state or federal government, or intergovernmental agreements, will pick up other odds and ends without having to list it all in the charter.

Frank Josselson said that the intent of his motion is to leave the changes Charlie Hales made in

section 6.

Chair Myers said that he did not know that there had been serious issue raised as to the inadequacy of the provision descriptions. He said that some of them come out of the statute.

Frank Josselson said that there was criticism of the solid waste provision which reads: "provision of facilities for, and disposal of, solid and liquid wastes of the region". It does not include a lot of the activities that Metro is doing, such as solid waste management and planning. He said that if the statutory language is used for provisions 6(1) Zoo, 6(2) regional facilities, 6(3) solid waste, and 6(5) geographic data, it will be closer to what Metro is actually doing.

Tim Sercombe said that the statutory language for 6(3) is "dispose and provide facilities for disposal of solid and liquid waste". He said that there are a whole bunch of powers in ORS 268 conditioned on voter approval. If ORS 268 is going to be incorporated as a list, there needs to be a distinction between those that are granted outright, those that are conditioned, and those subject to different processes under the statute.

Chair Myers said that the motion only applies to the group that are already set forth here. It does not expand that list.

Frank Josselson said that the planning and growth management of solid waste does not arise from ORS 268 but from the last legislative session.

Ron Cease said that Frank Josselson's intent is to make the statements as complete as possible.

Janet Whitfield asked if this motion enables Metro to do what the statutes say they can do or only what they are doing now.

Chair Myers said that it is to clarify or make more nearly complete the descriptions of these particular authorized activities as set forth in the statute. It is not to add to the list, but to enlarge the description to track more with in the statute.

Amendment to the motion: Frank Josselson amended the motion to authorize Tim Sercombe; along with Dan Cooper, to amend sections 6(1), 6(2), 6(3), and 6(5) according to the statutory language.

Chair Myers asked if the motion includes the specific changes that Charlie Hales proposal includes.

Frank Josselson said yes.

Chair Myers said that Charlie Hales' description of the powers with respect to parks and open spaces was approved at the last meeting.

Ray Phelps said that 6(5), *development and marketing of geographical data*, was the desire of the Legislature to authorize this government to operate outside the public records act with regard to selling data at a profit. He said that the geographic data base is a market driven sales element as opposed to the standard public record of access. He asked if the subsection were to be amended to add "or other", would that allow the government to produce all of its records at a profit. Geographic data was to be specifically sold at a profit. He said that legislative history could show that.

Jon Egge asked if it could say "or other demographic data".

Tim Sercombe said that he does not think that the listing of the function has to do with the public records issue. It will be covered by state law in terms of whether or not they can charge. He said that it is just a function listing. He said that Dan Cooper's concern was that they develop other data besides geographic data and he wanted to make sure that, by listing it as it is in the draft charter, it was not intended to restrict that.

Frank Josselson said that they should be given the authority that they need, but not enough so that they can sell public records at a profit.

Chair Myers said that the charter provision regarding whether or not they can charge for data should be left to state law.

Ray Phelps said that he was just raising the question because he did not want to have an unintended consequence.

Frank Josselson said that "or other" introduces the possibility that normal public records which, under the public records law, can only be sold for the cost of reproduction could be sold for a profit.

Chair Myers said that he did not think that it was intended to expand the ability of the government to sell the data for a profit. He said that he understands that it is intended to meet the question of whether, absent the provision, they could even develop the data.

Ray Phelps said that Dan Cooper's memo of comments to the draft charter mentions the exceptions of the RLIS process in ORS 268.

Chair Myers asked what the result would be if the provision came out entirely.

Larry Derr said that Dan Cooper's comments say that "many of these activities carried out by Metro at present are pursuant to intergovernmental agreements". He said that if that means that all are done that way, then the provision is not needed if there is a clarification that intergovernmental agreements are not restricted. If some are not pursuant to intergovernmental agreement, then there is a statute somewhere that says that they can do it.

Tim Sercombe said that the way the charter is currently structured, provided that this data provision is not a local government service that a local government is doing, Metro could assume it by ordinance. If they are developing a unique product that they are selling or marketing, it can be done under the current structure by passing an ordinance. He said that the only reason it was added at all was because the instructions said that the charter should recognize that Metro is doing this function and the Committee implicitly approved it. He said that when it came up in the list of things that Metro can do, he put it in. Whether or not they do something beyond that is up to the function assumption process.

Chair Myers suggested that, in regards to the amended subsection 5, Tim Sercombe confer with Dan Cooper about deleting the provision.

Frank Josselson said that Tim Sercombe should also consider the possibility of replacing it with a more general authorization to continue existing functions and activities.

Jon Egge said that, in regards to Charlie Hales' proposed 6(6), he is bothered by the statement "agreements with local governments made prior to the effective date of this charter". He said that it might provide mischief by Metro between the passage of the charter and the effective date of the charter. He said that he does not want to hamstring the government.

Charlie Hales said that he was trying to solve Dan Cooper's problem with the addition of "or other" in 6(5) and the language in 6(6). He said that if Tim Sercombe understands that was the intent, then that is sufficient for the moment. He said that he was not trying to expand Metro's powers or current authority--he was just trying to solve the quibble about fencing in existing authority or contractual agreement that has or might be made between Metro and some other government.

Jon Egge said that said that the LCDC scramble to plot areas in the interim period was unbelievable. He said that he is not suggesting that this government would do that, but some tension to enter into an agreement might be made clearly pointed to this provision. He said that he would prefer that the statement "agreements with local governments made prior to the effective date of this charter" come out of the amendment.

Charlie Hales said that, based on Dan Cooper's concerns, the words "planning and" need to be added to the solid waste provision under 6(3).

Frank Josselson suggested that it say "planning for the management of solid waste".

Chair Myers suggested that Tim Sercombe be allowed to work with Dan Cooper on the wording of the solid waste provision.

Charlie Hales said that is fine. He said that he wanted to make sure that the planning concept was included in the solid waste provision.

Larry Derr said that to the extent that it is talking about planning, it would go into the Regional Framework Plan and it is covered under the planning section. To the extent that the Committee is talking about any other planning for the provision of a service, he would like to, at some point, suggest some language that would clarify that.

Chair Myers said that he thought it should be dealt with generically, not inserting it every time. There should be an overarching provision that links the ability to plan with the various functions.

Frank Josselson said that he would amend his motion to have subsection 6 read "any other functions assigned to the Metropolitan Service District by the voters, action of state or federal government, ~~or agreements with local governments made prior to the effective date of this charter~~".

Ron Cease said that subsection 6 is not needed at all. He said that he would prefer that, under the listing of functions, the regional business license program be added.

Charlie Hales said that is one of the reasons for subsection 6. He said that the list is not global and a general statement, as in subsection 6, is needed.

Ned Look said that subsection 6 is needed.

Tim Sercombe asked if the intent of "any other functions assigned to the Metropolitan Service District by action of state or federal government" is to talk about a contractual action and not the statutes.

Charlie Hales said that his intent was both.

Tim Sercombe said that subsection 6 might mean any function assigned under any statute in ORS 268. It would be a catch all. Those statutes would also carry the processes and approval or limitations in ORS 268. If the voters have to approve a function under ORS 268, that would still carry on.

Charlie Hales said that there is a lot of miscellaneous stuff that the Committee has not spent much time talking about, such as the federal storm water stuff and the builders business license. He said that subsection 6 was his idea of a catch all phrase. If the current responsibilities are going to be listed, it should be bridged to things that have not been talked about.

Tim Sercombe said that in ORS 268.312, there are a lot of functions that require voter approval. Some of those programs are planning for the provision of programs for the aging, health care, manpower, mental health, the acquisition of Greenspaces, and facilities for metropolitan aspects of criminal and juvenile detention. There are a lot of functions that are assigned to Metro, but require voter approval for them to come in under the statutory provision. He said that it needs to be clear, when setting out the functions, if it intends to capture those in, but not require voter approval anymore or to say that they can do it as long as they get voter approval.

Charlie Hales said that the Committee spent a lot of time on the list, and then created a process for the assumption of other functions. He said that his use of the word "assign" was meant as the things that Metro can do now, not things that they could take on later with voter approval. He said that the process in the charter for the assumption of additional functions is for that.

Chair Myers said that this is being used for functions that are presently delegated and being done right now that may not have been adequately described.

Larry Derr said that the list needs to be inclusive because the Committee does then say that there are some hurdles to go through to add to it. He said that the two categories that are the catch-all are the mandated functions and the language out of the constitutional provision--imposed by constitution or state law. The second category, if the Committee agrees on it as a policy matter, is matters undertaken through intergovernmental agreement, which may or may not be existing.

Amendment to the motion: Frank Josselson amended subsection 6 of his motion to read "any other functions imposed by constitution or state law".

Frank Josselson said that his amendment would eliminate agreements with local governments made prior to the effective date of this charter.

Matt Hennessee asked if Frank Josselson meant to leave out intergovernmental agreements.

Frank Josselson said yes, as a matter of policy.

Larry Derr said that the intergovernmental agreements could be raised as a separate issue.

Chair Myers said that the Committee should deal with it under the discrete heading of intergovernmental agreements.

Janet Whitfield asked if the amendment applies to those functions that the regional government is mandated to do and not what they may do.

Frank Josselson said yes.

Tim Sercombe said that there are only a few functions that they are absolutely mandated to do, and those are land use planning functions. He said that there are a lot of things that the statutes say that Metro may do, without voter approval.

Larry Derr said that section 6 only talks about things that they are doing.

Tim Sercombe said that Janet Whitfield's question was whether or not the motion is a mandate, as opposed to things that they can do.

Chair Myers said that it refers to mandated things.

Janet Whitfield said that there are some things that Metro does that are "may" statements. She asked if those were included.

Larry Derr said no. He said that would have to be on the list ahead of this provision.

Janet Whitfield said that if there is something that they are currently doing and it is a "may" statement in the statutes, and is not on the list before this provision, then they would have to go through the process.

Larry Derr said that the alternative is that if it is a "may", but not a "shall", and there is a catch-all, then the Committee would empowered them to do anything whether or not they are doing it now. He said that is not the intention of this provision.

Chair Myers asked, apart from the items listed in section 6, what other present activities of Metro are being conducted as a result of imposition by constitution or state law.

Charlie Hales said that it covers the builder's business license, storm water, and federal transportation planning through the state government.

Janet Whitfield said that recycling is also included.

Charlie Hales said that he wrote it this way because the Committee may not think of everything.

Chair Myers said that the Committee should not try to itemize all the functions.

Ron Cease said that one way to get around it is to say that in addition to anything that they are authorized to do or are doing, as a result of the statement in section 4, they are specifically authorized to do the following. He said that section 6 is intended as a way to lay out, in much more specific terms, some of the functions and not to exclude anything else.

Charlie Hales said that it is intended to include everything else which is why there is the process to add functions.

Tim Sercombe said that section 4 is not a function conferring section. It is something that describes the jurisdiction. He said that section 6 is the first section that talks about what the functions are.

Ron Cease said that there needs to be a reference to section 6.

Chair Myers said that the language that has been proposed is appropriate.

Tim Sercombe suggested that subsection 6 include "imposed by state law". He said that he is not sure what is imposed by the constitution.

Larry Derr suggested using the language of the constitutional amendment.

Tim Sercombe said that there is no function imposed by the constitution.



Chair Myers said that it is a safety measure. It is just taking language out of the enabling constitutional amendment.

Restatement of the motion: The motion is to direct consultation between Tim Sercombe and Dan Cooper as to the possible amendment of the descriptions of the functions of sections 6(1), 6(2) and 6(3) of section 6 and the possible deletion of section 6(5). Section 6(6) will be modified to read "any other functions imposed on the Metropolitan Service District by the constitution of Oregon or state law". The motion includes that Section 6 would be moved to after the planning functions (Sections 7 and 8).

Chair Myers said that the order of the sections, after section 5 which has been deleted, would then be the current section 7, current section 8, and the amended section 6.

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

Chair Myers suggested that Larry Derr and Charlie Hales collaborate in terms of further provision proposals. He said that Tim Sercombe will pursue the activities directed or authorized by the motion with Dan Cooper.

## 2. Other Business

Frank Josselson suggested that Chair Myers go before the Metro Governmental Affairs Committee next Thursday, July 16, and oppose placement on the fall ballot of Rena Cusma's plan to abolish the three counties, Tri-Met and Metro and reconstitute them into a single government. He said that it is the conventional feeling and conventional wisdom of local government and regional government people with whom he has discussed the issue that the proposal does not stand a chance of passing in the fall and that the only purpose for it being proposed for the ballot now is to sabotage the chances of the charter. He said that he thinks it will if it is on the ballot. He said that he thinks it is an up-front to the Committee for Metro's executive officer to propose it and, at the same time, tell the press that it is something that her office had been considering for a year. He said that it should have been brought to the attention of the Committee a year ago. He said that it is a breach of basic respect that ought to exist, but has never existed between the regional government and the Committee.

Chair Myers said that members of the Committee are free to do whatever they want to. He said that if the Committee takes a position, he thinks that the Committee should not take the position that the issue should not be referred. He said that it is not the place of the Committee to say that. He said that the place of this Committee is to say, at a minimum, that they ask the council to defer a decision on whether to refer it until the Committee sees if there is going to be a charter or not because the Committee has a concern that the proposal could work to the disadvantage of the charter vote and, cumulatively, to the great disadvantage of Metro. He said that he would rather put it in those terms and if the Committee is able to complete a charter, then they may want, as a Committee, to take a further recommended position, vis-a-vis the Committee.

Frank Josselson said that he would hate to concede, publicly, that the Committee is not going to, or

may not, be able to put out a charter.

Chair Myers said that he does not intend to concede that they are not going to. He said that he would assert that he believes that the Committee is going to, but no one can be sure at this point.

Frank Josselson said that he would be grateful if Chair Myers would go to Metro and say that, if the Committee puts out a charter, please do not put the consolidation measure on the ballot until the charter has had a chance to be voted on by the people.

Larry Derr said that, as a practical matter of timing, it has to be more of what Chair Myers said because they are under about the same time constraints as the Committee--early August.

Chair Myers said that he thinks that the Metro Council is under a less severe schedule. They have about two weeks longer than the charter.

Larry Derr said that it would be preferable to ask the council that if they would otherwise choose to put it out, please do it only in lieu of a charter. If there is a charter, please do not do it.

Ron Cease suggested asking the council to hold off judgement on the MPAC until the charter is complete. He said that once they look at the charter, they might decide that the vote is more important or that it is not important. He said that it is important for them to see what is in the charter.

Jon Egge said that the Committee has witnessed what they have politely said was an error in the timing of the government on several occasions and this is another example of that. He said that he is not sure the Ron Cease's suggestion is strong enough because it still gives the government the option to rush in at the end. He said that it clearly has the ability to scuttle the charter.

Chair Myers said that he is not going to the Governmental Affairs Committee and accuse Rena Cusma and the council of nefarious motives. He said that other Committee members are free to do that as individuals. He said that he would rather concentrate on the question of its significance in relation to the charter.

Matt Hennessee said that the Committee ought to go with the suggestion. He said that as much as he has been bothered about the way that it has been done, it has caused him to work that much harder to make sure that there is a charter and it is a charter that the Committee can walk away from feeling good about. He said that there are people that have decided that the Committee is not going to have a charter. He said that he is more determined than ever that there will be one and, hopefully, it will be supported and the voters will be on the side of the Committee.

Ned Look said that he thinks that all of the comments and interviews with the press, to the extent possible, should be limited to the chair. He said that it is a great mistake for members to speak as individuals. It gets distorted quickly and comes out too often as representing more than an individual opinion. He said that the Committee decided on that approach earlier, but he keeps seeing people quoted in the press.

Motion: Matt Hennessee moved, Jon Egge seconded, that Chair Myers go to the Metro Governmental Affairs Committee and ask them to defer the consolidation proposal until the Committee has an opportunity to finish the charter.

Frank Josselson suggested that the motion also include that the council accord the Committee, half of whom were appointed by the council, the respect that it is due.

Vote on the motion: Judy Carnahan, Ron Cease, Larry Derr, Jon Egge, Charlie Hales, Matt Hennessee, Frank Josselson, Vern Shahan, Norm Wyers, and Chair Myers voted aye. Ned Look and Ray Phelps abstained from the vote. Tom Brian, Wes Myllenbeck, Bob Shoemaker and Mimi Urbigkeit were absent. The vote was 10 ayes and 2 abstentions and the motion passed.

Chair Myers adjourned the committee meeting at 10:30 p.m.

Respectfully submitted,

*Kimi Iboshi*

Kimi Iboshi  
Committee Clerk