

**METRO
CHARTER
COMMITTEE**

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AGENDA

DATE: July 14, 1992
MEETING: Full Committee
DAY: Tuesday
TIME: 6:00 p.m.
PLACE: Metro, Room 440, 2000 SW 1st Avenue, Portland

6:00 Discussion and decisions on pending issues for the Charter.

10:00 Meeting adjourned.

DATE: July 16, 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 pending issues for the Charter.

10:00 Meeting adjourned.

MINUTES OF THE CHARTER COMMITTEE
OF THE METROPOLITAN SERVICE DISTRICT

July 16, 1992

Metro Center, Room 440

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

Committee Members Absent: Tom Brian, Matt Hennessee, Mimi Urbigkeit

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

1. Discussion of charter revisions

Motion: Charlie Hales moved, Bob Shoemaker seconded, that Section 7(d), under adoption of ordinances, be amended to read: "*Allowing the council to review local government land use ~~decisions~~ regulations for consistency...*".

Charlie Hales said that his amendment is an effort to try to avoid dual review of local land use decisions. He said that he would also like to revisit the language in section 7(c) for the same reason. Metro ought to review patterns and practices by local governments, but they should not be in the business of checking out whether or not the zone change ought to have been approved.

Larry Derr said that the language on this provision came out a little spare and, as a result, leads to the wrong conclusion from the Committee's intention. Section 7(e) under the same area requires a determination that the local government enactments and regulations are consistent with the regional framework plan. Section 7(d) discusses the situation where local plans have been acknowledged of being in compliance with the LCDC goals, but when the local governing body makes a decision, they find ways to look the other way or come up with decisions that do not quite fit in. He said that the net result is a pattern and practice of doing precisely that which the plan said that they should not be doing. This provision was not intended to be a review of local government decisions in the sense that one could appeal a decision of Metro. It was intended to be a review to see that the local government has followed the regional framework plan. He suggested adding language expressing that this is not an appellate provision.

Charlie Hales said that he suggested the motion on the assumption because it was not possible to add a provision that would prevent attempts at dual review.

Larry Derr said that LCDC has the process, enforcement orders are based on this kind of a process. He said that there is language in the statutes that the Committee could look at.

Charlie Hales withdrew the motion and asked that the section be referred to counsel. He said that, when counsel comes back with a recommendation, the Committee bring up the issue of dual review and consider, in section 7(c), changing "land use decisions" to "comprehensive plan amendments". Only if the local government was changing its comprehensive plan would the possibility of dual review come up in the interim. If they were simply approving a zone change in conformance with the

comprehensive plan, that would be below the threshold of something that would be required to be consistent with the plan. He said that he was not trying to make a policy change, but was trying to put Metro in the position of oversight rather than appellate review.

Frank Josselson said that he is not sure that section 7(e) really conveys what the Committee proposed. He said that the Committee proposed that, after it has the regional framework plan, Metro will be reviewing local plans for consistency with the regional framework plan. The proposal stated, that in as much as that review is being undertaken, the report that was prepared in connection with the review by regional government could be substituted for the DLCD acknowledgement report that accompanies its review for local compliance with the LCDC goals. He said that would avoid a duplication of two reports on the same local plan.

Chair Myers agreed that the section does not convey the proper meaning. He said that he does not know if that procedure is something that the charter should address because it is a decision that LCDC would have to make.

Frank Josselson suggested that the provision be deleted because it is an administrative practice that the charter cannot control and DLCD could enact on its own.

Motion: Frank Josselson moved, Jon Egge seconded, that section 7(e), under adoption of ordinances, be deleted.

Bob Shoemaker said that if the motion passes, it should be clear in the history that the deletion was not intended to deny the council that authority.

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

Motion: Charlie Hales moved, Chair Myers seconded, the deletion of section eight, *addition of other matters in regional framework plan.*

Charlie Hales said that, mechanically, the Committee has made a general provision out of what was a specific list before by eliminating the list of what might be in the plan. He said that MPAC should not be involved, in a mechanical way or in a gatekeeping function for the determination of what other growth management provisions ought to be addressed by the plan. He said that was part of the reasoning for adding the words "growth management" in the amended version of the provision in section seven dealing with other matters addressed in the regional framework plan. He said that it would be excessive to have formal MPAC approval required for Metro to decide to do some other aspect of growth management planning.

Chair Myers said that he thinks section eight was subsumed in section seven in light on the Committee's amendments to the section.

Charlie Hales said that there is a policy decision that MPAC will not have the gatekeeping role that it was envisioned to have.

Larry Derr said that it would change the role of MPAC to be advice and consultation, but not approval authority. He said that RGC testified that the approval requirement should be removed and replaced with a provision that if MPAC does not positively advise for the planning for a new function, then it

would require two-thirds majority of the council rather than a simple majority to override the decision. He said that he personally thinks it is a close call. If a structure is developed that the Committee feels comfortable that it will be sound, strong, and good functioning, then the council should be left with that authority.

Ron Cease asked if the addition of matters to the regional framework plan would be left to the council under this motion.

Charlie Hales said it would with the advice and consultation of MPAC, but not with a required approval. It is dealt with under section seven.

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

Chair Myers said that the reference to section eight in section nine will be deleted. It will only be a reference to sections six and seven. He said that the section references will be revised to be consistent with the previous amendments.

Bob Shoemaker asked if section 9(1) is intended to raise a litigation issue with the statement "the ordinance shall contain findings establishing that the function is of metropolitan concern".

Chair Myers said that it probably should say that the ordinance shall contain a finding that the matter is of metropolitan concern.

Ron Cease said that the intent of the provision is that it is not an issue that would go to court. He said that there ought to be a requirement to do it, but it should not be subject to court review.

Motion: Bob Shoemaker moved, Charlie Hales seconded, to amend Section 9(1) as follows: "*The ordinance shall contain findings ~~establishing~~ that the function is of metropolitan concern...*".

Jon Egge asked if it could take it out of the realm of litigation.

Bob Shoemaker said that is his intent.

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

Motion: Chair Myers moved, Jon Egge seconded, to amend section 9(1) as follows: "*...function is of metropolitan concern and ~~setting forth~~ shall set forth the reasons...*".

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

aye and the motion passed.

Motion: Ron Cease moved, Norm Wyers seconded, that the following sentence be deleted from section 9(1): *"the ordinance may also be subject to particular approval requirements of this section"*.

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

Chair Myers asked the Committee to move on to the *assumption of local government service functions*.

Janet Whitfield said that the original outline required that there be no emergency clause, but that has not been covered.

Chair Myers said that it is picked up under the ordinance provision.

Janet Whitfield said that the ordinance provision only makes an exception for finance provisions.

Chair Myers said that it ought to be dealt with under the ordinance provision. He said that he would flag the issue.

Larry Derr said that, for clarification, it is currently worded to be that the subject matter is a function relating to the provision of local government services which requires the knowledge of what a local government service is. He said that some people have correctly suggested that just about any government service is being performed, in some form or another, by some local government. He said that the true intent of the provision was that Metro not supplant or take over the actual provision of the service that one or more units of local government are presently performing. He said that could be simply covered by saying a service being provided by a unit of local government--not a local government service generically. He said that the subject matter "provision of local government services" sounds theoretical and open ended when it means a function being provided by a local government.

Bob Shoemaker said that is what the last sentence--the definition--says.

Jon Egge said that it gets there in a round about way.

Larry Derr said that the substantive change is the issue of planning for services and providing the services. He said that there has been some confusion as to what planning for local government services means. Some plans, such as the framework plan, have regulatory effect so that if a plan for a service is adopted, and it has regulatory effect, the will of the regional government can be imposed just as effectively as if the provision of the service is directly taken over. If, on the other hand, planning for the service means planning to decide whether to get into it or how to get into it, and it has no regulatory effect, then that is something that uses the first step, comparable to studying the service. He said that he would like to see the scope of this section expanded to cover preparing a plan for the provision of services as well as for the assumption of the service, but have some language that makes it clear that means a regulatory plan, not simply studying whether or not to get into the service.

Frank Josselson suggested adding "may study, but may not plan or provide a local government service without the approval of the voters where applicable".

Bob Shoemaker asked if it is necessary if a plan has the effect of assuming a function, is not that an ordinance assuming a function.

Larry Derr asked what Bob Shoemaker meant by "assuming". He said that he thinks of "assuming" as having a staff of people that does operations and bills for the service. He said that there could be a plan that says all governments shall operate their water supply systems in this fashion from this source at this rate. He said that he did not know if that was assuming a function.

Bob Shoemaker asked if "an ordinance assuming or regulating a function relating to a provision of local government services" would work.

Charlie Hales said that he likes that. He said that the water issue is where the break would be. He suggested deleting the phrase "functions relating to the provision of". An ordinance assuming a local government service is one thing. An ordinance planning for local government services is not a big deal. Regulating is something in between. Assumption is something entirely different. He said that there is a big break between planning for a regional water system, regulating consumption, and making capital investments in a water system.

Bob Shoemaker suggested that it could say "an ordinance assuming or regulating the provision of local government services shall not be effective unless". The word "functions" could be deleted.

Frank Josselson said that the word "assumption" is used in so many ways throughout the draft. He said that he would feel more comfortable with the word "authorize" or "provide" than "assuming". He suggested saying "providing or regulating the provision of a local government service shall not be affected".

Ron Cease asked how this relates to the question of metropolitan concern. He said that he does not understand what it is intended to do.

Chair Myers said that he understands that it refers to a situation in which the council has adopted an ordinance, as described in 9(1), pertaining to undertaking a matter found to be of metropolitan concern. That matter either constitutes or includes a service at that time that is being provided by one or more units of local government. It is a sub-set of 9(1).

Ron Cease said that relates to the fact that the local government does not perform the local aspects of the function, but it is performing the piece of it that is of metropolitan concern.

Chair Myers said that would be the most likely situation.

Larry Derr said that for Metro to do it at all, Metro would either have to have the jurisdiction coming from state statute or have it be a matter of metropolitan concern as a threshold issue. Having past that threshold, than this says that if it is something that local government is presently doing, it has to go through this process.

Ron Cease asked if it has to go through the process anyway. It would have to have either MPAC approval or approval by the voters.

Frank Josselson said that this section accomplishes that. He suggested the sentence be reworded to say "an ordinance authorizing provision or regulation by Metro of a local government service shall not be effective unless the ordinance is approved contemporaneously by the voters of Metro or a majority of the members of MPAC".

Chair Myers suggested it would be clearer that this is a sub-set of the broad provision under 9(1) if it is made into sub-paragraphs. 9(1)(a) would set forth the general requirement with respect to an ordinance of assumption. 9(1)(b) would read: "An ordinance authorizing the undertaking of an additional function which includes or regulates a service being provided to constituents by one or more local governments ~~assuming functions relating to the provision of local governmental services~~ shall not be effective unless the assumption of the function...".

Bob Shoemaker said that the word "undertaking" would not seem to include simply regulating.

Motion: Frank Josselson moved, Ron Cease seconded, that the current 9(2) be amended to read: "*An ordinance authorizing provision or regulation by Metro of a service being performed by a unit of local government within the jurisdiction of Metro shall not be effective unless the ordinance ~~assumption of the function~~ is approved contemporaneously...*".

Larry Derr suggested that the current 9(1) should be the major head. The current 9(2), which Chair Myers suggested be 9(1)(b) should be 9(1)(a) and each of the other categories of specification should be sub-heads b, c, d, and e.

Amendment to the motion: Frank Josselson amended the motion to make the following changes in the formation of section 9:

Section 9(2) becomes Section 9(1)(a)

Section 9(3) becomes Section 9(1)(b)

Section 9(4) becomes Section 9(1)(c)

Section 9(5) becomes Section 9(1)(d)

Bob Shoemaker asked if the word "assumption" should be changed in the headings since the section is broader than that. He said that the heading for section nine should read "Provision or Regulation of Service Functions".

Larry Derr said that at the local government level, it is limited to services. At the regional level, they might get their hand in it through regulation.

Bob Shoemaker said that they are all services.

Frank Josselson said that there needs to be something to distinguish between services being performed by local governments and other services.

Bob Shoemaker said that happens through the body of the section.

Charlie Hales said that it should be the "provision or regulation of additional services" because the other services that Metro already provides are already covered.

Bob Shoemaker said that in 9(1), it could state, "before undertaking any services ~~additional functions~~ beyond those authorized under sections six and seven...".

Larry Derr said that "functions" was used because the Committee was distinguishing planning and service delivery. He said that planning is a form of a service.

Ron Cease asked what would be included in the term "services". Would it include regulation, policy, or is it a provision directed at services?

Larry Derr said that it is a generic term for that which government does.

Bob Shoemaker said that planning was dealt with under section seven. He said that another problem is that "functions" was used in section seven. He said that MPAC or voter approval is provided for when the ordinance provides or regulates a service being provided locally. He said that a plan, if that is all it is, does not do that. Planning is already protected. If the plan does do that, then it gets caught up in section nine, as it should be.

Restatement of the motion: The motion is to amend section 9 as follows:

Consolidate, as sub-sections of 9(1), the sections 9(2), 9(3), 9(4), and 9(5).

The current 9(2) would be amended to read: "An ordinance authorizing provision or regulation by Metro of a service being provided by a unit of local government within the jurisdiction of Metro shall not be effective unless the ordinance assumption of the function is approved contemporaneously...".

Larry Derr said that, from a drafting standpoint, section 9(1) becomes the first paragraph of section nine and everything else becomes one through four after the lead-in language in section nine. The title of section nine will be identified later.

Chair Myers said that, in some instances, the Committee has substituted "cities and counties" for "local governments", but this provision would go beyond that to service districts.

Janet Whitfield asked if the second sentence of the current 9(2) would remain.

Larry Derr said that the second sentence remains the same, but the third sentence--"local government services are those which are provided to constituents by one or more local government in the region at the time a Metro ordinance on assumption of the service is first introduced"--is deleted.

Frank Josselson said that "functions" in the second sentence becomes the word "service".

Ron Cease asked if the intent is that any service provided by a special district or any local government falls under this section.

Bob Shoemaker said that it has to be of metropolitan concern.

Ron Cease said that it is pretty broad. He said that he cannot conceive of anything that would not come under metropolitan concern.

Larry Derr said that it has to be "local government" also. The hospital district probably would not fit that mold.

Ron Cease said that hospital districts are considered special districts. He said that there are a lot of service districts that deal with almost anything.

Larry Derr said that one cannot say that, in the abstract, a function is going to be taken over and then

find that someone unaffected by the take-over happens to be providing the function. Metro must be taking over their function. He said that if Metro decided to do it in a way that affected some, but not all, it would not come under this.

Ron Cease said that he is concerned with the meanings of "service" and "function". He asked if a special district has a function and Metro is considering taking over the regional aspect of it, would it fall under this. He said that he can conceive of a situation where a local unit is doing something that has nothing to do with the region, but it is a function that the region wants to assume on the basis that it is of regional significance.

Chair Myers said that, if what the region is assuming would include supplanting the performance of that much of it by that unit of local government, then the answer is yes.

Ron Cease said that there is an arguments over what is the local piece and what is the regional piece.

Larry Derr said that there does not need to be any argument because the test is very easy--today the local government is doing it, tomorrow it is not because Metro took it over. By contrast, Metro may find that there is some regional aspect of a service which no one is doing that needs to be done even though it covers the same general subject matter as a city, county, or service district. Metro would not get into that.

Ron Cease said that it gets into the confusion of a function or a service which may be local and metropolitan. If Metro decides to take over a function that a local government may be performing some piece of, there may be an argument about whether Metro's involvement will impact the local government's function.

Larry Derr said that they are either doing it or not.

Chair Myers said that the Committee is trying to draw up a proposal that would be subject to a fairly clear test. If what Metro is undertaking supplants the performance of that service by the local governmental unit, this provision is triggered. If what Metro is undertaking might be addressing a sane service area or objective, but is performed without interfering with or supplanting the local government, this provision is not triggered.

Ron Cease asked what would trigger the question of whether it is being performed by local government. What would trigger this section?

Jon Egge said that the confusion centers around the use of the term "function" which could mean any portion of anything that local governments do. The delivery of a service is a much broader concept. He said that when Ron Cease talks about the parts and pieces, he starts to think function. He said that he thought the intent was a broad service delivery, like police services or water. It would not be a portion of police services that is clearly of metropolitan concern. He said that he never thought it was the Committee's intention to cover small functions that a government is performing, but to cover the broad subject matter of services.

Ray Phelps said that he thought it was the opposite of what Jon Egge just described.

Chair Myers said that one situation that would trigger this section would be when the activity this ordinance is authorizing Metro to undertake would substitute Metro for that unit of local government in providing that service.

Ron Cease said that there is an assumption that it would supplant it. He said that he is talking about

a distinction between metropolitan and local. He asked who would raise the issue that a local government or special district is already doing something and Metro would interfere with it if they took over a function or service. He said that there is no distinction between what is metropolitan and what is local.

Bob Shoemaker asked for a specific situation.

Janet Whitfield said that Dan Cooper mentioned, in his memo, the example of Greenspaces. Metro took inventory of the greenspace areas and asked local government to do that. She asked if that is something that local governments already do. She asked if that is a function.

Frank Josselson said no. He said that the Committee has made it clear that the government can study anything it wants to.

Janet Whitfield asked if they provided a service, set out by ordinance, and they changed it to take a little away from local government, would that be included under the provision. She asked at what stage does Metro get local government approval--when it is still an idea or when it is a completed ordinance that has been approved by the council.

Frank Josselson said that he is trying to think of what real problem this would create with any local government service that has regional significance, but he cannot think of any.

Bob Shoemaker asked if Metro were to take over the metropolitan aspects of water--trying to leave the local aspects alone, but necessarily imposing some degree of regulation on the local use of metropolitan water--would that get into the provision.

Frank Josselson said that it would get into the same kind of process with voter approval. He said that is what it is intended to do. He said that this is an important provision because without it, the sword of damocles continues to hang over every local government with respect to any service that could conceivably be called one of metropolitan concern. He said this is where the rubber meets the road in terms of regional/local government partnership.

Chair Myers said that there are a couple levels of inquiry. One is to try to be sure that the policy is stated as clearly as possible so there is not on-going recurring uncertainty about how it applies. A further inquiry is, if it is clear, whether or not that is the policy the Committee wants.

Charlie Hales said that this mechanism is going to work. He gave the example of water, where there are major capital assets owned by the water provider, and said that Metro would not embark on that without the involvement of local governments because they own it. He said that storm drainage is a regional problem in which there are not major investments where Metro could say to the local governments there are basin wide problems and someone needs to take the lead over that. Metro is not going to be able to do it without local government involvement because local governments are already managing storm water within their jurisdictions by mechanical means. He said that police records would be another example. The MPAC test is not a tough test or a handicap to being able to progress.

Ron Cease said that he has trouble determining a function that is not being done by some local government. He suggested removing this distinction and requiring either MPAC approval or voters approval. He said that either case, there are many different levels of functions and services. He asked if all of the levels need to go through the elaborate process.

Frank Josselson asked if Ron Cease would support a motion that said before Metro provides or

regulates any new service, Metro has to get the approval of the MPAC or a vote of the citizens.

Ron Cease said that he would support it. He said that he does not think that the MPAC will hold because of the one man, one vote question.

Frank Josselson said that he would like to amend the motion to include that any new service must have either MPAC's approval or the approval of the people.

Chair Myers said that the motion would then extend the MPAC or voter requirement completely across the board. Chair Myers said that issue was resolved before. He said that the question is whether or not to subject the government to that broadened control as the price of avoiding some potential uncertainty about whether, in a given situation, this requirement does or does not apply. He said that Ron Cease is saying, to avoid that question, everything should be subject to the same requirements.

Ron Cease said that Chair Myers is covering more than he intended. He asked if there is a clear distinction between what is an activity, a function, a regulation or a service. He said that there are a lot of problems with having two separate processes--the distinction between metropolitan and local, and whether or not everything that a local government is doing applies.

Ray Phelps said that business licenses, building permits, building and code inspections, and ambulance districts are all functions that are done by some local governments but not all. He said that he did not know how this would affect them.

Bob Shoemaker said that the Committee is proposing to put an additional impediment--the approval of MPAC--in front of Metro.

Ron Cease said that it is possible to have a distinction between the assumption of local government functions and the assumption of other functions by having a clear definition of services and functions and what each level contains. He said that there is a major definitional problem regarding what goes through the process and what does not. If it is open ended to include anything that the local government is doing, then the provision for the assumption of other functions is meaningless.

Bob Shoemaker said that Charlie Hales' point was that they are not doing everything. He gave the example of regulating helicopter landing sites. Things that are out there but not absorbed by government are what the provision is for. He said that the intent for everything else that is being done now is that it would have to have the buy-off of MPAC.

Ron Cease asked if that was for all levels of activities--a policy, a regulation, a service, or a function.

Bob Shoemaker said that Metro only has the right to plan and to serve under the charter.

Ron Cease said that he presumes that if Metro believed there was a need to coordinate an activity, then it would come under this provision.

Bob Shoemaker said that it would if it involved the regulation of the local governments' control of that activity.

Ron Cease asked if Metro wanted to develop a policy relating to some regional activity, would it come under this provision.

Charlie Hales said that he has a hard time understanding Ron Cease's concern in that Metro does not

do any of this now. By using the words "providing or regulating", planning is left out so Metro is free to plan, but they cannot regulate or do them if they are done by local governments without the approval of MPAC. He said that is not a big hurdle considering the fact that they would not accomplish anything in any of those areas without the cooperation of local government anyway.

Ray Phelps said that if the provision is going to include special service districts, there should be an exception for school districts and community colleges.

Larry Derr said that this is not an empowerment provision, it is a restriction. It is not the source of the authority.

Janet Whitfield asked if the phrase "within the jurisdiction of Metro" would cause a problem for counties since they are in and out of Metro.

Larry Derr said that term is being used advisably because, in individual instances, Metro's jurisdiction is broader than its boundaries.

Janet Whitfield asked if it would prevent Metro from taking over functions of Multnomah County because Multnomah County goes out beyond Metro's boundaries.

Ron Cease asked if an ordinance is adopted to assume a service and is subject to MPAC or voter approval, is it subject, as an ordinance, to a referendum.

Bob Shoemaker said that all ordinances are subject to referendum, unless an emergency clause is prescribed, but one has not be prescribed here.

Chair Myers said that there is a section later where prohibitions against the use of the emergency clause are spelled out. He said that if assumption ordinances want to be included, that should be picked up in the ordinance provision.

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

Jon Egge said that he did not think that anything in the motion changed the original intent of what was on paper, yet there were a lot of negative votes. If that approach is taken, there is no chance of getting a charter.

Bob Shoemaker said that this is a drafting and clarification amendment, not a substantive amendment. He suggested, due to the outcome of the vote, consider the substance of the section.

Ron Cease said that the motion does not get at his concern, but it does not harm it. He changed his vote from nay to aye.

Ned Look changed his abstention to an aye vote.

Final vote on the motion: Judy Carnahan, Ron Cease, Larry Derr, Jon Egge, Charlie Hales, Frank Josselson, Ned Look, Vern Shahan, Bob Shoemaker, and Chair Myers voted aye. Wes Myllenbeck, Ray

Phelps, and Norm Wyers voted nay. Tom Brian, Matt Hennessee, and Mimi Urbigkeit were absent. The vote was 10 ayes and three nays and the motion passed.

Bob Shoemaker asked that the Committee discuss the substantive issue.

Ron Cease said that he is not inclined to back off on his support of MPAC. He asked if one man, one vote is a legitimate issue to be raised. He said that he does not buy that it is a COG. He said that it might be possible to get around the one man, one vote by the option of going to the voters, but that option does not exist for the assumption of other functions.

Bob Shoemaker said that one man, one vote exists through action of the council.

Ron Cease said that the composition of MPAC could be skewed by small or large local governments. He said that the way that the COGs are put together--representing government--is like MPAC.

Larry Derr said that the vote issue can only come up if taking a final action that puts something in motion. The final action cannot happen without the ordinance and the ordinance has to be adopted by the popularly elected council. He said that it would be comparable to a subcommittee system when an idea cannot get to the council if it does not get out of subcommittee. The fact that there are only three or four councilors, out of 12 or 13, on the subcommittee does not interfere with one man, one vote.

Bob Shoemaker said that there might be a one man, one vote problem because it allows some authority outside the dually elected council to control its decisions and the outside authority is not popularly elected.

Larry Derr said that it constrains an open-ended authority of the council. If it stopped at the point where, if MPAC did not give its approval, the council is dead in the water and the issue cannot surface, then there probably is a problem.

Ron Cease said that he would assume that Metro would be consulted by MPAC, but the way that it is set up is that Metro adopts an ordinance and then MPAC makes its judgement, and possibly says no. The ordinance making power is subject to the referendum and to the veto of a group of cities and counties that have no relationship to the voters.

Jon Egge said that a more likely event is that Metro would talk to MPAC in advance and they would work together to the point of ordinance before getting to the contentious situation of never talking to them at all and an ordinance is sprung on them and hoping that they pass it.

Chair Myers said that, regarding the constitutional issue, there is an issue. He said that he does not have a hard conviction one way or another as to how it would be resolved. If this section is left in, it is saying that it is uncertain and it may be litigated.

Ron Cease said that there is a feeling that the MPAC has to be in the charter as a balance and he does not have a problem with that.

Jon Egge said that he has a concern about the definitional issue. He said that he is not completely comfortable with it from that standpoint. He said that he would prefer to discuss the definitional issue after he sees the last motion in writing to see if it has some definitional meaning.

Chair Myers said that he was raising the question of whether or not the Committee likes the provision.

Wes Myllenbeck said that he continues to oppose the MPAC mainly because he has had some bad experiences with standing committees. He said that he would not have opposed to an advisory group appointed for each specific function and then disbanded once that is resolved. He said that he does not like the method of selection--any advisory committee should be selected by Metro council.

Chair Myers said that the source and composition of the Committee is an issue that will be revisited. He said that the most important question at this time is the existence and authority of some body that would have a veto or if it would just be advisory.

Ron Cease said that a body with more than an advisory role gives it more significance. If it was simply advisory, it would not add anything. If it is going to have any meaning, it has to have more than an advisory function.

Bob Shoemaker suggested having a provision that would forestall litigation in the sense that if Metro goes ahead and takes on a function or a service and it does not believe that it impinges on any local jurisdiction, and MPAC does not say that it does, a local jurisdiction does not come into court a couple years later saying that it is an illegal ordinance. He said that there should be a provision that imposes a duty on MPAC to declare that a proposed ordinance takes over or regulates a local government service as part of the advisory process. If they fail to do that, all the local jurisdictions are there after foreclosed from raising that.

Larry Derr said that kind of proceeding would probably be either subject to a writ review process or declaratory judgement subject to a 30 to 60 day judgement period.

Bob Shoemaker said that is adequate as long as it is specific.

Tim Sercombe agreed with Larry Derr. He said that there would generally be a 60 day time period for taking up an issue. He said that he would have to consider if there were any litigation means to attack that beyond that time table.

Ron Cease asked if Metro decides to put something before the voters, would that take care of the problem.

Bob Shoemaker said that would do it. He asked if they do it by ordinance, and MPAC does not raise the issue, how long is the door open for some local government to come in and upset the apple cart.

Chair Myers said that a variant of that is whether or not there needs to be a provision that sets some fixed period within which the MPAC must act one way or another or it would deemed to have approved the ordinance. He said that would not allow MPAC, by inaction, to frustrate the resolution.

Motion: Chair Myers moved, Bob Shoemaker seconded, the concept that a provision be added to section nine providing that an ordinance submitted by Metro to MPAC for approval under the provisions of this section would be deemed approved unless otherwise acted on within 60 days.

Jon Egge asked what would happen if the issue was pretty complex. He said that he presumes the two groups would work together. There needs to be enough time for MPAC to be well enough informed to do it in one or two meetings.

Larry Derr said that there is the potential that Metro would adopt an emergency ordinance in the shortest time it could. The only period of time MPAC would have to react would be what the Committee would give them.

Jon Egge said that is what troubles him about 60 days.

Frank Josselson suggested that it read within 60 days or such reasonable longer period of time as MPAC may request and the council may approve.

Jon Egge said that 90 days is not very much time for government deliberations. He said that it seems reasonable that 60 days is not enough time.

Larry Derr said that 60 days is a good compromise. If MPAC feels that it is getting railroaded by the worst case scenario, it would be easy for them to say no.

Frank Josselson asked if the MPAC vote would be before or after the adoption of the ordinance.

Chair Myers said that it would follow the adoption.

Ray Phelps said that the time should be consistent with the time period for referral--90 days.

Chair Myers asked if Ray Phelps was assuming that the emergency clause would be prohibited.

Ray Phelps said yes, as a working assumption. He said that his point is the effectiveness of either the MPAC having its time to work its will or having the time to refer it for a vote of people.

Bob Shoemaker said that the time periods would be successive. The ordinance becomes effective after MPAC has run its course, then the clock starts going on the referendum.

Ray Phelps said that if it took 60 days, there is the potential for being out 150 days.

Tim Sercombe said that would not work. He said that the ordinance should say here is what Metro is going to do and it shall become effective upon MPAC approval or the passage of 60 days. At that point, the ordinance is done and there is no opportunity to refer after the ordinance is effective. The effective date of the ordinance would be upon MPAC approval or, if emergency clauses are forbidden, 90 days, whichever is later.

Larry Derr said that the date of adoption would begin the referral period.

Bob Shoemaker said that if there are some dissatisfied people, they are not going to want to gear up on a referendum campaign if there is still a reasonable opportunity that MPAC will reject it and it will have to go to the voters anyway. He said that the referendum clock should start running after the other things happen. If there needs to be something in the charter to protect that, the Committee should do it.

Ray Phelps said, assuming 60 days is allowed for MPAC to work its will and there are 90 days for a referendum, it would be five months before it would go into effect.

Bob Shoemaker said that is true, absent an emergency clause. He said that most ordinances assuming a function would come with a fiscal ordinance and there cannot be an emergency clause on that. He said that he thinks there should be 90 days for referendum after MPAC runs its course.

Chair Myers said that there would need to be a special provision to define that period.

Charlie Hales suggested requiring prior MPAC approval so that the ordinance would have to be submitted to MPAC first. He said that in any ordinance process, for example, when a planning

ordinance is taken to the planning commission, the ordinance that will taken to the governing body is taken to the commission. If they needed a long time to look at the ordinance, they would take a long time.

Larry Derr said that if there was a provision stating that the ordinance could not change--that it had to go to MPAC in the final form--it might work.

Charlie Hales said that MPAC does not have authority to amend. They only have authority to recommend or not recommend.

Judy Carnahan said that it seems a little backwards to do it that way.

Charlie Hales agreed with Judy Carnahan. He said that it assumes that the ordinance is going to be a cooked deal before it ever gets to the governing body for adoption.

Judy Carnahan asked if a restriction is then placed on the amount of time that MPAC may have it before it goes to Metro, and what would happen if Metro wanted to change it.

Tim Sercombe asked if he understood correctly that the proposal would be such that there would be a period of referral to MPAC which would have 60 days to vote it up or down and then the ordinance would go into effect and there would still be a 90 day provision for a referral.

Chair Myers said that is correct unless the Committee allows emergency clauses.

Ray Phelps said that he does not understand how there could be a legal basis for an emergency clause.

Bob Shoemaker gave the example of an inconsequential ordinance that impinges some local government authority. If MPAC was in a disarray and never got to the issue, he said that an emergency clause should be allowed to be attached to the ordinance at that point, if there is no fiscal provision, so that it can be effective without having to wait another 90 days for a referendum.

Ray Phelps asked if an emergency clause can be placed on any ordinance. He asked how to categorize which ordinances carry an emergency clause and which ones cannot.

Chair Myers said that the Constitution prohibits attaching an emergency clause to a measure that would raise revenue.

Tim Sercombe said that there is a provision in the Constitution about having no emergency clauses for non-home rule counties for tax measures. Other than that, it is not heavily regulated by state law. The judicial view of it is that the courts will defer to a locality putting an emergency clause on it and will not inquire as to whether there truly is an emergency.

Chair Myers said that he does not think that there is anything legally prohibiting the Committee from allowing an emergency clause on a measure, unless it happened to also come under some other restriction, like no emergency clause on a measure raising revenue. He suggested that question be determined first--whether or not to prohibit an emergency clause on a measure that is described in section two--and then determine how the rest fits together.

Ron Cease said that any ordinance is subject to referendum, but it is unlikely that there will be a referendum. He said that nothing relating to revenue ought to have an emergency clause.

Tim Sercombe said that the practicality of this is that an appeal could always be initiated. The only difference in terms of a referendum is that there is, often, a lower signature requirement, although

there is a shorter time to gather the signatures.

Chair Myers asked if the Committee would be willing to allow the council to attach an emergency clause to this kind of an ordinance, and then provide a time limit within which the MPAC must act when an ordinance is submitted to it. He said that he does not have a problem with not forbidding emergency clauses across the board and leaving it, as a political judgement, to the council. He said that the Committee would assume that, down the road, they would not move to add a prohibition against emergency clauses in these kinds of measures.

Vote on the motion: Judy Carnahan, Ron Cease, Larry Derr, Jon Egge, Charlie Hales, Frank Josselson, Ned Look, Vern Shahan, Bob Shoemaker, Norm Wyers, and Chair Myers voted aye. Wes Myllenbeck and Ray Phelps voted nay. Tom Brian, Matt Hennessee, and Mimi Urbigkeit were absent. The vote was 11 ayes to 2 nays and the motion passed.

Motion: Jon Egge moved, Charlie Hales seconded, to amend section 9(2) as follows:

"...unless the assumption of the function is approved ~~contemporaneously~~ by the voters of Metro...".

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

Chair Myers asked that the Committee consider the most open ended authorization first for charter treatment of compensated contractually provided services. He suggested that it would be a sub-part of the section describing the requirement of MPAC or voter approval. It would be an exception to the MPAC requirement. He said that Tim Sercombe suggested "no approval under this sub-section shall be required for the compensated provision of services by Metro to or on behalf of a local government under an agreement with that government".

Ron Cease asked if it would be just between Metro and that government.

Chair Myers said yes.

Bob Shoemaker said that the Committee can assume that Metro will negotiate to be adequately compensated. He said that the Committee does not need to say that Metro cannot do it for less than fair value.

Ray Phelps asked for the ordinary meaning in the context of the language of the word "compensation".

Tim Sercombe said it means that Metro would be fully compensated. If the Committee really wants to emphasize that, they can say "the provision of services under an agreement with that government that provides for full compensation to Metro the cost of providing that service".

Bob Shoemaker said that language would promote a lawsuit. Whoever does not like it would claim that there is not full compensation.

Frank Josselson said that problems and questions arise when Metro takes over a local function which is then regionally subsidized.

Vern Shahan asked if "equitable compensation" has the same meaning as "full compensation".

Frank Josselson said that Tim Sercombe's original language takes care of the problem. He said that is one of his objections to the regional government performing local functions--if they do it, they should get fully compensated for the cost of performing the service and the overhead. He said that there is also the more basic question of whether the regional government ought to be in the local government business at all. Under ORS 190, units of local governments can shuffle between their statutory authorities. He said that he does not want the regional government is the local government business, unless there is a finding that it is of metropolitan concern and MPAC or voters approve.

Ron Cease said that the word "compensated" would require that there is some kind of compensation and exchange of money. Using the term "fully compensated" raises questions and increases the chance of lawsuits. He said that some people do not want Metro to do local services at all. He said that it has not been abused in the past. He said that it should be left between Metro and the local government. There is no reason why MPAC would have business in an intergovernmental agreement between two jurisdictions.

Frank Josselson said that, if that is assumed, then the voters of Multnomah County, for example, become disenfranchised with respect to that service because the regional government is going to be running it and the local government is not.

Ron Cease said that it depends on the nature of the service. MPAC can determine when Metro can take on a function and there is an argument that the voters are disenfranchised by doing that. He said that the fear may be that Metro will take over the universe with this authority, but Metro has not done that in the past. If local governments and Metro want to form an intergovernmental agreement, nothing should stand in the way.

Motion: Chair Myers moved, Ron Cease seconded, that the following language be added to the charter as a further sub-provision of section 9(2): *"no approval under this sub-section shall be required for the compensated provision of services by Metro to or on behalf of a local government under an agreement with that government"*.

Tim Sercombe said that the language "to or on behalf" covers both contracts where Metro gives a service to the government itself as well as a contract where Metro is providing that service on behalf of the government to constituents.

Vote on the motion: Judy Carnahan, Ron Cease, Larry Derr, Jon Egge, Charlie Hales, Ned Look, Wes Myllenbeck, Ray Phelps, Bob Shoemaker, Norm Wyers, and Chair Myers voted aye. Frank Josselson and Vern Shahan abstained. Tom Brian, Matt Hennessee, and Mimi Urbigkeit were absent. The vote was 11 ayes and 2 abstentions and the motion passed.

Janet Whitfield asked if Metro still had to go through the MPAC process under the provision that just passed.

Chair Myers said not if it is an intergovernmental agreement. He said that the motion covers contractual agreements, not outright takeovers of a function.

Ray Phelps said that if the council creates an intergovernmental agreement, their mechanism is by ordinance. He asked if that would create a problem.

Chair Myers said that it should not create a problem because the section only exempts the decision from any further approval process.

Ray Phelps said that the contract, at some point, will be adopted as an ordinance. He said that the language may be a little too general.

Tim Sercombe said that before they assume this function, they would have to pass an ordinance and enter into an intergovernmental agreement to escape the need for MPAC approval.

Ray Phelps said that he is concerned about the statement "the council may assume by ordinance". He said that Tim Sercombe is saying it is done by contract.

Tim Sercombe said that if they got into an area of operating and providing a service, through intergovernmental agreement or anything else, they would have to pass an ordinance.

Ray Phelps said that there is a provision in section nine that says "the council may assume by ordinance any other function relation to a matter of metropolitan concern" which requires the advice of MPAC. He said that he is raising the concern that an intergovernmental agreement eventually culminates in an ordinance.

Chair Myers said that the Committee would address the issue when they discuss section 9(5).

Ron Cease said that the provision on the assumption of functions and operations of the mass transit district, section 9(3), is different than the current statute. He said that the current statute allows the council, simply by vote, to take over the operations and functions of Tri-Met. Under the provision in section 9(2), assumption of local government service functions, MPAC approval comes after ordinance adoption. For the mass transit district, under section 9(3), it says that before adoption of the ordinance, it would go before JPACT. He asked why there was a difference in the timing of MPAC involvement in the two processes.

Chair Myers said that if a function is advisory, it necessarily has to precede the adoption of the ordinance. Otherwise, there is nothing to advise about because it has already been done. Advice would have to precede the act. He said that, in the mass transit provision, there is incongruity between the language that speaks of the size of this commission and the language that speaks of the governing body of the mass transit district becoming the first governing body under Metro because the Tri-Met board has seven members. The provision introduces a "not fewer than" requirement, but then goes on to say that the Tri-Met board will be the first board. There either needs to be an outright provision that the commission created by Metro will be a commission of seven members or modify the last sentence to state that the current Tri-Met members will be members of the new commission.

Jon Egge said that the sentence "after assuming the functions and operations of a mass transit district, the council shall establish a commission of not less than seven members..." is not needed. He suggested stating that the initial mass transit commission would be the governing body of the mass transit district at time of assumption.

Tim Sercombe said that the intent of the sentence that Jon Egge would like to delete is to call for a commission, even beyond the initial commission and appointments.

Ray Phelps said that "not less than seven" is a good idea, particularly dealing with mass transit, the increased population, and expanded services. There might need to be more than seven people to get a fair representation of the community. He said that he understood the point of this provision to be to move the seven member board forward but not necessarily restrict the government from increasing

that number in the future should the need be seen.

Chair Myers said that, as written, it would allow them to establish a commission larger than seven at the outset if they want. He said that he would like to see the language tidied up.

Ron Cease said that he thought that the Committee's purpose was to make sure that when the commission first operates, it would be the board of the old district. He said that at some point, Tri-Met could ask that law be changed to expand the number on their board. It would be better to state that the initial commission be members of the Tri-Met board.

Chair Myers said the Committee should focus on whether they want that tight of a focus or if they just want wording to carry over those seven, whether or not that is the entire board or part of a larger board.

Tim Sercombe said that it is also possible that some members of the mass transit district would not want to continue on the new commission. The provision should say that there be at least seven members if that is the intent of the Committee.

Ron Cease said that if the provision said "at least seven members", there would need to be a statement that would say that at the point that the terms expire or at the point when any of the terms become vacant, they would be filled however the Committee chooses they be filled.

Bob Shoemaker said that is implicit. He suggested that the last line say that the governing body of the mass transit district be members of the initial mass transit commission.

Motion: Chair Myers moved, Ron Cease seconded, that section 9(3) be amended to read: *"...functions and operations of a mass transit district, the council shall establish a commission of not ~~less~~ fewer than seven members...members of the governing body of the mass transit district at the time of its assumption by Metro shall be ~~as the~~ members of the initial mass transit commission for Metro for the length of their terms of office."*

Vote on the motion: Judy Carnahan, Ron Cease, Larry Derr, Jon Egge, Charlie Hales, Frank Josselson, Ned Look, Ray Phelps, Vern Shahan, Bob Shoemaker, Norm Wyers, and Chair Myers voted aye. Wes Myllenbeck voted nay. Tom Brian, Matt Hennessee, and Mimi Urbigkeit were absent. The vote was 12 ayes and 1 nay and the motion passed.

Motion: Bob Shoemaker moved, Norm Wyers seconded, to amend section 9(3) to read: *"...Before adoption of this ordinance, the council shall seek ~~obtain, if possible,~~ the advice of the Joint Policy Advisory Committee on Transportation..."*

Bob Shoemaker said that he proposed the motion because it leaves it wide open and there is not a time limit on how long it must be left open.

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

Charlie Hales suggested that the assumption of Boundary Commission functions occur by ordinance in an attempt to make it clearer that if the legislature changes the statute or if it could be construed that approval of the charter constituted referral to the voters under the statute, the council could then assume, by ordinance, the duties of the Boundary Commission. He said that it is still up in the air whether the legislature will make this change. Approval of the charter does not constitute referendum to the voters under the existing statute. He said that his theory is that the legislature may modify or eliminate that statute after the passage of the charter and it would therefore rest with the council to take this action by ordinance.

Frank Josselson said that the recommendation of the Boundary Commission Subcommittee was that the council would study the Boundary Commission situation and then decide what to do with the Boundary Commission, either by way of taking it over as is, leaving it as it is, taking it over and modifying it, or abolishing it. He said that the Committee adopted the subcommittee report, but the language does not reflect the Committee's decision.

Charlie Hales said that the positive instruction to proceed with studying the issue is not included, only the limitation on the process is considered in the current language.

Frank Josselson said that the current language does not give regional government the authority to modify, reduce, limit, or eliminate the functions of the Boundary Commission.

Charlie Hales said that he assumed the last phrase--"the approval of this charter shall constitute voter approval of the authority of the council to assume the duties, functions, and powers"--was that power. If they can assume it, they can modify it.

Larry Derr said that the Committee does not know if that is true. He said that it is stated as it appears in the statute. Therefore, it probably only gives power so far as it states which is to take it over and do the job set out in the statute.

Chair Myers said that would be the case regardless of what the charter said until the statutes change.

Larry Derr said that he believes, to do anything with it, the statutes have to be followed or changed which is why the issue is probably moot. The subcommittee recommendation makes even more sense because it says that anything that Metro might choose to do about the Boundary Commission would be done after the study at which time legislation would be sought.

Ron Cease said that the only thing the statutes say is that the issue can be put before the voters, in terms of assuming it. There is no authority to amend, change, or alter it.

Frank Josselson said that the subcommittee recommended that the Committee defer and pass off to the regional government a bunch of Boundary Commission issues that this Committee was unable to come to grips with.

Chair Myers asked how much would really be lost if this section is contracted to simply provide, to the extent allowed by law, that the approval shall constitute and will require, before assuming the duties and functions, that the council shall obtain the advice of MPAC. He asked how much will be lost if the Committee does not get into the other directives, such as the study.

Frank Josselson said that he is concerned about the regional government's authority to eliminate the Boundary Commission if it wants to.

Chair Myers said that would require legislative action. He said that if this section is contracted to

make it an approval of the voters to assume it, with required consultation with MPAC, without the other provisions, the requirement for legislative action is not going to be any different.

Larry Derr said that is true, but the policy that is being carried out is totally different than what the Committee previously decided. They did not make a judgement that Metro should assume the functions of the Boundary Commission. That judgement should be made following the study.

Frank Josselson said that his preference is for Metro to not get into that business. If there is going to be a Boundary Commission, then it is inconsistent for a party through a partnership to be deciding on existence/non-existence boundaries for that party. If there is a Boundary Commission, it should be left out there on its own. He said that it is inconsistent with the concept of a local-regional government partnership for the regional government to be taking over Boundary Commission functions. On the other hand, there is enough division on this committee and there are enough people who believe that the Boundary Commission functions ought to be eliminated, that the government ought to have that authority if it wants to.

Chair Myers said that the contracted language he was talking about did not presume that assumption would in fact occur or in any way circumscribes the political choices the government has about what to do vis-a-vis the legislature. He said that he is just trying to narrow some provisions that are so prescriptive of the government.

Larry Derr said that the Committee received sound legal advice that says approval of the charter exercising the statutory authority to assume the Boundary Commission functions is ineffective.

Chair Myers asked if Larry Derr was suggesting alternative language.

Larry Derr said that the thrust of what the Committee did was to call out a study which could be followed by a wide range of actions. He said that, in hindsight, that may be a silly thing to say in the charter. If Metro wants to study the Boundary Commission, it can. The Committee has come to the conclusion that Metro cannot assume the functions, let alone change the functions, without the legislatures concurrence. He suggested deleting this section entirely.

Frank Josselson said that, given the concern expressed both in the subcommittee and Committee, his legal opinion has changed regarding the regional government's ability constitutionally, or the charter's ability, to transform or eliminate the Boundary Commission absent legislative action. He said that he is inclined to think that there is no function more clearly of metropolitan concern than that of the Boundary Commission. He said that a reasonable argument can be made that the charter has the authority to abolish the Boundary Commission.

Ron Cease said that he thought the Committee said that after the approval of the charter, there would be a study and the advice of MPAC would be sought. Presumably, they could recommend all kinds of things. The reason for the study was that there is a lot that will be happening with LCDC and it would be wise to incorporate all of that information. He said that there is an assumption that Metro will, at some point, assume the Boundary Commission functions, although it may not make sense.

Chair Myers said that it might be a structural thing. He said that provisions seem to be backward. It ought to first state that the approval of the charter authorizes Metro to assume those functions and then go on with the requirements prescribed before making that decision.

Ron Cease asked if that still left the option that they do not want to assume it.

Charlie Hales said yes. He said that it will put them in the same position as they are with respect to

Tri-Met--they can or cannot proceed by ordinance to absorb or eliminate the Boundary Commission.

Frank Josselson suggested that "Metro shall undertake a study of the Boundary Commission and shall take whatever action necessary or appropriate within its authority to implement the results of the study". He said that is what the subcommittee recommended.

Chair Myers asked if that was in the context of providing that the vote on the charter would authorize the assumption.

Frank Josselson said that issue would come up later. He said that Metro should be required to look at the Boundary Commission, study it and then take the appropriate action.

Ron Cease said the problem with that is that if they wanted to eliminate it, they have no authority to do so.

Larry Derr said that the action would be to go to the legislature.

Charlie Hales said that unless the Committee disagrees on the ingredients, all the ingredients of this package are here--study it, consider relevant state policy and talk to MPAC, and the power to absorb it by ordinance. If everyone agrees on the ingredients, the order could be changed for purposes of clarity.

Larry Derr said that the problem with the last ingredient, assumption by ordinance, is that it is only one of the possible outcomes of the study. He said that it should not be in the charter.

Charlie Hales said that he thinks all three ingredients should be there.

Larry Derr said that Charlie Hales' statement that the charter presently grants the authority to do whatever the study comes up with, subject to empowering legislation is not necessarily a bad idea, although it is different.

Tim Sercombe asked if he understood correctly that the Committee wants the charter to confer authority on the council to go to the legislature with changes that result from the study.

Larry Derr said that it is not that narrow. The charter will confer authority on the council to implement the results of the study. The charter is not a restriction. The charter does not have to be amended to find the authority to do whatever the study suggests. The charter is not an impediment.

Frank Josselson said that the charter does two things. It directs the council to undertake the study and directs the council to use whatever authority it has to implement the results of the study.

Tim Sercombe said that it really has no authority to implement the results of the study. Under a separate part of the charter, it is allowed to exercise state mandated functions.

Frank Josselson said that he would prefer to say that Metro may use whatever legal authority it has to carry out the study.

Charlie Hales said that Metro must still separately refer the take over of the Boundary Commission responsibility to the voters. The process, that Frank Josselson described, would be to study it, reach conclusions, and implement conclusions to the extent of their ability to do that. If the approval of the charter is good enough to satisfy the statutory requirement, then Metro is home free. If not, then go to the voters.

Larry Derr said that the result of the study could go in the one direction that the statute allows, which is only one option.

Frank Josselson said that the Committee could direct the council to ask for legislation authorizing the outcome of the study, whatever the outcome may be.

Chair Myers said that this approach would delete any provisions that would assert that the approval of this charter authorizes the takeover.

Frank Josselson said that is correct. He said that it would specifically state that the council shall seek legislative authority to implement the outcome of the results of the study. He suggested that the provision direct Metro to undertake a study of the Boundary Commission, to ask the legislature for authority to implement the results of the study, and to implement the results of the study.

Tim Sercombe asked if it was authority to implement before or after the study is made.

Frank Josselson said that it is before.

Charlie Hales suggested that in conducting the study, Metro will seek the advice of MPAC and will review relevant state policies.

Bob Shoemaker said that he has a problem with requiring Metro to implement a study. The study might be done by a committee, rather than the council in its entirety, and would normally result in a recommendation of the council which the council adopts, rejects, or changes. He asked if they would be locked into the results of this study.

Frank Josselson said that the results of the study may be to keep the Boundary Commission as it is.

Larry Derr said that the council is ultimately going to decide the results of the study.

Ray Phelps asked if the provision claiming that approval of the charter constitutes voter approval of the authority of the council to assume the functions of the Boundary Commission.

Chair Myers said that it is not included.

Ray Phelps asked if the provision is just a requirement of a study.

Chair Myers said that it is a study and implementation, including seeking state legislation as judged necessary.

Ray Phelps said that the conclusion might be to do nothing so the charter just prescribes the study.

Ron Cease said that it would not be so complicated if the Committee understands what the law will permit and what it will not permit. He said that the law will not permit Metro to decide how to handle local boundaries.

Charlie Hales said that it is already there in state law. All Metro has to do is go to the vote of the people.

Ron Cease said that the statute says that Metro can assume it--to take on what is done. Metro could take on the functions, but they would be bound by the process and the statutes. The whole issue of changing boundaries is a state law matter. The state law provides a process by which to do it, but the

steps laid out in state law have to be followed. To make an assumption that Metro can have a study and decide exactly how they want to do it is not going to happen. He said that it would be fine for Metro to have a study that says that they will assume it and will suggest to the legislature to have someone else assume it or eliminate it. He said that the advantages of a study is that Metro would do it recognizing that the authority is in the statute currently and they have not yet put it on the ballot because they are not particularly interested in it

Bob Shoemaker suggested changing the last paragraph to say to the extent allowable by law, the approval of this charter shall constitute voter approval of the authority of the council to assume, terminate, and to modify the duties, functions, and powers of the Boundary Commission. He said that gives it full reign to the extent allowed by law. That means the extent allowed by law today or in 10 years.

Ron Cease said that it should not be confused when the advice says that it cannot be done.

Bob Shoemaker said they should be permitted to do it if the law will permit them to do it.

Ron Cease said that the law does not permit it. This is not going to change the law.

Bob Shoemaker asked why Metro should not be given the power to assume, modify, or terminate the Boundary Commission.

Ron Cease said that the City of Portland, as a home rule unit, cannot say that they will control all their boundaries with voter approval. It is not permitted by law.

Bob Shoemaker said that it is the extent permitted by law and the laws can change.

Chair Myers said that it would be better if the charter vote itself would not lend itself to becoming characterized as a battleground around the future of the Boundary Commission if it is worded in a way that purports to make the charter an authorization to do some radical things with the Boundary Commission. The vote on the charter should not revolve around the question of the future of the Boundary Commission. He suggested that if anything is said at all, it should mandate a study of that issue and steps to implement the conclusions of that study, including seeking state legislation.

Frank Josselson said that he prefers that result, although, from a political point of view, it would enhance the charter's chances of passage to be able to write in the title that it eliminates the Boundary Commission.

Jon Egge said that if the Committee cannot effect Bob Shoemaker's proposal, and have to go with something halfway, he would rather not mention the Boundary Commission at all.

Bob Shoemaker said that if all this section does is permit them to assume the duties, functions, and powers, by implication, it does not give them authority to make any changes.

Ron Cease said that it does not give them authority to make changes, but it gives them authority to recommend changes.

Chair Myers suggested that the Boundary Commission be amended to delete any reference to this charter vote acting as approval to assume the function. It would provide a mandate that the council shall study the Portland Metropolitan Area Local Government Boundary Commission.

Frank Josselson suggested that the provision also state that it shall ask the legislature for authority to

implement the results of the study and it shall implement the results of the study.

Ron Cease said that Chair Myers' suggestion gets at the issue that some people would like to have the Boundary Commission eliminated. He said that if the region decides to eliminate it, he has no problem with that. He said that the way it is currently worded is as permitted by law, they would assume the function. He asked if that is what Chair Myers suggested earlier.

Chair Myers said that he was just carrying it in from the pending draft.

Ray Phelps asked that the Committee vote on the one paragraph regarding to the extent allowable by law. It is a threshold issue.

Motion: Frank Josselson moved, Ron Cease seconded, to amend section 9(4), Boundary Commission Functions, with the concepts to:

1. Direct the council to undertake a study of the Boundary Commission with MPAC advice.
2. Direct the council to ask for legislative authority to implement the results of the study, if necessary.
3. Implement the results of the study.

Tim Sercombe said that all of the authority would come from statutes. He said that it is different to state that they are going to study it and want authority from the legislature to give Metro authority to implement the study than it is to state that they are going to the legislature and get legislation to implement the study.

Ron Cease said that Metro would do the study and then go to the legislature and ask for the law to be changed.

Tim Sercombe said that is not precisely what the motion is.

Frank Josselson said that the Committee wants Metro to study it and the legislature to give them authority to do it.

Tim Sercombe said that they were talking about seeking legislation to implement the study.

Charlie Hales said that it should be legislative or voter approval. Voter approval might be required under the existing statute if the legislature chose not to change the law, but the power lies there now for Metro to refer assumption of the Boundary Commission to the people.

Larry Derr said that the charter is empowering Metro to carry out the results of its study and recognizing that it is going to go to the legislature to get some help.

Bob Shoemaker asked if there was any possibility that the constitutional amendment that is behind all that the Committee is doing gives authority to Metro to take over the Boundary Commission and to make changes in that it is a matter of metropolitan concern.

Chair Myers said that this ultimately needs to be worded in a way that would anticipate that they might judge that be the case and that they might not need to seek authorization. The threshold thrust is that this government is going to be mandated to examine into the functions of the Boundary Commission.

Vote on the motion: Judy Carnahan, Ron Cease, Larry Derr, Jon Egge, Charlie Hales, Frank Josselson, Ned Look, Vern Shahan, Bob Shoemaker, Norm Wyers, and Chair Myers voted aye. Wes Myllenbeck and Ray Phelps voted nay. Tom Brian, Matt Hennessee, and Mimi Urbigkeit were absent. The vote was 11 ayes to 2 nays and the motion passed.

Jon Egge said that he is unhappy with what the Committee has done with the Boundary Commission. He said that it pollutes the entire charter.

Motion: Jon Egge moved, Ray Phelps seconded, to delete all references to the Boundary Commission and to delete section 9(4).

Jon Egge said that he voted yes because he thought it was the best thing that the group would come up with, which is the approach he is taking with every vote. He said that what is best in this situation is not good enough for him. He said that a charter is not the place to study. This government can undertake everything that the Committee has talked about tonight without any authority at all. He said that the Committee has not really done anything. He said that he is ready to take the legal chances that they could eliminate the Boundary Commission because he believes that it could be eliminated. The Committee has done such a half-hearted job that it is not worth preserving.

Frank Josselson said that he is not giving up on the position that the regional government is empowered by the constitution to get rid of the Boundary Commission. The motion the Committee just passed gives them the opportunity to do that.

Chair Myers said that the passed motion insists that the question of the Boundary Commission's future in this regional government will be mandated subject to study.

Ray Phelps said that the subject of the Boundary Commission comes up every session with or without a study or charter and it does not make sense to put in the charter a study on an issue that surfaces in the legislature every two years. If the Committee is going to do something, they should do it.

Ron Cease said that the Boundary Commission issues are usually put forward to meet the political need of the constituents. They have never come back and said to put it back where it was before. He said that Metro does not care about what happens to the Boundary Commission. They do not really want the council to be making the decisions. This mandates them to look at the function and make recommendations as to what they want to do with it. They are being forced to do something that they are currently not forced to do at all.

Ray Phelps said that, with Ballot Measure Five, the Boundary Commission will probably get swept into that mandated cost and it may not survive.

Judy Carnahan asked when the study is suppose to happen. If the charter mandates that all of these things occur, they need to say when it will occur.

Frank Josselson asked if Judy Carnahan would vote for it if the motion was changed to say the study would be done immediately.

Judy Carnahan said that she would not. She said that other questions are still not answered. Anyone can do any study that they want to at any time and anyone can go to the legislature and ask for changes. The Committee has boxed something in--that they can do on their own anyway--with no time limitation.

Ron Cease asked if the current motion passes, would the statute stating that Metro has to take it to the voters for assumption be all that is left.

Jon Egge said yes.

Vote on the motion: Judy Carnahan, Jon Egge, Ray Phelps, and Vern Shahan voted aye. Ron Cease, Larry Derr, Charlie Hales, Frank Josselson, Ned Look, Bob Shoemaker, Norm Wyers, and Chair Myers voted nay. Tom Brian, Matt Hennessee, Wes Myllenbeck, and Mimi Urbigkeit were absent. The vote was 4 ayes and 8 nays and the motion failed.

Motion: Bob Shoemaker moved, Frank Josselson seconded, that section 9(4) be amended to include that the study shall be completed, so that any request for necessary legislation will be available for the 1995 session.

Bob Shoemaker acknowledged that if they do not want to do a meaningful study, they do not have to do a meaningful study and they will have complied with the charter.

Ray Phelps asked if he understood the motion correctly that there will be a study and there will be legislation at the 1995 legislature.

Bob Shoemaker said yes, if the study emerges with anything that requires legislation. They might conclude to do nothing.

Chair Myers said that he understood the motion would require a completion of the study within a time frame that would permit them to seek legislation, if any were needed to implement their recommendation, at the 1995 session.

Ray Phelps said that does not get at Judy Carnahan's question because they may conclude by a time past the opportunity to meet the 1995 session that they do not need any legislation. Her concern is continued by allowing that to go forward. The committee should be killed by 1995. He said that he understands the objective, but his point is that the study could continue forever.

Bob Shoemaker said that the motion is that the study shall be conducted and completed in such a timely manner that if any legislation is to be sought, it can be sought in the 1995 session.

Tim Sercombe asked if it would be okay to put a date in there, such as January 1, 1995.

Bob Shoemaker said that would be fine.

Ron Cease said that legislation needs to be done sooner than the session starts so it would be better to state September 15, 1994.

Bob Shoemaker said that will not be enough time because the charter will probably not become effective until the necessary legislation can become effective.

Chair Myers suggested that the September 1, 1994 date be used and the Committee can revisit that date if there are subsequent changes.

Vote on the motion: Ron Cease, Larry Derr, Jon Egge, Charlie Hales, Frank Josselson, Ned Look, Vern Shahan, Bob Shoemaker, Norm Wyers, and Chair Myers voted aye. Judy Carnahan and Ray Phelps voted nay. Tom Brian,

Matt Hennessee, Wes Myllenbeck, and Mimi Urbigkeit were absent.
The vote was 10 ayes to 2 nays and the motion passed.

Chair Myers asked the Committee to move on to the assumption of other functions, section 9(5).

Charlie Hales said that there is a numbering change in the section. The reference to section eight should be deleted.

Motion: Bob Shoemaker moved, Charlie Hales seconded, to amend section 9(5) as follows:

"...The council shall seek ~~obtain~~ the advice of MPAC before adopting..."

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

Motion: Chair Myers moved, Frank Josselson seconded, to amend section 9(5) as follows:

"...before adopting an ordinance undertaking a service function that is not a ~~local government service~~ service performed by one or more cities or counties within the jurisdiction of Metro."

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

Frank Josselson suggested amending section 9(5) to delete "function assumption". It would read: "...other function relating to a matter of metropolitan concern, which ~~function assumption~~ is not specifically regulated..."

Chair Myers said that it might not be clear what is not being regulated. He directed Tim Sercombe to modify the language in the first sentence of section 9(5).

Chair Myers adjourned the meeting at 10:00 pm.

Respectfully submitted,



Kimi Iboshi
Committee Clerk