METRO
CHARTER
COMMITTEE

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AGENDAS

DATE: July 18, 1992
MEETING: Full Committee
DAY: Saturday
TIME: 8:30 a.m.
PLACE: Metro, Room 440, 2000 SW 1st Avenue, Portland

8:30 Discussion and decisions on pending issues for the Charter.

5:00 Meeting adjourned.

DATE: July 21, 1992 *
MEETING: Full Committee
DAY: Tuesday
TIME: 6:00 p.m.
PLACE: Metro, Room 335, 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 21, 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, Bob Shoemaker, Mimi Urbigkeit, Norm Wyers
Committee Members Absent:	Tom Brian

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

1. Discussion of pending charter decisions

Motion: Charlie Hales moved, Bob Shoemaker seconded, to amend Section 11 to add the following language as the preamble:

> **Section 11.** *Finance. Metro may impose, levy and collect any tax except as prohibited by law or restricted by this charter and is authorized to issue revenue bonds, certificates of participation and other obligations.*

Charlie Hales said that his motion is based on Dan Cooper's recommendation for a general grant of taxation authority which would be limited by the limitation provisions. He said that Dan Cooper also proposed language about general obligation bonds. He said that language would probably come in under the referral provision of the section.

Chair Myers said that Dan Cooper's additional language was "except that no general obligation bonds payable from ad valorem property taxes may be issued except with the express approval of the electors pursuant to the Oregon Constitution". He asked if Charlie Hales was intending to put that provision in as a separate issue.

Charlie Hales said that he would leave the issue to Tim Sercombe as a drafting question.

Chair Myers said it is redundant, although it does not hurt anything.

Bob Shoemaker said that since general obligation bonds are not specifically mentioned in the charter, it would be worthwhile to include the provision to make it clear.

Larry Derr said that Dan Cooper's recommendation was to have a broad grant of taxing power and to stop there. He said that the Committee has restrictions. He said that he is concerned that using the broad grant of power without a qualifier introducing the restrictions might create some problems.

Chair Myers said that the motion includes the phrase "except...as restricted by this charter".

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

Charlie Hales asked if it is technically necessary and politically wise to include the provision on the general obligation bonds.

Tim Sercombe said that he is not sure that it is technically necessary.

Chair Myers suggested that the issue be left out of the charter for now. He said that under section 11(1), *referral of certain taxation ordinances*, there was a question raised about whether the description of the taxes on gross receipts of a class of persons or entities in the region did not include niche taxes. He said that he recalled that the Committee did not intend that reference to include niche taxes. He directed Tim Sercombe to clarify the provision.

The Committee agreed with Chair Myers recollection of the intent.

Bob Shoemaker asked if the same issue would apply to "income" because gross receipts are income.

Tim Sercombe said that he put "income" in because he thought that is what the Committee intended. Gross receipts are another way of doing the income tax. He said that the categories are very broad and if they are narrowed, and have a sales tax on a particular thing, it becomes a niche tax. The same is true for a gross receipts tax. He said that the problem could be solved by eliminating gross receipts and describing the tax in a more general sense.

Ron Cease asked if the distinction was made by the finance subcommittee.

Bob Shoemaker said that they did not.

Chair Myers said that it is a question of trying to make sure the language matches with the intention of the Committee.

Bob Shoemaker said that the subcommittee used the phrases "personnel income tax", "business income tax", "payroll tax", "property tax", and "sales tax".

Charlie Hales asked if the subcommittee was intending to carve out a class of taxes being general retail sales tax and general property tax as the big taxes that would be subject to referral.

Bob Shoemaker said that is correct, but they were intending to leave to ordinance the gross income tax imposed on certain receipts. He suggested that Tim Sercombe use the subcommittee's list of all the possible types of niche taxes when developing the provision.

Chair Myers said that the problem will be noted for Tim Sercombe to work on.

Jon Egge said that this area is very sensitive politically. He asked if any other unit of local government has the ability to impose a payroll tax on businesses by ordinance. He said that he is concerned about Metro having the ability to use a payroll tax for other purposes besides Tri-Met.

Bob Shoemaker said that the payroll tax is exempted--it requires voter approval.

Charlie Hales said that, based on the referendum requirement for the big general taxes of personnel income tax, business income tax, general retail sales tax, and property tax, the question remains whether or not there are any instances where there would be three layers of tax. He said that the lodging industry is one area where there could be three layers of taxes imposed by three different local governments on the same transaction. He said that is over the threshold of issues to deal with in the charter. He said that the lodging association suggested a mechanical limitation that would, over time, flatten the rate of the tax. The lodging association also proposed a provision that Metro be required to spend lodging tax revenues on tourism. He suggested placing a provision in the charter that would allow Metro to impose a hotel/motel tax. Any person subject to payment or collection of a tax under this provision shall be entitled to a credit against the payment of the tax in the amount due any incorporated city or county within Metro for a lodging tax for the same occupancy.

Ron Cease asked what the real intent is of Charlie Hales' suggestion.

Charlie Hales said that the problem is that it is a niche tax and can be imposed by local government ordinance and there is not the normal political brake on the imposition of the tax by multiple entities on the same transaction. It magnifies over time.

Ron Cease said that is true of any niche tax.

Charlie Hales said yes, but this is the only tax that he knows of that is in general use by local governments. He said that by giving Metro a general grant of taxing authority, they are creating a third layer in the piling on of taxes. Currently, a hotel would be subject to a room tax by both the city and the county. By giving Metro a general grant of taxing authority, it will be subject to a regional government tax.

Ron Cease said that the proposal is interest laden.

Charlie Hales said that it is, but it deals with the multiple layer of taxation problem. He said that there might be other areas to consider.

Bob Shoemaker said that the suggestion is a prohibition in any increase in lodging taxes over the present level.

Charlie Hale said that it is a prohibition by the jurisdictions that are already at the highest level.

Bob Shoemaker said that it is essentially saying that Metro cannot impose their own lodging tax, but they can take over someone else's tax. He said that it is inappropriate for the charter to favor on particular kind of tax responding to the entreaties of a special interest group that wants to protect itself. He said if the Committee accepted this suggestion, it opens them up to all the other interest groups.

Charlie Hales said that his point is that it is a political issue and they are giving a grant of taxing authority to a local government that does not have it now to tax a special interest group that is taxed in a peculiar way now.

Bob Shoemaker said that the political battle ought to be fought within the council when they are considering a tax. It is not appropriate to favor a particular group within the charter.

Ray Phelps said that one of the major concerns is when the levy or assessment of amount is uneven. Government then starts shifting the economics of being in business because one county's product is being priced higher through the taxing circumstances than the competitors in another county. He suggested that the provision be so that niche taxes be levied evenly so that no one county is more advantaged than another as opposed to identifying a specific industry.

Bob Shoemaker said that Ray Phelps' suggestion makes sense. He asked if equal protection would basically require that.

Ray Phelps said that it does not happen now because hotel/motel taxes are at different rates in different parts of the region.

Bob Shoemaker said that is because different jurisdictions charging.

Ray Phelps said that Metro could be looked at as a levelizer. He said that the gas tax is another example.

Larry Derr said that the problem is not that Metro will levy the tax unequally, but that more than one jurisdiction in the area levies the tax so that the sum total is unequal. He said that Metro should act as an equalizer so that the net result is that the taxpayer pays the same tax everywhere.

Charlie Hales said that he does not think that Metro has the power the prohibit a local government from imposing a tax, given that the taxes are already in place. He said that all Metro could do would be to establish a ceiling and then credit back to those that exceed the ceiling.

Larry Derr said if that is correct, and the suggestion works in an equitable manner, it could be a generic formula that could be applied across the board.

Chair Myers said that, if there is a provision dealing with credit, then assuming that Metro's rate is uniform, the economic effect of the tax will be consistent throughout the region because a credit will be received for whatever is being paid under that amount to some other unit of government. The net cost would be the same to everyone. He gave the example of Metro levying a 10% hotel/motel tax. If the hotel owner was paying 6% to the city, he/she would get a credit and pay 4% to Metro, but the total cost is 10%.

Ron Cease said that overall, it is reasonable on the assumption that the tax ought to be the same in the whole metropolitan area. He said that he is concerned that if some of the taxes are fairly high, it may be denying that as a real source of revenue.

Chair Myers said that if Metro levies a tax at 10% and another jurisdiction, whose tax the hotel owner can get a credit for against Metro's tax, is levying at 5%, there would be political incentive for that jurisdiction to levy another 5% because there is no political cost to it. Every local jurisdiction would have the capability of subtracting from Metro's actual access to that levy.

Vern Shahan said that if the charter speaks to hotel/motel taxes, the Committee should consider the wording of how the taxes can be used and the amount of the levy.

Jon Egge said that this is clearly an extension beyond Metro's current authority.

Frank Josselson said that Metro does not currently have authority to charge niche taxes with the vote of the people. Any grant of authority to collect any niche taxes is beyond the current authority.

Bob Shoemaker suggested that the credit be available only to the extent of the hotel/motel tax being levied at the time that Metro levies it tax. Any jurisdiction subsequently enacting such a tax, or raising their present level of tax, would not be entitled to the credit for that tax.

Vern Shahan said that whoever has the highest tax would always have that credit and the other jurisdictions will be subsidizing Metro back.

Bob Shoemaker said that his concept would have the effect of freezing the tax.

Larry Derr said that there would be increased political pressure on the local governments not to do it, but they would be legally able to do it.

Bob Shoemaker suggested that there be a provision stating that any tax imposed by ordinance would entitle the taxpayer within Metro to a credit equivalent to any such tax imposed by another jurisdiction within Metro to the extent such tax was in effect at the time Metro adopted its tax.

Ron Cease suggested having the effective date be the effective date of the charter adoption to get around the political incentive for local governments to increase their taxes before the tax went into effect. He said that he would like to see this principle only on the hotel/motel tax and not on the other taxes since the Committee does not know how the niche taxes are being used by other governments.

Bob Shoemaker suggested giving Metro council the authority to impose the limit on taxes that it might enact in the future.

Tim Sercombe said that, in effect, Metro will be levying a different hotel/motel tax level in each county which raises an issue about whether or not that violates the uniformity of taxation principle that is in the Constitution and whether or not a government can levy dissimilar taxes. If the leveling can be evaded by local government actions, and the leveling is not achieved, it may be insufficient to overcome that Constitutional principle.

Ron Cease asked if it would make a difference of when the credit is provided--before or after the tax.

Larry Derr said that the credit would probably come at the time of tax collection.

Chair Myers said that the rate enacted by Metro would be uniform.

Tim Sercombe said that he was talking about Metro's rate being uniform and having different credits available in different geographic territories.

Ron Cease said that if the tax rate for Metro is the same, but then gave people a credit for the following year, it might work.

Frank Josselson said that tax equity is desirable and he does not know if the Committee can do it lawfully under any approach. He suggested that Chair Myers talk to a tax expert to see if there is a way to legally accomplish tax equity.

Jon Egge said that Multnomah County is generally higher in taxes, especially the hotel/motel tax, so Metro would extract more of the tax from Clackamas County and Washington County.

<u>Motion:</u> Bob Shoemaker moved, Charlie Hales seconded, to add a provision to section 11(3) stating that any tax imposed by ordinance would entitle the taxpayer within Metro to a credit equivalent to any such tax imposed by another jurisdiction within Metro to the extent of such tax that was in effect at the time Metro adopted its tax.

Larry Derr suggested tabling the motion to try to get advice on whether the provision can function and how it would function.

Ron Cease said that the provision is worth trying for the hotel/motel taxes in the region, but he is leery about trying the use the principle for all niche taxes.

Vote on the motion: Larry Derr, Charlie Hales, Ray Phelps, and Bob Shoemaker voted aye. Judy Carnahan, Ron Cease, Jon Egge, Matt Hennessee, Frank Josselson, Ned Look, Wes Myllenbeck, Vern Shahan, Norm Wyers, and Chair Myers voted nay. Tom Brian and Mimi Urbigkeit were absent. The vote was 4 ayes to 10 nays and the motion failed.

Motion: Ron Cease moved, Bob Shoemaker seconded, to add a provision to section 11(3) stating that any hotel/motel tax imposed by ordinance would entitle the taxpayer within Metro to a credit equivalent to any hotel/motel tax imposed by another jurisdiction within Metro to the extent of any hotel/motel tax that was in effect at the time Metro adopted its tax.

Vote on the motion: Ron Cease, Charlie Hales, Matt Hennessee, Ray Phelps, Bob Shoemaker, and Norm Wyers voted aye. Judy Carnahan, Larry Derr, Jon Egge, Frank Josselson, Ned Look, Wes Myllenbeck, Vern Shahan, and Chair Myers voted nay. Tom Brian and Mimi Urbigkeit were absent. The vote was 6 ayes to 8 nays and the motion failed.

Chair Myers said that the finance discussion at the last meeting centered around three issues: establishing a dollar maximum for revenues that could be raised from the excise tax and determining an allocation of those revenues for certain purposes over a period of time; establishing a separate limitation on revenues on all other taxes raised or enacted by ordinance; and the elimination of the local government head tax.

Tim Sercombe distributed the charter draft finance language regarding the concepts adopted by the Committee at the last meeting. See Attachment A. Subsection three explains the dollar limitation on the excise tax revenues. Subsection four explains the unspecified limitation on certain tax revenue. Subsection five explains the process when the tax revenue exceeds the limitation. This provision is similar to section 11(3)(b) in the draft charter.

Ray Phelps said that he understood that an amount of money would be pegged in the charter rather than have an amount of money derived from a percent applied to an unknown amount of revenue.

Tim Sercombe said that it is pegged. There is a cap on all tax revenues of a particular category coming in, but one cannot accurately forecast the precise amount of the individual tax revenues because the variables are not under governmental control. If the revenue forecast limitation is exceeded, there will be problems in terms of the tax revenue limitation. Subsection five attempts to deal with the problem of what to do when the cap is exceeded by reducing the base available for the next fiscal year. As written, the language permanently affects the cap. Only after inflationary adjustments will it get back where it was before.

Larry Derr asked if a spending limitation, rather than a revenue raising limitation, would achieve the same purpose but would be less cumbersome. If more money is raised, then there would be some kind of adjustment in a subsequent budget year restricting the amount of carry over.

Tim Sercombe said that, in terms of lack of perplexity, expenditure limitations exist in other governments and is a common technique of limiting government. It is not common to limit the amount of revenue that comes in from a determinate tax.

Vern Shahan asked what controls if, under an expenditure mandate, the government raises twice as many dollars in taxes as is expected.

Larry Derr suggested that there would be a carry over limitation that would restrict its ability to budget for that amount in the subsequent year.

Vern Shahan asked if the amount that they could levy in subsequent years would be reduced.

Larry Derr said yes, because they would levy to reach the budget.

Tim Sercombe said that subsection six prohibits Metro from levying a charge on local governments. He said that he did not know if the limitation was an overall prohibition or if it was for planning. Subsection seven is the dedication of the excise tax proceeds and explains the pro rated allocation of the tax. The draft requires Metro to appropriate this fund in the percentages stated. He said that he did not know what is considered to be general overhead. He said that the draft explains it as the costs of staffing and compensating the council and president, compensating the manager and auditor, and staffing the MPAC.

Ray Phelps said that the auditor was not contemplated in the concept because the auditor would have a function that could be attributed to operating departments.

Ron Cease asked if the percentages would be permanently fixed into the charter and could not be changed.

Chair Myers said that, for a period of time, they are not to change.

Tim Sercombe said that subsection 7(c) provides an allocation for other government functions which are not substantially subsidized by user fees, special taxes or other dedicated revenues. The next paragraph says that if there is an overcollection of funds, causing a reduction in the next levy, the reduction would come out of the overhead and the other government function category and not out of the planning category to assure funding for planning.

Chair Myers asked if that statement would be necessary with an expenditure limitation approach.

Tim Sercombe said no. The next provision in the section states that the percentage allocation may change after adoption of the initial framework plan and the determination by the council that the local comprehensive plans are consistent with that. The final statement states that this section does not prevent the council from appropriating additional funds to these activities from other sources.

Larry Derr said that he thought the Committee came to the ultimate conclusion that the entire section would have a sunset.

Chair Myers said that he did not think that there was a total sunset. It was an authorization to change, but it only went to the purposes of spending.

Larry Derr said that he recalls that the final statement of it would allow the council, once the first round of planning was in place, to totally eliminate, if they chose, the percentages and the dollar limitations in this category.

Tim Sercombe asked if the revenue limitation of $6 million would also go away.

Larry Derr said that just the excise tax portion would go away. The categories of allocation, as well as the percentages of allocation, would be eliminated.

Tim Sercombe said that both the allocation and dedication would go away.

Larry Derr said that, in other words, they would have a free hand to spend the $6 million any way that they want to.

Tim Sercombe said that there are a number of practical issues about that, such as estimating the revenues in advance, the impact to the revenue or expenditure limitation if there are additional functions that are taken on by the government, whether or not the expenditures are mandated, and how long the revenue limitation penalty continue to affect the base.

Larry Derr suggested that the Committee accept the concept to experimentally change from a revenue cap to an expenditure cap to see if it would improve the process. He said that his suggestion is not intended to substantively change the concept, but to open the discussion on whether or not it would be more workable to have an expenditure cap.

Tim Sercombe said that expenditure limits are typically not limits on the total dollar expenditure of the entity, but the amount by which the expenditures can increase on a yearly basis. He said that they are designed to reduce the growth of government. If there is going to be an expenditure limit, it needs to say that the government is not going to spend more than X for any purpose during a year. He said that the conceptual difficulty with this government is that it is hard to predict its functions five years out.

Larry Derr said that he is not proposing an overall expenditure limit for the organization. He said that he is suggesting saying that it cannot spend revenues from those taxes in excess of X dollars.

Tim Sercombe asked if, conceptually, those taxes have to be married into some function.

Larry Derr said that he was not contemplating that it would have to be tied closer than it has been here.

Jon Egge said that the concept is not really being changed. When talking about a function, or a group of functions, the "or any other function language" could be used. He said that the Committee is not taking the approach of limiting the government's growth. Instead, they have clearly taken a starting point.

Ron Cease said that there is a substantial difference, conceptually, between an expenditure limit and a revenue limit. If there is an expenditure limit, the question of how it will apply to a new function will have to be discussed. It is easier to deal with expenditure limits than revenue limits.

Larry Derr said that it would work under the excise tax because the expenditures have been allocated, at least during the period of this limitation. It might not work under the overall cap because there would be a pot of money and the charter does not say how to spend it, so there could not be a spending limitation.

Tim Sercombe said he is not sure that the Committee wants to say that Metro can always spend X on planning and X on central management and it has to come from the excise tax. It might produce problems. He said that an overall expenditure limit or a limitation on the amount of money spent on certain functions is easy to draft. He said that he is not sure that this easily transfers into an expenditure limit scheme when there is non-dedicated revenue.

Vern Shahan asked if, under an expenditure limitation, the amount of revenue can be limited based on its tie to an expenditure.

Ray Phelps said that if there is an expenditure limitation, then the Committee may be back to the $12.6 million limitation with regard to all forms of taxes without a vote of the people. One or two of the expenditures could be identified and then the rest could fall under the $12.6 million limitation. He said that the $12.6 million might serve as a workable expenditure limitation with regard to how the money is raised according to the different opportunities.

Ron Cease said that there is no way of knowing how much money is coming in which can create a problem under either limitation. He said that if there is going to be a cap, the expenditure route would be the best way to do it. There is a relationship to the revenue, but the revenue does not have to be identical to the expenditures. He said that there needs to be a way to deal with unexpected expenditures.

Ray Phelps said that if Metro takes on a new function, they should go out and get financing or else do not take on the function. He said that the ability to go above the cap through a vote of the people is still in the charter.

Jon Egge said that with the $12.6 million figure, it could be done with an expenditure limitation and cover what the Committee wants covered.

Ray Phelps said that it could be done more productively than controlling revenue.

Frank Josselson said that it makes sense because revenues cannot be controlled with that degree of precision. He said that part of the finance/structure trade off was that there be certain functions of the government that have to be fully funded.

Chair Myers asked, in the context of expenditure limitations, how is that approached. Would certain kinds of tax proceeds still be acquired?

Ray Phelps said that planning is still the primary desire and, with the $12.6 million figure, planning is probably in the 30% bracket. He said that is the highest he would figure. Government overhead is probably half of that. After that, it would become an allocation problem.

Ron Cease said that if the Committee takes that approach, they need to figure out what to exclude. It would be an expenditure limit for the purpose of raising revenue from a tax source. He said that he does not like the idea of limits. If there are limits, they have to be workable and not so restrictive that Metro is not allowed to do anything.

Jon Egge said that the discussion at the last meeting was that a number of the Committee members were not comfortable with a tight limit. A little elbow room is needed without making an expenditure limit impractical.

Ned Look said that there needs to be a better control on the cost of Metro expenditures. He asked, if it is not done by expenditure limitations, how can the constituency be reassured. He said that there has to be some kind of limitation. They cannot have the same kind of broad taxing powers that other local governments now enjoy because the public will not accept it. He said that he agrees with Ray Phelps that future functions must come with the necessary revenue to pay for it.

Ron Cease said that the authorization to do a function means nothing without the financing, but it should not be so restrictive that it does not take care of situations that might arrive in the next few years. If there is a limit on the expenditures, and not on the revenue side, it is probably easier to deal with.

Vern Shahan asked Ray Phelps if, under this proposal, the existing legislative caps on excise spending--6% on total revenues--still exist.

Ray Phelps said that there would not need to be legislation to change it because it is a revenue limitation.

Frank Josselson said that a part of the adopted concept is that enterprise funds are dedicated to the functions with which they are raised. He said that the Committee should be very careful to assure that if this government takes on local government functions that are currently being performed, Metro should not be in the position to have a vote of the people to spend local revenues that are associated with those functions. Those revenues, that accompany the local government function, are spendable without a vote of the people and are not under the $12.6 million limitation.

Bob Shoemaker said that Frank Josselson's statement fits with Larry Derr's approach.

Tim Sercombe asked if he understood correctly that there would be a dollar limit which would be an expenditure limit for all activities of Metro. Excluded from that would be certain expenditures from other certain activities of the government.

Ron Cease said that the revenue sources would be excluded, not the functions.

Tim Sercombe said that he has difficulty conceptualizing what the Committee is doing by saying that Metro cannot spend more than X, unless they are willing to say that Metro cannot spend more than X on everything. If the Committee is going to say that Metro can spend less than X on everything, they need to say what X can be spent on.

Ron Cease said that the Committee could say that Metro can spend X of tax revenue and somewhere the charter could state what revenue is excluded.

Chair Myers said that it would be expenditures derived from certain sources of revenue.

Tim Sercombe said that other income would have to be limited to particular purposes, besides the expenditure limit.

Ron Cease said that grants and fees and charges should be excluded. If they are included, the expenditure limit will have to be at the $200 million figure.

Larry Derr said that if all of Metro's revenue sources are dedicated funds, except for the excise taxes and ordinance adopted taxes, it would take care of itself. He said that it may be true currently that, with the exclusion of the head tax and excise tax, there may not be any undedicated revenues. If that is true, then the Committee has authorized some kinds of taxes that are not dedicated, but have to go to the people. He suggested that those tax sources be dedicated funds.

Bob Shoemaker said that the ordinance taxes would most likely be dedicated.

Larry Derr said that is not necessarily true. He said that he envisions that it would go toward the general fund to allow for a greater disbursement of funds.

Frank Josselson said that the expenditure limitation, as he envisions it, would apply only to funds that are raised by means of the excise tax or other taxes that are raised without a vote of the people.

Ron Cease said that if there is a limit on the expenditures that Metro can undertake in the form of revenue raised from taxes, it is clear that some exclusions will have to be made. By doing that, if the restrictions are too strict, Metro will end up living on fees and charges rather than the general fund.

Chair Myers said that the Committee has reached an emerging consensus around trying to come at the matter of financial constraints from the expenditure side.

<u>Motion:</u> Ray Phelps moved, Larry Derr seconded, to have an expenditure limitation of $12.6 million from taxes levied by ordinance or through the excise process for the purposes of funding planning, including the per capita pick up, revenue shortfalls with the regional facilities, and the general government overhead.

Ron Cease asked why include particular spending purposes under an expenditure limitation.

Ray Phelps said that he wants to be certain that the political overhead is covered. Since planning is the number one priority for the government, it should also have guaranteed funding.

Ron Cease said that he can support an expenditure limit, but he has problems when specifying the uses of the revenue.

Larry Derr said that the Committee has not yet gone back to the details of the general structure outline. There is the potential of coming up with the most accountable structure for government that is possible within the range that is laid out. He said that there are better ways and worst ways that the structure could come out. He said that he supports the motion, with the calling out of the expenditures. He said that, if it passes, he would be willing to revisit it to remove the specific expenditure categories if the structure is developed to make it work as well as possible.

Bob Shoemaker asked if the $12.6 million limitation was limited to funding planning and general government operations.

Ray Phelps said that the $12.6 million limitation would fund planning, regional facilities, and government overhead. By calling the functions out, the members know what the money is spent for as opposed to allowing a full range of choice to the degree that some elements of the charter are not properly funded and so that there is not confusion as to what the monies can and cannot be spent for.

Bob Shoemaker said that he did not know if the Committee can contemplate what Metro could appropriately be spending general fund revenues for. He said that the $12.6 million figure is much more than is needed for those particular functions. He said that the virtue of a spending limit is to make it clear that this government is not one that can run amuck--there is a limit on the amount it can spend. He said that he does not think that the Committee should be limiting the categories of things from which it can spend that money.

Ned Look said that he agrees with Bob Shoemaker.

Jon Egge said that this proposal does not go quite as far as the substance of the original agreement reached at the last meeting.

Frank Josselson said that the agreement was that, in exchange for the structure, there would be full funding for planning.

Bob Shoemaker said that the Committee needs to find a way to do that, but it should not be done within a limit. He said that the only way he knows how to do it is to require that they spend not less than a certain amount for planning.

Frank Josselson said that there has to be a requirement that, at least, certain revenues be dedicated. He said that the Committee does not have to compel that they be spent, but he wants to compel it until he is satisfied that the government structure is the best possible. He said that he is not willing to back off the requirement that the particular funds be dedicated to the excise tax.

Bob Shoemaker said that the Committee is talking about two different subjects--adequately funding planning and imposing an outer limit on the expenditure of general fund revenues. Those are two different interests and the Committee is crippling itself by putting them in the same limitation.

Matt Hennessee said that he does not like the proposal for many of the same reasons Bob Shoemaker mentioned.

Ron Cease said that he does not like the limit, but, as a practical matter, it is needed. He said that he does not support the motion.

Ned Look asked if the funding for planning and government overhead are not spelled out in this motion, where will the funding for planning come from.

Bob Shoemaker said that the Committee could require that Metro spend not less than X dollars for planning during the development of the plan from excise tax revenues. He said that it should be a separate motion and separate provision. He said that the Committee should not deal with the general government piece.

Jon Egge said that he does not have a problem with Bob Shoemaker's suggestion. He said that is essentially what Ray Phelps is driving at with his motion. He said that Bob Shoemaker's suggestion does not change the substance of the Committee's agreement.

Larry Derr said that he could agree to calling out only the planning functions at $4.5 million as a mandated expenditure as a place holder to show that the Committee is committed to the concept. Before the Committee is done, they could revisit the wording.

<u>Amendment to the motion:</u> Ray Phelps amended, Larry Derr agreed, the motion to read that there will be an expenditure limitation of $12.6 million, of which $4.5 million will be spent for planning, plus an inflation factor of the Western cities CPI.

Ron Cease asked that the planning piece be handled as a separate motion.

Bob Shoemaker said that the issue could be bifurcated within the charter.

Ron Cease asked why the funding for planning must be from the excise tax.

Frank Josselson said that it is a secure source.

Bob Shoemaker said that the motion does not limit it to the excise tax, but, as a practical matter, that is where it would come from.

Chair Myers asked for the original motion.

Ray Phelps said that the original motion set out an expenditure limitation of $12.6 million and described how the money would be allocated, with respect to major categories of expense. He said that the amended motion only lists planning as an allocation of $4.5 million.

Larry Derr said that the motion means that it would be available for that, and any other governmental service, but it is not a mandate.

Ray Phelps said that the only mandated expenditure would be planning.

Ron Cease said that he would prefer the $12.6 million to be raised from tax sources. He said that this motion is worded better than the original motion.

Chair Myers said that he is uncertain about placing a dollar amount in the charter.

Ray Phelps said that the dollar amount could be converted to a percentage.

Frank Josselson said that the importance of the concept, and the expenditure requirement, is that it is a placeholder that the Committee can get beyond by addressing the structural pieces in a way to make the majority of the Committee comfortable. He said that there are two issues that are not addressed with the motion. One is whether the government is going to have seven or nine members. The other is the veto issue. He said that if those issues are dealt with satisfactorily, he would be very comfortable with stating that the regional government shall fully fund the planning functions.

Ray Phelps withdrew the motion.

Frank Josselson said that the more visible and accountable the government is, the more willing he is to provide discretion with respect to the expenditure provisions. He said that he prefers a seven member government because it is more likely to give each member known visibility and avoid anonymity. He said that the elected executive should be an executive and not the head of the legislative branch of government. This can be done by limiting the veto to service delivery kinds of functions with which the elected executive is charged. The elected executive is to run the services of the government. He said that the elected executive should have a veto over legislation involving service functions, but not over other general policy or planning functions. He said that with the structure he just described, he would be prepared to leave the funding of the planning to a simple statement that the regional government shall fully fund the planning obligations delegated to the regional government in the charter.

Bob Shoemaker asked Frank Josselson to be more specific on his definition of service delivery functions. He said that he earlier suggested a veto on the budget, taxes by ordinance, and service and user fees.

Frank Josselson said that the budget is the major policy made by the council. To give the executive veto over the budget is to give him/her control of the government.

Bob Shoemaker asked if Frank Josselson would provide an executive veto on taxes by ordinance.

Frank Josselson said that he has not completely thought through the concept and would like more time. A line item veto would be alright with respect to specific aspects of services.

Ray Phelps asked if the Committee agreed on anything with respect to the veto at the last meeting.

Chair Myers said they did not.

Larry Derr said that the executive should have a better authority to carry out those functions that are mandated to the executive. A veto would work strongly toward causing the council to not try to second guess those functions. If there is no veto on the remainder--long term planning and policy issues--it leaves the council freer to exercise those policy distinctions. If it is a part time council, they might not be able to muster an override of the veto. He said that where the council and executive came to loggerheads, it has probably been in the administration and not the long range policy issues.

Jon Egge said that he is nervous about the line item veto. He said that the budget is one of the largest policy decisions this government has.

Norm Wyers asked for an elaboration on characteristics of the seven member council.

Larry Derr said that the council would be elected by district and the presiding officer would be selected from within the council. Basically, it is the same process as exists currently, except that it is smaller. He said that he thought the Committee, at the last meeting, left the door open for additional compensation beyond the per diem the council gets currently, but less than full time and less than what the executive would be getting. He said that he believes there will either be volunteer citizen legislators or full time politicians. With a seven member council, they will be volunteer citizen legislators. He said that the presiding chair would probably be compensated more, but it does not necessarily work for the person to immediately become full time.

Ron Cease said that the budget is rarely vetoed. The threat of a veto is a very strong tool for the executive. He said that the budget is an executive budget because a council is incapable of putting together a budget. He said that the key to the budget is that the council must approve it. He said that there should not be a line item in a budget because it suggests that the executive can veto one item. He said that he could support a nine member council, but if the number is going to be reduced, there is going to be more work for the smaller body. He said that a smaller council will also cost more because of the reapportionment costs and they will need to be compensated because they will be doing more work.

Chair Myers said that the Committee should keep in mind that there are certain kinds of regular employment, such as the federal government, that forbid the holding of another compensated position.

Bob Shoemaker asked if that applied if the compensation is waivable.

Chair Myers said that he does not know. He said that it would be desirable to provide for some limited compensation.

Matt Hennessee said that all the Committee members have compromised on the structure. He said that, with projected growth in the region, it is ridiculous to go from a council size of 13 down to seven or nine from the standpoint of the type of work that is expected out of the government. He said that the structure argument started from the standpoint of balancing the power between the council and the executive. There is clearly not a balance of power with a part time presiding officer and a smaller council. He asked if the Committee is saying that from a political standpoint, the Committee is afraid to make the council full time.

Larry Derr said that not enough people want it to be full time.

Chair Myers asked if the presence or absence of a veto is the major factor in the balance of power.

Frank Josselson said that the visibility and accountability of the government is one factor and it is a function of the size. A veto is another important aspect. He said that the veto creates the major part of the balance of power that concerns him, but the veto alone does not satisfy him.

Matt Hennessee said that he does not understand how a person who represents 160,000 people on a part time basis, who probably also has another job, is going to be more visible to the people than currently with 80,000 constituents.

Ray Phelps said that he does not think that the veto is the cause of Metro's "reign of terror". He said that without the veto, it was a "reign of terror", but it is a "parody" with the veto. Without the veto, the executive does not have any method by which to gain the attention of the elected group of councilors. He said that the veto balances and calls for a calm basis for discussion and provide for the respectability of all elected officials when the tendency is to get out of control. He said that the concern for the veto is mislaid. It is one of the elements that has allowed Metro to stabilize itself.

Larry Derr said that the districts are going to be so large, regardless of the size of the council, that visibility and accountability are going to come from the media primarily and things that the regional government is doing that causes them to be known.

Jon Egge said that, in terms of the balance of power, the veto is much more important, but he does see the value of having a veto on service delivery. He said that the Committee cannot guarantee success with this government's structure, but this gets the closest to what he believes is the best. The size of the government does not create the same balance.

Bob Shoemaker said that he is not completely comfortable with the no and low compensation consensus that the Committee supposedly reached. He said that the selected presiding officer ought to be fairly well compensated. It should not necessarily be in a parity with the executive, but it should not be too far short of that. He said that the presiding officer should really be a balance of the executive, but that will not happen if he/she is expected to volunteer his/her time. He said that he is willing to take the risk of selecting a full time presiding officer from a pool of part time councilors. He said that he does not want the council to be full time politicians, but he is not happy with them not receiving compensation.

Ron Cease said that the goal for the council ought to be to strengthen its role. He said that one of the arguments made for a smaller council is that it is more manageable and that is valid. On the other hand, the bigger the district, the less visible the councilors are to the constituents. He said that the Committee should decide how they want the council to be more visible--with the constituents or with the media. With a smaller council, they will become less visible over time. He said that the Committee will have to justify a smaller size council. If it is smaller, they will have to be compensated.

Charlie Hales suggested a structure proposal in which the executive would have a partial veto, with the ability of council to override it with a two-thirds vote. The veto would be over taxes adopted by ordinance, the budget, and service and user fees. There would be a compensated seven member council. The councilors would be compensated equal to state legislators. The presiding officer would be compensated equal to the speaker of the house. He proposed a $12.5 million spending limit with the instruction to fully fund the planning responsibilities outlined in the charter. There would not be a specific dollar amount set out for the funding of planning.

Ron Cease asked why the council would be compensated at such a low level.

Charlie Hales said that it may not be high enough. He said that he was trying to peg it to something outside of the charter. He said that the compensation ought to be enough to relieve the pain of spending 20 to 30 hours a week on the region's business, but not enough to make a living off of.

Larry Derr asked how much the compensation would be, in dollar amounts.

Charlie Hales said that state legislators currently receive $12,000 a year and the speaker of the house receives $24,000. He said that he thinks those figures are too low.

Bob Shoemaker said that the legislators also receive a per diem of $73 for officially called meetings.

Chair Myers said that there could be a separate provision allowing per diem compensation as it is now in Metro.

Ron Cease said that the council size of seven is too small and the compensation should be larger. He said that if the proposal had nine councilors with greater compensation, he could support the proposal.

Charlie Hales said that he would like to see compensation at $20,000 to $25,000 for a council member and $40,000 for the presiding officer.

Larry Derr suggested that the council receive a compensation equal to one-third of a district court judge's salary and the presiding officer receive compensation equal to two-thirds of a district court judge's salary.

Motion: Charlie Hales moved, Bob Shoemaker seconded, the following structure and finance proposal:

A seven member council.

The councilors would receive a compensation equal to one-third that of a district court judge.

The presiding officer would receive compensation equal to two-thirds that of a district court judge.

The executive officer would have a veto on taxes adopted by ordinance, the budget, and service and user fees.

The council could override the veto with a two-thirds vote.

A $12.5 million spending limit.

The charter would have the instruction, although no dollar amount, to fully fund the planning responsibilities outlined in the charter.

Charlie Hales said that his motion has a seven member council because he agrees the smaller the council, the more visible it is.

Chair Myers asked what the transition procedure would be to reduce the size of the council. He asked if there would be a reapportionment after the first year by way of a special election.

Larry Derr said that it becomes more acute with the degree of shrinkage. He said that he would prefer to vote on this motion as a concept and deal with the mechanics later.

Jon Egge said that he supports everything in the motion except the veto over the budget. The budget carries the ability to control all policy and is the most substantive policy issue. If the executive has veto power over the budget, that person can effective control every function of the government.

Amendment to the motion: Frank Josselson moved, Jon Egge seconded, to amend the motion to strike the executive officer's veto authority over the budget.

Ray Phelps said that he is against the motion and the amendment because the veto sharpens the conversation and brings forth more inspection as to what the elements are that first went into the budget. He said that the elected executive is a partner and is a critical element in the policy of this government. He said that seven members is too small.

Jon Egge said that ORS 268 states that the elected executive is charged with the delivery of services of the government.

<u>Motion to close debate:</u> Matt Hennessee moved, Norm Wyers seconded, to close discussion and vote immediately on the amendment to the motion.

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

<u>Vote on the amendment:</u> Larry Derr, Jon Egge, Frank Josselson, and Vern Shahan voted aye. Judy Carnahan, Ron Cease, Charlie Hales, Matt Hennessee, Ned Look, Wes Myllenbeck, Ray Phelps, Bob Shoemaker, Norm Wyers, and Chair Myers voted nay. Tom Brian and Mimi Urbigkeit were absent. The vote was 4 ayes to 10 nays and the amendment failed.

<u>Amendment to the motion:</u> Ron Cease moved, Ray Phelps seconded, to amend the motion to include a nine member council rather than a seven member council.

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

<u>Motion to close debate:</u> Frank Josselson moved, Jon Egge seconded, to close discussion and vote immediately on the motion.

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

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

to 4 nays and the motion passed.

Bob Shoemaker said that he would like to revisit the issue of enterprise revenues, which the Committee agreed would be limited to the enterprise from which the revenue was derived. He said that there are some enterprises that should not be so constrained, such as a parking lot or a marketable commodity in which they are competing with the private sector. He asked if it would be worthwhile to exempt that kind of enterprise revenues so that the parking lot revenues would not have to be limited to the cost of operating the lot.

Frank Josselson said that Bob Shoemaker's suggestion makes sense, but it would be difficult to describe which services those are.

Bob Shoemaker said the exceptions would be proprietary in nature. They are the types of activities which Metro is not the only game in town so that the public would not be taken advantage of by making a profit on it.

Larry Derr said that the concept of fees was that the fees be set at a level to fund the cost of the services, including overhead.

Bob Shoemaker said that there would be the problem that it would not balance out at the end of the year, but appropriate adjustments could be made to keep it in line. He suggested a distinction be made that service and user fees for proprietary operations would not be subject to the same limitation. He asked that counsel bring back language.

Frank Josselson suggested that proprietary be defined as a service in which private enterprise is engaged in the region.

Jon Egge said that the definition would put the government into competition with the private industry. The private industry is very sensitive to that kind of competition. He said that he does not disagree with Bob Shoemaker's proposal. He suggested that counsel draft language and bring back the issue for the Committee to discuss.

Bob Shoemaker said that he is not sure that eliminating the head tax from Metro is appropriate. He asked Metro staff to explain the situation.

Jon Egge said that Ray Phelps said earlier that there was a tentative deal made with respect to the head tax in relationship to the excise tax. He said that he would like to hear local government's perspective.

Ken Gervais, Metro staff, asked the Committee to not prohibit the continuation of the head tax. He said that the money now goes back to local governments in terms of technical assistance. A local government committee meets to discuss how that fund should be spent which creates an interaction between the regional government and the local governments. He said that the head tax will either go away on its own or the local governments will get rid of it through the legislature.

Mike McKeever, RGC staff, said that the RGC has not asked that it be eliminated. He suggested that, if it is authorized, the $12.5 million under the lid could not solely be raised by the head tax.

Tim Sercombe said that the only authority on the government to put a charge on another government, against that government's will, comes from state law.

Charlie Hales said that if, after Metro has a charter and has taxing authorities, Metro still wants to fight out local government dues in the legislature, let them.

Bob Shoemaker asked if the Committee lets the local government dues take care of itself when it sunsets, should it be eliminated from the conceptual proposal the Committee adopted at the last meeting.

Chair Myers said that it has not been incorporated into the finance article yet. If there is not a motion to include it, the charter will remain silent on the issue. He asked if, regarding the salary of the councilors and presiding officer, the compensation set will be the salary or if the council may set compensation not to exceed that amount.

Bob Shoemaker said that the motion the Committee passed set the salary in the charter.

> Motion: Frank Josselson moved, Matt Hennessee seconded, to delete section 28, *limitation of terms of office*, from the charter.

Frank Josselson said that he made the motion because the voters have the opportunity to eliminate whomever they want to by voting someone out of office. If there is a good person, that person should be allowed to stay in officer for longer than the term limitation.

Ron Cease said that the motion makes sense, but within a reasonable limit such as in the charter draft, it is not too limiting. He said that when someone gets elected from a large district, chances are that the person will not get challenged and that person will get too comfortable in the position.

Ray Phelps said that he does not want the term limitations eliminated because the concept has become common in many different offices. With a small council and being nonpartisan, it is difficult to run against an incumbent. He said that the lack of term limitations would embed special interest people on the council.

Frank Josselson withdrew his motion. He asked that Tim Sercombe direct the Committee as to whether or not they should ask the legislature to repeal ORS 268. If not, he asked how the Committee should deal with conforming legislation.

Tim Sercombe said that there might be an issue of whether the legislature can compel the government to do something that it does not want to do, but there is not a lot of conflict between ORS 268 and the charter.

Chair Myers adjourned the meeting at 10:15 pm.

Respectfully submitted,

Kimi Iboshi

Kimi Iboshi
Committee Clerk

Materials following this page represent Attachments to the Public Record

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MEMORANDUM

To: Metro Charter Committee

Re: Draft Language on Finance Section of Proposed Charter

Date: July 21, 1992

A. Introduction.

At its July 18, 1992 meeting the Committee reached preliminary consensus on tax limitation and dedication provisions of the proposed charter. The features of this consensus are:

1. A limitation on the amount of excise taxes to $6,000,000 in the initial year of the operation of this limitation. This tax base could increase by the annual rate of inflation.

2. The elimination of authority to charge local governments for planning functions (except presumably through an intergovernmental contract). This charge is presently allowed by ORS 268.513.

3. A limitation on the amount of "ordinance taxes" that could be imposed in any one year to a certain amount. This amount has not been agreed upon by the Committee. This tax base could increase by an inflationary factor. By "ordinance taxes," I assume the Committee means those taxes which are not approved by popular vote, are not excise taxes, are not imposed currently by Metro, and are not a payroll tax (if TriMet functions are assumed).

4. The exclusive dedication of collected excise taxes to planning functions, the compensation and staffing of the charter officers, and other government functions which are not substantially subsidized. The allocation of the dedicated taxes has not been decided. It would be set in the proposed charter. The council could change this allocation by ordinance after adoption of the regional framework plan and a determination that all local comprehensive plans are consistent with the regional framework plan.

5. These provisions would replace the current tax revenue limitation in Section 11(3) of the proposed charter.

B. Draft Charter Language.

(3) Limitations on Excise Tax Revenues. During the first fiscal year after this charter takes effect, the total revenues from all excise taxes imposed by METRO shall not exceed $6,000,000. As used in this charter, "excise taxes" means taxes imposed on persons using the facilities, equipment, systems, functions, services or improvements owned, operated, franchised or provided by METRO. This tax revenue limitation shall increase, without voter approval, in each subsequent fiscal year in an amount equal to the rate of inflation for the previous calendar year. As used in this charter, the "rate of inflation" means the rate determined by the appropriate federal agency for increases in the consumer price index for goods and services in major cities in the western United States or the most equivalent rate.

(4) Limitations on Certain Tax Revenues. During the first fiscal year after this charter takes effect, the total revenues from all taxes imposed by METRO shall not exceed $__________. This tax revenue limitation shall increase, without voter approval, in each subsequent fiscal year in an amount equal to the rate of inflation for the previous calendar year.

(a) Excise taxes, taxes approved by the voters of METRO, taxes imposed by the Metropolitan Service District as of January 1, 1993, payroll taxes in the amount specified in subsection 11(1) of this charter, and tax increment financing charges on property are excluded from this limitation.

(b) As used in this subsection, "taxes" do not include revenues from charges to individuals for the provision of goods, services, or property, revenues from the issuance of franchises, licenses, permits or approvals, and benefit assessments against property.

(5) Exceeding Any Tax Revenue Limitation. A tax revenue limitation for any fiscal year shall be reduced by an amount equal to any revenue collected in excess of the tax revenue limitation for the previous fiscal year. This reduction shall occur in a supplemental budget. In the event this reduction results in an adjusted tax revenue limitation of less than 80% of the amount previously budgeted for that fiscal year, the tax revenue limitation shall be further reduced. This further reduction shall be the amount of the inflation increase for that tax revenue limitation which was previously budgeted for the fiscal year. If any tax revenue limitation is reduced under this subsection, the reduced base and inflationary increases calculated from that base, shall become the applicable tax revenue limitation.

(6) Prohibition on Local Government Charges. Unless approved by the voters or allowed by intergovernmental agreement, METRO may not levy a charge upon local governments for the provision of regional planning services or other general functions of METRO.

(7) Dedication of Excise Tax Proceeds. The proceeds from any tax limited by subsection (3) of this section shall, after providing for the costs of administration and any refunds or credits authorized by law, be placed in a special fund. The estimated amount of that fund shall be appropriated by the council in each fiscal year in the following amounts and for the following purposes:

a. ___% of the fund shall be used for the costs of regional planning by METRO;

b. ___% of the fund shall be used for the costs of staffing and compensating the council and president, compensating the manager [and auditor], and staffing the METRO policy advisory committee; and,

c. ___% of the fund shall be used for other government functions which are not substantially subsidized by user fees, special taxes or other dedicated revenues.

Notwithstanding these allocations, in the event the revenues in this special fund are reduced under subsection (5) of this section, the council shall reallocate this fund in the supplemental budget by maintaining the amount of funds previously appropriated for regional planning purposes and reducing the funds available for other purposes.

The percentage allocation of this fund set out in this subsection, but not its dedicated purposes, may be changed by ordinance after adoption of the initial regional framework plan and a determination by the council that all local comprehensive plans are consistent with the regional framework plan.

The required appropriations in this subsection shall not prevent the council from appropriating additional funds to these activities from other sources.

C. Comments on Draft Language and Concepts.

These types of revenue limitations are unique. I am not aware of models to use for these limitations. The suggested language is an initial draft and can, no doubt, be improved. In your deliberations on this language and these concepts, you may wish to consider the following:

1. It will be difficult to estimate in advance the revenues which are limited. This may mean that either the limitations will be exceeded regularly or the charges and taxes will be underlevied (and revenues reduced) to avoid violation of the limitations.

2. An enforcement mechanism is necessary to deter violations of the limitations. The draft requires reduction of the limitation applicable in future years if there are excess revenues collected. This is a multiple year penalty. That is, the base is permanently reduced by the amount of revenues exceeding the limitation. You may want to consider a lesser sanction.

3. Whether the limitations are exceeded will not be known until after the end of the fiscal year when all revenues have been collected. At that point, the budget for the next fiscal year will have been adopted. Any change to that budget necessary to remedy violation of the limitation for the previous year, will need to occur in a supplemental budget. There may be practical and legal problems in changing the budget through a supplemental budget.

4. If the experience with acknowledgment of comprehensive plans for goal consistency is any measure, there may be a long period before all local comprehensive plans are determined to be consistent with the regional framework plan. (Comprehensive plan acknowledgment took nearly twelve years.) The regional planning costs throughout this period may not be constant.

5. The draft mandates appropriations from the excise tax fund for the described purposes. This presupposes that the costs of these activities will be the same or more than the dedicated fund. What happens if this is not the case, i.e., if the central overhead or planning costs do not increase at the same rate as inflation? There may be then a forced appropriation in excess of actual need.

6. What happens to the excise tax limitation if additional government functions are assumed by METRO? The present statutory limit on excise taxes is a percentage of gross revenues. This provides flexibility if additional functions are assumed (and gross revenues increase). The risk of a dollar limitation is that this flexibility will be lacking.

PRESTON THORGRIMSON SHIDLER
GATES & ELLIS

By:____________________
Timothy J. Sercombe