

TRANSCRIPT OF AUGUST 13, 1992 METRO COUNCIL MEETING
Agenda Item No. 3.1 Briefing on Metro Charter Proposal

Jim Gardner: We'll move into Executive Officer Communications. Scheduled in this time slot is going to be a briefing for the Council on the recently approved Metro Charter proposal and Mr. Gervais, I think you're the one to do that. I know you don't need a reminder, but please push the button on the right.

Ken Gervais: Thank you. Mr. Chairman and members of the Committee, my understanding is, I'm sorry I wasn't here at your last meeting, or at the meeting of the Governmental Affairs Committee, so I don't know quite what was covered with respect to the Charter and I know all of you have had numerous opportunities to read the Charter in its various forms, including it's final form. So, I would give you a very brief overview of what I think are some of the highlights and Councilor Van Bergen has already indicated that he thought he had heard everything that I had to say in this, so I said I want to give you some numbers, so I'm trying, I'm going to start with the numbers first.

My numbers are preliminary. The Finance Department is working on some more detailed numbers to determine what this Charter, if passed in November, would cost this government. For the six months beginning January 1, 1993, my estimate is it would cost between \$230,000 and \$320,000 approximately in additional costs that you would have to modify this year's budget to accommodate those costs. Briefly, a little over half of that cost is attributable to the fact that the Charter would set Council salaries. Instead of being paid a per diem, the Charter would require, would stipulate, that Council be paid a salary. That amount this coming year, assuming the pay for district court judges is not changed, would be \$23,233 per Councilor and the Presiding Officer would receive twice that amount. So, and the, because of those amounts, would suggest that these would probably, it doesn't stipulate how much time that's supposed to involve, but I assume it's reasonable to presume that Councilors would also be entitled to benefits. Certainly, we'd have to pay FICA and PERS and other benefits related to that and that adds 34 percent. So we would take the amount, the Councilors would have used half of their per diem by that time for this fiscal year; you subtract that back out, your net increase is about \$164,000. Now it's possible that that wouldn't be a problem to the extent that Councilors have the right to waive that salary, so if Councilors didn't take that salary, it would not be a financial item.

The other things that would cause expenditure during this six month period would be the apportionment. You would be required, under the Charter if it passes, to designate an Apportionment Commission made up of seven members. I have talked to Dick Bolen about how much it costs to manipulate the data to come up with the reapportionment plan and I've assumed that it would require some legal attention, and so I'm assuming that apportionment would cost something in the range of \$50,000 to \$80,000. I think as we refine that, that will be more expensive. There is a possibility that the apportionment committee does not do its job, that the appointed referee, and I assume a referee would be a person that would be paid and would have

to start some work over again, so I'm assuming something in the range of \$50,000 to \$80,000.

There is also the requirement that you fund a office of citizens involvement. And the Charter doesn't say how much you have to pay for that, but it says you will fund it. And I'm assuming that if you've got a part-time person that started this year, maybe similar activity would go into this area...but I'm assuming that at least \$20,000 to \$30,000 approximately would be required for that. That gets me \$230,000, \$275,000 and I think that our Finance office will come up with greater numbers because they'll be more thorough than my analysis would.

Now in addition to those specific items, there are three other areas of exposure which I think the Council ought to have in mind on this Charter. The first is that this Charter would require the Council to fully fund planning. And, I have no idea what that means, but there was a lot of discussion on the part of the Charter Committee that suggested Metro was not doing an adequate job in the planning area. And so I would assume that if Metro even spent as much money as is now being spent, that there would possibly be a basis for arguing that is not fully funding planning. So that may be an unknown area out there that hangs out, that you might find has a substantial liability. The second area in which you, I don't know how much money you'd expend, is the Charter requires that this government seek whatever legislation is necessary to make it work. And we already know, we've had opinions from Counsel, some of that land use provisions are contrary to state law; you would require some changes. There is a provision that says if you ignore the local Boundary Commission, if you make a boundary change, I would guess that might lead to some litigation to the extent by law, assuming we can get around that one. But basically, you've got a provision to go to the legislature and do something which is not well known and then I think there's opportunity for substantial litigation and maybe that can be done with the Council you have now and perhaps not. So that's what I see as financial exposure that you have and I would expect these numbers to grow over time rather than to be reduced. The other item, just to touch briefly, you're well aware that the Charter contains \$12.5 million cap on expenditures of funds from sources other than those that are voted by the people and those which you already have in existence. In the sense of the property taxes you have at the Zoo and that excludes user fees and charges. There is still a problem with user fees in the way the Charter is written and it may require an amendment to it at some point. When we raised the specific issue, the Charter Committee wanted user fees to be no more than the cost of providing the services and when we pointed out that at the Zoo we charged more for a hot dog than it cost us and we used the profit from that to support other Zoo activities, they made an amendment to it that specifically accounted for concessions and parking in that context. But we don't know if there will be other instances, we don't know how it would apply for instance, in the parking structure at the new office building, whether we would have a problem there. So there is an eventual problem with that. In my calculation of how much this stuff's going to cost, I've assumed that the impact, the Metropolitan, the policy advisory committee, has, I'm assuming that those city officials and county officials and special district officials will provide their own staff, so I'm assuming that Metro would not provide staff for support for that group.

The changes that were made on Tri-Met, just one little wrinkle there, is that it stipulated you've got to get approval from JPACT, or input from JPACT if it's in existence, you've got to do it by ordinance rather than by resolution which you may do now. The ordinance cannot have an emergency clause and that when, you will have an intervening board to administer the agency, and you'll define what that board does and doesn't do, and that the existing board will be part of that first board. And at one point the language said it would be the first board, now it says it will be part of it. So those 7 people could be part of a 35-member board if you wanted. You can make any number of people you want on that board. Some of the intangibles that I think are the most important part of this - let me talk a little bit more about the structure, excuse me.

As you know, the number of Councilors will be reduced to seven. There's a full-time elected auditor. The veto is now limited to fiscal matters essentially. The Executive can veto only items, only an ordinance raising a tax, a budget, or a budget revision. The Executive would no longer have the authority to veto a measure, a substantive measure of any sort. There are term limitations, three for the Council members, two for the Executive, but no term limitations on the auditor. And then it creates an Office of Citizen Involvement which I've previously mentioned in terms of talking about Finance.

The intangibles that are difficult I think are the fact that the Charter draws its, we had hoped that the Charter would draw its authority, and that this would be a government of the people of the region and they would be the people to whom this government would report and be accountable. And what the imposition of the impact, there is clearly a situation in which there are kinds of things that this government, the elected government would want to do, which would take approval of local governments. There may be issues in which an issue is not appropriate to go to the voters, it's not a broad enough policy question but you want to do something, and you won't be able to go without approval of local governments, and that creates a, fuzzes the line of who this government is accountable to. As I said, there are a lot of legislative changes that are implied in the Charter that you're going to be mandated to go to the Legislature and seek. There's some things in there that the Charter Committee tried to put in and recognized that they were simply illegal like requiring you to avoid good faith collective bargaining that would allow for the possibility of negotiating agreements that would prevent you from going outside the collective bargaining agreement. That one has been left in saying "to the extent allowed by law" even though the Committee knows that there is no extent allowed by law. So there's some of those kinds of little quirky issues in there.

Then, lastly, a big thing in this Charter is the fact that it sets planning as the primary function of this government and says that it will be fully funded. That's a very unusual provision for any charter to include and a very big one for this government to think about and what it means for you

as you decide what you want to do about taking a position or whatever on this Charter. So unless there are questions, that's it, and I assume you have a copy of Mr. Cooper's explanatory statement about the Charter in front of you.

Jim Gardner: Thank you Ken, and I would imagine there would be some questions. Councilor Gronke.

Ed Gronke: Thank you Mr. Presiding Officer. I have two of Mr. Gervais, may the first one is for Mr. Gervais and our Counsel. If the Charter is adopted, does that mean that the salaries of the 13 present Councilors or elected Councilors would begin next year? I've been led to believe, or my interpretation was 1995. Is it actually, if it's adopted, would it be next year?

Ken Gervais: The Charter is effective January 1993. If its adopted, it says "salary per Councilor shall be..." It does not provide for a transition.

Ed Gronke: Do you agree with that interpretation?

Dan Cooper: Yes.

Ed Gronke: Second question, just a general question. Did you see anything in the Charter which you liked?

Ken Gervais: Yes. I liked it about the Charter is it does, it has the advantage over the existing law of, has a couple of advantages. The first that it brings in the constitutional amendment which allows this government and the voters of this region what is a matter of metropolitan concern. So that it takes from the legislature some of that ability, the legislature can preclude, and the state could preempt an area, but absent that, it does provide for the possibility that the voters in this government collectively can determine what is a matter of metropolitan concern. I think that is a broader grant of power in a general sense than what is in 268 which seems to cover everything, but which may not cover something which we'll discover in 10 or 15 years. The second thing I like about it is it provides for an amendment so that we can correct some of these problems that are in it if it were passed. The third thing I like about it is its done. I really like that aspect. And the last thing, I guess, which I would say I think is somewhat of an improvement over the current situation, is it does in spite of the \$12.5 million cap, it does allow for a little bit of flexibility in terms of solving some short-term financial problems for this agency if you can find a taxing source, if you can find something you can get away with. I didn't mean to be entirely negative about it. I'm very happy that it's finished.

Jim Gardner: Other questions? Councilor Buchanan.

Roger Buchanan: Yes, Ken, in listening to your discussion of costs I think you mentioned that you were not taking an accountant's perspective on this, that there could well be costs that you weren't aware of. I suspect that's true, what you are presenting to us today, I suspect that's true, can you give me an idea where you think these things might be hidden? I can see employee costs, for example, I can see space changes, I can see just movement of any organization is expensive and I'm trying to get a figure on, or a handle on a figure that somehow might...

Ken Gervais: Well, Councilor, I think the most frightening aspect from the financial point of view is the question of the planning must be fully funded. Right now we're spending between \$11 and \$12 million for various planning activities, most of that money comes from UMTA, ODOT, Tri-Met and so on, as you well know. If we should lose some of those sources and if the 1000 Friends of Oregon or the Homebuilders felt that we weren't maintaining a full effort and were to come back and take action to require this government to fully fund something, I mean I don't know what that means from a political point of view and a legal point of view. It sounds to me like when the federal law says the mail must go through and that means, apparently, that a mail truck has precedent over fire trucks and police cars and ambulances, I don't know what it means to tell a government you must fully fund some activity. I think that's a big unknown. I don't know that the Counsel could maybe say whether there had been tests of that kind of idea. I think that's a fairly frightening concept.

Roger Buchanan: Could I ask Councilor Cooper if he has some opinion on that.

Dan Cooper: I have less idea of what that means than Mr. Gervais does. In my view, it may simply be a political statement with no legal bearing besides just leaving it to the Council the judgment as to what full funding means. On the other hand, I recognize that that's possible that someone will argue that that's a different interpretation and you can find out later if you have someone saying that. Until then, I don't know.

Roger Buchanan: I think what I'm asking...

Dan Cooper: ...Need more lawyers.

Roger Buchanan: That's a given. My quick reading on it is full employment for the legal profession in the area. What I'm trying to get at here, is there a massive possibility of massive costs to this agency from this full funding of the planning operation thing. That's what I'm looking at. Are we looking at, you know, \$100 million? Are we looking at \$10 million? Are we looking at \$100,000? What are the liabilities we might be running into here?

Ken Gervais: As you know, there is a requirement for Future Vision, but there's no requirement that that be funded, but since that's part of

planning I suppose full funding from planning would mean you fund that. And our 2040 process is a process quite similar to what we understand they mean by future vision. That process will be somewhat later. Hopefully, 2040 will be near completion by the time they get going and maybe they can look at what 2040 is and just the citizen's commission looking at that would do it. If it goes beyond that and you're supposed to fund this, and we're going to start from scratch and do a better job than you did on 2040, then we could be talking about spending a lot of money. I can't guess how much money that would be.

Roger Buchanan: But it could be like millions in terms of basic costs, that sort of thing.

Ken Gervais: It certainly could. And much smaller jurisdictions than this have spent a lot more money than we're spending on this kind of planning.

Roger Buchanan: Okay. It's hard to pin down a figure, but it could be a lot of money is what we think. Thank you.

Jim Gardner: Councilor Devlin.

Richard Devlin: Thank you Mr. Chairman. Relative to the planning activities first, I think there's sentiment both on the Charter Committee and there's a sentiment on the part of the Council, particularly many members, that the agency should be devoting more to planning, but that aside, I don't think there was a full recognition on the part of some members of the Charter Committee of how expensive planning can be. In the last three years on the Greenspaces Program, by the time this fiscal year is complete, we will have spent probably \$1.5 million and about \$1 million of that will be actual planning expenditures. The \$.5 million will be on the ground type of improvement, but I mean that's just one relatively small area when you look at the overall picture, particularly when you look at the framework plan they're talking about putting in place. Some of those issues could have very significant costs. I'm not saying they wouldn't be warranted, but the costs could be significant. The Governmental Affairs Committee did have a briefing on the Charter and actually that briefing was a lot more, what should you say, there were a lot more knee jerk reactions during that Governmental Affairs Committee briefing. I think though when we finished all those reactions, there was some sentiment that what was really necessary relative to the Charter was for the Council and the Executive to take a very close look at the Charter. Weigh its positives, weigh its negatives, weigh whether or not it's to the advantage of the citizens of the region for it to be passed in its current form, whether it would be preferable for it to be defeated, what the options would be for the Council and the Executive should it be defeated, and really we need to look at this quite closely and get away from the knee jerk reactions that this is a bad idea or that's a bad idea and start to just weigh all the different factors in the Charter. In that light, I asked that a motion be prepared. The Governmental Affairs Committee did want this referred back

to the Governmental Affairs Committee so that a real analysis could be done by all staff, Executive and Council staff, of all of those ramifications so that when we come with a response, see if it's a response to, I don't know, I tend to have my doubts whether there will be a response to support. But, if it's a response simply to stay neutral, it might be very beneficial to identify those areas in which the Council and the Executive have concern. If it's a response to oppose, it's probably going to be very beneficial to state upfront what the areas of concerns are and also to state maybe some of the positives. The motion that I'd like to read into the record, and I will do it word for word just so there's no misunderstanding of it is, I move that further consideration of the proposed Metro Charter be referred to the Governmental Affairs Committee at its September 3, 1992 meeting, and that prior to that meeting, the staff prepare an analysis of the Charter including but not limited to, its fiscal impact on Metro and a comparison of its provision to the Council-adopted Charter principles set forth in previously adopted Resolution No. 92-1543A. The Governmental Affairs Committee should recommend a course of action for the Council at its earliest possible time.

Jim Gardner: Is there a second?

Roger Buchanan: Second, Mr. Chairman.

Jim Gardner: Okay. Further questions? Ms. Cusma.

Rena Cusma: I would like to, this is the first I've heard of the motion that is in front of you. And let me just say in relationship to that, it seems to me that if this Council is going to take any position on this issue, they really don't have the time to be referring it back to Committee at this point in time if they intend to have anything in the Voter's Pamphlet related to the Charter. The deadline for information to be able to get into the Voter's Pamphlet would be a week from today. I can tell that it's my intention to take a position in the Voter's Pamphlet. Now I'm not sure how that relates to the proposal Mr. Devlin has put on the table.

Jim Gardner: I have the same concern as you. I know the deadline is well before September 3, I didn't know the exact date. It seemed to me though that as a government, we would not be in any sense able to put an argument, a paid argument in opposition or support, but as individuals we certainly could, using of course, private funds. So I think that the question of what official position the Council takes doesn't really preclude placing arguments in either direction in the Voter's Pamphlet as individual citizens which is what we are and certainly what you are. For the Council as a whole to take a position without having a committee work on that and have the opportunity to look at the Charter in more detail, it seems to me to be a bit hasty and I really don't think it's going to interfere with more private political stands that we individually might take.

Rena Cusma: Mr. Presiding Officer, my primary interest here of course is to be sure that there's no misunderstanding about my position in the thing. I would not want to have this action take place and have any impression that somehow that's going to preclude anyone taking a position in the Voter's Pamphlet.

Jim Gardner: You want to share that with us now, your position?

George Van Bergen: Mr. Chair.

Jim Gardner: Yes, Councilor Van Bergen.

George Van Bergen: Well, that's the first I've heard of the motion also. And I'm in agreement with the Executive Officer that if anybody wants to go along, you certainly have the right and privilege and anything else that comes across in the deck. But I, endorsing this motion will put you on the track where this Council must make a recommendation for or against this thing. And I can't see it as coming up necessarily with (unclear) idea. I think there have been pretty good break downs on the matter by this gentlemen and I attended the meeting the other night too so that I could be informed on it and listened to Mr. Cooper. What else this committee could do baffles me. We're intelligent people in this area, we can read these things, we can understand them and I just don't want to see this Council driven into the position of taking a kind of a stand. We asked that this thing be done, it was done, let it fly on its own wings. Why should we muck around in it? Except as individuals, we can do that, but not as a group. I'll vote no on this motion.

Jim Gardner: Further discussion. Councilor Devlin.

Richard Devlin: I think that there are some issues that really haven't been discussed. I think a lot of times when we talked about the Charter, people have typically picked up their biggest bone of contention with something that's in the Charter. Whether it's reducing the number of Council seats from 13 to 7, whether it's putting a cap on revenue with the District can have in place in voter approval, whether it's a full-time auditor, but no one's really sat down and weighed the pluses and the minuses. Now, being a realist, there will be a lot of governments that may take a position on this particular Charter and most of those governments will do so by resolution and they'll do so after some degree of analysis. What impact that will have on the voters, from my perspective, is minimal. What impact it has really is more on the body here and just basically having done what we should be doing is looking at this Charter and to the extent that we can as a body saying what we really believe what the pluses and what the negatives are in the Charter. That may clearly end up being that we don't take a position on the vote itself.

Jim Gardner: Yes, Councilor Hansen.

Sandi Hansen: I would appreciate more information coming from the Governmental Affairs Committee because Councilor Devlin is right. We have good staff analysts who can take a look at those issues for us. I don't particularly need to make an endorsement one way or another for people who want to talk to me about the Charter, but I would like to be able to let people know some very factual information, and I think that's what the motion would allow us to do is present factual information.

Jim Gardner: Further discussion? We have a motion before us which Councilor Devlin read and I'm not going to try to test my memory, but the essence of it was that the matter of the proposed Metro Charter be referred to our Governmental Affairs Committee for them to request full explanation and any information that's being developed by our staff and by the Executive staff and then to return to the Council with a recommendation, either to endorse, either to oppose, or it could be a recommendation to do neither. Seeing no further discussion, those in favor of the motion, say aye. Opposed?

Councilors Buchanan, Devlin, Gronke, Hansen, McLain, Washington and Gardner voted aye. Councilors McFarland, Van Bergen and Wyers voted nay. Councilors Bauer and Collier were absent. The vote was 7-3 and the motion passed.

END OF TRANSCRIPT