

THE FUNCTIONS AND POWERS OF REGIONAL GOVERNMENT

Description and explanation of the functions and powers included in the initial charter outline submitted by the Metro Charter Committee for public comment and discussion.

**METRO CHARTER COMMITTEE
P.O. Box 9236
Portland, OR 97207
Hardy Myers, Chair**

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1. Background

Growth. Oregon is experiencing and will into the 21st century continue to experience a rapid rate of population growth. The population of the Portland metropolitan area (including Clark County, WA) alone is projected to explode by one-half million by the year 2010. The major challenge facing our region for the foreseeable future is to manage and control the enormous growth projected while:

- avoiding further congesting our streets and highways;
- protecting our water supply, important fisheries and wildlife resources and avoiding oversubscribing our waterways and water resources;
- preventing further deteriorating air quality
- protecting remaining open spaces;
- not perpetuating the sprawl of the urban and suburban areas at densities that cannot adequately or efficiently be serviced.

In short, our major challenge is to manage the growth we know is coming while preserving, restoring, and enhancing the natural, cultural, and historic treasures of Oregon, its liveability and its quality of life for our own sake and for future generations.

Oregon has long been a national leader in growth management. In 1973, with Senate Bill 100, we created the first state-wide land use planning system, administered by the Land Conservation and Development Commission. The system created by Senate Bill 100, which remains in effect with few modifications, contemplates a state-wide network of city and county "comprehensive" plans. Each local plan is required to conform to fourteen or more LCDC created policies known as the state-wide planning goals.

The Portland metropolitan area consists of 24 cities, three counties, and approximately 130 special districts. Notwithstanding this political fragmentation, the Portland metropolitan area must operate as a single integrated urban area for growth management purposes. For this reason, Senate Bill 100's reliance upon 27 independent units of local government to be the principal planning units does not result in regional planning which comprehensively addresses state-wide and regional needs and interests.

During the initial plan development stages of the state-wide planning process there were two regional governments operating in the Portland metropolitan area. From 1973 to 1979 the Columbia Region Association of Governments, or CRAG, was the regional government. In 1979, voters of the Portland metropolitan area abolished CRAG and created the first directly elected regional government in the United States, the Metropolitan Service District, or METRO. Both CRAG and METRO were charged by state law to "coordinate" local comprehensive plans within the metropolitan area. The major achievement of CRAG and METRO in this early period was the establishment of the nation's first regional urban growth boundary, a boundary line to separate those lands which are developable for urban purposes from those that are not. Lands within the boundary are called "urban", those without are called "rural". The urban growth boundary is a very significant contribution by regional government to local plan coordination.

While METRO has always had substantial federally-mandated transportation planning functions, until very recently, METRO has not exercised strong regional leadership in the comprehensive planning process. As a result of the lack of early, strong regional leadership and coordination, the state-wide planning process resulted not in "comprehensive" planning for the region

but instead what LCDC itself described as a "patchwork quilt" of 27 local plans. Instead of a plan to guide urban growth in the region, it produced 27 local plans which do much to promote and preserve local and neighborhood values and qualities but little to promote a rational, well-considered regional settlement pattern or strategy. This is not in criticism of local governments. No local government was or is equipped to plan for regional needs. Nor is it a criticism of METRO. At the time it created the region's - and the country's - first metropolitan-area urban growth boundary, there was tremendous special interest and political opposition to regional government, to the state-wide planning process, and to land use regulation. METRO did well to create the urban growth boundary and survive politically.

However, given the "bottom up" planning process Senate Bill 100 created and the lack of strong regional planning and coordination, important state-wide and regional needs were not and are not being met in regards to growth management in the Portland metropolitan area. Important local strides have been made. There are in effect 27 sets of local plans and implementing ordinances which do much to promote neighborhood and local values. The regional challenge, however, is to promote the kinds of settlement patterns that will be needed to accommodate substantial population growth without damaging, possibly irreparably, the natural, cultural, and historic qualities that make Oregon so uniquely liveable and enable Oregonians to enjoy a fine quality of life.

Against this backdrop, it is clear that the principal governmental function not now being performed and most in need of performance is regional growth management.

The following sections describe the powers and functions the Committee's initial charter outline proposes to delegate to regional government. While that delegation includes broad power to establish and enforce regional plans and policies, it is essential that local jurisdictions continue to exercise sufficient planning power and responsibilities for delivery of municipal services to ensure that neighborhood, community and local identity and interests are preserved. Thus, while the powers proposed for regional government are great, they are limited to matters best addressed at the regional level and that in many cases are impossible to carry out at the local level. And, importantly, regional government's powers are limited to those enumerated in the charter or subsequently added through processes to be set forth in the charter involving the citizens of the region and local governments as active participants. The specifics of those processes have not yet been defined by the Committee. All planning powers and functions not expressly delegated to regional government are expressly reserved to local governments.

In granting regional government strong but limited powers the Committee wishes to ensure that regional government performs those functions it performs best, leaving local governments free to perform those functions they perform best. A principal goal of the Committee is to establish a process that is neither "bottom up", like the current process, nor "top down", but instead one in which local and regional governments can and will, cooperatively as partners, contribute to the process what each is best suited to do. By specifically delineating the regional role, and leaving all else to local government, the Committee hopes to reduce the insecurities, hostilities, turf battles and rivalries that have too frequently characterized the local-regional relationship.

In the legislation creating METRO and in subsequent amendments, METRO was given far more power to plan and deliver services than it has exercised. METRO has expressed a determination not to take over service delivery at the local level, but the mere existence of unexercised statutory authority hangs like a sword of Damocles over each city, county and special district in the region. By limiting regional government to powers it is in fact expected to exercise, and allowing addition of others through processes specified in the charter, the Committee hopes to eliminate forever this important source of local government uncertainty and insecurity.

Fostering a positive and cooperative relationship between regional and local governments is

made even more important by the fact that most initial or future regional functions under the charter will involve local aspects addressed by local government.

Another principal goal of the Committee is to establish a process that produces and implements a sound vision for the future of the region - one that will ensure that over the long term - as growth and population pressures exert themselves upon the region - Oregon's quality of life is preserved and enhanced. One eloquent and recurrent theme in public testimony before the Committee was that Oregon's land use process has become a terribly complex regulatory process with no overriding vision, no clearly understood purpose. As a result, decisions are susceptible to manipulation by those who understand the system, whether they be aggressive neighborhood groups or developers, rather than being guided by public interest and a long term vision.

In sum, the Committee seeks through the charter to assure regional planning processes that will identify, preserve and enhance for present and future generations of the qualities and values that form life in the Portland metropolitan region. To do so, the Committee hopes to enable local and regional governments to perform the functions required of each; eliminate turf battles and foster intergovernmental cooperation; elevate existing planning processes from regulatory quagmires to systems with mission and purpose; and compel government, in cooperation with the best of the private and academic sectors, to establish and implement a future vision for our region.

2. Overview: The Planning Functions of Regional Government

The planning functions of regional government as set forth in the initial charter outline involve three basic activities: (a) providing for the preparation, by a highly respected, broad based citizen commission, of a Future Vision for the region, which is then to be adopted by the regional governing body; (b) using the Future Vision as a guide, preparing and adopting a Regional Framework Plan; (c) coordinating the amendment of local city and county plans as necessary to assure their consistency with the Regional Framework Plan. The result of the process will be a regional plan that is a combination of 28 plans (the Regional Framework Plan and 27 local plans) which, collectively, will satisfy all applicable state-wide planning goals and requirements and provide a coordinated, interrelated set of policies, plans and programs for management of the growth of the region.

It is important to emphasize that delegation to regional government of a planning function does not imply delegation of power to implement or carry out the plan produced. When, for example, regional government is delegated power to plan for highways, it is not also delegated authority to build highways. Delegation of the power to plan does not include or imply the power to implement, to carry out, or to deliver services.

Regional government's most important function is to act as the region's central nervous system, establishing and transmitting to local governments important state-wide and regional impulses that are best originated at the regional level. The system contemplated by the Committee is not intended to materially change the respective responsibilities of regional government and local governments. Rather it is intended to clarify the roles of each so that each may function cooperatively with the other in a regional-local partnership that is strong and free of the turf battles, rivalries, and insecurities that have historically marred the regional-local relationship.

3. The Future Vision Concept

The starting point for the regional planning process will be the Future Vision. The Future Vision is a view of how the region should look and function over the next 50 to 100 years to preserve, restore and maintain its livability and quality of life. The Committee has defined the Future Vision as:

~~"A conceptual statement that establishes a population level and settlement pattern that the region and adjacent areas can accommodate within the carrying capacity of the land, water and air resources, and that achieves a desired quality of life."~~

Unlike existing land use goals, plans, ordinances and regulations, the Future Vision is a pure planning tool with no regulatory purpose or effect. It is a long-term, visionary statement intended not to regulate, but to serve as a guiding foundation for the regional and local planning and growth management regulations which will follow. It is to furnish a long range vision and purpose that is lacking in today's regional and local plans and processes.

The committee has identified the matters the Future Vision is intended to address as: the use, restoration and preservation of regional land and natural resources for the benefit of present and future generations; how and where to accommodate the population growth for the region while sustaining and maintaining its livability and quality of life; means of developing new communities and additions to the existing urban area in well planned ways; economic growth and educational opportunity; appropriate regional and local government structures and financing to provide the necessary public services in an efficient, effective and accountable manner.

The Future Vision is to be developed by an unpaid citizen commission containing the finest representatives of the public, private and academic sectors. The process for selection of commission members is to be established by the regional governing body. Because the Future Vision is to be a long-range planning tool, it will look beyond the existing urban area and beyond existing regional government boundaries. Therefore, the Future Vision commission should include members who reside outside existing regional boundaries. To foster independent operation, the commission will have its own staff funded by the regional governing body. The commission is to be appointed within 90 days of the installation of the new regional governing body. The commission's work must be completed and adopted, with or without amendment, by the regional governing body within 24 months of appointment of the commission. The commission will terminate when its work is acted on by the regional governing body.

The Future Vision will be reviewed, updated and amended at such times as the regional governing body determines appropriate, but no less frequently than once every ten years. This periodic review will be conducted by a commission appointed by the same process and following the same procedures as the original Future Vision commission.

The Future Vision is not to become another regulatory layer in the land use process. It will have no regulatory function or purpose, and will not to be reviewable by LUBA or judicially. It will not be subject to review or acknowledgment by LCDC. As is described in the following section, its only official function is to serve as a guide for the Regional Framework Plan.

4. The Coordinated, Interrelated Bundle of Regional and Local Plans

a. The Bundling Concept. Regional planning and growth management responsibilities will be given direction by the Future Vision and will be carried out by a regional plan. The regional plan is a bundle of regionally and locally adopted plans and implementing ordinances. The bundle collectively will provide a unified set of policies, plans and procedures for management of regional growth. The components of the bundle are (1) a Regional Framework Plan adopted by the regional governing body with the active participation of citizens and local governments within the region and (2) the local plans adopted by the cities and counties within the region and approved by the regional governing body for consistency with the Regional Framework Plan.

b. The Regional Framework Plan. The charter will assign the regional governing body responsibility to plan and provide for the regional aspects of growth management. This will be done by the preparation and adoption of a Regional Framework Plan. The Regional Framework Plan is to be guided by the Future Vision. However, given its non-regulatory nature, the Future Vision is to serve as a guide only. While the regional governing body must describe the relationship of the Regional Framework Plan to the Future Vision, the Regional Framework Plan is not subject to judicial, LUBA, or LCDC review for conformity with the Future vision. The Regional Framework Plan must be consistent with the state-wide planning goals.

The regional Framework Plan planning functions may be carried out by means of one or more of the following methods: regional goals and objectives; functional plans; benchmarks for performance; or other mechanisms determined appropriate by the regional government.

The plan adopted by the regional governing body is called a "Framework" because it establishes a structure and order into which the local plans will be fit. The planning functions and activities to be included in the Regional Framework Plan are limited to those specified in the charter. The charter will contain a process requiring citizen and local government participation for adding planning functions having metropolitan concern to the initial list so that the charter remains capable of adjusting to changing times and circumstances.

Any planning function or activity not initially granted to regional government in the charter or subsequently assigned to regional government through procedures set forth in the charter will be reserved to local government.

The charter will assign the following planning functions to regional government:

- (1) Regional transportation and mass transit systems;
- (2) Management and amendment of the urban growth boundary;
- (3) Designation of urban reserves, that is, areas to be set aside for future inclusion within the urban growth boundary. The charter will also assign responsibility to the regional government for the following functions and activities with respect to urban reserves: control of boundaries; control of land uses within the boundaries including land divisions and well and septic tank or other subsurface sewage disposal systems; procedures for determining which local governments will assume jurisdiction of territory within urban reserves;
- (4) All federal and state mandated planning functions, which include, for example, Section 208 planning and planning for treatment and disposal of sanitary sewage.

In addition, the charter will assign to regional government the responsibility for planning within the following subject areas for those elements having metropolitan concern:

- (1) Water sources and storage facilities;
- (2) Housing densities within the region;
- (3) Greenspaces;
- (4) Planning and provisions for the siting of significant, high density, mixed use urban development;
- (5) Planning and provisions for the siting of commercial/industrial development;
- (6) Solid waste disposal, reuse, and recycling;
- (7) Regional exposition, recreation, cultural and convention facilities;
- (8) Regional disasters;
- (9) Energy.

For purposes of the foregoing list of nine subject areas, an aspect of a planning function or activity will be determined to be of metropolitan concern if: (a) a land use decision or action of one

~~jurisdiction will substantially interfere with another jurisdiction's local plan; or (b) a land use decision or action of a jurisdiction will substantially interfere with a provision of the Regional Framework Plan.~~

The charter will include a procedure by which planning responsibility for subject areas having metropolitan concern and not specified in the charter may be incorporated into the Regional Framework Plan subsequent to Plan adoption. The committee has not yet developed the procedure.

All planning responsibilities not delegated to regional government are reserved to local city and county plans. Delegation to regional government of a planning function does not imply any implementing, operational, or service delivery authority with respect to that function. The charter will expressly prohibit regional government from exercising any operational or service delivery functions not expressly delegated by the charter or subsequently determined to be of metropolitan concern and granted to regional government by vote of the people of the region.

The Regional Framework Plan is to be adopted within 36 months after installation of the new regional governing body. The regional governing body is to adopt the plan only after affording citizens and local governments an active and meaningful role in its process. The Committee has not achieved consensus as to the nature of the local government role in the process of developing the Regional Framework Plan. The Regional Framework Plan shall be subject to review for compliance with state-wide planning goals on a schedule established by LCDC. The Regional Framework Plan shall be subject to review and revision on whatever schedule the regional governing body determines appropriate.

c. City and County (Local) Plans. All planning powers, functions, and responsibilities not expressly granted to regional government in the charter or subsequently added through procedures to be specified in the charter remain the responsibility of local governments. The adopted plans of cities and counties will remain in place.

Those local plans must be consistent with the Regional Framework Plan. However, they need not be brought into consistency until they would become subject to periodic review by LCDC. In the meantime, in the event of conflict between a local plan provision and a Regional Framework Plan provision, the Framework Plan provision would control. Local plans will be subject to review and amendment on whatever schedule and in accordance with whatever procedures the local plan provides. Any amendments to local plans must, of course, be consistent with the Regional Framework Plan and with the State-wide planning goals.

d. LCDC Acknowledgment of Regional and Local Plans. LCDC acknowledgment is an order of LCDC confirming that a land use plan or ordinance complies with applicable state-wide planning goals. Both the Regional Framework Plan and the local city and county plans must comply with the state-wide planning goals. At this time, LCDC has acknowledged all local plans in the region.

The Committee has not reached consensus as to the procedures to be followed for LCDC acknowledgment of the Regional Framework Plan and of local plans. Three alternatives are described in the Committee's outline for public comment and discussion: (1) the Regional Framework Plan and amendments to each local plan are individually reviewed by LCDC for compliance with applicable state-wide goals; (2) the regional governing body reviews amendments to local plans for compliance (at the same time that it reviews local plans for consistency with the Regional Framework Plan); (3) the regional governing body reviews local plans only for consistency with the Regional Framework Plan; local plans are incorporated with the Framework Plan in the regional plan; and LCDC reviews the regional plan for compliance with all applicable state-wide goals. Variations of those alternatives have also been proposed.

The LCDC acknowledgment process can be and often is expensive, complicated and time consuming. Several members of the Committee prefer the third alternative above, that is, the regional plan be subject to the LCDC acknowledgment process but local plans not be individually acknowledged. The rationale for this approach is (1) inasmuch as regional government must satisfy itself that local plans comply with state-wide planning goals as a part of its review of those plans for consistency with the Regional Framework Plan, it eliminates 27 unnecessary, duplicative steps in the already cumbersome acknowledgment process; (2) since the Regional Framework Plan will contain the vast majority of issues of state-wide interest and significance, the state's interest in state-wide goal compliance is adequately addressed by acknowledgment of the regional plan which includes the Regional Framework Plan - the cost of LCDC individual acknowledgement review of 27 or more local plans does not justify any benefit; (3) because of its proximity and knowledge of regional and local issues, and its role as regional coordinator of local plans, regional government is far better equipped than LCDC to understand, relate to and address issues arising out of local plans.

Other Committee members believe LCDC should acknowledge all plans, regional and local. A suggestion has been made that if LCDC is to retain acknowledgment authority, then a report of the regional government to LCDC with respect to each local plan could be substituted for the acknowledgment report that otherwise would be prepared by LCDC staff (that is, the Department of Land Conservation and Development). In this way, that costly and time consuming staff report could be eliminated.

Whatever alternative, or variation is adopted, the process will assure that the bundle, the regional plan that includes the Regional Framework Plan and each of the local city and county plans, will comply with all applicable state-wide planning goals.

e. Model Standards and Procedures for Local Land Use Decision Making. Given the almost complete diversity in land use terminologies, standards and procedures from one local government to another within the region, the charter will require regional government to develop a model zoning and development code containing recommended terminologies, standards and procedures for local governments. Some reasonable degree of regional uniformity in these matters would enable citizens, public officials, and the real estate community to move from one city or county to another without having to learn an entirely new set of terms, standards and procedures.

5. Other Powers and Functions

Numerous and sometimes confusingly interrelated statutory provisions bestow broad powers and potential powers on the present METRO government. The Committee's charter outline confers only those specific powers for which there is a demonstrated need at the regional level. All other powers, including many in the present statutes, are denied to the regional government unless subsequently approved by a vote of the people. In addition, certain powers and functions are specifically reserved to local governments.

The functions and powers, other than the planning and growth management functions, that are described in the outline adopted by the Committee, are for the most part self-explanatory and are not further described in this document. As has been explained above, the presence of a regional government obligation to plan for a particular matter does not bestow the authority to perform any service or function in relation to that matter.

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