

**SUMMARY AND OUTLINE DESCRIPTION
OF PROPOSED CHARTER CONTENT
ON REGIONAL GOVERNMENT POWERS AND FUNCTIONS**

and

REGIONAL GOVERNANCE COMMITTEE COMMENTARY

January 16, 1992

METRO CHARTER COMMITTEE

SUMMARY AND OUTLINE DESCRIPTION
OF PROPOSED CHARTER CONTENT
ON REGIONAL GOVERNMENT POWERS AND FUNCTIONS...

FOR PUBLIC DISCUSSION AND RESPONSE

REGIONAL GOVERNANCE COMMITTEE

COMMENTS ON
METRO CHARTER COMMITTEE'S
SUMMARY AND OUTLINE DESCRIPTION
OF PROPOSED CHARTER CONTENT
ON REGIONAL GOVERNMENT POWERS AND FUNCTIONS

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The summary and outline that follow are the result of initial work by the Metro Charter Committee on the content of a proposed charter for regional government in the Portland metropolitan area. Except where noted, the provisions have the initial support of at least a majority of the Committee. They represent a first effort to distill a desirable framework of regional government from the multitude of ideas and philosophies presented to the Committee.

The Committee solicits written comments on these provisions to assist it in the next phase of deliberation which is to refine the content and develop specific charter language. Persons choosing to comment should be aware that these provisions are open to change as a result of comment and have not been finally adopted.

This document provides a commentary from the Regional Governance Committee on the Metro Charter Committee's work to date. The regularly numbered pages (1,2,3, etc.) on the left-hand side of all facing pages represent the verbatim work of the Charter Committee. The pages numbered 1A, 2A, 3A, etc. on the right-hand side of all facing pages represent the RGC's commentary on the Charter Committee's work.

The RGC believes that the Charter should focus on a governance structure and decision-making process for the regional government. The Charter should not include detailed lists of activities which the regional government must always perform and may not ever perform. A proper governance structure will provide the necessary partnership between regional and local governments and appropriate checks and balances to ensure that the regional government meets the needs of the citizens. RGC's recommendations for implementing these principles of governance are included in separate documents - an outline for a Charter and an accompanying narrative.

The RGC commentary is not a comprehensive presentation of RGC's positions on matters related to the development of a Charter for the regional government. That can be found in the body of work which RGC has developed and presented to the Charter Committee to date. This document is intended to relate that other work of RGC directly to the work of the Charter Committee and at a level of detail that hopefully will be useful to the Charter Committee's deliberations. As with the Charter Committee's work to date this commentary reflects the current opinions of RGC. It is subject to change upon receipt of further input and a better understanding of the Charter Committee's document.

OUTLINE OF PROPOSED CHARTER PROVISIONS

POWERS AND FUNCTIONS

I. Planning Powers and Responsibilities.

The regional government's planning and growth management responsibilities shall include the establishment of a Future Vision conceptual statement and the creation of a Regional Plan consisting of a Framework Plan addressing certain specified matters of metropolitan concern, together with the coordinated local plans of the cities and counties.

A. Future Vision.

1. Definition of the Future Vision.

- a. The Future Vision is a conceptual statement that indicates ~~preferred~~ population levels and settlement patterns 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.
- b. The Future Vision is a long-term, at least 50- year, visionary outlook.

2. Matters addressed by the Future Vision will include, but are not limited to:

- a. The use, restoration and preservation of regional land and natural resources for the benefit of present and future generations.
- b. How and where to accommodate the population growth

I. Planning Powers and Responsibilities

RGC supports assigning clear regional growth management planning responsibilities to the regional government. However, the cause of effective growth management will be best served if this section on Powers and Responsibilities is general and brief. The decision-making process established by the Charter should be the primary vehicle for allocating functions of the regional government, not the Charter itself. This draft is far too detailed.

I. A. Future Vision

← RGC supports the creation of a vision by the regional government. However, this level of detail about development of the vision is not appropriate in a Charter. Major portions of this section should be deleted and replaced with language which enables the regional government to produce a long-range outlook for the region as it deems appropriate.

← If this section is included in the Charter the following changes should be made:

- Require the revised RPAC (as per RGC recommendation) to advise the METRO Council on the vision prior to acting on it. This would not preclude the Council from appointing the type of advisory commission called for in the draft.

for the region while sustaining and maintaining its livability and quality of life.

- c. Means of developing new communities and additions to the existing urban area in well planned ways.
- d. Economic growth and educational opportunity.
- e. ~~Appropriate regional and local government structure-
and financing to provide the necessary public serv-
ices in an efficient, effective and accountable man-
ner.~~

3. Development, adoption and review of the Future Vision.

- a. The Future Vision will be developed by a broad-gauged commission appointed within 90 days after installation of the governing body of the regional government.
- b. The commission members will be selected by procedures to be established by the regional governing body.
- c. The commission members shall represent private, public and academic sectors.
- d. One or more commission members must reside outside the boundaries of the regional government.
- e. The Future Vision shall be adopted by the regional governing body within 24 months of appointment of the commission.

← Delete section I.A.2.e. Requiring one level of government to pass judgment on the efficiency of service delivery functions performed by other levels of government as part of a long-range planning document is inappropriate.

- f. The commission shall be served by independent staff.
- 4. The Future Vision shall be reviewed and amended in the manner of original adoption and at such times as the regional governing body shall determine, but not less frequently than once every 10 years.
- 5. Legal effect; reviewability.
 - a. The Future Vision is not a regulatory document.
 - b. The Future Vision is not reviewable by LUBA or judicially, and is not subject to LCDC acknowledgement or review.
 - c. The Future Vision affects the Regional Framework Plan in the manner described below.

B. Regional Plan.

There shall be a Regional Plan consisting of a Regional Framework Plan adopted by the regional governing body and the existing local plans of the cities and counties within the region as modified over time by those cities and counties to be consistent with the Regional Framework Plan.

- 1. Definition of Regional Framework Plan.
 - a. The Regional Framework Plan establishes and is limited to plans and policies for the matters addressed in 2 and 3 below, and provides the basis for coordination of local city and county plans.

I.B. Regional Plan

← Agree that the Regional Framework Plan should consist of goals and objectives, benchmarks for performance and functional plans. It should not be a regional comprehensive plan.

← The long lists of topic areas to be addressed by the Regional Framework Plan should be deleted. The general purpose of the Framework Plan (i.e. growth management) should be described. Specific topic areas to be addressed through regional planning should be left to a decision-making process identified in the Charter to determine.

← This section should be edited to delete planning phrases, programs and agencies which may cease to exist or be used during the life of the charter. Even such common phrases as “urban growth boundary” probably should not be in the charter, but rather the function it serves. Twenty years from now the region may have a much superior tool to an urban growth boundary

- b. The Regional Framework Plan must be consistent with State-wide Planning Goals and describe its relationship to the Future Vision.
 - c. The Regional Framework Plan will include regional goals and objectives, functional plans and benchmarks for performance as implementation tools.
2. Matters addressed in the Regional Framework Plan.
- a. Regional transportation and mass transit systems.
 - b. Urban growth boundary.
 - i. Management.
 - ii. Amendment.
 - c. Urban reserves.
 - i. Designation.
 - ii. Control of boundaries.
 - iii. Control of land use activities in area, including land division, wells and septic tank placement.
 - iv. Procedure for determining which local government(s) will assume jurisdiction of territory within urban reserves.
 - d. Federal and state mandated planning functions.
 - e. Matters of metropolitan concern within certain designated subject areas.
 - i. Planning within the following subject areas for those aspects having metropolitan concern.

for managing growth. This draft would require the regional government to use an urban growth boundary, urban reserves, etc. even if better tools became available. Phrases such as LCDC and LUBA should also be deleted in case these entities cease to exist.

← Sections I.B.2c.iii. and iv. should be changed. As currently drafted these sections would give the regional government the power to issue land use permits. This is an area traditionally reserved for local governments. The same purpose for controlling development in urban reserve areas can be accomplished by having the regional government establish performance standards which local plans must implement. This approach protects the regional interests while protecting local flexibility.

- a. Water sources and storage.
- b. Housing densities.
- c. Greenspaces.
- d. Planning and provisions for siting of significant, high density, mixed use urban development.
- e. Planning and provisions for siting of commercial/industrial development.
- f. Solid waste disposal, reuse and recycling.
- g. Regional exposition, recreation, cultural and convention facilities.
- h. Regional disasters.
- i. Energy.

ii. Definition of "metropolitan concern".

- a. A land use decision or action of one jurisdiction that will substantially interfere with another jurisdiction's local plan; or
- b. A land use decision or action of a jurisdiction that will substantially interfere with a provision of the Regional Framework Plan.

The above provisions reflect only the Committee's initial consideration of this definition. The Committee recognizes the

- ← In order to help ensure that the current greenspaces planning effort continues, RGC would support some reference to greenspaces planning in the Charter. However, if this reference is listed, language elsewhere in the Charter should guarantee that the existing document describing this program, including roles and responsibilities of regional and local governments, is carried forward.

- ← I.B.2.e. i. D and E should be deleted. If not, they should be changed. As currently drafted these sections would give the regional government the power to issue land use permits for major developments. This is an area traditionally reserved for local governments. The same purpose for controlling the siting of major developments can be accomplished by having the regional government establish performance standards which local plans must implement. This approach protects the regional interests while protecting local flexibility.

- ← Sections I.B. 2.e. a through i give the regional government vast powers to plan for subject areas, most of which they have had no involvement with in the past. The only specified role for local governments is in helping select additional subject areas to plan. No role for local governments is specified for developing the plans for subject areas listed in the Charter. This is inappropriate. The Charter should not seek to do the planning for the region, but establish the process for planning. None of the specific subject areas beyond plans already in effect (e.g. solid waste) or underway (e.g. greenspaces) should be listed in the Charter.

- ← Section I.B.2.e.ii. is an inadequate definition of “matters of metropolitan concern”. This definition is the heart of what the Charter should be addressing. The Charter should include general criteria (see RGC recommended language) for identifying matters of metropolitan concern and a very specific process for making this determination.

definition is incomplete and welcomes public comment on appropriate elements of the definition.

3. Procedure for addressing additional matters in this 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 procedure has not yet been established.

4. Matters excluded from the Regional Framework Plan.

All planning responsibilities not authorized under 2 or 3 above are reserved to city and county plans.

5. Procedures for development, adoption and review of the Regional Framework Plan.

- a. The Regional Framework Plan will be adopted, within 36 months after installation of the governing body of the regional government.

- b. Adoption alternatives for discussion and input:

- i. Alternative 1: Regional government adoption of the Regional Framework Plan.

← Section I.B.3. Unless the long list of planning responsibilities included in earlier sections is deleted or substantially shortened this section will be largely irrelevant because the Charter will empower the regional government to do most everything of consequence in the planning field from the outset. If that list is deleted or shortened then this section becomes possibly the most important section of the Charter. See RGC's recommended decision-making process. It should be inserted here for making decisions about future planning areas, as well as for executing the planning for any areas assigned outright in the Charter.

← Section I.B. 5. So long as there are statewide planning goals which local plans must conform to, the Charter should require that the Regional Framework Plan be acknowledged by LCDC.

with a charter mandate for local government involvement short of requiring local government approval.

ii. Alternative 2: Regional government adoption of the Regional Framework Plan with local government having some numerical authority in the voting.

c. Periodic LCDC review of the Regional Framework Plan for State-wide Goal compliance will occur on a schedule established by LCDC.

d. The Regional Framework Plan may be amended on a schedule to be determined by the regional governing body.

C. City and County (Local) Plans.

1. Definition of local plans.

Existing city and county plans, amended by the cities and counties as necessary to become consistent with the Regional Framework Plan.

2. Matters addressed in local plans.

All matters within the authority of local governments pursuant to state statute and local charters to the extent not dealt with by the Regional Framework Plan.

3. Adoption and review of local plans.

a. Local plans will continue to be adopted and

← Section I.C. RGC supports the concept that local plans should interrelate in a coordinated fashion to ensure that regional needs are met. However, the only reference to local plans in the Charter should be a description of the interrelationship between the Regional Framework Plan and local plans. It is inappropriate for a charter for a regional government to be defining local plans, describing what they can and can not address, and including them as part of a Regional Plan. The objective of ensuring that local plans accomplish regional objectives and performance standards can be accomplished simply by stating that local plans must be in compliance with the regional needs and describing a process for ensuring that this occurs.

amended based on local plan procedures, except that local plans must be made consistent with the Regional Framework Plan at the next local plan periodic review following adoption of the Regional Framework Plan.

b The issue of consistency with the Regional Framework plan is appealable as provided by law.

c State-wide Goal compliance review alternatives for discussion and input:

i. Alternative 1: By LCDC.

ii. Alternative 2: By regional governing body.

iii. Alternative 3: Regional governing body reviews for compliance with Regional Framework Plan and incorporates the local plans as a part of the regional plan. Only the regional plan is reviewed for compliance with State-wide Goals.

d Require that discretionary city and county land use decisions governing the approval and denial of land uses be based on standards and criteria which are included in the local development ordinances and are

← Section I.C.3.c. Local plans should continue to be reviewed by LCDC. It is appropriate for the regional government to review local plans for consistency with the regional plan. LCDC should have the benefit of the regional government's review prior to acting on the local plans. However, it is not appropriate to give the regional government the authority to approve local plans for consistency with statewide planning goals (to the exclusion of LCDC from this process). At some point in time it may be appropriate for LCDC and the regional government to sign an intergovernmental agreement to transfer some of the staff review function for state goals to the regional government, while retaining final decision-making authority at the state level. The Charter, however, does not need to address this eventuality, except to empower the regional government to enter into intergovernmental agreements if necessary to address a matter of metropolitan concern.

← Section 1.C.3.d. Should be deleted. It is inappropriate for a Charter for a regional government to dictate the form of local government development codes. The enforcement language included in this section could be a threat to the region's quality of life by obligating a local government without completely objective decision criteria to approve every development application or face legal challenge.

so clear and objective that they lead to reasonable and predictable decisions. Any standards and criteria for such decisions which do not meet this requirement shall be void and unenforceable.

D. The Regional Plan (which is a combination of the Regional Framework Plan and the local plans of cities and counties when made consistent with the Regional Framework Plan) must satisfy all State-wide Goals applicable to the region.

E. Development by regional government of recommended model standards and procedures for local land use decision making that may be adopted by local governments.

II. Operational and service delivery powers and responsibilities

A. Solid and liquid waste.

1. The regional governing body may:

a. Build, construct, acquire, lease, improve, operate and maintain landfills, transfer facilities, resource recovery facilities and other improvements, facilities

or equipment necessary or desirable for the solid and liquid waste disposal system of the region.

b. Sell or dispose of the products or by-products of the regional government's facilities.

← Section 1.C.3.E. is inappropriate for a Charter.

The service delivery section of the Charter should be similar to the planning powers and responsibilities, short on specific responsibilities and long on the process to be used over time to make these decisions.

← Section II.A. should be shortened substantially to generally describe solid waste powers. This language includes references to outdated issues (e.g. siting of solid waste landfills other than those approved by the EQC) and issues which are far too specific (e.g. pilot projects for recycle containers). This entire section is an excellent example of how quickly a charter which relies on specific detailed grants of authority can become dated. METRO should have the existing general authority to provide for and regulate the disposal of solid waste and promote waste reduction, recycling and reuse through programs, incentives and education.

- c. Require any person or class of persons who generate solid or liquid wastes to use the disposal, transfer or resource recovery sites or facilities of or designated by the regional government.
- d. Require any person or class of persons who pick up, collect, or transport solid or liquid wastes to use the disposal, transfer or resource recovery sites or facilities of or designated by the regional government.
- e. Regulate, license, franchise and certify disposal, transfer and resource recovery sites or facilities; establish, maintain, and amend rates charged by disposal, transfer and resource recovery sites or facilities; and otherwise control and regulate the establishment and operation of all public or private disposal, transfer and resource recovery sites or facilities located within the boundaries of the regional government. Licenses or franchises granted by the regional government may be exclusive.
- f. Prescribe a procedure for issuance, administration, renewal or denial of contracts, licenses or franchises granted under Subsection e.

- g. Regulate the service or services provided by contract, license or franchise and order modification, additions or extensions to the equipment, facilities, plan or services deemed to be in the public interest.
 - h. Receive, accept, process, recycle, reuse and transport solid and liquid waste.
 - i. Provide for the disposal of solid waste from Clackamas, Multnomah or Washington County at a disposal site or sites other than the site selected by the Environmental Quality Commission.
2. Establishment, modification or extension of any public or private disposal, transfer or resource recovery site or facility will be prohibited within the boundaries of the regional government without the prior approval of the governing body of the regional government.
3. If the regional governing body sends solid waste generated within its boundaries to a regional disposal site, the regional governing body shall:
- a. At least semiannually operate or cause to be operated a collection system or site for receiving household hazardous waste.
 - b. Provide residential recycling containers as a pilot project.

c. Provide an education program to increase participation in recycling and household hazardous materials collection programs.

B. Zoo and other regional public facilities.

The regional government may acquire, construct, alter, maintain, administer and operate metropolitan zoo facilities and other regional cultural, convention, exhibition, sports and entertainment facilities.

C. Sources and storage of water.

1. The regional government may acquire or develop sources of water for domestic, industrial, agricultural or recreational use.
2. The regional government may acquire, develop, construct, alter, maintain and operate reservoirs or other water collection and storage facilities for domestic, industrial, agricultural or recreation use.

D. Sewerage.

The Committee has not preliminarily determined what provisions, if any, the Charter should contain relating to sewerage.

E. Transportation.

The regional government may order transfer of the transit system of Tri-Met to the regional government, but any transfer must include

- ← Section II C. is a major expansion of current METRO powers. It would allow the METRO Council by a simple majority, using no decision criteria, to get in the water supply business. The current statute requires a vote of the people for this to occur. This section, along with several others in this portion of the draft, should be deleted. In its place should be a decision-making process which would require consultation with local governments and provide the mechanism as the need arises for the regional government to address water or any other issues which are determined using decision criteria and a collaborative process to be “matters of metropolitan concern”.

- ← Section II.D. should not be listed separately in Charter. The decision-making process can determine if and when regional involvement in sewerage issues is warranted.

- ← Section II E. should be amended to leave Tri-Met as it is, to be changed only after going through a decision making process.

continuation of a transit board of directors.

F. Parks and open spaces.

The regional government may acquire, develop and operate regional parks, open space and recreational facilities.

G. Boundary commissions.

The exercise of any boundary review functions presently performed by the local government boundary commission is a matter of metropolitan concern.

The Committee has yet to determine if the functions of the local boundary commission should continue under the charter.

H. Marketing of geographic data.

The regional government may impose and collect reasonable fees, based on market prices or competitive bids, for geographic data that are developed with a significant expenditure of public funds and that are an entire formula, device, technique, process, data base or system.

I. Miscellaneous.

1. The regional government may contract with any public entity or any private entity or individual to operate all or part of any facility the regional government is authorized to operate; or to perform all or part of any other function the

← Section II F. probably should not be listed separately in the Charter. As currently drafted this section is a major expansion of the authority of the regional government. It would allow the METRO Council by a simple majority, using no decision criteria, to get in the parks business. The current statute requires a vote of the people for this to occur. However, RGC in no way wants the Charter to impede progress on the current plan to submit an open space bond levy to the voters in the near future. Language should be added elsewhere in the Charter which guarantees that existing programs, agreements, plans, ordinances, etc., are carried forward to the new regional government. If it later is determined that such language will not sufficiently protect the ability of the regional government to sell the open space bonds, then RGC would be willing to reconsider its position on whether open spaces should be listed as a specified service delivery responsibility.

← Section II H probably is too detailed for treatment in a Charter. However, if it is included it should not directly or indirectly limit local governments' ability to receive fees for data they develop, or provide to the regional government.

regional government is authorized to perform.

2. The regional government may exercise police power for the purposes of the authorized functions of the regional government and, in so doing, may adopt ordinances for the proper functioning of the regional government.
3. To the extent necessary to carry out any function the regional government is authorized to perform, the regional government may acquire real or personal property within or outside the area of the regional government, including property of other public corporations, by purchase, condemnation, gift or grant.

J. Additional functions.

1. Unless the function is reserved by the charter to local government, the regional government may assume any other function of metropolitan concern by vote of the electors of the regional government.
2. The regional government may assume the local aspects of authorized functions of metropolitan concern only on the basis of agreements between the regional government and other public corporations, cities, or counties.

K. Additional matters.

The Committee agreed to send forward for comment

← Section II.J.2. should be deleted. It is inappropriate for a government which the constitution only authorizes to be involved in “matters of metropolitan concern” to assume local concerns, even with the consent of an individual local government.

the following proposals for additional regional government authority in regard to solid and liquid waste disposal. They are not included in this outline's initial discussion of solid and liquid waste because committee members lacked sufficient time to consider them.

1. Reduction of solid waste stream.

The regional government should have authority to impose source reduction measures.

2. Additional flow control authority.

The regional government's flow control authority should be extended to include the flow of recyclable materials collected at curbside, and other source-separated systems, to assure, among other things, that recyclables get recycled and not trashed.

3. Environmental cleanup of regional solid waste sites.

The regional government should have authority to conduct cleanup activities on closed or abandoned solid or liquid waste sites and illegal dumps.

4. Policing to keep system crime free.

The regional government should have responsibility to police all aspects of the solid and liquid waste system,

1. This is more detailed than necessary in a Charter. Unless there is clear evidence that the Regional Government should immediately be imposing certain source reduction measures, this type of function should be handled through a decision-making process and not listed in the Charter.
2. This language clearly puts METRO in the garbage collection business, an area to date reserved for local governments. The current system is working and does not, at this time, need to be changed. That system provides for METRO to set standards and guidelines for local government solid waste reduction plans. Those plans are then executed by the local governments, in many cases, through their authority to regulate franchises for the solid waste collection industry.
3. This, too, is not necessary to include in a Charter. If the regional government needs to conduct such activities it should do so through a decision making process.
4. This language should be deleted. Law enforcement is the responsibility of local, state and federal governments.

from collectors to haulers to disposal sites, in order to maintain a clean, honest system free of corruption and corrupting influences.