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MEMORANDUM

To: Charter Drafting Subcommittee
From: Tim Sercombe
Re: First Draft of Charter Provisions
Date: May 28, 1992

Attached for your review is a first draft of chapters I and II of the proposed charter. This part of the charter contains provisions relating to the authority and functions of the regional government, the growth management planning provisions, and the tax revenue limitation. These issues occupied much of the Committee deliberation time.

I have added comment after many sections of the draft charter. The commentary notes any change from the Committee instructions or adopted text and identifies some legal issues about these instructions.

I hope to have additional provisions drafted for distribution to the Subcommittee tomorrow. I suspect the attached draft and discussion will fully occupy the Subcommittee's time at the May 29 meeting. You may want to schedule a final Subcommittee meeting for next week to go over the remaining sections and revisions to the attached draft.

A few caveats. This is a first draft. It will likely require rewrite because it may fail to capture the desire of the Committee in many respects. I have been unable to complete needed review of the Committee minutes on several of these issues. Moreover, the draft has not been subject to any legal review by other municipal attorneys. I recommend that you allow me to share the draft with Dan Cooper, John Junkin and others to obtain their comments before the final Subcommittee review.



METRO

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Memorandum

Preamble

The principal mission of the government created by this charter is to manage urban growth and coordinate the provision of public facilities and services in the region. This government shall be the primary entity accountable to the citizens of the region for the success of this mission. It shall be judged by whether it accomplishes this mission using politically acceptable and effective means. This requires that these means be chosen through an open and publicized process and on the basis of sufficient information and public comment. It also requires that the choice of means be communicated clearly to citizens of the region. Finally, effective and politic means requires conservation of taxes and other public assets, protection of natural and human resources, coordination with and among other governments and service providers, and equitable financing. These principles shall govern the operation of the government created under this charter and the construction of this charter.

The preamble is derived from the Charter Committee discussion of February 20, 1992. The Committee concluded that effective regional growth management and planning required a government clearly accountable for this mission, a government openly and visibly addressing matters of metropolitan concern. Effective delivery of governmental services and provision of regional facilities demanded coordination among and with service providers, opportunities for consolidation, and efficient use of taxes and other public resources.

CHAPTER I

NAMES AND BOUNDARIES

Section 1. Title of Charter. The title of this charter is the 1992 Portland Metropolitan Region Charter.

Section 2. Name of Regional Government. The regional government created under this charter shall be known as the Portland Metropolitan Region. It shall be referred to in this charter as "Region."

Section 3. Boundaries. The area of governance of the Region includes all territory within November 3, 1992 boundaries of the Metropolitan Service District of the Portland metropolitan region, together with any territory thereafter annexed or subjected to its governance under state law. Territory may be withdrawn from the Region only as provided by ordinance of the region council.

The charter title and name of government is provided for discussion purposes only and not as a recommendation. The Committee need not use the word "Metropolitan" in the name of the government if it wishes the new government to be known as something besides "Metro." For example, the entity could be called "Columbia Region" or "Willamette Region."

The word "Region" is suggested to describe the type of entity as opposed to "Regional Government." This allows a cleaner description of its officers and bodies, i.e., "Region Council," "Region Executive," and "Region Manager."

The boundary description includes territory which is annexed or "subjected to . . . governance." The latter concept envisions areas of partial governance outside the political boundaries of the Region. This might occur, for example, if Tri-Met were taken over by the Region. In such a case, the boundaries of the Region would "for purposes of mass transit, be extended to encompass all the territory of the transit district." ORS 267.020(4).



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Memorandum

CHAPTER II

AUTHORITY

Section 4. Jurisdiction of Region. The Region has jurisdiction over matters of metropolitan concern. Among other things, matters of metropolitan concern include the planning and management of urban growth and the coordination of the provision of public facilities and services within the Region. Matters of metropolitan concern also include the activities of a metropolitan service district authorized under current and future state law and those matters designated by the region council. In designating a matter of metropolitan concern, the council shall consider whether financial savings, service efficiencies, greater government accountability, satisfaction of regional demand, or needed regulatory consistency will result by involvement of the Region. The meaning of "matters of metropolitan concern" is flexible and may evolve over time.

This section is new and has not been the subject of Committee action. One of the functions of the charter may be to give guidance on the meaning of "matters of metropolitan concern." This guidance would minimize litigation over its meaning and assist future governing bodies in determining whether proposed functions concern matters of metropolitan concern. It is important that the concept be flexible, and not static.

The draft states that the primary mission of the government (regional planning and coordination of public facilities and services) is a matter of metropolitan concern. The existing and future statutory functions of a metropolitan service district are deemed matters of metropolitan concern.

The Committee determined that many functions of the Region could be assumed by council action together with electorate or RPAC

consent. The draft lists factors that might be considered by the council in assessing whether a matter is of metropolitan concern. These factors are not intended to be exclusive. The listing of the factors, however, gives some content to the meaning of "metropolitan concern."

So that the charter will be flexible, "matters of metropolitan concern" and the powers of the Region to address these matters should be defined broadly. Needed controls and processes can be employed, however, to regulate the exercise of functions of the regional government.

Section 5. General Powers Grant. When exercising

authority over matters of metropolitan concern, the Region has all powers that the laws of the United States and the State of Oregon now or in the future could allow the Region, just as if this charter specifically set out each of those powers.

Section 6. Construction of Powers. The powers

specified in this charter are not exclusive. Their specification is not intended to limit authority. The powers in this charter shall be construed liberally. The Region may exercise fully all the powers possible under this charter and under United States and Oregon law. All powers continue unless the charter clearly indicates the contrary.

There are two basic charter models: a "special powers grant" charter and a "general powers grant" charter. A special powers grant charter lists each of the powers that the government can exercise. A general powers grant charter states that the government can exercise all powers that are legally possible.

Nearly all municipal charters in the last fifty years are general powers grant charters. The use of a general powers grant avoids legal controversies about whether the government can exercise a particular power to accomplish its functions. Use of this type of provision eliminates the need to enumerate each of the

Language from W.D.C.

government's powers, e.g., the power to sue, be sued, contract, convey property, accept gifts, etc.. The risk, of course, in listing each of the powers is that something will be left out or that the statement of the power will not be as complete as needed. A special powers grant charter will likely produce litigation over the powers of the Region.

I strongly recommend the use of a general powers grant. Use of this provision is consistent with the Committee's desire to limit the functions of the Region. These limitations are better stated as outright restrictions. For those functions which the Region does exercise, it should be able to use all of the powers available to local government.

Because of the proposed general powers grant, the particular powers suggested by the Committee have not been placed in the draft charter. These include the power to have and use a seal, collect fees for information, contract with public entities, and acquire real property.

Section 7. Exercise of Functions. The functions of the Region are limited to those allowed by or under this charter, including its amendments. The functions allowed (by) this charter are those performed by the Metropolitan Service District as of November 3, 1992. The functions allowed by this charter also include the performance of duties under a contract with another governmental unit.

Refine

*enumeration
service
functions*

The functions allowed under this charter are activities related to matters of metropolitan concern. These include, but are not limited to, the authorized functions of a metropolitan service district under ORS chapter 268 (1991), whether or not those functions require prior voter approval.

Before undertaking any functions allowed under this charter, the region council shall authorize the function by a nonemergency ordinance. The ordinance shall contain findings establishing

that the function is of metropolitan concern and setting forth the rationale for its assumption. The ordinance may be referred to the voters by the region council or by petition. The ordinance may also be subject to section 8 of this charter. Any limitation in this charter on the authority of the Region to assume functions shall not restrict the authority of the Region to supply services to another governmental unit or the state under an intergovernmental agreement.

Section 8. Approval of Assumption or Termination of Particular Functions. The assumption or termination of certain functions allowed under this charter require additional procedures. An ordinance assuming functions relating to the provision of traditional local governmental services, including making local land use and land division decisions and designating land uses on comprehensive plan maps, shall not be effective unless the assumption of the function is approved contemporaneously by the voters of the Region or a majority of the members of the regional policy advisory committee. This approval may occur either through adoption of a referred measure authorizing the function or by approval of a measure relating to Region finances which authorizes financing or identifies funds to be used for the exercise of the function. "Traditional local governmental services" are those historically provided by local governments and provided by one or more local governments in the region.

RPAC approval of spending.

Before adoption of an ordinance assuming the functions of a boundary commission or any local service function, other than traditional local governmental services, the region council shall obtain the recommendation of the regional policy advisory committee. Before adoption of an ordinance assuming the functions of a mass transit district, the region council shall obtain, if possible, the recommendation of the Joint Policy Advisory Committee on Transportation or its successor. The assumption or termination of regional planning functions is further subject to the limitations of section 9 of this charter.

These sections contain the authority for the Region to assume functions. Section 7 distinguishes between "functions allowed by this charter" (the current functions of Metro and contractual provision of services to local governments) and "functions allowed under this charter (additional functions). Functions allowed under the charter are defined as "matters of metropolitan concern" and include the statutory functions presently allowed for a metropolitan service district under ORS 268.310, 268.312, and 268.357. These are activities relating to: regional sewerage facilities; facilities for the disposal of liquid and solid wastes; surface water management; public transportation; metropolitan zoo; major cultural, convention, exhibition, sports and entertainment facilities; water supply and distribution; human services planning; parks, open space and recreation; criminal and juvenile programs and detention; libraries and the provision of information. ORS 268.310(6) and 268.312 requirements for prior voter approval of some of these functions are not included in the charter and would no longer be applicable.

Before assuming a function under the charter, the region council would have to enact an assumption ordinance with findings on why the matter is of metropolitan concern and setting out the rationale for the assumption. This ordinance could be referred by the council or by a referendum petition.

Unless an additional process is specified in the charter, the adoption of this ordinance allows the assumption of the function. The primary extraordinary process is when a traditional local government service function is assumed. This type of function

includes any service function being performed by a local government in the region at the time of enactment of the assumption ordinance. It includes local land use planning services. Local land use planning services means land use, land division and plan designation decisions. It would not include the adoption or amendment of plan policies or land use regulations.

The charter restrictions on function assumption do not limit the authority of the Region to perform governmental services on behalf of another government by intergovernmental agreement.

Assumption of other service functions, as well as the functions of a boundary commission, require consultation with the regional policy advisory committee. I felt it unnecessary to state that assumption of these functions could occur by vote of the electorate. The draft states that any assumption ordinance is referable. State law requires a vote on the specific proposition of assuming boundary commission duties. ORS 268.320(3).

The Committee determination that the region council review boundary change procedures and "adopt any changes to the current process deemed necessary for the region" has been omitted from the draft. The Region lacks authority to change state law on boundary changes.

I also interpret state law to require electorate approval of a specific proposition to transfer authority of the boundary commission to the Region. ORS 268.320(3) allows such a transfer by electorate approval of "a proposition referred to them by the governing body of the district." Approval of a charter is not approval of "a proposition." Nor is a charter referred "by the governing body of the [metropolitan service] district."

Before assuming the functions of a mass transit district, the region council must seek the advice of the Joint Policy Advisory Committee or its successor. The words "if possible" have been added in the event that no such entity exists at the time of assumption.

The Committee desire to continue the Tri-Met Board was deleted from the draft. State law provides that the offices of the directors of a mass transit district are dissolved after transfer of the transit system to a metropolitan service district. ORS 267.020(5). This statute would control over any provision to the contrary in the charter.

Finally, an assumption ordinance for regional planning is subject to the processes in section 9 of the charter relating to the regional framework plan.

HM
Make 1st
part of Section 7

Section 9. Regional Planning and Coordination.

(1) Regional Planning Activities. All enactments of the Metropolitan Service District affecting the content of local land use comprehensive plans or regulations or the provision of governmental or utility services which are in effect on January 1, 1992 shall remain in effect until changed or repealed by ordinance of the region council adopted under this section. This section prescribes the exclusive means for the adoption by the region council of certain policies. These policies are those applicable to governmental units and service providers other than the Region, which affect the content of local land use comprehensive plans or regulations, the management of growth in the metropolitan area, or the provision of governmental or utility facilities and services.

This introductory subsection expressly notes the continuation of existing Metro functional plans for service provision or comprehensive plan content until replaced by the regional framework plan or one of its components.

The regional framework plan process is the exclusive process for adopting policies applicable to local governments. Policies applicable to Metro's operations (e.g., processes for development of functional plans, landfill operations, etc.) can be adopted in enactments outside of the framework plan. Requiring that these policies be included in the framework plan would likely create a cumbersome process for the adoption and implementation of administrative policies of the region.

Since the substantive content of the framework plan is limited by the charter, and special processes are required for additional content, the charter needs to define the types of policies which must be adopted through the framework plan process. I have assumed these to be policies relating to local plan and ordinance content, growth management or the provision of public or utility facilities and services.

(2) General Growth Management Guidelines. No later than May 1, 1994, the region council shall adopt general growth management guidelines for the area, which may be entitled, "The Future Vision." The guidelines shall establish conceptual goals for the use of land in the area over at least a fifty year period. The guidelines shall be based on the council's assessment of the capacity of the area's land, water and air resources to accommodate population increases and settlement while preserving or enhancing the economic opportunities, health, safety and comfort of its residents. The guidelines shall address, among other things, the use, preservation and enhancement of the area's land, physical, educational and natural resources, the ways to accommodate increases in population consistent with the welfare of the area's residents, the means to reasonably develop new communities, and the obtaining of additional urban land and economic growth.

The council shall obtain the advice of a commission representing private, public, and academic interests before adoption or revision of the general growth management guidelines. The commission shall include at least one member who resides outside of the boundaries of the Region. The members of the commission shall not be compensated for their services.

The guidelines shall be revised and the planning period extended at least every fifteen years. The guidelines shall not be used to regulate the particular use of land.

The Future Vision concept reflects the February 27 and March 5, 1992 deliberations of the Committee. The text adopted by the Committee has been revised to eliminate jargon and redundancies. Thus, the substitute language "preserving or enhancing the economic opportunities, health, safety and comfort of [the area's] residents" was drafted to replace "sustaining and maintaining . . . livability and quality of life" and "desired quality of life." "Reasonably develop" was used instead of "developing . . . in well-planned ways." The terms "long-term," "50-year," and "visionary" seemed redundant of each other. "Conceptual goals for the use of land in the area over at least a fifty year period" was used for all of these concepts. A commission representing private, public and academic interests seemed "broad-gauged" and so the latter term was dropped as redundant.

The language on the functioning of the advisory committee was not included in the draft. It is probably not necessary that the charter instruct the committee to consider data and public input and adhere to the council's timetable. That language can be easily added, however, if the Committee believes the mandate to be needed.

Since the only charter process for adoption of the guidelines is obtaining the advice of the advisory committee, it did not seem necessary to require that the guidelines "be revised in the manner or [their] original development." Instead, the advice of the committee was required for "adoption or revision" of the guidelines.

The draft states that the guidelines shall not be used to regulate land uses. This character probably makes the guidelines unreviewable under current law by LUBA or through a writ of review. However, the charter cannot provide for this legal effect. The reviewability of the guidelines is purely an issue of state law. The charter cannot determine the issue of reviewability. At best, the charter can declare the intended effect of the guidelines. That effect may determine their reviewability by state courts or agencies.

There are a few planning considerations which are not expressly stated in the text as applicable to development of the guidelines, and which are suggested by the statewide planning goals. These largely pertain to development constraints beyond land, water and air resources capacity. They include provision of public facilities and services, transportation constraints, and energy conservation. The Committee may want to consider elaboration.

(3) Regional Framework Plan. The region council shall adopt a regional framework plan by July 1, 1996. The regional framework plan shall include regional goals, objectives and policies, functional plans, and performance standards addressing regional transportation issues, urban growth boundary amendment and management, management and use of lands outside the urban growth boundary, and federal and state mandated planning functions. The regional framework plan shall also contain model standards and procedures for local land use decision making that may be adopted by local governments.

The region council shall include in the regional framework plan those matters of metropolitan concern that would benefit from regional planning which pertain to: water sources and storage; housing densities; open space; the siting of significant land use developments; local solid waste disposal, reuse and recycling; the siting and operation of public exposition, recreation, cultural and convention facilities; and, regional disasters. Before including any of these matters in the regional framework plan, the council shall seek the advice of the regional policy advisory committee. The region council shall also consider the costs of including the matter in the regional framework plan and existing local and regional planning activities, roles and resources devoted to the matter.

No other matter may be included in the regional framework plan unless the question of its inclusion is approved by the majority of the members of the regional policy advisory committee

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or by a majority of the votes cast by the Region voters in an election on the proposition.

The regional framework plan shall determine the respective planning roles of the Region and local governments regarding the matters addressed. The regional framework plan shall be consistent with state standards applicable to local land use comprehensive plans. It shall describe any correlation between the regional framework plan and the general growth management guidelines adopted under subsection (2). The regional framework plan may be adopted in components. The region council shall consult with and obtain the advice of the regional policy advisory committee before adopting or amending all or part of the regional framework plan. The region council shall establish a process and schedule for amending the regional framework plan.

The region council shall adopt ordinances, and, if necessary, seek authority to establish the following program:

- a. Requiring comprehensive plans of local governments to be consistent with the regional framework plan within a particular period of time;
- b. Requiring the region council to adjudicate and determine the consistency of local comprehensive plans with the regional framework plan;
- c. Requiring local governments to make local land use decisions consistent with the regional framework plan before the local comprehensive plan has been determined to be consistent with the regional framework plan;

d. Allowing the council to review local government land use decisions for consistency with the regional framework plan and to require changes in local government standards and procedures to remedy a pattern of decision making inconsistent with the regional framework plan.

This part of the draft charter reflects the Committee's decisions made on February 27, March 5 and March 12, 1992. The most significant change to the text adopted by the Committee involves the treatment of local plans and the procedures used by local governments. The ability of the Region or its charter to require actions of local governments is a function of state law. State law cannot be expanded by charter requirement. Current state law allows Metro the power to require local governments to make their comprehensive plans consistent with adopted land use planning goals and objectives and functional plans. Those parts of the Committee proposal requiring local governments to make individual land use decisions consistent with the regional framework plan, granting authority to the Region to review local land use decisions, and granting authority to the Region to require changes in local government standards and procedures may be beyond the power of the charter to effect.

Accordingly, I have drafted that part of the proposal to require the region council to adopt ordinances, and if necessary seek authority, to require these things of local governments.

There are some questions about the regional framework plan concept that the Committee may wish to address. The Committee definition of the content of regional framework plans includes "benchmarks for performance as implementation tools." Are these benchmarks for the performance of local governments in adopting land use policies or making land use decisions or standards for regional land use needs? Are these benchmarks intended to have any legal effect in evaluating the content of local comprehensive plans? If so, their intended effect should be made clear in the charter.

The list of potential items for treatment in the regional framework plan does not include air quality and water quality, which are two of the three statutory items for functional plans in ORS 268.390. It does include "Greenspaces" as a non-mandatory item for treatment in the framework plan, even though it is the subject of a current regional planning effort. Similarly, wastewater management and stormwater management are the subject of current functional plans. The Committee

instructions state that these regional plans continue. The instructions are not clear on the legal effect of a functional plan that is not made part of the framework plan. If the functional plan is not part of the framework plan, must local comprehensive plans be consistent with the functional plan? If so, shouldn't these plans be included as mandatory parts of the framework plan?

There may be an issue about whether stormwater management is a "federal . . . mandated planning function" and the Committee may wish to consider adding it to the list to avoid that argument. The overall concept of "federal and state mandated planning functions" is unclear. For example, is air quality and water quality a "state mandated planning function" under ORS 268.390(2)?

The list of public facilities is described differently than elsewhere in the charter. "Exposition" is used instead of "exhibition" and "sports" and "other spectator" facilities are omitted from the list. The rationale for these differences is not apparent.

There is no sanction or safety valve for not meeting the deadline for adoption of the regional framework plan. The deadline is 42 months without regard to how many items are addressed in the regional framework plan. This might lessen desire to include portions of the non-mandatory subjects in the framework plan, a consequence which may not be desired. The Committee may want to allow a time extension if the extension is adopted by a super-majority of the region council or if more than a certain number of the non-mandatory topics are included in the plan.

The part of the Committee instructions on the determinations about the non-mandatory subjects need some clarification. The instructions imply that the non-mandatory items must be included in the framework plan if they are of metropolitan concern and would benefit from regional planning. Economic resources and other "ongoing planning activities" are required to be considered in making this determination. The relevance of these to the determination is unclear. For example, the council and RPAC may determine that housing densities are of metropolitan concern and would benefit from regional planning but the economic resources and other commitments prevent immediate regional planning. In such a case, is housing density required to be put into the framework plan?

References to existing state law have been avoided or omitted. Instead of saying that the regional framework plan must be consistent with the statewide planning goals (which may be repealed in the future), the draft states that the plan must be "consistent with state standards applicable to local land use comprehensive plans." Reference to periodic review of the plan

by LCDC was omitted. Whether this review is given is purely a matter of state law. Reference to the appealability of local land use findings of consistency with the regional framework plan as "as provided by law" was omitted as unnecessary. Finally, there is no need to specially empower the Region to contract with LCDC on acknowledgment reports. The Region has that power under the general powers grant.

Section 10. Limitations on Taxing Powers.

(1) Referral of taxation ordinances. Any ordinance of the region council imposing, or providing an exception from, taxes on all or part of the income, payroll, property, sales, purchases or gross receipts of a person or entity shall receive the approval of the electors of the Region before taking effect. This approval is not required for the continuation of taxes imposed by the Metropolitan Service District or for the rate or amount of any payroll tax imposed by a mass transit district at the time the functions of that district are assumed by the Region. For purposes of this subsection, "taxes" shall not include any charge for the provision of goods, services or property by the Region, franchise fees or any assessment.

(2) Prior Consultation for Tax Imposition. Before imposing any new tax, the region council shall obtain the recommendation of a tax study committee that includes representatives from the general population, businesses and local governments.

(3) Limitations on Certain Tax Revenues. Except for revenues from taxes approved by voters and a payroll tax in the amount of \$_____, revenues from taxation may not exceed the limitations specified in this subsection.

a) The initial tax revenue limitation is \$12.6 million for fiscal year 1994. 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. The rate of inflation shall be the rate determined by the appropriate federal agency for increases in the cost of goods and services in cities in the western United States or the most equivalent rate.

b) Revenues from charges to individuals or governments for the provision of goods, services or property or for the issuance of permits or approvals, benefit assessments against property, franchise fees and tax increment financing charges on property are excluded from this limitation.

c) The tax revenue limitation for any fiscal year shall be reduced in a supplemental budget effective in that fiscal year by an amount equal to any tax revenue collected in the previous fiscal year in excess of the tax revenue limitation for that previous fiscal year. In the event this tax base reduction results in an adjusted tax revenue limitation of less than 80% of the amount otherwise budgeted for that fiscal year, the tax base shall be further reduced by the amount of the inflation increase for that tax revenue limitation which was previously budgeted.

Additional work is needed on this section of the draft charter. I have not adequately researched the Committee's intentions on some of the matters in this section. Some of the concepts will need clarification.

Because of the general powers grant, there is no need to specify the Region's authority to impose any particular type of tax.

Some of the types of taxes requiring popular approval may need clarification. I added "gross receipts tax" because I assumed that was a type of "business income tax" that was intended to be restricted.

I also added taxes on "purchases" as well as "sales" because I assumed the intent was to capture taxes on any part of a sales transaction. There are some types of taxes on these transactions which are imposed on the purchaser and collected by the seller which are a form of "purchases" tax. For example, a utility tax on customers is sometimes imposed by local governments. A transient room tax is also a tax on customer purchase of accommodations.

The draft excludes from the definition of "tax," for purposes of requiring popular approval, charges for "the provision of goods, services or property by the region, franchise fees or any assessment." The intent here was not treat as a "tax" any profit made in a sales transaction by the region. The charter could define "tax" but the definition would be complex and there would be a risk of over-inclusiveness. I suggest the term be undefined but that exclusions be specified.

The tax revenue limitation subsections present particular drafting challenges. As I understand the Committee's instructions, this revenue limitation is only for taxes not otherwise approved by the voters. There are issues about what charges are included within this revenue limitation. Are profits from user charges subject to the limitation? If the voters approve a property tax base, are revenues from future 6% increases in the tax base subject to the limitation?

One critical issue involves what to do if revenues exceed budgeted forecast and the applicable cap. For example, suppose an excise tax on new construction is imposed. (This may be a "property tax" requiring voter approval under the draft charter. Assume that it is not so classified.) New construction booms and tax revenues exceed expectations and cause collections above the revenue limit. What is the legal effect?

The draft has a proposal that surplus revenues in one year cause a corresponding reduction in the amount of the limitation for the

next fiscal year. If the surplus is excessive, i.e., above 20%, and indicative of a bad faith levy, the allowed tax base would be further reduced by the inflation increase previously budgeted. There would always be a carry forward of surplus collected tax revenues into the tax revenue limitation for the next year. If there were several years of surplus revenues above the limitation, it is possible that no taxes could be imposed at some point.

Part of the practical difficulty with this concept may be the inability to forecast the amount of certain tax revenues in budgeting around the tax limitation. Another problem is that one would never know whether the limitation is exceeded in a fiscal year until after the completion of that fiscal year (when all taxes are collected and accounted for) and after the adoption of the budget for the next fiscal year (required to be adopted by June 30, before the beginning of the fiscal year). This means that reconciliation must occur through a supplemental budget in the next fiscal year.

Finally, some thought should be given to the effect of the revenue limitation when additional government functions are assumed by the Region. It is possible that some functions would have an existing tax revenue stream. If there were a vote on the tax revenue, together with a vote on the function assumption, the approval of the tax with the function would take it out of the revenue limitation. Are there some functions with existing tax revenues that would be assumed by RPAC endorsement alone? If so, would these taxes be limited by the charter restriction? Similarly, should tax proceeds which are shared by intergovernmental agreement be excluded?

Section 11. Limitations on Authority to Contract. No agreement of the Region shall restrict its ability to contract for services with persons or entities who are not employees of the Region.

This provision would limit the authority of the Region to enter into collective bargaining or other agreements which require that certain services be performed by employees of the Region, as opposed to independent contractors.

Section 12. Regulatory Powers. Regulations of the Region shall have full force and effect throughout its area of governance. A regulation of the Region shall be construed, to the extent feasible, in a manner consistent with regulations of a city, county or district in the same subject area. No regulation of the Region shall affect the structure or procedures of a city, county or district unless that effect is required by state or federal law. A regulation of the Region addressed primarily to substantive social, economic or regulatory objectives of the Region shall prevail over an inconsistent regulation of a city, county or district if it clearly intends to do so and if the area of regulation pertains to a function of the Region authorized by the voters of the Region.

This section does not reflect any Committee instruction and is suggested for purposes of discussion. It is not necessary to state the legal effect of Region regulations in the charter. The Committee may wish to include provisions to this effect for political reasons or to buttress claims as to legal effect.

The first three sentences of the section are probably the result of state law in any event. The last sentence concerns the reconciliation of conflicting regulations of the Region and another local government. There is no judicial precedent on how such a conflict would be resolved. The suggested rule is borrowed in part from case law on resolution of conflicts between state regulations and local government laws.

The placement of this conflict resolution rule in the charter would increase the likelihood of its recognition by a court in two respects. First, the conflict resolution rule would be approved by the voters if the charter is adopted. This would carry some weight. Second, subsequent approval of assumption of the function by the voters would implicitly approve the effect of that assumption under the charter - that Region regulations on the function control over inconsistent local laws. This again would have substantial political, as well as legal, effect.

Again, there may be other and better ways to detail the relationship of Region laws to local laws under the proposed charter. The suggested alternative may help the Committee focus on if or how it wants to explain this relationship in the proposed charter.