

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 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.

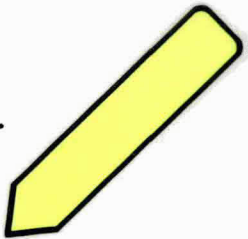
I strongly recommend the use of a general powers grant. Use of this provision is consistent with the Committee's desire to limit the functions of the Region. These limitations are better stated as outright restrictions. For those functions which the Region does exercise, it should be able to use all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

↑
COULDN'T
AGREE MORE

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



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1 hr to review

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

*If tax revenues
By local CAP?
then what?*

*Must be
specific*

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 ^{transfer of appropriations} ~~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? yes!

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? no!

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. Bullshit

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. not required for reduced budget

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.

what about TR met?

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



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Memorandum

Charter file

Date: June 9, 1992
To: Metro Council, Executive, Interested Parties
From: Betsy Bergstein, Office of Government Relations
Regarding: Charter Committee - Status Report

The Charter Committee met in an all day session at Nike on June 6, 1992 to review the work done by their legal counsel, Tim Sercombe.

The Chair instructed the Committee to focus on the wording of the draft charter, rather than discussion on the unresolved issues. After three fairly minor votes on wording questions, the Committee spent most of Saturday going through the draft to make certain it conformed to their intent.

The Charter Committee will meet on Thursday, June 11, 1992 to complete its work. The Committee Administrator told me their agenda includes: 1) defining the structure of the proposed RPAC; 2) revisiting regional government's taxing powers; 3) the name of the government (one member has proposed the "Regional Planning Agency"); 3) resolving the question of whether the regional government will be allowed to enter into intergovernmental agreements with local governments.

Three public meeting dates have been set:

June 25, Thursday 6-9 p.m. at Northwest Natural Gas Co. 4th floor, 220 NW 2nd Avenue

June 29, Monday 6-9 p.m. at Washington County Public Services Building, 155 N. First Avenue, Hillsboro

June 30, Tuesday 6-9 p.m. at Lake Oswego City Hall, 380 A Avenue, Lake Oswego

There are some members of the Committee who are talking about not putting a charter on the ballot this November 1992. Their argument is two-fold: (1) there is no agreement within the Committee, with local governments or with Metro on the components of the charter and; (2) the various initiatives coming from the Governor's office (the Goldschmidt Task Force, a potential special session and special election for a tax replacement) make the climate very poor in November 1992 for passage of a Metro Charter. There are also some committee

members who feel conforming state legislation will be required on some of the provision of the proposed Charter and it would be better to achieve that before placing a measure on the ballot. Please talk to me or Ken Gervais if you would like more information.