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PORTLAND

METROPOLITAN REGION

CHARTER

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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 Metropolitan Service District continues under this charter as a municipal corporation with the name "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 Territory may be withdrawn from the Region only as provided by ordinance of the region council.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 custodian of the Region's records shall keep a current and accurate description of the Region's boundaries, which shall be available for public inspection.

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).

CHAPTER II
FUNCTIONS AND POWERS

Section 4. Jurisdiction of Region. The Region has jurisdiction over those matters of metropolitan concern which are assigned to the Region under this charter or which are authorized under the procedures of this charter for assuming functions.

This section is new and has not been the subject of Committee action. The constitution provides that a chartered metropolitan service district has jurisdiction over "matters of metropolitan concern." The intent of this provision is to make clear that only certain matters of metropolitan concern are within the "jurisdiction" of the Region, i.e., those functions or activities allowed or authorized by the charter.

Under the charter, whether the Region can engage in an activity depends upon three things:

- 1) Does the Region have "jurisdiction," i.e., is it a "matter of metropolitan concern?"*
- 2) Is the Region authorized to engage in the activity under the provisions relating to allowance or assumption of functions? The provisions on allowance and assumption of functions are specific and intended to be the principal means of controlling the activities of the Region.*
- 3) Is the Region authorized to do the particular activity in the area of the allowed function? This issue is treated in the general powers grant of the charter. Many of the powers allowed in the charter are limited by specific provisions, e.g., limitations on the power of taxation.*

One of the functions of the charter may be to give guidance on the meaning of "matters of metropolitan concern." Before assuming a function the region council is required to adopt an ordinance containing findings on why the matter is of metropolitan concern. It is likely that there will be litigation over the meaning of this phrase.

The first draft of the proposed charter contained language in this section that would assist the region council and courts in deciding whether a matter is of metropolitan concern. The suggested language was not definitional. It stated that functions authorized for a metropolitan service district under state law were of metropolitan concern. The text then listed factors which the council could consider in determining whether a matter was of metropolitan concern. These factors would not be exclusive.

The Drafting Subcommittee recommended that this language not be included in the proposed draft because the Charter Committee decided to not include text on the meaning of metropolitan concern in the proposed charter. The earlier drafted language is set out here in case the Committee wishes to revisit that issue.

Thus, this section could be alternatively worded as follows:

Jurisdiction of Region. *The Region has jurisdiction over matters of metropolitan concern which are assigned to the Region under this charter or which are authorized under the procedures of this charter for assuming functions. Matters of metropolitan concern 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 region 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.*

Section 5. Exercise of Growth Management Functions. The Region is authorized to exercise those functions related to the management of growth in the urban area under section 6 of this charter or as permitted under the procedures specified in section 7 of this charter.

Section 6. Exercise of Authorized Functions. The Region is authorized to continue to exercise the following functions of the Metropolitan Service District: the ownership and operation of a metropolitan zoo and public cultural, trade, convention, exhibition, sports, entertainment, and spectator facilities; the disposal and provision of regional facilities for the disposal of solid and liquid wastes; the acquisition and maintenance of regional greenspaces; the development and marketing of geographic data; the adoption and enforcement of regional land use planning goals and objectives, the coordination of land use planning by cities and counties with federal, state and local

governments, the adoption, amendment and enforcement of regional land use functional plans related to transportation, greenspaces, wastewater management and stormwater management, and the adoption and amendment of an urban growth boundary for the Region.

Sections 5 and 6 state the functions of the Region which are directly allowed by the proposed charter. The Drafting Subcommittee desired that the regional planning function be mentioned first. Regional planning functions are authorized in both section 5 (and more particularly detailed in section 7) and section 6 (as existing functions of the Metro).

There are some regional planning functions of Metro which are mandated by statute (functional plans for air quality and water quality) and which are not currently being done. These have been omitted from the listed permitted functions. They could occur only through the regional framework plan process in section 7, presumably as state mandated functions.

The Committee should clarify an ambiguity or omission in its instructions. If the Committee desires to allow the Region to contract with local governments for the performance of services, this should be added to the list of permitted functions. That language could read as follows,

"The functions allowed by this charter also include the performance of duties under a contract with another governmental unit."

On the other hand, the Committee may wish to preclude this activity without express assumption of the function. There will be questions about whether contracts for services are service functions and what process should be used for their assumption.

Section 7. Regional Planning Functions.

(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 at the time this charter takes effect, shall remain in effect until changed or repealed by ordinance of the region council adopted under this section. The regional planning functions authorized by

section 6 and by this section of the charter shall be subject to the provisions of this section.

This subsection reflects the instruction that, "The Charter will provide that all existing regional planning documents remain in effect following charter adoption"

The second section of this subsection highlights an ambiguity in the instructions. Is the regional framework plan process the exclusive process for doing regional planning? Section 6 allows existing regional planning efforts to continue. The framework planning process covers some, but not all, of these planning efforts. For example, wastewater management plans and stormwater management plans are existing plans of Metro. Under the instructions, inclusion of these functions in the regional framework plan requires voter or RPAC approval. Are these areas automatic parts of the regional framework plan or do they operate independent of that process? The last sentence in this subsection requires voter or RPAC approval if planning for these functions is to be included in the framework plan and have the described effects on local land use planning.

(2) The Future Vision. The region council shall adopt a regional Future Vision by May 1, 1994. The Future Vision is a conceptual statement that indicates 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. The 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 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; and,
- d. Economic growth and educational resources.

The region council will appoint a broad-gauged commission to serve without compensation. The commission will consider available data and public input and seek any additional information necessary to develop the proposed Future Vision within a timetable established by the region council. The commission members shall represent private, public and academic sectors. One or more of the commission members must reside outside the boundaries of the Region. The commission shall recommend a Future Vision to the region council.

The Future Vision may be reviewed and amended at such times and in such manner as the region council shall determine and shall be completely reviewed and revised in the manner of its original development and adoption not less frequently than once every fifteen years.

The Future Vision is not a regulatory document. The Future Vision is not reviewable by the Land Use Board of Appeals or judicially, and is not subject to Land Conservation and Development Commission acknowledgment or review. The Future Vision affects the regional framework plan in the manner described below.

At the instruction of the Drafting Subcommittee, the text of this section has been taken literally from the instructions of the Committee. The text resulted from political compromise and the work of several authors. Parts of the subsections direct the activities of state agencies (not reviewable by LUBA or the courts, not subject to LCDC review). These effects cannot be dictated by a charter provision. This could be cured by changes to state law to ensure this effect, or the charter could provide that the region council could seek statutes to this effect. Depending on the legal effect of the Future Vision, its adoption may be unreviewable under current state law; this is not certain.

The first draft of the proposed charter had alternative wording for this section, which provided that,

(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.

Finally, there are a few planning considerations which are not stated in the text as applicable to development of the Future Vision, and which are suggested by the statewide planning goals. These largely pertain to development constraints for growth 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 regional framework plan shall determine the respective planning roles of the Region and local governments regarding the matters addressed. In making that determination, the availability of funding and the demands of other planning activities shall be considered.

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 Future Vision 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 seek periodic review by state agencies of the regional framework plan for its consistency with state laws and programs. 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 three years of adoption of the regional framework plan, or by the time of the next state general review of the comprehensive plan, whichever is longer;
- 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 region 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 or practice of decision making inconsistent with the regional framework plan.

Section 8. Assumption of Additional Regional Planning Functions. 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 region council shall consider the availability of funding and the demands of completed and ongoing planning activities.

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 or by a majority of the votes cast by the Region voters in an election on the proposition. This approval may occur either through adoption of a referred measure authorizing the regional planning function or by approval of a measure

relating to Region finances which authorizes financing or identifies funds to be used for the exercise of that regional planning function.

The most significant change to the text adopted by the Committee on the regional framework plan 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 instructions 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 mandate.

Accordingly, the proposed charter has been drafted to require the region council to adopt ordinances, and if necessary seek authority, to require these things of local governments.

There are issues about what is included in the regional framework plan and its legal effect that may require clarification and additional language. They include:

- 1. The relationship to already adopted functional plans. As earlier noted, some existing functional plans of Metro are not included in the list of items to be included in the framework plan (stormwater management plan, wastewater management plan). These might be included in the listed topics that do not require RPAC or popular approval.*
- 2. The relationship to mandated regional planning by the state. One of the required inclusions in the regional framework plan is "federal and state mandated planning functions." Is it intended that "state mandated planning functions" take in all of the required planning duties under ORS ch. 268 for metropolitan service districts? These include the adoption of land use goals and objectives, coordination of city and county land use planning, coordination of local planning with federal, state and other local governments, coordinative functions under ORS 197.190(1), designation of "areas and activities having significant impact upon the orderly and responsible development of the metropolitan area" including air quality, water quality, and transportation and development of functional plans for these areas, urban growth boundary management, and review of comprehensive plans for conformity with the goals and functional plans.*
- 3. What is the scope of the framework plan and is it the exclusive process for adopting certain policies? The instructions and discussions of the Drafting Committee suggest that the framework plan is the exclusive mechanism for adopting policies that apply to the content of local government land use plans and policies. This could be clarified by an additional sentence which would read as follows:*

"This section prescribes the exclusive means for the adoption by the region council of policies applicable to local governments which affect the content of local land use plans or regulations."

The instructions are less clear on whether the regional framework plan is intended to address non-land use matters and the content of local regulations or local responsibilities in areas besides land use. The list of the matters addressed includes one function performed only by Metro on a regional basis (siting and operation of public exposition, recreation, cultural and convention facilities) and at least one non-land use matter (regional disasters). This raises at least two issues:

a. Relationship to functional plans or planning by the Region for its own activities. If the Region desires to do functional planning for its own activities, must it develop that functional plan through the regional framework process? Examples might include: a functional plan for the zoo, regional landfill operations, the funding of arts in the region, etc.. Or is this planning part of a function authorized separately by the charter? The Drafting Subcommittee discussion suggested that the framework plan might affect operations of the Region but that the Region need not do its own planning through this process (i.e., with RPAC consultation or approval).

b. Relationship to non-land use planning. At what point does an activity become "regional planning" and subject to the framework planning process? Suppose the Region decides to look at the issue of consolidation of governments and make recommendations to local governments on the basis of this study. Must this study be done through the framework plan process (and require popular or RPAC approval) or is it a "function" which must be authorized under the function assumption part of the charter? If it is a function, is it a service function or a planning function?

When a matter has been addressed in the regional framework plan, can the Region make other local government regulations (beside land use regulations) consistent with the framework plan? For example, one of the subject areas of the framework plan could be "solid waste disposal, reuse and recycling." If this area is addressed, can the framework plan require local governments to adopt certain recycling regulations? Are these "benchmarks for performance as implementation tools?" While the legal effect of a framework plan on local land use planning is clear in the instructions, the legal effect of non-land use planning is not obvious.

There are some other concepts in the instructions that are not clear. The instructions require that certain items be included in the regional 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 factors to the determination is unclear.

It is also unclear if these determinations (available resources, priority of consideration, respective planning roles, management of planning process) are relevant only in deciding

whether to include an area in the framework plan or if they are determinations to be placed in the plan as well.

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.

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 modified. Whether this review is given is purely a matter of state law. Instead, the draft requires the council to seek this periodic review. 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. Therefore, this power was omitted. If the Committee desires to emphasize this need it can be easily added.

Section 9. Assumption or Termination of Additional Functions.

(1) Adoption of Assumption Ordinance. Before undertaking any additional functions beyond those authorized under sections 6, 7 and 8 of this charter, the region council shall authorize the function by 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. The ordinance may also be subject to the approval requirements of this section.

(2) Assumption of Local Government Services Function. An ordinance assuming functions relating to the provision of traditional local governmental services

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 to their constituents and which are provided by one or more local governments in the region at the time of the proposed assumption by the Region.

(3) Assumption of Other Service Functions. The region council shall obtain the advice of the regional policy advisory committee before adopting an ordinance undertaking a service function that is not a traditional local government service. "Undertaking a service function" means the provision of a category of services to individuals or governments.

(4) Assumption of Functions and Operations of Mass Transit District. Before adoption of an ordinance assuming the duties, functions, powers and operations 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. After assuming the functions and operations of a mass transit district, the region council shall retain the services of members of its governing body for the length of their terms of office in administering mass transit functions for the Region.

(5) Assumption of Boundary Commission Functions. Before assuming the duties, functions and powers of a boundary commission, the region council shall obtain

the advice of the regional policy advisory commission. To the extent allowed by law, the approval of this charter shall constitute voter approval of the authority of the region council to assume the duties, functions and powers of the Portland Metropolitan Area Local Government Boundary Commission by ordinance.

(6) Study of Boundary Commission Processes. Within a reasonable period of time after the effective date of this charter, the region council shall review the procedures for approving boundary changes and resolving boundary disputes within the Region. The region council shall obtain the advice of the regional policy advisory committee in making this review. The region council shall consider relevant state policies and rules and applicable provisions of the regional framework plan. The region council shall adopt any necessary changes to boundary commission procedures and standards and may seek any state authority needed to implement these changes.

(6) Assumption of Other Functions. The assumption or termination of regional planning functions is subject to the procedures and limitations of section 8 of this charter. The region council may assume by ordinance any other function or undertake any activity relating to a matter of metropolitan concern, which function or activity is not specifically regulated by this charter.

This section establishes the procedures for assumptions of functions of the Region beyond the current Metro functions and the regional planning functions. They would replace the processes required by ORS ch. 268 which requires voter approval of certain functions of a metropolitan service district. See, e.g., ORS 268.310(6) and ORS 268.312.

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 to the voters by the council.

One suggestion might be to preclude an emergency clause on this type of an ordinance. This would allow a referendum petition to be filed against the ordinance if a vote on the assumption was desired by many.

Unless an additional process is specified in the charter (as is the case for regional planning activities), 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. This probably includes local land use planning services. Local land use planning services means land use, land division and plan designation decisions. If the Committee wishes to prevent the Region from performing local government land use services, more explicit language in the proposed charter is necessary.

As noted earlier, there is some ambiguity on whether performance of local government services by contract, and not on a regional basis, is assumption of a local government service. The Region has authority to do this under state law applicable to all local governments. The issue is whether the service assumption process limits this authority.

Assumption of other service functions, as well as the functions of a boundary commission, require consultation with the regional policy advisory committee. It is unnecessary to state that assumption of these functions could occur by vote of the electorate. The draft states that any assumption ordinance is referable by the council.

State law requires a vote on the specific proposition of assuming boundary commission duties. 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." Thus, the statement of this effect is modified by the phrase "[t]o the extent allowed by law." The Committee should consider taking this provision out of the charter.

Similarly, the Region lacks current or potential charter authority to adopt boundary change law. The instruction directing the adoption of these changes has been modified to state that, "The region council shall adopt any necessary changes to boundary commission procedures and standards and may seek any state authority needed to implement these changes."

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 desire to retain the Tri-Met Board after mass transit assumption has been slightly modified since state law dissolves the Board after the assumption.

There are some ambiguities and gaps in the function assumption part of the draft. The Committee may wish to give further thought to the following:

1. What is a "function?" The instructions appear to divide functions into service functions, planning functions, and federally mandated functions. There are other activities of the Region which may or may not be functions. Under the draft proposed charter, if these activities are "functions" they could be assumed by the Region by adoption of an ordinance. Arguably, these types of activities include: regulation of persons (e.g., adoption of a phosphate detergent ordinance), activities which do not provide a service to local governments or persons (sale of goods such as regional maps), landbanking for regional water supply or other purposes (ORS 268.312(1)(a)), functional planning for Region activities, planning for potential Region activities (e.g., government consolidation), etc..

The draft charter notes that, "Undertaking a service function" means the provision of a category of services to individuals or governments." Is a broader or narrower concept intended?

Similarly, and as noted earlier, is the provision of services on a contract basis to a local government the assumption of a service function?

2. Effect of approval of function. Another issue related to the definition of "function" is how specific approval of a function must be. Must all activities related to the function be put before the voters or RPAC before they can be undertaken?

Section 10. General Grant and Construction of Powers. When exercising authority over functions allowed or assumed under this charter, 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. 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. 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 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.

The use of a general powers grant is strongly recommended. Use of this provision is consistent with the Committee's desire to limit the functions of the Region. But 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.

The last four sentences of this section state constructional rules for those powers which are specified in the charter. Their legal purpose is to prevent broad limitations on powers from being implied because a power is stated in the charter.

Section 11. 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, or gross receipts of persons or entities in the Region 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 possibly needed on this section of the draft charter. 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. "Gross receipts tax" was added as a category because it presumably is a type of "business income tax" that was intended to be restricted.

There are some types of taxes on sales transactions which are imposed on the purchaser and collected by the seller which are a form of a "sales" 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 Drafting Committee stated that the types of "sales" taxes intended to require popular approval are general taxes on goods and services. Thus, the type of taxes requiring popular approval are those on "persons or entities in the region." Further clarification is needed.

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. It is recommended that the term be undefined but that exclusions be specified.

The tax revenue limitation subsections present particular drafting challenges. 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 proposed charter proposes 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. Whether this provision could apply to collective bargaining with labor unions has not been researched. Its application may constitute an unfair labor practice.

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, and perhaps 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.

CHAPTER III

FORM OF GOVERNMENT

Section 13. Region Council. The governing body of the Region is the region council. The region council consists of a region executive, nominated and elected from the Region at large, and thirteen councilors, each nominated and elected from a single district within the Region. Vacancies in the region council shall be filled as provided in section 24 of this charter.

Except as provided below, the boundaries of councilor districts shall be fixed by ordinance. Within three months after an official census or official census estimate indicates that the boundaries deny equal protection of the laws, the region council shall respecify the boundaries so as to accord equal protection of the laws. In reapportioning the district, the region council shall consider the factors on setting district boundaries set out in section 21 of this charter. In the event the region council does not respecify the boundaries within this time, the boundaries shall be set as provided by law

This section and the next sections set out the basic organization of the Region. They provide for a region council of thirteen councilors elected from districts in the Region and a region executive elected from the entire Region.

The boundaries of the councilor districts are set by ordinance. This allows change in the district boundaries to occur without need of a charter amendment. Changes usually occur because of annexations or reapportionment.

The reference to factors on setting district boundaries during reapportionment is to the section of the charter on increasing the councilor districts from thirteen to fourteen. That section provides that,

"In apporioning districts the region council shall give consideration to the current districts and historical and traditional communities and counties. The region council need not follow city or special district boundaries or the

boundaries of election districts for state officers except when those political boundaries coincide with natural boundaries."

This is a paraphrase of the 1991 law which prescribed the process for redistricting Metro from twelve to thirteen councilor districts.

The proposed charter does not set out a procedure for setting district boundaries if the council is unable to agree on a reapportionment plan. One option might be to have those boundaries set by another regional officer or commission.

Section 14. Councilors. The initial region council shall consist of members of the governing body of the Metropolitan Service District whose term of office continues or begins in January, 1993. The term of office of these councilors shall be the term of office for which they were elected or appointed as members of the governing body of the Metropolitan Service District. At each general election after the adoption of this charter, one-half, or as nearly as possible, of the number of councilors shall be elected, each for a four year term.

Section 15. Region Executive. The initial region executive shall be the region executive for the Metropolitan Service District in office when this charter takes effect. The term of that region executive shall continue until the first meeting of the region council in January, 1995. At the first general election after the adoption of this charter and every fourth year thereafter, a region executive shall be elected for a four year term.

Section 16. Terms of Office. The term of office of an elective officer who is elected at a general election begins at the first council meeting of the year immediately following the election and continues until the successor to the office assumes the office.

Section 17. Appointive Offices and Commissions. Except as this charter provides to the contrary: a majority of the members of the region council may create, abolish and combine appointive Region offices and commissions by ordinance: and, the region executive may appoint and remove officers and members of commissions, subject to appointment confirmation and removal approval of the region council. As used in this charter, "majority of the members of the region council" means eight members, a majority of the number of council member offices.

This section has not been the subject of Committee deliberation and is presented for discussion purposes. It proposes that the region council create or abolish region offices and commissions but that the region executive make appointments and removals from these offices and commissions, subject to council approval.

The region manager and regional policy advisory committee are subject to a different rule ("Except as this charter provides to the contrary . . .").

Appointive officers are those who perform public duties. They typically take an oath. They often include a recorder or chief financial officer, attorney and judge. These positions and region commissions would be created by ordinance.

The creation or abolishment of offices and committees may be by a "majority of the members of the region council." This means a majority of the number of councilor positions or offices. It requires that eight members of the council take action. That number is constant, whether or not there are vacancies or absences from the council at the time of the action. The Drafting Subcommittee desired that some greater consensus of the council be required for certain actions than a majority of a quorum present and voting on a matter (which could be as low as five members of the council). This type of structural decision may be one of those occasions.

There are other options for filling officer positions and appointing commission members. If the Committee desires that this be done by the region council, the second sentence could provide that, "A majority of the members of the region council may appoint and remove officers and members of commissions." The suggestion of region executive and region council action is consistent with the balance of power struck on the region manager.

CHAPTER IV
REGION COUNCIL

Section 18. Distribution of Powers. Except as this charter prescribes otherwise, and except for initiative and referendum powers reserved to the voters of the Region, all powers of the Region are vested in the region council. Only the region council may adopt region plans and legislation, adopt an annual budget, and oversee and approve performance and financial audits of the Region.

This section gives all residual power of the Region, including legislative power, to the region council. Specific powers, and in some cases, exclusive powers are distributed by the proposed charter to the region executive and the region manager. There may be some powers which the Committee wishes to assign to the regional policy advisory committee. All powers not otherwise assigned, however, are conferred on the region council.

The second sentence reflects the Committee's instructions to exclusively assign certain functions to the region council. The phrase "region plans and policies" has been changed to "region plans and legislation." Some policies of the Region may be administrative policies which may be enacted by the region manager or appointed commissions. "Legislation" is intended to mean policy of general application which is not administrative in character.

Section 19. Meetings of the Region Council. The region council shall meet in the Region regularly at least once each month at a time and place it designates. The region council shall, by ordinance, prescribe the rules to govern the conduct and record of its meetings. Except as this charter provides to the contrary, the express concurrence of a majority of the members of the region council present and constituting a quorum is necessary to decide affirmatively a question before the region council.

This section states the general rule for council action to require an affirmative vote of the majority of the members present and constituting a quorum. This could be as low as five

members of the council. (A quorum is eight members.) The rule is modified by, "Except as this charter provides to the contrary . . ." This refers to the rules stated elsewhere in the charter - that the concurrence of eight members of the council is required to create or abolish offices or commissions or to adopt ordinances. Since rules of the council are required to be adopted by ordinance, the votes of eight members would be required to change the council rules.

The Committee may wish to add another sentence to this section regarding the calling of special meetings of the region council, "The region executive or five councilors may call special meetings of the region council in a manner prescribed by ordinance."

Section 20. Quorum. A majority of the members of the region council in office constitutes a quorum for its business. A quorum or a lesser number of council members may meet and compel the attendance of absent members.

The term "majority of the members of the region council" is defined in section 17 to mean eight members. This section uses a different calculus, a "majority of the members of the council in office." Usually, this will be eight members. But if there are a number of vacancies on the council at one time, there may be a need for a lesser number to meet and constitute a quorum. The region executive is a member of the region council for purposes of calculating the quorum and for all other purposes.

Section 21. Increase in Membership. The number of councilors shall increase from thirteen to fourteen on January 1, 2003. Not later than the 250th day before the date of the primary election in May, 2002, the region council shall divide the Region into fourteen councilor districts. The area within each district shall be contiguous.

In apportioning districts the region council shall give consideration to the current districts and historical and traditional communities and counties. The region council need not follow city or special district boundaries or the boundaries of election districts

for state officers except when those political boundaries coincide with natural boundaries.

Any councilor whose term continues beyond January, 2003 shall be specifically assigned to a district described by the region council for that portion of the councilor's term that extends beyond January, 2003. The description of the fourteen districts and the assignment of councilors to districts shall be accomplished in a single ordinance adopted by the region council. Candidates for the office of councilor at the primary and general elections in 2002 shall be nominated and elected from the apportioned districts. Except for a candidate seeking election for the unexpired term of a councilor who vacated the office, each candidate for the office of councilor who is elected to that office at the November, 2002 general election shall hold office for a term of four years beginning at the first region council meeting of January, 2003.

This provision is patterned after Oregon Laws, 1991, ch. 15, sec. 5 which prescribed the process for redistricting Metro from 12 to 13 councilor subdistricts.

Section 22. Region Executive. The region executive is a voting member of the region council. When present at region council meetings, the region executive shall preside over deliberations of the region council, preserve order, enforce the rules of the region council, and determine the order of business and agenda of region council meetings. Each year, the region executive shall prepare a proposed budget for the Region for consideration by the appropriate body. The region executive shall appoint a region manager, who shall be confirmed by the region council. The region executive shall perform such other duties as the region council may prescribe. The region

executive shall serve full time and shall not be employed by any other person or entity while serving as the region executive.

This section reflects the Committee deliberations of April 30, 1992. The Committee instructions stated that the region executive "sets council agenda." It was unclear if this meant that only the region executive can place an item on the council agenda. If this is not the intent of the Committee, then the authority of the region executive to set the agenda should be made subject to the rules of the council.

Under current law, the budget of the Region would be proposed by a budget committee and adopted by the region council. The draft states that the region executive prepares a proposed budget for "consideration by the appropriate body," i.e., the budget committee. The analogous duty of the region manager in section 28 is stated to "[p]repare and transmit to the region executive a draft annual budget."

The Committee instructions state that the region manager is hired by the region executive "subject to consent of the council" and "with approval of the council." This seems to require an affirmative vote by the region council. Thus, the draft provides that the region executive appoints and the region council confirms the appointment.

Section 23. Region Council President. At its first meeting each year, the region council shall elect a president from its councilors. The region council president shall preside over meetings of the region council when the region executive is absent or unable to participate.

Section 24. Qualifications.

(1) A councilor shall be a resident of the district from which the councilor is elected or appointed during the twelve months before the councilor's term of office begins. When the boundaries of that district have been apportioned or reapportioned during that period, residency in that district shall include residency in any former district with substantial area in the district from which the councilor is elected or appointed.

The region executive shall be a resident of the Region during the twelve months before the region executive's term of office begins. For purposes of this subsection, "Region" means the area of the Region at the time the term of office begins. For purposes of this charter, a person is a "resident" of an area where the person maintains a residence used a majority of time any residence is occupied by that person.

(2) A councilor or region executive shall be a qualified elector under the state constitution at the time that person's term of office begins.

(3) No person shall be a candidate at a single election for more than one elective office of the Region. An elected officer of the Region shall not hold any other elected office during his or her term of office.

(4) The region council is the final judge of the election and qualification of its members.

Section 25. Vacancies in Office. The office of a member of the council (councilor or region executive) becomes vacant upon the incumbent's:

- (1) Death,
- (2) Adjudicated incompetency,
- (3) Recall from office,
- (4) Failure, following election or appointment to the office to qualify for the office within ten days after the time for his or her office to begin,
- (5) Absence from the Region for 60 days without the region council's consent or from all meetings of the region council within a 60 day period without the region council's consent,

- (6) Ceasing to reside in the district or Region from which the member is elected or appointed,
- (7) Ceasing to be a qualified elector under state law,
- (8) Conviction of a felony or conviction of a federal or state offense punishable by loss of liberty and pertaining to his or her office, or
- (9) Resignation from office.

The region council shall be the final judge of whether a vacancy in office exists.

"Adjudicated incompetence" means inability or unfitness to manage one's affairs because of a mental condition formally determined in a legal proceeding by a court of competent jurisdiction.

A vacancy is created by the member's ceasing to reside in the district or Region which the member represents. This creates a legal requirement to continue to reside in that area during the term of office.

The statement of the council being the "final judge" of whether a vacancy exists is intended to minimize judicial review over these decisions to the extent possible.

Section 26. Filling Vacancies. A vacancy in the region council shall be filled by appointment of a majority of the members of the council holding office within ninety days after the vacancy occurs. The appointee's term of office runs from the time of his or her qualifying for the office after the appointment until the successor to the office is duly elected and qualifies for the office. If the vacancy occurs more than ___ days before the first general election following the beginning of the term for that office, the appointee's term of office runs only until the first council meeting in the year immediately following that election. At that general election a person shall be elected as councilor or region executive for the remainder of the term.

During a council member's disability to serve on the council or during a member's absence from the Region, a majority of the other council members may by appointment fill the vacancy pro tem.

If a vacancy in the office of councilor occurs after the councilor has been assigned to a reapportioned or newly apportioned district under sections 13 or 21 of this charter, the vacancy shall be deemed to have occurred in the district to which that councilor was assigned.

A vacancy in the region council may be filled by "a majority of the members of the council holding office." This means a majority of the remaining members of the council. Normally, a single vacancy is filled at one time. The requirement of this section is sufficiently flexible, however, to allow the council membership to be completed by appointment in a situation of simultaneous multiple vacancies so long as a single member of the council remains.

Whether the full remaining term is filled by an appointment depends on when the vacancy occurs. If it early in the term, sufficiently before the general election in the second year of the term, the last two years of the term would be filled by an elected member. Research is needed on the latest date for qualifying for that election.

The section allows for a council member appointment pro tem. There may be long hospitalizations or lengthy travel by a council member where the absence has been excused by the council (and no vacancy exists). In those cases, continued representation of the councilor's district or continuance of the region executive function may require a temporary appointment.

Section 27. Limitations of Terms of Office. No person shall be elected to the office of councilor for more than three consecutive full terms. No person shall be elected to the office of region executive for more than two consecutive full terms. The limitations of this section apply only to terms of office beginning in or after January, 1995.

CHAPTER V
OFFICERS, COMMISSIONS AND EMPLOYEES

Section 28. Region Manager.

(1) The region manager is the administrative head of the Region government. The region manager shall be appointed without regard for political considerations and solely on the basis of administrative qualifications. The region manager shall be appointed for a definite or indefinite term and may be removed by the region executive with or without cause. Within six months after a vacancy occurs in the office of region manager, the region executive and region council shall fill the vacancy. A person need not be a resident of the Region when appointed as region manager.

One of the most significant ambiguities in the proposed charter is the allocation of administrative duties and responsibilities between the region executive and the region manager. The Committee may want to eliminate the introductory sentence of this section if it wishes the region executive to be the accountable administrative head of the Region government.

The region manager can be removed "with or without cause." This makes the appointment at will and excuses the need for lengthy dismissal procedures on the existence of cause.

Vacancies in the office of region manager are required to be filled in six months. At the Drafting Subcommittee meeting, Mary Tobias suggested that this period may be too short for an effective recruitment. If the period is extended, the equivalent period in subsection (5) on time of pro tem manager appointments should also be extended.

- (2) The region manager shall:
- a. Attend region council meetings unless excused by the region council or region executive;

- b. Advise the region council and region executive on the affairs and needs of Region;
- c. Administer the provisions of all ordinances and the directions of the region council;
- d. Administer and supervise all franchises, leases, deeds, contracts, permits, and other agreements and sign any written conveyance, agreement or application of the Region;
- e. Organize and reorganize the departmental structure of the Region;
- f. Appoint, discipline, remove, and prescribe the duties of appointive personnel, except appointees of the region executive or region council;
- g. Supervise and control the region manager's appointees in their service to the Region;
- h. Prepare and transmit to the region executive an annual budget;
- i. Supervise operation, acquisition and disposition of the public utilities and property of the Region; and,
- j. Perform such other duties as the region council prescribes consistent with this charter.

This list of duties of the region manager expands the instructions of the Committee and is offered for discussion purposes. Perhaps the most significant duty, and the one the Committee may want to allocate to the region executive, is to "[o]rganize and reorganize the departmental structure of the Region."

The content of these duties is particularly important if the Committee retains the part of the next subsection that makes these duties "exclusive" to the manager in most respects.

(3) The duties of the region manager are exclusive except for those duties assigned by ordinance to the region executive or to a commission exercising authority over a function or service of the Region. The region manager may not control any judge or hearings officer appointed by the region council in the exercise of adjudicative functions by that person or, unless authorized by the region council, appointive personnel of the Region whom the region manager does not appoint.

(4) The region manager and other personnel whom the region council designates may sit with the region council but may not vote on questions before it. The region manager may take part in all discussions of the region council and any commission appointed by the region council.

(5) When the region manager is absent from the Region or disabled from acting as region manager, or when the office of region manager becomes vacant, the region executive shall appoint a region manager pro tem. The appointee shall have the powers and duties of the region manager, except that the region manager pro tem may appoint or remove personnel only with the approval of the region executive. No person shall be region manager pro tem for more than six consecutive months.

(6) Except in a region council meeting, or in immediate response to solicitation of advice by the region manager, no councilor may directly or indirectly, by suggestion or otherwise, attempt to influence the region manager or a candidate for the office of region manager in the appointment, discipline, or removal of personnel appointed by or under the region manager or in decisions regarding the property or contracts of the Region. A violator of this prohibition shall be removed from office by a court of competent jurisdiction upon suit by the region manager, member of the council,

or elector of the Region. In a region council meeting, members of the council may discuss with, or suggest to, the region manager anything pertinent to Region affairs.

The Committee instructions call for a "non-interference clause" in the charter. This subsection is a variation of the non-interference clause contained in the 1988 Model Charter for Oregon Cities. It applies only to region councilors and not the region executive. It would be impractical to preclude the region executive from discussing administration of Region affairs with the manager.

Region 29. Regional Policy Advisory Committee.

[The composition of the regional policy advisory committee has not been decided by the Committee. The Committee may wish to consider:

1. Appointments by the region council. Appointments or nominations could be made by individual members of the council, the entire council, the region executive or a combination of these processes.
2. Appointments by other governmental units. The charter cannot compel appointments by other governmental units. If these appointments are required, the Committee may wish to consider adding a provision for an alternative appointment if another governmental unit fails to act.
3. Terms and qualifications. Many issues of the composition of the RPAC have been discussed by the Committee. One issue is whether a councilor or the region executive should be a liaison member of RPAC. Another is whether the appointees serve at the pleasure of the appointing authority, i.e., whether they can be dismissed prior to the expiration of their term.

To the extent the RPAC functions in the area of land use policy formation, state law on city and county planning commissions might be of interest. State law has two restrictions on planning commissions designed to remove bias: a restriction on the number of members connected with real estate interests; and, a very broad conflict of interest provision. ORS 215.030(5) and ORS 215.035, applicable to county planning commissions, provide that:

Members of the commission shall be residents of the various geographic areas of the county. No more than two voting members shall be engaged principally in the buying, selling or developing of real estate for profit, as individuals, or be members of any partnership or officers or employees of any corporation that is engaged principally in the buying, selling or developing of real estate for profit. No more than two voting members shall be engaged in the same kind of occupation, business, trade or profession.

A member of a planning commission shall not participate in any commission proceeding or action in which any of the following has a direct or substantial financial interest: The member or the member's spouse, brother, sister, child, parent, father-in-law, mother-in-law, partner, any business in which the member is then serving or has served within the previous two years, or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment. Any actual or potential interest shall be disclosed at the meeting of the commission where the action is being taken.

4. Changes in the composition of RPAC. One of the provisions in a draft charter by Dan Cooper and John Junkin states, "No sooner than four years after adoption of this charter the council may with either the approval of the then existing [RPAC] or the electors of the region provide for a different number of members or method of selecting members for the Commission."

5. Duties. Based on the instructions of the Committee, the provision on the duties of the RPAC might read as follows:

The regional policy advisory committee shall:

- (a) Upon request of the region council, advise the region council on matters of metropolitan concern,
- (b) Approve or disapprove new functions of the Region that are then being performed by a local governmental unit in the Region,
- (c) Approve or disapprove the undertaking or deletion of any planning function by the Region, and,
- (d) Perform such other duties as the region council may prescribe.

Section 30. Compensation. No councilor shall receive compensation for serving in that capacity. The region council may, however, prescribe a plan for reimbursing councilors for necessary meals, travel and other expenses incurred in serving the Region and allowing a per diem payment for meetings. The salary and employment benefits of the region executive shall be set by the region council upon the recommendation of a salary commission to be appointed by the region council, but shall not be less than that of a district court judge of this state. The region council shall determine the compensation of other officers of the Region.

Section 31. Oath. Before assuming office, an officer shall take an oath or shall affirm that he or she will faithfully perform the duties of the office and support the constitutions and laws of the United States and the State of Oregon and the charter and laws of the Region.

CHAPTER VI
ELECTIONS

Section 32. State Law. Except as this charter or a Region ordinance prescribes to the contrary, a Region election shall conform to state law applicable to the election.

Section 33. Nominations. A person may be nominated in a manner prescribed by general ordinance to run for an elective office of the Region.

Section 34. Election of Region Officers. The first voting for councilor or region executive, except for certain elections to fill a vacancy in a term of office, shall take place at an election held at the same time and places in the Region as the statewide primary election that year. If at the primary election one candidate for a Region office receives a majority of the votes cast for all candidates for that office, that candidate shall be the only one whose name appears on the ballot at the general election that year for that particular office. If at the primary election no such candidate receives a majority vote, the two candidates receiving the two highest numbers of votes cast for the office shall be the only ones whose names appear on the ballot for the general election that year as candidates for that particular office. The candidate who receives the greatest number of the votes cast at the general election for that office is elected to that office and is entitled to a certificate of election.

Current state law requires election of municipal officers at the statewide general election. This proposed section allows a primary election to determine the one or two nominees whose names will be placed on the general election ballot.

Section 35. Recall. An elective officer of the Region may be recalled in the manner, and with the effect, now and hereafter prescribed by the constitution and laws of the state.

Section 36. Initiative and Referendum. The initiative and referendum powers reserved to the voters of the Region under Oregon Constitution, Article XI, section 14(5) are subject to the provisions of state law and ordinances of the region council.

The constitutional provision applicable to metropolitan service district charters reserves initiative and referendum powers to the district's voters. It provides that these powers are "exercised in the manner provided for county measures" under the county home rule section of the constitution. By statute, a chartered county can choose different requirements than those required by statute for the number of signatures required for an initiative or referendum petition. It is not clear if this option would exist for the Region. The Committee may wish to place a maximum requirement in the charter for initiative and referendum petition signatures. The limitation in the state constitution for cities is 15% of the electors for initiative measures and 10% for referenda.

Section 37. Amendment and Revision of Charter. The region council may refer, and the Region voters may initiate, amendments to this charter. A proposed amendment to the charter shall embrace one subject only and matters properly connected therewith. The region council shall provide by ordinance for a procedure to revise this charter.

This section distinguishes between amendments and revisions to the charter. This is to require a public process on the text of a revision before one is proposed.

CHAPTER VII
ORDINANCES

Section 38. Ordaining Clause. The ordaining clause of an ordinance adopted by the region council shall be, "The Region Council of _____ ordains as follows:". The ordaining clause of an initiated or referred ordinance shall be, "The People of _____ ordain as follows:".

Section 39. Adoption by Region Council. The region council shall adopt all legislation of the Region by ordinance. Except as provided below, no ordinance may be adopted by the region council at a meeting unless: the ordinance is introduced at a previous meeting of the region council; the title of the ordinance is included in a written agenda of the meeting at which the ordinance is adopted; the agenda of that meeting is publicized not less than three nor more than ten days before the meeting and, copies of the ordinance are available for public inspection at least three business days prior to the time of that meeting. The text of an ordinance may be amended, but shall not be substantially revised, at the meeting at which it is adopted. The preceding provisions of this section do not apply to an ordinance adopted by unanimous consent of the region council and containing findings on the need for immediate adoption. No ordinance

shall be adopted unless it receives the affirmative votes of a majority of the members of the region council in a public meeting.

This section of the proposed charter is not written in the manner of traditional ordinance adoption provisions. These standard provisions call for full reading of ordinances and provide for waiver of that oral reading. They also require multiple votes by the governing body on the ordinance at different times. The typical provisions are a relic from years past when communication was slower and dissemination of written materials was less easy.

Instead, the proposed section is more direct on the requirements for adoption of an ordinance. Unless immediate adoption is necessary and occurs by unanimous consent of the region council, an ordinance must be introduced at a council meeting prior to the meeting at which it is adopted; its title must be included in a written agenda of that meeting; the agenda must be publicized (published, posted, or broadcast) before the meeting; and, copies of the ordinance must be available before the adoption meeting. At the adoption meeting, an ordinance can be amended, but not revised. If revised (i.e., substantially amended) the adoption must occur at a subsequent meeting.

The purposes of these restrictions on the manner of ordinance adoption are to provide time for public awareness of the ordinance and for council interaction. Note that if the Committee decides to allow the region executive to exclusively control the agenda of the region council, the region executive could forestall action on an ordinance by not placing it on the agenda.

As noted earlier, adoption of an ordinance requires the affirmative vote of a "majority of the members of the region council." As this term is defined in section 17 of the proposed charter; it means a majority of the council member positions, i.e., eight council members.

Section 40. Endorsement. Unless a different procedure is prescribed by general ordinance, an ordinance shall be endorsed by the person presiding over the council at the time of its adoption.

Section 41. Effective Date of Ordinances. Unless a different time is stated in an ordinance, an ordinance shall take effect ninety days after its adoption by the region council. An ordinance may state an earlier effective date if an earlier effect is necessary

for the health, safety or welfare of the Region, the reasons why this is so are stated in an emergency clause of the ordinance, and the ordinance is approved by the affirmative vote of two-thirds of the members of the region council. An ordinance imposing or changing a tax or charge shall not contain an emergency clause.

Ordinances imposing an emergency clause allowing immediate effect would require an affirmative vote by ten council members. The Committee may wish to allow such an effect by majority vote.

No emergency clause could be attached to a taxation ordinance. The Committee may wish to preclude emergency clauses on ordinances assuming functions of metropolitan concern.

Section 42. Content of Ordinances. Each ordinance shall embrace one subject and all matters properly connected therewith. Each ordinance shall be plainly worded, avoiding as far as practicable the use of technical terms.

Section 43. Procedures by General Ordinances. The procedures for making, altering, vacating or abandoning a public improvement shall be governed by general ordinance. The procedures for fixing, levying, and collecting special assessments against real property for public improvements or services shall be governed by general ordinance. To the extent these procedures are not governed by general ordinance, they shall be governed by state law.

This provision would preclude ad hoc arrangements for improvement or disposition of public property or assessments. It protects the region council from individual equitable or political claims for special treatment in assessments or public improvements. The provision would not preclude legislation classifying and distinguishing between groups in these processes.

CHAPTER VIII

MISCELLANEOUS PROVISIONS

Section 44. Transition Provisions. All legislation, orders, rules and regulations of the Metropolitan Service District in force just before this charter takes effect remain in force after that time insofar as they are consistent with this charter. All rights, claims, causes of action, duties, contracts, and legal and administrative proceedings of the Metropolitan Service District that exist just before this charter takes effect continue and are unimpaired by the charter. Each then shall be in the charge of the officer or agency designated by this charter or by its authority to have charge of it. The unexpired terms of the elective officers of the Metropolitan Service District continue as provided by this charter. Upon the effective date of this charter, the assets and liabilities of the Metropolitan Service District become the assets and liabilities of the Region.

Section 45. Time of Effect. This charter takes effect January 1, 1993.

Section 46. Severability; Headings. The terms of this charter are severable. If a part of this charter is held invalid, that invalidity shall not affect any other part of this charter, except as the logical relation between the two parts requires. The chapter and section titles used herein are not part of the charter.

Section 47. Curative Legislation. The region council shall seek any state legislation necessary for all parts of this charter to have operative effect.

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