



CITY OF HOUSTON

Legal Department

Interoffice

Correspondence

To: Mayor Sylvester Turner

From: Arturo G. Michel
City Attorney

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Subject: Proposition B Impacts

This memo outlines some of the potential impacts if voters approve the charter amendment set forth in Proposition B, requiring the City to withdraw, or attempt to withdraw, from councils of government or metropolitan planning organizations that do not reapportion their voting membership according to population. The Council of Government, Metropolitan Planning Organization, and Transportation Policy Council are related, but not identical entities, so this memo will address the question in three parts.

Background:

The Houston-Galveston Area Council of Governments (“H-GAC”) is a Council of Governments (COG) operating as a regional planning commission under Chapter 391 of the Local Government Code. A regional planning commission is intended to permit local governments to join and cooperate to improve the health, safety, and general welfare of their residents.

H-GAC came into existence in 1967. Almost all its funding comes from or through the State of Texas. H-GAC acts as the regional supervisor of the performance of several state programs. Present programs include regional efforts to provide broadband access, conservation, flood mitigation, radio communications among first responders, economic development and employment, and regional transportation planning.

In 1974, the governor designated H-GAC as the metropolitan planning organization (“MPO”) for eight counties in southeast Texas, including Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller County. An MPO is recognized under federal law as an organization to facilitate the regional planning of transportation projects. See 23 U.S.C.A. sec. 134. MPOs are federally mandated to ensure regional transportation cooperation and management of federal transportation dollars. See 23 U.S.C.A. 134, et seq. The organizations arose beginning in 1962 with the passage of the Federal Highway Aid Act and are required for any urbanized area with a population of more than 50,000. There are currently 23 designated MPOs in Texas. Under its designation, H-GAC serves as the fiscal agent for federal regional transportation planning funding and is responsible for administering the metropolitan transportation planning process through H-GAC’s Transportation Policy Council, a separate policy making board composed of elected officials and appointed transportation agency representatives.

Recently, the Texas General Land Office allocated almost \$1.2 billion in federal Community Development Block Grant – Mitigation (“CDBG-MIT”) funding to a Regional Mitigation Program, with each designated

RPC responsible for further suballocation through the “method of distribution”. H-GAC, in its capacity as RPC/COG, was allocated \$488 million for distribution under this program. Harris County and the City of Houston found the distributions to the sub-recipients of these grants unfair. This led to public discussion of Harris County and the City withdrawing from H-GAC and forming an alternative organization.

The H-GAC Council of Governments could continue without Houston. The H-GAC COG would be able to function without Houston and Harris County. The H-GAC [bylaws](#) state in Article II, Section 2 that “[a] member of the Houston-Galveston Area Council may withdraw from membership by action of its governing body.” Additionally, COH members’ refusal to appear at a meeting prior to or in lieu of withdrawal would not prevent H-GAC from conducting business, because, as Article VI, Section 4 states, “[a] simple majority of the Board of Directors shall constitute a quorum for the transaction of all business.”

A regional planning commission under Chapter 391 does not have the power to tax nor does it have the power to issue any bonded indebtedness. Therefore, neither the City nor the County would have any financial barrier to withdrawing from H-GAC.

The H-GAC Metropolitan Planning Organization could continue without Houston, but there are substantial barriers to the City leaving. Houston is also a member of the Metropolitan Planning Organization (MPO) containing 8 of the 13 H-GAC counties. The H-GAC Board of Directors is the fiscal agent for the H-GAC MPO, and distributes funds, including federal grant funds, on its behalf.

MPOs are regulated, in part, under 23 U.S.C.A. § 134 and 23 C.F.R. § 450. An MPO must be designated “for each urbanized area with a population of more than 50,000 individuals. 23 C.F.R. § 450.310(a). That section also states: “[t]o the extent possible, only one MPO shall be designated for each urbanized area or group of contiguous urbanized areas. More than one MPO may be designated to serve an urbanized area only if the Governor(s) and the existing MPO, if applicable, determine that the size and complexity of the urbanized area make designation of more than one MPO appropriate.” 23 C.F.R. § 450.310(e). This provision, in place since 2016 and primarily used to consolidate MPOs rather than divide them, may provide an obstacle to leaving, since agreement from the governor and the existing MPO—presumably a simple majority of delegates, which Houston does not possess—are required to override it.

Furthermore, once an MPO has been designated, in order to change the composition of the MPO or “substantial[ly] change the proportion of voting members on the existing MPO representing the largest incorporated city,” the MPO would need to be redesignated. 23 C.F.R. § 450.310(j)(1).

Redesignation may only be done “by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the existing planning area population (including the largest incorporated city, based on population...)” 23 U.S.C.A. § 134(6)(A) (West). Houston and unincorporated Harris County combined represent about 60% of the planning area population, so in addition to support from the Governor they would need the support from other local governments to secure the population-based voting reapportionment required by the petition language. “Approval of the boundaries of a designated metropolitan planning area by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) is not required.” 43 T.A.C. § 16.51(c). An existing MPO designation remains in effect until redesignation occurs. 23 U.S.C.A. § 134(d)5.

Even if it were practically feasible to meet the requirements outlined above, the benefit of leaving an MPO is speculative and may result in the loss of federal highway and related funds coming to Houston. An immediate loss may be the inability to access Federal Infrastructure Act funds. Should multiple MPOs be designated within the same metropolitan planning area, the loss of regional cohesion would likely also jeopardize access to federal funds due to a lack of regional planning support.

The Transportation Policy Council could continue without Houston. The [Transportation Policy Council](#) (TPC) acts as the MPO's policymaking body. It has 28 members, 3 of which are representatives from the City of Houston. Under Section F of its [bylaws](#), a quorum of the TPC is a simple majority of members, so refusing to appear would not prevent the TPC from conducting business. The TPC's bylaws are silent as to whether a member may withdraw, but they do specify the number of members who should represent each member entity, including three members from the City of Houston. Amending the bylaws requires a two-thirds majority of the members, per Section L of the Bylaws. However, since an entity may only withdraw from the MPO with approval of the governor and representatives of at least 75% of the membership, withdrawing, or refusing to attend TPC meetings, would simply result in decisions being made that affect the City without any input from the City.

Potential impacts: If the City were able to withdraw from both the MPO and the COG, potential impacts include:

- Loss of access to federal funds due to lack of regional support
- Loss of access to regional Transportation Improvement Program funds
- Loss of support for applications for federal grants funding
- Reduced opportunity for regional collaboration and representation.
- Potential loss of access to services and goods purchased through or from the COG (e.g., aerial imagery and GIS data, demographic/transportation modeling)

While current projects in the queue would proceed, new projects would likely not be added, nor would the City have any influence over their funding. Whether current, ongoing projects and programs could continue likely would vary depending on the specific language of each agreement. The City likely would continue to have access to co-operative purchasing under HGACBuy.

In summary: Houston could withdraw from H-GAC (the COG), and H-GAC could continue to operate without Houston. The City may only withdraw from the MPO through the redesignation process outlined in the federal regulations cited above, which requires approval of the governor and representatives of 75% of the planning area population. ***This may not be practically feasible.*** Furthermore, the provision requiring Governor and existing MPO approval for more than one MPO to be designated per urbanized area is an additional obstacle to forming a separate MPO. If all statutory requirements for redesignation were met, the MPO minus Houston could continue to operate. After redesignation, the City could theoretically withdraw from the TPC if the necessary bylaw amendment were approved by a two-thirds majority of the members, but this would not remove the City from the MPO, only its decision-making body.

If the City withdrew from the COG and/or MPO, current projects would likely proceed as planned, but inclusion of new projects would be subject to H-GAC Board or Transportation Policy Council approval without City representation, and access to regional TIP funds, goods and services purchased through H-GAC, as well as other opportunities for regional collaboration would be threatened.

Regardless of the potential impacts, when a petition for a charter amendment contains sufficient signatures to satisfy the requirements set forth in Tex. Local Gov't Code Ann. § 9.004, City Council has a ministerial duty to call an election on "the first authorized uniform election date prescribed by the Election Code or the earlier of the date of the next municipal general election or presidential general election." Tex. Local Gov't Code Ann. § 9.004(b). Council has a legal obligation to adopt an ordinance ordering an election to submit the charter amendment proposal to the qualified voters of the City. *See Coalson v. City Council of Victoria*, 610 S.W.2d 744, 746-47 (Tex. 1980); *Jones v. Int'l Ass'n of Firefighters, Local Union No. 936*, 601 S.W.2s 454-56 (Tex. Civ. App.—Corpus Christi 1980, writ ref'd n.r.e.).