

Impact Analysis Workgroup

Report to Council

March 20, 2003

Impact Analysis Workgroup

Members:

Betsy Ames, Bureau of Planning
Mark Clemmons, Group Mackenzie
Jim Crawford, Portland Fire and Rescue
Eric Fruits, EcoNorthwest
Don Gardner, Office of Transportation
Elissa Gertler, Portland Development Commission
David Gooley, Bureau of Environmental Services
David Hasson, Bureau of Water Works
Denise Kleim, Bureau of Development Services
Margaret Mahoney, Bureau of Development Services
Bonny McKnight, Citywide Land Use Chairs
Ruth Roth, Office of Management and Finance
Steve Siegel, Siegel Consulting
John Tapogna, EcoNorthwest
Riley Whitcomb, Portland Parks and Recreation
Christen White, Ball Janik, LLP

Staff:

Hannah Kuhn, Mayor's Office
Tom Bader, Mayor's Office

Additional input:

Sam Adams, Mayor's Office
Brad Carter, Bureau of Planning
Stevie Greathouse, Bureau of Planning
Rick Michaelson, Planning Commission
Ethan Seltzer, Planning Commission
Lorna Stickel, Bureau of Water Works

Impact Analysis Workgroup – Report to City Council

I. Introduction

As part of the FY 2002-2003 Regulatory Improvement Workplan, the City Council directed the creation of:

“... a process for developing and considering regulatory impact statements to be used by the City when amending existing regulations or adopting new regulations. Such process shall include a cost/benefit analysis to evaluate the relative costs, benefits and impacts, both externally and internally, of regulatory decisions under the new or amended regulations. . . .”

The purpose of these impact analysis statements would be to:

“...help policy makers make decision informed by an understanding of a proposed regulation’s costs and benefits to both the community and to city government operations.”

A *Draft Guide to Regulatory Impact Analysis* was accepted by the Council as part of the Initial Regulatory Improvement Workplan, and used as a guide by staff preparing Impact Analysis Reports for regulatory proposals involving land use or building codes.

In order to refine the guide and the regulatory impact analysis process, the Office of the Mayor, in collaboration with the Office of Management and Finance, established a public-private work group. The workgroup included representatives from the regulatory bureaus and external stakeholders with land use planning, neighborhood and economic expertise. The workgroup was charged with developing a regulatory assessment process, an analysis template, and citywide guidelines for the consideration, development, and ongoing evaluation of regulatory actions and alternatives.

In carrying out its charge between December 2002 and March 2003, the Impact Analysis Workgroup gathered for six meetings, facilitated by Betsy Ames, Assistant Director of Planning, with lead staff work by Hannah Kuhn of the Mayor’s Office.

In pursuit of its assigned goals, the Workgroup completed the following tasks:

- Conducted national comparative research on regulatory impact analysis approaches.
- Gathered input from primary policy makers by interviewing City Commissioners, their staff and several members of the Planning Commission.
- Mapped regulatory bureaus’ current regulatory development processes.
- Developed an “ideal” process flowchart for regulatory and non-regulatory development, impact analysis and performance monitoring and evaluation.

- Discussed applicability of regulatory impact analysis requirement to policy actions other than regulations.
- Gathered feedback on staff and Planning Commission experiences with preparing regulatory impact analysis reports.
- Evaluated and refined the *Draft Guide to Regulatory Impact Analysis*.

II. Research and Input

Highlights from Policy Maker Interviews

In order to solicit information and perspective from the primary policy interviews were conducted with members of the City Council and their staffs, as well as several members of the Planning Commission. Open-ended interviews were conducted in person with City Council members and staff and by telephone with members of the Planning Commission. A more detailed summary of their responses is attached.

In general, all of the interviewees agreed that regulatory proposals should be explicit about goals, intent, and purpose. Most felt that Impact Analysis Reports should address alternative approaches explicitly, spelling out comparative pros and cons, and providing reasons why the recommended proposal is the preferred option.

There was general agreement among interviewees that the impact assessments should be succinct, but little agreement on format. Some preferred tables and charts. Some liked narrative while others thought checklists or bulleted points were more useful. Others thought that illustrations and other visual images would be helpful.

All interviewees wanted information about potential impacts of proposed regulations at all stages of their development, including in the earliest stages. At least two members of the Planning Commission suggested that bureaus be required to schedule a hearing with the Planning Commission on the initial scope of proposed projects and regulations.

Most interviewees wanted each regulatory proposal to include performance measures and a schedule for monitoring its application and correcting unintended consequences. Some raised concerns that monitoring, evaluation, and maintenance would require additional, dedicated resources.

Finally, several interviewees sounded two notes of caution. First, they expressed concern that the regulatory impact analysis creates additional staff work without adding commensurate value, fearing that we might just be creating more process and additional “bureaucratic” work. Second, they also expressed skepticism about whether decision makers would actually be guided or influenced by the impact analysis reports, stating that “politics”, organized testimony, or other considerations often influence decision makers more than objective facts presented by the impact analysis report, making it superfluous. A full report on these interviews is attached.

Best Practices Research

The Mayor’s Office conducted research on “best practices” being employed in the States of New York, Massachusetts and Virginia, and the Cities of Indianapolis, Milwaukee, Albuquerque, Miami, Austin, Boston, Chicago, San Diego, Tacoma and Boulder. The Workgroup felt there were useful aspects to draw from for this or other efforts, but agreed that there was no one model that could effectively be “transplanted” to the City of Portland.

The most interesting efforts have been taking place in New York State since early 1996, when it created the Governor’s Office of Regulatory Reform (GORR). GORR has

a clear mission and a wide reach; some of its achievements are included in the attachments. The Workgroup incorporated some of the ideas into its recommendations, but thought the New York process, when viewed in its entirety, was too onerous and detailed for the City's purposes.

Indianapolis also sought to reform the culture in which regulations are formulated. Their Regulatory Study Commission's first principle states, "regulations should be a last resort - their use indicates a failure of all other means." Both Indianapolis and New York State reached the conclusion that over-regulation hinders economic activity, and economic development. The State of Virginia arrived at the same conclusion, believing that government simply cannot afford to drive businesses away, or even be perceived as doing so.

Models for tying together the numerous goals and policies of a jurisdiction as well as measuring results can be found in Albuquerque (see attachment), Miami, Boston and Minneapolis, although the last two are very early in the process. Minneapolis commissioned a very large report by an outside company to detail how the city should proceed and how it can measure its success or failure; but as several Minneapolis city employees said, "we are pushing ahead, but it will be a long slow process."

Several other cities previously recommended as examples of regulatory reform are not pursuing regulatory reform at this time.

Many cities and states are "talking" about regulatory reform and making government more accountable and efficient. However, based on our limited research, very few are really digging in and addressing the issues. The ingredients needed for success seem to be leadership and an energized public.

III. Findings

The Workgroup developed several findings that formed the basis for its recommendations. Through the process, our thinking evolved beyond our initial charge and both our findings and recommendations reflect this shift in thinking. In order to emphasize the importance of early and ongoing review and consideration of proposals, the Workgroup decided to change the name of this process from Impact Analysis to Impact Assessment.

Understanding Cumulative Impacts

Council, other decision-makers, staff, and community stakeholders should understand the cumulative impacts of all decisions affecting land use and development. This includes the impacts of policy decisions, administrative actions, and actions regarding fees, charges, and incentives that impact land use and development. The primary purpose of the impact analysis or assessment process should be to ensure substantive and procedural discipline in the consideration, review, and potential adoption of new regulatory tools.

Transparency

The decision-making process should shed more “daylight” or “sunlight” on regulatory proposals – to make the decision-making process more transparent and to allow for a full understanding of the choices being made and rejected.

Continuous Assessment

Impacts should be assessed at each stage of the process when considering land use and development-related policies, regulations and administrative requirements. Review and early assessment are critical in the first stages to identify the issues, mandates, and purpose to be addressed, the intended outcomes of the project, and alternatives to be considered, and to determine whether and how best to proceed. If analyzed early in the process, an initial concept may be rejected in favor of a better alternative, including no action.

Integrated Philosophy of Discipline

Impact assessment should not become a duplicative process but should be integrated with existing processes. It should be a new way of doing business – a philosophy of discipline embedded in existing regulatory development processes.

Flexible Format

In establishing this “new way of doing business”, we should not expect a standardized format for impact assessments. The group did not believe that this philosophy of discipline should result in a “one size fits all” approach, but instead would serve as a series of questions to filter or evaluate proposals. The conclusions can be integrated in different ways and may not always result in stand-alone Impact Assessment documents. Depending on the stage of review, the results of the Impact Assessment inquiries could be recorded in a preamble to a new regulation, appear in a separate final assessment report, or be incorporated within a full project report presented to City Council or the Planning Commission.

Guiding Questions

The questions posed in the *Draft Guide to Regulatory Impact Analysis* are useful and can help shape the consideration of impacts throughout the process. However, different projects need to consider different questions as they move forward. While each question is important to consider, it is not necessary to respond to each question in a final report.

Process and Product

There is no balance sheet, ledger or formula based on these questions that will result in a decision to adopt or not adopt a regulation. Rather, the process of analysis will provide useful information that could lead the public or a decision-maker to pursue proposed legislation or withdraw it from further consideration. If there is a product in the process, it is the “sunlight” shed on our thinking and, in the end, a well-groomed code of regulations or a better tool box for accomplishing our goals and responding to mandates.

Applicability

The group found that there is a class of city actions, that while not regulations themselves can lead to subsequent regulations. For example, the Council’s decision to pursue “recovery” of fish species, rather than simply “preventing take” was a major city decision that has influenced and guided subsequent regulatory work. If an impact assessment had been conducted at the time of that decision, the purpose and intent of the decision and the extent of the mandate could have been considered in a broader context with a fuller understanding of potential impacts and identification of possible alternatives.

Phased Implementation

The Impact Assessment requirement should not be applied to all possible land use and development actions in its first year, but should begin with an initial implementation phase, focusing on regulatory actions. During “Phase One Implementation”, Impact Assessment should be encouraged but not required for other policy making and non-regulatory actions that impact land use and development in the City of Portland. At the end of the first year, we should evaluate Impact Reports or Assessments for their effectiveness and value added and propose refinements to the process before it is implemented City-wide for a wider variety of decisions.

IV. Recommendations

Based on our findings, the Impact Analysis Workgroup is recommending process changes and improvements that integrate critical considerations into the development and application of regulations, policies, and administrative requirements.

Model Process

The flow chart on page 8, *Model Process for Consideration and Assessment of Land Use and Development Actions*, shows the process recommended by the Workgroup for developing and assessing land use and development-related policies, regulations and administrative requirements. The Workgroup recommends this generalized chart, representing the enhanced process, as the primary tool for impact analysis and assessment. Not every project will complete every step or include every input shown, however, it is a model that should be used consistently throughout the City in the development of a wide range of policies, regulations, and administrative requirements.

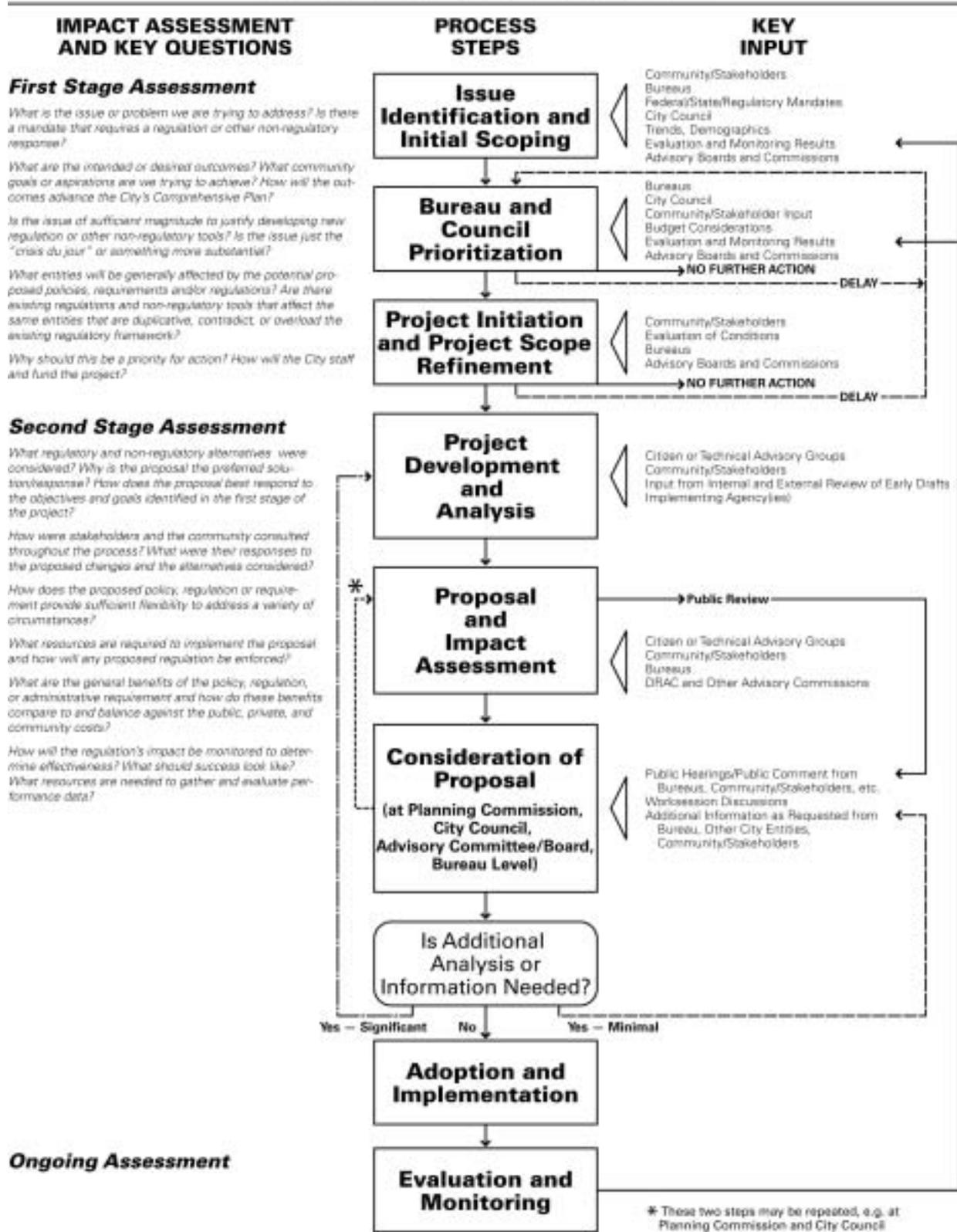
First Stage Assessment

Early assessment and identification of issues, goals, potential impacts, and intended outcomes of a project is critical. Thus, during the First Stage Assessment (i.e. the first three steps shown on the flow chart – Issue Identification and Initial Scoping; Bureau and Council Prioritization; and Project Initiation and Scope Refinement) the following questions are addressed:

1. What is the issue or problem we are trying to address? Is there a mandate (state or federal) that requires a regulation or other non-regulatory response – and is there clear authority for its adoption?
2. What are the intended or desired outcomes? What community goals or aspirations are we trying to achieve? How will the outcomes advance and support the City's Comprehensive Plan?
3. Is the issue of sufficient magnitude to justify developing new regulation or other non-regulatory tools? Is the issue just the "crisis du jour" or something more substantial?
4. What entities will be affected by the potentially proposed policies, requirements and/or regulations? Are there existing regulations and non-regulatory tools that affect the same entities? Are there existing policies, requirements and/or regulations that are duplicative, contradict, or overload the existing regulatory framework?
5. Why should this be a priority for action? How will the City staff and fund the project?

These questions are to be answered before entering the project development phase to determine whether and how to go forward. The answers to these first questions should also guide impact assessment throughout the project. This First Stage Assessment could result in a "no further action" determination. The City Council, relevant commissions, and the community should be involved in this early assessment.

Model Process for Consideration and Assessment of Land Use and Development Actions



Second Stage Assessment

The “Second Stage Assessment” consists of the following steps: Project Development and Analysis; Release of the Proposal including Impact Assessment; Consideration of the Proposal; and finally Adoption and Implementation. Depending on the Bureau and the scope of the project, several of these steps may be repeated. For example, any changes to Title 33 and the Comprehensive Plan will be considered by both the Planning Commission and the City Council prior to adoption. During the Second Stage Assessment, in addition to updating information prepared in the First Stage Assessment, the following key questions are addressed:

1. What regulatory and non-regulatory alternatives were considered? Why is the proposal the preferred solution/response? How does the proposal best respond to the objectives and goals identified in the first stage of the project?
2. How were stakeholders and the community consulted throughout the process? What were their responses to the proposed changes and the alternatives considered?
3. How does the proposed policy, regulation or requirement provide sufficient flexibility to address a variety of circumstances?
4. What resources are required to implement the proposal and how will any proposed regulation be enforced?
5. What are the general benefits of the policy, regulation, or administrative requirement and how do these benefits compare to and balance against the public, private, and community costs?
6. How will the regulation’s impact be monitored to determine effectiveness? What should success look like? What resources are needed to gather and evaluate performance data?

Decision makers, before adopting or implementing any changes should adequately understand and respond to these questions. The process outlined on the flow chart allows for reconsideration throughout the process to ensure sufficient analysis is completed and adequate information provided to the decision-makers.

Ongoing Assessment

The final step of the recommended process is Evaluation and Monitoring and “Ongoing Assessment”. It is critical that resources be available to assess the impacts and effectiveness of any new regulations and programs. Evaluation and Monitoring should provide the information needed to determine how the regulation is working, whether there are unintended or undesired outcomes, and whether there might be alternatives that could provide the needed remedy. Within six to nine months after implementation, initial reviews of new regulations should occur to identify if any technical fixes need to be made to address “glitches” identified through the practical application of the Code. A more thorough assessment of the overall project’s effectiveness should be completed within a two to three year timeframe.

The Flow Chart also reflects the wide variety of input that should feed into any project – ranging from evaluation and monitoring results, to mandates, to community and stakeholder input. It is critical to preliminary proposals and recommendations, as well as to final decisions, that a broad array of facts, opinions, desires, and input are gathered at all stages of a project.

Guide to Impact Assessment

In addition to the key questions reflected above, the Workgroup recommends that the attached *Guide to Impact Assessment* (a revised version of the *Draft Guide to Regulatory Impact Analysis*) be used in each phase of the process to prompt consideration of a variety of impacts. The questions are not designed as mandatory criteria, but as probative inquiries, the consideration of which will ensure disciplined thinking at all stages of development and review. Bureau assessments will not all look the same but each should process these inquiries and respond as appropriate. The final assessment and “report” will not necessarily address each and every one of these questions, but staff and decision makers should be able to respond to any of them.

Applicability

While a broad range of land use and development actions have public, private, and community impacts, it is recommended that for the first year, only regulatory actions (including administrative rule-making) be required to go through this process. Further, it is recommended that the City Council encourage Impact Assessments be completed for policy making and other non-regulatory actions that impact land use and development in the City of Portland. If Impact Assessment is judged worthwhile (after Phase One Implementation as discussed below), it should be applied to all policies, regulations and administrative requirements impacting land use and development, since many non-regulatory actions have significant impacts or may serve as the basis for future regulatory actions.

Implementation in Phases

As described above, a more limited Phase One Implementation of Impact Assessment is recommended for the first year, during which Impact Assessments will only be required for regulatory actions affecting land use and development. A subgroup of the Impact Analysis Workgroup, consisting of two bureau representatives, a Mayor’s office representative, and two external stakeholders, should be established to:

1. Meet quarterly to review materials prepared in response to the Impacts Assessment requirement during the past quarter.
2. At the end of the year, prepare an evaluation of the requirement addressing: (a) the quality of the material prepared during the year, (b) the cost and value of preparing the material, (c) any problem areas in the consideration and assessment process, (d) whether the requirement should be continued, modified, or expanded, and (e) if continued or expanded, recommend refinements to the requirement and process.
3. Report to Council by July 2004 with findings and recommendations.

Attachment 1

Regulatory Impact Analysis: Summary Notes from Interviews with City Council and Planning Commission

Open-ended interviews were conducted with:

Michael Harrison, Commissioner Francesconi's Office
Matthew Grumm and Aisling Coghlan, Commissioner Saltzman's Office
Rich Rodgers, Commissioner Sten's Office
Commissioner Randy Leonard and Ty Kovatch, Commissioner Leonard's Office
Mayor Vera Katz, Mayor's Office

Amanda Fritz, Planning Commission
Richard Michaelson, Planning Commission
Ethan Seltzer, Planning Commission
Ingrid Stevens, Planning Commission

Practical Considerations

- Don't create extra work for City staff.
- Avoid adding more process! Don't create a cumbersome requirement like a traditional environmental impact statement.

Regulatory Impact Analysis: Content

Goals

- Be explicit about goals: does this proposal achieve the stated goals? Specifically: what goals are regulatory impact analysis statements supposed to achieve?
- Articulate policy goals.
- Information about intent/purpose/mandates is helpful.
- Be specific about policy goals and check results.
- Ask the question: is a regulation the most effective way to solve this problem?

Costs

- Look at additional costs to administer new regulations, as well as additional costs to developers.
- Need to analyze and discuss costs early on, before Council allocates funds to work programs. Good to be attuned to who we affect [with regulations] and how.
- Re: costs. Ask the question "What is the cost of not doing anything?" and "What harm will this [regulation] prevent?"

Attachment 1

Benefits

- Focus on net benefits, not just costs by themselves; every public policy has costs. The question is how are they distributed and do they outweigh the benefits.
- Identify what the City is doing that has positive impacts and what it is doing to mitigate negative impacts, like tax abatements, grants, etc.
- Be explicit about quantifiable benefits to the community.

Alternatives Analysis

- Discuss other alternatives explicitly---spell out clearly why the staff proposal is the preferred option. Summarize public input, support and opposition.
- Try to focus the analysis on 5 or 6 most important issues. Current regulatory impact analysis has too many questions and answers. Need to narrow the focus.
- Appreciate information about other alternatives, especially which groups support or oppose which alternatives. Want to know why staff is recommending one over the other.
- Would like to see staff comments pro and con, as well as stakeholder comments, pro and con.
- Present alternatives, along with why or why not.
- Anecdotes are not helpful. Need to know which constituents support or oppose an option and why.
- Explain alternatives and provide larger context. Identify constraints.
- Regulatory impact analysis should include an analysis of community feedback, as well as economic impacts.

Other Content Issues

- Ask the question: is this a priority for funding? Should it be?
- It's important to seek balance among competing interests.
- How much can you really tell policy makers about costs and benefits in a short space?
- With a large, complex regulatory package, might be helpful to break it into smaller chunks, to make it more digestible.
- Rule of thumb for checking the usefulness of existing regulations: add one, remove one.
- Answer the question: What [tools, resources] should Council provide to allow staff to fix things?

Attachment 1

- Make development of clear, concise regulations a priority. Don't design straight jackets; provide flexibility.
- Look at other tools besides regulations.
- Quantification isn't nearly as important as prioritizing.
- Formulate regulations that allow for flexibility.
- After public outreach is completed and funding is identified, have the proposing bureau sign a "contract" with the Council and the community that spells out exactly which issues will be studied and developed and which will not within the scope of the regulatory project. Expectation management is important.

Regulatory Impact Analysis: Format

- Include the contact name and phone number of the staff that prepared the analysis, so Commissioners can follow up directly.
- Avoid overly long regulatory impact analysis. Write an executive summary with a checklist. Give it a title that clearly labels what the proposal aims to accomplish and flag key issues.
- Using charts to present information is very helpful.
- Avoid long, rambling narratives; more structure, clear headings are good.
- Avoid too much narrative. Bullets with clear headings are better.
- Narrative information is fine.
- Present key information as an Executive Summary with charts.
- Measuring impacts in dollars is not helpful.
- Would appreciate more figures (even ballpark figures), such as savings per unit or cost per parking space to the developer.
- Make regulatory impact analysis statements shorter, focus on the essentials, using bullets and outlines.
- Subjective evaluations are important.
- Regulatory impact analysis should include visuals and pictures (digital presentations, CAD, etc) to illustrate cases as much as possible. Avoid graphs.
- Images are a good way to convey information.

Attachment 1

Regulatory Development Process/Timing

- Share information about impacts on stakeholder groups early in the process, i.e., after the Planning Commission hearing.
- Include PDC in regulatory planning phase. Focus on upfront costs to small businesses like fees and regulatory burden.
- Flag “big impact” issues with Commissioners earlier than later. Impacts of particular interest include economic impacts and neighborhood impacts.
- We need to be able to stop projects-in-progress that have become unmanageable. Institute a formal feedback loop that allows us to check in periodically to see if the project is still viable.
- Brief the Planning Commission even earlier about community issues, scope of project, and check in at various stages in a multi-year project. Need to schedule an initial Planning Commission hearing on the initial scope of proposed projects.
- Would like an earlier check in with the Planning Commission and community on projects in the early development phase.

Funding

- Council has to fund error correction as part of each regulatory bureau’s budget.
- The Council should provide General Fund dollars to support big picture scans and analysis.
- The City as a whole needs to plan its funding over the long term.
- Tie regulatory development and impact analysis process in with the budget process.

Monitoring Performance

- Try to address the “stupid factor”, i.e., regulations that are just stupid or annoying or don’t make sense.
- Qualitative benchmarks are just as important as quantitative. For example, surveying neighbors as a way of judging the success of infill policy. Don’t try to quantify environmental values, for example.
- Yes, support defining goals and checking in on implementation, looking for unintended consequences.
- Try to eliminate duplication and inconsistencies between regulations in various titles of the City Code.

Attachment 1

- Concern that committing to monitor and measure performance will raise unrealistic expectations that corrective action will be taken if negative impacts are shown.
- Need to be prepared to respond to results of performance measures with mitigating actions.
- Every project should have benchmarks and goals, and a timeline for measuring success. There has to be follow-through on implementation in order to fine tune and correct.
- Within one year after implementation, expedite quick fixes (more substantial issues than the current Code Maintenance addresses), in order to correct unintended consequences right away.
- Would like to see a timeline for following up on newly adopted regulations, with dates.
- Following up on major policy initiatives is key, such as design standards or ADU regulations.
- Monitoring regulations should be a priority.
- Bureaus should be responsible for monitoring and measuring performance. Don't automatically report to Council---unless a policy correction is necessary.

Strategic “Big Picture” Planning

- Need to look at the larger context: what economic activities are compatible with environmental preservation?
- The role of the Planning Commission should be to look at the bigger picture and provide a public forum for discussing goals and competing priorities. Need to provide incentives for “big picture” thinking.
- Ideally, the Bureau of Planning should be looking at larger trends and city goals---not just developing regulatory packages that react to one interest group or another (“planning as therapy”)---being proactive and planning strategically.
- Need to look at the whole regulatory package across the city. Currently there is no sequencing, no coordination across bureaus, no big picture prioritization.
- Need to look at bigger projects, not just individual items on the Code Maintenance list.
- The Planning Commission’s focus should be on the bigger picture.

Attachment 1

Public Involvement

- Public is not aware of how public infrastructure helps economic development.
- Re: impacts on citizen stakeholders: City should focus its efforts on building the capacity of Neighborhood Associations; meaningful citizen involvement is key.
- Citizen outreach on regulatory proposals needs to be far more coordinated and consistent across bureaus. Need a master plan.
- Would prefer to have selected stakeholder committees to ensure diverse points of view are represented; need to hear more than just the staff proposal.

Cultural Issues

- Need to create a culture of continuous improvement among regulation writers. Empower staff to flag regulations that aren't working well and need fixing. Provide incentives (other than financial) to encourage staff to make suggestions for improvements. Need to keep a record of complaints about particular regulations and have an internal mechanism for catching and correcting problems. Constructive change should be encouraged.
- Need a cultural shift among city planners; it's not necessary to solve every problem---need to see difficult policy choices as opportunities for dialogue with the public.
- Look at other tools besides regulation. Bureaus choose regulatory solutions because that's what the City Council provides funding for. In order to get regulatory bureaus to select tools other than regulations, City Council should make non-regulatory tools available and encourage their use. For example, a unified citywide capital improvement program that is explicitly linked to citywide goals, including land use goals. Or PDC tax abatement and tax increment tools directly linked with/to citywide land use goals.
- Ask the right questions about options, ask the public to react; don't seek perfection.

Other Issues

- What other jurisdictions in the U.S. require a regulatory impact analysis statement for new regulations?
- More important than regulations and regulatory impacts is the inconsistent implementation or interpretation of regulations by City staff.
- Politics play a big role in regulatory decision-making, not just "the facts."

Attachment 2

Selected Best Practices

New York State

In 1996, the State of New York established G.O.R.R., Governor's Office of Regulatory Reform (www.gorr.state.ny.us). Their motto is, "Is government bureaucracy pulling you in too many directions?...then contact GORR!"

1. A de facto admission that regulations and overlapping agencies have confused the public and hindered economic activity.
2. Provides a clear process for evaluating proposed regulation. Agencies must answer the following key questions:
 - Is there clear statutory authority for the proposed regulation?
 - Is this simply a response to the "crisis du jour" or a persistent and lasting public problem?
 - Does the proposed rule provide maximum flexibility to the regulated parties?
 - What alternatives to regulation were considered?
3. Cost-Benefit Handbook. Provides exhaustive guidance for considering all impacts of a proposed regulation. See website for details. www.gorr.state.ny.us
4. RESULTS since 1996:
Washington Roundtable Report, Winter 2002-2003: "\$3 billion in regulatory savings or avoided costs and a greater than 50 percent decrease in the number of regulations issued as a result of the reform efforts that have taken place in New York. Regulation reform can set the stage for economic growth and development; GORR has moved into a proactive effort with the state economic development agency in permitting and site development."

Indianapolis

The City of Indianapolis created a Regulatory Study Commission in 1992, in order to assess the effects of regulatory costs and benefits to the local economy. Its fundamental operating principle is: first, do no harm.

Regulatory Study Commission Goals:

- Lighten the regulatory burdens imposed on citizens and businesses.
- Use the regulatory code as a tool to encourage new business opportunities.
- Eliminate regulatory barriers to creation of affordable, resident-owned housing.

Regulatory Study Commission Principles:

- Regulations should be a last resort-their use indicates a failure of all other means.
- Cost of a regulation should be no greater than the benefit to the community.
- Regulations must be simple, fair, and enforceable.
- Regulations must be written to insure the minimum possible constraints.
- Regulations must never exceed existing federal or state standards without a compelling and uniquely local reason for them to do so.

Attachment 2

Elimination of “low-impact” permits

Approximately 7200 permits a year have been eliminated because they dealt with such “low-impact” things as: replacing doors, bathroom fans, adding a roof layer or siding. This “re-categorization,” completed as part of the “Homeowners Freedom Act,” lightened the city’s administrative load in money and personnel.

Regulatory Enterprise Zones

Theoretical way of viewing the city that focuses on different customer/constituent groups. Instead of dividing the City into geographic sections, it applies a “regulatory enterprise zone” concept to demographic or economic thresholds. “Instead of defining our concept geographically, why not define it through the very people we are trying to help?” An example involved a citizen renovating a recently purchased distressed property. She placed debris under a tarp on the back porch before transporting it off to the dump. Instead of being praised for improving the local housing stock, or even being left alone to continue a commendable project, she was cited for having debris on her property. She was forced to call a trash hauler, which added unneeded expense and delayed the rehabilitation project by several weeks.

Albuquerque

2000 Progress Report: Very good *format* for reporting on City performance, both to city workers and the general public. Below is one example from www.cabq.gov/progress/

Goal:	Sustainable Community Development
Desired Community Condition:	A vital downtown
Indicator:	Proportion of downtown housing units to jobs
Indicator Description:	Measure proportion of housing units to jobs
Why is this Indicator Important?:	Downtowns are more likely to be viable when significant numbers of people reside there. Increased residence attracts more broad-based services, and promotes neighborhood-oriented growth.
Data Sources:	U.S. Census
Linkages:	This indicator is linked with those of economic vitality, since a vital downtown can add to the vitality of the entire city.

Conclusion: This is a simple model for reporting on progress of city efforts, that links vision, goals and specifics within a holistic picture of the city.

Milwaukee

Vision for Milwaukee:

- Dynamic and accessible markets gainfully employing citizens.

Attachment 2

- Safe, strong, and beautiful neighborhoods with well-maintained
- housing and a healthy environment.
- A flourishing culture recognized for its arts, recreation, museums, and institutions of education.

Mission for Milwaukee:

Provide a safe, secure environment for citizens and visitors.

- Promote an economic climate that supports job creation.
- Create opportunities that make citizens successful.
- Provide a sound and highly reliable physical infrastructure, including transportation and water systems, and a safe, healthy environment.

Measuring the effectiveness of city regulations and policies is easier with the presence of clear and concise goals that start at the top.

Interesting Approach to Mixed-Income Development:

Townhomes at Carver Park: Replaced 170 distressed units with 122 new housing units that mirror the architecture of the surrounding neighborhood. Range of affordable options includes: 51 public housing units, 51 tax credit rentals and 20 market rate units. This is an example of a *non-regulatory* method of achieving multiple policy goals, creating a win-win.

- Funding structure allowed the city to place the previously tax exempt property on the tax rolls.
- 14 units are fully wheelchair accessible.
- Funding included HUD's HOPE VI, Federal Home Loan Bank.
- Investment was made through the sale of Low Income Housing Tax Credits, attracting resources for development of affordable housing by offering tax credits to investors.
- In exchange for tax credits, Fannie Mae invested \$10 million.

The City's official website has an excellent page detailing incentives for business to pursue certain development projects. This appears to promote public-private partnerships; the City rewards desired behaviors and outcomes with a variety of incentives, including low-interest loans, tax-exempt bonds, tax-increment financing and tax credits.

Attachment 3

Guide to Impact Assessment

This *Guide to Impact Assessment* is to be used in each phase of the process of consideration of land use and development actions to prompt evaluation of a variety of impacts. The questions are not designed as mandatory criteria, but as probative inquiries, the consideration of which will ensure disciplined thinking at all stages of development and review. No Bureau's assessment will look the same but each will process these inquiries and respond as appropriate. The final assessment or "report" produced by the Bureau will not necessarily address each and every one of these questions, but staff and decision makers should be prepared to respond to any of them.

Purpose/Intent

What is the problem we are trying to address?

Are there mandates or requirements we are responding to?

Are there trends or changes that require changes to our regulations? (technology changes, growth impacts, etc.)

What problems, needs, or desires do the regulations address?

What elements of the City's vision, mission, goals, and objectives do the regulations support?

How do the regulations support the City's Comprehensive Plan?

What are our intended outcomes?

Is there clear statutory authority for the proposed regulation?

Is the problem the regulation seeks to address an isolated case or of sufficiently broad concern to justify a City regulation?

Is this a priority for action? Why?

What do the community and stakeholders want to achieve?

Impacts, Trade-offs and Consequences

Who or what do the regulations impact? (Classes of businesses? Type of development, e.g. residential, commercial? Specific areas of the City?)

What other City and non-City regulations affect the same subject or geographic area? Do the proposed regulations support, duplicate, or contradict those regulations?

Do the regulations create new non-conforming situations or address existing non-conforming uses?

Attachment 3

Does the proposed regulation impose requirements stricter than mandated? If so, are these differences explained fully, and is appropriate justification provided?

Alternatives Analysis and Regulatory Coordination

Is there a simpler regulation, or a non-regulatory method, which would accomplish the same goals?

Were alternatives to regulatory action fully considered and weighed? Such alternatives could include: doing nothing; private or non-profit solutions; voluntary agreements with affected parties; public education; non-regulatory City actions; better enforcement of existing regulations; public and private investment; and regulatory and non-regulatory incentives.

Is the proposed regulation simply a response to the “crisis du jour” which may subside on its own, or is it designed to address a persistent, lasting public concern?

What reviews will be required? Would a lesser level of review be appropriate?

Is the proposed regulation appropriately tailored to the specific problem it seeks to address?

Does the proposed regulation provide maximum flexibility to the regulated parties?

What exceptions and/or adjustments are allowed? Should these be allowed by right, or must they go through a process? How much would the exception/adjustment cost the applicant? Is this balanced out by the benefit to the City/others?

What types of appeal are allowed to the applicant? To other interested parties? What impact might appeals have on the cost to the City/to the applicant/to other interested parties?

How easy or difficult will the regulations be to implement?

Have we erred on the side of flexibility, simplicity, and ease of administration, rather than inflexibility and complexity?

What non-regulatory and non-land use methods have been considered? Why were they discarded?

What other ways are the City/others already working to achieve the same goals?

What other City and non-City regulations affect the same subject or geographic area? Do the proposed regulations support, duplicate, or contradict those regulations? How many different layers of regulation already apply to properties which will be effected by this regulation?

Do the regulations incorporate language and actions that parallel State, County and Metro to ensure compatibility and consistency wherever possible?

Attachment 3

Have we created non-conforming situations? Do we understand all the implications and have we adequately informed property owners and tenants of these implications and received and considered their input?

Can the regulation be combined with any similar regulations?

What is the incremental value of the “last 10 percent” of the requirements? Could we achieve most of the goal/outcome/benefit with a slightly lesser level of regulation? Are we trying to address 100% of the problem, or 90%? Would 90% be acceptable?

Could more or better enforcement of existing laws and regulations achieve the desired goal?

Costs

What are the permit and review costs of the regulation to developers and/or property owners?

Are there additional costs for preparing/providing additional information required?

Will the regulation create time delays for developers and/or property owners? What is the impact and cost of any delays?

What are the “soft cost” impacts of the regulation on developers and property owners? (e.g. decreased competitive advantage, loss of development potential)

Can average additional external costs be quantified? For example: Approximate percentage change in cost to complete a project subject to the regulation? Additional cost per square foot of development?

What are the internal administration costs for the City, in terms of materials, staffing, etc. for review, monitoring and evaluation, inspection, and enforcement of existing and proposed regulations?

Will there be any impact on fees charged? Will resources need to be redirected to address internal costs?

How will the regulation affect ongoing operational or transactional costs?

Will the proposal have an impact on the City’s revenue collections?

Benefits

What are the benefits of the regulation to current and/or future users/developers?

Will the regulation enhance the value of property?

What benefit does it provide the general public, e.g. environmental protection and natural resource enhancement, economic, neighborhood character, protection of public and private capital investments, quality of life, public health and safety benefits? Are there benefits derived from having the regulations apply to others?

Attachment 3

Do the potential benefits of the regulation outweigh the accumulated costs to developers, the public, and city government?

Are there scientific or economic measurements of the benefits?

Implementation

What are the accompanying compliance, enforcement and inspection plans? Are fines and penalties commensurate with violations?

Does the proposal involve a new review procedure, approval criteria, or standards?

Are there ongoing reporting or maintenance requirements that did not exist before?

If the regulation is violated, how will the violation be discovered and enforced?

What changes in staffing or funding are required to implement the regulation?

What new administrative rules, procedures, and training are required for implementation of the regulation?

Evaluation, Performance Measures and Benchmarks

What type of check-in/monitoring will there be? How can the City, and specifically the Council, be involved in ensuring efficacy of the regulations and/or standards?

How will we determine whether the regulation is effective? How will we know we are achieving our desired outcome/intent/measures?

What will success look like? (fewer accidents, fewer non-conforming uses, more density, more mixed use)

What baseline data is available that reflects the current situation?

Are there quantitative ways to measure whether we are achieving our desired outcome? (10% more affordable housing units in selected areas in the next 5 years)

Are there qualitative ways to measure whether we are achieving our desired outcome? (residential infill development is in harmony with existing neighborhood character)

Who will be responsible for post-adoption monitoring and performance measurement?

What resources are needed to gather and evaluate performance data, i.e., staff resources, technology, consulting expertise?

When should an initial technical review be completed?

When should a policy review be completed?

Post-adoption Monitoring and Performance Measurement

Are there minor technical or administrative obstacles to achieving our desired outcome/intent?

Attachment 3

Are we achieving the desired outcome/intent? What do our performance measures show?

What impacts is the regulation having? Were our assumptions about impacts correct? Why or why not?

Are there unintended or undesired outcomes? Describe.

Has this regulation fully achieved the desired outcome?

Is this outcome still desired?