

BEFORE THE COUNCIL
OF THE METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF SUBMITTING)	ORDINANCE NO. 80-86
METROPOLITAN SERVICE DISTRICT)	
ZOO SERIAL LEVIES)	Introduced by the
)	Ways and Means Committee

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. Short Title

This ordinance shall be known as the "Zoo Serial Levy Ordinance" and may be so cited and pleaded and shall be cited herein as "this ordinance."

Section 2. Definitions

A. "Council" means the Council of the Metropolitan Service District.

B. "District" means the Metropolitan Service District and all of the land and territory included within the boundaries of the District.

C. "Zoo" means the Washington Park Zoo of Portland, Oregon, operated by the District under ORS 268.310 (5).

Section 3. Findings

A. ORS 268.310 (5) permits the District to "acquire, construct, alter, maintain, administer and operate metropolitan zoo facilities."

B. ORS 268.315 provides that "(F)or the purpose of performing the functions set forth in subsection (5) of ORS 268.310, the District, when authorized at any properly called election held for such purpose, shall have the power to levy an ad valorem tax on all

taxable property within its boundaries not to exceed in any one year one-half of one percent (.005) of the true cash value of all taxable property within the boundaries of such district, computed in accordance with ORS 308.207."

C. The Zoo currently receives approximately 40 percent of its total revenues from a serial levy that will expire at the end of FY 1981.

D. The Zoo, with unique educational and recreational offerings, is utilized by and benefits District residents.

E. A regional funding base is necessary to provide for continued adequate care, maintenance and development of the Zoo's animal collection, programs and physical facilities.

F. During fiscal years 1982 through 1984 property tax revenues in the total amount of \$15,000,000 for the three-year period will be needed to fund Zoo operating and capital expenses.

Section 4. Purpose

The purposes of this ordinance are:

A. To provide for the health and welfare of District residents by providing for the maintenance and operation of the Zoo, and for construction and renovation of Zoo exhibits.

B. To approve submission of two three-year operating serial levies to the voters on May 20, 1980, the revenues of which will be used for purposes permitted under ORS 268.310 (5) and to pay the costs of holding the election.

Section 5. Submission of Tax Levy

A. The Council approves and hereby directs that a three-year operating serial levy of \$1,456,923 each year for three years, a

total of \$4,370,769 for the three-year period, be submitted to the voters on May 20, 1980. This levy shall be submitted separately from the levy described in subparagraph B of this Section so that it may qualify for the partial State payment provided by 1979 Or. Laws ch. 241.

B. The Council approves and hereby directs that a three-year mixed operating and capital serial levy of \$3,543,077 each year for three years, a total of \$10,629,231 for the three-year period, be submitted to the voters on May 20, 1980.

Section 6. Ballot Titles

A. The Ballot Titles for the levies described in Section 5 of this ordinance shall be as follows:

SERIAL LEVY,
PARTIALLY STATE FINANCED,
FOR BASIC ZOO OPERATIONS

QUESTION: Shall the Metropolitan Service District levy \$1,456,923, partially State-financed, each year for three years to operate the Zoo?

PURPOSE: This levy authorizes the Metropolitan Service District to serially levy \$1,456,923 annually for three years for a total of \$4,370,769 property tax outside the six percent limitation specified in the Oregon Constitution. Proceeds would be used entirely to support operation and maintenance of the Zoo. No portion would be used for capital construction.

EXPLANATION: The Washington Park Zoo is owned and operated by the Metropolitan Service District. In 1976, voters in all three counties of the District approved a five-year serial levy for Zoo operations and maintenance of \$10,000,000; \$2,000,000 each year for five years. That levy expires in mid-1981.

This proposed levy would begin in mid-1981 and expire in 1984. No provision is made in this levy for inflation or operation cost increases above the current funding level. A levy to offset such

cost increases during the three-year period is being submitted as a separate measure.

If this measure is approved, the \$4,370,769 will be partially funded by the State of Oregon. Such partial State funding is contingent upon voter approval of Ballot Measure # 5 which would provide partial State funding of local levies for operations.

SERIAL LEVY,
WITHOUT STATE FINANCING,
FOR ZOO OPERATIONS AND EXHIBITS

QUESTION: Shall the Metropolitan Service District levy \$3,543,077 each year for three years for operating and capital expenses at the Zoo?

PURPOSE: This levy authorizes the Metropolitan Service District to serially levy \$3,543,077 annually for three years for a total of \$10,629,231 property tax outside the six percent limitation specified in the Oregon Constitution. Proceeds from the levy would be used entirely to support operations and capital construction at the Zoo.

EXPLANATION: The Washington Park Zoo is owned and operated by the Metropolitan Service District. In 1976, District voters in Multnomah, Washington and Clackamas Counties approved a serial levy for Zoo operations and maintenance of \$10,000,000; \$2,000,000 each year for five years. That levy expires in mid-1981. A measure to continue a portion of that \$2,000,000-per-year levy until 1984 is being submitted as a separate measure.

This proposed levy would provide \$1,243,077 each year for Zoo operations and \$2,300,000 each year for capital construction. The operating funds would enable the Zoo to continue the same level of services currently being provided, by offsetting cost increases due to inflation, and would provide operating funds for new exhibits. The capital funds would be used to finance building of new exhibits for Alaskan animals and African Plains animals, would allow completion of the primate house and beaver/otter exhibit, and would allow renovation of the penguinarium.

If this measure is approved, \$10,629,231 of taxes

levied will be totally financed by local taxpayers without any partial state payment.

B. The above Ballot Titles shall be filed with the Director of Records and Elections of Multnomah County not later than March 11, 1980.

ADOPTED by the Council of the Metropolitan Service District this 11th day of March 1980.


Presiding Officer

ATTEST:


Clerk of the Council

AJ/gl
6996/92

NOTICE OF MEASURE ELECTION

Metropolitan Service District

Name of District

On May 20, 1980, an election will be held in
Date of Election

the Metropolitan Service District

Name of District

The polls will be open from 8:00 a.m. to 8:00 p.m. The following
measure will be submitted to the voters of the district:

(Put text of ballot title on reverse side)

This legal notice is to be published in The Oregonian

M. Eugene Merwin
Authorized signature

Presiding Officer, Metro Council
Title

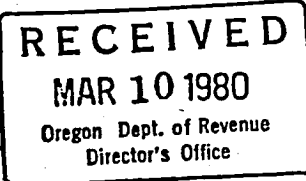
DIRECTOR OF ELECTIONS
METRO COUNCIL

This notice must be filed by the 35th day before the election. (40th day if primary or
general election)



DEPARTMENT OF JUSTICE

100 State Office Building
Salem, Oregon 97310
Telephone: (503) 378-4400



March 10, 1980

No. 7860

This opinion is issued in response to questions presented by Robyn L. Godwin, Director, Department of Revenue.

FIRST QUESTION PRESENTED

For purposes of computing an adjusted levy under Oregon Laws 1979, ch 241, sec 27(2)(a), is the Metropolitan Service District zoo serial levy approved May 25, 1976, considered (1) an operating serial levy or (2) a combination of capital construction and other operations serial levy?

ANSWER GIVEN

The serial levy is a combined capital construction and other purpose serial levy.

SECOND QUESTION PRESENTED

What procedure should be used in determining how the adjusted levy for the Metropolitan Service District for the 1981-1982 year is computed?

ANSWER GIVEN

The adjusted levy is the amount levied in 1979-1980 after deducting the amount levied for capital construction as defined in Oregon Laws 1979, ch 241, 23(3).

DISCUSSION

In 1976, the Metropolitan Service District of Multnomah County (hereinafter referred to as "Metro") proposed a five-year serial levy to support the Washington Park Zoo, which Metro now owns and operates. The levy was adopted. The Metro ordinance calling the election provides in pertinent part as follows:

"Section 4. Findings

"The Board finds that:

"A. ORS 268.310(5) (Chapter 510, Oregon Laws, 1975) permits the Metropolitan Service District to 'acquire, construct, alter, maintain, administer and operate metropolitan zoo facilities.'

"B. ORS 268.310(5) [sic, should be 268.315] Chapter 510, Oregon Laws, 1975) also provides that 'for the purpose of performing the functions set forth above, the District when authorized at any properly called election held for such purpose, shall have the power to levy an ad valorem tax on all taxable property within its boundaries not to exceed in any one year one-half of one percent (.005) of the true cash value of all taxable property within the boundaries of such district, computed in accordance with ORS 307.207.

". . . .

"H. A regional funding base is necessary to provide for continued adequate care, maintenance and development of the Portland Zoo's animal collection and physical facilities.

"Section 5. Purpose and Policy

"A. The purpose of this ordinance is to:

"1. Provide for the health and welfare of the people in the District.

"2. Provide for the maintenance and operation of metropolitan zoo facilities in the District.

"3. Approve submission of a five-year District-wide tax levy to the voters on May 25, 1976, the revenues of which will be used for those purposes set out in ORS 268.310(5). (Chapter 510, Oregon Laws, 1975) and to pay the costs of holding the election.

"Section 6. Submission of Tax Levy

"A. The Board approves submitting a five-year District-wide tax levy of \$2,000,000 each year for five years, a total of \$10,000,000 to the voters on May 25, 1976.

"B. The proceeds of the levy will be used for those purposes described in Chapter 510, Oregon Laws, 1975 and to pay the costs of holding the election.

"A. The ballot title for the five-year tax levy will be:

ZOO - METROPOLITAN SERVICE DISTRICT FUNDING
PROPOSAL

A measure providing for continued operation and maintenance of the zoo by authorizing and directing a continuing five-year special tax levy within the Metropolitan Service District, comprising portions of Clackamas, Multnomah and Washington Counties, effective July 1, 1976, of \$2,000,000 each year for five years, a total of \$10,000,000 for the five year period, in lieu of continued zoo financing through the City of Portland.

"B. The ballot title shall be filed with the Multnomah County Election Division and refiled between April 5, 1976, and April 25, 1976, only if funds or commitments for funds have been received to pay the cost of the election.

"Section 8. Transfer of Portland Zoo

"Upon voter approval of the five-year tax levy, the District will accept the land, animals, buildings and equipment comprising the Portland Zoo from the City upon terms and conditions acceptable to MSD and the City."

Oregon Laws 1979, ch 241, sec 27 provides for a limitation on the amount of that part of ad valorem taxes which will be financed in part by the State of Oregon, which can be extended on the assessment and tax rolls for any fiscal year by a political subdivision of the State of Oregon. It accomplishes this by stating in subsection (1) that any ad valorem tax extended on the roll for any fiscal year beginning on or after July 1, 1980, shall be financed completely by local property taxpayers without any partial state payment to the extent that the taxes are extended pursuant to a levy that is in excess of the district's adjusted levy or the amount of the levy within the taxing district's tax base.

Subsection (2), paragraph (a) of section 27 defines an adjusted levy as follows:

"(a) 'Adjusted levy' means:

"(A) For any taxing unit levying, in the preceding year, outside its tax base other than for serial levies for capital construction or capital construction and other operations or levies for payment bond principal and interest, the remainder of the base year levy certified to the assessor minus the tax levied for all bond principal and interest and any serial levy made for capital construction or combination of capital construction and other operations, multiplied by the product obtained by multiplying the population indicator by the inflation indicator."

". . . .

"(C) The portion of the serial levy for the 1979-1980 fiscal year made for purposes other than capital construction, if the taxing unit had no levy other than the serial levy or a levy for the payment of bond principal and interest for the 1979-1980 tax year. Any serial levy used to compute adjusted levy

under this subparagraph shall not be added to the adjusted levy under subparagraph (A) of paragraph (a) of subsection (1) of this section."

As used in these statutes capital construction is

"(3) For purposes of subsection (2) of this section, 'capital construction' means the acquisition of land upon which to construct a building, the acquisition of a building, the acquisition of an addition to a building which increases the square footage of the building, the construction of a building, the construction of an addition to an existing building which increases the square footage of the building or the acquisition of and installation of machinery and equipment which will become an integral part of a building or an addition to a building or a combination of those items." Oregon Laws 1979, ch 241, sec 23.

If the serial levy in question is determined to be an "operating serial levy" it would fall within the provisions of subparagraph (A) quoted above. The entire \$2,000,000 which was levied in 1979 would be further increased in multiplying the \$2,000,000 by an inflation-population factor. Based upon the inflation indicator for the 1980-1981 fiscal year, the adjusted levy for 1980-1981 would be \$2,286,000.

On the other hand, if the serial levy in question is a serial levy for capital construction and other purposes, the adjusted levy would be determined under subparagraph (C). No inflation-population factor increase is permissible, as would be the case for any other levy under subparagraph (A).

Therefore, it is very important to the district to determine which subparagraph applies to its levy in order for it to determine how much it may ask the voters to approve, to be financed in part by the State of Oregon, and how much must

be separately submitted to the voters to be entirely financed by the ad valorem taxpayers of the Metropolitan Service District. See ORS 310.395 as amended by Oregon Laws 1979, ch 241, sec 28.

In 1976, when Metro proposed the five-year serial levy to the voters, there was much publicity and many representations made to the voters that the passage of the serial levy would enable Metro not only to operate and maintain the Zoo with the moneys available to it, but would also provide sufficient moneys so that Metro could add to the buildings and construct new facilities on land owned by the Zoo. Among the purposes and policies of the ordinance set forth in section 5, was the raising of revenues to be used for the purposes set out in ORS 268.310(5). That subsection permits the Metropolitan Service District to acquire, construct, alter, maintain, administer and operate metropolitan zoo facilities. The emphasized words would permit capital construction projects.

However, the ballot title stated that the Metropolitan Service District funding proposal is a measure providing for continued operation and maintenance of the Zoo by authorizing and directing a continuing five-year special tax levy within the boundaries of Metro, of \$2,000,000 each year for five years, a total of \$10,000,000 for the five-year period, in lieu of continued Zoo financing by the City of Portland. If one were to look to the ballot title only, there was no mention of capital construction and nothing to indicate that

any' type of capital construction was contemplated. However, the ballot title does speak to "continued operation and maintenance of the Zoo." Additions to buildings which will increase the amount of square footage or the construction of minor buildings, which would be within the definition of capital construction under Oregon Laws 1979, ch 241, sec 23(3) quoted above, could be included under a very broad definition of maintenance of the Zoo. Therefore, one cannot say that the ballot title did not include any capital construction as defined by Or Laws 1979, ch 241.

The first Zoo budget adopted by Metro contained capital construction. That capital construction was funded entirely out of the single "Zoo" fund of Metro which also funded the other operations of the Zoo. This method of appropriating and accounting for Zoo funds has continued from 1977 through the current year.

In the four years in which the levy has been collected, revenues from the levy, just under \$2,000,000 each year, have gone into that single "Zoo" fund together with other revenues such as gate receipts and gifts. Some part of that fund has been spent for capital construction each year, although not necessarily all for "capital construction" as defined in Oregon Laws 1979, ch 241, sec 23(3). Capital construction expenditures in the 1978-1979 fiscal year were \$1,258,194; budgeted figure for the current fiscal year is \$930,000. But in each of these years, except (by a small margin) the first,

operating expenditures have exceeded the total amount of the levy. The FY 78-79 figure for operating expenditures was \$2,393,683; the budgeted FY 79-80 figure is \$3,216,515. The difference is made up by non-tax revenues, which in each year have exceeded the amount spent for capital construction.

It is urged that since each year a sum not merely equalling but exceeding levy proceeds has been spent for operations, the levy should be treated as being entirely for operating expenses, with capital construction expenditures deemed to have come from other sources. But all revenues went into the same Zoo fund without segregation, and payments were made out of that fund for operations and capital construction without regard to source.¹

Applying the usual rules of statutory construction both to the ordinance and to the ballot measure, one must first look at the words used therein. The ballot measure provides that the money will be used for continued operations and maintenance of the Zoo. As pointed out in the preceding paragraph, maintenance in the broad sense can include and in most probability would include "capital construction," as that term is narrowly defined by Oregon Laws 1979, ch 241, sec 23(3). At the very least, the term "maintenance" does give some doubt as to exactly what was meant by that term. Once doubt exists, we must look at the surrounding circumstances and related documents to try to determine what type of levy the people adopted. A reading of sections 4 and 5 of the

ordinance indicates that the levy could have been used for any of the purposes stated in ORS 268.310(5), which includes capital construction as defined by the 1979 Legislature. The testimony presented to the Multnomah County Tax Supervising and Conservation Commission on April 28, 1976 before the passage of the measure clearly indicates on pages 2, 4 and 6 of the transcript of the meeting that "capital construction" as defined in Oregon Laws 1979, ch 241, was planned during the years the levy was to be made, and that one purpose of the levy was to make such construction possible.

Based upon all of the other facts and circumstances surrounding the levy at the time of its adoption, it is the opinion of this office that property taxes were levied serially for the purpose of financing capital construction and other operations. Therefore, that levy would fall within subparagraph (C) of Oregon Laws 1979, ch 241, sec 27(2)(a). This subparagraph defines "adjusted levy" as the amount of serial levy for the 1979-1980 years remaining after subtracting the amounts levied for capital construction as defined in section 23(3) of Oregon Laws 1979, ch 241.

Following the procedure adopted by the Oregon Tax Court in Department of Revenue v. Multnomah County, 4 OTR 133, 153 (1970), the capital construction amount of the \$2,000,000 levied for the 1979-1980 fiscal year will be determined by the following formula:

$$A \times \frac{L}{T} = P$$

A is the estimated expenditures made in the 1979 budget as adopted at the beginning of the fiscal year for capital construction (as defined in Oregon Laws 1979, ch 241, sec 23 (3)).

L is the levy of taxes for the Zoo fund . (\$2,000,000 certified to the assessor).

T is the total estimated expenditures for all purposes as shown by the 1979 budget as adopted at the beginning of the fiscal year for the Zoo fund.²

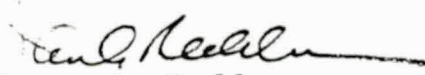
P is the amount levied for capital construction purposes for 1979, which is the amount to be subtracted from the levy certified to the assessor for the 1979-80 fiscal year.

This formula results in a proration of the total budgeted capital construction expenditure between the levy source, to be subtracted from the levy to determine the adjusted levy, and other sources. As stated in footnote 1, any non-levy revenues specifically designated and spent for particular capital projects may be subtracted from the "A" and "T" figures.

Insufficient information has been submitted to this office to implement the formula. Many of the items that are shown in the budget as either "capital outlay" or as "general capital improvements" do not fall within the definition of "capital construction" as defined in section 23 of Oregon Laws 1979, ch 241. After all of the proposed expenditures for "capital outlay" and "general capital improvements" are analyzed, it may be that only a very small portion of the amount shown under those categories fit the definition of "capital construction" as used in the 1979 law.

. If an analysis of the working papers which provided the figures in the budget prepared and approved by the governing body does not indicate that any of the levy is for capital construction as defined in the 1979 law, then all of the \$2,000,000 would be the adjusted levy for the 1980-1981 fiscal year.

The answer to the second question is moot because the serial levy is found to fall within subparagraph (C) and is not subject to the possible growth as would be the case with a levy falling under subparagraph (A). This is true even if no "capital construction" expenditures (as defined) were budgeted in 1979 for the 1979-80 fiscal year, as the levy was nevertheless "for" capital construction, and amounts were expended for that purpose in previous years under the same serial levy. Therefore, the adjusted levy for 1981-1982 will be the same amount as the adjusted levy for 1980-1981.


James A. Redden
Attorney General

JAR:IWJ:jo

¹To the extent gifts, grants or other sources of income were designated for specific capital projects, expenditures for that purpose may be deemed to have been made from the particular source.

²The 1979 adopted budget is the fiscal plan for Metro for that year. It sets forth the proposed expenditures, forms the basis for the appropriations and states the purposes for which

. all revenues, including the serial tax levy, were raised for that year.

Special ord. - not codified

ORDINANCE NO. 80-86

TITLE SUBMITTING METROPOLITAN
SERVICE DISTRICT ZOO SERIAL LEVIES

DATE INTRODUCED 2/14/80

FIRST READING 2/14/80

SECOND READING 2/28/80

DATE ADOPTED 3/11/80

DATE EFFECTIVE 3/11/80

ROLLCALL

	Yes	No	Abst.
Burton	X		
Stuhr	X		
Williamson		X	
Berkman			
Kirkpatrick	X		
Deines			
Rhodes	X		
Schedeen	X		
Miller Bonner	X		
Banzer			X
Peterson	X		
Kafoury	X		