

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

AN ORDINANCE RELATING TO CONTESTED) ORDINANCE NO. 82-137
CASE PROCEDURES AND AMENDING METRO)
CODE CHAPTER 5.02) Submitted by the Regional
) Development Committee

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. Metro Code section 5.02.005 is amended to read:

"5.02.005 Contested Case Defined, Notice of
Opportunity for Hearing, Service:

- (a) A contested case exists whenever:
- (1) Individual legal rights, duties or privileges of specific parties are required by statute or Constitution to be determined only after a hearing at which specific parties are entitled to appear and be heard.
 - (2) The District has discretion to suspend or revoke a right or privilege of a person; or
 - (3) There is a proceeding regarding a license, franchise or permit required to pursue any activity governed or regulated by the District; or
 - (4) There is a discharge of a District employee; or
 - (5) The District proposes to require a county, city or special district to change a plan pursuant to ORS 268.380 or 268.390; or
 - (6) There is a proceeding in which the District has directed by ordinance, rule or otherwise that the proceeding be conducted in accordance with contested case procedures.
- (b) A contested case does not exist when a District action rests solely on the results of a test or inspection.
- (c) The District shall give notice to all parties in a contested case. The notice shall include:

- (1) A statement of the party's right to request a hearing, or a statement of the time and place of the hearing;
 - (2) A statement of the authority and jurisdiction under which the hearing is to be held;
 - (3) A reference to the particular sections of the statutes, ordinances or rules involved;
 - (4) A short and plain statement of the matters asserted, charged or proposed;
 - (5) A statement that the party may be represented by counsel at the hearing;
 - (6) When applicable, a statement that if the party desires a hearing, the District must be notified within a specified number of days; and
 - [(7) A statement that if a hearing is held, each party to the hearing will be given the information on the procedures, right of representation, and other rights of the parties relating to the conduct of hearings as required under ORS 183.413(2).]
- (d) Unless the Council provides otherwise, the number of days within which the District must be notified that the party desires a hearing shall be as follows:
- (1) Within thirty (30) days of the date of mailing of notice; or
 - (2) Within sixty (60) days of the notification of refusal to issue a license, franchise or permit required to pursue any activity governed or regulated by the District, if the refusal is based on grounds other than the results of a test or inspection; or
 - (3) Within ninety (90) days of an immediate suspension or refusal to renew a license or franchise pursuant to [ORS 183.430(2) and] section 5.02.010 of these rules.
 - (4) In the case of a personnel discharge, within fourteen (14) days of the employee's receipt of the Notice of Discharge.
- (e) The notice shall be served personally or by registered or certified mail.

- (f) The District may provide that notice in addition to that required by this section be given for specific types of contested case."

Section 2. Metro Code section 5.02.007 is amended to read:

"5.02.007 Rights of Parties in Contested Cases:

- (a) The following [written or oral] information shall be given to the parties [required to be given under ORS 183.413(2)] before commencement of a contested case hearing [shall include]:
- (1) If a party is not represented by an attorney, a general description of the hearing procedure [including the order of presentation of evidence, what kinds of evidence are admissible, whether objections may be made to the introduction of evidence, and what kind of objections may be made and an explanation of the burdens of proof or burdens of going forward with evidence].
 - (2) Whether a record will be made of the proceeding and the manner of making the record and its availability to the parties.
 - [(3) The function of the record making with respect to the perpetuation of the testimony and evidence and with respect to any appeal from the determination or order of the District.]
 - (3) [(4)] Whether an attorney will represent the District in the matters to be heard and whether the parties ordinarily and customarily are represented by an attorney.
 - (4) [(5)] The title and function of the person presiding at the hearing with respect to the decision process, including, but not limited to, the manner in which the testimony and evidence taken by the person presiding at the hearing are reviewed, the effect of that person's determination, who makes the final determination on behalf of the District, whether the person presiding at the hearing is or is not an employee, officer, or other representative of the District and whether that person has the authority

to make a final independent determination.

[(6) In the event a party is not represented by an attorney, whether the party may during the course of the proceedings request a recess if at that point the party determines that representation by an attorney is necessary to the protection of the party's rights.]

[(7) Whether there exists an opportunity for an adjournment at the end of the hearing if the party then determines that additional evidence should be brought to the attention of the District and the hearing reopened.]

(5) [(8)] Whether there exists an opportunity after the hearing and prior to the final determination or order of the agency to review and object to any proposed findings of fact, conclusions of law, summary of evidence or recommendations of the officer presiding at the hearing.

(6) [(9)] A description of the appeal process from the determination or order of the District.

(b) The information required in subsection (a) may be given in writing or orally before the commencement of the hearing."

Section 3. Metro Code sections 5.02.020 and 5.02.044 are repealed.

Section 4. Metro Code section 5.02.025 is amended to read:

"5.02.025 Hearing:

(a) The hearing shall be conducted by, and shall be under the control of, the Council Presiding Officer or a hearings officer. [The hearings officer may be the Presiding Officer of the Council, if the hearing is to be before the Council, or any other person designated or approved by the Council.] Contested case hearings on amendments to the regional Urban Growth Boundary shall be before a hearings officer. [In addition to the requirements of subsection (c) of this section,] The Council may from time to time approve and provide to the

Executive Officer a list of prospective hearings officers from which hearings officers may be appointed by the Executive Officer. Unless the hearing is to be held before the Council, the hearings officer in a contested case shall be a member of the Oregon State Bar.

- (b) In the case of a hearing on a personnel discharge, the employee shall be given the opportunity to select the hearings officer from a list of at least three (3) prospective hearings officers approved by the Council.
- (c) At the discretion of the Presiding Officer or the hearings officer, the hearing shall be conducted in the following order:
 - (1) Staff report, if any.
 - (2) [(1)] Statement and evidence by the District in support of its action, or by the petitioner in support of a petition.
 - (3) [(2)] Statement and evidence of affected persons disputing the District action or petition.
 - (4) [(3)] Rebuttal testimony.
- (d) The hearings officer, a Council member, the Executive Officer or his/her designee, the General Counsel, and the affected parties shall have the right to question any witnesses. Cross-examination by parties shall be by submission of written questions to the Presiding Officer or hearings officer; provided however that cross-examination by parties may be oral, at the discretion of the Presiding Officer or hearings officer, if such questioning will not disrupt the proceedings.
- (e) The hearing may be continued for a reasonable period as determined by the Presiding Officer or hearings officer.
- (f) The Presiding Officer or hearings officer may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious or immaterial testimony.
- (g) Exhibits shall be marked and the markings shall identify the person offering the exhibits. The exhibits shall be preserved by the District as part of the record of the proceedings.

- (h) A verbatim oral, written, or mechanical record shall be made of all the proceedings. Such verbatim record need not be transcribed unless necessary for Council or judicial review.
- (i) Upon conclusion of the hearing, the record shall be closed and new evidence shall not be admissible thereafter; provided, however, that upon proper showing, the Presiding Officer or hearings officer may reopen the hearing for receipt of new evidence which could not have been introduced earlier and which is otherwise admissible under section 5.02.030."

Section 5. Metro Code section 5.02.035 is amended to read:

"5.02.035 Proposed Orders in Contested Case Other Than Personnel Discharges:

- (a) Within thirty (30) days of a hearing before a hearings officer in a contested case other than a personnel discharge, the hearings officer shall prepare and submit a proposed order together with the record compiled in the hearing, [including all the items listed in ORS 183.415(9),] to the Council. [If a majority of the Council members who are to render the final order were not present at the hearing or have not reviewed and considered the record, and the proposed order is adverse to a party other than the District,] The proposed order, including findings of fact and conclusions of law, shall be served upon the parties.
- (b) The parties shall be given the opportunity to file with the Council written exceptions to the proposed order and, upon approval of the Council, present oral argument regarding the exceptions to the Council. Argument before the Council shall be limited to parties who have filed written exceptions to the proposed order pursuant to this section, and shall be limited to argument on the written exceptions and argument in rebuttal of the argument on written exceptions.
- (c) "A party may, in addition to filing written exceptions, file a written request to submit evidence that was not available or offered at the hearing provided for in Code Section 5.02.025 (5.02.045). A written request to submit additional evidence must explain why the information was not provided at the hearing, and must demonstrate that such evidence meets the

standards of Section 5.02.030 and would likely result in a different decision. Upon receipt of a written request to submit additional evidence, the Council shall within a reasonable time:

- (1) Refuse the request; or
 - (2) Remand the proceeding to the hearings officer [Grant a new hearing under 5.02.025] for the limited purpose of receiving the new evidence and oral argument and rebuttal argument by the parties on the new evidence; or
 - (3) If the nature of the new evidence to be submitted is such that remand would serve no useful purpose, proceed to hear and consider the evidence and argument and rebuttal from the parties on the evidence."
- (d) If a new hearing is granted in accordance with subsection (c)(2) of this section, the hearings officer shall within seven (7) days of the hearing serve upon all of the parties and forward to the Council[:] a new proposed order in accordance with the provisions of Code section 5.02.035(a).
- [(1) a new proposed order in accordance with the requirements of 5.02.035[.]; or]
 - [(2) Recommended changes in the original proposed order and findings of fact and conclusions of law based on the new evidence; or]
 - [(3) A recommendation that the original proposed order and findings of fact and conclusions of law not be changed based on the new evidence."]

Section 6. Metro Code section 5.02.040 is amended to read:

"5.02.040 Proposed Orders In Contested Cases on Personnel Discharges:

- (a) Within seven (7) days of a hearing on a personnel discharge, the hearings officer shall prepare and submit a proposed order together with the record compiled in the hearing [including all the items listed in ORS 183.415(9)] to the Executive Officer. Said proposed order shall include rulings on evidence, findings of fact, conclusions of law and a proposed action.

- (b) Within seven (7) days of receipt of the proposed order, the Executive Officer shall issue a final order pursuant to Section 5.02.045 of these Rules."

Section 7. Metro Code section 5.02.042 is amended to read:

"5.02.042 Ex Parte Communications to the Hearings Officer:

- (a) The hearings officer shall place on the record a statement of the substance of any written or oral ex parte communication on a fact in issue made to the officer during the pendency of the proceeding. Parties shall, upon request, be given a reasonable opportunity to rebut such ex parte communications.

[(b) The hearings officer shall give notice to all parties of ex parte communications. The notice shall include:

(1) The substance of the communication if oral; if in writing, a copy of the communication.

(2) Whether or not the officer will consider the ex parte communication in making a recommendation to the agency or in deciding the case.]

[(c) If the hearings officer gives notice that the ex parte communication will be considered in making a recommendation to the Council or in deciding the case, the officer shall either (1) set a date when the other parties may rebut the substance of the ex parte communication in writing; or (2) schedule a hearing for the limited purpose of receiving evidence relating to the ex parte communication.]"

Section 8. Metro Code section 5.02.043 is amended to read:

"5.02.043 Ex Parte Communications to the Councilors:

- (a) Councilors shall place on the record a statement of the substance of any written or oral ex parte communications on a fact in issue made to a Councilor during review of a contested case. Parties shall, upon request, be given a reasonable opportunity to rebut such ex parte communications.

[(b) The Councilors shall give notice to all parties of ex parte communications. The notice shall include:

- (1) The substance of the communication if oral; if in writing, a copy of the communication.
- (2) Whether or not the Councilor(s) will consider the ex parte communication in deciding the case.]

[(c) If one or more Councilors gives notice that an ex parte communication will be considered in deciding the case, the Council at its discretion shall: (1) set a date when the other parties may rebut the substance of the ex parte communication in writing; (2) schedule a hearing for the limited purpose of receiving evidence relating to the ex parte communication; or if all parties are present and before the Council, receive evidence relating to any ex parte communication.]

[(d) If the Council schedules a hearing it may remand the matter to a hearings officer.]"

Section 9. Metro Code section 5.02.045 is amended to read:

"5.02.045 Final Orders In Contested Cases, Notification, Review:

(a) Except as provided in subsection [(b)] (c) of this section, the Council or Executive Officer decision in a contested case shall be adopted by a final order. Final orders in contested cases shall be in writing and shall include the following:

- (1) Rulings on admissibility of offered evidence.
- (2) Findings of Fact--those matters which are either agreed upon as fact or which, when disputed, are determined by the fact finder, on substantial evidence, to be fact over contentions to the contrary.
- (3) Conclusion(s) of Law--applications of the controlling law to the facts found and legal results arising therefrom.
- (4) The action taken by the District as a result of the Findings of Fact and Conclusions of Law.

(b) Upon receipt of a proposed order and consideration of exceptions, the Council shall either adopt the proposed order or remand the

matter to the hearings officer with instructions to change the order or its findings or conclusions and to provide an amended order. No exceptions will be received or heard on an amended order.

- (c) [(b)] When the Council's decision in a contested case necessitates the adoption of an ordinance, the Council shall direct that an ordinance be prepared for Council adoption. The ordinance shall incorporate the rulings, findings and conclusions required by subsection (a) or (b) of this section. An ordinance adopted pursuant to this subsection shall, upon adoption, be considered the final order subject to judicial review.
- (d) [(c)] Parties to contested cases and their attorneys of record shall be served a copy of the final order. Parties shall be notified of their right to judicial review of the order.
- (e) [(d)] The final order shall include a citation of the statute(s) under which the order may be appealed.
- (f) Final orders in contested cases before the Council shall be approved by a majority of a quorum of the Council; except, however, that approval of a final order amending the regional Urban Growth Boundary shall require approval of at least six (6) members of the Council."

Section 10. Metro Code section 5.02.050 is amended to read:

"5.02.050 Reconsideration, Rehearing:

- (a) A party may file a petition for reconsideration or rehearing on a final order with the District within ten (10) days after the order is issued. In the case of a personnel discharge, such petition shall be submitted to the Executive Officer. Other petitions shall be referred to the Council.
- (b) The petition shall set forth the specific ground or grounds for requesting the reconsideration or rehearing. The petition may be supported by a written argument.
- (c) The District may grant a reconsideration petition if sufficient reason therefore is made

to appear. If the petition is granted, an amended order shall be entered. The Council may allow oral or written argument by the parties on the reconsideration petition.

(d) The District may grant a rehearing petition if sufficient reason therefor is made to appear. The rehearing may be limited by the District to specific matters. If a rehearing is held an amended order shall be entered. Rehearings shall be held before the hearing officer who conducted the original hearing.

(e) If the District does not act on the petition within the sixtieth (60) day following the date the petition was filed, the petition shall be deemed denied.

ADOPTED by the Council of the Metropolitan Service District
this 1st day of July, 1982.

Cindy Banger
Presiding Officer

ATTEST:

Sue Haynes
Clerk of the Council

AJ/gl
6094B/252

A G E N D A M A N A G E M E N T S U M M A R Y

TO: Metro Council
FROM: Executive Officer
SUBJECT: Contested Case Procedures

I. RECOMMENDATIONS:

- A. ACTION REQUESTED: Approval of attached ordinance amending existing contested case procedures.
- B. POLICY IMPACT: The amendments are intended to correct inefficiencies in existing contested case procedures.
- C. BUDGET IMPACT: The amendments require, among other things, that all contested cases on Urban Growth Boundary (UGB) amendments be referred to a Hearings Officer. This requirement may necessitate additional funding for Hearings Officers, most of which should be provided by filing fees. The requirement also relieves the staff of much of the work associated with UGB amendments.

II. ANALYSIS:

- A. BACKGROUND: Metro's contested case procedures were originally adopted in 1979. Since then, we have gained experience in UGB amendment proceedings which indicate the advisability of streamlining procedures. The proposed amendments, other than editorial changes, are as follows:
 - 1. Addition of a requirement that cross-examination of witnesses by parties be by submission of written questions to the Hearings Officer, but may be oral at Hearings Officer's discretion.
 - 2. Addition of a procedure for consideration of new evidence by the Hearings Officer, and a requirement that new evidence submitted to the Council be either rejected or remanded to the Hearings Officer.
 - 3. A requirement that oral argument on exceptions to the Hearings Officer's report be allowed only upon Council approval.
 - 4. A requirement that UGB amendments can be approved only by an affirmative vote of six (6) members of the Council rather than a majority of a quorum.
 - 5. Allowance of oral or written argument on petitions for reconsideration.

6. A requirement that rehearings must be before the Hearings Officer.
7. A requirement that all UGB amendment contested cases be heard by a Hearings Officer.

It should also be noted that present procedures do not provide for contested case hearings before Council committees; only the Council or a Hearings Officer. A minor amendment has been proposed which reinforces that provision. Staff continues to believe that Hearings Officer's reports should go directly to the Council for decision rather than being submitted first to a Committee hearing or review.

- B. ALTERNATIVES CONSIDERED: Though a myriad of procedural configurations exist, staff feels those proposed most suitably correct procedural deficiencies noted in prior cases.
- C. CONCLUSION: Approval of attached Ordinance.

AJ/gl
6144B/252
6/11/82



METROPOLITAN SERVICE DISTRICT
527 S.W. HALL ST., PORTLAND, OR. 97201. 503/221-1646

MEMORANDUM

Date: June 25, 1982
To: Metro Council
From: Andrew Jordan, General Counsel *AJ*
Regarding: Proposed Amendment to Ordinance No. 82-137, An Ordinance
Relating to Contested Case Procedures and Amending
Metro Code Chapter 5.02.

In response to the action taken by the Council on the above mentioned ordinance at their meeting June 24, I have drafted the following amendment for your consideration:

In Section 5 of the ordinance, subparagraph (c) should read as follows:

"A party may, in addition to filing written exceptions, file a written request to submit evidence that was not available or offered at the hearing provided for in Code Section 5.02.025 (5.02.045). A written request to submit additional evidence must explain why the information was not provided at the hearing, and must demonstrate that such evidence meets the standards of Section 5.02.030 and would likely result in a different decision. Upon receipt of a written request to submit additional evidence, the Council shall within a reasonable time:

- (1) Refuse the request; or
- (2) Remand the proceeding to the hearings officer (Grant a new hearing under Section 5.02.025) for the limited purpose of receiving the new evidence and oral argument and rebuttal argument by the parties on the new evidence; or
- (3) If the nature of the new evidence to be submitted is such that remand would serve no useful purpose, proceed to hear and consider the evidence and argument and rebuttal from the parties on the evidence."

AJ/sh

Caroline Miller, representing Multnomah County Board of Commissioners.

The Council also received the following letters in support of the RTP:

Jane Cease, Chair, House Transportation Committee, Oregon Legislative Assembly;
Vern Ryles, Dick Burnham, Earl Bolliger and Peter Fry of the Central Eastside Industrial Council;
Larry Cole, Chairman, Washington County Transportation Coordinating Committee;
Mildred Schwab, City of Portland Commissioner; and
Al Myers, Mayor of Gresham.

7.2 Public Hearing on Ordinance No. 82-137, An Ordinance Relating to Contested Case Procedures and Amending Metro Code Chapter 5.02. (First Reading)

Motion to adopt Ordinance No. 82-137. (Deines/Schedeen)

Andy Jordan reviewed with the Council the proposed amendments to the contested case procedures.

General discussion by the Council.

Motion to amend the ordinance to allow for new evidence to be accepted by the Council at its discretion; (Williamson/Etlinger) passed by the following vote:

Yeas: Etlinger, Williamson, Schedeen, Banzer, Oleson.
Nays: Rhodes, Kafoury, Deines, Kirkpatrick.
Absent: Burton, Bonner Berkman.

There were no comments from the public on this matter.

7.3 Public Hearing on Ordinance No. 82-138, For the Purpose of Amending Appropriations, Increasing the Transfer from the Solid Waste and the Zoo Operating Funds to the General Fund, and Declaring an Emergency.

Motion to adopt Ordinance No. 82-138 (Deines/Schedeen); carried by the following roll call vote:

Yeas: Couns. Banzer, Burton, Deines, Kafoury, Kirkpatrick, Oleson, Rhodes, Schedeen and Williamson.
Nays: None.
Absent: Couns. Berkman, Bonner and Etlinger.

There were no public comments during this hearing.

General discussion of the changes to the FY '82 Budget.

A vote on the previous motion to adopt Ordinance No. 82-135, as amended, (Williamson/Kirkpatrick) indicated that the motion passed by the following roll call vote:

Yeas: Banzer, Bonner, Burton, Etlinger, Kirkpatrick,
Rhodes, Schedeen and Williamson.

Nays: Kafoury.

Absent: Berkman, Deines and Oleson.

Coun. Kafoury stated she voted in opposition to the RTP since she feels inadequate consideration has been given to energy supplies, telecommunications, and funding of the elements of the Plan.

6.1 Public Hearing on Ordinance No. 82-133, An Ordinance Amending Ordinance No. 81-105, Establishing Procedures for Locational Adjustments of the Metropolitan Service District's Urban Growth Boundary. (First Reading)

Motion to adopt Ordinance No. 82-133. (Bonner/Etlinger)

Motion to adopt amendments to Ordinance No. 82-133, as outlined in memo from staff dated June 30, 1982; carried unanimously. (Bonner/Kirkpatrick)

Mark Greenfield of 1000 Friends of Oregon stated his organization's concern with land speculation created with the provision for trades of property outside the UGB for property inside the UGB. Mr. Greenfield also stated that Metro should consider adopting standards for major amendments to the UGB.

Coun. Kafoury stated it has been the policy of the Council not to increase the size of the UGB and if standards for major amendments are adopted, the Council will not be limiting the UGB size.

Kevin Hanway, attorney representing the Homebuilders' Association, stated that Metro should consider doing away with trades altogether, because of additional expenses incurred for developing properties.

General discussion.

6.3 Ordinance No. 82-137, An Ordinance Relating to Contested Case Procedures and Amending Metro Code Chapter 5.02. (Second Reading)

Andy Jordan reviewed his memo relating the proposed amendments allowing Council to accept new testimony at its discretion.

Motion to adopt the amendments to Ordinance No. 82-137, as stated in memo from General Counsel dated June 25, 1982 (Williamson/Kirkpatrick); carried by the following vote:

Yeas: Banzer, Bonner, Burton, Etlinger, Kafoury, Schedeen,
and Williamson.
Nays: Rhodes and Kirkpatrick.
Absent: Berkman, Deines, and Oleson.

Waiver of Personnel Rules

Motion to approve the following variances to Metro's Personnel Rules:

1. Waive the required in-house posting for the Council Assistant Position.
2. Allow an extension of temporary employment for Gus Rivera to September 30, 1982.

carried unanimously. (Rhodes/Kirkpatrick)

There was no Executive Officer's report.

7.2 Committee Reports.

The following meetings were discussed:

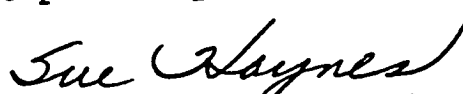
DEQ Air Quality Hearing - Oregon City - July 12.

Special Services Committee meetings scheduled for July 15, 20,
and 27.

Coun. Kafoury stated that she and Coun. Schedeen will be in Washington, DC, for a futures conference from July 17-25.

The meeting adjourned at 9:30 PM.

Respectfully submitted,


Sue Haynes, Clerk of the Council

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING THE) TEMPORARY RULE NO. 81-5
RULES OF PROCEDURE FOR CONTESTED)
CASES)

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT ADOPTS THE
FOLLOWING TEMPORARY RULE:

Section 1:

The Council, in accordance with ORS 183.335(5) and Metro Code
Section 5.01.065, adopts the following statements and citations of
authority relied on:

(a) The Council finds that there is a need to amend the Metro
contested case procedures to ensure that they conform to ORS ch. 183
and to more clearly define an efficient procedure for handling
contested cases.

(b) The authorities for adoption of this temporary rule are
contained in ORS ch. 183 and Metro Code Section 5.01.

(c) Failure to adopt this temporary rule promptly will result
in serious prejudice to the public interest and the interest of
parties to contested case hearings before the Metropolitan Service
District. The contested case procedures adopted by Metro must, but
currently do not, conform to ORS ch. 183. Since Metro contested
case procedures must conform to ORS ch. 183, and should contain
sufficient detail to fairly apprise parties of the procedures that
will be followed in contested cases, the amendments included in this
temporary rule should be adopted immediately. Since Metro will, in
the immediate future, be conducting contested case hearings for
amendments to the Urban Growth Boundary, these rules need to be

adopted immediately so that these parties will be aware of the procedures to be followed.

(d) The Attorney General's model rules of procedure were consulted in preparing the amendments adopted by this rule. The Attorney General's model rules of procedure are available through the Attorney General's office and a copy of those model rules is available at the offices of the Metropolitan Service District.


Section 2:

For the reasons stated in Section 1 of this Rule, the Council hereby adopts the attached amendment to Metro's contested case procedures as shown in Appendix 1.

Section 3:

The amendments adopted by this temporary rule are effective immediately upon filing with the Secretary of State in accordance with Metro Code Section 5.01.065 and this temporary rule shall be effective for 180 days unless earlier repealed or replaced by a permanent rule.

ADOPTED by the Council of the Metropolitan Service District
this 26th day of March, 1981.



Presiding Officer

Attest:



Clerk of the Council

MH/gl
2319B/214

NOTE: Additions are underlined; deletions are shown in brackets.

A P P E N D I X

CHAPTER 5.02

PROCEDURE FOR CONTESTED CASES

SECTIONS:

5.02.005	Contested Case Defined, Notice of Opportunity for Hearing, Service
<u>5.02.007</u>	<u>Rights of Parties in Contested Cases</u>
5.02.010	Immediate Suspension or Refusal to Renew a License or Permit, Notice of Opportunity for Hearing, Service Orders When No Hearing Requested or Failure to Appear
5.02.015	Subpoenas, Depositions
5.02.020	Hearing
5.02.025	Evidentiary Rules
5.02.030	Proposed Orders in Contested Cases Other Than Personnel Discharges
5.02.035	Proposed Orders in Contested Cases on Personnel Discharges
5.02.040	Ex Parte Communications to the Hearings Officer
<u>5.02.042</u>	<u>Ex Parte Communications to Councilors</u>
<u>5.02.043</u>	<u>Ex Parte Communication Record</u>
<u>5.02.044</u>	<u>Final Orders in Contested Cases, Notification, Review</u>
<u>5.02.045</u>	<u>Motions</u>
<u>5.02.046</u>	<u>Service of Documents on All Parties</u>
<u>5.02.047</u>	<u>Reconsideration, Rehearing</u>
5.02.050	

5.02.005 Contested Case Defined, Notice of Opportunity for Hearing, Service:

(a) A contested case exists whenever:

(1) [A constitutional provision, a statute or an ordinance requires a hearing upon an action; or] Individual legal rights, duties or privileges of specific parties are required by statute or Constitution to be determined only after a hearing at which specific parties are entitled to appear and be heard.

(2) The District has discretion to suspend or revoke a right or privilege of a person; or

(3) There is a proceeding regarding a license or permit required to pursue any activity governed or regulated by the District; or

(4) There is a discharge of a District employee; or

(5) The District proposes to require a county, city, or special district to change a plan pursuant to [Oregon Laws 1977, Chapter 665, Section 17 or 18;] ORS 268.380 or 268.390; or

(6) There is a proceeding in which the District has directed by ordinance, rule or otherwise that the proceeding be conducted in accordance with contested case procedures.

(b) A contested case does not exist when a District action rests solely on the results of a test or inspection.

[b] (c) The District shall give notice to all parties in a contested case. The notice shall include:

(1) A statement of the party's right to request a hearing, or a statement of the time and place of the hearing;

(2) A statement of the authority and jurisdiction under which the hearing is to be held;

(3) A reference to the particular sections of the statutes, ordinances or rules involved;

(4) A short and plain statement of the matters asserted, charged or proposed;

(5) A statement that the party may be represented by counsel at the hearing; [and]

(6) When applicable, a statement that if the party desires a hearing, the District must be notified within a specified number of days[.]; and

(7) A statement that if a hearing is held, each party to the hearing will be given the information on the procedures, right of representation, and other rights of the parties relating to the conduct of hearings as required under ORS 183.413(2).

(c) [The] Unless the Council provides otherwise, the number of days within which the District must be notified that the party desires a hearing shall be as follows:

(1) Within [twenty (20)] thirty (30) days of the date of mailing of notice; or

(2) [When the District refuses] Within sixty (60) days of the notification of refusal to issue a license, franchise or permit required to pursue any activity governed or regulated by the District, if the refusal is based on grounds other than the results of a test or inspection[, the District shall grant the person requesting the license or permit sixty (60) days from the notification of refusal to request a hearing]; or

(3) Within 90 days of an immediate suspension or refusal to renew a license or franchise pursuant to ORS 183.430(2) and section 5.02.010 of these rules.

[(3)] (4) In the case of a personnel discharge, within

[fifteen (15)] fourteen (14) days of the employee's receipt of the Notice of Discharge.

[(d)] (e) The notice shall be served personally or by registered or certified mail.

(f) The District may provide that notice in addition to that required by this section be given for specific types of contested cases.

5.02.007 Rights of Parties in Contested Cases:

(a) The written or oral information required to be given under ORS 183.413(2) before commencement of a contested case hearing shall include:

(1) If a party is not represented by an attorney, a general description of the hearing procedure including the order of presentation of evidence, what kinds of evidence are admissible, whether objections may be made to the introduction of evidence, and what kind of objections may be made and an explanation of the burdens of proof or burdens of going forward with evidence.

(2) Whether a record will be made of the proceeding and the manner of making the record and its availability to the parties.

(3) The function of the record making with respect to the perpetuation of the testimony and evidence and with respect to any appeal from the determination or order of the District.

(4) Whether an attorney will represent the District in the matters to be heard and whether the parties ordinarily and customarily are represented by an attorney.

(5) The title and function of the person presiding at the hearing with respect to the decision process, including, but not limited to, the manner in which the testimony and evidence taken by the person presiding at the hearing are reviewed, the effect of that person's determination, who makes the final determination on behalf of the District, whether the person presiding at the hearing is or is not an employee, officer, or other representative of the District and whether that person has the authority to make a final independent determination.

(6) In the event a party is not represented by an attorney, whether the party may during the course of the proceedings request a recess if at that point the party determines that representation by an attorney is necessary to the protection of the party's rights.

(7) Whether there exists an opportunity for an adjournment at the end of the hearing if the party then determines that additional evidence should be brought to the attention of the District and the hearing reopened.

(8) Whether there exists an opportunity after the hearing and prior to the final determination or order of the agency to review and object to any proposed findings of fact, conclusions of law, summary of evidence or recommendations of the officer presiding at the hearing.

(9) A description of the appeal process from the determination or order of the District.

(b) The information required in subsection (a) may be given in writing or orally before the commencement of the hearing.

5.02.010 Immediate Suspension or Refusal to Renew a License, Franchise or Permit, Notice of Opportunity for Hearing, Service:

(a) If the District finds there is a serious danger to the public health or safety, it may suspend or refuse to renew a license, franchise or permit immediately.

(b) The District shall give notice to the party upon immediate suspension or refusal to renew a license, franchise or permit. The notice shall include:

(1) A statement of the party's right to hearing.

(2) A statement of the authority and jurisdiction under which the hearing is to be held.

(3) A reference to the particular sections of the statutes, ordinances and rules involved.

(4) A short and plain statement of the matters asserted, charged or proposed.

(5) A statement that the party may be represented by counsel at the hearing.

(6) A statement that if the party demands a hearing the District must be notified within [thirty (30)] ninety (90) days of the date of the notice.

(7) A statement giving the reason or reasons for the immediate action.

(8) The effective date of the suspension or refusal to renew the license, franchise or permit.

(c) The notice shall be served personally or by registered or certified mail.

5.02.015 Orders When No Hearing Requested or Failure to Appear:

(a) When a party has been given an opportunity and fails to request a hearing within the specified time or fails to appear at

the specified time and place of a hearing, the District may enter an order which supports the District action or an order denying the petition upon which the hearing was to be held.

(b) The order supporting the District action shall set forth the material on which the action is based or the material shall be attached to and made a part of the order.

5.02.020 Subpoenas, Depositions:

(a) [The District shall issue subpoenas in hearings on contested cases on a showing of need, general relevancy and within reasonable scope of the proceedings.] The District shall issue subpoenas to any party to a contested case upon request upon a showing of general relevance and reasonable scope of evidence sought.

(b) [An interested party may petition the District for an order that the testimony of a material witness be taken by deposition. Fees and mileage are to be paid as determined by applicable statutes. Witnesses appearing pursuant to subpoena, other than parties or officers or employees of the District, shall be tendered fees and mileage as prescribed by law for witnesses in civil actions. The party requesting the subpoena shall be responsible for service of the subpoena and tendering the witness and mileage fees to the witness.

(c) On petition of any party to a contested case, the District may order the testimony of any material witness be taken by deposition in the manner prescribed by law for depositions in civil actions (ORS Chapter 45). Depositions may also be taken by the use of audio or audio-visual recordings. The petitions shall set forth:

(1) The name and address of the witness whose testimony is desired.

(2) A showing of materiality of the testimony.

(3) A request for an order that the testimony of the witness be taken before an officer named in the petition for that purpose.

(d) If the District issues an order for the taking of a deposition and the witness resides in this state and is unwilling to appear, the District may issue a subpoena as provided in subsection (a) requiring his appearance before the officer taking the deposition.

5.02.025 Hearing:

(a) The hearing shall be conducted by, and shall be under the control of, a hearings officer. The hearings officer may be the Presiding Officer of the Council, if the hearing is to be before the Council, or any other person designated or approved by the Council. In addition to the requirements of subsection (c) of this section,

the Council may from time to time approve and provide to the Executive Officer a list of prospective hearings officers from which hearings officers may be appointed by the Executive Officer. Unless the hearing is to be held before the Council, the hearings officer in a contested case shall be a member of the Oregon State Bar.

[(b)](b) The hearings officer shall place on the record a statement of the substance of any written or oral ex parte communications on a fact in issue made to the officer during the pendency of the proceeding and notify the parties of the communication and their right to rebut such communications.]

[(c)](b) In the case of a hearing on a personnel discharge, the employee shall be given the opportunity to select the hearings officer from a list of at least three (3) prospective hearings officers approved by the Council.

[(d)](c) At the discretion of the hearings officer, the hearing shall be conducted in the following order:

(1) Statement and evidence by the District in support of its action, or by the petitioner in support of a petition.

(2) Statement and evidence of affected persons disputing the District action or petition.

(3) Rebuttal testimony.

[(e)](d) The hearings officer, a Council member, the Executive Officer or his designee, the General Counsel, and the affected parties shall have the right to question any witnesses.

[(f)](e) The hearing may be continued for a reasonable period as determined by the hearings officer.

[(g)](f) The hearings officer may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious or immaterial testimony.

[(h)](g) Exhibits shall be marked and the markings shall identify the person offering the exhibits. The exhibits shall be preserved by the District as part of the record of the proceedings.

[(i)](h) A verbatim oral, written or mechanical record shall be made of all the proceedings. Such verbatim record need not be transcribed unless necessary for Council or judicial review.

5.02.030 Evidentiary Rules:

(a) Evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible.

(b) Irrelevant, immaterial or unduly repetitious evidence shall be excluded.

(c) All offered evidence, not objected to, will be received by the hearings officer subject to his/her power to exclude irrelevant, immaterial or unduly repetitious matter.

(d) Evidence objected to may be received by the hearings officer with rulings on its admissibility or exclusion to be made at the time a final order is issued.

(e) The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position.

5.02.035 Proposed Orders in Contested Cases Other Than Personnel Discharges:

(a) Within [seven (7)] thirty (30) days of a hearing in a contested case other than a personnel discharge, the hearings officer shall prepare and submit a proposed order together with the record compiled in the hearing, including all the items listed in ORS 183.415(9), to the Council. If a majority of the Council members who are to render the final order were not present at the hearing or have not reviewed and considered the record, and the proposed order is adverse to a party other than the District, the proposed order, including findings of fact and conclusions of law, shall be served upon the parties.

(b) The parties shall be given the opportunity to file written exceptions to the proposed order and present argument regarding the exceptions to the Council. Argument before the Council shall be limited to parties who have filed written exceptions to the proposed order pursuant to this section, and shall be limited to argument on the written exceptions and argument in rebuttal of the argument on written exceptions.

(c) A party may, in addition to filing written exceptions, file a written request to submit to the Council additional evidence that was not available or offered at the hearing provided for in 5.02.045. A written request to submit additional evidence must explain why the information was not provided at the hearing, and must demonstrate that such evidence would likely result in a different decision. Upon receipt of a written request to submit additional evidence, the Council shall within a reasonable time:

(1) Refuse the request; or

(2) Grant a new hearing under 5.02.025 for the limited purpose of receiving the new evidence and oral argument and rebuttal argument by the parties on the new evidence.

(d) If a new hearing is granted in accordance with subsection (c) (2) of this section, the hearings officer shall within seven (7) days of the hearing serve upon all of the parties and forward to the Council:

(1) A new proposed order in accordance with the requirements of 5.02.035.

(2) Recommended changes in the original proposed order and findings of fact and conclusions of law based on the new evidence; or

(3) A recommendation that the original proposed order and findings of fact and conclusions of law not be changed based on the new evidence.

5.02.040 Proposed Orders In Contested Cases On Personnel Discharges:

(a) Within seven (7) days of a hearing on a personnel discharge, the hearings officer shall prepare and submit a proposed order together with the record compiled in the hearing including all the items listed in ORS 183.415(9) to the Executive Officer. Said proposed order shall include rulings on evidence, findings of fact, conclusions of law and a proposed action.

(b) Within seven (7) days of receipt of the proposed order, the Executive Officer shall issue a final order pursuant to Section 5.02.045 of these Rules.

5.02.042 Ex Parte Communications to the Hearings Officer:

(a) The hearings officer shall place on the record a statement of the substance of any written or oral ex parte communication on a fact in issue made to the officer during the pendency of the proceeding.

(b) The hearings officer shall give notice to all parties of ex parte communications. The notice shall include:

(1) The substance of the communication if oral; if in writing, a copy of the communication.

(2) Whether or not the officer will consider the ex parte communication in making a recommendation to the agency or in deciding the case.

(c) If the hearings officer gives notice that the ex parte communication will be considered in making a recommendation to the Council or in deciding the case, the officer shall either (1) set a date when the other parties may rebut the substance of the ex parte communication in writing; or (2) schedule a hearing for the limited purpose of receiving evidence relating to the ex parte communication.

5.02.043 Ex Parte Communications to the Councilors:

(a) Councilors shall place on the record a statement of the substance of any written or oral ex parte communications on a fact in issue made to a Councilor during review of a contested case.

(b) The Councilors shall give notice to all parties of ex parte communications. The notice shall include:

(1) The substance of the communication if oral; if in writing, a copy of the communication.

(2) Whether or not the Councilor(s) will consider the ex parte communication in deciding the case.

(c) If one or more Councilors gives notice that an ex parte communication will be considered in deciding the case, the Council at its discretion shall: (1) set a date when the other parties may rebut the substance of any ex parte communication in writing; (2) schedule a hearing for the limited purpose of receiving evidence relating to any ex parte communication; or (3) if all parties are present and before the Council, receive evidence relating to any ex parte communication.

(d) If the Council schedules a hearing it may remand the matter to a hearings officer.

5.02.044 Ex Parte Communication Record:

If an ex parte communication is made to a hearings officer or Councilor as described in 5.02.042 or 5.02.043 the record shall include:

(a) The ex parte communication, if in writing.

(b) A statement of the substance of the ex parte communication, if oral.

(c) The Councilor's or hearings officer's notice to the parties of the ex parte communication.

(d) Rebuttal documents; and

(e) If a hearing is held, the evidence, exhibits and transcripts of the proceeding.

5.02.045 Final Orders In Contested Cases, Notification, Review:

(a) Except as provided in subsection (b) of this section, the Council decision in a contested case shall be adopted by a final order. Final orders in contested cases shall be in writing and shall include the following:

(1) Rulings on admissibility of offered evidence.

(2) Findings of Fact--those matters which are either agreed upon as fact or which, when disputed, are determined by the fact finder, on substantial evidence, to be fact over contentions to the contrary.

(3) Conclusion(s) of Law--applications of the controlling law to the facts found and legal results arising therefrom.

(4) The action taken by the District as a result of the findings of fact and conclusions of law.

(b) [The Council or Executive Officer shall place on the record a statement of the substance of any written or oral ex parte communications on a fact in issue made to the Council or Executive Officer during its review of a contested case. The Council or Executive Officer shall notify all parties of such communications and of their right to rebut the substance of the ex parte communications on the record.] When the Council's decision in a contested case necessitates the adoption of an ordinance, the Council shall direct that an ordinance be prepared for Council adoption. The ordinance shall incorporate the rulings, findings and conclusions required by subsection (a) of this section. An ordinance adopted pursuant to this subsection shall, upon adoption, be considered the final order subject to judicial review.

(c) [When the results of a contested case necessitates the adoption of an ordinance, the procedures for adoption of an ordinance in ORS Chapter 198 and in applicable District regulations shall be followed.] Parties to contested cases and their attorneys of record shall be served a copy of the final order. Parties shall be notified of their right to judicial review of the order.

(d) [Parties to contested cases and their attorneys of record shall be served a copy of the final order. Parties shall be notified of their right to judicial review of the order.] The final order shall include a citation of the statute(s) under which the order may be appealed.

[(e) Judicial review of final orders adopted after contested case proceedings shall be solely as provided in ORS Chapter 183 and every final order shall include a citation of the statutes under which the order may be appealed.]

5.02.046 Motions:

(a) Unless these rules or applicable statutes or ordinances provide another form of application, a request for an order or relief from the hearings officer or the Council shall be made by serving and filing a motion in writing for such order or relief.

(b) Parties shall submit all motions without oral argument unless otherwise directed by the hearings officer or the Council. The motion shall show proof of service on all opposing parties in accordance with Code section 5.02.047.

5.02.047 Service of documents on All Parties:

All documents, written correspondence or other material filed with or submitted to the hearings officer or the Council shall be

served on all parties. Any document filed with or submitted to the hearings officer or the Council shall contain proof of service on all parties.

5.02.050 Reconsideration, Rehearing:

(a) A party may file a petition for reconsideration or rehearing on a final order with the District within [sixty (60)] ten (10) days after the order is issued. In the case of a personnel discharge, such petition shall be submitted to the Executive Officer. Other petitions shall be referred to the Council.

(b) The petition shall set forth the specific ground or grounds for requesting the reconsideration or rehearing. The petition may be supported by a written argument.

(c) The District may grant a reconsideration petition if sufficient reason therefor is made to appear. If the petition is granted, an amended order shall be entered.

(d) The District may grant a rehearing petition if sufficient reason therefor is made to appear. The rehearing may be limited by the District to specific matters. If a rehearing is held an amended order shall be entered.

(e) If the District does not act on the petition within the sixtieth (60th) day following the date the petition was filed, the petition shall be deemed denied. (Rule No. 79-3)

MH/gl
2249B/131A



METROPOLITAN SERVICE DISTRICT
527 SW. HALL ST., PORTLAND, OR. 97201, 503/221-1646

July 12, 1982

Rick Gustafson
EXECUTIVE OFFICER

Metro Council
Cindy Banzer
PRESIDING OFFICER
DISTRICT 9

Bob Oleson
DEPUTY PRESIDING
OFFICER
DISTRICT 1

Charlie Williamson
DISTRICT 2

Craig Berkman
DISTRICT 3

Corky Kirkpatrick
DISTRICT 4

Jack Deines
DISTRICT 5

Jane Rhodes
DISTRICT 6

Betty Schedeen
DISTRICT 7

Ernie Bonner
DISTRICT 8

Bruce Etlinger
DISTRICT 10

Marge Kafoury
DISTRICT 11

Mike Burton
DISTRICT 12

Mr. George Poppen
County Clerk
Clackamas County Courthouse
906 Main
Oregon City, OR 97045

Dear Mr. Poppen:

Enclosed are true copies of the following ordinances adopted by the Council of the Metropolitan Service District on the date(s) indicated:

Ordinance No. 82-135 and Ordinance No. 82-137,
adopted July 1, 1982.

Please file these copies in the Metro ordinance files.

Sincerely,

Sue Haynes
Clerk of the Council



METRO

METROPOLITAN SERVICE DISTRICT

527 SW. HALL ST., PORTLAND, OR. 97201, 503/221-1646

July 12, 1982

Rick Gustafson
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Jane Rhodes
DISTRICT 6

Betty Schedeen
DISTRICT 7

Ernie Bonner
DISTRICT 8

Bruce Etlinger
DISTRICT 10

Marge Kafoury
DISTRICT 11

Mike Burton
DISTRICT 12

Jane McGarvin
Clerk of the Board
Multnomah County Courthouse
1021 SW Fourth Avenue, Room 606
Portland, OR 97204

Dear Ms. McGarvin:

Enclosed are true copies of the following ordinances adopted by the Council of the Metropolitan Service District on the date(s) indicated:

Ordinance No. 82-135 and Ordinance No. 82-137,
adopted July 1, 1982.

Please file these copies in the Metro ordinance files.

Sincerely,

Sue Haynes
Clerk of the Council



METROPOLITAN SERVICE DISTRICT
527 SW. HALL ST., PORTLAND, OR. 97201, 503/221-1646

July 12, 1982

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Marge Kafoury
DISTRICT 11

Mike Burton
DISTRICT 12

Gordon Mulleneaux
Washington County Administrator
150 North First, Room 418
Hillsboro, OR 97123

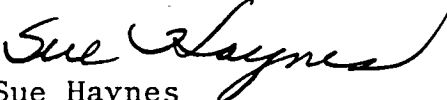
Dear Mr. Mulleneaux:

Enclosed are true copies of the following ordinances adopted by the Council of the Metropolitan Service District on the date(s) indicated:

Ordinance No. 82-135 and Ordinance No. 82-157,
adopted July 1, 1982.

Please file these copies in the Metro ordinance files.

Sincerely,


Sue Haynes
Clerk of the Council