

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

AN ORDINANCE AMENDING METRO CODE) ORDINANCE NO. 85-190
SECTION 2.05.045, FINAL ORDERS)
IN CONTESTED CASES)

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Code Section 2.05.045 shall be amended to read:

2.05.045 Final Orders In Contested Cases, Notification, Review:

(a) Except as provided in subsection (c) of this section, the Council or Executive Officer's 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 adopt the proposed order or revise or replace the findings or conclusions in a 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] a revised or replaced order except on new evidence presented to the hearings officer on remand.

(c) When the [Council's decision] proposed order in a contested case necessitates the adoption of an ordinance, [the Council shall direct that] staff shall prepare 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.

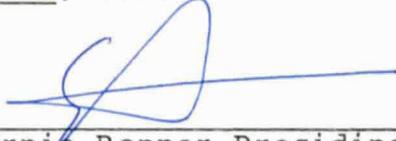
(d) Parties to contested cases and their attorneys of record shall be served a copy of the final order. Parties shall be notified of their right to judicial review of the order.

[(e) The final order shall include a citation of the statute(s) under which the order may be appealed.]

(e) [(f)] Final orders in cases other than on Urban Growth Boundary amendments [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]."

(f) An ordinance to approve a Petitions for amendment of the Urban Growth Boundary shall be pursuant to Code Section 2.01.070. A motion to deny such a petition shall require the approval of at least six members of the Council, and six votes shall be sufficient to approve a motion to deny notwithstanding a tie vote.

ADOPTED by the Council of the Metropolitan Service District
this 6th day of August, 1985.



Ernie Bonner, Presiding Officer

ATTEST:



Clerk of the Council

JH/gl
3886C/411-4
07/25/85

STAFF REPORT

Agenda Item No. 7.2

Meeting Date August 6, 1985

CONSIDERATION OF ORDINANCE NO. 85-190 AMENDING
CODE SECTION 2.05.045 FINAL ORDERS IN CONTESTED
CASES (Second Reading)

Date: July 16, 1985

Presented by: Jill Hinckley

FACTUAL BACKGROUND AND ANALYSIS

Section 2.05.045 of the Code of the Metropolitan Service District (Metro) sets out procedures for adoption of final orders in contested cases including petitions for amendment of the Urban Growth Boundary (UGB). Currently, this section allows the Council only to adopt an order proposed by the Hearings Officer or to remand the order to him or her for revisions. This requirement has proved burdensome in the past, when staff or a Councilor has sought specific changes in the proposed findings. The anticipated need for the Council to make a series of complex decisions on petitions for major amendment provides the impetus to amend this section to give the Council more flexibility. Several other minor changes to this section have also been proposed.

This ordinance will also affect the handling of petitions for the one locational adjustment currently in process. Notice of the hearing on Ordinance No. 85-189 was mailed to parties in this case.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Ordinance No. 85-190.

JH/srs
3886C/411-3
07/26/85

STAFF REPORT

Agenda Item No. _____

Meeting Date 7-25-85

CONSIDERATION OF ORDINANCE NO. 85-190 AMENDING
CODE SECTION 2.05.045 FINAL ORDERS IN CONTESTED
CASES (First Reading)

Date: July 16, 1985

Presented by: Jill Hinckley

FACTUAL BACKGROUND AND ANALYSIS

Section 2.05.045 of the Code of the Metropolitan Service District (Metro) sets out procedures for adoption of final orders in contested cases including petitions for amendment of the Urban Growth Boundary (UGB). Currently, this section allows the Council only to adopt an order proposed by the Hearings Officer or to remand the order to him or her for revisions. This requirement has proved burdensome in the past, when staff or a Councilor has sought specific changes in the proposed findings. The anticipated need for the Council to make a series of complex decisions on petitions for major amendment provides the impetus to amend this section to give the Council more flexibility. Several other minor changes to this section have also been proposed.

This ordinance will also affect the handling of petitions for the one locational adjustment currently in process. Notice of the hearing on Ordinance No. 85-189 was mailed to parties in this case.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Ordinance No. 85-190.

JH/gl
3886C/411-2
07/16/85

The Presiding Officer suggested that if petitions were heard on a case-by-case basis, staff prepare background information that would include a regional perspective of land use. Ms. Hinckley said staff was preparing an industrial land inventory which would be entered into the record.

In response to Councilor Kafoury's question, Ms. Hinckley said the examination of Clackamas County's subregional needs would be considered in the petition process. She said she would suggest an amendment to the Ordinance on August 6 to clarify how and when this should be considered.

7.2 Consideration of Ordinance No. 85-190, for the Purpose of Amending Metro Code Section 2.05.045, Final Orders in Contested Cases (First Reading)

The Clerk read the Ordinance by title only.

Motion: Councilor Kirkpatrick moved the Ordinance be adopted and Councilor Waker seconded the motion.

There was no public or Council comment on the Ordinance. Presiding Officer Bonner announced a second public hearing would occur on August 6.

8. RESOLUTIONS

8.1 Consideration of Resolution No. 85-585, for the Purpose of Transferring Solid Waste Disposal Franchise Permit No. 1 from Marine Drop Box Corporation to Marine Drop Box Service and Granting a Variance from User Fee and Regional Transfer Charge Collection Requirements

Rich McConaghy reported the Resolution would transfer the franchise from a former owner to a new owner. He then explained the disposal site operation as discussed in the staff report. He said the new owner had requested a fee variance because a large portion of the materials handled were recycled or reused. The owner would continue to pay user fees for materials landfilled, he said. In response to Councilor Gardner's question, he explained the original owner did not request a user fee variance but a similar variance was granted to another franchisee in January.

In response to Councilor Van Bergen's question, Mr. McConaghy said Metro did not limit the number of franchises granted. The new owner requested a transfer of the franchise and the transfer process required compliance with strict application, bonding and insurance requirements.

Motion: Councilor Kafoury moved the Ordinance be amended to include the changes in Section 3.01.070(a) of the Ordinance discussed by Ms. Hinckley.

Vote: A vote on the motion resulted in:

Ayes: Councilors Cooper, DeJardin, Gardner, Hansen, Kirkpatrick, Kafoury, Kelley, Myers, Oleson, Van Bergen, Waker and Bonner

The motion carried and the Ordinance was amended.

Vote: A vote on the motion to adopt the ordinance, as amended, resulted in:

Ayes: Councilors Cooper, DeJardin, Gardner, Hansen, Kirkpatrick, Kafoury, Kelley, Myers, Oleson, Van Bergen, Waker and Bonner

Ordinance No. 85-189 was adopted as amended.

7.2 Consideration of Ordinance No. 85-190, for the Purpose of Amending Metro Code Section 2.05.045, Final Orders in Contested Cases (Second Reading and Public Hearing)

Motion: The motion to adopt the Ordinance was made by Councilors Kirkpatrick and Waker on July 25, 1985.

The Clerk read the Ordinance by title only. Presiding Officer Bonner opened the public hearing. There was no comment.

Vote: A vote on the motion to adopt the Ordinance resulted in:

Ayes: Councilors Cooper, DeJardin, Gardner, Hansen, Kirkpatrick, Kafoury, Kelley, Myers, Oleson, Van Bergen, Waker and Bonner

The motion carried and the Ordinance was adopted.

8. OTHER BUSINESS

8.1 Consideration of a Contract with The Hallock Agency for Zoo Advertising Agency Services

At the request of the Presiding Officer, this item was considered before Item 7.1. In the absence of Jane Hartline, Councilor Kirkpatrick presented information about the contractor selection