

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF DEFINING A) ORDINANCE NO. 86-207
PLANNING PROCEDURE FOR DESIGNATING)
FUNCTIONAL PLANNING AREAS AND)
ACTIVITIES)

WHEREAS, ORS 268.390 authorizes the Metropolitan Service District (Metro) to prepare and adopt functional plans for areas and activities which have impact on air quality, water quality, transportation, and other aspects of metropolitan area development identified by the Council; and

WHEREAS, The statute requires the Council to define a planning procedure for identifying and designating those activities and areas in need of functional planning; now, therefore

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. The Executive Officer from time to time shall report to the Council those aspects of development in addition to water quality, air quality, and transportation, which are related to the orderly and responsible development of the metropolitan area.

Section 2. As part of its recommendation on the annual work plan the Intergovernmental Resource Committee established by Ordinance No. 84-180 shall report to the Council whether there are aspects of development in addition to water quality, air quality and transportation, which are related to the orderly and responsible development of the metropolitan area.

Section 3. The Council may by resolution designate areas and activities which have a significant impact on air quality, water quality, and transportation, and other aspects of development

reported in Sections 1 or 2 or on the Council's own determination. The resolution shall have findings demonstrating that the aspect is related to the orderly and responsible development of the metropolitan area and that the area and activity has a significant impact thereon.

Section 4. The resolution shall direct the Executive Officer to present to the Council a functional plan for the area and activity designated in Section 2.

Section 5. This ordinance shall be added to Chapter 3 of the Metropolitan Service District Code.

ADOPTED by the Council of the Metropolitan Service District this 11th day of September, 1986.


Richard Waker, Presiding Officer

ATTEST:


Clerk of the Council

DEC/gl
6119C/471-3
09/17/86

CONSIDERATION OF ORDINANCE NO. 86-207 FOR THE
PURPOSE OF DEFINING A PLANNING PROCEDURE FOR
DESIGNATING AREAS AND ACTIVITIES FOR WHICH A
FUNCTIONAL PLAN MAY BE ADOPTED

Date: August 18, 1986

Presented by: Donald E. Carlson
Eleanore Baxendale

FACTUAL BACKGROUND AND ANALYSIS

The purpose of Ordinance No. 86-207 is to define a planning procedure for designating areas and activities which may be the subject of a functional plan. The significance of adopting a functional plan is that the District may require cities and counties to change their comprehensive land use plans to conform to the District's functional plan. While Ordinance No. 86-207 is written to provide a procedure for general use, its initial application is contemplated for solid waste facilities.

Authority for the District to adopt and implement functional plans is set forth in ORS 198.390 which states in part as follows:

"268.390 Planning for activities and areas with metropolitan impact; review of local plans; urban growth boundary. A district council shall:

"1. Define and apply a planning procedure which identifies and designates areas and activities having significant impact upon the orderly and responsible development of the metropolitan area, including, but not limited to, impact on:

- (a) Air quality;
- (b) Water quality; and
- (c) Transportation.

"2. Prepare and adopt functional plans for those areas designated under subsection (1) of this section to control metropolitan area impact on air and water quality, transportation and other aspects of metropolitan area development the council may identify....

"4. Review the comprehensive plans in effect on January 1, 1979, or subsequently

adopted by the cities and counties within the district which affect areas designated by the council under subsection (1) of this section...and recommend or require cities and counties as it considers necessary, to make changes in any plan to assure that the plan and any actions taken under it conform to the ditrict's functional plans adopted under subsection (2) of this section...."

As indicated in Eleanore Baxendale's analysis of this statute (see Attachment "A," memo dated July 28, 1986) a six-step process is contemplated to complete the adoption and implementation of a functional plan. These steps include: 1) definition of planning procedure; 2) application of the planning procedure; 3) plan preparation; 4) plan adoption; 5) local plan review (for compliance); and 6) requiring local plan changes. Ordinance No. 86-207 fulfills step 1 -- by describing a "planning procedure" for the designation of areas and activities which have significant impact on the orderly development of the metropolitan area (not a process for how the plan will be developed).

The procedure outlined in Ordinance No. 86-207 is for the Executive Officer to identify from time to time and report those aspects of development which are related to the orderly and responsible development of the metropolitan area (to supplement water quality, air quality and transportation). This shall be done through a resolution presented to the Council for adoption which also makes the actual designation of the functional plan activity or area (step 2). The resolution shall have findings which support the designation and shall also require the Executive Officer to return to the Council with a functional plan for consideration and adoption. Once the functional plan is adopted then the implementation steps will commence.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Ordinance No. 86-207.

DEC/gl
6119C/471-2
08/19/86

Amend Ordinance 86-207 by adding the following language:

New Section 2:

Section 2. As part of its recommendation on the annual work plan the Intergovernmental Resource Committee established by ordinance 84-180 shall report to the Council whether there are aspects of development in addition to water quality, air quality and transportation, which are related to the orderly and responsible development of the metropolitan area.

Sections 2 - 4 shall be renumbered Section 2, now 3 shall be amended to read:

Section 3. The Council may by resolution designate areas and activities which have a significant impact on air quality, water quality and transportation and other aspects of development reported in Sections 1 or 2 or on the Council's own determination. The resolution shall have findings demonstrating that the aspect is related to the orderly and responsible development of the metropolitan area and that the area and activity has a significant impact thereon.



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

Date: July 28, 1986
To: Donald E. Carlson, Deputy Executive Officer
From: Eleanore S. Baxendale, General Counsel *ESB*
Regarding: SOLID WASTE FUNCTIONAL PLAN

Metro is seeking ways to require local governments in the region to adopt land use regulations which are consistent with Metro's policies for and management of solid waste.

Metro has two powers which can be used to implement regional planning: regional land use planning goals and functional plans.

Functional planning has been identified as an option for coordinating the land use elements of the solid waste management plan. This memo describes the implementation of a functional plan for solid waste first by describing and comparing the powers that Metro has, second by describing the necessary steps of a functional plan and third by proposing a minimum structure for making a solid waste functional plan.

I. DESCRIPTION AND COMPARISON OF POWERS

Under ORS 268.380 Metro can adopt "metropolitan area goals and objectives" which must be consistent with the statewide land use goals. Metro can then review local governments' comprehensive plans and require the local government to make changes in these comprehensive plans so that the plans conform with the metropolitan area goals and objectives.

Under ORS 268.390 Metro can prepare and adopt functional plans for areas which have "a significant impact upon the orderly and responsible development of the metropolitan area." Metro may then review local comprehensive plans and require changes in them to assure that the comprehensive plan "and any actions taken under it" conform to the functional plan.

The key difference between a metropolitan area goal and a functional plan is probably the difference in their scope: a

goal is a generalized policy statement applicable to the region as a whole but implemented by local jurisdiction without relation to the whole; a plan is a system applicable to the region as a whole and implemented by local jurisdictions to create an integrated system. The housing goal was a goal for each local jurisdiction (each jurisdiction achieved low cost housing its own way); the regional transportation plan is an integrated system of roads (the road location and classification must mesh). A functional plan is more than isolated goals. It is a system with many different components which interrelate.

Metro should use the functional plan process in this case.

A functional plan does not need to be approved by DEQ for Metro to have land use authority, unlike a Solid Waste Management Plan (SWMP) which must be approved by DEQ for Metro to have SWMP authority. Therefore, a functional plan can contain policies not found in the SWMP. However, it obviously should not conflict with a SWMP. A functional plan also does not need to be reviewed at the Metro level for compliance with statewide land use goals for Metro to have land use authority, unlike a metropolitan area goal. This means a functional plan can encompass policies and systems not normally considered in land use planning. However, when local jurisdictions amend their comprehensive plans to comply with Metro's functional plan, the amendments, obviously, must comply with the goals. As a result, Metro's functional planning provisions which affect land use should indirectly be consistent with land use policies.

II. STATUTORY STEPS FOR A FUNCTIONAL PLAN

ORS 268.380 has six steps for the adoption and implementation of a functional plan:

- (1). Define a planning procedure which identifies and designates areas and activities having a significant impact upon the orderly and responsible development of the metropolitan area, including, but not limited to, impact on: (a) Air quality; (b) Water quality; and (c) Transportation.
- (2). Apply the planning procedure defined in (1) above in order to designate an area for functional planning.
- (3). Prepare a functional plans for the areas described above.

(4). Adopt the plan.

(5). Review local comprehensive plans for conformance with the functional plan.

(6). "Recommend or require" local governments "to make changes in any plan to assure the plan and any actions taken under it conform to the districts' functional plans."

Metro has no written or customary process for implementing the functional plan process. The two existing functional plans, the Regional Transportation Plan and the "208" Plan, are for areas already identified in the statute (water and transportation); therefore, Steps 1 and 2 have never been applied. Both plans were prepared and adopted pursuant to federal law to allow the region to receive federal funds. The SWMP has been developed without any formal Metro committee review, unlike the RTP (TPAC and JPACT) and the "208" Plan (WRPAC). The state does not require these types of committees for the SWMP or for a functional plan based on the SWMP.

Therefore, Metro is free to use whatever system it wishes to develop its functional plan, as long as the general process in ORS 268.390 is followed.

III. PROCESS

To carry out Step 1 of the statute the staff should bring to the Council an ordinance describing a "planning procedure which identifies and designates" the functional planning areas. This can be a very simple procedure. At a minimum it should require that the identification be made by resolution and that the resolution state why the area has "significant impact on orderly and responsible development." Note the planning procedure in Step 1 is for identifying and designating areas for functional planning; it is not for defining how the plan should be developed. This means that Metro does not need to establish by ordinance one method of developing a functional plan which must be used for every future functional plan.

Step 2 is to apply the procedure in Step 1: Staff will prepare a resolution stating why solid waste is an area and activity having "significant impact on orderly and responsible development."

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Step 3 is to prepare the functional plan. Much of the functional plan exists, if Metro relies on the approved SWMP, the Solid Waste Reduction Plan and Resolution No. 84-105. Additional documents can be created and/or incorporated, like the draft amendments to the SWMP or new statements to clarify outdated portions of these documents, like dates or locations, or types of facilities. These would be either implementing the SWMP or amending the SWMP. These documents can be listed as being the plan rather than writing a new document. However, care must be taken to be clear which documents are being included and how to resolve conflicts among documents.

It is possible to create a special new functional plan which only addresses land use elements, but this is not recommended. The rationale for the land use elements must be clearly articulated (e.g., why must there be a transfer station within seven miles of Beaverton on at least four acres located near a major arterial), and this rationale is contained in full plan. Therefore, it is better to adopt the entire system plan so that nothing is misstated or becomes inconsistent when changes to one part are made.

However, the plan should be written to clearly identify those portions of the functional plan which interface with local comprehensive plans, and the plan should have clear functional plan policies for those portions. For example, on transfer stations current Metro policies require industrial land, near the center of waste, near major arterials, capable of serving public and private haulers and containing recycling centers. Metro's documents do not now require the site to be seven miles from the center of waste. This can be remedied by amending Metro's documents to state this and to show where the seven mile area is. These provisions could be restated separate from the main text in a special land use section.

As Metro creates the plan, issues which would benefit from local input should be carefully reviewed: e.g., when will Metro be specific and when will it allow flexibility. Once these issues are identified by staff, comment from the local government might be appropriate. Decisions on these issues can also help define the process for review in Step 5.

Step 4 is to adopt the plan. An ordinance should be used to officially designate the plan. As amendments to various plan documents are made through the years, the plan ordinance should also be amended. The same ordinance should also describe the process for the review to be undertaken in Step 5.

Steps 5 and 6 are review and require changes to comprehensive plans. This is clearly the most difficult step to implement.

In the ordinance adopting the plan, Metro should describe the review process. Input from local jurisdictions might be appropriate for establishing the review process. The review process can begin immediately once the plan is adopted. Metro can review comprehensive plans, identify areas for amendment, and set timelines for change. Or Metro can establish a timeline for local jurisdictions to do their own review, consult with Metro and have a timeline set for change. Since most jurisdictions schedule their plan amendments on an annual basis, this annual cycle should be accommodated. It was anticipated when Metro reviewed comprehensive plans for goal compliance that Metro would conform to the annual review period.

In Step 6 Metro would issue an order directing compliance based on findings of non-compliance. Failure to make required adjustments would require Metro to go to Circuit Court for a mandamus. If a jurisdiction alleged that the text of the required change violates land use laws, Metro's position is that first the change must be made and then the text of the change itself be tested at LUBA.

V. Summary

The functional process can be implemented as follows:

1. Staff devises a process for involving local government on resolution of local/regional policy issues on plan specificity and comprehensive plan review process.

2. Following any preliminary Council briefing, an ordinance is adopted by Council establishing the process for declaring an area to be appropriate for a functional plan.
3. A resolution declaring solid waste to be a functional planning area is adopted by Council.
4. A functional plan is prepared by staff using the local government input process in (1) for appropriate issues.
5. A review process is developed using the local government input process described in (1).
6. Ordinance is adopted by Council adopting plan and establishing the review process.
7. Review process.
8. Enforcement.

ESB/gl
5988C/D4-4

The motion carried and the Order was amended.

Councilor Oleson said he would not support the main motion because he thought more land was required to create jobs in the Sunset Corridor.

Councilor Cooper agreed with Councilor Oleson saying the UGB process was flawed. He said he was pro-development and regretted putting the applicant through the expense of proving their case.

Councilor Van Bergen said he would not support the motion because the term "need" was impossible to define.

Deputy Presiding Officer said he would support the motion because a case to add additional land to the UGB had not been made. He acknowledged the region needed more jobs but thought the Boundary served to let developers know where to look for available land.

Vote on the Main Motion: The vote resulted in:

Ayes: Councilors Collier, DeJardin, Frewing, Gardner, Hansen, Kafoury and Kirkpatrick

Nays: Councilors Cooper, Oleson and Van Bergen

Abstain: Councilors Kelley and Waker

The motion carried and the Order was adopted as amended.

Deputy Presiding Officer Gardner called a recess at 8:25 p.m.. Presiding Officer Waker called the meeting back to order at 8:45 p.m.

7.2 Consideration of Ordinance No. 86-207, for the Purpose of Defining a Planning Procedure for Designating Areas and Activities for Which a Functional Plan May be Adopted (First Reading and Public Hearing)

The Clerk read the Ordinance a first time by title only.

Eleanore Baxendale, General Counsel, reviewed information contained in staff's written report. She said the purpose of the Ordinance was to provide a process for the Executive Officer to designate activities for which a plan could be adopted.

Councilor Frewing said he would vote against the Ordinance as written because the proposed procedure required the Executive Officer to report planning functions to the Council. He preferred a procedure that would allow the public, Council and staff to partici-

pate in suggesting designated areas for functional plans. He thought the early phase of the annual budget process would be an excellent opportunity for seeking public comment.

Presiding Officer Waker noted the Ordinance outlined the first phase of the initiation process and that the Council would certainly be involved.

Motion: Councilor Gardner moved the Ordinance be adopted and Councilor Van Bergen seconded the motion.

Presiding Officer Waker opened the public hearing on the Ordinance. There being no testimony, he closed the public hearing.

Councilor Frewing, referring to a memorandum distributed to Councilors as an exhibit to staff's report from Eleanore Baxendale to Donald Carlson, asked whether the memo was representative of the reporting process that would occur if the Ordinance were adopted.

Ms. Baxendale explained when it became clear functional planning might be a tool the Council could use for solid waste management, she referred to the State Statutes to see how Metro could develop such a plan. The first step required establishing a generic process for naming plan topics. Under the proposed process, the Executive Officer would return to the Council with a resolution naming solid waste as an area to be addressed by functional planning. The resolution would contain the rationale for that action. The same process could be used for parks or libraries, she said.

Councilor Van Bergen said the Ordinance was unnecessary because the Executive Officer already had the authority to introduce such resolutions.

Ms. Baxendale responded the State Statute required the Council to adopt a process for naming designated areas for plans before a topic could be named.

Councilor Gardner supported the Ordinance saying it was acceptable and necessary. He thought the Council and the Executive Officer could take the initial steps to suggest plan areas.

Councilor Hansen said he agreed with Councilors Van Bergen and Frewing. He was concerned the Ordinance would pave the way for developing a hurried solid waste functional plan. He requested the Council and staff take time to develop a good process which would address all areas of concern.

After discussion, Councilor Frewing noted his specific concerns with the proposed Ordinance. He requested more specific language be

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drafted to address when topics could be suggested for consideration. He saw the Council's role as making an aggressive, annual search for functional planning areas and to learn issues of concern to constituents.

Councilor Kafoury thought the annual process was too limiting. She did not think the proposed Ordinance as written precluded the Council from defining functional planning areas.

Councilor Kafoury suggested staff draft an amendment to more clearly define timing for inviting input into the functional planning process.

The Presiding Officer announced the Ordinance would be considered a second time at the meeting of September 11, 1986.

7.3 Consideration of Ordinance No. 86-206, for the Purpose of Amending Metro Code Chapter 3.02, Amending the Regional Waste Treatment Management Plan, and Submitting the Plan for Recertification (Second Reading)

Neil McFarlane, Public Facilities Analyst, reviewed information in staff's written report.

The Clerk read the Ordinance by title a second time.

Motion: Presiding Officer Waker noted the Ordinance was moved for adoption by Councilors Frewing and Kirkpatrick at the meeting of August 14, 1986.

Responding to Councilor Kelley's question, Mr. McFarlane explained the Ordinance would incorporate the city of Gresham and Portland studies as support documents to the "208" Plan. The Council was not approving those studies, he said, but was acknowledging the fact they existed.

Vote: A vote on the motion resulted in:

Ayes: Councilors Collier, Cooper, DeJardin, Frewing, Gardner, Hansen, Kelley, Kirkpatrick, Oleson, Van Bergen and Waker

Absent: Councilor Kafoury

The motion carried and the Ordinance was adopted.

West Transfer and Recycling Center. Doug Drennen, Solid Waste Engineering/Analysis Manager, introduced Dave Luneke to the Council. He said Mr. Luneke had been recently hired to replace Buff Winn as Solid Waste Engineer. Mr. Drennen reported staff had begun a series of meetings with the public regarding the design of the transfer center. Mr. Luneke then reviewed the design and construction schedule for the project as listed in the written Executive Officer Report distributed at the meeting.

Executive Officer Gustafson also reported staff had appeared before the Washington County Board of Commissioners requesting they work with Metro in designing the transfer station. On Tuesday of this week the Board adopted an ordinance which would subject the transfer station site to Type III zoning if Metro's plan were not approved before the Ordinance went into effect. The Executive Officer explained staff were proceeding to ensure the permit was submitted before the 90-day period.

Marion County Disposal Agreement. Doug Drennen reported the Council would be asked at its September 25 meeting to approve a contract to dispose of waste at the Marion County Landfill. The agreement was an effort to reduce the volume of waste currently disposed at the St. Johns Landfill. Responding to the Presiding Officer's question, Mr. Drennen said initial disposal costs would be around \$12 per ton. That figure was less than a probable penalty Metro would pay to the City of Portland if allowable waste volumes were exceeded under the conditions imposed by the current Metro/City agreement.

3.1 Report on an Intergovernmental Agreement with the Portland Development Commission for the Convention, Trade and Spectator Facilities Project

Executive Officer Gustafson said the item was being pulled from the agenda because a final agreement had not yet been reached.

4. WRITTEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS

None.

5. CITIZEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS

None.

6. ORDINANCES

6.1 Consideration of Ordinance No. 86-207, for the Purpose of Defining a Planning Procedure for Designating Areas and Activities for Which a Functional Plan May be Adopted (Second Reading)

The Clerk read the Ordinance a second time by title only.

Main Motion: The motion to adopt the Ordinance was made on August 28, 1986, by Councilors Gardner and Van Bergen.

Eleanore Baxendale, General Counsel, distributed a proposed amendment to the Ordinance. Councilor Frewing said the amendment addressed the concerns he had raised at the August 28 Council meeting.

Motion to Amend: Councilor Frewing moved to amend the main motion by adding a new Section 2 after the existing Section 1 to read: "As part of its recommendation on the annual work plan the Intergovernmental Resource Committee established by Ordinance No. 84-180 shall report to the Council whether there are aspects of development in addition to water quality, air quality and transportation, which are related to the orderly and responsible development of the metropolitan area." Existing Sections 2, 3 and 4 shall be renumbered to read Sections 3, 4 and 5. The following language shall be added at the end of the first sentence of the existing Section 2 (new Section 3):
. . . Sections 1 or 2 or on the Council's own determination." Councilor Van Bergen seconded the motion.

Vote on Motion to Amend: The vote resulted in:

Ayes: Councilors DeJardin, Frewing, Gardner, Hansen, Kelley, Oleson, Van Bergen and Waker

Absent: Councilors Collier, Cooper, Kafoury and Kirkpatrick

The motion carried and the Ordinance was amended.

Vote on Main Motion as Amended: The vote resulted in:

Ayes: Councilors DeJardin, Frewing, Gardner, Hansen, Kelley, Oleson, Van Bergen and Waker

Absent: Councilors Collier, Cooper, Kafoury and Kirkpatrick

The motion carried and Ordinance No. 86-207 was adopted as amended.

6.2 Consideration of Ordinance No. 86-208, Adopting a Final Order and Amending the Urban Growth Boundary for Contested Case No. 85-9: Riviera Motors Property (First Reading and Public Hearing)

The Clerk read the Ordinance by title only for the first time.



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

September 29, 1986

• Ms. Jane McGarvin
Clerk of the Board
Multnomah County Courthouse
1021 S.W. Fourth Avenue
Portland, Oregon 97204

Dear Jane:

Enclosed are true copies of the following ordinances adopted by the Council of the Metropolitan Service District. Please file these ordinances in the Metro files maintained by your county.

Metro Council

Richard Waker
Presiding Officer
District 2

Jim Gardner
Deputy Presiding
Officer
District 3

Bob Oleson
District 1

Corky Kirkpatrick
District 4

Tom DeJardin
District 5

George Van Bergen
District 6

Sharron Kelley
District 7

John Frewing
District 8

Tanya Collier
District 9

Larry Cooper
District 10

Marge Kafoury
District 11

Gary Hansen
District 12

Executive Officer
Rick Gustafson

Ordinance No. 86-207, for the Purpose of Defining a Planning Procedure for Designating Areas and Activities for which a Functional Plan May Be Adopted

Ordinance No. 86-208, Adopting a Final Order and Amending the Metro Urban Growth Boundary for Contested Case No. 85-9: Riviera Motors

Ordinance No. 86-209, Amending Ordinance No. 83-162 to Eliminate Conditions Imposed on the Urban Growth Boundary Amendment Adopted for Contested Case No. 81-2: Waldo Estates

Ordinance No. 86-210, Authorizing a Temporary Reduction in Disposal Rates for Source Separated Yard Debris at the St. Johns Landfill

Sincerely,

A. Marie Nelson
Clerk of the Council

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Enclosures (4)



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

September 29, 1986

- Ms. Juanita Orr
County Clerk
Clackamas County Courthouse
8th and Main
Oregon City, Oregon 97045

Dear Ms. Orr:

Enclosed are true copies of the following ordinances adopted by the Council of the Metropolitan Service District. Please file these ordinances in the Metro files maintained by your county.

Metro Council

Richard Waker
Presiding Officer
District 2

Jim Gardner
Deputy Presiding
Officer
District 3

Bob Oleson
District 1

Corky Kirkpatrick
District 4

Tom DeJardin
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George Van Bergen
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Sincerely,

A. Marie Nelson
Clerk of the Council

amn

Enclosures (4)



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

September 29, 1986

Mr. Charles D. Cameron
County Administrator
Washington County Courthouse
150 North First Avenue
Hillsboro, Oregon 97123

Dear Mr. Cameron:

Enclosed are true copies of the following ordinances adopted by the Council of the Metropolitan Service District. Please file these ordinances in the Metro files maintained by your county.

Metro Council

Richard Waker
Presiding Officer
District 2

Jim Gardner
Deputy Presiding
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Sincerely,

A. Marie Nelson
Clerk of the Council

amn

Enclosures (4)