

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF REVISING) ORDINANCE NO 98-732
QUASI-JUDICIAL URBAN GROWTH)
BOUNDARY AMENDMENT) Introduced by Mike Burton, Executive Officer
PROCEDURES IN METRO CODE) and Councilor Susan McLain
3.01.033 , 3.01.035, 3.01.055, 3.01.065 and)
DECLARING AN EMERGENCY)

WHEREAS, Metro's urban growth boundary (UGB) procedures were revised and acknowledged for compliance with the statewide Goals in 1992; and

WHEREAS, Metro recognized ORS 197.763 (1989) on quasi-judicial procedures by following the statute and requiring that a copy of the statute be provided at each hearing; and

WHEREAS, Metro has had very few quasi-judicial UGB amendment applications since 1989, while the ORS 197.763 was amended in 1991, 1995, and 1997; and

WHEREAS, more quasi-judicial UGB amendment applications are anticipated in 1998 and 1999 due to the deadlines in ORS 197.299 (HB 2493); and

WHEREAS, incorporating the amended statutory language into Metro's quasi-judicial procedures will clarify and shorten the hearing procedure, now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1 - Adoption. The provisions of Metro Code 3.01.033 Applications for Major Amendments and Locational Adjustments and Metro Code 3.01.055 Public Hearing Rules Before the Hearings Officer are hereby adopted as revised in Exhibit "A," attached and incorporated into this Ordinance.

Section 2 - Locational Adjustments. The limitation that the total of all locational adjustments for any one year shall not exceed 100 net acres is hereby amended to establish the

order that locational adjustments qualify for the 100-acre per year limit. Metro Code 3.01.035(b) and the corresponding provisions in Ordinances Nos. 96-647C and 97-715B, Appendix A are hereby amended to read as follows:

“(b) All locational adjustment additions and administrative adjustments for any one year shall not exceed 100 net acres and no individual locational adjustment shall exceed 20 net acres. Natural areas adjustments shall not be included in the annual total of 100 acres, and shall not be limited to 20 acres, except as specified in 3.01.035(g), below. Completed locational adjustment applications shall be processed on a first come, first served basis.”

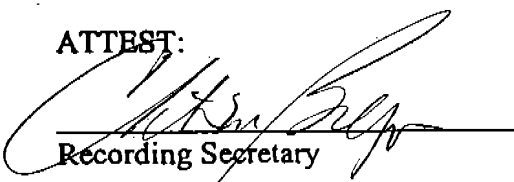
Section 3 - Emergency Clause. This ordinance shall be effective March 30, 1998 as necessary for the health, safety or welfare of the Metro area for the following reasons: (1) these procedures are needed to expedite amendment application hearings; (2) the deadline for 1998 applications is March 15, with two weeks for additions to complete the applications; and (3) postponement of hearings to await the effectiveness of these procedures is inconsistent with Metro's efforts to comply with the December 18, 1998 deadline for UGB amendments in ORS 197.299(2).

ADOPTED by the Metro Council this 16th day of April 1998.



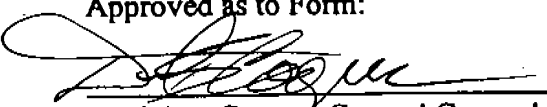
Jon Kvistad, Presiding Officer

ATTEST:



Recording Secretary

Approved as to Form:



Daniel B. Cooper, General Counsel

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3.01.033 Applications for Major Amendments and Locational Adjustments

(a) All petitions filed pursuant to this chapter for amendment of the UGB must include a completed petition on a form provided by the district. Petitions which do not include the appropriate completed form provided by the district will not be considered for approval.

(b) Major Amendments or Locational Adjustments may be filed by:

- (1) A county with jurisdiction over the property or a city with a planning area that includes or is contiguous to the property; or
- (2) The owners of the property included in the petition or a group of more than 50 percent of the property owners who own more than 50 percent of the land area in each area included in the petition.

(c) Completed petitions for amending the UGB through either a major amendment or locational adjustment, shall be considered by the district if filed prior to March 15. No petition shall be accepted under this chapter if the proposed amendment or locational adjustment to the UGB would result in an island of urban land outside the existing UGB, or if the proposed addition contains within it an island of non-urban land excluded from the petition. The district will determine not later than seven working days after the deadline whether a petition is complete and notify the petitioner. The petitioner must remedy any identified deficiencies within 14 days of notification, or the petition and fees shall be returned to the petitioner and no further consideration shall be given. Completeness of petitions shall be the petitioners' responsibility.

(d) Upon request by a councilor or the executive officer, the council may, by an affirmative vote of two-thirds of the full council, waive the filing deadline for a particular petition or petitions and hear such petition or petitions at any time. Such waiver shall not waive any other requirement of this chapter.

(e) The district shall give notice of the March 15 deadline for acceptance of petitions for UGB major amendments and locational adjustments under this chapter not less than 90 calendar days before a deadline and again 20 calendar days before

a deadline in a newspaper of general circulation in the district and in writing to each city and county in the district. A copy of the notice shall be mailed not less than 90 calendar days before a deadline to anyone who has requested notification. The notice shall explain the consequences of failing to file before the deadline and shall specify the district officer or employee from whom additional information may be obtained.

(f) All petitions shall be reviewed by district staff and a report and recommendation submitted to the hearings officer. For locational adjustments, the staff report shall be submitted not less than 10 calendar days before the hearing. For major amendments, the staff report shall be submitted not less than 21 calendar days before the hearing. A copy of the staff report and recommendation shall simultaneously be sent to the petitioner(s) and others who have requested copies. Any subsequent staff report used at the hearing shall be available at least seven days prior to the hearing.

(g) It shall be the responsibility of the petitioner to provide a list of names and addresses for notification purposes, consistent with section 3.01.055-~~(b)~~, when submitting a petition. Said list of names and addresses shall be certified in one of the following ways:

- (1) A list attested to by a title company as a true and accurate list of property owners as of a specified date; or
- (2) A list attested to by a county assessor, or designate, pledging that the list is a true and accurate list of property owners as of a specified date; or
- (3) A list with an attached affidavit completed by the proponent affirming that the names and addresses are a true and accurate list of property owners as of a specified date.

(h) Local Position on Petition:

- (1) Except as provided in subsection 4 of this section, a petition shall not be considered completed for hearing unless the petition includes a written statement by the governing body of each city or county with land use jurisdiction over the area included in the petition that:

- (A) recommends that Metro approve the petition;
or

- (B) recommends that Metro deny the petition; or
 - (C) expresses no preference on the petition.
- (2) Except as provided in subsection 4 of this section, a petition shall not be considered completed for hearing unless the petition includes a written statement by any special district which has an agreement with the governing body of each city or county with land use jurisdiction over the area included in the petition to provide one or more urban services to the subject area that:
- (A) recommends that Metro approve the petition; or
 - (B) recommends that Metro deny the petition; or
 - (C) expresses no preference on the petition.
- (3) If a city, county or special district holds a public hearing to establish its position on a petition, the city or county shall:
- (A) provide notice of such hearing to the district and to any city or county whose municipal boundaries or urban planning area boundary abuts the area affected; and
 - (B) provide the district with a list of the names and addresses of parties testifying at the hearing and copies of any exhibits or written testimony submitted for the hearing.
- (4) Upon request by an applicant, the executive officer shall waive the requirements of subsections (1) and (2) of this section regarding written recommendations from the city or county with land use jurisdiction or a special district which provides one or more urban services if the applicant shows that a request for comment was filed with the local government at least 120 calendar days previously and that the local government or service provider has not yet adopted a position.

(i) Petitions outside district boundary:

- (1) Petitions to extend the UGB to include land outside the district shall not be accepted unless accompanied by:
 - (A) A copy of a petition for annexation to the district to be submitted to the Portland Metropolitan Area Local Government Boundary Commission pursuant to ORS chapter 199; and
 - (B) A statement of intent to file the petition for annexation within 90 calendar days of Metro action, or after the appeal period following final action by a court concerning a Metro action, to approve the petition for UGB major amendment or locational adjustment.
- (2) A city or county may, in addition to the action required in subsection B of this section, approve a plan or zone change to implement the proposed adjustment in the area included in a petition prior to a change in the district UGB if:
 - (A) The district is given notice of the local action;
 - (B) The notice of the local action states that the local action is contingent upon subsequent action by the district to amend its UGB; and
 - (C) The local action to amend the local plan or zoning map becomes effective only if the district amends the UGB consistent with the local action.
- (3) If the city or county has not contingently amended its plan or zoning map to allow the land use category of the proposed amendment proposed in a petition, and if the district does approve the UGB amendment, the local plan or map change shall be changed to be consistent with the UGB amendment within one year.

3.01.055 Public Hearing Rules before the Hearings Officer

(a) Notice of the hearings governed by this section shall be provided to the applicant and to owners of record of property on the most recent property tax assessment roll where such property is located:

- (1) Within 250 feet of the property which is the subject of the notice where the subject property is outside an urban growth boundary and not within a farm or forest zone; or
- (2) Within 500 feet of the property which is the subject of the notice where the subject property is within a farm or forest zone.
- (3) Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.
- (4) At the discretion of the applicant, Metro shall also provide notice to the Department of Land Conservation and Development.
- (5) The notice shall:
 - (A) Explain the nature of the application and the proposed use or uses which could be authorized;
 - (B) List the applicable criteria from the ordinance and the regional framework plan that apply to the application at issue;
 - (C) Set forth the street address or other easily understood geographical reference to the subject property;
 - (D) State the date, time and location of the hearing;
 - (E) State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to the board based on that issue;
 - (F) Be mailed at least:
 - (i) Twenty days before the evidentiary hearing; or
 - (ii) If two or more evidentiary hearings are allowed, 10 days before the first evidentiary hearing;

(G) Include the name of a Metro representative to contact and the telephone number where additional information may be obtained;

(H) State that a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost;

(I) State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at reasonable cost; and

(J) Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.

(6) The failure of the property owner to receive notice as provided in this section shall not invalidate such proceedings if Metro can demonstrate by affidavit that such notice was given. The notice provisions of this section shall not restrict the giving of notice by other means, including posting, newspaper publication, radio and television.

(a)-(b) All major amendment and locational adjustment petitions accepted under this chapter shall receive a contested case hearing according to the following rules:

- (1) Hearings officers shall be selected by the district pursuant to the provisions of section 2.05.025(a) of the Metro Code.
- (2) Parties to the case shall be defined as being any individual, agency, or organization who participates orally or in writing in the creation of the record used by the hearings officer in making a decision. If an individual represents an organization orally and/or in writing, that individual must indicate the date of the organization meeting in which the position presented was adopted. The hearings officer may request that the representative explain the method used by the organization to adopt the position presented. Parties need not be represented by an

attorney at any point in the process outlined in this subsection and elsewhere in this chapter.

(3) At the time of the commencement of a hearing, the hearings officer shall provide the following information to parties:

(A) A list and statement of the applicable substantive criteria; ~~a copy of ORS 197.763;~~ and procedures for notice and conduct of local quasi-judicial land use hearings; ~~notice requirements; hearing procedures;~~ provided that failure to provide copies to all those present shall not constitute noncompliance with this subsection; and

(B) A statement that testimony and evidence must be directed toward the criteria or other specific criteria which the person believes apply to the decision; and

(C) A statement that the failure to raise an issue accompanied by statements or evidence with sufficient specificity to afford the decision-maker and the parties an opportunity to respond to the issue precludes appeal; and

~~(D) A statement that any party may request a continuance of the hearing, but that any continuance would be granted at the discretion of the hearings officer upon finding good cause;~~

(4) (A) Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments or testimony regarding the application. The hearing may be continued for a reasonable period as determined by the hearings officer. The hearings officer shall grant such request by continuing the public hearing pursuant to paragraph (B) of this subsection or leaving the record open for additional written evidence, arguments or testimony pursuant to paragraph (C) of this subsection.

(B) If the hearings officer grants a continuance, the hearing shall be continued to a date,

time and place certain at least seven days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence, arguments and testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least seven days to submit additional written evidence, arguments or testimony for the purpose of responding to the new written evidence.

(C) If the hearings officer leaves the record open for additional written evidence or testimony, the record shall be left open for at least seven days. Any participant may file a written request with the hearings officer for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearings officer shall reopen the record pursuant to subsection (7) of this section.

(D) Unless waived by the applicant, the local government shall allow the applicant at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence.

~~(4)~~(5) Failure of the petitioner to appear at the hearing without making arrangements for rescheduling the hearing shall constitute grounds for immediately denying the petition.

~~(5)~~(6) The hearing shall be conducted in the following order:

- (A) Staff report.
- (B) Statement and evidence by the petitioner in support of a petition.
- (C) Statement and evidence of affected persons, agencies, and/or organizations opposing or

supporting the petition, and/or anyone else wishing to give testimony.

(D) Rebuttal testimony by the petitioner.

~~(6)~~ (7) The hearings officer shall have the right to question any participant in the hearing. Cross-examination by parties shall be by submission of written questions to the hearings officer. The hearings officer shall give parties the opportunity to submit such questions prior to closing the hearing.

~~(7)~~ The hearing may be continued for a reasonable period as determined by the hearings officer.

(8) The hearings officer may set reasonable time limits for oral testimony and may exclude or limit cumulative, repetitive, or immaterial testimony.

(9) A verbatim audio tape or video tape, written, or other mechanical record shall be made of all proceedings, and need not be transcribed unless necessary for review upon appeal.

~~(10)~~ Upon conclusion of the hearing, the record shall be closed and new evidence shall not be admissible thereafter unless a party requests that the record remain open before the conclusion of the initial, evidentiary hearing. Upon such a request, the record shall remain open for at least seven days after the hearing unless there is a continuance.

~~(11)~~ (10) The burden of presenting evidence in support of a fact or position in the contested case rests on the petitioner. The proponent of a proposed UGB amendment shall have the burden of proving that the proposed amendment complies with the all applicable standards. ~~in this chapter.~~

~~(12)~~ A proponent or opponent shall raise all issues of concern either orally or in written form at the public hearing. Failure to do so will constitute a waiver to the raising of such issues at any subsequent administrative or legal appeal deliberations.

~~(13)~~ (11) The hearings officer may reopen a record to receive evidence not available or offered at the hearing. If the record is reopened, any person

may raise new issues which relate to the new evidence before the record is closed.

(12) An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the Metro Council. Such issues shall be raised and accompanied by statements or evidence sufficient to afford the governing body, planning commission, hearings body or hearings officer, and the parties an adequate opportunity to respond to each issue.

(13) All documents or evidence relied upon by the applicant shall be submitted to Metro and be made available to the public.

(14) UGB petitions may be consolidated by the hearings officer for hearings where appropriate. Following consultation with district staff and prospective petitioners, the hearings officer shall issue rules for the consolidation of related cases and allocation of charges. These rules shall be designed to avoid duplicative or inconsistent findings, promote an informed decision-making process, protect the due process rights of all parties, and allocate the charges on the basis of cost incurred by each party.

~~(b)~~(c) Within 30 calendar days following the close of the record, the hearings officer shall prepare and submit a proposed order and findings, together with the record compiled in the hearing and a list of parties to the case, to the executive officer. Within seven working days of receiving the materials from the hearings officer, the executive officer, or designate, shall furnish the proposed order and findings to all parties to the case. Accompanying the proposed order and findings shall be notification to parties which includes:

- (1) The procedure for filing an exception and filing deadlines for submitting an exception to the proposed order and findings of the hearings officer. Parties filing an exception with the district must furnish a copy of their exception to all parties to the case and the hearings officer.
- (2) A copy of the form to be used for filing an exception.

- (3) A description of the grounds upon which exceptions can be based.
- (4) A description of the procedure to be used to file a written request to submit evidence that was not offered at the hearing, consistent with Metro Code sections 2.05.035(c) and (d).
- (5) A list of all parties to the case.

~~—— (e) UGB petitions may be consolidated by the hearings officer for hearings where appropriate. Following consultation with district staff and prospective petitioners, the hearings officer shall issue rules for the consolidation of related cases and allocation of charges. These rules shall be designed to avoid duplicative or inconsistent findings, promote an informed decision-making process, protect the due process rights of all parties, and allocate the charges on the basis of cost incurred by each party.~~

(d) Once a hearings officer has submitted the proposed order and findings to the executive officer, the executive officer, or designate, shall become the custodian of the record compiled in the hearing, and shall make the record available at the district offices for review by parties.

3.01.065 Council Action On Quasi-Judicial Amendments

(a) The council may act to approve, remand or deny a petition in whole or in part. When the council renders a decision that reverses or modifies the proposed order of the hearings officer, then, in its order, it shall set forth its findings and state its reasons for taking the action.

(b) Parties to the case and the hearings officer shall be notified by mail at least 10 calendar days prior to council consideration of the case. Such notice shall include a brief summary of the proposed action, location of the hearings officer report, and the time, date, and location for council consideration.

(c) Final council action following the opportunity for parties to comment orally to council on the proposed order shall be as provided in Code section 2.05.045. Parties shall be notified of their right to review before the Land Use Board of Appeals pursuant to 1979 Oregon Laws, chapter 772.

(d) Comments before the council by parties must refer specifically to any arguments presented in exceptions filed according to the requirements of this chapter, and cannot introduce new evidence or arguments before the council. If no party to the case has filed an exception, then the council shall decide whether to entertain public comment at the time that it takes final action on a petition.

(e) Within 20 days from the day that the proposed order and findings of the hearings officer are mailed to them, parties may file a motion to reopen the record to receive admissible evidence not available at the hearing. The motion shall show proof of service on all parties. The council shall rule on such motions with or without oral argument at the time of its consideration of the case. An order approving such a motion to reopen the record shall remand the case to the hearings officer for evidentiary hearing. When the Metro Council or the hearings office reopens a record to admit new evidence, arguments or testimony, any person may raise new issues which relate to the new evidence, testimony or criteria for decision-making which apply to the matter at issue.

(f) When the council acts to approve in whole or in part a petition by requiring annexation to a city and/or service district(s) and Tri-Met and whenever a petition includes land outside the district:

- (1) Such action shall be by resolution expressing intent to amend the UGB if and when the affected property is annexed to the district within six months of the date of adoption of the Resolution.
- (2) The council shall take final action, as provided for in paragraphs (c) and (d) of this section, within 30 calendar days of notice that all required annexations to a city, service district(s) and the district have been approved.

(g) When the council is considering an ordinance to approve a petition, it shall take all public comment at its first reading of the ordinance, discuss the case, and then either pass the ordinance to second reading or remand the proposed order and findings of the hearings officer to the executive officer or the hearings officer for new or amended findings. If new or amended findings are prepared, parties to the case shall be provided a copy of the new order and findings by mail no less than seven calendar days prior to the date upon which the council will consider the new order and findings, and parties will be given the opportunity to provide the council with oral or written testimony regarding the new order and findings.

GROWTH MANAGEMENT COMMITTEE REPORT
CONSIDERATION OF ORDINANCE 98-732, FOR THE PURPOSE OF REVISING
QUASI-JUDICIAL URBAN GROWTH BOUNDARY AMENDMENT PROCEDURES
IN METRO CODE 3.01.033, 3.01.035, 3.01.055, 3.01.065 AND DECLARING AN
EMERGENCY

Date: April 8, 1998

Presented by: Councilor McLain

Committee Action: At its April 7, 1998 meeting, the Growth Management Committee unanimously voted to recommend to Council adoption of Ordinance 98-732. Voting in favor: Councilors Naito and McCaig.

Committee Issues/Discussion: There was no substantive discussion on this ordinance by the Councilors.

STAFF REPORT

CONSIDERATION OF ORDINANCE NO. 98-732, FOR THE PURPOSE OF REVISING QUASI-JUDICIAL URBAN GROWTH BOUNDARY AMENDMENT PROCEDURES IN METRO CODE 3.01.033, 3.01.035, 3.01.055, 3.01.065 AND DECLARING AN EMERGENCY

Date: March 4, 1998

Presented by: Larry Shaw

Proposed Action

Ordinance No. 98-732 amends Metro Code Chapter 3.01 to clarify and shorten the hearing procedure for Major Amendments and Locational Adjustments to the Urban Growth Boundary (UGB). This ordinance would be effective on March 30, 1998.

Factual Background and Analysis

Urban Reserves were adopted by the Metro Council on March 6, 1997. The Urban Growth Report sections on buildable lands, capacity analysis, forecasts for population, households and employment and the 1997 housing needs analysis were adopted on December 18, 1997. With these two decisions, which concluded that there is a deficit in the 20-year dwelling unit capacity, has come a dramatic increase in the number of inquiries for amending the UGB. With more UGB amendment activity anticipated, the Executive Officer recommends revisions, consistent with ORS 197.763, to clarify the procedures for processing UGB petitions.

The proposed changes are as follows:

1. Metro Code Section 3.01.033, Applications for Major Amendments and Locational Adjustments, would be amended to require that any staff report used at hearing shall be available at least seven days prior to the hearing.
2. Metro Code Section 3.01055 and 065 would be amended to incorporate the requirements that are specified in the Oregon Revised Statutes for notification and other procedural changes regarding the hearing itself.

In addition to the above, the Executive Officer recommends that Metro Code Section 3.01.035(b), Locational Adjustment Procedures, include the provision to process petitions on a first come, first served basis.

Budget Analysis

There is no budget impact.

Executive Officer's Recommendation

The Executive Officer recommends that the Metro Council adopt Ordinance No. 98-732.



METRO

DATE: February 20, 1998

TO: Councilor Lisa Naito
Chair, Growth Management Committee

FROM: *LSH*
Larry Shaw
Office of General Counsel

SUBJECT: UGB Amendment Procedure - Quasi-Judicial Applications

Metro's UGB Amendment Procedures were written and acknowledged in 1992. Quasi-judicial amendments are filed once a year and processed by a hearings officer prior to a Metro Council decision. Since 1992, Metro has had very few UGB Amendment applications each March. Therefore, biennial changes in the procedural statutory requirements in ORS 197.763 have been followed by Metro staff and the hearings officers using the statute and providing the parties a copy of the statute at each hearing. With more UGB amendment activity anticipated, the Executive Officer requested a discussion draft of amendments to Metro's acknowledged quasi-judicial procedures.

With one addition, the discussion draft is now Ordinance No. 98-732 amending Metro Code to add the following:

1. The absolute deadline for any staff memo of seven days prior to the hearing is added to 3.01.033(f) to reflect ORS 197.763(4)(b).
2. Public hearing notice requirements from ORS 197.763(2), (3) and (8) are incorporated into new 3.01.055(a), moving or eliminating 3.01.055(b)(3)(D); (b)(7),(10) and (12).
3. Continuance rules from ORS 197.763(6) are incorporated into new 3.01.055(b)(4).
4. The appeal issues statement from ORS 197.763(1) is incorporated into new 3.01.055(b)(12).
5. The full applicant documentation statement from ORS 197.763(4)(a) is incorporated into 3.01.055(b)(13).
6. The reopened record statement from ORS 197.763(7) is incorporated into 3.01.065(e).
7. The small addition to the discussion draft is to establish a first come, first served order for locational adjustments to qualify for the 100-acres per year limit.

These amendments address neither legislative amendments of the UGB, nor the process for "exceptions" to the hearings officer reports for quasi-judicial amendments. Legislative procedures could be addressed when the urban reserves productivity analysis to aid legislative amendments is complete.