

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO CODE) Ordinance No. 07-1165A
CHAPTER 3.09 (LOCAL GOVERNMENT BOUNDARY)
CHANGES) TO IMPLEMENT 2007 OREGON LAWS) Introduced by Chief Operating Officer
CHAPTER 173 AND UPDATE THE CHAPTER, AND) Michael Jordan with the Concurrence
DECLARING AN EMERGENCY) of Council President David Bragdon

WHEREAS, the Legislature enacted 2007 Oregon Laws chapter 173 (Senate Bill 615), which repealed the requirement in ORS chapter 268 that Metro provide a process for certain local governments to appeal boundary changes by other local governments to a Metro-established boundary appeals commission; and

WHEREAS, the Legislature concluded that the process for appeals to Metro's boundary appeals commission had become redundant with appeals of boundary changes to the Land Use Board of Appeals ("LUBA"), and a pre-requisite to appeal to LUBA; and

WHEREAS, other provisions in chapter 3.09 of the Code have become obsolete; and

WHEREAS, the Metropolitan Policy Advisory Committee reviewed the ordinance on January 9, 2008, and recommended approval after it tabled several proposed revisions to the ordinance for future consideration; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

- 1. Chapter 3.09 of the Metro Code is hereby amended, as indicated in Exhibit "A", attached and incorporated into this ordinance, in order to implement 2007 Oregon Laws chapter 173 and to make other changes to bring the chapter up to date.
- 2. The Findings of Fact and Conclusions of Law in Exhibit "B", attached and incorporated into this ordinance, explain how these amendments comply with the Regional Framework Plan and statewide planning laws.
- 3. This ordinance is necessary for the immediate preservation of public health, safety and welfare because the effective date of 2007 Oregon Laws chapter 173 is January 1, 2008, and timely repeal of code provisions that establish the boundary appeals commission will save local governments time and money on redundant appeals. An emergency is, therefore, declared to exist, and this ordinance shall take effect immediately, pursuant to Metro Charter section 39(1).

ADOPTED by the Metro Council this 17th day of January, 2008.

Attest:

David Bragdon, Council President
Christina Billington, Recording Secretary
Daniel B. Cooper, Metro Attorney

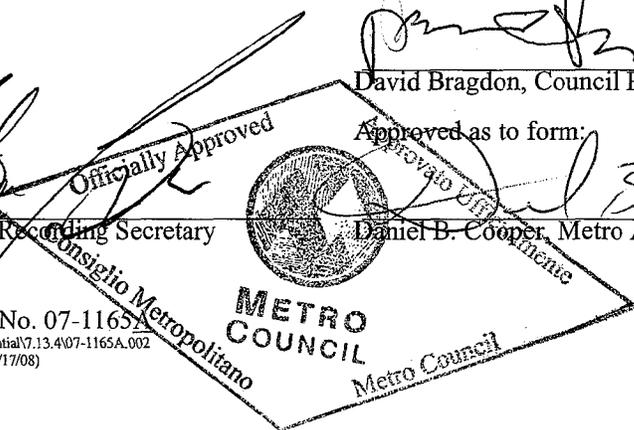


Exhibit A to Ordinance No. 07-1165A

Proposed Amendments to Metro Code Chapter 3.09 (Local Government
Boundary Changes)

September 24, 2007

3.09.010 Purpose and Applicability

The purpose of this chapter is to carry out the provisions of ORS 268.354. This chapter applies to all boundary changes within the boundaries of Metro and any annexation of territory to the Metro boundary. Nothing in this chapter affects the jurisdiction of the Metro Council to amend the region's Urban Growth Boundary (UGB).

3.09.020 Definitions

As used in this chapter, unless the context requires otherwise:

(a) "Affected entity" means a county, city or district for which a boundary change is proposed or is ordered.

(b) "Affected territory" means territory described in a petition.

(c) "Boundary change" means a major or minor boundary change involving affected territory lying within the jurisdictional boundaries of Metro or the boundaries of the urban reserves designated by Metro prior to June 30, 1997.

(d) "Deliberations" means discussion among members of a reviewing entity leading to a decision on a proposed boundary change at a public meeting for which notice was given under this chapter.

(e) "District" means a district defined by ORS 198.710 or any district subject to Metro boundary procedure act under state law.

(f) "Final decision" means the action by a reviewing entity whether adopted by ordinance, resolution or other means which is the determination of compliance of the proposed boundary change with applicable criteria and which requires no further discretionary decision or action by the reviewing entity other than any required referral to electors. "Final decision" does not include resolutions, ordinances or other actions whose sole purpose is to refer the boundary change to electors or to declare the results of an election, or any action to defer or continue deliberations on a proposed boundary change.

(g) "Major boundary change" means the formation, merger, consolidation or dissolution of a city or district.

(h) "Minor boundary change" means an annexation or withdrawal of territory to or from a city or district or from a city-county to a city. "Minor boundary change" also means an extra-territorial extension of water or sewer service by a city or district. "Minor boundary change" does not mean withdrawal of territory from a district under ORS 222.520.

(i) "Necessary party" means any county; city; district whose jurisdictional boundary or adopted urban service area includes any part of the affected territory or who provides any urban service to any portion of the affected territory; Metro; or any other unit of local government, as defined in ORS 190.003, that is a party to any agreement for provision of an urban service to the affected territory.

(j) "Petition" means any form of action that initiates a boundary change.

(k) "Reviewing entity" means the governing body of a city, county or Metro, or its designee.

(l) "Urban services" means sanitary sewers, water, fire protection, parks, open space, recreation and streets, roads and mass transit.

3.09.030 Notice Requirements

(a) The notice requirements in this section apply to all boundary change decisions by a reviewing entity except expedited decisions made pursuant to section 3.09.045. These requirements apply in addition to, and do not supersede, applicable requirements of ORS chapters 197, 198, 221 and 222 and any city or county charter provision on boundary changes.

(b) Within 45 days after a reviewing entity determines that a petition is complete, the entity shall set a time for deliberations on a boundary change. The reviewing entity shall give notice of its proposed deliberations by mailing notice to all necessary parties, by weatherproof posting of the notice in the general vicinity of the affected territory, and by publishing notice in a newspaper of general circulation in the affected territory. Notice shall be mailed and posted at least 20 days prior to the date of deliberations. Notice shall be published as required by state law.

(c) The notice required by subsection (b) shall:

- (1) Describe the affected territory in a manner that allows certainty;
- (2) State the date, time and place where the reviewing entity will consider the boundary change; and

(3) State the means by which any person may obtain a copy of the reviewing entity's report on the proposal.

(d) A reviewing entity may adjourn or continue its final deliberations on a proposed boundary change to another time. For a continuance later than 28 days after the time stated in the original notice, notice shall be reissued in the form required by subsection (b) of this section at least five days prior to the continued date of decision.

(e) A reviewing entity's final decision shall be written and authenticated as its official act within 30 days following the decision and mailed or delivered to Metro and to all necessary parties. The mailing or delivery to Metro shall include payment to Metro of the filing fee required pursuant to Section 3.09.060.

3.09.040 Requirements for Petitions

(a) A petition for a boundary change must contain the following information:

- (1) The jurisdiction of the reviewing entity to act on the petition;
- (2) A map and a legal description of the affected territory in the form prescribed by the reviewing entity;
- (3) For minor boundary changes, the names and mailing addresses of all persons owning property and all electors within the affected territory as shown in the records of the tax assessor and county clerk; and
- (4) For boundary changes under ORS 198.855(3), 198.857, 222.125 or 222.170, statements of consent to the annexation signed by the requisite number of owners or electors.

(b) A city, county and Metro may charge a fee to recover its reasonable costs to carry out its duties and responsibilities under this chapter.

3.09.045 Expedited Decisions

(a) The governing body of a city or Metro may use the process set forth in this section for minor boundary changes for which the petition is accompanied by the written consents of one hundred percent of property owners and at least fifty percent of the electors, if any, within the affected territory. No public hearing is required.

(b) The expedited process must provide for a minimum of 20 days' notice prior to the date set for decision to all necessary parties and other persons entitled to notice by the laws of the city

or Metro. The notice shall state that the petition is subject to the expedited process unless a necessary party gives written notice of its objection to the boundary change.

(c) At least seven days prior to the date of decision the city or Metro shall make available to the public a report that includes the following information:

- (1) The extent to which urban services are available to serve the affected territory, including any extra-territorial extensions of service;
- (2) Whether the proposed boundary change will result in the withdrawal of the affected territory from the legal boundary of any necessary party; and
- (3) The proposed effective date of the boundary change.

(d) To approve a boundary change through an expedited process, the city shall:

- (1) Find that the change is consistent with expressly applicable provisions in:
 - (A) Any applicable urban service agreement adopted pursuant to ORS 195.065;
 - (B) Any applicable annexation plan adopted pursuant to ORS 195.205;
 - (C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020(2) between the affected entity and a necessary party;
 - (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and
 - (E) Any applicable comprehensive plan; and
- (2) Consider whether the boundary change would:
 - (A) Promote the timely, orderly and economic provision of public facilities and services;
 - (B) Affect the quality and quantity of urban services; and
 - (C) Eliminate or avoid unnecessary duplication of facilities or services.

(e) A city may not annex territory that lies outside the UGB, except it may annex a lot or parcel that lies partially within and outside the UGB. Neither a city nor a district may extend water or sewer services from inside a UGB to territory that lies outside the UGB.

3.09.050 Hearing and Decision Requirements for Decisions Other Than Expedited Decisions

(a) The following requirements for hearings on petitions operate in addition to requirements for boundary changes in ORS chapters 198, 221 and 222 and the reviewing entity's charter, ordinances or resolutions.

(b) Not later than 15 days prior to the date set for a hearing the reviewing entity shall make available to the public a report that addresses the criteria in subsection (d) and includes the following information:

- (1) The extent to which urban services are available to serve the affected territory, including any extra territorial extensions of service;
- (2) Whether the proposed boundary change will result in the withdrawal of the affected territory from the legal boundary of any necessary party; and
- (3) The proposed effective date of the boundary change.

(c) The person or entity proposing the boundary change has the burden to demonstrate that the proposed boundary change meets the applicable criteria.

(d) To approve a boundary change, the reviewing entity shall apply the criteria and consider the factors set forth in subsections (d) and (e) of section 3.09.045.

3.09.060 Ministerial Functions of Metro

(a) Metro shall create and keep current maps of all service provider service areas and the jurisdictional boundaries of all cities, counties and special districts within Metro. The maps shall be made available to the public at a price that reimburses Metro for its costs. Additional information requested of Metro related to boundary changes shall be provided subject to applicable fees.

(b) The Metro Chief Operating Officer shall cause notice of all final boundary change decisions to be sent to the appropriate county assessor and elections officer, the Oregon Secretary of State and the Oregon Department of Revenue. Notification of public utilities shall be accomplished as provided in ORS 222.005(1).

(c) The Metro Chief Operating Officer shall establish a fee structure establishing the amounts to be paid upon filing notice of city or county adoption of boundary changes, and for related services. The fee schedule shall be filed with the Council Clerk and distributed to all cities, counties and special districts within the Metro region.

3.09.070 Changes to Metro's Boundary

(a) Changes to Metro's boundary may be initiated by Metro or the county responsible for land use planning for the affected territory property owners and electors in the territory to be annexed, or other public agencies if allowed by ORS 198.850(3). Petitions shall meet the requirements of section 3.09.040 above. The Chief Operating Officer shall establish a filing fee schedule for petitions that shall reimburse Metro for the expense of processing and considering petitions. The fee schedule shall be filed with the Council.

(b) Notice of proposed changes to the Metro boundary shall be given as required pursuant to Section 3.09.030.

(c) Hearings shall be conducted consistent with the requirements of section 3.09.050.

(d) Changes to the Metro boundary may be made pursuant to the expedited process set forth in section 3.09.045.

(e) The following criteria shall apply in lieu of the criteria set forth in subsection (d) of section 3.09.050. The Metro Council's final decision on a boundary change shall include findings and conclusions to demonstrate that:

- (1) The affected territory lies within the UGB;
- (2) The territory is subject to measures that prevent urbanization until the territory is annexed to a city or to service districts that will provide necessary urban services; and
- (3) The proposed change is consistent with any applicable cooperative or urban service agreements adopted pursuant to ORS chapter 195.

3.09.080 Incorporation of a City that Includes Territory Within Metro's Boundary

(a) A petition to incorporate a city that includes territory within Metro's boundary shall comply with the minimum notice requirements in section 3.09.030, the minimum requirements for a petition in section 3.09.040, the hearing and decision requirements in subsections (a), (c), and (e) of section 3.09.050 except that the

legal description of the affected territory required by Section 3.09.040(a)(1) need not be provided until after the Board of County Commissioners establishes the final boundary for the proposed city.

(b) A petition to incorporate a city that includes territory within Metro's jurisdictional boundary may include territory that lies outside Metro's UGB. However, incorporation of a city with such territory shall not authorize urbanization of that territory until the Metro Council includes the territory in the UGB pursuant to Metro Code Chapter 3.01.

(c) The following criteria shall apply in lieu of the criteria set forth in section 3.09.050(d). An approving entity shall demonstrate that:

- (1) Incorporation of the new city complies with applicable requirements of ORS 221.020, 221.031, 221, 034 and 221.035;
- (2) The petitioner's economic feasibility statement indicates that the city must plan for average residential density consistent with Title 1 and Title 11 of the Urban Growth Management Functional Plan; and
- (3) Any city whose approval of the incorporation is required by ORS 221.031(4) has given its approval or has failed to act within the time specified in that statute.

Exhibit A to Ordinance No. 07-1165A

Proposed ~~Changes~~Amendments to Metro's ~~Boundary Change~~ Code Chapter 3.09 (Local Government Boundary Changes)

~~August 2~~September 24, 2007

3.09.010 Purpose and Applicability

The purpose of this chapter is to carry out the provisions of ORS 268.354. This chapter applies to all boundary changes within the boundaries of Metro ~~or~~ and any ~~urban reserve designated by Metro prior to June 30, 1997~~ annexation of territory to the Metro boundary. Nothing in this chapter affects the jurisdiction of the Metro Council to amend the region's Urban Growth Boundary (UGB).

3.09.020 Definitions

As used in this chapter, unless the context requires otherwise:

(a) "Affected entity" means a county, city, ~~or special~~ district for which a boundary change is proposed or is ordered.

(b) "Affected territory" means territory described in a petition.

~~(c) "Approving entity" means the governing body of a city, county, city county or district authorized to make a decision on a boundary change, or its designee.~~

~~(d)~~ "Boundary change" means a major or minor boundary change, involving affected territory lying within the jurisdictional boundaries of Metro ~~and~~ or the boundaries of the urban reserves designated by Metro prior to June 30, 1997.

~~(e) "Contested case" means a boundary change decision by a city, county or district that is contested or otherwise challenged by a necessary party.~~

(d) "Deliberations" means discussion among members of a reviewing entity leading to a decision on a proposed boundary change at a public meeting for which notice was given under this chapter.

~~(e)~~ "District" means a district defined by ORS 198.710 or any district subject to Metro boundary procedure act under state law.

~~(f)~~ "Final decision" means the action by ~~an approving a~~ reviewing entity whether adopted by ordinance, resolution or other means which is the determination of compliance of the proposed boundary change with ~~all~~ applicable criteria and which requires no further discretionary decision or action by the ~~approving~~ reviewing entity other than any required referral to electors. "Final decision"

does not include resolutions, ordinances or other actions whose sole purpose is to refer the boundary change to electors or to declare the results of an election, or any action to defer or continue deliberations on a proposed boundary change.

(~~h~~g) "Major boundary change" means the formation, merger, consolidation or dissolution of a city or district.

(~~i~~h) "Minor boundary change" means an annexation or withdrawal of territory to or from a city or district or from a city-county to a city. "Minor boundary change" also means an extra-territorial extension of water or sewer service by a city or district. "Minor boundary change" does not mean withdrawal of territory from a district under ORS 222.520.

(~~j~~i) "Necessary party" means ~~any county~~city ~~or~~ district whose jurisdictional boundary or adopted urban service area includes any part of the affected territory or who provides any urban service to any portion of the affected territory ~~Metro~~and or any other unit of local government, as defined in ORS 190.003, that is a party to any agreement for provision of an urban service to the affected territory.

(~~k~~j) "Petition" means ~~a petition, resolution or other~~ any form of ~~initiatory action for~~ that initiates a boundary change.

(~~k~~k) "Reviewing entity" means the governing body of a city, county or Metro, or its designee.

(~~l~~) ~~"Uncontested case" means a boundary change decision by an approving entity that is not challenged by a necessary party to that decision.~~

~~(m)~~ "Urban services" means sanitary sewers, water, fire protection, parks, open space, recreation and streets, roads and mass transit.

~~3.09.030~~ Uniform Notice Requirements for Final Decisions

(a) The ~~following minimum notice~~ requirements in this section apply to all boundary change decisions by ~~an approving a reviewing~~ entity except expedited decisions made pursuant to section 3.09.045. ~~Approving entities may choose to provide more notice than required.~~ These ~~procedures~~ requirements are apply in addition to, and do not supersede, ~~the~~ applicable requirements of ORS ~~chapters~~ 197, 198, 221 and 222 and any city or county charter ~~for~~ provision on boundary changes. ~~Each approving entity shall provide for the manner of notice of boundary change decisions to affected persons.~~

(b) ~~An approving~~ Within 45 days after a reviewing entity determines that a petition is complete, the entity shall set a time for deliberations on a boundary change ~~within 30 days after the~~

~~petition is completed.~~ The ~~approving~~ reviewing entity shall give notice of its proposed deliberations by mailing notice to all necessary parties, by weatherproof posting of the notice in the general vicinity of the affected territory, and by publishing notice in a newspaper of general circulation in the affected territory. Notice shall be mailed and posted at least ~~45~~ 20 days prior to the date of ~~decision~~ deliberations. ~~for major boundary changes and for those minor boundary changes which are not within the scope of adopted urban service provider agreements and for which a shorter notice period has not been agreed to by all necessary parties. However, notice of minor boundary changes to special districts may be mailed and posted at least 40 days prior to the proposed date of decision.~~ Notice shall be published as required by state law.

(c) The notice ~~of the date of deliberations~~ required by subsection (b) shall:

- (1) ~~d~~Describe the affected territory in a manner that allows certainty;
- (2) ~~s~~State the date, time and place where the ~~approving~~ reviewing entity will consider the boundary change; and
- (3) ~~s~~State the means by which any ~~interested~~ person may obtain a copy of the ~~approving~~ reviewing entity's report on the proposal. ~~The notice shall state whether the approving entity intends to decide the boundary change without a public hearing unless a necessary party requests a public hearing.~~

(d) ~~An approving~~ A reviewing entity may adjourn or continue its final ~~decision~~ deliberations on a proposed boundary change to another time. For a continuance later than ~~31~~ 28 days after the time stated in the original notice, notice shall be reissued in the form required by subsection (b) of this section at least ~~15~~ five days prior to the continued date of decision. ~~For a continuance scheduled within 31 days of the previous date for decision, notice shall be adequate if it contains the date, time and place of the continued date of decision.~~

(e) ~~An approving~~ A reviewing entity's final decision shall be ~~reduced to writing~~ written and authenticated as its official act within ~~5 working~~ 30 days following the decision and mailed or delivered to Metro and to all necessary ~~parties~~ parties to the decision. The mailing or delivery to Metro shall include payment to Metro of the filing fee required pursuant to Section ~~3.09.110~~ 3.09.060. ~~The date of mailing shall constitute the date from which the time for appeal runs for appeal of the decision to the Metro Boundary Appeals Commission.~~

~~(f) Each county shall maintain a current map and list showing all necessary parties entitled to receive notice of proposed boundary~~

~~changes. A county shall provide copies of the map, list, and any changes thereto, to Metro.~~

3.09.040 ~~Minimum~~ Requirements for Petitions

(a) A petition for a boundary change ~~shall be deemed complete if it includes~~ must contain the following information:

- (1) The jurisdiction of the ~~approving~~ reviewing entity to act on the petition;
- (2) ~~A narrative, map and a legal and graphical~~ description of the affected territory in the form prescribed by the ~~Metro Chief Operating Officer~~ reviewing entity;
- (3) For minor boundary changes, the names and mailing addresses of all persons owning property and all electors within the affected territory as shown in the records of the tax assessor and county clerk; and
- (4) ~~A listing of the present providers of urban services to the affected territory;~~ For boundary changes under ORS 198.855(3), 198.857, 222.125 or 222.170, statements of consent to the annexation signed by the requisite number of owners or electors.
- ~~(5) A listing of the proposed providers of urban services to the affected territory following the proposed boundary change;~~
- ~~(6) The current tax assessed value of the affected territory; and~~
- ~~(7) Any other information required by state or local law.~~

(b) A city, ~~or~~ county and Metro may charge a fee to recover its reasonable costs to carry out its duties and responsibilities under this chapter.

3.09.045 Expedited Decisions

(a) ~~Approving entities~~ The governing body of a city or Metro may establish use an expedited decision the process set forth in this section that does not require a public hearing consistent with this section for minor boundary changes for which the petition is accompanied by the written consents of one hundred percent of property owners and at least fifty percent of the electors, if any, within the affected territory. No public hearing is required. ~~Expedited decisions are not subject to the requirements of Sections 3.09.030(b) and 3.09.050(a), (b), (c), (e) or (f). The expedited decision process may only be utilized for minor boundary changes where the petition initiating the minor boundary change is accompanied by the written~~

~~consent of one hundred percent (100%) of the property owners and at least fifty percent (50%) of the electors, if any, within the affected territory.~~

(b) The expedited ~~decision~~ process must provide for a minimum of ~~20~~ 20 days' notice prior to the date set for decision to all interested necessary parties and other persons entitled to notice by the laws of the city or Metro. The notice shall state that the petition is subject to the expedited process. ~~The expedited process may not be utilized if~~ unless a necessary party gives written notice of its ~~intent to contest the decision prior to the date of the decision.~~ objection to the boundary change. ~~A necessary party may not contest a minor boundary change where the minor boundary change is explicitly authorized by an urban services agreement adopted pursuant to ORS 195.065.~~

(c) At least seven days prior to the date of decision the ~~approving entity~~ city or Metro shall make available to the public a ~~brief~~ report that ~~addresses the factors listed in Section 3.09.050(b).~~ The decision record shall demonstrate compliance with the criteria contained in Sections 3.09.050(d) and (g). includes the following information:

- (1) The extent to which urban services are available to serve the affected territory, including any extra-territorial extensions of service;
- (2) Whether the proposed boundary change will result in the withdrawal of the affected territory from the legal boundary of any necessary party; and
- (3) The proposed effective date of the boundary change.

(d) ~~Decisions made pursuant to an expedited process are not subject to appeal by a necessary party pursuant to Section 3.09.070.~~ To approve a boundary change through an expedited process, the city shall:

- (1) Find that the change is consistent with expressly applicable provisions in:
 - (A) Any applicable urban service agreement adopted pursuant to ORS 195.065;
 - (B) Any applicable annexation plan adopted pursuant to ORS 195.205;
 - (C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020(2) between the affected entity and a necessary party;

- (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and
- (E) Any applicable comprehensive plan; and
- (2) Consider whether the boundary change would:
 - (A) Promote the timely, orderly and economic provision of public facilities and services;
 - (B) Affect the quality and quantity of urban services; and
 - (C) Eliminate or avoid unnecessary duplication of facilities or services.

(e) A city may not annex territory that lies outside the UGB, except it may annex a lot or parcel that lies partially within and outside the UGB. Neither a city nor a district may extend water or sewer or storm water services from inside a UGB to territory that lies outside the UGB. A district may annex territory outside the UGB if the district already includes territory outside the UGB. However, such a district may extend water, sewer or storm water services to proposed development on land outside the UGB only if the development is authorized by acknowledged provisions of the county's comprehensive plan and land use regulations.

3.09.050 Uniform Hearing and Decision Requirements for Final Decisions Other Than Expedited Decisions

(a) The following ~~minimum~~ requirements for hearings on ~~boundary change decisions~~ petitions operate in addition to ~~all procedural~~ requirements for boundary changes ~~provided for under in~~ ORS chapters 198, 221 and 222 and the reviewing entity's charter, ordinances or resolutions. ~~Nothing in this chapter allows an approving entity to dispense with a public hearing on a proposed boundary change when the public hearing is required by applicable state statutes or is required by the approving entity's charter, ordinances or resolutions.~~

(b) Not later than 15 days prior to the date set for a ~~boundary change decision hearing~~, the ~~approving~~ reviewing entity shall make available to the public a report that addresses the criteria in subsections (d) ~~and (g) below~~, and ~~that~~ includes ~~at a minimum the following:~~ the following information:

- (1) The extent to which urban services ~~presently~~ are available to serve the affected territory, including any extra territorial extensions of service;

- (2) ~~A description of how the proposed boundary change complies with any urban service provider agreements adopted pursuant to ORS 195.065 between the affected entity and all necessary parties;~~
- (3) ~~A description of how the proposed boundary change is consistent with the comprehensive land use plans, public facility plans, regional framework and functional plans, regional urban growth goals and objectives, urban planning agreements and similar agreements of the affected entity and of all necessary parties;~~
- (4) Whether the proposed boundary change will result in the withdrawal of the affected territory from the legal boundary of any necessary party; and
- (5) The proposed effective date of the ~~decision~~ boundary change.

(c) ~~In order to have standing to appeal a boundary change decision pursuant to Section 3.09.070 a necessary party must appear at the hearing in person or in writing and state reasons why the necessary party believes the boundary change is inconsistent with the approval criteria. A necessary party may not contest a boundary change where the boundary change is explicitly authorized by an urban services agreement adopted pursuant to ORS 195.065. At any public hearing, the~~ The persons or entities ~~entity~~ entity proposing the boundary change ~~shall have the~~ has the ~~burden to prove~~ demonstrate that the ~~petition proposed boundary change~~ meets the applicable ~~criteria for a boundary change~~.

(d) ~~An approving entity's final decision on a boundary change shall include findings and conclusions addressing the following criteria:~~ To approve a boundary change, the reviewing entity shall apply the criteria and consider the factors set forth in subsections (d) and (e) of section 3.09.045.

- (1) ~~Consistency with directly applicable provisions in an urban service provider agreement or annexation plan adopted pursuant to ORS 195.065;~~
- (2) ~~Consistency with directly applicable provisions of urban planning or other agreements, other than agreements adopted pursuant to ORS 195.065, between the affected entity and a necessary party;~~
- (3) ~~Consistency with specific directly applicable standards or criteria for boundary changes contained in comprehensive land use plans and public facility plans;~~

- ~~(4) Consistency with specific directly applicable standards or criteria for boundary changes contained in the Regional Framework Plan or any functional plan;~~
- ~~(5) Whether the proposed change will promote or not interfere with the timely, orderly and economic provisions of public facilities and services;~~
- ~~(6) The territory lies within the Urban Growth Boundary; and~~
- ~~(7) Consistency with other applicable criteria for the boundary change in question under state and local law.~~

~~(e) When there is no urban service agreement adopted pursuant to ORS 195.065 that is applicable, and a boundary change decision is contested by a necessary party, the approving entity shall also address and consider, information on the following factors in determining whether the proposed boundary change meets the criteria of Sections 3.09.050(d) and (g). The findings and conclusions adopted by the approving entity shall explain how these factors have been considered.~~

- ~~(1) The relative financial, operational and managerial capacities of alternative providers of the disputed urban services to the affected area;~~
- ~~(2) The quality and quantity of the urban services at issue with alternative providers of the urban services, including differences in cost and allocations of costs of the services and accountability of the alternative providers;~~
- ~~(3) Physical factors related to the provision of urban services by alternative providers;~~
- ~~(4) For proposals to create a new entity the feasibility of creating the new entity.~~
- ~~(5) The elimination or avoidance of unnecessary duplication of facilities;~~
- ~~(6) Economic, demographic and sociological trends and projections relevant to the provision of the urban services;~~
- ~~(7) Matching the recipients of tax supported urban services with the payers of the tax;~~
- ~~(8) The equitable allocation of costs to alternative urban service providers between new development and prior development; and~~

~~(9) Economies of scale.~~

~~(10) Where a proposed decision is inconsistent with an adopted intergovernmental agreement, that the decision better fulfills the criteria of Section 3.09.050(d) considering Factors (1) through (9) above.~~

~~(f) A final boundary change decision by an approving entity shall state the effective date, which date shall be no earlier than 10 days following the date that the decision is reduced to writing, and mailed to all necessary parties. However, a decision that has not been contested by any necessary party may become effective upon adoption.~~

~~(g) Only territory already within the defined Metro Urban Growth Boundary at the time a petition is complete may be annexed to a city or included in territory proposed for incorporation into a new city. However, cities may annex individual tax lots partially within and without the Urban Growth Boundary.~~

~~3.09.060 Creation of Boundary Appeals Commission~~

~~(a) The Metro Boundary Appeals Commission is created to decide contested cases of final boundary change decisions made by approving entities. The Metro Council shall appoint the Commission which shall consist of three citizen members, one each to be appointed from a list of nominees provided to the Metro Council President at least 30 days prior to the commencement of each term by Clackamas, Multnomah and Washington counties, respectively. The Council shall appoint two of the members for a initial four year term and one for a nominal two-year term, the initial terms to be decided by chance; thereafter, each commissioner shall serve a four year term. Each Commission member shall continue to serve in that position until replaced. Commission members may not hold any elective public office.~~

~~(b) The Metro Chief Operating Officer shall provide staff assistance to the Commission and shall prepare the Commission's annual budget for approval by the Metro Council.~~

~~(c) At its first meeting and again in its first meeting of each successive calendar year, the Commission shall adopt rules of procedure that address, among other things, the means by which a position is declared vacant and the means of filling a vacant position; and, the Commission at that first meeting shall elect a chairperson from among its membership, who shall serve in that position until a successor is elected and who shall preside over all proceedings before the Commission.~~

~~3.09.070 How Contested Case Filed~~

~~(a) A necessary party to a final decision that has appeared in person or in writing as a party in the hearing before the approving entity decision may contest the decision before the Metro Boundary Appeals Commission. A contest shall be allowed only if notice of appeal is served on the approving entity no later than the close of business on the 10th day following the date that the decision is reduced to writing, authenticated and mailed to necessary parties. A copy of the notice of appeal shall be served on the same day on Metro together with proof of service on the approving entity, the affected entity and all necessary parties. The notice of appeal shall be accompanied by payment of Metro's prescribed appeal fee. Service of notice of appeal on the approving entity, the affected entity and all necessary parties by mail within the required time and payment of the prescribed appeal fee shall be jurisdictional as to Metro's consideration of the appeal.~~

~~(b) An approving entity shall prepare and certify to Metro, no later than 20 days following the date the notice of appeal is served upon it, the record of the boundary change proceedings.~~

~~(c) A contested case is a remedy available by right to a necessary party. When a notice of appeal is filed, a boundary change decision shall not be final until resolution of the contested case by the Commission.~~

~~(d) A final decision of an approving entity is subject to appeal to the Commission by a necessary party when it is the last action that needs to be taken by the approving entity prior to the referral of the boundary change to the electors in those cases where approval of the electors is required or permitted.~~

~~3.09.080 Alternate Resolution~~

~~(a) On stipulation of all parties to a contested case made at any time before the close of the hearing before the Commission, the Commission shall stay further proceedings before it for a reasonable time to allow the parties to attempt to resolve the contest by other means.~~

~~(b) A contested case that is not resolved by alternate means during the time allowed by the Commission shall be rescheduled for hearing in the normal course.~~

~~3.09.090 Conduct of Hearing~~

~~(a) The Commission shall schedule and conduct a hearing on a contested case no later than 30 days after certification of the record of the boundary change proceedings.~~

~~(b) The Commission shall hear and decide a contested case only on the certified record of the boundary change proceeding. No new evidence shall be allowed. The party bringing the appeal shall have the burden of persuasion.~~

~~(c) The Commission shall hear, in the following order, the Metro staff report, if any; argument by the approving entity and the affected entity; argument of the party that contests the decision below; and rebuttal argument by the approving entity and the affected entity. The Commission may question any person appearing before it. Metro staff shall not make a recommendation to the Commission on the disposition of a contested case.~~

~~(d) The deliberations of the Commission may be continued for a reasonable period not to exceed 30 days.~~

~~(e) The Chairperson may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious or immaterial testimony. The Chairperson shall cause to be kept a verbatim oral, written, or mechanical record of all proceedings before the Commission.~~

~~(f) No later than 30 days following the close of a hearing before the Commission on a contested case, the Commission shall consider its proposed written final order and shall adopt the order by majority vote. The order shall include findings and conclusions on the criteria for decision listed in Section 3.09.050(d) and (g). The order shall be deemed final when reduced to writing in the form adopted, and served by mailing on all parties to the hearing.~~

~~(g) The Commission shall affirm or deny a final decision made below based on substantial evidence in the whole record. The Commission shall have no authority to remand a decision made below for further proceedings before the approving entity, and may only stay its proceedings to allow for alternate resolution as provided for in this chapter.~~

~~3.09.100 Ex Parte Communications to the Boundary Appeals Commission~~

~~Commission members shall place in the record a statement of the substance of any written or oral ex parte communication on a fact in issue made to them during the pendency of the proceeding on a contested case. A party to the proceeding at its request shall be allowed a reasonable opportunity to rebut the substance of the communication.~~

~~3.09.110~~3.09.060 Ministerial Functions of Metro

(a) Metro shall create and keep current maps of all service provider service areas and the jurisdictional boundaries of all cities, counties and special districts within Metro. The maps shall

be made available to the public at a price that reimburses Metro for its costs. Additional information requested of Metro related to boundary changes shall be provided subject to applicable fees.

(b) The Metro Chief Operating Officer shall cause notice of all final boundary change decisions to be sent to the appropriate county assessor~~(s)~~ and elections officer~~(s)~~, the Oregon Secretary of State and the Oregon Department of Revenue. Notification of public utilities shall be accomplished as provided in ORS 222.005(1).

(c) The Metro Chief Operating Officer shall establish a fee structure~~for~~ establishing the amounts to be paid upon filing notice of city or county adoption of boundary changes, ~~appeals to the Boundary Appeals Commission~~ and for related services. The fee schedule shall be filed with the Council Clerk and distributed to all cities, counties and special districts within the Metro region.

~~3.09.1203.09.070~~ Minor Boundary Changes to Metro's Boundary

(a) ~~Minor boundary changes~~ Changes to the Metro ~~Boundary~~ Metro's boundary may be initiated by Metro or the county responsible for land use planning for the affected territory property owners and electors in the territory to be annexed, or other public agencies if allowed by ORS 198.850(3). Petitions shall meet the ~~minimum~~ requirements of Section 3.09.040 above. The Chief Operating Officer shall establish a filing fee schedule for petitions that shall reimburse Metro for the expense of processing and considering petitions. The fee schedule shall be filed with the Council.

(b) Notice of proposed ~~minor boundary~~ changes to the Metro ~~Boundary~~ boundary shall be given as required pursuant to Section 3.09.030.

(c) Hearings ~~will~~ shall be conducted consistent with the requirements of Section 3.09.050. ~~When it takes action on a minor boundary change, the Metro Council shall consider the requirements of Section 3.09.050 and all provisions of applicable law.~~

(d) ~~Minor boundary changes~~ Changes to the Metro ~~Boundary~~ boundary may be made pursuant to the expedited process set forth in Section 3.09.045.

(e) The following criteria shall apply in lieu of the criteria set forth in subsections (d) ~~or (e)~~ of Section 3.09.050 ~~to a minor boundary change to Metro's boundary~~. The Metro Council's final decision on a boundary change shall include findings and conclusions to demonstrate that:

(1) The affected territory lies within the UGB; ~~and~~

(2) The territory is subject to measures that prevent urbanization until the territory is annexed to a city or to service districts that will provide necessary urban services; and

(3) The proposed change is consistent with any applicable cooperative or urban service agreements adopted pursuant to ORS chapter 195.

~~(f) Contested case appeals of decisions regarding minor boundary changes to the Metro Boundary are subject to appeal as provided in Section 3.09.070.~~

~~3.09.130-3.09.080~~ Incorporation of a City that Includes Territory Within Metro's Boundary

(a) A petition to incorporate a city that includes territory within Metro's boundary shall comply with the minimum notice requirements in Ssection 3.09.030, the minimum requirements for a petition in Ssection 3.09.040, the hearing and decision requirements in subsections (a), (c), and ~~(fe)~~ of Ssection 3.09.050, ~~and if the incorporation is contested by a necessary party, the contested case requirements and hearing provisions of 3.09.070, 3.09.080, 3.09.090, and 3.09.100,~~ except that the legal description of the affected territory required by Section 3.09.040(a)(1) need not be provided until after the Board of County Commissioners establishes the final boundary for the proposed city.

(b) A petition to incorporate a city that includes territory within Metro's jurisdictional boundary may include territory that lies outside Metro's UGB. However, incorporation of a city with such territory shall not authorize urbanization of that territory until the Metro Council includes the territory in the UGB pursuant to Metro Code Chapter 3.01.

(c) The following criteria shall apply in lieu of the criteria set forth in Ssection 3.09.050(d) ~~and (e)~~. An approving entity shall demonstrate that :

(1) Incorporation of the new city complies with the following criteria: applicable requirements of ORS 221.020, 221.031, 221, 034 and 221.035;

~~(1) At least 150 people reside in the territory proposed for incorporation, as required by ORS 221.020;~~

~~(2) No part of the territory proposed for incorporation lies within the boundary of another incorporated city, as prohibited in ORS 221.020;~~

~~(3) The petition complies with the requirements of ORS 221.031;~~

- ~~(4) The petitioner's economic feasibility statement complies with the requirements of ORS 221.035;~~
- ~~(5) If some of the territory proposed for incorporation lies outside the Metro UGB, that portion of the territory conforms to the requirements of ORS 221.034;~~
- (62) The petitioner's economic feasibility statement indicates that the city must plan for average residential density consistent with Title 1-~~(one)~~ and Title 11-~~(eleven)~~ of the Urban Growth Management Functional Plan; and
- (37) Any city whose approval of the incorporation is required by ORS 221.031(4) has given its approval or has failed to act within the time specified in that statute.

Exhibit B to Ordinance No. 07-1165[A](#)

**Proposed Amendments to Metro Code Chapter 3.09
Findings of Fact and Conclusions of Law**

I. OVERVIEW

Ordinance No. 07-1165 amends Metro Code Chapter 3.09 and the processes and criteria for forming and changing the boundaries of cities and special districts in the region. The chapter does not affect the region's urban growth boundary, which is subject to Metro Code Chapter 3.01.

The intentions of the Council are to bring the Chapter 3.09 into conformance with changes in the law (both statutory and case law) and to make the processes more efficient and the criteria more understandable. The amendments eliminate the Metro Boundary Appeals Commission, pursuant to Senate Bill 615 from the 2007 legislative session and make numerous small changes to the code to accomplish the Council's intentions.

II. STATEWIDE PLANNING GOALS

Goal 1 – Citizen Involvement: The Council followed its customary procedures for enactment of ordinances, including notification of the public, consideration by advisory committees at public meetings that were preceded by public notice, and a public hearing before the Council. These procedures comply with Metro's public involvement policy and Goal 1.

Goal 2 – Coordination: These amendments to the boundary change code were developed with the assistance of city and county lawyers from the local governments of the region. The amendments were reviewed by the Metropolitan Technical Advisory Committee, composed largely of professional planning staff of cities and counties from the region, and by the Metropolitan Policy Advisory Committee composed largely of elected officials of cities and counties from the region. Both committees recommended adoption of the amendments.

Goal 3 – Agricultural Lands: Metro's chapter 3.09 applies to land both inside and outside the regional urban growth boundary (UGB) (within Metro's jurisdiction). Chapter 3.09 expressly limits development of land subject to a boundary change outside the UGB to uses allowed by acknowledged comprehensive plans. The chapter generally does not allow annexation to cities that involve land outside the UGB, with the exception that parcels partially within the UGB may be annexed, but not urbanized until added to the UGB. Any such portions of parcels annexed to a city that are subject to Goal 3 and retain agricultural zoning. These amendments are consistent with Goal 3.

Goal 4 – Forest Lands: Metro's chapter 3.09 applies to land both inside and outside the regional urban growth boundary (UGB) (within Metro's jurisdiction). Chapter 3.09 expressly limits development of land subject to a boundary change outside the UGB to uses allowed by acknowledged comprehensive plans. The chapter generally does not allow annexation to cities that involve land outside the UGB, with the exception that parcels partially within the UGB may be annexed, but not urbanized until added to the UGB. Any such portions of parcels annexed to a city that are subject to Goal 4 and retain forest zoning. These amendments are consistent with Goal 4.

Goal 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces: Formation of cities and special districts and changes to their boundaries under Metro Code chapter 3.09 do not change the plan designations or the zoning of the land involved and, hence, do not affect Goal 5 resources. Formations and boundary changes are often followed by changes to plans and land use regulations. Goal 5 will apply to those changes. These amendments are consistent with Goal 5.

Goal 6 – Air, Land and Water Resources Quality: Formation of cities and special districts and changes to their boundaries under Metro Code chapter 3.09 do not change the plan designations or the zoning of the land involved and, hence, do not affect Goal 6 resources. Formations and boundary changes are often followed by changes to plans and land use regulations. Goal 6 will apply to those changes. These amendments are consistent with Goal 6.

Goal 7 – Areas Subject to Natural Disasters and Hazards: Formation of cities and special districts and changes to their boundaries under Metro Code chapter 3.09 do not change the plan designations or the zoning of the land involved and, hence, do not affect natural disasters or hazards. Formations and boundary changes are often followed by changes to plans and land use regulations. Goal 7 will apply to those changes. These amendments are consistent with Goal 7.

Goal 8 – Recreational Needs: Formation of cities and special districts and changes to their boundaries under Metro Code chapter 3.09 do not change the plan designations or the zoning of the land involved and, hence, do not affect Goal 8 resources. Formations and boundary changes are often followed by changes to plans and land use regulations. Goal 8 will apply to those changes. These amendments are consistent with Goal 8.

Goal 9 – Economic Development: Formation of cities and special districts and changes to their boundaries under Metro Code chapter 3.09 do not change the plan designations or the zoning of the land involved and, hence, do not affect Goal 9 resources. Formations and boundary changes are often followed by changes to plans and land use regulations. Goal 9 will apply to those changes. These amendments are consistent with Goal 9.

Goal 10 – Housing: Formation of cities and special districts and changes to their boundaries under Metro Code chapter 3.09 do not change the plan designations or the zoning of the land involved and, hence, do not affect housing choices. Formations and boundary changes are often followed by changes to plans and land use regulations. Goal 10 will apply to those changes. These amendments are consistent with Goal 10.

Goal 11 – Public Facilities and Services: Formation of cities and special districts and changes to their boundaries under Metro Code chapter 3.09 do not change the plan designations or the zoning of the land involved and, hence, do not directly affect public facilities and services. Formations and boundary changes, however, are often followed by changes to plans and land use regulations, including changes to public facility plans and service providers. Goal 11 will apply to those changes. These amendments are consistent with Goal 11.

Goal 12 – Transportation: Formation of cities and special districts and changes to their boundaries under Metro Code chapter 3.09 do not change the plan designations or the zoning of the land involved and, hence, do not directly affect transportation facilities. Formations and boundary changes, however, are often followed by changes to plans and land use regulations, including changes to transportation plans. Goal 12 will apply to those changes. These amendments are consistent with Goal 12.

Goal 13 – Energy Conservation: Formation of cities and special districts and changes to their boundaries under Metro Code chapter 3.09 do not change the plan designations or the zoning of the land involved and, hence, do not affect Goal 13 resources. Formations and boundary changes are often followed by changes to plans and land use regulations. Goal 13 will apply to those changes. These amendments are consistent with Goal 13.

Goal 14 – Urbanization: Metro’s chapter 3.09 applies to land both inside and outside the regional urban growth boundary (UGB) (within Metro’s jurisdiction). Chapter 3.09 expressly limits development of land subject to a boundary change outside the UGB to uses allowed by acknowledged comprehensive plans. The chapter generally does not allow annexation to cities that involve land outside the UGB, with the exception that parcels partially within the UGB may be annexed, but not urbanized until added to the UGB. Formation of cities and special districts and changes to their boundaries under Metro Code chapter 3.09 do not change the plan designations or the zoning of the land involved and, hence, do not directly affect urbanization of land within the UGB. Nonetheless, these boundary changes indirectly affect the use of land. These boundary changes and formations will be subject to the statewide planning goals, including Goal 14, when they are reviewed by cities and counties. These amendments are consistent with Goal 14.

Goal 15 – Willamette River Greenway: Formation of cities and special districts and changes to their boundaries under Metro Code chapter 3.09 do not change the plan designations or the zoning of the land involved and, hence, do not affect the Willamette River Greenway. Formations and boundary changes are often followed by changes to plans and land use regulations. Goal 15 will apply to those changes. These amendments are consistent with Goal 15.

III. REGIONAL FRAMEWORK PLAN

These amendments to Chapter 3.09 do not revise the criteria for formation of cities or districts or for changes to their boundaries. The amendments, therefore, do not invoke any of the policies of the Regional Framework Plan. Hence, following the amendments, Chapter 3.09 will remain consistent with the Plan.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO CODE) Ordinance No. 07-1165
CHAPTER 3.09 (LOCAL GOVERNMENT BOUNDARY)
CHANGES) TO IMPLEMENT 2007 OREGON LAWS) Introduced by Chief Operating Officer
CHAPTER 173 AND UPDATE THE CHAPTER, AND) Michael Jordan with the Concurrence
DECLARING AN EMERGENCY) of Council President David Bragdon

WHEREAS, the Legislature enacted 2007 Oregon Laws chapter 173 (Senate Bill 615), which repealed the requirement in ORS chapter 268 that Metro provide a process for certain local governments to appeal boundary changes by other local governments to a Metro-established boundary appeals commission; and

WHEREAS, the Legislature concluded that the process for appeals to Metro’s boundary appeals commission had become redundant with appeals of boundary changes to the Land Use Board of Appeals (“LUBA”), and a pre-requisite to appeal to LUBA; and

WHEREAS, other provisions in chapter 3.09 of the Code have become obsolete; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Chapter 3.09 of the Metro Code is hereby amended, as indicated in Exhibit “A”, attached and incorporated into this ordinance, in order to implement 2007 Oregon Laws chapter 173 and to make other changes to bring the chapter up to date.
2. The Findings of Fact and Conclusions of Law in Exhibit “B”, attached and incorporated into this ordinance, explain how these amendments comply with the Regional Framework Plan and statewide planning laws.
3. This ordinance is necessary for the immediate preservation of public health, safety and welfare because the effective date of 2007 Oregon Laws chapter 173 is January 1, 2008, and timely repeal of code provisions that establish the boundary appeals commission will save local governments time and money on redundant appeals. An emergency is, therefore, declared to exist, and this ordinance shall take effect immediately, pursuant to Metro Charter section 39(1).

ADOPTED by the Metro Council this ___ day of _____, 2008.

David Bragdon, Council President

Attest:

Approved as to form:

Christina Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

Exhibit A to Ordinance No. 07-1165

Proposed Amendments to Metro Code Chapter 3.09
(Local Government Boundary Changes)

September 24, 2007

3.09.010 Purpose and Applicability

The purpose of this chapter is to carry out the provisions of ORS 268.354. This chapter applies to all boundary changes within the boundaries of Metro and any annexation of territory to the Metro boundary. Nothing in this chapter affects the jurisdiction of the Metro Council to amend the region's Urban Growth Boundary (UGB).

3.09.020 Definitions

As used in this chapter, unless the context requires otherwise:

(a) "Affected entity" means a county, city or district for which a boundary change is proposed or is ordered.

(b) "Affected territory" means territory described in a petition.

(c) "Boundary change" means a major or minor boundary change involving affected territory lying within the jurisdictional boundaries of Metro or the boundaries of the urban reserves designated by Metro prior to June 30, 1997.

(d) "Deliberations" means discussion among members of a reviewing entity leading to a decision on a proposed boundary change at a public meeting for which notice was given under this chapter.

(e) "District" means a district defined by ORS 198.710 or any district subject to Metro boundary procedure act under state law.

(f) "Final decision" means the action by a reviewing entity whether adopted by ordinance, resolution or other means which is the determination of compliance of the proposed boundary change with applicable criteria and which requires no further discretionary decision or action by the reviewing entity other than any required referral to electors. "Final decision" does not include resolutions, ordinances or other actions whose sole purpose is to refer the boundary change to electors or to declare the results of an election, or any action to defer or continue deliberations on a proposed boundary change.

(g) "Major boundary change" means the formation, merger, consolidation or dissolution of a city or district.

(h) "Minor boundary change" means an annexation or withdrawal of territory to or from a city or district or from a city-county to a city. "Minor boundary change" also means an extra-territorial extension of water or sewer service by a city or district. "Minor boundary change" does not mean withdrawal of territory from a district under ORS 222.520.

(i) "Necessary party" means any county; city; district whose jurisdictional boundary or adopted urban service area includes any part of the affected territory or who provides any urban service to any portion of the affected territory; Metro; or any other unit of local government, as defined in ORS 190.003, that is a party to any agreement for provision of an urban service to the affected territory.

(j) "Petition" means any form of action that initiates a boundary change.

(k) "Reviewing entity" means the governing body of a city, county or Metro, or its designee.

(l) "Urban services" means sanitary sewers, water, fire protection, parks, open space, recreation and streets, roads and mass transit.

3.09.030 Notice Requirements

(a) The notice requirements in this section apply to all boundary change decisions by a reviewing entity except expedited decisions made pursuant to section 3.09.045. These requirements apply in addition to, and do not supersede, applicable requirements of ORS chapters 197, 198, 221 and 222 and any city or county charter provision on boundary changes.

(b) Within 45 after a reviewing entity determines that a petition is complete, the entity shall set a time for deliberations on a boundary change. The reviewing entity shall give notice of its proposed deliberations by mailing notice to all necessary parties, by weatherproof posting of the notice in the general vicinity of the affected territory, and by publishing notice in a newspaper of general circulation in the affected territory. Notice shall be mailed and posted at least 20 days prior to the date of deliberations. Notice shall be published as required by state law.

(c) The notice required by subsection (b) shall:

(1) Describe the affected territory in a manner that allows certainty;

(2) State the date, time and place where the reviewing entity will consider the boundary change; and

(3) State the means by which any person may obtain a copy of the reviewing entity's report on the proposal.

(d) A reviewing entity may adjourn or continue its final deliberations on a proposed boundary change to another time. For a continuance later than 28 days after the time stated in the original notice, notice shall be reissued in the form required by subsection (b) of this section at least five days prior to the continued date of decision.

(e) A reviewing entity's final decision shall be written and authenticated as its official act within 30 days following the decision and mailed or delivered to Metro and to all necessary parties. The mailing or delivery to Metro shall include payment to Metro of the filing fee required pursuant to Section 3.09.060.

3.09.040 Requirements for Petitions

(a) A petition for a boundary change must contain the following information:

- (1) The jurisdiction of the reviewing entity to act on the petition;
- (2) A map and a legal description of the affected territory in the form prescribed by the reviewing entity;
- (3) For minor boundary changes, the names and mailing addresses of all persons owning property and all electors within the affected territory as shown in the records of the tax assessor and county clerk; and
- (4) For boundary changes under ORS 198.855(3), 198.857, 222.125 or 222.170, statements of consent to the annexation signed by the requisite number of owners or electors.

(b) A city, county and Metro may charge a fee to recover its reasonable costs to carry out its duties and responsibilities under this chapter.

3.09.045 Expedited Decisions

(a) The governing body of a city or Metro may use the process set forth in this section for minor boundary changes for which the petition is accompanied by the written consents of one hundred percent of property owners and at least fifty percent of the electors, if any, within the affected territory. No public hearing is required.

(b) The expedited process must provide for a minimum of 20 days' notice prior to the date set for decision to all necessary parties and other persons entitled to notice by the laws of the city or Metro. The notice shall state that the petition is subject to the expedited process unless a necessary party gives written notice of its objection to the boundary change.

(c) At least seven days prior to the date of decision the city or Metro shall make available to the public a report that includes the following information:

- (1) The extent to which urban services are available to serve the affected territory, including any extra-territorial extensions of service;
- (2) Whether the proposed boundary change will result in the withdrawal of the affected territory from the legal boundary of any necessary party; and
- (3) The proposed effective date of the boundary change.

(d) To approve a boundary change through an expedited process, the city shall:

- (1) Find that the change is consistent with expressly applicable provisions in:
 - (A) Any applicable urban service agreement adopted pursuant to ORS 195.065;
 - (B) Any applicable annexation plan adopted pursuant to ORS 195.205;
 - (C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020(2) between the affected entity and a necessary party;
 - (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and
 - (E) Any applicable comprehensive plan; and
- (2) Consider whether the boundary change would:
 - (A) Promote the timely, orderly and economic provision of public facilities and services;
 - (B) Affect the quality and quantity of urban services; and

(C) Eliminate or avoid unnecessary duplication of facilities or services.

(e) A city may not annex territory that lies outside the UGB, except it may annex a lot or parcel that lies partially within and outside the UGB. A city may not extend water, sewer or storm-water services from inside a UGB to territory that lies outside the UGB. A district may annex territory outside the UGB if the district already includes territory outside the UGB. However, such a district may extend water, sewer or storm-water services to proposed development on land outside the UGB only if the development is authorized by acknowledged provisions of the county's comprehensive plan and land use regulations.

3.09.050 Hearing and Decision Requirements for Decisions Other Than Expedited Decisions

(a) The following requirements for hearings on petitions operate in addition to requirements for boundary changes in ORS chapters 198, 221 and 222 and the reviewing entity's charter, ordinances or resolutions.

(b) Not later than 15 days prior to the date set for a hearing the reviewing entity shall make available to the public a report that addresses the criteria in subsection (d) and includes the following information:

- (1) The extent to which urban services are available to serve the affected territory, including any extra territorial extensions of service;
- (2) Whether the proposed boundary change will result in the withdrawal of the affected territory from the legal boundary of any necessary party; and
- (3) The proposed effective date of the boundary change.

(c) The person or entity proposing the boundary change has the burden to demonstrate that the proposed boundary change meets the applicable criteria.

(d) To approve a boundary change, the reviewing entity shall apply the criteria and consider the factors set forth in subsections (d) and (e) of section 3.09.045.

3.09.060 Ministerial Functions of Metro

(a) Metro shall create and keep current maps of all service provider service areas and the jurisdictional boundaries of all cities, counties and special districts within Metro. The maps shall

be made available to the public at a price that reimburses Metro for its costs. Additional information requested of Metro related to boundary changes shall be provided subject to applicable fees.

(b) The Metro Chief Operating Officer shall cause notice of all final boundary change decisions to be sent to the appropriate county assessor and elections officer, the Oregon Secretary of State and the Oregon Department of Revenue. Notification of public utilities shall be accomplished as provided in ORS 222.005(1).

(c) The Metro Chief Operating Officer shall establish a fee structure establishing the amounts to be paid upon filing notice of city or county adoption of boundary changes, and for related services. The fee schedule shall be filed with the Council Clerk and distributed to all cities, counties and special districts within the Metro region.

3.09.070 Changes to Metro's Boundary

(a) Changes to Metro's boundary may be initiated by Metro or the county responsible for land use planning for the affected territory property owners and electors in the territory to be annexed, or other public agencies if allowed by ORS 198.850(3). Petitions shall meet the requirements of section 3.09.040 above. The Chief Operating Officer shall establish a filing fee schedule for petitions that shall reimburse Metro for the expense of processing and considering petitions. The fee schedule shall be filed with the Council.

(b) Notice of proposed changes to the Metro boundary shall be given as required pursuant to Section 3.09.030.

(c) Hearings shall be conducted consistent with the requirements of section 3.09.050.

(d) Changes to the Metro boundary may be made pursuant to the expedited process set forth in section 3.09.045.

(e) The following criteria shall apply in lieu of the criteria set forth in subsection (d) of section 3.09.050. The Metro Council's final decision on a boundary change shall include findings and conclusions to demonstrate that:

- (1) The affected territory lies within the UGB;
- (2) The territory is subject to measures that prevent urbanization until the territory is annexed to a city or to service districts that will provide necessary urban services; and
- (3) The proposed change is consistent with any applicable cooperative or urban service agreements adopted pursuant to ORS chapter 195.

3.09.080 Incorporation of a City that Includes Territory Within Metro's Boundary

(a) A petition to incorporate a city that includes territory within Metro's boundary shall comply with the minimum notice requirements in section 3.09.030, the minimum requirements for a petition in section 3.09.040, the hearing and decision requirements in subsections (a), (c), and (e) of section 3.09.050 except that the legal description of the affected territory required by Section 3.09.040(a)(1) need not be provided until after the Board of County Commissioners establishes the final boundary for the proposed city.

(b) A petition to incorporate a city that includes territory within Metro's jurisdictional boundary may include territory that lies outside Metro's UGB. However, incorporation of a city with such territory shall not authorize urbanization of that territory until the Metro Council includes the territory in the UGB pursuant to Metro Code Chapter 3.01.

(c) The following criteria shall apply in lieu of the criteria set forth in section 3.09.050(d). An approving entity shall demonstrate that:

- (1) Incorporation of the new city complies with applicable requirements of ORS 221.020, 221.031, 221, 034 and 221.035;
- (2) The petitioner's economic feasibility statement indicates that the city must plan for average residential density consistent with Title 1 and Title 11 of the Urban Growth Management Functional Plan; and
- (3) Any city whose approval of the incorporation is required by ORS 221.031(4) has given its approval or has failed to act within the time specified in that statute.

Exhibit A to Ordinance No. 07-1165

Proposed ~~Changes~~Amendments to Metro's ~~Boundary Change~~ Code Chapter 3.09 (Local Government Boundary Changes)

~~August 2~~September 24, 2007

3.09.010 Purpose and Applicability

The purpose of this chapter is to carry out the provisions of ORS 268.354. This chapter applies to all boundary changes within the boundaries of Metro ~~or and any urban reserve designated by Metro prior to June 30, 1997~~ annexation of territory to the Metro boundary. Nothing in this chapter affects the jurisdiction of the Metro Council to amend the region's Urban Growth Boundary (UGB).

3.09.020 Definitions

As used in this chapter, unless the context requires otherwise:

(a) "Affected entity" means a county, city, ~~or special~~ district for which a boundary change is proposed or is ordered.

(b) "Affected territory" means territory described in a petition.

(c) ~~"Approving entity" means the governing body of a city, county, city county or district authorized to make a decision on a boundary change, or its designee.~~

~~(d)~~ "Boundary change" means a major or minor boundary change involving affected territory lying within the jurisdictional boundaries of Metro ~~and or~~ the boundaries of the urban reserves designated by Metro prior to June 30, 1997.

~~(e)~~ "Contested case" means a boundary change decision by a city, county or district that is contested or otherwise challenged by a necessary party.

(d) "Deliberations" means discussion among members of a reviewing entity leading to a decision on a proposed boundary change at a public meeting for which notice was given under this chapter.

~~(e)~~ "District" means a district defined by ORS 198.710 or any district subject to Metro boundary procedure act under state law.

~~(f)~~ "Final decision" means the action by ~~an approving a reviewing~~ entity whether adopted by ordinance, resolution or other means which is the determination of compliance of the proposed boundary change with all applicable criteria and which requires no further discretionary decision or action by the approving reviewing

entity other than any required referral to electors. "Final decision" does not include resolutions, ordinances or other actions whose sole purpose is to refer the boundary change to electors or to declare the results of an election, or any action to defer or continue deliberations on a proposed boundary change.

(~~hg~~) "Major boundary change" means the formation, merger, consolidation or dissolution of a city or district.

(~~ih~~) "Minor boundary change" means an annexation or withdrawal of territory to or from a city or district or from a city-county to a city. "Minor boundary change" also means an extra-territorial extension of water or sewer service by a city or district. "Minor boundary change" does not mean withdrawal of territory from a district under ORS 222.520.

(~~ji~~) "Necessary party" means ~~any county~~ ~~city~~ ~~or~~ district whose jurisdictional boundary or adopted urban service area includes any part of the affected territory or who provides any urban service to any portion of the affected territory ~~Metro~~ and/or any other unit of local government, as defined in ORS 190.003, that is a party to any agreement for provision of an urban service to the affected territory.

(~~kj~~) "Petition" means a petition, resolution or other any form of ~~initiatory~~ action for that initiates a boundary change.

(k) "Reviewing entity" means the governing body of a city, county or Metro, or its designee.

(~~l~~) ~~"Uncontested case" means a boundary change decision by an approving entity that is not challenged by a necessary party to that decision.~~

(~~m~~) "Urban services" means sanitary sewers, water, fire protection, parks, open space, recreation and streets, roads and mass transit.

3.09.030 Uniform Notice Requirements for Final Decisions

(a) The following minimum notice requirements in this section apply to all boundary change decisions by an approving a reviewing entity except expedited decisions made pursuant to section 3.09.045. ~~Approving entities may choose to provide more notice than required.~~ These procedures requirements are apply in addition to, and do not supersede, the applicable requirements of ORS ~~at~~ chapters 197, 198, 221 and 222 and any city or county charter for provision on boundary changes. ~~Each approving entity shall provide for the manner of notice of boundary change decisions to affected persons.~~

(b) ~~An approving~~ Within 45 after a reviewing entity determines that a petition is complete, the entity shall set a time for deliberations on a boundary change ~~within 30 days after the petition is completed.~~ The ~~approving~~ reviewing entity shall give notice of its proposed deliberations by mailing notice to all necessary parties, by weatherproof posting of the notice in the general vicinity of the affected territory, and by publishing notice in a newspaper of general circulation in the affected territory. Notice shall be mailed and posted at least 4520 days prior to the date of ~~decision~~ deliberations for major boundary changes and for those minor boundary changes which are not within the scope of adopted urban service provider agreements and for which a shorter notice period has not been agreed to by all necessary parties. However, notice of minor boundary changes to special districts may be mailed and posted at least 40 days prior to the ~~proposed date of decision.~~ Notice shall be published as required by state law.

(c) The notice ~~of the date of deliberations~~ required by subsection (b) shall:

(1) dDescribe the affected territory in a manner that allows certainty;

(2) sState the date, time and place where the approving reviewing entity will consider the boundary change; and

(3) sState the means by which any interested person may obtain a copy of the approving reviewing entity's report on the proposal. ~~The notice shall state whether the approving entity intends to decide the boundary change without a public hearing unless a necessary party requests a public hearing.~~

(d) ~~An approving~~ A reviewing entity may adjourn or continue its final decision deliberations on a proposed boundary change to another time. For a continuance later than 31 28 days after the time stated in the original notice, notice shall be reissued in the form required by subsection (b) of this section at least 15 five days prior to the continued date of decision. ~~For a continuance scheduled within 31 days of the previous date for decision, notice shall be adequate if it contains the date, time and place of the continued date of decision.~~

(e) ~~An approving~~ A reviewing entity's final decision shall be ~~reduced to writing~~ written and authenticated as its official act within 5 working 30 days following the decision and mailed or delivered to Metro and to all necessary parties parties to the decision. The mailing or delivery to Metro shall include payment to Metro of the filing fee required pursuant to Section 3-09.1103.09.060. ~~The date of mailing shall constitute the date from which the time for appeal runs for appeal of the decision to the Metro Boundary Appeals Commission.~~

~~(f) Each county shall maintain a current map and list showing all necessary parties entitled to receive notice of proposed boundary changes. A county shall provide copies of the map, list, and any changes thereto, to Metro.~~

3.09.040 Minimum Requirements for Petitions

(a) A petition for a boundary change ~~shall be deemed complete if it includes~~ must contain the following information:

- (1) The jurisdiction of the ~~approving~~ reviewing entity to act on the petition;
- (2) A ~~narrative, map and a~~ legal ~~and graphical~~ description of the affected territory in the form prescribed by the ~~Metro Chief Operating Officer~~ reviewing entity;
- (3) For minor boundary changes, the names and mailing addresses of all persons owning property and all electors within the affected territory as shown in the records of the tax assessor and county clerk; and
- (4) ~~A listing of the present providers of urban services to the affected territory;~~ For boundary changes under ORS 198.855(3), 198.857, 222.125 or 222.170, statements of consent to the annexation signed by the requisite number of owners or electors.
- ~~(5) A listing of the proposed providers of urban services to the affected territory following the proposed boundary change;~~
- ~~(6) The current tax assessed value of the affected territory; and~~
- ~~(7) Any other information required by state or local law.~~

(b) A city, ~~or~~ county and Metro may charge a fee to recover its reasonable costs to carry out its duties and responsibilities under this chapter.

3.09.045 Expedited Decisions

(a) ~~Approving entities~~ The governing body of a city or Metro may establish use an expedited decision the process set forth in this section that does not require a public hearing consistent with this section for minor boundary changes for which the petition is accompanied by the written consents of one hundred percent of property owners and at least fifty percent of the electors, if any, within the affected territory. No public hearing is required. Expedited decisions are not subject to the requirements of Sections 3.09.030(b)

~~and 3.09.050(a), (b), (c), (e) or (f). The expedited decision process may only be utilized for minor boundary changes where the petition initiating the minor boundary change is accompanied by the written consent of one hundred percent (100%) of the property owners and at least fifty percent (50%) of the electors, if any, within the affected territory.~~

(b) The expedited decision process must provide for a minimum of ~~20~~ 20 days' notice prior to the date set for decision to all interested necessary parties and other persons entitled to notice by the laws of the city or Metro. The notice shall state that the petition is subject to the expedited process. ~~The expedited process may not be utilized if unless~~ a necessary party gives written notice of its ~~intent to contest the decision prior to the date of the decision.~~ objection to the boundary change. ~~A necessary party may not contest a minor boundary change where the minor boundary change is explicitly authorized by an urban services agreement adopted pursuant to ORS 195.065.~~

(c) At least seven days prior to the date of decision the approving entity city or Metro shall make available to the public a brief report that ~~addresses the factors listed in Section 3.09.050(b).~~ The decision record shall demonstrate compliance with the criteria contained in Sections 3.09.050(d) and (g). includes the following information:

- (1) The extent to which urban services are available to serve the affected territory, including any extra-territorial extensions of service;
- (2) Whether the proposed boundary change will result in the withdrawal of the affected territory from the legal boundary of any necessary party; and
- (3) The proposed effective date of the boundary change.

(d) ~~Decisions made pursuant to an expedited process are not subject to appeal by a necessary party pursuant to Section 3.09.070.~~ To approve a boundary change through an expedited process, the city shall:

- (1) Find that the change is consistent with expressly applicable provisions in:
 - (A) Any applicable urban service agreement adopted pursuant to ORS 195.065;
 - (B) Any applicable annexation plan adopted pursuant to ORS 195.205;

(C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020(2) between the affected entity and a necessary party;

(D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and

(E) Any applicable comprehensive plan; and

(2) Consider whether the boundary change would:

(A) Promote the timely, orderly and economic provision of public facilities and services;

(B) Affect the quality and quantity of urban services; and

(C) Eliminate or avoid unnecessary duplication of facilities or services.

(e) A city may not annex territory that lies outside the UGB, except it may annex a lot or parcel that lies partially within and outside the UGB. A city may not extend water, sewer or storm-water services from inside a UGB to territory that lies outside the UGB. A district may annex territory outside the UGB if the district already includes territory outside the UGB. However, such a district may extend water, sewer or storm-water services to proposed development on land outside the UGB only if the development is authorized by acknowledged provisions of the county's comprehensive plan and land use regulations.

3.09.050 Uniform Hearing and Decision Requirements for Final Decisions Other Than Expedited Decisions

(a) The following minimum requirements for hearings on boundary change decisions petitions operate in addition to all procedural requirements for boundary changes provided for under in ORS chapters 198, 221 and 222 and the reviewing entity's charter, ordinances or resolutions. Nothing in this chapter allows an approving entity to dispense with a public hearing on a proposed boundary change when the public hearing is required by applicable state statutes or is required by the approving entity's charter, ordinances or resolutions.

(b) Not later than 15 days prior to the date set for a boundary change decision hearing, the approving reviewing entity shall make available to the public a report that addresses the criteria in subsections (d) and (g) below, and that includes at a minimum the following: the following information:

- (1) The extent to which urban services presently are available to serve the affected territory, including any extra territorial extensions of service;
- (2) ~~A description of how the proposed boundary change complies with any urban service provider agreements adopted pursuant to ORS 195.065 between the affected entity and all necessary parties;~~
- ~~(3) A description of how the proposed boundary change is consistent with the comprehensive land use plans, public facility plans, regional framework and functional plans, regional urban growth goals and objectives, urban planning agreements and similar agreements of the affected entity and of all necessary parties;~~
- (4) Whether the proposed boundary change will result in the withdrawal of the affected territory from the legal boundary of any necessary party; and
- (5) The proposed effective date of the decision boundary change.

(c) ~~In order to have standing to appeal a boundary change decision pursuant to Section 3.09.070 a necessary party must appear at the hearing in person or in writing and state reasons why the necessary party believes the boundary change is inconsistent with the approval criteria. A necessary party may not contest a boundary change where the boundary change is explicitly authorized by an urban services agreement adopted pursuant to ORS 195.065. At any public hearing, the The persons or entities entity proposing the boundary change ~~shall have the~~ has the burden to ~~prove~~ demonstrate that the petition proposed boundary change meets the applicable criteria ~~for a boundary change~~.~~

(d) ~~An approving entity's final decision on a boundary change shall include findings and conclusions addressing the following criteria:~~ To approve a boundary change, the reviewing entity shall apply the criteria and consider the factors set forth in subsections (d) and (e) of section 3.09.045.

- ~~(1) Consistency with directly applicable provisions in an urban service provider agreement or annexation plan adopted pursuant to ORS 195.065;~~
- ~~(2) Consistency with directly applicable provisions of urban planning or other agreements, other than agreements adopted pursuant to ORS 195.065, between the affected entity and a necessary party;~~

- ~~(3) Consistency with specific directly applicable standards or criteria for boundary changes contained in comprehensive land use plans and public facility plans;~~
- ~~(4) Consistency with specific directly applicable standards or criteria for boundary changes contained in the Regional Framework Plan or any functional plan;~~
- ~~(5) Whether the proposed change will promote or not interfere with the timely, orderly and economic provisions of public facilities and services;~~
- ~~(6) The territory lies within the Urban Growth Boundary; and~~
- ~~(7) Consistency with other applicable criteria for the boundary change in question under state and local law.~~

~~(e) When there is no urban service agreement adopted pursuant to ORS 195.065 that is applicable, and a boundary change decision is contested by a necessary party, the approving entity shall also address and consider, information on the following factors in determining whether the proposed boundary change meets the criteria of Sections 3.09.050(d) and (g). The findings and conclusions adopted by the approving entity shall explain how these factors have been considered.~~

- ~~(1) The relative financial, operational and managerial capacities of alternative providers of the disputed urban services to the affected area;~~
- ~~(2) The quality and quantity of the urban services at issue with alternative providers of the urban services, including differences in cost and allocations of costs of the services and accountability of the alternative providers;~~
- ~~(3) Physical factors related to the provision of urban services by alternative providers;~~
- ~~(4) For proposals to create a new entity the feasibility of creating the new entity.~~
- ~~(5) The elimination or avoidance of unnecessary duplication of facilities;~~
- ~~(6) Economic, demographic and sociological trends and projections relevant to the provision of the urban services;~~

- ~~(7) Matching the recipients of tax supported urban services with the payers of the tax;~~
- ~~(8) The equitable allocation of costs to alternative urban service providers between new development and prior development; and~~
- ~~(9) Economies of scale.~~
- ~~(10) Where a proposed decision is inconsistent with an adopted intergovernmental agreement, that the decision better fulfills the criteria of Section 3.09.050(d) considering Factors (1) through (9) above.~~

~~(f) A final boundary change decision by an approving entity shall state the effective date, which date shall be no earlier than 10 days following the date that the decision is reduced to writing, and mailed to all necessary parties. However, a decision that has not been contested by any necessary party may become effective upon adoption.~~

~~(g) Only territory already within the defined Metro Urban Growth Boundary at the time a petition is complete may be annexed to a city or included in territory proposed for incorporation into a new city. However, cities may annex individual tax lots partially within and without the Urban Growth Boundary.~~

~~3.09.060 Creation of Boundary Appeals Commission~~

~~(a) The Metro Boundary Appeals Commission is created to decide contested cases of final boundary change decisions made by approving entities. The Metro Council shall appoint the Commission which shall consist of three citizen members, one each to be appointed from a list of nominees provided to the Metro Council President at least 30 days prior to the commencement of each term by Clackamas, Multnomah and Washington counties, respectively. The Council shall appoint two of the members for a initial four year term and one for a nominal two year term, the initial terms to be decided by chance; thereafter, each commissioner shall serve a four year term. Each Commission member shall continue to serve in that position until replaced. Commission members may not hold any elective public office.~~

~~(b) The Metro Chief Operating Officer shall provide staff assistance to the Commission and shall prepare the Commission's annual budget for approval by the Metro Council.~~

~~(c) At its first meeting and again in its first meeting of each successive calendar year, the Commission shall adopt rules of procedure that address, among other things, the means by which a position is declared vacant and the means of filling a vacant~~

~~position; and, the Commission at that first meeting shall elect a chairperson from among its membership, who shall serve in that position until a successor is elected and who shall preside over all proceedings before the Commission.~~

~~3.09.070 How Contested Case Filed~~

~~— (a) A necessary party to a final decision that has appeared in person or in writing as a party in the hearing before the approving entity decision may contest the decision before the Metro Boundary Appeals Commission. A contest shall be allowed only if notice of appeal is served on the approving entity no later than the close of business on the 10th day following the date that the decision is reduced to writing, authenticated and mailed to necessary parties. A copy of the notice of appeal shall be served on the same day on Metro together with proof of service on the approving entity, the affected entity and all necessary parties. The notice of appeal shall be accompanied by payment of Metro's prescribed appeal fee. Service of notice of appeal on the approving entity, the affected entity and all necessary parties by mail within the required time and payment of the prescribed appeal fee shall be jurisdictional as to Metro's consideration of the appeal.~~

~~— (b) An approving entity shall prepare and certify to Metro, no later than 20 days following the date the notice of appeal is served upon it, the record of the boundary change proceedings.~~

~~— (c) A contested case is a remedy available by right to a necessary party. When a notice of appeal is filed, a boundary change decision shall not be final until resolution of the contested case by the Commission.~~

~~— (d) A final decision of an approving entity is subject to appeal to the Commission by a necessary party when it is the last action that needs to be taken by the approving entity prior to the referral of the boundary change to the electors in those cases where approval of the electors is required or permitted.~~

~~3.09.080 Alternate Resolution~~

~~— (a) On stipulation of all parties to a contested case made at any time before the close of the hearing before the Commission, the Commission shall stay further proceedings before it for a reasonable time to allow the parties to attempt to resolve the contest by other means.~~

~~— (b) A contested case that is not resolved by alternate means during the time allowed by the Commission shall be rescheduled for hearing in the normal course.~~

~~3.09.090 Conduct of Hearing~~

~~— (a) The Commission shall schedule and conduct a hearing on a contested case no later than 30 days after certification of the record of the boundary change proceedings.~~

~~— (b) The Commission shall hear and decide a contested case only on the certified record of the boundary change proceeding. No new evidence shall be allowed. The party bringing the appeal shall have the burden of persuasion.~~

~~— (c) The Commission shall hear, in the following order, the Metro staff report, if any; argument by the approving entity and the affected entity; argument of the party that contests the decision below; and rebuttal argument by the approving entity and the affected entity. The Commission may question any person appearing before it. Metro staff shall not make a recommendation to the Commission on the disposition of a contested case.~~

~~— (d) The deliberations of the Commission may be continued for a reasonable period not to exceed 30 days.~~

~~— (e) The Chairperson may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious or immaterial testimony. The Chairperson shall cause to be kept a verbatim oral, written, or mechanical record of all proceedings before the Commission.~~

~~— (f) No later than 30 days following the close of a hearing before the Commission on a contested case, the Commission shall consider its proposed written final order and shall adopt the order by majority vote. The order shall include findings and conclusions on the criteria for decision listed in Section 3.09.050(d) and (g). The order shall be deemed final when reduced to writing in the form adopted, and served by mailing on all parties to the hearing.~~

~~— (g) The Commission shall affirm or deny a final decision made below based on substantial evidence in the whole record. The Commission shall have no authority to remand a decision made below for further proceedings before the approving entity, and may only stay its proceedings to allow for alternate resolution as provided for in this chapter.~~

~~3.09.100 Ex Parte Communications to the Boundary Appeals Commission~~

~~Commission members shall place in the record a statement of the substance of any written or oral ex parte communication on a fact in issue made to them during the pendency of the proceeding on a contested case. A party to the proceeding at its request shall be allowed a reasonable opportunity to rebut the substance of the communication.~~

3.09.110 3.09.060 Ministerial Functions of Metro

(a) Metro shall create and keep current maps of all service provider service areas and the jurisdictional boundaries of all cities, counties and special districts within Metro. The maps shall be made available to the public at a price that reimburses Metro for its costs. Additional information requested of Metro related to boundary changes shall be provided subject to applicable fees.

(b) The Metro Chief Operating Officer shall cause notice of all final boundary change decisions to be sent to the appropriate county assessor~~(s)~~ and elections officer~~(s)~~, the Oregon Secretary of State and the Oregon Department of Revenue. Notification of public utilities shall be accomplished as provided in ORS 222.005(1).

(c) The Metro Chief Operating Officer shall establish a fee structure ~~for~~ establishing the amounts to be paid upon filing notice of city or county adoption of boundary changes, ~~appeals to the Boundary Appeals Commission~~ and for related services. The fee schedule shall be filed with the Council Clerk and distributed to all cities, counties and special districts within the Metro region.

3.09.120 3.09.070 ~~Minor Boundary~~ Changes to Metro's Boundary

(a) ~~Minor boundary changes~~ Changes to ~~the Metro Boundary~~ Metro's boundary may be initiated by Metro or the county responsible for land use planning for the affected territory property owners and electors in the territory to be annexed, or other public agencies if allowed by ORS 198.850(3). Petitions shall meet the ~~minimum~~ requirements of ~~S~~section 3.09.040 above. The Chief Operating Officer shall establish a filing fee schedule for petitions that shall reimburse Metro for the expense of processing and considering petitions. The fee schedule shall be filed with the Council.

(b) Notice of proposed ~~minor boundary~~ changes to the Metro ~~Boundary boundary~~ shall be given as required pursuant to Section 3.09.030.

(c) Hearings ~~will~~shall be conducted consistent with the requirements of ~~S~~section 3.09.050. ~~When it takes action on a minor boundary change, the Metro Council shall consider the requirements of Section 3.09.050 and all provisions of applicable law.~~

(d) ~~Minor boundary changes~~ Changes to the Metro ~~Boundary~~ boundary may be made pursuant to the expedited process set forth in ~~S~~section 3.09.045.

(e) The following criteria shall apply in lieu of the criteria set forth in subsections (d) ~~or (e)~~ of ~~S~~section 3.09.050 ~~to a minor boundary change to Metro's boundary~~. The Metro Council's final decision on a boundary change shall include findings and conclusions to demonstrate that:

- (1) The affected territory lies within the UGB; ~~and~~
- (2) The territory is subject to measures that prevent urbanization until the territory is annexed to a city or to service districts that will provide necessary urban services; and
- (3) The proposed change is consistent with any applicable cooperative or urban service agreements adopted pursuant to ORS chapter 195.

~~(f) Contested case appeals of decisions regarding minor boundary changes to the Metro Boundary are subject to appeal as provided in Section 3.09.070.~~

~~3.09.130~~ 3.09.080 Incorporation of a City that Includes Territory Within Metro's Boundary

(a) A petition to incorporate a city that includes territory within Metro's boundary shall comply with the minimum notice requirements in Ssection 3.09.030, the minimum requirements for a petition in Ssection 3.09.040, the hearing and decision requirements in subsections (a), (c), and ~~(f)~~ of Ssection 3.09.050, ~~and if the incorporation is contested by a necessary party, the contested case requirements and hearing provisions of 3.09.070, 3.09.080, 3.09.090, and 3.09.100,~~ except that the legal description of the affected territory required by Section 3.09.040(a)(1) need not be provided until after the Board of County Commissioners establishes the final boundary for the proposed city.

(b) A petition to incorporate a city that includes territory within Metro's jurisdictional boundary may include territory that lies outside Metro's UGB. However, incorporation of a city with such territory shall not authorize urbanization of that territory until the Metro Council includes the territory in the UGB pursuant to Metro Code Chapter 3.01.

(c) The following criteria shall apply in lieu of the criteria set forth in Ssection 3.09.050(d) ~~and (e)~~. An approving entity shall demonstrate that:

(1) ~~+~~Incorporation of the new city complies with ~~the following criteria:~~ applicable requirements of ORS 221.020, 221.031, 221, 034 and 221.035;

~~(1) At least 150 people reside in the territory proposed for incorporation, as required by ORS 221.020;~~

~~(2) No part of the territory proposed for incorporation lies within the boundary of another incorporated city, as prohibited in ORS 221.020;~~

- ~~(3) The petition complies with the requirements of ORS 221.031;~~
- ~~(4) The petitioner's economic feasibility statement complies with the requirements of ORS 221.035;~~
- ~~(5) If some of the territory proposed for incorporation lies outside the Metro UGB, that portion of the territory conforms to the requirements of ORS 221.034;~~
- (62) The petitioner's economic feasibility statement indicates that the city must plan for average residential density consistent with Title 1 (~~one~~) and Title 11 (~~eleven~~) of the Urban Growth Management Functional Plan; and
- (37) Any city whose approval of the incorporation is required by ORS 221.031(4) has given its approval or has failed to act within the time specified in that statute.

Exhibit B to Ordinance No. 07-1165

**Proposed Amendments to Metro Code Chapter 3.09
Findings of Fact and Conclusions of Law**

I. OVERVIEW

Ordinance No. 07-1165 amends Metro Code Chapter 3.09 and the processes and criteria for forming and changing the boundaries of cities and special districts in the region. The chapter does not affect the region's urban growth boundary, which is subject to Metro Code Chapter 3.01.

The intentions of the Council are to bring the Chapter 3.09 into conformance with changes in the law (both statutory and case law) and to make the processes more efficient and the criteria more understandable. The amendments eliminate the Metro Boundary Appeals Commission, pursuant to Senate Bill 615 from the 2007 legislative session and make numerous small changes to the code to accomplish the Council's intentions.

II. STATEWIDE PLANNING GOALS

Goal 1 – Citizen Involvement: The Council followed its customary procedures for enactment of ordinances, including notification of the public, consideration by advisory committees at public meetings that were preceded by public notice, and a public hearing before the Council. These procedures comply with Metro's public involvement policy and Goal 1.

Goal 2 – Coordination: These amendments to the boundary change code were developed with the assistance of city and county lawyers from the local governments of the region. The amendments were reviewed by the Metropolitan Technical Advisory Committee, composed largely of professional planning staff of cities and counties from the region, and by the Metropolitan Policy Advisory Committee composed largely of elected officials of cities and counties from the region. Both committees recommended adoption of the amendments.

Goal 3 – Agricultural Lands: Metro's chapter 3.09 applies to land both inside and outside the regional urban growth boundary (UGB) (within Metro's jurisdiction). Chapter 3.09 expressly limits development of land subject to a boundary change outside the UGB to uses allowed by acknowledged comprehensive plans. The chapter generally does not allow annexation to cities that involve land outside the UGB, with the exception that parcels partially within the UGB may be annexed, but not urbanized until added to the UGB. Any such portions of parcels annexed to a city that are subject to Goal 3 and retain forest zoning. These amendments are consistent with Goal 3.

Goal 4 – Forest Lands: Metro's chapter 3.09 applies to land both inside and outside the regional urban growth boundary (UGB) (within Metro's jurisdiction). Chapter 3.09 expressly limits development of land subject to a boundary change outside the UGB to uses allowed by acknowledged comprehensive plans. The chapter generally does not allow annexation to cities that involve land outside the UGB, with the exception that parcels partially within the UGB may be annexed, but not urbanized until added to the UGB. Any such portions of parcels annexed to a city that are subject to Goal 4 and retain forest zoning. These amendments are consistent with Goal 4.

Goal 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces: Formation of cities and special districts and changes to their boundaries under Metro Code chapter 3.09 do not change the plan designations or the zoning of the land involved and, hence, do not affect Goal 5 resources. Formations and boundary changes are often followed by changes to plans and land use regulations. Goal 5 will apply to those changes. These amendments are consistent with Goal 5.

Goal 6 – Air, Land and Water Resources Quality: Formation of cities and special districts and changes to their boundaries under Metro Code chapter 3.09 do not change the plan designations or the zoning of the land involved and, hence, do not affect Goal 6 resources. Formations and boundary changes are often followed by changes to plans and land use regulations. Goal 6 will apply to those changes. These amendments are consistent with Goal 6.

Goal 7 – Areas Subject to Natural Disasters and Hazards: Formation of cities and special districts and changes to their boundaries under Metro Code chapter 3.09 do not change the plan designations or the zoning of the land involved and, hence, do not affect natural disasters or hazards. Formations and boundary changes are often followed by changes to plans and land use regulations. Goal 7 will apply to those changes. These amendments are consistent with Goal 7.

Goal 8 – Recreational Needs: Formation of cities and special districts and changes to their boundaries under Metro Code chapter 3.09 do not change the plan designations or the zoning of the land involved and, hence, do not affect Goal 8 resources. Formations and boundary changes are often followed by changes to plans and land use regulations. Goal 8 will apply to those changes. These amendments are consistent with Goal 8.

Goal 9 – Economic Development: Formation of cities and special districts and changes to their boundaries under Metro Code chapter 3.09 do not change the plan designations or the zoning of the land involved and, hence, do not affect Goal 9 resources. Formations and boundary changes are often followed by changes to plans and land use regulations. Goal 9 will apply to those changes. These amendments are consistent with Goal 9.

Goal 10 – Housing: Formation of cities and special districts and changes to their boundaries under Metro Code chapter 3.09 do not change the plan designations or the zoning of the land involved and, hence, do not affect housing choices. Formations and boundary changes are often followed by changes to plans and land use regulations. Goal 10 will apply to those changes. These amendments are consistent with Goal 10.

Goal 11 – Public Facilities and Services: Formation of cities and special districts and changes to their boundaries under Metro Code chapter 3.09 do not change the plan designations or the zoning of the land involved and, hence, do not directly affect public facilities and services. Formations and boundary changes, however, are often followed by changes to plans and land use regulations, including changes to public facility plans and service providers. Goal 11 will apply to those changes. These amendments are consistent with Goal 11.

Goal 12 – Transportation: Formation of cities and special districts and changes to their boundaries under Metro Code chapter 3.09 do not change the plan designations or the zoning of the land involved and, hence, do not directly affect transportation facilities. Formations and boundary changes, however, are often followed by changes to plans and land use regulations, including changes to transportation plans. Goal 12 will apply to those changes. These amendments are consistent with Goal 12.

Goal 13 – Energy Conservation: Formation of cities and special districts and changes to their boundaries under Metro Code chapter 3.09 do not change the plan designations or the zoning of the land involved and, hence, do not affect Goal 13 resources. Formations and boundary changes are often followed by changes to plans and land use regulations. Goal 13 will apply to those changes. These amendments are consistent with Goal 13.

Goal 14 – Urbanization: Metro’s chapter 3.09 applies to land both inside and outside the regional urban growth boundary (UGB) (within Metro’s jurisdiction). Chapter 3.09 expressly limits development of land subject to a boundary change outside the UGB to uses allowed by acknowledged comprehensive plans. The chapter generally does not allow annexation to cities that involve land outside the UGB, with the exception that parcels partially within the UGB may be annexed, but not urbanized until added to the UGB. Formation of cities and special districts and changes to their boundaries under Metro Code chapter 3.09 do not change the plan designations or the zoning of the land involved and, hence, do not directly affect urbanization of land within the UGB. Nonetheless, these boundary changes indirectly affect the use of land. These boundary changes and formations will be subject to the statewide planning goals, including Goal 14, when they are reviewed by cities and counties. These amendments are consistent with Goal 14.

Goal 15 – Willamette River Greenway: Formation of cities and special districts and changes to their boundaries under Metro Code chapter 3.09 do not change the plan designations or the zoning of the land involved and, hence, do not affect the Willamette River Greenway. Formations and boundary changes are often followed by changes to plans and land use regulations. Goal 15 will apply to those changes. These amendments are consistent with Goal 15.

III. REGIONAL FRAMEWORK PLAN

These amendments to Chapter 3.09 do not revise the criteria for formation of cities or districts or for changes to their boundaries. The amendments, therefore, do not invoke any of the policies of the Regional Framework Plan. Hence, following the amendments, Chapter 3.09 will remain consistent with the Plan.

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 07-1165, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 3.09 (LOCAL GOVERNMENT BOUNDARY CHANGES) TO IMPLEMENT 2007 OREGON LAWS CHAPTER 173 AND UPDATE THE CHAPTER, AND DECLARING AN EMERGENCY

Date: October 3, 2007

Prepared by: Richard Benner

BACKGROUND

Metro Code Chapter 3.09 establishes procedures and criteria for changes to the boundaries of cities, districts and Metro, for formation of districts, and for incorporation of cities. Metro's principal statute – ORS Chapter 268 – gave this responsibility to Metro at the time the Legislature abolished the Portland Metropolitan Area Local Government Boundary Commission. Changes to the statutes on boundary changes and rulings from administrative and judicial tribunals have made Chapter 3.09 out of date. For example, the 2007 Legislature amended Metro's statute to eliminate the requirement that Metro provide an internal (to Metro) process for appeals of local government boundary changes (Senate Bill 615). The amendments proposed by the ordinance would eliminate this appeals process from the chapter, with the result that such appeals would go directly to LUBA.

The ordinance makes many minor changes to the chapter in order to bring it up to date and more user-friendly. A section-by-section explanation is attached to this report.

ANALYSIS/INFORMATION

1. **Known Opposition:** there was no known opposition to the amendments as of the time of this report.
2. **Legal Antecedents:** authority for Metro Code Chapter 3.09 (Local Government Boundary Changes) derives from ORS 268.347-268.354. 2007 Oregon Laws Chapter 173 (Senate Bill 615) amended ORS Chapter 268 to eliminate the requirement that Metro provide an internal process for appeals of boundary changes.
3. **Anticipated Effects:** the ordinance will (1) bring Chapter 3.09 up to date with appellate rulings and changes to the statutes on boundary changes; (2) eliminate a redundant process for appeals of boundary changes by local governments; and (3) make the chapter easier to understand and use.
4. **Budget Impacts:** the ordinance will eliminate a redundant process for appeals of boundary changes by local governments. For those local governments who contest boundary changes by other local governments, the elimination of the Metro process for appeals will remove an extra step in the normal process of appeal to LUBA and the appellate courts. Metro will no longer have to staff this appeals process.

RECOMMENDED ACTION

The Metro Attorney recommends that the Metro Council enact Ordinance No. 07-1165

ATTACHMENT TO STAFF REPORT
Ordinance No. 07-1165
Proposed Revisions to the Metro Code on Boundary Changes, Chapter 3.09
SECTION-BY-SECTION ANALYSIS
September 25, 2007

Background

Metro Code Chapter 3.09 sets forth the process and criteria for changes to the boundaries of cities and service districts within Metro, including their formation, and changes to Metro's own district boundary. Metro was given this responsibility by the state legislation that abolished the Portland Metropolitan Area Local Government Boundary Commission in 1997.

The Metro Code, however, is only one source of process and criteria for boundary changes. ORS Chapters 198 (special districts), 199 (boundary commissions), 221 (cities) and 222 (city boundary changes) all contain requirements for local government boundary changes. City and county charters and ordinances often provide direction, as well. This makes the law on boundary changes very complicated and explains the many references in the code to other sources of law.

Purpose of Revisions

These proposed revisions to the boundary change code are part of a series of updates undertaken by the Metro Council beginning in 2002. Amendments to statutes relating to boundary changes, experience with boundary changes and a desire to simplify and clarify the process for changing Metro's own district boundary led Metro to conclude that revisions were necessary. An advisory group of lawyers and other professionals with experience with boundary changes reviewed the entire boundary change code for inconsistencies with new laws and opportunities for greater clarity and process efficiency. Their recommendations provide the basis for the proposed revisions.

Of particular note, the 2007 Legislature amended Metro's statute – ORS Chapter 268 – to eliminate the requirement that Metro provide an internal process for appeals of certain boundary changes. Because LUBA ruled in a 2006 case that Metro's internal appeal process is a pre-requisite to appeals to LUBA – effectively making the Metro appeal process an additional step in an already complicated process - these code amendments repeal the internal appeal process.

Section 3.09.010 Purpose and Applicability

The revisions to this section clarify that the chapter also applies to changes to the Metro district boundary, and remove the reference to urban reserves adopted prior to June 30, 1997 (invalidated by Oregon Court of Appeals).

Section 3.09.020 Definitions

The revisions to the definitions reflect changes in the substantive sections of the chapter. Of note are the added definition of "deliberations" to clarify notification requirements when no hearing is required, and the broader definition of "petition" to cover any method of initiation of a proposed boundary change allowed by law. The definition of "approving entity" is replaced by the more accurate term "reviewing entity." The definition of "contested case" is no longer needed because the amendments eliminate Metro's internal appeals process.

Section 3.09.030 Notice Requirements

This section sets forth the notification requirements for a proposed boundary changes. The revisions to subsection (a) clarify that expedited decisions are not subject to the notice requirements in this section. To make the code easier to use, notification requirements for expedited decisions would be moved to the section on such decisions, 3.09.045.

Revisions to subsection (b) clarify the deadline by which a reviewing entity must set a time for its deliberations on a proposed boundary change and extend the deadline from 30 to 45 days (to accommodate less frequent meeting schedules of smaller cities). This gives reviewing entities more flexibility in scheduling, provides more effective notice (closer to the date of the deliberations), and conforms to ORS 198.730(4).

The revision to subsection (c)(3) removes language about decisions without a hearing because the provision no longer applies to expedited decisions (they are covered in section 3.09.045).

The revision to subsection (d) shortens the maximum time for adjournment without additional notice (from 31 to 28 days), and for new notice if required, to conform the times to ORS chapter 198.

The revision to subsection (e) extends the time for issuance of a written decision from five working days to 30 calendar days after a decision.

The amendments would eliminate subsection (f) because it is burdensome on counties and is rarely undertaken.

Section 3.09.040 Requirements for Petitions

This section specifies the contents of a petition for a boundary change. The revisions clarify and simplify the requirements and conform them to the requirements of ORS chapters 198 and 222. They also clarify the difference between the petition for a boundary change and the report on the proposed change [required by sections 3.09.045(c) and 3.09.050(b)], issued by the reviewing entity, that follows the petition.

Section 3.09.045 Expedited Decisions

Metro's statute (ORS chapter 268) requires Metro to offer an expedited process for proposed boundary changes that are not contested by a "necessary party." The revisions simplify and clarify by consolidating all requirements for expedited decisions into this section. The revisions also bring this section into conformance with other statutes on boundary changes, most importantly, with ORS chapter 198 governing special districts, which does not allow review of changes without a hearing.

The amendments remove the sentence which, in the absence of an internal appeals process, purports to have the effect of limiting appeals by "necessary parties" to LUBA, which the Metro code cannot do.

Subsection (d) of this section would now contain the criteria and factors to be met or considered in review of a proposed boundary change.

Subsection (e) clarifies the circumstances in which boundary changes or extension of services may involve territory outside the UGB. Cities may not annex outside the UGB except to include a portion of a lot or parcel split by the city boundary. Districts that already contain territory outside the UGB may annex new territory outside the UGB. But districts may extend services to property outside the UGB only if the uses to be served comply with an acknowledged comprehensive plan.

Section 3.09.050 Hearing and Decision Requirements for Decisions Other Than Expedited Decisions

As it stands today, this section sets forth the criteria and factors that must be addressed by entities reviewing a proposed boundary change (except for expedited decisions). The most important change made to this section by the revisions is to consolidate the criteria and factors and to make them clearer and more objective, as required by ORS 268.354(d). Because the revised criteria and factors appear first in revised section 3.09.045, subsection (d) of this section simply makes reference to them in section 3.09.045 rather than repeat them here.

The revisions also clarify the distinction between the contents of the report issued by the reviewing entity prior to its deliberations [subsection (b)] and the findings it issues following its decision [subsection (d)].

The amendments would eliminate subsection (f) because sections 3.09.045(c)(3) and 3.09.050(b)(3) clarify the effective date of a boundary change and because section 3.09.070 clarifies the deadline for appeals to the Metro Boundary Appeals Commission.

The amendments would also eliminate subsection (g) because the subject is covered by amendments to 3.09.045. The requirement in (g) is made applicable to boundary changes by the reference to 3.09.045(e) in 3.09.050(d).

Section 3.09.060 Creation of Boundary Appeals Commission

Section 3.09.070 How Appeals are Filed

Section 3.09.080 Alternative Resolution

Section 3.09.090 Conduct of Hearing

Section 3.09.100 Ex Parte Communications to the Boundary Appeals Commission

The amendments repeal these sections in the wake of passage of Senate Bill 615 by the 2007 Oregon Legislature, which eliminated the requirement that Metro provide an internal process for appeals of boundary changes.

New Section 3.09.060 Ministerial Functions of Metro

This section prescribes actions Metro must take after boundary changes are made. The revision to subsection (b) clarifies that notification to utilities of boundary changes is the responsibility of cities, not Metro, as provided in ORS 222.005(1).

New Section 3.09.070 Changes to Metro's Boundary

This section prescribes the process and criteria for changes by the Metro Council to the Metro district boundary. These revisions update and clarify the section, including repeal of subsection (f) to conform to elimination of the internal boundary appeals process.

New Section 3.09.080 Incorporation of a City that Includes Territory Within Metro's Boundary
These revisions simplify the references to requirements in ORS chapter 221 (cities).