

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING THE) ORDINANCE NO. 02-944
URBAN GROWTH BOUNDARY FOR)
LOCATIONAL ADJUSTMENT CASE 01-1:) Introduced by Susan McLain,
CHRISTIAN LIFE CENTER CHURCH) Metro Councilor

WHEREAS, Metro received a petition for a locational adjustment for 13.57 acres located within Washington County at 5585 SW 209th Avenue in Aloha, as shown in Exhibit A; and

WHEREAS, Metro staff reviewed and analyzed the petition, and completed a written report to the Hearings Officer, recommending denial of the petition due to insufficient evidence demonstrating that the proposed urban growth boundary is superior to the Urban Growth Boundary (UGB) as presently located; and

WHEREAS, Metro held a hearing to consider the petition on June 11, 2001, conducted by an independent Hearings Officer; and

WHEREAS, the Hearings Officer continued the hearing until August 27, 2001, to allow the petitioner to submit additional information; and

WHEREAS, the Hearings Officer submitted his report on October 11, 2001, recommending approval of the petition for 13.57 acres subject to a condition of approval; and

WHEREAS, the Hearings Officer's condition of approval states that before the effective date of an ordinance amending the UGB to include the subject property, the owner of the property shall provide proof that it has filed a covenant in the deed records for Washington County, in a form acceptable to Metro General Counsel, requiring that the subject property shall continue to provide school services; and

WHEREAS, the Metro Council adopted Resolution No. 02-3153, expressing its intent to amend the Urban Growth Boundary as requested in the petition subject to the Hearings Officer's condition of approval, on February 7, 2002; and

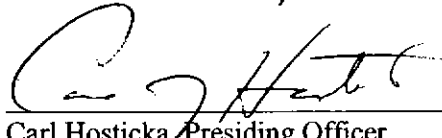
WHEREAS, the Metro Council adopted Ordinance No. 02-941, annexing the land subject to this petition to the Metro jurisdictional boundary, on April 18, 2002; now, therefore

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The UGB is amended to include the land shown in Exhibit A, attached and incorporated into this ordinance;
2. The amendment to the UGB meets the criteria for a locational adjustment, based upon the findings and conclusions of the Hearings Officer in Exhibit B, upon Resolution No. 02-3153 in Exhibit C, and upon Ordinance No. 02-941 in Exhibit D, all attached and incorporated in this ordinance;

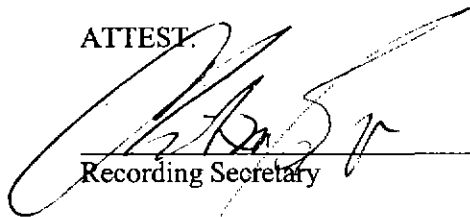
3. Within 90 days of the adoption of this ordinance, the owner of the property shall provide proof that it has filed a covenant in the deed records for Washington County, in a form acceptable to Metro General Counsel, requiring that the subject property shall continue to provide school services and shall only be utilized for church, school or other church-related purposes, until such time as all of the immediately contiguous parcels of property are included inside the UGB.
4. The amendment to the UGB provided for in this ordinance shall not become effective until the covenant provided for in Section 3 above has been recorded.

ADOPTED by the Metro Council this 9th day of May 2002.



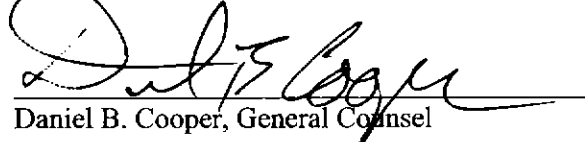
Carl Hosticka, Presiding Officer

ATTEST.



Recording Secretary

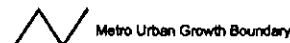
Approved as to Form:



Daniel B. Cooper, General Counsel

Exhibit A UGB Amendment

Ord. No. 02-944
Christian Life Center Church
Case 01-1



UGB Case 01-1
Christian Life
Center Church

The information on this map was derived from digital databases on Metro's GIS. Case law taken in the creation of this map. Metro cannot accept any responsibility for errors, omissions, or outdated accuracy. There are no warranties, expressed or implied, including the suitability of such information or fitness for a particular purpose, accompanying this product. However, resolution of any errors will be approached.



1" = 450 feet



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BEFORE THE METRO COUNCIL

In the matter of the petition of the Christian Life Center)
Church for a Locational Adjustment to the Urban Growth)
Boundary south of the City of Hillsboro, west of 209th)
Avenue in unincorporated Washington County)

RECOMMENDED
FINDINGS AND
CONCLUSIONS
Contested Case No. 01-01

A. BASIC FACTS, PUBLIC HEARINGS AND THE RECORD

1. On March 14, 2001, Christian Life Center Church ("petitioner") completed filing a petition for a locational adjustment to the Urban Growth Boundary ("UGB"). See Exhibit 1 for the petition for locational adjustment (the "petition"). Basic facts about the petition include the following:

a. The land to be added to the UGB is described as Tax Lot 6200, Map 1S2-14DC, Washington County, Oregon (the "subject property"). The subject property is a roughly rectangular shaped parcel 750 feet north-south by about 700 to 820 feet east-west. It contains 13.57 acres. The subject property is west of and adjoins SW 209th Street between SW Hagg Lane and SW Vermont Street. The UGB forms the east boundary of the subject property. See Exhibits 1, 11 and 13 for maps showing the subject property.

b. The subject property is designated and zoned AF-10 (Agriculture/Forest, 10-acre minimum lot size) on the acknowledged Washington County Comprehensive Plan Map. It is in an exception area to Statewide Planning Goals 3 and 4. The subject property is bounded on the north by land zoned AF-5 (Agriculture and Forest, 5-acre), on the west by land zoned AF-20 (Agriculture and Forest, 20-acre), on the south by land zoned RR-5 (Rural Residential, 5-acre), and on the east by SW 209th Avenue, which serves as the Urban Growth Boundary (UGB). Lands across SW 209th Avenue are within the UGB and are zoned R-5 (Residential, 5 units per acre) and R-15 (Residential, 15 units per acre). See Attachment 3 of Exhibit 1.

c. The subject property is developed with a 38,000-square foot church and associated 235-space parking lot on the eastern third of the site. The western two-thirds of the subject property is developed with a private park including a soccer field and two softball fields. Washington County approved the church use in 1993, Casefile 93-184-SU/D(INS), Attachment 19 of Exhibit 1. Washington County approved the park/recreation use in 1996, Casefile 96-288-SU/SU/D(INS), Exhibit 24. Public sewer and water are currently supplied to the subject property pursuant to an exception to Statewide Planning Goals 11 and 14. The petitioner also operates a private school on the subject property for pre-school through grade 12 serving approximately 200 students. The school is not an approved use on the subject property. Washington County previously determined that the school is not permitted in the rural area, because it is not "scaled to serve the rural population." See Washington County Casefile 96-288-SU/SU/D(INS), Exhibit 24, and Washington County Casefile 98-206-SU/D(INS), Exhibit 25. Enforcement by the County is stayed during pendency of this petition.

d. The petition was accompanied by comments from affected jurisdictions and service providers, although several jurisdictions declined to provide comments. See Exhibit 1, Attachments 9 & 15, and Exhibits 2, 3, 5, 9, 10, 20 & 21.

i. Metro waived the requirement for a written statement from the Washington County Board of Commissioners. Exhibit 10. The Board of Commissioners never did comment on the petition.

ii. The Tualatin Valley Water District ("TVWD") commented that it could provide water service to the subject property, but approval of the petition would not improve efficiency of service delivery in the UGB. TVWD expressed support for the petition. Exhibit 1, Attachment 9.

iii. Tualatin Valley Fire and Rescue District ("TVFR") commented that it could provide fire and emergency service to the subject property, but approval of the petition would not improve efficiency of service delivery in the UGB. TVFR took a neutral position in regard to the petition. Exhibit 3.

iv. The Hillsboro School District declined to comment on the petition. Exhibits 2 and 21.

v. Tri-Met commented that the subject property is "currently a little greater than 1/4 mile away" from the nearest transit stop, which is on 198th Avenue. "A property is considered served if it is 1/4 mile or less from transit." Tri Met took a neutral position regarding the petition. Exhibit 5.

vi. The Unified Sewerage Agency (USA) commented that sanitary and storm sewer services are currently provided to the subject property, and approval of the petition would have no impact on the efficiency of service delivery in the UGB. Exhibit 9.

vii. The petitioner did not submit comments from the Washington County's Sheriff's Office or the Tualatin Hills Parks and Recreation District ("THPRD") regarding the petition. However both agencies commented regarding the 1998 land use application for the school, which Washington County denied. See Exhibit 1, Attachment 15. The Sheriff's Office stated that emergency services are currently provided to the subject property, and the service level is adequate to serve the existing and proposed development. THPRD noted that the subject property is outside its boundaries. However the subject property is within one-half mile of an existing park, and park services are adequate to serve the subject property (contrary to the Washington County Community Plan Map for the area).

viii. After the public hearing while the public record was open, the Beaverton School District commented that approval of the petition will increase the efficiency of public school services within the existing UGB. Exhibit 20.

2. Metro staff mailed notices of a hearing to consider the petition by certified mail to the owners of property within 500 feet of the subject property, to the petitioner, to Washington County, to the City of Hillsboro and to the Department of Land Conservation and Development ("DLCD"). See Exhibit 1, Attachment 30. A notice of the hearing also was published in *The Oregonian* at least 10 days before the hearing.

3. On June 11, 2001, Metro hearings officer Larry Epstein (the "hearings officer") held a public hearing at the Washington County Public Services Building Auditorium to consider the petition. All exhibits and records of testimony have been filed with the Growth Management Services Division of Metro. At the beginning of the hearing, the hearings officer made a declaration consistent with ORS 197.763. The hearings officer disclaimed any *ex parte* contacts, bias or conflicts of interest. Eight witnesses, including Metro staff and consultants, testified in person. Other persons testified in writing. Exhibits 22 and 23.

a. Metro consulting planner Eric Eisemann verified the contents of the record and summarized the staff report (Exhibit 15), including basic facts about the subject property, the UGB and urban services, and comments from the various service providers

and affected jurisdictions. He testified that the petitioner failed to show that the proposed locational adjustment complies with all of the applicable approval criteria. He argued:

i. The petitioner demonstrated that urban services can be provided to the subject property in an orderly and economical fashion. However the petitioner failed to bear the burden of proof that adding the subject property to the UGB will result in a net improvement in efficiency of services to lands within the existing UGB. Sewer and water services are currently provided to the subject property and abutting lands within the UGB. He disputed the petitioner's conclusion that approval of the petition will result in a net improvement in the efficiency of school services by relieving pressure on urban public schools. The existing school is not an approved use on the subject property, and it might not be permitted even if the petition is approved or carried on after such approval. In addition, there is no evidence that approval of the petition is needed to make the urban school system more efficient.

(A) He argued that the lower burden of proof allowed in Contested Case 95-01 (Harvey) is inapplicable. In that case, the UGB abutted the property on three sides rather than on one side, and the site was used for permitted purposes. The subject property is not developed with approved urban uses. The existing school is not an approved use on the subject property.

ii. The petitioner failed to demonstrate that approval of the petition would facilitate needed development within the existing UGB. Existing urban lands near the subject property are fully developed, and urban services have been provided to them.

iii. Approval of the petition will not result in a superior UGB, because the petition fails to comply with the above criteria.

b. Attorneys Bill Cox and Gary Shepherd, Pastor Werner Rienas and Education Minister Jerry Huber appeared on behalf of the petitioner, Christian Life Center Church.

i. Mr. Cox argued that the subject property is fully developed for urban uses. Approval of the petition will allow the petitioner to continue providing educational and social services to urban residents, thereby promoting land use stability within the existing UGB.

(A) He noted that there is an undeveloped area of residentially-zoned property southeast of the subject property within the UGB. Approval of the petition will facilitate development of that property. In addition, based on the Metro Council's decision in Contested Case 88-3 (St. Francis), the fact that the abutting urban area is largely developed is irrelevant. The school on the subject property will serve this existing development.

(B) He argued that approval of the petition will increase the efficiency of school services within the UGB. The majority of students attending school on the subject property live in the Beaverton area. The Beaverton School District projects a capacity deficit of 15,000 students in 2020. See Exhibit 16, Attachment 8. Approval of the petition will help alleviate the deficit to some extent by allowing the petitioner to continue providing educational services for 250 students on the subject property. Denial of the petition will increase the demand for school services, because it will eliminate the existing school on the subject property.

(C) He argued that approval of the petition will increase the efficiency of urban services which are currently provided to the subject property. Approval of the petition would allow the petitioner to continue operating the school, thereby making more efficient use of existing urban services without requiring additional infrastructure.

(D) He argued that the petition is subject to a lower burden of proof, because the subject property is currently provided with urban services and developed with an urban school use, citing Metro Contested Case 95-01 (Harvey). Approval of the petition will maintain the existing service efficiencies generated by the petitioner's school.

(E) He requested the hearings officer continue the hearing to allow the petitioner an opportunity to provide additional evidence.

ii. Mr. Rienas testified that the County encouraged the petitioner to pursue a UGB amendment in order to allow continued operation of the private school on the subject property. He argued that education is part of the Church's ministry. Denial of the petition will conflict with their religious mission and curtail their ability to practice their religion. He argued that the subject property increases the efficiency of recreational facilities within the UGB. There is a shortage of recreational facilities within the UGB. The petitioner helps alleviate that shortage by allowing the public to use its recreational facilities on the subject property.

iii. Mr. Huber argued that approval of the petition will improve the efficiency of school services within the UGB, because the petitioner's school accommodates students who would otherwise attend public schools within the UGB. More than 90-percent of the students attending school on the subject property live in the urban area. There is a significant demand for education opportunities in the area. The existing school on the subject property is operating at full capacity with a 60-student waiting list. The petitioner expects to turn away more than 100 students who apply for the 2001-02 school year due to a lack of capacity.

iv. Mr. Shepherd argued that approval of the petition will result in a net increase in the efficiency of urban services.

(A) He argued that denial of this petition would be inefficient. There is an existing school on the subject property which is currently provided with urban services. Denial of the petition will force the petitioner to abandon the existing school, reducing the efficiency of the existing urban uses and services on and serving the subject property. The petitioner will need to construct additional facilities within the UGB, consuming additional vacant urban land.

(B) He argued that, based on the Council's decision in Contested Case 87-04 (Brennt), any net increase in efficiency is sufficient to establish that the petition will result in a superior UGB. He disagreed with staff's interpretation that the Brennt decision is limited to parcels of five acres or less. When the Council decided Brennt the Metro Code limited locational adjustments to a maximum of 10 acres. The current Code limits locational adjustments to a maximum of 20 acres. Therefore this petition to include the 13.57-acre subject property is consistent with Brennt, and any increase in efficiency is sufficient to comply with the Code.

(C) He noted that urban services are currently provided to the subject property. Therefore, based on the Council's decision in Contested Case 95-01 (Harvey), he argued the petition is subject to a lower burden of proof.

(D) He argued that Metro Code section 3.01.035(c)(2) --- “facilitate needed development on adjacent existing urban land” --- is not limited to developable land. Existing development within the UGB also benefits from the recreational opportunities and educational and social services provided by the uses on the subject property. Approval of the petition will facilitate continued occupancy of this existing development.

c. Gerald Brian argued that Metro needs to consider the long term use of entire area, including the need for a western bypass. He argued that a school on the subject property will impact the use of his abutting property. Establishment of a school will create a “school zone” and reduce the speed limit on the abutting road.

4. At the close of the June 11, 2001 hearing, the hearings officer continued the hearing to August 27, 2001. The hearings officer received the following evidence and testimony at the August 27, 2001 hearing:

a. Metro planner Tim O’Brien verified the contents of the record, including evidence submitted after the initial hearing, and summarized the staff report addendum, Exhibit 18.

i. He disputed the petitioner’s conclusion that “any increase in efficiency is enough to demonstrate that the petition results in a superior UGB.” He argued that, based on Metro Ordinance 81-05, the larger the parcel proposed for inclusion, the greater the benefit required. The subject property is much larger than the property involved in the Brennt case. Therefore the applicant has a greater burden of proof that approval of the petition will result in a superior UGB.

ii. He argued that the petitioner failed to bear the burden of proof that the petition will result in greater net efficiencies for public services.

(A) Public services are currently available to the subject property and surrounding properties within the UGB. Including the subject property in the UGB will have no impact on the efficiency of these services.

(B) Approval of the petition will have no impact on the efficiency of recreational facilities. There is no agreement between the petitioner and THPRD allowing public use of the recreational facilities on the subject property. In addition, the recreational facilities already exist on the site. Washington County approved the facilities in 1996, Washington County Casefile 96-288-SU/SU/D(INS). It is unnecessary to add the subject property to the UGB to obtain the alleged efficiency.

(C) There is no substantial evidence that students attending the petitioner’s school would attend public school if the petitioner’s school was unavailable. There is no evidence from the affected school districts that approval of the petition would increase their efficiency. In addition, given the limited capacity of the petitioner’s school, approval of the petition will have only a minor impact on the efficiency of the public school services.

iii. There is no substantial evidence that approval of the petition will facilitate development on adjacent land within the UGB. He argued that land within a three-mile radius of the subject property is not “adjacent.”

iv. He argued that the Religious Land Use and Institutionalized Persons Act of 2000 is inapplicable. The petition falls outside the scope of the Act as defined by section 2.A.ii of the Act, because approval or denial of the petition is not a "land use decision" as defined by the Act.

b. Mr. Cox responded to the staff report addendum.

i. He argued that the Code only requires a net increase in efficiency. It does not require a "significant" increase in efficiency. Approval of the petition will result in a small net improvement in the efficiency of school services, because the petitioner's school will accommodate a small percentage of the students within the Beaverton and Hillsboro School Districts.

ii. He argued that the petition will increase the efficiency of park and recreation services, because the soccer and baseball fields on the subject property will be available for public use at no cost to THPRD. Based on THPRD's Master Plan, Exhibit 16, Attachment 20, there is a need for 10 new soccer fields and five baseball fields in the area. Therefore the subject property will fulfill 10 to 20 percent of the need identified in the Master Plan. The petitioner currently allows the public to use the facilities. However the petitioner may be unable to maintain the facilities without the income from the school. The petitioner is likely to reduce or eliminate public use of the facilities if the petition is denied. In addition, use of the facilities by urban residents may create a zoning violation by allowing urban uses in the rural area.

iii. He argued that the Metro Code is a zoning law and therefore the petition is subject to the Religious Land Use and Institutionalized Persons Act of 2000. In addition, Metro is subject to the Act, because it receives federal funding.

iv. He testified that the petitioner would agree to a condition of approval requiring the property to be used for church and school purposes.

v. He requested the hearings officer hold the record open for two weeks to allow the Beaverton School District and the THPRD an opportunity to submit a written response.

c. Church member Matt Newman argued that approval of the petition will result in a net improvement in the efficiency of school and parks/recreation services and will facilitate needed development on adjacent urban land. He introduced a map illustrating schools, parks, land uses, census tracts and development approvals located within a three-mile radius of the subject property. Exhibit 16, Attachment 18. Many (although not a majority) of the students who now attend petitioner's school live within three miles of the subject property.

i. He argued that the term "adjacent" must be construed in context. School and park services cover a broader area than sewer and water facilities.

ii. He noted that significant growth has occurred in the surrounding area in recent years. 2500 new residential dwelling units have been approved within the three mile radius in the past four years.

iii. He argued that the petitioner's school results in a net economic benefit for local public schools. The majority of schools in the area exceed their capacity and must provide modular classrooms at \$100,000 each. The petitioner's school eliminates

the need for three modular classrooms by accommodating 200 students on the subject property, resulting in a net economic efficiency of \$300,000.

iv. He argued that approval of the petition will increase the efficiency of park and recreation services, because it eliminates the need for construction of additional facilities inside the UGB. Adding the subject property to the UGB would allow THPRD to use the petitioner's recreation facilities, fulfilling a need for such facilities identified in the THPRD's Master Plan. The THPRD cannot enter an agreement to allow public use the petitioner's recreational facilities under current conditions, because the subject property is located outside the UGB.

d. Pastor Rienas testified that the public currently uses the soccer and baseball fields on the subject property for practices and games. However the petitioner must limit public use to ensure it does not become an urban use in violation of the County's approval. He testified that several families have moved to the area in order to send their children to the petitioner's school.

e. The hearings officer held the record open for two weeks to allow the petitioner an opportunity to submit additional testimony and evidence in support of the petition. The record in this case closed at 5:00 p.m., September 10, 2001.

5. On October 11, 2001, the hearings officer filed with the Council a report, recommendation, and draft final order approving the petition for the reasons provided therein. Copies of the report and recommendation were timely mailed to parties of record together with an explanation of rights to file exceptions thereto and notice of the Council hearing to consider the matter.

6. The Council held a duly noticed public hearing to consider testimony and timely exceptions to the report and recommendation. After considering the testimony and discussion, the Council voted to conditionally approve the petition for Contested Case No. 01-01 (Christian Life Center), based on the findings in this final order, the report and recommendation of the hearings officer, and the public record in this matter.

B. APPLICABLE APPROVAL STANDARDS AND RESPONSIVE FINDINGS

1. Metro Code section 3.01.035(b) and (c) contain approval criteria for all locational adjustments. Metro Code section 3.01.035(g) contains additional approval criteria for locational adjustments to add land to the UGB. The relevant criteria from those sections are reprinted below in italic font. Following each criterion are findings explaining how the petition does or does not comply with that criterion.

Area of locational adjustments. All locational adjustment additions and administrative adjustments for any one year shall not exceed 100 net acres and no individual locational adjustment shall exceed 20 net acres...
Metro Code section 3.01.035(b)

2. No locational adjustments or administrative adjustments have been approved in 2001. Therefore not more than 100 acres has been added to the UGB this year. The petition in this case proposes to add 13.57 acres to the UGB, which is less than 20 acres. No other locational adjustment petitions are pending in 2001. Therefore, as proposed, the petition complies with Metro Code section 3.01.035(b).

Orderly and economic provisions of public facilities and services. A locational adjustment shall result in a net improvement in the efficiency of

public facilities and services, including but not limited to, water, sewerage, storm drainage, transportation, parks and open space in the adjoining areas within the UGB; and any area to be added must be capable of being served in an orderly and economical fashion.

Metro Code section 3.01.035(c)(1)

3. The subject property can be served by public water, storm and sanitary sewers, police, fire and emergency services based on the comments from the various service providers. See Exhibit 1, Attachments 9 & 15, and Exhibits 3 & 9. Therefore the area to be added is capable of being served in an orderly and economical fashion.

4. The Council has not adopted rules describing how to assess the relative efficiency of urban services. In the absence of such rules, the Council must construe the words in practice. It does so consistent with the manner in which it has construed those words in past locational adjustments to the extent the facts in this case are similar to the facts in prior cases.

a. In the past, where a petition before the Council proposed including developed land with urban services in-place, the Council has imposed a lower burden of proof than where a petition involved undeveloped land without in-place services. For instance, contrast the relevant findings in Council Orders regarding UGB 91-04 (PCC Rock Creek), UGB 91-01 (Dammach), UGB 88-03 (St. Francis), UGB 95-01 (Harvey) and UGB 98-05 (VVMC) with corresponding findings in Council Orders regarding UGB 94-01 (Starr/Richards), UGB 90-01 (Wagner) and UGB 88-02 (Mt. Tahoma).

i. In this case the subject property has urban services connected to and indistinguishable from services inside the UGB. However it is not developed with urban uses. Washington County approved the existing church and park as rural uses. See Washington County Casefile 93-184-SU/D(INS), Attachment 19 of Exhibit 1, and Washington County Casefile 96-288-SU/SU/D(INS), Exhibit 24. Washington County granted an exception to Statewide Planning Goals 11 and 14 to allow extension of public sewer service to the church on the subject property. See Exhibit 1, Attachment 18. The applicant is operating the existing school in violation of Washington County zoning, without County land use approval. See Exhibit 24.

ii. Based on prior decisions, the lower burden of proof is only available where both urban services and urban development are provided on the property subject to the petition. In this case, urban services are already in place, but the subject property does not contain urban development. Therefore this petition is subject to the higher burden of proof.

b. Including the subject property in the UGB does not increase the net efficiency of park and recreation services, because it does not result in any additional public park and recreation facilities nor does it result in increased public use of the existing recreational facilities.

i. The THPRD Master Plan identifies a need for additional park and recreation facilities in the vicinity.¹ See Exhibit 16, Attachment 20. The THPRD 20-year

¹ The subject property is not located within the boundaries of the THPRD. The THPRD Boundary is roughly 800 feet south of the subject property at its nearest point. See Exhibit 16, Attachment 18. However the THPRD includes a number of existing and planned facilities located outside of its boundaries, whose "service area" extends into the District.

Master Plan identifies a need for additional an additional 11.3-acres of Neighborhood Park land in the "southwest quadrant" of THPRD's service area. The Master Plan also identifies a need for 5 new ballfields and 10 new soccer fields in the southwest quadrant. This is consistent with the Washington County Aloha-Reedville-Cooper Mountain Community Plan Map which identifies this as a "park deficient area."²

ii. The petitioner's sports fields help meet the identified need for park and recreation facilities without additional cost to the public. The petitioner testified that it makes its facilities available for a variety of public groups including Beaverton Little League, Reedville Softball, Westside Softball League & Umpires Association and Community Basketball & Volleyball. See Exhibit 16, Attachment 9. Public use the petitioner's sports fields reduces the demand on other existing park/recreation facilities; that otherwise would draw users who now use the petitioner's facilities.

iii. However the locational adjustment is not necessary to create the this efficiency. The facilities exist and are permitted by law. But, the petitioner argued, without the location adjustment, they might not be able to afford to maintain the facilities and may have to reduce or prohibit public use of the facilities or eliminate the facilities altogether.

(A) Whether the recreational facilities will remain in existence if the locational adjustment is not approved and, consequently, the school is required to close eventually, is a question of fact. There is no substantial evidence in the record to support the petitioner's assertion that the sports fields will not remain in existence if the locational adjustment is not approved. The petitioner's assertion is evidence, but their self-interest and lack of financial or other relevant data to support the assertion detracts from its probative value so much that the evidence is not persuasive. It is speculative to conclude that denial of the locational adjustment will or is reasonably likely to result in loss of the sports fields for public use. Moreover the impacts of DENIAL of the locational adjustment are not relevant. Only the impacts of APPROVING the locational adjustment are relevant. Arguably approving the locational adjustment assures the sports fields will remain in existence, because they will be necessary at least for the recreational needs of the school. But that does not increase the efficiency of public park/recreation services

iv. The only way that the sports fields increase park/recreation service efficiency is if they are available to the public. The petitioner testified the facilities are available to a variety of public groups as noted above. However nothing obligates the petitioner to retain the facilities or to continue to allow public use of its private property. The petitioner did not propose a specific measure to assure public access to the sports fields when it agreed to be subject to a condition requiring the property to be used for school and church purposes. Thus approving the locational adjustment without more, or subject to a condition that requires the subject property be used for church and school purposes as proposed by the petitioner, does not assure the sports fields will be available by to public.

v. Approval of the petition subject to a condition of approval requiring that the petitioner make the sports fields available to the public would ensure that approval of the petition results in a net efficiency in parks/recreation services, because it would ensure that the facilities are and remain available to the public. The Council cannot impose such a condition unless it approves the petition. The Council has imposed conditions before in Contested Case 91-01 (Dammash State Hospital) and Contested Case

² The hearings officer takes official notice of the Aloha-Reedville-Cooper Mountain Community Plan Map, which was not included in the record as an exhibit.

94-01 (Starr/Richards) pursuant to authority granted by Metro Code section 3.01.40(a) as it existed when those petitions were approved.

vi. However a condition of approval requiring the petitioner to make the sports fields available to the public could be problematic to articulate and enforce³ and may be beyond the Council's authority under the existing Metro Code. Such a condition also may violate the Religious Land Use and Institutionalized Persons Act of 2000 and could be deemed an unconstitutional infringement on the petitioner's freedom of religion and association. The petitioner could propose a condition of approval requiring the petitioner to make the sports fields available to the public during daylight non-school hours when not otherwise needed for church or school purposes, waiving any constitutional or other rights. The Council could accept such a condition. But the petitioner has not expressly done so.

c. Based on the testimony from the Beaverton School District,⁴ Exhibit 20, including the subject property in the UGB increases the net efficiency of school services, because the petitioner's school accommodates students who would otherwise attend public school.⁵ The subject property must be located in the UGB in order for the petitioner to continue operating its school. See Exhibits 24 and 25. Therefore approval of the petition is necessary to achieve the net efficiency in school services identified by the Beaverton School District. The petitioner proposed and Council accepts a condition of approval requiring that the subject property continue to provide school services at at least current levels. The Council construes the term "school services" as "a comprehensive educational program similar to that offered in public preschool, grade, middle and/or high schools." Subject to that condition, including the subject property in the UGB does result in a net increase in the efficiency of school services.

d. It is not apparent from the record that including the subject property in the UGB will increase the net efficiency of water, surface water management/storm drainage, and fire/police protection, transit, transportation, for land already in the UGB. Most of these services are already in place, serving the existing church and recreational development on the subject property and abutting developed properties within the UGB. The inclusion of the subject property in the UGB is not necessary to maintain the existing efficiency of urban services to the subject property. Approval of the petition would increase the use of these facilities by allowing the petitioner to continue operating its school from the subject property. But it would not affect the efficiency of these services for land already in the UGB.

³ There is no legal process for adjudicating disputes about implementation or enforcement of such a condition; i.e., when and how is the petitioner required to allow public use of the facilities, whether the petitioner can charge a fee for such use, etc.. In addition, future development on the subject property, including but not limited to expansion of the church or school, could alter the recreational facilities in violation of the condition.

⁴ The petitioner also submitted letters from the Washington County Counsel's office, State Representative Bruce Starr and State Senator Charles Starr opining that including the subject property will result in a net increase in the efficiency of public school facilities within the existing UGB. Exhibits 14, 22 and 23. However the petitioner failed to provide any evidence that these persons are experts in the efficiency of school facilities. Their unsupported opinions are not substantial evidence.

⁵ The subject property is not within the boundaries of the Beaverton School District. The school district boundary is roughly 800 feet south of the subject property at its nearest point. See Exhibit 16, Attachment 18. However the petitioner's school currently serves more than 70 students who reside within the Beaverton School District. See Exhibit 16, Attachment 17.

Maximum efficiency of land uses. The amendment shall facilitate needed development on adjacent existing urban land. Needed development, for the purposes of this section, shall mean consistent with the local comprehensive plan and/or applicable regional plans.
Metro Code section 3.01.035(c)(2)

5. Including the subject property in the UGB facilitates development on adjacent existing urban land consistent with the local comprehensive plan, because it provides additional school capacity to serve residential development within the UGB.

a. Development within the adjacent urban area will increase the existing demand for school facilities and services in the area. School facilities on the subject property can facilitate development by accommodating some of that demand.

b. There is a dispute about whether approval of this petition will facilitate development on "adjacent" urban land.

c. The term "adjacent" is ambiguous and is not defined by the Metro Code. The majority of prior cases approved by the Council involved the extension of sewer, water and transportation services to abutting properties. By their nature this type of service must be physically connected to adjacent land in order to provide the service. Therefore "adjacent" properties have been predominantly limited to adjacent properties. However school and park/recreation services have a broader scope, attracting users from further away. (See the THPRD Master Plan which assumes a roughly 1500-foot radius service area around neighborhood parks). Black's Law Dictionary, 1968 Ed., defines the term "adjacent" as "lying near or close to; sometimes contiguous; neighboring."

i. Abutting properties within the UGB, directly across 209th Avenue from the subject property, are fully developed consistent with the R-6 (Residential, 6 dwelling units per acre) designation in the Washington County comprehensive plan, specifically the Aloha-Reedville-Cooper Mountain Community Plan Map. Therefore approval of the petition cannot facilitate needed development on those properties.

ii. There is a roughly 50-acre vacant parcel located approximately 800 feet south of the subject property, on the east side of 209th Avenue. See Exhibits 13 and 16, attachment 18. This property is "adjacent" as defined by the dictionary, because it is nearby. The property is designated medium density residential (15 units per acre) on the Aloha-Reedville-Cooper Mountain Community Plan Map. That property also is located within the boundaries of the THPRD and Beaverton School District. Amendment of the UGB to include the subject property would facilitate needed development on that "adjacent" vacant urban property if the petitioner continues to provide school and public recreation services. The petitioner proposed, and the Council accepts, a condition requiring that the subject property continue to provide school services similar to current levels which will ensure that approval of this petition actually facilitates needed development on this "adjacent" urban land.

iii. The petitioner defined "adjacent existing urban land" as vacant properties located within a three-mile radius of the subject property. See Exhibit 16. However the petitioner failed to provide adequate support in law or fact for this extremely broad definition, and Council finds "adjacent" land does not include all vacant urban land within three miles of the site.

Environmental, energy, social & economic consequences. Any impact on regional transit corridor development must be positive and any limitations imposed by the presence of hazard or resource lands must be addressed. Metro Code section 3.01.035(c)(3)

6. Including the subject property in the UGB would not have any impact on regional transit corridor development, because the nearest regional transit corridor is distant from the subject property (at Tualatin Valley Highway, more than a mile north of the subject property). The subject property is not subject to hazards and does not contain resource lands identified by Washington County. Therefore the petition complies with Metro Code section 3.01.035(c)(3).

Retention of agricultural land. When a petitioner includes land with Agricultural Class I-IV soils designated in the applicable comprehensive plan for farm or forest use, the petition shall not be approved unless it is factually demonstrated that:

(A) Retention of any agricultural land would preclude urbanization of an adjacent area already inside the UGB, or

(B) Retention of the agricultural land would make the provision of urban services to an adjacent area inside the UGB impracticable. Metro Code section 3.03.035(c)(4)

7. The subject property contains Class II soils. However the Washington County comprehensive plan designates the subject property and surrounding non-urban lands as AF-10 (Agriculture & Forest, 10-acre minimum lot size). This is not considered an exclusive farm or forest use designation. Therefore this criterion does not apply.

Compatibility of proposed urban uses with nearby agricultural activities. When a proposed adjustment would allow an urban use in proximity to existing agricultural activities, the justification in terms of this subsection must clearly outweigh the adverse impact of any incompatibility. Metro Code section 3.01.035(c)(5)

8. There are limited agricultural activities on adjacent lands to the north and west of the subject property, a commercial nursery and a Christmas tree farm. A fence on the subject property separates these uses from activities on the subject property. The subject property has been used as a church and park for several years without any significant conflicts with agricultural activities. Based on the historic lack of conflict between the existing urban development and the existing agricultural uses, it can be found that urban development on the subject property will not have a significant adverse impact on existing agricultural activities.

Superiority. [T]he proposed UGB must be superior to the UGB as presently located based on a consideration of the factors in subsection (c) of this section. Metro Code section 3.01.035(g)(2)

9. In prior cases the Council has required a lesser showing of superiority for smaller parcels. See Contested Case 87-04 (Brennt) where the Council concluded that “[f]or a proposed addition to the UGB of 10 acres or less, any improvement at all from the proposed change in relationship to UGB land abutting the addition area is enough of an improvement in the UGB to establish superiority.” However the burden of proof is a “sliding scale” which increases with the size of the parcel to be included. See Contested

Case 84-02 (PGE) and the Findings In Support Of Metro Ordinance No. 81-105 (For the Purpose of Establishing Procedures for Locational Adjustments to Metro's Urban Growth Boundary). The subject property contains more than 10 acres. Therefore the facts in Brennt are different enough to conclude that the petition in this case is not justified by any improvement in the UGB.

10. Based on the evidence in the record and the findings above, the proposed UGB is superior to the existing UGB "based on a consideration of the factors in subsection (c) of [section 3.01.035]", because:

a. Approval of the petition results in a net increase in the efficiency of school services to land already within the UGB, provided the applicant accepts a condition of approving requiring the subject property to continue to be used for school purposes as defined by Council.

b. The amendment facilitates needed development on adjacent urban land.

Similarly situated land. The proposed UGB amendment must include all similarly situated contiguous land which could also be appropriately included within the UGB as an addition based on the factors above. Metro Code section 3.01.035(g)(3)

11. There are no manmade or natural geographical boundaries between the subject property and the adjoining properties to the north, west or south. However the subject property, the only AF-10 zoned property in the area, is developed with a church and park/playfields. Adjacent lands are being actively farmed or are developed with low density rural uses. In addition, only the subject property is served by public sewer pursuant to an exception to Statewide Planning Goals 11 and 14. See Exhibit 1, Attachment 18. There is no similarly situated property which could also be appropriately included within the UGB based on the factors above.

[Average Density]. Demonstrate average residential densities of at least 10 dwelling units per net developable residential acre, or lower densities which conform to the 2040 Growth Concept plan designation for the area. 3.01.035(c)(6)

12. The subject property will be used for church, school and recreational purposes. Therefore this criterion is not applicable to this petition.

[Compliance with the Regional Framework Plan]. Petitions for locational adjustments shall demonstrate compliance with the Regional Framework Plan and implementing policies. 3.01.035(d).

13. The petition complies with the Regional Framework Plan, because the subject property does not contain identified Exclusive Farm Use (EFU) or Open Space lands. The subject property is designated exception land which may be used for purposes other than rural resource production or protection. In addition, urban services are currently provided to the subject property as an exception to statewide planning Goals 11 and 14. Therefore the petition is consistent with the Regional Framework Plan.

C. CONCLUSIONS AND DECISION

The following conclusions are adopted based on the foregoing findings.

1. Public services and facilities, including water, sanitary sewer, storm drainage, transportation, and police and fire protection, can be provided to the subject property in an orderly and economical fashion.

2. The petition complies with Metro Code section 3.01.035(c)(1), because the petition demonstrated that including the subject property in the UGB will result in a net improvement in the efficiency of school facilities and services for properties within the existing UGB, provided the petitioner agrees to be subject to a condition requiring the property to continue to be used for school purposes as defined by the Metro Council.

3. The petition complies with Metro Code section 3.01.035(c)(2), because the petition demonstrated that the proposed addition will facilitate needed development on adjacent existing urban land, subject to the aforementioned condition of approval.

4. The petition complies with Metro Code section 3.01.035(c)(3), because the locational adjustment will have no impact on regional transit corridor development and will not have significant adverse energy, social and environmental consequences.

5. Metro Code section 3.01.035(c)(4) is inapplicable, because the subject property does not include agricultural land

6. The petition complies with Metro Code section 3.01.035(c)(5), because the petition demonstrates that urban uses on the subject property will not conflict with existing agricultural activities.

7. The average density requirement of Metro Code section 3.01.035(c)(6) is inapplicable to this institutional site.

8. The petition does comply with the Regional Framework Plan and implementing policies. Metro Code section 3.01.035(d).

9. The locational adjustment will result in a superior UGB, Metro Code section 3.01.035(g)(2), because it results in a net improvement in school service and facilitates development on adjacent urban land.

10. The petition includes all similarly situated contiguous land outside the UGB, Metro Code section 3.01.035(g)(3).

11. For the foregoing reasons, the Metro Council hereby declares its intention to approve the petition in Contested Case 01-01, subject to applicable requirements of the Metro Code for an ordinance amending the UGB and the following condition:

Before the effective date of an ordinance amending the UGB to include the subject property, the owner of the property shall provide proof that it has filed a covenant in the deeds records for Washington County, in a form acceptable to Metro General Counsel, requiring that the subject property shall continue to provide school services. For purposes of this covenant, "school services" shall be defined to mean "a comprehensive educational program similar to that offered in public pre-school, grade, middle and/or high schools with capacity for 200 or more students. The covenant shall expire automatically when the subject property is surrounded by land in the UGB. The Metro Council or their successors in interest may enforce the covenant. The Metro Council or their successors in interest may approve amendments to or deletion of the covenant if it finds such amendments or deletion continues to assure the use of the subject property will result in a net increase in the efficiency of public services to land already in the UGB when such amendment or deletion is proposed.

An application to amend or delete the covenant shall be subject to applicable fees and standards for a locational adjustment or closest equivalent process at the time of application.

ATTACHMENT "A" TO THE FINAL ORDER
IN THE MATTER OF CONTESTED CASE 01-01 (Christian Life Center) :
EXHIBITS

| <u>Exhibit No.</u> | <u>Subject matter</u> |
|--------------------|--|
| 1 | Petition for locational adjustment and attached exhibits |
| 2 | Hillsboro School Dist. Service Provider Comment dated March 7, 2001 |
| 3 | Tualatin Valley Fire and Rescue Service Provider Comment dated March 20, 2001 |
| 4 | Letter from M. Weber, Metro, to W. Cox dated March 20, 2001 |
| 5 | Tri Met Service Provider Comment dated March 26, 2001 |
| 6 | Letter from Washington County DLUT re pending Service Provider Comment dated March 28, 2001 |
| 7 | Letter from W. Cox to M. Weber, Metro dated April 2, 2001 |
| 8 | Letter from W. Cox to Metro Councilor D. Bragdon dated April 2, 2001 |
| 9 | Unified Sewerage Agency Service Provider Comment dated April 2, 2001 |
| 10 | Letter from M. Weber, Metro, to W. Cox dated April 9, 2001 |
| 11 | Metro Staff Report dated June 1, 2001 with attachments |
| 12 | Letter from DLCD to L. Epstein dated June 5, 2001 |
| 13 | Notice of Hearing |
| 14 | Letter from A. Rappleyea, Washington County Counsel, to L. Epstein dated July 5, 2001 |
| 15 | Letter from W. Rienas to L. Epstein dated July 10, 2001 |
| 16 | Petitioner's Supplemental Information, dated July 23, 2001 and attachments |
| 17 | Letter from W. Cox to M. Weber, Metro dated July 23, 2001 |
| 18 | Addendum to the Metro Staff Report dated August 13, 2001 |
| 19 | Letter from W. Cox to L. Epstein dated August 27, 2001 |
| 20 | Letter from Beaverton School District to L. Epstein dated September 5, 2001 |
| 21 | Letter from W. Cox to L. Epstein dated September 10, 2001 |
| 22 | Letter from Representative Bruce Starr to L. Epstein dated September 10, 2001 |
| 23 | Letter from Senator Charles Starr to L. Epstein dated September 10, 2001 |
| 24 | Washington County Hearings Officer Decision Casefile 96-288-SU/SU/D(INS) dated August 15, 1996 |
| 25 | Washington County Hearings Officer Decision Casefile 98-206-SU/D(INS) dated August 4, 1998 |
| 26 | Religious Land Use and Institutionalized Persons Act of 2000 |

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF EXPRESSING) RESOLUTION NO. 02-3153
COUNCIL INTENT TO AMEND THE URBAN)
GROWTH BOUNDARY FOR LOCATIONAL)
ADJUSTMENT CASE 01-1: CHRISTIAN LIFE) Introduced by Mike Burton,
CENTER CHURCH) Executive Officer

WHEREAS, Metro received a petition for a locational adjustment for 13.57 acres located within Washington County at 5585 SW 209th Avenue in Aloha, as shown in Exhibit A;

WHEREAS, Metro staff reviewed and analyzed the petition, and completed a written report to the Hearings Officer, recommending denial of the petition due to insufficient evidence demonstrating that the proposed Urban Growth Boundary (UGB) is superior to the UGB as presently located; and

WHEREAS, Metro held a hearing to consider the petition on June 11, 2001, conducted by an independent Hearings Officer; and

WHEREAS, The Hearings Officer continued the hearing until August 27, 2001, to allow the petitioner to submit additional information; and

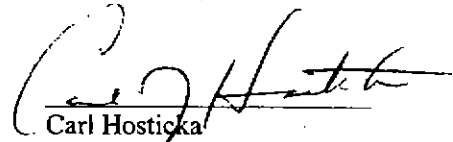
WHEREAS, The Hearings Officer submitted his report on October 11, 2001, recommending approval of the petition for 13.57 acres subject to a condition of approval; now therefore,

BE IT RESOLVED, THAT THE METRO COUNCIL


1. Based on the findings in Exhibit B attached hereto, expresses its intent to adopt an ordinance amending the Urban Growth Boundary as shown in Exhibit A attached hereto, within 30 calendar days of receiving notification that the property has been annexed to Metro, provided such notification is received within six (6) months of the date on which the resolution is adopted, and

2. Approves and endorses the request by the owners of the land and elector residing on the land that the subject property be annexed to Metro.

ADOPTED by the Metro Council this 7th day of February, 2002.


Carl Hosticka
Presiding Officer

Approved as to Form:


Daniel B. Cooper
General Counsel



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BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ANNEXING)
LANDS CONTAINING THE)
CHRISTIAN LIFE CENTER CHURCH)
TO THE METRO JURISDICTIONAL)
BOUNDARY)
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ORDINANCE NO. 02-941

Introduced by:
Councilor Susan McLain

WHEREAS, the duty and authority to review and approve annexations to the Metro jurisdictional boundary is granted to Metro pursuant to Oregon Revised Statute 268.354 (3) (c); and

WHEREAS, Metro received a complete petition from the property owners and registered voters of a certain tract of land depicted on the attached map and described in Exhibit A to this ordinance, requesting that their property be annexed to Metro; and

WHEREAS, Metro received written consent from a majority of the electors in the territory to be annexed and owners of more than half the land in the territory proposed to be annexed, as required by ORS 198.855 (3); and

WHEREAS, Metro Council in Resolution No. 02-3153 has expressed its intent to adopt an ordinance amending the Urban Growth Boundary to include the territory described in Exhibit A within 30 days of receiving notification that the territory has been annexed to Metro; and

WHEREAS, a report was prepared as required by law and Metro having considered the report and the testimony at the public hearing, does hereby favor annexation of the subject property based on the findings and reasons for decision attached hereto as Exhibit B; now therefore

THE METRO COUNCIL ORDAINS;

1. The territory described in Exhibit A and depicted on the attached map is hereby annexed to the Metro jurisdictional boundary.
2. Pursuant to Metro Code 3.09.050 (f), the effective date of this annexation decision shall be immediately upon adoption of this ordinance.

3. This ordinance is necessary for the immediate preservation of public health, safety and welfare because it is necessary to allow the Council to subsequently change the Urban Growth Boundary in a timely fashion. 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 _____ 2002.

Carl Hosticka, Presiding Officer

ATTEST:

Approved as to Form

Recording Secretary

Daniel Cooper, General Counsel

STAFF REPORT

FOR THE PURPOSE OF AMENDING THE URBAN GROWTH BOUNDARY FOR LOCATIONAL ADJUSTMENT CASE 01-1: CHRISTIAN LIFE CENTER CHURCH

Date: April 4, 2002

Prepared by: Tim O'Brien, Planning Department

I. PROPOSED ACTION

Adoption of Ordinance No. 02-944, For The Purpose of Amending the Urban Growth Boundary for Locational Adjustment Case 01-1: *Christian Life Center Church*. The proposed amendment area is shown on Exhibit A.

II. BACKGROUND AND ANALYSIS

On March 15, 2001, the Christian Life Center Church filed a petition for a 13.57-acre locational adjustment to the Urban Growth Boundary (UGB). The site consists of one tax lot in Washington County at 5585 SW 209th Avenue, Aloha. The subject property is zoned AF-10 (Agriculture and Forestry District-10 acre minimum) by Washington County. The site is currently used as a church with associated recreational activities and educational ministries.

The Hearings Officer, Larry Epstein, conducted a public hearing at the Washington County Public Services Building on June 11, 2001. The hearing was continued until August 27, 2001. The Hearings Officer submitted a report and recommendation to Metro on October 11, 2001, recommending approval of the petition subject to a condition of approval. The condition of approval, as recommended by the Hearings Officer is as follows:

Before the effective date of an ordinance amending the UGB to include the subject property, the owner of the property shall provide proof that it has filed a covenant in the deed records for Washington County, in a form acceptable to Metro General Counsel, requiring that the subject property shall continue to provide school services. For purposes of this covenant, "school services" shall be defined to mean "a comprehensive educational program similar to that offered in public pre-school, grade, middle and/or high schools with capacity for 200 or more students. The covenant shall expire automatically when the subject property is surrounded by land in the UGB. The Metro Council or their successors in interest may enforce the covenant. The Metro Council or their successors in interest may approve amendments to or deletion of the covenant if it finds such amendments or deletion continues to assure the use of the subject property will result in a net increase in the efficiency of public services to land already in the UGB when such amendment or deletion is proposed. An application to amend or delete the covenant shall be subject to applicable fees and standards for a locational adjustment or closest equivalent process at the time of application.

III. PREVIOUS COUNCIL ACTION

On February 7, 2002, the Metro Council adopted Resolution No. 02-3153, expressing its intent to amend the Urban Growth Boundary within 30 days of receiving notification that the property has been annexed to Metro, provided such notification is received within six (6) months of the date on which the resolution is adopted.

On April 18, 2002, the Metro Council adopted Ordinance No. 02-941, for the purpose of annexing lands containing the Christian Life Church to the Metro jurisdictional boundary.

IV. BUDGET IMPACT

There is no budget impact from adopting this ordinance.