

A G E N D A

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736
TEL 503 797 1542 | FAX 503 797 1793



METRO

Agenda

MEETING: METRO COUNCIL REGULAR MEETING - revised 11/20/02
DATE: November 21, 2002
DAY: Thursday
TIME: 2:00 PM
PLACE: Metro Council Chamber

CALL TO ORDER AND ROLL CALL

1. INTRODUCTIONS

2. CITIZEN COMMUNICATIONS

3. CONSENT AGENDA

3.1 Consideration of Minutes for the November 14, 2002 Metro Council Regular Meeting.

4. ORDINANCES - FIRST READING

4.1 **Ordinance No. 02-965**, For the purpose of Amending Chapter 2.02 Personnel Rules, of the Metro Code to conform to the Metro Charter amendments adopted on November 7, 2000, and Declaring an Emergency.

4.2 **Ordinance No. 02-969**, For the Purpose of Amending the Metro Urban Growth Boundary, the Regional Framework Plan and the Metro Code in order to Increase the Capacity of the Boundary to Accommodate Population Growth to the Year 2022; and Declaring an Emergency (**PUBLIC HEARING**)

4.3 **Ordinance No. 02-983**, For the Purpose of Amending the Metro Urban Growth Boundary to add land for a specific type of industry near specialized facilities north of Hillsboro; and Declaring an Emergency.

4.4 **Ordinance No. 02-984**, For the Purpose of Amending the Metro Urban Growth Boundary to add Land for a public school in Study Area 85; and Declaring an Emergency.

4.5 **Ordinance No. 02-985**, For the Purpose of Amending the Metro Urban Growth Boundary in the Vicinity of the City of Forest Grove by Adding and Deleting an Equivalent Amount of Land; and Declaring an Emergency

- 4.6 **Ordinance No. 02-986**, For the Purpose of Amending the Metro Urban Growth Boundary to Add land for a road improvement in the Sherwood Area, East of the Pacific Highway and North of the Tualatin-Sherwood Road; and Declaring an Emergency.
- 4.7 **Ordinance No. 02-987**, For the Purpose of Amending the Metro Urban Growth Boundary to add land in the Bethany area; and Declaring an Emergency.
- 4.8 **Ordinance No. 02-988**, For the Purpose of Establishing Regional Fiscal Policies Regarding Land Added to the Metro Urban Growth Boundary and Implementation of the 2040 Growth Concept; and Declaring an Emergency.

5. ORDINANCES - SECOND READING

- 5.1 **Ordinance No. 02-966A**, For the Purpose of Amending Chapter 2.04 Metro Contract Policies of the Metro Code to Conform to the Metro Charter Amendments Adopted on November 7, 2000, and Declaring an Emergency. Monroe
- 5.2 **Ordinance No. 02-967**, For the Purpose of Amending Title II Administration and Procedures (Chapter 2.03, 2.05, 2.06, 2.07, 2.09, 2.11, 2.12, 2.14, 2.15, 2.16, 2.17 and 2.18), of the Metro Code to Conform to the Metro Charter Amendments Adopted on November 7, 2000, and Declaring an Emergency. Bragdon
- 5.3 **Ordinance No. 02-972A**, For the Purpose of Amending Title III Planning of the Metro Code (Chapter 3.01 through Chapter 3.09), to Conform to the Metro Charter Amendments Adopted on November 7, 2000, and Declaring an Emergency. Monroe
- 5.4 **Ordinance No. 02-973**, For the Purpose of Amending Title IV Oregon Zoo of the Metro Code (Chapter 4.01), to Conform to the Metro Charter Amendments Adopted on November 7, 2000, and Declaring an Emergency. Bragdon
- 5.5 **Ordinance No. 02-974**, For the Purpose of Amending Title V Solid Waste of the Metro Code (Chapter 5.01 through Chapter 5.09) to Conform to the Metro Charter Amendments Adopted on November 7, 2000, and Declaring an Emergency. Monroe
- 5.6 **Ordinance No. 02-975**, For the Purpose of Amending Title VI Commissions of the Metro Code (Chapter 6.01), to Conform to the Metro Charter Amendments Adopted on November 7, 2000, and Declaring an Emergency. Bragdon
- 5.7 **Ordinance No. 02-976**, For the Purpose of Amending Title VII Excise Taxes and Title VIII Financing Powers and Chapter 2.06 Investment Policy of the Metro Code, to Conform to the Metro Charter Amendments Adopted on November 7, 2002, and Declaring an Emergency. Monroe
- 5.8 **Ordinance No. 02-977**, For the Purpose of Amending Title IX Elections of the Metro Code (Chapter 9.01 and Chapter 9.02), to Conform to the Metro Charter Amendments Adopted on November 7, 2000, and Declaring an Emergency. Bragdon

- 5.9 **Ordinance No. 02-978**, For the Purpose of Amending Title X Metro Parks and Monroe Greenspaces of the Metro Code (Chapter 10.01 through Chapter 10.03), to Conform to the Metro Charter Amendments Adopted on November 7, 2000, and Declaring an Emergency.

6. COUNCILOR COMMUNICATION

ADJOURN

Cable Schedule for Week of November 21, 2002 (TVTV)

	Sunday (11/24)	Monday (11/25)	Tuesday (11/26)	Wednesday (11/27)	Thursday (11/21)	Friday (11/22)	Saturday (11/23)
CHANNEL 11 (Community Access Network) (most of Portland area)						2:00 PM	
CHANNEL 21 (TVTV) (Washington Co., Lake Oswego, Wilsonville)	12:00 PM			7:00 PM 11:00 PM		7:00 PM 11:00PM	
CHANNEL 30 (TVTV) (NE Washington Co. - people in Wash. Co. who get Portland TCI)	12:00 PM			7:00 PM 11:00 PM		7:00PM 11:00PM	
CHANNEL 30 (CityNet 30) (most of City of Portland)	8:30 PM (previous meeting)						
CHANNEL 30 (West Linn Cable Access) (West Linn, Rivergrove, Lake Oswego)	4:30 PM			5:30 AM	1:00 PM 5:30 PM	3:00 PM	
CHANNEL 33 (ATT Consumer Svcs.) (Milwaukie)		10:00 AM 2:00 PM 9:00 PM					

PLEASE NOTE THAT ALL SHOWING TIMES ARE TENTATIVE BASED ON THE INDIVIDUAL CABLE COMPANIES' SCHEDULES. PLEASE CALL THEM OR CHECK THEIR WEB SITES TO CONFIRM SHOWING TIMES.

<i>Portland Cable Access</i>	www.pcatv.org	<i>(503) 288-1515</i>
<i>Tualatin Valley Television</i>	www.tvca.org	<i>(503) 629-8534</i>
<i>West Linn Cable Access</i>	www.ci.west-linn.or.us/CommunityServices/htmls/wltvsked.htm	<i>(503) 722-3424</i>
<i>Milwaukie Cable Access</i>		<i>(503) 654-2266</i>

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| 5.3 | Ordinance No. 02-972 , For the Purpose of Amending Title III Planning of the Metro Code (Chapter 3.01 through Chapter 3.09), to Conform to the Metro Charter Amendments Adopted on November 7, 2000, and Declaring an Emergency. | Governmental Affairs Com. |
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Consideration of the November 14, 2002 Regular Metro Council Meeting minutes.

**Metro Council Meeting
Thursday, November 21, 2002
Metro Council Chamber**

Agenda Item Number 4.1

Ordinance No. 02-965, For the purpose of Amending Chapter 2.02 Personnel Rules, of the Metro Code to conform to the Metro Charter amendments adopted on November 7, 2000, and Declaring an Emergency.

First Reading

**Metro Council Meeting
Thursday, November 21, 2002
Metro Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING CHAPTER 2.02) ORDINANCE NO. 02-965
PERSONNEL RULES, OF THE METRO CODE TO)
CONFORM TO THE METRO CHARTER)
AMENDMENTS ADOPTED ON NOVEMBER 7, 2000,) Introduced by the Council Governmental
AND DECLARING AN EMERGENCY) Affairs Committee

WHEREAS, on November 7, 2000, the electors of Metro approved Ballot Measure 26-10 amending the Metro Charter; and

WHEREAS, the Metro Charter Amendments, created the Office of Council President and abolished the Office of the Executive Officer; and

WHEREAS, the Metro Council amended Metro Code Chapter 2.01 to reflect the creation of the office of Metro Council President pursuant to Ordinance No. 02-954A on June 27, 2002; and

WHEREAS, the Metro Charter Amendments required the Metro Council to create the Office of the Chief Operating Officer; and

WHEREAS, the Metro Charter Amendments, added Metro Code Chapter 2.20 to create the office of Chief Operating Officer and to define the duties and responsibilities of the Chief Operating Officer, pursuant to Ordinance No. 02-942A on June 27, 2002; and

WHEREAS, the Metro Charter Amendments required the Council to create the Office of the Metro Attorney; and

WHEREAS, the Metro Council amended Chapter 2.08 of the Metro Code to create the office of the Metro Attorney and to define the duties and responsibilities of the Metro Attorney, pursuant to Ordinance No. 02-953A on June 27, 2002; and

WHEREAS, it is necessary to amend Chapter 2.02 of the Metro Code to conform to the Metro Charter Amendments adopted on November 7, 2000; and

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The Metro Code Chapter 2.02, Personnel Rules, is amended as provided for and is attached as Exhibit A.
2. The Metro Charter Amendments to the Metro Code adopted by this ordinance shall take effect on January 6, 2003.
3. Effective January 6, 2003, any reference to the Executive Officer in any existing collective bargaining agreement or employment agreement shall be deemed to be a reference to the Chief Operating Officer. The Chief Operating Officer has the authority to take any action under any collective bargaining agreement or employment agreement that can be taken by the Executive Officer.

ADOPTED by the Metro Council this _____ day of _____ 2002.

Carl Hosticka, Presiding Officer

Attest:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, General Counsel

2.02.195	Personnel Records
2.02.200	Grievance Procedure
2.02.205	Service Awards
2.02.210	Education, Training and Development Policy
2.02.215	Drug/Alcohol Abuse Policy
2.02.220	Smoking Policy
2.02.225	Conference, Memberships and Conventions
2.02.230	Employee Organizations and Representation
2.02.235	Political Activity
2.02.240	Ethical Requirements for Employees, Officers, Elected and Appointed Officials
2.02.245	Zoo Visitor Services Employees
2.02.250	Volunteers
2.02.255	Acknowledgment of Receipt of Personnel Policies
2.02.300	Personnel Rules for Represented Employees
2.02.305	Purpose
2.02.310	Administration of the Rules
2.02.315	Amendment
2.02.320	Separability
2.02.325	Definitions of Personnel Terms
2.02.330	Position Classification Plan
2.02.335	New Positions
2.02.340	New Classifications
2.02.345	Reclassification of Existing Positions
2.02.350	Pay Plans
2.02.355	Salary Administration
2.02.360	Pay Policies
2.02.365	Affirmative Action Policy
2.02.370	Nepotism
2.02.375	Internal Recruitment
2.02.380	Probationary Period
2.02.385	Job Share
2.02.390	Orientation
2.02.395	Workers' Compensation Insurance
2.02.400	Transfers
2.02.405	Sick Leave Transfer
2.02.410	Family Medical Leave
2.02.415	Pregnancy Leave/Transfer
2.02.420	Parental Leave
2.02.425	Preamble: Conduct, Discipline, Termination and Appeal
2.02.430	Disciplinary Actions
2.02.435	Resignation
2.02.440	Service Awards
2.02.445	Education Opportunities
2.02.450	Smoking Policy
2.02.455	Conference, Memberships and Conventions
2.02.460	Employee Organizations and Representation
2.02.465	Political Activity
2.02.470	Acknowledgment of Receipt of Personnel Policies

2.02.001 Personnel Rules For Non-Represented Employees

Sections 2.02.001 to 2.02.299 of this Metro Code shall be known as and may be cited as the "Metro Personnel Rules for Non-Represented Employees." As used in Sections 2.02.001 to 2.02.299, references to "rules" or "chapter" shall be deemed to be references to these Metro Personnel Rules for Non-Represented Employees. (Ordinance No. 94-523B)

2.02.005 Purpose

The purpose of this chapter is:

- (a) To provide and maintain a system of personnel administration for all non-represented employees, seasonal employees, and temporary employees in which the appointment and retention of persons in Metro employment shall be achieved on the basis of promoting the public welfare and implementing Metro's responsibilities.
- (b) To establish and maintain a position classification plan which shall group all positions into classifications based upon their duties and responsibilities.
- (c) To provide for a compensation plan which shall include for each classification a minimum and/or maximum salary rate and such intermediate salary rates as the Council considers necessary and equitable.
- (d) To promote efficiency, economy and public responsiveness in the operation of Metro.
- (e) To provide that the employees covered by these rules shall be subject to proper employee conduct, the satisfactory performance of work and the availability of funds.
- (f) The provisions in this chapter do not constitute a contract of employment. Moreover, in order to meet future challenges, the Council retains the flexibility to change, substitute, and discontinue the policies and benefits described herein, at any time, with or without notice to employees. No person shall be deemed to have a vested interest in, or legitimate expectation of, continued employment with Metro, or any policy or benefit described herein or otherwise generally followed by Metro. No contract of employment can be created, nor can an employee's status be modified, by any oral or written agreement (except a valid collective bargaining agreement), or course of conduct, except by a written agreement signed by the Council President or Chief Operating Officer Executive Officer and the employee, and subject to the any approval of the Council requirements for contracts established by the Metro Code.
- (g) Nothing contained in this section or elsewhere in the chapter shall be construed as any guarantee of hours worked per day or per week.

(Ordinance No. 81-116, Sec. 1. Amended by Ordinance No. 94-523B)

2.02.010 Administration of the Rules

- (a) The ~~Chief Operating Officer Executive Officer~~ shall be responsible for:

the same rate of pay, based upon the duties currently assigned to an existing position or to be assigned for a vacant position. If the position is filled, the incumbent employee is reclassified along with the position.

(cc) "Regular employee" means an employee who has successfully completed the required initial probationary period occupying a permanent position.

(dd) "Reinstatement" means the return of an employee to a position following a separation of employment.

(ee) "Represented employee" means an employee who is in a recognized or certified bargaining unit.

(ff) "Resignation" means voluntary separation from employment.

(gg) "Seasonal employee" means an employee who is employed during peak seasons of the year and who may be scheduled as needed during the remainder of the year.

(hh) "Separation" is the cessation of employment with Metro not reflecting discredit upon the employee.

(ii) "Status" refers to the standing of an employee.

(jj) "Temporary employee" means a nonstatus employee appointed for the purpose of meeting emergency, nonrecurring or short-term workload needs, or to replace an employee during an approved leave period, for a period not to exceed 1,044 hours within a fiscal year, excluding interns, work-study students, and CETA employees, or similar federal and state employment programs.

(kk) "Termination" means the cessation of employment with Metro.

(ll) "Volunteer" means an individual serving in a non-paid voluntary status.

(mm) "Work schedule" means the assignment of hours of work by a supervisor.

(Ordinance No. 81-116, Sec. 6. Amended by Ordinance No. 94-523B; Ordinance No. 95-602A, Sec. 1)

2.02.035 Position Classification Plan

(a) The purpose of the classification plan is to provide an inventory of specifications for each classification. The plan shall be developed and maintained so that all positions substantially similar with respect to duties, responsibilities, authority and qualifications are included within the same class, and so that the same range of compensation will apply. Each permanent position shall be allocated to an appropriate classification on the basis of the duties and responsibilities of the position.

(b) Classification titles shall be used in all personnel, budget and financial records.

(c) The classification plan shall cover permanent full-time and permanent part-time positions, as adopted and amended by the Council.

- (1) Administering or delegating the administration of all the provisions of this chapter, and whenever a question arises as to the meaning or interpretation of provisions of this chapter, the interpretation given by the Chief Operating Officer Executive Officer or his/her designee shall be final and binding.
- (2) Reviewing and recommending to the Council necessary changes to this chapter.
- (3) Publishing a Personnel Procedures Manual to implement the provisions of this chapter.

(b) The Metropolitan Exposition-Recreation Commission shall adopt personnel rules consistent with and subject to Sections 6.01.040(h) and (m) of the Code notwithstanding any provision of this chapter to the contrary. For this purpose, the authority and duties of the Chief Operating Officer Executive Officer to employ, manage and terminate employees referred to in this chapter shall reside with the commission for employees of the commission.

(Ordinance No. 81-116, Sec. 2. Amended by Ordinance No. 87-232, Sec. 1; Ordinance No. 89-325A, Sec. 3; Ordinance No. 94-523B)

2.02.015 Amendment

This chapter shall be amended solely by the Council, however, administrative amendments which deal solely with correcting grammatical or typographical errors, or correcting position titles to reflect properly processed reclassifications and title changes may be approved by the Chief Operating Officer Executive Officer. All proposed amendments to this chapter and/or benefit changes will be required to be adopted by the Council. ~~If practical, copies of proposed amendments shall be provided to all directors of departments at least 10 days in advance of the council meeting in which they are to be considered.~~

(Ordinance No. 81-116, Sec. 3, Amended by Ordinance No. 94-523B)

2.02.020 Separability

~~If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter.~~

(Ordinance No. 81-116, Sec. 4)

2.02.025 Exemptions

~~— (a) — Notwithstanding any provision of this chapter, council employees shall be exempt from and shall not be subject to this chapter except as expressly determined by a resolution adopted by the council, limited however to budgeted funds allocated to the council department.~~

~~— (b) — Notwithstanding any provision of this chapter, employees in the office of the Executive Officer shall be exempt from and shall not be subject to this chapter except as expressly determined in writing by the Executive Officer, limited however to budgeted funds allocated to the office of the Executive Officer.~~

(ae) Notwithstanding any provision of this chapter, employees in the Office of Auditor shall be exempt from and shall not be subject to this chapter except as expressly determined in writing by the Auditor, limited however to budgeted funds allocated to the Office of Auditor.

(Ordinance No. 81-116, Sec. 46. Amended by Ordinance No. 94-523B)

2.02.030 Definitions of Personnel Terms

For the purposes of this chapter unless the context requires otherwise the following terms shall have the meanings indicated:

(a) "Auditor" means the elected Auditor of Metro or his/her designee.

~~_____ (b) "Council" means the elected governing body of Metro.~~

(be) "Chief Financial Officer" means the person responsible for managing the financial affairs and budget of Metro and designated as such by the Chief Operating Officer.

~~_____ (c) "Chief Operating Officer" means the person holding the position of Chief Operating Officer established by Section 2.20.010 of the Metro Code.~~

~~_____ (d) "Council" means the elected governing body of Metro.~~

(ed) "Department" means a major functional unit of Metro as designated by the Chief Operating Officer.

(fe) "Department Director" means a person designated by the Chief Operating Officer to be responsible for the administration of a department or his/her designee.

(gf) "Division" means a major functional unit of a department.

(hg) "Employee" means an individual who is salaried or who receives wages for employment with Metro.

~~_____ (h) "Executive Officer" means the elected Executive Officer of Metro or his/her designee.~~

(i) "Exempt position" means a position exempt from mandatory overtime compensation.

(j) "Fiscal year" means a 12-month period beginning July 1 and ending June 30.

(k) "Flexible work schedule" means an alternative work schedule other than the established normal work schedule, but which includes the same number of total hours per pay period as other full-time positions.

(l) "Full-time" means a position in which the scheduled hours of work are 40 hours per week and which is provided for in the adopted budget.

(m) "Hourly rate" means the rate of compensation for each hour of work performed.

- (n) "Immediate family" means the husband, wife, son, daughter, father, mother, brother, sister, father-in-law, mother-in-law, grandparents or any relative living in the employee's household.
- (o) "Layoff" means a separation from employment because of organizational changes, lack of work, lack of funds, or for other reasons not reflecting discredit upon the employee.
- (p) "Non-exempt" position means a position that is eligible for overtime compensation.
- (q) "Non-represented employee" means an employee who is not in a recognized or certified bargaining unit.
- (r) "Part-time" means a position in which the scheduled hours of work are less than 40 hours per week but at least 20 hours or more per week and which is provided for in the adopted budget.
- (s) "Permanent employee" means an employee who is appointed to fill a budgeted position and who is not temporary or seasonal. However, the term permanent does not confer any form of tenure or other expectation of continued employment.
- (t) "Permanent position" means a budgeted position which is not temporary or seasonal. However, the term permanent does not confer any form of tenure or other expectation of continued employment.
- (u) "Personnel action" means the written record of any action taken affecting the employee or the status of his/her employment.
- (v) "Personnel Director" means the employee appointed by the Chief Operating Officer ~~Executive Officer~~ to administer the provisions of this chapter regardless of whether the person is also a ~~D~~department ~~D~~director.
- (w) "Personnel file" means an employee's official personnel file which is kept in the office of personnel.
- (x) "Personnel Procedures Manual" means a manual developed by the office of personnel and approved by the Chief Operating Officer ~~Executive Officer~~ to implement the policies and provisions of this chapter.
- (y) "Probationary period" means a continuation of the screening process during which an employee is required to demonstrate fitness for the position to which the employee is appointed or promoted. Successful completion of any probationary period is for Metro's internal screening process only and does not confer any form of tenure or other expectation of continued employment.
- (z) "Probationary employee" means an employee serving any period of probation.
- (aa) "Promotion" means the change of an employee from a position in one classification to a position in another classification having a higher maximum salary rate.
- (bb) "Reclassification" means a change in classification of a position by raising it to a class with a higher rate of pay, reducing it to a class with a lower rate of pay, or changing it to another class at

(d) The Chief Operating Officer ~~Executive Officer~~ or his/her designee shall establish administrative procedures to implement the classification and pay plans. The Chief Operating Officer ~~Executive Officer~~ may make administrative changes to classification specifications, title, and classification numbers. The Chief Operating Officer, ~~Executive Officer~~ with prior notice to the Metro Council, may annually revise salary ranges by an amount not to exceed the percentage increase to the National Consumers Price Index-W (Urban Wage Earners) calculated annually from March to March.

[POLICY NOTE: COUNCIL APPROVAL OF COLA? WHICH COLA?. DBC]

(Ordinance No. 81-116, Sec. 23. Amended by Ordinance No. 94-523B; Ordinance No. 97-707, Sec. 1.)

2.02.040 New Positions

Any new positions added to the budget require Council approval.

(Ordinance No. 81-116, Sec. 25. Amended by Ordinance No. 94-523B)

2.02.045 New Classifications

Any new classification added to the classification plan requires Council approval.

(Ordinance No. 81-116, Sec. 26. Amended by Ordinance No. 94-523B)

2.02.050 Reclassification of Existing Positions

Reclassification of an existing position from one existing classification to another existing classification may be approved by the Chief Operating Officer ~~Executive Officer~~ provided the reclassification can be accomplished with the limitations of the current budget.

(Ordinance No. 81-116, Sec. 27. Amended by Ordinance No. 94-523B)

2.02.055 Pay Plans

(a) The Chief Operating Officer ~~Executive Officer~~ shall prepare pay plans for permanent positions and seasonal appointments which shall establish a salary range with a minimum and a maximum salary rate of pay appropriate for each class. The pay plans shall be approved by the Council. The pay plans shall establish the eligibility of each classification to receive overtime compensation as indicated by exempt or non-exempt status.

(b) The pay plans shall equitably reflect the difference in duties and responsibilities, and shall be related to compensation for comparable positions within the job market.

(c) The Chief Operating Officer ~~Executive Officer~~ shall review the pay plans annually and include recommended revisions within his/her proposed budget. Said review may cover such items as changes in the Consumer Price Index and in salaries and benefits received by employees in the labor market.

(d) The Chief Operating Officer ~~Executive Officer~~ shall administer the pay plans based on the need and expectations of Metro along with suitable employee performance.

(e) The Chief Operating Officer ~~Executive Officer~~ may propose an agency-wide classification/compensation study for non-represented employees to assess classifications and evaluate compensation. The implementation of study recommendations require Council approval.

(Ordinance No. 81-116, Sec. 29. Amended by Ordinance No. 94-523B)

2.02.060 Salary Administration

(a) Current salary shall be used to calculate merit increases. Any annual revisions to the pay plans shall be added to the salary range of a classification, shall be cumulative, and shall be added to an employee's individual rate of pay. However, no employee's rate of pay shall be lower than the beginning rate of a salary range after a fiscal adjustment is made.

(b) Administrative Policies

- (1) Upon initial appointment to a position, each employee should receive a salary at or 5 percent above the beginning salary rate of the salary range for the class to which the position is allocated. Appointment at or 5 percent above the beginning salary rate should be the general practice, with appointments above that level being the exception for outstanding qualifications and experience, and subject to departmental personal services budget resources and approval of the hiring Department Director with concurrent notification to the Chief Operating Officer ~~Executive Officer~~.
- (2) Employees hired at or promoted to the beginning salary rate of a salary range shall receive a 5 percent salary increase after successful completion of six continuous months of probationary service. The increase of 5 percent shall be initiated by the office of personnel on the appropriate date. When an employee is appointed over the 5 percent above the beginning salary rate he/she is not eligible for a salary increase for one year, unless the Chief Operating Officer ~~Executive Officer~~ approves an extra meritorious salary increase based on outstanding performance after successful completion of six consecutive months of probationary service.
- (3) After an employee has reached 5 percent above the beginning salary rate, he/she is eligible for annual merit increases in 1 percent increments, not to exceed a total of 8 percent in any evaluation year, up to and including the maximum salary rate shown for the assigned salary range based on satisfactory performance which shall be effective on his/her anniversary date only.
- (4) All merit increases have to be authorized and approved by the Department Director and reviewed as to form by the Personnel Director prior to implementation. A decision by the Department Director to grant or withhold a merit increase will be communicated to the employee in writing.
- (5) Merit increases (except as noted in subsection (b)(2) of this section) must be submitted to the Personnel Director with a performance evaluation. Department Directors shall make every effort to complete the employee's evaluation by the employee's anniversary date. If the evaluation is not completed

by that date, any merit increase assigned shall be retroactive to the employee's anniversary date not to exceed one year of retroactivity.

- (6) Criteria to be considered in recommending and granting merit increases should include but not be limited to:
 - (A) Planning and organizing work, and meeting deadlines.
 - (B) Competency and judgment.
 - (C) Growth in and ability to handle job responsibilities.
 - (D) Attitude.
 - (E) Specific actions toward self-improvement, as necessary.
 - (F) Recognition of excellence.
 - (G) Productivity increases of tangible quantities and/or qualities.
 - (H) Creative and innovative contributions.
 - (I) Cost and budgetary savings realized, if any.
 - (J) Affirmative Action & EEO responsibilities.
 - (K) Safety practices.
- (7) The Personnel Director shall review performance evaluations to assure that appropriate criteria are included.
- (8) When an employee is promoted or reclassified to a position in a classification with a higher maximum salary rate, the employee shall be placed on the beginning salary rate of the salary range or receive an increase of 5 percent, whichever is greater.
- (9) A promoted employee shall receive a 5 percent increase upon successful completion of his/her six-month probationary period. The anniversary date shall be changed to reflect the effective date of the completion of this probation.
- (10) A reclassified employee shall not serve a probationary period. An employee reclassified to a position in a classification with a higher maximum salary rate shall not receive a salary increase after completion of six months in the new classification. The employee's anniversary date shall reflect the effective date of the reclassification.
- (11) When an employee is reclassified to a position in a classification with a lower maximum salary rate, the employee's salary rate shall not be reduced as long as the employee's current salary rate is within the lower salary range. If the

employee's salary rate is above the new salary range, the employee's rate of pay shall remain the same (red-circled) until annual adjustments to the pay plan bring the employee's rate within the new classification range. At that time, the employee will become eligible for merit increases.

- (12) When an employee is voluntarily demoted to a position in a classification with a lower maximum salary rate, the employee's salary rate shall not be reduced as long as the employee's current salary rate is within the lower salary range. If the employee's salary rate is above the new salary range, the employee's salary will be reduced to the highest rate of the new range. In no case, shall an employee's current salary rate be increased upon voluntary demotion.

(c) A Department Director may assign an employee, in writing, to work "out of class." Whenever an employee is assigned to work temporarily in a higher classification for a period in excess of 10 consecutive work days, he/she shall be considered as working "out of class" in a higher position and shall be paid from the date of assignment at 5 percent above his/her current rate of pay or at the beginning salary rate in the range designated for the higher classification if the employee is at the top of his/her salary range. An employee shall not remain in an acting capacity for a period exceeding six months within a 12-month period. If a Department Director needs to extend the work out of class period beyond six months, extenuating circumstances must be given in writing to the Chief Operating Officer ~~Executive Officer~~ for approval and forwarded to the Personnel Director. A work out of class assignment, for up to six months, shall not be considered as time served for purposes of the effective date for reclassification or promotion.

(d) When, as part of a classification/compensation study, the salary range for any classification is increased, individual employees shall be placed within the new range at their current rate of pay or on the beginning salary rate of the new salary range if the beginning salary rate is higher than his/her current rate of pay without a change in the employee's established anniversary date.

(e) When the salary range for an entire classification is decreased as a part of a classification/compensation study, the rates of the incumbents in the positions shall be continued (red-circled) and no change in salary shall occur until the annual adjustments to the pay plan bring the employee's rates in the new class within the new range. At that time, incumbents will become eligible for salary adjustments.

(Ordinance No. 81-116, Sec. 32. Amended by Ordinance No. 94-523B; Ordinance No. 96-650A, Sec. 1)

2.02.065 Pay Policies

(a) Permanent employees shall be paid according to the pay plan adopted by the Council and administered by the Chief Operating Officer ~~Executive Officer~~.

(b) Employees shall be paid twice monthly.

(c) In the event the normal payday falls on a holiday, payday shall occur the workday before the holiday. If the normal payday falls on a Saturday or a Sunday, payday shall be the prior Friday.

(d) Payroll procedures shall be established and implemented by the finance and management information department, accounting division.

(e) Payroll deductions will be made for income tax withholding, Workers' Compensation insurance and employee contributions to employee benefits, and may be made for the United Way Fund, payments to the employee's credit union and other agencies as approved by the Chief Operating Officer ~~Executive Officer~~ at the request of the employee.

- (1) Charitable solicitations of Metro employees while on the job during working hours shall be conducted in compliance with this section. No other solicitations of Metro employees while on the job during working hours by a charitable organization shall be permitted.
- (2) The Chief Operating Officer ~~Executive Officer~~ with consultation of Metro employees shall by executive order establish rules and procedures to implement this section including procedures for applications, time and length of solicitation campaigns and payroll deductions. The procedures shall specify that all solicitations shall be made during a single campaign period lasting no longer than 30 days and that employees may sign payroll deduction cards for charitable donations only during a two-week period following the end of the solicitation campaign period. The Chief Operating Officer ~~Executive Officer~~ once each year shall certify all charitable organizations recognized by Metro for the purpose of conducting a fund drive among the employees of Metro. The Chief Operating Officer's ~~Executive Officer's~~ action shall be based on the criteria stated in subsection (3) of this section.
- (3) Charitable organizations recognized to conduct a fund drive among Metro employees while on the job during working hours shall:
 - (A) Be a fund-raising organization which raised funds for 10 or more charitable agencies.
 - (B) Disburse funds only to agencies whose charitable activities are primarily in the geographical areas of Metro and which have an office located within Metro ~~the district~~.
 - (C) Be exempt from taxation under Internal Revenue Service Code Section 501(c)(3).
 - (D) Be in compliance with the Charitable Trust and Corporation Act and the Oregon Solicitation Act (ORS 128.618 through 128.898). All charitable organizations who have made the required filings under such laws and have no enforcement action pending against them shall be presumed to be in compliance with such laws.
 - (E) Have a policy prohibiting discrimination in employment and fund distribution with regards to race, color, religion, national origin, handicap, age, sex and sexual preference in the charitable organization and all its grantee agencies.

(F) Provide an audited annual financial report to Metro for distribution to its employees 60 days prior to the charitable campaign.

(4) Payroll deductions for employee charitable contributions shall be allowed only for charitable organizations in compliance with this section.

(Ordinance No. 81-116, Sec. 33. Amended by Ordinance No. 89-302A, Sec. 1, 2, 3 and 4; Ordinance No. 94-523B)

2.02.070 Affirmative Action Policy

(a) Policy Statement. Metro states as its policy a commitment to provide equal employment opportunities without regard to race, color, religion, national origin, sex, age, disability, sexual orientation, or marital or familial status, except where a bona fide occupational qualification exists.

(b) Affirmative Action Program. The Ceouncil has adopted an affirmative action policy and program which is set forth in a separate document which is available throughout Metro facilities. All employees are encouraged to familiarize themselves with Metro's affirmative action policies.

(Ordinance No. 81-116, Sec. 53. Amended by Ordinance No. 94-523B)

2.02.075 Nepotism

Notwithstanding Metro's affirmative action policy and program, no member of an employee's family (husband, wife, son, daughter, mother, father, brother, sister, in-laws of any kind, aunt, uncle, niece, nephew, stepparent, or stepchild) shall be employed in a position of exercising supervisory, appointment, or grievance adjustment authority over the other family member.

(Ordinance No. 81-116, Sec. 19. Amended by Ordinance No. 94-523B)

2.02.080 Recruitment and Appointment

(a) All promotions and appointments to vacancies shall be based on the requirements of the position and organizational and operational needs.

(b) Recruitment efforts will be coordinated by the office of personnel in cooperation with the hiring department. Recruiting publicity will be distributed through appropriate media and/or other organizations to meet affirmative action guidelines. Such publicity will indicate that Metro is an affirmative action, equal opportunity employer and will be designed to attract a sufficient number of qualified applicants.

(c) Internal Recruitments. A regular employee who has successfully completed his/her initial probationary period may apply for vacant positions and will be considered as an internal applicant. Temporary employees must have completed a competitive recruitment and selection process through the office of personnel to be considered as an internal applicant. All applications will be considered without prejudice to their present positions. Regular, regular part-time and temporary employees who apply will be given first consideration in filling a vacant position. Notice of internal recruitment shall be posted not less than five working days to allow for receipt of applications.

(d) General Recruitment. If the vacancy is not filled as a result of internal recruitment, recruitment outside the agency will commence. The period of general recruitment shall be not less than 10 working days to allow for receipt of applications.

(e) Except as otherwise provided for in this Code, All-all appointments of employees shall be the sole responsibility of the Chief Operating Officer Executive Officer subject to the provisions of this chapter. ~~However, the appointment of all department directors, the chief financial officer and the General Counsel must be confirmed by a majority of the council prior to the effective date of each such appointment or promotion.~~

(f) All appointments of employees to the office of the Metro Attorney Executive Officer shall be the sole responsibility of the Metro Attorney Executive Officer.

~~(g) All appointments of employees to the council department shall be the sole responsibility of the Presiding Officer of the council.~~

(gh) All appointments of employees to the Office of Auditor shall be the sole responsibility of the Auditor.

(hi) Appointments of Ddepartment Ddirectors, the Cehief Ffinancial Oefficer, the Ppersonnel Ddirector, the Metro Attorney General Counsel, staff in the office of the Chief Operating Officer Executive Officer, and staff in the Office of the Auditor, and staff in the council office may be made without going through the normal recruitment and selection process. The Ppersonnel Ddirector, the Cehief Ffinancial Oefficer, all Ddepartment Ddirectors, and all appointed staff in the office of the Chief Operating Officer Executive Officer shall serve at the pleasure of the Chief Operating Officer Executive Officer. Staff in the Office of Auditor shall serve at the pleasure of the Auditor. ~~Staff in the council office shall serve at the pleasure of the council.~~

(i) Effective January 6, 2003, all positions that were subject to appointment by the General Counsel, the Executive Officer or the Council President are abolished. The Metro Attorney or the Chief Operating Officer may thereafter create new positions and make appointments thereto as provided for in this section.

(Ordinance No. 81-116, Sec. 8. Amended by Ordinance No. 84-183, Sec. 1; Ordinance No. 87-218, Sec. 1; Ordinance No. 88-255, Sec. 1; Ordinance No. 91-378A, Sec. 5; Ordinance No. 94-523B; Ordinance No. 95-602A, Sec. 1)

2.02.085 Probationary Period

The probationary period shall be a continuation of the screening process and shall provide the supervisor an opportunity to observe the employee's work, to instruct and aid the employee in adjustment to the position, and to reject any employee who does not demonstrate fitness for the position. The successful completion of probation is for Metro's internal screening process only, and does not confer any form of tenure or other expectation of continued employment.

(a) All initial appointments and all promotions to permanent full-time and permanent part-time positions shall be subject to a standard probationary period of six consecutive months of service.

(b) Promotions. Employees who do not successfully complete their promotional six-month probationary period may be demoted at any time during the promotional period, and be reinstated into the position held prior to promotion if that position is vacant or if that position is filled by an employee in an initial probationary period. If that position is not filled by a person in his/her initial probationary period, the employee may be reinstated into any vacant position in the classification held prior to the promotion and the employee will serve a probationary period of three months in the new position. If no such positions are available, the employee shall be laid off.

(c) Reclassifications. No employee's position shall be reclassified until such time as he/she has successfully completed his/her initial six-month probationary period in the classification into which he/she was hired. Employees whose positions are reclassified, upon successful completion of the initial probationary period, shall not serve an additional probationary period.

(d) Transfers. Transfers to another position in the same classification with the similar duties, do not require an additional probationary period. Transfers to a position in the same classification with significantly different duties shall require a three-month probationary period. Employees who do not successfully complete the three-month probationary period, may be reinstated into the position held prior to transfer, if the position is vacant or if the position is filled by an employee in an initial probationary period. If that position does not exist as described above, the employee may be reinstated into any vacant position in the classification held prior to the transfer. If no such positions are available, the employee shall be laid off. In cases where a probationary employee is involuntarily transferred prior to the end of the probationary period, the employee must complete his/her initial probationary period.

(e) Demotions. An employee must have completed his/her initial six-month probationary period prior to requesting a voluntary demotion, and shall not serve a new probationary period upon demotion.

(f) Vacation leave credits based upon or earned in connection with time worked shall accumulate during an employee's initial probationary period. Upon successful completion of the initial probationary period, employee will be credited with vacation leave accumulated during the probationary period and will be eligible to take accrued vacation leave with pay as authorized. An employee who terminates for any reason during the initial probationary period shall not be entitled to vacation leave payment.

(g) Any authorized leave without pay during any probationary period will extend the probationary period by the amount of time the employee is on such leave.

(h) Employees serving the initial six-month probationary period may be disciplined or terminated without cause, with or without prior notice. Nothing in this section shall be construed as implying or requiring that cause must exist for the discipline or termination of a regular status employee.

(Ordinance No. 81-116, Sec. 9. Amended by Ordinance No. 94-523B)

2.02.090 Temporary Employees

(a) Temporary employees appointed prior to the effective date of this ordinance and who are still employed as temporary employees without a break in service after the effective date of this ordinance, shall continue to receive all employee benefits granted to them since their current appointment as a temporary employee, not to exceed 1,044 hours.

(b) Status of Temporary Employees. Temporary employment shall be used for the purpose of meeting emergency, nonrecurring, or short-term workload needs, or to replace an employee during an approved leave of absence. A temporary employee may be given a nonstatus appointment without open competition and consideration only for the purposes enumerated in this section. Temporary appointments shall not be used to defeat the open competitive recruitment and selection process. Temporary employment shall not be used as any portion of a required probationary period.

(c) Term of Appointment. The term of temporary employment may not exceed 1,044 hours within a fiscal year without approval of the Chief Operating Officer ~~Executive Officer~~ who may grant up to a 1,044 hour extension. A temporary employee shall not become a permanent employee upon working more than 1,044 hours.

(d) Benefits. Benefits required by law such as Workers' Compensation and Social Security will be paid for all temporary employees. No additional benefits will be paid or given to temporary employees.

(e) Eligibility for Regular Employment. Temporary employees may compete for regular positions on the same basis as applicants from outside the agency. Temporary employees who have gone through a competitive recruitment and selection process through the office of personnel for the current temporary position will be considered as in-house applicants for vacant positions for which they apply through the internal recruitment process.

(Ordinance No. 81-116, Sec. 54. Amended by Ordinance No. 94-523B)

2.02.095 Job Share

Any full-time position may be designated as a job share position by the Chief Operating Officer ~~Executive Officer~~ at the request of a ~~D~~epartment ~~D~~irector. A job share position is a full-time position which is shared by two employees. Benefits for such position shall be apportioned between the position occupants in proportion to time worked by each; however, such apportioning may be altered upon written agreement of position occupants and approval by the Personnel Director. In no event, however, shall the benefits of a job share position exceed the benefits of any other full-time position.

(Ordinance No. 81-116, Sec. 11. Amended by Ordinance No. 94-523B)

2.02.100 Orientation

All new permanent employees shall be provided with a copy of this chapter and insurance plans, and Metro shall periodically provide them with orientation sessions.

(Ordinance No. 81-116, Sec. 45. Amended by Ordinance No. 94-523B)

2.02.105 Workers' Compensation Insurance

(a) All employees shall be covered for medical expenses and disability benefits for compensable injuries or illness resulting from employment.

(b) Payment of medical expenses and lost time disability benefits is determined by the Workers' Compensation Administration in accordance with ORS Chapter 656.

(c) The cost of Workers' Compensation insurance shall be paid by Metro with the exception of the employee contribution mandated by the Workers' Compensation Law of the State of Oregon.

(d) During an employee's absence due to an on-the-job injury or occupational illness, the employee may utilize sick leave or vacation credits to augment any benefits paid by the Workers' Compensation fund.

(Ordinance No. 81-116, Sec. 43. Amended by Ordinance No. 94-523B)

2.02.110 Insurance and Retirement

(a) Permanent full-time employees shall receive insurance benefits, as provided in the budget, on the first day of the month following their first full month of employment. Co-payments by employees may be required. Job share positions are eligible for one set of benefits which are split between the two employees sharing the position.

(b) Permanent part-time employees who are budgeted at .50 FTE or more only, shall receive insurance benefits on a prorated basis, as provided in the budget, on the first day of the month following their first full month of employment. The prorated amount an eligible part-time employee will receive shall be commensurate with the budgeted FTE of their part-time position. An eligible part-time employee may pick up the remaining FTE portion and remaining cost up to 100 percent of insurance benefits at his/her request.

(c) Metro will pay the required employer contribution for an eligible employee's PERS (Public Employee Retirement System) account, and will also pick up the employee's 6 percent contribution. For only those current employees remaining in the former 11 percent plan, Metro will pay the employer 5 percent portion and pick up the employee 6 percent portion.

(Ordinance No. 81-116, Sec. 44. Amended by Ordinance No. 94-523B)

2.02.115 Transfers and Demotions

(a) Transfers. A lateral transfer is the voluntary or involuntary movement of an employee from one position to another position in the same classification, or the voluntary or involuntary movement of an incumbent employee's position. Lateral transfers within the same classification and with the same duties do not require a new probationary period. Lateral transfers within the same classification but with significantly different duties require a three-month probationary period. An employee's salary rate will remain the same for all lateral transfers.

(1) Involuntary Transfer. A lateral transfer of an incumbent employee without the consent of the incumbent employee may be made due to operational needs or as a result of disciplinary action, but the incumbent employee must be given 10 calendar days prior notice. The incumbent shall be transferred with the position.

(2) Voluntary Transfer. Regular employees may apply for a transfer to a vacant position by applying through the established internal recruitment process only.

(b) Voluntary Demotion. A regular employee may apply for a voluntary demotion by applying through the established internal recruitment process only.

(Ordinance No. 81-116, Sec. 13. Amended by Ordinance No. 94-523B)

2.02.120 Work Schedules

(a) The normal work schedule shall be 40 hours, Monday through Friday, and the normal work day shall be 8:00 a.m. to 5:00 p.m. Some departments have work schedules and hours, which may vary. In order to provide the best service to the public, Ddepartment Ddirectors may establish operating schedules for departments, which vary from the normal work schedule. Nothing contained in this section or elsewhere in this chapter shall be construed as any guarantee of hours of work per day or per week.

(b) Flexible Work Schedules. Department Ddirectors may establish employee work schedules, which vary from the normal work schedule. All flexible work schedules must be approved by the Ddepartment Ddirector.

(c) Meals and Breaks. Full-time employees shall be allowed at least a 30-minute, not more than an hour, meal break. Such meal breaks shall be scheduled in the middle of a workday as practicable. All employees are entitled to at least a 10-minute break period when working a continuous four-hour work period.

(Ordinance No. 81-116, Sec. 10. Amended by Ordinance No. 94-523B)

2.02.125 Overtime Compensation

(a) When overtime is authorized, overtime compensation shall be paid only to employees who are not exempt from overtime as established in the pay plan.

(b) No overtime shall be paid to overtime exempt employees. Time worked on a holiday may be taken at a later date. It is understood that an overtime exempt employee may have to work on occasion beyond normal business hours, and that some extra work hours beyond a usual workday or workweek are part of the job expectations for an overtime exempt employee. At the Ddepartment Ddirector's discretion, flexible work hours may be utilized to accommodate a reasonable balance of work hours. Recorded time off shall be consistent with administrative leave.

(c) For purposes of computing overtime, hours worked shall include only time actually worked by the employee, and shall not include holiday pay, vacation pay, sick pay, or other compensable leaves.

(d) Compensation for authorized overtime shall be at the rate of time-and-one-half for time actually worked in excess of the 40 hours in a workweek or eight hours in a workday and may be paid in cash if budgeted funds are available or, if the employee agrees as compensatory time off, at the discretion of the Ddepartment Ddirector. Compensatory time must be taken as leave within six months or paid in cash within the fiscal year that it is earned. Such payment shall be at the employee's rate of pay being earned at the time of payment. When a non-exempt employee is terminated, the employee shall be given cash compensation for the overtime the employee has accrued and not used.

(e) Overtime hours worked shall not be used to expand employee benefits or to shorten probationary or annual merit increase periods. Compensatory time off in lieu of overtime pay will be counted as regular time worked in computing wages and toward earning employee benefits and to serve out probation and merit increase periods.

(Ordinance No. 81-116, Sec. 34. Amended by Ordinance No. 94-523B)

2.02.130 Holidays

(a) Probationary and regular employees of Metro shall be entitled to the following holidays listed with pay; however, floating holidays cannot be utilized by employees until they have successfully completed their initial probationary period:

- (1) New Years Day
- (2) Martin Luther King Jr. Birthday
- (3) President's Day
- (4) Memorial Day
- (5) Independence Day
- (6) Labor Day
- (7) Veterans Day
- (8) Thanksgiving Day
- (9) Christmas Day

(10-11) Two floating holidays are allowed each fiscal year on days of each employee's choice, subject to schedule approval of the supervisor. For purposes of this section, a floating holiday is any day chosen by the employee and approved by the supervisor which would otherwise be a regular scheduled workday. The floating holidays are non-cumulative from fiscal year to fiscal year and must be taken by the employee within the fiscal year in which they accrue. No payment for floating holidays accrued and not taken shall be provided for any employee upon termination of employment for any reason.

(b) If any such holiday falls on a Sunday, the following Monday shall be given as that holiday. If any such holiday falls on a Saturday, the preceding Friday shall be given as a holiday.

(c) Holidays which occur during vacation or sick leave shall not be charged against such leave.

(d) Regular part-time employees shall receive holiday pay on a prorated basis, based on their hours of work.

(Ordinance No. 81-116, Sec. 35. Amended by Ordinance No. 94-523B)

2.02.135 Vacation

The following provisions are applicable to permanent employees only:

(a) All regular and regular part-time employees shall be granted annual vacation leave with pay.

(b) Upon successful completion of their initial probationary period, employees may be granted accrued vacation leave by approval of the ~~D~~epartment ~~D~~irector. Department ~~D~~irector vacations shall be approved by the Chief Operating Officer ~~Executive Officer~~.

(c) Employees shall not accumulate more than 250 hours of vacation leave. If the operating needs of the department prohibit granting a vacation leave request, additional hours in excess of the 250-hour limit, may be accrued or may be compensated, at the discretion of the Ddepartment Ddirector, and with the written approval of the Chief Operating Officer ~~Executive Officer~~. Such written authorization shall be filed in the finance and management information department, accounting division, with a copy to the office of personnel.

(d) Department Ddirectors shall schedule vacation requests consistent with the operational needs of the department. Vacation schedules may be amended to allow the department to meet emergency situations.

(e) An employee who has successfully completed his/her initial probationary period, and terminates for any reason, shall be entitled to payment for accrued unused vacation leave. In no case shall payment be more than the maximum allowable 250-hour accrual limit. An employee who terminates for any reason during the initial probationary period shall not be entitled to any accumulated vacation leave payment.

(Ordinance No. 81-116, Sec. 36. Amended by Ordinance No. 91-426, Sec. 1; Ordinance No. 94-523B)

2.02.140 Vacation Credit and Accrual Rate

The vacation credit and accrual schedules for permanent employees are as follows:

<u>Total Years of Continuous Service</u>	<u>Accrual Rate Per Pay Period</u>	<u>Equivalent Annual Hours for Full-Time Employees</u>
Date of Hire through completion of 3rd year	5.00 hours	120 hours
4th year through completion of 7th year	6.00 hours	144 hours
8th year through completion of 11th year	7.00 hours	168 hours
12th year or more	8.00 hours	192 hours

Permanent part-time employees shall accrue vacation under the above schedule at a rate proportionate to the time worked per week.

(Ordinance No. 81-116, Sec. 37. Amended by Ordinance No. 82-139, Sec. 1; Ordinance No. 91-426, Sec. 2; Ordinance No. 94-523B)

2.02.145 Sick Leave

(a) Permanent employees shall earn sick leave with pay at a rate of 104 hours per year (.05 hours per hour worked); such sick leave shall accrue in an unlimited amount.

(b) Permanent part-time employees shall earn sick leave with pay proportionate to the amount of FTE for the position in the budget; such sick leave shall accrue in an unlimited amount.

(c) Employees may use accrued sick leave when temporarily unable to perform work duties by reason of personal illness, injury, disability, medical or dental care, or illness, injury, or disability of a person living in the employee's household. Sick leave is not to be used for personal time off or to extend holidays or vacation leave. No payment for accrued sick leave shall be provided for any employee upon termination of employment for any reason.

(d) Abuse of the sick leave privilege shall be cause for disciplinary action. An employee who is unable to report to work because of any of the reasons set forth in the above subsection of this section shall report the reason for his/her absence to his/her supervisor. Sick leave with pay may not be allowed unless such report has been made. The supervisor may require sick leave to be supported by a physician's statement attesting to the illness.

(e) Permanent full-time employees who use 24 hours or less of sick leave within one fiscal year period, and who are not at the 250-hour vacation accrual limit, shall accrue eight additional hours of vacation leave in exchange for eight hours of sick leave at the end of the fiscal year period. Permanent part-time employees who use 12 hours or less of sick leave within one fiscal year, and who are not at the 250-hour vacation accrual limit, shall accrue four additional hours of vacation leave in exchange for four hours of sick leave. Permanent employees must work a full fiscal year in order to be eligible for this exchange of accrued hours.

(f) Transfer of Leave Credits. Sick leave is provided as a benefit to each employee as insurance for period of illness. Under normal circumstances benefits are not transferable; however, upon written request of a regular employee to the Chief Operating Officer ~~Executive Officer~~ the voluntary transfer of sick leave hours may be authorized on a limited, carefully monitored basis as follows:

- (1) Each request will be reviewed and approval granted or denied on a case-by-case basis by the Chief Operating Officer ~~Executive Officer~~.
- (2) Requests must be due to a catastrophic, long-term, or chronic illness of the requesting employee only.
- (3) The requesting employee must have no more than 40 hours, combined accrued sick leave hours and accrued vacation leave hours at the time of the request.
- (4) Upon approval per (1) above, the requesting employee, or another employee he/she has designated, may initiate a request to Metro employees for the transfer of accrued sick leave hours.
- (5) Employees wanting to voluntarily transfer accrued sick leave hours to the requesting employee may do so only as follows:
 - (A) The transferring employee's ~~D~~department ~~D~~irector must authorize the transfer of hours by signature, such authorization will indicate the transfer of hours can be accomplished within the departmental fiscal year budget.

- (B) The transfer of accrued sick leave hours cannot exceed a total of 40 hours per transferring employee for each individual requesting employee for each fiscal year.
- (C) Under no circumstances shall the transferring employee's sick leave balance be reduced to below 120 hours of accrued sick leave because of the voluntary transfer of sick leave hours to another employee.
- (6) Normal leave accruals will not continue for requesting employees while they are on paid leave status as a result of transferred hours. However, health and welfare benefits provided for any other employee on paid leave status will continue for the requesting employee for as long as they remain on paid status.
- (7) Any transferred sick leave hours unused by the requesting employee shall be returned to all transferring employees' sick leave accrual balances on a pro-rated basis.
- (8) Copies of approved requests and approved transfers of hours must be sent to the finance and management information department, accounting division, for implementation and to the office of personnel.

(Ordinance No. 81-116, Sec. 38. Amended by Ordinance No. 82-139, Sec. 2; Ordinance No. 94-523B)

2.02.150 Family Medical Leave

Metro provides family medical leave of up to 12 weeks within a one-year period for eligible employees when a serious health condition requires inpatient care or continuing treatment by a health care provider and makes the employee unable to work, and/or because of the birth of a child, or the placement of a child for adoption or foster care in the employee's home, and/or for the care of family members who suffer serious health conditions. For the purpose of this leave, family members are defined as a seriously-ill spouse, parent, parent-in-law, or child, or a sick minor child requiring home care. At the employee's discretion, the leave shall be paid from accrued personal leaves (including vacation leave, sick leave, compensatory time leave, personal holiday leave), or be unpaid. Except for limited circumstances, family medical leave runs concurrent with other leaves.

- (a) The employee shall be entitled to take family medical leave without being penalized for taking such leave.
- (b) An employee returning from family medical leave shall be reinstated with no greater or lesser right in employment than if the employee has not taken the leave ~~(pursuant to Oregon Laws 1991, chapter 939)~~.
- (c) All full-time and part-time employees who have completed at least 180 calendar days of employment while averaging at least 25 hours of work per week are eligible to request the leave.
- (d) Employees have the option of using their accumulated leave balances during the family medical leave. Health and welfare coverage will continue at the same level of benefits and contributions for employees on family medical leave as for other benefit-eligible employees. If employees fail to return from leave, except because of their own or a family member's serious health condition or another

circumstance beyond their control, Metro can recover health premiums it paid during the leave. These monies may be recovered from the final paycheck if there is one or by a lawsuit.

(e) Eligible employees may take a maximum of 12 weeks of family medical leave within a one-year period. Each one-year period begins on the date of the first day of actual leave taken. Leave may be taken continuously or, under certain circumstances, on a reduced workweek schedule, or intermittently.

(f) When the employee can anticipate that the serious health situation is going to arise, the employee must submit a written request to the Department Director and the office of personnel at least 15 days prior to taking the leave. When the employee cannot anticipate the serious health condition of the family member, an oral request can be made to the Department Director to be confirmed in writing to the Department Director and the office of personnel within three working days.

The employee's written request must contain the following:

- (1) The relationship of the employee to the person needing care.
- (2) The health condition of the family member necessitating the leave, along with a doctor's certification stating such health condition.
- (3) The anticipated length of absence, not to exceed 12 weeks.
- (4) Other family members who are taking family medical leave and when they are taking it or are otherwise available to care for the family member.

(g) Metro is not required to grant this leave of absence during any period of time in which another family member is also taking a family medical leave of absence from their employer, or is otherwise available to care for the family member. If a husband and wife both work for Metro, they can have only 12 weeks of combined leave for birth, placement for adoption or foster care in the employee's home, or caring for a sick parent or parent-in-law, which they can split between them. However, both are entitled to the full 12 weeks for their own illness, or caring for a sick child or spouse.

(h) The employee who takes a family medical leave of absence has a duty to make a reasonable effort to schedule medical treatment or supervision so as to minimize disruption of Metro's operations, subject to the approval of the treating physician.

(i) The former position of an employee on family medical leave shall either remain vacant during the leave, or it may be filled on a temporary basis and considered vacant for reinstatement purposes.

(j) At the conclusion of a family medical leave the employee shall be reinstated to his/her former position unless it has been eliminated due to material changes in Metro's financial or business circumstances, or the circumstances have so changed that the employee cannot be reinstated to his/her former position, in which case the employee shall be reinstated to an equivalent position which is available and suitable. If the circumstances have so changed that the employee cannot be reinstated to the former or an equivalent position, then the employee shall be reinstated to an available suitable position.

(k) Employees who do not return by the date specified may be disciplined up to and including dismissal.

(Ordinance No. 94-523B)

2.02.155 Pregnancy Leave/Transfer

Metro provides temporary transfer or pregnancy leave without pay to eligible employees who are physically unable to perform the duties of their regular position due to pregnancy, child birth, or related medical reasons, without significant risk to the health or safety of the employee or her pregnancy.

(a) The employee shall be entitled to take pregnancy leave or temporary transfer due to pregnancy without being penalized.

(b) The position of an employee on temporary transfer or pregnancy leave shall either remain vacant during the leave, or it may be filled on a temporary basis and considered vacant for reinstatement.

(c) An employee returning from pregnancy leave or temporary transfer shall be reinstated with no greater or lesser rights in employment than if the employee had not taken the leave (~~pursuant to ORS 659.389~~).

(d) Subject to these policies, and upon written request, all pregnant employees of Metro are eligible.

(e) Temporary Transfer

(1) Metro shall provide a temporary transfer for the employee if there is an available job which is suitable for the employee and to which the transfer can be reasonably accommodated.

(2) To initiate a transfer, the employee must submit a written request to the Ddepartment Ddirector and the office of personnel. The employee's written request must contain the following:

(A) The specific duties affected by the pregnancy.

(B) The reasons why the employee is unable to perform her duties without significant risk to the health or safety of the employee or her pregnancy.

(C) A statement that the employee is physically able to perform available work.

(D) A doctor's opinion/certificate confirming (A), (B) and (C) above to determine whether a transfer is reasonably necessary.

(3) The Ddepartment Ddirector or the office of personnel may request an additional independent medical opinion, at Metro expense, within three working days after receipt of the initial medical opinion.

(f) Pregnancy Leave

- (1) Metro shall provide a pregnancy leave of absence if no suitable work is available for temporary transfer, and if the leave can be reasonably accommodated.
- (2) The period of leave shall be the reasonable period of time during which the employee is disabled from performing any available positions. To initiate a leave of absence, the employee must make the request in writing to her Ddepartment Ddirector and the office of personnel. The leave request must include the period of time for which the leave is requested. The leave request must also address the employee's disability from performing other available work:
 - (A) If the employee previously requested a temporary pregnancy transfer, she must state whether a transfer was offered to her, and if a transfer was offered, the employee must explain why she is disabled from performing those job duties;
 - (B) If the employee did not request temporary pregnancy transfer, she must explain why she is disabled from performing any available job duties known to her; and
 - (C) A doctor's opinion/certificate confirming (A) or (B) above.
- (3) The Ddepartment Ddirector or the office of personnel may request an additional independent opinion, at Metro expense, within three working days after receipt of the initial medical opinion.
- (4) Employees have the option of using their accumulated leave balances during pregnancy leave. If the employee chooses to utilize accumulated balances, benefits will be continued as long as the leave is continued on paid status. If the employee chooses to take leave without pay, health and welfare coverage will continue at the same level of benefits and contributions as for other benefit-eligible employees to the extent the employee qualifies for family medical leave, otherwise, benefits only continue as long as the leave is continued on paid status. If employees fail to return from leave, except because of their own or a family member's serious health condition or another circumstance beyond their control, Metro can recover health premiums it paid during the leave. These monies may be recovered from the final paycheck if there is one or by a lawsuit. If the employee chooses to take leave without pay, benefits will be paid through the last day of the month following the month in which the leave without pay commences.
- (5) If, during the course of the leave, another position which the employee is qualified to perform becomes available, Metro will within three working days offer the available position to the employee, unless a physician has determined that the employee must remain on leave for a fixed or minimum period of time and the job becomes available during that period of time, or unless a physician has determined that the employee is disabled from performing any job duties for an indefinite period of time.

(g) If, during the course of pregnancy leave or transfer, the employee regains the ability to perform the duties of her former position she shall within three working days of her knowledge of her regained ability notify Metro. Metro shall restore the employee to her former position within 10 working days of notification by the employee, unless the position has been eliminated due to changed circumstances, in which case the employee will be reinstated to an available equivalent position. If no equivalent positions are available, the employee shall be reinstated to an available and suitable position.

(h) If, at any time during the course of pregnancy leave or transfer, the employee is released by her treating physician to perform the duties of her regular position, she must provide the written release to her Department Director and the office of personnel within three working days of the release. Metro will, within 10 working days of receipt of notice of release, restore the employee to her former position unless, the position has been eliminated due to changed circumstances, in which case the employee will be reinstated to an available equivalent position. If no equivalent positions are available, the employee shall be reinstated to an available and suitable position.

(i) Employees who do not follow timelines established in this policy or do not return by the date specified may be disciplined up to and including dismissal.

(Ordinance No. 94-523B)

2.02.160 Parental Leave

Metro provides parental leave of up to 12 weeks for eligible employees who have become parents. At the employee's discretion, the leave shall be paid from accrued vacation time or accrued sick leave, or be unpaid.

(a) The employee shall be entitled to take parental leave without being penalized for taking leave.

(b) When the employee returns from the leave, he or she must be restored to the former or an equivalent job, without loss of seniority, service credits, etc. If the employee cannot be reinstated to the former or equivalent job because the employer's circumstances have changed, the employee must be reinstated to any other position that is available and suitable.

(c) All employees who have completed 90 days of service are eligible to request the leave. If the period of leave occurs during any probationary period, the probationary period shall be extended for the period of the leave.

(d) Employees have the option of using their accumulated leave balances during pregnancy leave. If the employee chooses to utilize accumulated balances, benefits will be continued as long as the leave is continued on paid status. If the employee chooses to take leave without pay, health and welfare coverage will continue at the same level of benefits and contributions as for other benefit-eligible employees to the extent the employee qualifies for family medical leave, otherwise, benefits only continue as long as the leave is continued on paid status. If employees fail to return from leave, except because of their own or a family member's serious health condition or another circumstance beyond their control, Metro can recover health premiums it paid during the leave. These monies may be recovered from the final paycheck if there is one or by a lawsuit. If the employee chooses to take leave without pay,

benefits will be paid through the last day of the month following the month in which the leave without pay commences.

(e) Employees are entitled to a maximum of 12 weeks unpaid parental leave. Such entitlement begins on the date of birth of the child, or on the date of the taking of physical custody of a newly adopted child.

(f) A request shall be submitted simultaneously to the Ddepartment Ddirector and the office of personnel 30 calendar days before the occurrence of the event. The request must be in writing and contain the following information:

- (1) The employee's intent to take parental leave beginning on a date certain more than 30 days from the date of the request.
- (2) The anticipated date of birth of the parent's child; or
- (3) The anticipated date that the parent will obtain physical custody of a newly adopted child under six years of age.
- (4) The dates when the parent or if both parents request parental leave the dates which each parent will commence and terminate his or her portion of the parental leave.
- (5) Failure to submit a written request in accordance with (1) above may result in a reduction of leave time by three weeks as a penalty for untimely notice of leave.

(g) Employees who return from parental leave by the date listed in the written request on file will be restored to their former position without loss of seniority or vacation credits. If circumstances change so that the employee's former job is no longer available, that worker will be reinstated to an equivalent position or any other position that is available and suitable. Employees who do not return may be disciplined.

(Ordinance No. 94-523B)

2.02.165 Leave of Absence Without Pay

All regular employees may be granted leave of absence without pay and without employee benefits for a period not to exceed six months provided such leave can be scheduled without adversely affecting the operations of Metro. Such leave may be extended in writing by the Chief Operating Officer Executive Officer once up to an additional six months. Requests for leave of absence without pay shall be in writing, shall be directed to the Ddepartment Ddirector and shall contain reasonable justification for approval. Requests of 10 days or more shall require the approval of the Chief Operating Officer Executive Officer or his/her designee. The approved request shall be filed in the office of personnel. The employee may elect to continue employee benefits, and upon such election, premiums for such extended coverage shall be paid by the employee. Such coverage shall be subject to any restriction which may exist in each applicable benefit policy or plan.

(Ordinance No. 81-116, Sec. 39. Amended by Ordinance No. 94-523B)

2.02.170 Other Leaves of Absence with Pay

(a) Funeral Leave. A maximum of three days leave with pay shall be allowed a permanent, regular status employee to attend the funeral of the employee's immediate family member.

- (1) If travel is required, up to four additional days (chargeable to sick leave) may be allowed upon request to the employee's Ddepartment Ddirector.
- (2) Under special circumstances and upon the death of a person other than the employee's immediate family member, paid leave as described in (a) above to attend a funeral may be granted at the sole discretion of a Ddepartment Ddirector at the request of the employee.
- (3) When an employee participates in a funeral service he/she will be granted four hours time off with pay and chargeable to any accrued leave balance, or without pay if the employee has no accrued leave balances, to attend such funeral service subject to the approval of the Ddepartment Ddirector.

(b) Witness or Jury Duty. Any permanent, regular status employee shall be granted leave with pay and without loss of any benefits when called for jury duty or subpoenaed as a witness, subject to the following provisions:

- (1) The employee granted such leave shall pay all money, except travel allowance, received for his/her service as a juror or witness to Metro.
- (2) An employee serving as a juror or witness who does not serve for an entire day must return to work as otherwise scheduled.
- (3) Where an employee is required to serve as juror or witness on a scheduled day off or vacation day, and such day cannot reasonably be rescheduled, he/she may retain the fee paid for service as a juror or witness on his/her day off or vacation day.
- (4) Attendance in court as assigned including the time required going to the court and returning to the work site.

(c) Military Leave. Employees shall be granted military leave and right to reinstatement as required by applicable federal or state law.

- (1) Employees who fail to return to duty and/or request reinstatement with Metro within the time period allowed by applicable law shall be deemed to have resigned.
- (2) Employees who take military leave during a probationary period must serve out the remainder of their probationary period upon reinstatement in order to become regular employees.

(d) Alternative Duty. Any permanent, regular status employee who serves as a volunteer in the Peace Corps or U.S. Public Health Service, or other recognized federal volunteer programs as

approved by the Ddepartment Ddirector and the Chief Operating Officer~~Executive Officer~~, shall be granted approved unpaid leave during the service period.

- (1) Upon returning the employee shall have the right to be reinstated to the position held before the leave was granted.
- (2) Failure of the employee to return to work within 90 days of the termination of the service shall be cause for dismissal.

(e) Administrative Leave. Administrative leave is authorized paid leave for non-represented employees who work in classifications which are exempt from overtime pay. A Ddepartment Ddirector may be granted administrative leave in recognition of his/her overtime exempt status upon approval by the Chief Operating Officer~~Executive Officer~~. Other non-represented regular status employees who work in classifications which are exempt from overtime pay may also be granted such leave at the discretion of their Ddepartment Ddirector. Such leave shall not be cumulative from year to year, shall be compensable only in the form of leave time, and shall not exceed 40 hours in a fiscal year. Time not worked because of such leave shall not affect accrual of vacation or sick leave.

(Ordinance No. 81-116, Sec. 40. Amended by Ordinance No. 91-426, Sec. 3; Ordinance No. 94-523B)

2.02.175 Preamble--Conduct, Discipline, Termination and Appeal

Nothing contained in this chapter precludes a supervisor from establishing work rules not inconsistent with this chapter for efficient operation and administration of the job site, or precludes a supervisor from having private discussions with employees. These discussions may be in the form of assignment, instruction or any other job-related communication. Any disciplinary action may be grieved by non-represented employees under the grievance procedure established in this chapter.

(Ordinance No. 81-116, Sec. 20. Amended by Ordinance No. 94-523B)

2.02.180 Disciplinary Actions

(a) Disciplinary actions shall include only the following:

- (1) Oral or written reprimand;
- (2) Suspension;
- (3) Reduction in pay;
- (4) Transfer;
- (5) Demotion; and
- (6) Termination from employment.

Any of these disciplinary actions may be utilized. It may not be necessary in every circumstance that the discipline be taken progressively. Disciplinary actions shall occur in a manner that is least likely to embarrass employees before other employees or the public, although it is recognized that this may not always be possible depending on the circumstances.

(b) Metro reserves the right to discipline or terminate an employee whenever:

- (1) The employee's performance is unsatisfactory; or
- (2) Metro feels discipline or termination is appropriate for other reasons; or
- (3) Whenever it is determined that such action is in the best interests of Metro.

(c) The following are some examples (but not all) of the types of conduct which will result in disciplinary action. The listing of these examples is for illustrative purposes, and in no way limits Metro's authority and discretion to discipline or terminate employees pursuant to paragraph (a) of this section:

- (1) Abandonment of position.
- (2) Absence from duty without leave.
- (3) Abuse of leave privileges.
- (4) Below standard work performance.
- (5) Discourteous treatment of the public or other employees, including but not limited to intentional tortious conduct.
- (6) Possessing, using, transferring, offering or being under the influence of any intoxicants or narcotics during working hours.
- (7) Fraud in securing appointment or promotion.
- (8) Insubordination, including but not limited to, refusal or failure to follow the directive of a supervisor or other designated management staff, failure to comply with an established work rule or procedure, or discourteous behavior toward members of management.
- (9) Misuse of Metro property, funds or records.
- (10) Neglect of duty.
- (11) Willful deceit.
- (12) Any conviction by a court of law which demonstrates an impaired ability to properly perform work for Metro, or which would cause embarrassment or inconvenience for Metro.
- (13) Violation of Metro ordinances, regulations and directives.
- (14) Willful violation of established safety policies.
- (15) Inability to get along with fellow employees.

- (16) Any falsification of information during the employment application or employment appointment process, regardless of when discovered.
- (17) Unlawful harassment or discrimination.
- (18) Theft, including personal or public property.
- (19) Sleeping on the job.
- (20) Gambling on Metro premises, including but not limited to card games, dice games.
- (21) Violation of this chapter, established work rules, or other management directives.

(d) Procedure for Suspension, Reduction in Pay, Transfer, Demotion or Termination. The supervisor will review information gathered with the office of personnel prior to the supervisor taking any suspension without pay, reduction in pay, transfer, demotion or termination action. If a basis for discipline exists:

- (1) An employee may be suspended with pay, by the Ddepartment Director, pending disciplinary action.
- (2) A written notice of contemplated disciplinary action (suspension, reduction in pay, transfer, demotion, or dismissal) shall be delivered to the affected employee in person or by mail. This notice shall state the reasons for the proposed action and will include:
 - (A) The alleged conduct by the affected employee.
 - (B) The violation(s).
 - (C) A date, time, and place for the affected employee to have an opportunity to address the violation(s) at a pre-disciplinary meeting. Employees may, at their expense, be represented by an attorney or other person of their choice in a pre-disciplinary meeting.
- (3) Upon completion of the pre-disciplinary meeting, a written notice of the actual disciplinary action taken, if any, shall be delivered to the affected employee in person or by mail. This notice shall state the disciplinary action taken, the violation(s), and the effective date of the disciplinary action. This notice shall be a permanent part of the affected employee's personnel record.
- (4) No failure by Metro to follow any of the procedures described herein shall be grounds for invalidating disciplinary action, including termination, which is otherwise deserved on the merits. Additionally, the Personnel Director may, in his/her discretion, dispense with all or part of these procedures, with or without notice to the employee.

(e) The affected employee may grieve the final disciplinary action pursuant to the grievance procedure established in this policy. In the case of a termination action the grievance shall be filed at Step 2 of the Grievance Procedure in this chapter with the Ddepartment Director, with a copy to the Personnel Director.

(Ordinance No. 81-116, Sec. 21. Amended by Ordinance No. 94-523B)

2.02.185 Layoff

(a) If there is a reorganization, changes in the organization, lack of work or lack of funds, or other reasons not reflecting discredit on employees, the Chief Operating Officer ~~Executive Officer~~ may lay off employees. When layoffs occur, temporary employees in affected classes shall be terminated first, with or without prior notice; then employees in their initial probationary period in affected classes shall be terminated, with or without prior notice; and finally regular employees in affected classes not in their initial probation shall be given a minimum of two weeks written notice of their layoff from Metro employment.

(b) Laid off employees shall be placed on a layoff list and may be recalled from the layoff list to a vacant position within the classification from which they were laid off for one year following layoff and prior to internal recruitment for the vacant position. It is the employee's obligation to keep the office of personnel informed of any change of address. If the office of personnel attempts to contact the employee by mail and the letter is returned, the employee's name will be removed from the layoff list.

(c) When an employee on the layoff list rejects an offered appointment to a vacant position in the same classification from which they were laid off, the employee's name will be removed from the layoff list.

(Ordinance No. 81-116, Sec. 14. Amended by Ordinance No. 94-523B)

2.02.190 Resignation

Any employee may resign from Metro by presenting an oral or written resignation to the supervisor, manager, or Ddepartment Director. An oral resignation shall be confirmed in writing by the supervisor to the resigning employee. To resign in good standing, an employee must give a minimum of two weeks notice of resignation, unless because of extenuating circumstances the supervisor, manager, or Ddepartment Director agrees to permit a shorter period of notice. The resignation shall provide an effective date which shall be the last day actually worked, and shall be forwarded to the office of personnel by the supervisor. If an employee who has resigned seeks to rescind the resignation, such rescission only may be granted by the affected Ddepartment Director at his/her sole discretion. All compensatory time for non-exempt employees only, and vacation leave credits earned and not used, up to the 250-hour limit, shall be paid.

(Ordinance No. 81-116, Sec. 15. Amended by Ordinance No. 94-523B)

2.02.195 Personnel Records

(a) An official personnel file will be maintained by the office of personnel for each employee of Metro. The personnel file will constitute the official record of an individual's employment with Metro.

(b) No information that reflects critically upon an employee shall be placed in an employee's personnel record without giving a copy to the employee.

(c) Access to the personnel file shall be limited to the employee, management staff, and the staff of the office of personnel. Management staff must have job-related reasons to have access to job-related information in an employee's file upon request to the Personnel Director. Employees may review their personnel files in the office of personnel during regular business hours. Employees may authorize in writing a person(s) to review their personnel files. Employees have the right to copies of material in their personnel files upon request. Personnel records will leave the office of personnel only under the procedures established by the office of personnel.

(d) Information in personnel files will be treated as exempt from public disclosure to the extent provided by the Oregon Public Records Law.

(Ordinance No. 81-116, Sec. 12. Amended by Ordinance No. 94-523B)

2.02.200 Grievance Procedure

It is the policy of Metro to provide for an orderly process whereby non-represented permanent employees may have their dissatisfactions considered fairly and rapidly without fear of reprisal. Every effort should be made to first find an acceptable solution by informal means with the first-line supervisor.

(a) Definition. A grievance is defined as a written expression of an alleged violation of this chapter of the Code, submitted by an employee(s) for the purpose of obtaining adjustment.

(b) Procedure

- (1) An employee who believes a grievance exists which has not been resolved by informal means must reduce the grievance to writing. The written grievance must contain:
 - (A) A clear and complete account of the action or inaction which adversely affected or affects the employee.
 - (B) The specific provision(s) of this chapter believed to have been violated or misapplied to the employee.
 - (C) The date of the circumstances giving rise to the grievance and the date of the employee's first knowledge of those circumstances, if later.
 - (D) The remedy sought by the employee to resolve the grievance.
- (2) The employee must present the written grievance to his/her supervisor within 15 calendar days of the occurrence of the circumstances giving rise to the grievance or the employee's first knowledge of those circumstances. The supervisor shall discuss the grievance with the employee and attempt to resolve it. If the written grievance is not resolved within five calendar days from the date of submission of the written grievance to the supervisor, it may be submitted within another five calendar days to the employee's Department Director.

- (3) The Ddepartment Ddirector and the employee will attempt to resolve the grievance within five calendar days from the date of submission of the written grievance to the Ddepartment Ddirector. If the grievance remains unresolved after the five calendar day period, the employee may submit it within another five calendar days to the Chief Operating Officer~~Executive Officer~~.
- (4) The Chief Operating Officer~~Executive Officer~~ will review and investigate the grievance, as necessary. The Chief Operating Officer~~Executive Officer~~ will respond to the grievant within 15 calendar days from the date the grievance was submitted to the Chief Operating Officer~~Executive Officer~~. The decision of the Chief Operating Officer~~Executive Officer~~ shall be final and binding.

(c) Any or all time limits specified in these rules may be waived by mutual consent of all parties. Likewise, any step in the procedure may be waived by mutual consent of all parties. Mutual consent shall be confirmed in writing.

(d) Any grievance not taken to the next step by the grievant within the prescribed number of days after receipt of a response shall be deemed resolved.

(Ordinance No. 81-116, Sec. 22. Amended by Ordinance No. 94-523B)

2.02.205 Service Awards

The Chief Operating Officer~~Executive Officer~~ shall provide a service award program for permanent Metro employees.

(Ordinance No. 81-116, Sec. 50. Amended by Ordinance No. 94-523B)

2.02.210 Education, Training and Development Policy

(a) Education and Development. All regular full-time employees, upon successful completion of the six-month probationary period, are encouraged to pursue educational opportunities or development programs which are directly related to the employee's work and which will enhance the employee's job-related skill level.

- (1) A full-time employee who registers for courses which are judged to be of direct and significant benefit to Metro may receive some reimbursement for expenses incurred by the employee while taking approved courses provided that:
 - (A) The course is submitted to the employee's Ddepartment Ddirector for approval at least 30 days prior to proposed enrollment, and the course is approved by the Ddepartment Ddirector.
 - (B) The course is taken on the employee's own time.
 - (C) The amount of reimbursement is at the Ddepartment Ddirector's discretion and is subject to departmental budgetary limitations and priorities.

- (D) The employee receives a grade of "C" or better or a "pass" grade if the class is graded on a "Pass-Fail" basis. Metro will make reimbursement within 30 days after proof of satisfactory completion of the course.
 - (E) The employee is not receiving reimbursement for tuition from other sources.
 - (F) The tuition reimbursement per course shall not exceed the tuition rate for a similar course at Portland State University.
 - (G) The tuition reimbursement for any single course shall not exceed the tuition rate for a three-hour graduate level course at Portland State University.
 - (H) The total tuition reimbursement to an employee shall not exceed \$1,000 in any fiscal year.
- (2) In lieu of tuition reimbursement, the Ddepartment Director may approve time off with pay so an employee may attend courses or development programs which are directly related to the employee's current position and will result in improved job performance or skills.
 - (3) Normally, the cost of textbooks and technical publications required for such courses or development programs shall be the responsibility of the employee. However, the Ddepartment Director may elect to reimburse the employee for textbooks and publications for such courses. If the employee is reimbursed, the textbooks and publications shall be the property of Metro and shall be returned to the Ddepartment Director upon completion of the educational courses or development programs.

(b) Training. Metro may develop and implement its own training and development programs or may obtain and implement training and development programs to be conducted by person(s) other than Metro employees.

- (1) The Ddepartment Director may temporarily change an employee's work assignment for a period not to exceed 90 work days, without posting, so that such employee can participate in training and development provided.
- (2) If an employee is required to participate in any training and development program, it shall be considered time worked for pay purposes. All tuition, texts, training materials, and other expenses incident to such required participation shall be assumed by the department.
- (3) If an employee desires to participate in any training and development program in which their participation is not required, time off to attend must be approved by the Ddepartment Director. All tuition, texts, training materials, and other expenses incident to such non-required participation shall be assumed by the employee, however, the Ddepartment Director may elect to reimburse the employee for textbooks and publications for such courses. If the employee is

reimbursed, textbooks and publications shall be the property of Metro and shall be returned to the ~~D~~eartment ~~D~~irector upon completion of the training or development program.

- (4) Metro shall notify employees of available training and development programs provided by Metro.

(Ordinance No. 81-116, Sec. 42. Amended by Ordinance No. 94-523B; Ordinance No. 95-594A, Sec. 1)

2.02.215 Drug/Alcohol Abuse Policy

(a) An employee who believes that he/she has a problem involving the use of alcohol or drugs can ask the supervisor or the office of personnel staff for confidential assistance. No discipline or discrimination will result from an employee asking for such assistance, although a "reentry" or performance contract will be required of an employee once the problems have been identified or assessed and a treatment program started. Failure to sign or to live up to the performance contract or treatment program obligations will be grounds for discipline, including termination.

Metro also agrees to work jointly with the employee to identify all Metro and, if applicable, union benefits and benefit programs that may be available to help deal with the problem, such as leaves of absence, sick pay, short-term or long-term disability pay and health insurance. Any continuing rehabilitation treatment will be paid for by the employee and whatever employee coverage for such treatment that is provided by the existing benefits package. The request for assistance and any later treatment program will be kept as confidential as possible under all the factual circumstances.

Although Metro recognizes that alcohol and drug abuse can sometimes be successfully treated and it is willing to work with employees who may suffer from such problems, it is the employee's responsibility to seek such assistance BEFORE drug or alcohol problems lead to on-the-job safety or misconduct incidents, or violations of this policy and to corresponding disciplinary action. AFTER a violation of this policy occurs, or AFTER a drug- or alcohol-related accident, an employee's willingness to seek Metro or outside assistance will NOT "excuse" the violation and generally will have no bearing on the determination of an appropriate disciplinary action.

(b) Prohibited Conduct

- (1) Alcohol. The possession, transfer, sale, offering, consumption or being under the influence of any intoxicating liquor while on Metro property is prohibited. **IMPORTANT:** The conduct prohibited includes consumption of any intoxicating liquor prior to reporting to work or during breaks or lunch period or on the job. For purposes of this provision, "under the influence" shall be defined as a blood alcohol content of .02 or higher.
- (2) Drugs. The possession, transfer, sale, offering, consumption or being under the influence of any narcotic, hallucinogen, stimulant, sedative, or drugs (except as authorized and prescribed by a physician and then only if reported to the supervisor prior to beginning work) while on Metro property or time (such as on customer's premises).

EXCEPTION. The use of medically-prescribed or over-the-counter drugs during working hours is approved, and an employee shall have no obligation to inform his or her supervisor of such usage unless the prescribed or over-the-counter drug contains a warning notice of possible impairment which may prevent an employee from performing his or her job safely and adequately; for example, operating mechanical equipment. An employee must inform his or her supervisor that he/she is taking prescribed or over-the-counter drugs which contain a warning of possible impairment prior to beginning work each day he or she uses the medication.

IMPORTANT. The conduct prohibited by this rule includes consumption of any such substance prior to reporting to work or during breaks or lunch period or on the job. An employee who tests "positive" for any such substances by screening and confirmation tests, including an employee who tests positive as the result of an authorized prescribed substance that was not reported to the supervisor prior to beginning work, will be deemed "under the influence" for the purposes of this rule.

The only exception is that less than 50 nanograms of THC, the active ingredient in marijuana, will not be considered a positive test.

(c) **Right to Test.** When Metro reasonably suspects that an employee has consumed or is under the influence of alcohol or any other substance or is otherwise in violation of this policy, Metro may require that the employee submit to appropriate tests for alcohol or prohibited drugs or substances in his/her system, including urinalysis. Failure to promptly give written consent, without qualification, to such testing and failure to provide samples for such testing will be grounds for immediate suspension pending further investigation and consideration, and for possible discipline, including termination.

Metro will bear the expense of all testing under this provision requested by Metro. A positive test must be confirmed by a second test which uses a different methodology than the one which was used for the initial positive result. An employee subject to testing will, upon request, receive a sample of the tested substance so that the employee can submit it to an independent lab (one chosen by the employer) for verification.

An employee determined to have violated this rule for the first time will not automatically be subject to discipline or discharge depending on the circumstances of the violation and whether he or she agrees to complete an approved substance abuse program. Second or subsequent violations of this rule may result in discipline, up to and including discharge.

The results of all investigations, tests and discipline will be kept strictly confidential to the extent permitted by law, except that such information will be made available on request by the employee.

(Ordinance No. 94-523B)

2.02.220 Smoking Policy

Smoking (cigarettes, pipes and cigars) is prohibited inside all Metro facilities. Notwithstanding the provisions of this section, smoking is prohibited in any public meeting as defined in ORS 192.710.

(Ordinance No. 89-285, Sec. 1. Amended by Ordinance No. 94-523B)

2.02.225 Conferences, Membership and Conventions

Attendance at conferences, conventions or other meetings at Metro's expense shall be authorized by the ~~Chief Operating Officer~~ Executive Officer. Authorization shall be granted on the basis of an employee's participation in or the direct relation of his/her work to the subject matter of the meeting. Members of professional societies may be permitted to attend meetings of their society when such attendance is considered to be in the best interest of Metro. Metro shall pay for professional or trade memberships for employees when deemed appropriate by the ~~Chief Operating Officer~~ Executive Officer or his/her designee limited, however, to the availability of budgeted funds.

(Ordinance No. 81-116, Sec. 41. Amended by Ordinance No. 94-523B)

2.02.230 Employee Organizations and Representation

Employees of Metro have the right to form, join and participate in the activities of labor organizations of their own choosing for the purpose of representation and collective bargaining on matters relating to wages, hours and working conditions in accordance with the Oregon Revised Statutes and Regulations of the State Employment Relations Board.

(Ordinance No. 81-116, Sec. 17. Amended by Ordinance No. 94-523B)

2.02.235 Political Activity

(a) Nothing contained within this chapter shall affect the right of the employee to hold membership in and to support a political party, to vote as they choose, to privately express their opinions on all political subjects and candidates, to maintain political neutrality and to attend political meetings. An employee must exercise all due caution in such activities to prevent public misunderstanding of such actions as representing Metro, or to bring discredit to Metro, the Council, ~~Executive Officer~~, or his/her supervisor.

(b) No official, employee or any other person shall attempt to coerce, command or require any Metro employee to influence or give money, service or other thing of value to aid or promote any political committee or to aid or promote the nomination or election of any person to public office.

(c) No public employee shall solicit any money, influence, service or other thing of value or otherwise promote or oppose any political committee or promote or oppose the nomination or election of a candidate, the gathering of signatures on an initiative, referendum or recall petition, the adoption of a measure or the recall of a public office-holder while on the job during working hours. However, nothing in this section is intended to restrict the right of a public employee to express personal political views.
(ORS 260.432)

(Ordinance No. 81-116, Sec. 18. Amended by Ordinance No. 94-523A)

2.02.240 Ethical Requirements for Employees, Officers, Elected and Appointed Officials

(a) The purpose of this section is to establish a Code of Ethics for Metro public officials which is consistent with current public policy established by the Oregon Legislative Assembly. Failure to comply with the provisions of this Code shall be grounds for disciplinary action for employees of Metro.

(b) "Public official" means any employee, officer, elected official or appointed member of a board, commission or committee of Metro.

(c) All public officials of Metro shall strictly comply with the following requirements:

- (1) No public official shall use official position or office to obtain financial gain for the public official, other than official salary, honoraria or reimbursement of expenses, or for any member of the household of the public official, or for any business with which the public official is associated.
- (2) No public official or candidate for office or a member of the household of the public official or candidate shall solicit or receive, whether directly or indirectly, during any calendar year, any gift or gifts with an aggregate value in excess of \$100 from any single source who could reasonably be known to have a legislative or administrative interest in any governmental agency in which the official has or the candidate if elected would have any official position or over which the official exercises or the candidate, if elected, would exercise any authority.
- (3) No public official shall solicit or receive, either directly or indirectly, and no person shall offer or give to any public official any pledge or promise of future employment, based on any understanding that such public official's vote, official action or judgment would be influenced thereby.
- (4) No public official shall further the personal gain of the public official through the use of confidential information gained in the course of or by reason of the official position or activities of the public official in any way.
- (5) No person shall offer during any calendar year any gifts with an aggregate value in excess of \$100 to any public official or candidate therefor or a member of the household of the public official or candidate if the person has a legislative or administrative interest in a governmental agency in which the official has or the candidate if elected would have any official position or over which the official exercises or the candidate if elected would exercise any authority.

(d) ~~The Auditor Executive Officer, and every member of the Ceouncil of Metro, and the Portland Metropolitan Area Local Government Boundary Commission~~ shall be required to comply with the reporting requirements established by ORS 244.060, including the filing of a Statement of Economic Interest on an annual basis as required by state law. A copy of the Statement of Economic Interest shall be filed with the Ceouncil Celerk at the time of filing with the appropriate state agency.

(e) The Chief Operating Officer, the Metro Attorney, the Chief Financial Officer, and all All members of the Metropolitan Exposition-Recreation Commission and all Department Directors

employees filling positions requiring council confirmation as set forth in section 2.02.080(e) shall file annually with the Council Clerk a Statement of Economic Interest which is substantially consistent with that required by ORS 244.060.

(f) Public officials shall comply with the following requirements regarding the declaration of potential conflicts of interest and recording the notice of a potential conflict:

- (1) If the public official is an elected public official or an appointed public official serving on a board or commission, announce publicly the nature of the potential conflict prior to taking any action thereon in the capacity of a public official.
- (2) If the public official is any other appointed official subject to this chapter, notify in writing the person who appointed the public official to office of the nature of the potential conflict, and request that the appointing authority dispose of the matter giving rise to the potential conflict. Upon receipt of the request, the appointing authority shall designate within a reasonable time an alternate to dispose of the matter, or shall direct the official to dispose of the matter in a manner specified by the appointing authority.
- (3) Nothing in subsection (1) of this section requires any public official to announce a potential conflict of interest more than once on the occasion which the matter out of which the potential conflict arises is discussed or debated.
- (4) Nothing in this section authorizes a public official to vote if the official is otherwise prohibited from doing so.
- (5) When a public official gives notice of a potential conflict of interest, the potential conflict shall be recorded in the official records of the public body.

(Ordinance No. 89-305A, Sec. 3. Amended by Ordinance No. 94-523B)

2.02.245 Zoo Visitor Services Employees

(a) Purpose. The purpose of this section is to establish personnel policies pertaining to the conditions of employment of Zoo visitor services worker employees; to promote efficiency, economy, and public responsiveness in the operation of the Zoo visitor services division; and to provide that the employees covered by this section shall be subject to proper conduct, the satisfactory performance of work, and the availability of funds. Other sections of this chapter apply to visitor services employees, however, in the event of a conflict between this section and other sections of this chapter, this section shall govern.

~~_____ (b) This section does not constitute a contract of employment. In order to meet future challenges and to continue to improve the working environment for all zoo visitor services employees, the council retains the flexibility to change, substitute, interpret and discontinue the policies and benefits described herein, at any time, with or without notice to employees. No contract of employment can be created, nor can an employee's status be modified, by any oral or written agreement, or course of conduct, except by a written agreement signed by the division manager, zoo director or his/her designee, the personnel director, and the Executive Officer. Whenever a question arises as to the meaning or~~

interpretation of any policy or practices of the zoo visitor services division, the interpretation given by the Executive Officer and/or his/her designee(s) shall be final and binding. [Duplicated elsewhere.]

(be) Definitions

- (1) The visitor services worker classification is divided into two definitions and nothing contained in this section shall be construed as any guarantee of hours worked per day or per week:

- (A) Seasonal Visitor Services Worker employee: Employees who are employed on a seasonal basis. They will be scheduled regularly during the peak seasons and scheduled as needed and as available during the remainder of the year.

The probationary period for seasonal visitor services employees is the initial 30 workdays of employment, and an additional probationary period shall not be required at a subsequent reinstatement, if the reinstatement is within one year of termination in good standing. Visitor services employees serving their initial probationary period may be disciplined or terminated without cause, with or without prior notice. However, nothing in this paragraph shall be construed as implying or requiring that cause must exist for the discipline or termination of a seasonal status employee who has completed the initial probationary period.

- (B) Regular Visitor Services Worker employee: Employees who are employed on a year-round basis in the visitor services division of the Oregon Zoo Metro Washington Park Zoo and regularly scheduled to work 20 or more hours each week, as provided by the current adopted budget.

- (2) "Director" means director of the Oregon Zoo Metro Washington Park Zoo.

- (3) Seasons are defined as April through the first week in September (Labor Day) and the second week in September through March.

(cd) Application of Personnel Policies. All visitor services worker employees shall be subject to this section and to all other Zzoo personnel policies and regulations not inconsistent with this section.

(de) Recruitment and Appointment for Seasonal Visitor Services Worker Employees

- (1) In-house recruitment to fill seasonal visitor services vacancies is not required and is at the discretion of the visitor services manager.
- (2) Recruitment to fill vacancies shall include appropriate forms of announcements to attract qualified applicants and to comply with Affirmative Action goals.
- (3) At the beginning of each season a general recruitment will be initiated. The recruitment will remain open until the beginning of the following season. A list

of qualified applicants will be developed by the visitor services manager pursuant to these visitor services worker rules, from which visitor services workers will be appointed. Applicants will be appointed from this list on an as-needed basis only. If the seasonal list is not exhausted, those not hired but remaining on the list must go through the next season's selection process to be considered for hiring. The visitor services manager will maintain the list and will determine who will be appointed.

- (4) Employees who leave in good standing may, within one year of termination, be reinstated without going through a recruitment process.

(ef) Recruitment and Appointment for Regular Visitor Services Worker Employees

- (1) In-house recruitments to fill regular visitor services worker vacancies are open only to current seasonal visitor services worker employees which will be the first means used. If no one applies, then the position may be filled with a current seasonal employee who shall be appointed by the visitor services manager.
- (2) In-house recruitments to fill vacancies as described in (1) above, shall include posting of such vacancies for at least five calendar days within the visitor services division.
- (3) Regular visitor services worker employees will be eligible to apply in-house for all vacant regular (non-visitor services worker) positions within Metro.

(fg) Status of Seasonal Visitor Services Worker Employee Seasonal visitor services worker employees will be eligible to compete for in-house recruitments of a regular, non-visitor services worker position, if they have worked 40 hours per week for three consecutive months and were hired through a competitive process for or had been reinstated to the position they currently hold.

(gh) Benefits

- (1) Benefits required by law such as Workers' Compensation and Social Security will be paid for all visitor services employees. Seasonal visitor services worker employees will not receive any other benefits.
- (2) Seasonal visitor services worker employees will not be paid for holidays not worked. Designated holidays shall be considered as normal workdays.
- (3) Regular visitor services worker employees appointed to one of the regular visitor services worker positions will receive a full benefit package when working a minimum of 20 hours per week.

(hi) Performance Evaluation. Performance evaluations will be performed at least once during the initial 30 workday probationary period.

(ij) Disciplinary Action

- (1) Nothing contained in this section precludes the visitor services manager or Zzoo Ddirector from establishing work rules not inconsistent with this section for efficient operations and administration of the job site, or precludes the manager from having private discussions with employees. These discussions may be in the form of assignment, instruction, or any other job-related communication.
- (2) It is appropriate, though not always necessary in every circumstance, that disciplinary actions be taken progressively. Disciplinary actions will take into consideration the degree, severity, and frequency of the offense and/or circumstances surrounding the incident. Any disciplinary action shall be done in a manner that is least likely to embarrass the employee before other employees or the public. Copies of disciplinary actions shall be placed in the employee's personnel file. Any disciplinary action may be grieved under the grievance procedure established in Cchapter 2.02 of the Code.
- (3) The following are some examples (but not all) of the types of conduct which will result in disciplinary action. The listing of these examples is for illustrative purposes:
 - (A) Abandonment of position.
 - (B) Absence from duty without leave.
 - (C) Abuse of leave privileges.
 - (D) Below standard work performance.
 - (E) Discourteous treatment of the public or other employees.
 - (F) Intoxication during working hours.
 - (G) Fraud in securing appointment or promotion.
 - (H) Insubordination.
 - (I) Misuse of Metro property, funds or records.
 - (J) Neglect of duty.
 - (K) Willful deceit.
 - (L) Any conviction by a court of law which demonstrates an impaired ability to properly perform work for the division.
 - (M) Violation of Metro Code, ordinances and regulations, established work rules and directives, including those directives defined in the Visitor Services Worker Handbook.

- (4) Dismissal. Should the actions of an employee indicate the dismissal of the employee may be necessary, the visitor services manager will review the proposed termination with the Ppersonnel Ddirector, including a review of any response or explanation by the employee. If the dismissal action is appropriate, the visitor services manager will seek authorization from the Zzoo Ddirector to proceed with the dismissal. The employee shall be notified in writing of the dismissal action. The notice will become a permanent part of the employee's personnel file. Payroll shall be notified to prepare the final check.

(jk) Promotion. Eligibility for assignment to visitor services worker 2 and 3 classifications shall be established by the visitor services manager and shall be subject to in-house recruitment established in (f)(1-3) above upon determination that an employee has acquired or possesses the knowledge, skill and ability required for the position.

(kl) Wage Rates

- (1) Visitor services worker employees will be paid at a rate in the pay plan recommended by the visitor services manager and the Ppersonnel Ddirector, and approved by the Chief Operating Officer Executive Officer and the Council.
- (2) The step range for each employee shall be established on the basis of individual qualifications and work assignment. It will be the general practice to appoint new visitor services worker employees at the beginning step of the visitor services worker 1 salary range. Exceptions approved by the Chief Operating Officer Executive Officer may be made to allow hiring above the beginning step. Total hours of previous work experience with the Zzoo and the quality of that work will be considered in determining the step for previous employees reemployed at the Zzoo in subsequent seasons.
- (3) Eligibility for a wage increase shall be at the discretion of the visitor services manager and after successful completion of the initial probationary period.
- (4) Section 2.02.160 of the Metro Code (Salary Administration Guidelines) shall not apply to any visitor services worker employees.

(lm) Reporting and Hours of Work

- (1) Because the number of seasonal visitor services worker employees needed at a given time depends upon weather conditions, such employees may be relieved from duty prior to the end of a scheduled workday or may be directed to not report for duty on a scheduled workday. The Ddirector or his/her designee shall establish appropriate procedures for regulating reporting during inclement weather.
- (2) Work schedules will be posted, and will be subject to subsection (1) above. No employee will be called to work for less than three hours in one day.

(mn) Rest and Meal Period

- (1) A rest period of 10 minutes with pay will be provided during each work period of four hours.
- (2) A non-paid lunch period of 30 minutes shall be provided. Whenever possible, such meal period shall be scheduled in the middle of the shift.

(Ordinance No. 81-123, Sec. 1 and 2. Amended by Ordinance No. 87-221, Sec. 1 and 2; Ordinance No. 89-269, Sec. 1; Ordinance No. 89-269; Ordinance No. 92-467A, Sec. 1; Ordinance No. 94-523B)

2.02.250 Volunteers

A volunteer is an individual serving in a non-paid voluntary status. Volunteers are not considered employees of Metro and are not subject to the provisions of this chapter, except as otherwise provided by law.

(Ordinance No. 94-523B)

2.02.255 Acknowledgment of Receipt of Personnel Policies

All permanent employees shall be given a copy of this chapter of the Code and shall acknowledge receipt by signing the following statement:

"I acknowledge that I have received a copy of the Metro Code, Chapter 2.02, which outlines my working conditions, privileges and obligations as an employee. This chapter constitutes the general policies of Metro and may be supplemented by more specific policies. Further, I understand that this chapter is necessarily subject to change. I understand that no contract of employment can be created, nor can an employee's status be modified by any oral or written agreement (except a valid collective bargaining agreement), representation, or course of conduct. Lastly, I understand that these policies do not in any way constitute a contract of employment, either express or implied."

Print Employee Name

Employee Signature

Date

Social Security Number

(Ordinance No. 94-523B)

2.02.300 Personnel Rules for Represented Employees

Sections 2.02.300 to 2.02.499 of this Metro Code shall be known as and may be cited as the "Metro Personnel Rules for Represented Employees". As used in Sections 2.02.300 to 2.02.499, references to "rules" or "chapter" shall be deemed to be references to these Metro Personnel Rules for Represented Employees.

(Ordinance No. 94-523B)

2.02.305 Purpose

The purpose of this chapter is:

- (a) To provide and maintain a system of personnel administration for all represented employees in which the appointment and retention of persons in Metro employment shall be achieved on the basis of promoting the public welfare and implementing Metro's responsibilities;
- (b) To establish and maintain a position classification plan which shall group all positions into classifications based upon their duties and responsibilities;
- (c) To provide for a compensation plan which shall include for each classification a minimum and/or maximum salary rate and such intermediate salary rates as the Ceouncil considers necessary and equitable;
- (d) To promote efficiency, economy, and public responsiveness in the operation of Metro;
and
- (e) To provide that the employees covered by these rules shall be subject to proper employee conduct, the satisfactory performance of work, and the availability of funds.
- (f) The provisions in this chapter do not constitute a contract of employment. Moreover, in order to meet future challenges, the Ceouncil retains the flexibility to change, substitute, and discontinue the policies and benefits described herein. No person shall be deemed to have a vested interest in, or legitimate expectation of, continued employment with Metro, or any policy or benefit described herein or otherwise generally followed by Metro. No contract of employment can be created, nor can an employee's status be modified, by any oral or written agreement, or course of conduct, except by a written agreement signed by the Chief Operating Officer and the Executive Officer and the employee, and subject to the any approval by the Metro Council ~~requirements for contracts established by the Metro Code~~.
- (g) Nothing contained in this section or elsewhere in the chapter shall be construed as any guarantee of hours worked per day or per week.
- (h) This chapter shall apply to all represented employees. Employees who are in certified or recognized bargaining units shall have all aspects of their wages, hours, and working conditions determined by collective bargaining agreements, except with regard to the recruitment and selection of applicants for initial appointment to a position, and except as addressed in this chapter. If a conflict exists between this chapter and the terms of a valid collective bargaining agreement, the collective bargaining agreement shall govern.

(i) Where a collective bargaining agreement contains any type of grievance resolution procedure, that procedure, including any procedural and/or substantive limitations placed upon it by the collective bargaining agreement, shall be the sole and exclusive remedy for employees in that bargaining unit.

(Ordinance No. 94-523B)

2.02.310 Administration of the Rules

The Chief Operating Officer ~~Executive Officer~~ shall be responsible for:

- (a) Administering or delegating the administration of all the provisions of this chapter.
- (b) Reviewing and recommending to the Council necessary changes to this chapter.
- (c) Publishing a Personnel Procedures Manual to implement the provisions of this chapter.

(Ordinance No. 94-523B)

2.02.315 Amendment

Administrative amendments which deal solely with correcting grammatical or typographical errors, or correcting position titles to reflect properly processed reclassification and title changes, or correcting departmental name changes to accurately reflect current organizational structure may be approved by the Chief Operating Officer ~~Executive Officer~~. All proposed amendments to this chapter and/or benefit changes will be required to be adopted by the Council. Copies of proposed amendments shall be given to union(s) representative at least 30 days prior to the Council meeting in which they are to be considered.

(Ordinance No. 94-523B)

2.02.320 Separability

If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter.

(Ordinance No. 94-523B)

2.02.325 Definitions of Personnel Terms

For the purposes of this chapter unless the context requires otherwise the following terms shall have the meanings indicated:

- (a) Chief Operating Officer" means the person holding the position of Chief Operating Officer established by Section 2.20.010 of the Metro Code.
- (ba) "Council" means the elected governing body of Metro.

- (cb) "Department" means a major functional unit of Metro as designated by the Chief Operating Officer.
- (de) "Department Director" means a person designated by the Chief Operating Officer to be responsible for the administration of a department or his/her designee.
- (ed) "Dismissal" means the termination of employment for cause (see Termination).
- (fe) "Division" means a major functional unit of a department.
- (gf) "Employee" means an individual who is salaried or who receives wages for employment with Metro.
- ~~(g) "Executive Officer" means the elected Executive Officer of Metro or his/her designee.~~
- (h) "Exempt position" means a position exempt from mandatory overtime compensation.
- (i) "Fiscal year" means a 12-month period beginning July 1, and ending June 30.
- (j) "Full-time" means a position in which the scheduled hours of work are 40 hours per week and which is provided for in the adopted budget.
- (k) "Non-exempt" position means a position that is eligible for overtime compensation.
- (l) "Part-time" means a position in which the scheduled hours of work are less than 40 hours per week but at least 20 hours or more per week and which is provided for in the adopted budget.
- (m) "Permanent employee" means an employee who is appointed to fill a budgeted position and who is not temporary or seasonal. However, the term permanent does not confer any form of tenure or other expectation of continued employment.
- (n) "Permanent position" means a budgeted position which is not temporary or seasonal. However, the term permanent does not confer any form of tenure or other expectation of continued employment.
- (o) "Personnel action" means the written record of any action taken affecting the employee or the status of his/her employment.
- (p) "Personnel Director" means the employee appointed by the Chief Operating Officer ~~Executive Officer~~ to administer the provisions of this chapter regardless of whether the person is also a ~~D~~department ~~D~~director.
- (q) "Personnel file" means an employee's official personnel file which is kept in the office of personnel.
- (r) "Probationary period" means a continuation of the screening process during which an employee is required to demonstrate fitness for the position to which the employee is appointed or promoted. Successful completion of any probationary period is for Metro's internal screening process only and does not confer any form of tenure or other expectation of continued employment.

(s) "Reclassification" means a change in classification of a position by raising it to a class with a higher rate of pay, reducing it to a class with a lower rate of pay, or changing it to another class at the same rate of pay, based upon the duties currently assigned to an existing position or to be assigned for a vacant position. If the position is filled, the incumbent employee is reclassified along with the position.

(t) "Regular employee" means an employee who has successfully completed the required initial probationary period occupying a permanent position.

(u) "Represented employee" means an employee who is in a recognized or certified bargaining unit.

(v) "Resignation" means voluntary separation from employment.

(w) "Status" refers to the standing of an employee.

(x) "Termination" means the cessation of employment with Metro, whether or not for cause.

(Ordinance No. 94-523B. Amended by Ordinance No. 95-602A, Sec. 1)

2.02.330 Position Classification Plan

(a) The purpose of the classification plan is to provide an inventory of specifications for each classification. The plan shall be developed and maintained so that all positions substantially similar with respect to duties, responsibilities, authority and qualifications are included within the same class, and so that the same range of compensation will apply. Each permanent position shall be allocated to an appropriate classification on the basis of the duties and responsibilities of the position.

(b) Classification titles shall be used in all personnel, budget and financial records.

(c) The classification plan shall cover permanent full-time and permanent part-time positions, as adopted and amended by the Council.

(d) The Chief Operating Officer ~~Executive Officer~~ or his/her designee shall establish administrative procedures to implement the classification and pay plans. The Chief Operating Officer ~~Executive Officer~~ may make administrative changes to classification specifications, title, and classification numbers.

(Ordinance No. 94-523B)

2.02.335 New Positions

Any new positions added to the budget require Council approval.

(Ordinance No. 94-523B)

2.02.340 New Classifications

Any new classification added to the classification plan requires Council approval.

(Ordinance No. 94-523B)

2.02.345 Reclassification of Existing Positions

Reclassification of an existing position from one existing classification to another existing classification may be approved by the Chief Operating Officer ~~Executive Officer~~ provided the reclassification can be accomplished with the limitations of the current budget.

(Ordinance No. 94-523B)

2.02.350 Pay Plans

Pay plans for represented employees are developed through collective bargaining and are subject to ratification by the Council. The Chief Operating Officer ~~Executive Officer~~, Personnel Director, and labor relations officer will meet with designated Councilors prior to the expiration date of collective bargaining contracts to discuss fiscal direction regarding pay and benefits for negotiations with the unions.

(Ordinance No. 94-523B)

2.02.355 Salary Administration

(a) Upon initial appointment to a position, each employee should receive a salary at or 5 percent above the beginning salary rate of the salary range for the class to which the position is allocated. Appointment at or 5 percent above the beginning salary rate should be the general practice, with appointments above that level being the exception for outstanding qualifications and experience, and subject to departmental personal services budget resources and approval of the hiring Department Director with concurrent notification to the Chief Operating Officer ~~Executive Officer~~.

(b) When an employee is reclassified to a position in a classification with a higher maximum salary rate, the employee shall be placed on the beginning salary rate of the salary range or receive an increase of 5 percent, whichever is greater.

(c) A reclassified employee shall not serve a probationary period. An employee reclassified to a position in a classification with a higher maximum salary rate shall not receive a salary increase after completion of six months in the new classification. The employee's anniversary date shall reflect the effective date of the reclassification.

(d) When an employee is reclassified to a position in a classification with a lower maximum salary rate, the employee's salary rate shall not be reduced as long as the employee's current salary rate is within the lower salary range. If the employee's salary rate is above the new salary range, the employee's rate of pay shall remain the same (red-circled) until annual adjustments to the pay plan bring the employee's rate within the new classification range. At that time, the employee will become eligible for merit increases.

(e) When an employee is voluntarily demoted to a position in a classification with a lower maximum salary rate, the employee's salary rate shall not be reduced as long as the employee's current salary rate is within the lower salary range. If the employee's salary rate is above the new salary range, the employee's salary will be reduced to the highest rate of the new range. In no case, shall an employee's current salary rate be increased upon voluntary demotion.

2.02.360 Pay Policies

- (a) Permanent employees shall be paid according to the pay plan adopted by the Ceouncil and administered by the Chief Operating Officer Executive-Officer.
- (b) Employees shall be paid twice monthly.
- (c) In the event the normal payday falls on a holiday, payday shall occur the workday before the holiday. If the normal payday falls on a Saturday or a Sunday, payday shall be the prior Friday.
- (d) Payroll procedures shall be established and implemented by the finance and management information department, accounting division.
- (e) Payroll deductions will be made for income tax withholding, Workers' Compensation insurance and employee contributions to employee benefits, and may be made for the United Way Fund, payments to the employee's credit union and other agencies as approved by the Chief Operating Officer Executive-Officer at the request of the employee;
 - (1) Charitable solicitations of Metro employees while on the job during working hours shall be conducted in compliance with this section. No other solicitations of Metro employees while on the job during working hours by a charitable organization shall be permitted.
 - (2) The Chief Operating Officer Executive-Officer with consultation of Metro employees shall by executive order establish rules and procedures to implement this section including procedures for applications, time and length of solicitation campaigns and payroll deductions. The procedures shall specify that all solicitations shall be made during a single campaign period lasting no longer than 30 days and that employees may sign payroll deduction cards for charitable donations only during a two-week period following the end of the solicitation campaign period. The Chief Operating Officer Executive-Officer once each year shall certify all charitable organizations recognized by Metro for the purpose of conducting a fund drive among the employees of Metro. The Chief Operating Officer's Executive-Officer's action shall be based on the criteria stated in subsection (3) of this section.
 - (3) Charitable organizations recognized to conduct a fund drive among Metro employees while on the job during working hours shall:
 - (A) Be a fund-raising organization which raised funds for 10 or more charitable agencies.
 - (B) Disburse funds only to agencies whose charitable activities are primarily in the geographical areas of Metro and which have an office located within Metrothe district.

- (C) Be exempt from taxation under Internal Revenue Service Code Section 501(c)(3).
 - (D) Be in compliance with the Charitable Trust and Corporation Act and the Oregon Solicitation Act (ORS 128.618 through 128.898). All charitable organizations who have made the required filings under such laws and have no enforcement action pending against them shall be presumed to be in compliance with such laws.
 - (E) Have a policy prohibiting discrimination in employment and fund distribution with regards to race, color, religion, national origin, handicap, age, sex and sexual preference in the charitable organization and all its grantee agencies.
 - (F) Provide an audited annual financial report to Metro for distribution to its employees 60 days prior to the charitable campaign.
- (4) Payroll deductions for employee charitable contributions shall be allowed only for charitable organizations in compliance with this section.

(Ordinance No. 94-523B)

2.02.365 Affirmative Action Policy

(a) Policy Statement. Metro states as its policy a commitment to provide equal employment opportunities without regard to race, color, religion, national origin, sex, age, disability, sexual orientation, or marital or familial status, except where a bona fide occupational qualification exists.

(b) Affirmative Action Program. The Council has adopted an affirmative action policy and program which is set forth in a separate document which is available throughout Metro facilities. All employees are encouraged to familiarize themselves with Metro's affirmative action policies.

(Ordinance No. 94-523B)

2.02.370 Nepotism

Notwithstanding Metro's affirmative action policy and program, no member of an employee's family (husband, wife, son, daughter, mother, father, brother, sister, in-laws of any kind, aunt, uncle, niece, nephew, stepparent, or stepchild) shall be employed in a position of exercising supervisory, appointment, or grievance adjustment authority over the other family member.

(Ordinance No. 94-523B)

2.02.375 Internal Recruitment

A regular employee who has successfully completed his/her initial probationary period may apply for vacant positions and will be considered as an internal applicant. All applications will be considered without prejudice to their present positions. Regular, regular part-time (and temporary employees) who apply will be given first consideration in filling a vacant position. Notice of internal recruitment shall be posted not less than five working days to allow for receipt of applications.

(Ordinance No. 94-523B)

2.02.380 Probationary Period

The probationary period shall be a continuation of the screening process and shall provide the supervisor an opportunity to observe the employee's work, to instruct and aid the employee in adjustment to the position, and to reject any employee who does not demonstrate fitness for the position. The successful completion of probation is for Metro's internal screening process only, and does not confer any form of tenure or other expectation of continued employment.

(a) Reclassification. No employee's position shall be reclassified until such time as he/she has successfully completed his/her initial six-month probationary period in the classification into which he/she was hired. Employees whose positions are reclassified, upon successful completion of the initial probationary period, shall not serve an additional probationary period.

(b) Demotions. An employee must have completed his/her initial six-month probationary period prior to requesting a voluntary demotion, and shall not serve a new probationary period upon demotion.

(c) Any authorized leave without pay during any probationary period will extend the probationary period by the amount of time the employee is on such leave.

(Ordinance No. 94-523B)

2.02.385 Job Share

Any full-time position may be designated as a job share position by the Chief Operating Officer ~~Executive Officer~~ at the request of a Ddepartment Ddirector. A job share position is a full-time position which is shared by two employees. Benefits for such position shall be apportioned between the position occupants in proportion to time worked by each; however, such apportioning may be altered upon written agreement of position occupants and approval by the Personnel Director. In no event, however, shall the benefits of a job share position exceed the benefits of any other full-time position.

(Ordinance No. 94-523B)

2.02.390 Orientation

All new permanent employees shall be provided with a copy of this chapter and insurance plans and Metro shall periodically provide them with orientation sessions.

(Ordinance No. 94-523B)

2.02.395 Workers' Compensation Insurance

(a) All employees shall be covered for medical expenses and disability benefits for compensable injuries or illness resulting from employment.

(b) Payment of medical expenses and lost time disability benefits is determined by the Workers' Compensation administration in accordance with ORS Chapter 656.

(c) The cost of Workers' Compensation insurance shall be paid by Metro with the exception of the employee contribution mandated by the Workers' Compensation Law of the State of Oregon.

(d) During an employee's absence due to an on-the-job injury or occupational illness, the employee may utilize sick leave or vacation credits to augment any benefits paid by the Workers' Compensation fund.

(Ordinance No. 94-523B)

2.02.400 Transfers

All vacant positions are subject to normal recruitment procedures.

(a) Involuntary Transfer. A lateral transfer of an incumbent employee without the consent of the incumbent employee may be made due to operational needs or as a result of disciplinary action, but the incumbent employee must be given 10 calendar days prior notice. The incumbent shall be transferred with the position.

(Ordinance No. 94-523B)

2.02.405 Sick Leave Transfer

Under normal circumstances leave accruals are not transferable. However, upon written request of a regular employee to the Chief Operating Officer~~Executive Officer~~, the voluntary transfer of sick leave hours may be authorized on a limited, carefully monitored basis as follows:

(a) Each request will be reviewed and approval granted or denied on a case by case basis by the Chief Operating Officer~~Executive Officer~~.

(b) Requests must be due to a catastrophic, long-term, or chronic illness of the requesting employee only.

(c) The requesting employee must have no more than forty (40) hours, combined accrued sick leave hours and accrued vacation leave hours, at the time of the request.

(d) Upon approval per (1) above, the requesting employee, or another employee he/she has designated, may initiate a request to Metro employees for the transfer of accrued sick leave hours.

(e) Employees wanting to voluntarily transfer accrued sick leave hours to the requesting employee may do so only as follows:

- (1) The transferring employee's ~~D~~director must authorize the transfer of hours by signature, such authorization will indicate the transfer of hours can be accomplished within the departmental fiscal year budget.
- (2) The transfer of accrued sick leave hours cannot exceed a total of 40 hours per transferring employee for each individual requesting employee for each fiscal year.

- (3) Under no circumstances shall the transferring employee's sick leave balance be reduced to below 120 hours of accrued sick leave because of the voluntary transfer of sick leave hours to another employee.

(f) Normal leave accruals will not continue for requesting employees while they are on paid leave status as a result of transferred hours. However, health and welfare benefits provided for any other employee on paid leave status will continue for the requesting employee for as long as they remain on paid status.

(g) Any transferred sick leave hours unused by the requesting employee shall be returned to all transferring employees' sick leave accrual balances on a pro-rated basis.

(h) Copies of approved requests and approved transfers of hours must be sent to the finance and management information department, accounting division for implementation and to the office of personnel.

(Ordinance No. 94-523B)

2.02.410 Family Medical Leave

Metro provides family medical leave of up to twelve (12) weeks within a one-year period for eligible employees when a serious health condition requires inpatient care or continuing treatment by a health care provider and makes the employee unable to work, and/or because of the birth of a child, or the placement of a child for adoption or foster care in the employee's home, and/or for the care of family members who suffer serious health conditions. For the purpose of this leave, family members are defined as a seriously-ill spouse, parent, parent-in-law, or child, or a sick minor child requiring home care. At the employee's discretion, the leave shall be paid from accrued personal leaves (including vacation leave, sick leave, compensatory time leave, personal holiday leave), or be unpaid. Except for limited circumstances, family medical leave runs concurrent with other leaves.

(a) The employee shall be entitled to take family medical leave without being penalized for taking such leave.

(b) An employee returning from family medical leave shall be reinstated with no greater or lesser right in employment than if the employee has not taken the leave (pursuant to Oregon Laws 1991, chapter 939).

(c) All full-time and part-time employees who have completed at least 180 calendar days of employment while averaging at least 25 hours of work per week are eligible to request the leave.

(d) Employees have the option of using their accumulated leave balances during the family medical leave. Health and welfare coverage will continue at the same level of benefits and contributions for employees on family medical leave as for other benefit-eligible employees. If employees fail to return from leave, except because of their own or a family member's serious health condition or another circumstance beyond their control, Metro can recover health premiums it paid during the leave. These monies may be recovered from the final paycheck if there is one, or by a lawsuit.

(e) Eligible employees may take a maximum of 12 weeks of family medical leave within a one-year period. Each one-year period begins on the date of the first day of actual leave taken. Leave

may be taken continuously or, under certain circumstances on a reduced workweek schedule, or intermittently.

(f) When the employee can anticipate that the serious health situation is going to arise, the employee must submit a written request to the Department Director and the office of personnel at least 15 days prior to taking the leave. When the employee cannot anticipate the serious health condition of the family member, an oral request can be made to the Department Director to be confirmed in writing to the Department Director and the office of personnel within three working days.

The employee's written request must contain the following:

- (1) The relationship of the employee to the person needing care.
- (2) The health condition of the family member necessitating the leave, along with a doctor's certification stating such health condition.
- (3) The anticipated length of absence, not to exceed 12 weeks.
- (4) Other family members who are taking family medical leave and when they are taking it, or are otherwise available to care for the family member.

(g) Metro is not required to grant this leave of absence during any period of time in which another family member is also taking a family medical leave of absence from their employer, or is otherwise available to care for the family member. If a husband and wife both work for Metro, they can have only 12 weeks of combined leave for birth, placement for adoption or foster care in the employee's home, or caring for a sick parent or parent-in-law, which they can split between them. However, both are entitled to the full 12 weeks for their own illness, or caring for a sick child or spouse.

(h) The employee who takes a family medical leave of absence has a duty to make a reasonable effort to schedule medical treatment or supervision so as to minimize disruption of Metro's operations, subject to the approval of the treating physician.

(i) The former position of an employee on family medical leave shall either remain vacant during the leave, or it may be filled on a temporary basis and considered vacant for reinstatement purposes.

(j) At the conclusion of a family medical leave, the employee shall be reinstated to his/her former position, unless it has been eliminated due to material changes in Metro's financial or business circumstances, or the circumstances have so changed that the employee cannot be reinstated to his/her former position, in which case the employee shall be reinstated to an equivalent position which is available and suitable. If the circumstances have so changed that the employee cannot be reinstated to the former or an equivalent position, then the employee shall be reinstated to an available suitable position.

(k) Employees who do not return by the date specified may be disciplined up to and including dismissal.

(Ordinance No. 94-523B)

2.02.415 Pregnancy Leave/Transfer

Metro provides temporary transfer or pregnancy leave without pay to eligible employees who are physically unable to perform the duties of their regular position due to pregnancy, child birth, or related medical reasons, without significant risk to the health or safety of the employee or her pregnancy.

(a) The employee shall be entitled to take pregnancy leave or temporary transfer due to pregnancy without being penalized.

(b) The position of an employee on temporary transfer or pregnancy leave shall either remain vacant during the leave, or it may be filled on a temporary basis and considered vacant for reinstatement.

(c) An employee returning from pregnancy leave or temporary transfer shall be reinstated with no greater or lesser rights in employment than if the employee had not taken the leave (pursuant to ORS 659.389).

(d) Subject to these policies, and upon written request, all pregnant employees of Metro are eligible.

(e) Temporary Transfer

(1) Metro shall provide a temporary transfer for the employee if there is an available job which is suitable for the employee and to which the transfer can be reasonably accommodated.

(2) To initiate a transfer, the employee must submit a written request to the Department Director and the office of personnel. The employee's written request must contain the following:

(A) The specific duties affected by the pregnancy.

(B) The reasons why the employee is unable to perform her duties without significant risk to the health or safety of the employee or her pregnancy.

(C) A statement that the employee is physically able to perform available work.

(D) A doctor's opinion/certificate confirming (a), (b), and (c) above, to determine whether a transfer is reasonably necessary.

(3) The Department Director or the office of personnel may request an additional independent medical opinion, at Metro expense, within three working days after receipt of the initial medical opinion.

(f) Pregnancy Leave

(1) Metro shall provide a pregnancy leave of absence if no suitable work is available for temporary transfer, and if the leave can be reasonably accommodated.

- (2) The period of leave shall be the reasonable period of time during which the employee is disabled from performing any available positions. To initiate a leave of absence, the employee must make the request in writing to her Department Director and the office of personnel. The leave request must include the period of time for which the leave is requested. The leave request must also address the employee's disability from performing other available work:
- (A) If the employee previously requested a temporary pregnancy transfer, she must state whether a transfer was offered to her, and if a transfer was offered, the employee must explain why she is disabled from performing those job duties.
 - (B) If the employee did not request temporary pregnancy transfer, she must explain why she is disabled from performing any available job duties known to her.
 - (C) A doctor's opinion/certificate confirming (a) or (b) above.
- (3) The Department Director or the office of personnel may request an additional independent opinion, at Metro expense, within three working days after receipt of the initial medical opinion.
- (4) Employees have the option of using their accumulated leave balances during pregnancy leave. If the employee chooses to utilize accumulated balances, benefits will be continued as long as the leave is continued on paid status. If the employee chooses to take leave without pay, health and welfare coverage will continue at the same level of benefits and contributions as for other benefit-eligible employees to the extent the employee qualifies for family medical leave, otherwise, benefits only continue as long as the leave is continued on paid status. If employees fail to return from leave, except because of their own or a family member's serious health condition or another circumstance beyond their control, Metro can recover health premiums it paid during the leave. These monies may be recovered from the final paycheck if there is one, or by a lawsuit. If the employee chooses to take leave without pay, benefits will be paid through the last day of the month following the month in which the leave without pay commences.
- (5) If, during the course of the leave, another position which the employee is qualified to perform becomes available, Metro will, within three working days, offer the available position to the employee, unless a physician has determined that the employee must remain on leave for a fixed or minimum period of time and the job becomes available during that period of time, or unless a physician has determined that the employee is disabled from performing any job duties for an indefinite period of time.

(g) If, during the course of pregnancy leave or transfer, the employee regains the ability to perform the duties of her former position, she shall, within three working days of her knowledge of her regained ability, notify Metro. Metro shall restore the employee to her former position within 10 working days of notification by the employee, unless the position has been eliminated due to changed

circumstances, in which case the employee will be reinstated to an available equivalent position. If no equivalent positions are available, the employee shall be reinstated to an available and suitable position.

(h) If, at any time during the course of pregnancy leave or transfer, the employee is released by her treating physician to perform the duties of her regular position, she must provide the written release to her Department Director and the Personnel Director with three working days of the release. Metro will, within 10 working days of receipt of notice of release, restore the employee to her former position, unless the position has been eliminated due to changed circumstances, in which case the employee will be reinstated to an available equivalent position. If no equivalent positions are available, the employee shall be reinstated to an available and suitable position.

(i) Employees who do not follow timelines established in this policy or do not return by the date specified may be disciplined up to and including dismissal.

(Ordinance No. 94-523B)

2.02.420 Parental Leave

Metro provides parental leave of up to 12 weeks for eligible employees who have become parents. At the employee's discretion, the leave shall be paid from accrued vacation time or accrued sick leave, or be unpaid.

(a) The employee shall be entitled to take parental leave without being penalized for taking leave.

(b) When the employee returns from the leave, he or she must be restored to the former or an equivalent job, without loss of seniority, service credits, etc. If the employee cannot be reinstated to the former or equivalent job because the employer's circumstances have changed, the employee must be reinstated to any other position that is available and suitable.

(c) All employees who have completed 90 days of service are eligible to request the leave. If the period of leave occurs during any probationary period, the probationary period shall be extended for the period of the leave.

(d) Employees have the option of using their accumulated leave balances during pregnancy leave. If the employee chooses to utilize accumulated balances, benefits will be continued as long as the leave is continued on paid status. If the employee chooses to take leave without pay, health and welfare coverage will continue at the same level of benefits and contributions as for other benefit-eligible employees to the extent the employee qualifies for family medical leave; otherwise, benefits only continue as long as the leave is continued on paid status. If employees fail to return from leave, except because of their own or a family member's serious health condition or another circumstance beyond their control, Metro can recover health premiums it paid during the leave. These monies may be recovered from the final paycheck if there is one, or by a lawsuit. If the employee chooses to take leave without pay, benefits will be paid through the last day of the month following the month in which the leave without pay commences.

(e) Employees are entitled to a maximum of 12 weeks unpaid parental leave. Such entitlement begins on the date of birth of the child, or on the date of the taking of physical custody of a newly adopted child.

(f) A request shall be submitted simultaneously to the Ddepartment Ddirector and the office of personnel 30 calendar days before the occurrence of the event. The request must be in writing and contain the following information:

- (1) The employee's intent to take parental leave beginning on a date certain more than 30 days from the date of the request.
- (2) The anticipated date of birth of the parent's child, or
- (3) The anticipated date that the parent will obtain physical custody of a newly adopted child under six years of age.
- (4) The dates when the parent, or if both parents request parental leave, the dates which each parent will commence and terminate his or her portion of the parental leave.
- (5) Failure to submit a written request in accordance with (1) above may result in a reduction of leave time by three weeks as a penalty for untimely notice of leave.

(g) Employees who return from parental leave by the date listed in the written request on file will be restored to their former position without loss of seniority or vacation credits. If circumstances change so that the employee's former job is no longer available, that worker will be reinstated to an equivalent position or any other position that is available and suitable. Employees who do not return may be disciplined.

(Ordinance No. 94-523B)

2.02.425 Preamble--Conduct, Discipline, Termination and Appeal

Nothing contained in this chapter precludes a supervisor from establishing work rules not inconsistent with this chapter for efficient operation and administration of the job site, or precludes a supervisor from having private discussions with employees. These discussions may be in the form of assignment, instruction, or any other job-related communication. Any disciplinary action may be grieved by represented employees under the grievance procedure established in the collective bargaining agreement.

(Ordinance No. 94-523B)

2.02.430 Disciplinary Actions

Disciplinary actions shall include only the following: oral or written reprimand, suspension, reduction in pay, demotion and termination from employment. Any of these disciplinary actions may be utilized. It may not be necessary in every circumstance that the discipline be taken progressively.

(a) The following are some examples (but not all) of the types of conduct which will result in disciplinary action. The listing of these examples is for illustrative purposes, and in no way limits Metro's authority and discretion to discipline or terminate employees pursuant to paragraph (A) of this section:

- (1) Abandonment of position.

- (2) Absence from duty without leave.
- (3) Abuse of leave privileges.
- (4) Below standard work performance.
- (5) Discourteous treatment of the public or other employees, including but not limited to intentional tortious conduct.
- (6) Possessing, using, transferring, offering or being under the influence of any intoxicants or narcotics during working hours.
- (7) Fraud in securing appointment or promotion.
- (8) Insubordination.
- (9) Misuse of Metro property, funds or records.
- (10) Neglect of duty.
- (11) Willful deceit.
- (12) Any conviction by a court of law which demonstrates an impaired ability to properly perform work for Metro.
- (13) Violation of Metro ordinances, regulations and directives.
- (14) Willful violation of established safety policies.
- (15) Any falsification of information during the employment application or employment appointment process, regardless of when discovered.
- (16) Unlawful harassment or discrimination.
- (17) Theft, including personal or public property.
- (18) Sleeping on the job.
- (19) Gambling on Metro premises, including but not limited to card games, dice games, but not including employee pools.
- (20) Violation of this chapter, established work rules, or other management directives.

(b) Procedure for Suspension, Reduction in Pay, Demotion or Termination. The supervisor will review information gathered with the office of personnel prior to the supervisor taking any suspension without pay, reduction in pay, demotion or termination action. If a basis for discipline exists:

- (1) An employee may be suspended with pay, by the Ddepartment Ddirector, pending disciplinary action.

- (2) A written notice of contemplated disciplinary action (suspension, reduction in pay, demotion, or dismissal) shall be delivered to the affected employee in person or by mail. This notice shall state the reasons for the proposed action and will include:
 - (A) The alleged conduct by the affected employee.
 - (B) The violation(s).
 - (C) A date, time, and place for the affected employee to have an opportunity to address the violation(s) at a pre-disciplinary meeting. Employees may be represented by the union in a pre-disciplinary meeting.
- (3) Upon completion of the pre-disciplinary meeting, a written notice of the actual disciplinary action taken, if any, shall be delivered to the affected employee in person or by mail. This notice shall state the disciplinary action taken, the violation(s), and the effective date of the disciplinary action. This notice shall be filed in the affected employee's personnel file.

(c) The affected employee may grieve the final disciplinary action pursuant to the grievance procedure established in the collective bargaining agreement.

(Ordinance No. 94-523B)

2.02.435 Resignation

Any employee may resign from Metro by presenting an oral or written resignation to the supervisor, manager, or Ddepartment Ddirector. An oral resignation shall be confirmed in writing by the supervisor to the resigning employee. To resign in good standing, an employee must give a minimum of two weeks notice of resignation, unless because of extenuating circumstances the supervisor, manager, or Ddepartment Ddirector agrees to permit a shorter period of notice. The resignation shall provide an effective date which shall be the last day actually worked, and shall be forwarded to the office of personnel by the supervisor. If an employee who has resigned seeks to rescind the resignation, such rescission only may be granted by the affected Ddepartment Ddirector at his/her sole discretion. All compensatory time for non-exempt employees only, and vacation leave credits earned and not used, up to the 250-hour limit, shall be paid.

(Ordinance No. 94-523B)

2.02.440 Service Awards

The Chief Operating Officer ~~Executive Officer~~ shall provide a service award program for Metro employees.

(Ordinance No. 94-523B)

2.02.445 Education Opportunities

(a) All regular and regular part-time employees are encouraged to pursue educational opportunities which are directly related to the employee's work and which will enhance the employee's job-related skill level.

(b) Employees who register for courses which are judged to be of direct and significant benefit to Metro may receive some reimbursement for expenses incurred by the employee while taking approved courses. Procedures for application and amount awarded are contained in the Personnel Procedures Manual.

(c) Normally the cost of textbooks and technical publications required for such courses shall be the responsibility of the employee. If Metro purchases any of the textbooks and publications for such courses, said textbooks and publications shall become the property of Metro.

(Ordinance No. 94-523B)

2.02.450 Smoking Policy

Smoking (cigarettes, pipes and cigars) is prohibited inside all Metro facilities. Notwithstanding the provisions of this section, smoking is prohibited in any public meeting as defined in ORS 192.710.

(Ordinance No. 94-523B)

2.02.455 Conferences, Membership and Conventions

Attendance at conferences, conventions or other meetings at Metro's expense shall be authorized by the Chief Operating Officer ~~Executive Officer~~. Authorization shall be granted on the basis of an employee's participation in or the direct relation of his/her work to the subject matter of the meeting. Members of professional societies may be permitted to attend meetings of their society when such attendance is considered to be in the best interests of Metro. Metro shall pay for professional or trade memberships for employees when deemed appropriate by the Chief Operating Officer ~~Executive Officer~~ or his/her designee limited, however, to the availability of budgeted funds.

(Ordinance No. 94-523B)

2.02.460 Employee Organizations and Representation

Employees of Metro have the right to form, join and participate in the activities of labor organizations of their own choosing for the purpose of representation and collective bargaining on matters relating to wages, hours and working conditions in accordance with the Oregon Revised Statutes and Regulations of the State Employment Relations Board.

(Ordinance No. 94-523B)

2.02.465 Political Activity

(a) Nothing contained within this chapter shall affect the right of the employee to hold membership in and to support a political party, to vote as they choose, to privately express their opinions on all political subjects and candidates, to maintain political neutrality and to attend political meetings.

An employee must exercise all due caution in such activities to prevent public misunderstanding of such actions as representing Metro, or to bring discredit to Metro, the Council, Chief Operating Officer Executive Officer or his/her supervisor.

(b) No official, employee or any other person shall attempt to coerce, command or require any Metro employee to influence or give money, service or other thing of value to aid or promote any political committee or to aid or promote the nomination or election of any person to public office.

(c) No public employee shall solicit any money, influence, service or other thing of value or otherwise promote or oppose any political committee or promote or oppose the nomination or election of a candidate, the gathering of signatures on an initiative, referendum or recall petition, the adoption of a measure or the recall of a public office holder while on the job during working hours. However, nothing in this section is intended to restrict the right of a public employee to express personal political views.
(ORS 260.432)

(Ordinance No. 94-523B)

2.02.470 Acknowledgment of Receipt of Personnel Policies

All permanent employees shall be given a copy of this chapter of the Code and shall acknowledge receipt by signing the following statement:

"I acknowledge that I have received a copy of the Metro Code, Chapter 2.02, which outlines my working conditions, privileges and obligations as an employee. This chapter constitutes the general policies of Metro and may be supplemented by more specific policies. Further, I understand that this chapter is necessarily subject to change. I understand that no contract of employment can be created, nor can an employee's status be modified by any oral or written agreement (except a valid collective bargaining agreement), representation, or course of conduct. Lastly, I understand that these policies do not in any way constitute a contract of employment, either express or implied."

Print Employee Name

Employee Signature

Date

Social Security Number

(Ordinance No. 94-523B)

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 02-965 FOR THE PURPOSE OF AMENDING CHAPTER 2.02 PERSONNEL RULES OF THE METRO CODE TO CONFORM TO THE METRO CHARTER AMENDMENTS ADOPTED ON NOVEMBER 7, 2000, AND DECLARING AN EMERGENCY

Date: November 19, 2002

Prepared by: Peggy Coats

BACKGROUND

As a result of the passage by the voters of Ballot Measure 26-10 on November 7, 2000, various changes to Metro's existing code are in order to conform to the approved amendments to Metro's charter. The changes proposed in this ordinance to Chapter 2.02, Personnel Rules, primarily remove references to the Executive Officer and Presiding Officer, whose offices will be abolished effective January 6, 2003; and create references to the Council President and the Chief Operating Officer, consistent with code amendments adopted by Council earlier this year (see "Legal Antecedents" below).

ANALYSIS/INFORMATION

1. **Known Opposition** None
2. **Legal Antecedents** Resolution 00-2929A "For the Purpose of Submitting to the Voters an Amendment to the Metro Charter Abolishing the Office of Executive Officer, Creating the Office of Council President, and Making Related Changes"; Ordinance 02-942A "For the Purpose of Adding a New Chapter 2.20 to the Metro Code Creating the Office of Chief Operating Officer"; Ordinance 02-953A "For the Purpose of Creating the Office of Metro Attorney"; Ordinance 02-954A "For the Purpose of Reflecting the Creation of the Office of Metro Council President"; and Ordinance 02-955A "For the Purpose of Amending Chapter 2.19 of the Metro Code to Conform to Charter Amendments Adopted on November 7, 2000".
3. **Anticipated Effects** This ordinance will amend Chapter 2.02 of the Metro Code to conform to approved Charter amendments.
4. **Budget Impacts** None

RECOMMENDED ACTION

That Council approve adoption of Ordinance 02-965.

Agenda Item Number 4.2

Ordinance No. 02-969, For the Purpose of Amending the Metro Urban Growth Boundary, the Regional Framework Plan and the Metro Code in order to Increase the Capacity of the Boundary to Accommodate Population Growth to the Year 2022; and Declaring an Emergency.

First Reading and Public Hearing

Metro Council Meeting
Thursday, November 21, 2002
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING THE)
METRO URBAN GROWTH BOUNDARY,) ORDINANCE NO. 02-969
THE REGIONAL FRAMEWORK PLAN AND)
THE METRO CODE IN ORDER TO)
INCREASE THE CAPACITY OF THE)
BOUNDARY TO ACCOMMODATE) Introduced by the Community Planning
POPULATION GROWTH TO THE YEAR) Committee
2022; AND DECLARING AN EMERGENCY)

WHEREAS, state law requires the Metro Council to assess the capacity of the urban growth boundary ("UGB") every five years and, if necessary, increase the region's capacity to accommodate a 20-year supply of buildable land for housing; and

WHEREAS, the Council and the Land Conservation and Development Commission agreed that the Council would undertake the assessment and any necessary action to increase the capacity of the UGB as part of the state's periodic review process; and

WHEREAS, Task 2 of the periodic review work program calls for completion of the same assessment of capacity and increase in capacity, if necessary, by December 20, 2002; and

WHEREAS, the Council determined a need for _____ new dwelling units to accommodate a forecast population increase of _____ and for land to accommodate a forecast employment increase of _____ jobs for the three-county metropolitan region by the year 2022; and

WHEREAS, the Council determined that the existing UGB has the capacity to accommodate _____ new dwelling units and _____ new jobs; and

WHEREAS, policy measures to protect Industrial Areas within the existing UGB can accommodate an additional _____ new jobs; and

WHEREAS, policy measures to strengthen Regional and Town Centers as the hearts of the region's communities can accommodate an additional _____ units of needed housing; and

WHEREAS, expansion of the UGB in the Damascus, Gresham, Oregon City, Wilsonville, Sherwood, Tigard, Beaverton, King City, Hillsboro and Bethany areas can accommodate the balance of this needed housing and ____ new jobs; and

WHEREAS, the Council consulted its Metropolitan Planning Advisory Committee and the 24 cities and three counties of the metropolitan region and considered their comments and suggestions prior to making this decision; and

WHEREAS, Metro conducted five public workshops in locations around the region to provide information about alternative locations for expansion of the UGB and to receive comment about those alternatives; and

WHEREAS, Metro published, on August 25, 2002, notice of public hearings before the Council on the proposed decision in compliance with Metro Code 3.01.050; and

WHEREAS, the Metro's Community Planning Committee and the Metro Council held public hearings on the proposed decision on October 1, 3, 10, 15, 22, 24, and 29 and November 21, 2002, and considered the testimony prior to making this decision; now, therefore,

THE METRO COUNCIL HEREBY ORDAINS AS FOLLOWS:

1. Title 1, Requirements for Housing and Employment Accommodation, of the Urban Growth Management Functional Plan ("UGMFP") is hereby amended as indicated in Exhibit A, attached and incorporated into this ordinance, in order to ensure that the UGB continues to provide capacity to accommodate housing and employment growth.
2. Policy 1.16 is hereby added to the Regional Framework Plan ("RFP"), as indicated in Exhibit B, attached and incorporated into this ordinance, in order to protect residential neighborhoods pursuant to Measure 26-29, enacted by voters of the district on May 21, 2002.
3. Title 12, Protection of Residential Neighborhoods, as set forth in Exhibit C, attached and incorporated into this ordinance, is hereby adopted as part of the UGMFP in order to implement Policy 1.16 of the RFP to protect residential neighborhoods pursuant to Measure 26-29.
4. Policies 1.4.1 and 1.4.2, as indicated in Exhibit D, and the accompanying map of Regionally Significant Industrial Areas, as indicated on Exhibit E, are hereby added to the RFP, both exhibits attached and incorporated into this ordinance, in order to increase the efficiency of the use of land within the UGB for industrial use.

5. Title 4, Industrial and Other Employment Areas, of the UGMFP is hereby amended as indicated in Exhibit F, attached and incorporated into this ordinance, in order to implement Policies 1.4.1 and 1.4.2 of the RFP to increase the efficiency of the use of land within the UGB for industrial use.
6. Policy 1.15 is hereby added to the RFP, as indicated in Exhibit G, attached and incorporated into this ordinance, in order to increase the efficiency of the use of residential land within the UGB as it existed prior to adoption of this ordinance and within areas added to the boundary by this ordinance.
7. Title 6, Regional Accessibility, of the UGMFP, is hereby re-titled as Central City, Regional Centers, Town Centers and Neighborhood Centers and amended, as set forth in Exhibit H, attached and incorporated into this ordinance, in order to implement Policy 1.15 of the RFP by strengthening the roles of centers as the hearts of the region's communities and to improve the efficiency of land use within centers.
8. Performance measures are hereby adopted, as set forth in Item 1 in Appendix A, "Performance Measures to Evaluate Efforts to Improve Land Use Efficiency", to evaluate the progress of efforts to achieve the 2040 Growth Concept and of actions taken in this ordinance to improve the efficiency of the use of land within the UGB.
9. Policy 1.9 is hereby added to the RFP, as indicated in Exhibit J, attached and incorporated into this ordinance, in order to ensure, to the extent practicable, that expansion of the UGB will enhance the roles of Regional and Town Centers in the region.
10. Chapter 3.01 of the Metro Code, Urban Growth Boundary and Urban Reserve Procedures, is hereby amended, as indicated in Exhibit K, attached and incorporated into this ordinance, in order to implement Policy 1.9 of the RFP and to clarify the authority of the Metro Council to place conditions on addition of territory to the UGB.
11. Section 3.07.1110 of Title 11, Urban Growth Boundary Amendment Urban Reserve Plan Requirements, of the UGMFP, is hereby amended as indicated in Exhibit L, attached and incorporated into this ordinance, in order to protect land added to the UGB as Regionally Significant Industrial Area from incompatible use during the planning for urbanization of the land.
12. The Metro UGB is hereby amended to include all or portions of Study Areas ____, more precisely identified in the Alternatives Analysis Report, Item 6 in Appendix A, subject to the conditions set forth in Exhibit M and mapped on the Alternative Areas Map, Exhibit N, both exhibits attached and incorporated into this ordinance, in order to accommodate housing and employment that cannot be accommodated within the UGB as it existed prior to adoption of this ordinance.

13. The Metro UGB is hereby amended to include those lands described in the Technical Amendments Report and accompanying maps, Item 7 in Appendix A, to make the UGB coterminous with nearby property lines or natural or built features in order to make the UGB function more efficiently and effectively.
14. Appendix A, attached and incorporated into this ordinance, is hereby adopted in support of the amendments to the UGB, the RFP and the Metro Code in sections 1 through 12 of this ordinance. The following documents comprise Appendix A:
 1. Performance Measures to Evaluate Efforts to Improve Land Use Efficiency
 2. Regional Employment Forecast 2000 to 2030, December __, 2002
 3. 2002-2022 Urban Growth Report: Residential Land Need Analysis
 4. 2002-2022 Urban Growth Report: An Employment Land Need Analysis
 5. Map Atlas Memorandum and Maps
 6. 2002 Alternative Analysis Study
 7. Technical Amendments Report
 8. Housing Needs Analysis
15. The Findings of Fact and Conclusions of Law in Exhibit P, attached and incorporated into this ordinance, explain how the supporting documents described in section 13 of this ordinance demonstrate that the amendments to the UGB, the RFP and the Metro Code in sections 1 through 11 of this ordinance comply with state law and the RFP.
16. This ordinance is necessary for the immediate preservation of public health, safety and welfare because state law requires Metro to ensure that the region's UGB includes a 20-year supply of buildable land for housing upon the completion of its analysis of the capacity of the boundary. An emergency is therefore declared to exist, and this ordinance shall take effect _____, 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 B. Cooper, General Counsel

Exhibit A to Ordinance No. 02-969

TITLE 1: REQUIREMENTS FOR HOUSING AND EMPLOYMENT ACCOMMODATION

3.07.110-Intent

State law and Metro Code require that the Metro urban growth boundary (UGB) have sufficient capacity to accommodate the expected growth for 20 years. It is Metro policy to minimize the amount of urban growth boundary expansion required for the expected population and employment growth by the year 2017 consistent with all Statewide Goals. To further that policy, it is beneficial and desirable for Metro to require actions intended to increase the capacity for development of land within the UGB. Increasing the capacity of land within the UGB will include requiring changes for appropriate locations in both the rate of development permitted per acre (zoned density) and the rate at which housing and employment are actually built within the UGB. Development consistent with the design types of the Metro 2040 Growth Concept will focus these efforts. As a matter of regional policy, each city and county must contribute its fair share to increasing the development capacity of land within the UGB.

Metro will work with local jurisdictions to develop a set of region-wide community development code provisions, standards and other regulations which local jurisdictions may adopt that will help implement the 2040 Growth Concept and this functional plan. Included in this project will be a review of development standards in support of smaller lots and more flexible use of land, strategies to encourage land assembly, more flexible zoning and improvements in the pre-application process to ensure timely and thorough review and to provide for early involvement by the public to address neighborhood concerns and assure community acceptance of these changes.

3.07.110 Purpose and Intent

One goal of the Framework Plan is the efficient use of land. Title 1 intends to use land within the UGB efficiently by increasing its capacity to accommodate housing and employment. Title 1 directs each city and county in the region to consider actions to increase its capacity and to take action if necessary to accommodate its share of regional growth as specified in this section.

(Ordinance No. 97-715B, Sec. 1.)

3.07.120 Methods to Increase Calculated Capacity Required for All Cities and Counties

All cities and counties within Metro are required to include within their comprehensive plans and implementing ordinances the following provisions:

A. — Cities and counties shall apply a minimum density standard to all zones allowing residential use as follows:

1. — a. — Provide that no development application, including a subdivision, may be approved unless the development will result in the building of 80 percent or more of the maximum number of dwelling units per net acre permitted by the zoning designation for the site; or

- _____ b. _____ Adopt minimum density standards that apply to each development application that vary from the requirements of subsection 1.a., above. However, for the purpose of compliance with Table 3.07-1, only those dwelling units that are allowed at these minimum density standards shall be counted for compliance with the calculated capacities of Table 3.07-1.
- _____ 2. _____ The minimum density standard may be achieved by use of a small lot district where an average lot size of 5000 to 6200 square feet allows flexibility within that range on development applications, so long as the district remains in compliance with the minimum density standard used to calculate capacities for compliance with Table 3.07-1 capacities.
- _____ 3. _____ No comprehensive plan provision, implementing ordinance or local process (such as site or design review) may be applied and no condition of approval may be imposed that would have the effect of reducing the minimum density standard.
- _____ 4. _____ For high density zones with maximum zoned density higher than 37 dwelling units per net acre, the minimum residential density may be 30 dwelling units per net acre.
- _____ 5. _____ This minimum density requirement does not apply (1) outside the urban growth boundary, (2) inside areas designated as open space on the attached Open Spaces Map[†], and (3) inside areas designated as unbuildable on the attached Open Spaces Map. The maximum zoned density does not include the density bonus for zones that allow them.
- B. _____ Cities and counties shall not prohibit partitioning or subdividing inside the Metro urban growth boundary where existing lot sizes are two or more times that of the minimum lot size in the development code.
- C. _____ Cities and counties shall not prohibit the construction of at least one accessory unit within any detached single family dwelling that is permitted to be built in any zone inside the urban growth boundary. Reasonable regulations of accessory units may include, but are not limited to, size, lighting, entrances and owner occupancy of the primary unit, but shall not prohibit rental occupancy, separate access, and full kitchens in the accessory units.

3.07.120 Housing and Employment Capacity

A. Each city and county shall determine its capacity for housing and employment in order to ensure that it provides and continues to provide at least the capacity for the city or county specified in Table 3.01-7. Local governments shall use data provided by Metro unless the Metro Council or its designee determines that data preferred by a city or county is more accurate.

B. A city or county shall determine its capacity for dwelling units by cumulating the minimum number of dwelling units authorized in each zoning district in which dwelling units are authorized. A city or county may use a higher number of dwellings than the minimum density for a zoning district if development in the five years prior to the determination has actually occurred at the higher number.

C. If a city annexes county territory, the city shall ensure that there is no net loss in regional housing or employment capacity, as shown on Table 3.07-1, as a result of amendments of comprehensive plan or land use regulations that apply to the annexed territory.

[†]—All “attached” documents referenced in this chapter are on file in the Metro Council office.

D. After completion of its initial determination of capacity, each city or county shall report changes in its capacity by December 31 of the first calendar year following completion of its initial determination and by December 31 of every following year.

(Ordinance No. 97-715B, Sec. 1.)

3.07.130 Design Type Boundaries Requirement

For each of the following 2040 Growth Concept design types, city and county comprehensive plans shall be amended to include the boundaries of each area, determined by the city or county consistent with the general locations shown on the 2040 Growth Concept Map:

Central City--Downtown Portland is the Central City which serves as the major regional center, an employment and cultural center for the metropolitan area.

Regional Centers--~~Nine~~Seven regional centers will become the focus of compact development, redevelopment and high-quality transit service and multimodal street networks.

Station Communities--Nodes of development centered approximately one-half mile around a light rail or high capacity transit station that feature a high-quality pedestrian environment.

Town Centers--Local retail and services will be provided in town centers with compact development and transit service.

Main Streets--Neighborhoods will be served by main streets with retail and service developments served by transit.

Corridors--Along good quality transit lines, corridors feature a high-quality pedestrian environment, convenient access to transit, and somewhat higher than current densities.

Employment Areas--Various types of employment and some residential development are encouraged in employment areas with limited commercial uses.

Industrial Areas--Industrial areas are set aside primarily for industrial activities with limited supporting uses.

Regionally Significant Industrial Areas--Industrial areas with site characteristics that are relatively rare in the region that render them especially suitable for industrial use.

Inner Neighborhoods--Residential areas accessible to jobs and neighborhood businesses with smaller lot sizes are inner neighborhoods.

Outer Neighborhoods--Residential neighborhoods farther away from large employment centers with larger lot sizes and lower densities are outer neighborhoods.

(Ordinance No. 97-715B, Sec. 1.)

3.07.140 Requirements to Increase Capacity If Recent Development At Low Density

- A. ~~All cities and counties shall determine whether actual built densities for housing during 1990-1995 were less than 80 percent of maximum zoned densities. The 1990-1995 actual built densities within cities and counties inside the urban growth boundary shall be compared with zoned densities for housing units during that period.~~

~~Residential developments to be analyzed shall be those which were permitted by a land use action and constructed during the period from 1990 to 1995, and residential density shall be measured in households per net developed acre.²~~

- B. ~~If the comparison of actual built densities to maximum zoned densities for the period 1990-1995 indicates that actual built densities were less than 80 percent of maximum zoned densities, the city or county shall also demonstrate that it has considered and adopted at least two of the following methods to increase capacity:~~

- ~~1. Financial incentives for higher density housing;~~
- ~~2. Provisions permitting additional density beyond that generally allowed in the zoning district in exchange for amenities and features provided by the developer;~~
- ~~3. Removal or easing of approval standards or procedures;~~
- ~~4. Redevelopment and infill strategies; and~~
- ~~5. Authorization of housing types not previously allowed by the plan or regulations.~~

3.07.140 Measures to Increase Development Capacity

- A. Each city and county shall adopt a minimum dwelling unit density, as prescribed in this subsection, for each zoning district in which dwelling units are authorized inside the UGB:

1. Any city or county minimum density standard deemed to comply with the Urban Growth Management Functional Plan pursuant to section 3.07.810 prior to January 1, 2003, shall be deemed to comply with this subsection.
2. A city or county shall not approve a subdivision or development application that will result in a density below the minimum density for the zoning district.
3. A city or county may change the dwelling unit density of any zoning district so long as the zoning district continues to comply with this subsection and so long as the city or county continues to provide at least the overall capacity for housing for the city or county specified in Table 3.07-1.

- B. A city or county shall not prohibit the partition or subdivision of a lot or parcel that is at least twice the size of the minimum size for new lots or parcels in any zoning district in which dwelling units are authorized.

² - See Title 10, Definitions.

C. A city or county shall authorize the establishment of at least one accessory dwelling unit for each detached single-family dwelling unit in a zoning district and for each detached or attached single-family dwelling unit in a Regional Center or Station Community. The authorization may be subject to reasonable regulation for siting and design purposes.

D. In order to assist Metro to comply with state progress reporting requirements in ORS 197.301, by April 30 of each odd-numbered year, each city and county shall report to Metro the actual density of new residential development per net developed acre authorized in those zoning districts that allow residential development in the preceding 24 months.

(Ordinance No. 97-715B, Sec. 1.)

3.07.150 Determination of Calculated Capacity of Housing Units and Jobs

The purpose of this section is to require each city and county within the Metro region to determine the housing and employment capacity of its existing comprehensive plan and implementing ordinances; determine calculated capacity for dwelling units and jobs by the method in this section; and increase calculated capacity, if necessary, to achieve the functional plan capacities in Table 3.07-1. Each city and county within the Metro region is hereby required to complete the following steps:

- A. ~~Determine the calculated capacity of dwelling units and jobs by the year 2017 using the zoned capacity³ of its current comprehensive plan and implementing ordinances.~~
 1. ~~Cities and counties shall use Metro estimates of vacant land, and land likely to redevelop, unless they have data that they believe is more accurate. In this case, the city or county may provide Metro the following:~~
 - a. ~~The source of the data;~~
 - b. ~~The reasons that the locally developed data is a more accurate estimate than the Metro estimate of vacant and redevelopable land;~~
 - c. ~~The database from which the above were derived;~~
 - d. ~~The database of committed development lands.~~

~~Cities and counties may use their data, subject to acceptance by the Metro Council or its designee, after the Executive Officer determines that the city or county data may be more accurate than the Metro data. The Executive Officer shall notify the Metro Council of each instance in which the data submitted by a city or county is determined by the Executive Officer to be less accurate than Metro data.~~
 2. ~~In determining the calculated capacity of existing comprehensive plans and implementing ordinances, cities and counties shall not use a calculated capacity for dwelling units of more than 80 percent of maximum zoned residential density, unless:~~
 - a. ~~Actual experience in the jurisdiction since 1990 has shown that development has occurred at density greater than 80 percent of zoned residential density; or~~

³ - See Title 10, Definitions, "zoned density" and "calculated capacity."

- b. ~~Minimum density standards are adopted or proposed for adoption in the zoning code that require residential development at greater than 80 percent of maximum zoned residential density.~~
- 3. ~~Cities and counties calculating capacity through the use of density bonus provisions may consider transfers, including off-site transfers, only upon demonstration that previous approvals of all density transfers within the past 5 years have resulted in an average of at least 80 percent of maximum zoned densities actually being built.~~
- 4. ~~The capacity calculation shall use only those development types that are allowed in the development code. Any discretionary decision must not diminish the zoned density if it is to be counted as a part of calculated capacity; and~~
- 5. ~~Cities and counties, in coordination with special districts, shall demonstrate that they have reviewed their public facility capacities and plans to assure that planned public facilities can be provided, to accommodate the calculated capacity within the plan period.~~
- B. ~~Calculate the increases in dwelling unit and job capacities by the year 2017 from any proposed changes to the current comprehensive plans and implementing ordinances that must be adopted to comply with section 3.07.120 of this title and add the increases to the calculation of expected capacities.~~
- C. ~~Determine the effect of each of the following on calculated capacities, and include any resulting increase or decrease in calculated capacities:~~
 - 1. ~~Required dedications for public streets, consistent with the Regional Accessibility Title;~~
 - 2. ~~Off-street parking requirements, consistent with this functional plan;~~
 - 3. ~~Landscaping, setback, and maximum lot coverage requirements;~~
 - 4. ~~The effects of tree preservation ordinances, environmental protection ordinances, view preservation ordinances, solar access ordinances, or any other regulations that may have the effect of reducing the capacity of the land to develop at the zoned density;~~
 - 5. ~~The effects of areas dedicated to bio-swales, storm water retention, open space dedications, and other requirements of local codes that may reduce the capacity of the land to develop at the zoned density.~~
- D. ~~If any of the calculated capacities are determined to be less than any of the city or county target dwelling unit and job capacities in Table 3.07-1, either jurisdiction-wide or in mixed-use areas, or both, then the city or county shall comply with the performance standards in section 3.07.160 of this title by amending its comprehensive plans and implementing ordinances to increase calculated capacities, as needed, to comply with the calculated capacities required in Table 3.07-1.~~

3.07.150 Transfer of Capacity

A. A city or county may amend its comprehensive plan and land use regulations to transfer capacity for housing or employment shown on Table 3.07-1 to another city or county inside the UGB upon a demonstration that:

1. The transfer complies with the policies of the Regional Framework Plan;
2. The transfer will not reduce the capacity of the region for housing or employment specified on Table 3.07-1;
3. The housing or employment capacity to be transferred is reasonably likely to occur at the receiving site within the 20-year planning period of Metro's last UGB capacity review under ORS 197.299; and
4. The transfer does not move capacity from a designated Center to an Inner or Outer Neighborhood, or from a Regional Center to a Town Center.

B. A city or county may seek a transfer of capacity as authorized in subsection A by filing an application on a form provided for that purpose by Metro. After receipt of a complete application, Metro shall set the matter for a public hearing before the Metro Council and shall notify MPAC and those persons who request notification of requests for transfers of capacity.

C. The Metro Council shall hold a public hearing to consider the request for a transfer of capacity. Any person may participate in the hearing. The Metro Council may set terms and conditions upon approval of a transfer so long as they relate to the criteria in subsection A and are incorporated into the Metro Council's order.

D. The Metro Council shall issue an order with its conclusions and analysis and send a copy to the local governments involved in the transfer and any person who participated in the hearing before the Metro Council. Any person who participated in the hearing may seek review of the Metro Council's order as a land use decision under ORS 197.015(10)(a)(A).

(Ordinance No. 97-715B, Sec. 1. Amended by Ordinance No. 01-925E, Sec. 4.)

3.07.160 Local Plan Accommodation of Expected Growth Capacity for Housing and Employment—Performance Standard

All cities and counties within Metro shall demonstrate that:

- A. The provisions required in section 3.07.120 of this title have been included in comprehensive plans and implementing ordinances; and that
- B. Using the computation method in section 3.07.150, including the minimum residential density provisions required in section 3.07.120, that calculated capacities will achieve the target capacities for dwelling units and full-time and part-time jobs contained in Table 3.07-1, including both jurisdiction-wide expected capacities and capacities for mixed-use areas; and that
- C. Effective measures have been taken to reasonably assure that the calculated capacities will be built for dwelling units and jobs; and that

- D. Expected development has been permitted at locations and densities likely to be achieved during the 20-year planning period by the private market or assisted housing programs, once all new regulations are in effect.

(Ordinance No. 97-715B, Sec. 1.)

3.07.170 Design Type Density Recommendations

- A. For the area of each of the 2040 Growth Concept design types, the following average densities for housing and employment are recommended to cities and counties:

Central City - 250 persons per acre
Regional Centers - 60 persons per acre
Station Communities - 45 persons per acre
Town Centers - 40 persons per acre
Main Streets - 39 persons per acre
Corridor - 25 persons per acre
Employment Areas - 20 persons per acre
Industrial Areas - 9 employees per acre
Regionally Significant Industrial Area - 9 employees per acre
Inner Neighborhoods - 14 persons per acre
Outer Neighborhoods - 13 persons per acre

(Ordinance No. 97-715B, Sec. 1.)

Table 3.07-1 Target Capacity for Housing and Employment Units—Year 1994 to 2017 (Section 3.07.120(A)(1)(b))				
City or County	Dwelling Unit Capacity ¹	Job Capacity	Mixed-Use Areas ²	
			Dwelling Unit Capacity	Job Increase
Beaverton	15,021	25,122	9,019	19,084
Cornelius	1,019	2,812	48	335
Durham	262	498	0	0
Fairview	2,921	5,689	635	2,745
Forest Grove	2,873	5,488	67	628
Gladstone	600	1,530	20	140
Gresham	16,817	23,753	3,146	9,695
Happy Valley	2,030	1,767	52	245
Hillsboro	14,812	58,247	9,758	20,338
Johnson City	168	180	0	0
King City	182	241	55	184
Lake Oswego	3,353	8,179	446	3,022
Maywood Park	27	5	0	0
Milwaukie	3,514	7,478	2,571	6,444
Oregon City	6,157	8,185	341	2,341
Portland	70,704	158,503	26,960	100,087
River Grove	(15)	41	0	0
Sherwood	5,010	8,156	1,108	3,585
Tigard	6,073	14,901	981	8,026
Troutdale	3,789	5,570	107	267
Tualatin	3,635	9,794	1,248	2,069
West Linn	2,577	2,114	0	594
Wilsonville	4,425	15,030	743	4,952
Wood Village	423	736	68	211
Clackamas County ³	19,530	42,685	1,661	13,886
Multnomah County ³	3,089	2,381	0	0
Washington County ³	54,999	52,578	13,273	25,450
	243,993	461,633		

¹—Based on Housing Needs Analysis. Applies to existing city limits as of June, 1996. Annexations to cities would include the city assuming responsibility for Target Capacity previously accommodated in unincorporated county.

²—Mixed-use areas are: Central City—about 250 persons per acre; regional centers—about 60 ppa; town centers—40 ppa; station communities—about 45 ppa; main streets—about 39 ppa.

³—Standards apply to the urban-unincorporated portion of the county only. At the request of cities, Metro may also supply targets for planning areas for cities in addition to the existing boundary targets cited above. (Ordinance No. 97-715B, Sec. 1.)

Table 3.07-1 Target Capacity for Housing and Employment Units – Year 1994 to 2017 Section 3.07.120(A)(1)(b)		
City or County	Dwelling Unit Capacity	Job Capacity
<u>Beaverton</u>	<u>13,635</u>	<u>21,368</u>
<u>Cornelius</u>	<u>1,285</u>	<u>3,054</u>
<u>Durham</u>	<u>243</u>	<u>522</u>
<u>Fairview</u>	<u>2,929</u>	<u>7,063</u>
<u>Forest Grove</u>	<u>3,054</u>	<u>5,943</u>
<u>Gladstone</u>	<u>880</u>	<u>1,569</u>
<u>Gresham</u> ³	<u>20,020</u>	<u>27,679</u>
<u>Happy Valley</u> ⁴	<u>5,705</u>	<u>1,418</u>
<u>Hillsboro</u> ³	<u>16,106</u>	<u>59,566</u>
<u>Johnson City</u>	<u>38</u>	<u>82</u>
<u>King City</u> ⁶	<u>461</u>	<u>470</u>
<u>Lake Oswego</u>	<u>4,049</u>	<u>13,268</u>
<u>Maywood Park</u>	<u>12</u>	<u>5</u>
<u>Milwaukie</u>	<u>3,188</u>	<u>3,650</u>
<u>Oregon City</u> ²	<u>7,994</u>	<u>7,665</u>
<u>Portland</u> ³	<u>72,136</u>	<u>209,215</u>
<u>Rivergrove</u>	<u>20</u>	<u>0</u>
<u>Sherwood</u>	<u>5,216</u>	<u>9,518</u>
<u>Tigard</u>	<u>6,308</u>	<u>17,801</u>
<u>Troutdale</u>	<u>3,260</u>	<u>7,222</u>
<u>Tualatin</u> ⁷	<u>4,054</u>	<u>12,301</u>
<u>West Linn</u>	<u>3,732</u>	<u>1,935</u>
<u>Wilsonville</u> ²		
<u>Wood Village</u>	<u>458</u>	<u>1,074</u>
<u>Clackamas County</u> ^{1,3}	<u>13,340</u>	<u>31,901</u>
<u>Multnomah County</u> ⁸	<u>0</u>	<u>0</u>
<u>Washington County</u> ¹	<u>51,649</u>	<u>55,921</u>
Regional Total	239,872	501,210

¹Standards apply to the urban unincorporated portion of the county only.

²The Cities of Oregon City and Wilsonville have not completed their capacity analysis (as of July 2002).

³Includes capacity for Pleasant Valley Concept Plan, former Urban Reserve Nos. 4 and 5.

⁴Includes capacity for former Urban Reserve Nos. 14 and 15.

⁵Includes capacity for former Urban Reserve No. 55.

⁶Includes capacity for former Urban Reserve No. 47.

⁷Includes capacity for former Urban Reserve No. 43.

⁸Capacity for unincorporated Multnomah County is included in the capacities of the Cities of Gresham, Portland and Troutdale.

Exhibit B to Ordinance No. 02-969

New Regional Framework Plan Policy pursuant to Measure 26-29

Policy 1.16 Residential Neighborhoods

The livability of existing residential neighborhoods is essential to the success of the 2040 Growth Concept. In order to protect and improve the region's existing residential neighborhoods, Metro shall take measures to:

- Protect residential neighborhoods from air and water pollution, noise and crime.
- Make community services accessible to residents of neighborhoods by walking, bicycle and transit, where possible.
- Facilitate the provision of affordable government utilities and services to residential neighborhoods.

Metro shall not require local governments to increase the density of existing single-family neighborhoods identified solely as Inner or Outer Neighborhoods.

Exhibit C to Ordinance No. 02-969

New Metro Code to implement Policy 1.16 of the Regional Framework Plan

TITLE 12: PROTECTION OF RESIDENTIAL NEIGHBORHOODS

3.07.1210 Purpose and Intent

Existing neighborhoods are essential to the success of the 2040 Growth Concept. The intent of Title 12 of the Urban Growth Management Functional Plan is to protect the region's residential neighborhoods. The purpose of Title 12 is to help implement the policy of the Regional Framework Plan to protect existing residential neighborhoods from air and water pollution, noise and crime and to provide adequate levels of public services.

3.07.1220 Residential Density

Metro shall not require any city or county to authorize an increase in the residential density of a single-family neighborhood in an area mapped solely as an Inner or Outer Neighborhood pursuant to Metro Code section 3.07.130 prior to May 22, 2002.

3.07.1230 Access to Commercial Services

- A. In order to reduce air pollution and traffic congestion, and to make commercial retail services more accessible to residents of Inner and Outer Neighborhoods, each city and county may designate in its comprehensive plan and land use regulations one or more Neighborhood Centers within or in close proximity to Inner and Outer Neighborhoods to serve as the central location of commercial services.
- B. To ensure that commercial development principally serves the needs of the residents of Inner and Outer Neighborhoods, but does not generate excessive traffic, noise or air pollution, each city and county shall adopt limitations on the scale of commercial services in Neighborhood Centers. In a Neighborhood Center, a city or county shall not approve:
1. A commercial retail use with more than 20,000 square feet of gross leasable area in a single building; or
 2. Office commercial uses with more than 10,000 square feet of gross leasable area in a single building or on a single lot or parcel.

3.07.1240 Access to Parks and Schools

- A. Each city and county shall, within two years following adoption by the Metro Council of a process and criteria for such standards, establish a level of service standard for parks and greenspaces that calls for a park facility within a specified distance of all residences.
- B. To make parks and greenspaces more accessible to residents of Inner and Outer Neighborhoods and all residents of the region, each city and county shall provide for access to parks and greenspaces by walking, biking and transit, where transit is available or planned.

- C. To make parks and schools more accessible to neighborhood residents, to reduce traffic, and to use land more efficiently, cities, counties, park providers and school districts shall, where appropriate provide for shared use of school facilities for park purposes and of park facilities for school purposes.
- D. To make public schools more accessible to neighborhood residents, cities, counties and school districts shall consider school sites that are near concentrations of population and are connected to those concentrations by safe and convenient walking, biking and, where transit is available or planned, transit facilities.

Exhibit D to Ordinance No. 02-969

New Regional Framework Plan Policy on Economic Opportunity

According to the Regional Industrial Land Study, economic expansion of the 1990s diminished the region's inventory of land suitable for industries that offer the best opportunities for new family-wage jobs. Sites suitable for these industries should be identified and protected from incompatible uses.

1.4.1 Metro, with the aid of leaders in the business and development community and local governments in the region, shall designate as Regionally Significant Industrial Areas those areas with site characteristics that make them especially suitable for the particular requirements of industries that offer the best opportunities for family-wage jobs.

1.4.2 Metro, through the Urban Growth Management Functional Plan, and local governments shall exercise their comprehensive planning and zoning authorities to protect Regionally Significant Industrial Areas from incompatible uses.

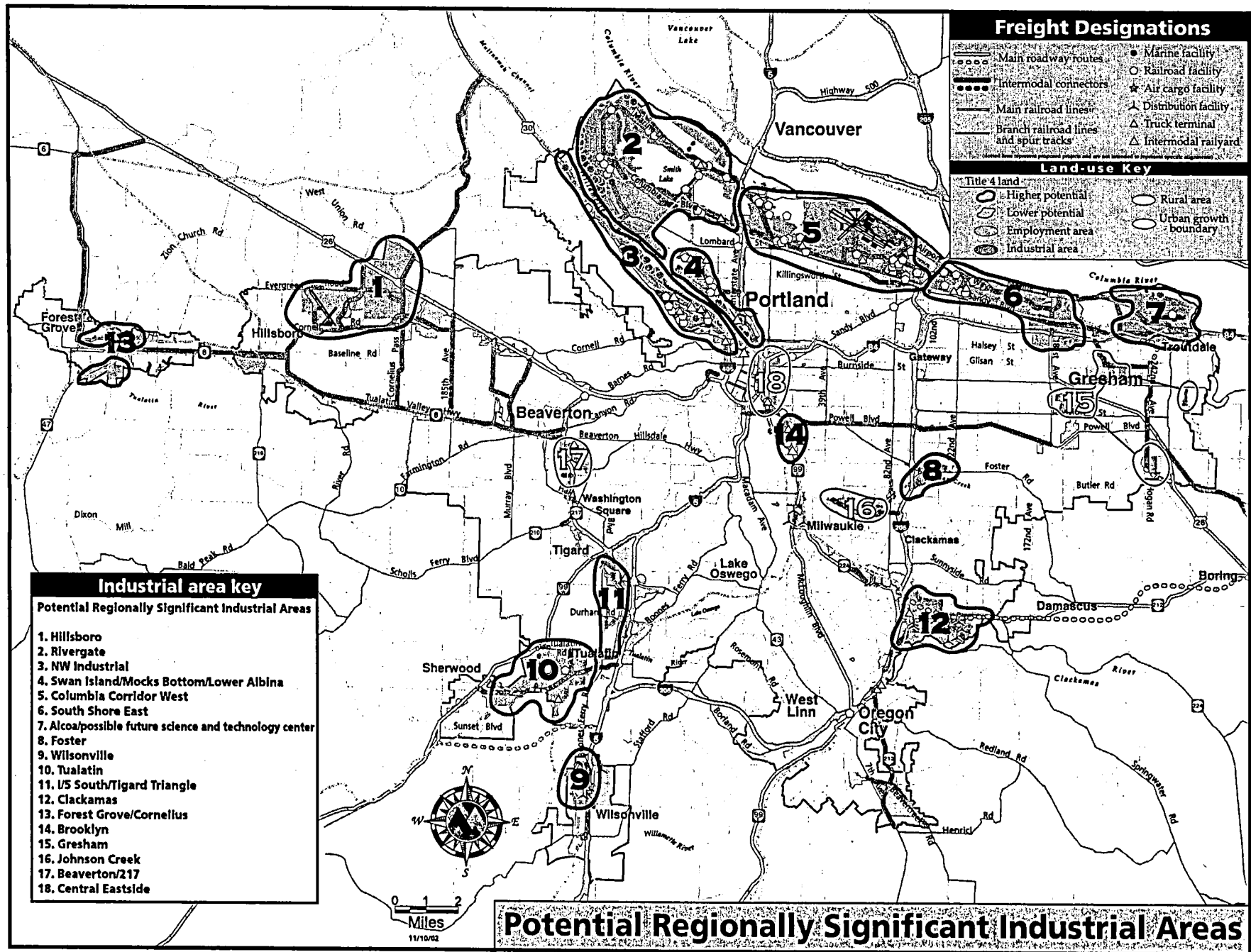


Exhibit F to Ordinance No. 02-969

TITLE 4: INDUSTRIAL AND OTHER EMPLOYMENT AREAS

3.07.410 Intent

It is the intent of the Metro 2040 Growth Concept that Employment and Industrial Areas contain supportive retail development. Employment and Industrial areas would be expected to include some limited retail commercial uses primarily to serve the needs of people working or living in the immediate Employment or Industrial Areas; not larger market areas outside the Employment or Industrial Areas.

3.07.410 Purpose and Intent

The Regional Framework Plan calls for a strong economic climate. To improve the region's economic climate, the plan seeks to protect the supply of sites for employment by limiting incompatible uses within Industrial and Employment Areas. To protect the capacity and efficiency of the region's transportation system for movement of goods and services, and to promote the creation of jobs in centers, the plan encourages efficient patterns and mixes of uses within designated Centers and discourages certain kinds of commercial retail development outside Centers. It is the purpose of Title 4 to achieve these policies. Metro will consider amendments to this title in order to make the title consistent with new policies on economic development adopted as part of periodic review.

3.07.420 Comprehensive Plan and Implementing Ordinance Changes Required

- A. — Cities and counties are hereby required to amend their comprehensive plans and implementing regulations, if necessary, to prohibit retail uses larger than 60,000 square feet of gross leasable area per building or business in the Industrial Areas designated on the attached Employment and Industrial Areas Map[†].
- B. — This subsection applies to city and county comprehensive plan designations and zoning ordinances acknowledged by the effective date of this functional plan, which allow retail uses larger than 60,000 square feet of gross leasable area per building or business in Employment Areas designated on the attached Employment and Industrial Areas Map. These cities and counties may continue to allow the extent and location of retail uses allowed in Employment Areas on the effective date of this Functional Plan for the specific zones in acknowledged land use regulations listed in Table 3.07.4. For all other zones in Employment Areas, these cities and counties are hereby required to amend their comprehensive plans and implementing regulations, if necessary, to require a process resulting in a land use decision for any retail uses larger than 60,000 square feet of gross leasable area per building or business on those lands where such uses are currently allowed by any process. The standards for the land use decision to allow any such retail uses shall require (1) a demonstration in the record that transportation facilities adequate to serve the retail use, consistent with Metro's functional plans for transportation, will be in place at the time the retail use begins operation; and (2) a demonstration that transportation facilities adequate to meet the transportation need for the other planned

[†]—On file in the Metro Council office.

uses in the Employment Areas are included in the applicable comprehensive plan provisions. If the city and county comprehensive plan designations and zoning ordinances which allow retail uses larger than 60,000 square feet of gross leasable area per building or business in Employment Areas have not been acknowledged by the effective date of this functional plan, subsection 3.07.420(C) of this title shall apply.

- C. ~~City or county comprehensive plan designations and zoning ordinances acknowledged by the effective date of this functional plan which do not allow retail uses larger than 60,000 square feet of gross leasable area per building or business in Employment Areas designated on the attached Employment and Industrial Areas Map shall continue to prohibit them unless an exception is established under section 3.07.430 of this title pursuant to the compliance procedures of Title 8.~~

3.07.420 Protection of Regionally Significant Industrial Areas

- A. Regionally Significant Industrial Areas are those areas that offer the best opportunities for family-wage industrial jobs. Each city and county with land use planning authority over areas shown on the Generalized Map of Regionally Significant Industrial Areas adopted in Ordinance No. 02-969 shall derive specific plan designation and zoning district boundaries of the areas from the Map, taking into account the location of existing uses that would not conform to the limitations on non-industrial uses in subsection C, D and E of this section and the need of individual cities and counties to achieve a mix of types of employment uses.
- B. Each city and county with land use planning authority over an area designated by Metro on the 2040 Growth Concept Map, as amended by Ordinance No. 02-969, as a Regional Significant Industrial Area shall, as part of compliance with section 3.07.1120 of the Urban Growth Management Functional Plan, derive plan designation and zoning district boundaries of the areas from the Growth Concept Map.
- C. After determining boundaries of Regionally Significant Industrial Areas pursuant to subsections A and B, the city or county shall adopt implementing ordinances that limit development in the areas to industrial uses, uses accessory to industrial uses, offices for industrial research and development and large corporate headquarters in compliance with subsection E of this section, utilities, and those non-industrial uses necessary to serve the needs of businesses and employees of the areas. Ordinances shall not allow financial, insurance, real estate or other professional office uses unless they are accessory to an industrial or other permitted use.
- D. Notwithstanding subsection C, a city or county shall not approve:
1. A commercial retail use with more than 20,000 square feet of retail sales area in a single building or in multiple buildings that are part of the same development project; or
 2. Commercial retail uses that would occupy more than five percent of the net developable portion of all contiguous Regionally Significant Industrial Areas.

E. As provided in subsection C of this section, a city or county may approve an office for industrial research and development or a large corporate headquarters if:

1. The office is served by public or private transit; and
2. If the office is for a corporate headquarters, it accommodates at least 1,000 employees and is subject to a master plan that sets forth plans for long-term use of the subject property.

F. A city or county may allow division of lots or parcels into smaller lots or parcels as follows:

1. Lots or parcels 20 acres or smaller may be divided into any number of smaller lots or parcels;
2. Lots or parcels larger than 20 acres but smaller than 50 acres may be divided into any number of smaller lots and parcels so long as the resulting division yields the maximum number of lots or parcels larger than 20 acres;
3. Lots or parcels 50 acres or larger may be divided into smaller lots and parcels so long as the resulting division yields the maximum number of lots or parcels of at least 50 acres;
4. Notwithstanding paragraphs 2, 3 and of this subsection, any lot or parcel may be divided into smaller lots or parcels or made subject to rights-of-way for the following purposes:
 - a. To provide public facilities and services;
 - b. To separate a portion of a lot or parcel in order to protect a natural resource, to provide a public amenity, or to implement a remediation plan for a site identified by the Oregon Department of Environmental Quality pursuant to ORS 465.225;
 - c. To separate a portion of a lot or parcel containing a nonconforming use from the remainder of the lot or parcel in order to render the remainder more practical for a permitted use;
 - d. To reconfigure the pattern of lots and parcels pursuant to subsection G of this section; or
 - e. To allow the creation of a lot for financing purposes when the created lot is part of a master planned development.

G. A city or county may allow reconfiguration of lots or parcels less than 50 acres in area if the reconfiguration would be more conducive to a permitted use and would result in no net increase in the total number of lots and parcels. Lots or parcels 50 acres or greater in area may also be reconfigured so long as the resulting area of any such lot or parcel would not be less than 50 acres.

H. Notwithstanding subsections C and D of this section, a city or county may allow the lawful use of any building, structure or land at the time of enactment of an ordinance adopted pursuant to this section to continue and to expand to add up to 20 percent more floor area and 10 percent more land area. Notwithstanding subsection F of this section, a city or county may allow division of lots or parcels pursuant to a master plan approved by the city or county prior to December 31, 2003.

J. By December 31, 2003, Metro shall, following consultation with cities and counties, adopt a map of Regionally Significant Industrial Areas with specific boundaries derived from the Generalized Map of Regionally Significant Industrial Areas adopted in Ordinance No. 02-969, taking into account the location of existing uses that would not conform to the limitations of non-industrial uses in subsections C, D and E of this section and the need of individual cities and counties to achieve a mix of types of employment uses. Each city and county with land use planning authority over the area shall use the map in the application of the provisions of this section until the city or county adopts plan designations and zoning district boundaries of the area as provided by subsection A of this section.

3.07.430-Exceptions

~~Exceptions to this standard for Employment Areas may be included in local compliance plans for:~~

- A. ~~Low traffic generating, land consumptive commercial uses with low parking demand which have a community or region wide market; or~~
- B. ~~Specific Employment Areas which have substantially developed retail areas or which are proposed to be or have been locally designated, but not acknowledged by the effective date of this functional plan, as retail areas, may allow new or redeveloped retail uses where adequate transportation facilities capacity is demonstrated in local compliance plans as provided in Title 8.~~

3.07.430 Protection of Industrial Areas

A. In Industrial Areas mapped pursuant to Metro Code section 3.07.130 that are not Regionally Significant Industrial Areas, cities and counties shall limit new and expanded retail commercial uses to those appropriate in type and size to serve the needs of businesses, employees and residents of the Industrial Areas.

B. In an Industrial Area, a city or county shall not approve:

1. A commercial retail use with more than 20,000 square feet of retail sales area in a single building or in multiple buildings that are part of the same development project; or
2. Commercial retail uses that would occupy more than ten percent of the net developable portion of the area or any adjacent Industrial Area.

C. Notwithstanding subsection B of this section, a city or county may allow the lawful use of any building, structure or land at the time of enactment of an ordinance adopted pursuant to this section to continue and to expand to add up to 20 percent more floorspace and 10 percent more land area.

3.07.440 Protection of Employment Areas

- A. Except as provided in subsections C, D and E, in Employment Areas mapped pursuant to Metro Code section 3.07.130, cities and counties shall limit new and expanded commercial retail uses to those appropriate in type and size to serve the needs of businesses, employees and residents of the Employment Areas.
- B. Except as provided in subsections C, D and E, a city or county shall not approve a commercial retail use in an Employment Area with more than 60,000 square feet of gross leasable area in a single building, or commercial retail uses with a total of more than 60,000 square feet of retail sales area on a single lot or parcel, or on contiguous lots or parcels, including those separated only by transportation right-of-way.
- C. A city or county whose zoning ordinance applies to an Employment Area and is listed on Table 3.07-4 may continue to authorize commercial retail uses with more than 60,000 square feet of gross leasable area in that zone if the ordinance authorized those uses on January 1, 2003.
- D. A city or county whose zoning ordinance applies to an Employment Area and is not listed on Table 3.07-4 may continue to authorize commercial retail uses with more than 60,000 square feet of gross leasable area in that zone if:
1. The ordinance authorized those uses on January 1, 2003;
 2. Transportation facilities adequate to serve the commercial retail uses will be in place at the time the uses begin operation; and
 3. The comprehensive plan provides for transportation facilities adequate to serve other uses planned for the Employment Area.
- E. A city or county may authorize new commercial retail uses in Employment Areas if the uses:
1. Generate no more than a 25 percent increase in site-generated vehicle trips above permitted non-industrial uses; and
 2. Meet the Maximum Permitted Parking – Zone A requirements set forth in Table 3.07-2 of Title 2 of the Urban Growth Management Functional Plan.

Table 3.07-4
(Section 3.07.420(B))

Clackamas County unincorporated
Commercial
Commercial Industrial

Lake Oswego
General Commercial
Highway Commercial

Troutdale
General Commercial

Hillsboro
General Commercial

Sherwood
General Commercial

Tigard
General Commercial
Commercial Professional

Tualatin
Commercial General

Wilsonville
Planned Development Commercial

Exhibit G to Ordinance No. 02-969

New Regional Framework Plan Policy on Centers

1.15 Centers

The success of the 2040 Growth Concept depends upon the maintenance and enhancement of the Central City, Regional and Town Centers, Station Communities and Main Streets as the principal centers of urban life in the region. Each Center has its own character and is at a different stage of development. Hence, each needs its own strategy for success.

Metro shall develop a regional strategy for enhancement of Centers, Station Communities and Main Streets in the region. The strategy shall recognize the critical connection between transportation and these design types, and integrate policy direction from the Regional Transportation Plan. The strategy shall place a high priority on investments in Centers by Metro and efforts by Metro to secure complementary investments by others. The strategy shall include measures to encourage the siting of government offices and appropriate facilities in Centers and Station Communities. Metro shall work with local governments, community leaders and state and federal agencies to develop an investment program that recognizes the stage of each Center's development, the readiness of each Center's leadership, and opportunities to combine resources to enhance results. To assist, Metro shall maintain a database of investment and incentive tools and opportunities that may be appropriate for individual Centers.

Metro shall assist local governments and shall seek assistance from the state in the development and implementation of strategies for each of the Centers on the 2040 Growth Concept Map. The strategy for each Center shall be tailored to the needs of the Center and shall include an appropriate mix of investments, incentives, removal of barriers and guidelines aimed to encourage the kinds of development that will add vitality to Centers and improve their functions as the hearts of their communities.

It is the policy of Metro to determine whether strategies for Centers are succeeding. Metro shall measure the success of Centers and report results to the region and the state. Metro shall work with its partners to revise strategies over time to improve their results.

Exhibit H to Ordinance 02-969

New Metro Code to Implement Policy 1.15 of the Regional Framework Plan

~~TITLE 6: REGIONAL ACCESSIBILITY~~

~~3.07.610 Intent~~

~~Implementation of the 2040 Growth Concept requires that the region identify key measures of transportation effectiveness which include all modes of transportation. Developing a full array of these measures will require additional analysis. Focusing development in the concentrated activity centers, including the central city, regional centers, town centers and station communities, requires the use of alternative modes of transportation in order to avoid unacceptable levels of congestion. The continued economic vitality of industrial areas and intermodal facilities is largely dependent on preserving or improving access to these areas and maintaining reasonable levels of freight mobility in the region. Therefore, regional congestion standards and other regional system performance measures shall be tailored to reinforce the specific development needs of the individual 2040 Growth Concept design types.~~

~~These regional standards are linked to a series of regional street design concepts that fully integrate transportation and land use needs for each of the 2040 land use design types in the Regional Framework Plan. The designs generally form a continuum; a network of throughways (freeway and highway designs) emphasize auto and freight mobility and connect major activity centers. Slower speed boulevard designs within concentrated activity centers balance the multi-modal travel demands for each mode of transportation within these areas. Street and road designs complete the continuum, with multi-modal designs that reflect the land uses they serve, but also serving as moderate speed vehicle connections between activity centers that complement the throughway system. It is intended that the entirety of these Title 6 standards will be supplemented by the 1998 Regional Transportation Plan (RTP).~~

~~(Ordinance No. 97-715B, Sec. 1. Amended by Ordinance No. 98-721A, Sec. 1.)~~

~~3.07.620 Regional Street Design Guidelines~~

~~Regional routes in each of the 2040 Design Types are designated as one of four major classifications on the Regional Street Design Map, attached[†]. The four classifications are: Throughways, Boulevards, Streets and Roads. All cities and counties within the Metro region shall consider the following regional street design elements when planning for improvements to these facilities, including those facilities built by ODOT, Tri-Met or the Port of Portland. "Creating Livable Streets: Street Design for 2040" (1997) is a resource for cities, counties, ODOT, Tri-Met and the Port of Portland to use when prioritizing street design elements within a constrained right of way.~~

~~A. Throughways. Throughways connect the region's major activity centers within the region, including the central city, regional centers, industrial areas and intermodal facilities to one another and to points outside the region. Throughways are traffic oriented with designs that emphasize motor vehicle mobility. Throughways are divided into Freeway and Highway designs.~~

- ~~1. Freeway Design. Freeways are designed to provide high speed travel for longer motor vehicle trips throughout the region. These designs usually include four to six vehicle lanes, with additional lanes in some situations. They are completely~~

[†] On file in the Metro Council office.

divided, with no left turn lanes. Street connections always occur at separated grades with access controlled by ramps. Cities and counties shall amend their comprehensive plan and implementing ordinances, if necessary, to require consideration of the following Freeway design elements when proceeding with improvements to the right of way on regional routes designated on the regional street design map:

- a. ——— High vehicle speeds;
- b. ——— Improved pedestrian crossings on overpasses;
- c. ——— Parallel facilities for bicycles;
- d. ——— Motor vehicle lane widths that accommodate freight movement and high-speed travel.

2. ——— Highway Design. Highways are designed to provide high speed travel for longer motor vehicle trips throughout the region while accommodating limited public transportation, bicycle and pedestrian travel. Highways are usually divided with a median, but also have left turn lanes where at grade intersections exist. These designs usually include four to six vehicle lanes, with additional lanes in some situations. Cities and counties shall amend their comprehensive plan and implementing ordinances, if necessary, to require consideration of the following Highway design elements when proceeding with improvements to the right of way on regional routes designated on the regional street design map:

- a. ——— High vehicle speeds;
- b. ——— Few or no driveways;
- c. ——— Improved pedestrian crossings at overpasses and all intersections;
- d. ——— Accommodation of bicycle travel through the use of a striped bikeway;
- e. ——— Sidewalks where appropriate;
- f. ——— Motor vehicle lane widths that accommodate freight movement and high-speed travel.

B. ——— Boulevard Designs. Boulevards serve major centers of urban activity, including the Central City, Regional Centers, Station Communities, Town Centers and some Main Streets. Boulevards are designed with special amenities to favor public transportation, bicycle and pedestrian travel and balance the many travel demands of these areas. Boulevards are divided into regional and community-scale designs on the Regional Street Design Map. Regional and Community Boulevards combine motor vehicle traffic with public transportation, bicycle and pedestrian travel where dense development is oriented to the street. Regional Boulevard designs usually include four vehicle lanes, with additional lanes or one-way couplets in some situations. Community Boulevard designs may include up to four vehicle lanes and on-street parking. Fewer vehicle lanes may be appropriate in Community Boulevard designs in some situations, particularly when necessary to provide on-street parking. Cities and counties shall amend their comprehensive plan and implementing ordinances, if necessary, to require consideration of the following Regional

and Community Boulevard design elements when proceeding with improvements to the right-of-way on regional routes designated on the regional street design map:

1. ~~Low to moderate vehicle speeds on Regional Boulevard and low vehicle speeds on Community Boulevards;~~
2. ~~The use of medians and curb extensions to enhance pedestrian crossings where wide streets make crossing difficult;~~
3. ~~Combined driveways;~~
4. ~~On street parking where possible;~~
5. ~~Wide sidewalks with pedestrian amenities such as benches, awnings and special lighting;~~
6. ~~Landscape strips, street trees or other design features that create a pedestrian buffer between curb and sidewalk;~~
7. ~~Improved pedestrian crossings at all intersections, and mid-block crossings where intersection spacing exceeds 530 feet;~~
8. ~~Striped bikeways or shared outside lane;~~
9. ~~Motor vehicle lane widths that consider the above improvements.~~

C. ~~Street Designs. Streets serve the region's transit corridors, neighborhoods and some main streets. Streets are designed with special amenities to balance motor vehicle traffic with public transportation, bicycle and pedestrian travel in the 2040 Design Types they serve. Streets are divided into regional and community scale designs on the Regional Street Design Map. Regional Streets are designed to carry motor vehicle traffic while also providing for public transportation, bicycle and pedestrian travel. Regional street designs usually include four vehicle lanes, with additional lanes in some situations. Community Street designs may include up to four vehicle lanes. Fewer vehicle lanes may be appropriate in Community Street designs in some situations, particularly when necessary to provide on street parking. Cities and counties shall amend their comprehensive plan and implementing ordinances, if necessary, to require consideration of the following Regional Street design elements when proceeding with improvements to the right-of-way on regional routes designated on the Regional Street Design Map:~~

1. ~~Moderate vehicle speeds;~~
2. ~~The use of medians and curb extensions to enhance pedestrian crossings where wide streets make crossing difficult or to manage motor vehicle access;~~
3. ~~Combined driveways;~~
4. ~~On street parking when appropriate;~~
5. ~~Buffered sidewalks with pedestrian amenities such as special lighting and special crossing amenities tied to major transit stops;~~

6. ~~Landscape strips, street trees or other design features that create a pedestrian buffer between curb and sidewalk;~~
7. ~~Improved pedestrian crossings at signaled intersections on Regional Streets and improved pedestrian crossings at all intersections on Community Streets;~~
8. ~~Striped bikeways or shared outside lane;~~
9. ~~Motor vehicle lane widths that consider the above improvements.~~

D. ~~Urban Roads. Urban Roads serve the region's industrial areas, intermodal facilities and employment centers where buildings are less oriented to the street, and primarily emphasize motor vehicle mobility. Urban Roads are designed to carry significant motor vehicle traffic while providing for some public transportation, bicycle and pedestrian travel. These designs usually include four vehicle lanes, with additional lanes in some situations. Cities and counties shall amend their comprehensive plan and implementing ordinances, if necessary, to require consideration of the following Urban Road design elements when proceeding with improvements to the right of way on regional routes designated on the regional street design map:~~

1. ~~Moderate vehicle speeds;~~
2. ~~Few driveways;~~
3. ~~Sidewalks;~~
4. ~~Improved pedestrian crossings at major intersections;~~
5. ~~Striped bikeways;~~
6. ~~Center medians that manage access and control left turn movements;~~
7. ~~Motor vehicle lane widths that consider the above improvements.~~

(Ordinance No. 97-715B, Sec. 1. Amended by Ordinance No. 98-721A, Sec. 1.)

3.07.630 Design Standards for Street Connectivity

The design of local street systems, including "local" and "collector" functional classifications, is generally beyond the scope of the Regional Transportation Plan (RTP). However, the aggregate effect of local street design impacts the effectiveness of the regional system when local travel is restricted by a lack of connecting routes, and local trips are forced onto the regional network. Therefore, streets should be designed to keep through trips on arterial streets and provide local trips with alternative routes. The following design and performance options are intended to improve local circulation in a manner that protects the integrity of the regional system.

Cities and counties within the Metro region are hereby required to amend their comprehensive plans and implementing ordinances, if necessary, to comply with or exceed one of the following options in the development review process:

A. ~~Design Option.~~ Cities and counties shall ensure that their comprehensive plans, implementing ordinances and administrative codes require demonstration of compliance with the following, consistent with regional street design policies:

1. ~~For new residential and mixed-use development, all contiguous areas of vacant and primarily undeveloped land of five acres or more shall be identified by cities and counties and the following will be prepared, consistent with regional street design policies:~~

~~A map that identifies possible local street connections to adjacent developing areas. The map shall include:~~

- a. ~~Full street connections at intervals of no more than 530 feet, except where prevented by topography, barriers such as railroads or freeways, or environmental constraints such as major streams and rivers. Street connections at intervals of no more than 330 feet are recommended in areas planned for the highest density mixed-use development.~~
- b. ~~Accessways for pedestrians, bicycles or emergency vehicles on public easements or right-of-way where full street connections are not possible, with spacing between full street or accessway connections of no more than 330 feet, except where prevented by topography, barriers such as railroads or freeways, or environmental constraints such as major streams and rivers.~~

2. ~~New residential and mixed-use developments shall include local street plans that:~~

- a. ~~Encourage pedestrian and bicycle travel by providing short, direct public right-of-way routes to connect residential uses with nearby existing and planned commercial services, schools, parks and other neighborhood facilities; and~~
- b. ~~Include no cul-de-sac streets longer than 200 feet, and no more than 25 dwelling units on a closed-end street system except where topography, barriers such as railroads or freeways, or environmental constraints such as major streams and rivers, prevent street extension; and~~
- c. ~~Provide bike and pedestrian connections on public easements or right-of-way when full street connections are not possible, with spacing between connections of no more than 330 feet except where prevented by topography, barriers such as railroads or freeways, or environmental constraints such as major streams and rivers; and~~
- d. ~~Consider opportunities to incrementally extend and connect local streets in primarily developed areas; and~~
- e. ~~Serve a mix of land uses on contiguous local streets; and~~
- f. ~~Support posted speed limits; and~~
- g. ~~Consider narrow street design alternatives that feature total right-of-way of no more than 46 feet, including pavement widths of no more than 28 feet, curb face to curb face, sidewalk widths of at least 5 feet and landscaped pedestrian buffer strips that include street trees; and~~

(2) determine a recommended set of transportation projects, actions, or strategies and the appropriate modes and corridors to address identified needs in the system-level study area.

The second phase is project-level planning (also referred to as project development). The purpose of project-level planning is to develop project design details and select a project alignment, as necessary, after evaluating engineering and design details and environmental impacts.

The following sub-sections (A-D): (1) require that cities and counties establish regional mode split targets for all 2040 design types that will be used to guide transportation system improvements; (2) establish optional performance standards and deficiency thresholds intended to identify transportation needs through multi-modal system-level planning and (3) establish the process to identify appropriate recommended solutions to address those needs identified through multi-modal system-level planning and project-level planning.

A. Alternative Mode Analysis:

1. Person travel represents the largest share of trips for all modes of travel. Improvement in mode split will be used as the key regional measure for assessing transportation system improvements in the Central City, Regional Centers, Town Centers and Station Communities. For other 2040 Growth Concept design types, mode split will be used as an important factor in assessing transportation system improvements. Each jurisdiction shall establish an alternative mode split target (defined as non-Single Occupancy Vehicle person-trips as a percentage of all person-trips for all modes of transportation) for trips into, out of and within all 2040 Growth Concept land use design types within its boundaries one year after adoption of the 1998 Regional Transportation Plan. The alternative mode split target shall be no less than the regional targets for these 2040 Growth Concept land use design types to be established in the 1998 Regional Transportation Plan.
2. Cities and counties shall identify actions which will implement the mode split targets one year after adoption of the 1998 Regional Transportation Plan. These actions should include consideration of the maximum parking ratios adopted as part of Title 2, section 3.07.220; Regional Street Design considerations in this title; and transit's role in serving the area.

B. Motor Vehicle Congestion Analysis:

1. Motor Vehicle Level Of Service (LOS) is a measurement of congestion as a share of designed motor vehicle capacity of a road. Table 3.07-5, Motor Vehicle Level Of Service Deficiency Thresholds and Operating Standards, may be incorporated into local comprehensive plans and implementing ordinances to replace current methods of determining motor vehicle congestion on regional facilities, if a city or county determines that this change is needed to permit Title 1, Table 3.07-1 capacities for the 2040 design types and facilities.
2. Analysis: A transportation need is identified in a given location when analysis indicates that congestion has reached the level indicated in the "exceeds deficiency threshold" column of Table 3.07-5 and that this level of congestion will negatively impact accessibility, as determined through section 3.07.640(B)(4), below. The analysis should consider a mid-day hour appropriate for the study area and the appropriate two-hour peak-hour condition, either A.M. or P.M. or both to address the problem. Other non-peak

hours of the day, such as mid-day on Saturday, should also be considered to determine whether congestion is consistent with the acceptable or preferred operating standards identified in Table 3.07-5. The lead agency or jurisdictions will be responsible for determining the appropriate peak and non-peak analysis periods. The lead agency or jurisdictions will be responsible for determining the appropriate peak analysis period.

— An appropriate solution to the need is determined through multi-modal system-level planning considerations listed in section 3.07.640(C), below. For regional transportation planning purposes, the recommended solution should be consistent with the acceptable or preferred operating standards identified in Table 3.07-5. A city or county may choose a higher level of service operating standard where findings of consistency with section 3.07.640(C) have been developed.

3. — Regional Highways. Figure 3.07-1 identifies the Regional Highways specified in Table 3.07-5. Each corridor will be evaluated on a case-by-case basis through system-level refinement studies. The studies will identify the performance and operating expectations for each corridor based on their unique operating and geographic characteristics. Appropriate multi-modal solutions to needs identified through these studies will be forwarded for inclusion in the Regional Transportation Plan.
4. — Accessibility. If a deficiency threshold is exceeded on the regional transportation system as identified in Table 3.07-5, cities and counties shall evaluate the impact of the congestion on regional accessibility using the best available quantitative or qualitative methods. If a determination is made by Metro that exceeding the deficiency threshold negatively impacts regional accessibility, cities and counties shall follow the transportation systems analysis and transportation project analysis procedures identified in 3.07.640(C) and (D) below.
5. — Consistency. The identified function or the identified capacity of a road may be significantly affected by planning for 2040 Growth Concept design types. Cities and counties shall take actions described in section 3.07.640(C) and (D) below, including amendment of their transportation plans and implementing ordinances, if necessary, to preserve the identified function and identified capacity of the road, and to retain consistency between allowed land uses and planning for transportation facilities.

C. — Transportation Systems Analysis. This section applies to city and county comprehensive plan amendments or to any studies that would recommend or require an amendment to the Regional Transportation Plan to add significant single occupancy vehicle (SOV) capacity to multi-modal arterials and/or highways.

Consistent with Federal Congestion Management System requirements (23 CFR Part 500) and TPR system planning requirements (660-12), the following actions shall be considered through the Regional Transportation Plan when recommendations are made to revise the Regional Transportation Plan and/or local transportation system plans to define the need, mode, corridor and function to address an identified transportation need consistent with Table 3.07-5, and recommendations are made to add significant SOV capacity:

1. — Regional transportation demand strategies;
2. — Regional transportation system management strategies, including intelligent transportation systems (ITS);

3. — High occupancy vehicle (HOV) strategies;
4. — Regional transit, bicycle and pedestrian system improvements to improve mode split;
5. — Unintended land use and transportation effects resulting from a proposed SOV project or projects;
6. — Effects of latent demand from other modes, routes or time of day from a proposed SOV project or projects;
7. — If upon a demonstration that the above considerations do not adequately and cost-effectively address the problem, a significant capacity improvement may be included in the regional transportation plan.

Consistent with Federal Congestion Management System requirements (23 CFR Part 500) and TPR system planning requirements (660-12), the following actions shall be considered when local transportation system plans (TSPs), multi-modal corridor and sub-area studies, mode specific plans or special studies (including land use actions) are developed:

1. — Transportation demand strategies that further refine or implement a regional strategy identified in the RTP;
2. — Transportation system management strategies, including intelligent Transportation Systems (ITS), that refine or implement a regional strategy identified in the RTP;
3. — Sub-area or local transit, bicycle and pedestrian system improvements to improve mode split;
4. — The effect of a comprehensive plan change on mode split targets and actions to ensure the overall mode split target for the local TSP is being achieved;
5. — Improvements to parallel arterials, collectors, or local streets, consistent with connectivity standards contained in section 3.07.620 of this title, as appropriate, to address the transportation need and to keep through trips on arterial streets and provide local trips with alternative routes;
6. — Traffic calming techniques or changes to the motor vehicle functional classification, to maintain appropriate motor vehicle functional classification;
7. — If upon a demonstration that the above considerations do not adequately and cost-effectively address the problem, a significant capacity improvement may be included in the comprehensive plan.

Upon a demonstration that the above considerations do not adequately and cost-effectively address the problem and where accessibility is significantly hindered, Metro and the affected city or county shall consider:

1. — Amendments to the boundaries of a 2040 Growth Concept design type;
2. — Amendments or exceptions to land use functional plan requirements; and/or

~~3. Amendments to the 2040 Growth Concept.~~

~~Demonstration of compliance will be included in the required congestion management system compliance report submitted to Metro by cities and counties as part of system level planning and through findings consistent with the TPR in the case of amendments to applicable plans.~~

- ~~D. Transportation Project Analysis. The TPR and Metro's Interim Congestion Management System (GMS) document require that measures to improve operational efficiency be addressed at the project level. Section 3.07.620 of this title requires that street design guidelines be considered as part of the project level planning process. Therefore, cities, counties, Tri Met, ODOT, and the Port of Portland shall address the following operational and design considerations during transportation project analysis:~~

- ~~1. Transportation system management (e.g., access management, signal inter-ties, lane channelization, etc.) to address or preserve existing street capacity.~~
- ~~2. Guidelines contained in "Creating Livable Streets: Street Design Guidelines for 2040" (1997) and other similar resources to address regional street design policies.~~

~~The project need, mode, corridor, and function do not need to be addressed at the project level. This section 3.07.640(D) does not apply to locally funded projects on facilities not designated on the Regional Motor Vehicle System Map or the Regional Street Design Map. Demonstration of compliance will be included in the required Congestion Management System project level compliance report submitted to Metro as part of project level planning and development.~~

~~(Ordinance No. 97-715B, Sec. 1. Amended by Ordinance No. 98-721A, Sec. 1.)~~

Table 3.07-5
Motor Vehicle Level of Service Deficiency Thresholds and Operating Standards*
 (Section 3.07.640(B)(1))

Location	Mid Day One Hour Peak			A.M./P.M. Two Hour Peak		
	Preferred Operating Standard	Acceptable Operating Standard	Exceeds Deficiency Threshold	Preferred Operating Standard	Acceptable Operating Standard	Exceeds Deficiency Threshold
Central City, Regional Centers, Town Centers, Main Streets and Station Communities	C	E	F	1 st hour E 2 nd hour E	1 st hour F 2 nd hour E	1 st hour F 2 nd hour F
Corridors, Industrial Areas and Intermodal Facilities, Employment Areas and Inner and Outer Neighborhoods	C	D	E	1 st hour E 2 nd hour D	1 st hour E 2 nd hour E	1 st hour F 2 nd hour E
Regional Highway Corridors	identify and evaluate on a case-by-case basis** to balance regional and local mobility and accessibility objectives			identify and evaluate on a case-by-case basis** to balance regional and local mobility and accessibility objectives		

*Level of Service is determined by using either the latest edition of the Highway Capacity Manual (Transportation Research Board) or through volume to capacity ratio equivalencies as follows: LOS C = .8 or better; LOS D = .8 to .9; LOS E = .9 to 1.0; and LOS F = 1.0 to 1.1. A copy of the Level of Service Tables from the Highway Capacity Manual is attached as Table 3.07-6. Regional Highway Corridors are identified in the map attached as Figure 3.07-1.

** See section 3.07.640(B)(3).

(Ordinance No. 98-721A, Sec. 1.)

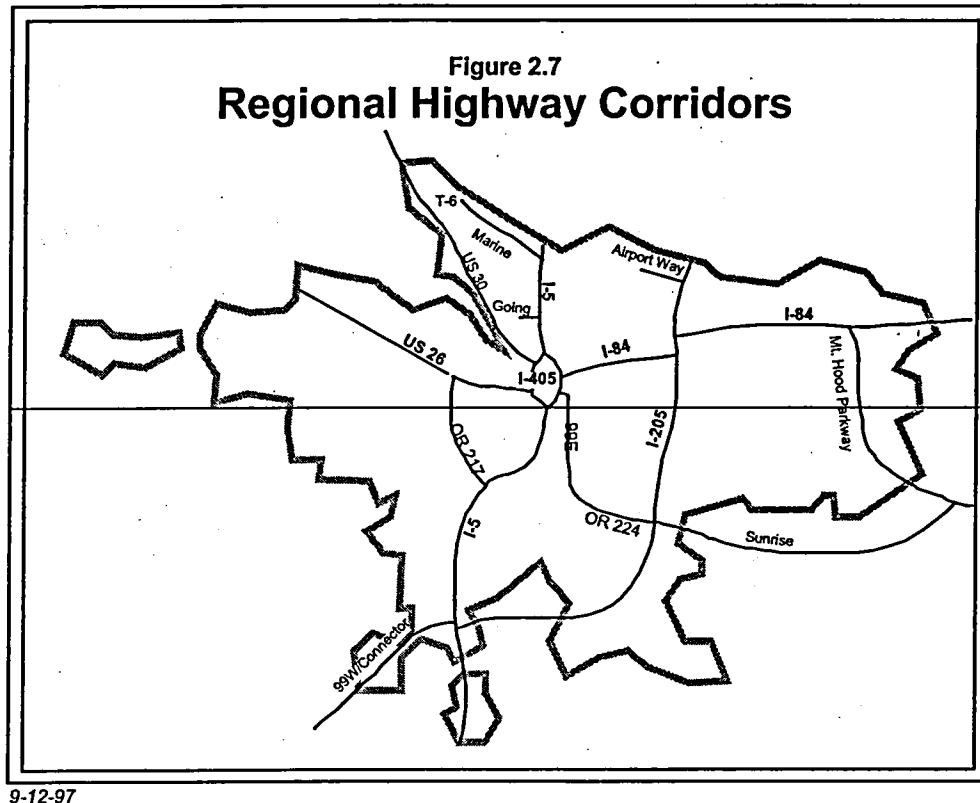
Table 3.07-6
Level-of-Service (LOS) Definitions for Freeways, Arterials and Signalized Intersections
 (Section 3.07.640(B)(1))

LOS	Freeways (average travel speed assuming 70 mph design speed)	Arterials (average travel speed assuming a typical free flow speed of 40 mph)	Signalized Intersections (stopped delay per vehicle)	Traffic Flow Characteristics
A	Greater than 60 mph Average spacing: 22 car lengths	Greater than 35 mph	Less than 5 seconds; most vehicles do not stop at all	Virtually free flow; completely unimpeded Volume/capacity ratio less than or equal to .60
B	57 to 60 mph Average spacing: 13 car lengths	28 to 35 mph	5.1 to 15 seconds; more vehicles stop than for LOS A	Stable flow with slight delays; reasonably unimpeded Volume/capacity ratio .61 to .70
C	54 to 57 mph Average spacing: 9 car lengths	22 to 28 mph	15.1 to 25 seconds; individual cycle failures may begin to appear	Stable flow with delays; less freedom to maneuver Volume/capacity ratio of .71 to .80
D	46 to 54 mph Average spacing: 6 car lengths	17 to 22 mph	25.1 to 40 seconds; individual cycle failures are noticeable	High density, but stable flow Volume/capacity ratio of .81 to .90
E	30 to 46 mph Average spacing: 4 car lengths	13 to 17 mph	40.1 to 60 seconds; individual cycle failures are frequent; poor progression	Operating conditions at or near capacity; unstable flow Volume/capacity ratio of .91 to 1.00
F	Less than 30 mph Average spacing: bumper to bumper	Less than 13 mph	Greater than 60 seconds; not acceptable for most drivers	Forced flow, breakdown conditions Volume/capacity ratio of greater than 1.00
>F	Demand exceeds roadway capacity, limiting volume that can be carried and forcing excess demand onto parallel routes and extending the peak period			Demand/capacity ratios of greater than 1.10

Source: 1985 Highway Capacity Manual (A through F descriptions); Metro (>F description)

(Ordinance No. 97-715B, Sec. 1. Amended by Ordinance No. 98-721A, Sec. 1.)

Figure 3.07-1
(Section 3.07.640(B)(3))



(Ordinance No. 98-721A, Sec. 1.)

TITLE 6: CENTRAL CITY, REGIONAL CENTERS AND TOWN CENTERS

3.07.610 Purpose and Intent

The success of the 2040 Growth Concept depends upon the maintenance and enhancement of the Central City, Regional and Town Centers and Station Communities as the principal centers of urban life in the region. Title 6 intends to enhance Centers by encouraging development in Centers that will improve the critical roles Centers play in the region and by discouraging development outside Centers that will detract from those roles.

3.07.620 Local Strategy to Improve Centers

- A.** Each city and county with a Regional or Town Center shown on the 2040 Growth Concept map shall, on a schedule established jointly with Metro but not later than December 31, 2007, develop a strategy to enhance Centers within its jurisdiction. The strategy shall include at least the following elements:

1. An analysis of physical and regulatory barriers to development and a program of actions to eliminate or reduce them.
2. An accelerated review process for preferred types of development.
3. An analysis of incentives to encourage development and a program to adopt incentives that are available and appropriate for each Center.
4. A schedule for implementation of Title 4 of the Urban Growth Management Functional Plan.
5. An analysis of the need to identify one or more Neighborhood Centers within or in close proximity to Inner and Outer Neighborhoods to serve as the central location of neighborhood commercial services, as authorized by Title 12, section 3.07.1230 of the Urban Growth Management Functional Plan.
6. A work plan, including a schedule, to carry out the strategy.

3.07.630 Special Transportation Areas

Any city or county that has adopted a strategy for a Center pursuant to section 3.07.620 and measures to discourage commercial retail use along state highways outside Centers, Station Communities and Neighborhood Centers shall be eligible for designations by the Oregon Transportation Commission as a Special Transportation Area under Policy 1B of the 1999 Oregon Highway Plan.

3.07.640 Government Offices

- A. Cities and counties shall encourage the siting of government offices in Centers, Station Communities, Main Streets and Corridors by taking action pursuant to section 3.07.620 to eliminate or reduce unnecessary physical and regulatory barriers to development and expansion of such offices in Centers and Station Communities.
- B. Cities and counties shall discourage the siting of government offices outside Centers, Station Communities, Main Streets and Corridors by requiring a demonstration by the applicant government agency that sites within these designations cannot reasonably accommodate the proposed offices due to characteristics of the offices other than parking for employees.
- C. For purposes of this section, "government offices" means administrative offices and those offices open to and serving the general public, such as libraries, city halls and courts. The term "government offices" does not include other government facilities, such as fire stations, sewage treatment plants or equipment storage yards.

3.07.650 Reporting on Center Progress

In order to assist Metro to evaluate the effectiveness of Title 6 in aid of accomplishment of the 2040 Growth Concept, and to comply with state progress reporting requirements in ORS 197.301, by April 15 of each even-numbered year beginning 2004, each city and county shall report to Metro on a set of measures prescribed by the Council on a form developed for that purpose by Metro.

Exhibit J to Ordinance No. 02-969

New Regional Framework Plan Policy on the Urban Growth Boundary

1.9 Urban Growth Boundary

It is the policy of Metro to ensure that expansions of the UGB help achieve the objectives of the 2040 Growth Concept. When Metro expands the boundary, it shall consider whether the expansion will enhance the roles of Regional and Town Centers and, to the extent practicable, ensure that it does.

Exhibit K to Ordinance No. 02-969

TITLE 11: PLANNING FOR NEW URBAN AREAS

3.07.1105 Purpose and Intent

It is the purpose of this Title 11 to require that all territory added to the Urban Growth Boundary shall be included within a city or county's comprehensive plan prior to urbanization. The comprehensive plan amendment must be consistent with the Functional Plan. The intent of this title is that comprehensive plan amendments shall promote the integration of the new land added to the Urban Growth Boundary into existing communities or provide for the establishment of new communities.

3.07.1105 Purpose and Intent

It is the purpose of Title 11 to require and guide planning for conversion from rural to urban use of areas brought into the UGB. It is the intent of Title 11 that development of areas brought into the UGB implement the Regional Framework Plan and 2040 Growth Concept.

3.07.1110 Interim Protection of Areas Brought Inside Urban Growth Boundary

Prior to the adoption by all local governments having jurisdiction over any territory added to the Urban Growth Boundary of comprehensive plan amendments consistent with all requirements set forth in this title, a city or county shall not approve of:

- A. Any land use regulation or zoning map amendments specific to the territory allowing higher residential density than allowed by acknowledged provisions in effect prior to the adoption of the Urban Growth Boundary amendment;
- B. Any land use regulation or zoning map amendments specific to the territory allowing commercial or industrial uses not allowed under acknowledged provisions in effect prior to the adoption of the Urban Growth Boundary Amendment;
- C. Any land division or partition that would result in the creation of any new parcel which would be less than 20 acres in total size.

3.07.1110 Interim Protection of Areas Brought into the Urban Growth Boundary

After inclusion of an area within the UGB and prior to the adoption by all local governments with jurisdiction over an area brought into the UGB of amendments to comprehensive plans and implementing land use regulations that comply with 3.07.1120, the local government shall not approve of:

- A. Any land use regulation or zoning map amendments specific to the territory allowing higher residential density than allowed by acknowledged provisions in effect prior to the adoption of the UGB amendment;
- B. Any land use regulation or zoning map amendments specific to the territory allowing commercial or industrial uses not allowed under acknowledged provisions in effect prior to the adoption of the UGB amendment;

- C. Any land division or partition that would result in the creation of any new parcel which would be less than 20 acres in total size;
- D. In an area identified by the Metro Council in the ordinance adding the area to the UGB as a Regionally Significant Industrial Area:
 - 1. A commercial use that is not accessory to industrial uses in the area; and
 - 2. A school, church or other institutional or community service use intended to serve people who do not work or reside in the area.

3.07.1120 Urban Growth Boundary Amendment Urban Reserve Plan Requirements

All territory added to the Urban Growth Boundary as either a major amendment or a legislative amendment pursuant to Metro Code chapter 3.01 shall be subject to adopted comprehensive plan provisions consistent with the requirements of all applicable titles of the Metro Urban Growth Management Functional Plan and in particular this Title 11. The comprehensive plan provisions shall be fully coordinated with all other applicable plans. The comprehensive plan provisions shall contain an urban growth plan diagram and policies that demonstrate compliance with the RUGGO, including the Metro Council adopted 2040 Growth Concept design types. Comprehensive plan amendments shall include:

- A. Provision for annexation to a city or any necessary service districts prior to urbanization of the territory or incorporation of a city or necessary service districts to provide all required urban services.
- B. Provision for 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 design type designation for the area.
- C. Demonstrable measures that will provide a diversity of housing stock that will fulfill needed housing requirements as defined by ORS 197.303. Measures may include, but are not limited to, implementation of recommendations in Title 7 of the Urban Growth Management Functional Plan.
- D. Demonstration of how residential developments will include, without public subsidy, housing affordable to households with incomes at or below area median incomes for home ownership and at or below 80 percent of area median incomes for rental as defined by U.S. Department of Housing and Urban Development for the adjacent urban jurisdiction. Public subsidies shall not be interpreted to mean the following: density bonuses, streamlined permitting processes, extensions to the time at which systems development charges (SDCs) and other fees are collected, and other exercises of the regulatory and zoning powers.
- E. Provision for sufficient commercial and industrial development for the needs of the area to be developed consistent with 2040 Growth Concept design types. Commercial and industrial designations in nearby areas inside the Urban Growth Boundary shall be considered in comprehensive plans to maintain design type consistency.
- F. A conceptual transportation plan consistent with the applicable provision of the Regional Transportation Plan, Title 6 of the Urban Growth Management Functional Plan, and that

is also consistent with the protection of natural resources either identified in acknowledged comprehensive plan inventories or as required by Title 3 of the Urban Growth Management Functional Plan. The plan shall, consistent with OAR Chapter 660, Division 11, include preliminary cost estimates and funding strategies, including likely financing approaches.

- G. Identification, mapping and a funding strategy for protecting areas from development due to fish and wildlife habitat protection, water quality enhancement and mitigation, and natural hazards mitigation. A natural resource protection plan to protect fish and wildlife habitat, water quality enhancement areas and natural hazard areas shall be completed as part of the comprehensive plan and zoning for lands added to the Urban Growth Boundary prior to urban development. The plan shall include a preliminary cost estimate and funding strategy, including likely financing approaches, for options such as mitigation, site acquisition, restoration, enhancement, or easement dedication to ensure that all significant natural resources are protected.
- H. A conceptual public facilities and services plan for the provision of sanitary sewer, water, storm drainage, transportation, parks and police and fire protection. The plan shall, consistent with OAR Chapter 660, Division 11, include preliminary cost estimates and funding strategies, including likely financing approaches.
- I. A conceptual school plan that provides for the amount of land and improvements needed, if any, for school facilities on new or existing sites that will serve the territory added to the UGB. The estimate of need shall be coordinated with affected local governments and special districts.
- J. An urban growth diagram for the designated planning area showing, at least, the following, when applicable:
 - 1. General locations of arterial, collector and essential local streets and connections and necessary public facilities such as sanitary sewer, storm sewer and water to demonstrate that the area can be served;
 - 2. Location of steep slopes and unbuildable lands including but not limited to wetlands, floodplains and riparian areas;
 - 3. General locations for mixed use areas, commercial and industrial lands;
 - 4. General locations for single and multi-family housing;
 - 5. General locations for public open space, plazas and neighborhood centers; and
 - 6. General locations or alternative locations for any needed school, park or fire hall sites.
- K. The plan amendments shall be coordinated among the city, county, school district and other service districts.

3.07.1130 Implementation of Urban Growth Boundary Amendment Urban Reserve Plan Requirements

- A. On or before 60 days prior to the adoption of any comprehensive plan amendment subject to this Title 11, the local government shall transmit to Metro the following:
1. A copy of the comprehensive plan amendment proposed for adoption;
 2. An evaluation of the comprehensive plan amendment for compliance with the Functional Plan and 2040 Growth Concept design types requirements and any additional conditions of approval of the urban growth boundary amendment. This evaluation shall include an explanation of how the plan implements the 2040 Growth Concept;
 3. Copies of all applicable comprehensive plan provisions and implementing ordinances as proposed to be amended.
- B. The Council may grant an extension of time for adoption of the required Comprehensive Plan Amendment if the local government has demonstrated substantial progress or good cause for failing to adopt the amendment on time. Requests for extensions of time may accompany the transmittal under subsection A of this section.

3.07.1140 Effective Date and Notification Requirements

The provisions of this Title 11 are effective immediately. Prior to making any amendment to any comprehensive plan or implementing ordinance for any territory that has been added to the Urban Growth Boundary after the effective date of this code amendment, a city or county shall comply with the notice requirements of section 3.07.830 and include in the required staff report an explanation of how the proposed amendment complies with the requirements of this Title 11 in addition to the other requirements of this functional plan.

Agenda Item Number 4.3

**Ordinance No. 02-983, For the Purpose of Amending the Metro Urban Growth
Boundary to add land for a specific type of industry near specialized facilities
north of Hillsboro; and Declaring an Emergency.**

First Reading

**Metro Council Meeting
Thursday, November 21, 2002
Metro Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING THE)
METRO URBAN GROWTH BOUNDARY TO) ORDINANCE NO. 02-983
ADD LAND FOR A SPECIFIC TYPE OF)
INDUSTRY NEAR SPECIALIZED)
FACILITIES NORTH OF HILLSBORO; AND) Introduced by Community Planning Committee
DECLARING AN EMERGENCY)

WHEREAS, state law requires the Metro Council to assess the capacity of the urban growth boundary ("UGB") every five years and, if necessary, increase the region's capacity to accommodate the long-term need for employment opportunities; and

WHEREAS, the Council and the Land Conservation and Development Commission agreed that the Council would undertake the assessment and any necessary action to increase the capacity of the UGB as part of the state's periodic review process; and

WHEREAS, Task 2 of the periodic review work program calls for completion of the same assessment of capacity and increase in capacity, if necessary, by December 20, 2002; and

WHEREAS, the Council determined a need for land to accommodate a forecast employment increase of ____ jobs for the three-county metropolitan region by the year 2022; and

WHEREAS, the Council determined that the pre-existing UGB had the capacity to accommodate ____ of those ____ new jobs; and

WHEREAS, policy measures to protect Industrial Areas adopted in Ordinance No. 02-969 increased the capacity of the pre-existing UGB to accommodate an additional ____ of those ____ new jobs within the UGB; and

WHEREAS, expansion of the UGB by Ordinance No. 02-969 added land with the capacity to accommodate ____ of those ____ new jobs, leaving unmet the need for land to accommodate ____ new jobs; and

WHEREAS, the Council identified a specific type of high-technology industrial need that cannot reasonably be accommodated on land within the UGB, or on land of higher priority under state law for inclusion within the UGB; and

WHEREAS, the Council consulted its Metropolitan Planning Advisory Committee and the 24 cities and three counties of the metropolitan region and considered their comments and suggestions prior to making this decision; and

WHEREAS, Metro conducted five public workshops in locations around the region to provide information about alternative locations for expansion of the UGB and to receive comment about those alternatives; and

WHEREAS, Metro published, on August __, 2002, notice of public hearings before the Council on the proposed decision in compliance with Metro Code 3.01.050; and

WHEREAS, the Metro's Community Planning Committee and the Metro Council held public hearings on the proposed decision on October __ and __ and December __ 2002, and considered the testimony prior to making this decision; now, therefore,

THE METRO COUNCIL HEREBY ORDAINS AS FOLLOWS:

1. The Metro UGB is hereby amended to include the Shute/Evergreen site, more precisely identified and mapped on Exhibit A, attached and incorporated into this ordinance, in order to accommodate a specific type of high-technology industrial need.
2. Inclusion of the Shute/Evergreen site within the UGB is subject to the conditions set forth in Exhibit B, attached and incorporated into this ordinance, in order to ensure that development on the site is limited to the specific need for which the Council includes the site.
3. The Findings of Fact and Conclusions of Law in Exhibit C, attached and incorporated into this ordinance, explain how the record demonstrates that addition of the Shute/Evergreen site complies with state planning laws, the Regional Framework Plan and the Metro Code.
4. This ordinance is necessary for the immediate preservation of public health, safety and welfare because state law requires Metro to ensure that the region's UGB includes a long-term supply of land for employment and there is an immediate need for a site for the specific type of high-technology industry identified in this ordinance. An emergency is therefore declared to exist, and this ordinance shall take effect _____, 2003, pursuant to Metro Charter section 39(1).

ADOPTED by the Metro Council this __ day of December, 2002.

Carl Hosticka, Presiding Officer

ATTEST:

Approved as to Form:

Recording Secretary

Daniel B. Cooper, General Counsel

Exhibit A Ord. No. 02-983



The information on this map was derived from digital databases on Metro's GIS. Care was taken in the creation of this map. Metro cannot accept any responsibility for errors, omissions, or positional accuracy. There are no warranties, expressed or implied, including the accuracy of measurements or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.

0 500 1000 1500 2000 Feet

1" = 1400 feet



METRO

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Exhibit B
Ordinance No. 02-983
Conditions
Available at a later date

Exhibit C
Ordinance No. 02-983
Findings of Fact and Conclusions of Law
Available at a later date

Agenda Item Number 4.4

**Ordinance No. 02-984, For the Purpose of Amending the Metro Urban Growth
Boundary to add Land for a public school in Study Area 85; and Declaring
an Emergency.**

First Reading

**Metro Council Meeting
Thursday, November 21, 2002
Metro Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING THE) ORDINANCE NO. 02-984
METRO URBAN GROWTH BOUNDARY TO)
ADD LAND FOR A PUBLIC SCHOOL IN)
STUDY AREA 85; AND DECLARING AN) Introduced by Community Planning Committee
EMERGENCY)

WHEREAS, state law requires Metro to assess the capacity of the urban growth boundary (UGB) every five years and, if necessary, increase the region's capacity to accommodate the long-term need for employment opportunities; and

WHEREAS, the same state law requires Metro to include sufficient land to accommodate the siting of new public school facilities; and

WHEREAS, the Metro Council and the Land Conservation and Development Commission agreed that the Council would undertake the assessment and any necessary action to increase the capacity of the UGB as part of the state's periodic review process; and

WHEREAS, Task 2 of the periodic review work program calls for completion of the same assessment of capacity and increase in capacity, if necessary, by December 20, 2002; and

WHEREAS, the Council identified a specific need for land to site a public elementary School in the Beaverton School District that cannot reasonably be accommodated on land within the UGB, or on land of higher priority under state law for inclusion within the UGB; and

WHEREAS, the Council consulted its Metropolitan Planning Advisory Committee and the 24 cities and three counties of the metropolitan region and considered their comments and suggestions prior to making this decision; and

WHEREAS, Metro conducted five public workshops in locations around the region to provide information about alternative locations for expansion of the UGB and to receive comment about those alternatives; and

WHEREAS, Metro published, on August 25, 2002, notice of public hearings before the Council on the proposed decision in compliance with Metro Code 3.01.050; and

WHEREAS, the Metro's Community Planning Committee and the Metro Council held public hearings on the proposed decision on October 1, 3, 10, 15, 22, 24 and 29 and November 21, 2002, and considered the testimony prior to making this decision; now, therefore,

THE METRO COUNCIL HEREBY ORDAINS AS FOLLOWS:

1. The Metro UGB is hereby amended to include a portion of Study Area 85, more precisely identified and mapped on Exhibit A, attached and incorporated into this ordinance, in order to accommodate a site for a public elementary school for the Beaverton School District.
2. Inclusion of the Beaverton School District site within the UGB is subject to the conditions set forth in Exhibit B, attached and incorporated into this ordinance, in order to ensure that development on the site is limited to the public elementary school for which the Council included the site.
3. The Findings of Fact and Conclusions of Law in Exhibit C, attached and incorporated into this ordinance, explain how the record demonstrates that addition of the Beaverton School District site complies with state planning laws, the Regional Framework Plan and the Metro Code.
4. This ordinance is necessary for the immediate preservation of public health, safety and welfare because state law requires Metro to ensure that the region's UGB includes sufficient land to accommodate the siting of new public school facilities, and the Beaverton School District has an immediate need for facilities. An emergency is therefore declared to exist, and this ordinance shall take effect on _____, 2003, 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:

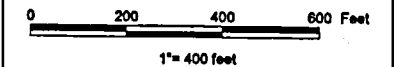
Recording Secretary

Daniel B. Cooper, General Counsel

Proposed Beaverton School District Site



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METRO

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Plot date: Nov 14, 2002; nl

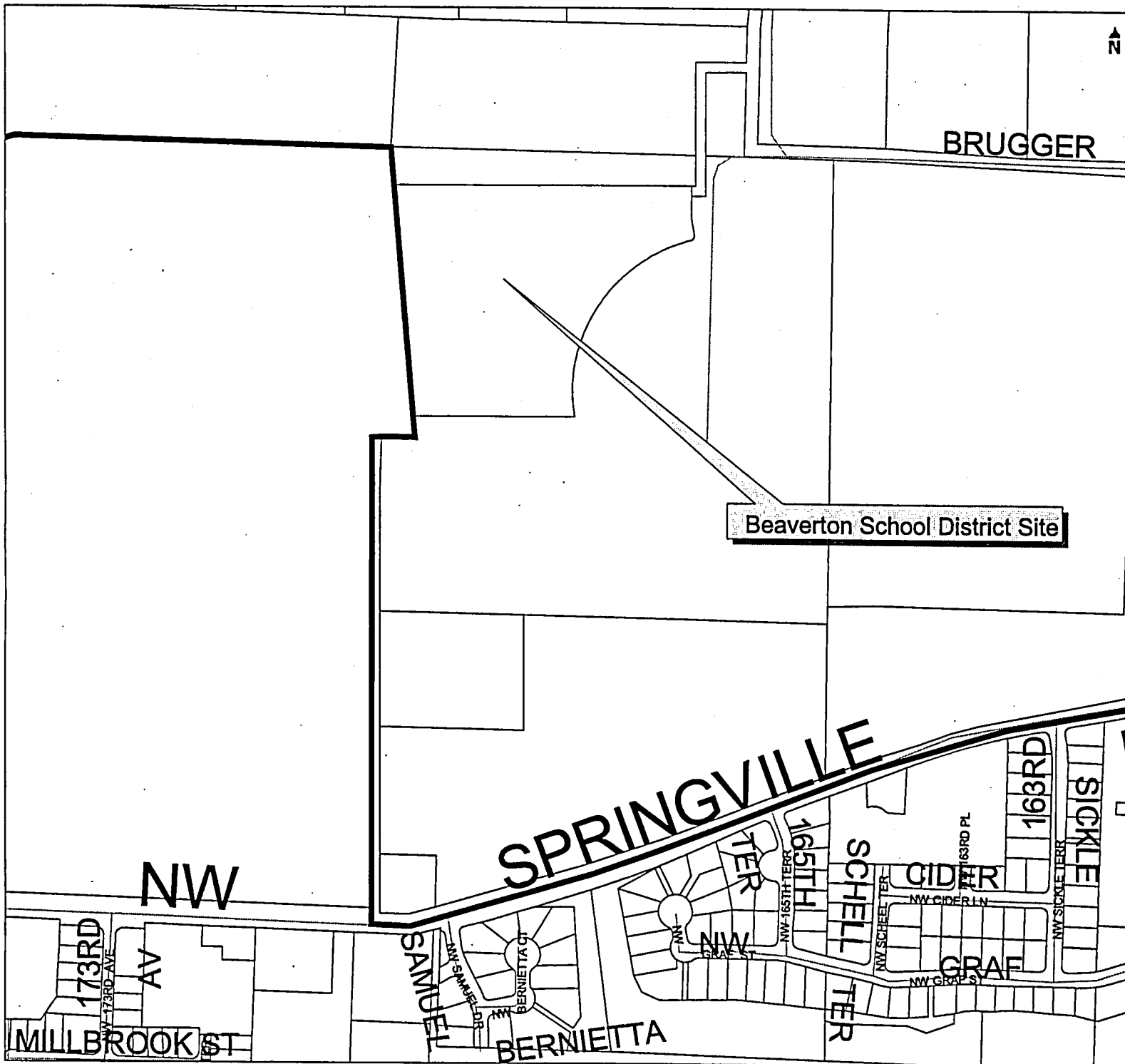


Exhibit B
Ordinance No. 02-984
Conditions
Available at a later date

Exhibit C
Ordinance No. 02-984
Findings of Fact and Conclusions of Law
Available at a later date

STAFF REPORT

CONSIDERATION OF ORDINANCE NO. 02-984 FOR THE PURPOSE OF AMENDING THE METRO URBAN GROWTH BOUNDARY TO ADD LAND FOR A PUBLIC SCHOOL IN STUDY AREA 85; AND DECLARING AN EMERGENCY

Date: November 2002

Prepared by: Brenda Bernards

PROPOSED ACTION

Adoption of Ordinance No. 02-984 bringing a site into the Urban Growth Boundary (UGB) to accommodate an elementary school in the Beaverton School District.

BACKGROUND

Metro is currently undertaking a process that will result in a legislative amendment to the UGB in December 2002. The school districts were offered the opportunity to participate in this process by requesting inclusion into the UGB of specific sites that were required to meet the districts' needs. The Beaverton School District has taken advantage of this opportunity and submitted a request for consideration of a specific site as part of Metro's legislative action to amend the UGB.

The Beaverton School District Site is located in Alternative Analysis Study Areas 85, shown on Exhibit A of Ordinance No. 02-984. If Study Area 85 is brought into the UGB as part of the general land need consideration, this separate amendment to include the site is unnecessary.

ANALYSIS/INFORMATION

Known Opposition

There is no known opposition to the proposed legislation.

Anticipated Effects

Adoption of this Ordinance will result in the inclusion of a 10 acre site into the Urban Growth Boundary for an elementary school.

Budget Impacts

Adoption of this ordinance has no budget impact.

PROCESS

At the request of State Representatives for the Beaverton and Hillsboro School Districts, Metro staff met with school district representatives to discuss a process for the inclusion of specific sites to meet the school districts' needs in Metro's legislative process to amend the UGB. The Forest Grove, Sherwood, Tigard-Tualatin and West Linn-Wilsonville School Districts were also invited to participate. Potential sites for inclusion to meet the needs of the Gresham-Barlow and Oregon City School Districts were also discussed with these school districts. By offering this opportunity, Metro recognizes that expansion in one part of the region will not meet the needs of a school district whose boundaries are not within the expansion area.

A school district choosing to take advantage of this process needed to address the seven Statewide Planning Goal 14 factors identified in Metro Code 3.01.020(b). The first two factors address need and the remaining five address the locational factors that can be considered for inclusion in the UGB. A school district needed to have completed a Facilities Plan that, among other requirements, identifies the need for additional sites and the process and criteria for selecting a potential site.

SCHOOL DISTRICTS' LONG RANGE SCHOOL FACILITIES PLANS

The Beaverton School District was advanced enough in their planning, with a completed Facilities Plan and an identified site, to be able to participate in this current legislative process. A Copy of the Facilities Plans has been included as part of the record of the Periodic Review Program. The Facilities Plan meets the requirements of ORS 195.110. This Plan assists the school district to facilitate future planning efforts. It is a valuable tool that enable the school district to forecast future school enrollment growth, the distribution of that growth, and the timing and need for new schools. The Beaverton School District sufficiently demonstrated that there is a need for an additional school and that the site selected to accommodate this need is the most appropriate to meet the identified need. The school district outlined its selection process using its established policies for school siting to guide the decision. Metro staff is satisfied that the process used has determined the most appropriate location to meet the defined need as set out in Metro Code 3.01.020.

BEAVERTON SCHOOL DISTRICT'S REQUEST

The Beaverton School District is requesting an adjustment of the UGB to include a 10-acre site located in Alternative Analysis Study Area 85 which is adjacent to, and east of, the Portland Community College Rock Creek campus and north of NW Springville Road. Study Area 85 is a Tier 3 area surrounded by Tier 1 Study Areas 84 and 86. The site is adjacent to the UGB and is intended to meet the need for an elementary school in the northern portion of that school district.

This site was previously considered as part of a larger proposal to include a 109-acre site known as Gossamer Hills (former Urban Reserve Area 65).

The school district's Facility Plan forecasted a short-term need (2002 to 2007) for two to three new elementary schools, one middle school and one high school. Since the need is distributed throughout the school district, the siting of all of these schools will not necessarily involve expanding the UGB. One of the new elementary school is proposed to be located on the 10-acre site outside of the UGB to serve the northern portion of the school district.

Need for an Additional School Site

Over the last decade, the population within the Beaverton School District's boundary has grown from 151,285 residents to 215,167 residents. This represents a 42 percent increase in population and has resulted in a steep increase in student enrollment. Since 1990, the enrollment has grown over 37 percent, almost 10,000 new students. Much of the population and corresponding enrollment growth has occurred in the northern and southern portions of the school district. Growth forecasts prepared by Metro's Data Resource Center and the Portland State University Center for Population Research and Census indicate that student enrollment will continue to grow over the next twenty years at an annual average growth rate of at least 1.8%

Before considering building a new school, the school district considers other techniques for expanding existing school capacity such as additions to schools, portable classrooms and redrawing school attendance boundaries.

Site Selection Process

The Beaverton School District uses the site selection process noted below. For an elementary school, the school district looks for a site of 7 to 10 acres. In addition to the physical size of a site, the Facility Plan includes a set of general site selection guidelines to identify and select new sites for schools.

1. Location

- a. Is the site geographically located in a place where a school is needed within the next ten years based on enrollment growth?
- b. Is the site located in a land use zone where a school is not a prohibited use?
- c. Is the site inside the Urban Growth Boundary? If not, it is preferred that the site be adjacent to the Urban Growth Boundary.
- d. Are adjacent land uses compatible with the grade level of the proposed school?
Compatibility is generally defined as:
 - i. Elementary and middle school sites should be adjacent to residential land.
 - ii. High school sites should be adjacent to residential land with limited and compatible non-residential uses adjacent.
- e. If site assembly is required, can several parcels be aggregated to create an appropriately sized and configured school site? Because site assembly potentially adds additional time and expense to the District, the following characteristics are preferred:
 - i. Six or fewer parcels to reach the 7- to 10-acre minimum.
 - ii. Improvements on fewer than 20% of the parcels.
 - iii. Improvement values of less than \$250,000.
 - iv. Probability of need for condemnation on fewer than 20% of the parcels.
 - v. Probability of need for condemnation of owner occupied residences on fewer than 10% of the parcels.
- f. Public utilities are currently available or are readily available through the development process.
- g. Is the site served by the preferred classification of roads?
 - i. Local road or minor collector for elementary schools.
 - ii. Minor or major collector for middle schools.
 - iii. Major collector or arterials for high schools (access to an arterial preferred).

2. Topography

- a. Are the existing slopes on the site consistent with reasonable grading costs to provide for the building and grounds needed for the proposed school?
- b. Are the existing slopes configured such that site configuration and access to public streets can be reasonably accommodated?
- c. Are the site geology and soils conditions appropriate for the required construction?

3. Environmental

- a. Is the site encumbered with excessive wetland or riparian areas?
- b. Are there existing stands of trees or vegetation that would interfere with site development?
- c. Is there significant wildlife habitat on the site?
- d. Is the site adjacent to a stream that will require significant setbacks or be subject to periodic flooding?

- e. Has the site previously been in an industrial or commercial use that may have resulted in contamination?

4. Economic

- a. Can the site be secured at a fair market value?
- b. Are there extraordinary development costs?
- c. Will there be extraordinary operating costs?

These guidelines are intended to assist and inform the school district in evaluating potential future school sites. They are not intended to be absolute decision factors. Many factors go into determining the suitability of a new site and these factors need to be balanced with school district objectives and conditions at the time of site selection.

Selection of the Proposed Site

As noted above the school district's Facility Plan has recommended that new elementary schools be constructed on building sites in the 7 to 10-acres size range. The school district undertook an analysis to find a potential school site in the 7 to 10-acres range in the northern portion of the school district. This analysis included two steps. First, sites seven acres or greater with an improvement value of less than \$250,000 were evaluated in the designated north study area, inside the UGB, to determine if there were potential sites to locate a new elementary school in this area. The analysis focused on the area north of West Union Road because that is where the majority of the new residential growth is anticipated. Additionally, the analysis looked closely at the western portion of the north study area because the eastern portion already has two elementary schools.

Based on this analysis, a total of 25 sites in the 7-acres or greater range and inside the UGB were identified. Each site was examined to determine the potential for siting an elementary school. Of these 25 sites, none are considered to have the potential for locating a new elementary school. The issues associated with these sites include approved (but yet to be built) subdivisions, natural resource or public facility (power line) constraints, proximity to existing elementary schools, or schools are not a permitted use in the zoning category. Consideration of the zoning of the alternative sites is necessary. Unlike commercial, residential or industrial developers, school districts have finite resources for property acquisition and development, which is coupled with the duty to spend public money wisely. Residentially zoned land that does not allow schools are prohibitively expensive because not only is the price of the land itself exorbitant, but also rezoning the property contributes to the expense of developing, while adding an element of uncertainty to the school siting. Furthermore, rezoning multi-family residential sites so that a school is allowed reduces the buildable land supply and impedes Beaverton's ability to reach Metro's target densities.

The second step was to consider the opportunity for aggregating smaller lots into a 7-acre or greater site for a new elementary school. Lot aggregation, while feasible, requires substantially more time and costs to the school district and offers less certainty in terms of when a new school could be constructed. Issues such as multiple property owner negotiations, use and/or removal of existing structures, relocation costs, and potential condemnation issues complicate the process of lot aggregation. However, the analysis for this application did examine those existing lots inside the UGB that are two acres or greater with improvement values less than \$250,000 to identify if there were opportunities inside the north study area to aggregate smaller lots into a viable elementary school site.

This assessment discovered that there were five groupings of tax lots that could potentially be assembled into a 7 to 10-acres site for an elementary school. However, in all five instances, the groupings are located in the eastern portion of the north study area, in close proximity to two existing elementary schools.

The close proximity of potential sites to the existing elementary schools preclude them from being viable school sites. The school district and the community place great value on neighborhood schools, especially at the elementary level. Multiple elementary schools in such close proximity will divide the neighborhood and community, cause confusion among parents and students over which school they should attend, and create significant difficulties for determining school attendance boundaries.

The school district determined that there are no feasible parcels available within the UGB in the north study area of the Beaverton School District for an additional elementary school. The need for a school is in the northwest corner of the Beaverton School District. Recently constructed elementary schools serve the areas in the northeast corner of the study area. The only feasible alternative is to locate a new elementary school outside the UGB. There are several parcels greater than seven acres outside of the UGB but located within the school district boundaries. Many of these parcels are not adjacent to the UGB, and therefore would not comply with Section 3.01.020(d) of Metro Code. These parcels were ruled out of consideration.

The proposed site is large enough (ten acres) and is a feasible location and configuration for an elementary school to serve the north study area of the school district. The subject site has other advantages that make it appropriate for a future elementary school site. These advantages include:

1. The site's immediate proximity to the Rock Creek Campus of Portland Community College. This proximity will provide the Beaverton School District and Portland Community College an opportunity to explore collaborative educational programs between the two campuses. Discussions have already occurred regarding potential opportunities to establish programs such as early childhood development, after-school daycare and/or activities and teacher aide programs.
2. The fact that the property is already in public ownership and is dedicated to a specific public use – namely an elementary school. The public use of this property is further reinforced in Washington County's Bethany Community Plan that identifies this property as a future school site.
3. Services can be made readily available to the subject site.

APPLICABLE REVIEW CRITERIA

The criteria for a Legislative UGB amendment are contained in Metro Code 3.01.020.

Metro Code 3.01.020(a) states that the purpose of Metro Code 3.01.020 is to address ORS 197.298, Goals 2 and 14 of the statewide planning goals and the Regional Urban Growth Goals and Objectives (RUGGO). This section details a process, which is intended to interpret Goals 2 and 14 for specific application to consideration of lands to be added to the UGB. Compliance with this section constitutes compliance with ORS 197.298, statewide planning Goals 2 and 14 and the RUGGOs.

Metro Code 3.01.020(b) notes that, while all of the seven Goal 14 factors must be addressed, the factors cannot be evaluated without reference to each other. Rigid separation of the factors would

ignore obvious overlaps between them. Demonstration of compliance with one factor or sub-factor may not constitute a sufficient showing of compliance with the goal, to the exclusion of the other factors when making an overall determination of compliance or conflict with the goal. Generally, the consideration of the factors for legislative amendments is undertaken by Metro staff. In the case of the Beaverton School District's request for consideration of its site in the current legislative amendment process, the school district undertook this work. Not all elements of the factors apply to the school district; these elements are noted as not applying. The school district has demonstrated the need for an additional school site and demonstrated that the priorities of ORS 197.298 have been followed and that the recommended site is better than alternative sites, balancing factors 3 through 7.

The seven factors to be addressed are included in Metro Code 3.01.020(b)(1)-(7). Attachment 1 to this report detail the response of the school district to the seven factors and other applicable criteria outlined in the Metro Code.

EXECUTIVE OFFICER'S RECOMMENDATION

It is recommend that this site be brought into the UGB for school purposes.

BEAVERTON SCHOOL DISTRICT

APPLICABLE REVIEW CRITERIA

The criteria for a major UGB amendment are contained in Metro Code 3.01.020. The criteria and Metro staff analysis follow.

Metro Code 3.01.020(a) states that the purpose of Metro Code 3.01.020 is to address ORS 197.298, Goals 2 and 14 of the statewide planning goals and the Regional Urban Growth Goals and Objectives (RUGGO). This section details a process, which is intended to interpret Goals 2 and 14 for specific application to consideration of lands to be added to the UGB. Compliance with this section constitutes compliance with ORS 197.298, statewide planning Goals 2 and 14 and the RUGGOs.

Metro Code 3.01.020(b) notes that, while all of the seven Goal 14 factors must be addressed, the factors cannot be evaluated without reference to each other. Rigid separation of the factors would ignore obvious overlaps between them. Demonstration of compliance with one factor or sub-factor may not constitute a sufficient showing of compliance with the goal, to the exclusion of the other factors when making an overall determination of compliance or conflict with the goal. Generally, the consideration of the factors for legislative amendments is undertaken by Metro staff. In the case of the Beaverton School District request for consideration of its site in the current legislative amendment process, the School District undertook this work. Not all elements of the factors apply to the School Districts; these elements are noted as not applying. The School District has demonstrated the need for an additional school site and demonstrated that the priorities of ORS 197.298 have been followed and that the recommended site is better than alternative sites, balancing factors 3 through 7.

The seven factors to be addressed are included in Metro Code 3.01.020(b)(1)-(7)

FACTOR 1: Demonstrated need to accommodate long-range urban population growth [3.01.020(b)(1)].

(A) The district shall develop 20-year Regional Forecasts of Population and Employment, which shall include a forecast of net developable land need, providing for coordination with cities, counties, special districts and other interested parties, and review and comment by the public. This factor goes on to indicate how land needs are to be calculated, which necessary land for schools to be included in these calculations.

(B) The forecast and inventory, along with all other appropriate data shall be considered by the district in determining the need for net developable land. This factor goes on to indicate how Metro is to conduct this analysis.

(C) If the inventory of net developable land is insufficient to accommodate the housing need identified in the 20-year Regional Forecast at the actual developed density that has occurred since the last periodic review of the urban growth boundary, the district shall (this subsection goes on to describe the process Metro will follow to evaluate additional land need).

(D) For consideration of a legislative UGB amendment, the district council shall review an analysis of land outside the present UGB to determine those areas best suited for expansion of the UGB to meet the identified need.

(E) The district must find that the identified need cannot reasonably be met within the UGB, consistent with the following considerations:

- (i) That there is not a suitable site with an appropriate comprehensive plan designation.
- (ii) All net developable land with the appropriate plan designation within the existing UGB shall be presumed to be available for urban use during the planning period.

(iii) Market availability and level of parcelization shall not render an alternative site unsuitable unless justified by findings consistent with the following criteria:

(I) Land shall be presumed to be available for use at some time during the planning period of the UGB unless legal impediments, such as deed restrictions, make it unavailable for the use in question.

(II) A parcel with some development on it shall be considered unavailable if the market value of the improvements is not significantly less than the value of the land, as established by the most recent assessor records at the time of inventory. Standard measures to account for the capability of infill and redevelopment will be developed by the district to provide a means to define what is significant when comparing structure value and land values. When a city or county has more detailed or current gross redevelopable land inventory data, for all or part of their jurisdiction, it can request that the district substitute that data in the district gross developable land inventory.

(III) Properly designated land in more than one ownership shall be considered suitable and available unless the current pattern or level of parcelization makes land assembly during the planning period unfeasible for the use proposed.

Beaverton School District: Staff Response

Factor 1 primarily sets forth requirements for Metro to undertake when evaluating regional land needs and future Urban Growth Boundary requirements. Metro is currently considering the entire UGB through periodic review and will make recommendations by the end of 2002 regarding where UGB expansions will occur to accommodate the anticipated 20-year need for urban land.

Metro has requested that the Beaverton School District provide information regarding the specific ten-acre site it wishes to bring into the UGB. Section III (Background) of this petition provides the technical documentation and findings on the need for an additional elementary school in the North Study Area, which satisfied MCC 3.01.020(b)(1)(B). Section III also provides an analysis demonstrating that the identified need for an elementary school cannot reasonably be met inside the UGB.

The analysis in Section III examines the potential for school sites within the UGB based on (1) parcels seven acres and greater (see Table 6) and (2) sites seven acres and greater comprised of several adjacent parcels ("aggregated sites" – see Table 7). The analysis did not rely on market availability or level of parcelization as criteria for site suitability, in compliance with Factor 1Eiii.

According to Factor 1Eiii, market availability and level of parcelization are not to render alternative sites unsuitable unless findings show that alternative sites (1) have deed restrictions; (2) have high improvement/building values relative to their land values; or (3) are located in areas where the current pattern or level of parcelization makes land assembly unfeasible. Per Factor 1Eiii(II), the analysis focused on parcels with building values of \$250,000 or less. By limiting the potential parcels to those with building values of \$250,000 or less, the parcels being examined are more realistic options, given that their building values are generally lower than their land values. The building value limitation is necessary to prevent effort spent on analyzing sites that would be nearly impossible to acquire and, therefore, impractical to develop.

Aggregation of parcels also must be analyzed through the lens of realistic alternatives. Aggregation of parcels can often be inefficient, in that it can require more time for acquisition and condemnation than does acquisition of one parcel. Per Factor 1Eiii(II), only parcels with building values of \$250,000 or less (each) were examined for potential aggregation.

Land patterns, or zoning districts, per Factor 1Eiii(III), were used as valid criteria for site suitability. Schools are not permitted in several zoning districts in Washington County, and several sites were ruled

out because they were located in inappropriate zones. The assumptions used for site suitability criteria in the analysis in Section III are in compliance with Factor 1E.

This analysis clearly demonstrates that there are no suitable sites in the UGB where student enrollment growth is driving the need for a new elementary school. This information satisfies the requirements of Factor 1E and ORS 195.110.

FACTOR 2: Need for housing, employment and livability. A proponent may choose to address either subsection (A) or (B) or both, as described below.

(B) To assert a need for a UGB because of a livability need, an applicant must:

- (i) factually define the livability need, including its basis in adopted local, regional, state, or federal policy;**
- (ii) factually demonstrate how the livability need can best be remedied through a change in the location of the UGB;**
- (iii) identify both positive and negative aspects of the proposed boundary amendment on both the livability need and on other aspects of livability; and**
- (iv) demonstrate that, on balance, the net result of addressing the livability need by amending the UGB will be positive.**

Beaverton School District: Staff Response

Factor 2A does not apply to this petition for UGB Amendment. The proposed amendment is for the siting of an elementary school and is not based upon housing or employment opportunities.

Factor 2B applies to this petition because the need for the UGB amendment is directly based on livability and the provision of public education services to the growing population in the Beaverton School District. Regarding the specific subsections of Factor 2B, the following findings are provided:

- ◆ The Beaverton School District is obligated to provide public education services to all residents within its boundaries. Because the Beaverton School District is classified as a “high growth district”, it is required, by state statute (ORS 195.110) to prepare and adopt a School Facility Plan to identify school facility needs based on population growth projections. The District adopted the Facility Plan in June 2002. Elements of this Facility Plan will be incorporated into the Washington County and City of Beaverton Comprehensive Plans and will become land use planning policy.
- ◆ The Beaverton School District Facility Plan has identified the need for up to three new elementary schools in the District in the next five years. The Facility Plan indicates that at least one of these three schools needs to be located in the northern portion of the District, which includes the North Study Area, where significant population growth has occurred. Inclusion of the ten-acre parcel within the UGB will serve the documented need for an elementary school to serve enrollment in the northern portion of the Beaverton School District. As demonstrated in Section III, this need cannot be met inside the UGB, and must, therefore, be accommodated outside of the UGB. Also see ORS 195.110(8).
- ◆ The proposed UGB amendment will provide a positive benefit to the livability of residents in the District by offering additional school capacity in an area where existing schools are reaching or exceeding their enrollment capacities. Enrollment growth forecasts clearly indicate that there will be more demand for additional student capacity in the northern portion of the District. Absent new elementary school facilities in this area, existing schools will need to accommodate this growth. As this petition and the District’s Facility Plan demonstrate, the existing schools serving the area are at or above capacity and, therefore, will be unable to accommodate the significant increases in enrollment projected for this portion of the District.

◆ Additional benefits of the UGB amendment include the provision of recreational and community space that will be provided when school is not in session (play fields, etc.) and the site's proximity to the Rock Creek Campus of Portland Community College. This proximity will provide the Beaverton School District and Portland Community College an opportunity to explore collaborative educational programs between the two campuses. Discussions have already occurred regarding potential opportunities to establish programs such as early childhood development, after-school daycare and/or activities and teacher aide programs.

◆ As land is included in the UGB, a change in the character of the land will occur. While this can be perceived as a negative impact associated with a new school, given the fact that the site is located next to an existing public educational institution (Rock Creek Campus of Portland Community College) the proposed use is already an established use in the area. A new elementary school will result in additional school buses and student access on the road system that will access the site via either the PCC Rock Creek Campus, NW Brugger Road, or an alternative appropriate route the school obtains via its condemnation authority. In the event that the access is via NW Brugger Road, some residents along NW Brugger Road may be affected by the increase in vehicle traffic (consisting of mostly school buses, teachers, and parents), more people would be impacted positively by the location of the school than impacted negatively by slight increase in traffic. The provision of public educational services in a growing community always involves tradeoffs, and the petitioner believes that the provision of adequate and accessible education outweighs the small number of potential additional vehicles on NW Brugger Road.

◆ When the positive and negative aspects of this proposal are balanced, the proposed school site will have a major positive benefit to the residents of the immediate area and the Beaverton School District by providing needed elementary school capacity to accommodate enrollment growth.

"LOCATIONAL" FACTORS

Having established the need for a UGB amendment based on factors 1 and 2, factors 3 through 7 require an analysis of other sites outside the UGB to determine if they are better alternatives for inclusion in the UGB than the BSD site, and whether any of the alternative sites can reasonably accommodate the identified need.

MC 3.01.030(b)(3)-(7) sets out factors and subfactors that must be considered and balanced for the alternative sites, and then compared to the subject site. The fundamental legal standard that must be addressed and satisfied is set out in MC 3.01.030(b), which provides:

"While all of the following Goal 14 factors must be addressed, the factors cannot be evaluated without reference to each other. Rigid separation of the factors ignores obvious overlaps between them . . . factors 3 and 7 are intended to assist in the decision as to which site is **most appropriate** for inclusion within the boundary through a **balancing of factors** . . ."

(Emphasis added)

According to LUBA, factors 3 and 7 "set forth five considerations that must be balanced in deciding where to expand the urban growth boundary. The goal of that process is to determine the 'best' land to include within the UGB, based on appropriate consideration and balancing of each factor." *1000 Friends v. Metro*, 38 Or LUBA, 565, 584 (2000) ("*Ryland I*"), *aff'd as modified*, *1000 Friends v. Metro*, ___ Or App ___, P3d___ (May 31, 2001) ("*Ryland II*"). The Oregon Court of Appeals has made clear that the factors and subfactors relevant to the alternative site analysis are not independent approval criteria, but rather, the less demanding standard is that each of them be considered and balanced. The court stated: "... the locational factors are not independent approval criteria. It is not necessary that a designated level of satisfaction of the objectives of each of the factors must always be met before a local government can justify a change in a UGB. Rather, the local government must show that the factors were 'considered' and balanced by the local government in determining if a change in the UGB for a particular area is

justified. It is within a local government's authority to evaluate the Goal 14 factors and exercise its judgment as to which areas should be made available for growth. *Branscomb v. LCDC*, Or App 738, 743, 699 P2d 1192 (1983), *aff'd* 297 Or 142, 681 P2d 124 (1984)."
Ryland II, 3.

The Court of Appeals has emphasized the importance of the balancing process for UGB amendment by explaining, "[t]he purpose of Goal 14 is to allow a local government to evaluate the seven factors and to exercise its judgment as to which areas should be available for urban growth in the most orderly, economic manner with the least adverse consequences." *Branscomb v. Land Conservation and Development Commission*, 64 Or App 738, 699 P2d 1192, 1195 (1983), *aff'd* 297 Or 142, 681 P2d (1984).

FACTOR 3: Orderly and economic provision of urban services. Consideration of this factor shall be based upon the following [3.01.020(b)(3)]:

(A) For the purposes of this section, economic provision shall mean the lowest public cost provision of urban services. When comparing alternative sites with regard to factor 3, the best site shall be that site which has the lowest net increase in the total cost for provision of all urban services. In addition, the comparison may show how the proposal minimizes the cost burden to other properties outside the subject property proposed to be brought into the boundary.

(B) For the purposes of this section, orderly shall mean the extension of services from existing serviced areas to those areas which are immediately adjacent and which are consistent with the manner of service provision. For the provision of gravity sanitary sewers, this would mean a higher rating for an area within an already served drainage basin. For the provision of transit, this would mean a higher rating for an area, which could be served by the extension of an existing route rather than an area, which would require an entirely new route.

Beaverton School District: Staff Response

The proposed site for the elementary school will promote both orderly and economic provision of urban services because (1) the site is located adjacent to the UGB, and (2) the site is located adjacent to a similar use (Portland Community College, Rock Creek campus), and will require similar types of services.

The following service providers were contacted regarding this proposal: Clean Water Services, Tualatin Valley Water District, Tualatin Hills Park and Recreation District, Tualatin Valley Fire and Rescue, Washington County Sheriff, and Tri-Met (see Service Provider Letters, Appendix).

Sanitary Sewer: The site can be serviced by the existing sanitary sewer system via gravity service (see Figure 8). Sanitary sewer service is available approximately 2,000 feet south of the site near the intersection of NW Springville Road and NW Samuel Drive. The existing sanitary sewer service consists of an 8-inch pipe, which drains directly into a 21-inch Clean Water Services (CWS) mainline. According to CWS, the existing system has capacity to serve development on the BSD site, likely via an extraterritorial line extension.

Storm Drainage: No costs would be required to service this site with storm drainage facilities. Stormwater detention will not be required for the development of the BSD site, per the Gossamer Hills Preliminary Water Quality/Water Quantity Stormwater Report, prepared by CES/NW, Inc. and dated July 20, 2000. CES/NW analyzed the downstream flow to a point approximately 660 feet downstream of the site and found all existing storm facilities to this point to have capacity adequate to convey the increased

flows from development up to 50 acres. There are no streams or floodplains located on the BSD site. Stormwater quality treatment facilities can easily be constructed on site at a minimal cost with no required off-site improvements. Treatment facilities can consist of ponds or biofiltration swales.

Water: Efficient water service can be provided to this site. Water service is available approximately 1,500 feet south of the site in NW Springville Road. Pressures from the existing facilities will be adequate to serve the site with domestic and fire protection flow. The Tualatin Valley Water District supports the petition (see Figure 9).

Schools: The use of the ten acres as an elementary school site will provide the surrounding area with a needed elementary school facility as supported by the Beaverton School District Facility Plan 2002. Though the school's primary purpose would be education, the school would also provide the surrounding neighborhood with a community focal point and recreational space.

Parks and Recreation: Development of the site as an elementary school will include play fields and other areas for use by both students and the general public. The school is intended to not only provide the area with a needed elementary facility to accommodate increasing enrollment, but is also intended to serve as a community focal point and gathering place for the neighborhood. The Tualatin Hills Park and Recreation District (THPRD) was contacted regarding the provision of park and recreation services to the BSD site. THPRD has not yet commented on service to this site. According to an Intergovernmental Agreement between the Beaverton School District and THPRD, the sharing of facilities between THPRD and the Beaverton School District is encouraged. The Beaverton School District works closely with THPRD to make their facilities available for parks and recreation programs.

Fire and Life Safety: Fire and rescue services are available to the site. TVFR has personnel and equipment in the area that can respond to an emergency incident and implement such actions as may be necessary for fire and/or rescue operations. As mentioned previously, water pressure would be adequate to serve the site with water for fire protection purposes.

Police: The site is serviceable by police. The Washington County Sheriff supports the petition.

Transit: According to Tri-Met, the site can be served by Tri-Met's Line 67 (30 minute peak hour frequencies), and Tri-Met does not foresee a need to implement additional service changes. Tri-Met recommends that the development of a school on the site should be well-integrated with the community as a community amenity.

Transportation: The size and operation of the elementary school has not yet been determined, and, therefore, a traffic study has not yet been prepared. The site has access to NW Brugger Road. Discussions are under way with Portland Community College to determine if a potential access easement would be available to access the site from Springville Road. A different alternative route could also be explored, if necessary, which could be obtained via the Beaverton School District's condemnation authority.

The Bethany Community Plan and the Gossamer Hills Master Plan, which were both approved by Washington County, support the development of an elementary school on the BSD site. Both of these plans provide for the servicing of the school site with transportation and other public facilities. Washington County has already reviewed the infrastructure plans to serve the site, and has approved the development application. If the Gossamer Hills area were to be included in the UGB, the plans for access to the school would be in place.

This information satisfies the requirements of Factor 3.

FACTOR 4: Maximum efficiency of land uses within and on the fringe of the existing urban area. Consideration of this factor shall be based on the following [3.01.020(b)(4)]:

(A) That the subject site can be developed with features of an efficient urban growth form including residential and employment densities capable of supporting transit service; residential and employment development patterns capable of encouraging pedestrian, bicycle, and transit use; and the ability to provide for a mix of land uses to meet the needs of residents and employees. If it can be shown that the above factors of compact form can be accommodated more readily in one area than others, the area shall be more favorably considered.

Beaverton School District Response

The elementary school will benefit the neighborhood by serving the growing population in the northwestern portion of the Beaverton School District, an area where there are no existing elementary schools in close proximity to students. The BSD site is located adjacent to an educational use, the PCC-Rock Creek campus. The proximity of the two educational facilities provide the Beaverton School District and Portland Community College the unique opportunity to explore collaborative educational programs between the two campuses. Discussions have already occurred regarding potential program opportunities. The proximity of these two educational facilities is one unique advantage that the BSD site has over other potential sites.

The use proposed for the BSD site, an elementary school, will be developed with features of an efficient urban growth form and will be integrated into the urban fabric of the neighborhood. The site will be accessible by bicyclists and pedestrians, and pedestrian and bicycle facilities would be designed for accommodating students and teachers traveling to and from school, as well as community members seeking recreational or extra-curricular opportunities while school is not in session. The school would have safe and adequate bicycle parking, and the site is serviceable by transit. The site size (ten acres) meets the guidelines for elementary school site size recommended in the Beaverton School District Facility Plan (7-10 acres), and, therefore would maximize utilization of land. The school will meet educational, recreational, and public gathering space needs of the community.

Although other sites outside the UGB could potentially be developed with urban growth forms similar to those possible on the BSD site, there is no reason to believe that another site could be more efficient than the BSD site (see Table 8). Many of the other potential sites outside the UGB have environmental constraints or odd configurations, which detract from efficiency of land development. Some potential sites (#5 and #9) are too large, and would require the purchase of over 20 acres of excess property, which is inefficient in terms of the use of public money and facility decision-making.

Potential sites within the UGB (see Tables 6 and 7) have zoning or environmental constraints, or are too close to existing elementary schools. Locating an elementary school too close to another elementary school (e.g. within one mile) is an inefficient distribution of educational facilities and would create attendance boundary issues. The BSD Site is located over 1.5 miles from the nearest elementary school, and, therefore, would contribute to a better distribution of educational benefits among the community.

The Bethany Community Plan and the Gossamer Hills Master Plan, which were both approved by Washington County, support the development of an elementary school on the BSD site. Both of these plans provide for the servicing of the school site with transportation and other public facilities. Washington County has already reviewed the infrastructure plans to serve the site, and has approved the development application. If the Gossamer Hills area were to be included in the UGB, the plans for provision of a mix of uses and multi-modal transportation service would be in place.

(B) The proposed amendment will facilitate achieving an efficient urban growth form on adjacent urban land, consistent with adopted local comprehensive and regional functional plans, by assisting with achieving residential and employment densities capable of supporting transit service; supporting the evolution of residential and employment development patterns capable of encouraging pedestrian, bicycle, and transit use; and improving the likelihood of realizing a mix of land uses to meet the needs of residents and employees.

Beaverton School District: Staff Response

The BSD site is located immediately adjacent to the UGB and to an existing educational use. The Beaverton School District Facility Plan recommends siting a new elementary school in the northern portion of the Beaverton School District, which includes the North Study Area. The Facility Plan is consistent with existing local community plans which support the elementary school use in this location. In 1999, Washington County amended the Bethany Community Plan portion of the comprehensive plan to designate the school site and surrounding area (the "Gossamer Hills" area) as appropriate for an urban use. (Ordinance No. 546 and Resolution and Order No. 99-186; October 1999). The Bethany Community Plan identifies the Gossamer Hills site, which includes the school site, as "Area of Special Concern #2" and includes a series of design elements for the area to guide future urban development. Included in the design elements is the following language:

Area of Special Concern No. 2 encompasses land located east of the PCC Rock Creek Campus and north of Springville Road. This area was included within the regional Urban Growth Boundary (UGB) by action of the Metro Council in 1999. Consistent with the conditions of that action, the following provisions shall apply to new development in this area:

f) Prior to commencement of development in the area, the developer shall provide the opportunity for the Beaverton School District to acquire up to 10 acres of land on the development site for an elementary school.

Following adoption of this language the Gossamer Hills Master Plan was approved by Washington County (Casefile 00-601-M; July 2001). This Master Plan included the ten-acre site and identified it as a future school site. Following Master Plan approval, the County approved a Property Line Adjustment creating the ten-acre site (Casefile 01-399-PLA; October 2001). The zoning on the property, as shown on current Washington County records, is R-9. Elementary schools are permitted in this zoning district. The Bethany Community Plan and the Gossamer Hills Master Plan, which were both approved by Washington County, support the development of an elementary school on the BSD site. Both of these plans provide for the servicing of the school site with transportation and other public facilities. Washington County has already reviewed the infrastructure plans to serve the site, and has approved the development application. If the Gossamer Hills area were to be included in the UGB, the plans for provision of a mix of uses and multi-modal transportation service would be in place. If approved, the Gossamer Hills site will be developed in an efficient urban form, in conformance with the Gossamer Hills Master Plan.

The Washington County Comprehensive Framework Plan for the Urban Area includes the following policies and implementation strategies that address school facilities:

POLICY 15, ROLES AND RESPONSIBILITIES FOR SERVING GROWTH:

It is the policy of Washington County to work with service providers, including cities and special districts, and the Portland Metropolitan Area Boundary Commission, to insure that facilities and services required for growth will be provided when needed by the agency or agencies best able to do so in a cost effective and efficient manner.

Implementing Strategy:

1. Enter into intergovernmental agreements with high growth school districts which are consistent with ORS 195.020 and ORS 195.110, and which contain at a minimum the following items:

- 1. An explanation of how objective criteria for school capacity in the District's school facility plan will be used by the County;*
- 2. School District involvement with the County's periodic review; and*
- 3. How the County will coordinate comprehensive plan amendments and residential land use regulation amendments with the District, including notice of hearing. These intergovernmental agreements may be adopted by the Board of County Commissioners through Resolution and Order.*

POLICY 30, SCHOOLS:

It is the policy of Washington County to coordinate with school districts and other educational institutions in planning future school facilities to ensure proper location and safe access for students.

Implementing Strategies

The County will:

- a. Include as an element of the Resource Document of the Comprehensive Plan, the School Facility Plans adopted by high growth school districts pursuant to ORS 195.110. The County will also provide notice to the affected high growth school district when considering a plan or land use regulation amendment that affects school capacity.*
- b. Include in the Community Development Code the opportunity for school districts to review and comment on all development proposals subject to the growth management standards.*
- c. Include in the Community Development Code clear and objective criteria regarding the location and design of educational facilities. Such criteria will address pedestrian, bicycle and vehicle access, the means to ensure compatibility of the facility with surrounding uses and consistency with the applicable Community Plan.*
- d. Encourage the re-use of school buildings when such facilities are removed from use by the school district.*

The Comprehensive Plan also states that Washington County and school districts should coordinate regarding school facility placement, future development potentially affecting school facilities, and safety. The Comprehensive Plan policies and implementation strategies above primarily focus on Washington County's coordination with administrative districts, and school districts in particular. As stated in Policy 30, Implementation Strategy A, the County is to include School Facility Plans adopted by high growth school districts pursuant to ORS 195.110 (e.g. Beaverton School District) as part of the Resource Document of its Comprehensive Plan. The Objective Enrollment Capacity Criteria contained in the District's Facility Plan will be adopted into the County's Community Development Code. The Beaverton School District Facility Plan identifies a need for an elementary school in the northern portion of the Beaverton School District, contains an analysis of the northern portion of the Beaverton School District, notes that the Northern Study Area lacks adequate elementary school site options, and states that the BSD site is well positioned to serve the growing student enrollment demand in the northern portion of the District in the next five years, with or without any expansions for residential development to the UGB in the area. This petition supports the conclusions presented in the Beaverton School District Facility Plan and the Washington County Comprehensive Plan.

FACTOR 5: Environmental, energy, economic and social consequences. An evaluation of this factor shall be based upon consideration of at least the following [3.01.020(b)(5)]:

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(A) If the subject property contains any resources or hazards subject to special protection identified in the local comprehensive plan and implemented by appropriate land use regulations, findings shall address how urbanization is likely to occur in a manner consistent with these regulations.

Washington County's Comprehensive Plan identifies and maps "significant natural resources," which include minerals, water areas and wetlands, wildlife habitat, fish habitat, scenic resources, significant natural areas and historic and cultural resources. The BSD site does not contain any resources or hazards subject to special protection identified in the Washington County Comprehensive Plan.

(B) Complementary and adverse economic impacts shall be identified through review of a regional economic opportunity analysis, if one has been completed. If there is no economic opportunity analysis, one may be completed for the subject land.

Beaverton School District: Staff Response

No adverse economic impacts are expected to occur as a result of the development of an elementary school on the subject site. Economic impacts would primarily be positive, the most significant including the provision of education for future productive members of society. Other economic benefits would include job creation for teachers, staff, and administration, as well as the generation of need for food services, construction, maintenance, and other services.

(C) The long-term environmental, energy, economic, and social consequences resulting from the use at the proposed site shall be identified. Adverse impacts shall not be significantly more adverse than would typically result from the needed lands being located in other areas requiring an amendment of the UGB.

Beaverton School District: Staff Response

Long-term environmental, energy, economic, and social consequences resulting from the use at the proposed site would not be significantly more adverse than consequences resulting from siting an elementary school on the alternative sites.

Environmental Impacts. As stated previously, the site does not contain any resources or hazards subject to special protection identified in the Washington County Comprehensive Plan. In 1999, EnviroScience, Inc. prepared a Natural Resource Evaluation and Protection Plan for Site #65, which included the subject BSD site. This Plan confirmed that the ten-acre site does not require any special environmental mitigation. A majority of the potential sites outside the UGB (see Table 8) have environmental constraints, such as streams, floodplains, or steep terrain. The lack of environmental resources or hazards on the BSD site means that locating an elementary school in this location would have less environmental impact than locating on one of the sites with environmental constraints.

Energy Impacts. Increases in energy usage as a result of the approval of this petition would primarily be due to heating, cooling and lighting needs for the elementary school building and vehicles and school buses traveling to and from the site. However, these energy impacts would be comparable regardless of where the school is sited, although traveling to sites 6-8 would trigger more vehicle miles traveled for students because of the distance between these sites and the student population. In order to mitigate energy usage resulting from transportation, the school will be designed to accommodate and encourage pedestrian, bicycle, and transit usage. It may be possible to obtain an easement for pedestrian and bicycle usage (and potentially vehicle usage) through one of the parcels between the subject site and Springville Road, or to obtain access via eminent domain. The approved Gossamer Hills Master Plan includes such

connections. The location of this site adjacent to the UGB will minimize energy usage with regard to many services. Energy use on-site will be addressed as development plans progress.

Economic Impacts. As discussed in the response to Factor 5B, economic impacts resulting from the development on the subject site would be positive.

Social Impacts. The social impacts resulting from the siting of a school would be overwhelmingly positive. Education is one of the foundations for productive, civic-minded members of society. The construction of a new school in the North Study Area is necessary to prevent overcrowding from the expected continued population growth in the area. In addition to benefits for the students themselves, the school would offer the community a place for congregating for community events or extracurricular activities, such as athletic events or civic organizations. The new school would also serve the neighborhood by providing open space for recreation and exercise. As mentioned previously, there are no known historical or archaeological resources located on the site. If during construction such resources are discovered, development will comply with appropriate federal and state regulations.

These environmental, energy, economic, and social impacts are no more adverse for the BSD site than for other potential sites. With regard to environmental impacts, this site is preferable because it has no significant environmental features. Economic and social impacts are positive, based on the nature of the school facility and its location near the population it is intended to serve. Energy impacts related to building needs and maintenance are no different than on any other site. Energy impacts related to transportation will be minimized through the provision of adequate transit, pedestrian, and bicycle facilities. The Beaverton School District is exploring opportunities to access the site via an agreement with PCC. Other transportation access options include a route acquired by powers of eminent domain, or via NW Brugger Road.

FACTOR 6: Retention of agricultural land. This factor shall be addressed through the following [3.01.020(b)(6)]:

(A) Prior to the designation of urban reserves, the following hierarchy shall be used for identifying priority sites for urban expansion to meet a demonstrated need for urban land:

- (i) Expansion on rural lands excepted from statewide planning Goals 3 and 4 in adopted and acknowledged county comprehensive plans. Small amounts of rural resource land adjacent to or surrounded by those "exception lands" may be included with them to improve the efficiency of the boundary amendment. The smallest amount of land necessary to achieve improved efficiency shall be included;**
- (ii) If there is not enough land as described in (i) above to meet demonstrated need, secondary or equivalent lands, as defined by the state, should be considered;**
- (iii) If there is not enough land as described in either (i) or (ii) above, to meet demonstrated need, secondary agricultural resource lands, as defined by the state should be considered;**
- (iv) If there is not enough land as described in either (i), (ii) or (iii) above, to meet demonstrated need, primary forest resource lands, as defined by the state, should be considered;**
- (v) If there is not enough land as described in either (i), (ii), (iii) or (iv) above, to meet demonstrated need, primary agricultural lands, as defined by the state, may be considered.**

Beaverton School District: Staff Response

Factor 6 establishes a hierarchy for including sites in the UGB to meet a demonstrated need. In this case, the demonstrated need is for a site of at least seven acres that meets the District's site selection criteria. In accordance with ORS 195.110(8), the District identified the BSD site as being the most appropriate site to meet the demonstrated need. The alternative sites cannot meet the demonstrated need because of

impediments such as environmental and topographic constraints, proximity to existing elementary schools and site size and configuration problems. See Figure 7 and Table 8 in Section III.

The alternative sites that are designated exception areas include site numbers 2, 6, 7 and 8. Although these exception sites are preferred in the Factor 6 hierarchy, it is appropriate to consider lower ranked agricultural land for inclusion in the UGB because the exception lands cannot meet the demonstrated need. Specifically, sites 6-8 are located in Multnomah County and are too distant from the students that need service. These sites are further impeded by steep terrain, stream and environmental constraints. Site 2 cannot meet the demonstrated need because of its proximity to existing elementary schools in the eastern portion of the Study Area and topographic and stream/environmental constraints.

Based on their designation in Washington County's Comprehensive Plan, the BSD site and the remainder of the alternative sites analyzed are considered primary agricultural lands under the Factor 6 hierarchy. As such, these sites and the BSD site have equal priority for inclusion in the UGB under Factor 6. Although these sites are equally ranked, the BSD site can best meet the demonstrated need. The primary constraint for the alternative sites is their size and configuration. Specifically, site 4 is too narrow to accommodate all of the needed elementary school facilities, and sites 5 and 9 are too large for the needed school, so utilizing these sites would require the District to purchase excess property. Sites 1 and 3 are also too large for the elementary school, and also include stream and environmental constraints.

As discussed above, Factor 6 must be balanced with the other locational factors to determine which site is most appropriate for inclusion in the UGB (MC 3.01.030(b)). Based on the demonstrated need and for a site of at least seven acres that meets the District's site selection criteria, the BSD site is the most appropriate site under Factor 6. This finding is consistent with the District's identification of the BSD site as being the most appropriate site to meet the demonstrated need, in accordance with ORS 195.110(8).

(B) After urban reserves are designated and adopted, consideration of factor 6 shall be considered satisfied if the proposed amendment is wholly within an area designated as an urban reserve.

Beaverton School District: Staff Response

This factor is not applicable. Per a January 2000 Court of Appeals ruling, Urban Reserves have ceased to exist.

(C) After urban reserves are designated and adopted, and a proposed amendment is for land not wholly within an urban reserve, the petition must also demonstrate by substantial evidence that the need cannot be met within urban reserves.

Beaverton School District: Staff Response

This factor is not applicable. Per a January 2000 Court of Appeals ruling, Urban Reserves have ceased to exist.

FACTOR 7: Compatibility of proposed urban development with nearby agricultural activities [3.01.020(b)(7)].

(A) The record shall include an analysis of the potential impact on nearby agricultural activities including, but not limited to, the following:

(i) A description of the number, location and types of agricultural activities occurring within one mile of the subject site;

(ii) An analysis of the potential impacts, if any, on nearby agricultural activities taking place on lands designated for agricultural use in the applicable adopted county or city comprehensive plan, and mitigation efforts, if any impacts are identified. Impacts to be considered shall include consideration of land and water resources, which may be critical to agricultural activities, consideration of the impact on the farming practices of urbanization of the subject land, as well as the impact on the local agricultural economy.

Beaverton School District: Staff Response

The proposed elementary school will have little if any effect on agricultural activities within one mile of the subject site or the agricultural economy in the area. The subject site itself is currently vacant, and not being used for agricultural purposes. Therefore, the inclusion of these ten acres of land inside the UGB would not reduce the amount of productive farmland. The urbanization of the land south of Springville Road has already created the majority of impacts possible on farming in the North Study Area.

A Farming Practices Report was prepared for Site 65 at Bethany in 2000. The subject site was previously part of Site 65. The Report was prepared with the assistance of Clifford Joss, a farmer with 60 years of experience farming in the North Study Area and Keith Fishback, a farmer with 20 years of experience farming in the area. The Report identified the current farm usage within one mile of Site 65, which included the BSD site. According to the Report, there is not enough contiguous land in the one-mile area to support full time farming. Within the one-mile radius, some small farms exist that grow grain, wheat, red clover, grass, and grass seed, oats, Christmas trees, nursery stock and pasture. Many parcels also include single-family dwellings. According to the Report, the average parcel size of EFU land that is farmed in this area is smaller than 30 acres, which is too small for viable farming. As noted in the Report, the farms are too small for farmers to make a living wage. The largest parcel in the area belongs to Portland Community College (247 acres) and is located within the UGB. All farming in this area is dryland farming, and requires no taking of water from other uses.

The majority of farms within a one-mile radius of the site are not accessed by Brugger Road, a proposed access road for the elementary school site. Similarly, farm traffic does not utilize the interior PCC roads, the other proposed access for the BSD site. Therefore, conflicts would be minimized. There is urban housing development along the south side of Springville Road, and the largest farms are located along the west side of 185th Avenue, well-separated from the subject site. According to the Farming Practices Report, most slow-moving farm traffic uses West Union Road, US 26, or 185th Avenue. The Report states that trips to and from farms are concentrated around certain times of the year (typically during the summer when school is not in session), and, therefore, any conflicts between farm vehicles and trips to the school would occur sporadically rather than on a regular basis. Many of the potential conflicts between farm vehicles and other vehicles already exist based on current development patterns. The addition of an elementary school to the area would make little difference in terms of traffic flow.

3.01.020(c) The requirements of statewide planning Goal 2 will be met by addressing both the criteria in section 3.01.020(b), above, and by factually demonstrating that:

- (1) The land need identified cannot be reasonably accommodated within the current UGB; and**
- (2) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts; and**
- (3) The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in other areas than the proposed site and requiring an exception.**

Beaverton School District: Staff Response

This petition meets the requirements of Section 3.01.020(b) as discussed in the previous responses, and satisfies the three criteria listed in this section of the Metro Code, as follows:

- (1) As discussed in the Introduction to this petition and as determined in the Beaverton School District Facility Plan, there is an identified need for an elementary school in the northern portion of the Beaverton School District (North Study Area) to serve the growing population in this area. As discussed in response to Section 3.01.020.b.1(e) and in the Introduction to this petition, there are no adequate sites for an elementary school in the UGB within the North Study Area. Sites which are large enough either have environmental constraints or are located in extremely close proximity to the other two elementary schools in the North Study Area, which is not as preferable as locating the school closer to the population it is intended to serve (the western portion of the North Study Area). It is best to distribute schools evenly through a community to achieve neighborhood benefits and provide neighborhood schools. Potential aggregation of land into sites at least 7 acres also does not produce adequate sites due to environmental constraints, proximity to existing elementary schools, or odd site configuration.
- (2) The proposed use of the BSD site is an elementary school, which is compatible with adjacent land uses. The BSD site is located adjacent to the PCC-Rock Creek campus, another educational use. As discussed in the response to Section 3.01.02.b.2, this proximity will provide the Beaverton School District and Portland Community College an opportunity to explore collaborative educational programs between the two campuses. The BSD site is also located near existing residential land uses, which will help foster a sense of community ownership. Design measures such as landscaping will be incorporated into the school's site plan during the development review process in accordance with Washington County code.
- (3) As discussed in the response to Section 3.01.02.b.5, Long-term environmental, energy, economic, and social consequences resulting from the use at the proposed site would not be significantly more adverse than consequences resulting from siting an elementary school in other areas.

3.01.020(d) The proposed location for the UGB shall result in a clear transition between urban and rural lands, as evidenced by its use of natural and built features, such as roads, drainage divides, floodplains, power lines, major topographic features, and historic patterns of land use or settlement.

Beaverton School District: Staff Response

The proposed UGB amendment would maintain a clear transition between urban and rural lands, as it is located adjacent to the UGB. The BSD site would be used for an elementary school, and would be located directly east of the Portland Community College (PCC) Rock Creek Campus. The elementary school use would be compatible with the existing educational use (the PCC campus). The proposed addition does not include any islands of non-urban land. The site is large enough to incorporate landscaping or buffering requirements that will be applied during the development review process.

3.01.020(e) Satisfaction of the criteria in section 3.01.020(a) and (b) does not mean that other statewide planning goals do not need to be considered. If the proposed amendment involves other statewide planning goals, they shall be addressed.

Beaverton School District: Staff Response

There are no additional statewide goals that apply to this petition.

Attachment 1 to Staff Report to Ordinance No. 02-984

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3.01.020(f) Section 3.01.020(a), (b), (c) and (d) shall be considered to be consistent with and in conformance with the Regional Urban Growth Goals and Objectives.

Beaverton School District: Staff Response

As demonstrated in the responses to Sections 3.01.020(a-d), this petition for UGB Amendment is in conformance with the Regional Urban Growth Goals and Objectives.

Agenda Item Number 4.5

Ordinance No. 02-985, For the Purpose of Amending the Metro Urban Growth Boundary in the Vicinity of the City of Forest Grove by Adding and Deleting an Equivalent Amount of Land; and Declaring an Emergency.

First Reading - Ordinance will be available prior to the Council meeting

Metro Council Meeting
Thursday, November 21, 2002
Metro Council Chamber

Agenda Item Number 5.1

**Ordinance No. 02-966, For the Purpose of Amending Chapter 2.04 Metro
Contract Policies of the Metro Code to Conform to the Metro Charter
Amendments Adopted on November 7, 2000, and Declaring an Emergency.**

Second Reading

Metro Council Meeting
Thursday, November 21, 2002
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING CHAPTER 2.04) ORDINANCE NO. 02-966
METRO CONTRACT POLICIES, OF THE METRO)
CODE TO CONFORM TO THE METRO CHARTER)
AMENDMENTS ADOPTED ON NOVEMBER 7, 2000,) Introduced by the Council Governmental
AND DECLARING AN EMERGENCY) Affairs Committee

WHEREAS, on November 7, 2000, the electors of Metro approved Ballot Measure 26-10 amending the Metro Charter; and

WHEREAS, the Metro Charter Amendments, created the Office of Council President and abolished the Office of the Executive Officer; and

WHEREAS, the Metro Council amended Metro Code Chapter 2.01 to reflect the creation of the office of Metro Council President pursuant to Ordinance No. 02-954A on June 27, 2002; and

WHEREAS, the Metro Charter Amendments required the Metro Council to create the Office of the Chief Operating Officer; and

WHEREAS, the Metro Charter Amendments, added Metro Code Chapter 2.20 to create the office of Chief Operating Officer and to define the duties and responsibilities of the Chief Operating Officer, pursuant to Ordinance No. 02-942A on June 27, 2002; and

WHEREAS, the Metro Charter Amendments required the Council to create the Office of the Metro Attorney; and

WHEREAS, the Metro Council amended Chapter 2.08 of the Metro Code to create the office of the Metro Attorney and to define the duties and responsibilities of the Metro Attorney, pursuant to Ordinance No. 02-953A on June 27, 2002; and

WHEREAS, it is necessary to amend Chapter 2.04 of the Metro Code to conform to the Metro Charter Amendments adopted on November 7, 2000; and

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The Metro Code Chapter 2.04 Metro Contract Policies is amended as provided for and is attached as Exhibit A.
2. The Metro Charter Amendments to the Metro Code adopted by this ordinance shall take effect on January 6, 2003.
3. Effective January 6, 2003, any reference to the Executive Officer in any existing contract or agreement shall be deemed to be a reference to the Chief Operating Officer and the Chief Operating Officer has the authority to take any action under an existing contract or agreement that can be taken by the Executive Officer.

ADOPTED by the Metro Council this _____ day of _____ 2002.

Carl Hosticka, Presiding Officer

Attest:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, General Counsel

Exhibit A
Metro Charter 2003 Amendments to Metro Code
Chapter 2.04, Metro Contract Policies

CHAPTER 2.04

METRO CONTRACT POLICIES

SECTIONS	TITLE
2.04.010	Definitions *
CONTRACTS IN GENERAL	
2.04.020	Authority to Award and Execute Contracts, Budget Limitations
2.04.022	Federal Law and Rules
2.04.024	Metropolitan Exposition-Recreation Commission
2.04.026	Council Approval of Contracts
2.04.028	Council Information Reports
2.04.030	Regulations
2.04.032	Prohibition Against Doing Business With Certain Former Metro Officials (repealed Ord. 99-822 §2)
PERSONAL SERVICES CONTRACTS	
2.04.040	Personal Services Contracts -- General
2.04.042	Personal Services Contracts Up to \$50,000
2.04.044	Personal Services Contracts of More than \$50,000
2.04.046	Personal Services Contract Amendments
2.04.048	Notice of Award and Appeals of Personal Services Contracts
CONTRACT REVIEW BOARD	
2.04.050	Public Contract Review Board
2.04.052	Public Contracts -- General
2.04.054	Competitive Bidding Exemptions
2.04.056	Public Contracts Up to \$50,000
2.04.058	Public Contract Amendments
2.04.060	Food Products
2.04.062	Sole Source
2.04.064	Sale of Surplus Property
2.04.070	Notice of Award and Appeals
METRO ESB, MBE AND WBE PROGRAM	
2.04.100	Findings
2.04.105	Policy Statement
2.04.110	Definitions
2.04.115	Program Administration
2.04.120	Program Activities
2.04.125	Directory (repealed Ord. 97-692A §10)
2.04.130	Minority-Owned Banks

* Note: Former sections 2.04.010 to 2.04.090 were repealed by Ordinance No. 96-635B, Sec. 3, which created existing sections 2.04.010 to 2.04.070.

- 2.04.135 Affirmative Action and Equal Opportunity Procedures (repealed Ord. 97-692A §11)
- 2.04.140 Certification of Minority Business Eligibility (repealed Ord. 97-692A §11)
- 2.04.145 Annual Minority Business Goals (repealed Ord. 97-692A §11)
- 2.04.150 Good Faith Efforts at Maximizing ESB, MBE and WBE Opportunities
- 2.04.155 Contract Award Criteria (repealed Ord. 97-692A §13)
- 2.04.160 Definition and Determination of Good Faith Efforts (repealed Ord. 97-692A §13)
- 2.04.162 Contractor Work Force Efforts at Maximizing Minority and Women Opportunities
- 2.04.165 Replacement of ESB, MBE or WBE Subcontractors
- 2.04.170 Council Information Reports
- 2.04.180 Compliance (repealed Ord. 97-692A §18)
- 2.04.190 Severability and Intent
- 2.04.200-.290 (repealed Ord. 97-692A §22)

METRO DISADVANTAGED BUSINESS ENTERPRISE PROGRAM FOR FEDERALLY-FUNDED CONTRACTS

- 2.04.300 Disadvantaged Business Enterprise Program (DBE Program) for Federally-Funded Contracts, Findings, Purpose and Authority
- 2.04.305 Policy Statement
- 2.04.310 Definitions
- 2.04.315 Notice to Contractors, Subcontractors and Subrecipients
- 2.04.320 DBE Liaison Officer
- 2.04.325 Directory
- 2.04.330 DBE-Owned Banks
- 2.04.335 Affirmative Action and Equal Opportunity Procedures
- 2.04.340 Certification of Disadvantaged Business Eligibility
- 2.04.345 Annual Disadvantaged Business Goals
- 2.04.350 Contract Goals
- 2.04.355 Contract Award Criteria
- 2.04.360 Determination of Good Faith Efforts
- 2.04.365 Replacement of DBE Subcontractors
- 2.04.370 Records and Reports
- 2.04.375 Counting Disadvantaged Business Participation Toward Meeting Goals
- 2.04.380 Compliance and Enforcement

METRO RECYCLED PRODUCT PROCUREMENT PROGRAM

- 2.04.500 Policy Statement
- 2.04.510 Definitions
- 2.04.520 Recycled Products (Generally)
- 2.04.530 Recycled Content Paper Products
- 2.04.540 Recycled Oil
- 2.04.550 Compost Products
- 2.04.560 Retread Tires
- 2.04.570 Recycled Paint and Building Materials
- 2.04.580 Promotion and Evaluation of Recycled Content Product Procurement Plan

2.04.010 Definitions

For the purposes of this chapter unless the context requires otherwise the following terms shall have the meanings indicated:

(a) "Auditor" means the Metro Auditor provided for in Section 18 of the 1992 Metro Charter.

(b) "Chief Operating Officer" means the person holding the position of Chief Operating Officer established by Section 2.20.010 of the Metro Code.

(cb) "Competitive bidding" means an advertised solicitation of sealed bids.

(de) "Contract Review Board" or "Board" means the Metro Contract Review Board created pursuant to Section 2.04.050 of this chapter.

(ed) "Council PresidentPresiding Officer" means the Council President council Presiding Officer provided for in Section 16(4) of the 1992 Metro Charter.

(fe) "Emergency" means the occurrence of a specific event or events that could not have been reasonably foreseen and prevented, and which requires the taking of prompt action to remedy the condition and thereby avoid further physical damage or harm to individuals or the occurrence of avoidable costs.

(gf) "Emergency contract" means a contract whose purpose is limited to remedying an emergency situation.

~~(g) "Executive Officer" means the Metro Executive Officer provided for in Section 17 of the 1992 Metro Charter.~~

(h) "Intergovernmental agreement" means a written agreement with any other unit or units of federal, state or local government providing for the acquisition of goods or services by Metro, for the provision of goods or services by Metro or for the payment or receipt of funds in order to promote or carry out a common purpose.

(i) "Notice of award" means written communication to a responsive, responsible bidder or proposer stating that their bid or proposal has been conditionally determined to be the lowest, responsive, responsible bid or most responsive proposal and that ~~the district~~ Metro intends to enter into a contract upon completion by the bidder/proposer of all required conditions.

(j) "Personal services contract" means any contract by which Metro acquires a professional, artistic, creative, consulting, educational, or management service. Contracts which are predominately for the purpose of obtaining a product, labor or materials, or the services of a construction trade are not a personal services contract.

(k) "Procurement Officer" means the person designated by the Chief Operating Officer ~~Executive Officer~~ to carry out the functions required of such person by this chapter.

(l) "Public agency" means any agency of the federal government, State of Oregon, or any political subdivision thereof, authorized by law to enter into public contracts and any public body created by intergovernmental agreement.

(m) "Public contract" means any purchase, lease or sale by Metro of personal property, public improvement or services, including those transacted by purchase order, other than agreements which are for personal services.

(n) "Public improvement" means projects for construction, reconstruction or major renovation on real property by or for a public agency. "Public improvement" does not include emergency work, minor alteration, ordinary repair or maintenance in order to preserve a public improvement.

(o) "Request for Proposals or RFP" means the issuance of a request for offers that will be evaluated based on factors that are not limited to price alone.

(p) "Sole source contract" means a contract for which it can be documented there is only one qualified provider of the required service or material.

(Ordinance No. 96-635B, Sec. 3.)

CONTRACTS IN GENERAL

2.04.020 Authority to Award and Execute Contracts, Budget Limitations

~~The Chief Operating Officer and Pursuant to the 1992 Metro Charter, the Executive Officer and Auditor~~ have the authority to award and execute contracts that are necessary to carry out their administrative responsibilities. These two officers may delegate authority to award and execute contracts on their behalf by doing so in writing. The Auditor shall be subject to the same limitations and have the same authority as provided for the Chief Operating Officer by this Code Chapter. ~~The council Presiding Officer is delegated authority to award and execute contracts on behalf of the council. Unless the Council expressly approves a contract containing a requirement to the contrary, no contract may obligate Metro to the payment of funds not appropriated for that purpose by the Council.~~

(Ordinance No. 96-635B, Sec. 3.)

2.04.022 Federal Law and Rules

Notwithstanding any provision of this chapter, the applicable federal laws, rules and regulations shall govern in any case where federal funds are involved and the federal laws, rules and regulations conflict with any of the provisions of this chapter or require additional conditions in public or personal services contracts not authorized by this chapter.

(Ordinance No. 96-635B, Sec. 3.)

2.04.024 Metropolitan Exposition-Recreation Commission

The Metropolitan Exposition-Recreation Commission has authority to enter into contracts pursuant to Metro Code Section 6.01.040(j). Notwithstanding any provision of this chapter to the contrary, the Commission may without the prior approval of the Chief Operating Officer ~~Executive Officer~~ enter into contracts in any amount in accordance with contracting rules adopted by the Commission pursuant to the authority contained in Section 6.01.040(j). However, the Contract Review Board created pursuant to Section 2.04.050 shall be the contract review board for the Commission.

(Ordinance No. 96-635B, Sec. 3.)

2.04.026 Council Approval of Contracts

(a) Notwithstanding any other provisions of this chapter, the Chief Operating Officer, Metro Attorney, Executive Officer or Auditor must obtain authorization by the Council prior to execution of the following types of contracts:

- (1) Any contract which commits the ~~district~~ Metro to the expenditure of appropriations not otherwise provided for in the current fiscal year budget at the time the contract is executed and which has a significant impact on Metro. The following types of contracts shall be considered to have significant impacts unless the Council finds that under the circumstances a contract will not have a significant impact:
 - (A) Any public contract for a term greater than 12 months for private operation of all or of a major part of a Metro facility or concessions at a Metro facility.
 - (B) Any public improvement contract for an amount over \$50,000.
 - (C) Any public contract which will potentially result in a material (more than 5 percent of the related fund) loss of revenues or increase in expenditures in more than one year in any Metro fund.
 - (D) Any contract for personal services for a term greater than 12 months and in an amount greater than \$50,000.
 - (E) Any contract for personal services for an amount greater than \$50,000 related to Metro's exercise of its regional planning functions pursuant to Section 5 of the 1992-Metro Charter.
 - (F) Any contract for personal services for an amount over \$50,000 related to the study by Metro of exercising authority, pursuant to Section 7 of the 1992-Metro Charter, over additional functions.
- (2) Any agreement entered into pursuant to ORS Cchapter 190 by which Metro acquires or transfers any interest in real property, assumes any function or duty of another governmental body, or transfers any function or duty of Metro to another governmental unit; or
- (3) Any contract for the purchase, sale, lease or transfer of real property owned by Metro. However, the Chief Operating Officer ~~Executive Officer~~ may execute options to purchase real property.

(b) Prior to adoption of the annual budget, the Chief Operating Officer ~~Executive Officer~~ shall submit a list of proposed contracts over \$50,000 to be entered into during the next fiscal year. The Council shall designate in the annual budget ordinance which contracts have a significant impact on Metro.

Thereafter, if the Chief Operating Officer Executive-Officer proposes to enter into a contract that will commit the ~~district~~ Metro to the expenditure of appropriations not provided for in the current fiscal year budget in an amount greater than \$50,000 that the Ceouncil has not considered during the annual budget process, the Chief Operating Officer Executive-Officer shall inform the Council President ~~council Presiding-Officer~~ in writing and shall recommend whether the contract should be classified as a significant impact contract. The Council President ~~Presiding-Officer~~ shall immediately cause copies of the notice to be furnished to all members of the Ceouncil. The Ceouncil may determine that the contract has a significant impact on Metro within 10 days of receipt of the notice from the Chief Operating Officer Executive-Officer. If the contract is determined by the Ceouncil to have a significant impact on Metro, execution by the Chief Operating Officer Executive-Officer shall be subject to Ceouncil authorization. If the Ceouncil does not determine that the contract has a significant impact on Metro, the Chief Operating Officer Executive-Officer may execute the contract after transmitting a description of the purpose of the contract, the appropriation to which contract payments will be charged, and a summary of the scope of work to be performed to the Ceouncil or a Ceouncil committee as deemed appropriate by the Council President ~~Presiding-Officer~~.

(c) All contracts which require Ceouncil authorization pursuant to subsection (a)(1) or (b) above and which are subject to competitive bidding or Rrequest for Pproposals procedures shall require Ceouncil authorization of the request for bids or Rrequest for Pproposals prior to release of bidding or proposal documents to vendors. At the time of Ceouncil authorization of the competitive bid or Rrequest for Pproposal documents, the Ceouncil may waive the requirement of Ceouncil authorization of the contract.

(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 99-822, Sec. 1.)

2.04.028 Council Information Reports

The Chief Operating Officer Executive-Officer shall provide a monthly report to Ceouncil showing all contracts awarded and amended during the preceding month.

The Chief Operating Officer Executive-Officer shall make available to the Ceouncil on request information showing the status of all contracts whether listed in the adopted budget or not.

(Ordinance No. 96-635B, Sec. 3.)

2.04.030 Regulations

The Chief Operating Officer Executive-Officer may establish by executive order additional regulations consistent with this chapter.

(Ordinance No. 96-635B, Sec. 3.)

PERSONAL SERVICES CONTRACTS

2.04.040 Personal Services Contracts -- General

(a) Disadvantaged Business Program. All contracting for personal services is subject to the Metro Disadvantaged Business Enterprise Program for Federally-Funded Contracts, Metro Women

Business Enterprise Program, and the Metro Minority Business Enterprise Program provisions of this chapter.

(b) Substantive Requirements. All Metro personal services contracts shall contain all provisions required by ORS Chapter 279 and shall be construed to be consistent with all relevant provisions of ORS Chapter 279.

(Ordinance No. 96-635B, Sec. 3.)

2.04.042 Personal Services Contracts Up to \$50,000

(a) For personal services contracts of less than \$5,000, multiple proposals are not required, but shall be encouraged.

(b) For personal services contracts of \$5,000 or more but not more than \$50,000, proposals shall be solicited from a minimum of three (3) potential contractors who are capable and qualified to perform the requested work. Metro shall keep a written record of the source and amount of the quotes received. If three (3) quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes. In addition, the contracting department shall notify the procurement officer of the nature of the proposed contract, the estimated cost of the contract, and the name of the contact person.

(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 97-692A, Sec. 20; Ordinance No. 99-822, Sec. 3.)

2.04.044 Personal Services Contracts of More than \$50,000

Personal services contracts of \$50,000 shall be subject to the following process:

(a) A Request for Proposal(s) shall be prepared and advertised at least once. Notice shall also be mailed to interested contractors known to Metro.

(b) All requests for proposals shall at a minimum contain a description of the project and a brief summary of the project history, contain a detailed proposed scope of work or other specifications setting forth expected performance by the contractor, include a description of the criteria that will be utilized to evaluate proposals and a broad range of the estimated cost for the project.

(c) Evaluations of proposals and the determination of the most qualified proposer shall be made.

(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 99-822, Sec. 4.)

2.04.046 Personal Services Contract Amendments

(a) Personal services contracts of an initial amount of \$25,000 or less may be amended to increase the amount of the contract to no more than twice the original contract amount. This limit is cumulative and includes any and all contract amendments or extensions. Any contract amendment(s) in excess of this ceiling requires approval by the Council. The Council shall determine whether it is appropriate to amend the contract despite the policy that favors competitive procurement of personal services.

(b) Contracts with an initial amount of greater than \$25,000 may be amended provided that any amendment that increases the total amount payable to an amount more than \$50,000 greater than the initial contract amount shall be subject to approval by the Ceouncil. The Ceouncil shall determine whether it is appropriate to amend the contract despite the policy that favors competitive procurement of personal services.

(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 99-822, Sec. 5.)

2.04.048 Notice of Award and Appeals of Personal Services Contracts

Notice of award and any appeal thereof shall be subject to the rules and procedures established in Ssection 2.04.070 except that the final determination of any appeal shall be made by the Ceouncil and not the Cecontract Rreview Bboard.

(Ordinance No. 96-635B, Sec. 3.)

CONTRACT REVIEW BOARD

2.04.050 Public Contract Review Board

(a) Creation of the Public Contract Review Board. Pursuant to ORS 279.055 the Metro Ceouncil is designated and created as the Metro Contract Review Board.

(b) Powers of Board. The Metro Cecontract Rreview Bboard shall have all the powers provided to a contract review board by ORS Cehapter 279.

(c) Contract Review Board Meetings

- (1) The meetings of the Cecontract Rreview Bboard shall normally, but need not, be conducted at the same time as, and as a part of, the regular meetings of the Metro Ceouncil.
- (2) The rules of procedure adopted by the Ceouncil for its proceedings shall also govern proceedings of the Cecontract Rreview Bboard unless they conflict with rules adopted by the Bboard.

(Ordinance No. 96-635B, Sec. 3.)

2.04.052 Public Contracts -- General

(a) State Law Requirements, Procedures.

- (1) The procedures for competitive bidding of all Metro public contracts and for the issuance of competitive Request for Proposals when authorized as an exception to competitive bid requirements shall comply with all requirements that are generally applicable to local governments.

(2) Notwithstanding the provisions of this subsection (a)(1), the model rules adopted by the Oregon Attorney General shall not apply to Metro.

(3) The Chief Operating Officer ~~Executive Officer~~ may establish by executive order detailed procedural requirements consistent with this chapter and state law. In so doing, the Chief Operating Officer ~~Executive Officer~~ may adopt in whole or in part the model rules of procedure established by the Oregon Attorney General pursuant to ORS 279.049.

(b) Substantive Requirements. All Metro public contracts shall contain all provisions required by ORS ~~C~~chapter 279 and shall be construed to be consistent with all provisions of ORS ~~C~~chapter 279.

(c) Rejection of Bids. The Chief Operating Officer ~~Executive Officer~~ may reject any bid or proposal not in compliance with all prescribed procedures and requirements and may, for good cause, reject any or all bids or proposals upon finding that it is in the public interest to do so.

(d) Bonds. Unless the Board shall otherwise provide, bonds and bid security requirements are as follows:

- (1) Bid security not exceeding 10 percent of the amount bid for the contract is required unless the contract is for \$25,000 or less.
- (2) For public improvements, a labor and materials bond and a performance bond, both in an amount equal to 100 percent of the contract price are required for contracts over \$25,000.
- (3) Bid security, labor and material bond and performance bond may be required even though the contract is of a class not identified above, if the Chief Operating Officer ~~Executive Officer~~ determines it is in the public interest.

(e) Disadvantaged Business Program. All public contracts are subject to the Metro Disadvantaged Business Enterprise Program for Federally-Funded Contracts, Metro Women Business Enterprise Program, and the Metro Minority Business Enterprise Program provisions of this chapter.

(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 99-822, Sec. 6.)

2.04.054 Competitive Bidding Exemptions

Subject to the policies and provisions of ORS 279.005 and 279.007, and the Metro Code, all Metro and Metropolitan Exposition-Recreation Commission public contracts shall be based upon competitive bids except:

(a) State Law. Classes of public contracts specifically exempted from competitive bidding requirements by state law.

(b) Board Rule. The following classes of public contracts are exempt from the competitive bidding process based on the legislative finding by the Board that the exemption will not encourage

favoritism or substantially diminish competition for public contracts and that such exemptions will result in substantial cost savings:

- (1) All contracts estimated to be not more than \$50,000 provided that the procedures required by Section 2.04.056 are followed.
- (2) Purchase and sale of zoo animals, zoo gift shop retail inventory and resale items, and any sales of food or concession items at Metro facilities.
- (3) Contracts for management and operation of food, parking or similar concession services at Metro facilities provided that procedures substantially similar to the procedures required for formal Request for Proposals used by Metro for personal services contracts are followed.
- (4) Emergency contracts provided that written findings are made that document the factual circumstances creating the emergency and establishing why the emergency contract will remedy the emergency. An emergency contract must be awarded within 60 days of the declaration of the emergency unless the Board grants an extension.
- (5) Purchase of food items for resale at the Oregon Zoo provided the provisions of Section 2.04.060 are followed.
- (6) Contracts for warranties in which the supplier of the goods or services covered by the warranty has designated a sole provider for the warranty service.
- (7) Contracts for computer hardware and software provided that procedures substantially similar to the procedures required for formal Request for Proposals used by Metro for personal services contracts are followed.
- (8) Contracts under which Metro is to receive revenue by providing a service.
- (9) Contracts for the lease or use of the convention, trade, and spectator buildings and facilities operated by the Metro Exposition-Recreation Commission.
- (10) Public contracts by the Metro Exposition-Recreation Commission in an amount less than \$75,000, which amount shall be adjusted each year to reflect any changes in the Portland SMSA CPI, provided that any rules adopted by the commission which provide for substitute selection procedures are followed.
- (11) Contracts for equipment repair or overhaul, but only when the service and/or parts required are unknown before the work begins and the cost cannot be determined without extensive preliminary dismantling or testing.
- (12) Contracts in the nature of grants to further a Metro purpose provided a competitive Rrequest for Pproposal process is followed.

- (13) The procurement of utilities, including telephone service, electric, natural gas, and sanitary services, provided that competition is available and a Rrequest for Pproposal process is followed.
- (14) The procurement of art and art related production and fabrication provided that a Rrequest for Pproposal process is followed.
- (15) Sponsorships which are identified and approved in the proposed budget and are not designated by Council as having a significant impact as outlined in Section 2.04.026 need not follow a competitive bidding or proposal process. In order to be eligible for this exemption the sponsorship shall provide Metro with event advertising and/or media releases.

(c) Board Resolution. Specific contracts, not within the classes exempted in subsections (a) and (b) above, may be exempted by the Board by resolution subject to the requirements of ORS 279.015(2) and ORS 279.015(5). The Board shall, where appropriate, direct the use of alternate contracting and purchasing practices that take account of market realities and modern innovative contracting and purchasing methods, which are consistent with the public policy of encouraging competition.

(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 97-677B, Sec. 2; Ordinance No. 98-768, Sec. 2; Ordinance No. 99-822, Sec. 7.)

2.04.056 Public Contracts Up to \$50,000

(a) Under \$5,000. For public contracts of less than 5,000, competitive bids are not required but shall be encouraged.

(b) Between \$5,000 and \$50,000. For public contracts of \$5,000 or more but not more than \$50,000, Metro shall obtain a minimum of three (3) competitive quotes. Metro shall keep a written record of the source and amount of the quotes received. If three (3) quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes. In addition, the contracting department shall notify the procurement officer of the nature of the proposed contract, the estimated cost of the contract, and the name of the contact person.

(c) Contracts under \$50,000 should be awarded on the basis of the least cost alternative available that is capable of performing the work required.

(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 97-692A, Sec. 21; Ordinance No. 99-822, Sec. 8.)

2.04.058 Public Contract Amendments

(a) The Chief Operating Officer ~~Executive Officer~~ may execute amendments to public contracts which were not designated as contracts having a significant impact on Metro, provided that any one of the following conditions are met:

- (1) The original contract was let by a formal competitive procurement process, the amendment is for the purpose of authorizing additional work for which unit prices or alternates were provided that established the cost for the additional

work and the original contract governs the terms and conditions of the additional work; or

- (2) The amendment is a change order that resolves a bona fide dispute with the contractor regarding the terms and conditions of a contract for a public improvement and the amendment does not materially add to or delete from the original scope of work included in the original contract; or
- (3) The amount of the aggregate cost increase resulting from all amendments does not exceed 20 percent of the initial contract if the face amount is less than or equal to \$1,000,000 or 10 percent if the face amount is greater than \$1,000,000; amendments made under subsection (1) or (2) are not included in computing the aggregate amount under this subsection; or
- (4) The Metro Contract Rreview Board has authorized the extension of the contract amendment.

(b) No contract which was designated as a contract having a significant impact on Metro may be amended without the express approval of the Council evidenced by a duly adopted resolution or ordinance; except as follows:

- (1) The Chief Operating Officer ~~Executive Officer~~ may approve any amendment that is a change order that resolves a bona fide dispute with the contractor regarding the terms and conditions of a contract for a public improvement if the amendment does not materially add to or delete from the original scope of work included in the original contract. Provided, however, the Chief Operating Officer ~~Executive Officer~~ must obtain Council approval for any such change order that results in a total aggregate increase of more than 5 percent of the original contract amount. If the Council approves a change order pursuant to this subsection it may also in the same action authorize additional change orders to resolve future disputes in an amount not to exceed that established by the Council.
- (2) The Chief Operating Officer ~~Executive Officer~~ may approve any contract amendment to a contract for a public improvement that does not increase the contract amount more than \$25,000 if the amount of the aggregate cost resulting from all amendments authorized pursuant to this subsection does not exceed 5 percent of the initial contract. In computing the dollar amount of any amendment for the purpose of this subsection, only the amount of additional work or extra cost shall be considered and may not be offset by the amount of any deletions.
- (3) The Chief Operating Officer ~~Executive Officer~~ may approve a change order for additional work if the original contract was let by a formal competitive procurement, the amendment is for the purpose of authorizing additional work for which unit prices or bid alternates were provided that established the cost for the additional work and the original contract governs the terms and conditions of the additional work.
- (4) The Chief Operating Officer ~~Executive Officer~~ may approve a change order to a public improvement contract in order to meet an emergency.

(c) No public contract may be amended to include additional work or improvements that are not directly related to the scope of work that was described in the competitive process utilized to award the contract.

(d) For the purpose of this section any contract which was subject to specific Council authorization of its execution prior to the effective date of this ordinance shall be considered to be a contract that has a significant impact on Metro.

(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 99-822, Sec. 9.)

2.04.060 Food Products

(a) All food items and food service contracts will be procured through competitive bidding, except as provided in sections (b) through (d) below.

(b) Competitive bids or quotes are not required when food items other than those routinely stocked by a Metro department are needed for requested catering services.

(c) Competitive bids or quotes are not required for fully or partially prepared food items which require:

(1) The use of a specific recipe provided and/or developed in conjunction with a Metro department; or

(2) The use of a proprietary recipe or formula which is the property of a vendor.

(d) Purchases of groceries, meat, poultry, and produce may be limited to vendors who have been prequalified. The Chief Operating Officer ~~Executive Officer~~ shall establish prequalification procedures that ensure competition and fairness.

(Ordinance No. 96-635B, Sec. 3.)

2.04.062 Sole Source

If there is only one qualified provider of the service required, the initiating department need not solicit and document proposals. The initiating department must document that there is only one qualified provider of the service required. Sole source contracts may not exceed \$2,500 unless the Board shall have specifically exempted the contract from the public bidding or applicable alternative procurement procedure.

(Ordinance No. 96-635B, Sec. 3.)

2.04.064 Sale of Surplus Property

Contracts for sale of surplus property may be executed without competitive oral or sealed bids only when the Chief Operating Officer ~~Executive Officer~~ determines in writing that the number, value and nature of the items to be sold make it probable that the cost of conducting a sale by bid will be such that a liquidation sale will result in substantially greater net revenue to Metro.

2.04.070 Notice of Award and Appeals

[POLICY NOTE: Clarify appeals process for appeals from MERC and Auditor. DBC]

(a) At least five (5) days prior to the execution of any public contract over \$50,000 for which a competitive bid or proposal process is required, Metro shall provide a notice of award to the contractor selected and to all contractors who submitted unsuccessful bids or proposals.

(b) Bid/Request for Proposals Appeal Procedures. The following procedure applies to aggrieved bidders and proposers who wish to appeal an award of a public contract or a personal services contract above \$50,000. The appeal process for bids is the same as for a Rrequest for Proposals. In the case of a Rrequest for Pproposal(s), disagreement with the judgment exercised in scoring by evaluators is not a basis for appeal.

- (1) All appeals shall be made in writing and shall be delivered to the procurement officer at Metro's main office within five (5) working days of the postmarked date on the notice of award. The written appeal must describe the specific citation of law, rule, regulation, or procedure upon which the appeal is based.
- (2) The procurement officer shall forthwith notify the appropriate Ddepartment Director and the Chief Operating Officer ~~Executive Officer~~ of the appeal. Within 10 working days of the receipt of the notice of appeal, the Chief Operating Officer ~~Executive Officer~~ shall send a notice of rejection of the appeal or a notice of acceptance of the appeal, as applicable, to the appellant. The appellant may appeal the Chief Operating Officer's ~~Executive Officer's~~ decision to reject the appeal in writing to the Board within five (5) working days from the postmarked date on the notice of rejection.
- (3) The Board will review the grounds for appeal, all pertinent information, and the Chief Operating Officer's ~~Executive Officer's~~ recommendation, and make a decision. The decision of the Board is final.
- (4) No contract which is the subject of a pending appeal may be executed unless the Board shall have given its approval at the request of the Chief Operating Officer ~~Executive Officer~~. The Chief Operating Officer ~~Executive Officer~~ may request the Board to determine a matter without waiting for the expiration of the time periods provided for herein.
- (5) In the event Council authorization of execution of the contract is required under Section 2.04.026 of this Code the appeal shall be heard before the Council considers authorization of the contract.

(c) Appeals from Disqualifications

- (1) The Board shall hear all appeals from any person who is disqualified by Metro as a bidder. The basis for the appeal shall be limited to the following grounds:

- (A) Disqualification of bidder pursuant to ORS 279.037.
- (B) Denial of prequalification to bid pursuant to ORS 279.039 and 279.041.
- (2) Any person who wishes to appeal disqualification as a bidder shall, within three (3) business days after receipt of notice of disqualification, notify in writing the Metro Attorney General Counsel that the person appeals the disqualification. The Metro Attorney General Counsel shall promptly notify the Bboard of the appeal by providing notice to the Council President Presiding Officer.
- (3) Promptly upon receipt of notice of appeal, the Council President Presiding Officer shall notify the appellant and the Metro Attorney General Counsel of the time and place of the appeal proceeding.
- (4) The Bboard shall conduct the appeal proceeding and decide the appeal within 10 days after receiving notification of the appeal from the Metro Attorney General Counsel. The Bboard shall set forth in writing the reasons for the decision.
- (5) Appeal Proceeding.
 - (A) The Council President Presiding Officer shall preside over the appeal proceeding. The general order shall be as follows:
 - (i) Presentation by Metro of documentation and testimony supporting the disqualification.
 - (ii) Presentation by the appellant of documentation and testimony opposing the disqualification.
 - (B) Members of the Bboard shall have the right to ask both Metro and the appellant questions and to review documentation referred to and presented by the parties.
 - (C) Formal court rules of evidence shall not apply.
 - (D) The Bboard shall consider de novo the notice of disqualification, and record of investigation made by Metro and any evidence provided by Metro and the appellant prior to or at the appeal proceeding. There shall be no continuance or reopening of the appeal proceeding to offer additional evidence unless the appellant can demonstrate to the Council President Presiding Officer that the additional evidence was not known to the appellant at the time of the proceeding or that with reasonable diligence the appellant would not have discovered the evidence prior to the appeal proceeding.
 - (E) A tape recording will be made of the appeal proceeding which shall be made available to the appellant upon payment of costs to Metro of making the tape.

(F) The Board shall render a decision which shall be reviewed only upon petition in the Circuit Court of Multnomah County. The petition must be filed within 15 days after the date of the decision.

(6) Metro may reconsider its determination with regard to the disqualification at any time prior to the appeal proceeding.

(d) Appeals of contract awards and decisions of the Auditor shall be made directly to the Contract Revision Board.

(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 99-822, Sec. 10.)

METRO ESB, MBE AND WBE PROGRAM

2.04.100 Findings

(a) The Metro Council finds:

- (1) The opportunity for full participation in our free enterprise system by emerging small businesses, minorities and women owned businesses is essential;
- (2) Greater economic opportunity for emerging small businesses, minorities and women owned businesses is essential;
- (3) Historical patterns of exclusion and discrimination against racial or ethnic groups and women resulted in unfortunate effects of social, political and economic inequity that still exist;
- (4) It is in the best interest of Metro and the community to do business with emerging small businesses, minority and women owned businesses resulting in increased competition and a stronger local economy;
- (5) In cooperation with the private sector, the affected populations, interested groups and appropriate governmental entities, a program should be established to recommend remedies.

(b) It is the purpose of this policy to establish and implement a program to encourage the utilization by Metro of emerging small businesses, minority and women owned businesses, to the greatest extent permitted by law, by creating for such businesses the maximum possible opportunity to compete for and participate in locally-funded Metro contracting activities. This program does not apply to federally-funded contracts, which are governed by Metro Code 2.04.300, et seq.

(Ordinance No. 83-165, Sec. 1; amended by Ordinance No. 84-181, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; repealed by Ordinance No. 97-692A, Sec. 1; replaced by Ordinance No. 97-692A, Sec. 2)

2.04.105 Policy Statement

(a) Metro expresses its strong commitment to provide maximum opportunity to do business with ESBs, MBEs and WBEs.

(b) It is the policy of Metro to provide equal opportunity to all persons to access and participate in the locally-funded projects, programs and services of Metro. Metro and Metro contractors shall not discriminate against any person or firm on the basis of race, color, national origin, sex, sexual orientation, age, religion, physical handicap, political affiliation or marital status.

(Ordinance No. 83-165, Sec. 2; amended by Ordinance No. 84-181, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; amended by Ordinance No. 97-692A, Sec. 3)

2.04.110 Definitions

For purposes of Metro Code Sections 2.04.100 to 2.04.190, unless the context requires otherwise, the following definitions shall apply:

(a) "Department" means the State of Oregon's Department of Consumer and Business Affairs or such state agency, department or entity to which has been delegated the responsibility to certify a Emerging Small Business Enterprise, Minority Business Enterprise, Women Business Enterprise, or a Disadvantaged Business Enterprise and to engage in related activities.

(b) "Emerging Small Business Enterprise" or "ESB" means a small business concern which is certified as such by the Department.

(c) "Minority Business Enterprise" or "MBE" means a business concern which is certified as such by the Department.

(d) "Women Owned Business Enterprise" or "WBE" means a business concern which is certified as such by the Department.

(Ordinance No. 165, Sec. 3; amended by Ordinance No. 84-181, Sec. 2; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; and Ordinance No. 88-252, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; amended by Ordinance No. 96-635B, Sec. 4.; repealed by Ordinance No. 97-692A, Sec. 4; replaced by Ordinance No. 97-692A, Sec. 5)

2.04.115 Program Administration

(a) The ~~Chief Operating Officer~~ Executive Officer shall be responsible for administering this program. The ~~Chief Operating Officer~~ Executive Officer may, by executive order, designate a Program Coordinator and, if necessary, other staff adequate to administer this program on the executive's behalf.

(b) In administering this program, the ~~Chief Operating Officer~~ Executive Officer shall advise potential ESB, MBE and WBE vendors that Metro does not certify ESBs, MBEs and WBEs, and shall direct them to the Department.

(Ordinance No. 83-165, Sec. 4; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; repealed by Ordinance No. 97-692A, Sec. 6; replaced by Ordinance No. 97-692A, Sec. 8)

2.04.120 Program Activities

The Chief Operating Officer ~~Executive Officer~~ shall direct staff to develop procedures in the following areas leading to increased business with ESBs, MBEs, and WBEs:-

- (a) Outreach. Such procedures may include electronic notices, telephone hotlines, annual contract lists, newsletters, regularly-scheduled contractor orientation programs, and participation in regional outreach opportunities.
- (b) Technical Assistance. Provide information on feasible options for management assistance, bonding, insurance, and financial assistance.
- (c) Reduce Contract Size. Examining alternatives for arranging contracts by size and type of work so as to enhance the possibility of participation by ESBs, MBEs and WBEs.
- (d) Education. Periodic training for staff to ensure awareness of program objectives and desired activities on their part.
- (e) Plan Centers. Ensuring ESB, MBE and WBE plan centers and contractors are receiving requests for bids, proposals and quotes.
- (f) Advertising. Advertise formal purchases and contracting opportunities in at a minimum, one newspaper of general circulation and one minority-oriented publication.
- (g) Informal Purchasing Opportunities. Requiring that at least one ESB and one MBE and one WBE vendor or contractor be contacted for all purchases and contracts more than \$2,500 and less than \$25,000. The program coordinator may waive this requirement if he/she determines that there are no certified ESBs, MBEs and WBEs on the certification list capable of providing the service or item. Any such waivers shall be in writing, and shall be kept as supporting documentation.
- (h) Informal Construction Opportunities. Requiring all construction opportunities for contracts more than \$2,500 and less than \$25,000 to be bid only by qualified ESBs, MBEs and WBEs. The Chief Operating Officer ~~Executive Officer~~ may waive this requirement if he/she determines that there are no certified ESBs, MBEs and WBEs on the certification list capable of providing the project needed. Any such waivers shall be in writing, and shall be kept as supporting documentation.
- (i) The program coordinator may establish and implement additional techniques which are consistent with this Program and designed to facilitate participation of ESBs, MBEs and WBEs in Metro purchasing and contracting activities.

(Ordinance No. 83-165, Sec. 5; amended by Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; repealed by Ordinance No. 97-692A, Sec. 7; replaced by Ordinance No. 97-692A, Sec. 9)

2.04.130 Minority-Owned Banks

Metro will seek to identify minority-owned banks and banks utilizing equal opportunity banking practices, including community reinvestment, and, to the greatest extent permitted by law, use their services. In addition, Metro will encourage prime contractors, subcontractors and consultants to utilize such services by sending them brochures and service information on such banks.

(Ordinance No. 83-165, Sec. 7; amended by Ordinance No. 84-181, Sec. 3; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2)

2.04.150 Good Faith Efforts at Maximizing ESB, MBE and WBE Opportunities

The Chief Operating Officer ~~Executive Officer~~ shall establish procedures relating to good faith opportunities for major construction projects. Procedures shall be consistent in nature and scope with those of other local public bodies for ease in understanding for contractors.

(a) Good faith efforts for maximizing ESB, MBE and WBE opportunities shall be required for construction contracts in an amount determined by the Chief Operating Officer ~~Executive Officer~~.

(b) At the discretion of the program coordinator, good faith efforts may be required for any other contract, including architects and engineers. This requirement shall be made in writing prior to the solicitation of bids for such contract.

(c) When construction projects using a proposal process are approved by Ceouncil, the staff shall consider past ESB, MBE and WBE utilization as part of the selection criteria. The program coordinator shall provide the awarded contractor with ESB, MBE and WBE targets for subcontracting.

(d) Compliance with good faith efforts is required. Contractors failing to comply will be considered in breach of contract.

(Ordinance No. 83-165, Sec. 11; repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; Ordinance No. 88-252, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; amended by Ordinance No. 97-692A, Sec. 12)

2.04.162 Contractor Work Force Efforts at Maximizing Minority and Women Opportunities

(a) Metro contractors shall not discriminate against any person or firm on the basis of race, color, national origin, sex, sexual orientation, age, religion, physical handicap, political affiliation or marital status.

(b) Assuring that minorities and women have access to employment opportunities in the construction industry is critical. The Chief Operating Officer ~~Executive Officer~~ shall establish procedures relating to work apprenticeships for minorities and women for Metro major construction projects. Procedures may include participation in a workforce clearing house providing opportunities for minorities and women.

(Ordinance No. 97-692A, Sec. 14-15.)

2.04.165 Replacement of ESB, MBE or WBE Subcontractors

Prime contractors shall not replace an ESB, MBE or WBE subcontractor with another subcontractor, either before contract award or during contract performance, without prior notice to Metro. Prime contractors who replace an ESB, MBE or WBE subcontractor shall make good faith efforts as described in the preceding section in selecting a replacement.

(Ordinance No. 83-165, Sec. 14; amended by Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; amended by Ordinance No. 97-692A, Sec. 28)

2.04.170 Council Information Reports

The ~~Chief Operating Officer~~ ~~Executive Officer~~ shall provide an annual report to ~~Council~~ showing utilization of ESBs, MBEs and WBEs doing business with Metro.

The ~~Chief Operating Officer~~ ~~Executive Officer~~ shall use utilization when evaluating the performance of this program and ~~D~~department ~~D~~irectors.

(Ordinance No. 83-165, Sec. 15; amended by Ordinance No. 84-181, Sec. 7, and Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; repealed by Ordinance No. 97-692A, Sec. 16; replaced by Ordinance No. 97-692A, Sec. 17)

2.04.190 Severability and Intent

(a) The provisions of Metro Code ~~S~~ections 2.04.100 to 2.04.190 shall be effective in all cases unless otherwise provided for by state or federal law. The provisions of Metro Code ~~S~~ections 2.04.100 to 2.04.190 are separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of Metro Code ~~S~~ections 2.04.100 to 2.04.190 or the invalidity of the application thereof to any person or circumstances shall not affect the validity of the remainder of Metro Code ~~S~~ections 2.04.100 to 2.04.190, or the validity of their application to other persons or circumstances.

(b) Metro Code ~~S~~ections 2.04.100 to 2.04.190 are intended, and should be construed, as establishing and requiring the maximum efforts at assuring ESB, MBE, and WBE participation in Metro contracting activities that is consistent with the United States and Oregon Constitutions and applicable federal and state law.

(Ordinance No. 92-466A, Sec. 2. Amended by Ordinance No. 97-692A, Sec. 19)

METRO DISADVANTAGED BUSINESS ENTERPRISE PROGRAM FOR FEDERALLY-FUNDED CONTRACTS

2.04.300 Disadvantaged Business Enterprise Program (DBE Program) For Federally-Funded Contracts, Findings, Purpose and Authority

(a) It is the purpose of Metro Code ~~S~~ections 2.04.300-.390 to establish and implement a program to encourage the utilization by Metro of disadvantaged businesses by creating for such businesses the maximum possible opportunity to compete for and participate in federally-funded Metro

contracting activities. The DBE Program does not apply to locally-funded contracts, which are governed by 2.04.100 to 2.04.190.

(b) Metro Code Sections 2.04.300-.390 are intended to comply with all relevant federal regulations, including those adopted to implement Section (105)(f) of the Surface Transportation Assistance Act of 1982, relating to the participation by Minority Business Enterprises in Department of Transportation programs, and Section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991.

(c) Metro Code Sections 2.04.300-.390 shall be known and may be cited as the "Metro Disadvantaged Business Enterprise Program for Federally-Funded Contracts," hereinafter referred to as the "DBE Program."

(Ordinance No. 92-466A, Sec. 2. Amended by Ordinance No. 97-692A, Sec. 23)

2.04.305 Policy Statement

(a) Through the DBE Program, Metro:

- (1) Expresses its strong commitment to provide maximum opportunity to disadvantaged businesses in contracting;
- (2) Informs all employees, governmental agencies and the general public of its intent to implement this policy statement; and
- (3) Assures conformity with applicable federal regulations as they exist or may be amended.

(b) It is the policy of Metro to provide equal opportunity to all persons to access and participate in the projects, programs and services of Metro, in accordance with Title VI of the Civil Rights Act of 1964. Metro and Metro contractors will not discriminate against any person or firm on the basis of race, color, national origin, sex, sexual orientation, age, religion, physical handicap, political affiliation or marital status.

(c) The policies, practices and procedures established by the DBE Program shall apply to all Metro departments and project areas except as expressly provided in the DBE Program.

(d) The objectives of the DBE Program shall be:

- (1) To assure that provisions of the DBE Program are adhered to by all Metro departments, contractors, employees and USDOT subrecipients and contractors; and
- (2) To initiate and maintain efforts to increase DBE Program participation by disadvantaged businesses.

(e) Metro accepts and agrees to the statements of 49 CFR §23.43 (a)(1) and (2), and said statements shall be included in all USDOT agreements with USDOT subrecipients and in all USDOT-assisted contracts between Metro or USDOT subrecipients and any contractor.

2.04.310 Definitions

For purposes of the DBE Program, the following definitions shall apply:

(a) "Applicant" means one who submits an application, request or plan to be approved by a USDOT official or by Metro as a condition to eligibility for Department of Transportation (USDOT) financial assistance; and "application" means such an application, request or plan.

(b) "Construction contract" means a contract for construction of buildings or other facilities, and includes reconstruction, remodeling and all activities which are appropriately associated with a construction project.

(c) "Contract" means a mutually binding legal relationship or any modification thereof obligating the seller to furnish supplies or services, including construction, and the buyer to pay for them. For purposes of the DBE Program a lease or a purchase order of \$500.00 or more is a contract.

(d) "Contractor" means the one who participates, through a contract or subcontract, in the DBE Program and includes lessees.

(e) "Department or USDOT" means the United States Department of Transportation, including its operating elements.

(f) "Disadvantaged Business Enterprise or DBE" means a small business concern which is so certified by an authorized agency and:

- (1) Which is at least 51 percent owned by one or more socially or economically disadvantaged individuals, or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more socially or economically disadvantaged individuals; and
- (2) Whose management and daily business operations are controlled by one or more of the socially or economically disadvantaged individuals who own it.

(g) "Executive Department" means the State of Oregon's Executive Department or such state agency, department or entity to which has been delegated the responsibility to certify a Minority Business Enterprise, Women Business Enterprise, or a Disadvantaged Business Enterprise and to engage in related activities.

(h) "Joint venture" is defined as an association of two or more businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge. In a joint venture between a DBE and non-DBE, the DBE must be responsible for a clearly defined portion of the work to be performed and must share in the ownership, control, management responsibilities, risks and profits of the joint venture. A joint venture of a DBE and a non-DBE must receive Metro approval prior to contract award to be counted toward any DBE contract goals.

(i) "Labor and materials contract" is a contract including a combination of service and provision of materials other than construction contracts. Examples may include plumbing repair, computer maintenance or electrical repair, etc.

(j) "Lessee" means a business or person that leases, or is negotiating to lease, property from a recipient or the department on the recipient's or department's facility for the purpose of operating a transportation-related activity or for the provision of goods or services to the facility or to the public on the facility.

(k) "Oregon Department of Transportation or ODOT" means the State of Oregon's Department of Transportation.

(l) "Personal services contract" means a contract for services of a personal or professional nature.

(m) "Procurement contract" means a contract for the purchase or sale of supplies, materials, equipment, furnishings or other goods not associated with a construction or other contract.

(n) "Recipient" means any entity, public or private, to whom USDOT financial assistance is extended, directly or through another recipient for any program.

(o) "Small business concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

(p) "Socially or economically disadvantaged individuals or disadvantaged individuals" has the meaning established by ORS 200.005(2), (9), including the rebuttable presumption established by ORS 200.015(3), and the definitions supplied by ORS 200.005(7), (10).

(q) "USDOT-assisted contract" means any contract or modification of a contract between Metro and a contractor which is paid for in whole or in part with USDOT financial assistance.

(r) "USDOT financial assistance" means financial aid provided by USDOT or the United States Railroad Association to a recipient, but does not include a direct contract. The financial aid may be provided directly in the form of actual money, or indirectly in the form of guarantees authorized by statute as financial assistance services of federal personnel, title or other interest in real or personal property transferred for less than fair market value, or any other arrangement through which the recipient benefits financially, including licenses for the construction or operation of a deep water port.

(Ordinance No. 92-466A, Sec. 2. Amended by Ordinance No. 96-635B, Sec. 4.)

2.04.315 Notice to Contractors, Subcontractors and Subrecipients

Contractors, subcontractors and subrecipients of Metro accepting contracts or grants under the DBE Program which are USDOT-assisted shall be advised that failure to carry out the requirements set forth in 49 CFR 23.43(a) shall constitute a breach of contract and, after notification by Metro, may result in termination of the agreement or contract by Metro or such remedy as Metro deems appropriate.

(Ordinance No. 92-466A, Sec. 2)

2.04.320 DBE Liaison Officer

(a) The ~~Chief Operating Officer~~ Executive Officer shall, by executive order, designate a DBE liaison officer and, if necessary, other staff adequate to administer the DBE Program. The DBE liaison officer shall report directly to the ~~Chief Operating Officer~~ Executive Officer on matters pertaining to the DBE Program.

(b) The DBE liaison officer shall be responsible for developing, managing and implementing the DBE Program, and for disseminating information on available business opportunities so that DBEs are provided an equitable opportunity to bid on Metro contracts. In addition to the responsibilities of the DBE liaison officer, all ~~D~~department ~~D~~directors and program managers shall have responsibility to assure implementation of the DBE Program.

(Ordinance No. 92-466A, Sec. 2. Amended by Ordinance No. 97-692A, Sec. 25)

2.04.325 Directory

A directory of DBEs as certified by ODOT or the Executive Department, as applicable, shall be maintained by the Liaison Officer to facilitate identifying such businesses with capabilities relevant to general contracting requirements and particular solicitations. The directory shall be available to contract bidders and proposers in their efforts to meet DBE Program requirements.

(Ordinance No. 92-466A, Sec. 2)

2.04.330 DBE-Owned Banks

Metro will seek to identify DBE-owned banks within the policies adopted by the Metro ~~C~~council and make the greatest feasible use of their services. In addition, Metro will encourage prime contractors, subcontractors and consultants to utilize such services by sending them brochures and service information on certified DBE banks.

(Ordinance No. 92-466A, Sec. 2)

2.04.335 Affirmative Action and Equal Opportunity Procedures

Metro shall use affirmative action techniques to facilitate DBE and participation in contracting activities. These techniques include:

(a) Arranging solicitations, time for the presentation of bids, quantities specifications and delivery schedules so as to facilitate the participation of DBEs.

(b) Referring DBEs in need of management assistance to established agencies that provide direct management assistance to such businesses.

(c) Carrying out information and communications programs on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual where appropriate.

(d) Distribution of copies of the DBE Program to organizations and individuals concerned with DBE programs.

(e) Periodic reviews with Department Directors to ensure that they are aware of the DBE Program goals and desired activities on their parts to facilitate reaching the goals. Additionally, departmental efforts toward and success in meeting DBE goals for department contracts shall be factors considered during annual performance evaluations of the Department Directors.

(f) Monitor and ensure that disadvantaged planning centers and likely DBE contractors are receiving requests for bids, proposals and quotes.

(g) Study the feasibility of certain USDOT-assisted contracts and procurements being set aside for DBE participation.

(h) Distribution of lists to potential DBE contractors of the types of goods and services which Metro regularly purchases.

(i) Advising potential DBE vendors that Metro does not certify DBEs, and directing them to ODOT until December 31, 1987, and, thereafter, to the Executive Department.

(j) Specifying purchases by generic title rather than specific brand name whenever feasible.

(k) Establishing an interdepartmental contract management committee which will meet regularly to monitor and discuss, among other issues, potential DBE participation in contracts. In an effort to become more knowledgeable regarding DBE resources, the committee shall also invite potential DBE contractors to attend selected meetings.

(l) Requiring that at least one DBE vendor or contractor be contacted for all contract awards which are not exempt from Metro's contract selection procedures and which are 1) for more than \$500 but not more than \$25,000 in the case of non-personal services contracts; and 2) for more than \$2,500 but not more than \$25,000 for personal services contracts. The liaison officer may waive this requirement if he/she determines that there are no DBEs on the certification list capable of providing the service or item. For contracts over the dollar amounts indicated in this section, all known DBEs in the business of providing the service(s) or item(s) required shall be mailed bid or proposal information.

(m) The Chief Operating Officer ~~Executive Officer~~ or his/her designee may establish and implement additional affirmative action techniques which are designed to facilitate participation of DBEs in Metro contracting activities.

(Ordinance No. 92-466A, Sec. 2; amended by Ordinance No. 94-554B)

2.04.340 Certification of Disadvantaged Business Eligibility

(a) To participate in the DBE Program as a DBE, contractors, subcontractors and joint ventures must have been certified by an authorized certifying agency as described in subsection (b) of this section.

(b) Metro will not perform certification or recertification of businesses or consider challenges to socially and economically disadvantaged status. Rather Metro will rely upon the certification and recertification processes of ODOT and will utilize ODOT's certification list until December 31, 1987, and, thereafter, the Executive Department's list in determining whether a prospective contractor or

subcontractor is certified as a DBE. A prospective contractor or subcontractor must be certified as a DBE by one of the above agencies, as applicable, and appear on the respective certification list of said agency, prior to the pertinent bid opening or proposal submission date to be considered by Metro to be an eligible DBE and be counted toward meeting goals. Metro will adhere to the recertification rulings resulting from 105(f) or state law, as applicable.

(c) Prospective contractors or subcontractors which have been denied certification by one of the above agencies may appeal such denial to the certifying agency pursuant to applicable law. However, such appeal shall not cause a delay in any contract award by Metro. Decertification procedures for USDOT-assisted contractor or potential contractors will comply with the requirements of Appendix A "Section by Section Analysis" of the July 21, 1983, Federal Register, Vol. 45, No. 130, p. 45287, and will be administered by the agency which granted certification.

(d) Challenges to certification or to any presumption of social or economic disadvantage with regard to the USDOT-assisted portion of the DBE Program, as provided for in 49 CFR 23.69, shall conform to and be processed under the procedures prescribed by each agency indicated in paragraph (b) of this section. That challenge procedure provides that:

- (1) Any third party may challenge the socially and economically disadvantaged status of any individual (except an individual who has a current 8(a) certification from the Small Business Administration) presumed to be socially and economically disadvantaged if that individual is an owner of a firm certified by or seeking certification from the certifying agency as a disadvantaged business. The challenge shall be made in writing to the recipient.
- (2) With its letter, the challenging party shall include all information available to it relevant to a determination of whether the challenged party is in fact socially and economically disadvantaged.
- (3) The recipient shall determine, on the basis of the information provided by the challenging party, whether there is reason to believe that the challenged party is in fact not socially and economically disadvantaged if the recipient determines:-
 - (i) ~~if the recipient determines-T~~that there is not reason to believe that the challenged party is not socially and economically disadvantaged, the recipient shall so inform the challenging party in writing. This terminates the proceeding.
 - (ii) ~~if the recipient determines-T~~that there is reason to believe that the challenged party is not socially and economically disadvantaged, the recipient shall begin a proceeding as provided in paragraphs (b), (4), (5) and (6) of this paragraph.
- (4) The recipient shall notify the challenged party in writing that his or her status as a socially and economically disadvantaged individual has been challenged. The notice shall identify the challenging party and summarize the grounds for the challenge. The notice shall also require the challenged party to provide to the recipient, within a reasonable time, information sufficient to permit the recipient

to evaluate his or her status as a socially and economically disadvantaged individual.

- (5) The recipient shall evaluate the information available to it and make a proposed determination of the social and economic disadvantage of the challenged party. The recipient shall notify both parties of this proposed determination in writing, setting forth the reasons for its proposal. The recipient shall provide an opportunity to the parties for an informal hearing, at which they can respond to this proposed determination in writing and in person.
- (6) Following the informal hearing, the recipient shall make a final determination. The recipient shall inform the parties in writing of the final determination, setting forth the reasons for its decision.
- (7) In making the determinations called for in paragraphs (b)(3)(5) and (6) of this paragraph, the recipient shall use the standards set forth in Appendix C of this subpart.
- (8) During the pendency of a challenge under this section, the presumption that the challenged party is a socially and economically disadvantaged individual shall remain in effect. 49 CFR 23.69.

(Ordinance No. 92-466A, Sec. 2)

2.04.345 Annual Disadvantaged Business Goals

(a) The Metro Council shall, by resolution each August, establish annual DBE goals for the ensuing fiscal year. Such annual goals shall be established separately for construction contracts, labor and materials contracts, personal services contracts, procurement contracts and USDOT-assisted contracts regardless of type.

(b) Annual goals will be established taking into consideration the following factors:

- (1) Projection of the number and types of contracts to be awarded by Metro;
- (2) Projection of the number, expertise and types of DBEs likely to be available to compete for the contracts;
- (3) Past results of Metro's efforts under the DBE Program; and
- (4) Existing goals of other local USDOT recipients and their experience in meeting these goals.

(c) Annual goals for USDOT-assisted contracts must be approved by the United States Department of Transportation. 49 CFR §23.45(g)(3).

(d) Metro will publish notice that the USDOT-assisted contract goals are available for inspection when they are submitted to USDOT or other federal agencies. They will be made available for

30 days following publication of notice. Public comment will be accepted for 45 days following publication of the notice.

(Ordinance No. 92-466A, Sec. 2. Amended by Ordinance No. 97-692A, Sec. 26)

2.04.350 Contract Goals

(a) The annual goals established for construction contracts shall apply as individual contract goals for construction contracts over \$50,000.

(b) The liaison officer may set a contract goal for any contract other than construction contracts over \$25,000. The setting of such contract goal shall be made in writing prior to the solicitation of bids for such contract. Contract goals for contracts other than construction contracts over \$50,000 shall be set at the discretion of the liaison officer and shall not be tied, necessarily, to the annual goal for such contract type.

(c) Even though no DBE goals are established at the time that bid/proposal documents are drafted, the liaison officer may direct the inclusion of a clause in any RFP or bid documents for any contract described in this section which requires that the prime contractor, prior to entering into any subcontracts, make good faith efforts, as that term is defined in Section 2.04.360, to achieve DBE participation in the same goal amount as the current annual goal for that contract type.

(d) Contract goals may be complied with pursuant to Section 2.04.360 or 2.04.375. The extent to which DBE participation will be counted toward contract goals is governed by the latter section.

(Ordinance No. 92-466A, Sec. 2)

2.04.355 Contract Award Criteria

(a) To be eligible for award of contracts containing a DBE goal, prime contractors must either meet or exceed the specific goal for DBE participation, or prove that they have made good faith efforts to meet the goal prior to the time bids are opened or proposal are due. Bidders/Proposers are required to utilize the most current list of DBEs certified by the Executive Department in all of the bidders'/proposers' good faith efforts solicitations. The address where certified lists may be obtained shall be included in all applicable bid/proposal documents.

(b) All invitations to bid or Rrequest for Pproposals on contracts for which goals have been established shall require all bidders/proposers to submit with their bids and proposals a statement indicating that they will comply with the contract goal or that they have made good faith efforts as defined in Section 2.04.360 to do so. To document the intent to meet the goals, all bidders and proposers shall complete and endorse a disadvantaged business program compliance form and include said form with bid or proposal documents. The form shall be provided by Metro with bid/proposal solicitations.

(c) Agreements between a bidder/proposer and a DBE in which the DBE promises not to provide subcontracting quotations to other bidders/proposers are prohibited.

(d) Apparent low bidders/proposers shall, by the close of the next working day following bid opening (or proposal submission date when no public opening is had), submit to Metro detailed DBE utilization forms listing names of DBEs who will be utilized and the nature and dollar amount of their participation. This form will be binding upon the bidder/proposer. Within five (5) working days of bid

opening or proposal submission date, such bidders/proposers shall submit to Metro signed letters of agreement between the bidder/proposer and DBE subcontractors and suppliers to be utilized in performance of the contract. A sample letter of agreement will be provided by Metro. The DBE utilization forms shall be provided by Metro with bid/proposal documents.

(e) An apparent low bidder/proposer who states in its bid/proposal that the DBE goals were not met but that good faith efforts were performed shall submit written evidence of such good faith efforts within two (2) working days of bid opening or proposal submission in accordance with Section 2.04.360. Metro reserves the right to determine the sufficiency of such efforts.

(f) Except as provided in paragraph (g) of this section, apparent low bidders or apparent successful proposers who state in their bids/proposals that they will meet the goals or will show good faith efforts to meet the goals, but who fail to comply with paragraph (d) or (e) of this section, shall have their bids or proposals rejected and shall forfeit any required bid security or bid bond. In that event the next lowest bidder or, for personal services contracts, the firm which scores second highest shall, within two (2) days of notice of such ineligibility of the low bidder, submit evidence of goal compliance or good faith effort as provided above. This process shall be repeated until a bidder or proposer is determined to meet the provisions of this section or until Metro determines that the remaining bids are not acceptable because of amount of bid or otherwise.

(g) The liaison officer, at his/her discretion, may waive minor irregularities in a bidder's or proposer's compliance with the requirements of this section provided, however, that the bid or proposal substantially complies with public bidding requirements as required by applicable law.

(Ordinance No. 92-466A, Sec. 2)

2.04.360 Determination of Good Faith Efforts

(a) Bidders or Proposers on USDOT-assisted contracts to which DBE goals apply must, to be eligible for contract award, comply with the applicable contract goal or show that good faith efforts have been made to comply with the goal. Good faith efforts should include at least the following standards established in the amendment to 49 CFR §23.45(h), Appendix A, dated Monday, April 27, 1981. A showing of good faith efforts must include written evidence of at least the following:

- (1) Attendance at any pre-solicitation or prebid meetings that were scheduled by Metro to inform disadvantaged business enterprises of contracting and subcontracting or material supply opportunities available on the project.
- (2) Advertisement in trade association, general circulation, disadvantaged and trade-oriented, if any and through a disadvantaged-owned newspaper or disadvantaged-owned trade publication concerning the subcontracting or material supply opportunities at least 10 days before bids or proposals are due.
- (3) Written notification to a reasonable number but no less than five DBE firms that their interest in the contract is solicited. Such efforts should include the segmenting of work to be subcontracted to the extent consistent with the size and capability of DBE firms in order to provide reasonable subcontracting opportunities. Each bidder should send solicitation letters inviting quotes or proposals from DBE firms, segmenting portions of the work and specifically

describing, as accurately as possible, the portions of the work for which quotes or proposals are solicited from DBE firms and encouraging inquiries for further details. Letters that are general and do not describe specifically the portions of work for which quotes or proposals are desired are discouraged, as such letters generally do not bring responses. It is expected that such letters will be sent in a timely manner so as to allow DBE sufficient opportunity to develop quotes or proposals for the work described.

- (4) Evidence of follow-up to initial solicitations of interest, including the following:
 - (A) The names, addresses, telephone numbers of all DBE contacted;
 - (B) A description of the information provided to DBE firms regarding the plans and specifications for portions of the work to be performed; and
 - (C) A statement of the reasons for non-utilization of DBE firms, if needed to meet the goal.
- (5) Negotiation in good faith with DBE firms. The bidder shall not, without justifiable reason, reject as unsatisfactory bids prepared by any DBE firms.
- (6) Where applicable, the bidder must provide advice and assistance to interested DBE firms in obtaining bonding, lines of credit or insurance required by Metro or the bidder.
- (7) Overall, the bidder's efforts to obtain DBE participation must be reasonably expected to produce a level of participation sufficient to meet Metro's goals.
- (8) The bidder must use the services of minority community organizations, minority contractor groups, local, state and federal minority business assistance offices and other organizations identified by the Executive Department's Advocate for Minority and Women and Emerging Small Business that provide assistance in the recruitment and placement of DBEs.

(Ordinance No. 92-466A, Sec. 2)

2.04.365 Replacement of DBE Subcontractors

Prime contractors shall not replace a DBE subcontractor with another subcontractor, either before contract award or during contract performance, without prior Metro approval. Prime contractors who replace a DBE subcontractor shall replace such DBE subcontractor with another certified DBE subcontractor or make good faith efforts as described in the preceding section to do so.

(Ordinance No. 92-466A, Sec. 2)

2.04.370 Records and Reports

(a) Metro shall develop and maintain a record keeping system to identify and assess DBE contract awards, prime contractors' progress in achieving goals and affirmative action efforts. Specifically, the following records will be maintained:

- (1) Awards to DBEs by number, percentage and dollar amount;
- (2) A description of the types of contracts awarded; and
- (3) The extent to which goals were exceeded or not met and reasons therefor.

(b) All DBE records will be separately maintained. Required DBE information will be provided to federal agencies and administrators on request.

(c) The liaison officer shall prepare reports, at least semiannually, on DBE participation to include the following:

- (1) The number of contracts awarded;
- (2) Categories of contracts awarded;
- (3) Dollar value of contracts awarded;
- (4) Percentage of the dollar value of all contracts awarded to DBE firms in the reporting period; and
- (5) The extent to which goals have been met or exceeded.

(Ordinance No. 92-466A, Sec. 2)

2.04.375 Counting Disadvantaged Business Participation Toward Meeting Goals

(a) DBE participation shall be counted toward meeting the goals on each contract as follows:

- (1) Subject to the limitations indicated in paragraphs (2) through (8) below, the total dollar value of a prime contract or subcontract to be performed by DBEs is counted toward the applicable goal for contract award purposes as well as annual goal compliance purposes.
- (2) The total dollar value of a contract to a disadvantaged business owned and controlled by both disadvantaged males and non-disadvantaged females is counted toward the goals for disadvantaged businesses and women, respectively, in proportion to the percentage of ownership and control of each group in the business.

The total dollar value of a contract with a disadvantaged business owned and controlled by disadvantaged women is counted toward either the disadvantaged business goal or the goal for women, but not to both. Metro shall choose the goal to which the contract value is applied.

- (3) Metro shall count toward its goals a portion of the total dollar value of a contract with an eligible joint venture equal to the percentage of the ownership and control of the disadvantaged business partner in the joint venture.

- (4) Metro shall count toward its goals only expenditures to DBEs that perform a commercially useful function in the work of a contract. A DBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether a DBE is performing a commercially useful function, Metro shall evaluate the amount of work subcontracted, industry practices and other relevant factors.
- (5) Consistent with normal industry practices, a DBE may enter into subcontracts. If a DBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the DBE shall be presumed not to be performing a commercially useful function. The DBE may present evidence to Metro to rebut this presumption. Metro's decision on the rebuttal of this presumption is subject to review by USDOT for USDOT-assisted contracts.
- (6) A DBE which provides both labor and materials may count toward its disadvantaged business goals expenditures for materials and supplies obtained from other than DBE suppliers and manufacturers, provided that the DBE contractor assumes the actual and contractual responsibility for the provision of the materials and supplies.
- (7) Metro shall count its entire expenditure to a DBE manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale).
- (8) When USDOT funds are passed-through by Metro to other agencies, any contracts made with those funds and any DBE participation in those contracts shall only be counted toward Metro's goals. Likewise, any USDOT funds passed-through to Metro from other agencies and then used for contracting shall count only toward that agency's goals. Project managers responsible for administration of pass-through agreements shall include the following language in those agreements:
 - (A) Policy. It is the policy of the Department of Transportation that disadvantaged business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 23 apply to this agreement.
 - (B) DBE Obligation. The recipient or its contractor agrees to ensure that disadvantaged business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part

23 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of USDOT-assisted contracts.

(b) DBE participation shall be counted toward meeting annual goals as follows:

- (1) Except as otherwise provided below, the total dollar value of any contract which is to be performed by a DBE is counted toward meeting annual goals.
- (2) The provisions of paragraphs (a)(2) through (a)(8) of this section, pertaining to contract goals, shall apply equally to annual goals.

(Ordinance No. 92-466A, Sec. 2. Amended by Ordinance No. 97-692A, Sec. 27)

2.04.380 Compliance and Enforcement

(a) Metro shall reserve the right, at all times during the period of any contract, to monitor compliance with the terms of this chapter and the contract and with any representation made by a contractor prior to contract award pertaining to DBE participation in the contract.

(b) The liaison officer may require, at any stage of contract completion, documented proof from the contractor of actual DBE participation.

(Ordinance No. 92-466A, Sec. 2)

METRO RECYCLED PRODUCT PROCUREMENT PROGRAM

2.04.500 Policy Statement

It is the purpose of this ordinance to establish a Recycled Content Product Procurement Program that will achieve the following:

(a) Increase the procurement of recycled content products and recyclable materials by all Metro departments and facilities and increase the use of recycled content products and recyclable materials by contractors to Metro in the performance of their contract work.

(b) Comply with ORS Chapter 279 regarding procurement of recycled content materials and products by public agencies.

(c) Encourage procurement of products with the greatest post-consumer content, and those that contribute to the use of locally generated and recovered materials for which there are the most significant recycling market development needs.

(d) Serve as an example for other institutional purchasers, both public and private.

(Ordinance No. 93-513, Sec. 2)

2.04.510 Definitions

As used in Section 2.04.500 through the end of this chapter:

- (a) "Compost" means the controlled biological decomposition of organic material or the product resulting from such a process.
- (b) "Glass aggregate" means any blend of material at least 15 percent of which is post-consumer container glass, window (or plate) glass, and/or plumbing ceramics, that functions as a construction aggregate substitute. The total mix shall meet the gradation for the designated application.
- (c) "Industrial oil" means any compressor, turbine, or bearing oil, hydraulic oil, metal-working oil or refrigeration oil.
- (d) "Lubricating oil" means any oil intended for use in an internal combustion crankcase, transmission, gearbox or differential or an automobile, bus, truck, vessel, plane, train, heavy equipment or machinery powered by an internal combustion engine.
- (e) "Organic soil amendments" means compost products made from organic waste materials, including yard debris, leaves, sewage sludge, food waste or municipal solid waste. Organic soil amendments may be used in the following applications: soil mix component, propagation, container mixes, field crop amendments, mulch, soil top dressing, substitute for gravel, soil structure improvement, mud control, erosion control, stormwater runoff, landfill cover and weed control.
- (f) "Post-consumer waste" means a finished material which would normally be disposed of as solid waste, having completed its life cycle as a consumer item. Post-consumer waste does not include manufacturing waste.
- (g) "Recycled material" means any material that would otherwise be useless, unwanted or discarded material except for the fact that the material still has useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled.
- (h) "Recycled oil" means used oil that has been prepared for reuse as a petroleum product by refining, re-refining, reclaiming, reprocessing or other means provided that the preparation or use is operationally safe, environmentally sound and complies with all laws and regulations.
- (i) "Recycled paint" means water-based latex paint with a 50 percent post-consumer recycled content that has been processed for reuse as an interior or exterior primer or surface coating on walls and ceilings.
- (j) "Recycled paper" means a paper product with not less than (1) 50 percent of its total weight consisting of secondary waste materials; or (2) 25 percent of its total weight consisting of post-consumer waste.
- (k) "Recycled product" means all materials, goods and supplies, not less than 50 percent of the total weight of which consists of secondary and post-consumer waste with not less than 10 percent of its total weight consisting of post-consumer waste. Recycled product also includes any product that could have been disposed of as solid waste, having completed its life cycle as a consumer item, but otherwise refurbished for reuse without substantial alteration of the product's form.

(l) "Retread tire" means any tire that uses an existing casing for the purpose of vulcanizing new tread to such casing that meets all performance and quality standards specified in the Federal Motor Vehicle Safety Standards determined by the United States Department of Transportation.

(m) "Secondary waste materials" means fragments of products or finished products of a manufacturing process which has converted a virgin resource into a commodity of real economic value, and includes post-consumer waste, but does not include excess virgin resources of the manufacturing process. For paper secondary waste materials does not include fibrous waste generated during the manufacturing process such as fibers recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips, sawdust or other wood residue from a manufacturing process.

(n) "US EPA Purchasing Guidelines" means the product standards of the United States Environmental Protection Agency published in the Code of Federal Regulations, Title 40, Chapters 248 through 253.

(Ordinance No. 93-513, Sec. 2)

2.04.520 Recycled Products (Generally)

(a) Metro facilities and contractors to use Recycled Materials and Products

- (1) The procurement officer shall review procurement standards and specifications currently utilized in order to eliminate, where economically feasible, discrimination against the procurement of recycled materials and products, and to develop purchasing practices which encourage purchase of materials that are recycled or may be recycled or reused when discarded.
- (2) To the extent practicable, Metro's standards and specifications for recycled products shall be consistent with US EPA Purchasing Guidelines.
- (3) Notices to solicit bids from contractors shall state that Metro gives the price preference described in subsection (b)(1) of this section to recycled products and materials. All invitations to bid or requests for proposals shall include the following language: "Vendors shall use recycled and recyclable materials and products to the maximum extent economically feasible in the performance of contract work set forth in this document."
- (4) At their discretion, Metro and its agents, including contractors, may specify acceptance of only recycled products or materials in bids and solicitations so long as quality and availability of recycled products and materials are equal to nonrecycled products and materials. When a recycled product or material is specified in a bid or solicitation, no price preference shall be given.
- (5) If the price of a recycled product is equal to or less than an otherwise identical non-recycled product, then Metro and its agent, including contractors, shall specify only the recycled product in bids and specifications.

- (6) The procurement officer and waste reduction division shall provided information on US EPA Purchasing Guidelines and on recycled products available in the region to contractors and bidders, and shall provide notice of the availability of such information in procurement solicitations. Metro staff shall contact the procurement officer or the waste reduction division to determine the availability of recycled products prior to the solicitation of quotes, bids or proposals for any contract in an amount greater than \$5,000. This requirement shall not apply to contracts for services only.
- (7) The procurement officer shall investigate and implement, as appropriate, purchasing jointly with other public agencies to potentially reduce the price for recycled products.

(Ordinance No. 93-513, Sec. 2)

(b) Price preference to be given for the purchase of Recycled Products or Materials

- (1) When purchasing products or procuring services, Metro shall give preference to materials and supplies manufactured from recycled materials if the recycled product or material:
 - (A) is available;
 - (B) meets applicable standards;
 - (C) can be substituted for a comparable nonrecycled product; and
 - (D) costs do not exceed the costs of nonrecycled products by more than 10 percent.
- (2) At their discretion, Metro departments and facilities may give a greater than 10 percent price preference to the purchase of recycled products, materials and supplies manufactured from recycled materials or that reduce the amount of waste generated.
- (3) When considering bids/proposals submitted by contractors, Metro shall evaluate the extent to which recycled materials and products have been incorporated.
- (4) Vendors and contractors who incorporate recycled materials and products in their bids/proposals shall provide written certification of the minimum recycled content of these materials and products, including the percent of post-consumer and secondary waste as defined in Section 2.04.510.
- (5) Unless otherwise specified in a bid or proposal request, bidders and proposers shall submit the actual proposed cost of a recycled product or material bid item. It shall be Metro's responsibility to calculate any preferences required. If Metro, in its sole discretion, determines that a product or material offered by a vendor or contractor is a recycled product or material meeting the requirements of this

section, Metro shall subtract 10 percent or the preference otherwise offered, from the bid or proposal item, for the purpose of comparing bids or proposals.

(Ordinance No. 93-513, Sec. 2)

2.04.530 Recycled Content Paper Products

(a) Metro shall give up to a 10 percent price preference for the purchase of recycled paper (which includes all paper products), as compared to nonrecycled paper or paper products, if its performance meets applicable specifications, it is available at the specified price preference and within a reasonable period of time. If the price of one recycled paper is equal to or less than another recycled paper which contains a higher percentage of post-consumer waste, Metro shall also give preference to the recycled paper with the highest percentage of post-consumer waste. To the extent feasible, unbleached recycled paper or recycled paper produced without chlorine bleach shall be selected over chlorine-bleached paper.

(b) Metro may purchase jointly with other agencies to reduce the cost of recycled paper. All recycled paper purchases shall require the manufacturer's certification of recycled content, including the percentage of post-consumer waste.

(c) Except where prohibited by existing warranties, service agreements or contracts, the solid waste department shall only specify recycled paper in its solicitations and bids.

(d) All bids for new equipment and services shall include language to ensure that they can use recycled paper.

(e) All contract printing shall include the 10 percent price preference for recycled paper.

(f) Metro shall make every effort to eliminate purchases of paper products that would be a contaminant to the in-house collection program, and to purchase products that may be recycled or reused when discarded.

(g) The use of non-recyclable goldenrod and other very bright, hard-to-bleach colored papers is prohibited.

(h) All Metro documents and correspondence shall be printed on recycled paper, if the recycled paper meets specifications, is available at the 10 percent price preference, and is available within a reasonable period of time. To the extent feasible, the official recycled paper symbol or the words "printed on recycled content paper," followed by the percentage of post-consumer content shall be printed on documents printed at Metro or on contract printing.

(Ordinance No. 93-513, Sec. 2)

2.04.540 Recycled Oil

(a) As specified in ORS 279.580 to 279.595, Metro specifications for the purchase of lubricating oil and industrial oil shall not exclude recycled oils. Specifications for the procurement of recycled oil shall be consistent with the re-refined lubricating oil purchasing guideline of the US Environmental Protection Agency. In addition, Metro shall purchase lubricating and industrial oil from the seller whose product contains the greater percentage of recycled oil as long as the recycled oil:

- (1) Is available within a reasonable period of time in quantities necessary for Metro's needs;
- (2) Meets performance standards recommended by the equipment or vehicle manufacturer, including any warranty requirements; and
- (3) Is offered at a price that does not exceed the 10 percent price preference for recycled products over comparable nonrecycled products.

(b) As stipulated in ORS Chapter 279, Metro's affirmative program for procuring recycled oil shall include, but be not be limited to the following:

- (1) Notice of Metro's preference for recycled oil shall be provided in publications used to solicit bids from suppliers;
- (2) Metro shall provide a description of its recycled oil procurement program at bidders' conferences and in procurement solicitations or invitations to bid; and
- (3) Metro shall make a good faith effort to inform industry trade associations about its recycled oil preference program.

(c) Metro shall specify recycled oils in its bids and solicitations for fleet vehicles and transport services and to the extent feasible not enter into agreements for these services with companies that restrict the use of recycled oils.

(Ordinance No. 93-513, Sec. 2)

2.04.550 Compost Products

(a) Metro shall specify and give preference to purchase of organic soil amendments made from yard debris, sewage sludge or other organic waste composts rather than compost made from nonrecycled organic materials if the organic soil amendments:

- (1) Are available;
- (2) Meet the functional requirements of the specific application;
- (3) Meet human health and plant safety standards; and
- (4) Do not exceed the 10 percent price preference for recycled products over nonrecycled products.

(Ordinance No. 93-513, Sec. 2)

2.04.560 Retread Tires

(a) The procurement officer shall eliminate any specifications that discriminate against procurement of retread tires and shall give preference to the purchase of retread tires over new tires, if the retread tires:

- (1) Are available;
- (2) Meet the performance standards recommended by the equipment or vehicle manufacturer, including warranty requirements;
- (3) Meet the EPA Purchasing Guideline for retread tires; and
- (4) Do not exceed the 10 percent price preference for recycled products over nonrecycled products.

(b) Metro shall procure retreading services for used tire cores to the extent that the retreaded tires can meet the requirements of subsection (a) of this section.

(c) Metro shall specify retread tires in its bids and solicitations for fleet and transport services and to the extent feasible shall not enter into agreements for these services with companies that restrict the use of retread tires.

(Ordinance No. 93-513, Sec. 2)

2.04.570 Recycled Paint and Building Materials

Metro shall utilize recycled paint and other recycled content building materials in construction and remodeling projects if such paint or materials:

- (a) Are available;
- (b) Meet the functional requirements of the particular application;
- (c) Meet building code regulations and design review standards; and
- (d) Do not exceed the cost of nonrecycled paint or building materials by more than 10 percent.

(Ordinance No. 93-513, Sec. 2)

2.04.580 Promotion and Evaluation of Recycled Content Product Procurement Plan

(a) Consistent with Executive Order No. 47A, Metro recycling coordinating committees shall include recycled product procurement strategies as part of their annual recycling plans. These plans shall incorporate the provisions of this ordinance as they apply to purchasing transactions and bid solicitations.

(b) To implement the provisions identified in this ordinance, Metro's waste reduction division and the procurement officer shall provide purchasing assistance to Metro staff. This assistance may include, but not be limited to:

- (1) Providing information about recycled products available in the Metro region;
- (2) Writing procurement specifications and standards for recycled products in bids, solicitations, and contracts;

- (3) Obtaining manufacturers' certification of recycled content;
- (4) Notifying potential bidders about preferences for recycled content products in notices, bidder's conferences or elsewhere, as appropriate; and
- (5) Offering workshops and seminars on recycled products and procurement for Metro departments and facilities.

(c) Notwithstanding the provisions of this ordinance, Metro may identify and purchase new or untested recycled products or materials to help develop markets for materials with low recovery rates and to improve markets for locally-generated materials. These materials and products may include, but are not limited to, plastic products, building and construction materials, and glass aggregate with recycled content.

(d) The waste reduction division shall prepare a report annually to measure the progress of the recycled content product procurement program, and shall present the report to the Chief Operating Officer ~~Executive Officer~~ and the Metro Council. At a minimum, this report shall include:

- (1) The amount of recycled products purchased compared to non-recycled products;
- (2) The percentage of total dollar value of Metro purchases of recycled products compared to non-recycled products;
- (3) A summary of the year's activities; and
- (4) Recommendations on program modifications to increase recycled product procurement levels.

(Ordinance No. 93-513, Sec. 2)

STAFF REPORT

IN CONSIDERATION OF

- ORDINANCE NO. 02-966 FOR THE PURPOSE OF AMENDING CHAPTER 2.04 METRO CONTRACT POLICIES, OF THE METRO CODE TO CONFORM TO THE METRO CHARTER AMENDMENTS ADOPTED ON NOVEMBER 7, 2000, AND DECLARING AN EMERGENCY
- ORDINANCE 02-974 FOR THE PURPOSE OF AMENDING TITLE V SOLID WASTE, OF THE METRO CODE (CHAPTER 5.01 THROUGH CHAPTER .09), TO CONFORM TO THE METRO CHARTER AMENDMENTS ADOPTED ON NOVEMBER 7, 2000, AND DECLARING AN EMERGENCY
- ORDINANCE 02-976, FOR THE PURPOSE OF AMENDING TITLE VII EXCISE TAXES, TITLE VIII FINANCING POWERS AND CHAPTER 2.06 INVESTMENT POLICIES OF THE METRO CODE, TO CONFORM TO THE METRO CHARTER AMENDMENTS ADOPTED ON NOVEMBER 7, 2000, AND DECLARING AN EMERGENCY

Date: October 29, 2002

Prepared by: John Houser

BACKGROUND

As a result of the passage by the voters of Ballot Measure 26-10 on November 7, 2000, various changes to Metro's existing code are in order to conform to the approved amendments to Metro's charter. The changes proposed in these ordinances to primarily remove references to the Executive Officer and Presiding Officer, whose offices will be abolished effective January 6, 2003; and create references to the Council President and the Chief Operating Officer, consistent with code amendments adopted by Council earlier this year (see "Legal Antecedents" below), along with minor grammatical and formatting corrections. The proposed ordinances make changes to the following code sections:

- Chapter 2.04 (Metro Contract Policies) and Chapter 2.06 (Investment Policy)
- Title V Solid Waste(Chapters 5.01 through 5.09)
- Title IV Excise Taxes (Chapter 7.01)
- Title VIII Financing Powers (Chapter 8.01)

ANALYSIS/INFORMATION

1. **Known Opposition** None
2. **Legal Antecedents** Resolution 00-2929A "For the Purpose of Submitting to the Voters an Amendment to the Metro Charter Abolishing the Office of Executive Officer, Creating the Office of Council President, and Making Related Changes"; Ordinance 02-942A "For the Purpose of Adding a New Chapter 2.20 to the Metro Code Creating the Office of Chief Operating Officer"; Ordinance 02-953A "For the Purpose of Creating the Office of Metro Attorney"; Ordinance 02-954A "For the Purpose of Reflecting the Creation of the Office of Metro Council President"; and Ordinance 02-

955A "For the Purpose of Amending Chapter 2.19 of the Metro Code to Conform to Charter Amendments Adopted on November 7, 2000".

3. **Anticipated Effects** These ordinances will amend Chapters 2.04, 2.06, 5.01 through 5.09, 7.01, and 8.01 of the Metro Code to conform to approved Charter amendments.
4. **Budget Impacts** None

RECOMMENDED ACTION

That Council approve adoption of Ordinances 02-966, 02-974 and 02-976.

Agenda Item Number 5.2

Ordinance No. 02-967, For the Purpose of Amending Title II Administration and Procedures (Chapter 2.03, 2.05, 2.06, 2.07, 2.09, 2.11, 2.12, 2.14, 2.15, 2.16, 2.17 and 2.18), of the Metro Code to Conform to the Metro Charter Amendments Adopted on November 7, 2000, and Declaring an Emergency.

Second Reading

**Metro Council Meeting
Thursday, November 21, 2002
Metro Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING TITLE II) ORDINANCE NO. 02-967
ADMINISTRATION AND PROCEDURES (CHAPTERS)
2.03, 2.05, 2.06, 2.07, 2.09, 2.11, 2.12, 2.14, 2.15, 2.16, 2.17)
and 2.18), OF THE METRO CODE TO CONFORM TO)
THE METRO CHARTER AMENDMENTS ADOPTED ON)
NOVEMBER 7, 2000, AND DECLARING AN) Introduced by the Council
EMERGENCY) Governmental Affairs Committee

WHEREAS, on November 7, 2000, the electors of Metro approved Ballot Measure 26-10 amending the Metro Charter; and

WHEREAS, the Metro Charter Amendments, created the Office of Council President and abolished the Office of the Executive Officer; and

WHEREAS, the Metro Council amended Metro Code Chapter 2.01 to reflect the creation of the office of Metro Council President pursuant to Ordinance No. 02-954A on June 27, 2002; and

WHEREAS, the Metro Charter Amendments required the Metro Council to create the Office of the Chief Operating Officer; and

WHEREAS, the Metro Charter Amendments, added Metro Code Chapter 2.20 to create the office of Chief Operating Officer and to define the duties and responsibilities of the Chief Operating Officer, pursuant to Ordinance No. 02-942A on June 27, 2002; and

WHEREAS, the Metro Charter Amendments required the Council to create the Office of the Metro Attorney; and

WHEREAS, the Metro Council amended Chapter 2.08 of the Metro Code to create the office of the Metro Attorney and to define the duties and responsibilities of the Metro Attorney, pursuant to Ordinance No. 02-953A on June 27, 2002; and

WHEREAS, it is necessary to amend the following Chapters of Title II Administration and Procedures to conform to the Metro Charter Amendments adopted on November 7, 2000:

Exhibit	Chapter	Title II Administration and Procedures
A	2.03	Civil Penalties
B	2.05	Procedure for Contested Cases
C	2.06	Investment Policy
D	2.07	One Percent For Art Program
E	2.09	Contractor's Business License Program
F	2.11	Government Relations
G	2.12	Office of Citizen Involvement
H	2.14	Facility-Related Parking Policy and Regulations
I	2.15	Metro Auditor
J	2.16	Naming of Facilities

Exhibit	Chapter	Title II Administration and Procedures
K	2.17	Code of Ethics For Metro Officials and Requirements for Lobbyists
L	2.18	Campaign Finance Regulation

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The Metro Code Chapters are amended as provided for and are attached as follows:

Exhibit	Chapter	Title II Administration and Procedures
A	2.03	Civil Penalties
B	2.05	Procedure for Contested Cases
C	2.06	Investment Policy [Deleted and moved to revised Title VII Finance]
D	2.07	One Percent For Art Program
E	2.09	Contractor's Business License Program
F	2.11	Government Relations [Repealed]
G	2.12	Office of Citizen Involvement
H	2.14	Facility-Related Parking Policy and Regulations
I	2.15	Metro Auditor
J	2.16	Naming of Facilities
K	2.17	Code of Ethics For Metro Officials and Requirements for Lobbyists
L	2.18	Campaign Finance Regulation

2. The Metro Charter Amendments to Title II Administration and Procedures of the Metro Code adopted by this ordinance shall take effect on January 6, 2003.

ADOPTED by the Metro Council this _____ day of _____ 2002.

Carl Hosticka, Presiding Officer

Attest:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, General Counsel

Exhibit A
Metro Charter 2003 Amendments to Metro Code

CHAPTER 2.03

CIVIL PENALTIES

SECTIONS	TITLE
2.03.010	Purposes
2.03.020	Definitions
2.03.030	Consolidation of Proceedings
2.03.040	Notice of Violation and Intent to Assess Civil Penalty
2.03.050	Mitigating and Aggravating Factors
2.03.060	Zoo Schedule of Civil Penalties
2.03.070	Solid Waste Schedule of Civil Penalties
2.03.080	Written Notice of Assessment of Civil Penalty; When Penalty Payable
2.03.090	Compromise or Settlement of Civil Penalty by Director

2.03.010 Purposes

The purpose of these rules and regulations is to prescribe the procedures and requirements for the notice, assessment, collection and enforcement of civil penalties.

(Ordinance No. 50, Sec. 1)

2.03.020 Definitions

Unless otherwise required by context, as used in this subdivision:

(a) "Director" means the "Department Director" as defined in Section 2.17.020(d)~~director of a department of Metro.~~

(b) "License" as used in this Code, has the meaning given that word by ORS Chapter 183.

~~(c)~~ (b) "Order" means (ia) any action satisfying the definition given in ORS Cchapter 183, or
(iib) any other action so designated in ORS Cchapter 268.

(de) "Respondent" means the person against whom a civil penalty is assessed.

(ed) "Violation" means a transgression of any provision or condition of any license and includes both acts and omissions.

~~(e) "License" as used in this Code, has the meaning given that word by ORS 183.310(3)~~
(1975 Replacement Part).

(Ordinance No. 50, Sec. 2)

2.03.030 Consolidation of Proceedings

Notwithstanding that each and every violation is a separate and distinct offense, and in cases of continuing violation, each day's continuance is a separate and distinct violation, proceedings for the assessment of multiple civil penalties for multiple violations may be consolidated into a single proceeding.

(Ordinance No. 50, Sec. 3)

2.03.040 Notice of Violation and Intent to Assess Civil Penalty

(a) Except as provided in subsection (d) of this section, prior to the assessment of any civil penalty the Director shall serve a written notice of violation and intent to assess civil penalties upon the respondent.

(b) The notice shall be personally delivered or sent by registered or certified mail by an employee of Metro or any other competent person over the age of 18 years to:

- (1) The respondent; or
- (2) Any person designated by law as competent to receive service of a summons or notice for the respondent; or
- (3) Following appearance of counsel for the party, the party's counsel.

(c) A notice of violation shall specify the violation and state that Metro will assess a civil penalty if the violation continues or occurs after five (5) days following service of the notice.

(d) Written notice of violation and intent to assess a civil penalty shall not be required where:

- (1) The respondent has otherwise received actual notice of violation not less than five (5) days prior to the violation for which a penalty is assessed.
- (2) The violation is of a type that would normally not be in existence for five (5) days or the jurisdiction of Metro to prosecute the violation is liable to be interrupted within that time.

(Ordinance No. 50, Sec. 4)

2.03.050 Mitigating and Aggravating Factors

(a) In establishing the amount of a civil penalty to be assessed, the Director or the Council shall consider the following factors:

- (1) Whether the respondent has committed any prior violation, regardless of whether or not any administrative, civil, or criminal proceeding was commenced therefore;
- (2) The history of the respondent in taking all feasible steps or procedures necessary or appropriate to correct any violation;
- (3) The economic and financial conditions of the respondent.

(b) In establishing whether a civil penalty should be remitted or mitigated, the Director or the Council may consider the following factors:

- (1) The gravity and magnitude of the violation;
- (2) Whether the violation was repeated or continuous;
- (3) Whether a cause of the violation was an unavoidable accident, or negligence, or an intentional act of the respondent;
- (4) The opportunity and degree of difficulty to correct the violation;
- (5) The respondent's cooperativeness and efforts to correct the violation for which the penalty is to be assessed;
- (6) The cost to Metro of investigation and correction of the cited violation prior to the time Metro receives respondent's answer to the written notice of assessment of civil penalty; or
- (7) Any other relevant factor.

(c) Unless the issue is raised in respondent's answer to the written notice of assessment of civil penalty, the Council may presume that the economic and financial conditions of respondent would allow imposition of the penalty assessed by the Director. At the hearing, the burden of proof and the burden of coming forward with evidence regarding the respondent's economic and financial condition or regarding any factor urged in mitigation shall be upon the respondent.

(Ordinance No. 50, Sec. 5)

2.03.060 Zoo Schedule of Civil Penalties

In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to the zoo by service of a written notice of assessment of civil penalty upon the respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

- (a) Not less than \$100 nor more than \$500 for violation of an order of Metro or its Council.

(b) Not less than \$25 nor more than \$500 for any violation which causes, contributes to, or threatens the injury of any zoo animals.

(c) Not less than \$25 nor more than \$500 for any other violation.

(Ordinance No. 50, Sec. 6)

2.03.070 Solid Waste Schedule of Civil Penalties

In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to the transferring, processing or disposal of solid waste by service of a written notice of assessment of civil penalty upon the respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

(a) Not less than \$100 nor more than \$500 for violation of an order of Metro or its Council.

(b) Not less than \$25 nor more than \$500 for any other violation.

(Ordinance No. 50, Sec. 7)

2.03.080 Written Notice of Assessment of Civil Penalty: When Penalty Payable

(a) A civil penalty shall be due and payable when the respondent is served a written notice of assessment of civil penalty signed by the Director. Service of the written notice of assessment of civil penalty shall be in accordance with the service provisions of Section 2.03.040.

(b) The written notice of assessment of civil penalty shall include:

- (1) A reference to the particular sections of the statute, rule, regulation, standard, order, certificate or permit involved;
- (2) A short and plain statement of the matters asserted or charged;
- (3) A statement of the amount of the penalty or penalties imposed; and
- (4) A statement of the respondent's right to request a hearing.

(c) The respondent shall have 20 days from the date of mailing of the notice in which to make written application for a hearing before the Metro.

(d) All hearings shall be conducted pursuant to the contested case hearing procedures in the Metro Code.

(e) Unless the amount of the penalty is paid within 10 days after the order becomes final, the order shall constitute a judgment and may be filed in accordance with the provisions of Oregon Law ~~18.320 to 18.370~~ ORS 18.320 to 18.370. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

(Ordinance No. 50, Sec. 8)

2.03.090 Compromise or Settlement of Civil Penalty by Director

At any time subsequent to service of the written notice of assessment of civil penalty, the Director is authorized to seek to compromise or settle any unpaid civil penalty which he deems appropriate. Any compromise or settlement executed by the Director shall not be final until approved by the Council.

(Ordinance No. 50, Sec. 9)

Exhibit B
Metro Charter 2003 Amendments to Metro Code

CHAPTER 2.05

PROCEDURE FOR CONTESTED CASES

SECTION	TITLE
2.05.005	Contested Case Defined, Notice of Opportunity for Hearing, Service
2.05.007	Rights of Parties in Contested Cases
2.05.010	Immediate Suspension or Refusal to Renew a License or Permit, Notice of Opportunity for Hearing, Service
2.05.015	Orders When No Hearing Requested or Failure to Appear
2.05.025	Hearing
2.05.030	Evidentiary Rules
2.05.035	Proposed Orders in Contested Cases Other Than Personnel Discharges
2.05.040	Proposed Orders in Contested Cases on Personnel Discharges
2.05.042	Ex Parte Communications to the Hearings Officer
2.05.043	Ex Parte Communications to Councilors
2.05.045	Final Orders in Contested Cases, Notification, Review
2.05.046	Motions
2.05.047	Service of Documents on All Parties
2.05.050	Reconsideration, Rehearing

2.05.005 Contested Case Defined, Notice of Opportunity for Hearings, Service

(a) A contested case exists whenever:

- (1) Individual legal rights, duties or privileges of specific parties are required by statute or Constitution to be determined only after a hearing at which specific parties are entitled to appear and be heard;
- (2) ~~The district~~Metro has discretion to suspend or revoke a right or privilege of a person; or
- (3) There is a proceeding regarding a license, franchise or permit required to pursue any activity governed or regulated by ~~the district~~Metro; or
- ~~_____ (4) There is a discharge of a district employee; or~~
- ~~_____ (5) The district proposes to require a county, city or special district to change a plan pursuant to ORS 268.380 or 268.390; or~~

(46) There is a proceeding in which ~~the district~~Metro has directed by ordinance, rule or otherwise that the proceeding be conducted in accordance with contested case procedures.

(b) A contested case does not exist when a ~~district~~Metro action rests solely on the results of a test or inspection.

(c) ~~The district~~Metro shall give notice to all parties in a contested case. The notice shall include:

- (1) A statement of the party's right to request a hearing, or a statement of the time and place of the hearing;
- (2) A statement of the authority and jurisdiction under which the hearing is to be held;
- (3) A reference to the particular sections of the statutes, ordinances or rules involved;
- (4) A short and plain statement of the matters asserted, charged or proposed;
- (5) A statement that the party may be represented by counsel at the hearing; and
- (6) When applicable, a statement that if the party desires a hearing, ~~the district~~Metro must be notified within a specified number of days; and

(d) Unless the Council provides otherwise, the number of days within which the ~~district~~Metro must be notified that the party desires a hearing shall be as follows:

- (1) Within 30 days of the date of mailing of notice; or
- (2) Within 60 days of the notification of refusal to issue a license, franchise or permit required to pursue any activity governed or regulated by ~~the district~~Metro, if the refusal is based on grounds other than the results of a test or inspection; or
- (3) Within 90 days of an immediate suspension or refusal to renew a license or franchise pursuant to Section 2.05.010 of these rules; or;
- (4) In the case of a personnel discharge, within 14 days of the employee's receipt of the Notice of discharge.

(e) The notice shall be served personally or by registered or certified mail.

(f) ~~The district~~Metro may provide that notice in addition to that required by this section be given for specific types of contested case.

(Rule No. 79-3. Amended by Rule No. 81-5 and Ordinance No. 82-137, Sec. 2)

2.05.007 Rights of Parties in Contested Cases

(a) The following information shall be given to the parties before commencement of a contested case hearing:

- (1) If a party is not represented by an attorney, a general description of the hearing procedure.
- (2) Whether a record will be made of the proceeding and the manner of making the record and its availability to the parties.
- (3) Whether an attorney will represent ~~the district~~Metro in the matters to be heard and whether the parties ordinarily and customarily are represented by an attorney.
- (4) The title and function of the person presiding at the hearing with respect to the decision process, including, but not limited to, the manner in which the testimony and evidence taken by the person presiding at the hearing are reviewed, the effect of that person's determination, who makes the final determination on behalf of ~~the district~~Metro, whether the person presiding at the hearing is or is not an employee, officer, or other representative of ~~the district~~Metro and whether that person has the authority to make a final independent determination.
- (5) Whether there exists an opportunity after the hearing and prior to the final determination or order of the agency to review and object to any proposed Findings of Fact, Conclusions of Law, summary of evidence or recommendations of the officer presiding at the hearing.
- (6) A description of the appeal process from the determination or order of the ~~district~~Metro.

(b) The information required in subsection (a) may be given in writing or orally before the commencement of the hearing.

(Rule No. 79-3. Amended by Rule No. 81-5 and Ordinance No. 82-137, Sec. 2)

2.05.010 Immediate Suspension or Refusal to Renew a License or Permit, Notice of Opportunity for Hearing, Service

(a) If ~~the district~~Metro finds there is a serious danger to the public health or safety, it may suspend or refuse to renew a license or permit immediately.

(b) ~~The district~~Metro shall give notice to the party upon immediate suspension or refusal to renew a license or permit. The notice shall include:

- (1) A statement of the party's right to hearing.
- (2) A statement of the authority and jurisdiction under which the hearing is to be held.

- (3) A reference to the particular sections of the statutes, ordinances and rules involved.
 - (4) A short and plain statement of the matters asserted, charged or proposed.
 - (5) A statement that the party may be represented by counsel at the hearing.
 - (6) A statement that if the party demands a hearing ~~the district~~Metro must be notified within 30 days of date of the notice.
 - (7) A statement giving the reason or reasons for the immediate action.
 - (8) The effective date of the suspension or refusal to renew the license or permit.
- (c) The notice shall be served personally or by registered or certified mail.

(Rule No. 79-3)

2.05.015 Orders When No Hearing Requested or Failure To Appear

(a) When a party has been given an opportunity and fails to request a hearing within the specified time or fails to appear at the specified time and place of the hearing, ~~the district~~Metro may enter an order which supports ~~the district~~Metro action or an order denying the petition upon which the hearing was to be held.

(b) The order supporting ~~the district~~Metro action shall set forth the material on which the action is based or the material shall be attached to and made a part of the order.

(Rule No. 79-3)

2.05.025 Hearing

(a) The hearing shall be conducted by, and shall be under the control of, the ~~council~~Council President ~~presiding officer~~ or a hearings officer. Contested case hearings on amendments to the regional Urban Growth Boundary shall be before a hearings officer. The ~~Council~~ may from time to time approve and provide to the Chief Operating Officer ~~executive officer~~ a list of prospective hearings officers from which hearings officers may be appointed by the Chief Operating Officer ~~executive officer~~. Unless the hearing is to be held before the Council, the hearings officer in a contested case shall be a member of the Oregon State Bar.

(b) In the case of a hearing on a personnel discharge, the employee shall be given the opportunity to select the hearings officer from a list of at least three prospective hearings officers approved by the Council.

(c) At the discretion of the ~~presiding officer~~Council President or the hearings officer, the hearing shall be conducted in the following order:

- (1) Staff report, if any.
- (2) Statement and evidence by ~~the district~~Metro in support of its action, or by the petitioner in support of a petition.
- (3) Statement and evidence of affected persons disputing ~~the district~~Metro action or petition.
- (4) Rebuttal testimony.

(d) The hearings officer, a ~~C~~council member, the ~~Chief Operating Officer executive officer~~ or his/her designee, the ~~Metro Attorneygeneral counsel~~, and the affected parties shall have the right to question any witnesses. Cross-examination by parties shall be by submission of written questions to the ~~Council President presiding officer or~~ Council President presiding officer; provided however that cross-examination by parties may be oral, at the discretion of the ~~Council President presiding officer or~~ Council President presiding officer, if such questioning will not disrupt the proceedings.

(e) The hearing may be continued for a reasonable period as determined by the Council President presiding officer or ~~hearings officer~~.

(f) The Council President presiding officer or ~~hearings officer~~ may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious or immaterial testimony.

(g) Exhibits shall be marked and the markings shall identify the person offering the exhibits. The exhibits shall be preserved by ~~the district~~Metro as part of the record of the proceedings.

(h) A verbatim oral, written, or mechanical record shall be made of all the proceedings. Such verbatim record need not be transcribed unless necessary for C~~ouncil~~ or judicial review.

(i) Upon conclusion of the hearing, the record shall be closed and new evidence shall not be admissible thereafter; provided, however, that upon proper showing, the Council President presiding officer or ~~hearings officer~~ may reopen the hearing for receipt of new evidence which could not have been introduced earlier and which is otherwise admissible under S~~ection~~ 2.05.030.

(Rule No. 79.3. Amended by Rule No. 81-5 and Ordinance No. 82-137, Sec. 4)

2.05.030 Evidentiary Rules

(a) Evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible.

(b) Irrelevant, immaterial or unduly repetitious evidence shall be excluded.

(c) All offered evidence, not objected to, will be received by the hearings officer subject to his/her power to exclude irrelevant, immaterial or unduly repetitious matter.

(d) Evidence objected to may be received by the hearings officer with rulings on its admissibility or exclusion to be made at the time a final order is issued.

(e) The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position.

(Rule No. 79-3)

2.05.035 Proposed Orders in Contested Case Other than Personnel Discharges

(a) Within 30 days of a hearing before a hearings officer in a contested case other than a personnel discharge, the hearings officer shall prepare and submit a proposed order together with the record compiled in the hearing, to the Ceouncil. The proposed order, including Findings of Fact and Conclusions of Law, shall be served upon the parties.

(b) Within seven (7) days of the release of the proposed order, the ~~Chief Operating Officer~~ executive officer shall mail notice to all parties of the date by which written exceptions to the proposed order must be filed. This shall be not less than 14 nor more than 21 days from the date notice of this deadline is mailed, unless otherwise agreed to by all parties. The proposed order and any exceptions received to it shall be forwarded to the Ceouncil of Metro ~~the Metropolitan Service District~~ for consideration at its next scheduled meeting at least two weeks after the deadline for filing exceptions.

The Ceouncil may, by majority vote, decide to consider objections received following the deadline established, but must allow at least two weeks between the date the exception is filed and the date the Ceouncil reviews it. Only parties may file exceptions, and exceptions may address only issues raised in the hearing. Upon approval of the Ceouncil, parties who have filed written exceptions may present oral argument in support of the exceptions, and other parties shall be given the opportunity to orally rebut exceptions made. Oral argument shall be limited to the specific objections raised in the written exceptions.

(c) A party may, in addition to filing written exceptions, file a written request to submit evidence that was not available or offered at the hearing provided for in Code Ssection 2.05.025. A written request to submit additional evidence must explain why the information was not provided at the hearing, and must demonstrate that such evidence meets the standards of Ssection 2.05.030 and would likely result in a different decision. Upon receipt of a written request to submit additional evidence, the Ceouncil shall:

- (1) Refuse the request; or
- (2) Remand the proceeding to the hearings officer for the limited purpose of receiving the new evidence and oral argument and rebuttal argument by the parties on the new evidence; or
- (3) If the nature of the new evidence to be submitted is such that remand would serve no useful purpose, proceed to hear and consider the evidence and argument and rebuttal from the parties on the evidence.

Requests to submit new evidence must be filed by the deadline for filing written exceptions established pursuant to Ssection 2.05.035(b), unless circumstances regarding the evidence preclude doing so.

(d) If a new hearing is granted in accordance with subsection (c)(2) of this section, the hearings officer shall within seven (7) days of the hearing serve upon all of the parties and forward to the Ceouncil a new proposed order in accordance with the provisions of Code Section 2.05.035(a).

(Rule No. 79-3. Amended by Rule No. 82.5; Ordinance No. 82-137, Sec. 5; Ordinance No. 86-203, Sec. 2 and 3)

2.05.040 Proposed Orders in Contested Cases on Personnel Discharges

~~_____ (a) Within seven days of a hearing on a personnel discharge, the hearings officer shall prepare and submit a proposed order together with the record compiled in the hearing to the executive officer. Said proposed order shall include rulings on evidence, findings of fact, conclusions of law and a proposed action.~~

~~_____ (b) Within seven days of receipt of the proposed order, the executive officer shall issue a final order pursuant to section 5.02.045 of these rules.~~

(Rule No. 79-3. Amended by Rule No. 81-5; Ordinance No. 82-137, Sec. 6; Ordinance No. 86-203, Sec. 2 and 3)

2.05.042 Ex Parte Communications to the Hearings Officer

The hearings officer shall place on the record a statement of the substance of any written or oral ex parte communication on a fact in issue made to the officer during the pendency of the proceeding. Parties shall, upon request, be given a reasonable opportunity to rebut such ex parte communications.

(Rule No. 81-5. Amended by Ordinance No. 82-137, Sec. 7)

2.05.043 Ex Parte Communications to the Councilors

Councilors shall place on the record a statement of the substance of any written or oral ex parte communications on a fact in issue made to a Ceouncilor during review of a contested case. Parties shall, upon request, be given a reasonable opportunity to rebut such ex parte communications.

(Rule No. 81-5. Amended by Ordinance No. 82-137, Sec. 8)

2.05.045 Final Orders in Contested Cases, Notification, Review

(a) Except as provided in subsection (c) of this section, the Ceouncil or Chief Operating Officer's ~~executive officer's~~ decision in a contested case shall be adopted by a final order. Final orders in contested cases shall be in writing and shall include the following:

- (1) Rulings on admissibility of offered evidence.
- (2) Findings of Fact -- those matters which are either agreed upon as fact or which, when disputed, are determined by the fact finder, on substantial evidence, to be fact over contentions to the contrary.

(3) Conclusion(s) of Law -- applications of the controlling law to the facts found and legal results arising therefrom.

(4) The action taken by ~~the district~~ Metro as a result of the Findings of Fact and Conclusions of Law.

(b) Upon receipt of a proposed order and consideration of exceptions, the Council shall adopt the proposed order or revise or replace the findings or conclusions in a proposed order or remand the matter to the hearings officer. No written exceptions need be received on a revised or replaced order except on new evidence presented to the hearings officer on remand. Parties shall be given an opportunity to comment orally to the Council on a revised order.

(c) When the proposed order in a contested case necessitates the adoption of an ordinance, staff shall prepare an ordinance for Council adoption. The ordinance shall incorporate the rulings, findings and conclusions required by subsection (a) or (b) of this section. An ordinance adopted pursuant to this subsection shall, upon adoption, be considered the final order subject to judicial review.

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

(e) Final orders in cases other than on Urban Growth Boundary amendments shall be approved by a majority of a quorum of the Council.

(f) ~~Final approval of An ordinance to approve a petition for an amendment of the Urban Growth Boundary shall be made by the adoption of an ordinance pursuant to Code section 2.01.070. A motion to deny such a petition shall require the approval of at least six members of the council, and six votes shall be sufficient to approve a motion to deny notwithstanding a tie vote.~~

(Rule No. 79-3. Amended by Rule No. 81-5; Ordinance No. 82-137, Sec. 9; Ordinance No. 85-190, Sec. 1; Ordinance No. 86-203, Sec. 3)

2.05.046 Motions

(a) Unless these rules or applicable statutes or ordinances provide another form of application, a request for an order or relief from the hearings officer or the Council shall be made by serving and filing a motion in writing for such order or relief.

(b) Parties shall submit all motions without oral argument unless otherwise directed by the hearings officer or the Council. The motion shall show proof of service on all opposing parties in accordance with Code Section 2.05.047.

(Rule No. 81-5)

2.05.047 Service of Documents on All Parties

All documents, written correspondence or other material filed with or submitted to the hearings officer or the Ceouncil shall be served on all parties. Any document filed with or submitted to the hearings officer or the Ceouncil shall contain proof of service on all parties.

(Rule No. 81-5)

2.05.050 Reconsideration, Rehearing

(a) A party may file a petition for reconsideration or rehearing on a final order with the districtMetro within ten (10) days after the order is issued. ~~In the case of a personnel discharge, such petition shall be submitted to the executive officer. Other petitions shall be referred to the council.~~

(b) The petition shall set forth the specific ground or grounds for requesting the reconsideration or rehearing. The petition may be supported by a written argument.

(c) ~~The districtMetro~~ may grant a reconsideration petition if sufficient reason therefor is made to appear. If the petition is granted, an amended order shall be entered. The Ceouncil may allow oral or written argument by the parties on the reconsideration petition.

(d) ~~The districtMetro~~ may grant a rehearing petition if sufficient reason therefor is made to appear. The rehearing may be limited by ~~the districtMetro~~ to specific matters. If a rehearing is held an amended order shall be entered. Rehearings shall be held before the hearings officer who conducted the original hearing.

(e) If ~~the districtMetro~~ does not act on the petition within the 60th day following the date the petition was filed, the petition shall be deemed denied.

(Rule No. 79-3. Amended by Rule No. 81-5; Ordinance No. 82-137, Sec. 10)

Exhibit C
Metro Charter 2003 Amendments to Metro Code

CHAPTER 2.06

INVESTMENT POLICY—MOVED TO REVISED METRO CODE TITLE VII FINANCE

SECTIONS — TITLE

2.06.010	Scope
2.06.020	Objectives
2.06.030	Responsibility
2.06.040	Prudence
2.06.050	Investment Diversification
2.06.060	Competitive Selection of Investment Instruments
2.06.065	Monitoring the Portfolio
2.06.070	Qualifying Institutions
2.06.080	Banking Services (repealed Ord. 97-684 §1)
2.06.090	Safekeeping and Collateralization
2.06.100	Indemnity Clause
2.06.110	Compliance
2.06.120	Accepting and the
2.06.130	Reporting Requirements
2.06.140	Performance Evaluation
2.06.150	Policy Adoption
2.06.160	Policy Readoption

2.06.010 Scope

These investment policies apply to all cash-related assets included within the scope of Metro's audited financial statements and held directly by Metro. Other than bond proceeds or other segregated revenues, the total of funds pooled for investments ranges from \$60 million to \$100 million with an average of \$80 million. Funds held and invested by trustees or fiscal agents are excluded from these policies; however, such funds are subject to the regulations established by the State of Oregon.

Funds of Metro will be invested in compliance with the provisions of ORS 294.035 through 294.048; ORS 294.125 through 294.155; ORS 294.810; and other applicable statutes. Investments will be in accordance with these policies and written administrative procedures. Investment of any tax-exempt borrowing proceeds and of any debt-service funds will comply with the 1986 Tax Reform Act provisions and any subsequent amendments thereto.

(Ordinance No. 90-365. Amended by Ordinance No. 97-684, Sec. 1)

2.06.020 Objectives

(a) **Safety.** Investments shall be undertaken in a manner that seeks to ensure the preservation of principal in the overall portfolio and security of funds and investments. For securities not backed by

the full faith and credit of the federal government, diversification is required in order that potential losses on individual securities would not exceed the income generated from the remainder of the portfolio.

____ (b) Liquidity. The investment officer shall assure that funds are constantly available to meet immediate payment requirements including payroll, accounts payable and debt service.

____ (c) Yield. The investment portfolio shall be designed with the objective of regularly exceeding the average return on 90-day U.S. Treasury Bills. The investment program shall seek to augment returns above this level, consistent with risk limitations described in this policy and prudent investment principles.

Due to Metro's fiduciary responsibility, safety of capital and availability of funds to meet payment requirements are the overriding objectives of the investment program. Investment yield targets are secondary.

____ (d) Legality. Funds will be deposited and invested in accordance with statutes, ordinances and policies governing Metro.

(Ordinance No. 87-228, Sec. 3. Amended by Ordinance No. 90-365)

2.06.030 Responsibility

____ The Investment Officer. The executive officer is the investment officer of the district. The authority for investing Metro funds is vested with the investment officer, who, in turn, designates the investment manager to manage the day-to-day operations of Metro's investment portfolio, place purchase orders and sell orders with dealers and financial institutions, and prepare reports as required.

____ (b) Investment Advisory Board (IAB). There shall be an investment advisory board composed of five members.

____ (1) Terms of Service. The term of service for citizens appointed to the IAB shall be three calendar years. The term of appointment shall be staggered so that not more than two members' terms expire in any calendar year.

____ (2) Appointment. The investment officer shall recommend to the council for confirmation, the names of persons for appointment to the IAB.

____ (3) Duties. The IAB shall meet at least quarterly. The IAB will serve as a forum for discussion and act in an advisory capacity for investment strategies, banking relationships, the legality and probity of investment activities and the establishment of written procedures for the investment operations.

____ (c) Quarterly Reports. At each quarterly meeting, a report reflecting the status of the portfolio will be submitted for review and comment by at least 3 members of the IAB. Discussion and comment on the report will be noted in minutes of the meeting. If concurrence is not obtained, notification will be given to the investment officer including comments by the IAB.

(Ordinance No. 87-228, Sec. 1. Amended by Ordinance No. 90-365; Ordinance No. 94-538; Ordinance No. 97-684, Sec. 1)

2.06.040 Prudence

The standard of prudence to be applied by the investment officer shall be the "prudent investor" rule: "Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived." The prudent investor rule shall be applied in the context of managing the overall portfolio.

(Ordinance No. 87-228, Sec. 1. Amended by Ordinance No. 90-365)

2.06.050 Investment Diversification

(Definitions of terms and applicable authorizing statutes are listed in the "Summary of Investment Available to Municipalities" provided by the state treasurer.) The investment officer will diversify the portfolio to avoid incurring unreasonable risks inherent in or from investments in specific instruments, individual financial institutions, or markets.

Moved to revised Metro Code Title VII Finance

	Percent of Portfolio (Maximum)
(1) U.S. Treasury Bills, Notes, Bonds, Strips and/or State and Local Government Series (SLGS)	100%
(2) Securities of U.S. Government Agencies and U.S. Government Sponsored Enterprises	100%
(3) Certificates of Deposit (CD) Commercial Banks in Oregon insured by FDIC	100%
(4) Repurchase Agreements (Repo's) Maximum 90-day maturity	50%
(5) Banker's Acceptances (BA)	100%
(6) Commercial Paper (CP) Issued by a financial institution, commercial, industrial or utility business enterprise.	35%

For a corporation headquartered in Oregon; A-1 and P-1 only;
maximum 90-day maturity; A-2 and P-2, A-1/P-2, or A-2/P-1
only, maximum 60-day maturity.

For a corporation headquartered outside Oregon; A-1 and P-1 only;
maximum 90-day maturity

____ (7) State of Oregon and Local Government _____ 25%
Securities with A ratings or better

____ (8) State of Oregon Investment Pool _____ 100%

____ (9) Market Interest Accounts and Checking
____ Accounts Minimum necessary for daily
____ cash management efficiency

____ (b) Diversification by Financial Institution

____ (1) Qualified Institutions The investment officer shall maintain a listing of financial
institutions whose securities dealers are recommended by the DAB. Any financial
institution or its securities dealer is eligible to make an application to the
investment officer and upon due consideration and approval hold available funds.

A listing of the eligible institutions shall be held by the investment officer and
provided any fiduciary agent or trustee.

____ (2) Diversification Requirements. The combination of investments in Certificates of
Deposit and Banker's Acceptances as outlined individually at 2.06.050(b)(2)(A)
and (C) invested with any one institution shall not exceed 25 percent of the total
available funds or 15 percent of the equity of the institution.

____ (A) Certificates of Deposit - Commercial Banks

____ No more than the lesser of 25 percent of the total available funds or
15 percent of the equity of the financial institution may be invested with
any one institution.

____ (B) Repurchase Agreements

____ May be purchased from any qualified institution provided the master
repurchase agreement is effective and the safekeeping requirements are
met. All repurchase agreements will be fully collateralized by general
obligations of the U.S. Government, the agencies and instrumentalities of
the United States or enterprises sponsored by the United States
government, marked to market.

____ The investment officer shall not enter into any reverse repurchase
agreements.

~~_____~~ (C) ~~Banker's Acceptances~~

~~_____~~ Must be guaranteed by, and carried on the books of, a qualified financial institution whose short-term letter of credit rating is rated in the highest category by one or more nationally recognized statistical rating organizations.

Qualified institution means:

- (i) ~~_____~~ A financial institution that is located and licensed to do banking business in the State of Oregon; or
- (ii) ~~_____~~ A financial institution located in the States of California, Idaho, or Washington that is wholly owned by a bank holding company that owns a financial institution that is located and licensed to do banking business in the State of Oregon.

~~_____~~ No more than the lesser of 25 percent of the total available funds or 15 percent of the equity of the financial institution may be invested with any one institution.

~~_____~~ Corporate Paper

~~_____~~ No more than 5 percent of the total portfolio with any one corporate entity.

~~_____~~ (E) ~~State and Local Government Securities~~

~~_____~~ No more than 15 percent of the total portfolio in any one local entity.

~~_____~~ (F) ~~State of Oregon Investment Pool~~

~~_____~~ Not to exceed the maximum amount established in accordance with ORS 294.810, with the exception of pass-through funds (in and out within 10 days).

~~_____~~ (G) ~~U.S. Government Agencies~~

~~_____~~ Securities of U.S. Government Agencies and U.S. Government Sponsored Enterprises as defined under ORS 294.035 and/or 294.040.
~~_____~~ No more than 40 percent of the total portfolio in any one agency.

~~_____~~ (H) ~~U.S. Government Treasuries~~

~~_____~~ No limitations

_____(c)____ Diversification by Maturity. Only investments which can be held to maturity shall be purchased. Investments shall not be planned or made predicated upon selling the security prior to maturity. This restriction does not prohibit the use of repurchase agreements under ORS 294.135(2). This policy shall not preclude the sale of securities prior to their maturity in order to improve the quality, net yield, or maturity characteristic of the portfolio.

_____Maturity limitations shall depend upon whether the funds being invested are considered short-term or long-term funds. All funds shall be considered short-term except those reserved for capital projects (e.g., bond sale proceeds).

_____(1)____ Short-Term Funds

_____(A)____ Investment maturities for operating funds and bond reserves shall be scheduled to meet projected cash flow needs. Funds considered short-term will be invested to coincide with projected cash needs or with the following serial maturity:

25% minimum to mature under three months

75% minimum to mature under 18 months

100% minimum to mature under five years

_____(B)____ Investment may not exceed five years. Investment maturities beyond 18 months may be made when supported by cash flow projections which reasonably demonstrate that liquidity requirements will be met. Maturities beyond 18 months will be limited to direct U.S. Treasury obligations.

_____(2)____ Long-Term Funds

_____(A)____ Maturity scheduling shall be timed according to anticipated need. ORS 294.135 permits investment beyond 18 months for any bond proceeds or funds accumulated for any purpose which the district is permitted by state law to accumulate and hold funds for a period exceeding one year. The maturities should be made to coincide as nearly as practicable with the expected use of the funds.

_____(B)____ Investment of capital project funds shall be timed to meet projected contractor payments. The drawdown schedule used to guide the investment of the funds shall evidence the approval of the investment officer and review of the Chief Financial Officer.

_____(d)____ Total Prohibitions. The investment officer may not make a commitment to invest funds or sell securities more than 14 business days prior to the anticipated date of settlement of the purchase or sale transaction, and may not agree to invest funds or sell securities for a fee other than interest. Purchase of standby or forward commitments of any sort are specifically prohibited.

_____(e)____ Adherence to Investment Diversification. Diversification requirements must be met on the day an investment transaction is executed. If due to unanticipated cash needs, investment maturities or marking the portfolio to market, the investment in any security type, financial issuer or maturity

spectrum later exceeds the limitations in the policy, the investment officer is responsible for bringing the investment portfolio back into compliance as soon as is practical.

(Ordinance No. 87-228, Sec. 1. Amended by Ordinance No. 90-365; Ordinance No. 93-501; Ordinance No. 97-684, Sec. 1; Ordinance No. 98-734, Sec. 1)

2.06.060 Competitive Selection of Investment Instruments

Before the investment officer invests any surplus funds, a competitive offering solicitation shall be conducted orally. Offerings will be requested from financial institutions for various options with regards to term and instrument. The investment officer will accept the offering which provides the highest rate of return within the maturity required and within the prudent investor rule. Records will be kept of offerings and the basis for making the investment decision.

(Ordinance No. 87-228, Sec. 1. Amended by Ordinance No. 90-365; Ordinance No. 97-684, Sec. 1)

2.06.065 Monitoring the Portfolio

The investment manager will routinely monitor the contents of the portfolio by analyzing the holdings to the markets, relative values of competing instruments, changes in credit quality, and by identifying and executing advantageous transactions, the portfolio may be adjusted accordingly.

(Ordinance No. 97-684, Sec. 1. Amended by Ordinance No. 98-790, Sec. 1)

The investment officer shall maintain a listing of all authorized dealers and financial institutions which are approved for investment purposes. Written procedures and criteria for selection of financial institutions will be established by the investment officer. Financial institutions must have a branch in Oregon. Any firm is eligible to apply to provide investment services to Metro and will be added to the list if the selection criteria are met. Additions or deletions to the list will be made by the investment officer and reviewed by the IAB. At the request of the investment officer, the firms performing investment services for Metro shall provide their most recent financial statements or Consolidated Report of Condition (call report) for review. Further, there should be in place, proof as to all the necessary credentials and licenses held by employees of the broker/dealers who will have contact with Metro as specified by but not necessarily limited to the National Association of Securities Dealers (NASD), Securities and Exchange Commission (SEC), etc. At minimum, the investment officer and the IAB shall conduct an annual evaluation of each firm's qualifications to determine whether it should be on the authorized list.

Securities dealers not affiliated with a Qualified Financial Institution, as defined in ORS 294.035, will be required to have headquarters located in the State of Oregon, Washington or Idaho and, if not headquartered in the State of Oregon, to have an office located in Oregon. Notwithstanding the above, securities dealers who are classified as primary dealers with the New York Federal Reserve Bank are also eligible.

(Ordinance No. 87-228, Sec. 1. Amended by Ordinance No. 90-365; Ordinance No. 97-684, Sec. 1; Ordinance No. 98-790, Sec. 1.)

2.06.090-Safekeeping and Collateralization

All securities purchased pursuant to this investment policy will be delivered by either book entry or physical delivery to a third party for safekeeping by a bank designated as custodian. Purchase and sale of all securities will be on a payment versus delivery basis. The trust department of the bank designated as custodian will be considered to be a third party for the purposes of safekeeping of securities purchased from that bank. The custodian shall issue a safekeeping receipt to Metro listing the specific instrument, rate, maturity and other pertinent information.

Delivery versus payment will also be required for all repurchase transactions and with the collateral priced and limited in maturity in compliance with ORS 294.035(11).

Notwithstanding the preceding, an exception to the delivery versus payment policy is made when purchasing State and Local Government Series Securities (SLGS) from the United States Treasury's Bureau of Public Debt to satisfy arbitrage yield restriction requirements of the Internal Revenue Code for tax exempt bond issues.

Deposit-type securities (i.e., Certificates of Deposit) shall be collateralized through the state collateral pool as required by ORS 295.015 and ORS 295.018 for any amount exceeding \$100,000, recognizing that ORS 295.015 requires only 25 percent collateralization and ORS 295.018 requires 100 percent collateralization when the institution is not listed by the state treasurer.

(Ordinance No. 87-228, Sec. 1; Amended by Ordinance No. 97-684, Sec. 1; Ordinance No. 01-932, Sec. 1)

2.06.100-Indemnification

(a) Metro shall indemnify the investment officer, chief financial officer, investment manager, staff and the IAB members from personal liability for losses that might occur pursuant to administering this investment policy.

(b) The investment officer, acting in accordance with written procedures and exercising due diligence, shall not be held personally responsible for a specific security's credit risk or market price changes, provided that these deviations are reported to the council as soon as practicable.

(Ordinance No. 87-228, Sec. 1. Amended by Ordinance No. 97-684, Sec. 1)

2.06.110-Controls

The investment officer shall maintain a system of written internal controls, which shall be reviewed annually by the IAB and the independent auditor. The controls shall be designed to prevent loss of public funds due to fraud, error, misrepresentation or imprudent actions.

Metro's independent auditor at least annually shall audit investments according to generally accepted auditing standards and this ordinance.

(Ordinance No. 90-365.)

2.06.120 Accounting Method

Metro shall comply with all required legal provisions and Generally Accepted Accounting Principles (GAAP). The accounting principles are those contained in the pronouncements of authoritative bodies, including but not necessarily limited to, the American Institute of Certified Public Accountants (AICPA); the Financial Accounting Standards Board (FASB); and the Government Accounting Standards Board (GASB).

(Ordinance No. 90-365. Amended by Ordinance No. 97-684, Sec. 1)

2.06.130 Reporting Requirements

— (a) — A transaction report shall be prepared by the investment manager not later than one business day after the transaction, unless a trustee, operating under a trust agreement, has executed the transaction. The trustee agreement shall provide for a report of transactions to be submitted by the trustee on a monthly basis.

— (b) — Quarterly reports shall be prepared for each regular meeting of the IAB to present historical investment information for the past 12-month period. Copies shall be provided to the executive officer and the Metro council.

(Ordinance No. 90-365. Amended by Ordinance No. 97-684, Sec. 1)

2.06.140 Performance Policy

The portfolio performance of Metro's investment program is evaluated quarterly by the IAB using the objectives set forth in this policy. The quarterly report which confirms adherence to this policy shall be provided to the Metro council as soon as practicable.

The performance of Metro's portfolio shall be measured by comparing the average yield of the portfolio at month-end against the performance of the 90-day U.S. Treasury Bill issue maturing closest to 90 days from month-end and the Local Government Investment Pool's monthly average yield.

(Ordinance No. 90-365. Amended by Ordinance No. 97-684, Sec. 1)

2.06.150 Policy Adoption

This investment policy must be reviewed by the IAB and the Oregon Short-Term Fund Board prior to adoption by the Metro council. Adoption of this policy supersedes any other previous council action or policy regarding Metro's investment management practices.

(Ordinance No. 90-365. Amended by Ordinance No. 97-684, Sec. 1)

2.06.160 Policy Readoption

This policy shall be subject to review and readoption annually by the Metro council in accordance with ORS 294.135.

(Ordinance No. 90-365, Readopted by Ordinance No. 93-501; Ordinance No. 94-555, Sec. 1; Ordinance No. 97-684, Sec. 1; Ordinance No. 98-734, Sec. 1; Ordinance No. 99-799, Sec. 1; Ordinance No. 00-856, Sec. 1; Ordinance No. 01-932, Sec. 1.)

Moved to revised Metro Code Title VII Finance

Exhibit D
Metro Charter 2003 Amendments to Metro Code

CHAPTER 2.07

ONE PERCENT FOR ART PROGRAM

SECTIONS	TITLE
2.07.010	Short Title
2.07.020	Definitions
2.07.030	Policy
2.07.040	Dedication
2.07.050	Ownership
2.07.060	Approvals
2.07.070	Implementation

2.07.010 Short Title

This ordinance shall be known as the "~~Metropolitan Service District~~ One Percent for Art Program" and may be so cited and pleaded and shall be referred to herein as "this program."

(Ordinance No. 87-215, Sec. 1)

2.07.020 Definitions

(a) "Construction cost" means budgeted construction cost, excluding design, engineering and administrative costs, cost for fees and permits, and indirect costs, such as interest during construction, land acquisition, relocation, demolition, street and utility, construction appurtenant to the main project, advertising and legal fees.

(b) "Council" means the Council of the ~~Metropolitan Service District~~ Metro.

~~_____~~ (c) ~~"District" means the Metropolitan Service District.~~

(cd) "Metro District facility" means those facilities constructed at the direction of the ~~district~~ Metro.

(de) "Major ~~district~~ construction project" ("Project") means projects for construction, reconstruction or major renovation of a ~~district~~ Metro facility with an estimated construction cost of \$100,000 or more. "Major district construction project" does not include emergency work, minor alteration, ordinance repair or maintenance necessary to preserve a facility.

(Ordinance No. 87-215, Sec. 2)

2.07.030 Policy

The Ceouncil finds that it is appropriate in major ~~district~~-construction projects that one ~~1~~ percent of the construction cost of such projects be devoted to the acquisition and display of art to be integral to, displayed in, upon, or in proximity to the project, or capable of display in other ~~district~~-Metro facilities which the Ceouncil deems appropriate.

These funds shall be expended on art which is of redeeming quality, advances public understanding of art, and enhances the aesthetic quality of the location which will be the site of works of art funded by these funds. The goal is to select and display art which represents the best in artistic skills and to encourage public dialogue and understanding of works of art.

(Ordinance No. 87-215, Sec. 3)

2.07.040 Dedication

One percent of the construction cost of major ~~district~~-construction projects shall be set aside for the acquisition of art, unless the Ceouncil, following a public hearing, by resolution exempts the project from the One Percent Program. Such an exemption must be approved prior to or at the time a contract for an architect has been entered into, or prior to or at the time a contract to participate financially in a project is entered into by the Ceouncil, whichever is earlier.

Works of art may be integral to, or displayed in, upon or adjacent to the project, or capable of display in other ~~district~~-Metro facilities.

The Ceouncil may order works of art removed or relocated if it finds that doing so is in keeping with the purposes of this ordinance.

The Ceouncil may determine to use contributed funds in addition to or in lieu of the monies raised for the construction costs.

(Ordinance No. 87-215, Sec. 1)

2.07.050 Ownership

All art acquired pursuant to this ordinance shall be acquired in the name of the Metro Metropolitan Service District and title shall vest in Metro~~the Metropolitan Service District~~.

(Ordinance No. 87-215, Sec. 5)

2.07.060 Approvals

Contracts brought forward under this program shall be approved in accordance with the Metro Code.

(Ordinance No. 87-215, Sec. 6)

2.07.070 Implementation

The Ceouncil shall adopt by resolution guidelines for implementing this program. The guidelines shall be interpreted in such a manner to fully carry out the purposes of this ordinance. |

(Ordinance No. 87-215, Sec. 7)

Exhibit E
Metro Charter 2003 Amendments to Metro Code

CHAPTER 2.09

CONTRACTOR'S BUSINESS LICENSE PROGRAM

SECTIONS	TITLE
2.09.010	Purpose and Authority
2.09.020	Definitions
2.09.030	Eligibility and License Issuance
2.09.040	Denial of Issuance
2.09.050	Exemptions
2.09.060	License Applicability
2.09.070	Application for License
2.09.080	Application Contents
2.09.090	Validity of the License
2.09.100	Fee
2.09.110	License
2.09.120	Renewal
2.09.130	Revocation
2.09.140	Appeal of a Revoked License or Denied Application
2.09.150	Penalty
2.09.160	Distribution of Fees
2.09.170	Regulations

2.09.010 Purpose and Authority

(a) The purpose of this ordinance is to provide a procedure for ~~the district~~Metro to issue a contractor's business license, establish a fee for the license, and distribute to participating jurisdictions the fees collected by ~~the district~~Metro.

(b) The authority for the Metropolitan Service District to issue a contractor's business license, establish requirements for the issuance of the license, charge a fee for the license, receive reimbursement for administrative expenses incurred in carrying out this program, determine the dollar amount of residential building permits issued within the ~~district~~Metro Area and distribute the fees to participating jurisdictions is granted by ORS 701.015.

(Ordinance No. 88-248, Sec. 1. Amended by Ordinance No. 91-411, Sec. 2)

2.09.020 Definitions

(a) "Contractor" or "Landscape contractor" has the meaning given under ORS 701.005, and ORS 701.015(6)(c)(d), respectively.

(b) "Contractor business license" means a document issued by ~~the district~~Metro to a contractor or landscape contractor that permits the contractor or landscape contractor to conduct business in participating jurisdictions.

(c) "Contractor's business license fee" means any fee paid to ~~the district~~Metro for the issuance of a contractor's business license.

(d) "Business license tax" means any fee paid by a contractor or landscape contractor to a city or county for any form of license that is required by the city or county to conduct business in that jurisdiction. The term does not include any franchise fee or privilege tax imposed by a participating jurisdiction upon a public utility under ORS 221.420 or 221.450 or any provision of a city charter.

(e) "Conducting business" means to engage in any activity in pursuit of gain including activities carried on by a contractor or landscape contractor through officers, agents and employees as well as activities carried on by a contractor or landscape contractor on that contractor's or landscape contractor's own behalf.

(f) "Participating jurisdiction" means any city or county located wholly or partly within the boundaries of ~~the district~~Metro that has a requirement for a contractor or landscape contractor to obtain a business license to conduct business in that jurisdiction, and the fee for this license is not based on or measured by adjusted net income.

(g) "Principal place of business" means the location of the central administrative office in this state of a contractor or landscape contractor conducting business in ~~this district~~the Metro Area.

(h) "Residential building permit" means any permit issued for the construction or alteration of a residential structure ~~issued by a governing body authorized under ORS 455.150.~~

(Ordinance No. 88-248, Sec. 1. Amended by Ordinance No. 91-411, Sec. 3)

2.09.030 Eligibility and License Issuance

Any contractor or landscape contractor wishing to conduct business in any participating jurisdiction shall be issued a contractor's business license if subsections (a) and (b) are met by the contractor or landscape contractor:

(a) Presents proof to ~~the district~~Metro that the contractor or landscape contractor has paid the business license tax imposed by the city when:

- (1) The principal place of business of the contractor or landscape contractor is within the city; or
- (2) Presents proof that contractor or landscape contractor has paid the business tax imposed by the city because the contractor or landscape contractor derives gross receipts of \$125,000 or more from business conducted within the boundaries of the city during the calendar year for which the business license tax is owed.

- (b) (1) Presents proof that the contractor or landscape contractor is currently registered with the State of Oregon Construction Contractor's Board or the State of Oregon Landscape Contractor's Board;
- (2) Completes an application as required by Section 2.09.070 of this chapter;
- (3) Pays the contractor's business license fee established in Section 2.09.100 of this chapter; and
- (4) Meets all other license requirements provided under this chapter.

(Ordinance No. 88-248, Sec. 1. Amended by Ordinance No. 91-411, Sec. 4)

2.09.040 Denial of Issuance

- (a) ~~The district~~Metro shall refuse to issue a license for any one of the following reasons:
 - (1) Fraud, misrepresentation or false statement made in the applications at the time of application.
 - (2) Failure to present proof at the time of application that the applicant has met all other license requirements provided under this chapter.
 - (3) Failure to pay the contractor's business license fee established under Section 2.09.100 of this chapter.

(b) Notice of denial of a application shall be given in writing to the applicant setting forth the grounds of the denial. Such notice shall be mailed to the applicant at the address that appears on the application for the license. This action of denial may be appealed as provided in Section 2.09.140 of this chapter.

(Ordinance No. 88-248, Sec. 1. Amended by Ordinance No. 91-411, Sec. 5)

2.09.050 Exemptions

(a) A contractor or landscape contractor that is required to be licensed by a city within the boundaries of ~~the district~~Metro that imposes a business license tax based on or measured by adjusted net income earned by conducting business within the city may not obtain and possess a contractor's business license in lieu of that jurisdiction's business license tax or business.

(b) Certain persons furnishing materials, improving personal property, owner builders, or persons otherwise licensed may be exempt from registration under this chapter under ORS 701.010.

(Ordinance No. 88-248, Sec. 1. Amended by Ordinance No. 91-411, Sec. 6)

2.09.060 License Applicability

(a) If a contractor or landscape contractor has paid any business license tax imposed by participating jurisdictions in which the contractor or landscape contractor has an office the contractor or landscape contractor may apply for a contractor's business license from ~~the district~~Metro.

(b) If a contractor or landscape contractor has been issued a contractor's business license by ~~the district~~Metro, the contractor or landscape contractor may conduct business without any other business license in participating jurisdictions in which the contractor or landscape contractor:

- (1) Has no office;
- (2) Has not derived gross receipts of \$250,000 or more from business conducted within the boundary of the participating jurisdiction during the calendar year for which the business license is owed.

(Ordinance No. 88-248, Sec. 1. Amended by Ordinance No. 91-411, Sec. 7; Ordinance No. 99-817A, Sec. 1.)

2.09.070 Application for License

To obtain a contractor's business license, a contractor or landscape contractor must make application in person or by mail to ~~the district~~Metro upon forms provided and prescribed by ~~the district~~Metro. The completed application shall be filed with the fee described in Section 2.09.100 of this chapter with the ~~district~~Metro before a contractor or landscape contractor is issued a contractor's business license.

(Ordinance No. 88-248, Sec. 1. Amended by Ordinance No. 91-411, Sec. 8)

2.09.080 Application Contents

Each application for a contractor's business license received by ~~the district~~Metro shall contain:

- (a) The name of the business making application.
- (b) The name of a contact person in the business.
- (c) The address of the principal place of business.
- (d) The telephone number of the business.
- (e) State of Oregon Construction Contractor's Board registration number or State Landscape Contractor's Board.
- (f) Date of application.
- (g) The signature of the contractor or landscape contractor making the application.
- (h) Such other information as ~~the district~~Metro shall determine.

(Ordinance No. 88-248, Sec. 1. Amended by Ordinance No. 91-411, Sec. 9)

2.09.090 Validity of the License

(a) The license shall be valid from the date of issuance to the first day of the month in the following year; if issued after the middle of any month, the license shall be valid to the first day of the following month of that year. The license shall not be issued for a portion of a year.

(b) Before the expiration of the contractor's business license, ~~the district~~Metro shall notify the contractor or landscape contractor to whom the license was issued of the approaching expiration. Within 90 days prior to the expiration date, the notice shall be mailed to the contractor or landscape contractor to whom the license was issued at the address shown on the original application for the license maintained by ~~the district~~Metro.

(c) ~~The district~~Metro is not required to notify the contractor or landscape contractor of an approaching expiration if the contractor's or landscape contractor's license has been revoked under Section 2.09.130 of this chapter, or if the contractor or landscape contractor has failed to notify the ~~district~~Metro of a change of address.

(Ordinance No. 88-248, Sec. 1. Amended by Ordinance No. 91-411, Sec. 10)

2.09.100 Fee

The fee to be paid by any contractor or landscape contractor for a contractor's business license is \$135 and is non-refundable.

(Ordinance No. 88-248, Sec. 1. Amended by Ordinance No. 91-411, Sec. 11; Ordinance No. 99-817A, Sec. 2.)

2.09.110 License

Each contractor's business license issued under this chapter shall state upon its face the following:

- (a) The name of the licensee.
- (b) The address of the licensee.
- (c) A unique license number established by ~~the district~~Metro.
- (d) The date of issuance.
- (e) The date of expiration.
- (f) Such other information as ~~the district~~Metro shall determine.

(Ordinance No. 88-248, Sec. 1. Amended by Ordinance No. 91-411, Sec. 12)

2.09.120 Renewal

Each contractor or landscape contractor requesting renewal of a license must make application, as described in Section 2.09.070 of this chapter, to ~~the district~~Metro upon forms provided and prescribed by ~~the district~~Metro. The completed application for renewal of the contractor's business license shall be filed with the fee described in Section 2.09.100 of this chapter with ~~the district~~Metro before a renewal license is issued.

(Ordinance No. 88-248, Sec. 1. Amended by Ordinance No. 91-411, Sec. 14)

2.09.130 Revocation

(a) A license issued under this chapter may be revoked by ~~the district~~Metro, after notice, for any of the following reasons:

- (1) Fraud, misrepresentation or false statement contained in the application for the license.
- (2) Fraud, misrepresentation or false statement made in the course of carrying out the licensed activity.
- (3) Conducting the licensed activity in an unlawful manner or in such a manner as to constitute a menace to the health, safety or general welfare of the public.
- (4) Failure to comply with the ordinances and resolutions of a jurisdiction within the boundaries of ~~the district~~Metro in which the license holder is conducting business authorized by this license.

(b) Notice of revocation of a license shall be given in writing to the licensee setting forth the grounds of the complaint. Such notice shall be mailed by certified mail at least 10 working days before the date of revocation to the licensee at the address that appears on the application for the license being revoked. Revocation shall be effective 10 working days after notice of revocation.

(Ordinance No. 88-248, Sec. 1. Amended by Ordinance No. 91-411, Sec. 15)

2.09.140 Appeal of a Revoked License or Denied Application

Any contractor or landscape contractor aggrieved by the action of ~~the district~~Metro in denying an application for or revocation of a contractor's business license is entitled to appeal action under the provisions of Metro Code chapter 2.05.

(Ordinance No. 88-248, Sec. 1. Amended by Ordinance No. 91-411, Sec. 16)

2.09.150 Penalty

Any contractor or landscape contractor who fails to comply with or violates any provision of this chapter is subject to penalties under Section 1.01.110 of this Code. In the event that a provision of this chapter is

violated by a firm or corporation, the officer or contractor or landscape contractor responsible for the violation shall be subject to the penalty provided in Ssection 1.01.110 of this Code.

(Ordinance No. 88-248, Sec. 1. Amended by Ordinance No. 91-411, Sec. 17)

2.09.160 Distribution of Fees

The ~~district~~Metro shall distribute the contractor's business license fees collected by the ~~district~~Metro under this chapter to participating jurisdictions after the ~~district~~Metro has received reimbursement for administrative expenses incurred in carrying out the provisions of this chapter. At least once a year, each participating jurisdiction shall receive a share of the contractor's business license fees collected by the ~~district~~Metro based on a ratio of the number of residential building permits issued by each participating jurisdiction to the total number of residential building permits issued during that year by all participating jurisdictions.

(Ordinance No. 88-248, Sec. 1. Amended by Ordinance No. 91-411, Sec. 18)

2.09.170 Regulations

The Chief Operating Officer ~~executive officer~~ may establish such other contractor's business license regulations, not inconsistent with this chapter, as may be necessary and expedient.

(Ordinance No. 88-248, Sec. 1. Amended by Ordinance No. 91-411, Sec. 19)

Exhibit F
Metro Charter 2003 Amendments to Metro Code

CHAPTER 2.11

GOVERNMENT RELATIONS – REPEAL CHAPTER 2.11

SECTIONS — TITLE

2.11.010 — Legislative Representative

2.11.010 Legislative Representative

The legislative representative shall be appointed by the executive officer, and subject to confirmation by the council, shall have the following duties:

- (a) Responsibility for managing the district's state legislative program including:
- (1) Assembling the district's legislative program for review and approval by the council following a process established by the council;
 - (2) Ensure district representation before legislative committees with individual legislators both during a legislative session and in interim periods and with other interested persons;
 - (3) Development and implementation of a system to monitor and inform the council and executive officer of district-related legislation; and
 - (4) Preparation of a final legislative report analyzing district-related legislation.
 - (5) Responsibility for communicating district programs and policies to local, state and federal governmental officials, and task forces, commissions, and rule-making bodies.
 - (6) Responsibility to monitor and communicate to the council and executive officer programs and policies of other governments and special interest groups which affect or impact functions or activities of the district.

(d) The legislative representative of Metro shall not represent or advocate the position of any single Metro-elected official or group of elected officials. A legislative representative shall advocate only on matters which have been approved or adopted by the Metro council or any task force or committee authorized by the council to represent the council on legislative matters and which have been approved by the executive officer. For any matter in which the council or any task force or committee

~~authorized to represent the council on legislative matters and the executive officer disagree, a legislative representative shall not represent or advocate for either the Metro council or the executive officer.~~

~~(Ordinance No. 90-369, Sec. 1. Amended by Ordinance No. 95-591, Sec. 1)~~

Repeal 1

Exhibit G
Metro Charter 2003 Amendments to Metro Code

CHAPTER 2.12

OFFICE OF CITIZEN INVOLVEMENT

SECTIONS	TITLE
2.12.010	Creation and Purpose
2.12.020	Establishment of Metro Committee for Citizen Involvement (repealed Ord. 00-860A §2)
2.12.030	Approval of Bylaws (repealed Ord. 00-860A §2)

2.12.010 Creation and Purpose

There is hereby created an Office of Citizen Involvement consisting of such employees as the council may provide. The purpose of the office of citizen involvement is to develop and maintain programs and procedures to aid communication between citizens of Metro and the Metro Council and executive officer.

(Ordinance No. 93-479A, Sec. 2. Amended by Ordinance No. 98-755.)

Exhibit H
Metro Charter 2003 Amendments to Metro Code

CHAPTER 2.14

FACILITY-RELATED PARKING POLICY AND REGULATIONS

SECTIONS	TITLE
2.14.010	Purpose and Policy
2.14.020	Definitions
2.14.030	Parking Regulations

2.14.010 Purpose and Policy

The purpose of this chapter is to give policy direction as to the use and regulation of parking lots and structures at Metro regional facilities.

It is the policy of Metro to obtain maximum use of its regional facilities by assisting the public and Metro employees to gain access to, and use of those facilities, consistent with their planned use and with other region-wide Metro policies and objectives.

Parking is an integral part of the regional facility that enables the facility to fulfill its mission and objectives. The administration of parking lots and structures is carried out as part of the administration of the facility.

Parking lots and structures are for the use of the visitors to the facility, and Metro employees and staff assigned to the facilities. Metro may assist employees in gaining access to its regional facilities in a manner that promotes alternatives to the use of single occupancy motor vehicles.

Parking lots and structures may be operated in an entrepreneurial manner that generates revenues for Metro and its facilities.

Metro will work with appropriate local jurisdictions, to ensure that design and operation of its parking lots and structures is consistent with this parking policy.

(Ordinance No. 95-586. Amended by Ordinance No. 99-807A, Sec. 2.)

2.14.020 Definitions

For the purposes of this chapter unless the context requires otherwise the following terms shall have the meaning indicated:

(a) "Parking lot" means any Metro-owned or managed vehicle parking areas including but not limited to ~~the Metro-Washington Park~~ Oregon Zoo parking lot, the Oregon Convention Center parking lot, parking at the Metro Regional Center, Portland Metropolitan Exposition Expo-Center, facilities

managed by the Metro Regional Parks and Greenspaces Department, or any other Metro-owned or operated parking facility, whether currently owned or managed or which Metro acquires or assumes responsibility hereafter.

(b) "Premises" mean any property, buildings or grounds which are either owned by Metro or which are the responsibility of Metro to manage.

(Ordinance No. 95-586)

2.14.030 Parking Regulations

The following rules shall govern all vehicles operated within the area of any Metro parking lot or Metro premises:

(a) It shall be a violation of this Code for the driver of any motor vehicle or bus to violate any legend or direction contained in any sign, signal, or marking now installed or hereafter installed upon any portion of Metro premises or Metro parking lot areas. Drivers of all vehicles shall drive in a careful and safe manner at all times, and shall comply with the signals and directions of the police or security officers and all posted traffic signs. Blocking of entrances, driveways, walks, loading platforms, fire lanes, or fire hydrants is prohibited. Parking without authority, or parking in an unauthorized locations or in locations reserved for other persons or contrary to the directions of posted signs, is prohibited.

(b) Metro or Metro ERC security personnel designated by the Chief Operating Officer ~~executive officer~~ as serving as a Metro parking patrol shall have the authority and duty to issue parking citations in accordance with subsection (c) of this section for a violation specified by subsection (a) of this section. The Metro parking patrol shall have no other police authority. Persons appointed as Metro parking patrol shall be special police officers of Metro. As special police officers, the Metro parking patrol personnel shall have authority to issue citations for violations of parking or non-moving traffic violations occurring on Metro premises or Metro parking lots, and particularly they shall have authority to issue citations. To the extent of the power and authority granted in this section, such personnel shall exercise full police power and authority.

(c) Parking Citations

(1) Form of citations. All parking citation forms used by the Metro parking patrol shall be in a form approved by the Metro Attorney general counsel of Metro and as issued by the District-Circuit Court for the State of Oregon for Multnomah County. Such parking citations shall, at a minimum, clearly state:

- (A) The date, place, and nature of the charge;
- (B) Time and place for the defendant's appearance in court;
- (C) Name of the issuing officer;
- (D) License number of the vehicle.

- (2) Procedure for issuing citations. Any citation form issued pursuant to this Code section shall either be delivered to the defendant or placed in a conspicuous place upon the vehicle involved in the violation. A duplicate original of the notice shall serve as the complaint in the case when it is filed with the court. In all other aspects, the procedure now provided by law in such cases shall be followed, but ORS 810.365 does not apply. The officer need not have observed the act of parking, but need only observe that the car was parked in violation of Metro Code.
- (3) Use of parking citation as complaint. The original of the traffic citation form when completed to meet the minimum requirements of ORS 221.340 may serve as a complaint, other forms of parking complaints are prohibited.
- (4) Citation form books issued by district circuit court. Citation form books for parking violations shall be provided by the ~~district~~circuit court and upon request distributed to the Metro parking patrol officers who issue them.
- (5) List of parking citations. A list of the parking citations issued by Metro parking patrol officers shall be forwarded to the ~~district~~ circuit court within 24 hours.

(d) Person Responsible for Violation Charged by the Citation. The registered owner of the vehicle is prima facie responsible for the violation charged by the citation.

(Ordinance No. 95-586)

Exhibit I
Metro Charter 2003 Amendments to Metro Code

CHAPTER 2.15

METRO AUDITOR

SECTIONS	TITLE
2.15.010	Independence
2.15.020	Funding
2.15.030	Audit Schedule
2.15.040	Scope of Audits
2.15.050	Access to Records and Property
2.15.060	Audit Reports
2.15.070	Responses to Audit Reports
2.15.080	External Audits
2.15.090	Report of Irregularities

2.15.010 Independence

The Office of Auditor is an elected position defined by the 1992 Metro Charter with specific duties including the requirement to make continuous investigations of the operations of Metro. These investigations include financial and performance audits. The Auditor is required to make reports to the Metro Council and ~~executive officer~~ with recommendations for action.

The Office of Auditor consists of the Metro Auditor and such subordinate employees as the Council may provide. The Auditor has neither a management nor a policy role, rather the Auditor provides independent and objective information about Metro programs and services. The functions of the Auditor include financial as well as performance audits of all departments, offices, commissions, activities and operations of Metro and reports regarding compliance with adopted laws, policies and sound fiscal practices.

The Office of Auditor will adhere to government auditing standards in conducting its work and will be considered independent as defined by those standards. The Auditor will strive to assure maximum coordination between its function and the audit needs of Metro including the Council and Chief Operating Officer~~executive officer~~.

(Ordinance No. 95-610A, Sec. 1)

2.15.020 Funding

In each annual budget sufficient funds and personnel shall be provided by the Metro Council to carry out the responsibilities specified herein.

(Ordinance No. 95-610A, Sec. 1)

2.15.030 Audit Schedule

Each year the Aauditor shall submit an annual plan to the Metro Council for review and comment. The plan shall include the departments, commissions, activities, functions and offices scheduled for audit during the year. This plan may be amended during the year as deemed necessary by the Aauditor. However, additional resources not authorized in the annual budget may not be utilized without Council approval. Additionally, the Aauditor may spontaneously initiate and conduct any other audit deemed necessary to undertake with notification to the Council prior to conducting the audit.

In the selection of audit areas, the determination of audit scope and timing of audit work, the Aauditor should consult with federal, state, local jurisdiction auditors, and independent auditors so the desirable audit coverage is provided and audit effort may be properly coordinated.

The Metro Council ~~and executive officer~~ may request that the Aauditor perform special audits that are not included in the annual audit schedule. Such audits will be considered by the Aauditor taking into account available resources and audit priorities. The final decision regarding the audit schedule shall remain with the Aauditor.

Special audit reports will be handled the same as regular audit reports, except that in personnel matters of a confidential nature, reporting on results may be limited to the Chief Operating Officer ~~executive officer~~ and the Council President ~~presiding officer of Metro~~.

(Ordinance No. 95-610A, Sec. 1)

2.15.040 Scope of Audits

(a) The Aauditor shall conduct financial and performance audits to independently determine whether:

- (1) Activities and programs being implemented have been authorized by Metro Charter or Code, state law or applicable federal law regulations;
- (2) Activities and programs are being conducted as prescribed by the Council and ~~executive officer~~ to accomplish the objectives intended by the Metro Charter or Code, state law or applicable federal law or regulations;
- (3) Activities or programs efficiently and effectively serve the purpose intended by the Metro Charter, Code, state law or applicable federal law or regulations;
- (4) Activities and programs are being conducted and funds expended in compliance with applicable laws;
- (5) Revenues are being properly collected, deposited and accounted for;
- (6) Resources, including funds, property and personnel, are adequately safeguarded, controlled and used in a faithful, effective and efficient manner;

- (7) Financial and other reports are being provided that disclose fairly and fully all information that is required by law, that is necessary to ascertain the nature and scope of programs and activities and that is necessary to establish a proper basis for evaluating the programs and activities;
- (8) There are adequate operating and administrative procedures and practices, systems or accounting internal control systems and internal management controls which have been established by management; or
- (9) There are indications of fraud, abuse or illegal acts which need further investigation.

(b) Audits shall be conducted in accordance with government auditing standards applicable to financial and performance audits.

(Ordinance No. 95-610A, Sec. 1)

2.15.050 Access to Records and Property

All officers and employees of Metro shall furnish the Aauditor with requested information and records within their custody regarding powers, duties, activities, organization, property, financial transactions and method of business required to conduct an audit or otherwise perform audit duties. In addition, they shall provide access for the Aauditor to inspect all property, equipment and facilities within their custody. If such officers or employees fail to produce the aforementioned information, then the Aauditor may cause a search to be made and exhibits to be taken from any book, paper or record of any such official or employee, excepting personal information, and every office having the custody of such records shall make a search and forward such requested exhibits to the Aauditor.

(Ordinance No. 95-610A, Sec. 1)

2.15.060 Audit Reports

Each audit conducted by the Aauditor shall result in a written report. These final audit reports shall be made available to the public. The final audit report will include the written responses of the audited entity before it is released to the public. The Aauditor shall provide the final report to the Council President ~~presiding officer and the executive officer~~ prior to releasing the report to the public.

(Ordinance No. 95-610A, Sec. 1)

2.15.070 Responses to Audit Reports

The Aauditor shall furnish a final draft of each audit report to the audited entity for review and comment before it is released. The head of the audited entity may respond in writing to the Aauditor's recommendations within 10 working days, or at the Aauditor's discretion, a longer time frame may be specified. If a timely response is not received the Aauditor shall so note at the time the report is released. The response must specify agreement with the audit findings and recommendations, or reasons for disagreement, as well as proposed plans for implementing solutions to identified problems and a proposed timetable to complete such activities.

(Ordinance No. 95-610A, Sec. 1)

2.15.080 External Audits

Subject to the requirements of the Metro Code pertaining to contracts, the Auditor shall appoint external certified public accountants to conduct certified financial statement audits, as specified by state or local law. The Auditor shall coordinate and monitor the conduct of and the responses to external financial statement audits. The Auditor shall work toward the elimination of duplicative audit work through cooperation with state, federal and external auditors. The Auditor may also, within budgeted appropriations, contract with other professionals to assist in the performance of the audit function. The Auditor will coordinate and monitor audit related assistance provided by such professionals.

(Ordinance No. 95-610A, Sec. 1)

2.15.090 Report of Irregularities

If the Auditor detects apparent violations of law or apparent instances of malfeasance or nonfeasance by an officer or employee or information that indicates derelictions may be reasonably anticipated, the Auditor shall report the irregularities to the Council President ~~presiding officer~~ of the Metro Council and the Chief Operating Officer ~~executive officer~~. If the irregularity is potentially criminal in nature, the Auditor shall notify the district attorney, when appropriate, in addition to those previously cited.

(Ordinance No. 95-610A, Sec. 1)

Exhibit J
Metro Charter 2003 Amendments to Metro Code

CHAPTER 2.16

NAMING OF FACILITIES

SECTIONS	TITLE
2.16.010	Statement of Purpose
2.16.020	Policy for Naming of Facilities
2.16.030	Facility Names

2.16.010 Statement of Purpose

This chapter is established to provide a policy for the naming of facilities owned or operated by Metro. This policy includes facilities that are operated by a Metro department, commission, or other entity which has responsibility for facility operations.

(Ordinance No. 94-576A, Sec. 1.)

2.16.020 Policy for Naming of Facilities

(a) Facilities owned by Metro shall be named through adoption of an ordinance by the Metro Council. Such an ordinance shall state the name and address of the facility, which shall be included in this chapter. For purposes of this section, a "facility" shall be a building, which may contain one or more rooms, theaters, halls, offices, exhibits, etc., a group of buildings under common management with a shared mission, or a zoo, park, open space, trail, cemetery, golf course, boat ramp, or other outdoor area owned by Metro.

(b) The principal purpose of the name of a facility shall be to identify the facility's function and purpose. When the Council deems it to be practicable and advisable, the name may also reflect the facility's ownership, location, source or sources of funding for its construction, or the contribution of effort made by a person or persons toward its construction, acquisition, or operation.

(c) A Metro facility may be named after any living person who has not held elective office in Oregon. In the event Metro acquires ownership of a facility that was named after a living person by the facility's former owner, the facility shall continue to bear that name.

(d) A Metro facility may be named for a deceased person in recognition of the person's significant contribution of effort or money in support of the facility or its construction or mission, in conformance with an adopted policy of the Metro Council.

(e) Individual parts of a facility, including but not limited to theaters, exhibits, ballrooms, meeting rooms, halls, lobbies, and equipment, may be named after a person or persons, living or deceased, by adoption of a resolution by the Metro Council ~~or relevant operating commission; provided,~~

however, that such a resolution adopted by a commission shall be subject to review by the Metro council as stipulated in the Metro Code.

(f) Facilities which Metro operates but does not own may not be named or re-named by Metro or a Metro commission. The owner(s) of such facilities shall retain authority for their naming or re-naming.

(Ordinance No. 94-576A, Sec. 1.)

2.16.030 Facility Names

(a) The following are the names and addresses of the facilities owned by Metro:

- ~~_____ Oregon Convention Center, 777 NE Martin Luther King Blvd., Portland, Oregon~~
- Metro Central Transfer Station, 6161 NW 61st Avenue, Portland, Oregon
- Metro Regional Center, 600 NE Grand Avenue, Portland, Oregon
- Metro South Transfer Station, 2001 Washington St., Oregon City, Oregon
- ~~_____ Oregon Convention Center, 777 NE Martin Luther King Blvd., Portland, Oregon~~
- Oregon Zoo, 4001 SW Canyon Rd., Portland, Oregon
- ~~_____ Portland Metropolitan Exposition Center, 2060 N. Marine Drive, Portland, Oregon~~

(Ordinance No. 94-576A, Sec. 1. Amended by Ordinance No. 98-726, Sec. 2.)

Exhibit K
Metro Charter 2003 Amendments to Metro Code

CHAPTER 2.17

**CODE OF ETHICS FOR METRO OFFICIALS
AND REQUIREMENTS FOR LOBBYISTS**

SECTIONS	TITLE
2.17.010	Purpose and Policy
2.17.020	Definitions
2.17.030	Giving and Receiving Gifts Prohibited by Lobbyists Registered with Metro
2.17.040	Whistleblowing
2.17.050	Financial Reporting Requirements
2.17.060	Restrictions on Meals and Entertainment
2.17.070	Reimbursement for Attendance at Events
2.17.090	Prohibition Against Doing Business With Metro Officials.
2.17.110	Registration of Lobbyists
2.17.120	Exemptions to Lobbyist Registration Requirements
2.17.130	Statements of Lobbying Expenses
2.17.140	Employers of Lobbyists Expense Statements
2.17.150	Verification of Reports, Registrations and Statements
2.17.160	Public Nature of Reports, Registrations and Statements
2.17.170	Sanctions for Violations
2.17.180	Pending Enforcement by Oregon Government Standards and Practices Commission

2.17.010 Purpose and Policy

(a) The Metro Council hereby declares that the purpose of this Chapter is to ensure that Metro serves the public and informs the public fully concerning its decision making. In accordance with such purposes, this Chapter establishes a Code of Ethics for Metro and requirements for lobbyists appearing before Metro.

(b) In adopting this Chapter, the Metro Council intends:

- (1) To be consistent with and to add to current public policy established by the Oregon Legislative Assembly;
- (2) To require Metro officials to operate under high ethical standards;
- (3) To require Metro officials to treat their offices and positions as a public trust whose powers and resources are to be used for the benefit of the public and not for any personal benefit; and

- (4) To require individuals and entities appearing before Metro to identify themselves and the interests they represent.

(c) It is the policy of Metro that all Metro officials and employees strictly comply with the Code of Ethics contained in ORS 244.040.

(Ordinance No. 99-795B, Sec. 1.)

2.17.020 Definitions

For the purposes of this Chapter, unless the context requires otherwise, the following terms shall have the meaning indicated:

(a) "Business" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for economic gain.

(b) "Business with which the Metro official is associated" means any business of which the person or the person's relative is a director, officer, owner or employee, or agent or any corporation in which the person or the person's relative owns or has owned stock worth \$1,000 or more at any point in the preceding calendar year, but excluding any income-producing not-for-profit corporation that is tax exempt under Section 501(c) of the Internal Revenue Code with which a public official is associated in a nonremunerative capacity.

(c) "Consideration" includes a gift, payment, distribution, loan, advance or deposit of money or anything of value, and includes a contract, promise or agreement, whether or not legally enforceable.

(d) "Department ~~D~~director" means any person employed by Metro in a position on a permanent basis which authority is to administer a department of Metro as designated by the Chief Operating Officer ~~is subject to appointment by the executive officer and confirmation by the Metro council.~~

(e) "Doing business" means entering into a direct contractual relationship with a business with which the Metro official is associated.

(f) "Elected official" means any person elected or appointed as a member of the Metro ~~C~~council, ~~the executive officer,~~ or the Aauditor.

(g) "Employer of a lobbyist" means the individual or entity required to grant official authorization to a lobbyist to lobby on their behalf pursuant to Section 2.17.110(a)(2).

(h) "Ethics" means positive principles of conduct, some of which are also enforced by federal, state or other local law.

(i) "Exercise of official authority" means: Metro elected officials and the Chief Operating Officer and Metro Attorney General Counsel have authority to exercise official responsibility over any Metro matter. Appointed commissioners have authority over any matter over which the relevant commission has jurisdiction. Department Directors have authority over any matter related to the

department they administer. Metro employees have authority over matters as assigned to them by their supervisors.

(j) "Gift" means "Gift" as defined in ORS 244.020(8). However, for the purpose of this chapter, "Gift" does not include plaques, momentos or similar items with little or no intrinsic value.

(k) "Legislative action" means introduction, sponsorship, testimony, debate, voting or any other official action on any ordinance, resolution, amendment, nomination, appointment or report, or any matter which may be the subject of action by the Metro Council or any committee thereof.

(l) "Legislative or administrative interest" means an economic interest, distinct from that of the general public, in one or more ordinances, resolutions, regulations, proposals or other matters subject to the action or vote of a Metro official or Metro employee.

(m) "Lobbying" means influencing, or attempting to influence, legislative action through oral or written communication with Metro officials, solicitation of others to influence or attempt to influence legislative action or attempting to obtain the good will of Metro Councilors.

(n) "Lobbyist" means: (i) Any individual who agrees to provide personal services for money or any other consideration for the purpose of lobbying; and (ii) Any employee of a business, not-for-profit corporation, association, organization or other group, who engages in lobbying.

(o) "Metro" means all of Metro including any department or branch of Metro including any Metro commission.

(p) "Metro commissioner" means any person appointed to a position on the Metropolitan Exposition Recreation Commission.

(q) "Metro facilities" means meeting rooms, meeting areas or other Metro property generally available to the public.

(r) "Metro official" means any Department Director, elected official or Metro commissioner.

(s) "Person" means any individual, business, association, corporation, organization or other group.

(t) "Public agency" means any governmental body, including but not limited to the Federal Government, the State of Oregon, any other state of the United States of America, or any public agency or municipal corporation thereof.

(u) "Public official" means any member or member-elect of any public agency and any member of the staff or an employee thereof.

(v) "Whistleblowing" means disclosing information pursuant to the protective provision of The Oregon Whistleblower Law (renumbered in 2001: ORS 659A.200 through 659A.224) (ORS-659.505)

through 659.545). In addition, whistleblowing shall include disclosing information regarding the violation of any provision of the Metro Charter or Metro Code.

(Ordinance No. 99-795B, Sec. 1.)

2.17.030 Giving and Receiving Gifts Prohibited by Lobbyists Registered with Metro

(a) All Metro officials, lobbyists and employers of lobbyists registered with Metro shall comply strictly with the following requirements:

- (1) No Metro official shall solicit or receive, whether directly or indirectly, a gift from any lobbyist or employer of a lobbyist registered with Metro.
- (2) No lobbyist or employer of a lobbyist registered with Metro shall offer any gift to any Metro official or Metro employee.

(Ordinance No. 99-795B, Sec. 1.)

2.17.040 Whistleblowing

(a) The Council specifically recognizes the provisions of The Oregon Whistleblower Whistleblowing Law (ORS 659A.200 through 659A.224)(~~ORS 659.505 through ORS 659.545~~). The Council directs the Chief Operating Officer~~Executive Officer~~, pursuant to ORS 659A.221~~659.540~~, to establish for Metro the specific regulations and procedures to implement the Oregon Whistleblower Whistleblowing Law.

(b) Metro officials shall recognize whistle-blowing as appropriate. However, this provision shall not preclude taking disciplinary action against any Metro employee when it is appropriate to do so for independent reasons.

(Ordinance No. 99-795B, Sec. 1.)

2.17.050 Financial Reporting Requirements

(a) Elected officials shall comply with the reporting requirements established by ORS 244.060, including the filing of a Statement of Economic Interest on an annual basis as required by state law. A copy of the Statement of Economic Interest shall be filed with the Council Clerk at the time of filing with the appropriate state agency.

(b) All Department Directors and Metro commissioners shall file annually with the Council Clerk a Statement of Economic Interest which is substantially consistent with that required by ORS 244.060.

(c) In addition, the Statement of Economic Interest shall disclose the ownership of any real property outside the Metro boundary and within Multnomah, Clackamas or Washington County.

(Ordinance No. 99-795B, Sec. 1.)

2.17.060 Restrictions on Meals and Entertainment

(a) No Metro official shall solicit or receive entertainment from any lobbyist or employer of a lobbyist registered with Metro.

(b) No lobbyist or employer of a lobbyist registered with Metro shall furnish to a Metro official admission to entertainment.

(c) Metro officials shall not solicit or receive meals from any lobbyist or employer of a lobbyist registered with Metro if the cost of the meal exceeds the amount allowed by the United States Internal Revenue Service as a deductible business travel expense.

(d) No lobbyist or employer of a lobbyist registered with Metro shall furnish a Metro official meals if the cost of the meal exceeds the amount allowed by the United States Internal Revenue Service as a deductible business travel expense.

(e) However, subject to the limits of ORS Chapter 244, Metro officials may attend fundraising events benefiting non-profit tax exempt entities as guests of lobbyists or employers of lobbyists registered with Metro. Lobbyists or employers of lobbyists registered with Metro may pay the cost of Metro officials attending such fundraising events.

(Ordinance No. 99-795B, Sec. 1.)

2.17.070 Reimbursement for Attendance at Events

Metro officials may not accept food, lodging and travel from any person with a legislative or administrative interest in Metro when participating in an event which bears a relationship to the Metro officials' office when appearing in their official capacities unless the cost of the food, lodging, or travel would have been eligible for payment as a Metro expense and the incurrence of the expense with Metro funds has been approved prior to the event by the appropriate authority.

(Ordinance No. 99-795B, Sec. 1.)

2.17.090 Prohibition Against Doing Business With Metro Officials

(a) Except as provided for in subsections (b) and (c), Metro may not do business with any Metro official while the official is in office or within one year after the Metro official ceases to be a Metro official if the official had authority to exercise official responsibility in the matter. Any contract entered into in violation of this provision is void.

(b) Upon the request of the Chief Operating Officer ~~executive officer~~ or a Metro commission, the Council may waive the effect of the prohibition contained in subsection (a) upon making written findings that:

(1) It is in the best interests of Metro to do business with the Metro official.

- (2) The Metro official took no action while in office that directly related to the preparation of the terms and conditions in the contract documents that may give an appearance of impropriety or favoritism.
- (3) Other factors exist which are explicitly found by the Ceouncil to benefit Metro that outweigh the policy considerations of ensuring that no appearance of favoritism exists in the award of Metro contracts.

(c) This section applies only to Metro officials who first take office or are re-elected or re-appointed to an office after September 7, 1995. This section shall not be construed to permit any activity that is otherwise prohibited by any other statute, rule, ordinance, or other law.

(Ordinance No. 99-795B, Sec. 1.)

2.17.110 Registration of Lobbyists

(a) Within three (3) working days after exceeding the limit of time specified in Code Section 2.17.120(a)(5), each lobbyist shall register with the Oregon Government Standards and Practices Commission by filing with the Commission and Council a statement containing the following information:

- (1) The name and address of the lobbyist.
- (2) The name and address of each person or agency by whom the lobbyist is employed or in whose interest the lobbyist appears or works, a description of the trade, business, profession or area of endeavor of that person or agency, and a designation by each such person or agency that the lobbyist is officially authorized to lobby for that person or agency.
- (3) The name of any member of the Metro Council who is in any way employed by the lobbyist employer designated in paragraph (b) of this subsection or who is employed by the lobbyist or whether the lobbyist and member are associated with the same business. Ownership of stock in a publicly traded corporation in which a member of the Metro Council also owns stock is not a relationship which need be stated.
- (4) The general subject or subjects of the legislative interest of the lobbyist.

(b) The designation of official authorization to lobby shall be signed by an officer of each such corporation, association, organization or other group or by each individual by whom the lobbyist is employed or in whose interest the lobbyist appears or works.

(c) A lobbyist must revise the statements required by subsection (a) of this section, if any of the information contained therein changes within 30 days of the change.

(d) A lobbyist registration expires one year after the date of filing or refiling.

(Ordinance No. 99-795B, Sec. 1.)

2.17.120 Exemptions to Lobbyist Registration Requirements

(a) The requirements of Code Section 2.17.110 through Code Section 217.140 do not apply to the following:

- (1) News media or their employees or agents, who in the ordinary course of business publish or broadcast news items, editorials or other comments or paid advertisements which directly or indirectly urge legislative action if such persons engage in no other activities in connection with such legislative action.
- (2) Any Metro oOfficial acting in an official capacity.
- (3) Public oOfficials acting in their official capacity as a member or employee of a public agency.
- (4) Any individual who receives no additional consideration for lobbying and who limits lobbying activities solely to formal appearances to give testimony before Metro Council or any of its committees, and who, if the individual testifies, registers an appearance in the records of the Council or its committees.
- (5) Any person who spends not more than five (5) hours during any calendar quarter lobbying, excluding travel time.

(Ordinance No. 99-795B, Sec. 1.)

2.17.130 Statements of Lobbying Expenses

(a) Any lobbyist who engages in any lobbying activities shall file with the Oregon Standards and Practices Commission and the Council on January 31 of each year a statement showing:

- (1) The name of any Metro official who attended a fund raising event for a non-profit tax exempt entity as a guest of the lobbyist including the date, name of the non-profit entity and amount of that expenditure.

(Ordinance No. 99-795B, Sec. 1.)

2.17.140 Employers of Lobbyists Expense Statements

(a) Any person which employs a lobbyist who was registered, or who was required to register with the Oregon Standard and Practices Commission shall file with the Commission and the Council by January 31, a statement showing, for the preceding calendar year:

- (1) The name of any Metro official who attended a fund raising event for a non-profit tax exempt entity as a guest of the employer of a lobbyist, but not including

information previously reported in compliance with Section 2.17.130 and the date, name of the non-profit entity and amount of expenditure.

(Ordinance No. 99-795B, Sec. 1.)

2.17.150 Verification of Reports, Registrations and Statements

(a) Each report, registration or statement required by this Chapter shall contain or be verified by a written declaration that it is made under the penalties of false swearing.

(b) No person shall willfully make and subscribe any document which contains or is verified by a written declaration for false swearing which the person does not believe to be true and correct to every matter.

(Ordinance No. 99-795B, Sec. 1.)

2.17.160 Public Nature of Reports, Registrations and Statements

All information submitted to the Oregon Government Standards and Practices Commission or Council in any report, registration or statement required by this Chapter is a public record.

(Ordinance No. 99-795B, Sec. 1.)

2.17.170 Sanctions for Violations

Pending the Oregon Government Standards and Practices Commission obtaining jurisdiction to enforce this chapter, and notwithstanding any other provision of the Metro Code, a person who violates any provision of this Chapter or fails to file any report, registration or statement or to furnish any information required by this Chapter shall be subject to a civil penalty in an amount not greater than \$500. When authorized by law the Commission shall require that any person who violates any provision of this Chapter is subject to the provisions of ORS 171.990 and ORS 171.992.

However no Metro official shall be subject to any sanction for a violation of this chapter that resulted from the receipt of any gift, meal, or entertainment from any person who is not currently registered with Metro as a lobbyist or is not designated on a lobbyist's registration as the employer of a lobbyist.

(Ordinance No. 99-795B, Sec. 1.)

2.17.180 Pending Enforcement by Oregon Government Standards and Practices Commission

Prior to the Oregon Government Standards and Practices Commission becoming the administrative and enforcement authority for the provisions of this Chapter pursuant to an intergovernmental agreement or action of the Oregon Legislative as appropriate, all reports and registrations required by this Chapter shall be filed solely with the Council.

(Ordinance No. 99-795B, Sec. 1.)

Exhibit L
Metro Charter 2003 Amendments to Metro Code

CHAPTER 2.18

CAMPAIGN FINANCE REGULATION

SECTIONS	TITLE
2.18.010	Purpose and Intent
2.18.020	Definitions
2.18.030	Additional Campaign Finance Reporting Requirements
2.18.040	Public Dissemination of Campaign Finance Reports

2.18.010 Purpose and Intent

The purpose and intent of this chapter is to provide additional campaign finance reporting disclosure to the public that is consistent with the current campaign finance disclosure requirements in Oregon and federal laws. It is the intent of this chapter that it be construed as being a supplement to existing campaign finance regulations.

(Ordinance No. 00-849A, Sec. 1.)

2.18.020 Definitions

As used in this chapter, the following terms shall have the following meanings. Any word not specifically defined herein shall have the meaning defined in ORS 260.005.

- (a) "Candidate" means a candidate for a Metro elected office.
- (b) "Legislative or administrative interest" has the meaning defined in ORS 244.020.
- (c) "Metro Elected Official" means any person elected or appointed as a member of the Metro Council, ~~the Metro Executive Officer and the Metro Auditor.~~
- (d) "Metro Elected Office" means the seven (7) Metro Council positions, ~~the Metro Executive Officer and the Metro Auditor.~~

(Ordinance No. 00-849A, Sec. 1.)

2.18.030 Additional Campaign Finance Reporting Requirements

(a) Every Candidate and every Metro Elected Official who is a candidate for any public office shall file with the Metro Council Clerk an original copy of any campaign finance report required to be filed pursuant to ORS 260 or any applicable federal law. Such campaign finance reports shall include

all required reports of contributions and expenditures. The report shall be delivered to the Clerk within two (2) days after it is filed with the filing officer provided for under Oregon or federal law.

(b) In addition to the reports required by subsection (a) above, every Candidate and every Metro Elected Official who is a candidate for any public office shall file reports with the Metro Council Clerk disclosing all contributions required to be reported under Oregon or federal law no less frequently than every 90 days. The first report shall be filed with the Metro Council Clerk no later than 90 days after the date the Metro Elected Official declares their candidacy or first organizes a political committee.

(c) Prior to taking any action or voting on any matter in which any person who has a legislative or administrative interest has made a campaign contribution of \$500 or more in the aggregate to the Metro Elected Official, the Metro Elected Official shall disclose the existence of the contribution on the public record, if the contribution has not been previously reported on any financial report required to be filed with the Metro Council Clerk pursuant to (a) or (b) above.

(d) A Metro Councilor shall make the disclosure of such contributions on the record required by (c) above immediately prior to voting or abstaining from voting on the matter. The ~~Metro Executive Officer and~~ Metro Auditor shall disclose such contributions by filing a written notice with the Metro Council Clerk or the Council prior to taking action on any such matter. In all cases, the disclosure shall include the name of the donor, the amount of the contribution and the nature of the donor's legislative or administrative interest in Metro.

(Ordinance No. 00-849A, Sec. 1.)

2.18.040 Public Dissemination of Campaign Finance Reports

The Metro Council Clerk shall maintain a file of all campaign finance reports received and shall provide public access to the file at no charge. The Metro Council Clerk shall also provide such access by including the reports on Metro's world-wide web information "page."

(Ordinance No. 00-849A, Sec. 1.)

STAFF REPORT

IN CONSIDERATION OF

- ORDINANCE NO. 02-967 FOR THE PURPOSE OF AMENDING TITLE II ADMINISTRATION AND PROCEDURES (CHAPTERS 2.03, 2.05, 2.07, 2.09, 2.11, 2.12, 2.14, 2.15, 2.16, 2.17, AND 2.18), OF THE METRO CODE TO CONFORM TO THE METRO CHARTER AMENDMENTS ADOPTED ON NOVEMBER 7, 2000, AND DECLARING AN EMERGENCY
- ORDINANCE 02-972 FOR THE PURPOSE OF AMENDING TITLE III PLANNING OF THE METRO CODE (CHAPTER 3.01 THROUGH CHAPTER 3.09), TO CONFORM TO THE METRO CHARTER AMENDMENTS ADOPTED ON NOVEMBER 7, 2000, AND DECLARING AN EMERGENCY
- ORDINANCE 02-973, FOR THE PURPOSE OF AMENDING TITLE IV OREGON ZOO OF THE METRO CODE (CHAPTER 4.01), TO CONFORM TO THE METRO CHARTER AMENDMENTS ADOPTED ON NOVEMBER 7, 2000, AND DECLARING AN EMERGENCY
- ORDINANCE 02-975, FOR THE PURPOSE OF AMENDING TITLE VI COMMISSIONS OF THE METRO CODE (CHAPTER 6.01), TO CONFORM TO THE METRO CHARTER AMENDMENTS ADOPTED ON NOVEMBER 7, 2000, AND DECLARING AN EMERGENCY
- ORDINANCE 02-977, FOR THE PURPOSE OF AMENDING TITLE IX ELECTIONS OF THE METRO CODE (CHAPTER 9.01 AND CHAPTER 9.02), TO CONFORM TO THE METRO CHARTER AMENDMENTS ADOPTED ON NOVEMBER 7, 2000, AND DECLARING AN EMERGENCY
- ORDINANCE 02-978, FOR THE PURPOSE OF AMENDING TITLE X METRO REGIONAL PARKS AND GREENSPACES OF THE METRO CODE (CHAPTER 10.01 THROUGH CHAPTER 10.03), TO CONFORM TO THE METRO CHARTER AMENDMENTS ADOPTED ON NOVEMBER 7, 2000, AND DECLARING AN EMERGENCY

Date: October 10, 2002

Prepared by: Peggy Coats

BACKGROUND

As a result of the passage by the voters of Ballot Measure 26-10 on November 7, 2000, various changes to Metro's existing code are in order to conform to the approved amendments to Metro's charter. The changes proposed in these ordinances to primarily remove references to the Executive Officer and Presiding Officer, whose offices will be abolished effective January 6, 2003; and create references to the Council President and the Chief Operating Officer, consistent with code amendments adopted by Council earlier this year (see "Legal Antecedents" below), along with minor grammatical and formatting corrections. The proposed ordinances make changes to the following code sections:

- Title II, Administration and Procedures (Chapters 2.03, 2.05, 2.07, 2.09, 2.11, 2.12, 2.14, 2.15, 2.16, 2.17, and 2.18)
- Title III Planning (Chapters 3.01 through 3.09)

- Title IV Oregon Zoo (Chapter 4.01)
- Title VI Commissions (Chapter 6.01)
- Title IX Elections (Chapters 9.01 and 9.02)
- Title X Metro Regional Parks and Greenspaces (Chapters 10.01 through 10.03)

ANALYSIS/INFORMATION

1. **Known Opposition** None
2. **Legal Antecedents** Resolution 00-2929A "For the Purpose of Submitting to the Voters an Amendment to the Metro Charter Abolishing the Office of Executive Officer, Creating the Office of Council President, and Making Related Changes"; Ordinance 02-942A "For the Purpose of Adding a New Chapter 2.20 to the Metro Code Creating the Office of Chief Operating Officer"; Ordinance 02-953A "For the Purpose of Creating the Office of Metro Attorney"; Ordinance 02-954A "For the Purpose of Reflecting the Creation of the Office of Metro Council President"; and Ordinance 02-955A "For the Purpose of Amending Chapter 2.19 of the Metro Code to Conform to Charter Amendments Adopted on November 7, 2000".
3. **Anticipated Effects** This ordinance will amend Chapters 2.03, 2.05, 2.06, 2.07, 2.09, 2.11, 2.12, 2.14, 2.15, 2.16, 2.17, 2.18, 3.01 through 3.09, 4.01, 6.01, 9.01, 9.02, and 10.01 through 10.03) of the Metro Code to conform to approved Charter amendments.
4. **Budget Impacts** None

RECOMMENDED ACTION

That Council approve adoption of Ordinances 02-967, 02-972, 02-973, 02-975, 02-977 and 02-978.

Agenda Item Number 5.3

Ordinance No. 02-972, For the Purpose of Amending Title III Planning of the Metro Code (Chapter 3.01 through Chapter 3.09), to Conform to the Metro Charter Amendments Adopted on November 7, 2000, and Declaring an Emergency.

Second Reading

Metro Council Meeting
Thursday, November 21, 2002
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING TITLE III) ORDINANCE NO. 02-972
PLANNING OF THE METRO CODE (CHAPTER 3.01)
through CHAPTER 3.09), TO CONFORM TO THE METRO)
CHARTER AMENDMENTS ADOPTED ON NOVEMBER 7,) Introduced by the Council
2000, AND DECLARING AN EMERGENCY) Governmental Affairs Committee

WHEREAS, on November 7, 2000, the electors of Metro approved Ballot Measure 26-10 amending the Metro Charter; and

WHEREAS, the Metro Charter Amendments, created the Office of Council President and abolished the Office of the Executive Officer; and

WHEREAS, the Metro Council amended Metro Code Chapter 2.01 to reflect the creation of the office of Metro Council President pursuant to Ordinance No. 02-954A on June 27, 2002; and

WHEREAS, the Metro Charter Amendments required the Metro Council to create the Office of the Chief Operating Officer; and

WHEREAS, the Metro Charter Amendments, added Metro Code Chapter 2.20 to create the office of Chief Operating Officer and to define the duties and responsibilities of the Chief Operating Officer, pursuant to Ordinance No. 02-942A on June 27, 2002; and

WHEREAS, the Metro Charter Amendments required the Council to create the Office of the Metro Attorney; and

WHEREAS, the Metro Council amended Chapter 2.08 of the Metro Code to create the office of the Metro Attorney and to define the duties and responsibilities of the Metro Attorney, pursuant to Ordinance No. 02-953A on June 27, 2002; and

WHEREAS, it is necessary to amend the following Chapters of Title III Planning of the Metro Code to conform to the Metro Charter Amendments adopted on November 7, 2000:

Exhibit	Chapter	Title III Planning
A	3.01	Urban Growth Boundary and Urban Reserve Procedures
B	3.02	Waste Water Management Plan
C	3.03	Housing Goals & Objectives
D	3.04	Regional Stormwater Management Plan
E	3.06	Planning Procedure for Designating Functional Planning Areas and Activities
F	3.07	Urban Growth Management Functional Plan
G	3.09	Local Government Boundary Changes

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The Metro Code Chapters are amended as provided for and are attached as follows:

Exhibit	Chapter	Title III Planning
A	3.01	Urban Growth Boundary and Urban Reserve Procedures
B	3.02	Waste Water Management Plan
C	3.03	Housing Goals & Objectives [Repealed]
D	3.04	Regional Stormwater Management Plan [Repealed]
E	3.06	Planning Procedure for Designating Functional Planning Areas and Activities
F	3.07	Urban Growth Management Functional Plan
G	3.09	Local Government Boundary Changes

2. The Metro Charter Amendments to Title III Planning of the Metro Code adopted by this ordinance shall take effect on January 6, 2003.

ADOPTED by the Metro Council this _____ day of _____ 2002.

Carl Hosticka, Presiding Officer

Attest:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, General Counsel

Exhibit A
Metro Charter 2003 Amendments to Metro Code

Chapter 3.01

URBAN GROWTH BOUNDARY AND URBAN RESERVE PROCEDURES

SECTIONS	TITLE
3.01.005	Purpose
3.01.010	Definitions
3.01.012	Urban Reserve Areas
3.01.015	Legislative Amendment Procedures
3.01.020	Legislative Amendment Criteria
3.01.025	Major Amendment Procedures
3.01.030	Criteria for Major Amendment
3.01.033	Minor Adjustment Procedures
3.01.035	Criteria for Minor Adjustments
3.01.037	Roadway Realignment - Administrative Adjustments (repealed Ord. 01-929A §10)
3.01.040	Metro Conditions of Approval
3.01.045	Fees
3.01.050	Hearing Notice Requirements
3.01.055	Public Hearing Rules Before the Hearings Officer
3.01.060	Exceptions to Hearing Officer Decision
3.01.065	Council Action on Quasi-Judicial Amendments
3.01.070	Final Action Notice Requirements
3.01.075	Boundary Line Location Interpretation (repealed Ord. 01-929A §11)
3.01.080	Chapter Regulation Review
3.01.085	Severability

3.01.005 Purpose

(a) This chapter is established to provide procedures to be used by Metro in making amendments to the Metro Urban Growth Boundary (UGB) adopted pursuant to ORS 268.390(3) and 197.005 through 197.430. The chapter is intended to interpret all criteria and standards for boundary amendments pertaining to Statewide Planning Goals 2 and 14, and the Regional Urban Growth Goals and Objectives. Unique circumstances associated with a proposed amendment may require consideration of statewide planning goals other than Goals 2 and 14. This chapter is also established to be used for the establishment and management of Urban Reserves, pursuant to OAR 660-021-000 to 660-21-0100 and RUGGO Objective 22.

(b) The objectives of the UGB are to:

(1) Provide sufficient urban land for accommodating the forecast 20-year urban land need, reevaluated at least every five years as set forth in Sections 3.01.015-3.01.020;

- (2) Provide for an efficient urban growth form which reduces sprawl;
 - (3) Provide a clear distinction between urban and rural lands;
 - (4) Encourage appropriate infill and redevelopment in all parts of the urban region.
- (c) The objectives of the Urban Reserves are to:
- (1) Identify sufficient land suitable for urbanization sufficient to accommodate the forecast needs for a 30 to 50-year interval, reevaluated at least every 15 years;
 - (2) Limit the areas which are eligible to apply for inclusion to the Urban Growth Boundary consistent with ORS 197.298, and protect resource lands outside the urban reserve areas;
 - (3) Protect lands designated as urban reserves for their eventual urbanization, and insure their efficient urbanization consistent with the 2040 Growth Concept, the RUGGOs and the Urban Growth Management Functional Plan;
 - (4) Provide for coordination between cities, counties, school districts, and special districts for planning for the urban reserve areas;
 - (5) Ensure a smooth transition to urban development by planning for general governance, public facilities, land uses, and planning for financing the capital needs of the urban development.

(Ordinance No. 92-450A, Sec. 1. Amended by Ordinance No. 96-655E, Sec. 1)

3.01.010 Definitions

- (a) "Council" has the same meaning as in Chapter 1.01 of the Metro Code.
- (b) "Compatible," as used in this chapter, is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses. Any such interference or adverse impacts must be balanced with the other criteria and considerations cited.
- ~~(c) "District" has the same meaning as in chapter 1.01.~~
- (cd) "Goals" means the statewide planning goals adopted by the Oregon Land Conservation and Development Commission at OAR 660-015-0000.
- (de) "Gross developable vacant land" means the total buildable land area within the UGB, as compiled by Metro for the purpose of determining the need for changes in the urban land supply. These are lands that can be shown to lack significant barriers to development. Gross developable vacant lands include, but are not limited to, all recorded lots on file with the county assessors equal to or larger than either the minimum lot size of the zone in which the lot is located or the minimum lot size which will be applied in an urban holding zone which:

- (1) Are without any structures as corroborated through examination of the most recent aerial photography at the time of inventory; or
- (2) Have no improvements according to the most recent assessor records.

(ef) "Gross redevelopable land" means the total area of redevelopable land and infill parcels within the UGB including:

- (1) That portion of all partially developed recorded lots, where one-half acre or more of the land appears unimproved through examination of the most recent aerial photography at the time of inventory; and
- (2) All recorded lots on file with the county assessors that are 20,000 square feet or larger where the value of the improvement(s) is significantly less than the value of the land, as established by the most recent assessor records at the time of inventory. Standard measures to account for the capability of infill and redevelopment properties will be developed by the ~~district~~ Metro to provide a means to define what is significant when comparing structure value and land values; or, when a city or county has more detailed or current gross redevelopable land inventory data, for all or a part of their jurisdiction, it can request that the ~~district~~ Metro substitute that data for inclusion in the gross developable land inventory.

(fg) "Gross developable land" means the total of gross developable vacant land and gross redevelopable land.

(gh) "Legislative amendment" means an amendment to the UGB initiated by the ~~district~~ Metro, which is not directed at a particular site-specific situation or relatively small number of persons.

(hi) "Natural area" means a landscape unit substantially without any human development that is substantially in a native and unaffected state and may be composed of plant and animal communities, water bodies, soil and rock and mitigated habitat. Natural areas must be identified in a city, county or special district open space inventory or plan.

(ij) "Natural feature" means any landscape unit, such as a slope greater than 25 percent, a water body, a floodplain or a forest, that acts as a barrier or transition between human activities.

(jk) "Net acre" for purposes of calculating the total land area within a proposal to amend the UGB means an area measured in acres which excludes:

- (1) Any developed road rights-of-way through or on the edge of the proposed UGB amendment; and
- (2) Environmentally constrained areas, including any open water areas, floodplains, natural resource areas protected in the comprehensive plans of cities and counties

in the region, slopes in excess of 25 percent and wetlands requiring a federal fill and removal permit under Section 404 of the Clean Water Act. These excluded areas do not include lands for which the local zoning code provides a density bonus or other mechanism which allows the transfer of the allowable density or use to another area or to development elsewhere on the same site; and,

(3) All publicly-owned land designated for park and open space uses.

(kl) "Net developable land" means the total of net developable vacant land and net redevelopable land.

(lm) "Net developable vacant land" means the number of acres that are available for all types of development after the total number of developable acres within the UGB is reduced by the amount of land for the provision of roads, schools, parks, private utilities, churches, social organizations, legally buildable single family lots, and other public facilities.

(mn) "Net redevelopable land" means the amount of land remaining when gross redevelopable land is reduced by the estimated land needed for the provision of additional roads, schools, parks, private utilities and other public facilities. ~~The district~~ Metro shall determine the appropriate factor to be used for each jurisdiction in consultation with the jurisdiction within which the specific redevelopable land is located.

(no) "Nonurban land" means land currently outside the UGB.

(op) "Party" means any individual, agency, or organization who participates orally or in writing in the creation of the record established at a public hearing.

(pq) "Planning period" means the period covered by the most recent officially adopted ~~district~~ Metro forecasts, which is approximately a 20-year period.

(qr) "Property owner" means a person who owns the primary legal or equitable interest in the property.

(rs) "Public facilities and services" means sanitary sewers, water service, fire protection, parks, open space, recreation, streets and roads and mass transit.

(st) "Regional forecast" means a 20-year forecast of employment and population by specific areas within the region, which has been adopted by ~~the district~~ Metro.

(tu) "Site" means the subject property for which an amendment or locational adjustment is being sought.

(uv) "Specific land need" means a specific type of identified land needed which complies with Goal 14, Factors 1 and 2 that cannot be reasonably accommodated on urban reserve land.

(vw) "UGB" means the Urban Growth Boundary for the district Metro pursuant to ORS 268.390 and 197.005 through 197.430.

(wx) "Urban land" means that land inside the UGB.

(xy) "Urban reserve" means an area designated as an urban reserve pursuant to Section 3.01.012 of this Code and applicable statutes and administrative rules.

(Ordinance No. 92-450A, Sec. 1. Amended by Ordinance No. 96-655E, Sec. 1; Ordinance No. 97-711, Sec. 2; Ordinance No. 99-818A, Sec. 1; Ordinance No. 00-871A, Sec. 3; Ordinance No. 01-929A, Sec. 7.)

3.01.012 Urban Reserve Areas

(a) Purpose. The purpose of this section is to comply with ORS 197.298 by identifying lands designated urban reserve land by Metro as the first priority land for inclusion in the Metro Urban Growth Boundary.

(b) Designation of Urban Reserves.

- (1) The Council shall designate the amount of urban reserves estimated to accommodate the forecast need.
- (2) The areas designated as urban reserves shall be sufficient to accommodate expected urban development for a 30 to 50-year period, taking into account an estimate of all potential developable and redevelopable land within the current Urban Growth Boundary.
- (3) The Council shall estimate the capacity of the urban reserves consistent with the procedures for estimating capacity of the urban area set forth in Section 3.01.020.
- (4) The minimum residential density to be used in estimating the capacity of the areas designated as urban reserves shall be an average of at least 10 dwelling units per net developable acre or lower densities which conform to the 2040 Growth Concept design type designation for the urban reserve area.
- (5) The Council may designate a portion of the land required for urban reserves in order to phase designation of urban reserves.
- (6) Metro has designated as urban reserve areas those lands indicated on the 2040 Growth Concept map which was adopted as part of the Regional Urban Growth Goals and Objectives.

(c) Plans For Urban Reserve Areas. Subject to applicable law, cities and counties may prepare and adopt comprehensive plan amendments for urban reserve areas consistent with all provisions of the Urban Growth Management Functional Plan prior to the inclusion of an urban reserve area within the Urban Growth Boundary. Prior to the preparation and adoption of any such comprehensive plan

amendments, at the request of a city or county, the Council shall establish the 2040 Growth Concept design types and the boundaries of the area to be planned, if it has not previously done so.

(Ordinance No. 96-655E, Sec. 1. Amended by Ordinance No. 98-772B, Sec. 1; Ordinance No. 99-818A, Sec. 1.)

3.01.015 Legislative Amendment Procedures

(a) The process for determination of need and location of lands for amendment of the UGB is provided in Section 3.01.020.

(b) Notice shall be provided as described in Section 3.01.050.

(c) The Council shall initiate Legislative Amendments when it determines pursuant to Goal 14 and Section 3.01.020 that there is a need to add land to the Urban Growth Boundary.

(d) Before adopting any legislative amendment, Metro shall consult with cities, counties in the Metro Area and MPAC to determine which cities and counties, if any, are prepared to initiate comprehensive plan amendments for urban reserve areas, if they are included, within the Urban Growth Boundary.

(e) Where a city or county has adopted comprehensive plan amendments for an urban reserve area pursuant to Section 3.01.012(c), the Metro Council shall rely upon the planned status of that urban reserve in considering applicable criteria.

(f) Legislative amendment decisions shall be based upon substantial evidence in the decision record which demonstrates how the amendment complies with applicable state and local law and statewide goals as interpreted by Section 3.01.020.

(g) The following public hearings process shall be followed for legislative amendments:

- (1) ~~The district~~Metro Council shall refer a proposed amendment to the appropriate Council committee at the first Council reading of the ordinance.
- (2) The committee shall take public testimony at as many public hearings as necessary. At the conclusion of public testimony, the committee shall deliberate and make recommendations to the Council.
- (3) The Council shall take public testimony at its second reading of the ordinance, discuss the proposed amendment, and approve the ordinance with or without revisions or conditions, or refer the proposed legislative amendment to the Council committee for additional consideration.
- (4) Testimony before the Council or the committee shall be directed to Goal 14 and Goal 2 considerations interpreted at Section 3.01.020 of this chapter.

- (5) Prior to the Ceouncil acting to approve a legislative amendment, including land outside the ~~districtMetro's~~ regional boundary, the Ceouncil shall annex the territory to the ~~districtMetro~~. The annexation decision shall be consistent with the requirements of Section 3.09.120 of this Ceode. If the annexation decision becomes the subject of a contested case pursuant to Chapter 3.09 of this Ceode, the Legislative amendment to the Urban Growth Boundary shall not be approved until the contested case is either withdrawn or the annexation is approved by the Boundary Appeals Commission, whichever occurs first.

(Ordinance No. 92-450A, Sec. 1. Amended by Ordinance No. 96-655E, Sec. 1; Ordinance No 98-772B, Sec. 1; Ordinance No. 99-818A, Sec. 1.)

3.01.020 Legislative Amendment Criteria

(a) The purpose of this section is to address ORS 197.298, Goals 2 and 14 of the statewide planning goals and ~~RUGGO~~ the Regional Framework Plan. This section details a process which is intended to interpret Goals 2 and 14 for specific application to the ~~districtMetro~~ UGB. Compliance with this section shall constitute compliance with ORS 197.298, statewide planning Goals 2 and 14 and the ~~Regional Urban Growth Goals and Objectives~~ Framework Plan.

(b) While all of the following Goal 14 factors must be addressed, the factors cannot be evaluated without reference to each other. Rigid separation of the factors ignores obvious overlaps between them. Demonstration of compliance with one factor or subfactor may not constitute a sufficient showing of compliance with the goal, to the exclusion of the other factors when making an overall determination of compliance or conflict with the goal. For legislative amendments, if need has been addressed, the ~~districtMetro~~ shall demonstrate that the priorities of ORS 197.298 have been followed and that the recommended site was better than alternative sites, balancing ~~F~~ factors 3 through 7.

- (1) Factor 1: Demonstrated need to accommodate long-range urban population growth.

- (A) ~~The districtMetro~~ shall develop 20-year Regional Forecasts of Population and Employment, which shall include a forecast of net developable land need, providing for coordination with cities, counties, special districts and other interested parties, and review and comment by the public. After deliberation upon all relevant facts, ~~the districtMetro~~ shall adopt a forecast. This forecast shall be completed at least every five years or at the time of periodic review, whichever is sooner. Concurrent with the adoption of the ~~districtMetro's~~ 20-year Regional Forecast, the ~~districtMetro~~ shall complete an inventory of net developable land calculating the supply of buildable land within the Urban Growth Boundary by applying the variables set forth in Chapter 1 of the Regional Framework Plan. ~~The district Metro~~ shall provide the opportunity for review and comment by all cities and counties in the districtMetro Area, and by the public.

- (i) In calculating the supply of buildable lands in the Urban Ggrowth Bboundary, ~~the district~~Metro shall estimate the effect, based on the best information available, of changes to zoned capacity that have been adopted and implemented by local governments to comply with the Region 2040 Growth Concept and all titles of the Urban Growth Management Functional Plan.
- (ii) ~~The district~~Metro shall estimate the number of gross vacant buildable acres within the Urban Ggrowth Bboundary.
- (iii) ~~The district~~Metro shall estimate the number of net vacant buildable acres within the Urban Ggrowth Bboundary from the gross vacant buildable acres. The number of acres estimated to be unavailable for housing development shall be subtracted to estimate the net acres, including, but not limited to:
 - (I) Lands in environmentally sensitive areas and lands with slopes equal to or exceeding 25 percent, provided those lands are zoned so as to be unavailable for housing development.
 - (II) Lands for streets, schools, parks, churches and social organizations.
 - (III) Vacant legally buildable lots zoned for single-family residential use.
- (iv) ~~The district~~Metro shall estimate the number of net vacant buildable acres that are available for residential use based on current local government zoning designations. ~~The district~~Metro shall also estimate the number of dwelling units that these residentially zoned lands can accommodate under existing zoning designations.
- (v) ~~The district~~Metro shall reduce the estimated number of dwelling units that can be accommodated on vacant residential lands to account for the following:
 - (I) The number of dwelling units estimated to be lost when property owners do not develop to maximum residential densities, taking into account zoned minimum densities; and
 - (II) If Metro adopts additional measures to increase residential densities inside the existing Urban Ggrowth Bboundary, the number of additional dwelling units

estimated to be accommodated as the result of the new measures.

- (vi) ~~The district~~Metro shall increase the estimated number of dwelling units that may be accommodated on vacant residential lands due to changes in zoning or development patterns, including but not limited to, the following:

- (I) Local adoption of mixed use zoning designations;
- (II) Local adoption of increased residential densities to meet Region 2040 Growth Concept and Title 1 of the Urban Growth Management Functional Plan;
- (III) The estimated number of dwelling units that may be accommodated as a result of redevelopment and infill development and accessory dwelling units;
- (IV) The estimated number of dwelling units allowed on legally buildable lots in environmentally constrained areas.
- (V) Development on vacant and legally buildable lots zoned for single family at a rate of one dwelling unit per lot.

- (B) The forecast and inventory, along with all other appropriate data shall be considered by ~~the district~~Metro in determining the need for net developable land. Appropriate data includes, but is not limited to, estimates of the actual density and the actual average mix of housing types of residential development that have occurred within the Urban Growth Boundary since the last periodic review of the Urban Growth Boundary or last five years, whichever is greater. The results of the inventory and forecast shall be compared, and if the net developable land equals or is larger than the need forecast, then the ~~district~~Metro-council Council shall hold a public hearing, providing the opportunity for comment. The Council may conclude that there is no need to move the UGB and set the date of the next five-year review or may direct staff to address any issues or facts which are raised at the public hearing.

- (C) If the inventory of net developable land is insufficient to accommodate the housing need identified in the 20-year Regional Forecast at the actual developed density that has occurred since the last periodic review of the Urban Growth Boundary, ~~the district~~Metro shall

- (i) Conduct a further analysis of the inventory of net developable land to determine whether the identified need can reasonably be met within the Urban Growth Boundary including a consideration of whether any significant surplus of developable land in one or more land use categories could be suitable to address the unmet forecasted need;
 - (ii) Estimate city and county progress toward meeting the target capacities for dwelling units and employment set forth in Title 1 of the Urban Growth Management Functional Plan (Metro Code, Table 3.07-1);
 - (iii) Consider amendments to the Urban Growth Management Functional Plan that would increase the number of dwelling units that can be accommodated on residential and mixed-use land within the Urban Growth Boundary;
 - (iv) Adopt amendments to the Urban Growth Management Functional Plan that the Metro Council determines are appropriate;
 - (v) Estimate whether the increased number of dwelling units accommodated within the Urban Growth Boundary due to amendments to the Urban Growth Management Functional Plan will provide a sufficient number of dwelling units to satisfy the forecasted need;
 - (vi) The Metro Council shall hold a public hearing prior to its determination of whether any estimated deficit of net developable land is sufficient to justify an analysis of locations for a legislative amendment of the UGB.
- (D) For consideration of a legislative UGB amendment, ~~the district~~Metro Council shall review an analysis of land outside the present UGB to determine those areas best suited for expansion of the UGB to meet the identified need.
- (E) ~~The district~~Metro must find that the identified need cannot reasonably be met within the UGB, consistent with the following considerations:
- (i) That there is not a suitable site with an appropriate comprehensive plan designation.
 - (ii) All net developable land with the appropriate plan designation within the existing UGB shall be presumed to be available for urban use during the planning period.

(iii) Market availability and level of parcelization shall not render an alternative site unsuitable unless justified by findings consistent with the following criteria:

- (I) Land shall be presumed to be available for use at some time during the planning period of the UGB unless legal impediments, such as deed restrictions, make it unavailable for the use in question.
- (II) A parcel with some development on it shall be considered unavailable if the market value of the improvements is not significantly less than the value of the land, as established by the most recent assessor records at the time of inventory. Standard measures to account for the capability of infill and redevelopment will be developed by ~~the district~~Metro to provide a means to define what is significant when comparing structure value and land values. When a city or county has more detailed or current gross redevelopable land inventory data, for all or a part of their jurisdiction, it can request that ~~the district~~Metro substitute that data in ~~the district~~Metro gross developable land inventory.
- (III) Properly designated land in more than one ownership shall be considered suitable and available unless the current pattern or level of parcelization makes land assembly during the planning period unfeasible for the use proposed.

(2) Factor 2: Need for housing, employment opportunities and livability may be addressed under either subsection (A) or (B) or both, as described below.

- (A) For a proposed amendment to the UGB based upon housing or employment opportunities ~~the district~~Metro must demonstrate that a need based upon an economic analysis can only be met through a change in the location of the UGB. For housing, the proposed amendment must meet an unmet need according to statewide planning Goal 10 and its associated administrative rules. For employment opportunities, the proposed amendment must meet an unmet long-term need according to statewide planning Goal 9 and its associated administrative rules. The amendment must consider adopted comprehensive plan policies of jurisdictions adjacent to the site, when identified by a jurisdiction and must be consistent with ~~the district~~Metro's adopted policies on urban growth management, transportation, housing, solid waste, and water quality management.

- (B) To assert a need for a UGB amendment based on livability, the ~~district~~Metro must:
- (i) Ffactually define the livability need, including its basis in adopted local, regional, state, or federal policy;
 - (ii) Ffactually demonstrate how the livability need can best be remedied through a change in the location of the UGB;
 - (iii) Identify both positive and negative aspects of the proposed UGB amendment on both the livability need and on other aspects of livability; and
 - (iv) Ddemonstrate that, on balance, the net result of addressing the livability need by amending the UGB will be positive.
- (3) Factor 3: Orderly and economic provision of public facilities and services. An evaluation of this factor shall be based upon the following:
- (A) For the purposes of this section, economic provision shall mean the lowest public cost provision of urban services. When comparing alternative sites with regard to Ffactor 3, the best site shall be that site which has the lowest net increase in the total cost for provision of all urban services. In addition, the comparison may show how the proposal minimizes the cost burden to other areas outside the subject area proposed to be brought into the boundary.
 - (B) For the purposes of this section, orderly shall mean the extension of services from existing serviced areas to those areas which are immediately adjacent and which are consistent with the manner of service provision. For the provision of gravity sanitary sewers, this could mean a higher rating for an area within an already served drainage basin. For the provision of transit, this would mean a higher rating for an area which could be served by the extension of an existing route rather than an area which would require an entirely new route.
- (4) Factor 4: Maximum efficiency of land uses within and on the fringe of the existing urban area. An evaluation of this factor shall be based on at least the following:
- (A) The subject area can be developed with features of an efficient urban growth form including residential and employment densities capable of supporting transit service; residential and employment development patterns capable of encouraging pedestrian, bicycle, and transit use; and the ability to provide for a mix of land uses to meet the needs of residents

and employees. If it can be shown that the above factors of compact form can be accommodated more readily in one area than others, the area shall be more favorably considered.

- (B) The proposed UGB amendment will facilitate achieving an efficient urban growth form on adjacent urban land, consistent with local comprehensive plan policies and regional functional plans, by assisting with achieving residential and employment densities capable of supporting transit service; supporting the evolution of residential and employment development patterns capable of encouraging pedestrian, bicycle, and transit use; and improving the likelihood of realizing a mix of land uses to meet the needs of residents and employees.
- (5) Factor 5: Environmental, energy, economic and social consequences. An evaluation of this factor shall be based upon consideration of at least the following:
- (A) If the subject property contains any resources or hazards subject to special protection identified in the local comprehensive plan and implemented by appropriate land use regulations, findings shall address how urbanization is likely to occur in a manner consistent with these regulations.
 - (B) Complementary and adverse economic impacts shall be identified through review of a regional economic opportunity analysis, if one has been completed. If there is no regional economic opportunity analysis, one may be completed for the subject land.
 - (C) The long-term environmental, energy, economic, and social consequences resulting from the use at the proposed site. Adverse impacts shall not be significantly more adverse than would typically result from the needed lands being located in other areas requiring an amendment of the UGB.
- (6) Factor 6: Retention of agricultural land. This factor shall be addressed through the following:
- (A) Prior to the designation of urban reserves, the following hierarchy shall be used for identifying priority sites for urban expansion to meet a demonstrated need for urban land:
 - (i) Expansion on rural lands excepted from statewide planning Goals 3 and 4 in adopted and acknowledged county comprehensive plans. Small amounts of rural resource land adjacent to or surrounded by those "exception lands" may be included with them to improve the efficiency of the boundary.

amendment. The smallest amount of resource land necessary to achieve improved efficiency shall be included;

- (ii) If there is not enough land as described in (i) above to meet demonstrated need, secondary or equivalent lands, as defined by the state, should be considered;
 - (iii) If there is not enough land as described in either (i) or (ii) above, to meet demonstrated need, secondary agricultural resource lands, as defined by the state should be considered;
 - (iv) If there is not enough land as described in either (i), (ii) or (iii) above, to meet demonstrated need, primary forest resource lands, as defined by the state, should be considered;
 - (v) If there is not enough land as described in either (i), (ii), (iii) or (iv) above, to meet demonstrated need, primary agricultural lands, as defined by the state, may be considered.
- (B) After urban reserves are designated and adopted, consideration of Ffactor 6 shall be considered satisfied if the proposed amendment is wholly within an area designated as an urban reserve.
- (C) After urban reserves are designated and adopted, a proposed amendment for land not wholly within an urban reserve must also demonstrate that the need cannot be satisfied within urban reserves.
- (7) Factor 7: Compatibility of proposed urban development with nearby agricultural activities.

The record shall include an analysis of the potential impact on nearby agricultural activities including the following:

- (i) A description of the number, location and types of agricultural activities occurring within one mile of the subject site;
- (ii) An analysis of the potential impacts, if any, on nearby agricultural activities taking place on lands designated for agricultural use in the applicable adopted county or city comprehensive plan, and mitigation efforts, if any impacts are identified. Impacts to be considered shall include consideration of land and water resources which may be critical to agricultural activities, consideration of the impact on the farming practices of urbanization of the subject land, as well as the impact on the local agricultural economy.

(c) The requirements of statewide planning Goal 2 will be met by addressing all of the requirements of Section 3.01.020(b), above, and by factually demonstrating that:

- (1) The land need identified cannot be reasonably accommodated within the current UGB; and
- (2) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts; and
- (3) The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in other areas than the proposed site and requiring an exception.

(d) The proposed location for the UGB shall result in a clear transition between urban and rural lands, using natural and built features, such as roads, drainage divides, floodplains, powerlines, major topographic features, and historic patterns of land use or settlement.

(e) Satisfaction of the requirements of Section 3.01.020(a) and (b) does not mean that other statewide planning goals do not need to be considered. If the proposed amendment involves other statewide planning goals, they shall be addressed.

(f) Sections 3.01.020(a), (b), (c) and (d) shall be considered to be consistent with and in conformance with the Regional Urban Growth Goals and Objectives.

(g) Where efficiencies in the future development of an existing urban reserve are demonstrated, the Metro Council may amend the urban reserve in the same UGB amendment process to include additional adjacent nonresource lands up to 10 percent of the total acreage. Any urban reserve amendment shall demonstrate compliance with the Urban Reserve Rule (OAR 660-021-0030).

(Ordinance No. 92-450A, Sec. 1. Amended by Ordinance No. 96-655E, Sec. 1; Ordinance No. 97-711, Sec. 1; Ordinance No. 99-818A, Sec. 1; Ordinance No. 00-871A, Sec. 3.)

3.01.025 Major Amendment Procedures

(a) A city, a county, a special district or a property owner may file an application for a major amendment to the UGB on a form provided for that purpose. The ~~Executive Officer~~Chief Operating Officer will accept applications for major amendments between February 1 and March 15 of each calendar year except that calendar year in which the Metro Council is completing its five-year analysis of buildable land supply under ORS 197.299(1). After receipt of a complete application, the ~~Executive Officer~~Chief Operating Officer will set the matter for a public hearing and provide notice to the public in the manner set forth in Sections 3.01.050 and 3.01.055.

(b) The ~~Executive Officer~~Chief Operating Officer will determine whether the application is complete and notify the applicant of its determination within seven working days after the filing of an application. If the application is not complete, the applicant shall revise it to be complete within 14 days

of notice of incompleteness from the ~~Executive Officer~~Chief Operating Officer. The ~~Executive Officer~~Chief Operating Officer will dismiss an application and return application fees if it does not receive a complete application within 14 days of its notice.

(c) Upon a request by a Metro Councilor and a finding of good cause, the Metro Council may, by a two-thirds vote of the full Council, waive the filing deadline for an application.

(d) Except for that calendar year in which the Metro Council is completing its five-year analysis of buildable land supply, the ~~Executive Officer~~Chief Operating Officer shall give notice of the March 15 deadline for acceptance of applications for major amendments not less than 120 calendar days before the deadline and again 90 calendar days before the deadline in a newspaper of general circulation in the ~~district~~Metro and in writing to each city and county in the ~~district~~Metro. A copy of the notice shall be mailed not less than 90 calendar days before the deadline to anyone who has requested notification. The notice shall explain the consequences of failure to file before the deadline and shall specify the Metro representative from whom additional information may be obtained.

(e) The ~~Executive Officer~~Chief Operating Officer shall submit a report and recommendation on the application to the hearings officer not less than 21 calendar days before the hearing. The ~~Executive Officer~~Chief Operating Officer shall send a copy of the report and recommendation simultaneously to the applicant and others who have requested copies. Any subsequent report by the ~~Executive Officer~~Chief Operating Officer to be used at the hearing shall be available at least seven days prior to the hearing.

(f) An applicant shall provide a list of names and addresses of property owners for notification purposes, consistent with Section 3.01.055, when submitting an application. The list shall be certified in one of the following ways:

- (1) By a title company as a true and accurate list of property owners as of a specified date; or
- (2) By a county assessor, or designate, pledging that the list is a true and accurate list of property owners as of a specified date; or
- (3) By the applicant affirming that the list is a true and accurate list as of a specified date.

(g) An applicant may request postponement of the hearing to consider the application within 90 days after filing of the application. The ~~Executive Officer~~Chief Operating Officer may postpone the hearing for no more than 90 days. If the ~~Executive Officer~~Chief Operating Officer receives no request for rescheduling within 90 days after the request for postponement, the application shall be considered withdrawn and the ~~Executive Officer~~Chief Operating Officer shall return the portion of the fee deposit not required for costs assessed pursuant to Section 3.01.045.

(h) Position of City or County:

- (1) Except as provided in paragraph (4) of this section, an application shall not be considered complete unless it includes a written statement by the governing body

of each city or county with land use jurisdiction over the area included in the application that:

- (A) Recommends approval of the application;
 - (B) Recommends denial of the application; or
 - (C) Makes no recommendation on the application.
- (2) Except as provided in paragraph (4) of this subsection, an application shall not be considered complete unless it includes a written statement by any special district that has an agreement with the governing body of any city or county with land use jurisdiction over the area included in the application to provide an urban service to the area that:
- (A) Recommends approval of the application;
 - (B) Recommends denial of the application; or
 - (C) Makes no recommendation on the application.
- (3) If a city, county or special district holds a public hearing to consider an application, it shall:
- (A) Provide notice of such hearing to the ~~Executive Officer~~Chief Operating Officer and any city or county whose municipal boundary or urban planning area boundary abuts the area; and
 - (B) Provide the ~~Executive Officer~~Chief Operating Officer with a list of the names and addresses of persons testifying at the hearing and copies of any exhibits or written testimony submitted for the hearing.
- (4) Upon request by an applicant, ~~Executive Officer~~the Council may shall waive the requirements of subsections (1) and (2) of this section if the applicant shows that the local government has a policy not to comment on such applications or that a request for comment was filed with the local government or special district at least 120 calendar days before the request and the local government or special district has not yet adopted a position on the application. The governing body of a local government may delegate the decisions described in paragraphs (1) and (2) of this subsection to its staff.
- (i) Applications involving land outside district boundary:
- (1) An application to expand the UGB to include land outside the ~~district~~Metro Area shall not be accepted unless accompanied by a copy of a petition for annexation to the ~~-district~~Metro Area.

- (2) A city or county may approve a plan or zone change to implement the proposed amendment prior to a change in the ~~district~~Metro UGB if:
- (A) The ~~Executive Officer~~Council receives notice of the local action;
 - (B) The local action is contingent upon subsequent action by the Metro Council to amend its UGB; and
 - (C) The local action to amend the local plan or zoning map becomes effective only if the Metro Council amends the UGB consistent with the local action.
- (3) If the Metro Council approves the application, the local government shall amend its plan or map within one year to be consistent with the amendment.

(j) The proposed amendment to the UGB shall include the entire right-of-way of an adjacent street to ensure that public facilities and services can be provided to the subject property by the appropriate local government or service district in a timely and efficient manner.

(Ordinance No. 92-450A, Sec. 1. Amended by Ordinance No. 96-655E, Sec. 1; Ordinance No. 99-818A, Sec. 1; Ordinance No. 01-929A, Sec. 3.)

3.01.030 Criteria for Major Amendment

(a) The purpose of the major amendment process is to provide a mechanism to address needs for land that were not anticipated in the last five-year analysis of buildable land supply and cannot wait until the next five-year analysis. This section establishes criteria for major amendments to the UGB and sets forth how state law applies to these amendments. Metro intends compliance with the criteria of this section to constitute compliance with ORS 197.298, statewide planning Goals 2 and 14 and the Regional Urban Growth Goals and Objectives. Land may be added to the UGB under this section only for the following purposes: public facilities, public schools, natural areas, land trades and other nonhousing needs.

(b) The applicant shall demonstrate that the amendment will provide for an orderly and efficient transition from rural to urban use, considering the following factors:

- (1) Demonstrated need to accommodate long-range urban population growth. The Metro Council will consider, based upon evidence in the record, whether the need for the subject land was accommodated at the time of the last legislative analysis of the UGB required by ORS 197.299. If the need was not accommodated in that analysis, the Metro Council will consider whether the need must be met now, rather than at the time of the next legislative amendment, in order to ensure an orderly and efficient transition from rural to urban use.
- (2) Need for employment opportunities and livability. The Metro Council will consider, based upon evidence in the record, whether the need must be met at a

particular location, or in a particular part of the region, in order to secure an employment or livability opportunity that cannot await the next legislative review of the UGB required by ORS 197.299(1), or to ensure the livability of that part of the region.

- (3) Orderly and economic provision of public facilities and services. The Metro Council will consider, based upon evidence in the record, whether adding the subject land to the UGB, as compared with other land that might be added, will result in a more logical extension of public facilities and services and reduce the overall cost of public facilities and services to land already within the UGB.
- (4) Maximum efficiency of land uses within and on the fringe of the existing urban area. The Metro Council will consider, based upon evidence in the record, whether, in comparison with other land that might be added to the UGB, addition of the subject land will better achieve the residential and employment targets and transportation objectives in the 2040 Growth Concept that apply to nearby land within the UGB.
- (5) Environmental, energy, economic and social consequences. The Metro Council will consider, based upon evidence in the record, whether the consequences of addition of the subject land would be, on the whole, more positive than not including the land, and more positive than including other land.
- (6) Retention of agricultural and forest land. The Metro Council will consider, based upon evidence in the record, addition of land designated for agriculture or forestry pursuant to a statewide Goal 3 (Agricultural Land) or Goal 4 (Forest Land) only under the following circumstances:
 - (A) There is no land designated as urban reserve land pursuant to OAR 660, Division 021, as exception land pursuant to ORS 197.732(1)(a) or (b), or as marginal land pursuant to ORS 197.247 (1991 Edition) available to accommodate the subject need; or
 - (B) There is no land designated urban reserve available to accommodate the subject need, the subject land is not high-value farmland as described in ORS 215.710, and the subject land is completely surrounded by exception land; or
 - (C) The application identifies a specific type of land need that cannot reasonably be accommodated on land described in (A) or (B) of this paragraph; or
 - (D) Future urban services could not reasonably be provided to land described in (A) or (B) of this paragraph.

- (7) Compatibility of proposed urban development with nearby agricultural activities. The Metro Council will consider, based upon evidence in the record, whether urban development on the subject land would likely cause a change in farm practices, or an increase in the cost of farm practices, on farms in areas designated for agriculture or forestry pursuant to a statewide planning goal within one mile of the subject land, based upon an inventory and analysis of those practices. The Metro Council will also consider measures that might eliminate or alleviate the potential conflicts with farm practices.

(c) The applicant shall demonstrate that:

- (1) There is no land within the existing UGB that can reasonably accommodate the subject need;
- (2) The long-term environmental, economic, social and energy consequences of addition of the subject land would not be significantly more adverse than the consequence of adding other land; and
- (3) The proposed uses of the subject land would be compatible, or through measures can be made compatible, with uses of adjacent land.
- (4) The amendment will not result in the creation of an island of urban land outside the UGB or an island of rural land inside the UGB.
- (5) The amendment complies with applicable statewide planning goals.
- (6) If the amendment would add land for public school facilities, a conceptual school plan as described in Section 3.07.1120(I) has been completed.

(d) If the Metro Council adds land to the UGB in order to facilitate a trade and the land is available for housing, the Metro Council shall designate the land to allow an average density of at least 10 units per net developable acre or such lower density that is consistent with the 2040 Growth Concept plan designation for the area.

(e) Compliance with the criteria in subsections (b) and (c) of this section shall constitute conformance with the Regional Urban Growth Goals and Objectives.

(Ordinance No. 92-450A, Sec. 1. Amended by Ordinance No. 96-655E, Sec. 1; Ordinance No. 01-929A, Sec. 4.)

3.01.033 Minor Adjustment Procedures

(a) A city, a county, a special district or a property owner may file an application with Metro for a minor adjustment to the UGB on a form provided for that purpose by Metro. The application shall include a list of the names and addresses of owners of property within 100 feet of the land involved in the application. The application shall also include the positions on the application of appropriate local governments and special districts, in the manner required by Section 3.01.025(h).

(b) Upon receipt of a complete application, the ~~Executive Officer~~Chief Operating Officer shall provide notice of the application to the persons specified in Sections 3.01.050(d)(1) and 3.01.050(d)(3) through (6), to owners of property within 100 feet of the land involved in the application, to the Metro Council and to any person who requests notification of applications for minor adjustments.

(c) The ~~Executive Officer~~Chief Operating Officer shall determine whether the application is complete and shall notify the applicant of its determination within seven working days after the filing of an application. If the application is not complete, the applicant shall complete it within 14 days of the ~~Executive Officer~~Chief Operating Officer's notice. The ~~Executive Officer~~Chief Operating Officer will dismiss an application and return application fees if it does not receive a complete application within 14 days of its notice.

(d) The ~~Executive Officer~~Chief Operating Officer shall review the application for compliance with the criteria in Section 3.01.035 and issue an order with its analysis and conclusion within 90 days of receipt of a complete application. The ~~Executive Officer~~Chief Operating Officer shall send a copy of its order to the applicant, the city or county with jurisdiction over the land that is the subject of the application and any person who requests a copy.

(e) The applicant or any person who commented on the application may appeal the ~~Executive Officer~~Chief Operating Officer's order to the Metro Council by filing an appeal on a form provided by the ~~Executive Officer~~Chief Operating Officer for that purpose within 14 days of receipt of the order. The Council shall consider the appeal at a public hearing held not more than 60 days following receipt of a timely appeal. Following the hearing, the Council shall uphold, deny or modify the ~~Executive Officer~~Chief Operating Officer's order on the minor adjustment. The Council shall issue an order with its analysis and conclusion and send a copy to the appellant, the city or county with jurisdiction over the land that is the subject of the application and any person who requests a copy.

(Ordinance No. 92-450A, Sec. 1. Amended by Ordinance No. 98-732, Sec. 1; Ordinance No. 99-818A, Sec. 1; Ordinance No. 01-902, Secs. 1 and 3; Ordinance No. 01-929A, Sec. 5.)

3.01.035 Criteria for Minor Adjustments

(a) The purpose of this section is to provide a mechanism to make small changes to the UGB in order to make it function more efficiently and effectively. It is not the purpose of this section to add land to the UGB to satisfy a need for housing or employment. This section establishes criteria that embody state law and Regional Framework Plan policies applicable to boundary adjustments.

(b) Metro may adjust the UGB under this section only for the following reasons: (1) to site roads and lines for public facilities and services; (2) to trade land outside the UGB for land inside the UGB; or (3) to make the UGB coterminous with nearby property lines or natural or built features.

(c) To make a minor adjustment to site a public facility line or road, or to facilitate a trade, Metro shall find that:

- (1) The adjustment will result in the addition to the UGB of no more than two net acres for a public facility line or road and no more than 20 net acres in a trade;

- (2) Aadjustment of the UGB will make the provision of public facilities and services more efficient or less costly;
- (3) Urbanization of the land added by the adjustment would have no more adverse environmental, energy, economic or social consequences than urbanization of land within the existing UGB;
- (4) Urbanization of the land added by the adjustment would have no more adverse effect upon agriculture or forestry than urbanization of land within the existing UGB;
- (5) The adjustment will help achieve the 2040 Growth Concept;
- (6) The adjustment will not result in an island of urban land outside the UGB or an island of rural land inside the UGB; and
- (7) If the adjustment is to facilitate a trade, the adjustment would not add land to the UGB that is currently designated for agriculture or forestry pursuant to a statewide planning goal.

(d) To make a minor adjustment to make the UGB coterminous with property lines, natural or built features, Metro shall find that:

- (1) The adjustment will result in the addition of no more than two net acres to the UGB;
- (2) Urbanization of the land added by the adjustment would have no more adverse environmental, energy, economic or social consequences than urbanization of land within the existing UGB;
- (3) Urbanization of the land added by the adjustment would have no more adverse effect upon agriculture or forestry than urbanization of land within the existing UGB;
- (4) The adjustment will help achieve the 2040 Growth Concept;
- (5) The adjustment will not result in an island of urban land outside the UGB or an island of rural land inside the UGB.

(e) If the Metro Council adds land to the UGB in order to facilitate a trade and the land is available for housing, the Metro Council shall designate the land to allow an average density of at least 10 units per net developable acre or such lower density that is consistent with the 2040 Growth Concept designation for the area.

(f) The ~~Executive Officer~~Chief Operating Officer shall submit a report to the Council at the end of each calendar year with an analysis of all boundary adjustments made during the year pursuant to this section. The report shall demonstrate how the adjustments, when considered cumulatively, are consistent with and help achieve the 2040 Growth Concept.

(Ordinance No. 92-450A, Sec. 1. Amended by Ordinance No. 98-732, Sec. 2; Ordinance No. 99-818A, Sec. 1; Ordinance No 01-902, Sec. 2; Ordinance No. 01-929A, Sec. 6.)

3.01.040 Metro Conditions of Approval

(a) Land added to the UGB by legislative amendment pursuant to Section 3.01.015 or by major amendment pursuant to Section 3.01.025 shall be subject to the Urban Growth Boundary area comprehensive plan requirements of Title 11 of the Urban Growth Management Functional Plan (Metro Code Section 3.07.1110 et seq.).

(b) Unless a comprehensive plan amendment has been previously approved for the land pursuant to Section 3.01.012(c), when it adopts a Legislative or major amendment adding land to the UGB, the Council shall take the following actions:

- (1) The Council shall consult with affected local governments and MPAC to determine whether local governments have agreed, pursuant to ORS 195.065 to 195.085 or otherwise, which local government shall adopt comprehensive plan amendments for the area consistent with requirements of the Urban Growth Management Functional Plan (Metro Code Chapter 3.07) and in particular, Title 11 thereof (Metro Code Section 3.07.1110 et seq.). Where the affected local governments have agreed as to which local government or governments shall be responsible, the Council shall so designate. If there is no agreement, then the Council shall, consistent with ORS 195.065 to 195.085, establish a process to determine which local government or governments shall be responsible and at the conclusion of the process, so designate.
- (2) The Council shall establish the 2040 Growth Concept design type designations applicable to the land added to the Urban Growth Boundary, including the special land need, if any, that is the basis for the amendment.
- (3) The Council shall establish the boundaries of the area that shall be included in the conceptual level of planning required by Title 11 of the Urban Growth Management Functional Plan (Metro Code Section 3.07.1110 et seq.). The boundary of the planning area may include all or part of one or more designated urban reserves.
- (4) The Council shall also establish the time period for city or county compliance with the requirements of the Urban Growth Management Functional Plan (Metro Code Chapter 3.07) and in particular, Title 11 thereof (Metro Code Section 3.07.1110 et seq.); however, the time period shall not be less than two (2) years from the time a local government is designated pursuant to Section 3.01.040(b)(1) above.

- (5) The Council may adopt text interpretations of the requirements of Urban Growth Management Functional Plan (Metro Code Chapter 3.07) and in particular, Title 11 thereof (Metro Code Section 3.07.1110 et seq.) that shall be applicable to the required City or County comprehensive plan amendments. These interpretations may address special land needs that are the basis for the amendment but otherwise such interpretations shall not impose specific locational development requirements. Text interpretations may include determinations that certain provisions of Title 11 are not applicable to specific areas because of the size or physical characteristics of land added to the Urban Growth Boundary.

(Ordinance No. 92-450A, Sec. 1. Amended by Ordinance No. 96-655E, Sec. 1; Ordinance No. 99-818A, Sec. 1; Ordinance No. 01-929A, Sec. 9.)

3.01.045 Fees

(a) Each application submitted by a property owner or group of property owners pursuant to this chapter shall be accompanied by a filing fee in an amount to be established by resolution of the Council. Such fees shall not exceed the actual costs of the ~~district~~Metro to process an application. The filing fee shall include administrative costs and hearings officer/public notice costs.

(b) The fees for administrative costs shall be charged from the time an application is filed through mailing of the notice of adoption or denial to the Department of Land Conservation and Development and other interested persons.

(c) An applicant also shall be charged for the costs of the ~~district~~Metro hearings officer as billed for that case and for the costs of public notice.

(d) Before a hearing is scheduled, an applicant shall submit a fee deposit.

(e) The unexpended portion of an applicant's deposit, if any, shall be returned to the applicant at the time of a final disposition of the application.

(f) If hearings officer/public notice or administrative costs exceed the amount of the deposit, the applicant shall pay to Metro an amount equal to the costs in excess of the deposit, prior to final action by the Metro Council.

(g) The Metro Council may, by resolution, reduce, refund or waive the administrative fee, or portion thereof, if it finds that such fees would create an undue hardship for the applicant.

(Ordinance No. 92-450A, Sec. 1. Amended by Ordinance No. 01-929A, Sec. 9.)

3.01.050 Hearing Notice Requirements

(a) **45-Day Notice.** A proposal to amend the UGB by legislative amendment under Section 3.01.015 or by major amendment under Section 3.01.025 shall be submitted to the director of the Department of Land Conservation and Development at least 45 days before the first public hearing on the

matter. The notice shall be accompanied by the appropriate forms provided by the department and shall contain a copy of a map showing the location of the proposed amendment. A copy of the same information shall be provided to the city and county, representatives of recognized neighborhoods, citizen planning organizations and/or other recognized citizen participation organizations adjacent to the location of the proposed amendment.

(b) Newspaper Ads. A 1/8 page advertisement in a newspaper of general circulation of the ~~district~~Metro for all legislative amendments and major amendments. For legislative amendments and major amendments the initial newspaper advertisements shall be published at least 45 days prior to the public hearing and shall include the same information listed in subsection (a).

(c) Notice of public hearing shall include:

- (1) The time, date and place of the hearing.
- (2) A description of the property reasonably calculated to give notice as to its actual location. A street address or other easily understood geographical reference can be utilized if available.
- (3) For major amendments;
 - (A) An explanation of the proposed action, including the nature of the application and the proposed boundary change.
 - (B) A list of the applicable criteria for approval of the petition at issue.
 - (C) A statement that the failure of an issue to be raised in a hearing, in person or by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes an appeal based on the issue.
- (4) Notice that interested persons may submit written comments at the hearing and appear and be heard.
- (5) Notice that the hearing will be conducted pursuant to district rules and before the hearings officer unless that requirement is waived by the Metro Council;
- (6) Include the name of the Metro staff to contact and telephone number for more information;
- (7) State that a copy of the staff report will be available for inspection at no cost at least seven calendar days prior to the final hearing, and that a copy will be made available at no cost or reasonable cost. Further that if additional documents or evidence is provided in support of the application any party shall be entitled to a continuance of the hearing; and

- (8) Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings, and
- (d) Not less than 20 calendar days before the hearing, notice shall be mailed to the following persons:
- (1) The applicant and owners of record of property on the most recent property tax roll where the property is located.
 - (2) All property owners of record within 500 feet of the site. For purposes of this subsection, only those property owners of record within the specified distance from the subject property as determined from the maps and records in the county departments of taxation and assessment are entitled to notice by mail. Failure of a property owner to receive actual notice will not invalidate the action if there was a reasonable effort to notify owners of record.
 - (3) Cities and counties in the district Metro, or cities and counties whose jurisdictional boundaries either include or are adjacent to the subject property, and affected agencies who request regular notice.
 - (4) The neighborhood association, community planning organization or other citizen group, if any, which has been recognized by the city or county with land use jurisdiction for the subject property.
 - (5) Any neighborhood associations, community planning organizations, or other vehicles for citizen involvement in land use planning processes whose geographic areas of interest either include or are adjacent to the site and which are officially recognized as being entitled to participate in land use planning processes by the cities and counties whose jurisdictional boundaries either include or are adjacent to the site.
 - (6) The regional representatives of the director of the Oregon Department of Land Conservation and Development and the Oregon Department of Transportation.
 - (7) Any other person requesting notification of UGB changes.
- (e) At the conclusion of the hearing, the hearings officer may continue the hearing to a time, place and date certain, without additional notice.

(Ordinance No. 92-450A, Sec. 1. Amended by Ordinance No. 99-818A, Sec. 1; Ordinance No. 01-929A, Sec. 9.)

3.01.055 Public Hearing Rules before the Hearings Officer

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

- (1) Within 250 feet of the property which is the subject of the notice where the subject property is outside an urban growth boundary and not within a farm or forest zone; or
- (2) Within 500 feet of the property which is the subject of the notice where the subject property is within a farm or forest zone.
- (3) Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.
- (4) ~~If required~~At the discretion of the applicant, the ~~Executive Officer~~Chief Operating Officer shall also provide notice to the Department of Land Conservation and Development.
- (5) The notice shall:
 - (A) Explain the nature of the application and the proposed use or uses which could be authorized;
 - (B) List the applicable criteria from the ordinance and the regional framework plan that apply to the application at issue;
 - (C) Set forth the street address or other easily understood geographical reference to the subject property;
 - (D) State the date, time and location of the hearing;
 - (E) State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to the board based on that issue;
 - (F) Be mailed at least:
 - (i) ~~Twenty~~20 days before the evidentiary hearing; or
 - (ii) If two or more evidentiary hearings are allowed, 10 days before the first evidentiary hearing;
 - (G) Include the name of a Metro representative to contact and the telephone number where additional information may be obtained;
 - (H) State that a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are

available for inspection at no cost and will be provided at reasonable cost;

- (I) State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at reasonable cost; and
- (J) Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.

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

(b) All applications for a major amendment accepted under this chapter shall receive a contested case hearing according to the following rules:

- (1) Hearings officers shall be selected by the ~~district~~Metro pursuant to the provisions of Section 2.05.025(a) of the Metro Code.
- (2) Parties to the case shall be defined as being any individual, agency, or organization who participates orally or in writing in the creation of the record used by the hearings officer in making a decision. If an individual represents an organization orally and/or in writing, that individual must indicate the date of the organization meeting in which the position presented was adopted. The hearings officer may request that the representative explain the method used by the organization to adopt the position presented. Parties need not be represented by an attorney at any point in the process outlined in this subsection and elsewhere in this chapter.
- (3) At the time of the commencement of a hearing, the hearings officer shall provide the following information to parties:
 - (A) A list and statement of the applicable substantive criteria and procedures for notice and conduct of local quasi-judicial land use hearings provided that failure to provide copies to all those present shall not constitute noncompliance with this subsection; and
 - (B) A statement that testimony and evidence must be directed toward the criteria or other specific criteria which the person believes apply to the decision; and

- (C) A statement that the failure to raise an issue accompanied by statements or evidence sufficient to afford the decision-maker and the parties an opportunity to respond to the issue precludes appeal.
- (4) (A) Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments or testimony regarding the application. The hearing may be continued for a reasonable period as determined by the hearings officer. The hearings officer shall grant such request by continuing the public hearing pursuant to paragraph (B) of this subsection or leaving the record open for additional written evidence, arguments or testimony pursuant to paragraph (C) of this subsection.
- (B) If the hearings officer grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence, arguments and testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least seven days to submit additional written evidence, arguments or testimony for the purpose of responding to the new written evidence.
- (C) If the hearings officer leaves the record open for additional written evidence or testimony, the record shall be left open for at least seven days. Any participant may file a written request with the hearings officer for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearings officer shall reopen the record pursuant to subsection (11) of this section.
- (D) Unless waived by the applicant, the local government shall allow the applicant at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence.
- (5) Failure of the applicant to appear at the hearing without making arrangements for rescheduling the hearing shall constitute grounds for immediately denying the application.
- (6) The hearing shall be conducted in the following order:
 - (A) Staff report.
 - (B) Statement and evidence by the applicant in support of a petition.

- (C) Statement and evidence of affected persons, agencies, and/or organizations opposing or supporting the petition, and/or anyone else wishing to give testimony.
- (D) Rebuttal testimony by the applicant.
- (7) The hearings officer shall have the right to question any participant in the hearing. Cross-examination by parties shall be by submission of written questions to the hearings officer. The hearings officer shall give parties the opportunity to submit such questions prior to closing the hearing.
- (8) The hearings officer may set reasonable time limits for oral testimony and may exclude or limit cumulative, repetitive, or immaterial testimony.
- (9) A verbatim audio tape or video tape, written, or other mechanical record shall be made of all proceedings, and need not be transcribed unless necessary for review upon appeal.
- (10) The burden of presenting evidence in support of a fact or position in the contested case rests on the applicant. The proponent of a proposed UGB amendment shall have the burden of proving that the proposed amendment complies with all applicable standards.
- (11) The hearings officer may reopen a record to receive evidence not available or offered at the hearing. If the record is reopened, any person may raise new issues which relate to the new evidence before the record is closed.
- (12) An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the Metro Council. Such issues shall be raised and accompanied by statements or evidence sufficient to afford the governing body, planning commission, hearings body or hearings officer, and the parties an adequate opportunity to respond to each issue.
- (13) All documents or evidence relied upon by the applicant shall be submitted to the ~~Executive Officer~~ Chief Operating Officer and be made available to the public.
- (14) Applications may be consolidated by the hearings officer for hearings where appropriate. Following consultation with ~~district~~ Metro staff and prospective applicants, the hearings officer shall issue rules for the consolidation of related cases and allocation of charges. These rules shall be designed to avoid duplicative or inconsistent findings, promote an informed decision-making process, protect the due process rights of all parties, and allocate the charges on the basis of cost incurred by each party.

(c) Within 30 calendar days following the close of the record, the hearings officer shall prepare and submit a proposed order and findings, together with the record compiled in the hearing and a list of parties to the case, to the ~~executive officer~~ Chief Operating Officer. Within seven (7) working days of receiving the materials from the hearings officer, the ~~executive officer~~ Chief Operating Officer, or designate, shall furnish the proposed order and findings to all parties to the case. Accompanying the proposed order and findings shall be notification to parties which includes:

- (1) The procedure for filing an exception and filing deadlines for submitting an exception to the proposed order and findings of the hearings officer. Parties filing an exception with the ~~district~~ Metro must furnish a copy of their exception to all parties to the case and the hearings officer.
- (2) A copy of the form to be used for filing an exception.
- (3) A description of the grounds upon which exceptions can be based.
- (4) A description of the procedure to be used to file a written request to submit evidence that was not offered at the hearing, consistent with Metro Code Sections 2.05.035(c) and (d).
- (5) A list of all parties to the case.

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

(Ordinance No. 92-450A, Sec. 1. Amended by Ordinance No. 98-732, Sec. 1; Ordinance No. 01-929A, Sec. 9.)

3.01.060 Exceptions to Hearing Officer Decision

(a) Standing to file an exception and participate in subsequent hearings is limited to parties to the case.

(b) Parties shall have 20 calendar days from the date that the proposed order and findings are mailed to them to file an exception to the proposed order and findings of the hearings officer with the ~~district~~ Metro on forms furnished by the ~~district~~ Metro.

(c) The basis for an exception must relate directly to the interpretation made by the hearings officer of the ways in which the application satisfies the standards for approving an application for a UGB amendment. Exceptions must rely on the evidence in the record for the case. Only issues raised at the evidentiary hearing will be addressed because failure to raise an issue constitutes a waiver to the raising of such issues at any subsequent administrative or legal appeal deliberations.

(Ordinance No. 92-450A, Sec. 1. Amended by Ordinance No. 01-929A, Sec. 9.)

3.01.065 Council Action On Quasi-Judicial Amendments

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

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

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

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

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

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

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

(g) When the Ceouncil is considering an ordinance to approve an application, it shall take all public comment at its first reading of the ordinance, discuss the case, and then either pass the ordinance to second reading or remand the proposed order and findings of the hearings officer to the executive officer Metro Attorney or the hearings officer for new or amended findings. If new or amended findings are prepared, parties to the case shall be provided a copy of the new order and findings by mail no less

than seven calendar days prior to the date upon which the Ceouncil will consider the new order and findings, and parties will be given the opportunity to provide the Ceouncil with oral or written testimony regarding the new order and findings.

(Ordinance No. 92-450A, Sec. 1. Amended by Ordinance No. 96-655E, Sec. 1; Ordinance No. 98-732, Sec. 1; Ordinance No. 01-929A, Sec. 9.)

3.01.070 Final Action Notice Requirements

(a) ~~The districtMetro~~ shall give each county and city in the ~~districtMetro~~ notice of each amendment of the UGB. Mailing the notice required by Ballot Measure 56 (Nov. 1998) [ORS Chapter 268] or ORS 197.615 shall satisfy this subsection.

(b) For the local government designated as having the responsibility for land use planning for the area(s) added to the UGB, ~~the districtMetro~~ shall provide an additional notice stating the time period for completing comprehensive plan amendments for the area.

(Ordinance No. 92-450A, Sec. 1. Amended by Ordinance No. 99-818A, Sec. 1.)

3.01.080 Chapter Regulation Review

The procedures in this chapter shall be reviewed by ~~the districtMetro~~ every five years, and can be modified by the Ceouncil at any time to correct any deficiencies which may arise. This chapter shall be submitted upon adoption to the Land Conservation and Development Commission for acknowledgment pursuant to ORS 197.251, as an implementing measure to ~~the districtMetro~~ UGB. Amendments to this chapter shall be submitted to the Department of Land Conservation and Development pursuant to the requirements of OAR 660 Divisions 18-and-19 as appropriate.

(Ordinance No. 92-450A, Sec. 1)

3.01.085 Severability

Should a section, or portion of any section of this chapter, be held to be invalid or unconstitutional by a court of competent jurisdiction, the remainder of this chapter shall continue in full force and effect.

(Ordinance No. 92-450A, Sec. 1)

Exhibit B
Metro Charter 2003 Amendments to Metro Code

Chapter 3.02

WASTE WATER MANAGEMENT PLAN

SECTIONS	TITLE
3.02.001	Authority and Purpose
3.02.002	Adoption
3.02.003	Conformity to the Regional Plan
3.02.004	Review of Violations of the Waste Treatment Management Component
3.02.005	Change of Waste Treatment Management Component Study Areas
3.02.006	Study Areas
3.02.008	Project Prioritization
3.02.009	Continuing Planning Process
3.02.010	Application of Rules
3.02.011	Severability

3.02.001 Authority and Purpose

(a) This chapter is adopted pursuant to ORS 268.390(1)(b) and 268.390(2) for the purpose of adopting and implementing the Regional Waste Water Management Plan, hereinafter referred to as the "Regional Plan." The Regional Plan shall include the Regional Waste Water Management Plan Text, Sewerage Transmission and Treatment Service Areas Map and Collection System Service Areas Map.

(b) These rules shall become effective 45 days after the date of adoption. As a result of Metro's continuing "208" Water Quality Program, the Council hereby designates water quality and waste treatment management as an activity having significant impact upon the orderly and responsible development of the region.

(Adopted by CRAG Rule. Amended by Ordinance No. 80-102, Sec. 1; Ordinance No. 84-184, Sec. 1; Ordinance No. 86-206, Sec. 1; Ordinance No. 88-275, Sec. 1)

3.02.002 Adoption

The Regional Waste Water Management Plan, as amended, copies of which are on file at Metro offices, is adopted and shall be implemented as required by this chapter.

(Adopted by CRAG Rule. Amended by Ordinance No. 80-102, Sec. 2; Ordinance No. 84-184, Sec. 1; Ordinance No. 86-206, Sec. 1; Ordinance No. 87-229, Sec. 1; Ordinance No. 88-275, Sec. 1)

3.02.003 Conformity to the Regional Plan

(a) Management agencies shall not take any land use related action or any action related to development or provision of public facilities or services which are not in conformance with the Regional Plan.

(b) For purposes of this chapter "management agencies" shall mean all cities, counties and special districts involved with the treatment of liquid wastes within the Metro jurisdiction.

(Adopted by CRAG Rule. Amended by Ordinance No. 80-102, Sec. 3; Ordinance No. 86-203, Sec. 1)

3.02.004 Review of Violations of the Regional Plan

(a) Any member management agency, interested person or group may petition the Ceouncil for review of any action, referred to in Section 3.02.003 of this chapter, by any management agency within 30 days after the date of such action.

(b) Petitions filed pursuant to this section must allege and show that the subject action is of substantial regional significance and that the action violates the Regional Plan.

(c) Upon receipt of a petition for review, the Ceouncil shall decide, without hearing, whether the petition alleges a violation of the Regional Plan and whether such violation is of substantial regional significance and, if so, shall accept the petition for review. The Ceouncil shall reach a decision about whether to accept the petition within 30 days of the filing of such petition. If the Ceouncil decides not to accept the petition, it shall notify the petitioner in writing of the reasons for rejecting said petition. If the Ceouncil decides to accept the petition, it shall schedule a hearing to be held within 30 days of its decision. A hearing on the petition shall be conducted in accordance with applicable procedural rules.

(Adopted by CRAG Rule. Amended by Ordinance No. 80-102, Sec. 4)

3.02.005 Regional Plan Amendments

(a) Revisions in the Regional Plan shall be in accordance with procedural rules adopted by the Ceouncil.

(b) Mistakes discovered in the Regional Plan may be corrected administratively without petition, notice or hearing. Such corrections may be made by order of the Ceouncil upon determination of the existence of a mistake and of the nature of the correction to be made.

(Adopted by CRAG Rule. Amended by Ordinance No. 80-102, Sec. 5; Ordinance No. 86-203, Sec. 1)

3.02.006 Study Areas

(a) Treatment System Study Areas:

(1) Certain areas may be designated on the Treatment System Service Area Map as "Treatment System Study Areas." Such designations are temporary and indicate areas requiring designation of that land to which each management agency

intends to provide wastewater treatment services, as identified in an acceptable facilities plan.

- (2) Wastewater treatment facilities within treatment system study areas shall be allowed only if:
 - (A) Required to alleviate a public health hazard or water pollution problem in an area officially designated by the appropriate state agency;
 - (B) Needed for parks or recreation lands which are consistent with the protection of natural resources or for housing necessary for the conduct of resource-related activities; or
 - (C) Facilities have received state approval of a Step 1 Facilities Plan, as defined by the U. S. Environmental Protection Agency regulations (Section 201, PL 92-500), prior to the effective date of this chapter.
- (3) Facilities planning for a designated treatment system study area shall include investigation of the regional alternative recommended in the support documents accepted by the Regional Plan. Such investigations shall be conducted in accordance with Article V, Section 1, (A)(2)(a)(iv) of the Regional Plan text.
- (4) No federal or state grants or loans for design or construction of any major expansion or modification of treatment facilities shall be made available to or used by agencies serving designated treatment system study areas until such time as a state approved facilities plan has been completed.
- (5) Upon completion of a facilities plan and acknowledgment by Metro of compliance with the Regional Plan, a treatment system study area shall become a designated treatment system service area and shall be eligible to apply for Step 2 and Step 3 construction grants. The treatment system service area shall be incorporated by amendment into the Regional Plan and all appropriate support documents pursuant to Section 3.02.009 of this chapter.

(b) Collection System Study Areas:

- (1) Certain areas are designated on the Collection System Service Area Map as "Collection System Study Areas." Such designations are temporary and exist only until such time as each member and special district designates that land to which it intends to provide sewage collection services. At the time of designation, collection system study areas shall become designated collection system service areas. The Regional Plan and the appropriate support documents shall be amended to incorporate the collection system service area pursuant to Section 3.02.009 of this chapter.
- (2) Designation as a collection system study area shall not be construed to interfere with any grants or loans for facility planning, design or construction.

(Adopted by CRAG Rule; amended by Ordinance No. 80-102, Sec. 6, and Ordinance No. 86-206, Sec. 1)

3.02.008 Project Prioritization

Metro shall review each publication of the DEQ grant priorities list and shall have the opportunity to comment thereon.

(Adopted by CRAG Rule. Amended by Ordinance No. 80-102, Sec. 8; Ordinance No. 86-206, Sec. 1)

3.02.009 Continuing Planning Process

(a) For the purpose of implementing Article V, Section 1 (A)(2)(b)(i) of the Regional Plan, the continuing planning process shall follow, but not be limited to, the procedure shown below.

- (1) Evaluation of new information with respect to its impact on the Regional Plan. Regional Plan changes shall be based upon:
 - (A) Changes in custody, maintenance and/or distribution of any portion of the waste treatment component;
 - (B) Changes in population forecasts and/or wasteload projections;
 - (C) Changes in state goals or regional goals or objectives;
 - (D) Changes in existing treatment requirements;
 - (E) Implementation of new technology or completion of additional study efforts; development of more energy-efficient wastewater treatment facilities; or
 - (F) Other circumstances which because of the impact on water quality are deemed to effect the waste treatment component.
- (2) Adequate public review and comment on the change.
- (3) Adoption of Regional Plan change by Metro Council.
- (4) Submittal of change to DEQ for approval and state certification.
- (5) EPA approval of change.

(b) For the purpose of amending support documents referenced in Article I, Section 3(F) of the Regional Plan, the process shall be as shown below:

- (1) Any proposed change to the support documents shall be presented to the Metro Council with the following information:

- (A) Reasons for proposed action;
 - (B) Basis of data;
 - (C) Method of obtaining data;
 - (D) Period in which the data was obtained;
 - (E) Source of the data;
 - (F) Alternatives considered; and
 - (G) Advantages and disadvantages of the proposed action.
- (2) Following approval by the Metro Council, amendments to the support documents shall be attached to appropriate documents with the following information:
- (A) Approved change and replacement text for the document;
 - (B) Specific location of change within the document;
 - (C) Reasons for the change; and
 - (D) Date of Council action approving the change.

(Adopted by CRAG Rule. Amended by Ordinance No. 80-102, Sec. 9; Ordinance No. 86-206, Sec. 1)

3.02.010 Application of Ordinance

This chapter shall apply to all portions of Clackamas, Washington and Multnomah counties within the jurisdiction of Metro.

(Adopted by CRAG Rule. Amended by Ordinance No. 80-102, Sec. 10)

3.02.011 Severability

(a) The sections of this chapter shall be severable, and any action or judgment by any state agency or court of competent jurisdiction invalidating any section of this chapter shall not affect the validity of any other section.

(b) The sections of the Regional Plan shall also be severable and shall be subject to the provisions of subsection (a) of this section.

(c) For purposes of this section, the maps included in the Regional Plan shall be considered as severable sections, and any section or portion of the maps which may be invalidated as in subsection (a) above shall not affect the validity of any other section or portion of the maps.

(Adopted by CRAG Rule. Amended by Ordinance No. 80-102, Sec. 11)

Exhibit C
Metro Charter 2003 Amendments to Metro Code

Chapter 3.03

HOUSING GOALS & OBJECTIVES—REPEAL CHAPTER 3.03

SECTIONS — TITLE

3.03.010 — Authority and Purpose
3.03.020 — Adoption
3.03.030 — Implementation
3.03.040 — Periodic Review

3.03.010 Authority and Purpose

This chapter is adopted pursuant to ORS 268.380 (1) and (2) for the purpose of adopting and implementing region-wide land-use planning goals and objectives related to housing.

(Ordinance No. 80-98, Sec. 1)

3.03.020 Adoption

The document entitled "Metro Housing Goals and Objectives," September 4, 1980, attached hereto and incorporated herein, or on file at Metro offices, is hereby adopted.

(Ordinance No. 80-98, Sec. 2) Note: The "Metro Housing Goals and Objectives" were amended by Ordinance No. 80-104.

3.03.030 Implementation

The Metro Housing Goals and Objectives adopted herein are considered interim and shall be implemented as provided in the Introduction and Background section of the Goals and Objectives document referred to in section 3.03.020 of this chapter.

(Ordinance No. 80-98, Sec. 3)

3.03.040 Periodic Review

The Metro Housing Goals and Objectives shall be subject to regular review, and amendment where appropriate, every four years from the date of adoption.

(Ordinance No. 80-98, Sec. 4)

Exhibit-D
Metro Charter 2003 Amendments to Metro Code

Chapter 3.04

REGIONAL STORMWATER MANAGEMENT PLAN

SECTIONS — TITLE

- 3.04.010 — Authority and Purpose
- 3.04.020 — Adoption
- 3.04.030 — Regional Drainage Basin Designations
- 3.04.040 — Policies and Guidelines
- 3.04.050 — Drainage Management Agencies
- 3.04.060 — Plan Amendments
- 3.04.070 — Continuing Planning Process
- 3.04.080 — Scope and Application

3.04.010 Authority and Purpose

— (a) — This chapter is adopted pursuant to ORS 268.310(3) and 268.390(4)(b) for the purpose of adopting and implementing a Regional Stormwater Management Plan, herein after referred to as the "Plan." The Plan shall include the Plan Text, dated February 1982, the eight Regional Drainage Basin Maps, dated February 1982, and the following supporting documents:

- (1) — Regional Stormwater Management Inventory, Metropolitan Service District, April 1980
- (2) — Technical Supplement #3, Stormwater Management Design Manual, Metropolitan Service District, Spring 1980
- (3) — Technical Report #1, Basic Data Report, Portland State University, 1981
- (4) — Technical Report #2, Instream Water Quality, Portland State University, 1981
- (5) — Technical Report #3, Effectiveness of Selected Management Practices, Portland State University, 1981
- (6) — Technical Report #4, Regional Drainage Basins Report, Portland State University, 1981
- (7) — Technical Report #5, Monitoring Report, Portland State University, 1981

— (b) — The Plan shall become effective 90 days after the date of adoption. As a result of Metro's continuing "208" Water Quality Program, the council hereby designates water quality and stormwater

management as an activity having significant impact upon the orderly and responsible development of the region.

(Ordinance No. 82-128, Sec. 1)

3.04.020 Adoption

The Regional Stormwater Management Plan, dated February 1982, copies of which are on file at Metro offices, is adopted and shall be implemented as required in this chapter.

(Ordinance No. 82-128, Sec. 2)

3.04.030 Regional Drainage Basin Designations

_____ (a) _____ Eight minor drainage basins in the Metro region are hereby determined to be regional drainage basins for the purposes of the Plan. These basins have been selected because they:

- _____ (1) _____ Encompass three or more local jurisdictions (city or county); and
- _____ (2) _____ They currently have stormwater management problems or a high potential for such problems due to increased development.

_____ (b) _____ The regional drainage basins are shown on the regional drainage basin maps and are listed below:

- _____ (1) _____ Beaver/Kelly Creek
- _____ (2) _____ Fairview Creek
- _____ (3) _____ Kellogg/McScott Creek
- _____ (4) _____ Fryon Creek
- _____ (5) _____ Fanno Creek
- _____ (6) _____ Beaverton/Cedar Mill Creek
- _____ (7) _____ Rock Creek
- _____ (8) _____ Johnson Creek

_____ (c) _____ In addition to drainage issues within the regional drainage basins, the Metro council can choose to address other drainage and water quality issues outside of the regional drainage basins if those issues involve three or more jurisdictions (city, county or state) and arise, or have the potential to arise, as the result of increased development.

(Ordinance No. 82-128, Sec 3)

3.04.040 Policies and Guidelines

In order to help meet the regional objectives prescribed in ORS 268.310(3) and ORS 268.390(1)(b) the following Drainage Management Policies and Guidelines are established:

_____ (a) Policy. To minimize on-site erosion during site preparation as part of an overall site drainage plan for all new development on slopes in excess of 12 percent.

- _____ (1) Temporary Erosion Control Plans (TECP) should be considered as part of an overall site drainage plan for all new development on slopes in excess of 12 percent.
- _____ (2) Chapter 70 (Excavation and Grading) of the State of Oregon Structural Specialty Code and Fire and Life Safety Code should be adopted by all local jurisdictions within the Metro region.
- _____ (3) For developments which do not require a TECP, removal of vegetation during the construction period should be minimized, with replacement and/or enhancement of vegetation upon completion of construction.

_____ (b) Policy. To minimize streambank and channel erosion by controlling the amount and rate of stormwater runoff. To implement this policy, the following guidelines are suggested.

- _____ (1) Stormwater drainage systems should place emphasis on maximizing natural water percolation. Runoff which cannot be accommodated by soil percolation should be directed to natural drainageways so as not to degrade instream water quality or contribute to the peak flood flow.
- _____ (2) Natural drainageways should be riprapped or otherwise stabilized as necessary below drainage and culvert discharge points for a distance sufficient to convey the discharge without channel erosion.
- _____ (3) Erosion protection should be provided the full length of any channel section in which water velocity exceeds the scour velocity of the natural channel materials.
- _____ (4) Riparian vegetation that protects streambanks from eroding should be maintained and enhanced.
- _____ (5) Removal of fill material or construction within stream channels and floodways should be accomplished so that:
 - _____ (A) There is not increase in suspended sediment or turbidity above background level; and
 - _____ (B) There is no decrease in channel capacity.

~~_____ (c) Policy. To manage the 100-year floodplain and floodway in order to protect their natural function, and minimize water quality degradation and property damage. To implement this policy, the following guidelines are suggested:~~

- ~~_____ (1) Local drainage management agencies as identified in Table III-1, are encouraged to establish regional drainage councils to coordinate basin-wide drainage management.~~
- ~~_____ (2) Drainage plans and policies within regional drainage basins should be coordinated by all local drainage management agencies within the basin.~~
- ~~_____ (3) All local drainage management agencies should adopt and maintain regulations necessary to qualify for the National Flood Insurance Program.~~
- ~~_____ (4) Local drainage management agencies are encouraged wherever possible to retain floodway and floodplain lands as open space used for flood storage recreation and wildlife habitat.~~

~~_____ (d) Policy. To protect and enhance the capacity of urban streams to provide habitat for fish and other aquatic organisms. To implement this policy, the following guidelines are suggested:~~

- ~~_____ (1) The removal of fill material or construction in fish spawning areas shall be in accordance with the policies of the State Department of Fish and Wildlife and the Division of State Lands.~~
- ~~_____ (2) Canopy-forming riparian vegetation should be preserved or replaced along all year-round streams.~~
- ~~_____ (3) Community education programs should be developed to help minimize the disposal of harmful or toxic materials in storm drains.~~
- ~~_____ (4) Cooperative fish enhancement programs between civic groups, local jurisdictions and the Oregon Department of Fish and Wildlife are encouraged.~~

~~(Ordinance No. 82-128, Sec. 4)~~

3.04.050 Drainage Management Agencies

For the purposes of this chapter the following Management Agencies have been designated:

- ~~_____ (a) Region-wide Planning and Coordination shall be done by the Metropolitan Service District.~~
- ~~_____ (b) Regional Drainage Basin Management should be coordinated within each of the following basins by the respective jurisdictions:~~
 - ~~_____ (1) Rock Creek Basin:~~

- ____ (A) Hillsboro
- ____ (B) Portland
- ____ (C) Multnomah County
- ____ (D) Washington County
- ____ (2) Beaverton/Cedar Mill Creek Basin:
- ____ (A) Beaverton
- ____ (B) Portland
- ____ (C) Multnomah County
- ____ (D) Washington County
- ____ (3) Fanno Creek Basin:
- ____ (A) Beaverton
- ____ (B) Durham
- ____ (C) Lake Oswego
- ____ (D) Portland
- ____ (E) Tigard
- ____ (F) Tualatin
- ____ (G) Clackamas County
- ____ (H) Multnomah County
- ____ (I) Washington County
- ____ (4) Tryon Creek Basin:
- ____ (A) Lake Oswego
- ____ (B) Portland
- ____ (C) Clackamas County

Repeal 1

- ____ (D) Multnomah County
- ____ (5) Kellogg/Mt. Scott Creek Basin:
- ____ (A) Gladstone
- ____ (B) Happy Valley
- ____ (C) Milwaukie
- ____ (D) Clackamas County
- ____ (E) Washington County
- ____ (6) Johnson Creek Basin:
- ____ (A) Gresham
- ____ (B) Happy Valley
- ____ (C) Milwaukie
- ____ (D) Portland
- ____ (E) Clackamas County
- ____ (F) Multnomah County
- ____ (7) Fairview Creek Basin:
- ____ (A) Fairview
- ____ (B) Gresham
- ____ (C) Troutdale
- ____ (D) Wood Village
- ____ (E) Multnomah County
- ____ (8) Beaver/Kelly Creeks:
- ____ (A) Gresham
- ____ (B) Troutdale
- ____ (C) Multnomah County

(Ordinance No. 82-128, Sec. 5)

3.04.060 Plan Amendments

~~_____ (a) _____ Revisions in the Regional Plan shall be in accordance with procedural rules adopted by the council pertaining to review and amendment of functional plans.~~

~~_____ (b) _____ Mistakes discovered in the regional plan text or maps may be corrected administratively without petition, notice or hearing. Such corrections may be made by order of the council upon determination of the existence of a mistake and of the nature of the correction to be made.~~

(Ordinance No. 82-128, Sec. 6)

3.04.070 Continuing Planning Process

~~_____ (a) _____ Goals of the Continuing Planning Process are;~~

~~_____ (1) _____ To provide a forum for evaluating and refining the Regional Plan.~~

~~_____ (2) _____ To assist Metro with the evaluation and prioritization of its stormwater management activities.~~

~~_____ (b) _____ An annual workshop is to be held on or about the date of the annual meeting of the water resources policy alternatives committee. This workshop shall be designed to accomplish the following:~~

~~_____ (1) _____ Serve as a forum for evaluating Regional Plan performance and needs.~~

~~_____ (2) _____ Provide an annual community assessment of Metro's drainage program.~~

~~_____ (c) _____ The following ongoing program activities are proposed, subject to availability of financial resources, in support of the continuing planning process:~~

~~_____ (1) _____ Regional Planning Framework—To facilitate a consistent regulatory framework for drainage management Metro will explore the formation of regional drainage councils comprised of the local management agencies designated in section 3.04.050.~~

~~_____ (2) _____ Regional Drainage Information Clearinghouse—Metro should establish a regional technical information service to encourage and complement regional plan implementation efforts at the local level.~~

~~_____ (3) _____ Community Involvement—Metro should maintain an ongoing public involvement program designed to establish a regional constituency for stormwater quality management.~~

(Ordinance No. 82-128, Sec. 7)

3.04.080 Scope and Application

~~This chapter shall apply to all land development within the eight regional drainage basins identified in section 3.04.030 and illustrated on maps contained in Part IV of the Regional Plan.~~

~~(Ordinance No. 82-128, Sec. 8)~~

Repeal 1

Exhibit E
Metro Charter 2003 Amendments to Metro Code

Chapter 3.06

**PLANNING PROCEDURE FOR DESIGNATING
FUNCTIONAL PLANNING AREAS AND ACTIVITIES**

SECTIONS	TITLE
3.06.010	Policy and Purpose
3.06.020	Procedures and Implementation

3.06.010 Policy and Purpose

The Ceouncil recognizes its authority and responsibility pursuant to ORS 268.390 to prepare and adopt functional plans for areas and activities which have impact on air quality, water quality, transportation and other aspects of metropolitan area development identified by the Ceouncil.

This chapter is intended to define a planning procedure for identifying and designating those activities and areas in need of functional planning.

(Ordinance No. 91-408A, Sec. 1)

3.06.020 Procedures and Implementation

(a) The ~~executive officer~~Chief Operating Officer from time to time shall report to the Ceouncil those aspects of development in addition to water quality, air quality, and transportation, which are related to the orderly and responsible development of the metropolitan area.

(b) As part of the Ceouncil standing committee recommendations from review of the ~~executive officer~~Chief Operating Officer's annual proposed budget, the standing committees shall report to the Ceouncil whether there are aspects of development in addition to water quality, air quality and transportation, which are related to the orderly and responsible development of the metropolitan area.

(c) The Ceouncil may by resolution designate areas and activities having significant impact upon the orderly and responsible development of the metropolitan area, including, but not limited to, air quality, water quality, and transportation. The resolution shall state that the area or activity designated has a significant impact on metropolitan area development.

(d) The resolution shall direct the ~~executive officer~~Chief Operating Officer to present to the Ceouncil a functional plan for the area and activity designated in the resolution.

(Ordinance No. 86-207. Replaced by Ordinance No. 91-408A, Sec. 1)

Exhibit F
Metro Charter 2003 Amendments to Metro Code

Chapter 3.07

URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN

SECTIONS TITLE

- 3.07.010 Purpose
- 3.07.020 Regional Policy Basis
- 3.07.030 Structure of Requirements

TITLE 1: REQUIREMENTS FOR HOUSING AND EMPLOYMENT ACCOMMODATION

- 3.07.110 Intent
- 3.07.120 Methods to Increase Calculated Capacity Required for All Cities and Counties
- 3.07.130 Design Type Boundaries Requirement
- 3.07.140 Requirements to Increase Capacity If Recent Development At Low Density
- 3.07.150 Determination of Calculated Capacity of Housing Units and Jobs
- 3.07.160 Local Plan Accommodation of Expected Growth Capacity for Housing and Employment—
Performance Standard
- 3.07.170 Design Type Density Recommendations
- Table 3.07-1 Target Capacity for Housing and Employment Units - Year 1994 to 2017**

TITLE 2: REGIONAL PARKING POLICY

- 3.07.210 Intent
- 3.07.220 Performance Standard
- Table 3.07-2 - Regional Parking Ratios**

**TITLE 3: WATER QUALITY, FLOOD MANAGEMENT AND FISH AND WILDLIFE
CONSERVATION**

- 3.07.310 Intent
- 3.07.320 Applicability
- 3.07.330 Implementation Alternatives for Cities and Counties
- 3.07.340 Performance Standards
- 3.07.350 Fish and Wildlife Habitat Conservation Area
- 3.07.360 Metro Model Ordinance Required
- 3.07.370 Variances
- Table 3.07-3 - Protected Water Features**

TITLE 4: RETAIL IN EMPLOYMENT AND INDUSTRIAL AREAS

- 3.07.410 Intent
- 3.07.420 Comprehensive Plan and Implementing Ordinance Changes Required
- 3.07.430 Exceptions
- Table 3.07-4**

TITLE 5: NEIGHBOR CITIES AND RURAL RESERVES

- 3.07.510 Intent
- 3.07.520 Rural Reserves and Green Corridors
- 3.07.530 Invitations for Intergovernmental Agreements
- 3.07.540 Metro Intent with Regard to Green Corridors

TITLE 6: REGIONAL ACCESSIBILITY

- 3.07.610 Intent
- 3.07.620 Regional Street Design Guidelines
- 3.07.630 Design Standards for Street Connectivity
- 3.07.640 Transportation Performance Standards
- Table 3.07-5 Motor Vehicle Level of Service Deficiency Thresholds and Operating Standards*
- Table 3.07-6 Level-of-Service (LOS) Definitions for Freeways, Arterials and Signalized Intersections

Figure 3.07-1

TITLE 7: AFFORDABLE HOUSING

- 3.07.710 Intent
- 3.07.720 Voluntary Affordable Housing Production Goals
- 3.07.730 Requirements for Comprehensive Plan and Implementing Ordinance Changes
- 3.07.740 Requirements for Progress Report
- 3.07.750 Metro Assessment of Progress
- 3.07.760 Recommendations to Implement Other Affordable Housing Strategies
- Table 3.07-7 Five-Year Voluntary Affordable Housing Production Goals

TITLE 8: COMPLIANCE PROCEDURES

- 3.07.810 Compliance With the Functional Plan
- 3.07.820 Compliance Review by the ~~Executive Officer~~ Chief Operating Officer
- 3.07.830 Review of Compliance by Metropolitan Policy Advisory Committee
- 3.07.840 Review by Metro Council
- 3.07.850 Extension of Compliance Deadline
- 3.07.860 Exception from Compliance
- 3.07.870 Enforcement of Functional Plan
- 3.07.880 Compliance Report and Order
- 3.07.890 Citizen Involvement in Compliance Review

TITLE 9: PERFORMANCE MEASURES

- 3.07.910 Intent
- 3.07.920 Performance Measures Adoption

TITLE 10: FUNCTIONAL PLAN DEFINITIONS

- 3.07.1010 Definitions

TITLE 11: URBAN GROWTH BOUNDARY AMENDMENT URBAN RESERVE PLAN REQUIREMENTS

- 3.07.1105 Purpose and Intent

- 3.07.1110 Interim Protection of Areas Brought Inside Urban Growth Boundary
- 3.07.1120 Urban Growth Boundary Amendment Urban Reserve Plan Requirements
- 3.07.1130 Implementation of Urban Growth Boundary Amendment Urban Reserve Plan Requirements
- 3.07.1140 Effective Date and Notification Requirements

NOTE: The Urban Growth Management Functional Plan was adopted by the Metro Council by Ordinance No. 96-647C, and amended by Ordinance No. 97-691C, prior to being codified as Metro Code Chapter 3.07 by Ordinance No. 97-715B.

3.07.010 Purpose

The regional policies which are adopted by this Urban Growth Management Functional Plan recommend and require changes to city and county comprehensive plans and implementing ordinances. The purpose of this functional plan is to implement regional goals and objectives adopted by the Metro Council as the Regional Urban Growth Goals and Objectives (RUGGO), including the Metro 2040 Growth Concept and the Regional Framework Plan. The comprehensive plan changes and related actions, including implementing regulations, required by this functional plan as a component of the Regional Framework Plan, shall be complied with by cities and counties as required by Section 5(e)(2) of the Metro Charter.

Any city or county determination not to incorporate all required functional plan policies into comprehensive plans shall be subject to the conflict resolution and mediation processes included within the RUGGO, Goal I provisions, prior to the final adoption of inconsistent policies or actions.

(Ordinance No. 97-715B, Sec. 1.)

3.07.020 Regional Policy Basis

The regional policies adopted in this Urban Growth Management Functional Plan functional plan are formulated from, and are consistent with, the RUGGOs, including the Metro 2040 Growth Concept. The overall principles of the Greenspaces Master Plan are also incorporated within this functional plan. In addition, the updated Regional Transportation Plan (RTP)¹, when adopted, will serve as the primary transportation policy implementation of the 2040 Growth Concept. However, early implementation land use policies in this functional plan are integrated with early implementation transportation policies derived from preparation of the 1996 Regional Transportation Plan, and consistent with the Metro 2040 Growth Concept.

(Ordinance No. 97-715B, Sec. 1.)

3.07.030 Structure of Requirements

The Urban Growth Management Functional Plan is a regional functional plan which contains "requirements" that are binding on cities and counties of the region as well as recommendations that are not binding. "Shall" or other directive words are used with requirements. The words "should" or "may" are used with recommendations. In general, the plan is structured so that local jurisdictions may choose either performance standard requirements or prescriptive requirements. The intent of the requirements is to assure that cities and counties have a significant amount of flexibility as to how they meet requirements. Performance standards are included in most titles. If local jurisdictions demonstrate to Metro that they meet the performance standard, they have met that requirement of the title. Standard methods of compliance are also included in the plan to establish one very specific way that jurisdictions may meet a title requirement, but these standard methods are not the only way a city or county may show compliance. In addition, certain mandatory requirements that apply to all cities and counties are established by this functional plan.

¹ Metro has an adopted Regional Transportation Plan. However, because of changing local and regional conditions, as well as state and federal requirements, the RTP is scheduled to be amended in 1997.

(Ordinance No. 97-715B, Sec. 1.)