

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING ) ORDINANCE NO. 11-1254  
METRO CODE CHAPTER 10.03, ) Introduced by Michael Jordan, Chief  
REGARDING CONSERVATION ) Operating Officer, with the concurrence  
EASEMENTS ) of Tom Hughes, Council President

WHEREAS, Oregon Revised Statutes 271.715 through 271.795 (the “State Conservation Easement Law”) authorizes public entities to acquire conservation easements when such entities determine that it will be in the public interest;

WHEREAS, when the state legislature initially adopted the State Conservation Easement Law in 1983, it did not include metropolitan service districts in the list of public bodies authorized to acquire and enforce conservation easements;

WHEREAS, due to the state legislature’s omission, in 1997, the Metro Council adopted Metro Code Chapter 10.03, “Conservation Easements,” which essentially restated the State Conservation Easement Law and gave Metro the rights and benefits found in the State Conservation Easement Law;

WHEREAS, the state legislature amended the State Conservation Easement Law in 1999 making it expressly applicable to metropolitan service districts;

WHEREAS, additional amendments to the State Conservation Easement Law over the last decade have resulted in discrepancies between the Metro Code and the State Conservation Easement Law;

WHEREAS, the Metro Council finds that Metro Code Chapter 10.03 is no longer necessary given that the State Conservation Easement Law now expressly governs Metro’s acquisition of conservation easements;

WHEREAS, the Metro Council finds that it is inefficient to maintain the substantive provisions of Metro Code Chapter 10.03, which duplicate the State Conservation Easement Law, effectively requiring that the Metro Code be amended each time state law changes; and

WHEREAS, the Metro Council finds that it is nevertheless beneficial to retain a statement of purpose in Chapter 10.03 that confirms Metro’s commitment to acquiring conservation easements in accordance with law, in order to encourage preservation of natural spaces; now therefore

THE METRO COUNCIL ORDAINS AS FOLLOWS:

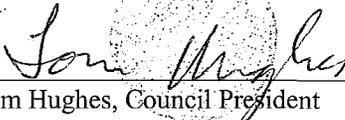
1. Metro Code Chapter 10.03 is repealed and replaced with the following:

“10.03.01 Purpose and Authority

The purpose of this chapter is to encourage the voluntary retention and protection of the natural, scenic, or open space values of real property, assuring its availability for agricultural, forest, recreational, or open space use, protecting natural resources, maintaining or enhancing air or

water quality, and preserving the historical, architectural, archeological, or cultural aspects of real property by private property owners through sale, donation, or dedication of conservation easements to Metro. Metro may acquire conservation easements in accordance with law.”

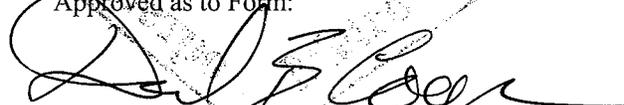
ADOPTED by the Metro Council this 17 day of FEBRUARY, 2011.

  
\_\_\_\_\_  
Tom Hughes, Council President

Attest:

  
\_\_\_\_\_  
Kelsey Newell, Recording Secretary

Approved as to Form:

  
\_\_\_\_\_  
Daniel B. Cooper, Metro Attorney

## **STAFF REPORT**

### **IN CONSIDERATION OF ORDINANCE NO. 11-1254, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 10.03, REGARDING CONSERVATION EASEMENTS**

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Date: February 10, 2011

Prepared by: Hope S. Whitney  
503-797-1661

## **BACKGROUND**

Oregon Revised Statutes 271.715 through 271.795 (the “State Conservation Easement Law”) governs the acquisition of conservation easements by public entities. ORS 271.715(1) defines a “conservation easement” as a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural, scenic, or open space values of real property, ensuring its availability for agricultural, forest, recreational, or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.

When the state legislature initially adopted the State Conservation Easement Law, it did not apply to Metro. Specifically, Metro did not receive the benefits of the state statute, which authorized the acquisition and enforcement of conservation easements by only certain public bodies. Accordingly, in 1997, the Metro Council adopted Metro Code Chapter 10.03, “Conservation Easements” (“Chapter 10.03”), which was substantially identical to the State Conservation Easement Law. The purpose of Chapter 10.03 was to make it clear that Metro was authorized to acquire conservation easements, that such acquisitions would comply with state law requirements, and that the conservation easements Metro acquired would be enforceable.

In 1999, the state legislature amended the State Conservation Easement Law, making it applicable to Metro. In addition, revisions to the State Conservation Easement Law over the past decade have resulted in discrepancies between state law and Chapter 10.03. For example, the public hearing requirements set forth in Chapter 10.03.060 are no longer required by state law, if the conservation easement being acquired is “pursuant to a metropolitan service district bond measure authorizing the acquisition of open spaces within specific areas.” It is inefficient for the Metro Code to duplicate state law, as it effectively requires a code amendment each time state law changes. The Office of Metro Attorney therefore recommends that the Metro Council adopt Ordinance No. 11-1254 to repeal the substantive provisions of Metro Code Chapter 10.03, but to retain the statement of purpose in Chapter 10.03 to confirm Metro’s commitment to acquiring conservation easements in accordance with law, in order to encourage preservation of natural spaces.

If the Metro Council adopts this Ordinance, a public hearing will no longer be required each time Metro acquires a conservation easement pursuant to the 2006 Natural Areas Bond Measure. Resolution No. 07-3766A, “Authorizing the Chief Operating Officer to Purchase Property with Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan,” adopted by the Metro Council on March 1, 2007, identifies a pre-approved set of criteria and conditions under which the Chief Operating Officer and his designees are authorized to negotiate and complete land acquisition transactions related to the 2006 Natural Areas Bond Measure, which land acquisition transactions include conservation easements. The elimination of the public hearing requirement from Chapter 10.03 will allow the acquisition of conservation easements in the target areas identified in the 2006 Natural Areas Bond

Measure without further Metro Council approval in each instance, so long as such acquisitions are within the parameters set forth in the Work Plan and the Refinement Plans.

#### **ANALYSIS/INFORMATION**

1. **Known Opposition.** None.
2. **Legal Antecedents.** ORS 271.715 *et seq.* Metro Code Chapter 10.03.
3. **Anticipated Effects.** More efficient implementation of the State Conservation Easement Law and the Metro Code.
4. **Budget Impacts.** None.

#### **RECOMMENDED ACTION**

Adoption of Ordinance 11-1254