

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO ) Ordinance No. 12-1276  
CODE CHAPTER 3.09, LOCAL GOVERNMENT )  
BOUNDARY CHANGES, TO CONFORM TO NEW ) Introduced by Councilor Barbara Roberts  
LEGISLATION AND TO IMPROVE THE )  
BOUNDARY CHANGE PROCESS )

WHEREAS, ORS 268.347 to 268.354 charges Metro with responsibilities for the process of changing local government boundaries in the region; and

WHEREAS, the 2011 Oregon Legislature revised the responsibilities assigned to Metro, reducing the types of local government service districts whose boundary changes Metro must regulate; and

WHEREAS, clarification of Metro's administrative role in the processing of final changes to local government boundaries would simplify and improve the boundary change process; and

WHEREAS, the Council held a public hearing on the proposed amendments on April 12, 2012; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

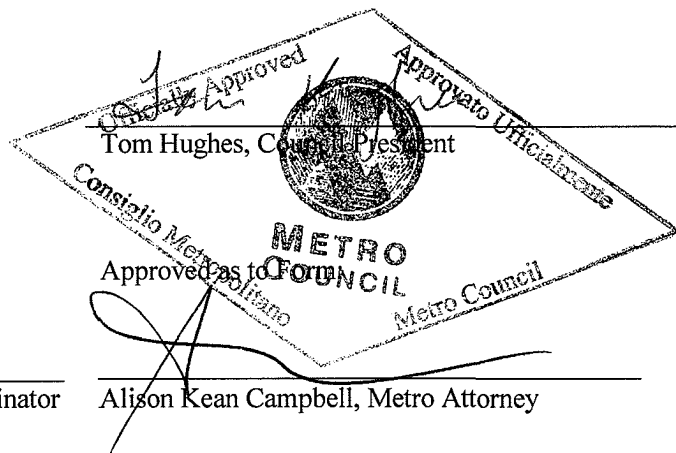
1. Metro Code Chapter 3.09, Local Government Boundary Changes, is hereby amended as indicated in Exhibit A, attached and incorporated into this ordinance.
2. The Findings of Fact and Conclusions of Law, set forth in Exhibit B, attached and incorporated into this ordinance, explain how the amendments comply with state and regional laws.

ADOPTED by the Metro Council this 12th day of April 2012.

Attest:



Kelsey Newell, Regional Engagement Coordinator



Alison Kean Campbell, Metro Attorney

**AMENDMENTS TO METRO CODE CHAPTER 3.09  
LOCAL GOVERNMENT BOUNDARY CHANGES**

3.09.010 Purpose and Applicability

The purpose of this chapter is to carry out the provisions of ORS ~~268.347 to~~ 268.354. This chapter applies to ~~all~~ boundary changes within the boundaries of Metro or of urban reserves designated by Metro and any annexation of territory to the Metro boundary. Nothing in this chapter affects the jurisdiction of the Metro Council to amend the region's Urban Growth Boundary (UGB).

3.09.020 Definitions

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

- A. "Adequate level of urban services" means a level of urban services adequate to support the higher number of dwelling units and jobs specified for the appropriate design type in section 3.07.640A of Title 6 of the Urban Growth Management Functional Plan, or in the ordinance adopted by the Metro Council that added the area to be incorporated, or any portion of it, to the UGB.
- B. "Affected entity" means a county, city or district for which a boundary change is proposed or is ordered.
- C. "Affected territory" means territory described in a petition.
- D. "Boundary change" means a major or minor boundary change involving affected territory lying within the jurisdictional boundaries of Metro or the boundaries of urban reserves designated.
- E. "Deliberations" means discussion among members of a reviewing entity leading to a decision on a proposed boundary change at a public meeting for which notice was given under this chapter.
- ~~F. "District" means a: district defined by ORS 199.420 or any district subject to Metro boundary procedure act under state law.~~
  - ~~1. Domestic water supply district organized under ORS chapter 264;~~

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2. Park and recreation district organized under ORS chapter 266;
3. Metropolitan service district organized under ORS chapter 268;
4. Sanitary district organized under ORS 450.005 to 450.245;
5. Sanitary authority, water authority or joint water and sanitary authority organized under ORS 450.600 to 450.989; or
- 4.6. District formed under ORS 451.410 to 451.610 to provide water or sanitary service.

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

G.H. "Major boundary change" means the formation, merger, consolidation or dissolution of a city or district.

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

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

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~~J.~~K. "Petition" means any form of action that initiates a boundary change.

~~K.~~L. "Reviewing entity" means the governing body of a city, county or Metro, or its designee.

~~L.~~M. "Urban reserve" means land designated by Metro pursuant to ORS 195.137 et seq. for possible addition to the UGB.

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

3.09.030 Notice Requirements

- A. The notice requirements in this section apply to all boundary change decisions by a reviewing entity except expedited decisions made pursuant to section 3.09.045. These requirements apply in addition to, and do not supersede, applicable requirements of ORS Chapters 197, 198, 221 and 222 and any city or county charter provision on boundary changes.
- B. Within 45 days after a reviewing entity determines that a petition is complete, the entity shall set a time for deliberations on a boundary change. The reviewing entity shall give notice of its proposed deliberations by mailing notice to all necessary parties, by weatherproof posting of the notice in the general vicinity of the affected territory, and by publishing notice in a newspaper of general circulation in the affected territory. Notice shall be mailed and posted at least 20 days prior to the date of deliberations. Notice shall be published as required by state law.
- C. The notice required by subsection (b) shall:
  - 1. Describe the affected territory in a manner that allows certainty;
  - 2. State the date, time and place where the reviewing entity will consider the boundary change; and
  - 3. State the means by which any person may obtain a copy of the reviewing entity's report on the proposal.

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- D. A reviewing entity may adjourn or continue its final deliberations on a proposed boundary change to another time. For a continuance later than 28 days after the time stated in the original notice, notice shall be reissued in the form required by subsection (b) of this section at least five days prior to the continued date of decision.
- E. A reviewing entity's final decision shall be written and authenticated as its official act within 30 days following the decision and mailed or delivered to Metro and to all necessary parties. The mailing or delivery to Metro shall include payment to Metro of the filing fee required pursuant to section 3.09.060.

3.09.040 Requirements for Petitions

- A. A petition for a boundary change must contain the following information:
  - 1. The jurisdiction of the reviewing entity to act on the petition;
  - 2. A map and a legal description of the affected territory in the form prescribed by the reviewing entity;
  - 3. For minor boundary changes, the names and mailing addresses of all persons owning property and all electors within the affected territory as shown in the records of the tax assessor and county clerk; and
  - 4. For boundary changes under ORS 198.855(3), 198.857, 222.125 or 222.170, statements of consent to the annexation signed by the requisite number of owners or electors.
- B. A city, county and Metro may charge a fee to recover its reasonable costs to carry out its duties and responsibilities under this chapter.

3.09.045 Expedited Decisions

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

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- B. The expedited process must provide for a minimum of 20 days' notice prior to the date set for decision to all necessary parties and other persons entitled to notice by the laws of the city or Metro. The notice shall state that the petition is subject to the expedited process unless a necessary party gives written notice of its objection to the boundary change.
  
- C. At least seven days prior to the date of decision the city or Metro shall make available to the public a report that includes the following information:
  - 1. The extent to which urban services are available to serve the affected territory, including any extra-territorial extensions of service;
  - 2. Whether the proposed boundary change will result in the withdrawal of the affected territory from the legal boundary of any necessary party; and
  - 3. The proposed effective date of the boundary change.
  
- D. To approve a boundary change through an expedited process, the city shall:
  - 1. Find that the change is consistent with expressly applicable provisions in:
    - a. Any applicable urban service agreement adopted pursuant to ORS 195.065;
    - b. Any applicable annexation plan adopted pursuant to ORS 195.205;
    - c. Any applicable cooperative planning agreement adopted pursuant to ORS 195.020(2) between the affected entity and a necessary party;
    - d. Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services;
    - e. Any applicable comprehensive plan; and
    - f. Any applicable concept plan; and
  - 2. Consider whether the boundary change would:
    - a. Promote the timely, orderly and economic provision of public facilities and services;
    - b. Affect the quality and quantity of urban services; and

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- c. Eliminate or avoid unnecessary duplication of facilities or services.
- E. A city may not annex territory that lies outside the UGB, except it may annex a lot or parcel that lies partially within and partially outside the UGB.

3.09.050 Hearing and Decision Requirements for Decisions Other Than Expedited Decisions

- A. The following requirements for hearings on petitions operate in addition to requirements for boundary changes in ORS Chapters 198, 221 and 222 and the reviewing entity's charter, ordinances or resolutions.
- B. Not later than 15 days prior to the date set for a hearing the reviewing entity shall make available to the public a report that addresses the criteria in subsection (d) and includes the following information:
  - 1. The extent to which urban services are available to serve the affected territory, including any extra territorial extensions of service;
  - 2. Whether the proposed boundary change will result in the withdrawal of the affected territory from the legal boundary of any necessary party; and
  - 3. The proposed effective date of the boundary change.
- C. The person or entity proposing the boundary change has the burden to demonstrate that the proposed boundary change meets the applicable criteria.
- D. To approve a boundary change, the reviewing entity shall apply the criteria and consider the factors set forth in subsections (d) and (e) of section 3.09.045.

~~3.09.060 Ministerial Functions of Metro Process to Make Boundary Change Effective~~

- A. ~~Metro shall create and keep current maps of all service provider service areas and the jurisdictional boundaries of all cities, counties and special districts within Metro. The maps shall be made available to the public at a price that reimburses Metro for its costs. Additional~~

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~~information requested of Metro related to boundary changes shall be provided subject to applicable fees. After a reviewing entity makes a final decision on a boundary change, the entity and Metro shall follow the process set forth below:~~

- ~~1. The reviewing entity shall send its final decision, with the map, legal description and other supporting materials required by law, to the Oregon Department of Revenue (DOR);~~
- ~~2. The DOR will review the materials to determine whether they are in final approval form and notify the reviewing entity of its determination;~~
- ~~3. The reviewing entity shall send its final decision, with supporting materials and the DOR approval, to Metro;~~
- ~~4. Metro shall record and map the final decision, with supporting materials and DOR determination, and send it to the Secretary of State (SOS), the reviewing entity, the appropriate county assessor's and elections offices, making the final decision effective on the date of Metro's submittal;~~
- ~~5. The SOS will send its filing letter to Metro;~~
- ~~6. Metro shall post the final decision, supporting materials, the DOR determination and the SOS filing letter at the Metro website.~~

~~The Metro Chief Operating Officer (COO) shall cause notice of all final boundary change decisions to be sent to the appropriate county assessor and elections officer, the Oregon Secretary of State and the Oregon Department of Revenue. Notification of public utilities shall be accomplished as provided in ORS 222.005(1)-B. If a reviewing entity notifies Metro that the entity needs expedited treatment of its final decision at the time the entity sends its decision to the DOR, Metro will ensure it completes Step 4 in subsection A within 24 hours of its receipt of the final decision and DOR determination from the entity.~~

~~2. \_\_\_\_\_~~

~~C. The COO shall establish a fee structure establishing the amounts to be paid upon filing notice of city or county adoption of boundary changes, and for related services by the reviewing entity with submittal of its final decision in Step 3 of subsection A to cover Metro's costs for the~~



~~services set forth in this section. The fee schedule shall be filed~~COO shall file the fee schedule with the Clerk of the Council Clerk and ~~distributed~~send it to all cities, counties and special districts ~~within~~in the Metro region.

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

### 3.09.070 Changes to Metro's Boundary

- A. Changes to Metro's boundary may be initiated by Metro or the county responsible for land use planning for the affected territory, property owners and electors in the territory to be annexed, or other public agencies if allowed by ORS 198.850(3). Petitions shall meet the requirements of section 3.09.040 above. The COO shall establish a filing fee schedule for petitions that shall reimburse Metro for the expense of processing and considering petitions. The fee schedule shall be filed with the Council.
- B. Notice of proposed changes to the Metro boundary shall be given as required pursuant to section 3.09.030.
- C. Hearings shall be conducted consistent with the requirements of section 3.09.050.
- D. Changes to the Metro boundary may be made pursuant to the expedited process set forth in section 3.09.045.
- E. The following criteria shall apply in lieu of the criteria set forth in subsection (d) of section 3.09.050. The Metro Council's final decision on a boundary change shall include findings and conclusions to demonstrate that:
1. The affected territory lies within the UGB;
  2. The territory is subject to measures that prevent urbanization until the territory is annexed to a city or to service districts that will provide necessary urban services; and

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3. The proposed change is consistent with any applicable cooperative or urban service agreements adopted pursuant to ORS Chapter 195 and any concept plan.
- F. Changes to the Metro boundary that occur by operation of law pursuant to ORS 268.390(3)(b) are not subject to the procedures or criteria set forth in this section.

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

- A. A petition to incorporate a city that includes territory within Metro's boundary shall comply with the minimum notice requirements in section 3.09.030, the minimum requirements for a petition in section 3.09.040, and the hearing and decision requirements in subsections (a), (c), and (e) of section 3.09.050, except that the legal description of the affected territory required by section 3.09.040(a)(1) need not be provided until after the Board of County Commissioners establishes the final boundary for the proposed city.
- B. A petition to incorporate a city that includes territory within Metro's jurisdictional boundary may include territory that lies outside Metro's UGB. However, incorporation of a city with such territory shall not authorize urbanization of that territory until the Metro Council includes the territory in the UGB pursuant to Metro Code Chapter 3.07.
- C. The following criteria shall apply in lieu of the criteria set forth in section 3.09.050(d). An approving entity shall demonstrate that:
  1. Incorporation of the new city complies with applicable requirements of ORS 221.020, 221.031, 221.034 and 221.035;
  2. The petitioner's economic feasibility statement must demonstrate that the city's proposed permanent rate limit would generate sufficient operating tax revenues to support an adequate level of urban services, as defined in this chapter and required by ORS 221.031; and
  3. Any city whose approval of the incorporation is required by ORS 221.031(4) has given its approval or has failed to act within the time specified in that statute.

3.09.090 Extension of Services Outside UGB

Neither a city nor a district may extend water or sewer service from inside a UGB to territory that lies outside the UGB.

## **Exhibit B to Ordinance No. 12-1276**

### **Findings of Fact and Conclusions of Law**

Ordinance No. 12-1276 makes two changes to Metro Code Chapter 3.09, Local Government Boundary Changes (“the Boundary Change code”). First, the ordinance revises the definition in 3.09.020 of “district” to conform it to a change in state law enacted in 2011. The new statute (ORS 268.351) sets forth an explicit list of the types of service districts whose boundary changes are subject to Metro’s procedures and criteria. Second, the ordinance clarifies the roles of Metro and other agencies in the administrative process that follows final action by a city, county or service district to create or change a boundary (3.09.060). The effects of these changes are limited to local government boundary changes and are not implemented through land use regulations. Other changes to the code made by the ordinance correct grammar and citations.

#### **Regional Framework Plan**

There are no policies in the Regional Framework Plan (RFP) that apply expressly to local government boundary changes. Nor is Chapter 3.09 among the code chapters upon which Metro relies to implement policies of the RFP.

#### **State Law**

ORS chapters 198, 221, 222, 268 and 308 guide local government boundary changes in the Metro region. The revisions to Metro Code 3.09.020 conform to an amendment to ORS 268.351 made in 2011. The revisions are consistent with other provisions of these statutes.

The revisions to Metro Code 3.09.060 sets forth the roles of Metro and other agencies in, and the sequence of steps to complete, the administrative process that follows final action by a city, county or service district on a boundary change. The roles and the sequence of steps are consistent with the five statutes.

#### **Conclusion**

Based upon these findings, the Metro Council concludes that the changes made to Metro Code Chapter 3.09, Local Government Boundary Changes are consistent with the Regional Framework Plan and applicable statutes.

## STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 12-1276, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 3.09, LOCAL GOVERNMENT BOUNDARY CHANGES, TO CONFORM TO NEW LEGISLATION AND TO IMPROVE THE BOUNDARY CHANGE PROCESS

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Date: March 20, 2012

Prepared by: Dick Benner (1532)

### BACKGROUND

The 2011 Oregon Legislature passed (and the Governor signed) a bill introduced for Metro to reduce the types of local government service districts whose boundary changes Metro must regulate and track. The Legislature removed types of districts – such as vector control and highway lighting districts – whose activities do not relate to Metro’s missions. Metro must now conform its code to the new law.

DRC and OMA took the opportunity to draft improvements to the boundary change process and vetted the changes with local governments in the region and the Oregon Department of Revenue (ODOR) and the Secretary of State’s office (SOS) to ensure practicality and acceptance. After thorough discussion with these practitioners, we reached consensus on the changes. The process changes clarify the steps cities, counties, districts, Metro and ODOR/SOS take to finalize a boundary change.

### ANALYSIS/INFORMATION

1. **Known Opposition:** There is no known opposition. A group of local government boundary change practitioners reached consensus on the changes to the process.
2. **Legal Antecedents:** ORS 268.347 to 268.354 charge Metro with responsibility to regulate and track city and service district boundary changes in the region. The Oregon Legislature enacted Senate Bill 48 in the 2011 session to reduce the types of service districts Metro must track to those whose services relate to Metro missions.
3. **Anticipated Effects:** Adoption of the amendments will clarify and simplify the boundary change process for Metro and other local governments.
4. **Budget Impacts:** Adoption of the amendments is expected to have a small, positive effect on Metro’s costs to carry out its duties under the statute.

### RECOMMENDED ACTION

DRC and OMA recommend that the Council adopt the amendments to Metro Code Chapter 3.09.