

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING)	
METRO CODE CHAPTER 3.09 (LOCAL)	
GOVERNMENT BOUNDARY CHANGES))	ORDINANCE NO. 04-1033 ^A
TO ALLOW USE OF THE EXPEDITED)	
PROCESS FOR CHANGES TO THE METRO)	
DISTRICT BOUNDARY AND TO CLARIFY)	Introduced by Council President Bragdon
CRITERIA FOR BOUNDARY CHANGES,)	and Councilor McLain
AND DECLARING AN EMERGENCY)	

WHEREAS, the Metro Council intends that territory added to the urban growth boundary (“UGB”) become available for urbanization, consistent with the Urban Growth Management Functional Plan (“UGMFP”), in a timely and orderly fashion; and

WHEREAS, the Council, pursuant to Metro Code Section 3.01.040, applies a design type from the 2040 Growth Concept to the territory at the time the Council adds it to the UGB; and

WHEREAS, Title 11 of the UGMFP (Planning for New Urban Areas) ensures that territory added to the UGB will not be urbanized until appropriate planning and zoning designations consistent with the Growth Concept design type are applied by the responsible city or county; and

WHEREAS, there are circumstances in which territory added to the UGB should be annexed to the Metro district quickly to facilitate the timely and orderly urbanization of the territory; and

WHEREAS, Metro Code Chapter 3.09 (Local Government Boundary Changes) does not currently authorize use of the expedited process, set forth in Section 3.09.045, for minor changes to the Metro District boundary; and

WHEREAS, the criteria for boundary changes in Chapter 3.09 are not clear, as required by state law; now, therefore,

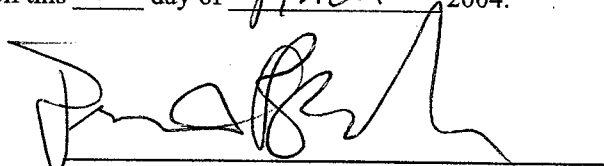
THE METRO COUNCIL ORDAINS AS FOLLOWS:

- Chapter 3.09 of the Metro Code is hereby amended, as indicated in Exhibit A, attached and incorporated into this ordinance, in order to authorize annexation to the Metro District of territory in the UGB through the expedited process for minor boundary changes in Chapter 3.09 and to clarify the process criteria for ~~boundary changes~~incorporation of new cities.

2. The Findings of Fact and Conclusions of Law in Exhibit B, attached and incorporated into this ordinance, demonstrate that these amendments to Chapter 3.09 comply with the Regional Framework Plan and statewide planning laws.

3. This ordinance is necessary for the immediate preservation of public health, safety and welfare because the time involved in processing applications for change to the Metro District boundary is delaying the replenishment of the supply of project-ready industrial sites in the region. An emergency is therefore declared to exist, and this ordinance shall take effect immediately, pursuant to Metro Charter section 39(1).

ADOPTED by the Metro Council this 4th day of March 2004.


David Bragdon, Council President

ATTEST:

Approved as to Form:


Recording Secretary


Daniel B. Cooper, Metro Attorney



Exhibit A to Ordinance No. 04-1033A
Amendments To Chapter 3.09
Local Government Boundary Changes

3.09.120 Minor Boundary Changes to Metro's Boundary

(a) Minor boundary changes to the Metro Boundary may be initiated by Metro, the city or the county responsible for ~~concept land use planning for the affected territory specified pursuant to Metro Code Section 3.01.040,~~ property owners and electors in the territory to be annexed, or ~~others as otherwise provided by law~~ public agencies if allowed by ORS 198.850(3). Petitions shall meet the minimum requirements of Section 3.09.040 above. The Chief Operating Officer shall establish a filing fee schedule for petitions that shall reimburse Metro for the expense of processing and considering petitions. The fee schedule shall be filed with the Council.

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

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

(d) Minor boundary changes to the Metro Boundary ~~are not subject~~ may be made pursuant to an 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) or (e) of Section 3.09.050 to a minor boundary change to Metro's boundary. The Metro Council's final decision on a boundary change shall include findings and conclusions to demonstrate that:

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

(2) ~~Upon annexation to the district, the affected territory will become subject to the interim protection standards set forth in Metro Code section 3.07.1120 and any conditions imposed by the ordinance adding the territory to the UGB.~~ 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.

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

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

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

(b) A petition to incorporate a city that includes territory within Metro's jurisdictional boundary may include territory that lies outside Metro's UGB. However, incorporation of a city with

such territory shall not authorize urbanization of that territory until the Metro Council includes the territory in the UGB pursuant to Metro Code Chapter 3.01.

(c) The following criteria shall apply in lieu of the criteria set forth in Section 3.09.050(d) and (e). An approving entity shall demonstrate that incorporation of the new city complies with the following criteria:

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

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

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

(4) The petitioner's economic feasibility statement complies with the requirements of ORS 221.035;

(5) If some of the territory proposed for incorporation lies outside the Metro UGB, that portion of the territory conforms to the requirements of ORS 221.034;

(6) The petitioner's economic feasibility statement indicates that the city must plan for average residential density ~~of at least 10 dwelling units per net developable residential acre or such other density specified in~~ consistent with Title 1 (one) and Title 11 (eleven) (Requirements for Housing and Employment Accommodation) of the Urban Growth Management Functional Plan; and

(7) Any city whose approval of the incorporation is required by ORS 221.031(4) has given its approval or has failed to act within the time specified in that statute.

Exhibit B to Ordinance No. 04-1033A
Findings of Fact and Conclusions of Law

I. Overview

Ordinance No.04-1033A revises the process and criteria for changing the boundary of Metro's district to make it easier and more efficient. It accomplishes that by simplifying the criteria and by making such boundary changes eligible for the "expedited" process already provided in Metro Code Chapter 3.09 on boundary changes. The ordinance also establishes criteria and procedures tailored to the incorporation of new cities that would include territory within the Metro district. These criteria and procedures will make incorporation easier and more efficient. In combination, these revisions will help accomplish the policies of the Regional Framework Plan (RFP) and the 2040 Growth Concept (part of the RFP), and will help accomplish the objectives of the statewide planning program, by making the transition from rural land to urban land more efficient and orderly.

II. Statewide Planning Laws

Statewide Planning Goal 1 – Citizen Involvement: The Council followed its customary procedure to enactment of ordinances, including public notification, consideration by advisory committees at public meetings that were preceded by public notification, and a public hearing before the Council on February 26, 2004. This process complies with Metro's public involvement policy and with Goal 1

Statewide Planning Goal 2 – Land Use Planning: The Council circulated a draft version of this ordinance to all local governments within Metro's jurisdiction. The Council received and responded to comment from local governments. The Council also accepted recommended changes to the draft ordinance from the Metropolitan Policy Advisory Committee, composed largely of local elected officials. This process fulfilled the coordination requirements of Goal 2.

Statewide Planning Goal 3 – Agricultural Lands: Because this ordinance applies only to territory within Metro's urban growth boundary, Goal 3 does not apply.

Statewide Planning Goal 4 – Forest Lands: Because this ordinance applies only to territory within Metro's urban growth boundary, Goal 4 does not apply.

Statewide Planning Goal 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces: This ordinance simply revises the process and criteria for determining whether territory within an urban growth boundary should fall within the jurisdiction of Metro, and whether it is appropriate that the territory lie within the boundaries of a new city. It does not affect the allowable uses of the territory and, hence, does not affect resources protected by Goal 5. Hence, Goal 5 does not apply to this ordinance.

Statewide Planning Goal 6 – Air, Land and Water Resources Quality: This ordinance simply revises the process and criteria for determining whether territory within an urban growth

boundary should fall within the jurisdiction of Metro, and whether it is appropriate that the territory lie within the boundaries of a new city. It does not affect the allowable uses of the territory and, hence, does not affect resources protected by Goal 6. Hence, Goal 6 does not apply to this ordinance.

Statewide Planning Goal 7 – Areas Subject to Natural Disasters and Hazards: This ordinance simply revises the process and criteria for determining whether territory within an urban growth boundary should fall within the jurisdiction of Metro, and whether it is appropriate that the territory lie within the boundaries of a new city. It does not affect the allowable uses of the territory and, hence, does not involve uses of land subject to natural hazards. Hence, Goal 7 does not apply to this ordinance.

Statewide Planning Goal 8 – Recreational Needs: This ordinance simply revises the process and criteria for determining whether territory within an urban growth boundary should fall within the jurisdiction of Metro, and whether it is appropriate that the territory lie within the boundaries of a new city. It does not affect the allowable uses of the territory and, hence, does not address or affect recreational needs. Hence, Goal 8 does not apply to this ordinance.

Statewide Planning Goal 9 – Economic Development: This ordinance will facilitate annexation of territory designated for employment uses to the Metro district, a prerequisite to urbanization and development. The ordinance also makes the process of incorporation of a new city faster and easier. Making these processes faster and easier will accelerate the provision of services to employment land in the region and improve the economic prospects for the region. The ordinance complies with Goal 9.

Statewide Planning Goal 10 – Housing: This ordinance simply revises the process and criteria for determining whether territory within an urban growth boundary should fall within the jurisdiction of Metro, and whether it is appropriate that the territory lie within the boundaries of a new city. It does not affect the allowable uses of the territory and, hence, does not address or affect housing needs. Hence, Goal 10 does not apply to this ordinance.

Statewide Planning Goal 11 – Public Facilities and Services: This ordinance simply revises the process and criteria for determining whether territory within an urban growth boundary should fall within the jurisdiction of Metro, and whether it is appropriate that the territory lie within the boundaries of a new city. It does not affect the allowable uses of the territory and it does not determine which local government will provide public facilities or services to the territory, a determination that will be made later, pursuant to the process and criteria that would change as a result of this ordinance. Goal 11 will apply to these later determinations, not to this ordinance.

Statewide Planning Goal 12 – Transportation: This ordinance simply revises the process and criteria for determining whether territory within an urban growth boundary should fall within the jurisdiction of Metro, and whether it is appropriate that the territory lie within the boundaries of a new city. It does not affect the allowable uses of the territory and it does not determine which local government will provide transportation services to or within the territory. Those determinations will be made at the time comprehensive plans, transportation system plans and

land use regulations are revised prior to urbanization of the territory. Goal 12 will apply to these later determinations. Goal 12 does not apply to this ordinance.

Statewide Planning Goal 13 – Energy Conservation: This ordinance simply revises the process and criteria for determining whether territory within an urban growth boundary should fall within the jurisdiction of Metro, and whether it is appropriate that the territory lie within the boundaries of a new city. It does not affect the allowable uses of the territory and, hence, does not address or affect energy conservation. Hence, Goal 13 does not apply to this ordinance.

Statewide Planning Goal 14 – Urbanization: This ordinance revises the process and criteria for determining whether territory within an urban growth boundary should fall within the jurisdiction of Metro, and whether it is appropriate that the territory lie within the boundaries of a new city. The revisions will make both processes faster and more efficient. One effect will be a more efficient transition from rural to urban land use. The ordinance complies with Goal 14.

Statewide Planning Goal 15 – Willamette River Greenway: This ordinance simply revises the process and criteria for determining whether territory within an urban growth boundary should fall within the jurisdiction of Metro, and whether it is appropriate that the territory lie within the boundaries of a new city. It does not affect the allowable uses of the territory and, hence, does not address or affect uses within the Willamette River Greenway. Hence, Goal 15 does not apply to this ordinance.

III. Regional Framework Plan

Policy 1.4 – Economic Opportunity: One objective of this ordinance is to make the process for addition to the Metro district boundary of territory designated for employment easier and faster. The ordinance will accomplish this objective (1) by simplifying the criteria and making the “expedited” process in Metro Code Chapter 3.09 available for changes to the Metro district boundary and (2) by tailoring a process and simplifying criteria for incorporation of new cities with territory within Metro. These revisions will enhance economic opportunities in the region, and comply with Policy 1.4.

Policy 1.5 – Economic Vitality: For the same reasons stated under Policy 1.4, these revisions will enhance economic vitality in the region, and comply with Policy 1.5.

Policy 1.6 – Growth Management: This policy calls for efficient management of urban land, among other things. For the same reasons stated under Statewide Planning Goal 14, these revisions will encourage the evolution of an efficient urban growth form, and comply with Policy 1.6.

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 03-1033A, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 3.09 (LOCAL GOVERNMENT BOUNDARY CHANGES) TO ALLOW USE OF THE EXPEDITED PROCESS FOR CHANGES TO THE METRO DISTRICT BOUNDARY AND TO CLARIFY CRITERIA FOR BOUNDARY CHANGES, AND DECLARING AN EMERGENCY

Date: February 27, 2004

Prepared by: Dick Benner
Presented by: Dick Benner

PROPOSED ACTION

Adoption of Ordinance No. 04-1033A amending Metro Code Chapter 3.09 (Local Government Boundary Changes) to allow use of the expedited process for changes to the Metro district boundary and to clarify the process and criteria for changes to the district boundary and incorporation of new cities, and declaring an emergency.

BACKGROUND

Attached to this memorandum is a draft ordinance amending the Metro Code on boundary changes. The Office of Metro Attorney (“OMA”) drafted the changes to accomplish several objectives:

1. To make the process of annexing territory to the Metro district easier and faster.
2. To specify the process and criteria for incorporation of a new city within Metro’s boundary.

This draft is revised from the first reading draft to respond to recommendations from MPAC. MPAC recommended that this ordinance revise only those sections of Chapter 3.09 having to do with changes to the district boundary and the incorporation of new cities. MPAC recommended that Metro take more time on other revisions to Chapter. 3.09 to all on further consideration by local governments

1. Ease the Process for Annexation to the Metro District

The Metro Code on annexations (Chapter 3.09) provides an expedited process for “consent” annexations to which no “necessary party” (defined) objects. The current code, however, expressly makes this expedited process unavailable for annexations to the Metro district. The draft ordinance would amend the code to make “consent” annexations to the district eligible for the faster process. [Note: the Council added a requirement to Title 11 (Planning for New Urban Areas) that territory added to the UGB be annexed to the district prior to urbanization.]

2. Specify Process and Criteria for Incorporation of New Cities

The Metro Code does not specify a process or criteria tailored to the incorporation of a new city within Metro’s boundary. The draft ordinance adds a new section aimed particularly at such incorporations, such as the incorporation of Damascus. The proposed revisions also reflect recent changes in the statutes on incorporations in the Metro area.

ANALYSIS/INFORMATION

1. Known opposition

None at this time.

2. Legal antecedents

ORS chapters 198 and 268; Metro Code chapter 3.09 (Local Government Boundary Changes).

3. Anticipated effects

If the proposed revisions are made to the Metro Code on Metro district boundary changes, review of such changes will become faster and will require fewer public and private resources for processing the changes. If the Metro Council adopts the new provisions for incorporation of new cities, that process will become faster and more efficient.

4. Budget impacts

If the proposed revisions are made to the Metro Code on boundary changes, the staff anticipates that fewer resources (time, contract funds) will be required for the processing changes to the Metro district boundary and for review by Metro staff of proposed incorporations of new cities.

RECOMMENDED ACTION

OMA recommends that the Metro Council adopt these changes to Ordinance No. 04-1033A following public comments and the revisions that may follow from those comments.

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DISTRICT BOUNDARY AND TO CLARIFY)	Introduced by Council President Bragdon
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AND DECLARING AN EMERGENCY)	

WHEREAS, the Metro Council intends that territory added to the urban growth boundary (“UGB”) become available for urbanization, consistent with the Urban Growth Management Functional Plan (“UGMFP”), in a timely and orderly fashion; and

WHEREAS, the Council, pursuant to Metro Code Section 3.01.040, applies a design type from the 2040 Growth Concept to the territory at the time the Council adds it to the UGB; and

WHEREAS, Title 11 of the UGMFP (Planning for New Urban Areas) ensures that territory added to the UGB will not be urbanized until appropriate planning and zoning designations consistent with the Growth Concept design type are applied by the responsible city or county; and

WHEREAS, there are circumstances in which territory added to the UGB should be annexed to the Metro district quickly to facilitate the timely and orderly urbanization of the territory; and

WHEREAS, Metro Code Chapter 3.09 (Local Government Boundary Changes) does not currently authorize use of the expedited process, set forth in Section 3.09.045, for minor changes to the Metro District boundary; and

WHEREAS, the criteria for boundary changes in Chapter 3.09 are not clear, as required by state law; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

- Chapter 3.09 of the Metro Code is hereby amended, as indicated in Exhibit A, attached and incorporated into this ordinance, in order to authorize annexation to the Metro District of territory in the UGB through the expedited process for minor boundary changes in Chapter 3.09 and to clarify the criteria for boundary changes.

2. The Findings of Fact and Conclusions of Law in Exhibit B, attached and incorporated into this ordinance, demonstrate that these amendments to Chapter 3.09 comply with the Regional Framework Plan and statewide planning laws.

3. This ordinance is necessary for the immediate preservation of public health, safety and welfare because the time involved in processing applications for change to the Metro District boundary is delaying the replenishment of the supply of project-ready industrial sites in the region. An emergency is therefore declared to exist, and this ordinance shall take effect immediately, pursuant to Metro Charter section 39(1).

ADOPTED by the Metro Council this ____ day of _____ 2004.

David Bragdon, Council President

ATTEST:

Approved as to Form:

Recording Secretary

Daniel B. Cooper, Metro Attorney

Exhibit A to Ordinance No. 04-1033
Amendments To 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 268.354. This chapter applies to all boundary changes within the boundaries of Metro ~~or~~ and any ~~urban reserve designated by Metro prior to June 30, 1997~~ annexation of territory to the Metro boundary. Nothing in this chapter affects the jurisdiction of the Metro Council to amend the region's Urban Growth Boundary ("UGB").

3.09.020 Definitions

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

- (a) "Affected entity" means a county, city, or special district for which a boundary change is proposed or is ordered.
- (b) "Affected territory" means territory described in a petition.
- (c) "Approving entity" means the governing body of a city, county, city-county or district authorized to make a decision on a boundary change, or its designee.
- (d) "Boundary change" means a major or minor boundary change, involving affected territory lying within the jurisdictional boundaries of Metro and the urban reserves designated by Metro prior to June 30, 1997.
- (e) "Contested case" means a boundary change decision by a city, county or district that is contested or otherwise challenged by a necessary party.
- (f) "District" means a district defined by ORS 198.710 or any district subject to Metro boundary procedure act under state law.
- (g) "Final decision" means the action by an approving entity whether adopted by ordinance, resolution or other means which is the determination of compliance of the proposed boundary change with all applicable criteria and which requires no further discretionary decision or action by the approving 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.
- (h) "Major boundary change" means the formation, merger, consolidation or dissolution of a city or district.
- (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.

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

(k) “Petition” means a petition, resolution or other form of initiatory action for a boundary change.

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

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

3.09.030 Uniform Notice Requirements for Final Decisions

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

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

(c) The notice of the date of the public hearing, or of deliberations if the decision is to be made without a hearing pursuant to Section 3.09.045, shall: describe the affected territory in a manner that allows certainty; state the date, time and place where the approving entity will consider the boundary change; and state the means by which any interested person may obtain a copy of the approving entity’s report on the proposal. The notice shall state whether the approving entity intends to decide the boundary change without a public hearing unless a necessary party requests a public hearing.

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

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

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

3.09.040 Minimum Requirements for Petitions

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

- (1) The jurisdiction of the approving entity to act on the petition;
- (2) A narrative, legal and graphical description of the affected territory in the form prescribed by the Metro Chief Operating Officer;
- (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;
- (4) A listing of the present providers of urban services to the affected territory;
- (5) A listing of the proposed providers of urban services to the affected territory following the proposed boundary change;
- (6) The current tax assessed value of the affected territory; and
- (7) Any other information required by state or local law; and
- (8) An explanation how the petition satisfies the criteria in subsections (d) or (e) of 3.09.050, in subsection (e) of 3.09.120, or in subsection (c) of 3.09.130, whichever are applicable.

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

3.09.045 Expedited Decisions

(a) Approving entities may establish an expedited decision process that does not require a public hearing ~~consistent with this section~~. Expedited decisions are not subject to the requirements of Sections 3.09.030(b) and 3.09.050(a), (b), (c),(e) or (f). The expedited decision process may only be utilized for minor boundary changes where the petition initiating the ~~minor boundary~~ change is accompanied by the written consent of one hundred percent (100%) of the property owners and at least fifty percent (50%) of the electors, if any, within the affected territory.

(b) Notwithstanding the notice requirements in subsection (b) of section 3.09.030, ¶the expedited decision process must provide for a minimum of 20 days notice to all ~~interested~~ necessary parties and persons otherwise legally entitled to notice. The notice shall state that the petition is subject to the expedited process. The expedited process may not be utilized if a necessary party gives written notice of its intent to contest the decision prior to the date of the decision. A necessary party may not contest a minor boundary change where the minor boundary change is explicitly authorized by an urban services agreement adopted pursuant to ORS 195.065.

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

(d) Decisions made pursuant to an expedited process are not subject to appeal ~~by a necessary party~~ pursuant to Section 3.09.070.

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

(a) The following minimum requirements for hearings on ~~boundary change decisions petitions~~ operate in addition to all procedural requirements for boundary changes provided for under ORS chapters 198, 221 and 222. Nothing in this chapter requires an approving entity to hold a public hearing in addition to a hearing required by ORS 221.040, or allows an approving entity to dispense with a public hearing on a proposed boundary change when the public hearing is required by applicable state statutes or is required by the approving entity's charter, ordinances or resolutions.

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

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

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

(d) An approving entity's final decision on a boundary change shall include findings and conclusions ~~addressing the following criteria to demonstrate that the affected territory lies within the UGB and that the proposal is consistent with:~~

- (1) ~~Consistency with directly a~~Applicable provisions in an urban service ~~provider agreement or annexation plan~~ adopted pursuant to ORS 195.065 ~~or an annexation plan adopted pursuant to ORS 195.205;~~
- (2) ~~Consistency with directly a~~Applicable provisions of ~~urban any cooperative planning or other agreements, other than agreements adopted pursuant to ORS 195.065, agreement adopted pursuant to ORS 195.020(2) or other planning agreement~~ between the affected entity and a necessary party;
- (3) ~~Consistency with specific directly applicable~~Clear and objective standards or criteria for boundary changes contained in ~~applicable~~ comprehensive land use plans and public facility plans;
- (4) ~~Consistency with specific directly applicable~~Clear and objective standards or criteria for boundary changes contained in the Regional Framework Plan or any functional plan;
- (5) ~~Whether the proposed change will promote or not interfere with t~~The timely, orderly and economic provisions of public facilities and services; ~~and~~
- (6) ~~The territory lies within the Urban Growth Boundary; and~~
- (7) ~~Consistency with other applicable~~Clear and objective criteria ~~for applicable to~~ the boundary change in ~~question under other~~ state and local laws.

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

- (1) ~~The relative financial, operational and managerial capacities of alternative proposed providers of the disputed urban services to the affected area territory have the financial, operational and managerial capacity to provides the services;~~
- (2) ~~The quality and quantity of the urban services at issue with alternative providers of the urban services, including differences in cost and allocations of costs of the services and accountability of the alternative providers~~ proposed providers of urban services to the affected territory can provide the necessary quality and quantity of service at a reasonable cost;
- (3) There are no Pphysical factors ~~related to the that would prevent feasible~~ provision of urban services by ~~alternative proposed~~ providers;

- (4) ~~For proposals to create a new entity the feasibility of creating the new entity.~~
- (5) ~~Plans to provide urban services to the affected territory will eliminate or avoid~~The elimination or avoidance of unnecessary duplication of facilities;
- (6) Economic, demographic and sociological trends and projections relevant to the provision of the urban services indicate that services are feasible in the affected territory;
- (7) ~~Matching~~The recipients of tax supported urban services ~~with~~ will, to the extent possible, be the payers of the tax;
- (8) ~~The equitable~~A allocation of the costs to ~~alternative~~ proposed urban service providers of serving between new development and prior development will be equitable.; ~~and~~
- (9) ~~Economies of scale.~~
- (10) ~~Where a proposed decision is inconsistent with an adopted intergovernmental agreement, that the decision better fulfills the criteria of Section 3.09.050(d) considering Factors (1) through (9) above.~~

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

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

(h) Only territory already within the jurisdictional boundary of Metro at the time a petition is complete may be annexed to a city.

3.09.060 Creation of Boundary Appeals Commission

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

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

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

3.09.070 How Contested Case Filed

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

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

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

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

3.09.080 Alternate Resolution

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

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

3.09.090 Conduct of Hearing

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

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

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

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

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

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

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

3.09.100 Ex Parte Communications to the Boundary Appeals Commission

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

3.09.110 Ministerial Functions of Metro

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

(b) The Metro Chief Operating Officer shall cause notice of all final boundary change decisions to be sent to the appropriate county assessor(s) and elections officer(s), the Secretary of State and the Oregon Department of Revenue.

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

3.09.120 Minor Boundary Changes to Metro's Boundary

(a) Minor boundary changes to the Metro Boundary may be initiated by Metro, the city or county responsible for concept planning for the affected territory specified pursuant to Metro Code Section 3.01.040, property owners, ~~and~~ electors, or others as ~~otherwise~~ provided by law. Petitions shall meet the minimum requirements of Section 3.09.040 above. The Chief Operating Officer shall establish a filing fee schedule for petitions that shall reimburse Metro for the expense of processing and considering petitions. The fee schedule shall be filed with the Council.

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

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

(d) Minor boundary changes to the Metro Boundary ~~are not subject~~ may be made pursuant to an 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) or (e) of Section 3.09.050 to a minor boundary change to Metro's boundary. The Metro Council's final decision on a boundary change shall include findings and conclusions to demonstrate that:

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

(2) Upon annexation to the district, the affected territory will become subject to the interim protection standards set forth in Metro Code section 3.07.1120 and any conditions imposed by the ordinance adding the territory to the UGB.

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

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

(a) A petition to incorporate a city that includes territory within Metro's jurisdictional boundary shall comply with the minimum notice requirements in section 3.09.030, the minimum requirements for a petition in section 3.09.040, the hearing and decision requirements in subsections (a), (c), and (f) of section 3.09.050, and the contested case requirements and hearing provisions of 3.09.070, 3.09.080, 3.09.090, and 3.09.100.

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

(c) The following criteria shall apply in lieu of the criteria set forth in Section 3.09.050(d) and (e). An approving entity shall demonstrate that incorporation of the new city complies with the following criteria:

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

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

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

(4) The petitioner's economic feasibility statement complies with the requirements of ORS 221.035;

(5) If some of the territory proposed for incorporation lies outside the Metro UGB, that portion of the territory conforms to the requirements of ORS 221.034;

(6) The petitioner's economic feasibility statement indicates that the city must plan for average residential density of at least 10 dwelling units per net developable residential acre or such other density specified in Title 1 (Requirements for Housing and Employment Accommodation) of the Urban Growth Management Functional Plan; and

(7) 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.

STAFF REPORT

FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 3.09 (LOCAL GOVERNMENT BOUNDARY CHANGES) TO ALLOW USE OF THE EXPEDITED PROCESS FOR CHANGES TO THE METRO DISTRICT BOUNDARY AND TO CLARIFY CRITERIA FOR BOUNDARY CHANGES, AND DECLARING AN EMERGENCY

Date: January 14, 2004

Prepared by: Dick Benner
Presented by: Dick Benner

PROPOSED ACTION

Adoption of ordinance 04-1033 amending Metro Code Chapter 3.09 (Local Government Boundary Changes) to allow use of the expedited process for changes to the Metro district boundary and to clarify criteria for boundary changes, and declaring an emergency.

BACKGROUND

Attached to this memorandum is a draft ordinance amending the Metro Code on boundary changes. The Office of Metro Attorney (“OMA”) drafted the changes to accomplish several objectives:

1. To make the process of annexing territory to the Metro district easier and faster.
2. To specify the process and criteria for incorporation of a new city within Metro’s boundary.
3. To make the criteria for boundary changes clearer and more objective.
4. To bring the code in line with state and local law and with Metro’s experience.

OMA recommends that the Council adopt these changes following public comments and the revisions that may follow from those comments.

1. Ease the Process for Annexation to the Metro District

The Metro Code on annexations (Chapter 3.09) provides an expedited process for “consent” annexations to which no “necessary party” (defined) objects. The current code, however, expressly makes this expedited process unavailable for annexations to the Metro district. The draft ordinance would amend the code to make “consent” annexations to the district eligible for the faster process. [Note: the Council added a requirement to Title 11 (Planning for New Urban Areas) that territory added to the UGB be annexed to the district prior to urbanization.]

2. Specify Process and Criteria for Incorporation of New Cities

The Metro Code does not specify a process or criteria tailored to the incorporation of a new city within Metro’s boundary. The draft ordinance adds a new section aimed particularly at such incorporations, such as the incorporation of Damascus. The proposed revisions also reflect recent changes in the statutes on incorporations in the Metro area.

3. Make Criteria Clearer and More Objective

The Metro statute – ORS Chapter 268 – requires Metro to establish clear and objective criteria for review of proposed boundary changes [268.354(1)(d)]. The criteria in the current code are subject to criticism on this count. The draft ordinance moves the criteria toward greater clarity and objectivity while addressing the subjects and policies in the current code.

4. Bring the Code up to Date

There have been changes both to the statutes on boundary changes and LCDC rules that have made several provisions in the Metro Code on boundary changes out of date. The proposed revisions bring the code into line with recent changes to state law on incorporation of new cities (*e.g.*, special provisions for new cities whose boundary would include land both within and outside Metro’s UGB). The revisions also respond to changes in LCDC’s rules on urban reserves (urban reserves no longer required).

ANALYSIS/INFORMATION

1. Known opposition

None at this time.

2. Legal antecedents

ORS chapters 198 and 268; Metro Code chapter 3.09 (Local Government Boundary Changes).

3. Anticipated effects

If the proposed revisions are made to the Metro Code on boundary changes, review of proposed boundary changes will become faster and will require fewer public and private resources for processing the changes. This will especially be true for changes to the Metro district boundary.

4. Budget impacts

If the proposed revisions are made to the Metro Code on boundary changes, the staff anticipates that fewer resources (time, contract funds) will be required for the processing changes to the Metro district boundary.