

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ADOPTING A) ORDINANCE NO 98-791
NEW CHAPTER OF THE METRO CODE)
RELATING TO LOCAL GOVERNMENT) Introduced by Councilor McLain
BOUNDARY CHANGES AND)
DECLARING AN EMERGENCY)

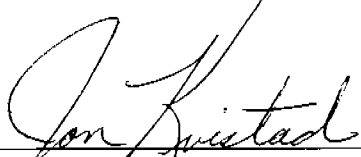
WHEREAS, the 1997 Oregon Legislature adopted Chapter 516 of Oregon Laws of 1997, which abolished the Portland metropolitan area Boundary Commission effective January 1, 1999, and authorized Metro, pursuant to ORS 268.347 through ORS 268.354, to adopt procedural and substantive provisions related to local government boundary changes; and

WHEREAS, MPAC, after study, has recommended to the Council that provisions be adopted to carry out the legislative authorization; now, therefore,


THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Chapter 3.09, Local Government Boundary Changes, attached hereto as Exhibit A, is hereby adopted; and,
2. This Ordinance is necessary for the immediate preservation of public health, safety and welfare; and an emergency is therefore declared to exist, and this Ordinance shall take effect immediately, pursuant to Metro Charter Section 39(1), in order for the provisions of Chapter 3.09 to be in effect on January 1, 1999, when the Portland metropolitan area local government Boundary Commission is abolished.

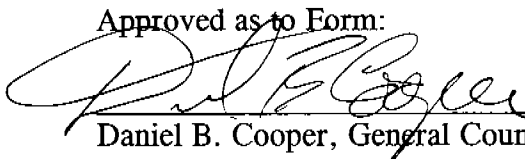
ADOPTED by the Metro Council this 17th day of December 1998.



Jon Kvistad, Presiding Officer

ATTEST:


Recording Secretary

Approved as to Form:


Daniel B. Cooper, General Counsel

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Ordinance No. 98-791
Exhibit A

CHAPTER 3.09

LOCAL GOVERNMENT BOUNDARY CHANGES

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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 any urban reserve designated by Metro prior to June 30, 1997. Nothing in this chapter affects the jurisdiction of the Metro Council to amend the region's Urban Growth Boundary.

3.09.020 Definitions

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

(a) "Affected entity" means a city, city-county, 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 the district boundary procedure act under state law.

(g) "Final decision" means an adopted resolution or ordinance of an approving entity that is the final action of the approving entity on the boundary change, including a resolution or ordinance that declares the result of an election to which a boundary change decision has been referred.

(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. These procedures are in addition to and do not supersede the requirements of ORS chapters 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.

(b) An approving entity shall set a time for deliberations on a boundary change within 30 days after the petition is completed. The approving 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 45 days prior to the date of decision 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. Notice shall be published as required by state law.

(c) The notice of the date of deliberations 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 30 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 Executive 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.

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

3.09.050 Uniform Hearing Requirements for Final Decisions

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

(b) Except when a public hearing is requested by a necessary party, an approving entity may make a final decision on a completed petition for an annexation of territory without a public hearing when a decision without public hearing is allowed by state and local law, when the affected territory is surrounded by a city as described in ORS 222.750 ("island annexations") or when the petition is accompanied by the written consent of one hundred percent (100%) of the property owners and at least fifty percent (50%) of the electors within the affected territory ("100% owner annexations").

(c) An approving entity shall conduct a public hearing on the proposed boundary change if a necessary party requests a hearing in a writing delivered to the approving entity not later than 15 days prior to the date set for the decision. The request for public hearing shall state reasons why the party believes the boundary change is inconsistent with the approval criteria. At any public hearing, the persons or entities proposing the boundary change shall have the burden to prove that the petition meets the criteria for a boundary change.

(d) Not later than 30 days prior to the date set for a boundary change decision, the approving entity shall make available to the public a report that includes at a minimum the following:

- (1) The extent to which urban services presently are available to serve the affected territory;
- (2) The extent to which urban services serving the affected territory result from extraterritorial extensions of service outside the service provider's legal boundary;
- (3) 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;
- (4) 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;
- (5) Whether the proposed boundary change will result in the withdrawal of the affected territory from the legal boundary of any necessary party; and
- (6) The proposed effective date of the decision.

(e) An approving entity's final decision shall be reduced to writing and authenticated. A final decision that is subject to a public hearing shall be based on substantial evidence in the record of that hearing. All boundary change decisions whether made with or without a public hearing shall include findings of fact and conclusions from those findings as to address the following minimum criteria for decision:

- (1) The decision complies with urban service provider agreements adopted pursuant to ORS 195.065 between the affected entity and all necessary parties;
- (2) The decision is consistent with specific directly applicable standards or criteria for boundary changes contained in comprehensive land use plans, public facility plans, regional framework and functional plans, urban planning agreements and similar

agreements of the affected entity and of all necessary parties;

- (3) The affected entity can assure that urban services are now or can be made available to serve the affected territory, by its own forces or by contract with others.
- (4) If the proposed boundary change is for annexation of territory to Metro, a determination by the Metro Council that the territory should be included in the Urban Growth Boundary shall be the primary criteria for approval.

(f) In addition to the criteria for decision set out in subsection (e) of this section, in those cases where the agreements required by ORS 195.065 are not yet adopted and a proposed provider of an urban service to the affected territory is disputed by a necessary party, a final decision by a city or county made after public hearing shall address and consider, as to the proposed providers of urban services to the affected territory:

- (1) Financial, operational and managerial capacity to provide the service;
- (2) The effect on the cost of the urban service to the users of the service, the quality and quantity of the service provided and the ability of urban service users to identify and contact service providers, and to determine their accountability with ease;
- (3) Physical factors related to the provision of the urban service;
- (4) The feasibility of creating a new entity for the provision of the urban service;
- (5) The elimination or avoidance of unnecessary duplication of facilities;
- (6) Economic, demographic and sociological trends and projections relevant to the provision of the urban service;

- (7) The allocation of charges among urban service users in a manner that reflects differences in the costs of providing services to the users;
- (8) Matching the recipients of tax supported urban services with the payers of the tax;
- (9) The equitable allocation of costs between new development and prior development; and
- (10) Economies of scale.
- (11) Where a proposed decision is inconsistent with adopted intergovernmental agreements by or among any necessary parties, the city or county making the final decision shall include factual findings that the decision better fulfills the criteria of subsections (1) through (10) of this section.

(g) A final boundary change decision by an approving entity shall state the effective date, which date shall be no earlier than 30 days following the date that the 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 defined Metro Urban Growth Boundary at the time a petition is complete 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 the Urban Growth Boundary.

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 Executive Officer 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 Executive 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 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.

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.

(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.

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 section 3.09.050 of this Code. 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 Executive 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 Executive 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.