

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING THE) ORDINANCE NO. 91-408A
PLANNING PROCEDURE FOR DESIGNATING)
FUNCTIONAL PLANNING AREAS AND) Introduced by Rena Cusma,
ACTIVITIES) Executive Officer

WHEREAS, Ordinance No. 86-207 was adopted to define a planning procedure for the Council of the Metropolitan Service District to identify and designate those activities and areas in need of functional planning; and

WHEREAS, Subsequent land use appeals of the Metropolitan Service District actions have focused on the legal issue of whether Metro planning actions are final land use decisions similar to actions implementing comprehensive plans; and

WHEREAS, The current procedural requirement in Ordinance No. 86-207 requiring findings for initiating functional plan development may confuse the legal status of this action; and

WHEREAS, Ordinance No. 86-207 and proposed amendments to said ordinance merit incorporation into the Metro Code to clearly establish the legal provisions by which the District shall pursue development of functional plans; now, therefore,

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. The following sections are added to the Code of the Metropolitan Service District.

Chapter 3.06

3.06.010 Policy and Purpose: The Council recognizes its authority and responsibility pursuant to ORS 268.390 to prepare and adopt functional plans for areas and activities which have impact on air quality, water quality, transportation and other

aspects of metropolitan area development identified by the Council.

This chapter is intended to define a planning procedure for identifying and designating those activities and areas in need of functional planning.

3.06.020 Procedures and Implementation:

(a) The Executive Officer from time to time shall report to the Council those aspects of development in addition to water quality, air quality, and transportation, which are related to the orderly and responsible development of the metropolitan area.

(b) As part of the Council standing committee recommendations from review of the Executive Officer's annual Proposed Budget, the standing committees shall report to the Council whether there are aspects of development in addition to water quality, air quality and transportation, which are related to the orderly and responsible development of the metropolitan area.

(c) The Council may by resolution designate areas and activities having significant impact upon the orderly and responsible development of the metropolitan area, including, but not limited to, air quality, water quality, and transportation. The resolution shall state that the area or activity designated has a significant impact on metropolitan area development.

(d) The resolution shall direct the Executive Officer to present to the Council a functional plan for the area and activity designated in the resolution.

ADOPTED by the Council of the Metropolitan Service District
this 27th day of June, 1991.



Tanya Collier, Presiding Officer

ATTEST:



Clerk of the Council

STAFF REPORT

CONSIDERATION OF ORDINANCE NO. 91-408 FOR THE PURPOSE OF AMENDING THE PLANNING PROCEDURE FOR DESIGNATING FUNCTIONAL PLANNING AREAS AND ACTIVITIES

DATE: June 13, 1991

Presented by: Rich Carson
Mel Huie
Larry Shaw

Factual Background and Analysis

Ordinance No. 86-207 defines the planning procedure for designating areas and activities which may be the subject of a functional plan. It was adopted in 1986 prior to initiation of the Solid Waste Management Plan. It provides a process for a Metro Council resolution to initiate a functional plan that requires findings of significant impact on orderly development of the metropolitan area. General Counsel has recommended this Ordinance amendment eliminating the findings requirement prior to initiation of any more functional plans to avoid confusion over the legal status of the resolution.

Review of Ordinance No. 86-207, Section 3, indicates that this procedure Ordinance requires more than ORS 268.390 requires to initiate a functional plan. The additional findings requirement in the Ordinance could be used against Metro if a legal argument is made that merely initiating development of a functional plan is an appealable land use decision. That Ordinance requirement makes exercise of Metro's statutory authority to begin functional planning look like a quasi-judicial decision.

STOP v. Metro held that plans with contingent recommendations were not final. So, a Metro Council decision to start such a plan should fit the same category. Therefore, General Counsel recommends that the special findings requirement be removed from the Ordinance. The reasons that Metro has for initiating a functional plan would still be indicated in a resolution format that is not labeled "findings."

The Ordinance amendments include the following:

1. Ordinance No. 86-207, Section 2, should be amended to change "Intergovernmental Resource Committee established by Ordinance No. 84-180" to "Transportation and Planning Committee of the Metro Council," the current Metro committee assigned to functional planning.
2. Ordinance No. 86-207, Section 3, should be amended to eliminate the "findings" requirement.
3. Ordinance No. 86-207, Section 4, should be amended to change "* * * designated in Section 2" to "designated in the resolution" for internal consistency.

These amendments to Ordinance No. 86-207 are clarifications intended to strengthen Metro's ability to defend a challenge to initiation of a functional plan.

Executive Officer's Recommendation

The Executive Officer recommends adoption of Ordinance No. 91-408.



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

Date: June 20, 1991

To: Transportation and Planning Committee

From: Jessica *JM* Marlitt, Council Analyst

Regarding: ORDINANCE NO. 91-408, AMENDING THE PLANNING PROCEDURE FOR DESIGNATING FUNCTIONAL PLANNING AREAS AND ACTIVITIES

At the Transportation and Planning Committee meeting June 11, an informal briefing and review was conducted on draft Ordinance No. 91-408, amending provisions of Ordinance No. 86-207. Ordinance No. 86-207 was Metro's original legislative action to define procedures for designating Metro functional planning areas and activities.

The Committee asked Council staff to review the complete text of Ordinance No. 86-207 and prepare new language for Section 2, one area which Ordinance No. 91-408 would amend. The new language would clarify the Council standing committee process for annually reviewing areas/issues of development which might appropriately be addressed by a functional plan.

In the course of preparing this new language, Council staff consulted with legal counsel about codifying Ordinance No. 91-408. Legal counsel felt making Ordinance No. 91-408 a part of the Metro Code was important and advised the ordinance should be reformatted to meet Code requirements.

Therefore, a revised Ordinance No. 91-408A is being prepared and will be distributed prior to the June 25 meeting. It will be structured to become a part of the Metro Code, as Chapter 3.00, and include new language, per the Committee's directions, to clarify the intent of Section 2.

If you have any questions, please contact me at extension 286.

TPCOM A:\91408A.MEM

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING THE) ORDINANCE NO. 91-408
PLANNING PROCEDURE FOR DESIGNATING)
FUNCTIONAL PLANNING AREAS AND) Introduced by Rena Cusma,
ACTIVITIES) Executive Officer

WHEREAS, Ordinance No. 86-207 was adopted to define a planning procedure for the Council of the Metropolitan Service District to identify and designate those activities and areas in need of functional planning; and

WHEREAS, Subsequent land use appeals of the Metropolitan Service District actions have focused on the legal issue of whether Metro planning actions are final land use decisions similar to actions implementing comprehensive plans; and

WHEREAS, The current procedural requirement in Ordinance No. 86-207 requiring findings for initiating functional plan development may confuse the legal status of this action; now, therefore,

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 2 is hereby amended:

"As part of its recommendation on the annual work plan the ~~Intergovernmental Resource Committee established by Ordinance No. 84-180~~ Transportation and Planning Committee of the Metro Council."

Section 3 is amended to read:

"The Council may by resolution designate areas and activities having significant impact upon the orderly and responsible development of the metropolitan area,

including, but not limited to, air quality, water quality, and transportation. The resolution shall state that the area or activity designated has a significant impact on metropolitan area development."

Section 4 is hereby amended:

"The resolution shall direct the Executive Officer to present to the Council a functional plan for the area and activity designated in ~~Section 2~~ the resolution."

ADOPTED by the Council of the Metropolitan Service District
this _____ day of _____, 1991.

Tanya Collier, Presiding Officer

ATTEST:

Clerk of the Council

LS/gl
1043

TRANSPORTATION AND PLANNING COMMITTEE REPORT

ORDINANCE NO. 91-408A, AMENDING THE PLANNING PROCEDURE FOR DESIGNATING FUNCTIONAL PLANNING AREAS AND ACTIVITIES

Date: June 26, 1991

Presented by: Councilor Gardner

COMMITTEE RECOMMENDATION: At the June 25, 1991, Transportation and Planning Committee meeting, Councilors Devlin, McLain, Van Bergen and myself voted unanimously to recommend Council adopt Ordinance No. 91-408A as amended. Councilor Bauer was absent.

COMMITTEE DISCUSSION/ISSUES: Ordinance No. 91-408A would amend and make a part of the Metro Code Ordinance No. 86-207 describing Metro's functional planning process. This ordinance was developed to:
1) clarify the District's process for determining areas and activities which may merit the development of functional plans; 2) provide a consistent legal context for Metro functional planning procedures.

The Committee approved ordinance amendments which structure the provisions for inclusion in the Metro Code as Chapter 3.06; add a "Policy and Purpose" introductory statement; and provide generally for Council standing committees to identify potential functional planning areas/activities during the annual budget review process.

Committee members briefly discussed the variety of legal language used to describe Metro's functional planning authority. Metro Legal Counsel Larry Shaw noted state statute language was very broad and Metro efforts, such as Ordinance No. 91-408, aimed at establishing a consistent legal description of Metro's functional planning actions.



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

DATE: June 28, 1991

TO: Rena Cusma, Executive Officer

FROM: Paulette Allen, Clerk of the Council *PA*

RE: TRANSMITTAL OF ORDINANCE NOS. 91-390A, 91-407A, 91-408, AND 91-410

Attached for your consideration are true copies of the ordinances referenced above adopted by the Council on June 27, 1991.

If you wish to veto any of the above referenced ordinances, I must receive a signed and dated written veto message from you no later than 5:00 p.m., Friday, July 5, 1991. The veto message, if submitted, will become part of the permanent record. If no veto message is received by the time and date stated above, these ordinances will be considered finally adopted.

I, *Unette Shorley*, received this memo and true copies of Ordinance Nos. 91-390A, 91-407A, 91-408, and 91-410 from the Clerk of the Council on June 28, 1991.

Date: *6/28/91*

ORD. MEM



METRO

2000 SW First Avenue
Portland, OR 97201-5398
(503) 221-1646
Fax 241-7417

91-408

August 16, 1991

Clerk of the Board
Multnomah County Courthouse
1021 S.W. Fourth Avenue
Portland, OR 97204

Dear Clerk of the Board:

Enclosed are true copies of the following ordinances adopted by the Metro Council. Please file these ordinances in the Metro file maintained by your County.

Executive Officer
Rena Cusma

Metro Council
Tanya Collier
Presiding Officer
District 9

Jim Gardner
Deputy Presiding
Officer
District 3

Susan McLain
District 1

Lawrence Bauer
District 2

Richard Devlin
District 4

Tom DeJardin
District 5

George Van Bergen
District 6

Ruth McFarland
District 7

Judy Wyers
District 8

Roger Buchanan
District 10

David Knowles
District 11

Sandi Hansen
District 12

1. Ordinance No. 91-382, Amending the FY 1990-91 Budget and Appropriations Schedule to Increase the Convention Center Capital Fund Personal Services Appropriations
2. Ordinance No. 91-376B, Revising Admission Fees and Policies at the Metro Washington Park Zoo
3. Ordinance No. 91-387A, An Ordinance Amending Ordinance No. 90-340A Revising the FY 1990-91 Budget and Appropriations Schedule for the Purpose of Funding Initial Financing and Purchase Costs of the Hanna Property
4. Ordinance No. 91-386C, For the Purpose of Amending Metro Chapter Code 5.02, Establishing Solid Waste Disposal Rates for FY 1991-92
5. Ordinance No. 91-389, For the Purpose of Exempting the Oregon Convention Center Grand Opening from the Provisions of Metro Code Chapter 7.01 Excise Tax
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25. Ordinance No. 91-409, For the Purpose of Amending Chapter 2 of the Metro Code to Establish the Appointment Process, Qualifications, and Terms of Office for Members of the Portland Metropolitan Area Local Government Boundary Commission
26. Ordinance No. 91-417, An Ordinance for the Purpose of Amending and Renewing the Franchise Agreement with East County Recycling, Inc.; and Declaring an Emergency

Sincerely,



Paulette Allen
Clerk of the Council



METRO

2000 SW First Avenue
Portland, OR 97201-5398
(503) 221-1646
Fax 241-7417

August 16, 1991

Charles D. Cameron
County Administrator
150 N. First Avenue
Hillsboro, OR 97124

Dear Mr. Kauffman:

Enclosed are true copies of the following ordinances adopted by the Metro Council. Please file these ordinances in the Metro file maintained by your County.

Executive Officer
Rena Cusma

Metro Council

Tanya Collier
Presiding Officer
District 9

Jim Gardner
Deputy Presiding
Officer
District 3

Susan McLain
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Lawrence Bauer
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Richard Devlin
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Tom DeJardin
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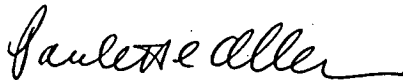
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Sincerely,



Paulette Allen
Clerk of the Council



METRO

2000 SW First Avenue
Portland, OR 97201-5398
(503) 221-1646
Fax 241-7417

August 16, 1991

John Kauffman
County Clerk
Clackamas County Courthouse
807 Main Street
Oregon City, OR 97045

Dear Mr. Kauffman:

Enclosed are true copies of the following ordinances adopted by the Metro Council. Please file these ordinances in the Metro file maintained by your County.

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Paulette Allen
Clerk of the Council