

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

(Ordinance No 98-791, Sec. 1. Amended by Ordinance No. 07-1165A, Sec. 1; Ordinance No. 10-1244B, Sec. 14; and Ordinance No. 12-1276, Sec. 1.)

3.09.020 Definitions

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

- A. "Adequate level of urban services" means a level of urban services adequate to support the higher number of dwelling units and jobs specified for the appropriate design type in section 3.07.640A of Title 6 of the Urban Growth Management Functional Plan, or in the ordinance adopted by the Metro Council that added the area to be incorporated, or any portion of it, to the UGB.
- B. "Affected entity" means a county, city or district for which a boundary change is proposed or is ordered.
- C. "Affected territory" means territory described in a petition.

- D. "Boundary change" means a major or minor boundary change involving affected territory lying within the jurisdictional boundaries of Metro or the boundaries of urban reserves designated pursuant to ORS 195.137 to 195.145.
- E. "Deliberations" means discussion among members of a reviewing entity leading to a decision on a proposed boundary change at a public meeting for which notice was given under this chapter.
- F. "District" means a:
1. Domestic water supply district organized under ORS chapter 264;
 2. Park and recreation district organized under ORS chapter 266;
 3. Metropolitan service district organized under ORS chapter 268;
 4. Sanitary district organized under ORS 450.005 to 450.245;
 5. Sanitary authority, water authority or joint water and sanitary authority organized under ORS 450.600 to 450.989; or
 6. District formed under ORS 451.410 to 451.610 to provide water or sanitary service.
- G. "Final decision" means the action by a reviewing entity, adopted by ordinance, resolution or other means, that determines compliance of the proposed boundary change with applicable criteria and requires no further discretionary action by the reviewing entity other than any required referral to electors. "Final decision" does not include resolutions, ordinances or other actions whose sole purpose is to refer the boundary change to electors, to declare the results of an election, or to defer or continue deliberations on a proposed boundary change.
- 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 county to a city. "Minor boundary change" also means an extra-territorial extension of water or sewer service by a city or district. "Minor boundary change" does not mean withdrawal of territory from a district under ORS 222.520.

- J. "Necessary party" means any county; city; district whose jurisdictional boundary or adopted urban service area includes any part of the affected territory or who provides any urban service to any portion of the affected territory; Metro; or any other unit of local government, as defined in ORS 190.003, that is a party to any agreement for provision of an urban service to the affected territory.
- K. "Petition" means any form of action that initiates a boundary change.
- L. "Reviewing entity" means the governing body of a city, county or Metro, or its designee.
- M. "Urban reserve" means land designated by Metro pursuant to ORS 195.137 et seq. for possible addition to the UGB.
- N. "Urban services" means sanitary sewers, water, fire protection, parks, open space, recreation and streets, roads and mass transit.

(Ordinance No 98-791, Sec. 1. Amended by Ordinance No. 99-803, Sec. 1; Ordinance No. 02-972A, Sec. 1; Ordinance No. 07-1165A, Sec. 1; Ordinance No. 10-1244B, Sec. 14; and Ordinance No. 12-1276, Sec. 1.)

3.09.030 Notice Requirements

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

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

(Ordinance No 98-791, Sec. 1. Amended by Ordinance No. 99-803, Sec. 1; Ordinance No. 07-1165A, Sec. 1.)

3.09.040 Requirements for Petitions

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

(Ordinance No 98-791, Sec. 1. Amended by Ordinance No. 02-972A, Sec. 1; Ordinance No. 07-1165A, Sec. 1.)

3.09.045 Expedited Decisions

- A. The governing body of a city or Metro may use the process set forth in this section for minor boundary changes for which the petition is accompanied by the written consents of one hundred percent of property owners and at least

fifty percent of the electors, if any, within the affected territory. No public hearing is required.

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

c. Eliminate or avoid unnecessary duplication of facilities or services.

E. A city may not annex territory that lies outside the UGB, except it may annex a lot or parcel that lies partially within and partially outside the UGB.

(Ordinance No. 99-803, Sec. 1. Amended by Ordinance No. 07-1165A, Sec. 1; Ordinance 10-1244B, Sec. 14.)

3.09.050 Hearing and Decision Requirements for Decisions Other Than Expedited Decisions

A. The following requirements for hearings on petitions operate in addition to requirements for boundary changes in ORS Chapters 198, 221 and 222 and the reviewing entity's charter, ordinances or resolutions.

B. Not later than 15 days prior to the date set for a hearing the reviewing entity shall make available to the public a report that addresses the criteria identified in subsection (D) and includes the following information:

1. The extent to which urban services are available to serve the affected territory, including any extra territorial extensions of service;

2. Whether the proposed boundary change will result in the withdrawal of the affected territory from the legal boundary of any necessary party; and

3. The proposed effective date of the boundary change.

C. The person or entity proposing the boundary change has the burden to demonstrate that the proposed boundary change meets the applicable criteria.

D. To approve a boundary change, the reviewing entity shall apply the criteria and consider the factors set forth in subsections (D) and (E) of section 3.09.045.

(Ordinance No 98-791, Sec. 1. Amended by Ordinance No. 99-803, Sec. 1; Ordinance No. 02-964, Sec. 4; and Ordinance No. 07-1165A, Sec. 1.)

3.09.060 Process to Make Boundary Change Effective

A. After a reviewing entity makes a final decision on a boundary change, the entity and Metro shall follow the process set forth below:

1. The reviewing entity shall send its final decision, with the map, legal description and other supporting materials required by law, to the Oregon Department of Revenue (DOR);

2. The DOR will review the materials to determine whether they are in final approval form and notify the reviewing entity of its determination;
 3. The reviewing entity shall send its final decision, with supporting materials and the DOR approval, to Metro;
 4. Metro shall record and map the final decision, with supporting materials and DOR determination, and send it to the Secretary of State (SOS), the reviewing entity, the appropriate county assessor's and elections offices, making the final decision effective on the date of Metro's submittal;
 5. The SOS will send its filing letter to Metro;
 6. Metro shall post the final decision, supporting materials, the DOR determination and the SOS filing letter at the Metro website.
- B. If a reviewing entity notifies Metro that the entity needs expedited treatment of its final decision at the time the entity sends its decision to the DOR, Metro will ensure it completes Step 4 in subsection A within one working day of its receipt of the final decision and DOR determination from the entity.
- C. The COO shall establish a fee structure establishing the amounts to be paid by the reviewing entity with submittal of its final decision in Step 3 of subsection A to cover Metro's costs for the services set forth in this section. The COO shall file the fee schedule with the Clerk of the Council and send it to all cities, counties and special districts in the Metro region.
- D. Metro shall create and keep current maps of district boundaries and the boundaries of all cities and counties within Metro. The maps and any additional information requested that relates to boundary changes shall be made available to the public at a price that reimburses Metro for its costs.

(Ordinance No 98-791, Sec. 1. Amended by Ordinance No. 02-972A, Sec. 1; amended and renumbered by Ordinance No. 07-1165A, Sec. 1. Amended by Ordinance No. 10-1244B, Sec. 14 and Ordinance No. 12-1276, Sec. 1.)

3.09.070 Changes to Metro's Boundary

- A. Changes to Metro's boundary may be initiated by Metro or the county responsible for land use planning for the affected territory, property owners and electors in the territory to be annexed, or other public agencies if

allowed by ORS 198.850(3). Petitions shall meet the requirements of section 3.09.040 above. The COO shall establish a filing fee schedule for petitions that shall reimburse Metro for the expense of processing and considering petitions. The fee schedule shall be filed with the Council.

- B. Notice of proposed changes to the Metro boundary shall be given as required pursuant to section 3.09.030.
- C. Hearings shall be conducted consistent with the requirements of section 3.09.050.
- D. Changes to the Metro boundary may be made pursuant to the expedited process set forth in section 3.09.045.
- E. The following criteria shall apply in lieu of the criteria set forth in subsection (D) of section 3.09.050. The Metro Council's final decision on a boundary change shall include findings and conclusions to demonstrate that:
 - 1. The affected territory lies within the UGB;
 - 2. The territory is subject to measures that prevent urbanization until the territory is annexed to a city or to service districts that will provide necessary urban services; and
 - 3. The proposed change is consistent with any applicable cooperative or urban service agreements adopted pursuant to ORS Chapter 195 and any concept plan.
- F. Changes to the Metro boundary that occur by operation of law pursuant to ORS 268.390(3)(b) are not subject to the procedures or criteria set forth in this section.

(Ordinance No. 99-818A, Sec. 5. Amended by Ordinance No. 02-972A, Sec. 1; Ordinance No. 04-1033A, Sec. 1. Amended and renumbered by Ordinance No. 07-1165A, Sec. 1. Amended by Ordinance No. 10-1244B, Sec. 14.)

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

- A. A petition to incorporate a city that includes territory within Metro's boundary shall comply with the minimum notice requirements in section 3.09.030, the minimum requirements for a petition in section 3.09.040, and the hearing and decision requirements in subsections (A) and (C) of section 3.09.050, except that the legal description of the affected territory required by section 3.09.040(a)(1) need not be provided until after the Board of County Commissioners establishes the final boundary for the proposed city.

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

(Ordinance No. 04-1033A, Sec. 1. Amended and renumbered by Ordinance No. 07-1165A, Sec. 1. Amended by Ordinance No. 10-1244B, Sec. 14.)

3.09.090 Extension of Services Outside UGB

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

(Ordinance 10-1244B, Sec. 14.)
