

FROM:

ORD.#87-226

Marie Nelson

Clerk of the Council

*Re: Staff report
for 1st reading -*

*See Ord. #87-225
file.*

METRO

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

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

AN ORDINANCE ESTABLISHING)
A REGIONAL COMMISSION TO) ORDINANCE NO. 87-226
CONSTRUCT AND OPERATE)
REGIONAL CONVENTION, TRADE,) Introduced by Presiding Officer
AND SPECTATOR FACILITIES) Waker at the Request of the
CTS Committee

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY
ORDAINS:

Section 1. The purpose of this ordinance is to establish a regional commission to construct, maintain, and operate regional convention, trade, and spectator facilities pursuant to ORS 268.395, 268.400, and 268.310(6). It is intended that this ordinance be replaced by a comparable state statute, and that a bill to accomplish this result will be introduced into the 1989 Oregon Legislative Assembly.

Section 2. The following sections are added to the Code of the Metropolitan Service District:

Chapter X.01

REGIONAL CONVENTION, TRADE, AND SPECTATOR FACILITIES COMMISSION

X.01.010 Definitions:

As used herein:

(a) "Adversely affected or aggrieved" means a person who appeared orally or in writing before the Commission prior to and regarding a final Commission action and who:

(A) Has suffered or will suffer an injury to some substantial interest of the person caused by the final Commission action; or

(B) Had an interest in the final Commission action that was recognized by the Commission, asserted a position on the merits of the final Commission action, and suffered a final Commission action contrary to the position asserted by the person.

Persons who sign petitions are not considered to have submitted oral or written testimony.

(b) "Commission" means the Regional Convention, Trade, and Spectator Facilities Commission established hereunder;

(c) "Council" means the Council of the Metropolitan Service District;

(d) "Councilor" means a member of the Council;

(e) "District" means the Metropolitan Service District;

(f) "Executive" means the Executive Officer of the Metropolitan Service District.

(g) "Final action" means an action taken by resolution of the Commission that is not a ministerial action and that is not a tentative or preliminary action that:

(A) Precedes final action; or

(B) Does not preclude further consideration of the

action.

X.01.020 Commission Created:

There hereby is created the Regional Convention, Trade, and Spectator Facilities Commission. The Commission shall consist of seven members, including a Chairperson, appointed as follows:

(a) The County Commissions of Clackamas, Multnomah, and Washington Counties each shall nominate one candidate. The candidates must be residents of the nominating County. The nominations shall be forwarded to the Council by the Executive.

(b) The City Council of the City of Portland shall nominate one candidate for each of two positions. The candidates must be residents of the City. The nominations shall be forwarded to the Council by the Executive.

(c) The Executive shall nominate two candidates, and forward those nominations to the Council. The candidates must be residents of the District.

(d) The Council shall confirm or reject the nominees to the Commission. All nominees who are confirmed by the Council shall be appointed to the Commission by the Executive. If a nominee is rejected by the Council, the authority which nominated that candidate shall nominate another candidate. This nomination and review process shall continue until all members of the Commission are appointed.

(e) Of the initial appointments, one shall be for a one year term; two shall be for a two year term; two shall be for a three year term; and two shall be for a four year term. Thereafter appointments shall be for a four year term.

(f) A vacancy shall occur from the death, resignation, or inability to serve of any member or from the removal of a member by the Executive for just cause, subject to approval of the removal by a majority of the members of the Council.

(g) Vacancies shall be filled pursuant to the procedure governing the initial appointment of members.

(h) The members shall serve without salary or compensation of any nature.

(i) No person who is elected to a compensated public office, or appointed to fill a vacancy in a compensated public office, shall be eligible to serve.

(j) The Commission may adopt its own rules of organization and procedure and may elect its own officers.

X.01.030 Powers:

The Commission shall have the following power and authority:

(a) To approve the construction, equipping, maintainance, and repair of any convention, trade, and spectator buildings and facilities, provided that the direct management and supervision of the construction of the Oregon Convention Center shall be under the direction and supervision of the Executive subject to the approval of the Commission.

(b) To operate and market the use of such buildings and facilities;

(c) To acquire in the name of the District by purchase, devise, gift, or grant real and personal property or any interest therein as the Commission may find necessary for its purposes. The Commission may recommend to the Council the condemnation of property for use by the Commission but may not itself exercise the condemnation power;

(d) To lease and dispose of property in accordance with ORS 271.300 to 271.360;

(e) To maintain and repair any real and personal property acquired for the purposes of the Commission;

(f) To lease, rent, and otherwise authorize the use of its buildings and facilities in accordance with such schedules of ranges of charges and methods for determining charges as shall have been approved by the Council at the time of the Council's approval of the Commission's annual budget or at such other time as the Council shall deem appropriate; to establish any other terms and conditions governing use of its buildings and facilities; and to adopt any regulations deemed necessary or appropriate for the protection of users and for the protection and public use and enjoyment of its buildings and facilities;

(g) To perform planning and feasibility studies for convention, trade, and spectator facilities within the District;

(h) To employ, manage, and terminate such personnel, including the General Manager and executing staff, as the Commission may find necessary, appropriate, or convenient for its purposes under personnel rules adopted by the Commission. Commission employee shall be exempt from personnel rules of the Council or District;

(i) To employ professional, technical, and other assistance as the Commission may find necessary, appropriate, or convenient for its purposes provided that the employment of legal counsel

shall be subject to the approval of the District's general counsel;

(j) To enter into contracts of such types and in such amounts, including intergovernmental agreements, as the Commission deems necessary, appropriate, or convenient for the construction, equipment, maintenance, repair, operation, and marketing of the use of its buildings and facilities, and for professional and other services, under contracting rules adopted by the Commission. Commission contracts shall be exempt from other contracting rules of the Council or District;

(k) To accept gifts and donations and to contract for and receive federal and other aid and assistance;

(l) To use services provided by the District including, without limitation, accounting, legal, personnel, risk management, public affairs, and other services, subject to compensation being provided by the Commission to the District as the District may require;

(m) To recommend to the Council such long term revenue and general obligation measures and other revenue raising measures for the benefit of the Commission's purposes as the Commission may deem appropriate for the consideration by the Council or the electors of the District, but the Commission may not adopt such measures itself;

(n) To recommend to the Council the adoption of ordinances carrying criminal and civil penalties for their violation, but the Commission may not adopt such ordinances itself;

(o) To do all other acts and things necessary, appropriate, or convenient to the exercise of the powers of the Commission.

X.01.040 Budget and Accounts:

The Commission shall keep its accounts in conformity with the accounting practices of the District, and the accounts shall be audited yearly. The Commission annually shall prepare a proposed budget in accordance with the local budget law and the schedule and requirements of the District and shall submit the budget to the Executive for inclusion in the Executive's budget submission to the Council. The Commission's budget shall be subject to review and approval by the Council. The Commission's proposed budget shall include proposed schedules of ranges of charges or methods for determining charges for use of its buildings and facilities during the budget year together with any other proposed revenue raising measures.

X.01.050 Form of Action:

All final actions of the Commission shall be by resolution.

X.01.060 Delegation:

The Commission may delegate to its employees any of the power and authority of the Commission subject to those limitations the Commission deems appropriate. Any delegation shall be by resolution of the Commission.

X.01.070 Appeals:

(a) Any person adversely affected or aggrieved by a final action of the Commission may appeal the action. All appeals must be received by the Executive at 2000 S.W. First Avenue, Portland,

Oregon 97201, within two working days after adoption of the Commission resolution taking the final action. All appeals shall be in writing and shall include (1) a description of the final action appealed from including the resolution number; (2) the appellant's name, address, telephone number, relationship to the final action, and signature; (3) a clear statement of the specific reasons for the appeal including any misapplication of law; and (4) an appeal fee of \$100.00. On receipt of an appeal, the Executive within two working days of receipt shall refer the appeal either directly to the Council or to a hearings officer:

(A) A Council hearing on the appeal shall be scheduled within 30 days of the Executive's referral. The hearing shall be conducted by, and shall be under the control of, the Council's Presiding Officer. At the conclusion of the appeal hearing, the Council may uphold, modify, or reverse the final action of the Commission;

(B) If the Executive refers an appeal to a hearings officer, a hearing on the appeal shall be scheduled within 15 days of the Executive's referral.

Within five days of a hearing before a hearings officer, the hearings officer shall prepare and submit to the Council a proposed final order, together with the record in the matter. The proposed final order may propose to uphold, modify or reverse the final action of the Commission. The proposed final order shall be subject to Council review under subsection (b) of this section.

(b) In the event of an appeal hearing before either the Council or a hearings officer, the District shall serve written notice of the hearing on the appellant at least five working days prior to the hearing either by personal service or by mailing the notice to the appellant at the address contained in the appeal document. The District also shall mail the notice to all persons who have made written requests for the notice, and to all other persons whom the District determines should receive notice of the appeal, at least five working days prior to the hearing.

(c) At an appeal hearing, the Council or the hearings officer shall hold the hearing limited to the points or issues raised in the appeal. The appeal hearing shall be on only the record already existing. Unless the Council Presiding Officer or the hearings officer prescribes otherwise, the hearing shall be conducted in the following order:

- (A) Report and recommendation by the Executive Officer or the Executive Officer's designee;
- (B) Argument by the Commission or the Commission's designee;
- (C) Argument by the appellant;
- (D) Argument by other person interested in the appeal;
- (E) Rebuttal argument by the Commission or the Commission's designee;

(d) The Council's Presiding Officer or hearings officer may set reasonable time limits for argument.

(e) A verbatim oral, written, or mechanical record shall be made of the hearing. The verbatim record of the hearing before a hearings officer need not be transcribed unless necessary for Council review.

(f) The hearing may be continued for a reasonable period as determined by the Council's Presiding Officer or the hearings officer.

(g) In an appeal, the appellant shall have the burden of establishing that the final action of the Commission was incorrect.

(h) A Council hearing on a proposed order of a hearings officer shall be scheduled within 30 days of receipt of the proposed order. A copy of the proposed order shall be served on the appellant, the Commission, and other persons who made arguments at the hearing before the hearings officer, either by personal service or by mail, at least five working days prior to the Council's hearing on the proposed order. The persons entitled to notice hereunder may file written exceptions to the proposed order and written statements in support of the proposed order, either at or prior to the Council's hearing. At the hearing on the proposed order, the Council, at the discretion of the Council's Presiding Officer, may allow person who have filed written exceptions or statements under this subsection to present oral argument, which shall be limited to argument on the written exceptions and argument in rebuttal of argument on written exceptions.

(i) The final decision on an appeal shall be by final order of the Council. In the case of an appeal hearing conducted by a hearings officer, upon receipt of a proposed order and consideration of written exceptions, the Council shall either adopt or modify the proposed order. Final orders shall be in writing and shall include the following:

(A) Findings of fact: those matters which either are agreed upon as fact or which, when disputed, are determined, on substantial evidence, to be fact over contentions to the contrary;

(B) Conclusions of law: applications of controlling law to the facts found and legal results arising therefrom; and

(C) The action taken by the Council on the appeal as a result of the findings of fact and conclusions of law.

(j) Councilors and the hearings officer shall place on the record a statement of the substance of any written or oral ex parte communication on a fact in issue made to a Councilor or the hearings officer during the pendency of an appeal proceeding. The appellant, the Commission, and other persons who made arguments at the appeal hearing shall be given a reasonable opportunity to rebut ex parte communications.

(k) Final orders shall be approved by a majority of a quorum of the Council.

(l) All documents, written correspondence, or other material filed with or submitted to the Council or the hearings officer shall be served on the appellant, the Commission, and

other persons who were entitled to notice of the appeal hearing under subsection (b) of this section, and shall contain proof of service.

(m) Notice hereunder shall be deemed to have been served at the time of delivery to the person on whom service is being made or at the time of deposit in the mail, postage prepaid, addressed to that person at the address last provided in writing to the District by the person or at the last address of the person known to the District.

(n) The provisions of Chapter 2.05 of the Code of the District shall not be applicable to appeals under this section.

X.01.080 Review:

(a) Within five days after the passage of any resolution, the Commission shall file a copy of the resolution with the Executive, who shall maintain a special record of the Commission's resolutions which shall be accessible to the public under like terms as the ordinances of the District. Except as provided in subsection (c) of this section, no resolution of the Commission shall become effective until 5:00 p.m. on the 10th day following the filing of a copy thereof with the Executive.

(b) Except as provided in subsection (c) of this section, a resolution of the Commission shall not become effective if, within 10 days after the filing by the Commission of a copy of the resolution with the Executive, either the Executive or the Council files a request with the Executive for Council review of the Commission resolution. All requests for review shall be in

writing and shall include (1) a description of the resolution to be reviewed including the resolution number; and (2) a clear statement of the specific reasons for the review and the requested Council action. upon receipt of a request for Council review of Commission action, the Executive forthwith shall notify the Commission of the request for review and shall deliver to the Commission a copy of the request for review. The resolution to be reviewed shall be placed on the agenda for the next regular Council meeting, subject to compliance with rules for placing items on the agenda; provided, however, that the Council may review the resolution at any meeting under a suspension of the rules. For any review, the Executive may submit a recommendation as to the action to be taken by the Council or review.

(c) Resolutions of the Commission which pertain solely to the following matters shall be effective upon adoption or at such other time as specified by the Commission:

(A) Scheduling the use of buildings and facilities; operated by the Commission;

(B) Entering into agreements for the use of buildings and facilities operated by the Commission, including all of the terms and conditions of the agreements, provided the agreements do not transfer operation, management, and control of the buildings and facilities;

(C) Personnel policy or matter of employment, dismissal, or disciplining of employees;

(D) Purchasing supplies, consumables, services, and equipment, in accordance with a budget approved by the Council;

(d) The Council may, by regularly adopted ordinance, repeal, amend, or alter any resolutions adopted by the Commission. Any repeal, amendment, or alteration may be made retroactive or prospective in effect but shall not invalidate any contract or agreement that has become effective under this section prior to adoption of the ordinance.

ADOPTED by the Council of the Metropolitan Service District
this _____ day of _____, 1987.

Not Adopted

Richard Wacker
Presiding Officer

ATTEST:

Clerk of the Council