

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING) ORDINANCE NO. 97-677B
METRO CODE CHAPTERS 2.04 AND 6.01)
AND DECLARING AN EMERGENCY) Introduced by Councilor
) Ruth McFarland

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1. Findings.

1. The Metropolitan Exposition-Recreation Commission (MERC) is a Metro Commission created pursuant to the provisions of Chapter 6 of the Metro Code. MERC is charged by Metro with the operation and management of regional sports, trade, convention, and spectator facilities, including facilities owned by the City of Portland as well as by Metro.

2. The Council finds that the regional facilities operated by MERC make a valuable contribution to the economic health, vitality, and quality of life in the Metro region.

3. The Council finds that it is in the interests of the Metro region to provide a management structure for the regional facilities managed by MERC that is efficient, cost effective, and accountable to public purposes and elected officials.

4. The Council finds that the facilities managed by MERC operate in a competitive, rapidly changing market.

5. The Council finds that the best means to meet the goal of cost effective, efficient, and accountable management of the MERC facilities in a competitive, market driven business is to enhance MERC's ability to operate in the most flexible, entrepreneurial and efficient manner possible.

6. The Council further finds that joint management and operation of the regional facilities maximizes economies of scale and other management efficiencies.

7. It is the intention of the Council in this Ordinance to amend sections of the Metro Code applicable to MERC so as to

benefit the residents of the Metro region by enhancing MERC's ability to operate in the most entrepreneurial, efficient and cost effective manner possible. Therefore, the provisions of this Ordinance shall be liberally construed so as to accomplish the intent of the Council.

Section 2. Metro Code Section 2.04.054 is amended as follows:

2.04.054 Competitive Bidding Exemptions

Subject to the policies and provisions of ORS 279.005 and 279.007, and the Metro Code, all Metro and Metropolitan Exposition-Recreation Commission public contracts shall be based upon competitive bids except:

(a) State Law. Classes of public contracts specifically exempted from competitive bidding requirements by state law.

(b) Board Rule. The following classes of public contracts are exempt from the competitive bidding process based on the legislative finding by the board that the exemption will not encourage favoritism or substantially diminish competition for public contracts and that such exemptions will result in substantial cost savings:

- (1) All contracts estimated to be not more than \$25,000 provided that the procedures required by section 2.04.056 are followed.
- (2) Purchase and sale of zoo animals, zoo gift shop retail inventory and resale items, and any sales of food or concession items at Metro facilities.
- (3) Contracts for management and operation of food, parking or similar concession services at Metro facilities provided that procedures substantially similar to the procedures required for formal Request for Proposals used by Metro for personal services contracts are followed.

- (4) Emergency contracts provided that written findings are made that document the factual circumstances creating the emergency and establishing why the emergency contract will remedy the emergency. An emergency contract must be awarded within 60 days of the declaration of the emergency unless the board grants an extension.
- (5) Purchase of food items for resale at the zoo provided the provisions of section 2.04.060 are followed.
- (6) Contracts for warranties in which the supplier of the goods or services covered by the warranty has designated a sole provider for the warranty service.
- (7) Contracts for computer hardware and software provided that procedures substantially similar to the procedures required for formal Request for Proposals used by Metro for personal services contracts are followed.
- (8) Contracts under which Metro is to receive revenue by providing a service.
- (9) Contracts for the lease or use of the convention, trade, and spectator buildings and facilities operated by the Metro Exposition-Recreation Commission.
- (10) Public contracts by the Metro Exposition-Recreation Commission in an amount less than \$75,000, which amount shall be adjusted each year to reflect any changes in the Portland SMSA CPI, provided that any rules adopted by the commission which provide for substitute selection procedures are followed; or
- (11) Contracts for equipment repair or overhaul, but only when the service and/or parts required are unknown before the work begins

and the cost cannot be determined without extensive preliminary dismantling or testing.

- (12) Contracts in the nature of grants to further a Metro purpose provided a competitive request for proposal process is followed.

(c) Board Resolution. Specific contracts, not within the classes exempted in subsections (a) and (b) above, may be exempted by the board by resolution subject to the requirements of ORS 279.015(2) and ORS 279.015(5). The board shall, where appropriate, direct the use of alternate contracting and purchasing practices that take account of market realities and modern innovative contracting and purchasing methods, which are consistent with the public policy of encouraging competition.

Section 3. Metro Code Chapter 6.01 is amended as follows:

6.01.010 Purpose

The purpose of this chapter is to establish a metropolitan commission to renovate, maintain, operate, and manage metropolitan convention, trade and spectator facilities pursuant to the 1992 Metro Charter. The commission established by this chapter is intended by the Metro council to operate in a cost effective, independent, entrepreneurial and accountable manner, so as to provide the greatest benefit to the residents of the Metro region. The provisions of this chapter shall therefore be liberally construed so as to achieve these ends. The commission is subject to the authority of the Metro auditor to perform the duties of that office.

6.01.020 Definitions

As used herein:

- (a) "Commission" means the Metropolitan Exposition-Recreation Commission established hereunder;
- (b) "Council" means the Metro council;
- (c) "Councilor" means a member of the council;

(d) "District" means Metro;

(e) "Executive" means the executive officer of Metro.

(f) "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:

(1) Precedes final action; or

(2) Does not preclude further consideration of the action.

(g) "Just cause" means habitual absence from meetings of the commission, physical or mental disability that prevents meaningful participation as a commission member, failure to remain a resident of the district, the commission of substantive violation of ORS chapter 244 (Government Ethics) or substantive regulations adopted pursuant thereto, conviction of any felony, or the commission of any action or failure to act of a similar nature that brings into serious question the ethical or legal integrity of the commission member's official actions.

(h) "Metro auditor" means the Office of Metro Auditor created pursuant to the 1992 Metro Charter.

6.01.030 Commission Created

There is hereby created a metropolitan exposition-recreation commission consisting of seven members. All members shall be residents of the district. The commission members shall be appointed as follows:

(a) Members of the commission shall be appointed by the executive officer and confirmed by a majority of the members of the council in accordance with the following procedures:

(1) Nomination Process. The executive officer will accept nominations to the commission as follows:

- (A) The County Commissions of Clackamas, Multnomah and Washington counties each shall nominate one candidate. The candidates must be residents of the district and nominating county.
 - (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 district and the City of Portland.
 - (C) Two nominees shall be at the sole discretion of the executive officer. The candidates must be residents of the district.
- (2) Appointment Process. The executive officer shall, upon concurring in the nominations received from the County Commissions of Clackamas, Multnomah and Washington counties or the City Council of the City of Portland, transmit the names of the persons so nominated to the Metro council as appointments for confirmation. In addition, the executive officer shall transmit two additional names as appointments for confirmation.

For those positions on the commission which are subject to nomination by a local governmental body, the executive officer will receive the nominations from the relevant governing body and review the nomination prior to submitting the nomination to the Metro council for confirmation. If the executive officer fails to concur with any candidate so nominated by a local government, the executive officer shall so notify the jurisdiction which shall then nominate another candidate. This process shall continue until such time as the executive officer agrees to transmit the name of the individual nominated by the local government.

If an appointment submitted to the council for confirmation as a result of this process is rejected by the council, the executive officer shall so notify the local government which shall nominate another candidate and the process shall continue until such time as a candidate nominated by a local government has been forwarded by the executive officer to the council for confirmation and has been confirmed.

If the council fails to confirm an appointment made at the sole discretion of the executive officer, the executive officer may submit the name of another person for confirmation by the council.

(b) A vacancy shall occur from the death, resignation, failure to continue residency within the district and in the case of members nominated by a local government residency within the boundaries of the nominating government, 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.

(c) Vacancies shall be filled pursuant to the procedure governing the initial appointment of members. Vacancies in a position originally filled by a member nominated by a local government pursuant to this section shall be filled by the nomination, appointment and confirmation process provided for in this section so that five members of the commission shall be the nominees of the four local government bodies as specified herein.

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

(e) The commission may adopt its own rules of organization and procedure and may elect its own officers for such terms and with such duties and powers necessary for the performance of the functions of such offices as the commission determines appropriate.

6.01.040 Powers

The commission shall have the following power and authority:

(a) To renovate, equip, maintain and repair any convention, trade, and spectator buildings and facilities for which the commission is responsible, and to advise the public owners of these facilities on financial measures which may be necessary or desirable with respect to initial construction or major capital projects;

(b) To manage, operate and market the use of the convention, trade, and spectator buildings and facilities for which the commission is responsible;

(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, structures and facilities; to fix fees and charges relating to the use of said buildings, structures and facilities; 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 as the commission may find necessary, appropriate, or

convenient for its purposes under personnel rules adopted by the commission;

(i) To employ professional, technical, and other assistance as the commission may find necessary, appropriate, or convenient for its purposes;

(j) To enter into contracts of such types and in such amounts, including intergovernmental agreements, as the commission may deem necessary, appropriate, or convenient for the renovation, equipment, maintenance, repair, operation, and marketing of the use of buildings and facilities for which it is responsible, and for professional and other services, under contracting rules adopted by the commission;

(k) To enter into intergovernmental agreements for the transfer of convention, trade, or spectator buildings and facilities to the district, or for the transfer of operating and administrative responsibilities for such buildings and facilities to the commission, provided that the council has approved such acquisition or transfer;

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

(m) To determine the type, quality, and scope of services required by the commission in order to conduct its business in a cost effective, entrepreneurial, and independent manner, as required by this chapter. Services of the district including accounting, personnel, risk management, public affairs, and other services may be provided by the district subject to compensation being provided by the commission to the district as the district and the commission may agree upon. The commission may acquire such services by other means, provided that the commission determines by duly adopted resolution that the provision of such services by other means is cost effective, and results in a net benefit to the residents of the district and the regional facilities managed by the commission. The commission's legal services shall be provided to the commission by Metro's Office of General Counsel; fees for such services shall be as agreed to by the commission and Metro. The commission may purchase legal

services outside of Metro only with the permission of the Metro General Counsel. The commission shall provide Metro with 90 days written notice of its intent to purchase any service outside of Metro which was previously provided by Metro;

(n) To recommend to the council and to the other public owners of buildings and facilities managed by the commission 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 consideration by the council, by the other public owners of buildings or facilities managed by the commission, or the electors of the district, but the commission may not adopt such measures itself;

(o) 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;

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

6.01.050 Budget and Accounts

(a) General Requirements. The commission accounts shall be kept in conformity with generally accepted accounting practices and in accordance with the local budget law, provided that the local budget law shall control in the event of a conflict with generally accepted accounting practices, and the accounts shall be audited yearly at the same time and by the same auditor as are the district's accounts.

(b) Procedure for Commission Approval of Proposed Budget. The commission annually shall prepare a proposed budget and shall approve the proposed budget by duly adopted resolution. The commission's deliberations and actions on its budget, including any work sessions or subcommittee sessions, shall be conducted as public meetings as required by the Oregon statutes governing public meetings. Prior to approving any proposed budget, the commission shall provide

a reasonable opportunity for interested persons to testify and make their views known with respect to the proposed budget.

(c) Procedure for Submission of Commission Budget to Metro. Thirty days prior to the date set by the council for the executive officer's budget submission to the council, the commission shall transmit its proposed budget to the Metro executive, and shall simultaneously provide a copy of the proposed budget to the council. The executive shall submit the commission's proposed budget to the council with the executive's general budget submission to the council, together with any recommendations the executive may have for changes in the commission's proposed budget. The commission's budget shall be subject to review and approval by the council.

(d) Content of Commission's Budget. To the maximum extent permitted by law, the commission's budget shall consist of one commission-wide series of appropriations in those categories which are required by local budget law, applicable to all buildings, facilities, and programs managed by the commission. Once the commission's budget has been adopted by the council, any changes in the adopted appropriations not previously approved by the council must be ratified in advance by the council.

6.01.060 Commission Meetings and Form of Action

(a) Commission Meetings. All meetings of the commission shall be conducted as public meetings as required by Oregon law, except where executive sessions are permitted by law. The commission shall provide adequate notice of its meetings as required by law to the media and all interested persons who have requested in writing that they be provided with notice of commission meetings. In addition to these requirements, five working days prior to each regular meeting, the commission shall send a copy of its agenda for such meeting to all elected Metro officials, and to each city and county in the Metro region. In the event of a special meeting, in addition to complying with any and all requirements applicable to special meetings under Oregon law, the commission shall provide each Metro elected official with:

- (1) a copy of the proposed agenda for the special meeting, to be hand delivered or transmitted by facsimile device to the Metro elected official at least 24 hours in advance of the special meeting; and
- (2) at least 24 hours prior notice by telephone of the time, date, place, and proposed agenda for the special meeting.

(b) Commission Actions. All final actions of the commission shall be by resolution.

6.01.070 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.

6.01.080 Filing and Effective Date of Commission Resolutions

(a) Within five days after the passage of any resolution, the commission shall file a copy of the resolution with the council clerk, or such other officer as the council may designate, 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. The council clerk or such other officer as the council may designate shall immediately notify the executive officer and council of the receipt of the resolution.

(b) Resolutions of the commission shall be effective upon adoption or at such other time as specified by the commission.

6.01.100 Council Regional Facilities Committee/Commission
Business Plans

(a) The commission shall prepare business plans for each of its facilities, and shall update those plans as needed. The commission shall provide all Metro elected officials with copies of its business plans.

(b) The commission regularly shall report to the council regional facilities committee for purposes of review and recommendation on general policy, commission business plans, and budget matters. Such reports shall occur as directed by the committee, but in no event less than quarterly.

(c) The commission shall, on an annual basis, set goals and benchmarks for the performance of the buildings, facilities and services managed by the commission. Such goals and benchmarks shall be discussed in public meetings with reasonable opportunity for public input, and shall be adopted by duly adopted resolutions of the commission. Copies of proposed goals and benchmarks shall be provided to all Metro elected officials no later than ten working days prior to formal adoption by the commission. The commission shall include in its quarterly reports to the council regional facilities committee progress reports on the commission's progress towards meeting its adopted goals and benchmarks.

Section 4. Emergency Clause. This Ordinance being necessary for the health, safety, or welfare of the Metro region, for the reason that the financial and operating condition of the Commission requires the changes and improvements provided for herein without further delay, an emergency is declared to exist and this Ordinance takes effect upon passage.

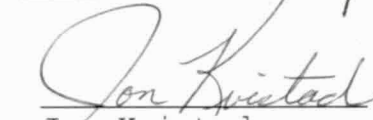
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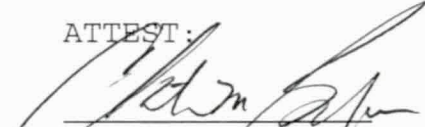
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ADOPTED by the Metro Council this 13th day of January 1997.


Jon Kvistad
Presiding Officer

ATTEST:


Clerk of Council

APPROVED AS TO FORM:


Daniel B. Cooper
Metro General Counsel

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STAFF REPORT

CONSIDERATION OF ORDINANCE NO. 97-677, AMENDING METRO CODE CHAPTERS 2.04 AND 6.01 WHICH PERTAIN TO THE METROPOLITAN EXPOSITION-RECREATION COMMISSION (MERC)

Date: January 14, 1997

Presented by: Mark B. Williams
MERC Interim General Manager

Introduction:

This staff report accompanies and explains ordinance No. 97-677. Appendix A provides a section-by-section analysis; Appendix B shows the sources of the policy recommendations behind these amendments to the Metro Code, from the reports and studies which called for these changes.

Background and analysis:

The purpose of Metro ordinance No. 97-677 is to enhance MERC's ability to manage the facilities assigned to it by Metro in a manner that is entrepreneurial, cost-effective, efficient, flexible and accountable to elected officials and the public. The ordinance implements the recommendations of the elected officials, leading business representatives and citizens who served on the 1995 City/Metro Facilities Consolidation Committee and the 1996 Metro-appointed Transition Team on Regional Facilities Consolidation, who studied management of the regional sports, trade, convention, and spectator facilities operated by MERC. Councilors Ruth McFarland and Ed Washington and Executive Officer Mike Burton served as members of the Consolidation Committee; Councilor Ed Washington served on the Transition Team.

The Portland City Council and the Multnomah County Commission endorsed these recommendations on December 19, 1996 and requested that the Metro Council act within 90 days to make changes in the Metro Code to accomplish these goals.

Ordinance No. 97-677 would accomplish the goals of entrepreneurial, cost-effective, efficient, autonomous, flexible and accountable management of the regional facilities through:

- changes in procurement of support services and contracting procedures for some contracts to enhance flexibility and cost-effectiveness.

- global, streamlined budgeting, with one MERC-wide series of appropriations, and with a schedule that corresponds more closely to the facilities' business cycle.
- simplification and streamlining of approval and review processes for MERC budget adjustments, resolutions, and other actions.

Changes in the code are designed to ensure that MERC can respond rapidly to business conditions and opportunities in a competitive market, in order to best serve the regional public at minimum cost to the taxpayer.

Accountability

To ensure that the provisions to enhance the autonomy and independence of MERC do not weaken MERC's accountability to elected officials and the public, the ordinance strengthens accountability mechanisms that do not compromise the flexibility, efficiency and streamlined operations that are the intent of this ordinance. The ordinance:

- strengthens reporting by MERC to the Council, with the frequency and format as directed by the Metro Regional Facilities Committee, but in no event less than quarterly
- adds new provisions requiring public input in meetings on MERC budget and expanded public notice for all MERC meetings
- provides for transmission of the MERC budget directly to the Council at the time it is submitted to the Executive Officer
- creates new requirements to ensure that all Metro elected officials are notified in advance of proposed MERC actions

The ordinance leaves intact current accountability mechanisms, some spelled out in the ordinance and others in effect under MERC policy, that are in the public interest and do not dilute the intent of this ordinance, including:

- monthly public meetings to review all aspects of operation and management of the facilities
- citizen advisory committees for each facility
- maintenance of Council's ultimate authority for budget approval
- maintenance of Council as MERC's contract review board

Councilor Ed Washington's proposal to the Transition Team

Councilor Ed Washington submitted a proposal to the Transition Team on September 16, 1996 in response to the Transition Team's Model Draft, which included the following recommendations:

- "Metro/Commission would work together to craft a more efficient operating relationship, designed to improve efficiency of operations and reduce costs... To achieve this goal, the new [regional facilities management entity], as authorized by Metro Council in annual budget, would be able to purchase outside services (within a legal and ethical framework) from the service supplier offering the lowest bid/most efficient service." [Note: this recommendation was also included in the Transition Team Model Draft 9/12/96, Operational Considerations, No. 3]
- "No review of decisions. All Commission actions are final."
- "The [new regional facilities management entity], a management organization, is responsible for management of the system of regional facilities (including the OCC, EXPO Center, the PCPA and Civic Stadium), for management of each of the facilities within the system and for managing all financial aspects of the public funds contributed to the system." [Note: this recommendation was also included in the Transition Team Model Draft 9/12/96, Structural Considerations, No.4]
- "Metro Council approves the [new regional facilities management entity's] annual, global budget, and gives [new regional facilities management entity] authority to operate within that global budget." [Note: this recommendation was also included in the Transition Team Model Draft 9/12/96, Structural Considerations, No.6]
- "Funds [would be] managed system-wide..."
- "Broader exemptions from competitive bidding granted by Metro Council."

Appendix A

Section by Section Analysis

SECTION 1: FINDINGS

This section of the ordinance spells out the rationale for enacting changes in the Metro Code to enhance MERC's ability to operate in an entrepreneurial, efficient, cost-effective, autonomous, and accountable manner, and explicitly states the Council's intent for the ordinance.

SECTION 2: AMENDS METRO CODE SECTION 2.04.054

Paragraph (9) updates existing language to reflect MERC's current role and makes it consistent with other references throughout the ordinance.

Paragraph (10) increases the dollar amount of contracts that are exempt from the formal "sealed bid" competitive bidding process from \$31,000 to \$100,000. Enhances flexibility, efficiency and cost-effectiveness for these contracts by reducing the time and costs associated with formal bidding. Provides MERC the ability to meet urgent needs (including repairs) on timely basis, without jeopardizing bookings and losing revenue. Permits use of smaller, more cost-effective firms that are unable to meet formal bidding requirements. Informal bidding, including the request for proposal process, remains MERC policy for minor contracts. Major contracts remain subject to formal bidding process.

SECTION 3: AMENDS METRO CODE CHAPTER 6

6.01.010 Purpose

Adds 'housekeeping' language and states intent of the ordinance.

6.01.020 Definitions

Deletes existing (a) (1) and (a) (2), that allow individuals (from the public) to appeal to the Council to request review of MERC resolutions. Note that other avenues for citizen appeal remain available under state law, such as the writ of review.

New (a) strikes archaic language; updates definitions

6.01.030 Commission Created

Strikes archaic language

6.01.040 Powers

(a) Reflects owner's responsibility to meet capital requirements of its buildings, including City of Portland's acceptance of responsibility for financing the capital needs of the buildings that it owns (PCPA and Stadium).

(b) Strikes archaic language and adds new language consistent with ordinance.

(f) Strikes unclear and obsolete language, eliminates layer of approval to enable MERC to act quickly and flexibly

(i) Changed to be consistent with (m)

(m) Enables MERC to procure best services at lowest cost--implements change called for in all recommendations for more cost-effective, efficient and entrepreneurial management of MERC.

(n) Adds language to reflect City of Portland's acceptance of responsibility for financing the capital needs of the buildings that it owns, as well as Metro's obligation to seek regional funding for the capital needs of the facilities.

6.01.050 Budget and Accounts

(a) - (d) Streamlines MERC budget process. Enhances MERC's ability to operate in an entrepreneurial and efficient manner, as recommended by all of the committees examining management of MERC. Takes into account the business needs of the facilities operating in a competitive market. Makes MERC budget process more business-like through elimination of costly, duplicative, and time-consuming MERC budget review. Ensures that process remains in accordance with local budget law and generally accepted accounting principles. Retains Metro Council's ultimate authority to review and approve the MERC budget.

(b) Adds language to enhance MERC's accountability in the budget process to both the public and to the Council. Requires opportunity for public testimony before MERC adopts budget.

(c) Provides budget schedule that corresponds more closely to business cycle within which MERC operates,

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING) ORDINANCE NO. 97-677
METRO CODE CHAPTERS 2.04 AND 6.01)
AND DECLARING AN EMERGENCY) Introduced by Councilor Ruth
McFarland

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1. Findings.

1. The Metropolitan Exposition-Recreation Commission (MERC) is a Metro Commission created pursuant to the provisions of Chapter 6 of the Metro Code. MERC is charged by Metro with the operation and management of regional sports, trade, convention, and spectator facilities, including facilities owned by the City of Portland as well as by Metro.

2. The Council finds that the regional facilities operated by MERC make a valuable contribution to the economic health, vitality, and quality of life in the Metro region.

3. The Council finds that it is in the interests of the Metro region to provide a management structure for the regional facilities managed by MERC that is efficient, cost effective, and accountable to public purposes and elected officials.

4. The Council finds that the facilities managed by MERC operate in a competitive, rapidly changing market.

5. The Council finds that the best means to meet the goal of cost effective, efficient, and accountable management of the MERC

ORDINANCE NO. 97-677

facilities in a competitive, market driven business is to enhance MERC's ability to operate in the most flexible, entrepreneurial and autonomous manner possible.

6. The Council further finds that joint management and operation of the regional facilities maximizes economies of scale and other management efficiencies.

7. It is the intention of the Council in this ordinance to amend sections of the Metro code applicable to MERC so as to benefit the residents of the Metro region by enhancing MERC's ability to operate in the most entrepreneurial, efficient, cost effective and autonomous manner possible. Therefore, the provisions of this ordinance shall be liberally construed so as to accomplish the intent of the council.

Section 2. Metro Code Section 2.04.054 is amended as follows:

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Subject to the policies and provisions of ORS 279.005 and 279.007, and the Metro Code, all Metro and Metropolitan Exposition-Recreation Commission public contracts shall be based upon competitive bids except:

(a) State Law. Classes of public contracts specifically exempted from competitive bidding requirements by state law.

(b) Board Rule. The following classes of public contracts are exempt from the competitive bidding process based on the legislative finding by the board that the exemption will not encourage favoritism or substantially diminish competition for public contracts and that such exemptions will result in substantial cost savings:

- (1) All contracts estimated to be not more than \$25,000 provided that the procedures required by section 2.04.056 are followed.
- (2) Purchase and sale of zoo animals, zoo gift shop retail inventory and resale items, and any sales of food or concession items at Metro facilities.
- (3) Contracts for management and operation of food, parking or similar concession services at Metro facilities provided that procedures substantially similar to the procedures

required for formal Request for Proposals used by Metro for personal services contracts are followed.

- (4) Emergency contracts provided that written findings are made that document the factual circumstances creating the emergency and establishing why the emergency contract will remedy the emergency. An emergency contract must be awarded within 60 days of the declaration of the emergency unless the board grants an extension.
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- (7) Contracts for computer hardware and software provided that procedures substantially

similar to the procedures required for formal Request for Proposals used by Metro for personal services contracts are followed.

- (8) Contracts under which Metro is to receive revenue by providing a service.

- (9) Contracts for the lease or use of the ~~Oregon Convention Center or other~~ convention, trade, and spectator buildings and facilities operated by the Metro Exposition-Recreation Commission.

- (10) Contracts for purchases by the Metro Exposition-Recreation Commission in an amount less than ~~\$31,000~~100,000, which amount shall be adjusted each year to reflect any changes in the Portland SMSA CPI, provided that any rules adopted by the commission which provide for substitute selection procedures are followed; or

- (11) Contracts for equipment repair or overhaul, but only when the service and/or parts

required are unknown before the work begins and the cost cannot be determined without extensive preliminary dismantling or testing.

(12) Contracts in the nature of grants to further a Metro purpose provided a competitive request for proposal process is followed.

(c) Board Resolution. Specific contracts, not within the classes exempted in subsection (a) and (b) above, may be exempted by the board by resolution subject to the requirements of ORS 279.015(2) and ORS 279.015(5). The board shall, where appropriate, direct the use of alternate contracting and purchasing practices that take account of market realities and modern innovative contracting and purchasing methods, which are consistent with the public policy of encouraging competition.

Section 3. Metro Code Chapter 6 is amended as follows:

6.01.010 Purpose

The purpose of this chapter is to establish a metropolitan commission to renovate, maintain, and operate, and manage metropolitan convention, trade and spectator facilities pursuant to ORS 268.395, 268.400, and 268.310(6), and the 1992 Metro Charter. The Commission established by this chapter is intended by the Metro Council to operate in a cost effective, independent, and entrepreneurial manner, so as to provide the greatest benefit to the residents of the Metro region. The provisions of this chapter shall therefore be liberally construed so as to achieve these ends.

6.01.020 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:~~

~~(1) Has suffered or will suffer an injury to some substantial interest of the person caused by the final commission action; or~~

~~(2) 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.~~

(ba) "Commission" means the Metropolitan Exposition-Recreation Commission established hereunder;

(eb) "Council" means the Metro council ~~of the Metropolitan Service District;~~

(ec) "Councilor" means a member of the council;

(ed) "District" means ~~the Metropolitan Service District;~~

(ee) "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:

- (1) Precedes final action; or
- (2) Does not preclude further consideration of the action.

(h) "Just cause" means habitual absence from meetings of the commission, physical or mental disability that prevents meaningful participation as a commission member, failure to remain a resident of the district, the commission of substantive violation of ORS chapter 244 (Government Ethics) or substantive regulations adopted pursuant thereto, conviction of any felony, or the commission of any action or failure to act of a similar nature that brings into serious question the ethical or legal integrity of the commission member's official actions.

6.01.030 Commission Created

There is hereby created a metropolitan exposition-recreation commission consisting of seven members. All members shall be residents of the district. ~~One of the members shall be appointed by the executive officer to be the initial chairperson of the commission.~~ The commission members shall be appointed as follows:

(a) Members of the commission shall be appointed by the executive officer and confirmed by a majority of the members of the council in accordance with the following procedures:

(1) Nomination Process. The executive officer will accept nominations to the commission as follows:

(A) The County Commissions of Clackamas, Multnomah and Washington counties each shall nominate one candidate. The candidates must be residents of the district and nominating county.

(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 district and the City of Portland.

(C) Two nominees shall be at the sole discretion of the executive officer. The candidates must be residents of the district.

(2) Appointment Process. The executive officer shall, upon concurring in the nominations received from the County Commissions of Clackamas, Multnomah and Washington counties or the City Council of the City of Portland, transmit the names of the persons so nominated to the Council of the Metropolitan Service District as appointments for confirmation. In addition, the Executive Officer shall transmit two additional names as appointments for confirmation.

For those positions on the commission which are subject to nomination by a local governmental body, the executive officer will receive the nominations from the relevant governing body and review the nomination prior to submitting the nomination to the Metro council for confirmation. If the executive officer fails to concur with any candidate so nominated by a local government, the executive officer shall so notify the jurisdiction which shall then nominate another candidate. This process shall continue until such time as the executive officer agrees to transmit the name of the individual nominated by the local government.

If an appointment submitted to the council for confirmation as a result of this process is rejected by the council, the executive officer shall so notify the local government which shall nominate another candidate and the process shall continue until such time as a candidate nominated by a local government has been forwarded by the executive officer

to the council for confirmation and has been confirmed.

If the council fails to confirm an appointment made at the sole discretion of the executive officer, the executive officer may submit the name of another person for confirmation by the council.

~~———— (b) 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 including the chairperson shall be for a four-year term. Thereafter appointments shall be for a four-year term.~~

~~———— (c) Provided further that the initial terms of members shall expire on the 15th day of January closest to the appropriate anniversary of the appointment.~~

~~———— (d) Of the initial appointments, the executive officer shall designate one member as the initial chairperson to hold that position for a four-year term. If a vacancy occurs before the end of the term, the executive officer~~

~~shall appoint a new chairperson to complete the unexpired term in the same manner as in the case of the member whose term was not completed.~~

(eb) A vacancy shall occur from the death, resignation, failure to continue residency within the district and in the case of members nominated by a local government residency within the boundaries of the nominating government, 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.

(fc) Vacancies shall be filled pursuant to the procedure governing the initial appointment of members. Vacancies in a position originally filled by a member nominated by a local government pursuant to this section ~~or pursuant to Metro Executive Order No. 36~~ shall be filled by the nomination, appointment and confirmation process provided for in this section so that five members of the commission shall be the nominees of the four local government bodies as specified herein.

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

(he) The commission may adopt its own rules of organization and procedure and ~~except as provided for the appointment of the initial chairperson in subsection (e) above,~~ may elect its own officers for such terms and with such duties and powers necessary for the performance of the functions of such offices as the commission determines appropriate.

6.01.040 Powers

The commission shall have the following power and authority:

(a) To renovate, equip, maintain and repair any convention, trade, and spectator buildings and facilities for which the commission is responsible, and to advise the public owners of these facilities on financial measures which may be necessary or desirable with respect to initial construction or major capital projects;

enabling MERC to incorporate actual performance and revenue results from previous year and make more realistic projections.

(d) Enhances efficiency and flexibility by providing for one commission-wide series of appropriations for personal services, materials, and services, capital outlay, and contingency. Requires Council approval for any changes in appropriations adopted by the Council.

6.01.060 Commission Meetings and Form of Action

Subjects MERC to more stringent public accountability standards for meetings. Requires prior notice to Metro elected officials and governments within the Metro region of proposed MERC actions.

6.01.080 Filing and Effective date of Commission Resolutions

(a-d) Enhances MERC's efficiency and autonomy by eliminating the review process for MERC resolutions. Intent is to focus Council's review of MERC actions on larger management and policy issues. Separate provisions ensure expanded opportunities for Council and public input into MERC resolutions prior to final action by the Commission, and enhanced reporting requirements to Council Regional Facilities Committee.

6.01.090 Initial Charge to Commission

Strikes archaic language having to do with the initial formation of the Commission.

6.01.100 Council Convention Center Committee

Updates and strikes archaic language; strengthens reporting requirements by MERC to the Council through the Regional Facilities Committee

Appendix B

Sources of Proposed Metro Code Amendments

City/Metro Facilities Consolidation Committee; Transition Team on Regional Facilities Consolidation

In its final report, the Consolidation Committee recommended that:

"Exposition Recreation facilities should be managed as a flexible financial and operational system... Governance [of the ER facilities] should be structured to allow:

- operation in an independent and entrepreneurial manner
- maintenance of a system of accountabilities to the public entities
- cutting the cost of support services..."

-City/Metro Facilities Consolidation Advisory Committee final recommendations, 1/11/96

The Transition Team reexamined and endorsed the recommendations of the Consolidation Committee. In the course of its deliberations, "the Transition Team developed an operational and governance model. The Model called for a modification of the current MERC structure into a ...more flexible, autonomous, and entrepreneurial entity operating with an annual global budget... The Transition Team reached a general accord that this model incorporated most, if not all, of the recommendations from the Consolidation Committee."

-Final report of the Transition Team on Regional Facilities Consolidation, 10/15/96

"Metro/Commission would work together to craft a more efficient operating relationship, designed to improve efficiency of operations and reduce costs... To achieve this goal, the new [regional facilities management entity] would be able to purchase outside services (within a legal and ethical framework) from the service supplier offering the lowest bid/most efficient service."

-Transition Team Model Draft 9/12/96, Operational Considerations, No.4.

**Portland City Council Resolution and Multnomah County
Commission Ordinance**

The Portland City Council, on December 19, 1996, adopted a resolution in which the City acknowledged its capital responsibility for the PCPA and Civic Stadium, and agreed to contribute a total of \$3 million over the next five years for the operation of the buildings. The resolution stated: "...both commitments [are] subject to the Metro Council taking official action within 90 days from the date of this resolution which:

- Allow MERC enhanced autonomy to run its regional facilities in an independent and entrepreneurial manner;
- Reduce overhead costs by addressing support cost charges and allowing MERC needed flexibility in the provision of support services;
- Grant MERC the ability to provide and/or purchase support services in such a manner as to provide the most efficient, cost effective, flexible and business-like approach to managing the regional facilities"

•
-Portland City Council resolution adopted by the City Council on 12/19/96

The Multnomah County Commission, also on December 19, 1996, adopted a county ordinance enacting changes in the Multnomah County Transient Lodging Tax to allocate annually \$1.2 million to PCPA, \$200,000 to market the PCPA and support the region's cultural tourism efforts, and \$3.8 million for the operation of OCC.

In a separate resolution, the County Commission endorsed the Consolidation Committee's recommendations, as follows: "The Board of County Commissioners requests that the Metro Regional Facilities Committee report within 90 days...on its plan for implementing improvements in the organization of the [MERC], including but not limited to improvements allowing MERC to operate in a more independent and entrepreneurial manner, flexibility in securing support services so as to allow MERC to minimize overhead costs allocation to the regional facilities, and measures designed to hold down the costs for tenants of the regional facilities while maximizing management efficiencies."

-Multnomah County Commission resolution, passed 12/19/96

(b) To manage, operate and market the use of the Oregon Convention Center and other convention, trade, and spectator buildings and facilities for which the commission is responsible; ~~and to advise the district on operating and marketing matters that relate to the initial construction of 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, structures and facilities; to fix fees and charges relating to the use of said buildings, structures

and facilities, ~~provided the Commission pursuant to section 6.01.050 shall obtain the prior approval of all revenue sources by the council;~~ 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 as the commission may find necessary, appropriate, or convenient for its purposes under personnel rules adopted by the commission;

(i) ~~Except as provided in subsection (m) below, t~~To employ professional, technical, and other assistance as the commission may find necessary, appropriate, or convenient for its purposes;

(j) To enter into contracts of such types and in such amounts, including intergovernmental agreements, as the

commission may deem necessary, appropriate, or convenient for the renovation, equipment, maintenance, repair, operation, and marketing of the use of buildings and facilities for which it is responsible, and for professional and other services, under contracting rules adopted by the commission;

(k) To enter into intergovernmental agreements for the transfer of convention, trade, or spectator buildings and facilities to the district, or for the transfer of operating and administrative responsibilities for such buildings and facilities to the commission, provided that the council has approved such acquisition or transfer;

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

(m) To determine the type, quality, and scope of services required by the Commission in order to conduct its business in a cost effective, entrepreneurial, and independent manner, as required by this chapter. Services of the district including accounting, legal, personnel, risk management, public affairs, and other services, ~~shall~~ may be provided by the district subject to compensation being

provided by the Commission to the district as the district and the Commission may ~~require~~ agree upon; The commission may acquire such services by other means, provided that the Commission determines by duly adopted resolution that the provision of such services by other means is cost effective, and results in a net benefit to the residents of the District and the regional facilities managed by the Commission ~~subject to budget approval by the council, provided the employment of legal counsel shall be subject to the approval of the district's general counsel;~~

(n) To recommend to the council and to the other public owners of buildings and facilities managed by the Commission 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 consideration by the council, by the other public owners of buildings or facilities managed by the Commission, or the electors of the district, but the commission may not adopt such measures itself;

(o) 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;

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

6.01.050 Budget and Accounts

(a) General Requirements. The commission accounts shall be kept in conformity with the generally accepted accounting practices of the district, and in accordance with the local budget law, and the accounts shall be audited yearly at the same time and by the same auditor as are the district's accounts.

(b) Procedure for Commission Approval of Proposed Budget. The commission annually shall prepare a proposed budget and shall approve the proposed budget by duly adopted resolution in accordance with the local budget law and the schedule and requirements of the district and shall submit the budget to the executive officer for inclusion in the executive officer's budget submission to the council. The commission's deliberations and actions on its budget,

including any work sessions or subcommittee sessions, shall be conducted as public meetings as required by the Oregon statutes governing public meetings. Prior to approving any proposed budget, the commission shall provide a reasonable opportunity for interested persons to testify and make their views known with respect to the proposed budget.

(c) Procedure for Submission of Commission Budget to Metro. Ten working days prior to the date set by the council for the executive officer's budget submission to the council, the commission shall transmit its proposed budget to the Metro executive, and shall simultaneously provide a copy of the proposed budget to the council. The executive shall submit the commission's proposed budget to the council with the executive's general budget submission to the council, together with any recommendations the executive may have for changes in the commission's proposed budget. The commission's budget shall be subject to review and approval by the council.

(d) Content of Commission's Budget. To the maximum extent permitted by law, the commission's proposed budget shall consist of one commission-wide series of appropriations for personal services, materials and

services, capital outlay, and contingency, applicable to all buildings, facilities, and programs managed by the commission. ~~include a schedule of the items, services and facilities for which the commission intends to fix fees and charges relating to the use of its buildings, structures and facilities during the budget year together with any other proposed revenue raising measures.~~ Once the commission's budget has been adopted by the council, any changes in the adopted appropriations ~~Any additions to the schedule of items, services and facilities and any other new revenue sources not previously approved by the council must be ratified in advance by the council.~~

6.01.060 Commission Meetings and Form of Action

(a) Commission Meetings. All meetings of the commission shall be conducted as public meetings as required by Oregon law, except where executive sessions are permitted by law. The commission shall provide adequate notice of its meetings as required by law to the media and all interested persons who have requested in writing that they be provided with notice of commission meetings. In addition to these requirements, five working days prior to each regular meeting, the commission shall send a copy of its agenda for

such meeting to all elected Metro officials, and to each city and county in the Metro region. In the event of a special meeting, in addition to complying with any and all requirements applicable to special meetings under Oregon law, the commission shall provide each Metro elected official with:

(i) a copy of the proposed agenda for the special meeting, to be hand delivered or transmitted by facsimile device to the Metro elected official at least 24 hours in advance of the special meeting; and,

(ii) at least 24 hours prior notice by telephone of the time, date, place, and proposed agenda for the special meeting.

(b) Commission Actions. All final actions of the commission shall be by resolution.

6.01.070 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.

6.01.080 Review Filing and Effective Date of Commission Resolutions

(a) Within five days after the passage of any resolution, the commission shall file a copy of the resolution with the council clerk, or such other officer as the council may designate, 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 council clerk. The council clerk~~ or such other officer as the council may designate shall immediately notify the executive officer and council of the receipt of the resolution.

(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 council clerk, either the executive officer, three members of the council acting jointly, or any person adversely affected or~~

~~aggrieved by a final action of the commission files a request with the council clerk 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, (2) a clear statement of the specific reasons for the review and the requested council action, and (3) the name and address of the person requesting review. Upon receipt of a request for council review of commission action, the council clerk 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 officer may submit a recommendation as to the action to be taken by the council or review. In conducting the review the council shall hear and consider statements from the person requesting the review, the executive officer, the commission and other interested persons. After hearing the matter, the council shall upon motion act to approve the commission action, modify the action or return the matter to the commission.~~

~~If the council approves or modifies the commission resolution it shall become effective immediately. If the council returns the resolution to the commission it shall not become effective until such time as the commission takes further action on the matter subject to the review procedures of this Code.~~

~~(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:~~

~~(1) Scheduling the use of buildings and facilities, operated by the commission;~~

~~(2) 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;~~

~~(3) Matters of employment, dismissal, or disciplining of employees,~~

~~(4) Purchasing supplies, consumables, services, and equipment, in accordance with a budget approved by the council,~~

~~(d) The council may on its own initiative or at the request of the executive, 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.~~

~~6.01.090 Initial Charge to Commission~~

~~Following appointment of its members and during the time prior to the completion of construction of the convention center, the commission shall do the following:~~

~~(a) Adopt a five year operating plan which includes but is not limited to staffing requirements, personnel rules and contract rules, rental schedules, marketing programs and expenditure and revenue requirements. In preparing the operating plan the commission shall consider Metro policies and services and incorporate those policies and services if they are found to offer advantages for efficient operation. The commission shall propose operating procedures which take into account the unique functions of the commission and the business practices of the convention, trade and spectator industry. Prior to the adoption of the plan the commission shall submit the plan to the council for review and recommendation no later than June 30, 1988.~~

~~(b) Not later than September 1, 1988, report to the council on the progress of, and make recommendations to the council of appropriate action regarding negotiations with local governments within the district for the transfer of appropriate facilities or operations to the commission. The negotiations may include but are not limited to transfer of assets and liabilities and operational responsibilities, transfer of employees, revenue and expenditure requirements, and schedules and charges and methods of determining charges.~~

~~(c) Identify statutory changes needed for the commission to carry out its responsibilities. The commission shall submit proposed statutory changes to the council for review and appropriate action no later than August 15, 1988.~~

~~(d) To facilitate this initial Charge the council shall forthwith upon appointment of the commission adopt a budget for operation of the commission and assign to the commission for implementation any contracts entered into by the district for the operation and marketing of the convention center.~~

6.01.100 Council Convention Center Regional Facilities Committee

The commission regularly shall report to the council regional facilities~~convention center~~ committee for purposes of review and recommendation on ~~the adoption of the five-year plan and on~~ general policy and budget matters. Such reports shall occur as directed by the committee, but in no event less than quarterly.

Section 3. Emergency Clause. This Ordinance being necessary for the health, safety, or welfare of the Metro region, for the reason that the financial and operating condition of the Commission requires the changes and improvements provided for herein without further delay, an emergency is declared to exist and this Ordinance takes effect upon passage.

ADOPTED by the Metro Council this ___ day of ___, 1997.

Jon Kvistad
Presiding Officer

ATTEST:

Clerk of Council

APPROVED AS TO FORM:

Daniel B. Cooper
Metro General Counsel