

METROPOLITAN EXPOSITION-RECREATION COMMISSION

Resolution 97-07

For the Purpose of Stating the Commission's Position with Respect to Proposed Metro Ordinance No. 97-677-B.

WHEREAS, on January 27, 1997, the Metro Regional Facilities Committee unanimously approved Metro Ordinance No. 97-677-B, and passed that ordinance on to the full Metro Council for action; and,

WHEREAS, Metro Ordinance No. 97-677-B provides needed changes in the Commission's management structure that will enhance the Commission's ability to operate regional facilities in an entrepreneurial, independent, and cost effective manner, consistent with a competitive, rapidly changing market; and,

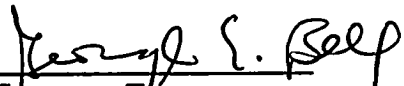
WHEREAS, Metro Ordinance No. 97-677-B is set for a final vote before the Metro Council on Thursday, February 13, 1997,

BE IT THEREFORE RESOLVED:


1. That the Commission supports passage of Metro Ordinance No. 97-677-B, and urges the Metro Council to act favorably on the ordinance on February 13, 1997.
2. That the Commission declares its intent to work cooperatively with Metro and other interested parties throughout the Metro region in order to implement the changes called for in Metro Ordinance No. 97-677-B in a positive and productive manner.

Passed by the Commission on February 12, 1997.


Chair


Secretary-Treasurer

APPROVED AS TO FORM:
Daniel B. Cooper, General Counsel

By: 
Katie Pool
Senior Assistant Counsel

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.

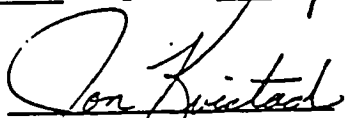
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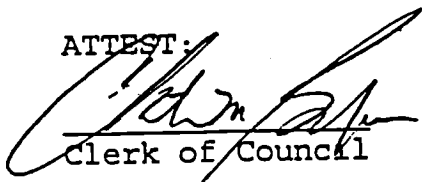
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ADOPTED by the Metro Council this 13th day of January 1997.



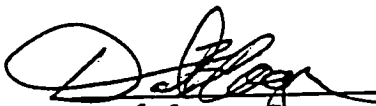
Jon Kvistad
Presiding Officer

ATTEST:



Clerk of Council

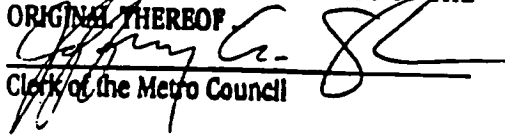
APPROVED AS TO FORM:



Daniel B. Cooper
Metro General Counsel

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I HEREBY CERTIFY THAT THE FOREGOING
IS A COMPLETE AND EXACT COPY OF THE
ORIGINAL THEREOF



Clerk of the Metro Council