

BEFORE THE METRO COUNCIL

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AN ORDINANCE FOR THE PURPOSE)
OF ASSUMING THE DUTIES, FUNCTIONS,)
POWERS, AND OPERATIONS OF THE)
TRI-COUNTY METROPOLITAN TRANSPOR-)
TATION DISTRICT OF OREGON, AND)
CREATING THE METRO TRANSIT)
COMMISSION)

ORDINANCE NO. 94-563

Introduced by
Councilor Jon Kvistad

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THE METRO COUNCIL HEREBY ORDAINS:

Section 1. The Metro Council finds:

1. Pursuant to ORS 267.020 and ORS 268.370, and Section 7(2) of the 1992 Metro Charter, Metro is authorized to assume the duties, functions, powers, and operations of the Tri-County Metropolitan Transportation District of Oregon, and the Metro Council may order transfer of the transit system of the Tri-County Metropolitan Transportation District of Oregon to Metro.
2. Before the adoption of this Ordinance the Metro Council has referred this matter to the Joint Policy Committee on Transportation for its advice.
3. Pursuant to the 1992 Metro Charter, Section 7(4), after assuming the functions and operations of a transit district, the Metro Council must establish a mass transit commission of not fewer than seven members and determine its duties in administering mass transit functions for Metro.
4. The function of providing public transportation through the operation of a regional mass transit system is a matter of metropolitan concern. Providing public transportation is a matter of metropolitan concern because the regional mass transit system

extends throughout the Metro area, the benefits of the mass transit system are conferred not only on the direct users of the system but on all residents, property owners and employers within the region, and in order to comply with state and federal requirements for reduction of dependence on automobile travel and clean air standards a regionally-operated mass transit system is necessary.

5. The reasons it is appropriate for Metro to undertake the function of providing public transportation by exercising the authority granted by the Legislature to assume the duties, functions, powers and operations of the Tri-County Metropolitan Transportation District of Oregon include the following:

a. Metro assumption of this function will provide for the electors of Metro to have a greater role in controlling the mass transit function;

b. Metro provision of public transportation will allow regionally elected officials to determine if and when the voters should be asked to approve taxes that may be needed to finance mass transit and particularly light rail improvements and to coordinate the financial needs of mass transit with other regional financial needs; and

c. Metro is the regional agency responsible for regional planning functions. There is a need to closely coordinate planning for mass transit with the regional growth management planning functions. This can be best accomplished by unifying all regional planning functions within an agency directly responsible to the voters.

6. Metro's assumption of the duties, functions, powers and operations of the Tri-County Metropolitan Transportation District at this time is also made appropriate because the changes in Metro's governance structure mandated by the adoption of the 1992 Metro

Charter become complete on January 2, 1995, and there will also be a change in the Office of Governor of the State of Oregon at the same time.

7. It is the intent of the Council that the Metro Transit Commission should continue the administration and operation of the mass transit system with a relationship between the Commission and its General Manager as similar as possible to the present structure of the Board and General Manager so that all decisions and actions that are now solely within the purview of the General Manager shall continue to be within the sole authority of the General Manager and not subject to review by the Metro Council. The oversight and control exercised by the Metro Council and Executive over the mass transit system is to be limited to the authority to appoint the Commission, the power to approve the Commission's budget, the authority to review decisions regarding fares, schedules and routes, and authority of the Council to exercise all legislative power of a mass transit agency.

Section 2. Upon the effective date of this Ordinance:

1. The governing body of the Tri-County Metropolitan Transportation District of Oregon shall transfer title to, and possession of, the transit system and of all books, records, files, documents, and other property of the Tri-County Metropolitan Transportation District of Oregon to Metro.

2. Metro shall be responsible for all the liabilities and obligations imposed upon or assumed by the Tri-County Metropolitan Transportation District of Oregon.

3. For purposes of mass transit Metro shall have all the rights, powers, privileges, and immunities, and be subject to all the duties and obligations, of a mass transit district under ORS 267.010 to 267.390.

4. The boundaries of Metro shall, for purposes of mass transit, be extended to encompass all the territory of the Tri-County Metropolitan Transportation District of Oregon.

5. The Tri-County Metropolitan Transportation District of Oregon is dissolved and the offices of its directors are terminated.

Section 3. The following chapter creating the Metro Transit Commission is hereby added to the Metro Code:

TITLE VI
COMMISSIONS

CHAPTERS:

6.02 Transit Commission

CHAPTER 6.02
TRANSIT COMMISSION

6.02.010 Purpose: The purpose of this chapter is to establish a commission to administer the mass transit functions which Metro has assumed by the dissolution of the Tri-County Metropolitan Transportation District of Oregon and the transfer of its mass transit system to Metro, and to provide for the continued operation of the mass transit system as expanded and modified in the future.

6.02.020 Definitions: As used herein:

- (a) "Commission" means the Metro Transit Commission established hereunder;
- (b) "Council" means the Council of Metro;
- (c) "Councilor" means a member of the Council;
- (d) "District" means Metro, and the territory within its boundaries as those boundaries exist for mass transit purposes;
- (e) "Executive" means the Executive Officer of Metro.

6.02.030 Commission Created:

- (a) The Metro Transit Commission is created. The Commission shall consist of seven members. One member shall be appointed from each of seven subdistricts. At least one of the members shall be a person who regularly uses the services provided by a mass transit system. Members shall reside in the subdistrict from which they are respectively appointed. The subdistricts shall be as nearly equal in population as possible based on the latest federal census, and shall be designed to assure representation of the most populous

city, other cities and unincorporated territory in the District proportionate to their respective populations provided that if less than the entire District is taxed for mass transit purposes, the subdistricts shall be wholly within the taxed area. The District or, if the taxed area is less than the entire District, the taxed area shall be divided into subdistricts after each succeeding federal census, by the Council. Each subdistrict for this purpose shall be assigned to a Council district for the purpose of proposing candidates. The initial subdistricts from which members shall be appointed shall be those established by the Secretary of State for the former Tri-County Metropolitan Mass Transit District in effect on the effective date of this chapter.

(b) The term of office of a member is four years, but each member, except for the initial members shall serve at the pleasure of the Executive. Before the expiration of the term of a member, the member's successor shall be appointed. A member, including any initial member, is eligible for reappointment. In case of a vacancy for any cause, the Executive shall appoint a person to serve for the unexpired term. A member whose term has expired shall continue to serve until the appointment of a successor unless discharged by the Executive.

(c) The initial members of the Commission shall consist of the seven members of the Board of Directors of the former Tri-County Metropolitan Transportation District of Oregon holding office on the effective date of this chapter. Those members shall serve for a term that is equal in length to the remainder of the term they have been appointed to serve.

(d) Members of the Commission, other than the initial members, shall be appointed by the Executive subject to confirmation by a majority of the members of the Council, in accordance with the following procedures:

The Councilor whose Council district has been assigned the corresponding Metro Transit Commission subdistrict shall solicit from each city and county located wholly or partly within the subdistrict for which the appointment will be made recommendations of qualified individuals for the position. After considering these recommendations the Councilor shall transmit to the Executive the name of at least one, but not more than three, qualified candidates for consideration. From this list, the Executive may either select an individual considered qualified by the Executive or inform the Councilor that the Executive does not consider any candidate qualified and request that the Councilor submit additional names. The name of the person appointed by the Executive shall be transmitted to the Council for confirmation.

(e) For the purpose of proposing candidates for appointment to the Commission, the Councilors representing Metro Councilor districts are initially assigned to the following existing mass transit district subdistricts as follows:

Council District 1 is assigned transit district subdistrict 6.
Council District 2 is assigned transit district subdistrict 7.
Council District 3 is assigned transit district subdistrict 3.
Council District 4 is assigned transit district subdistrict 1.
Council District 5 is assigned transit district subdistrict 2.
Council District 6 is assigned transit district subdistrict 5.
Council District 7 is assigned transit district subdistrict 4.

6.02.040 Officers of Commission; terms; oath:

(a) The Commission shall choose from among its members, by majority vote of the members, a chair, vice chair, treasurer and secretary, to serve for terms of two years.

(b) Each member, before entering upon the duties of office, shall take and subscribe to an oath that the member will honestly, faithfully and impartially perform duties as a member and disclose any conflict of interest the member may have in any matter to be acted upon by the Commission. A copy of the oath shall be filed with the Clerk of the Council.

6.02.050 Meetings of Commission; quorum. The Commission shall hold regular monthly meetings at a time and place fixed by the rules of the Commission. Special meetings may be held when called by the chair of the Commission or when called by a majority of the members. However, five days' notice of a special meeting shall be given by the secretary to each member not joining in the call. A majority of the members constitutes a quorum for the transaction of business.

6.02.060 Powers of Commission.

(a) Subject only to the power of the Metro Council to review certain actions of the Commission provided for in Section 6.02.120, the Commission shall have full authority and power to administer, construct and operate the mass transit system and facilities of the District as set forth herein. The Metro Council shall serve as the Contract Review Board for the District for the purpose of authorizing exemptions from competitive bidding requirements. The Commission and its General Manager shall have final authority over all personnel and contract matters including, but not limited to, all collective bargaining matters,

employment contracts, personal service agreements, and decisions regarding the award or amendment of public contracts relating to the administration, construction and operation of the mass transit system of the District.

(b) All matters regarding fares, routes and schedules shall be approved by the Commission by resolution subject to review by the Council as provided in Section 6.02.120. Temporary or experimental changes in routes and schedules shall not be subject to Council review.

(c) All legislative actions including the imposition of taxes, changes in boundaries, referral of measures to the electors, and the issuance of financial obligations as authorized by ORS ch 267, other provisions of Oregon Law or the 1992 Metro Charter shall require approval of the Council as set forth in Section 6.02.090.

(d) The Commission may appoint peace officers who shall have the same authority as other peace officers, except that such authority shall be limited to the enforcement of police ordinances of the District relating to mass transit and the enforcement, for purposes relating to the protection, use and enjoyment of District mass transit property and facilities, of state and local laws.

(e) The Commission may, by resolution, provide a procedure for the conduct of public hearings on proposed changes in transit routes and schedules. The Commission may delegate to the general manager or other administrative officer the authority to conduct such hearings.

6.02.070 General manager; qualifications; term; removal.

(a) The Commission shall appoint a general manager on the basis of the qualifications of the general manager with special reference to the actual experience in or knowledge of accepted practices in respect to the duties of the office of the general manager. A general manager shall hold office for an indefinite term and may be removed by the Commission only by an affirmative vote of a majority of the members.

(b) Before a general manager is removed, the general manager shall upon demand be given a written statement of the reasons for removal. If requested, the general manager shall be given an open hearing at a meeting of the Commission before the final vote for removal. However, the Commission may by resolution suspend the general manager from office pending a hearing. The action of the Commission in suspending or removing a general manager, if approved by a majority of the members of the Commission, may be reconsidered by the board but is otherwise final and not subject to appeal.

6.02.080 Duties of general manager. The general manager shall:

(a) Have full charge of the acquisition, construction, maintenance and operation of the transit system.

(b) Have full charge of the administration of the business affairs of the Commission.

(c) Enforce all ordinances related to mass transit adopted by the District.

(d) Administer the personnel system adopted by the Commission and, except for officers appointed by the Commission, appoint, discipline or remove all officers and employees, subject to Oregon law and the rules of the Commission.

(e) Prepare and submit to the Commission within 30 days after the end of each fiscal year a complete report of the finances and administrative activities of the Commission for that preceding fiscal year.

(f) Keep the Commission advised as to the needs of the mass transit system.

(g) Prepare all plans and specifications for acquisition of equipment or construction of improvements or facilities for the mass transit system.

(h) Cause to be installed and maintained a system of auditing and accounting which shows completely and at all times the financial condition of the mass transit system.

(i) Devote the entire working time of the general manager to the business of the mass transit system.

(j) Perform such other duties as the Commission requires by resolution.

6.02.085 General manager's attendance at Commission meetings; pro tempore manager.

(a) The general manager shall attend the meetings of the Commission and may participate in its deliberations, but has no vote.

(b) The Commission may appoint a general manager pro tempore during the absence or disability of the general manager.

6.02.090 Ordinances; legislative actions; taxes; debt and boundary changes.

(a) The legislative authority of the District for mass transit purposes shall be exercised by ordinance. All ordinances are subject to adoption by the Council. Ordinances related to mass transit may be submitted to the Council for consideration and adoption by a majority vote of the Commission. Before adopting any ordinance related to the mass transit

system, other than an ordinance submitted by the Commission, the Council shall submit the ordinance to the Commission for its advice and recommendation.

(b) Except as expressly delegated to the Commission by this Chapter, the authority granted to mass transit districts by the provisions of ORS 267.250 - 267.265, ORS 267.300, 267.305, 267.310, 267.325 - 267.430 may only be exercised by the Metro Council.

6.02.100 Budget and Accounts: The Commission accounts shall be audited yearly at the same time and by the same auditor as are the District's accounts. The Commission annually shall prepare a proposed budget in accordance with the local budget law and shall submit the budget to the Executive for inclusion in the Executive's budget submission to the Council. The Commission's budget and any amendments or supplemental budget shall be subject to adoption by the Council.

6.02.110 Form of Action: All final actions of the Commission regarding fares, schedules and routes shall be by resolution.

6.02.120 Review:

(a) Within five (5) days after the adoption of any resolution regarding fares, schedules and routes, the Commission shall file a copy of the resolution with the Council Clerk, 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. No resolution of the Commission regarding fares, schedules and routes 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 shall immediately notify the Executive and Council of the receipt of the resolution.

(b) A resolution of the Commission regarding fares, schedules and routes shall not become effective if, within ten (10) days after the filing by the Commission of a copy of the resolution with the Council Clerk, either the Executive Officer, or three members of the Council acting jointly, 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; 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 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 may submit a recommendation as to the action to be taken by the Council on review. In conducting the review the Council shall hear and consider statements from the person requesting the review, the Executive, 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.

Section 4. Metro Code Section 7.01.050 is amended to read as follows:

7.01.050 Exemptions:

(a) The following persons, users and operators are exempt from the requirements of this Chapter:

- (1) Persons, users and operators whom the District is prohibited from imposing an excise tax upon under the Constitution or Laws of the United States or the Constitution or Laws of the State of Oregon.
- (2) Persons who are users and operators of the Memorial Coliseum, Portland Civic Stadium or the Portland Center for the Performing Arts.
- (3) Persons whose payments to the District or to an operator constitute a donation, gift or bequest for the receipt of which neither the District nor any operator is under any contractual obligation related thereto.
- (4) Any persons making payment to the District for a business license pursuant to ORS 701.015.
- (5) Any person which is a state, a state agency or a municipal corporation to the extent of any payment made directly to the District for any purpose other than solid waste disposal, use of a Metro ERC Facility, or use of the Metro Washington Park Zoo.
- (6) Users who are sublessees, subtenants, sublicensees, or other persons paying compensation for the use of Metro ERC Facilities including payments by users for concessions or catering services made to the Commission or its agents but not users who purchase admission tickets

for events at Metro ERC Facilities that are available to members of the general public.

- (7) An operator of a franchised processing center that accomplishes material recovery and recycling as a primary operation.
- (8) Persons making payments to the District on behalf of the Metro Washington Park Zoo for the following purposes:
 - (A) Contributions, bequests, and grants received from charitable trusts, estates, nonprofit corporations, or individuals regardless of whether the District agrees to utilize the payment for a specific purpose including all payments to the Zoo Parents program;
 - (B) Corporate sponsorships or co-promotional efforts for events that are open to the general public, or for specific capital improvements, educational programs, publications, or research projects conducted at the Zoo;.
 - (C) Payments that entitle a person to admission to a fund-raising event benefiting the Zoo that is not held on the grounds of the Zoo;
 - (D) Payments that entitle a person to admission to a special fund-raising event held at the Zoo where the event is sponsored and conducted by a nonprofit organization approved by the Council

and the primary purpose of which is to support the Zoo and the proceeds of the event are contributed to the Zoo;

- (E) Notwithstanding the provisions of subsection (A) through (D) above, all payments received by the District for admission to the Zoo, or which entitle individuals to receipt of food, beverages, goods, or rides on the Zoo train shall be subject to tax regardless of whether payment is received from an individual or otherwise on behalf of special groups including but not limited to employee and family member picnics, corporate or family parties, or similar events.

(9) Users and operators of any mass transit facility or equipment that is owned, operated, franchised or otherwise provided by the Metro Transit Commission pursuant to Chapter 6.02 of this Code.

(b) Any person; user or operator that is exempt for the payment of an excise tax pursuant to this section shall nonetheless be liable for compliance with this Chapter and the payment of all taxes due pursuant to any activity engaged in by such person which is subject to this Chapter and not specifically exempted from the requirements hereof. Any operator whose entire compensation from others for use of a District facility is exempt from the provisions of this Chapter shall be deemed to be a user and not an operator.

Section 5. The transition provisions of Schedule "A" shall apply.

Section 6. Construction. This Ordinance shall be construed liberally to affect its purpose which is to accomplish to the full extent provided by law for the dissolution of Tri-

Met and the complete transfer of all duties, functions, powers, operations, liabilities, and assets of Tri-Met to Metro so that Tri-Met is extinguished as a separate legal entity, and Metro assumes is responsible for and has complete control over subject only to the provisions of Section 3 hereof of all of the rights, duties, responsibilities, debts, obligations, assets tangible and intangible including causes of actions and power to initiate, prosecute or defend any litigation of whatsoever nature upon the effective date of this Ordinance.

ADOPTED by the Metro Council this ____ day of _____, 199__.

Judy Wyers, Presiding Officer

ATTEST:

Clerk of the Council

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SCHEDULE A

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TRANSITION PROVISIONS.

The following provisions shall apply to the transfer of the mass transit system of the Tri-County Metropolitan Transportation District of Oregon, hereinafter referred to as "Tri-Met," to Metro. To the extent that any of these provisions are inconsistent with any provision of Section 3 or Section 4 of this Ordinance these transition provisions shall control.

1. The provisions of the Tri-Met Code and all other duly adopted ordinances, resolutions and official actions of Tri-Met in force and effect on the effective date of this Ordinance are hereby ratified and approved and shall remain in force and effect until superseded or repealed. The Clerk of the Council shall maintain and keep a record and index of all actions of the Tri-Met Board and the Metro Transit Commission.
2. In the event of any vacancy on the Commission that occurs after the effective date of this Ordinance and prior to January 2, 1995, the vacancy shall be filled by the Executive Officer making an appointment after consulting with the Governor and the cities and counties in the affected subdistrict, subject to confirmation by the Council.
3. All employees presently employed by Tri-Met are hereby transferred to the Metro Transit Commission and become employees of the mass transit commission as provided herein. On transfer, all employees shall continue to have all accrued but

unused vacation sick leave and personal leave time that they have immediately prior to transfer.

4. On the effective date of this Ordinance, Tri-Met shall transfer all of its employees represented by labor unions to the Metro Transit Commission. Thereafter the Metro Transit Commission shall recognize the same unions as representative of the transferred employees and shall comply with the collective bargaining agreements in effect prior to transfer.
5. On the effective date of this Ordinance, Tri-Met shall transfer all of its unrepresented employees to the Metro Transit Commission.
6. On and after the effective date of this Ordinance, the Metro Transit Commission shall assure that all Tri-Met employees as of the effective date of this Ordinance are accorded all the rights to which they are entitled under Oregon laws affecting the transfer of duties from one unit of government to another.
7. By the adoption of this Ordinance all collective bargaining agreements to which Tri-Met is a party are hereby assigned to the Metro Transit Commission. The Metro Transit Commission shall conduct such impact bargaining with affected unions as is appropriate and necessary under applicable law.

8. All pension plans, retirement, rights and retirement benefits entered into or agreed to by Tri-Met are hereby ratified and it shall be the obligation of the Metro Transit Commission to honor and maintain all existing obligations of Tri-Met regarding pensions and retirement rights and benefits.
9. Pursuant to the application of Metro to enroll certain employees in the Oregon Public Employee Retirement System (PERS) as approved by PERS on April 17, 1991, and as amended on July 11, 1991, Metro has an obligation to "eventually" include all Metro employees in PERS. The adoption of this Ordinance does not require conferring PERS membership on Tri-Met employees upon their transfer to the Metro Transit Commission. Metro will not move to include Tri-Met employees in PERS. Oregon law currently provides that Tri-Met may join PERS but Tri-Met has not yet done so. Upon the effective date of this Ordinance the issue of membership in PERS for mass transit employees shall be determined by the Metro Transit Commission and subject to the collective bargaining laws of the State of Oregon.
10. The fiscal year 1994-95 Tri-Met Budget is hereby ratified and confirmed as the Fiscal Year 1994-95 Budget for the Metro Transit Commission. The Commission may at its sole discretion approve transfers of appropriations for Fiscal Year 1994-95 consistent with Oregon Local Budget Law (ORS 294.450). However, if a supplemental budget during fiscal year 1994-95 is required it shall be subject to approval by the Metro Council.

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11. During Fiscal Year 1994-95 no fund transfers shall occur between the funds and accounts of the Metro Transit Commission and other Metro funds or accounts except as provided for by duly approved intergovernmental agreements authorized prior to the effective date of this Ordinance or as expressly agreed to by the Metro Transit Commission after the effective date of this Ordinance.

NOTE:

This section is not yet complete. The Office of General Counsel will provide the Clerk of the Council with revisions and additional provisions prior to the time of first reading of the Ordinance. Additional provisions will include sections pertaining to transfer of funds, real estate and personal property; providing for the continued use of the "Tri-Met" name and logo, and other trade and service marks; assumption and satisfaction of all existing debts, bonds and other financial obligations entered into by Tri-Met prior to the date of transfer; the explicit assumption by the Commission of all existing contractual obligations including but not limited to all Westside Light Rail contracts whether fully executed or pending based on existing bids and bid documents; approval and ratification of all outstanding requests for bids on proposals, and negotiated but not yet executed transactions.

It is the intention that the transition provisions will contain as complete a detail as possible to create a transfer of the mass transit system in a manner that preserves the status quo of all existing assets, rights, duties, liabilities and obligations of Tri-Met while providing for a transfer of all assets, rights, duties, liabilities and obligations to the Metro Transit Commission.

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