

Date: April 26, 2023

To: Board of Directors

From: Sam Desue, Jr.

Subject: RESOLUTION NO. 23-04-15 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH WILSONVILLE PERTAINING TO WITHDRAWAL FROM THE DISTRICT OF AREAS WITHIN THE WILSONVILLE CITY LIMITS

1. Purpose of Item

This Resolution requests that the TriMet Board of Directors (Board) authorize the General Manager or his designee to execute an Intergovernmental Agreement (IGA) with Wilsonville pertaining to the adjustment of the TriMet District boundary to exclude certain parcels of land within the Wilsonville city limits.

2. Type of Agenda Item

- Initial Contract
- Contract Modification
- Other Intergovernmental Agreement

3. Reason for Board Action

Board approval is required for any IGA obligating TriMet to pay in excess of \$1,000,000. This IGA may require TriMet to forgo future tax revenues in excess of \$1,000,000.

4. Type of Action

- Resolution
- Ordinance 1st Reading
- Ordinance 2nd Reading
- Other _____

5. Background

The original boundaries of the TriMet District were established in 1969 by the legislature’s creation of Oregon’s three “mass transit districts” -- TriMet, Salem Cherriots, and Lane Transit District -- and adoption of statutes now codified at ORS 267.010 through 267.480. Separately, the legislature established “transportation districts,” applicable to smaller providers of local transportation services in the state (codified at ORS 267.510 - 267.650).

Tax Revenues Supporting TriMet. Under ORS 267.385, all employers within the TriMet District help fund transit services through an excise tax of eight-tenths of one percent (0.008%) on all wages paid. In addition, employees within the District pay tax on all wages earned from self-employment at the same tax rate. TriMet also receives “in-lieu” taxes collected by the State of Oregon from its employees who work within the TriMet District. These significant and predictable tax revenues generated from within the District provide

substantial financial stability to TriMet and help support the Agency's bonded indebtedness. These reliable tax revenues are part of the reason that TriMet has achieved its AAA bond rating for several years.

TriMet District Boundary Modification Authority. The legislature provided two methods in ORS Chapter 267 for modifying the boundaries of a mass transit district and withdrawing transit service from a transit district's territory. These methods are found at ORS 267.207 ("voluntary withdrawal"), and ORS 267.250 through 267.265 ("petition for withdrawal"). Regardless of the statutory procedure, any modification of the boundaries of a transit district must be effected by the passage of an Ordinance.

(1) Voluntary Withdrawal. Under the voluntary procedure provided by ORS 267.207(1), the Board has authority to alter the territorial boundaries of a transit district "by a nonemergency ordinance adopted at any regular meeting." The TriMet Board previously relied on this statute to adopt voluntary withdrawal ordinances in November of 2001, by Ordinance No. 259 adjusting the boundary in the Canby area, and in November 2012, by Ordinance No. 325 adjusting the boundary in the Boring area.

(2) Petition for Withdrawal. The process for withdrawal of areas from a transit district by petition is more rigorous. Under ORS 267.253 - ORS 267.257, once every five years, a petition for withdrawal of a defined area from a transit district may be submitted to its Board by not less than fifteen percent of the registered electors who reside in an "affected area." An "affected area" is defined by ORS 267.250(1) as an area of not less than one square mile within which at least 200 electors reside, which is also outside of any city with a population of 10,000 or more. Pursuant to ORS 267.253(2), the next possible date such a petition may be filed is during the period from January 1, 2026 through August 30, 2026.

After the county clerk certifies the validity of the signatures on the petition, the Board must hold a hearing on the petition within 90 days. Within that time period and prior to the hearing, the Board must conduct a study of the "affected area." Issues that the study must consider include:

- current use of the transit system within the affected area,
- the amount of transit district revenues derived from the area,
- the history of transit service provided there,
- whether or when transit service will be provided, and
- an assessment of the effect of the withdrawal on the rest of the transit district, including the extent to which taxes must be increased on the rest of the transit district as a result of the withdrawal.

Upon completion of the study and the hearing, the Board must adopt a resolution denying the petition, or adopt an ordinance withdrawing the affected area from the transit district. Pursuant to ORS 267.260, the withdrawal of an area requires the transit district to recalculate and increase the tax burden on the rest of the transit district in order to make up for the loss of tax revenue from the withdrawn area.

History of TriMet Withdrawal Ordinances. Over the years, six small cities have withdrawn from the TriMet District using the petition process provided by ORS 267.250 – 267.265.

- On November 30, 1988, the Board adopted Ordinances Nos. 165, 166 and 167, providing for the withdrawal of Damascus, Molalla and Wilsonville from the District.
- On December 28, 1998, the Board adopted Ordinance No. 233, providing for the withdrawal of the city of Sandy from the District.
- On October 24, 2001, the Board adopted Ordinance No. 258, providing for the withdrawal of the city of Canby from the District.
- On December 14, 2011, the Board adopted Ordinance No. 320, providing for the withdrawal of the city of Boring from the District.

Pursuant to its authority under ORS 267.207(1), the TriMet Board also may make voluntary adjustments to the District's boundaries by a nonemergency ordinance at any regular meeting. The Board used the voluntary withdrawal process on November 28, 2001, when it adopted Ordinance No. 259, withdrawing certain rural areas from the District that were outside of the city of Canby. On November 28, 2012, the Board used the voluntary withdrawal process when it adopted Ordinance No. 325, withdrawing certain rural areas from the District that were outside of the city of Boring.

TriMet implemented these voluntary withdrawals after Canby and Boring withdrew from the District, in order to eliminate areas that had become inefficient and inconvenient for the District to serve after the cities had withdrawn. Under the voluntary withdrawal process, there is no statutory provision allowing for TriMet to recover the tax revenue lost as a result of removing areas from the District.

As indicated above, Wilsonville was part of the original TriMet District until November of 1988, when the Board adopted Withdrawal Ordinance No. 167. In 1989, Wilsonville began providing local transit service through its city-operated South Metro Area Regional Transit (SMART) system. However, the sparsely populated area north of Wilsonville and south of Tualatin remains part of the TriMet District, although not frequently served due to its lack of development.

Wilsonville is served by TriMet's Westside Express (WES) commuter railroad. Although Wilsonville also is served by TriMet's bus Line 96, connecting Tualatin to north Wilsonville, TriMet does not provide transit service to other parts of the city. However, according to TriMet's December 2015 Southwest Service Enhancement Plan, TriMet intends to provide future service along SW 124th Avenue and the proposed Basalt Creek Parkway between Tualatin and Wilsonville, as that area develops and demand for transit service increases.

Wilsonville Seeks to Withdraw Annexed Areas from District. Since its 1988 withdrawal from the TriMet District, Wilsonville annexed three parcels north of its city limits, extending the city boundaries to encompass portions of the TriMet District. Wilsonville would like these areas to be withdrawn from the TriMet District and incorporated into its city-operated SMART system.

The definition of an "affected area" in ORS 267.250(1) prevents the use of the petition for withdrawal process to remove the three annexed parcels from the District, because Wilsonville is a city with a population of more than 10,000. As a result, in order for Wilsonville to have the three annexed parcels withdrawn from the District, it must rely on the TriMet Board, using its authority under ORS 267.207(1), to adopt an ordinance that voluntarily adjusts the District's boundary to exclude the three parcels.

Wilsonville Seeks to Withdraw UGB Areas from District. Wilsonville also wants to modify the District's boundary to exclude areas north of the Wilsonville city limits, and within Wilsonville's Urban Growth Boundary (UGB). Wilsonville would like to permanently exclude TriMet from serving all areas within Wilsonville's UGB up to the proposed Basalt Creek Parkway (the southern boundary of the Tualatin UGB), as well as areas northeast of Wilsonville on the east side of Interstate 5. If Wilsonville annexes its UGB area and completes planned infrastructure improvements, it would extend city services and SMART transit service within the UGB. The SMART service expansion would overlap TriMet's planned extension of service along the Basalt Creek Parkway.

Introduction of HB 2666 Legislation. Wilsonville advised its local state legislator, Representative Courtney Neron, of the city's desire to exclude the above areas from the TriMet District and its intent to extend SMART and other city services into these areas. It also claimed that it had tried for years to obtain TriMet's voluntary withdrawal from the city's UGB as well as from the three parcels within its city limits, but that TriMet had refused to cooperate with this effort. Therefore, on the city's behalf, Rep. Neron introduced House Bill 2666 in the current legislative session on January 9, 2023. HB 2666 would bypass the current statutory withdrawal petition process and enact a special statute mandating that the TriMet Board pass an ordinance excluding Wilsonville's three annexed parcels, as well as certain areas within its UGB, from the TriMet District.

Negotiations with Wilsonville. On December 22, 2022, prior to the introduction of HB 2666, TriMet General Manager Desue sent a letter to Wilsonville Mayor Fitzgerald offering to negotiate a mutually beneficial resolution of some of Wilsonville's concerns. TriMet specifically wished to address the particular circumstances of the city's inability to use the petition process to withdraw the three parcels within its city limits from the District. In the interests of cooperation and enhancement of TriMet's and Wilsonville's mutual relationships, General Manager Desue proposed that a voluntary withdrawal ordinance regarding the three parcels be prepared for submission to the Board, in exchange for Wilsonville's payment of \$2,738,000, which is an estimated amount of tax revenue TriMet would lose over a ten year period as a result of the withdrawal.

General Manager Desue also proposed that, after the Board's anticipated adoption of the voluntary withdrawal ordinance for the three parcels inside the city limits, TriMet and city staff would negotiate another voluntary withdrawal ordinance for areas within Wilsonville's UGB, to the extent such a mutually beneficial voluntary withdrawal could be achieved. TriMet understood that this follow-up negotiation could proceed even if Wilsonville engaged in a parallel effort to promote the withdrawal by petition process allowed by ORS 267.250 – 267.265. Under that process, the earliest date that a petition for withdrawal of areas within the UGB could be submitted would be between January 1 and August 30, 2026.

TriMet and Wilsonville staff met on January 9, 2023, and developed a plan to resolve the boundary issues by means of an IGA for the three parcels within the city limits, and a Memorandum of Understanding (MOU) that would outline procedures for negotiating any potential withdrawal from the District of areas within the UGB. Unfortunately, negotiations over the IGA and MOU ultimately failed and were broken off by Wilsonville, and the city declared it would proceed solely with its efforts to pass HB 2666.

After Wilsonville failed to obtain a hearing on its legislation, the Co-Chair of the House Transportation Committee, Susan McLain, and Rep. Neron offered their assistance to the

parties in resolving these matters. As a result of their efforts, TriMet and Wilsonville agreed to participate in a mediated negotiation session on April 14, 2023.

Proposed IGA. Regardless of the outcome of that negotiation, TriMet wishes to continue its efforts to resolve at least part of Wilsonville's boundary concerns. Therefore, this Resolution seeks authorization from the Board to enter into an IGA with Wilsonville that would result in:

- the withdrawal from the District of the three annexed parcels,
- Wilsonville's compensatory payment to TriMet of \$2,738,000, and
- Wilsonville's removal of HB 2666 from consideration in the current legislative session.

Assuming that the parties execute the IGA, and TriMet is assured of Wilsonville's compensatory payment and its removal of HB 2666, TriMet will submit a voluntary withdrawal ordinance for consideration at the Board's May 24, 2023 meeting that would adjust the District boundary to exclude the three annexed city parcels from the District.

6. Financial/Budget Impact

Execution of the IGA and the Board's adoption of the proposed voluntary withdrawal ordinance is estimated to cost TriMet at least \$2,738,000 in lost tax revenue over the next ten-year period. However, the Resolution is revenue-neutral for this time period because the projected revenue loss to TriMet would be offset by Wilsonville's one-time payment of \$2,738,000 to TriMet within 30 days after the Board's adoption of the voluntary withdrawal ordinance.

7. Impact if Not Approved

If the Resolution is not approved, TriMet will not be able to enter into the IGA with Wilsonville and will not proceed with submission of the proposed voluntary withdrawal ordinance to the Board. In that event, Wilsonville most likely would pursue passage of HB 2666 that would mandate TriMet's adoption of an ordinance to exclude areas surrounding Wilsonville from the District.

RESOLUTION NO. 23-04-15

**RESOLUTION NO. 23-04-15 OF THE TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT OF OREGON (TRIMET) AUTHORIZING
AN INTERGOVERNMENTAL AGREEMENT WITH WILSONVILLE
PERTAINING TO WITHDRAWAL FROM THE DISTRICT OF AREAS
WITHIN THE WILSONVILLE CITY LIMITS**

WHEREAS, TriMet has authority under ORS 267.200 to enter into an Intergovernmental Agreement (IGA) with Wilsonville pertaining to withdrawal from the TriMet District of certain areas within the city of Wilsonville; and

WHEREAS, the TriMet Board of Directors (Board) has authority under ORS 267.207(1) to adjust the District boundary by a nonemergency ordinance to allow for the withdrawal from the District of certain areas within the city of Wilsonville; and

WHEREAS, by Resolution No. 22-05-35, dated May 25, 2022, the Board adopted a Statement of Policies requiring the Board to authorize all IGAs and contracts obligating TriMet to pay in excess of \$1,000,000; and

WHEREAS, adjustment of the District boundary may result in lost tax revenues to TriMet in excess of \$1,000,000, notwithstanding Wilsonville's \$2,738,000 compensatory payment to TriMet;

NOW, THEREFORE, BE IT RESOLVED:

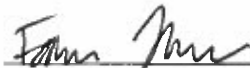
1. That the IGA shall conform with applicable law.
2. That the General Manager or his designee is authorized to execute the IGA with the city of Wilsonville.
3. The IGA shall terminate after all obligations of the Parties are satisfied, including the Board's adoption of a voluntary withdrawal ordinance pertaining to three parcels within the Wilsonville city limits, Wilsonville's compensatory payment to TriMet of the amount of \$2,738,000 and Wilsonville's removal of HB 2666 from further consideration in the current legislative session.

Dated: April 26, 2023



Presiding Officer

Attest:



Recording Secretary

Approved as to Legal Sufficiency:



Legal Department