

**RESOLUTION NO. 3055**

**A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE MAYOR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF WILSONVILLE AND THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON FOR THE ADJUSTMENT OF THE TRIMET DISTRICT BOUNDARIES AND AN ASSOCIATED MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF WILSONVILLE AND THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON REGARDING FUTURE ADJUSTMENT OF TRIMET DISTRICT BOUNDARIES.**

WHEREAS, prior to 1988, the City of Wilsonville ("City") was part of the Tri-County Metropolitan Transportation District of Oregon ("TriMet") service boundary; and

WHEREAS, the Wilsonville business community and the City recognized, in the 1980s, that TriMet offered minimal public transit service to the Wilsonville community while Wilsonville businesses paid significant payroll taxes to TriMet; and

WHEREAS, in 1988, the Wilsonville Innovative Transportation Association successfully petitioned TriMet to withdraw and form an independent City-owned transit system; and

WHEREAS, the City, through its South Metro Area Regional Transit Department ("SMART"), provides nationally recognized and award-winning public transit for the Wilsonville community and larger Portland and Salem-metro area regions; and

WHEREAS, SMART transit service is fare-free for in-city routes and the payroll tax rate paid by employers is 0.5% of wages earned within SMART's service boundary; and

WHEREAS, TriMet not only charges a fare for all its fixed-route services, it also charges a payroll tax rate of 0.8037% as of January 1, 2023 (a 60% increase over SMART's payroll tax rate); and

WHEREAS, according to TriMet, it currently collects approximately \$273,800 annually in payroll taxes from employers within the Wilsonville city limits while providing no transit service to those properties; and

WHEREAS, one of these employers is the State of Oregon through its Department of Corrections; and

WHEREAS, SMART currently offers service to these properties while receiving no payroll tax contribution because the City believes that public transit should be made available to all who seek to utilize it; and

WHEREAS, TriMet also currently collects nominal income through its payroll tax within the City of Wilsonville urban growth boundary (“UGB”) in the area known as Basalt Creek because the area is within TriMet’s service boundary; and

WHEREAS, as the Basalt Creek UGB area develops, properties will annex into the City of Wilsonville; and

WHEREAS, the Basalt Creek UGB area is identified by the Metro regional government as a Regionally Significant Industrial Area; and

WHEREAS, the City has invested significant resources in the planning and visioning of Basalt Creek with strategies to provide millions of dollars’ worth of infrastructural investments to spur industrial growth in the area that will offer high-wage commercial and industrial jobs; and

WHEREAS, the City’s investments in Basalt Creek, without a revision to the TriMet boundary, will lead to TriMet unfairly reaping the benefit of the City’s investments and employers’ high-wage job offerings without any plan to provide service commensurate with the services provided by SMART in other areas of Wilsonville; and

WHEREAS, TriMet will continue to unfairly and inequitably collect payroll tax from current and future properties within the City of Wilsonville unless TriMet’s boundary is adjusted; and

WHEREAS, the City has attempted, with no meaningful response from TriMet, for at least ten years to revise TriMet’s boundary so that properties within the city limits and the City’s UGB may be served by SMART; and

WHEREAS, SMART is the only municipal transit department within Metro’s boundary and bordering TriMet’s boundary, and thus, any agreements between, or actions by, the City and TriMet regarding an adjustment to TriMet’s boundary to address these issues are not precedential as to any other city or transit district within Metro; and

WHEREAS, due to TriMet’s unwillingness to engage the City to address the boundary issues, the City sought to introduce legislation to adjust TriMet’s boundary during the 2023 state legislative session; and

WHEREAS, HB 2666 (2023) was introduced to adjust TriMet’s boundary; and

WHEREAS, only after the introduction of HB 2666 were TriMet staff willing to meet with City staff to discuss alternative solutions regarding the boundary to avoid a legislative remedy; and

WHEREAS, TriMet staff, City staff, and the Mayor of Wilsonville met on January 9, 2023 to discuss the boundary issue; and

WHEREAS, in that meeting, TriMet made clear that it saw the path forward consisting of two steps; and

WHEREAS, the first step consisted of a withdrawal from the TriMet service boundary of the parcels that are currently within Wilsonville's city limits ("Step 1"); and

WHEREAS, the second step would be for the City to petition TriMet to withdraw the UGB area in 2026, the next time petitions may be considered under state statutes ("Step 2"); and

WHEREAS, TriMet staff stated, in the January 9, 2023 meeting, that there is a "per parcel process" for pulling out of the TriMet service area (Step 1), which is why the properties within the City of Wilsonville did not need to go through the petition process; and

WHEREAS, TriMet staff also stated in that meeting that they were not aware of any statutory reason the City would be prohibited from undertaking Step 2 (petition to withdraw process); and

WHEREAS, based on TriMet's representations regarding the processes available to the City to adjust the service boundaries, the parties left the meeting understanding that the next steps were for TriMet to draft an intergovernmental agreement ("IGA") to address Step 1 and a memorandum of understanding ("MOU") to address Step 2, which would work together to address all of the City's concerns; and

WHEREAS, since that January 9, 2023 meeting, it has become apparent that representations made by TriMet in the meeting were wholly inaccurate; and

WHEREAS, contrary to TriMet's representations, TriMet does not have a "per parcel process" to adjust its boundary, but rather can adjust its boundary however it sees fit at any time via ordinance adopted at a Board of Directors meeting, pursuant to ORS 267.207(1), which TriMet staff did not identify until January 26, 2023; and

WHEREAS, this statutory right means that TriMet could withdraw the parcels within the city limits and the entire Wilsonville UGB together via ordinance adopted by its Board, and thus a two-step process is not necessary; and

WHEREAS, only after City staff learned of TriMet's statutory authority did TriMet staff claim that its Board would not adopt such an ordinance, as opposed to could not do so; and

WHEREAS, when City staff received TriMet's draft IGA, TriMet staff failed to also provide a draft MOU, despite stating, in the January 9 meeting, that they would draft the MOU; and

WHEREAS, the execution of any IGA must be contingent on the contemporaneous signing of a MOU to ensure that both Step 1 and Step 2 are adequately addressed simultaneously; and

WHEREAS, the draft IGA sought to require the City to not only withdraw HB 2666, but also agree to never pursue a legislative remedy regarding TriMet's boundary; and

WHEREAS, the City Council is not legally allowed to bind successor Councils' decision-making regarding future legislative initiatives and so the City is legally barred from agreeing to such terms; and

WHEREAS, TriMet staff has stated that TriMet cannot agree to the deletion in the draft IGA of the City's agreement to never pursue a legislative remedy regarding TriMet's boundary; and

WHEREAS, since TriMet did not provide a draft MOU, City staff drafted a MOU for TriMet review; and

WHEREAS, when City staff began drafting the MOU, and reviewed the relevant statutes for petitioning to withdraw from TriMet, staff discovered that, contrary to TriMet's representations, the City cannot petition to adjust the boundary; and

WHEREAS, ORS 267.253(1) exclusively allows only electors within the affected area to file a petition to withdraw from the TriMet service boundary; and

WHEREAS, City staff reached out to TriMet staff about this issue and TriMet confirmed that the City would not be able to petition to withdraw, essentially undermining the entire premise of Step 2, which TriMet had stated the City could do at the January 9 meeting; and

WHEREAS, in an effort to salvage the negotiations despite these setbacks, City staff completed a draft of the MOU that left open who would petition for withdrawal; and

WHEREAS, when the City received the revisions to the MOU from TriMet, TriMet indicated, for the first time, that it plans to provide service in the UGB area; and

WHEREAS, TriMet's revision is completely contrary to the parties' discussions in the January 9 meeting where the City stated its intention to provide SMART service in the area and TriMet did not state any such plans to provide service; and

WHEREAS, one of the critical components of the TriMet Board approving a petition to withdraw is that TriMet does not have plans to provide service within the next five (5) years (e.g., by 2031 if the petition is filed in 2026), which is one of the criteria stated in ORS 267.257(3)(b); and

WHEREAS, the State of Oregon has pledged its commitment to pursuing equitable and climate-friendly policies, including, in particular, support for expansion of public transit service; and

WHEREAS, the City and SMART are committed to providing efficient and equitable transit that furthers local, state, and federal climate friendly goals and plans to fully transition its fleet to alternative fuels by 2028; and

WHEREAS, the City seeks to expand its equitable and climate-friendly public transit service within its city limits and UGB area; and

WHEREAS, if TriMet is willing to agree to the reasonable terms of the IGA and MOU, as drafted by the City, the City is confident that it will be able to undertake such an expansion.

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

Section 1. Findings. The City Council adopts by reference and incorporates as if fully set forth herein the above statements and the staff report accompanying this Resolution. The City Council finds that the IGA attached hereto as **Exhibit A** and the MOU attached hereto as **Exhibit B** reflect the City Council's terms and conditions for resolve the boundary dispute with TriMet that are in the best interest of the health, safety, and welfare of the City of Wilsonville community.

Section 2. The City Council authorizes the Mayor to execute an Intergovernmental Agreement between the City of Wilsonville and the Tri-County Metropolitan Transportation District of Oregon for the Adjustment of TriMet District Boundaries ("IGA") substantially similar to **Exhibit A** attached hereto and a Memorandum of Understanding between the City of

Wilsonville and the Tri-County Metropolitan Transportation District of Oregon Regarding Future Adjustment of TriMet District Boundaries substantially similar to **Exhibit B** attached hereto as contemporaneous with the execution of the IGA.

Section 3. Effective Date. This Resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 20<sup>th</sup> day of March, 2023, and filed with the Wilsonville City Recorder this date.

---

JULIE FITZGERALD, MAYOR

ATTEST:

---

Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Fitzgerald

Council President Akervall

Councilor Linville

Councilor Berry

Councilor Dunwell

EXHIBITS:

- A. Intergovernmental Agreement between the City of Wilsonville and the Tri-County Metropolitan Transportation District of Oregon for the Adjustment of TriMet District Boundaries
- B. Memorandum of Understanding between the City of Wilsonville and the Tri-County Metropolitan Transportation District of Oregon Regarding Future Adjustment of TriMet District Boundaries