



March 10, 2023

VIA EMAIL

Greg Skillman
TriMet
1800 SW 1st Avenue
Portland, OR 97201
skillmag@trimet.org

Re: TriMet/SMART Boundary Adjustment

Dear Greg:

This letter is to inform TriMet that the City of Wilsonville (“Wilsonville”) will no longer be participating in negotiations with TriMet concerning a potential intergovernmental agreement and memorandum of understanding to adjust the TriMet/SMART service area boundaries. Wilsonville does not make this decision lightly – this comes after years of effort by Wilsonville urging TriMet to meaningfully negotiate in good faith to resolve the boundary issues, only to be once again disappointed by TriMet’s lack of transparency. As such, Wilsonville is left with no choice but to seek a legislative fix regarding the transit service boundary. This letter explains how Wilsonville came to conclude that a legislative remedy is the only option left for Wilsonville to pursue.

1. Pre-HB 2666 (2022)

Wilsonville has consistently raised the service boundary issue with TriMet for years, including multiple meetings over the past decade of former Mayor Tim Knapp with former GMs Doug Kelsey and Neil McFarlane, and even meetings now with Mayor Fitzgerald and GM Desue. Wilsonville has repeatedly communicated to TriMet that TriMet collects transit tax revenues from businesses within the City of Wilsonville without providing any transit service. Conversely, Wilsonville, with its emphasis on providing full-service, dependable transit service to the Wilsonville community and the region through its South Metro Area Regional Transit (SMART) department, provides transit in these areas, including Coffee Creek Correctional Facility that is within TriMet’s district boundary, and pays transit-in-lieu tax to TriMet.

Beyond the properties within the Wilsonville city limits, Wilsonville communicated to TriMet that Wilsonville is investing millions of dollars to plan and build infrastructure in its urban growth boundary (UGB) to incentivize businesses offering high-wage commercial and industrial jobs to locate in areas that will be annexed into Wilsonville. While TriMet likely makes very

little revenue from the existing businesses within the current Wilsonville UGB, due to County zoning restrictions, TriMet could see a future windfall from Wilsonville's significant investments, unfairly reap the transit tax revenues from these areas, all while lacking any commitment to properly serve such a promising regionally significant commercial and industrial area.

Only after Wilsonville prompted the introduction of HB 2666 did TriMet show a willingness to discuss the boundary issue, seemingly to avoid the political damage TriMet could face through a statewide public process displaying TriMet's unfair taxation on City of Wilsonville businesses.

2. January 9, 2023 Meeting

On January 9, 2023, TriMet staff met with Wilsonville staff and Wilsonville's Mayor to discuss the boundary issue. TriMet made clear at that meeting that it saw the path forward consisting of two steps, the first being a withdrawal from the TriMet service boundary of the three (3) parcels that are currently within Wilsonville's city limits ("Step 1"). The second step would be for Wilsonville to petition TriMet to withdraw the UGB area in 2026, the next time petitions may be considered under state statutes ("Step 2").

TriMet staff stated, in that meeting, that they were not aware of any statutory reason Wilsonville would be prohibited from undertaking the petition process (Step 2). They did state, however, that there is a "per parcel process" for pulling out of the TriMet service area, which is why the three properties within the City of Wilsonville did not need to go through the petition process (Step 1).

Based on TriMet's representations regarding the processes available to Wilsonville to adjust the service boundaries, the parties discussed drafting two different documents – an intergovernmental agreement (IGA) regarding the Step 1 process and a memorandum of understanding (MOU) regarding the Step 2 process.

3. Information and Actions Since January 9, 2023 Meeting

Since that January 9, 2023 meeting, it has become apparent that representations made by TriMet in the meeting were wholly inaccurate, and thus render further negotiations futile.

First, the "per parcel process" TriMet identified for Step 1 actually allows the TriMet board to adjust any of its service boundaries at any time, including the Wilsonville UGB. There is no exception that the process only applies to specific parcels or only parcels within city limits. Indeed, the TriMet board's authority is quite expansive under the state statute:

"The board of directors of a mass transit district may alter the territorial boundaries of the district by a nonemergency ordinance adopted at any regular meeting." ORS 267.207(1).

This statute was provided by TriMet to Wilsonville on January 26, 2023 as the basis for doing Step 1, while also informing Wilsonville staff that this statute is the board's authority to adjust the boundary as an alternative to a petition process. In other words, TriMet disclosed, for the first time on January 26, 2023, that ORS 267.207(1) actually allows for the entire service area being discussed (both the properties within the city limits and the UGB area) to be adjusted by the TriMet board without a petition process. It was not until after January 26, 2023 that TriMet

stated its board would not adopt such an ordinance, as opposed to could not do so (though, as stated by TriMet's staff at the January 9, 2023 meeting, it appears that the TriMet board has never been told the reasons for Wilsonville's desire to adjust the service boundaries).

Second, when Wilsonville staff began drafting the memorandum of understanding (after TriMet failed to do so), and reviewed the relevant statutes for petitioning to withdraw from TriMet, Wilsonville discovered that, contrary to TriMet's representations, Wilsonville cannot petition to adjust the boundary. ORS 267.253(1) exclusively allows only electors within the affected area to file a petition. Wilsonville reached out to TriMet about this issue and TriMet confirmed that Wilsonville would not be able to petition to withdraw – in effect, the entire premise of Step 2 was undermined, and Wilsonville is left with no remedy to adjust the service boundary outside of a legislative remedy.

Third, in an effort to salvage the negotiations despite these setbacks, Wilsonville completed a draft of the MOU that left open who would petition for withdrawal. Wilsonville did so hoping that, with its extensive outreach and ability to explain the advantages of SMART's service, it could work with electors within the UGB for them to petition TriMet to withdraw.

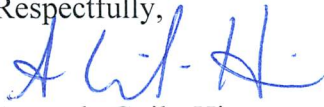
However, when Wilsonville received the revisions to the MOU from TriMet, TriMet indicated, for the first time, that it plans to provide service in the UGB area. One of the critical components of the TriMet board approving a petition to withdraw is that TriMet does not have plans to provide service within the next five (5) years (e.g., by 2031 if the petition is filed in 2026). See ORS 267.257(3)(b). Thus, even if Wilsonville can overcome the barrier of gathering property owners to petition for withdrawal, it is likely that ORS 267.257(3)(b) cannot be met and thus, TriMet will be able to deny the petition.

In addition to these roadblocks, TriMet still has yet to provide the financial information it stated, at the January 9, 2023 meeting, that it would provide regarding the revenue from the UGB area. This oversight seems due to the nominal revenue generated from those properties, as Wilsonville had indicated was likely the case. TriMet also stated that it needed to update its revenue numbers regarding the three (3) properties within the city limits, but once Wilsonville stated it would not pay anything over what was previously discussed at the January 9, 2023 meeting, TriMet simply put that \$2.7 million figure in the IGA without further review or discussion.

While Wilsonville knew that TriMet was motivated to negotiate with Wilsonville due to the pending state legislation, Wilsonville worked to find solutions at every turn, despite all the roadblocks that TriMet failed to disclose at the January 9, 2023 meeting. TriMet falsely led Wilsonville to believe that the two-step process could be a legitimate path forward. It is clear now that TriMet's goal was only to resolve the issue of the three (3) properties within the city and to delay the UGB boundary discussion, knowing that a petition to withdraw in 2026 would surely fail, all while trying to have Wilsonville agree in the IGA to not pursue any future legislative remedies regarding boundary adjustments.

At this point, TriMet has left Wilsonville no choice but to move forward with a legislative solution to the boundary. Wilsonville will not be engaging in any further negotiations concerning the IGA or the MOU.

Respectfully,



Amanda Guile-Hinman
City Attorney

cc (via email): Wilsonville City Council
TriMet Board of Directors
City Manager Bryan Cosgrove, City Manager
Mark Ottenad, City Public/Government Affairs Director
Dwight Brashear, SMART Transit Director
Sam Desue, Jr., TriMet General Manager
JC Vannatta, TriMet Executive Director of Public Affairs
Miles Pengilly, TriMet State Government Affairs Manager