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City Club of Portland Report on Ballot Measure 26-1: County Charter Change Concerning Jurisdiction Over County Roads Within Cities

City Club of Portland (Portland, Or.)

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CITY CLUB OF PORTLAND
Report on
Ballot Measure 26-1: County charter change concerning
jurisdiction over county roads within cities.

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The City Club membership will vote on this report Friday, October 22, 1993. Until the membership vote, the City Club does not have an official position on this report. The outcome of this vote will be reported in the City Club *Bulletin* dated November 5, 1993 (Vol. 75, No. 23).

TABLE OF CONTENTS

I.	INTRODUCTION	73
II.	BACKGROUND	73
	A. Current Jurisdiction Over Roads	
	B. Willamette River Bridges	
	C. Transition From Counties to Cities	
	D. Portland and Multnomah County Agreement	
	E. Gresham and Multnomah County Negotiations	
	F. Four-City Memorandum of Understanding	
	G. The Initiative	
III.	ARGUMENTS ADVANCED IN FAVOR AND AGAINST	77
	A. Arguments Advanced in of the Initiative	
	B. Arguments Advanced Against the Initiative	
IV.	MAJORITY DISCUSSION	78
	A. Control of Roads — Local or Regional?	
	B. Gresham's Planning Goals	
	C. Non-Duplication of Government Entities	
	D. Bridges	
	E. Tax Implications	
V.	MAJORITY CONCLUSIONS	79
VI.	MAJORITY RECOMMENDATION	79
VII.	MINORITY DISCUSSION	80
	A. Regional Transportation Planning and Road Maintenance	
	B. Allocation of Resources	
	C. Compliance With State Law	
	D. Efficiency in Government	
	E. Agreement Between City and County	
VIII.	MINORITY CONCLUSIONS	82
IX.	MINORITY RECOMMENDATION	82
X.	APPENDICES	83
	A. Interviews	
	B. Bibliography	

CITY CLUB REPORT
Ballot Measure 26-1
East Multnomah County Roads Initiative

I. INTRODUCTION

An initiative submitted by Citizens for LESS Government, a group based in Gresham, will appear on the November 9, 1993, ballot in Multnomah County. The City of Gresham is a strong proponent of this initiative. If passed, the initiative will amend Multnomah County's charter to require the county to transfer county roads to those cities which request it. The initiative reallocates state gas tax money between Multnomah County and its cities and provides for transfer of equipment and personnel. This initiative also impacts the funding for the bridges maintained by Multnomah County. All Multnomah County voters will vote on the initiative.

The official ballot language and summary are as follows:

Title: County charter change concerning jurisdiction over county roads within cities.

Question: Shall charter require transfer of county roads within a city, plus road funds, equipment and staff if requested by city?

Summary: This changes County charter. It requires County to transfer county roads within a city upon a city's request. It includes transferring funds, equipment and staff. Road equipment will be shifted at no cost. Existing contractual employment rights of transferred staff not binding on city. Transferred staff subject to statutory employment security rights and city's employment agreements, if any. City must hold a public hearing before seeking transfer. County hearing, now required by state law, will not be held. City will then regulate and maintain roads.

II. BACKGROUND

A. Current Jurisdiction Over Roads

Multnomah County has jurisdiction over the arterials and major collectors within the city limits of Fairview, Gresham, Troutdale and Wood Village. Arterials are roadways that primarily carry traffic to and from other parts of the region at high volume and speed. Major collectors are roadways that primarily carry traffic from lesser collectors and local service streets to destinations and to arterials. Arterials within the city limits of Gresham include roads such as Division Street, Stark Street, 182nd Avenue, 122nd Avenue and Hogan Road. Major collectors within the city limits of Gresham include 139th Avenue, 202nd Avenue, parts of Sandy Boulevard and Main Street.

Gresham is the fourth largest city in Oregon, yet Multnomah County controls over 50% of the non-state roads within the city limits. Other cities around the state control all or most of their roads, as shown in Table 1:

TABLE 1
PERCENTAGE OF NON-STATE ROADS
CONTROLLED BY CITY

CITY	PERCENTAGE OF NON-STATE ROADS CONTROLLED BY CITY
Beaverton	88%
Eugen	99%
Gresham	46%
Portland	100%
Salem	100%
Sandy	99%
Tigard	95%

The initiative involves the potential transfer of roads from Multnomah County to the four cities in the county that do not control their roads: Fairview, Gresham, Troutdale and Wood Village. This report, however, will focus primarily on the controversy between Multnomah County and Gresham for two reasons. First, only Gresham among the four cities favors this initiative and intends to exercise its right to transfer the roads if the initiative passes. The other three cities in East Multnomah County have stated that they will not exercise their right to transfer. Second, the amount of road mileage in dispute is significantly greater in Gresham than in the other three cities. Multnomah County controls 122 miles of roads in Gresham, while controlling only five miles of roads in Fairview, 21 miles in Troutdale, and three miles in Wood Village.

Gresham is responsible for transportation planning within the City of Gresham. At the same time, the arterials and major collectors in that city are under the jurisdiction of Multnomah County. Multnomah County and Gresham have adopted different road construction standards, reflecting the differing strategies for capital improvements and maintenance. The county spends more funds on capital improvements, constructing roads to a higher standard and spending less on maintenance. Gresham does not construct roads to as high a standard and spends more on maintenance.

Currently Gresham, Multnomah County and the City of Portland each have roads departments. Gresham has 21 staff members for 100 road miles. Multnomah County has 137 staff members for 502 road miles.

Metro controls the functional classification of arterials and sets design standards for all roads in the region. The standards relate to road capacity and level of service (number and width of lanes, traffic signals, turn lanes, etc.). Metro does not control landscaping, pedestrian facilities, maintenance, or construction standards such as paving type or thickness.

B. Willamette River Bridges

Some of the bridges that span the Willamette River are also financially affected by this ballot measure. Multnomah County is responsible for the operations, maintenance and improvement of the following bridges: Broadway Bridge, Burnside Bridge, Hawthorne Bridge, Morrison Bridge, Sellwood Bridge and the Willamette Slough Bridge. These bridges are defined as the "Willamette River Bridges."

The initiative does not affect any other bridges. Multnomah County would maintain jurisdiction over the Willamette River bridges under the initiative. The initiative fixes the funding for bridge maintenance at \$1.64 million per year with an annual adjustment for inflation. Also, the initiative fixes the funding for capital improvements for the bridges at \$1.06 million per year.

Major maintenance activities such as painting are part of a capital improvement program. The Willamette River bridges require frequent major maintenance. Recent changes to federal environmental laws have increased the cost of such bridge maintenance. For example, the Environmental Protection Agency (EPA) now requires total containment of dust and spray associated with sanding and repainting the bridges — no paint chips or paint can fall into the rivers or escape into the air.

C. Transition From Counties to Cities

State law stipulates that county roads, excluding bridges within cities, will shift from county to city jurisdiction. A procedure for such transitions is set out in ORS 373.270. Relevant to this transition is the Transportation Planning Rule adopted by the Land Conservation and Development Commission (LCDC). This rule requires coordination of transportation systems of different levels of government to enhance effective patterns of land use.

D. Portland and Multnomah County Agreement

In 1984 Multnomah County agreed to transfer to Portland control over all county roads within the city limits of Portland. Maywood Park also received control over its roads. The 1984 agreement, like Ballot Measure 26-1, involved transferring staff, equipment and funds to enable Portland to service the roads transferred to it. As Portland annexes additional areas into the city, roads within the annexed areas are transferred to Portland's control.

E. Gresham and Multnomah County Negotiations

For ten years, Gresham and Multnomah County have been trying to resolve the dispute over which jurisdiction should control the roads in Gresham and set priorities for spending gas tax monies on roadway capital improvements within that city. They have been unable to agree. The committee heard testimony that personality conflicts contributed to the impasse. Numerous witnesses indicated that the parties will likely not reach an agreement under current circumstances.

F. Four-City Memorandum of Understanding

In February 1990 the four cities of Fairview, Gresham, Troutdale and Wood Village came to an understanding with Multnomah County regarding sharing funds for road capital improvements and maintenance. The understanding was formalized in a Memorandum of Understanding (MOU). The MOU provided that "those arterials or collectors which are essential to serving more than the needs of a single jurisdiction will be the county's responsibility." The MOU required that a clear signage system be adopted to identify which roads were under county jurisdiction and which were under city jurisdiction. The MOU spelled out criteria to determine which roadways would remain or be transferred to Multnomah County control, including all major interjurisdictional arterials and collectors. However, maps and identification of specific roadways were left to later agreement.

The MOU provided for modification of priorities in the county's capital improvement program. The MOU also provided for a revision in notification procedures of road construction and maintenance, and better coordination of schedules between the cities and the county. Again, the MOU simply articulated the objective and left much of the substance to subsequent intergovernmental agreements. Despite continued negotiations, binding agreements have not been achieved.

G. The Initiative

The initiative is borne out of Gresham's frustration with its inability to convince Multnomah County to enter into an intergovernmental agreement regarding the control of roads. The Gresham city council fully supports the initiative. If it passes, Gresham will request that the county turn over the roads within Gresham to its control. The county would be required to turn 122 miles of roadway over to Gresham, as well as corresponding funding, staff and equipment to allow Gresham to maintain those roadways and fund its capital improvements.

The initiative would amend the Multnomah County charter to require the county to transfer roads to any city willing to take on the responsibility. Cities such as Fairview, Troutdale and Wood Village that do not want to accept this responsibility would not have to do so. The initiative stipulates that after a city holds a public hearing and adopts a resolution accepting jurisdiction over county roads within its boundaries, Multnomah County must surrender jurisdiction of those roads to the city within 90 days.

The initiative reallocates road revenue from the county to cities that take over their roads. Road revenue to be shared includes all county fuel taxes and state highway funds, except those set aside for the Willamette River bridges.

Under the initiative, road funds would be allocated by total centerline road miles within the city, divided by the total centerline road miles within the county. The initiative defines "centerline road miles" as the length of miles of road without regard to the number of lanes. This would have the effect of reallocating gas tax revenues among the three major jurisdictions. The City of Gresham, which would more than double its road mileage control (from 100 to 222 road miles) would see an estimated 61% increase in gas tax revenues (\$1.7 million annually). Multnomah County, which would lose control of (25%) of its roads (from 502 to 380 road miles), would see an estimated 16% decrease in gas tax revenues (\$3 million annually). Portland, whose control of road mileage would not change, would see an estimated 3% increase in gas tax revenues (approximately \$1 million annually). Exceptions to this formula would require the written approval of the county and all affected cities.

The initiative requires Multnomah County to transfer road maintenance equipment to the city at no cost to the city. The county and the city would be required to make agreements regarding transfer of such equipment, county road department employees and any legal instruments, such as permits, related to the transferred roads.

III. ARGUMENTS ADVANCED IN FAVOR AND AGAINST

A. Arguments in Favor of the Initiative

1. Gresham should have local control of roads within its own jurisdiction.
2. The initiative would eliminate a double permit problem which currently requires users to obtain permits from both the city and Multnomah County in order to build on roads owned by Multnomah County.
3. Gresham would control the order and priority of its capital improvement projects.
4. The initiative would allow Gresham to coordinate the street improvements within its city limits with other projects that disrupt traffic, like sewer or water projects.
5. Gresham can do a better job maintaining its own roads.
6. The initiative would distribute gas tax dollars more equitably. Currently, fewer tax dollars are spent in Gresham than Gresham residents contribute to the tax fund.
7. The initiative does not increase taxes. It merely reallocates gas tax dollars.
8. The initiative would integrate the 122 miles of county roads inside Gresham's city limits into Gresham's land use, economic development and construction plans.
9. Fairview, Troutdale and Wood Village would not have to take local control over their roads. Their maintenance and capital improvement projects could stay with Multnomah County.
10. Gresham would be able to serve all its citizens more equitably. Currently, Gresham can respond only to those citizens whose roads are controlled by Gresham. Citizens are often confused about whom to call regarding road problems, such as potholes, safety concerns, and lack of sidewalks or curbs.
11. It is inappropriate for a county government to control and make decisions for cities. Multnomah County should focus on county-wide services such as libraries, corrections, health and human services rather than roads within city limits, which are better serviced locally.
12. A county-wide system of transportation would still exist. Gresham would still have to follow state land use goals and Metro's land use and transportation regulations.

B. Arguments Against the Initiative

1. The initiative could force duplication of staff and expensive equipment.
2. The smaller cities of Fairview, Troutdale and Wood Village may have difficulty funding capital projects on their own.
3. The transfer of major roads to Gresham would decrease the county-wide road system. The county should have jurisdiction over arterials and major collectors in order to promote a county-wide plan.
4. The initiative would increase competition for road dollars within Multnomah County.
5. Multnomah County can do a better job of maintaining roads. Multnomah County has been maintaining roads longer than Gresham and does better quality surfaces which last longer on roads.
6. The initiative would provide a windfall transfer of a million dollars to the City of Portland with no additional responsibility.
7. The initiative does not adequately fund maintenance projects for bridges.

IV. MAJORITY DISCUSSION

A. Control of Roads — Local or Regional?

Opponents of the initiative explained that major roads need a regional approach so that buses, cars and bike lanes do not substantially change or end when travelling from one jurisdiction to another. However, one witness explained that both state and regional land use planning regulations bind cities in treatment of major arterials. For example, Gresham could not convert a four-lane arterial into a two-lane road if either the state's land use regulations or Metro's functional classifications have identified the road as a four-lane road. Therefore, a regional approach may not be jeopardized by giving local control of roads to cities. We already have multiple jurisdictions with control over sections of roads that continue on into a second jurisdiction.

The majority of your committee observes that most citizens do not restrict their travel to one county. Many of us travel on state highways or county roads and travel from county to county with little or no inconvenience. The same would hold true if Gresham takes control of all the county roads within its limits.

B. Gresham's Planning Goals

Proponents of the initiative argue that Gresham should be able to have the vision and identity it wants for its city. Control of the streets would allow Gresham more flexibility and control over long-range planning. Witnesses supporting the initiative explained that one of the reasons Gresham wants control over its roadways is that a unified, attractive and identifiable city will increase civic pride and attract economic development.

The committee heard testimony that Multnomah County has focused on the functional aspects of road maintenance and construction. Witnesses also testified that Gresham's vision is to enhance roads by adding trees, plants and flowers, as well as curbs and sidewalks. This makes roads more enjoyable and safer for pedestrians and public transportation users, particularly along busy arterials.

C. Non-Duplication of Government Entities

The committee heard conflicting testimony on whether the initiative would create duplicative road departments. One witness testified that transferring the roads to Gresham would not create another governmental agency. Gresham's road department already exists. However, another witness explained that the initiative would create duplicative, expensive bureaucracies, one in Gresham and one at the county level. As a result, the witness concluded, "the initiative is not good for the taxpayer."

A majority of your committee concluded that the initiative does not provide the choice to eliminate a governmental agency. The initiative provides a choice of control over roads between two existing road departments.

D. Bridges

Witnesses testified that currently, to fund significant capital improvements on the bridges, Multnomah County must seek funds beyond the state gas tax revenues. The committee also heard testimony that the funds allocated by the initiative would be insufficient to maintain and improve the county's Willamette River bridges.

A majority of the committee felt the formula under the initiative would not significantly alter the county's need to seek additional funds for capital improvement projects.

E. Tax Implications

Gresham citizens do not have control over spending commensurate with the amount of state gas taxes they pay. Gresham's citizens currently pay more gas tax dollars than are spent on Gresham's roads. Proponents also argue that tax funds will be distributed more equitably if the initiative passes. The critical mass of the funding for roads currently goes to the county, which prioritizes its own projects to fund.

This initiative would not increase gas taxes. It reallocates the current taxes collected. The formula under the initiative for allocating monies from state gas taxes is based solely on the number of miles of roads transferred to the cities from the county. It provides equal revenue per road mile for all jurisdictions. Proponents argue that under the initiative's formula, Gresham would receive revenues more proportionately equal to the tax dollars its citizens pay.

V. MAJORITY CONCLUSIONS

A majority of the committee concludes that:

1. Transfer of jurisdiction of all county roads within Gresham city limits to Gresham would not jeopardize Multnomah County's county-wide road system.
2. The City of Gresham should be able to control its local roads and identity by choosing to have sidewalks, traffic controls and tree-lined boulevards.
3. Transfer of the roads to Gresham would not create another government entity; Gresham is already in the roads business.
4. Multnomah County should allow Gresham the same rights it has given the City of Portland and Maywood Park. Gresham, like other major cities in Oregon, should have control over its roads.
5. The initiative does not create new taxes or increase taxes; it reallocates current tax dollars.
6. The City of Gresham should decide how to spend its portion of its gas tax dollars.

VI. MAJORITY RECOMMENDATION

The majority of your committee recommends a "yes" vote on Ballot Measure 26-1.

Respectfully submitted,

Eleanor Haas
Carrol Johnson
Leslie Sack
Debra Hall, Chair

VII. MINORITY DISCUSSION

A minority of the committee recommends a vote against this measure because it fragments the responsibility for regional roads and because it inappropriately reallocates state gasoline tax money between Multnomah County and the four cities of Fairview, Gresham, Troutdale and Wood Village.

A. Regional Transportation Planning and Road Maintenance

Arterials and collectors that cross jurisdictional lines should be maintained and planned regionally. A regional approach can provide continuity across city and county boundaries and ensure allocation of maintenance funds based on regional needs.

Approval of the ballot measure would impair Multnomah County's ability to provide regional leadership, because the county would lose control of the arterials in Gresham. Regional roads should be the responsibility of a regional agency to ensure that they are built and maintained consistently. If arterial roads are transferred to Gresham, the differences in standards could result in inconsistent design and maintenance of arterials as they pass from jurisdiction to jurisdiction.

Gresham is not in a position to be a regional leader, because it can only control roads in its boundary. It would be inappropriate for Gresham to control roads outside the city, because voters in unincorporated areas have no representation on the city council. Voters in the unincorporated areas should have the ability to vote for the government officials controlling roads in their area. Metro provides some level of regional control, but not to a sufficient level of detail.

The City of Gresham says that because transportation and land use are linked, the local government with land use planning authority should also have control over the roads serving those land uses. However, as illustrated above, local control can lead to problems when different jurisdictions decide to treat the same arterial differently. Fairview, Troutdale and Wood Village have been able to coordinate their land use planning with the county without the shift in responsibility that this measure would precipitate. Gresham and Multnomah County should be able to do the same.

B. Allocation of Resources

The ballot measure's formula for distributing state gasoline tax revenues does not recognize the different traffic levels, and thus cost of maintenance, of different roads. The formula considers only miles of road measured at the centerline of the road. A two-lane residential street would be eligible for the same funding as a six-lane arterial, even though the arterial is much more costly to construct and maintain. The formula would act as a disincentive to the small cities (Fairview, Troutdale and Wood Village) to take over responsibility for their streets, and the City of Gresham could also find itself without sufficient funds.

The ballot measure would transfer \$1 million dollars to the City of Portland without increasing its responsibility for roads. Supporters of the measure have not argued or presented any evidence that this reallocation is justified by any consideration of need.

According to Multnomah County, the reduction in funds available to the county will jeopardize its ability to maintain and improve regional facilities, such as the Willamette River bridges. The ballot measure allocates a fixed amount for those capital improvements to these bridges. The fixed amount (\$1,060,000 per year) is less than the county has been spending on capital improvements for bridges and is not indexed for future inflation. As a result, major maintenance could be deferred and the bridges would deteriorate.

C. Compliance With State Law

The Transportation Planning Rule adopted by the LCDC mandates a much closer relationship between transportation planning and land use planning than previously existed in Oregon. Proponents of this initiative argue that the rule gives local jurisdictions control of the roads and land use planning. However, nothing in the Transportation Planning Rule requires that planning for arterial streets be transferred to local jurisdictions. The rule requires planning and coordination between governments but does not prohibit regional planning.

Multnomah County has already offered to transfer local collector streets to the City of Gresham. The initiative is not needed to give the city control over the planning for those streets.

The minority questions whether the ballot measure is consistent with state laws. The ballot measure sidesteps ORS 373.270, which sets up a statutory procedure for transferring the control of roads from counties to cities. The minority doubts that a county ordinance could or should be used to rewrite a state statute.

D. Efficiency in Government

The City of Gresham has argued that the process of obtaining building permits and development approvals is unnecessarily complicated because applicants must obtain permission from both the city and Multnomah County. The ballot measure is not needed to resolve this problem, because Multnomah County has set up a process that transfers development approval authority to a city through which a road runs, so long as the city agrees to require construction to county standards. Also, the committee heard testimony by representatives from Fairview, Troutdale and Wood Village, who stated that they have had no difficulty coordinating efforts with Multnomah County.

The City of Gresham may be able to build more roads than Multnomah County with the same amount of money. However, county officials assert that the Gresham roads are less expensive because of the higher construction design standards required by Multnomah County. The City of Gresham will spend more in maintenance than Multnomah County over the life of the road because of the lower initial construction standard. The county indicates that the overall costs of the road would be similar, or possibly somewhat lower, under the Multnomah County approach when inflation and maintenance costs are considered.

E. Agreement Between City and County

In 1990, Multnomah County and the four east county cities signed the Memorandum of Understanding (MOU), described in the background of this report, which called for a series of intergovernmental agreements to specify responsibilities and transfer of resources. The MOU attempted to resolve the conflicts and rivalries

that had marked discussion of transportation issues in the area. This committee was not able to sort out why the MOU process failed. However, intergovernmental agreements appear to be a more appropriate mechanism for resolving these issues than changing the Multnomah County charter which, once passed, can only be changed by a vote of the people.

VIII. MINORITY CONCLUSIONS

A minority of the committee concludes that:

1. The ballot measure fragments authority rather than allowing regional control of roads.
2. The ballot measure would inappropriately redistribute funds to the City of Portland and City of Gresham at the expense of Multnomah County, impairing the county's ability to maintain its bridges.
3. The ballot measure attempts to circumvent the provisions of a state statute which specifies how to transfer control of county roads to a city. The measure is therefore vulnerable to legal challenge.
4. It is doubtful that the City of Gresham is more efficient than Multnomah County.
5. Negotiated intergovernmental agreements are the best way to resolve these issues.

IX. MINORITY RECOMMENDATION

The minority recommends a "no" vote on Ballot Measure 26-1.

Respectfully submitted,

Michael J. Lilly
Laura Hudson
Renée Rothauge