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Date: April 20, 2022

From: Better Eugene-Springfield Transportation (BEST)

To: Lane Transit District (LTD) Board of Directors

Re: Board Bylaws for a Public Agency

Dear Board Members,

BEST is pleased to provide feedback on the latest draft Amended and Restated Bylaws you are discussing at your meeting today.¹

LTD is a public agency.

Of course, LTD is not a private corporation but a public agency organized “for the purpose of providing a mass transit system for the people of the district.”²

In more detail, LTD offers transportation options to all members of the public, including youth, seniors, people with low incomes, people with disabilities, and everyone else.

Moreover, LTD is substantially supported by public taxes. These include payroll taxes, various federal funds, and special state funding.

Finally, LTD has impacts in the community beyond just helping people get there. The design, land uses, and livability of our communities are intimately linked to our transportation system. LTD services are part of the transportation backbone around which our community is built and grows. Thus, LTD plays a role in issues beyond just public transit.

The role of directors is to represent public interests.

Of course, LTD is overseen by directors who—unlike for most other local public agencies—are not elected by rather appointed by the Governor and confirmed by the Senate.³

It is critical to appreciate that this unusual system of representation is both a feature and a bug.

¹ 2022-04-20 Regular Board Meeting Agenda Packet Handout 2 – Bylaws, https://www.ltd.org/file_viewer.php?id=5709.

² ORS 267.080: Creation of district, https://oregon.public.law/statutes/ors_267.080.

³ ORS 267.090: Directors, https://oregon.public.law/statutes/ors_267.090.

Building a successful community by bringing people together to promote transportation options, safe streets, and walkable neighborhoods.

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The feature is that directors are unelected by design to insulate them from local politics. If directors were elected, there would be a risk that those most motivated to run for office would oppose the idea of public transit and undermine the agency.

The bug is the flip side of this unusual arrangement. Not being elected, thus not being known by most people they represent, and in some case not even being clear on who they represent, it is difficult for LTD directors to represent public interests as effectively as do mayors, city councilors, county commissioners, school board members, utility board members, and other local elected officials.

Indeed, with no electorate in play, there is a risk that LTD devolve to primarily internal discussions between just board and staff.

The bylaws must be designed to empower directors to represent public interests effectively.

Given this unusual unelected governance framework, it is essential that the Bylaws incorporate provisions to empower directors to represent public interests effectively.

Unfortunately, BEST is not seeing such provisions in the current draft. Indeed, we are seeing instances in which the Bylaws are disempowering directors charged to represent public interests, delegating more power and decisions to staff. Below we highlight some sections of the draft Bylaws.

1.2 Guiding Principle ✓

This section about “connecting community” and “working with partners” is a good expression of LTD’s larger role.

2.1 Purpose of the Board of Directors ✗

This section states: “The individual directors are public officials.” This section needs to better flesh out the roles and responsibilities of directors as “public officials.”

2.6 Directors’ Responsibilities ✗

This sections and its subsections focus more negatively on what director should *not* do rather than positively on what they should. As noted for Section 2.1, there is a need to flesh out the roles and responsibilities of directors as “public officials.”

2.6.3 Public Engagement ✗

As drafted, this subsection is too weak. It isn’t sufficient to state that “directors are *encouraged* to participate in and with the community they serve.” Rather much more explicit language is needed around how directors can effectively hear from and respond to their constituents they are appointed to represent, especially in their own subdistricts.

2.9 Communication Among Public, LTD Staff and Directors ✘

As drafted, this section details *how* communications are to occur. Left unaddressed is the *purpose* of such communications and how effective they are. By setting up the Clerk of the Board and General Manager as gatekeepers for communications with the public, there is a risk of throttling the ability of directors to effectively communicate with and represent the public. Although it is appropriate for the Clerk of the Board and General Manager to be kept in the loop, it is essential that directors have the ability to carry out their own responsibilities to represent public interests and exercise independent oversight over a public agency.

3.3.1 President ✘

As drafted, this subsection grants the President significant powers above and beyond that of all other directors—even more so than many mayors, who are elected by voters to that role.

By granting the President the power to set the agenda, this section disempowers community members in the six other subdistricts not represented by the President, as their representatives are not able to even bring a topic up for discussion if the President is opposed. (The provision that a majority of the Board can add an item to the agenda is too high of a threshold, and counter to common practice of other public bodies, for which a minority of more than one can add agenda items.)

Moreover, the Board Counsel should, as the title indicates, serve the Board, i.e., all seven directors, and not set up the President as a gatekeeper between the Board Counsel and their seven primary clients.

4.3.1 Email Communication / 4.3.2 Serial Communication ✘

These subsections are highly problematic. A consequence of such provisions is that the public feels like LTD doesn't listen and isn't responsive, as the ability of directors to communicate with their own constituents is severely constrained. While, of course, it is necessary to abide by Oregon's Public Records and Meeting Laws,⁴ we must not lose sight of the fact that the public cannot be served if they cannot communicate effectively—in both directions—with their own representatives.

4.4.2 Notice and Public Participation ✘

As drafted, this subsection is woefully inadequate in supporting public participation. Merely providing “a reasonable means for members of the public to *attend* the meeting” does not represent the kind of robust public participation that Oregon is committed to. Being able to attend a meeting merely enables the public to be informed about what LTD is doing: the lowest level on the Spectrum of Public Participation.⁵

At a minimum, at any (regular, special or work session) meeting during which the Board is scheduled to make decisions impacting the public interest, there should be at least a public comment period.

⁴ Attorney General's Public Records and Meetings Manual 2019, <https://www.doj.state.or.us/oregon-department-of-justice/public-records/attorney-generals-public-records-and-meetings-manual/>.

⁵ IAP2 Spectrum of Public Participation, <https://www.iap2.org/page/pillars>.

Above and beyond this minimum level of public input, the bylaws (or some subordinate document, such as a public participation plan) needs to detail out the goals of LTD's public participation efforts and practices to achieve those goals. LTD's public participation plan should highlight when the goal is to 1) inform, 2) consult, 3) involve, 4) collaborate, or 5) empower the public.

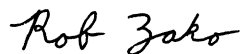
ARTICLE 6A: BOARD COUNSEL ✗

Subsection 3.3.1 President and Section 4.2 Director Preparation for Meetings both reference the "Board Counsel," a position that is otherwise not defined. A new article needs to be added to the Bylaws that details:

- how the Board Counsel is retained, overseen, and if necessary removed;
- the roles and responsibilities of the Board Counsel; and
- specifically, the nature of the attorney-client relationship between the Board Counsel and the Board, both collectively and for each individual director.

BEST looks forward to seeing a revised draft addressing the concerns we highlight here.

For BEST,



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