

# Oregon Municipal Handbook

## CHAPTER 4: ELECTIONS



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## Chapter 4: Election Law

More than any other level of government, local governments are the product of elections. Local voters decide not just who holds elected office — they also decide the offices. For home rule cities, the powers and structure of government are topics of voter-approved charters.

In several ways, local elections in Oregon are governed by local law. For instance, home rule charters decide the type and number of a city’s public offices and the term and qualifications of each office.<sup>1</sup> Frequently, charters and local ordinances also provide unique processes of filing petitions and of filling vacancies in local office.<sup>2</sup>

That said, while local laws play some role, election law in Oregon is largely a matter of state law. Article II, Section 8, of the Oregon Constitution assigns the Oregon Legislature with the responsibility of “prescribing the manner of regulating and conducting elections” and of policing “improper conduct.”<sup>3</sup> Because of this, elections in Oregon are regulated by a series of statutes and an administrative framework headed by the Secretary of State.<sup>4</sup> The Secretary of State’s Office provides ample guidance on Oregon election law, with manuals on state and local candidacies, ballot measure procedures, and campaign finance regulations, among others.<sup>5</sup>

The state made several changes to its election system in 1979 and vested significant responsibility in county clerks, mandating that “the county clerk is the only elections officer who may conduct an election in this state.”<sup>6</sup> Under this approach, county clerks are responsible for establishing precincts, preparing ballots and sample ballots, and receiving and processing votes.<sup>7</sup> County clerks also work with city election officers — such as the city’s auditor, recorder, or administrator — to administer voting on local candidates and local measures.<sup>8</sup> County clerks are authorized to supervise cities on the administration of election law, but it is the Secretary of State that has ultimate authority to interpret and enforce state election law.<sup>9</sup>

This chapter will cover the most important election laws in Oregon, focusing primarily on state law. Part I covers election laws that apply directly to cities, beginning with the procedural

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<sup>1</sup> See, e.g., LEAGUE OF OREGON CITIES, MODEL CHARTER FOR OREGON CITIES 7-9 (2018), <https://www.orecities.org/application/files/3015/7228/7626/ModelCharterUpdate03-15-19.pdf> (last accessed Sept. 2, 2020).

<sup>2</sup> *Id.*

<sup>3</sup> See Or Const, Art II, § 8.

<sup>4</sup> See ORS 246.110.

<sup>5</sup> See, e.g., Or. Secretary of State, *Election Law Summary* 4 (2016), [https://sos.oregon.gov/elections/documents/elec\\_law\\_summary.pdf](https://sos.oregon.gov/elections/documents/elec_law_summary.pdf) (last accessed Sept. 2, 2020).

<sup>6</sup> ORS 246.200.

<sup>7</sup> *Id.*

<sup>8</sup> ORS 246.210.

<sup>9</sup> ORS 246.110.

requirements for holding an election and the restrictions on political activity during work hours. Part II covers laws that apply to local candidates, from the eligibility requirements found under local law to state regulations on campaign finance. Similarly, Part III covers laws that apply to local measures, specifically local initiatives, referenda, and referral measures. Finally, Part IV describes the general enforcement process for state election offenses, which is carried out largely by the Secretary of State Elections Division.

## I. ELECTION LAWS FOR CITIES

As described above, state law governs the process for local candidates and measures to get on the ballot. In addition to these processes, state law imposes certain general requirements on cities that relate to elections. First, Oregon law restricts when cities can hold certain elections and requires cities to work with their county to facilitate the election.<sup>10</sup> Second, city employees are prohibited at all times — during, before, and after any election — from engaging in certain political activity during work hours.<sup>11</sup> Significantly, this prohibition does not apply to elected officials and includes an exception for political views in the workplace.<sup>12</sup> Third, with any local candidate or ballot petition, Oregon election law requires the campaign to file a statement of organization and to track every contribution and expenditure.<sup>13</sup>

### A. Holding an Election

#### i. Timing Requirements

Cities, like the state, hold elections for the purposes of electing officials and approving or rejecting ballot measures. In various ways, state law limits the timing of local elections held for either purpose.<sup>14</sup> In general, local elections must be held on one of four dates: **(1)** the second Tuesday in March; **(2)** the third Tuesday in May; **(3)** the third Tuesday in September; or **(4)** the first Tuesday after the first Monday in November.<sup>15</sup> Absent an emergency, these dates are the only dates that a city can hold an election on a referral (i.e. a “city measure referred by the city governing body”) or for a city office.<sup>16</sup>

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<sup>10</sup> See, e.g., ORS 221.230.

<sup>11</sup> See ORS 260.432(2).

<sup>12</sup> *Id.*

<sup>13</sup> ORS 260.005 to ORS 260.285.

<sup>14</sup> See, e.g., ORS 221.230.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

But additional restrictions apply.<sup>17</sup> First, state law requires that all regular elections for city officers “be held at the same time and place as elections for state and county officers.”<sup>18</sup> Elections for state and county officers are conducted in **primary elections** held only “on the third Tuesday in May of each even-numbered year” and **general elections** held only on “the first Tuesday after the first Monday in November of each even-numbered year.”<sup>19</sup> Thus, local elections for city office generally are held only on numbers (2) and (4) of the above dates, and only in even-numbered years.<sup>20</sup> If a city does hold an election on a date other than the primary or general election, the city bears the expense of the election.”<sup>21</sup>

Second, restrictions apply to elections held on any city measure *other* than a referral.<sup>22</sup> Absent an emergency, state law requires that an “election on a city measure . . . other than a [referral]” must be held on the third “Tuesday in May” or “the first Tuesday after the first Monday in November.”<sup>23</sup> While these dates are identical to the dates for primary and general elections, note that there is no requirement for the election to be held in an even-numbered year. Thus, while elections on non-referral city measures need to be held on numbers (2) and (4) of the dates in the paragraph above, they can be in an odd-numbered year.<sup>24</sup> Non-referral city measures include local initiatives, citizen-led referenda, recall measures, and measures seeking to alter local boundaries through annexation, withdrawal, or disincorporation.

As noted, under certain circumstances, a city may hold an **emergency election** that falls on a date other than the dates described above.<sup>25</sup> To do so, the city must find that an emergency actually exists and that “extraordinary hardship to the community” would result from waiting until the next available election date to conduct an election.<sup>26</sup> The city must adopt this finding in a resolution after a public hearing.<sup>27</sup> The hearing itself must be adequately noticed and cannot be held on the same day as a regularly scheduled council meeting.<sup>28</sup> In the event of an emergency, an election can be held as early as 47 days after giving notice to the county clerk (see below).<sup>29</sup>

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<sup>17</sup> See ORS 254.035; see also Or Const, Art II, § 14a (requiring that “regular elections” in cities occur “at the same time [as] primary and general biennial elections” for state and county offices).

<sup>18</sup> ORS 254.035.

<sup>19</sup> ORS 254.056.

<sup>20</sup> *Id.*

<sup>21</sup> ORS 254.046.

<sup>22</sup> ORS 221.230(2).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> ORS 221.230(3).

<sup>26</sup> *Id.*

<sup>27</sup> ORS 221.230(4).

<sup>28</sup> *Id.*

<sup>29</sup> ORS 221.230(5).

For some city measures, however, emergency elections simply are not an option. Even in an emergency, an election cannot be held on certain types of measures that have specific timing requirements under a state statute or the state constitution. For example, Article XI, Section 11, of the Oregon Constitution requires that local measures proposing new property taxes must be presented to voters in a general election.<sup>30</sup> This requirement is waived if at least 50% of eligible voters participate in the election, but such turnout is difficult to achieve outside of a general election; in the past 30 years, only three primary elections have seen a turnout higher than 50%.<sup>31</sup> Similarly, a proposed local measure to consolidate two or more cities must be presented to voters at a “primary election or general election.”<sup>32</sup> Due to these measure-specific timing requirements, LOC recommends that cities thoroughly research state election laws before placing a measure on the ballot, particularly if the ballot is not a general election ballot.

## ii. Filing with the County

State law also requires cities to notify the county prior to an election of every candidate and every measure that will be voted on in an election. Generally, the chief elections officer for a city needs to submit this information to the county clerk no later than the **61<sup>st</sup> day** prior to an election.<sup>33</sup> Cities need to file a “statement of the city offices” that are the subject of the election and information about each of the candidates.<sup>34</sup> Cities also need to file a “statement of the city measures” and the ballot title for each of the measures.<sup>35</sup> If the city is resubmitting a September election measure in a November election, then cities have slightly more time; cities need to resubmit a statement for that measure no later than the **47<sup>th</sup> day** prior to the election.<sup>36</sup>

These requirements are the same regardless of whether the city is submitting information as part of a general election, a primary election, or its own special election. That said, if the city is holding an emergency election, the process of notifying the county clerk is different.<sup>37</sup> The city must notify the county no later than the 47<sup>th</sup> day before the desired election date and must include a copy of the resolution and findings that an emergency election is justified.<sup>38</sup>

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<sup>30</sup> Or Const, Art XI, § 11.

<sup>31</sup> *Id.*; Or. Secretary of State, *Voter Turnout History for Primary Elections 1* (2018), <https://sos.oregon.gov/elections/Documents/Voter-Turnout-History-Primary.pdf> (last accessed Sept. 8, 2020); Or. Secretary of State, *Statistical Summary May 19, 2020, Primary Election 1* (2020), <https://sos.oregon.gov/elections/Documents/statistics/may-2020-statistical-summary-participation.pdf> (last accessed Sept. 8, 2020).

<sup>32</sup> ORS 222.250.

<sup>33</sup> ORS 254.095.

<sup>34</sup> ORS 254.095(1).

<sup>35</sup> ORS 254.095(2).

<sup>36</sup> ORS 254.095(3).

<sup>37</sup> ORS 221.230(5).

<sup>38</sup> *Id.*

## B. Prohibited Political Activity — ORS 260.432 and related federal laws

State election law in general prohibits city employees from engaging in certain political activity during work hours.<sup>39</sup> While this ban can seem simple, several of its definitions and exceptions make the law — ORS 260.432 — deceptively complex. This section will explore the law in detail and will conclude with two federal laws that sometimes apply to city employees. For more information on all of these laws, cities can consult the manual *Restrictions on Political Campaigning by Public Employees*, which was last revised and adopted by the Oregon Secretary of State in January 2016.<sup>40</sup>

ORS 260.432 includes three main requirements that affect cities and city employees. First, the law prohibits any public employee from engaging in certain political activity during work hours.<sup>41</sup> Specifically, public employees cannot solicit money, services, or influence, and cannot otherwise support or oppose a candidate, measure, or political committee.<sup>42</sup> Second, the law prohibits any person from attempting to “coerce, command, or require” a public employee to engage in the prohibited conduct.<sup>43</sup> Third, the law requires that a notice be posted in all public workplaces about the law; this requirement applies to all public employers, including cities and other municipal corporations.<sup>44</sup>

ORS 260.432 is sometimes called Oregon’s “Little Hatch Act,” a reference to the federal Hatch Act that proscribes the political activity of federal employees.<sup>45</sup> It is easier to understand what this law prohibits by breaking it down into its basic elements. The law applies **(1)** only to public employees, **(2)** only during work hours, **(3)** and only to certain political activities.

### i. Public Employees

ORS 260.432 does not offer a clear definition of the “public employees” that are covered by the law. The law clearly provides that “elected officials” are not public employees, but then is noticeably vague about what types of positions *are* employees.<sup>46</sup> Fortunately, guidance from the Secretary of State clarifies this issue.<sup>47</sup>

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<sup>39</sup> ORS 260.432.

<sup>40</sup> Or. Secretary of State, *Restrictions on Political Campaigning by Public Employees* 1 (2016), <https://sos.oregon.gov/elections/Documents/restrictions.pdf> (last accessed Sept. 11, 2020).

<sup>41</sup> ORS 260.432(2).

<sup>42</sup> *Id.*

<sup>43</sup> ORS 260.432(1).

<sup>44</sup> ORS 260.432(3).

<sup>45</sup> *Oregon State Police Officers Ass’n v. State*, 308 Or 531, 535 (1989); see 5 U.S.C. §§ 1501–1508 (2018).

<sup>46</sup> ORS 260.432(6).

<sup>47</sup> Or. Secretary of State, *Restrictions on Political Campaigning by Public Employees* (2016), <https://sos.oregon.gov/elections/Documents/restrictions.pdf> (last accessed Sept. 11, 2020).

### a. City Officials

Elected officials, as noted above, are not public employees, meaning that elected officials are free to engage in political activities on their own, such as endorsing a local candidate or measure.<sup>48</sup> However, this does not mean that elected officials can forget about ORS 260.432. Elected officials are prohibited from ordering a public employee to engage in political activity while on the job.<sup>49</sup> For instance, elected officials cannot order city employees to help them make an endorsement, nor can they use city employees to support or oppose a measure or candidate.<sup>50</sup> Because politics are an inherent part of their job, elected officials need to be aware of this law from the moment they take office, even though they are free to engage in political activity on their own.

By contrast, non-elected officials are public employees, even if they are volunteers, according to the Secretary of State.<sup>51</sup> For instance, an appointed member of a budget or planning commission is a public employee under ORS 260.432, meaning they cannot engage in political activity “during work hours.”<sup>52</sup> For an official, this includes any situation where the person is serving in their official capacity, such as attending a meeting or event or working on an official project or publication.<sup>53</sup>

Like any public employee, a non-elected official is permitted on their personal time to make endorsements and engage in other political activity.<sup>54</sup> Non-elected officials may even include their title as part of an endorsement or other political activity, as long as they are not acting in an official capacity when they do so.<sup>55</sup> If there is the potential for confusion about whether an employee is acting in a personal or official capacity, LOC recommends that the employee state in advance that they are acting solely in their personal capacity and do not represent the views of their employer.

Finally, any individual who is appointed to fill a vacant city council seat is considered an elected official because their appointment is to an elected office.<sup>56</sup> Therefore, council appointees are free to engage in political activities as long as they do not involve public employees.

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<sup>48</sup> ORS 260.432(6).

<sup>49</sup> ORS 260.432(1).

<sup>50</sup> *Id.*

<sup>51</sup> Or. Secretary of State, *Restrictions on Political Campaigning by Public Employees* 5 (2016), <https://sos.oregon.gov/elections/Documents/restrictions.pdf> (last accessed Sept. 11, 2020).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> Or. Secretary of State, *Election Law Summary* 27 (2016), [https://sos.oregon.gov/elections/Documents/elec\\_law\\_summary.pdf](https://sos.oregon.gov/elections/Documents/elec_law_summary.pdf) (last accessed Sept. 11, 2020).



## b. City Staff

Most city staff who are non-elected, paid, and work full-time are public employees. **Volunteers** generally are not public employees under ORS 260.432 because they are not compensated; further, workers' compensation coverage is not adequate compensation for a volunteer to be considered a public employee, according to the Secretary of State.<sup>57</sup> Likewise, **contractors** are not usually considered public employees because most are independent parties performing limited services for the city.<sup>58</sup>

That said, public employees still violate ORS 260.432 if they act through a volunteer or contractor to engage in political activity.<sup>59</sup> City employees cannot direct volunteers to help support or oppose a local candidate or measure, nor can a city employee hire a public relations firm to promote a local measure.<sup>60</sup> Any information produced by city staff must be impartial.

### ii. 'During Work Hours'

Under ORS 260.432, public employees are only prohibited from engaging in political activity "during work hours."<sup>61</sup> But work hours are not always easy to determine, especially for salaried employees. Regardless of their time or location, a public employee is considered "at work" when performing tasks that fall within designated **job duties**.<sup>62</sup> Also, where applicable, a public employee is considered at work when acting in an **official capacity**; for example, a city elections employee is considered at work when working on election materials. Similarly, a city official is considered at work when attending meetings as part of their official duties.<sup>63</sup>

Some activities are always performed while "on the job during work hours," according to the Secretary of State.<sup>64</sup> First, publishing material (or approving it) for an official website or publication is always work that is performed "during work hours."<sup>65</sup> Second, attending an event as a city's representative is always considered work hours.<sup>66</sup> Third, whenever an employee seeks an expense reimbursement for an activity, that activity is considered work hours.<sup>67</sup>

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<sup>57</sup> Or. Secretary of State, *Restrictions on Political Campaigning by Public Employees* 6 (2016), <https://sos.oregon.gov/elections/Documents/restrictions.pdf> (last accessed Sept. 11, 2020).

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> ORS 260.432(1).

<sup>62</sup> Or. Secretary of State, *Restrictions on Political Campaigning by Public Employees* 5 (2016), <https://sos.oregon.gov/elections/Documents/restrictions.pdf> (last accessed Sept. 11, 2020).

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 6.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 5.

By contrast, **on-call shifts** are not considered “on the job” unless or until the public employee is called in to work.<sup>68</sup> A public employee generally is not considered at work until they are performing assigned work, meaning that an employee who has not yet been notified of any on-call duties is free to engage in political activity until they receive that notification.<sup>69</sup>

Similarly, public employees may use lunch hours, breaks, and other time off to engage in political activity that would otherwise be prohibited by ORS 260.432.<sup>70</sup> That said, the employee must choose to volunteer their time; in other words, a public employer cannot encourage or require employees to promote a political cause during their time off.<sup>71</sup> Public employers may restrict the use of public property on lunch breaks and off-work hours through a local policy.

### iii. Prohibited Political Activity

Finally, ORS 260.432 prohibits only certain types of political activity.<sup>72</sup> In general, the law prohibits public employees from supporting or opposing measures, candidates, petitions, or political committees.<sup>73</sup> Each of these restrictions is intended to limit efforts to influence voters with public funds. But the law does not prohibit efforts to support or oppose legislative bills, meaning that public employees may lobby state and local governing bodies as part of their job.<sup>74</sup> Similarly, the law does not prohibit involvement in legal disputes, including disputes over the legality of local petitions and ballot titles.<sup>75</sup> Because neither of these areas is up to voters, there are no restrictions on public employees.

While on the job, public employees cannot collect funds, prepare election filing forms, prepare or distribute written material, or perform other campaign related activities.<sup>76</sup> However, a public employee may provide **impartial information** about a candidate, measure, or petition as part of their normal job duties.<sup>77</sup>

Of course, determining whether information is impartial can be a difficult inquiry. As such, the Secretary of State Elections Division offers to review election-related documents

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<sup>68</sup> See 38 Or Op Atty Gen. 618, 1977 WL 31206 (1977).

<sup>69</sup> *Id.*

<sup>70</sup> Or. Secretary of State, *Election Law Summary 27* (2016), [https://sos.oregon.gov/elections/Documents/elec\\_law\\_summary.pdf](https://sos.oregon.gov/elections/Documents/elec_law_summary.pdf) (last accessed Sept. 11, 2020).

<sup>71</sup> *Id.*

<sup>72</sup> ORS 260.432(1)-(2).

<sup>73</sup> *Id.*

<sup>74</sup> Or. Secretary of State, *Restrictions on Political Campaigning by Public Employees 9* (2016), <https://sos.oregon.gov/elections/Documents/restrictions.pdf> (last accessed Sept. 11, 2020).

<sup>75</sup> *Id.*

<sup>76</sup> Or. Secretary of State, *Election Law Summary 27* (2016), [https://sos.oregon.gov/elections/Documents/elec\\_law\\_summary.pdf](https://sos.oregon.gov/elections/Documents/elec_law_summary.pdf) (last accessed Sept. 11, 2020).

<sup>77</sup> *Id.*

before they are distributed.<sup>78</sup> If the Elections Division approves a city document, the city is shielded from a subsequent finding that the document violates the impartiality requirements under ORS 260.432.<sup>79</sup> Generally, impartiality requires that documents **(1)** must not explicitly urge a yes or no vote, **(2)** must be factually balanced, and **(3)** must fully describe how much a measure costs if the document describes what the measure will accomplish.<sup>80</sup>

#### **a. Personal Opinions**

ORS 260.432 carves out an exception for the rights of public employees to “express personal political views” while at work.<sup>81</sup> The Secretary of State interprets this exception to mean that a public employee may communicate verbally about politics and wear buttons, t-shirts, and other political clothing, and may post campaign signs in their workplace.<sup>82</sup> However, this expression can be limited by content-neutral local policies, particularly where the employee becomes a disruption to the workplace or to the organization as a whole.<sup>83</sup> For advice on how to craft an effective local policy, cities that are members of CIS are encouraged to reach out to the Pre-Loss Legal Department.

#### **iv. Related Federal Laws**

In addition to Oregon’s “Little Hatch Act,” cities should be aware of two federal laws that relate to election activities. Significantly, these laws do not include an exception for personal political views and therefore impose stricter requirements on public employees.

First, the federal Hatch Act applies to public employees who work “in connection with programs financed in whole or in part by federal loans or grants.”<sup>84</sup> For questions about how and when this law applies, LOC encourages cities to consult with their legal counsel.

Second, the National Voter Registration Act (NVRA) and state law under ORS 247.208 prohibit public employees from displaying “any indications of political preference or party allegiance” during voter registration activities.<sup>85</sup> Specifically, city employees cannot “wear or

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<sup>78</sup> Or. Secretary of State, *Restrictions on Political Campaigning by Public Employees* 17 (2016), <https://sos.oregon.gov/elections/Documents/restrictions.pdf> (last accessed Sept. 11, 2020).

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at 18.

<sup>81</sup> ORS 260.432(2).

<sup>82</sup> Or. Secretary of State, *Restrictions on Political Campaigning by Public Employees* 7-8 (2016), <https://sos.oregon.gov/elections/Documents/restrictions.pdf> (last accessed Sept. 11, 2020).

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* at 5; see 5 U.S.C. §§ 1501–1508 (2018).

<sup>85</sup> See 52 U.S.C. §§ 20501–20511 (2018); see also Or. Secretary of State, *Restrictions on Political Campaigning by Public Employees* 6 (2016), <https://sos.oregon.gov/elections/Documents/restrictions.pdf> (last accessed Sept. 11, 2020).

display” political clothing while offering individuals “the opportunity to register to vote.”<sup>86</sup> However, these laws apply only to public registration drives; private efforts by public employees to register voters are not subject to these restrictions.<sup>87</sup>

## II. LOCAL CANDIDATES

Running for public office in a city requires an understanding of both state and local law. First, local charters and, to a certain degree, state law limit who can run for city office.<sup>88</sup> Second, state law governs the process of filing for office and also requires that candidates track their campaign spending and donations.<sup>89</sup> Third, vacancies in office can be resolved under state law but often are covered by local law.<sup>90</sup> Finally, oaths of office are matters of local law.<sup>91</sup>

### A. Eligibility Requirements

State law prevents individuals from running for multiple city offices at once and under some circumstances might also limit one’s ability to hold multiple public offices.

First, under state law, local candidates cannot run for more than one city office in the same election.<sup>92</sup> A candidate who already holds an elected office may run for another office but filing for two or more city offices in one election is prohibited.<sup>93</sup>

Second, unless otherwise provided by local law,<sup>94</sup> public employees are permitted to run for elected office.<sup>95</sup> In other words, employees of a city generally may run for one of the city’s elected offices.<sup>96</sup> That said, state law prohibits the employee from campaigning during their work hours.<sup>97</sup> Also, if the employee is elected, then the employee may need to give up their

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<sup>86</sup> Or. Secretary of State, *Election Law Summary* 38 (2016), [https://sos.oregon.gov/elections/Documents/elec\\_law\\_summary.pdf](https://sos.oregon.gov/elections/Documents/elec_law_summary.pdf) (last accessed Sept. 11, 2020).

<sup>87</sup> *Id.*

<sup>88</sup> See, e.g., LEAGUE OF OREGON CITIES, MODEL CHARTER FOR OREGON CITIES 7-9 (2018), <https://www.orcities.org/application/files/3015/7228/7626/ModelCharterUpdate03-15-19.pdf> (last accessed Sept. 2, 2020).

<sup>89</sup> Or. Secretary of State, *2020 Campaign Finance Manual* 6 (2020), <https://sos.oregon.gov/elections/Documents/campaign-finance.pdf> (last accessed Sept. 22, 2020).

<sup>90</sup> See LEAGUE OF OREGON CITIES, MODEL CHARTER FOR OREGON CITIES 9 (2018), <https://www.orcities.org/application/files/3015/7228/7626/ModelCharterUpdate03-15-19.pdf> (last accessed Sept. 2, 2020).

<sup>91</sup> See League of Oregon Cities, Oaths of Office FAQ 2 (2017), <https://www.orcities.org/application/files/3415/6116/0282/OathsFAQ6-9-17.pdf> (last accessed Sept. 24, 2020).

<sup>92</sup> ORS 249.013(2).

<sup>93</sup> *Id.*

<sup>94</sup> See LEAGUE OF OREGON CITIES, MODEL CHARTER FOR OREGON CITIES 7-9 (2018), <https://www.orcities.org/application/files/3015/7228/7626/ModelCharterUpdate03-15-19.pdf> (last accessed Sept. 2, 2020).

<sup>95</sup> Or. Secretary of State, *Election Law Summary* 10 (2016), [https://sos.oregon.gov/elections/Documents/elec\\_law\\_summary.pdf](https://sos.oregon.gov/elections/Documents/elec_law_summary.pdf) (last accessed Sept. 11, 2020).

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

employment through the city under Oregon common law, which historically prohibits “dual office holding” where two public positions are incompatible.<sup>98</sup>

Third, city officials cannot hold more than one lucrative public position at the same time under Article X, Section 2, of the Oregon Constitution.<sup>99</sup> Similar to above, an official who holds a lucrative office may run for a second lucrative office; however, if they are successful, that official must resign from the first office before assuming the second one.<sup>100</sup> While this provision might apply in some cases, most cities are not impacted by this provision because most city offices are volunteer positions that do not rise to the level of “lucrative” office. By definition, a lucrative office requires a “salary or other compensation beyond expenses.”<sup>101</sup>

More so than state law, local charters determine who is or isn’t eligible for city office.<sup>102</sup> The *LOC Model Charter for Oregon Cities* features many common eligibility requirements.<sup>103</sup> For example, many city charters limit individuals from holding multiple positions in a city, regardless of whether they are lucrative or not.<sup>104</sup> Most city charters also require that elected officials reside in the city, and that they do so for some period of time — usually one year — before seeking office.<sup>105</sup>

## B. Campaign Finance Laws

For individuals who are eligible for office, the first election laws they are likely to encounter are Oregon’s campaign finance laws. In general, state law provides that candidates for elected office must **(1)** open a campaign bank account and **(2)** file a statement of organization for a candidate committee early in their campaign for office.<sup>106</sup> To some degree, cities can also adopt campaign finance reporting requirements.<sup>107</sup> This section is limited to the state’s requirements.

As an initial matter, candidates who do not exceed more than \$750 in contributions or expenditures do not need to create a campaign account or candidate committee.<sup>108</sup> However, if a

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<sup>98</sup> See *Columbia Cty. Admin. School Dist. No. 5 Joint v. Prichard*, 36 Or App 643, 645 (1978); see also 38 Or. Op Atty. Gen. 1411, 1977 WL 31324 (1977).

<sup>99</sup> Or Const, Art II, § 10.

<sup>100</sup> Or. Secretary of State, *Election Law Summary* 10 (2016), [https://sos.oregon.gov/elections/Documents/elec\\_law\\_summary.pdf](https://sos.oregon.gov/elections/Documents/elec_law_summary.pdf) (last accessed Sept. 11, 2020).

<sup>101</sup> *Id.*

<sup>102</sup> See LEAGUE OF OREGON CITIES, MODEL CHARTER FOR OREGON CITIES 7-9 (2018), <https://www.orcities.org/application/files/3015/7228/7626/ModelCharterUpdate03-15-19.pdf> (last accessed Sept. 2, 2020).

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* at 8 (prohibiting mayor and councilor from being employed by the city).

<sup>105</sup> See, e.g., EUGENE, OR., CHARTER Ch. 3, § 8 (2019), EUGENE, OR., CHARTER Ch. 6, § 19 (2019).

<sup>106</sup> Or. Secretary of State, *2020 Campaign Finance Manual* 6 (2020), <https://sos.oregon.gov/elections/Documents/campaign-finance.pdf> (last accessed Sept. 22, 2020).

<sup>107</sup> *Id.* at 10; see also, e.g., PORTLAND, OR., CODE § 2.04.010 (2020).

<sup>108</sup> *Id.* at 6.

candidate at any point exceeds the \$750 threshold, the candidate will have three business days to meet these requirements.<sup>109</sup> That candidate will also have seven calendar days to comply with certain reporting requirements (see below).<sup>110</sup>

**i. Candidate committees**

Candidates who expect to spend or receive more than \$750 are expected to file a **Statement of Organization** within three business days of their first contribution or expenditure or by the filing deadline, whichever comes first.<sup>111</sup> The statement of organization must be filed with the Secretary of State’s Election Division.<sup>112</sup>

Once a committee is created, the committee must select a treasurer; the candidate may serve in this position or appoint someone else.<sup>113</sup> Whoever serves as treasurer must be a registered Oregon voter.<sup>114</sup> Among other things, the treasurer is responsible for opening a campaign account, keeping detailed financial records that are current up to within seven business days of the last contribution or expenditure, and preserving these records in compliance with state retention requirements.<sup>115</sup>

**ii. Campaign account**

Campaign accounts are bank accounts that track the money that is received or spent in furtherance of a candidate’s election.<sup>116</sup> Campaign accounts must be opened at the time of filing the statement of organization for the candidate committee, or else within five business days of the filing.<sup>117</sup>

The Secretary of State has prescribed certain rules for candidate’s campaign accounts. First, the account must be opened at a financial institution that is located within the state.<sup>118</sup> Second, the account must be maintained in the name of the candidate committee, though the candidate can be named as an account holder.<sup>119</sup> Third, the campaign account cannot include any funds other than the contributions and other receipts received by the candidate committee.<sup>120</sup>

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<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.* at 7.

<sup>112</sup> *Id.* at 10.

<sup>113</sup> *Id.* at 7.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*; see also ORS 260.055.

<sup>116</sup> Or. Secretary of State, *2020 Campaign Finance Manual 10* (2020), <https://sos.oregon.gov/elections/Documents/campaign-finance.pdf> (last accessed Sept. 22, 2020).

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

### iii. Reporting Requirements

State law requires candidate committees that spend or receive more than \$3,500 in expenditures or contributions to file all transactions of either type electronically on ORESTAR, which stands for Oregon Elections System for Tracking and Reporting.<sup>121</sup> A candidate committee that does not expect to spend or receive more than \$3,500 in expenditures or contributions can file a **Certificate of Limited Contributions and Expenditures**.<sup>122</sup> If so, that candidate committee does need to file the transactions on ORESTAR, but nevertheless needs to maintain records of those transactions on their own.<sup>123</sup> If a candidate at any point exceeds the \$3,500 threshold for expenditures or contributions, the committee has just seven calendar days to report all of the committee's transactions on ORESTAR.<sup>124</sup> For more information, consult the Secretary of State's 2020 Campaign Finance Manual.<sup>125</sup>

## C. Filing as a Candidate

Depending on the circumstances, both state and local law might govern how candidates file for office. Under state law, local candidates may file in one of two ways: **(1)** by paying a filing fee or **(2)** by petition.<sup>126</sup> However, local charters and ordinances frequently provide a separate process for individuals to seek nominations.<sup>127</sup> LOC encourages cities and/or candidates to review local law to fully understand what is required for candidates to file. This section will focus exclusively on the filing methods under state law.

To file by fee, a candidate simply submits a form prepared by the Secretary of State and pays the applicable fee.<sup>128</sup> Local candidates must file with the city's election officer.<sup>129</sup> The fees for city offices, if any, are set by city's charter or ordinance.<sup>130</sup>

The deadline for filing by fee is no later than the 70<sup>th</sup> day before a primary or general election.<sup>131</sup> The deadline for withdrawing a candidacy is three days later, or the 67<sup>th</sup> day before

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<sup>121</sup> *Id.* at 15.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> Or. Secretary of State, *County, City, and District Candidate Manual 22* (2020), <https://sos.oregon.gov/elections/Documents/county-city-district-candidates.pdf> (last accessed Sept. 22, 2020).

<sup>127</sup> *Id.*; see also LEAGUE OF OREGON CITIES, MODEL CHARTER FOR OREGON CITIES 8 (2018), <https://www.orcities.org/application/files/3015/7228/7626/ModelCharterUpdate03-15-19.pdf> (last accessed Sept. 2, 2020).

<sup>128</sup> Or. Secretary of State, *County, City, and District Candidate Manual 22* (2020), <https://sos.oregon.gov/elections/Documents/county-city-district-candidates.pdf> (last accessed Sept. 22, 2020).

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> ORS 249.037.



these elections.<sup>132</sup> For those looking to file right away, candidates may file as early as the 250<sup>th</sup> day before a primary election, and the 15<sup>th</sup> day after the primary election for a general election.<sup>133</sup>

Candidates can avoid paying a filing fee if they instead file by petition.<sup>134</sup> To do so, candidates first need approval from the city’s election officer to distribute the petition.<sup>135</sup> The process begins with a candidate submitting a prospective petition and signature sheet to the election officer on forms approved by the Secretary of State.<sup>136</sup> If the forms are complete, the elections officer then provides the candidate with a petition number and the number of signatures required for the candidate to file, along with the filing deadline.<sup>137</sup> To file by petition, a city candidate either needs 500 signatures or signatures equaling 1% of all votes cast for governor in the last election in which a governor was elected to a full-term.<sup>138</sup> Commonly, cities adopt different signature requirements for nominating petitions; this is an example of how local law can change the election process for local candidates.<sup>139</sup>

Once a candidate submits a completed petition, signature sheets, and related paperwork, the city elections official reviews the forms to confirm that the circulators certified each of the signature sheets.<sup>140</sup> The elections official then sends the forms to the county elections official to confirm that each of the petition signatures was made by a registered city voter.<sup>141</sup> Because some signatures might not survive this signature verification process, candidates are strongly advised to gather more than the minimum signatures required to file as a candidate.<sup>142</sup>

The deadlines for a candidate to file by fee are the same deadlines for filing by petition.<sup>143</sup> Significantly, however, a candidate filing by petition is not considered “filed” until their signature sheets have been verified by city and county officials.<sup>144</sup> This process depends on the availability of elections staff to complete the verification. Because of this, candidates seeking to file by petition must allow “sufficient” time for this process to be completed before the filing

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<sup>132</sup> ORS 249.170

<sup>133</sup> ORS 249.037; ORS 249.722.

<sup>134</sup> Or. Secretary of State, *County, City, and District Candidate Manual 22* (2020), <https://sos.oregon.gov/elections/Documents/county-city-district-candidates.pdf> (last accessed Sept. 22, 2020).

<sup>135</sup> *Id.*

<sup>136</sup> *Id.* at 23.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> See, e.g., *Elections*, CITY OF BEND, <https://www.bendoregon.gov/government/departments/city-recorder/elections> (last accessed Oct. 12, 2020).

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*



deadline and should file early to avoid complications.<sup>145</sup> Of course, it is possible for candidates to seek elected office as a **write-in candidate**.<sup>146</sup> Write-in candidates do not need to file with the city as a candidate but do need to comply with applicable campaign finance laws.<sup>147</sup>

Finally, if a county is not producing a voter’s pamphlet, some local candidates may file to have their candidate statement included in the state’s voter pamphlet.<sup>148</sup> This option is available to candidates who are seeking office in cities of more than 50,000 people.<sup>149</sup> For more information, consult the Secretary of State’s *State Voter’s Pamphlet Manual*.<sup>150</sup>

## D. Vacancies

State law does not provide a process for resolving vacancies in local office. Instead, vacancies are defined and filled pursuant to the terms of a city’s charter.<sup>151</sup> The most obvious vacancies occur upon the death, adjudicated incompetence, or recall of an office incumbent.<sup>152</sup> However, a vacancy might also arise where an office incumbent violates certain conditions of office that are described in a city charter; for example, an office could become “vacant” upon a councilor’s conviction of a misdemeanor or crime or upon a councilor’s absence from council meetings for longer than 60 days.<sup>153</sup> Typically, vacancies are filled by appointment by a majority of the city council, with the chosen appointee assuming the term of office of the last person elected to that office.<sup>154</sup>

In some cases, a city councilor might be absent for a prolonged period of time due to illness, injury, or temporary disability.<sup>155</sup> In these situations, some city charters allow for the city council to appoint a **councilor pro tem** to substitute for the incumbent until they are able to resume their duties.<sup>156</sup>

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<sup>145</sup> *Id.*

<sup>146</sup> *Id.* at 26.

<sup>147</sup> *Id.* The definition of “candidate” includes anyone seeking office, regardless of “whether or not the name of the individual is printed on the ballot.” Or. Secretary of State, *2020 Campaign Finance Manual* 6 (2020), <https://sos.oregon.gov/elections/Documents/campaign-finance.pdf> (last accessed Sept. 22, 2020).

<sup>148</sup> Or. Secretary of State, *State Voters’ Pamphlet Manual* 8 (2020), <https://sos.oregon.gov/elections/Documents/VPManual.pdf> (last accessed Oct. 2, 2020).

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> See LEAGUE OF OREGON CITIES, MODEL CHARTER FOR OREGON CITIES 9 (2018), <https://www.orcities.org/application/files/3015/7228/7626/ModelCharterUpdate03-15-19.pdf> (last accessed Sept. 2, 2020).

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

In extreme cases, a city council may have so many vacancies in office that they are unable to reach a quorum. Under these circumstances, state law authorizes the city to move forward with a special election to fill the vacancies.<sup>157</sup> State law authorizes the election itself and also authorizes the mayor, or else the remaining members of the governing body, to appoint any officers needed to carry out the election.<sup>158</sup> In the event that every single position in a city’s governing body becomes vacant, it falls on the county to appoint a “sufficient” number of persons needed to fill any remaining vacancies.<sup>159</sup>

## E. Oath of office

If elected, the final step for a local candidate before assuming their duties as an elected official is to typically take an oath of office. While state officials are required to take their own oaths of office, there is no constitutional article or state statute that requires the same of local officials.<sup>160</sup> Instead, the oath of office requirement is found in each city’s local charter or ordinances.<sup>161</sup>

An oath of office is a sworn promise and a statement of fact that the oath taker will uphold the law and perform their duties with integrity. Cities may choose to provide for the exact wording of this oath by charter or ordinance. Otherwise, LOC has created a sample oath:

I, [insert name of oath taker], do solemnly swear and affirm that I support the Constitution and laws of the United States and the state of Oregon, and of the charter, ordinances, and rules of procedures for the City of [insert name of city], and that I will faithfully and honorably perform the duties of the office for which I am about to assume.

A city’s charter or ordinances may require that a particular position administer the oath of office, such as a municipal judge or city auditor.<sup>162</sup> A city might also require that the oath be reduced to writing; if so, this writing is subject to Oregon’s public records laws.<sup>163</sup>

Finally, if an elected official fails to take the oath of office required by local law, this is not necessarily grounds for invalidating any of their actions as an elected official.<sup>164</sup> Oregon

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<sup>157</sup> ORS 221.160(1).

<sup>158</sup> *Id.*

<sup>159</sup> ORS 221.160(2).

<sup>160</sup> See LEAGUE OF OREGON CITIES, OATHS OF OFFICE FAQ 2 (2017), <https://www.oregocity.org/application/files/3415/6116/0282/OathsFAQ6-9-17.pdf> (last accessed Sept. 24, 2020).

<sup>161</sup> *Id.*

<sup>162</sup> *Id.* at 3.

<sup>163</sup> *Id.* at 4.

<sup>164</sup> *Id.*

recognizes the “de facto officer” doctrine, which holds that the official actions of an individual who possesses public office and who acts under “a color of right” carry the same legal effect as the official actions of any other officer.<sup>165</sup> Thus, assuming an elected official failed to take their oath of office, any subsequent actions by that elected official likely would still be valid because they held office and acted as a public official in the meantime.<sup>166</sup>

### III. LOCAL MEASURES

As with local candidates, the laws governing the placement of measures on a local ballot are a mix of state and local law. First, campaign finance laws require chief petitioners to create petition committees for almost all local measures.<sup>167</sup> Second, the Oregon Constitution guarantees the right of local voters to seek initiative and referendum measures.<sup>168</sup> Oregon statutes provide a general process for voters, but cities may modify this process by charter or ordinance.<sup>169</sup> Third, state election law prescribes certain rules for cities to place referrals on the ballot.<sup>170</sup>

#### A. Campaign Finance Laws

Oregon’s campaign finance laws apply to ballot measures as well as candidates.<sup>171</sup> In general, a petition committee must be created by the chief petitioners of any local initiative, referendum, or recall petition.<sup>172</sup> For cities, the only applicable exception to the creation of a petition committee is a petition for disincorporation.<sup>173</sup> Unlike candidate committees, which are not required for candidates who spend or receive less than \$750, petition committees need to be created regardless of the committee’s expenditures or contributions.<sup>174</sup>

To create a petition committee, chief petitioners are required to file a statement of organization no later than three business days after receiving any contribution or making any expenditure.<sup>175</sup> If no contributions or expenditures are made, the chief petitioners of a petition can file this statement at a later date; however, a city cannot approve a petition for circulation

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<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> Or. Secretary of State, *2020 Campaign Finance Manual* 8 (2020), <https://sos.oregon.gov/elections/Documents/campaign-finance.pdf> (last accessed Sept. 22, 2020).

<sup>168</sup> Or Const, Art IV, § 1(5).

<sup>169</sup> *Id.*

<sup>170</sup> Or. Secretary of State, *County, City and District Referral Manual* 10 (2020), <https://sos.oregon.gov/elections/Documents/ReferralManual.pdf> (last accessed Sept. 29, 2020).

<sup>171</sup> Or. Secretary of State, *2020 Campaign Finance Manual* 8 (2020), <https://sos.oregon.gov/elections/Documents/campaign-finance.pdf> (last accessed Sept. 22, 2020).

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> *Id.* at 9.

until it has verified that a petition committee has been created.<sup>176</sup> Furthermore, a petition committee cannot support more than one initiative, referendum, or recall petition.<sup>177</sup>

By and large, petition committees operate the same as candidate committees.<sup>178</sup> The statement of organization must be filed with the Secretary of State’s Election Division.<sup>179</sup> The committee must report its expenditures through ORESTAR, unless the committee files a certificate of limited expenditures and contributions because it expects to receive or spend less than \$3,500 in a calendar year. Petition committees have somewhat different reporting requirements depending on how close the transaction is to a primary or general election.<sup>180</sup> For more information, consult the Secretary of State’s 2020 *Campaign Finance Manual*.<sup>181</sup>

## B. Initiative and Referenda

Article IV, section 1(5), of the Oregon Constitution guarantees city voters the right to propose local laws through initiative, as well as the right to approve or reject recently adopted local ordinances by popular referendum.<sup>182</sup> This constitutional provision requires the Oregon Legislature to establish a process for city voters to exercise these rights; at the same time, it provides that cities may modify this procedure through their own laws.<sup>183</sup> Cities are prohibited from requiring more than 15% of voters to sign an initiative petition or more than 10% to sign a referendum petition.<sup>184</sup> Cities also cannot supersede certain state statutes.<sup>185</sup> This section will focus exclusively on the process for initiatives and referenda under state law.

### i. Legislative in Nature

One significant limiting factor on the use of initiatives and referenda is that the subject of the measure must be **legislative** in nature.<sup>186</sup> In this way, an initiative must propose a law, not an administrative action by the council that might include, for example, a decision to enter (or not

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<sup>176</sup> *Id.* at 8.

<sup>177</sup> *Id.*

<sup>178</sup> *Id.* at 9-10.

<sup>179</sup> *Id.*

<sup>180</sup> *Id.* at 19.

<sup>181</sup> *Id.*

<sup>182</sup> Or Const, Art IV, § 1(5).

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> Or. Secretary of State, *County, City and District Initiative and Referendum Manual* 8 (2020), <https://sos.oregon.gov/elections/Documents/countycitydistrictir.pdf> (last accessed Sept. 30, 2020).

<sup>186</sup> See *Foster v. Clark*, 309 Or 464, 471 (1990) (holding that initiatives and referenda are only authorized if they address “municipal legislation.”).

enter) a specific real estate contract.<sup>187</sup> Similarly, a referendum can only target a city council’s legislation, not a past administrative or adjudicative decision.<sup>188</sup>

Sometimes, it can be difficult to know if a local decision — an ordinance, resolution, order, etc. — is a legislative act or an administrative one.<sup>189</sup> To answer this question, Oregon courts assess the nature of the action also the “nature of the legal framework in which the action occurs.”<sup>190</sup> In general, a legislative action is one that “makes policy of general applicability and is more than temporary in duration.”<sup>191</sup> By contrast, an administrative action is one that “applies previous policy to particular actions.”<sup>192</sup> Where a city adopts a process to make certain decisions — such as naming streets — the adoption of that framework is considered “legislation,” and decisions that are made *pursuant* to that framework are more likely administrative.<sup>193</sup>

While courts will inquire to see if a measure is legislative, this review is limited; at this stage, courts will not review the constitutionality of what a measure actually proposes, i.e., whether an initiative or referendum “would violate some completely different portion of the constitution.”<sup>194</sup> That type of constitutional review may occur only if the measure passes and becomes law.

Finally, in documents or proceedings, a city might take a position that a particular action is legislative or not.<sup>195</sup> These positions carry no legal effect: whether an action is legislative or not for purposes of Oregon’s initiative and referendum is ultimately one for courts to decide.<sup>196</sup>

### **i. Filing an Initiative**

An initiative is an effort by local voters to propose a new law or set of laws, such as an ordinance, a charter amendment, or even a new charter.<sup>197</sup> Local voters may start the process of initiating a measure at any time.<sup>198</sup>

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<sup>187</sup> See *Monahan v. Funk*, 137 Or 580, 585 (1931).

<sup>188</sup> See *Rossolo v. Multnomah County Elections Div.*, 272 Or App 572, 584 (noting that “executive, administrative, or adjudicative” actions are “outside the scope of” the constitutional rights of initiative and referendum.).

<sup>189</sup> See, e.g., *Foster*, 309 Or at 471.

<sup>190</sup> *Foster*, 309 Or at 474.

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> *Id.* at 471.

<sup>195</sup> *Id.* at 472.

<sup>196</sup> *Id.*

<sup>197</sup> Or. Secretary of State, *County, City and District Initiative and Referendum Manual* 8 (2020), <https://sos.oregon.gov/elections/Documents/countycitydistrictir.pdf> (last accessed Sept. 30, 2020).

<sup>198</sup> *Id.* at 6.

Under state law, the initiative process begins with the filing of a prospective petition.<sup>199</sup> Prospective petitions must be submitted on a form prescribed by the Secretary of State.<sup>200</sup> It must list no more than three chief petitioners and must provide the text of the proposed initiative.<sup>201</sup> It also must designate whether the circulators of the petition would be paid.<sup>202</sup> Once a prospective petition is submitted, the city’s election officer dates and time stamps the document and, assuming it is completed correctly, assigns the document an ID number.<sup>203</sup>

Next, within five business days, the city’s election officer must review the text of the prospective petition to ensure it complies with requirements under the Oregon Constitution.<sup>204</sup> Besides being legislative in nature (see above), initiatives must be limited to a **single subject** and any “matters properly connected therewith.”<sup>205</sup> Oregon courts follow a two-part test when evaluating if an initiative petition contains a single subject.<sup>206</sup> First, the text of the initiative must have a “unifying principle logically connecting all provisions” in the measure.<sup>207</sup> Second, the court assesses if all parts of the measure are “properly connected” to that principle.<sup>208</sup> In general, this test is satisfied as long as an initiative proposes a law or charter amendment that “addresses a single substantive area of law, even if it includes a wide range of connected matters intended to accomplish the goal of that single subject.”<sup>209</sup> For example, in 2018, Portland voters approved an initiative that created a clean energy fund through a 1% gross receipts tax on large retailers.<sup>210</sup> While the unifying principle of the measure was to create a program that funded clean energy projects, the initiative addressed many other related matters, such as the creation of the Portland Clean Energy Community Benefits Fund to recommend clean energy projects to the city.<sup>211</sup>

After reviewing the text to ensure that it complies with constitutional requirements, the local elections official must notify the chief petitioners of this determination.<sup>212</sup> If the text complies, the local elections official also forwards a copy of the prospective petition to the city attorney so that the attorney can prepare a **ballot title**.<sup>213</sup> Significantly, the city’s determination

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<sup>199</sup> *Id.* at 7.

<sup>200</sup> *Id.* at 8.

<sup>201</sup> *Id.* at 7.

<sup>202</sup> *Id.*

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> Or Const, Art IV, § 1(2)(d).

<sup>206</sup> *See* State v. Mercer, 269 Or App 135, 138 (2015).

<sup>207</sup> *Id.*

<sup>208</sup> *Id.*

<sup>209</sup> *Id.* at 139.

<sup>210</sup> *About PCEF*, CITY OF PORTLAND, <https://www.portland.gov/bps/cleanenergy/about-pcef> (last accessed Oct. 13, 2020).

<sup>211</sup> *Id.*

<sup>212</sup> Or. Secretary of State, *County, City and District Initiative and Referendum Manual* 9 (2020), <https://sos.oregon.gov/elections/Documents/countycitydistrictir.pdf> (last accessed Sept. 30, 2020).

<sup>213</sup> *Id.*

on the constitutionality of the initiative can be challenged by any voter in circuit court.<sup>214</sup> If a voter files a challenge in circuit court, they must notify the county elections official by no later than 5 p.m. on the following business day.<sup>215</sup>

A ballot title is a statement that describes what a measure will do if voters approve it.<sup>216</sup> A ballot title consists of three main parts: (1) a caption, (2) a question, and (3) a summary.<sup>217</sup> The **caption** cannot exceed 10 words and identifies the petition’s subject.<sup>218</sup> The **question** cannot exceed 20 words and must be worded so that an affirmative response to the question is the same as a “yes” vote.<sup>219</sup> The **summary** cannot exceed 175 words and must “concisely and impartially” summarize the initiative petition and its effect.<sup>220</sup> Upon receipt of the prospective petition, the city attorney has five business days to prepare the ballot title.<sup>221</sup>

Once the ballot title is prepared and filed, the local elections official must publish notice of the ballot title in a newspaper of general circulation and provides a copy of it to the chief petitioners.<sup>222</sup> The notice may also be published on the city’s website for a minimum of 7 days.<sup>223</sup> Just like an initiative’s text, a voter may challenge the text of a ballot title by filing a petition for review in circuit court no later than 7 business days after a ballot title is filed.<sup>224</sup> As such, the notice of the ballot title must state that the ballot title has been received, that it may be challenged in circuit court, and that the deadline is 7 business days from the ballot title filing.<sup>225</sup> The notice must also state that the initiative text complied with constitutional requirements and must include the text of the ballot title or information on how to obtain a copy.<sup>226</sup>

As soon as the ballot title is filed, the chief petitioners of an initiative can submit a draft cover sheet and signature sheets to the city for approval to circulate them.<sup>227</sup> Before approving the petition for circulation, the city elections official must review the sheets to confirm that they are using the official forms prescribed by the Secretary of State and that they include all of the required information.<sup>228</sup> The official also must confirm that the chief petitioners have created a

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<sup>214</sup> *Id.*

<sup>215</sup> *Id.* at 7.

<sup>216</sup> *Id.* at 9.

<sup>217</sup> *Id.*

<sup>218</sup> *Id.*

<sup>219</sup> *Id.*

<sup>220</sup> *Id.*

<sup>221</sup> *Id.* at 7.

<sup>222</sup> *Id.* at 10.

<sup>223</sup> *Id.*

<sup>224</sup> *Id.* at 7, 10.

<sup>225</sup> *Id.* at 10.

<sup>226</sup> *Id.*

<sup>227</sup> *Id.* at 10-11, 23.

<sup>228</sup> *Id.* at 10.

petition committee as required under Oregon’s campaign finance laws and that any challenges to the ballot title or initiative text are complete.<sup>229</sup>

Once a petition is approved for circulation, the petitioners can begin to gather signatures. From its approval date, a petition has two years to gather enough signatures and submit them to the city for verification.<sup>230</sup> Unless otherwise provided by local law, an initiative petition must be signed by not less than 15% of a city’s registered voters, which also is the maximum requirement allowed by the Oregon Constitution.<sup>231</sup> The Secretary of State encourages petitioners to gather more than the minimum number of signatures required because some signatures might be invalidated, namely if a one or more signers are not city residents or not registered to vote.<sup>232</sup>

Petitioners also should keep in mind that a petition must qualify for an election and be filed with the city’s governing body no later than 90 days before an election.<sup>233</sup> Note that this is different from a petition being submitted 90 days before an election. Once a petition is submitted, two additional steps need to take place before this deadline.<sup>234</sup> First, the city elections official must submit the petition to the county for verification of the signatures, a process that can take up to 15 days.<sup>235</sup> Second, the city must file the initiative measure with the city’s governing body at its next meeting.<sup>236</sup> Also note that under state law, city measures other than referral measures may only be featured in a May or November election unless there are grounds for an emergency election.<sup>237</sup>

No later than 30 days after an initiated measure is filed with the city’s governing body, the governing body must hold a meeting to review the measure.<sup>238</sup> The governing body has three options: (1) approve the measure into law, (2) reject the measure, or (3) reject the measure and refer a competing measure to voters.<sup>239</sup> If the governing body approves the measure, then the measure goes into effect without the need for an election.<sup>240</sup> If the governing body rejects the measure, then the measure will be submitted to city voters at the next May or November

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<sup>229</sup> *Id.*

<sup>230</sup> *Id.* at 7.

<sup>231</sup> ORS 250.305.

<sup>232</sup> Or. Secretary of State, *County, City and District Initiative and Referendum Manual* 11 (2020), <https://sos.oregon.gov/elections/Documents/countycitydistrictir.pdf> (last accessed Sept. 30, 2020).

<sup>233</sup> *Id.* at 14.

<sup>234</sup> *Id.*

<sup>235</sup> *Id.* at 6.

<sup>236</sup> *Id.* at 13.

<sup>237</sup> ORS 221.230.

<sup>238</sup> Or. Secretary of State, *County, City and District Initiative and Referendum Manual* 14 (2020), <https://sos.oregon.gov/elections/Documents/countycitydistrictir.pdf> (last accessed Sept. 30, 2020).

<sup>239</sup> *Id.*

<sup>240</sup> *Id.*



election.<sup>241</sup> If the city rejects the initiative and refers a competing measure, the competing measure must be prepared no later than 30 days after the initiative was filed with the governing body and must be featured in the same May or November election as the initiated measure.<sup>242</sup>

## ii. Filing a Referendum

A referendum, also known as a popular referendum, is a method that enables voters to adopt or reject a local ordinance or other legislative enactment that has been enacted by the voters' governing body.<sup>243</sup> Like initiatives, the process of putting a referendum on the ballot begins with a prospective petition.<sup>244</sup> Unlike initiatives, a referendum petition happens quickly; a petition must be submitted with signatures no later than 30 days after an ordinance is adopted.<sup>245</sup> Emergency ordinances take effect immediately and generally are not subject to referendum.<sup>246</sup>

Even though a referendum is a faster process, a prospective referendum petition must meet many of the same requirements as a prospective initiative petition.<sup>247</sup> A referendum petition must be submitted on the same form, SEL 370, that is prescribed by the Secretary of State.<sup>248</sup> It must list no more than three chief petitioners, specify if circulators are to be paid, and provide the text of the ordinance or legislative enactment that is the subject of the referendum.<sup>249</sup> Once a prospective petition is submitted, the city's election officer dates and time stamps the document and, assuming it is completed correctly, assigns the document an ID number.<sup>250</sup>

The process of filing a referendum petition does not provide time for local elections officials to review the constitutionality of the prospective petition.<sup>251</sup> Even so, a referendum must be for a legislative enactment to be constitutional; the method cannot be used to reverse an administrative or adjudicative decision by a city council.<sup>252</sup> If a referendum petition is denied as

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<sup>241</sup> *Id.*

<sup>242</sup> *Id.*

<sup>243</sup> *Id.* at 4.

<sup>244</sup> *Id.* at 16.

<sup>245</sup> *Id.* at 5.

<sup>246</sup> *See, e.g.*, PORTLAND, OR., CODE § 2.02.040(F) (2020).

<sup>247</sup> Or. Secretary of State, *County, City and District Initiative and Referendum Manual* 16 (2020), <https://sos.oregon.gov/elections/Documents/countycitydistrictir.pdf> (last accessed Sept. 30, 2020).

<sup>248</sup> *Id.* at 17.

<sup>249</sup> *Id.*

<sup>250</sup> *Id.* at 16.

<sup>251</sup> *Id.*

<sup>252</sup> *See, e.g.*, *Rossolo v. Multnomah County Elections Div.*, 272 Or App 572, 584 (noting that “executive, administrative, or adjudicative” actions are “outside the scope of” the constitutional rights of initiative and referendum.).

not “legislative,” that decision can be challenged in circuit court.<sup>253</sup> Oregon courts have jurisdiction to review a proposed referendum measure to determine if it is constitutional.<sup>254</sup>

Once a prospective referendum petition is accepted, the local elections official must forward the petition to the city attorney so that the attorney can draft a ballot title.<sup>255</sup> The city attorney has five business days to do so.<sup>256</sup> For information on what is required in the ballot title, see the previous section on local initiatives.<sup>257</sup>

Once the ballot title is completed, the city attorney submits it to the local elections official, who publishes a notice of the ballot title in a newspaper of general circulation; the notice may also be published on the city’s website for a minimum of 7 days.<sup>258</sup>

A voter may challenge the text of a ballot title by filing a petition for review in circuit court no later than 7 business days after a ballot title is filed.<sup>259</sup> If so, the voter must also notify the county elections official of the case no later than 5 p.m. on the following business day.<sup>260</sup>

On that note, the city’s notice of the ballot title must state that the ballot title has been received, that it may be challenged in circuit court, and that the deadline is 7 business days from the ballot title filing.<sup>261</sup> The notice must also include the text of the ballot title or information on how to obtain a copy.<sup>262</sup>

While the city is preparing a ballot title, the chief petitioners of the referendum are free to submit their cover sheet and signature sheets for approval.<sup>263</sup> This is different from an initiative, which requires petitioners to wait until the ballot title is complete to submit these sheets.<sup>264</sup> The city elections officer reviews the sheets for the required information and then approves them for circulation so that the petitioners can begin gathering signatures.<sup>265</sup> State law still requires that the chief petitioners create a petition committee, as required by Oregon’s campaign finance laws, before a local elections official can approve the petition for circulation.<sup>266</sup>

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<sup>253</sup> ORS 246.910.

<sup>254</sup> See *Foster v. Clark*, 309 Or 464, 471 (1990).

<sup>255</sup> Or. Secretary of State, *County, City and District Initiative and Referendum Manual* 16 (2020), <https://sos.oregon.gov/elections/Documents/countycitydistrictir.pdf> (last accessed Sept. 30, 2020).

<sup>256</sup> *Id.*

<sup>257</sup> See also *id.* at 19.

<sup>258</sup> *Id.* at 16.

<sup>259</sup> *Id.* at 19.

<sup>260</sup> *Id.* at 16.

<sup>261</sup> *Id.* at 10.

<sup>262</sup> *Id.*

<sup>263</sup> *Id.* at 18.

<sup>264</sup> *Id.* at 10.

<sup>265</sup> *Id.* at 18.

<sup>266</sup> *Id.*

As noted above, the chief petitioners have just 30 days from the date the ordinance or other legislative enactment was adopted to collect enough signatures and submit them to the local elections official for verification.<sup>267</sup> Signature verification for a referendum petition does not need to be completed before the petition deadline.<sup>268</sup> This process can take up to 15 days and may occur in the days following the 30-day deadline.<sup>269</sup> Unless otherwise provided by local law, a referendum petition needs to be signed by no less than 10% of a city’s registered voters.<sup>270</sup>

Once the signatures are submitted, the local elections official reviews them with support from the county elections office; if the petition gathered enough valid signatures, then the official will certify the referendum measure for an upcoming election.<sup>271</sup> Under state law, a referendum petition needs to be submitted no later than 90 days before an election to be on the ballot.<sup>272</sup> In addition, state law provides that referendum measures — like local initiatives — can only be voted on in a May or November election, unless there are grounds for an emergency election.<sup>273</sup>

### C. Referrals

A referral, also known as a legislative referendum, is a method for city councils to propose a local law to voters.<sup>274</sup> Instead of using a petition process, a city’s governing body can simply adopt a referendum that refers a measure for voters to decide.<sup>275</sup>

Once a city adopts this resolution, the city has two options. First, the city may file the text of the referral measure with the city’s elections official.<sup>276</sup> The city elections official then sends the referral to the city’s attorney, who has five business days to prepare a ballot title.<sup>277</sup> Second, and alternatively, the city’s governing body can prepare the ballot title in advance and file it with the city election’s official.<sup>278</sup> For information on what is required in a ballot title, see the above section on local initiatives.<sup>279</sup>

Once the ballot title is completed, the local elections official must publish a notice of the ballot title in a newspaper of general circulation and may also publish it on the city’s website for

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<sup>267</sup> *Id.* at 5.

<sup>268</sup> *Id.* at 6.

<sup>269</sup> *Id.* at 5, 19 (noting that the deadline is “the last day to submit signatures *for verification*”) (emphasis added).

<sup>270</sup> *Id.* at 5.

<sup>271</sup> *Id.* at 22.

<sup>272</sup> *Id.*

<sup>273</sup> ORS 221.230.

<sup>274</sup> Or. Secretary of State, *County, City and District Referral Manual* 10 (2020), <https://sos.oregon.gov/elections/Documents/ReferralManual.pdf> (last accessed Sept. 29, 2020).

<sup>275</sup> *Id.* at 11.

<sup>276</sup> *Id.*

<sup>277</sup> *Id.*

<sup>278</sup> *Id.*

<sup>279</sup> *See also id.* at 11.

a minimum of 7 days.<sup>280</sup> Just like with initiatives and popular referenda, a voter may challenge the text of a ballot title by filing a petition for review in circuit court no later than 7 business days after a ballot title is filed.<sup>281</sup> If so, the voter must also notify the county elections official of the case no later than 5 p.m. on the following business day.<sup>282</sup>

On that note, the city’s notice of the ballot title must state that the ballot title has been received, that it may be challenged in circuit court, and that the deadline is 7 business days from the ballot title filing.<sup>283</sup> The notice must also include the text of the ballot title or information on how to obtain a copy.<sup>284</sup>

If no challenge is filed against the ballot title, then the city is free to file the measure with the county elections official.<sup>285</sup> Significantly, however, many cities will also be required to provide an **explanatory statement** if the county is producing a county voters’ pamphlet.<sup>286</sup> An explanatory statement must be an impartial description of the referred measure and must be no more than 500 words in length.<sup>287</sup>

Generally, a measure referred to voters by a city’s governing body can be voted on at any election date permitted under state law: (1) the second Tuesday in March, (2) the third Tuesday in May, (3) the third Tuesday in September, or (4) the first Tuesday after the first Monday in November.<sup>288</sup> The deadline for a city to submit their referral to the county (along with all other city measures) is the 61<sup>st</sup> day before the election.<sup>289</sup>

#### **i. Referring Advisory Questions**

In addition to referring legislation to city voters, some cities have adopted charter provisions or ordinances that enable them to refer **advisory questions** to voters.<sup>290</sup> Unlike a standard referral, an advisory question is a non-binding and non-legislative measure that cities can use to seek guidance from voters on a particular topic.<sup>291</sup> For some cities, the process of referring an advisory question is identical to the local process of referring legislation.<sup>292</sup>

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<sup>280</sup> *Id.* at 10.

<sup>281</sup> *Id.*

<sup>282</sup> *Id.*

<sup>283</sup> *Id.* at 12.

<sup>284</sup> *Id.*

<sup>285</sup> *Id.* at 12-13.

<sup>286</sup> *Id.*

<sup>287</sup> *Id.*

<sup>288</sup> ORS 221.230.

<sup>289</sup> ORS 254.095.

<sup>290</sup> *See, e.g.*, PORTLAND, OR., CODE § 2.04.125 (2020).

<sup>291</sup> *Id.*

<sup>292</sup> *Id.*; *see also* PORTLAND, OR., CODE § 2.04.120 (2020).

## D. Other Local Measures

Finally, due to the wide variety of local measures, this section should not be interpreted as an all-encompassing list of local measures. Other types of local measures are addressed elsewhere in this Handbook. First, the section of this Handbook on city boundaries fully explores the requirements for residents to bring measures on incorporation, annexation, and related topics. Second the section of this Handbook on municipal officials provides an overview of the process for putting a recall measure on the ballot.

# IV. ENFORCEMENT

Oregon election law, from ORS Chapter 246 through ORS Chapter 260, is enforced mostly through complaints filed with the Secretary of State Elections Division.<sup>293</sup> The complaint process for election offenses is found under ORS 260.345.<sup>294</sup>

The enforcement process typically begins with the filing of a complaint by a registered voter.<sup>295</sup> The complaint must state the “reason for believing” a violation of an election law or rule occurred, along with any related evidence.<sup>296</sup> Anonymous complaints are not permitted.<sup>297</sup> Generally, complaints must be filed within 90 days of the election at which the alleged violation occurred, or 90 days following the date the alleged violation occurred, whichever is later.<sup>298</sup> The Elections Division may initiate investigations on their own, though, so enforcement is not entirely dependent on receiving a complaint.<sup>299</sup>

Next, the Elections Division has up to 48 hours to notify the person who is the subject of the complaint that the complaint has been received.<sup>300</sup> In this notice, the person is “invited to respond to the allegations and provide any relevant information.”<sup>301</sup> The Elections Division will then begin to investigate whether a violation has occurred or not; in the process, investigators may consider information outside of what is submitted in the complaint.<sup>302</sup> For civil violations, the complaint and any information compiled throughout the investigation is a public record and

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<sup>293</sup> ORS 260.345.

<sup>294</sup> *Id.*

<sup>295</sup> ORS 260.345(1).

<sup>296</sup> *Id.*

<sup>297</sup> *Id.*

<sup>298</sup> ORS 260.345(7).

<sup>299</sup> ORS 260.345(8).

<sup>300</sup> ORS 260.345(3).

<sup>301</sup> Or. Secretary of State, *Restrictions on Political Campaigning by Public Employees* 19 (2016), <https://sos.oregon.gov/elections/Documents/restrictions.pdf> (last accessed Sept. 11, 2020).

<sup>302</sup> *Id.*

available to the public through a public records request.<sup>303</sup> For criminal election offenses, the investigation is exempt from public disclosure until the investigation is closed.<sup>304</sup>

If there is insufficient evidence of an elections offense, the Elections Division will notify the voter who filed the complaint and the subject of the complaint that the investigation found no violation and that the matter is closed.<sup>305</sup> If there is sufficient evidence of a criminal violation, the Elections Division will forward the findings to the Oregon Attorney General’s Office and request prosecution.<sup>306</sup> Finally, if there is sufficient evidence of a civil violation, the Elections Division will issue a “Notice of Proposed Civil Penalty.”<sup>307</sup> This notice gives the subject of the complaint the option of paying the penalty or requesting a hearing to contest the finding.<sup>308</sup> To request a hearing, the person must return a hearing request form and explain the reasons for contesting the charge, along with any mitigating circumstances.<sup>309</sup> For more information on the hearing process, consult the manual *Restrictions on Political Campaigning by Public Employees* — ORS 260.432.<sup>310</sup>

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<sup>303</sup> Or. Secretary of State, *Election Law Summary* 47 (2016), [https://sos.oregon.gov/elections/Documents/elec\\_law\\_summary.pdf](https://sos.oregon.gov/elections/Documents/elec_law_summary.pdf) (last accessed Sept. 11, 2020).

<sup>304</sup> *Id.*

<sup>305</sup> Or. Secretary of State, *Restrictions on Political Campaigning by Public Employees* 19 (2016), <https://sos.oregon.gov/elections/Documents/restrictions.pdf> (last accessed Sept. 11, 2020).

<sup>306</sup> *Id.*

<sup>307</sup> *Id.*

<sup>308</sup> *Id.*

<sup>309</sup> *Id.*

<sup>310</sup> *Id.* at 20.