

GUIDE



Manual for Ordinance Drafting and Maintenance

December 2017

Foreword to the Third Edition December 2017

This manual is designed to enable cities to draft, adopt and maintain ordinances that are legally defensible, readily accessible, and understandable by local government officials, staff members and the public.

Ordinances are city laws analogous to the statutes that constitute state law. When an officer enforces an ordinance by issuing a citation, the officer should have confidence that the ordinance exists, is valid, and clearly says what it is intended to mean. Unfortunately, this is not always the case. Here are few examples:

- If an ordinance lacks an ordaining clause required by the local charter, it is invalid.
- An ordinance that has been specifically repealed is not revived by a later amendment.
- An ordinance adopted through procedures that do not follow charter requirements is subject to legal challenge.
- A prosecution for violation of an ordinance that cannot be located is certain to be dismissed.
- Local government officials sometimes do not understand the meaning or intent of ordinances that were adopted in the past.

For those and many other reasons, the importance of careful ordinance drafting, adoption and maintenance cannot be overstressed.

This manual covers ordinance drafting, adoption, and maintenance, and provides a final checklist for determining compliance with all ordinance adoption requirements. Please note that this manual is not a substitute for legal advice. City officials and staff are encouraged to consult with their city attorney for specific legal advice.

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Chapter 1: Drafting

Before drafting a local policy document, consider the subject matter and determine the most appropriate form of action – resolution or ordinance.

A **resolution** should deal with a temporary or special policy matter. A resolution is administrative because it executes a law already in effect, and resolution adoption procedures are usually less circumscribed than those for an ordinance. Policy adoption and other administrative matters are proper subjects for action by resolution. For example, a city council may approve the adoption of a new personnel manual through a resolution.

An **ordinance** should be used for legislation intended to have a permanent and general effect. (See page 23 for discussion of special and general ordinances) Ordinance adoption procedures are prescribed by charter or statute and must be strictly followed. Unless an ordinance contains an emergency clause, it usually does not take effect immediately and is subject to the local referendum right. (See page 14, **Emergency Clauses**.)

Even though the subject matter of an action may appear to be administrative, and therefore a proper subject for a resolution, a statute or a procedural ordinance may specify that the action be taken by ordinance. The charter, ordinances or statutes should be consulted to determine the form of action to be taken.

Numbering Ordinances and Resolutions

There are various ordinance numbering methods. Consecutive numbering, however, is recommended for ordinances, amending ordinances, and special ordinances. Use of “A” and “B” (e.g., Ordinance No. 1900; Ordinance No. 1900A) or the year and number (e.g., 1984-6) can be confusing and does not indicate the total number of ordinances enacted and to be accounted for.

Resolutions should be numbered separately from ordinances and should be numbered consecutively for the reasons listed above.

Ordinance numbers should be assigned after adoption. Otherwise, gaps will occur in the numbering system when a proposed ordinance is not adopted, the numbering will not remain in chronological order, and the same number may be assigned to two different ordinances. Some governing bodies assign “bill” numbers to ordinances as reference numbers before the ordinance is adopted.

A number should never be used twice. Reusing numbers causes confusion in governing body records and makes maintenance of a legislative history difficult. Further, repeal of one of the identically numbered ordinances may inadvertently result in repeal of the other.

When a cross reference is made to another ordinance, it is better to refer to the subject matter of the ordinance instead of the ordinance number. Thus, no change needs to be made when the

ordinance is repealed and a new ordinance is enacted. In any case, make sure that cross references are not made to repealed or inapplicable ordinances. The city should keep an up-to-date list of cross references. (See **Appendix C.**)

EXAMPLE – Referring to Subject Matter of Another Ordinance

Section 2. Bicycles. The city ordinance that regulates traffic applies to bicycle use.

EXAMPLE – Referring to Another Ordinance by Number

Section 2. Bicycles. Ordinance No. 1534 applies to bicycle use.

Ordinance Title

An ordinance title may or may not be required by charter. Many charters contain no ordinance title requirement other than a reference that allows the reading portion of the enacting requirements to be fulfilled by reading the title only.

Even when not legally required, an ordinance title is desirable for easy identification and reference and to expedite enactment. Titles should be as short and direct as possible. The purpose of a title is to identify a single general subject that covers all matters contained in the body of the ordinance. The title is sufficient if it states the real nature of the ordinance and if all minor features of the ordinance have a reasonable and natural connection with the title subject.

EXAMPLE 1

ORDINANCE NO. _____

AN ORDINANCE DEFINING NUISANCES; PROVIDING FOR THEIR ABATEMENT; PROVIDING PENALTIES; AND REPEALING ORDINANCE NOS. 366, 415 AND 416.

EXAMPLE 2

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE NO. 175, RELATING TO INITIATIVE AND REFERENDUM.

Whereas Clauses

Whereas clauses state the purpose or background of legislation. If whereas clauses are wanted, they should be placed immediately after the ordinance title and before the ordaining clause, so

that they do not become part of the law. Whereas clauses need not be codified or compiled, but they should remain available for legislative history as part of the original ordinance.

Purpose clauses may set forth findings which serves the same function as a whereas clause but should be avoided or stated as a whereas clause unless the intent is to include the purpose section as part of the law.

Policy statements form a substantive statement of legislative intent (they do not serve the same purpose as whereas clauses). They are included in the ordinance and are binding on future actions. If there is a policy change, the policy statement must be amended or repealed to agree with the new policy.

EXAMPLE 1 – Whereas Clauses

Ordinance No. 376-77:

ORDINANCE NO. 376-77

AN ORDINANCE RELATING TO THE PRESERVATION AND THE DESTRUCTION OF RECORDS OF THE CITY OF _____, OREGON; AND DECLARING AN EMERGENCY.

Whereas, it is necessary to purge the files and set up a records management and retention system in conformance with ORS Ch. 192; and

Whereas, it is necessary to do this in preparation for microfilming the city's records; and

Whereas, this statute requires formal approval by the governing body of the city of _____ of a Records Retention and Disposal Schedule as reviewed by the Oregon State Archivist;

The City of _____ does ordain as follows:

EXAMPLE 2 – Policy Statement

Ordinance No. 1382:

Section 1. [Policy.] In the public interest, health, safety and welfare it is hereby declared the policy of the Common Council of the City of _____, Oregon, that it is under no obligation or duty to furnish on demand, utility or other city services to areas rezoned, subdivided or annexed when it is structurally impractical or financially not feasible to do so, ...

Ordaining Clause

Ordaining clauses are generally required by charter, and it is essential that the charter be checked for the proper wording. Some charters refer to the ordaining clause as the “enacting clause.”

EXAMPLE

City of [_____] Charter:

Section 8.1. Ordaining Clause. The ordaining clause of an ordinance shall read:
“The City of _____ ordains as follows.”

Always use the charter language. If the charter requires an ordaining clause and it is not used, the ordinance is invalid. Substantial compliance with the charter language may be sufficient, but it is best to prevent litigation by using the exact charter language.

Ordaining clauses must be inserted before all matter intended to have the force of law. (See page 3, **Whereas Clauses**.)

Short Title

It is sometimes helpful to refer to an ordinance that has a very long title by a short name, commonly called a **short title**. It is a shorthand reference, e.g., the “Zoning Ordinance,” the “Offenses Ordinance.” The short title may not be used when reading the ordinance by title only to fulfill the enacting requirement.

The short title should be inserted immediately after the ordaining clause and before the text of the ordinance.

EXAMPLE

The City of _____ ordains:

Section 1. Short Title. This ordinance may be referred to as the “Zoning Ordinance of the City of _____.”

Definitions

Use **definitions** sparingly. Do not define common words unless the common meaning is altered. However, creating artificial meanings for commonly understood words usually causes confusion. The following kinds of definitions should be avoided:

Dog. As used in this ordinance, means dog or cat.

Dog. A member of the canine family over 12 weeks of age.

The problem in the second definition is that the term being defined is imprecise. Use of “adult dog” or “mature dog” would be clearer.

The definition section is generally the first section in the body of the ordinance, but it should be drafted last to ensure consistency in the use of terms throughout the ordinance.

List defined words alphabetically without numbers or letters so that the definition section can be amended by simply inserting new definitions in the proper alphabetical order. That method avoids the necessity of renumbering or re-lettering, as well as the difficult task of locating and changing all cross references to former numbers or letters.

EXAMPLE 1

Section 1. Definitions. As used in this ordinance, the following mean:
Costs. The expense of removing, storing, or selling a junked vehicle.
Discarded vehicle. A vehicle that has an expired license plate.
Law enforcement officer. An authorized law enforcement officer of the city.

Determine if a definition is to “mean” or to “include.” Use the word “means” when the definition is intended to be exhaustive. When the term cannot be fully defined but can be illustrated by a series of examples, use the word “includes.”

EXAMPLE 2

Section 1. Definitions. As used in this ordinance, the following words, except where the context clearly indicates otherwise, mean:
Improvement. Includes:
(1) Grading, graveling, paving or other surfacing of a street or opening, laying out, widening, extending, altering, changing the grade of, or constructing a street.
(2) Constructing or reconstructing sidewalks or bicycle paths.
(3) Installing ornamental street lights.
(4) Installing underground wiring or related equipment.
(5) Reconstructing or repairing a street improvement mentioned in this definition.
(6) Constructing, reconstructing, or repairing a sanitary or storm sewer or water or geothermal main.
(7) Acquiring, establishing, constructing, or reconstructing an off-street motor vehicle parking facility.
(8) Constructing, reconstructing, installing, or equipping a park, playground, or neighborhood recreation facility.
(9) Other local improvements for which an assessment may be made on property that is specially benefitted.

Lot. A lot, block, or parcel of land.

Owner. The record holder of legal title or, when the land is being purchased under a recorded land sale contract, the purchaser.

Section Numbers and Titles

Assign each section in an ordinance or code a **number** and a **title** for easy reference and readability. Assign each subsection or paragraph a **number** or a **letter**. Avoid Roman numerals – “Section XXXVII” – as it is more cumbersome and confusing than “Section 37.”

Numbers should be consecutive, except when leaving space for addition of new material (see example below). Some numbers should be reserved for expansion in general offenses, nuisances, zoning, and other ordinances that are amended frequently to add new material.

EXAMPLE

Section 2. Assault...

Section 3. Menacing...

Section 4. Recklessly Endangering Another Person...

Section 5. Disorderly Conduct...

(1)...

(2)...

(3)...

[Sections 6 to 10 reserved for expansion.]

Section 11. ...

Avoid long sections. If a section is longer than one-half page, it probably contains more than one subject and could be divided into separate sections or subsections. (See **Appendix D** for comparison of a lengthy building abatement section with similar provisions drafted in separate sections.)

Do not change numbering systems within an ordinance or in an amending ordinance. If a section is repealed and then replaced, do not reuse the old number; give the replacement section a new number. (See pages 15-17, **Amendments** section.)

When section titles are used, an ordinance or code is easier to read and the content of each section is more readily identified. Titles are particularly useful in locating a specific provision in a lengthy ordinance or code chapter. Compare the difference in identifying subject matter in the following two passages, which are identical except for the addition of section titles.

EXAMPLE – Without Titles

Section 81. No person shall knowingly make a false written statement to a public servant about an application for a benefit.

Section 82.

(1) No person shall intentionally obstruct, impair, or hinder the administration of law or another governmental function by means of intimidation, force or physical interference or obstacle.

(2) This section does not apply to the obstruction of unlawful governmental action or interference with making an arrest.

EXAMPLE – With Titles

Section 81. Unsworn Falsification. No person shall knowingly make a false written statement to a public servant about an application for a benefit.

Section 82. Obstructing Governmental Administration.

(1) No person shall intentionally obstruct, impair or hinder the administration of law or another governmental function by means of intimidation, force or physical interference or obstacle.

(2) This section does not apply to the obstruction of unlawful governmental action or interference with making an arrest.

Avoid the use of articles and chapters except in very long ordinances, such as zoning ordinances. Indexing is more difficult and both written and oral references are more cumbersome when article and chapter numbers are added to section and subsection numbers.

An increasing number of compilations and codes include a detailed table of contents before each chapter. A table of contents serves an indexing function and is more economical and easier to update than a standard index. The use of section titles is even more important for this purpose.

EXAMPLE

City of [] compilation (business chapter):

Chapter 8 – BUSINESS

8-1	PEDDLERS (Ordinance No. 137)
8-1.1	Definitions
8-1.2	Licenses
8-1.3	Penalties
8-1.4	Repeal

- 8-1.5 Emergency Clause

- 8-2 OCCUPATIONAL LICENSES
(Ordinance No. 162 as amended by 205 and 401)
 - 8-2.1 Definitions; Application of Ordinance
 - 8-2.2 Intent of Ordinance; Exclusions
 - 8-2.3 Tax Imposed; Conditions
 - 8-2.4 Itinerant Businesses
 - 8-2.5 Display of Tax Receipt
 - 8-2.6 False Statements; Tax Delinquency
 - 8-2.7 Additional Remedies
 - 8-2.8 Repeal
 - 8-2.9 Penalties
 - 8-2.10 Severability
 - 8-2.11 Effective Date

- 8-3 PINBALL AND MUSIC MACHINES; SHUFFLEBOARDS
(Ordinance No. 163)
 - 8-3.1 Definition of “Person”
 - 8-3.2 License Required
 - 8-3.3 Definition of “License”
 - 8-3.4 Minors Operating Machines or Games
 - 8-3.5 Distance from Public School
 - 8-3.6 Application for License
 - 8-3.7 Charges
 - 8-3.8 Repeal
 - 8-3.9 Penalties
 - 8-3.10 Slugs; Fraud
 - 8-3.11 Emergency Clause

Language

Simple sentences and ordinary English help make an ordinance understandable to its users. Legal jargon and technical language should be avoided if possible. Some ordinances (*e.g.*, sewer regulations) necessarily contain technical material, but most ordinances are directed to the general public and everyone should be able to read and understand them. Some common language problems encountered in ordinance drafting are discussed below.

Legal Subject. “It” and “there” are not proper legal subjects. Instead of writing “It shall be unlawful to fail to obey a traffic control device,” use “No person shall fail to obey a traffic control device.”

Verb Tense. Ordinances should be drafted in the present tense. The law acts now and continues to act until repealed. Using the present tense avoids the use of “shall” as part of the future tense. “Shall” should be reserved for mandatory provisions that prohibit or require action.

“May” vs. “Shall.” “May” is permissive and “shall” is mandatory. Before using “shall,” decide if the action must be taken or if it is discretionary. Some legal writers suggest that the negative of “shall” is “may not,” but this is not yet used in Oregon, and we continue to use “shall not.”

Duplication. Do not use redundant pairs of words that have the same meaning, such as “null and void,” “full and complete,” and “cease and desist.” Those are legalisms that have a fascinating history going back to the need for both Anglo-Saxon and French terms in English law, but the need has long since disappeared. Determine what is meant and say it in one word.

Date and Time. Ordinance language should specify dates and times. For example, “will go into effect after June 30, 2020,” is more succinct than “will go into effect on or after July 1, 2020,” and “will go into effect after 11:00 p.m.” is more succinct than “will go into effect on or after 11:00 p.m.” To avoid confusion, use “noon” or “midnight” or “12:01” a.m. and p.m. rather than “12:00” a.m. and p.m.

“Such” and “Said.” Those words are greatly overworked in legal drafting. Ordinances are littered with “said building,” “said owner,” “such application,” and “such street.” These phrases are used as a shorthand method to refer to, for example, “the building that was just mentioned in the preceding sentence.” If an ordinance section is referring to a dangerous building, write “the building.” The reader will know which building. If there is reference to more than one type of building, use identifying terms such as “the dangerous building” and “the non-dangerous building.”

“Any,” “Each,” “Every” and “All.” If the intent of the ordinance provision is to encompass everyone who might possibly come within its prohibitions or regulations, the drafter need only write “No person shall” or “A person may.” The use of these phrases makes clear that no person is excluded.

Singular vs. Plural. Singular should be used instead of plural. For example, use “person” instead of “person or persons” or “person(s).” The singular encompasses all persons.

Sexist Language. The use of “he” as a neutral pronoun instead of using “he or she” is a policy matter for each governing body to determine. In drafting ordinances, however, care should be taken to avoid producing discriminatory effects by using male and female nouns and pronouns. Although not binding on cities, note that state statutes, rules, and orders must be drafted in gender-neutral language. See ORS 174.129. The following three ordinance sections should have been drafted in sex-neutral terms by directing the prohibitions to “person.” These sections are examples of archaic, and in some cases, unconstitutional, provisions that are no longer included in up-to-date compilations and codes.

Section 23. Mashing. No **male** person shall accost any **female** for making improper advances or indecent remarks or make such advances or remarks.

Section 24. Prostitution.

- (1) No **woman** shall, with or without remuneration, engage in the practice of prostitution.
- (2) No **woman** shall in any manner solicit a person for prostitution.

Section 25. Solicitation. No **female** shall frequent, loiter, or be employed in a tavern, cabaret, or nightclub for the purpose of soliciting a **male** person to purchase drinks.

Abbreviations. If abbreviations are used, spell out the words and show the abbreviation to be used in parentheses the first time the abbreviated words are used in the ordinance. For example, “the Department of Environmental Quality (DEQ)...” Abbreviations also could be included in a definitions section.

Appendix D contains a list of commonly used words and phrases that should be avoided in drafting ordinances and provides substitutes.

Penalties

A **penalty** section is necessary if conduct is being regulated or proscribed.

EXAMPLE 1

Section 11. Penalty. Violation of a provision of this ordinance is punishable by a fine not to exceed \$300. Each day's violation constitutes a separate offense.

EXAMPLE 2

Section 38. Penalty. A person convicted of violating a provision of this ordinance shall be punished by a fine not to exceed \$500.

Review the city charter to determine if it contains a limitation on the penalty that may be imposed.

EXAMPLE

Charter of the City of [_____]:

Section 42. The council shall have authority and power within the city of _____ to provide for the punishment of all violations of the ordinances by fine or imprisonment; but no fine shall exceed the sum of \$500.00 and no imprisonment more than 250 days.

State law also may limit the penalty that may be imposed. Adoption of a state law by reference usually includes adoption of the penalty provisions. If a local government's ordinance provisions are substantially the same as state law, a greater penalty probably could not be imposed than that

allowed by state law. The penalty section of an ordinance adopting state law should include language like the following:

“The penalty for violation of a provision that is identical to a state statute containing a lesser penalty is limited to the penalty prescribed by a state law.”

Some codes have penalty provisions at the end of each chapter, while others have a general penalty provision that applies to the entire code.

EXAMPLE

City of [_____] Code:

1.060. General Penalties. Except as otherwise provided, any person violating the provisions of this code shall, on conviction thereof, be punished by imprisonment not to exceed 60 days or by a fine not to exceed \$500, or both...

Saving and Severability Clauses

When an ordinance is adopted to replace and repeal a previously enacted ordinance that contained a penalty provision, the new ordinance should have a clause that “saves” the effect of the old ordinance until the effective date of the new ordinance. This **saving clause** allows prosecution for violation of the old ordinance to continue even after the new one takes effect if the violation occurred when the former ordinance was still in effect.

EXAMPLE

Section _____. Saving Clause. Ordinance No. ____, repealed by this ordinance, shall remain in force to authorize the arrest, prosecution, conviction, and punishment of a person who violates Ordinance No. ____ prior to the effective date of this ordinance.

Codes often contain a general provision that applies to future enactments. In that case, a saving clause is not needed for each ordinance that amends the code.

EXAMPLE

1.16. Effect of Repeal of Code Sections and Ordinances. Repeal of a code section or ordinance does not revive a code section or ordinance in force before or at the time the repealed code section or ordinance took effect. The repeal does not affect a punishment or penalty incurred before the repeal took effect, nor a suit, prosecution or proceeding pending at the time of the repeal for an offense committed under the repealed code section or ordinance.

A **severability clause** states specifically the governing body’s intent that the provisions of an ordinance or code are severable and that an invalid section or subsection does not invalidate the entire ordinance or code.

EXAMPLE

Section 14. Severability. Invalidity of a section or part of a section of this [ordinance/code] shall not affect the validity of the remaining sections or parts of sections.

Repeal

When an ordinance is to be **repealed**, it should be repealed specifically by ordinance number, title or subject matter, and date of enactment. If the ordinance has been amended, all amendments should be repealed in the same manner and at the same time. While this is not required, because repeal of the amendments is implied, specific repeal does help in tracking legislative history and in record keeping. If only one section is to be repealed, the ordinance should be amended instead (See page 15, discussion under **Amendments**).

EXAMPLE 1

Section 48. Repeal. Ordinance No. 1147, proscribing general offenses, enacted November 7, 2000, amended by Ordinance No. 1386, enacted October 4, 2003, is repealed.

EXAMPLE 2

Section 49. Repeal. Section 12, Mashing, of Ordinance No. 1147, enacted November 7, 2000, is repealed.

EXAMPLE 3

Section 50. Repeal. Code section 4.050, prescribing a curfew, is repealed.

Do not repeal ordinances by using the phrases “all in conflict” or “all ordinances, insofar as they may conflict with.” Every effort should be made to determine prior ordinance provisions that are in conflict and need specific repeal. If the above phrases are used, some provisions of an ordinance intended for repeal may not conflict with the new ordinance and, consequently, are not effectively repealed. Other conflicts may be so subtle that they require judicial interpretation to determine whether the provisions have been impliedly repealed. Specific repeal of an ordinance or its sections will prevent these problems.

An old ordinance should not be replaced by a new ordinance that “amends” that ordinance “in entirety.” A saving clause will protect pending prosecutions on actions initiated under the replaced ordinance. If an ordinance is amended in entirety, the old ordinance remains in effect, and the new ordinance is merely an amendment. If elimination of the entire ordinance is

intended, the old ordinance should be repealed. Portions of the old ordinance that the governing body wants to retain should be included in the new ordinance.

In some cases, more than one ordinance is amended by the same amending ordinance. If one of the amended ordinances is later repealed, the specific sections of the amending ordinance that affected the repealed ordinance should also be repealed. This will avoid confusion and remove doubt as to whether part of the original ordinance is still active. To avoid record keeping problems, it is best not to amend more than one ordinance in a single amending ordinance.

EXAMPLE 4

Section 43. Repeal. Ordinance No. 471, Traffic Regulations, enacted June 4, 1995, as amended by sections 7 and 8 of Ordinance No. 503, enacted July 17, 2002, is repealed.

Effective Date

Most charters contain a provision stating the **effective date** of ordinances.

EXAMPLE

1998 Charter of the City of [_____]:

Section 32. When Ordinances Take Effect. An ordinance enacted by the council shall take effect on the thirtieth (30) day after its enactment. When the council deems it advisable, however, an ordinance may provide a later time for it to take effect, and in case of emergency, it may take effect immediately.

The 30-day provision is common in city charters. The purpose of that requirement is to allow time for exercise of the referendum.

Emergency Clauses

An **emergency clause** gives effect to an ordinance before the normal effective date. Many charters prescribe special procedures for emergency adoption of legislation. If a charter requires specific findings of fact on the necessity for the emergency, the ordinance must set out those findings in the emergency section.

Emergency measures are those necessary for the public peace, health, or safety, and should not be routinely attached to every enactment. An emergency clause may not be used to avoid the referendum. (See **Appendix E**, “Limitations on the Use of Emergency Clauses.”)

EXAMPLE

Section 4. Emergency. Because prompt and continuous disposal of solid waste is necessary for the peace, health, and safety of the people of the city of _____ and the surrounding area, an emergency is declared to exist, and this ordinance is effective upon its passage by the council.

Remember, effective dates should read “effective after June 30, 20XX,” not “effective on and after July 1, 20XX.”

Amendments

Amendments change, add, or repeal material in a code or an ordinance.

Draft amendments are to conform to the titles and numbering system of the ordinance or code being amended. Refer to and follow the definitions contained in the ordinance or code.

An ordinance section or a code provision need not be repealed to change it. The provision needs only to be amended to read as desired. If an ordinance section or a code section has already been amended, repealing the prior amending ordinance is not necessary. Again, amending the original section is sufficient.

In adding new material, for example a new subsection, the entire section generally should be written out, including the new material, to show how the amended section will read in full. If that is not done, confusion may arise as to where the new material fits into the context of the section and whether old material is superseded. In the following example, subsection (4) of section 5 of Ordinance No. 1971 is being amended. Subsection (4) could be a totally new subsection or it could be a replacement for a previous subsection (4).

EXAMPLE 1

Section 1. Section 5 of Ordinance No. 1971 is amended to read:

“Section 5. Disorderly Conduct. No person shall disturb the peace by:

- (1) Participating in or abetting violent, tumultuous, or threatening conduct.
- (2) Inciting another person to commit a breach of the peace.
- (3) Committing an obscene, indecent, or immoral act in a public place.
- (4) Knowingly permitting disorderly conduct on premises owned or controlled by that person.”**

When amending a particularly lengthy section, writing out only the amended subsection may be more convenient. In the following example, paragraph (c) is being added to subsection (15) of section 5 of Ordinance No. 310. In this case, reference to only the section would cause confusion as to where the new material belongs. Specific reference to the subsection is necessary.

EXAMPLE

Section 1. Subsection 15 of section 5 of Ordinance No. 310 is amended to read:

- “(15) Contour lines shall be shown at the following intervals:
- (a) For slopes of less than 5 percent, 2-foot contour intervals.
 - (b) For slopes of 5 to 15 percent, 5-foot contour intervals.
 - (c) **For slopes of 15 to 20 percent, 10-foot contour intervals.”**

Amendments or additions may be made to definition sections that are not numbered or lettered (See page 5, **Definitions**). The entire section may be rewritten as illustrated above, or, if the section is lengthy, just the definitions to be added or amended may be included in the amending ordinance.

EXAMPLE 1 - New material.

Section 1. Section 1, Definitions, of Ordinance No. 15 is amended by adding:

“Easement. A grant of the right to use a strip of land for specific purposes.”

EXAMPLE 2 - Change in wording.

Section 1. In section 1, Definitions, of Ordinance No. 15, the following definition is amended to read:

“Easement. A nonpossessory interest in the land of another which entitles the owner of the interest to a limited use or enjoyment of the other's land.”

Use caution to avoid inadvertently dropping portions of text during the amending process because of failure to recite all the desired language following “amended to read.”

The amending ordinance should state where the new material is to be placed, by section or subsection number.

EXAMPLE

Section 1. Ordinance No. 149 is amended by adding a new section 7A, to read:

“Section 7A. Terms of Office. In a city council election in which there are positions of different terms of years, the candidates who receive the largest number of votes shall be elected to the positions with the longest terms.”

When amending, reaffirming the original ordinance or code section is not necessary. An amendment does not imply that the rest of the original ordinance is invalid.

If an amended ordinance is retyped to include the amending material, the history of the amendment should be placed at the end of each amended section. If a section is lengthy, the history may be placed following the added subsection.

EXAMPLE

Section 14. Verdicts. Six of the jurors sworn to try the case must concur to render a verdict. [Section 14 amended by Ord. No. 953, sec. 4, passed Feb. 4, 1985.]

The amendment itself should not include the history. It is a convenience for users of the ordinance and not part of the law.

When there is no room for expansion in the numbering system and a new section is added to an ordinance or code section, sections should not be renumbered. Instead, the new section should be placed in the most appropriate place by giving it an alphabetical designation, e.g., “Section 4A” or code section “1.020A.” Attempting to renumber the remaining sections of an ordinance can lead to trouble. The use of letters for added sections is acceptable; however, it is not acceptable for numbering ordinances and resolutions (See page 1). Refer to page 6, **Section Numbers and Titles**. Again, that problem is the reason for allowing room for expansion in the numbering system.

Ordinances may be amended only by another ordinance, not by resolution or motion, unless the ordinance itself authorizes the use of a resolution to alter some of its features.

EXAMPLE

Section 30. Charges. Sewer charges and connection charges shall be based on the unit method, which shall be established and adjusted by resolution. Current rates shall be available for public inspection.

Chapter 2: Adoption

Charter Requirements

A **charter** usually prescribes reading, publication, and notice requirements for enacting ordinances. The reading requirement states the number of times an ordinance must be read aloud, either in full or by title, and on how many separate occasions. Often, an ordinance may be read by title only and enacted at a single council or commission meeting if there is unanimous consent of the members present. If charter adoption requirements or statutes are not followed, a court may consider the legislation void.

A city's charter provides publication and notice requirements. The charter or statute must always be complied with for adoption requirements. **Appendix A** contains the ordinance adoption procedures from the model city charter.

Referential Adoption Practices

When a city adopts by reference certain state laws or state administrative rules, as local laws, conservative legal advice urges that the state law be readopted if it is changed. A court appeals decision, *Brinkley v. Motor Vehicles Division*,¹ held that local adoption of future laws by reference (for example, "ORS chapter 471 and 472, as now or hereafter constituted") is unconstitutional. If a state law or administrative rule is not readopted when it is changed, usually only those laws that existed at the time the ordinance was enacted, and which have not been changed, may be legally enforced.² This procedure always has been necessary when adopting privately promulgated material (such as the Uniform Housing Code) by reference. The *Brinkley* decision and the older Oregon Supreme Court case law are not consistent with U.S. Supreme Court case law interpreting federal constitutional requirements.

Re-adoption of changes in state law is simple to accomplish. Assume changes were made in ORS chapters 471 and 472 (Liquor Control) by the 2017 Legislature and that the original ordinance was adopted in 2005 and read as shown in the following example.

EXAMPLE 1

Section 3. Oregon Liquor Control Law Adopted. Violation of a provision of ORS chapters 471 and 472, as now constituted, is an offense against this city.

An amendment to re-adopt the chapters would read as follows:

¹ 47 Or App 25 (1980).

² The absurdity of the problem created by this ruling is illustrated by the fact that local jurisdictions cannot deviate from some state laws, such as the state building code. Thus, they may enforce only that which is currently state law, regardless of what the law was at the time their ordinance was adopted.

EXAMPLE 2

Ordinance No. 904

AN ORDINANCE AMENDING THE GENERAL OFFENSES ORDINANCE.

The city of [_____] ordains:

Section 1. Section 3 of Ordinance No. 722 is amended to read:

“Section 3. Oregon Liquor Control Law Adopted. Violation of a provision of ORS chapters 471 and 472, as now constituted, is an offense against this city.”

This amendment is a re-adoption because it adopts the state law “as now constituted” (i.e., as constituted after the 2017 changes). When the amendment is typed into the original ordinance, a history of its amendment should be included.

EXAMPLE 3

Section 3. Oregon Liquor Control Law Adopted. Violation of a provision of ORS chapters 471 and 472, as now constituted, is an offense against this city. [Section 3 amended by Ord. No. 904, Sec. 1, passed Nov. 12, 2017.]

Describe specifically what is being adopted by reference. Adopting "the attached document as the comprehensive plan" may create confusion later when all members of the governing body are newly elected, the recorder or manager has been in office only six months, four drafts of the comprehensive plan are found in the files, and "the attached" is no longer attached to the adopting ordinances.

EXAMPLE

Section 1. Comprehensive Plan Adopted. The document entitled "A Comprehensive Plan for the city of _____," prepared by the consulting firm of Smith and Smith and dated June 13, 2015, is adopted by reference as the comprehensive plan of the city.”

Chapter 3: Maintenance

Location

An original ordinance, the ordinance copy that is signed and dated by the appropriate officials as prescribed by charter, should never be removed from the office of the custodian of city records. Copies should be made available for public inspection and for use by the governing body, legal counsel, and other staff members. Copies of ordinances also should be available in city and county libraries and in the county law library. Finally, many cities make their ordinances, compilations, or codes available online, either on their own websites or through a code service such as Municode.

Compilation or Code

A compilation or code makes local laws seem more accessible to the public and to governing body officials and staff who work with the laws.

A **compilation** is an organized collection of all active general ordinances of a city. It is divided into chapters of related subject matter, such as:

- Government and Administration
- Public Improvements
- Utilities
- Public Protection
- Vehicles and Traffic
- Business
- Buildings
- Development Regulations

A copy of the charter and a franchise section are often included in the compilation.

A **code** that is adopted as a single document may be useful when the number of ordinances becomes too large and the material is too bulky to fit easily into a single volume. Codes are also divided into chapters like those listed above.

Ordinance numbers and titles, as well as whereas, ordaining, emergency, saving, severability, repealing, and attestation clauses, are not included in a code. However, the appropriate clauses must still be included in new ordinances that amend the code. Saving and severability clauses applicable to the entire code are usually contained in a general chapter at the beginning of the code.

State laws are codified in the Oregon Revised Statutes (ORS). Ordinances that are enacted and later codified in a code are of the same nature as bills of the Legislature. All original ordinances must be retained when ordinances are codified into a code. The charter is not codified, but it is

often included in the code volume. Franchises are not codified because of their contractual nature, but they may be included as a separate chapter in the code.

A compilation usually contains a disposition list which briefly indicates the status of all ordinances passed by the city or county. See **Appendix C** for a sample page.

A code also usually contains derivation and disposition tables that indicate the source of the current code sections and the disposition (by code section) of the general ordinances that existed before codification. A disposition list, as described for compilations, above, may be kept in the code volume for historical reference. Examples of code derivation and disposition lists are included in **Appendix C**.

Repealed Ordinances

Repealed ordinances should be removed immediately from the compilation, removed from the file containing active ordinances, and placed in a special file of repealed ordinances. Holders of copies of repealed ordinances should be notified of the repeal. The original of the repealed ordinance must be retained and should be marked “Repealed by Ordinance No. ____, dated _____.”

Amending Ordinances

An **ordinance amending a general ordinance** is itself a general ordinance and should be kept with the amended ordinance. Obviously, this will not be possible if more than one ordinance is amended by a single ordinance, which is another reason that an amending ordinance should not amend more than one ordinance. If that should occur, a copy of the amending ordinance should be attached to each amended ordinance.

The amended ordinance should be re-typed as amended and distributed to persons who have copies of the ordinance. If that is not possible, amendments should be noted on all copies of the ordinance (i.e., “Amended by No. ____,” or “Sec. 8A added by No. ____,” should be noted in the margin of amended sections).

General v. Special Ordinances

A **general ordinance** commonly applies to, and is binding on, all members of a community. Examples include offenses, public improvement procedures, zoning, traffic, and street vacation procedures.

A **special ordinance** is limited in its application, either in time or in persons or property affected, or both. Examples of special ordinance subject matter include a specific street vacation, a special election, a call for a bond sale, and spreading assessments for a public improvement.

Since special ordinances are of limited application, they need not be filed with the general ordinances, but originals of special ordinances should be filed with originals of other ordinances. Special ordinances are not compiled or codified with the general ordinances, but for ease of

access, a special ordinance list may be kept and included in the compilation or code volume. (See **Appendix C**).

Ordinance Inventory

An **ordinance inventory** is a detailed chronological list of each ordinance (general and special). It includes:

- (1) The ordinance number;
- (2) The ordinance subject;
- (3) The date of enactment;
- (4) Compilation or code numbers of the ordinance;
- (5) What the ordinance amends or repeals; and
- (6) What ordinance amends or repeals it.

(See **Appendix C** for a sample inventory form).

The laws of the city will be readily accessible if the ordinance inventory is kept up-to-date by a staff member.

APPENDIX A: Ordinance Drafting and Adoption Procedures

Ordinance Drafting

Before presenting legislation to a governing body for adoption, the legislation should be checked to ensure that:

1. The correct legislative form was chosen – ordinance or resolution.
2. A bill number, if used, has been assigned.
3. The ordinance has a title.
4. The ordinance contains the ordaining clause specified in the city charter.
5. Each section has a number and a title.
6. The language is understandable:
 - Use the present tense.
 - Use common English instead of technical jargon.
7. The definitions include only necessary words, do not define common words by other than common meanings, and do not contain substantive provisions.
8. The subject matter of each section is well organized and contains only one subject.
 - A legal subject exists – a specific person or thing, not an “it.”
 - A legal action exists – an action is a right, privilege, power, obligation or sanction.
 - When the law applies and under what conditions it applies are clearly explained.
9. If the ordinance amends an ordinance or code, it clearly indicates what is amended and where it is to be placed.
10. The penalties conform to the charter or statutes, if pertinent.
11. A saving clause is included, if needed.
12. A severability clause is included, if needed.
13. A replaced ordinance is repealed specifically, i.e., “Ordinance No. __, enacted _____, is repealed.”

Adoption Requirements

During the adoption process, correct adoption procedures must be followed. The city charter must be checked for the following:

1. Publication requirements.
2. Requirements for posting notice.
3. Number of times the ordinance must be read aloud, in its entirety or by title only, before the governing body's vote.

Post Adoption

After an ordinance is adopted, make sure that:

1. The ordinance is assigned the correct ordinance number.
2. The signatures required by the charter are affixed to the original document within the required time limit.
3. Existing ordinances or codes are updated – old material deleted and new material added, if necessary.
4. Copies of the new ordinance are distributed to appropriate persons and places.
5. All relevant parties receive notice of the effective date of the new ordinance, and the new ordinance is not enforced until after the effective date.
6. The original ordinance is filed with other active originals.
7. If an ordinance is repealed, it is removed from the active file and placed in the inactive ordinance file.

Example of Ordinance Adoption Requirements

Model City Charter³

Section 30. Ordaining Clause. The ordaining clause of an ordinance shall be “The city of _____ ordains as follows:”

Section 31. Adoption by Council.

1. Except as subsection (2) of this section allows adoption at a single meeting and subsection (3) of this section allows reading by title only, an ordinance shall be fully and distinctly read in open council meeting on two different days before being adopted by the council.
2. Except as subsection (3) of this section allows reading by title only, the council may adopt an ordinance at a single meeting by the express unanimous votes of all council members present, provided the ordinance is read first in full and then by title.
3. A reading of an ordinance may be by title only if:
 - a. No council member present at the reading requests that the ordinance be read in full, or
 - b. At least one week before the reading:
 - i. A copy of the ordinance is provided for each council member,
 - ii. Three copies of the ordinance are available for public inspection in the office of the custodian of city records, and
 - iii. Notice of their availability is given by written notice posted at the city hall and two other public places in the city.
4. An ordinance read by title only has no legal effect if it differs substantially from its terms as it was filed prior to the reading unless each section so differing is read fully and distinctly in open council meeting before the council adopts the ordinance.
5. Upon the adoption of an ordinance, the ayes and nays of the council members shall be entered in the record of council proceedings.
6. After adoption of an ordinance, the custodian of city records shall endorse it with its date of adoption and the endorser’s name and title of office.

Section 32. Effective Date. A nonemergency ordinance takes effect on the thirtieth day after its adoption or on a later day the ordinance prescribes. An ordinance to meet an emergency may take effect as soon as adopted.

³ Bureau of Governmental Research and Service, University of Oregon, Model Charter for Oregon Cities (1988), pp. 8-9.

APPENDIX B: Ordinance Inventory

The ordinance inventory is designed to offer convenient access to ordinance history in chronological order. If it is maintained, the status of an ordinance can be ascertained at any time. This process also serves as a double check to ensure that all original ordinances are numbered, dated, and signed correctly, and that repealed ordinances are not inadvertently amended.

A suggested form showing typical entries is reproduced on the following page, and a blank form that can be removed and reproduced to use in setting up an ordinance inventory is on the next page. Each time a new ordinance is passed, enter it into the next space on the form. If it amends or repeals another ordinance or code section, note those actions in the proper place on the form. If the ordinance contains references to other ordinances or statutes, those references should be noted.

The ordinance inventory should be filled out completely for each ordinance. In the case of special ordinances, other information may be included in addition to the basic subject matter. See page 23 for the type of information typically included for special ordinances.

Inventory Forms

City _____

Ord. No.	Date Passed	Subject Matter		Amended By	Disposition
36	7/18/90	<i>General offenses</i>		39	Repealed By 51
					Special
		Amends #	Repeals # 18	Chap. 4	
37	7/18/90	<i>Annexation hearing West Hills Tract</i>			Repealed By
					Special ✓
		Amends #	Repeals #		
38	11/21/90	<i>Contract review board</i>			Repealed By
					Special
		Amends #	Repeals #	Chap. 1	
39	5/21/91	<i>General offenses</i>			Repealed By
					Special
		Amends # 36	Repeals #	Chap. 4	
40	8/20/91	<i>Sewer improvement assessment</i>			Repealed By
		<i>Sewer Dist. #4</i>			Special ✓
		Amends # City _____	Repeals # _____		

Ord. No.	Date Passed	Subject Matter		Amended By	Disposition
					Repealed By
					Special
		Amends #	Repeals #		
					Repealed By
					Special
		Amends #	Repeals #		
					Repealed By
					Special
		Amends #	Repeals #		
					Repealed By
					Special
		Amends #	Repeals #		
					Repealed By
					Special
		Amends #	Repeals #		

Disposition and Derivation Lists

Once an ordinance inventory has been completed, a disposition list can be created by listing each ordinance by number and indicating: (1) whether it has been repealed; (2) if it is a special ordinance; and (3) if a compilation or code exists, where it is located within that volume. That list becomes part of the code or compilation and should be updated each time the code or compilation is updated. It provides users of the compilation or code with a clear legislative history of every ordinance.

For cities with codes, a derivation table that indicates either the ordinance number or previous code section of each of the current code sections is important. The derivation table is an important part of keeping an accurate legislative history of current code sections.

EXAMPLE – Disposition List

- 675. Repealed by 848
- 676. Special – Public Impr.
- 677. Special – Public Impr.
- 678. Repealed by 726
- 679. Repealed by 717
- 680. Repealed by 848
- 681. Special – Annexations
- 682. Repealed by 733
- 683. Special – Public Impr.
- 684. Special – Annexations
- 685. Special – Annexations
- 686. Failed to pass
- 687. Special – Finances
- 688. Special – Annexations
- 689. Superseded by 807
- 690. Special – Public Impr.
- 691. Repealed by 852
- 692. Special – Annexations
- 693. Special – Finances
- 694. Special – Finances
- 695. Repealed by 930
- 696. Special – Bond Issues
- 697. Special – Public Impr.
- 698. Repealed by 965
- 699. Repealed by 967
- 700. Special – Finances
- 701. Special – Finances
- 702. Special – Annexations
- 703. Special – Annexations
- 704. Failed to pass
- 705. Repealed by 960
- 706. Special – Public Impr.
- 707. Comp. 2-4
- 708. Repealed by 970
- 709. Failed to pass
- 710. Repealed by 960
- 711. Repealed by 967
- 712. Repealed by 930
- 713. Repealed by 893
- 714. Repealed by 740
- 715. Comp. 1-2
- 716. Special – Annexations
- 717. Repealed by 853
- 718. Special – Annexations
- 719. Repealed by 954
- 720. Comp. 6-2
- 721. Repealed by 953
- 723. Special – Annexations
- 724. Special – Annexations
- 725. Repealed by 863
- 726. Comp. 7-1
- 727. Repealed by 665 & 930
- 728. Failed to pass
- 729. Failed to pass
- 730. Repealed by 829
- 731. Repealed by 946
- 732. Repealed by 965
- 733. Repealed by 930
- 734. Repealed by 913
- 735. Special – Public Impr.
- 736. Superseded by 807
- 737. Comp. 7-2
- 738. Repealed by 784
- 739. Failed to pass
- 740. Comp. 3-1
- 741. Superseded by 748
- 742. Special – Public Impr.
- 743. Special – Public Impr.
- 744. Failed to pass
- 745. Repealed by 960
- 746. Failed to pass
- 747. Special – Public Impr.
- 748. Repealed by 967
- 749. Repealed by 805
- 750. Superseded by 807
- 751. Superseded by 807
- 752. Special – Annexations
- 753. Special – Annexations
- 754. Special – Public Impr.
- 755. Superseded by 807
- 756. Special – Annexations
- 757. Special – Annexations
- 758. Special – Annexations
- 759. Special – Bond Issues

EXAMPLE – Derivation List

Chapter 1

General Provisions

<u>Section No.</u>	<u>Ordinance No.</u>
1.005	New
1.010	New
1.015	New
1.020	New
1.025	New
1.030	New
1.035	New
1.040	New
1.042	New
1.045	New
1.050	New
1.052	New
1.055	New
1.057	New
1.060	New
1.065	New
1.070	New
1.075	New

Dallas Derivation - 2

Chapter 2
Government and Administration

<u>Section No.</u>	<u>Ordinance No.</u>	
2.005	503(1)	
2.010	503(7)	A
2.015	503(8)	
2.050	847(1)	A
2.055	847(2)	
2.060	847(3)	
2.065	847(4)	
2.070	847(5)	
2.075	847(6)	
2.100	671(1)	
2.105	671(2)	
2.150	688(1)	
2.155	688(2, 3)	A
2.200	863(1, 2, 3)	A
2.250	507(1)	A
2.255	507(2, 3)	A
2.260	507(4)	A
2.265	507(4)	A
2.270	507(5)	A
2.300	1179(1)	A
2.305	1179(2)	
2.310	1179(3, 4)	A
2.315	1179(5)	A
2.320	1179(6)	A

A = Amended

3/4/91

Special Ordinance List

Special ordinances are those requiring one specific action to fulfill their purpose or those that are not of general application. For convenient reference, special ordinances may be listed by subject matter in a table separate from the general ordinances. Each city should determine what categories will best serve its needs and the kind of information about each ordinance that will be useful for its purposes.

If a city or county has a compiled volume of general ordinances or a code, the special ordinance list may be added as a separate section, or it may be kept in a separate volume or notebook.

EXAMPLE – List of Special Ordinances

Ordinances that require one specific action to fulfill their purpose or that are not of general application have been classified as special ordinances and are listed here by subject matter for convenient reference. The following headings indicate the subject matter of the listed ordinances.

A. Public Ways

1. Vacations and Dedications
2. Street Name Changes

B. Public Improvements

1. Streets
2. Sidewalks
3. Sewers

C. Franchises and Contracts

1. Franchises
2. Contracts

D. Bond Issues

E. Annexations

F. Charter Amendments

G. Repealing Ordinances

H. Finances

1. Special Funds
2. Tax Levies

APPENDIX C: Techniques and Language

Substitutes for Some Words Commonly Used in Ordinances

<u>Avoid</u>	<u>Substitute</u>
the applicant <u>shall be accorded the opportunity</u> to be heard	the applicant may request a hearing
the council shall <u>afford the opportunity</u>	the council shall allow
the <u>aforesaid</u> vehicle the <u>above mentioned</u> vehicle the <u>said</u> vehicle	the vehicle
fine <u>and/or</u> imprisonment	fine or imprisonment, or both
<u>at such time as</u>	when
<u>at the place where</u>	where
<u>attains the age of sixteen</u>	becomes sixteen years of age
the recorder <u>be, and he hereby is, directed to</u>	the recorder shall
when the council <u>shall be of the opinion that</u>	when the council determines, decides
the council may <u>constitute and appoint</u> a board	the council may appoint a board
<u>due to the fact that</u> notice was not received	because notice was not received
<u>during such time as</u> the position <u>remains</u> vacant	while the position is vacant

Avoid

Substitute

each and every councilor may

a councilor may

if the applicant shall fail, refuse or neglect to file

if the applicant does not file

for the reason that; because of

because

shall make a full and complete report to

shall report to

the recorder shall give consideration to the report

the recorder shall consider the report

if any person shall violate the provisions of

violation of the provisions of

in the event that the meeting falls on a holiday

if the meeting falls on a holiday

the city manager is authorized and directed to

the city manager may (or shall, depending on the intent)

the fire marshal is ordered and directed to

the fire marshal shall

it shall be the fire marshal's duty to

the fire marshal shall

it shall be lawful to

a person may

it shall be unlawful to

no person shall

when the municipal judge shall order, adjudge and decree

when the municipal judge orders

as allowed by the provisions of state law

as provided by state law

unless and until the council determines

until (or unless, depending on the intent) the council determines

councilman

councilor, council member

chairman

chair

If possible, the following words should not be used:

forthwith
henceforth
hereafter
hereby
herein
hereinabove
hereinafter
hereinbelow
heretofore

thenceforth
thereupon
therewith
to wit
whatsoever
whensoever
wherein
wheresoever
whichsoever

Example of Unsatisfactory Ordinance Drafting

Section 4. Whenever the mayor, chief of police, city attorney, street commissioner, fire chief, or any councilman, shall find or be of the opinion that there is a dangerous building in the city of _____, it shall be the duty of such person to report the same to the common council. Thereupon the common council shall, within a reasonable time, fix a time and place for a public hearing thereon. Notice shall be mailed to the owner of record of the premises whereon said building is located, by the city recorder, notifying said owner in general terms that a hearing will be held concerning said property, and the time and place thereof. At said time and place, or at such other time or times, or place or places, as the council may adjourn to, said hearing shall be held, and the council shall determine by resolution whether or not said building is dangerous. The council may, as a part of said hearing, inspect said building, and the facts observed by said council at such inspection may be considered by it in determining whether or not said building is dangerous. At said hearing the owner or other person interested in said property or building shall have the right to be heard, if such owner or person requests the same. Ten days notice of any such hearing shall be given publication in some newspaper published in the city of - _____, or by posting notices thereof in three public places in said city, and if the last mentioned notice be published or given as herein required, no irregularity or failure to mail notices shall invalidate the proceedings. At such hearing the council shall have the power to order any building declared to be dangerous, removed and abated, if in its judgment such removal or abatement is necessary in order to remove said dangerous condition, or the council shall have the power to order said building made safe and to prescribe what acts or things must be done to render the same safe. Five days notice of said findings and of any orders made by the council shall be given to the owner of said building, his agent or other person controlling the same and if said orders be not obeyed and said building rendered safe within the time in said order specified, being not less than five days, then the council shall have the power and duty to order said building removed or made safe at the expense of the property on which the same may be situated. In that event the council must specify with convenient certainty the work to be done and shall file a statement thereof with the recorder, and shall advertise for bids for the doing of said work in the manner provided for advertising for bids for street improvement work, and thereafter said bids shall be received, opened, and contract let, the council shall ascertain and determine the probable cost of said work, and assess the same against the property upon which said building is situated, said assessment shall be declared by an ordinance, and it shall be entered in the docket of city liens, and shall thereupon be and become a lien against said property, and the creation of said lien and the collection....

Example of Satisfactory Ordinance Drafting

(Redraft of material on previous page)

Section 2. Nuisance Declared. Every building found by the council to be a dangerous building is declared to be a public nuisance and may be abated by the procedures specified in this ordinance or by a suit for abatement brought by the city.

Section 3. Initial Action. When a city official determines that a dangerous building exists, the official shall report it to the council. The council shall, within a reasonable time, schedule a public hearing.

Section 4. Mailed Notice.

(1) The city recorder shall notify the owner of the building, and, if not the same person, the owner of the property on which the building is located. The notice shall state:

- (a) That a hearing will be held concerning the nuisance character of the property; and
- (b) The time and place of the hearing.

(2) A copy of the notice shall be posted on the property.

Section 5. Published and Posted Notices. Ten days' notice of the hearing shall be published in a newspaper of general circulation in the city or posted in three public places in the city.

Section 6. Hearing.

(1) At the hearing, the owner or other persons interested in the dangerous building shall have the right to be heard.

(2) The council may inspect the building and may consider the facts observed in determining if the building is dangerous.

(3) If the council determines that the building is dangerous, the council may, by resolution:

- (a) Order the building to be abated; or
- (b) Order the building to be made safe and prescribe what must be done to make it safe.

Section 7. Council Orders; Notice. Five days' notice of the council's findings and orders made by the council shall be given to the owner of the building, his agent, or other person controlling the building. If the orders are not obeyed and the building not made safe within the time specified by the order (not less than five days), the council may order the building demolished or made safe at the expense of the property on which it is located.

Section 8. Abatement by the City.

(1) If the council orders are not complied with, the council shall:

- (a) Specify the work to be done;
- (b) File a statement with the recorder; and
- (c) Advertise for bids for doing the work in the manner provided for advertising for bids for street improvement work.

(2) Bids shall be received, opened and the contract let.

Section 9. Assessment.

(1) The council shall determine the probable cost of the work and assess the cost against the property upon which the building is located. The assessment shall be declared by resolution, be entered into the docket of city liens, and become a lien against the property.

(2) Creation of the lien and collection and enforcement of the cost shall be performed in substantially the same manner as assessment for street improvements.

APPENDIX D: Limitations on the Use of Emergency Clauses

An **emergency clause** gives effect to an ordinance before the normal effective date. Many charters prescribe special procedures for emergency adoption of legislation. If a charter requires specific findings of fact on the necessity for the emergency, the ordinance must set out those findings in the emergency section. State law, however, places some important limits on the use of emergency clauses, as outlined below. Please note that this list may not be exhaustive.

Revenue Bonds

Bottom Line: Public bodies that issue revenue bonds under ORS 287A.150 must do so by resolution or nonemergency ordinance.

ORS 287A.150(1): “In addition to any other authority to issue revenue bonds, a public body may authorize revenue bonds by resolution or nonemergency ordinance pursuant to this section for a public purpose.”

Explanation: ORS 287A.150 provides public bodies an additional statutory authority to issue revenue bonds for a public purpose. Public bodies that issue revenue bonds under ORS 287A.150 must do so per the procedures set out in that statute. Thus, a public body may only issue a revenue bond under ORS 287A.150 by resolution or nonemergency ordinance. ORS 287A.150(1). If issued by nonemergency ordinance, the “public body may not sell the revenue bonds pursuant to this section until the period for referral of the ordinance has expired” or, if referred, until “the electors approve issuance of the revenue bonds.” ORS 287A.150(2). Interestingly, a public body may subsequently issue “refunding bonds” under ORS 287A.360 to 287A.380 to pay revenue bonds issued under ORS 287A.150. Those refunding bonds, however, are not subject to the “procedures and limitations” of ORS 287A.150. Thus, a public body could issue a refunding bond with an emergency ordinance.

Municipal Financing of Educational Facilities

Bottom Line: Cities and counties can issue revenue bonds to finance post-secondary educational facilities but must do so via resolution or nonemergency ordinance.

ORS 350.680(2): “A municipality may authorize the issuance of revenue bonds [to finance education facilities] by resolution or nonemergency ordinance under the procedure described in ORS 287A.150.”

Explanation: ORS 350.670 authorizes municipalities (cities and counties) to finance “education facilities.” For purposes of that statute, education facilities are “real or personal property owned or operated by an educational institution and used to provide post-secondary education.” ORS 350.665(1). Specifically, cities and counties are authorized, among other things, “to borrow money and to issue revenue bonds to finance education facilities costs or to refund revenue bonds pursuant to ORS 287A.150.” ORS 350.675(1). The process of issuing a revenue bond under ORS 350.675 borrows from ORS 287A.150. Specifically, “[a] municipality may authorize the issuance of revenue bonds by resolution or nonemergency ordinance under the procedure described in ORS 287A.150.” ORS 350.680(2).

Urban Renewal: Declaration of Blighted Areas and Need for Urban Renewal Agency

Bottom Line: ORS 457.035 automatically creates an urban renewal agency in every municipality. The urban renewal agency may not exercise any powers, however, until the municipality issues a nonemergency ordinance identifying areas of blight and the need for the urban renewal agency.

ORS 457.035(1): “In each municipality, as defined in ORS 457.010, there hereby is created a public body corporate and politic to be known as the ‘urban renewal agency’ of the municipality. However, the urban renewal agency shall not exercise its powers until or unless the governing body of the municipality, by nonemergency ordinance, declares that blighted areas exist in the municipality and that there is need for an urban renewal agency to function in the municipality and elects to have the powers of an urban renewal agency exercised in any of the three ways provided in ORS 457.045.”

Explanation: ORS chapter 457 establishes the concept of “blighted areas” and “urban renewal.” Every municipality in the state has its own “urban renewal agency,” but that agency cannot exercise any powers until the municipality declares, through a nonemergency ordinance, that “blighted areas” exist in the municipality and the urban renewal agency is needed to address the blight. ORS 457.035(1). Interestingly, a municipality can terminate an urban renewal agency “by ordinance,” and need not use a nonemergency ordinance to do so. ORS 457.075.

Urban Renewal: Approval of an Urban Renewal Plan

Bottom Line: The governing body of a municipality must adopt urban renewal plans by nonemergency ordinance.

ORS 457.095(1): “The governing body of the municipality, upon receipt of a proposed urban renewal plan and report from the municipality’s urban renewal agency and after public notice

and hearing and consideration of public testimony and planning commission recommendations, if any, may approve the urban renewal plan. The approval shall be by nonemergency ordinance which shall incorporate the plan by reference.”

Explanation: Once a municipality passes an ordinance under ORS 457.035 and determines that an urban renewal agency is necessary, the agency must develop an urban renewal plan per ORS 457.085. Then, the municipality must approve the plan, per ORS 457.095. Specifically, the municipality must approve the plan “by nonemergency ordinance,” and the ordinance must incorporate the plan by reference. (Note that the nonemergency ordinance must also conform to the requirements listed in ORS 457.095(1)-(7).) Following adoption of the ordinance approving the urban renewal plan, the municipality must publish notice of the adoption of the urban renewal plan no later than four days after the municipality adopts the plan. Presumably, notice of adoption of the urban renewal plan is designed to give the voters of the municipality a better chance at referring the ordinance to the ballot. Finally, per ORS 457.135, an urban renewal plan is presumed valid 90 days after its adoption via nonemergency ordinance.

Urban Renewal: Substantial Changes to Urban Renewal Plan

Bottom Line: Any “substantial change” to an urban renewal plan must be approved by nonemergency ordinance.

ORS 457.220(2): “Any substantial change made in the urban renewal plan shall, before being carried out, be approved and recorded in the same manner as the original plan.”

Explanation: ORS 457.095 states that the governing body of a municipality must approve any urban renewal plans developed by the municipality’s urban renewal agency. The governing body may only approve urban renewal plans by nonemergency ordinance. ORS 457.220 states that any “substantial change” to the plan must be approved in the same manner—that is, by nonemergency ordinance. Note that the statute does not explain what changes are so “substantial” as to require formal approval under ORS 457.095. *See also Umrein v. Nelson*, 70 Or App 104, 107-08 (1984) (noting that some changes to an urban renewal project are “so substantial as to require formal amendment of the urban renewal plan under ORS 457.220(2),” but remanding to the trial court to make that determination).

Article IX, section 1a: Tax and Revenue Ordinances

Bottom Line: Cities “may not include an emergency clause in an ordinance regarding taxation or exemption.” *Advance Resorts of America, Inc. v. City of Wheeler*, 141 Or App 166, 178 (1996).

Or Const, Art IX, § 1a: “The Legislative Assembly shall not declare an emergency in any act regulating taxation.”

Explanation: Article IX, section 1a, was adopted by initiative in 1912, and prohibited the state legislature from enacting an emergency act that regulated taxation. In other words, Article IX, section 1a, guaranteed the voters the right to exercise the referendum power over state laws that regulated taxation. See Or Const, Art IV, § 1 (repealed by HJR No. 16 (1968)) (guaranteeing the right of the voters the power to refer legislative enactments to the ballot). On its face, Article IX, section 1a, only prohibits the “Legislative Assembly” from declaring an emergency in legislation that regulates taxation. In subsequent cases, however, the appellate courts have held that the prohibition found in Article IX, section 1a, also applies to counties, see *Multnomah County v. Mittleman*, 275 Or 545 (1976), and cities, see *Advance Resorts of America, Inc. v. City of Wheeler*, 141 Or App 166 (1996). The courts noted that the constitutional amendments that guaranteed the referendum power to the voters of counties and cities were enacted *after* Article IX, section 1a. See Or Const, Art VI, § 10 (1958) (county home rule); Or Const, Art IV, § 1(5) (1968) (right of referendum reserved to city voters). Thus, the constitutional amendments that guaranteed referendum powers for county and city voters necessarily incorporated the limits contained in Article IX, section 1a.

APPENDIX E: Ordinances that Must be Referred to Electors

Local Fuel Tax

Bottom Line: A city must refer new or amended fuel taxes.

ORS 319.950: “A city, county or other local government may enact or amend any charter provision, ordinance, resolution or other provision taxing fuel for motor vehicles after submitting the proposed tax to the electors of the local government for their approval.”

Disincorporation

Bottom Line: The question whether to disincorporate must be referred to the voters.

ORS 221.621 provides that disincorporation must be decided by election. The disincorporation process begins when a petition is filed under ORS 221.621(2). The governing body of the city cannot consider adoption or rejection of a disincorporation measure before submitting it to the electors of the city. ORS 221.261(3).

Incorporation of a City by Merging Adjoining Cities or Territory

Bottom Line: A city must refer the question of whether to incorporate a new city by merging with another city or with unincorporated territory and must refer a charter for the proposed city at the same election.

ORS 222.210 to 222.310 provides a statutory means of incorporating a city by merging two or more existing cities (whether they adjoin or not), or by merging an existing city and unincorporated territory (whether they adjoin or not). That procedure begins with the filing of a petition under ORS 222.220. If the petition to incorporate meets statutory requirements, “the governing body of each of the cities to be included in the proposed city shall approve the petition and appoint two residents of each of the cities as the members of a charter commission to prepare a charter for the proposed city to be submitted to the electors for approval or rejection at the same election at which is submitted the question of the creation of the proposed city.” ORS 222.240.

Construction of a Sewer System: “May” vs. “Must”

Bottom Line: A city may refer the issue of acquiring or building sewer infrastructure, but a city must refer a bond issued to finance the acquisition or construction of sewer facilities necessary for compliance with an EQC order.

ORS Chapter 224 governs municipal financing, construction, and regulation of sewer systems. ORS 224.232 deals with issuing bonds to pay for the acquisition or construction of a sewer system. Interestingly, ORS 224.232(1) states that the governing body of a city “*may* refer the

question of acquiring and constructing [sewer] facilities to a vote of its electors, and after approval thereof by a majority of such electors, *may* authorize the issuance of and cause to be issued bonds of the municipality for such purposes.” However, when the Oregon Environmental Quality Commission enters an order pursuant to ORS 468.090 and requires a city to acquire or construct sewer facilities to comply with state environmental laws, “the governing body of the municipality *must* refer to its electors the question of a bond issue in an amount sufficient to finance the necessary acquisition of such facilities.” ORS 224.232(2) (emphasis added).

Siting a Casino Within a City

Bottom Line: A city must refer the question of whether to allow a casino within city territory.

ORS Chapter 227 contains procedures for cities to establish planning commissions and make planning decisions. ORS 227.172 deals with siting a casino within the territory of a city. Of interest to this memo: “A casino may not be sited on land in an incorporated city unless the electors of the city approve the development.” ORS 227.172(2).

Local Option Tax on Marijuana Sales

Bottom Line: A local option tax on marijuana sales must be referred to the voters.

ORS 475B.320 to 475B.345 governs with city and county regulation of recreational marijuana. ORS 475B.345 permits cities and counties to impose a three percent tax on the sale of marijuana. If the city or county adopts an ordinance that imposes a tax on marijuana sales, “the governing body shall refer the measure of the ordinance to the electors of the city or county for approval at the next statewide general election.” ORS 475B.345(4).

[A city or county does not need to refer all ordinances that regulate marijuana. For example, ordinances establishing “reasonable regulations” (*i.e.*, time, place, and manner restrictions) on marijuana facilities do not need to be referred to the voters. *See* ORS 475B.340.]

Prohibition of Marijuana Establishments

Bottom Line: Prohibiting or allowing marijuana facilities within a city must be referred to the voters.

Under ORS 475B.800, cities and counties can pass ordinances to prohibit or allow the following marijuana facilities: marijuana processing sites; medical marijuana dispensaries; marijuana producers; marijuana processors; marijuana wholesalers; marijuana retailers; or any combination of those entities. If a city or county adopts an ordinance prohibiting or allowing any of those facilities, “the governing body shall submit the measure of the ordinance to the electors of the city or county for approval at the next statewide election.” ORS 475B.800(2).