

Oregon Municipal Handbook

CHAPTER 4: ELECTIONS

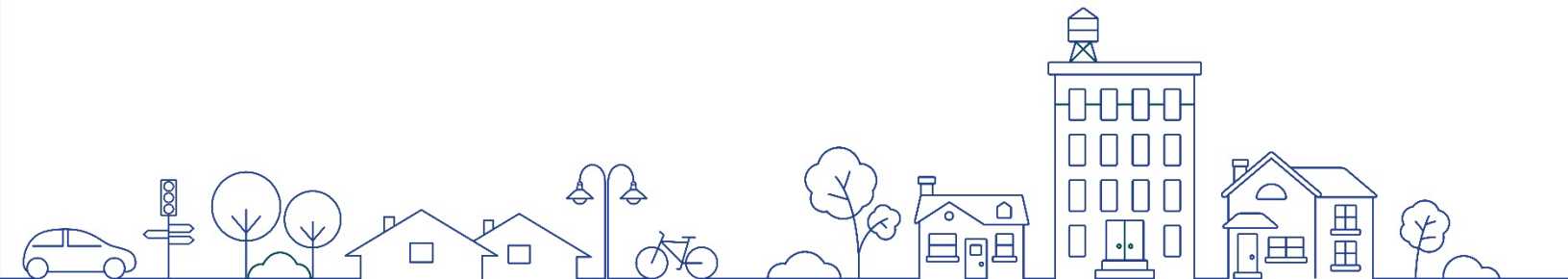


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Chapter 4: Election Law

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.¹ Frequently, charters and local ordinances also provide unique processes of filing petitions and of filling vacancies in local office.²

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.”³ Because of this, elections in Oregon are regulated by a series of statutes and an administrative framework headed by the Secretary of State.⁴ 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.⁵

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.”⁶ Under this approach, county clerks are responsible for establishing precincts, preparing ballots and sample ballots, and receiving and processing votes.⁷ 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.⁸ 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.⁹

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

¹ See, e.g., LEAGUE OF OREGON CITIES, MODEL CHARTER FOR OREGON CITIES, https://www.orcities.org/download_file/605/1852 (last accessed Aug. 16, 2024).

² *Id.*

³ See Or Const, Art II, § 8.

⁴ See ORS 246.110.

⁵ See, e.g., Or. Secretary of State, *Election Law Summary* (2024), https://stage-sos.oregon.gov/elections/Documents/elec_law_summary.pdf (last accessed Aug. 16, 2024).

⁶ ORS 246.200.

⁷ *Id.*

⁸ ORS 246.210.

⁹ 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.¹⁰ Second, city employees are prohibited at all times—during, before, and after any election—from engaging in certain political activity during work hours.¹¹ Significantly, this prohibition does not apply to elected officials and includes an exception for political views in the workplace.¹² 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.¹³

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.¹⁴ 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 fourth Tuesday in August; or **(4)** the first Tuesday after the first Monday in November.¹⁵ 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.¹⁶

¹⁰ See, e.g., ORS 221.230.

¹¹ See ORS 260.432(2).

¹² *Id.*

¹³ ORS 260.005 - ORS 260.285.

¹⁴ See, e.g., ORS 221.230.

¹⁵ *Id.*

¹⁶ *Id.*

But additional restrictions apply.¹⁷ 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.”¹⁸ 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.”¹⁹ Thus, local elections for city office generally are held only on numbers (2) and (4) of the above paragraph dates, and only in even-numbered years.²⁰ 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.”²¹

Second, restrictions apply to elections held on any city measure *other* than a referral.²² 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.”²³ 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.²⁴ 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.²⁵ 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.²⁶ The city must adopt this finding in a resolution after a public hearing.²⁷ The hearing itself must be adequately noticed and cannot be held on the same day as a regularly scheduled council meeting.²⁸ 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).²⁹

¹⁷ 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).

¹⁸ ORS 254.035.

¹⁹ ORS 254.056.

²⁰ *Id.*

²¹ ORS 254.046.

²² ORS 221.230(2).

²³ *Id.*

²⁴ *Id.*

²⁵ ORS 221.230(3).

²⁶ *Id.*

²⁷ ORS 221.230(4).

²⁸ *Id.*

²⁹ 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.³⁰ 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%.³¹ Similarly, a proposed local measure to consolidate two or more cities must be presented to voters at a “primary election or general election.”³² Due to these measure-specific timing requirements, the 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 **61st day** prior to an election.³³ Cities need to file a “statement of the city offices” that are the subject of the election and information about each of the candidates.³⁴ Cities also need to file a “statement of the city measures” and the ballot title for each of the measures.³⁵

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.³⁶ The city must notify the county no later than the 47th day before the desired election date and must include a copy of the resolution and findings that an emergency election is justified.³⁷

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.³⁸ While this ban can seem simple, several of its definitions and

³⁰ Or Const, Art XI, § 11.

³¹ *Id.*; Or. Secretary of State, *Voter Turnout History for Primary Elections* (2024), <https://sos.oregon.gov/elections/Documents/Voter-Turnout-History-Primary.pdf> (last accessed September 26, 2024); Or. Secretary of State, *Statistical Election Statistics* (2024) (last accessed September 26, 2024).

³² ORS 222.250.

³³ ORS 254.095.

³⁴ ORS 254.095(1).

³⁵ ORS 254.095(2).

³⁶ ORS 221.230(5).

³⁷ *Id.*

³⁸ ORS 260.432.

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 May 2024.³⁹

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.⁴⁰ Specifically, public employees cannot solicit money, services, or influence, and cannot otherwise support or oppose a candidate, measure, or political committee.⁴¹ Second, the law prohibits any person from attempting to “coerce, command, or require” a public employee to engage in the prohibited conduct.⁴² 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.⁴³

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.⁴⁴ 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.⁴⁵ Fortunately, guidance from the Secretary of State clarifies this issue.⁴⁶

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.⁴⁷ However, this does not mean that elected officials can forget about ORS 260.432.

³⁹ Or. Secretary of State, *Restrictions on Political Campaigning by Public Employees*, p. 1 (2024), <https://sos.oregon.gov/elections/Documents/restrictions.pdf> (last accessed September 26, 2024).

⁴⁰ ORS 260.432(2).

⁴¹ *Id.*

⁴² ORS 260.432(1).

⁴³ ORS 260.432(4).

⁴⁴ *Oregon State Police Officers Ass’n v. State*, 308 Or 531, 535 (1989); see 5 U.S.C. §§ 1501–1508 (2018).

⁴⁵ ORS 260.432(6).

⁴⁶ Or. Secretary of State, *Restrictions on Political Campaigning by Public Employees* p. 1 (2024), <https://sos.oregon.gov/elections/Documents/restrictions.pdf> (last accessed September 26, 2024).

⁴⁷ ORS 260.432(7).

Elected officials are prohibited from ordering a public employee to engage in political activity while on the job.⁴⁸ 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.⁴⁹ 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.⁵⁰ 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.”⁵¹ 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.⁵²

Like any public employee, a non-elected official is permitted on their personal time to make endorsements and engage in other political activity.⁵³ 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.⁵⁴ If there is the potential for confusion about whether an employee is acting in a personal or official capacity, the 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.⁵⁵ Therefore, council appointees are free to engage in political activities as long as they do not involve public employees.

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, and further, workers’ compensation coverage is not adequate compensation for a volunteer to be considered a public employee, according to the Secretary of State.⁵⁶ Likewise,

⁴⁸ ORS 260.432(1).

⁴⁹ *Id.*

⁵⁰ Or. Secretary of State, *Restrictions on Political Campaigning by Public Employees*, p. 6 (2024), <https://sos.oregon.gov/elections/Documents/restrictions.pdf> (last accessed September 24, 2024).

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ ORS 260.432(7).

⁵⁶ Or. Secretary of State, *Restrictions on Political Campaigning by Public Employees* p. 6 (2024), <https://sos.oregon.gov/elections/Documents/restrictions.pdf> (last accessed September 26, 2024).

contractors are not usually considered public employees because most are independent parties performing limited services for the city.⁵⁷

That said, public employees still violate ORS 260.432 if they act through a volunteer or contractor to engage in political activity.⁵⁸ 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.⁵⁹ 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.”⁶⁰ 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**.⁶¹ 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.⁶² Similarly, a city official is considered at work when attending meetings as part of their official duties.⁶³

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

By contrast, **on-call shifts** are not considered “on the job” unless or until the public employee is called in to work.⁶⁸ 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.⁶⁹

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ ORS 260.432(2)(7).

⁶¹ ORS 260.432(2).

⁶² Or. Secretary of State, *Restrictions on Political Campaigning by Public Employees* p. 13 (2024), <https://sos.oregon.gov/elections/Documents/restrictions.pdf> (last accessed September 26, 2024).

⁶³ *Id.* at 4.

⁶⁴ *Id.* at 5.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.* at 5.

⁶⁸ See 38 Or Op Atty Gen. 618, 1977 WL 31206 (1977).

⁶⁹ *Id.*

Similarly, public employees may use lunch hours, breaks, and other time off to engage in political activity that would otherwise be prohibited by ORS 260.432.⁷⁰ 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.⁷¹ 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.⁷² In general, the law prohibits public employees from supporting or opposing measures, candidates, petitions, or political committees.⁷³ 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.⁷⁴ Similarly, the law does not prohibit involvement in legal disputes, including disputes over the legality of local petitions and ballot titles.⁷⁵ 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.⁷⁶ However, a public employee may provide **impartial information** about a candidate, measure, or petition as part of their normal job duties.⁷⁷

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 before they are distributed.⁷⁸ If the Elections Division approves a city document, the city is generally shielded from a subsequent finding that the document violates the impartiality requirements under ORS 260.432, under the “Division’s Safe Harbor Program.”⁷⁹ Generally, impartiality requires that documents **(1)** must not explicitly urge a yes or no vote, **(2)** must be factually balanced, and **(3)** if the material includes information about what a measure would pay for or do, it must also describe information about what would happen if the measure does not

⁷⁰ ORS 260.432(7).

⁷¹ *Id.*

⁷² ORS 260.432(1).

⁷³ *Id.*

⁷⁴ Or. Secretary of State, *Restrictions on Political Campaigning by Public Employees*, p. 15 (2024), <https://sos.oregon.gov/elections/Documents/restrictions.pdf> (last accessed September 26, (2024)).

⁷⁵ *Id.*

⁷⁶ *Id.* at 7.

⁷⁷ *Id.* at 14.

⁷⁸ *Id.* at 15.

⁷⁹ *Id.*

pass; and (4) if the material pertains to a measure that would affect property taxes, it must include the cost per \$1,000 of assessed property value.⁸⁰

a. Personal Opinions

ORS 260.432 carves out an exception for the rights of public employees to “express personal political views” as long as a “reasonable person would not infer that the personal political views of the public employee represent the views of the public employer of the public employee” or when a public employee communicates “with a separate public employee or elected official about the appointment of a person to a public office, provided that the communication is made in furtherance of the recipient's official duties relating to an appointment required by the Oregon Constitution or a state statute.”⁸¹

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.⁸² 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.⁸³ 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.”⁸⁴ 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

⁸⁰ *Id.* at 16.

⁸¹ ORS 260.432(3).

⁸² Or. Secretary of State, *Restrictions on Political Campaigning by Public Employees*, p. 8, 11-12 (2024), <https://sos.oregon.gov/elections/Documents/restrictions.pdf> (last accessed September 26, 2024).

⁸³ *Id.*

⁸⁴ *Id.* at 4; *see* 5 U.S.C. §§ 1501–1508 (2018); *see also* U.S. Office of Special Counsel website, <https://osc.gov/Services/Pages/HatchAct-StateLocal.aspx> (last accessed September 26, 2024).

allegiance” during voter registration activities.⁸⁵ Specifically, the NVRA restrictions prohibit public employees from wearing political buttons while performing NVRA services, which is more restrictive than the general rule set forth in ORS 260.432, which allows public employee to wear political buttons or clothing so long as it does not violate an employer’s policy.⁸⁶ However, these laws apply only to public registration drives; private efforts by public employees to register voters are not subject to these restrictions.⁸⁷

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.⁸⁸ Second, state law governs the process of filing for office and also requires that candidates track their campaign spending and donations.⁸⁹ Third, vacancies in office can be resolved under state law but often are covered by local law.⁹⁰ Finally, oaths of office are matters of local law.⁹¹

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.⁹² 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.⁹³

⁸⁵ See 52 U.S.C. §§ 20501–20511 (2018); see also Or. Secretary of State, *Restrictions on Political Campaigning by Public Employees*, p. 6 (2024), <https://sos.oregon.gov/elections/Documents/restrictions.pdf> (last accessed September 26, 2024); see also U.S. Department of Justice Civil Rights Division website, <https://www.justice.gov/crt/about-national-voter-registration-act> (last accessed September 26, 2024).

⁸⁶ Or. Secretary of State, *Restrictions on Political Campaigning by Public Employees*, p. 6, 8 (2024), <https://sos.oregon.gov/elections/Documents/restrictions.pdf> (last accessed September 26, 2024)

⁸⁷ *Id.*

⁸⁸ See, e.g., LEAGUE OF OREGON CITIES, MODEL CHARTER FOR OREGON CITIES, p. 3, 8-10 (2023), https://www.orcities.org/download_file/605/1852 (last accessed September 26, 2024).

⁸⁹ Or. Secretary of State *2024 Campaign Finance Manual*, p. 29 (2024), <https://sos.oregon.gov/elections/Documents/campaign-finance.pdf> (last accessed September 26, 2024).

⁹⁰ See, e.g., LEAGUE OF OREGON CITIES, MODEL CHARTER FOR OREGON CITIES, p. 4, 5, 7, 10, 11 (2023), https://www.orcities.org/download_file/605/1852 (last accessed September 26, 2024).

⁹¹ See League of Oregon Cities, FAQ on Oaths of Office, p. 2 (2023), https://www.orcities.org/download_file/382/1852 (last accessed September 26, 2024).

⁹² ORS 249.013(2).

⁹³ *Id.*

Second, unless otherwise provided by local law,⁹⁴ public employees are permitted to run for elected office. In other words, employees of a city generally may run for one of the city’s elected offices. That said, state law prohibits the employee from campaigning during their work hours.⁹⁵ Also, if the employee is elected, then the employee may need to give up their employment through the city under Oregon common law, which historically prohibits “dual office holding” where two public positions are incompatible.⁹⁶

Third, city officials cannot hold more than one lucrative public position at the same time under Article X, Section 2, of the Oregon Constitution.⁹⁷ 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.⁹⁸ 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.”⁹⁹

More so than state law, local charters determine who is or isn’t eligible for city office.¹⁰⁰ The *LOC Model Charter for Oregon Cities* features many common eligibility requirements.¹⁰¹ For example, many city charters limit individuals from holding multiple positions in a city, regardless of whether they are lucrative or not.¹⁰² 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.¹⁰³

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

⁹⁴See, e.g., LEAGUE OF OREGON CITIES, MODEL CHARTER FOR OREGON CITIES (2023), p. 9, [HTTPS://WWW.OREGONCITIES.ORG/DOWNLOAD_FILE/605/1852](https://www.oregoncities.org/download_file/605/1852) (last accessed September 26, 2024).

⁹⁵ ORS 260.432.

⁹⁶ 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).

⁹⁷ Or Const, Art II, § 10.

⁹⁸ See ORS 249.013.

⁹⁹ See *Or. Secretary of State County, City, District Candidate Manual* (2024), p. 8, <https://sos.oregon.gov/elections/Documents/county-city-district-candidates.pdf> (last accessed September 26, 2024).

¹⁰⁰ See LEAGUE OF OREGON CITIES, MODEL CHARTER FOR OREGON CITIES (2023), p. 8, [HTTPS://WWW.OREGONCITIES.ORG/DOWNLOAD_FILE/605/1852](https://www.oregoncities.org/download_file/605/1852) (last accessed September 26, 2024).

¹⁰¹ *Id.*

¹⁰² *Id.* at 9 (e.g. prohibiting mayor and councilor from being employed by the city).

¹⁰³ See, e.g., EUGENE, OR., CHARTER Ch. 3, § 8 (2019), EUGENE, OR., CHARTER Ch. 6, § 19 (2019), <https://www.eugene-or.gov/DocumentCenter/View/456/Eugene-Charter-2002-updated-2019?bidId=> (last accessed September 26, 2024).

a candidate committee early in their campaign for office.¹⁰⁴ To some degree, cities can also adopt campaign finance reporting requirements.¹⁰⁵ 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.¹⁰⁶ However, if a candidate at any point exceeds the \$750 threshold, the candidate will have three business days to meet these requirements.¹⁰⁷ That candidate will also have seven calendar days to comply with certain reporting requirements (see below).¹⁰⁸

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.¹⁰⁹ The statement of organization must be filed with the Secretary of State’s Election Division.¹¹⁰

Once a committee is created, the committee must select a treasurer—the candidate may serve in this position or appoint someone else.¹¹¹ Whoever serves as treasurer must be a registered Oregon voter.¹¹² 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.¹¹³

ii. Campaign account

Campaign accounts are bank accounts that track the money that is received or spent in furtherance of a candidate’s election.¹¹⁴ 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.¹¹⁵

¹⁰⁴ Or. Secretary of State, *2024 Campaign Finance Manual*, p. 7 (2024),

<https://sos.oregon.gov/elections/Documents/campaign-finance.pdf> (last accessed September 26, 2024).

¹⁰⁵ *Id.* at 9.

¹⁰⁶ *Id.* at 5.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 6.

¹⁰⁹ *Id.* at 6.

¹¹⁰ *Id.* at 9.

¹¹¹ *Id.* at 7.

¹¹² *Id.*

¹¹³ *Id.*; see also ORS 260.055.

¹¹⁴ Or. Secretary of State, *2024 Campaign Finance Manual*, p. 9 (2024),

<https://sos.oregon.gov/elections/Documents/campaign-finance.pdf> (last accessed September 26, 2024).

¹¹⁵ *Id.*

The Secretary of State has prescribed certain rules for candidate’s campaign accounts. To describe a few, the account must be opened at a financial institution that is located within the state.¹¹⁶ The account must be maintained in the name of the candidate committee, though the candidate can be named as an account holder.¹¹⁷ The campaign account cannot include any funds other than the contributions and other receipts received by the candidate committee.¹¹⁸ For more information, consult the Secretary of State’s 2024 Campaign Finance Manual.¹¹⁹

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.¹²⁰ 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**.¹²¹ 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.¹²² 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.¹²³ For more information, consult the Secretary of State’s 2024 Campaign Finance Manual.¹²⁴

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.¹²⁵ However, local charters and ordinances frequently provide a separate process for individuals to seek nominations.¹²⁶ 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.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ Or. Secretary of State, *Campaign Finance Manual*, p. 9 (2024), <https://sos.oregon.gov/elections/Documents/campaign-finance.pdf> (last accessed September 26, 2024).

¹²⁰ *Id.* at 14.

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.* at 15.

¹²⁴ *Id.*

¹²⁵ Or. Secretary of State, *County, City, and District Candidate Manual*, pg. 21 (2024), <https://sos.oregon.gov/elections/Documents/county-city-district-candidates.pdf> (last accessed September 27, 2024).

¹²⁶ *Id.*; see also LEAGUE OF OREGON CITIES, MODEL CHARTER FOR OREGON CITIES (2023), p. 9, [HTTPS://WWW.ORCITIES.ORG/DOWNLOAD_FILE/605/1852](https://www.orcities.org/download_file/605/1852) (last accessed September 27, 2024).

To file by fee, a candidate simply submits a form prepared by the Secretary of State and pays the applicable fee.¹²⁷ Local candidates must file with the city's election officer.¹²⁸ The fees for city offices, if any, are set by city's charter or ordinance.¹²⁹

The deadline for filing by fee is no later than the 70th day before a primary or general election.¹³⁰ The deadline for withdrawing a candidacy is three days later, or the 67th day before these elections.¹³¹ For those looking to file right away, candidates may file as early as the 250th day before a primary election, and the 15th day after the primary election for a general election.¹³²

Candidates can avoid paying a filing fee if they instead file by petition.¹³³ To do so, candidates first need approval from the city's election officer to distribute the petition.¹³⁴ 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.¹³⁵ 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.¹³⁶ 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.¹³⁷ 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.¹³⁸

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.¹³⁹ The elections official then sends the forms to the county elections official to

¹²⁷ Or. Secretary of State, *County, City, and District Candidate Manual*, p. 21 (2024), <https://sos.oregon.gov/elections/Documents/county-city-district-candidates.pdf> (last accessed September 27, 2024).

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ ORS 249.037.

¹³¹ ORS 249.170.

¹³² ORS 249.037; ORS 249.722.

¹³³ Or. Secretary of State, *County, City, and District Candidate Manual*, p. 21 (2024), <https://sos.oregon.gov/elections/Documents/county-city-district-candidates.pdf> (last accessed September 27, 2024).

¹³⁴ *Id.*

¹³⁵ *Id.* at 22.

¹³⁶ *Id.*

¹³⁷ *Id.* at 21.

¹³⁸ See, e.g., *Elections*, CITY OF BEND, <https://www.bendoregon.gov/government/departments/city-recorder/elections> (last accessed September 27, 2024).

¹³⁹ Or. Secretary of State, *County, City, and District Candidate Manual*, p. 21 (2024), <https://sos.oregon.gov/elections/Documents/county-city-district-candidates.pdf> (last accessed September 27, 2024).

confirm that each of the petition signatures was made by a registered city voter.¹⁴⁰ 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.¹⁴¹

The deadlines for a candidate to file by fee are the same deadlines for filing by petition.¹⁴² Significantly, however, a candidate filing by petition is not considered “filed” until their signature sheets have been verified by city and county officials.¹⁴³ 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 deadline and should file early to avoid complications.¹⁴⁴ Of course, it is possible for candidates to seek elected office as a **write-in candidate**.¹⁴⁵ Write-in candidates do not need to file with the city as a candidate but do need to comply with applicable campaign finance laws.¹⁴⁶

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.¹⁴⁷ This option is available to candidates who are seeking office in cities of more than 50,000 people.¹⁴⁸ For more information, consult the Secretary of State’s *State Voter’s Pamphlet Manual, last updated in January 2024*.¹⁴⁹

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.¹⁵⁰ The most obvious vacancies occur upon the death, adjudicated incompetence, or recall of an office incumbent.¹⁵¹ 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

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 25.

¹⁴⁶ *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, *2024 Campaign Finance Manual*, p. 21 (2024), <https://sos.oregon.gov/elections/Documents/campaign-finance.pdf> (last accessed September 27, 2024).

¹⁴⁷ Or. Secretary of State, *State Voters’ Pamphlet Manual*, p. 9 (2024), <https://sos.oregon.gov/elections/Documents/VPManual.pdf> (last accessed September 27, 2024).

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ See LEAGUE OF OREGON CITIES, MODEL CHARTER FOR OREGON CITIES (2023), p. 4-5, 7, 9-11, [HTTPS://WWW.OREGONCITIES.ORG/DOWNLOAD_FILE/605/1852](https://www.oregoncities.org/download_file/605/1852) (last accessed September 27, 2024).

¹⁵¹ *Id.*

meetings for longer than 60 days.¹⁵² 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.¹⁵³

In some cases, a city councilor might be absent for a prolonged period of time due to illness, injury, or temporary disability.¹⁵⁴ 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.¹⁵⁵

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.¹⁵⁶ 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.¹⁵⁷ 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.¹⁵⁸

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.¹⁵⁹ Instead, the oath of office requirement is found in each city’s local charter or ordinances.¹⁶⁰

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

¹⁵² *Id.* at 9-10.

¹⁵³ *Id.* at 10.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ ORS 221.160(1).

¹⁵⁷ *Id.*

¹⁵⁸ ORS 221.160(2).

¹⁵⁹ See League of Oregon Cities, FAQ on Oaths of Office, p. 2 (2023), https://www.orcities.org/download_file/382/1852 (last accessed September 27, 2024).

¹⁶⁰ *Id.*

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.¹⁶¹

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.¹⁶² A city might also require that the oath be reduced to writing; if so, this writing is subject to Oregon’s public records laws.¹⁶³

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.¹⁶⁴ Oregon 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.¹⁶⁵ 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.¹⁶⁶

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.¹⁶⁷ Second, the Oregon Constitution guarantees the right of local voters to seek initiative and referendum measures.¹⁶⁸ Oregon statutes provide a general process for voters, but cities may modify this process by charter or ordinance.¹⁶⁹ Third, state election law prescribes certain rules for cities to place referrals on the ballot.¹⁷⁰

¹⁶¹ LOC has been advised that some cities have modified their oaths of office regarding adherence to all laws of the United States. The status of marijuana in Oregon is at odds with federal laws regarding the substance. Because of this disconnect, some cities are considering recognizing this disconnect in their oaths of office.

¹⁶² *Id.* at 3.

¹⁶³ *Id.* at 4.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ Or. Secretary of State, *2024 Campaign Finance Manual*, p. 7 (2024), <https://sos.oregon.gov/elections/Documents/campaign-finance.pdf> (last accessed September 27, 2024).

¹⁶⁸ Or Const, Art IV, § 1(5).

¹⁶⁹ *Id.*

¹⁷⁰ Or. Secretary of State, *County, City and District Referral Manual*, p. 6, 8, 11, 14 (2024), <https://sos.oregon.gov/elections/Documents/ReferralManual.pdf> (last accessed September 27, 2024).

A. Campaign Finance Laws

Oregon’s campaign finance laws apply to ballot measures as well as candidates.¹⁷¹ In general, a petition committee must be created by the chief petitioners of any local initiative, referendum, or recall petition.¹⁷² For cities, the only applicable exception to the creation of a petition committee is a petition for disincorporation.¹⁷³ 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.¹⁷⁴

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.¹⁷⁵ 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 until it has verified that a petition committee has been created.¹⁷⁶ Furthermore, a petition committee cannot support more than one initiative, referendum, or recall petition.¹⁷⁷

By and large, petition committees operate the same as candidate committees.¹⁷⁸ The statement of organization must be filed with the Secretary of State’s Election Division.¹⁷⁹ 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.¹⁸⁰ For more information, consult the Secretary of State’s 2024 *Campaign Finance Manual*.¹⁸¹

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.¹⁸² This constitutional provision requires the Oregon

¹⁷¹ Or. Secretary of State, 2024 *Campaign Finance Manual*, p. 6 (2024), <https://sos.oregon.gov/elections/Documents/campaign-finance.pdf> (last accessed September 27, 2024).

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* at 9.

¹⁷⁶ *Id.* at 8.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* at 9-10.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* at 19.

¹⁸¹ *Id.*

¹⁸² Or Const, Art IV, § 1(5).

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.¹⁸³ Cities are prohibited from requiring more than 15% of voters to sign an initiative petition or more than 10% to sign a referendum petition.¹⁸⁴ Cities also cannot supersede certain state statutes.¹⁸⁵ This section will focus exclusively on the process for initiatives and referenda under state law.¹⁸⁶

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.¹⁸⁷ 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 enter) a specific real estate contract.¹⁸⁸ Similarly, a referendum can only target a city council’s legislation, not a past administrative or adjudicative decision.¹⁸⁹

Sometimes, it can be difficult to know if a local decision—an ordinance, resolution, order, etc.—is a legislative act or an administrative one.¹⁹⁰ To answer this question, Oregon courts assess the nature of the action also the “nature of the legal framework in which the action occurs.”¹⁹¹ In general, a legislative action is one that “makes policy of general applicability and is more than temporary in duration.”¹⁹² By contrast, an administrative action is one that “applies previous policy to particular actions.”¹⁹³ 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.¹⁹⁴

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

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ Or. Secretary of State, *County, City and District Initiative and Referendum Manual*, p. 3 (2024), <https://sos.oregon.gov/elections/Documents/countydistrictir.pdf> (last accessed September 27, 2024).

¹⁸⁶ See ORS 250.041, ORS 250.005 to 250.038.

¹⁸⁷ See *Foster v. Clark*, 309 Or 464, 471 (1990) (holding that initiatives and referenda are only authorized if they address “municipal legislation.”).

¹⁸⁸ See *Monahan v. Funk*, 137 Or 580, 585 (1931).

¹⁸⁹ 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.).

¹⁹⁰ See, e.g., *Foster*, 309 Or at 471.

¹⁹¹ *Foster*, 309 Or at 474.

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

constitution.”¹⁹⁵ 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.¹⁹⁶ 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.¹⁹⁷

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.¹⁹⁸ Local voters may start the process of initiating a measure at any time.¹⁹⁹

Under state law, the initiative process begins with the filing of a prospective petition.²⁰⁰ Prospective petitions must be submitted on a form prescribed by the Secretary of State.²⁰¹ It must list no more than three chief petitioners and must provide the text of the proposed initiative.²⁰² It also must designate whether the circulators of the petition would be paid.²⁰³ 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 identification number.²⁰⁴

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.²⁰⁵ Besides being legislative in nature (see above), initiatives must be limited to a **single subject** and any “matters properly connected therewith.”²⁰⁶ Oregon courts follow a two-part test when evaluating if an initiative petition contains a single subject.²⁰⁷ First, the text of the initiative must have a “unifying principle logically connecting all provisions” in the measure.²⁰⁸ Second, the court assesses if all parts of the measure are “properly connected” to that principle.²⁰⁹ In general,

¹⁹⁵ *Id.* at 471.

¹⁹⁶ *Id.* at 472.

¹⁹⁷ *Id.*

¹⁹⁸ Or. Secretary of State, *County, City and District Initiative and Referendum Manual*, p. 8 (2024), <https://sos.oregon.gov/elections/Documents/countycitydistrictir.pdf> (last accessed September 27, 2024).

¹⁹⁹ *Id.* at 5.

²⁰⁰ *Id.* at 7.

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.* at 8.

²⁰⁵ *Id.* at 7.

²⁰⁶ Or Const, Art IV, § 1(2)(d).

²⁰⁷ See *State v. Mercer*, 269 Or App 135, 138 (2015).

²⁰⁸ *Id.*

²⁰⁹ *Id.*

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.”²¹⁰ For example, in 2018, Portland voters approved an initiative that created a clean energy fund through a 1% gross receipts tax on large retailers.²¹¹ 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.²¹²

After reviewing the text to ensure that it complies with constitutional requirements, the local elections official must notify the chief petitioners of this determination.²¹³ 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**.²¹⁴ Significantly, the city’s determination on the constitutionality of the initiative can be challenged by any voter in circuit court.²¹⁵ If a voter files a challenge in circuit court, they must notify the county elections official by no later than 5:00 p.m. on the following business day.²¹⁶

A ballot title is a statement that describes what a measure will do if voters approve it.²¹⁷ A ballot title consists of three main parts: (1) a caption, (2) a question, and (3) a summary.²¹⁸ The **caption** cannot exceed 10 words and identifies the petition’s subject.²¹⁹ 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.²²⁰ The **summary** cannot exceed 175 words and must “concisely and impartially” summarize the initiative petition and its effect.²²¹ Upon receipt of the prospective petition, the city attorney has five business days to prepare the ballot title.²²²

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

²¹⁰ *Id.* at 139.

²¹¹ *About PCEF*, CITY OF PORTLAND, <https://www.portland.gov/bps/cleanenergy/about-pcef> (last accessed September 27, 2024).

²¹² *Id.*

²¹³ Or. Secretary of State, *County, City and District Initiative and Referendum Manual*, p. 7 (2024), <https://sos.oregon.gov/elections/Documents/countycitydistrictir.pdf> (last accessed September 27, 2024).

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.* at 7.

²¹⁷ *Id.* at 9.

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.*

petitioners.²²³ The notice may also be published on the city’s website for a minimum of seven days.²²⁴ 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 seven business days after a ballot title is filed.²²⁵ 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 seven business days from the ballot title filing.²²⁶ 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.²²⁷

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.²²⁸ 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.²²⁹ The official also must confirm that the chief petitioners have created a petition committee as required under Oregon’s campaign finance laws and that any challenges to the ballot title or initiative text are complete.²³⁰

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.²³¹ 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.²³² 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.²³³

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.²³⁴ Note that this is different from a petition being submitted 90 days before an election. Once a petition is

²²³ *Id.* at 10.

²²⁴ *Id.*

²²⁵ *Id.* at 7, 10.

²²⁶ *Id.* at 10.

²²⁷ *Id.*

²²⁸ *Id.* at 10-11, 24.

²²⁹ *Id.* at 10.

²³⁰ *Id.*

²³¹ *Id.* at 7.

²³² ORS 250.305.

²³³ Or. Secretary of State, *County, City and District Initiative and Referendum Manual*, p. 20 (2024), <https://sos.oregon.gov/elections/Documents/countycitydistrictir.pdf> (last accessed September 27, 2024).

²³⁴ *Id.* at 14.

submitted, two additional steps need to take place before this deadline.²³⁵ 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.²³⁶ Second, the city must file the initiative measure with the city's governing body at its next meeting.²³⁷ 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.²³⁸

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.²³⁹ 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.²⁴⁰ If the governing body approves the measure, then the measure goes into effect without the need for an election.²⁴¹ If the governing body rejects the measure, then the measure will be submitted to city voters at the next May or November election.²⁴² 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.²⁴³

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.²⁴⁴ Like initiatives, the process of putting a referendum on the ballot begins with a prospective petition.²⁴⁵ Unlike initiatives, a referendum petition happens quickly; a petition must be submitted with signatures no later than 30 days after an ordinance is adopted.²⁴⁶ Emergency ordinances take effect immediately and generally are not subject to referendum.²⁴⁷

²³⁵ *Id.*

²³⁶ *Id.* at 6.

²³⁷ *Id.* at 13.

²³⁸ ORS 221.230.

²³⁹ Or. Secretary of State, *County, City and District Initiative and Referendum Manual*, p. 6 (2024), <https://sos.oregon.gov/elections/Documents/countycitydistrictir.pdf> (last accessed September 27, 2024).

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ *Id.* at 4.

²⁴⁵ *Id.* at 16.

²⁴⁶ *Id.* at 5.

²⁴⁷ *See, e.g.*, PORTLAND, OR., CODE § 2.02.040(F) (2020).

Even though a referendum is a faster process, a prospective referendum petition must meet many of the same requirements as a prospective initiative petition.²⁴⁸ A referendum petition must be submitted on the same form, SEL 370, that is prescribed by the Secretary of State.²⁴⁹ 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.²⁵⁰ 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 identification number.²⁵¹

The process of filing a referendum petition does not provide time for local elections officials to review the constitutionality of the prospective petition.²⁵² 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.²⁵³ If a referendum petition is denied as not “legislative,” that decision can be challenged in circuit court.²⁵⁴ Oregon courts have jurisdiction to review a proposed referendum measure to determine if it is constitutional.²⁵⁵

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.²⁵⁶ The city attorney has five business days to do so.²⁵⁷ For information on what is required in the ballot title, see the previous section on local initiatives.²⁵⁸

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.²⁵⁹

²⁴⁸ Or. Secretary of State, *County, City and District Initiative and Referendum Manual*, p. 5 (2024), <https://sos.oregon.gov/elections/Documents/countycitydistrictir.pdf> (last accessed September 27, 2024).

²⁴⁹ *Id.* at 17.

²⁵⁰ *Id.*

²⁵¹ *Id.* at 16.

²⁵² *Id.*

²⁵³ 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.).

²⁵⁴ ORS 246.910.

²⁵⁵ See *Foster v. Clark*, 309 Or 464, 471 (1990).

²⁵⁶ Or. Secretary of State, *County, City and District Initiative and Referendum Manual*, p. 16 (2024), <https://sos.oregon.gov/elections/Documents/countycitydistrictir.pdf> (last accessed September 27, 2024).

²⁵⁷ *Id.*

²⁵⁸ See also *id.* at 19.

²⁵⁹ *Id.* at 16.

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.²⁶⁰ 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.²⁶¹

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.²⁶² The notice must also include the text of the ballot title or information on how to obtain a copy.²⁶³

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.²⁶⁴ This is different from an initiative, which requires petitioners to wait until the ballot title is complete to submit these sheets.²⁶⁵ 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.²⁶⁶ 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.²⁶⁷

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.²⁶⁸ Signature verification for a referendum petition does not need to be completed before the petition deadline.²⁶⁹ This process can take up to 15 days and may occur in the days following the 30-day deadline.²⁷⁰ Unless otherwise provided by local law, a referendum petition needs to be signed by no less than 10% of a city’s registered voters.²⁷¹

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.²⁷² Under state law, a referendum petition needs to be submitted no later than 90 days before an election to be on the ballot.²⁷³ In

²⁶⁰ *Id.* at 19.

²⁶¹ *Id.* at 16.

²⁶² *Id.* at 10.

²⁶³ *Id.*

²⁶⁴ *Id.* at 18.

²⁶⁵ *Id.* at 10.

²⁶⁶ *Id.* at 18.

²⁶⁷ *Id.*

²⁶⁸ *Id.* at 5.

²⁶⁹ *Id.* at 6.

²⁷⁰ *Id.* at 5, 19 (noting that the deadline is “the last day to submit signatures *for verification*”) (emphasis added).

²⁷¹ *Id.* at 5.

²⁷² *Id.* at 22.

²⁷³ *Id.*

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.²⁷⁴

C. Referrals

A referral, also known as a legislative referendum, is a method for city councils to propose a local law to voters.²⁷⁵ Instead of using a petition process, a city’s governing body can simply adopt a referendum that refers a measure for voters to decide.²⁷⁶

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.²⁷⁷ The city elections official then sends the referral to the city’s attorney, who has five business days to prepare a ballot title.²⁷⁸ Second, and alternatively, the city’s governing body can prepare the ballot title in advance and file it with the city election’s official.²⁷⁹ For information on what is required in a ballot title, see the above section on local initiatives.²⁸⁰

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 a minimum of seven days.²⁸¹ 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 seven business days after a ballot title is filed.²⁸² If so, the voter must also notify the county elections official of the case no later than 5:00 p.m. on the following business day.²⁸³

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 seven business days from the ballot title filing.²⁸⁴ The notice must also include the text of the ballot title or information on how to obtain a copy.²⁸⁵

If no challenge is filed against the ballot title, then the city is free to file the measure with the county elections official.²⁸⁶ Significantly, however, many cities will also be required to

²⁷⁴ ORS 221.230.

²⁷⁵ Or. Secretary of State, *County, City and District Referral Manual*, p. 3 (2024), <https://sos.oregon.gov/elections/Documents/ReferralManual.pdf> (last accessed September 27, 2024).

²⁷⁶ *Id.* at 5.

²⁷⁷ *Id.*

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ *See also id.* at 11.

²⁸¹ *Id.* at 10.

²⁸² *Id.*

²⁸³ *Id.*

²⁸⁴ *Id.* at 12.

²⁸⁵ *Id.*

²⁸⁶ *Id.* at 10-11.

provide an **explanatory statement** if the county is producing a county voters' pamphlet.²⁸⁷ An explanatory statement must be an impartial description of the referred measure and must be no more than 500 words in length.²⁸⁸

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 fourth Tuesday in August, or (4) the first Tuesday after the first Monday in November.²⁸⁹ The deadline for a city to submit their referral to the county (along with all other city measures) is the 61st day before the election.²⁹⁰

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.²⁹¹ 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.²⁹² For some cities, the process of referring an advisory question is identical to the local process of referring legislation.²⁹³

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.²⁹⁴ The complaint process for election offenses is found under ORS 260.345.²⁹⁵

²⁸⁷ *Id.* at 11

²⁸⁸ *Id.*

²⁸⁹ ORS 221.230.

²⁹⁰ ORS 254.095.

²⁹¹ *See, e.g.*, PORTLAND, OR., CODE § 2.04.125 (2020).

²⁹² *Id.*

²⁹³ *Id.*; *see also* PORTLAND, OR., CODE § 2.04.120 (2020).

²⁹⁴ ORS 260.345; OAR 165-001-0095; *see also* Or. Secretary of State Report an Election Law Violation website at <https://sos.oregon.gov/elections/Pages/election-law-violation.aspx> (last accessed September 27, 2024).

²⁹⁵ *Id.*

The enforcement process typically begins with the filing of a complaint by a registered voter.²⁹⁶ The complaint must state the “reason for believing” a violation of an election law or rule occurred, along with any related evidence.²⁹⁷ Anonymous complaints are not permitted.²⁹⁸ 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.²⁹⁹ The Elections Division may initiate investigations on their own, though, so enforcement is not entirely dependent on receiving a complaint.³⁰⁰

Next, the Elections Division has up to three business days to notify the person who is the subject of the complaint that the complaint has been received.³⁰¹ 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.³⁰² For civil violations, the complaint and any information compiled throughout the investigation is a public record and available to the public through a public records request.³⁰³

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.³⁰⁴ For more information on how to report an election law violation, consult the Oregon Secretary of State website found here: <https://sos.oregon.gov/elections/Pages/election-law-violation.aspx> (last accessed September 27, 2024).

²⁹⁶ ORS 260.345(1).

²⁹⁷ *Id.*

²⁹⁸ *Id.*

²⁹⁹ ORS 260.345(7).

³⁰⁰ ORS 260.345(8).

³⁰¹ ORS 260.345(3).

³⁰² *Id.*

³⁰³ *See* ORS 260.537.

³⁰⁴ *Id.*