

# 99<sup>TH</sup> ANNUAL CONFERENCE


BEND • OCTOBER 17-19



## Councilors' Workshop

PRESENTERS: JAYME PIERCE & PATTY MULVIHILL

**Council Rules of Procedure:  
Are They Working for Your  
City**



**Does Your Charter Help or  
Hinder Today's Challenges**



**How State and Federal  
Courts Have Impacted  
Cities in the Last Year**

**Workshop  
Agenda**



## RULES OF PROCEDURES

### Authority

It shall, by ordinance enacted by two-thirds vote of the whole Council, adopt rules for the government of its members and proceedings.<sup>1</sup>

The Council shall review these rules periodically and not less frequently than every two years at its second meeting in January of odd-numbered years to coincide with the possible election of new Council members. Amendments shall be adopted by ordinance, as required by the Charter. The Council rules are not intended to replace or supersede any applicable federal or state laws or regulations or provisions of the City Charter.

The Council may by majority vote in an open Council meeting waive any Council rule for a specific situation.

<sup>1</sup> Charter Chapter IV, Section 13

# Council Rules of Procedure: Are They Working for Your City

**Why Do We Need  
Them**

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**What Should They  
Address**

**Process**

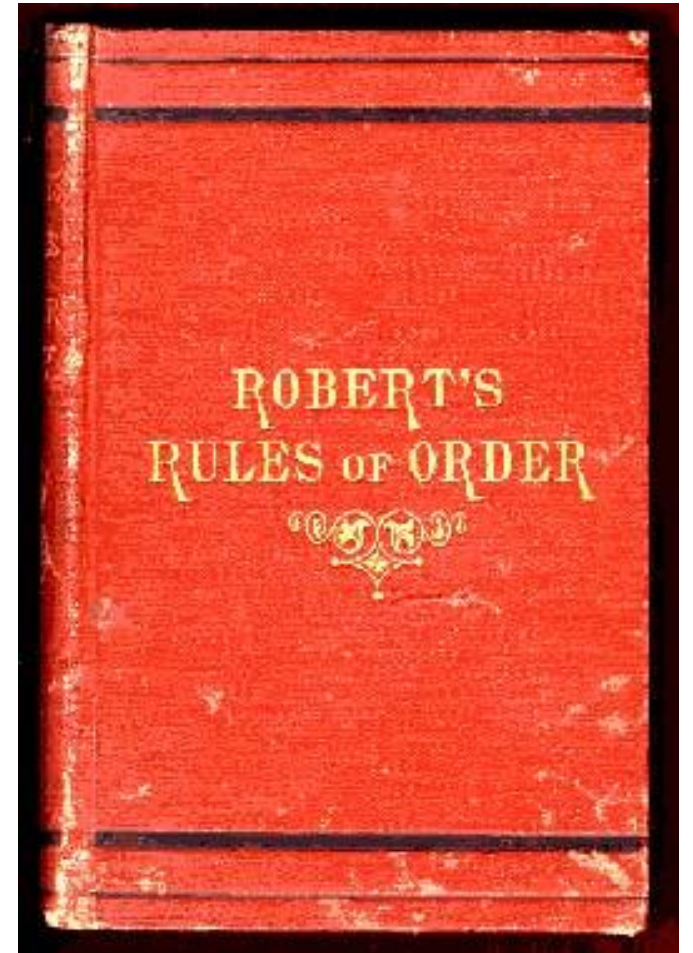
**Segment  
Agenda**



# Why Do We Need Rules

“Where there is no law, but every man does what is right in his own eyes, there is the least of liberty.”

— **Henry M. Robert**





Supports  
efficiency and  
consistency



Encourages  
courteous and  
respectful  
conversation



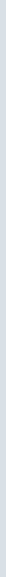
Provides  
guidance



Ensures  
continuity and  
stability



Manages and  
reduces conflict



# What Should They Address





General Governance



Meeting Logistics



Public Comment



Ethics



Decorum



Outside Statements and Social Media



Committees



Censure



Rules of Debate



Amendment and Repeal



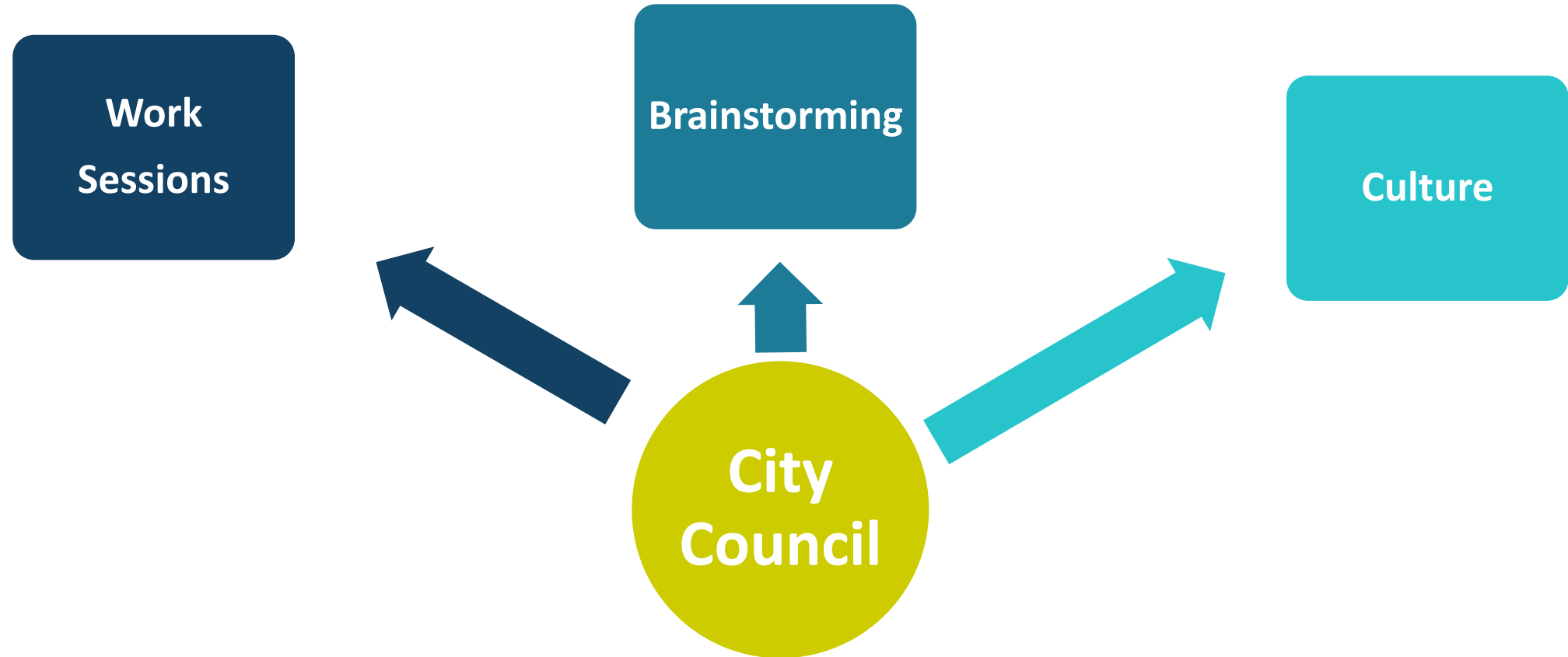
Other Items?



Process

# What is it that your council needs?

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# Bonus Items

Code of Ethics

Standards of Conduct

CITY OF FLORENCE

## CITY COUNCIL NORMS

### Interpersonal and Behavioral Norms:

- ◆ We assume good intentions.
- ◆ When we disagree, we will do so without being disagreeable.
- ◆ We will make space for everyone to speak.
- ◆ We will be respectful, open, and honest in our work and communications with each other.
- ◆ We will exercise humility.
- ◆ When we have concerns with a council colleague, we will address those concerns in a timely, respectful, and constructive manner.
- ◆ We will check ourselves in adherence to our norms and practice self-regulation; however the mayor may nudge us when we need nudging.
- ◆ Don't personalize policy disagreements, or take offense to what someone says as their truth .
- ◆ We will not criticize one another in public.
- ◆ We will seek to build relationships with our council colleagues outside of official duties.
- ◆ We respect each other by minimizing side conversations in our meetings.

### Procedural and Process Norms:

- ◆ We will wait to be recognized by the mayor before speaking.
- ◆ We will pay attention to each other; listen and don't interrupt.
- ◆ We don't undermine the decisions made by the council (for example, if you voted against a policy that passed, you will still support the effective implementation of the policy despite not supporting the policy itself).
- ◆ We will address each other using titles during council meetings.
- ◆ In public, staff will use titles when speaking to the council and council uses first names for staff.
- ◆ When past or present elected officials are at council meetings, the mayor will publicly acknowledge their attendance.
- ◆ As a rule, we will notify staff of media requests and/or appearances to avoid surprises and staff will support with messaging and coordination.
- ◆ The mayor represents the council to the media on issues of "ends" and will consult with council colleagues as appropriate and staff answer questions on the "means".
- ◆ We will share/repost/link to official city social media but will not engage in debate or dialogue with the public via social media.
- ◆ Council members may reply directly to emails/calls to acknowledge the message was received; however, they should take the appropriate time to reflect and coordinate with staff and council on an answer before responding.

Rob Ward  
Mayor

Sally Wantz  
President

Bill Meyer  
Vice-President

Jo Beaudreau  
Councilor

Robert Carp  
Councilor





Council-Manager  
**CHARTER**

**BAKER CITY**

BAKER COUNTY  
STATE OF OREGON



**VOTED BY THE PEOPLE**  
**MAY 16, 1952**

**Proclaimed by Mayor and Effective Date**

**MAY 21, 1952**

Revised by vote: May 21, 2002

Proclaimed by Mayor Effective: November 4, 2002

Amendments in: May, 2006; May 2020; November 2022

\*Proposal was referred to the people by the Council at the election May 16, 1952, and approved by a majority of 833 (1975 Yes and 1142 No). Baker City had a Commission form of government when on May 19, 1950, the people voted approval of the original Council-Manager Charter. The Council-Manager Charter of May 16, 1952, herein, replaced the original Council-Manager Charter, and completely repealed all prior Charter Provisions, which the 1950 document did not do.

# Does Your Charter Help or Hinder Today's Challenges

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**Necessity of Review**

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graph TD; A[Necessity of Review] --> B[LOC Flags]; B --> C[New Ideas]; C --> D[Process];
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**LOC Flags**

**New Ideas**

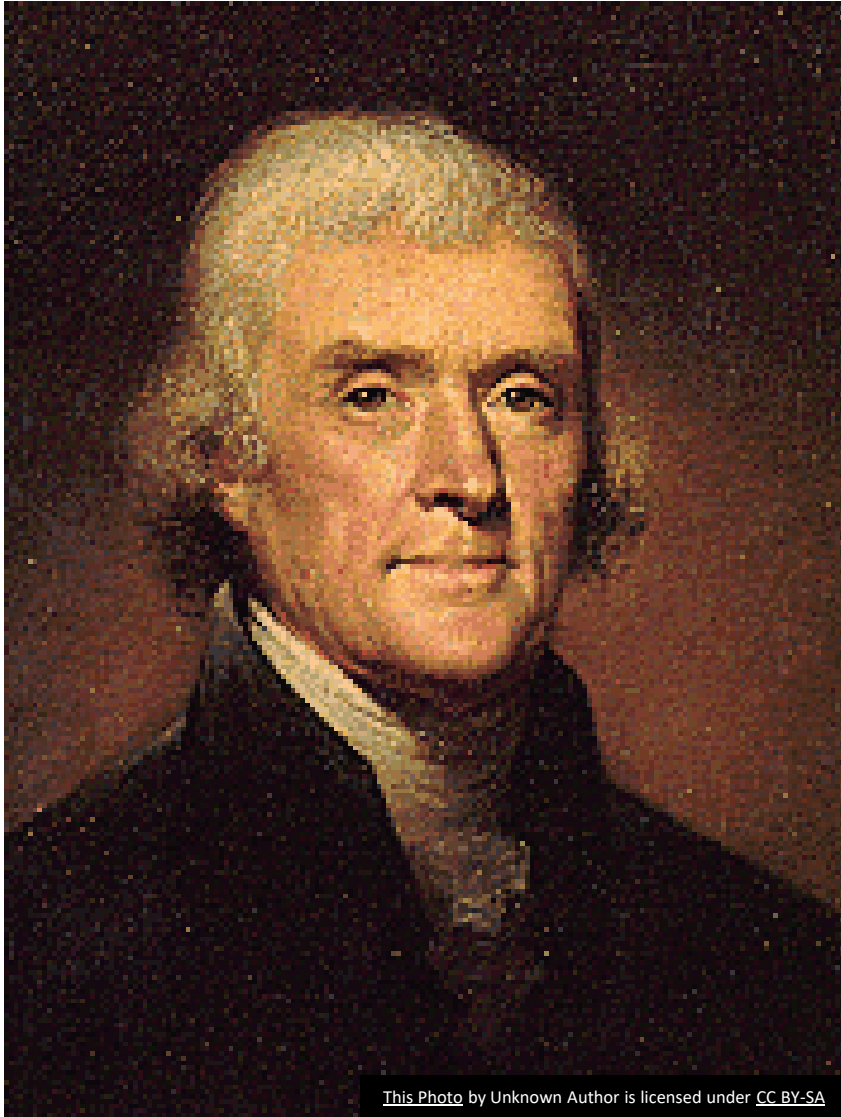
**Process**

**Segment  
Agenda**



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# Necessity of Review



This Photo by Unknown Author is licensed under [CC BY-SA](#)

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"I am not an advocate for frequent changes in laws and constitutions, but laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths discovered and manners and opinions change, with the change of circumstances, institutions must advance also to keep pace with the times. We might as well require a man to wear still the coat which fitted him when a boy as a civilized society to remain ever under the regimen of their barbarous ancestors."

# Common Reasons for Review

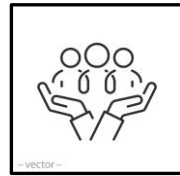
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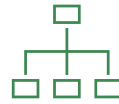
**Change in the  
Law**



**Complexity**



**Representation**



**Structure**



**Accountability**



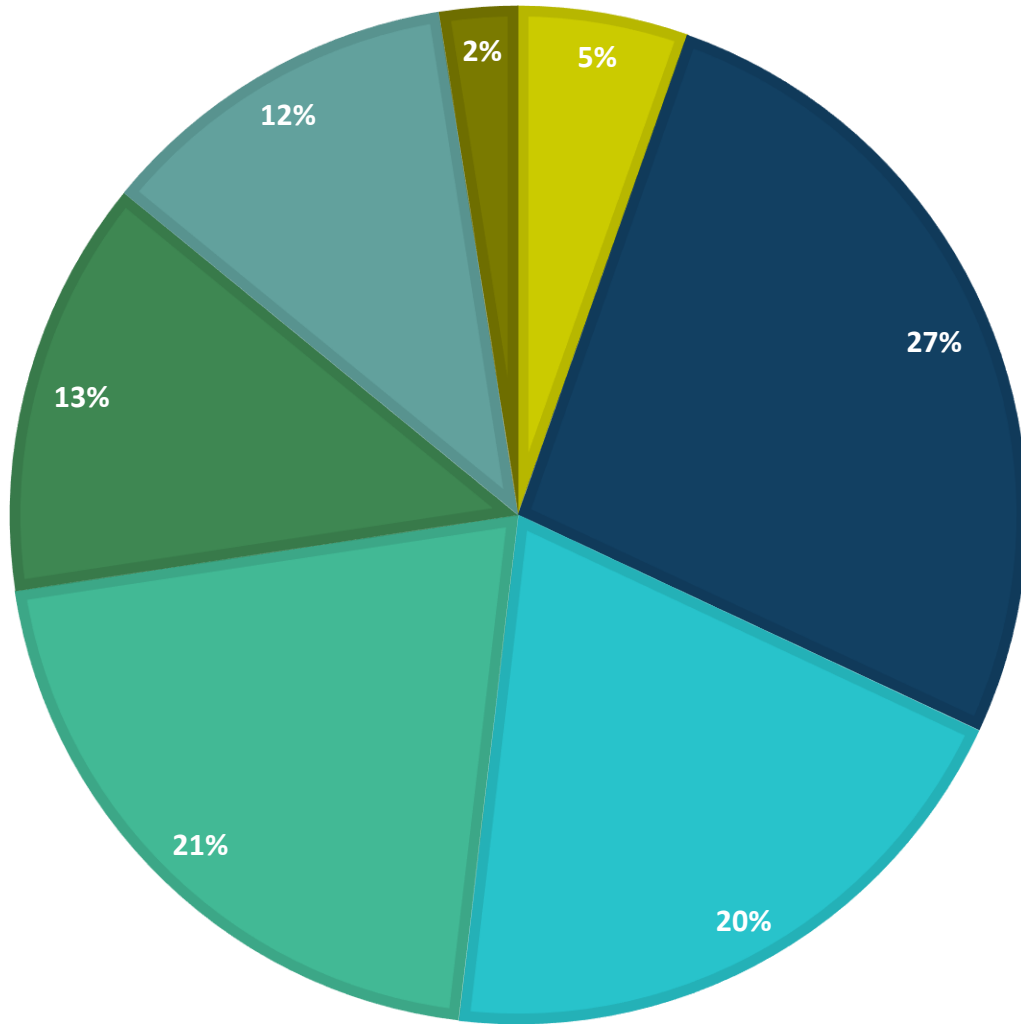
**Poor  
Performance**



**Standard  
Practice**

**Review ≠ Change**

■ Since 2020   ■ 2010 - 2019   ■ 2000 - 2009   ■ 1990 - 1999



# Charter Amendments in Oregon

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# LOC Flags

# Worth a Second Look

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TERMS OF OFFICE



OATHS OF OFFICE



ATTORNEY/JUDGE



VACANCIES



AGENDAS



SPECIFICITY

**Consistent Terms & Proper Grammar Matter**



New Ideas

# What LOC Is Seeing

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<b>Mayoral Role</b>	<b>Extension of Terms</b>	<b>Term Limits</b>	<b>Wards</b>
<b>Value Statements</b>	<b>Equity Considerations</b>	<b>Elected Official Compensation</b>	<b>Residency Requirements</b>
<b>Voter Approval</b>	<b>Veto Powers</b>	<b>Rank Choice Voting</b>	<b>Ordinance Readings</b>

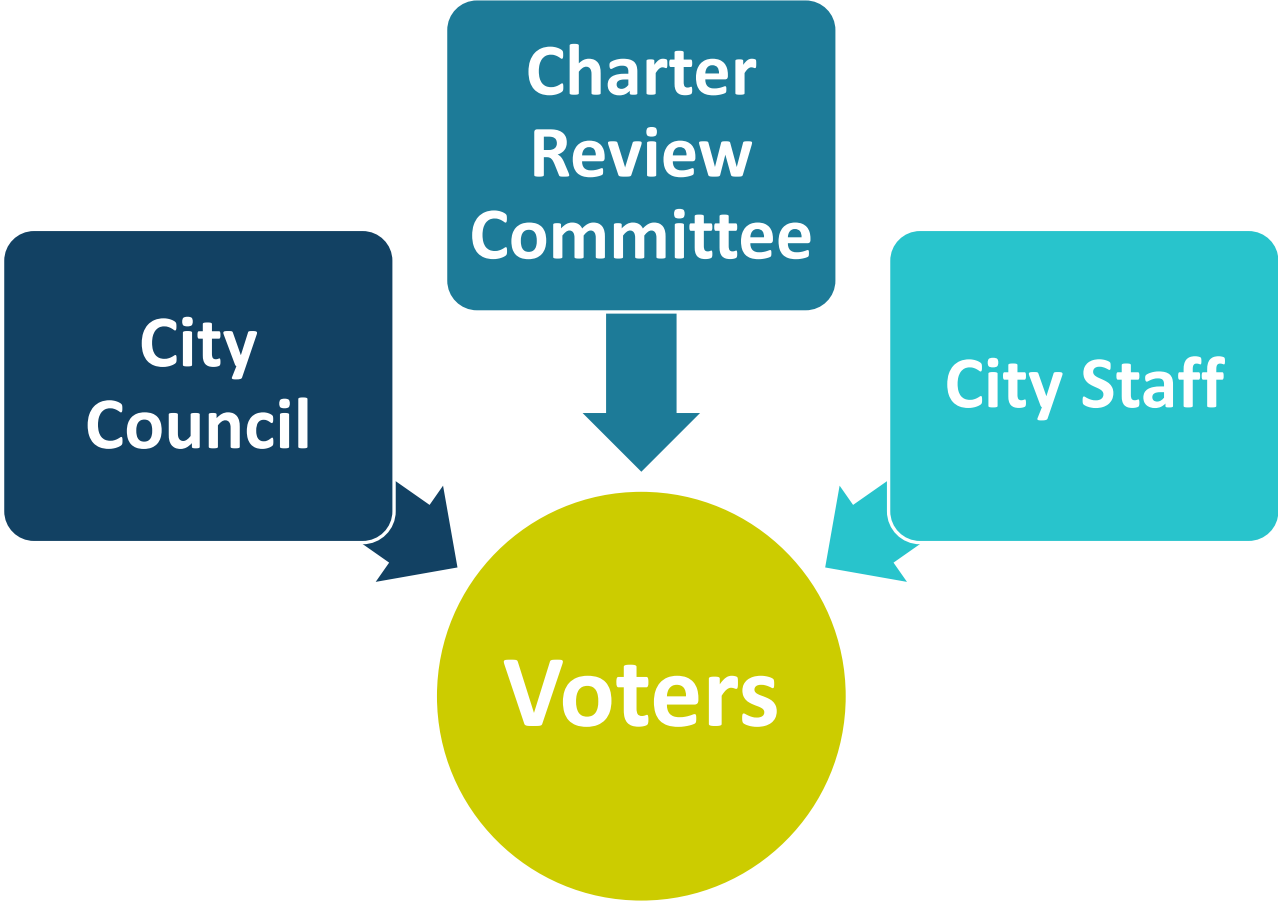




Process

# Common Process

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# How State & Federal Courts Have Impacted Oregon Cities in the Last Year

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WHAT COUNCILORS SHOULD KNOW

# Segment Agenda

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Quick Facts on Court System



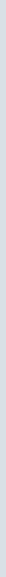
The Elephant in the Room – *Grants Pass*



Decisions from State Courts



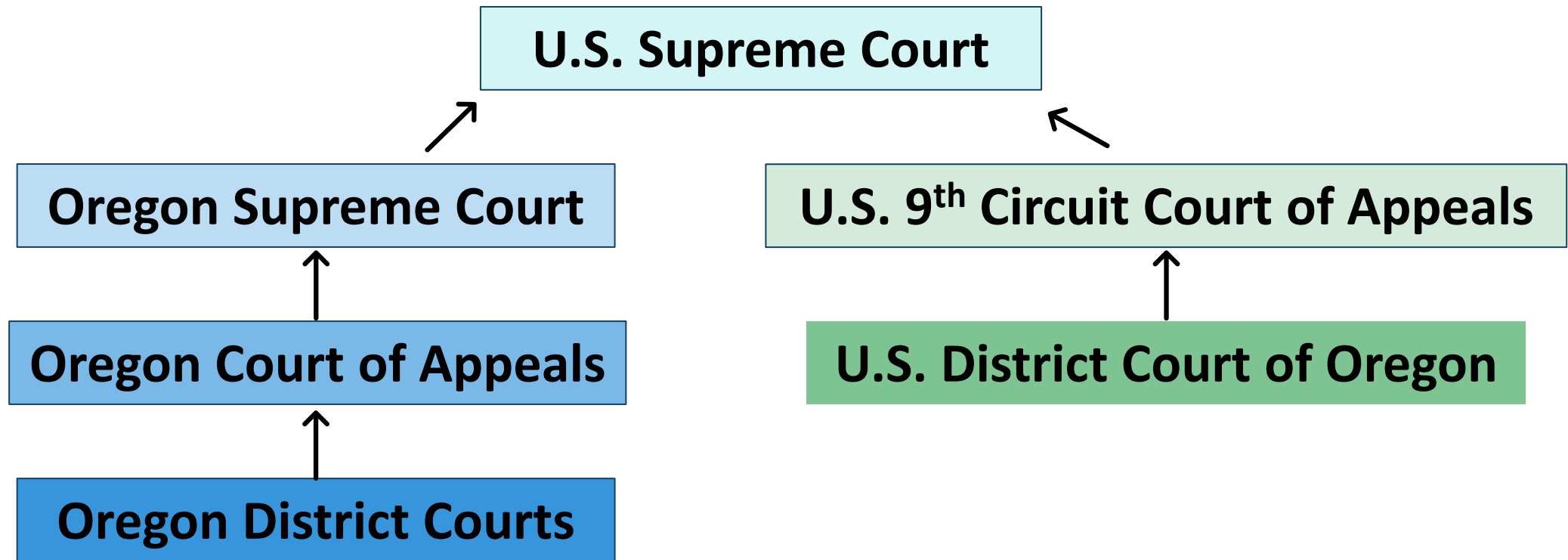
Decisions from Federal Courts

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# Quick Facts on the Court System

# Judicial Hierarchy

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# Oregon Courts

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## Supreme Court

- Chief Justice
- 7 Justices

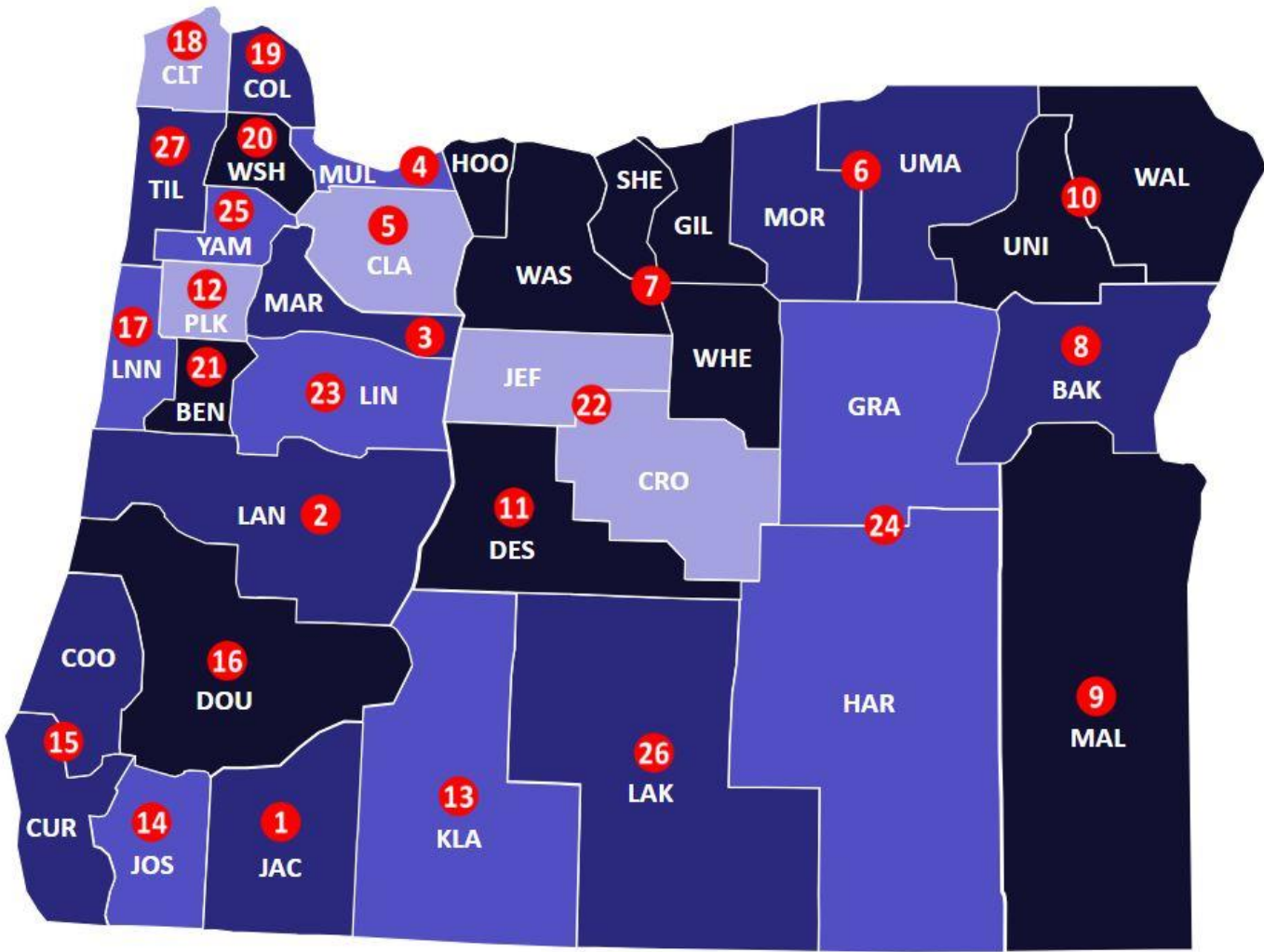
## Oregon Court of Appeals

- Chief Judge
- 13 Judges

## Oregon District Courts

- 36 Circuit Courts
- 179 Circuit Court Judges
- 27 Judicial Districts





# Oregon's Judicial Districts

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# Federal Courts

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## Supreme Court

- Chief Justice
- 9 Justices

## 9<sup>th</sup> Circuit Court of Appeals

- Chief Judge
- 51 Judges

## U.S. District Court, Oregon

- Chief Judge
- 9 District Judges
- 11 Magistrate Judges



# U.S. 9th Circuit Court of Appeals

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# Elephant in the Room

# *Johnson v. Grants Pass*

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REGULATING PUBLIC SPACES – PERSONS EXPERIENCING HOMELESSNESS

U.S. SUPREME COURT

# Facts / History

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**In September of 2018 – *Martin v. Boise* decided.**

**In July of 2020 – *Blake v. Grants Pass (now Johnson v. Grants Pass)* decided, with en banc review resulting in additional decisions.**

**Both cases state that prohibiting a person, who has nowhere else to go, from sitting, sleeping, lying, keeping warm & dry, and/or taking rudimentary precautions from the elements, is cruel and unusual punishment, which violates the 8<sup>th</sup> Amendment to the U.S. Constitution.**



**Being homeless or unhoused is not a status.**



**The 8<sup>th</sup> Amendment is not violated when a camping ordinance, which is generally applicable, regulates public spaces.**



**Reversed and remanded for issues like standing, excessive fines, and class status/certification.**

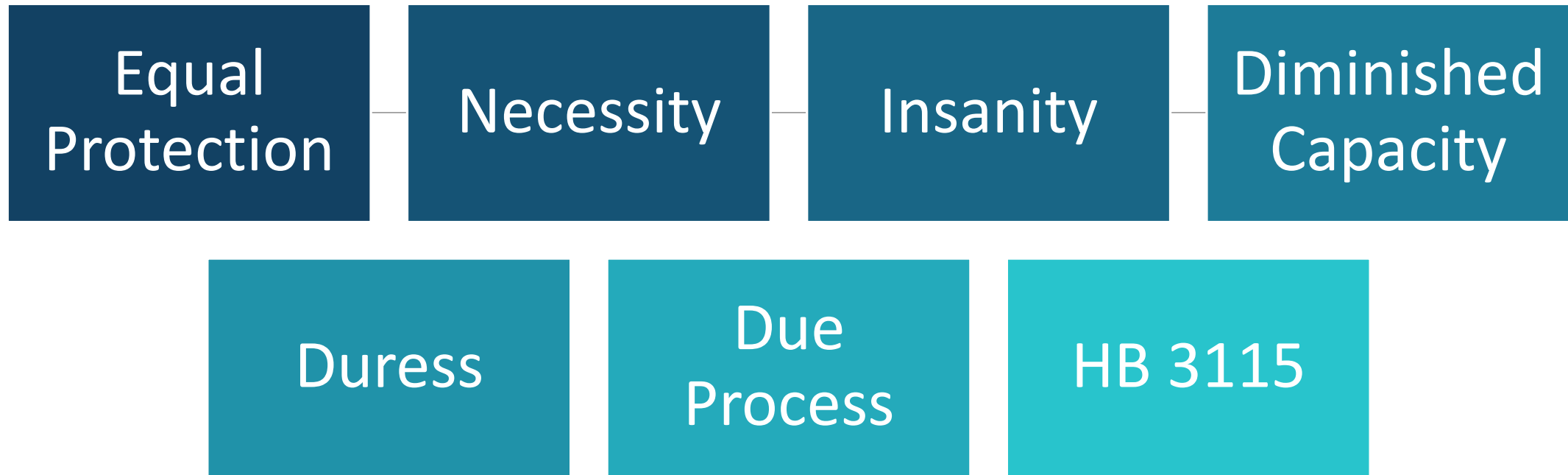


**Homelessness is complex. Its causes are many. So may be the public policy responses required to address it....**

**Yes, people will disagree over which policy responses are best: they may experiment with one set of approaches only to find later another set works better; they may find certain responses more appropriate for some communities than others. But in our democracy, that is their right.**

**Nor can a handful of federal judges begin to “match” the collective wisdom the American people possess in deciding “how best to handle” a pressing social question like homelessness. The Constitution’s Eighth Amendment serves many important functions, but it does not authorize federal judges to wrest those rights and responsibilities from the American people and in their place dictate this Nation’s homelessness policy.**





## Potential Areas of Future Litigation

*But Here in  
Oregon .....*

**Any ordinance which regulates the acts of sitting, lying, sleeping or keeping warm and dry outdoors on public property that is open to the public must be objectively reasonable as to time, place and manner with regards to persons experiencing homelessness.**

# Reasonableness – Look to *Medford*?

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Low Barrier Shelters  
and Car Camping  
Permitted

City Invested in Affordable  
Housing, Contributed to  
Shelters, and Made Space  
Available for Camping  
(Tent and Car)

A person merely engaging in  
the life-sustaining activities of  
sleeping, resting, or seeking  
shelter were not implicated  
in the ordinance language.

Lengthy public process  
before ordinance  
adoption with all  
interested people

Multi-jurisdictional team  
provided “resources first,  
enforcement last”  
approach to educate and  
inform public.

Frequent notice to public  
of enforcement acts.

# What's the Councilor To Do?

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City Conversation



Show Your Work



Use Your Voice



# State of Oregon Cases

# *Fields v. Newport*

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RECREATIONAL IMMUNITY

OREGON COURT OF APPEALS

# Facts

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**A woman fell and broke her leg while she was walking home from the beach on a city of Newport trail she used to get to and from Agate Beach. The trail was an improved trail.**

# Primary Complaint / Argument

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**Walking on the trail  
was recreational  
activity**

**City's Position**

**Walking on the trail  
was using the trail to  
get to beach where  
recreation would occur**

**Woman's Position**



# Secondary Complaint / Argument

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**Any trail adjacent to recreational facility provides immunity**



**Only unimproved trails adjacent to recreational facility provides immunity**



**Walking is not always recreational – question of fact for a jury to decide.**



**Recreational immunity only provided to adjacent landowners who have unimproved trails, not to landowners with improved trails.**

**Decision\***

# Temporary Fix

82nd OREGON LEGISLATIVE ASSEMBLY—2024 Regular Session

Enrolled  
**Senate Bill 1576**

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary for Senator Floyd Prozanski)

CHAPTER \_\_\_\_\_

AN ACT

Relating to civil matters; creating new provisions; amending ORS 17.095, 105.668, 105.672, 105.688 and 646A.589; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

**SECTION 1.** ORS 646A.589 is amended to read:  
646A.589. (1)(a) The Attorney General may serve an investigative demand upon any person that possesses, controls or has custody of any information, document or other material that the Attorney General determines is relevant to an investigation of a violation of ORS 646A.570 to 646A.589 or that could lead to a discovery of relevant information. An investigative demand may require the person to:

(A) Appear and testify under oath at the time and place specified in the investigative demand;  
(B) Answer written interrogatories; or  
(C) Produce relevant documents or physical evidence for examination at the time and place specified in the investigative demand.

(b) The Attorney General shall serve an investigative demand under this section in the manner provided in ORS 646.622. The Attorney General may enforce the investigative demand as provided in ORS 646.626.

(2)(a) An attorney may accompany, represent and advise in confidence a person that appears in response to a demand under subsection (1)(a)(A) of this section. The person may refuse to answer any question on constitutional grounds or on the basis of any other legal right or privilege, including protection against self-incrimination, but must answer any other question that is not subject to the right or privilege. If the person refuses to answer a question on grounds that the answer would be self-incriminating, the Attorney General may compel the person to testify as provided in ORS 136.617.

(b) The Attorney General shall exclude from the place in which the Attorney General conducts an examination under this subsection all persons other than the person the Attorney General is examining, the person's attorney, the officer before which the person gives the testimony and any stenographer recording the testimony.

(3)(a) The Attorney General shall hold in confidence and may not disclose to any person any documents, including data protection assessments, answers to interrogatories and transcripts of oral testimony, except that the Attorney General may disclose the documents to:

(A) The person that provided the documents or the oral testimony;  
(B) The attorney or representative of the person that provided the documents or oral testimony;

Adds “running, walking, and cycling” to the definition of recreational purposes until July 1, 2025.

# What's the Councilor To Do?

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Talk with City  
Attorney/Manager/CIS



Tell Your Legislators  
Why a Fix Is Needed



Follow LOC's Legislative  
Alerts in 2025

# *City of Cornelius v. DLCD*

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OREGON AGENCY RULEMAKING AUTHORITY - CFEC

OREGON COURT OF APPEALS - APPEALS TO SUPREME COURT

# Facts

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**The Land Conservation & Development Commission (DLCD), pursuant to an Executive Order issued by former Governor Brown in 2020, adopted 89 administrative rules in 2022 known as the Climate-Friendly and Equitable Communities (CFEC) rules to reduce greenhouse gas emissions.**

# CFEC Broadly Does

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Requires certain local governmental entities to update land use and transportation plans to:

- ❖ Allow for greater residential density.
- ❖ Reduce the amount of land reserved for parking.
- ❖ Reduce residents' vehicle travel miles.
- ❖ Provide infrastructure for electric vehicles.
- ❖ Designate climate-friendly areas and adopt plans to meet requirements of those new areas.\*

Applicable to

Albany	Gladstone	Medford
Ashland	Gold Hill	North Plains
Bend	Grants Pass	Phoenix
Central Point	Gresham	Troutdale
Coburg	Happy Valley	Rogue River
Cornelius	Hillsboro	Salem
Corvallis	Jacksonville	Sherwood
Durham	Keizer	Springfield
Eugene	Lake Oswego	Tualatin
Fairview	McMinnville	Wood Village



# Primary Complaint / Argument

---

**Exceeded Statutory  
Authority & Improper  
Process**

**City's Position**

**Met Statutory  
Requirements &  
Substantially  
Complied with Process**

**State's Position**



**With two exceptions, LCDC had statutory authority to enact regulations.**



**While not perfect, LCDC's notice was good enough and substantially compliant.**

**Decision**

## The “Huh” Moment of the Opinion

“While we agree with petitioners that ORS 183.335(2)(b)(B)’s reference to the law the agency intends to implement is a reference to the *substantive* law an agency intends to implement, and not just a reference to its general rulemaking authority, its purpose is nonetheless to give the public information on the agency’s thinking as a procedural matter and does not require the agency to be correct...”

# What's the Councilor To Do?

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You and Staff Need to  
Monitor Rulemaking



Tell Your Legislators  
Why a Fix Is Needed



Follow LOC's *Bulletin*  
for Case Updates

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# Federal Courts

# *St. Timothy's Episcopal Church v. Brookings*

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RELIGIOUS LAND USE & INSTITUTIONALIZED PERSONS ACT

UNITED STATES DISTRICT COURT OF OREGON

# Facts

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**Church provided free meals to residents in need for well over a decade, increasing the frequency over time, to multiple times per year. City passed an ordinance restricting meal service from the zoning district to no more than two times per week but required a conditional use permit to do so – church did not have a conditional use permit.**

# Primary Complaint / Argument

---

**City's regulations  
were permissible  
under federal law.**

**City's Position**

**City's regulation  
violated church's  
freedom of religious  
expression**

**Church's Position**





**Regulation placed a substantial burden on the church's religious exercise.**



**City's regulation was not shown to be the least restrictive means of achieving a compelling government interest.**

**Decision**

## Notes on RLIUPA

Religious Exercise = Any exercise of religion, whether or not compelled by, or central to, a system of religious belief.

Substantial burden is one where the government regulation puts substantial pressure on a religious adherent to modify their behavior and violate their beliefs.

# What's the Councilor To Do?

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Ask Staff for RLIUPA Training



Make Sure Planning Commission  
Trained

# *Miller v. Heimuller*

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FIRST AMENDMENT APPLICATIONS TO PUBLIC MEETINGS

UNITED STATES DISTRICT COURT OF OREGON



# Facts

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**911 Special District banned a city council member from attending meetings in-person, requiring him to attend virtually – alleging the council member’s past behavior was threatening towards district employees.**

# Primary Complaint / Argument

---

**In-person attendance at public meeting not required by Constitution & Can Prospectively Ban if Virtual Provided.**

**District's Position**

**In-Person Attendance is Protected by First Amendment & Cannot Prospectively Ban**

**Plaintiff's Position**



**In-Person Attendance at a Government's Public Meeting is Protected First Amendment Expressive Speech.**



**Cannot Prospectively Ban Someone from Public Meeting Based on Past Conduct – If Disruptive During Meeting You Kick Out.**

**Decision**

# What's the Councilor To Do?

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Double Check Your  
Rules of Procedure



Troubleshoot Concerns  
with City Attorney/CIS



Safety Concerns  
Discussed with Police



# *NRA v. Vullo*

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FIRST AMENDMENT & GOVERNMENT COERCION

UNITED STATES SUPREME COURT



# Facts

---

**New York Dept. of Financial Services threatened to investigate and penalize insurance entities that did business with the NRA.**

# Primary Complaint / Argument

---

**New York officials were exercising their city's first amendment rights to free speech.**

**New York's Position**

**City officials were coercing other entities with threats of punishment to restrain their own free speech.**

**NRA's Position**



**Government officials cannot use the power of the government to punish or suppress disfavored expression.**



**Government officials also cannot coerce a private party to punish or suppress disfavored speech on the government's behalf.**

**Decision**

# What's the Councilor To Do?

---



Don't Make Threats



Work with Staff to Identify  
Appropriate Conduct



Limit Enforcement Actions  
to Permissible Actions

# *Sheetz v. County of El Dorado*

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FIFTH AMENDMENT, TAKINGS CLAUSE – IMPACT FEES

UNITED STATES SUPREME COURT

# Facts

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**County adopted a traffic impact fee as a condition of receiving a building permit. While the rate takes into account the type of development the amount is not based on the cost specifically attributable to the particular project on which the fee is imposed. Owner wanted to build a pre-fab house and was required to pay \$23,420 fee.**

# Primary Complaint / Argument

---

Because the fee was a legislative act, the *Nolan/Dolan* test does not apply and exaction is not occurring.

County's Position

Conditioning his permit on traffic impact fee was unlawful exaction in violation of Takings Clause.

Owner's Position





**Legislative enacted impact fees (SDC's) are subject to *Nolan/Dolan* analysis.**



**Did not decide that legislatively enacted impact fees are unconstitutional.**



**Did not address whether impact fees that are imposed generally on a class of properties violate *Nolan/Dolan*.**

**Decision**

## *Nolan/Dolan*

Step 1: Does the condition/fee have an “essential nexus” to the government’s land use interest.

Step 2: The condition/fee must have “rough proportionality” to the development’s impact on the land-use interest.

# What's the Councilor To Do?

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Assess Your SDC's



SDC's Reviews Ask for  
*Nolan/Dolan* Review



Watch Legislative/Legal  
Alerts from LOC

# *Lindke v. Freed*

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FIRST AMENDMENT – PUBLIC OFFICIAL'S SOCIAL MEDIA USE

UNITED STATES SUPREME COURT



# Facts

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**City manager used his personal Facebook page to post information that was both about his private life and his work at the city. Resident posted comments that were negative about city and manager deleted posts and blocked resident.**

# Primary Complaint / Argument

---

**The page was a private and personal page, not subject to First Amendment.**

**Manager's Position**

**The City Manager's page was a public forum b/c of posts about city, deleting and blocking violated 1<sup>st</sup> Amendment.**

**Resident's Position**



**Merits not decided – court remanded back to lower court for findings of fact based on new legal rules.**



**Speech is attributable to government if the official possessed actual authority to speak on State's behalf.**



**And, official purported to exercise that authority when he spoke on social media.**

**Decision**

## *Authority to Act and Speak*

Looking & functioning like public page is not the key – authority to act and speak is the key

If what you are commenting on is not within your purview, you have no authority

Authority comes from written law and from custom and usage

Authority to speak may apply on social media even if law doesn't explicitly reference social media



## *Tips*



**Disclaimers about page being only personal views provides heavy presumption of personal content only.**



**Investigation into specific posts and authorities required when you mix personal and public posts on social media.**



**Sharing official city posts on personal page more clearly keeps your page private.**



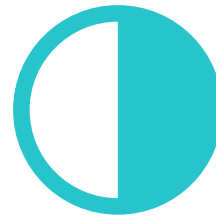
**Blocking someone on a mixed-use page is exposing yourself to high levels of liability.**

# What's the Councilor To Do?

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Know what authority  
you have to speak/act



Separate your public  
and private lives



Learn your city's social  
media policies

