

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR MULTNOMAH COUNTY

ELONA WILSON and ISABELA	)	
VILLARREAL,	)	
	)	
Petitioners,	)	Case No. 22CV23601
	)	
v.	)	
	)	
ROBERT L. TAYLOR, Portland City	)	OPINION
Attorney,	)	
	)	
Respondent.	)	

**INTRODUCTION**

Pursuant to Chapter 13 of the Portland City Charter (Charter), the Charter Commission approved a measure for the November 2022 ballot that, if approved by the voters, would substantially change the structure and operation of city government and the process for electing city officials. Petitioners brought this action pursuant to ORS 250.296 and ORS 28.010, contending that the ballot title prepared by the City Attorney for this measure does not comply with ORS 250.035(1)(c), and the explanatory statement does not comply with ORS 251.215.<sup>1</sup>

Respondent contends that judicial review of the ballot title is limited under ORS 256.296(1) to determining whether the title is “insufficient, not concise, or unfair.” Respondent contends that the City’s ballot title is fair, concise, and sufficient in compliance with the statute. Similarly, respondent contends that the explanatory statement complies with ORS 251.215 because it is impartial, simple, and understandable.

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<sup>1</sup> James L. Posey also submitted a brief opposing the City Attorney’s ballot title. The court will treat Mr. Posey’s brief as an *amicus curiae* (friend of the court) submission and grants Mr. Posey’s request to have his views considered in this action.

For the reasons explained below, the court concludes that the City’s ballot title and explanatory statement do not fully comply with statutory standards. The court modifies the ballot title and explanatory statement as set forth below.

## **DISCUSSION**

### **Background**

In December 2020, the City Council appointed twenty Portland residents to serve on the Charter Commission in accordance with Charter Section 13-301(a). The Charter Commission’s task is “to review and recommend amendments to” the Charter. *Id.* In June 2022, after a lengthy public process, seventeen of the twenty Charter Commissioners voted to advance to the November 2022 ballot a measure changing the structure and operation of Portland’s City government and the method for electing city officials.<sup>2</sup>

As described in the Charter Commission’s report, the measure, if adopted, would make three significant changes to Portland’s governmental structure designed to make the city “more accountable, transparent, efficient and effective, responsive, and representative of every area of our city.” Charter Commission Progress Report #6, p. 20. First, the measure shifts management of the city’s operations to a City Administrator, supervised by the mayor. Second, the measure expands the City Council to twelve members, with three members elected to represent Portland residents in four geographic districts. Third, the proposal adopts “ranked choice voting” for electing city officials.

Section 2.04.110 of the Portland City Code (Code) requires the City Attorney to prepare a ballot title and explanatory statement for a measure referred to the voters by the Charter Commission. The ballot title and explanatory statement must conform “with the requirements of

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<sup>2</sup> The Charter Commission’s initial vote occurred on June 14, 2022; on June 21, seventeen Charter Commissioners voted to clarify the effective dates of the measure.

state law.” Code Section 2.04.110 A(1)(c). Under ORS 250.296, any elector dissatisfied with the City’s ballot title may file a petition for judicial review stating the reasons the elector believes the ballot title is “insufficient, not concise or unfair.”

Respondent does not dispute that ORS 250.296 authorizes, by implication, a challenge to the explanatory statement to be published in the Voters’ Pamphlet for compliance with statutory standards. Under ORS 251.215, the explanatory statement for a statewide ballot measure must be an “impartial, simple and understandable statement explaining the measure” in 500 words or less. Similarly, in a county that prepares a county voters’ pamphlet that includes a city measure, the city is required to submit “an impartial, simple and understandable statement explaining the measure and its effect.” ORS 251. 345.

Petitioners timely filed this challenge to the City Attorney’s ballot title and explanatory statement, contending that the ballot title is “insufficient, not concise or unfair,” and the explanatory statement is not “impartial, simple and understandable.

#### **Ballot Title—Caption and Question**

Under ORS 250.035(1), a ballot title for a city measure must consist of: “(a) A caption of not more than 10 words which reasonably identifies the subject of the measure; (b) A question of not more than 20 words which plainly phrases the chief purpose of the measure so that an affirmative response to the question corresponds to an affirmative vote on the measure; and (c) A concise and impartial statement of not more than 175 words summarizing the measure and its major effect.”

The City Attorney prepared the following ballot title caption and question:

#### **CAPTION**

Amends Charter: Changes the structure of Portland’s government

## QUESTION

Should City Administrator, supervised by Mayor, manage Portland with twelve Councilors representing four districts making laws and voters ranking candidates?

Petitioners contend that the Question does not comply with statutory requirements because the syntax “gets in the way of clarity, and the description of rank choice voting is unhelpful and potentially misleading.” *Amicus* Posey contends that the ballot title does not adequately explain the novelty and complexity of the ranked choice voting processes. The court agrees with those contentions, in part. Although the City Attorney’s Question is concise and fair, it is insufficient because it is not understandable, in part because of its syntax and in part because of its use of the phrase “voters ranking candidates” at the end of the sentence. The alternative Question proposed by petitioners is better, though still somewhat difficult to understand.

The court concludes that the ballot title caption and question set forth below will be sufficient to comply with statutory requirements:

## CAPTION

Amends Charter: Changes Portland’s government structure and process for electing city officials<sup>3</sup>

## QUESTION

Should Administrator manage city government, 12-member Council (three from each district) make laws, voters elect officials using ranked choice process?

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<sup>3</sup> The court does not count the words “Amends Charter” in the 10-word limit for the caption, consistent with ORS 250.035(2)(a) (“Amends Constitution” not included in word limit for caption for measure that amends the Oregon Constitution), and *Portland Police Assn. v. Civil Serv. Brd.*, 292 Or 433, 440 (1982) (“A city’s charter is, in effect, the city constitution”). See *Bennett v. City of Portland*, Multnomah County Circuit Court case no. 17CV08376, opinion dated March 15, 2017, at n. 2 (applying principle).



## **Ballot Title—Summary**

The City Attorney prepared the following summary:

### **SUMMARY**

The Charter Commission proposed a measure to change Portland's government.

Currently, Council is one Mayor and four Commissioners elected citywide. Council makes laws. Mayor and Commissioners directly manage bureaus. Portlanders vote for one candidate per office in May primaries, possible November runoffs.

If measure is approved, City Administrator – supervised by Mayor – would manage daily operations, including hiring, firing and supervising most bureau directors. Council makes laws. Mayor would not be part of Council but could break tie votes on non-emergency ordinances. Independent Salary Commission would set elected officials' salaries. Council would expand to twelve Councilors and seats would shift from citywide to four new geographic districts – created by Independent District Commission – with three Councilors representing each district. Voters would rank candidates in order of preference, with Councilors elected by district using single transferrable vote ranked choice voting and Mayor and Auditor elected citywide using instant runoff ranked choice voting. Ranked choice voting eliminates primaries. Cost estimate is 0.9 to 8.7 million dollars annually. Other provisions.

Petitioners contend that there are two problems with the City Attorney's summary: (1) the description of ranked choice voting—especially the use of the terms “instant runoff ranked choice voting” and “single transferrable vote ranked choice voting”—fails to plainly describe how voting under this system differs from our current system; and (2) the cost estimate of 0.9 to 8.7 million dollars annually is speculative and misleading. Petitioners also propose using bullet points to make the summary more understandable. *Amicus* Posey contends that the City Attorney's summary does not adequately explain the processes for tallying and reallocating votes under the two ranked choice methods proposed by the measure.

The court agrees with petitioners' first point; the court also agrees that bullet point organization will make the summary more understandable. The court agrees with respondent

that the cost estimates provided by the City Budget Office should be included in the summary.

The court further agrees with petitioners and *amicus* Posey that the ranked choice processes are not adequately explained. Accordingly, the court approves the following summary:

## SUMMARY

Charter Commission's proposal to change structure of Portland city government.

Currently, City Council includes one Mayor and four Commissioners elected citywide. Council makes laws; Mayor and Commissioners directly manage bureaus. Voters choose one candidate per office in citywide primary elections with runoff elections if necessary.

If measure is approved:

- City Administrator, supervised by Mayor, manages daily operations, including hiring, firing, and supervising bureau directors
- Council expanded to twelve members; City divided into four geographic districts created by Independent District Commission; three Councilors elected to represent each district
- Council makes laws. Mayor may introduce laws, vote to break ties on non-emergency ordinances
- Independent Salary Commission sets elected officials' salaries
- City elections use "ranked choice voting" process that allows voters to rank candidates in order of preference instead of casting a single vote; primary elections eliminated. For citywide offices (Mayor, Auditor), votes tallied in rounds until single candidate receives majority. For Councilors, votes tallied and reallocated in rounds until three candidates in each district meet election threshold.
- Cost estimate: \$900,000 to \$8.7 million annually
- Includes other provisions

## Explanatory Statement

The City Attorney drafted a 500-word explanatory statement to be published in the Voters' Pamphlet pursuant to ORS 251.215 and Portland City Code Section 2.04.110. Petitioners contend that the City Attorney's explanatory statement does not comply with the statute, which requires the statement to be an "impartial, simple and understandable statement explaining the measure." Petitioners propose an alternative statement that, in

petitioner's view, makes the explanation simpler and more understandable by making changes in format, syntax and organization. Respondent does not object to petitioners' non-substantive formatting and syntax changes, but objects to the proposed re-organization of the measure's three primary changes to city government.

The court agrees with petitioners that the City Attorney's explanatory statement can be simplified and made more understandable by making non-substantive changes in formatting, syntax, and wording. The court agrees with respondent that the organization should be consistent with the organizational structure of the ballot title. Accordingly, the court approves the following explanatory statement:

The Portland Charter Commission recommends amending the City Charter to reform the structure and operation of city government. The recommendations, made after months of study and community engagement, are supported by seventeen of the twenty Charter Commission members.

The measure includes three interdependent reforms:

**(1) City Administrator, supervised by Mayor, manages City**

**Currently:** City Council, consisting of Mayor and four Commissioners, exercises legislative and executive powers. Executive power includes managing city bureaus.

**If measure is approved:** City Council continues to exercise legislative power to make laws. A City Administrator hired by Mayor and confirmed by Council exercises executive power to implement laws and manage city bureaus. City Administrator hires, fires, and supervises bureau directors. Mayor is not a member of City Council but may introduce laws and break tie votes on non-emergency ordinances. An Independent Salary Commission of human resource professionals sets elected officials' salaries.

**(2) City Council expanded to 12; three from each of four new geographic districts**

**Currently:** City Council consists of five members—one Mayor and four Commissioners—elected citywide.



**If measure is approved:** City Council expands to 12 members, elected from four new geographic districts, with three Councilors representing each district. An Independent District Commission draws district boundary lines, to be adjusted every decade beginning in 2030 based on census population data.

**(3) City officials to be elected using “ranked choice voting” process**

**Currently:** Qualified Portland voters cast one vote for each candidate for each office in citywide election for Mayor, Auditor, City Council members. If no candidate for an office receives more than 50% of votes at May primary, the top two candidates compete in November runoff election.

**If measure is approved:** Voters may rank candidates in order of preference, with votes tallied in rounds until there is a winner. Ranked choice voting results in one general election, eliminating primary elections.

Ballot tallying methods depend on the office. For officials chosen at a citywide election—Mayor and Auditor—an “instant runoff” process is used to count ballots in rounds. If no candidate receives over 50% of the votes in the first round, the candidate receiving fewest votes is eliminated, and that candidate’s votes are transferred to each voter’s next-highest ranked candidate. The process continues for as many rounds as necessary until a candidate exceeds a 50% majority. For City Council seats, a “single transferrable vote” method is used. Candidates win when they exceed a threshold set by the number of available positions. Ballots are counted in rounds; any candidate exceeding the threshold is elected, and that candidate’s votes above the threshold are proportionally transferred to other candidates based on voters’ preference. The candidate receiving the fewest votes each round is eliminated, and that candidate’s votes are transferred to other candidates based on voters’ preferences. The process continues for as many rounds as necessary until all positions are filled.

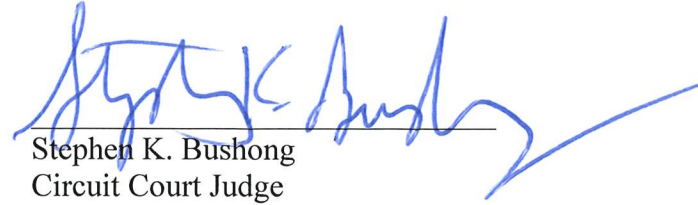
The City Budget Office estimates the cost of implementing the measure is about \$900,000 to \$8.7 million annually, representing about 0.1 to 1.4% of Portland’s discretionary funding.



## CONCLUSION

Pursuant to ORS 250.296, the court approves the ballot title and explanatory statement as modified in this opinion.<sup>4</sup> Respondent's counsel should submit a form of judgment consistent with this opinion.

Dated this 15<sup>th</sup> day of August, 2022.



Stephen K. Bushong  
Circuit Court Judge

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<sup>4</sup> Non-substantive formatting changes can be made to the ballot title and explanatory statement approved by the court as needed for printing ballots and publishing the Voters' Pamphlet efficiently. According to the Word Count tool included in the Microsoft Word application used by the court, the ballot title and explanatory statement approved by the court comply with the statutory word limits. The court's ballot title uses 10 words in the caption, 20 words in the question, and 175 words in the summary. The court's explanatory statement uses 500 words.