

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

JOY ALICE DAVIS,

Petitioner,

LOUISE HANSEN, SIMONE REDE

Respondents.

Case No. 24CV11288

ORDER AND OPINION FINDING  
INITIATIVE PDX24OL-02  
UNCONSTITUTIONAL IN PART

**I. INTRODUCTION**

Oral argument on Petitioner’s Challenge to initiative petition PDX-24-OL-02 occurred on April 26, 2024. Petitioner Joy Davis was represented by Kelly Simon. Intervenor Will Aitchison was represented by Aaron Landau. Louise Hansen and Simone Rede, the City of Portland Respondents, were represented by Maia Haium. After considering the oral arguments of the parties, their written memoranda and attachments, as well as the amicus brief submitted by Portland Forward, the Court finds that the initiative petition violates the Oregon Constitution because it is administrative, not legislative, in nature, contrary to Article IV, section 1(5).

**II. BACKGROUND**

Petitioner challenges Portland initiative petition PDX-24-OL-02, a proposed Portland City Charter amendment on the grounds that it violates Article IV of the Oregon Constitution. The Petition is brought pursuant to ORS 250.270. Petitioner challenges the constitutionality of the measure on two grounds. First, that it violates the requirement that an initiative be truly

legislative in nature, rather than administrative. Second, that it violates the Constitution's single subject requirement.

**Initiative PDX-24-OL-02** reads as follows:

**CAPTION** Amends Charter: Increases police patrol officers, detoxification centers, street response services.

**QUESTION** Should Portland increase and maintain police officers in patrol; create 24-hour drug/alcohol detoxification centers; increase street response services?

### **SUMMARY**

#### **Currently:**

- The Police Chief has discretion to allocate police bureau resources, including work assignments like patrol duties for members of the police bureau

- County governments are the primary local authorities for behavioral health, which includes both mental health services and substance abuse services. Drug and alcohol treatment centers are available within the City, but not a detoxification drop-off center

- In addition to county programs, the City – through Portland Street Response – uses criteria to deploy qualified mental health providers via self-dispatch or in response to 911 or 311 calls

#### **If measure is approved, amended City Charter will require Council to:**

- Increase and maintain number of sworn police officers in patrol services
- Create and maintain 24-hour drug/alcohol detoxification drop-off and treatment centers
- Increase and maintain street response services, including social workers working with police and fire personnel to reduce violence and connect people with services

- Fund with marijuana tax, license, general and other revenue
- Issue annual public compliance report

### III. ANALYSIS

#### a. Article IV, section 1(5)—Legislative or Administrative

Article IV, section 1(5) reserves to “the qualified voters of each municipality and district” the initiative power reserved to the people by Article IV, section 1(2), “as to all local, special and municipal legislation of every character in or for their municipality or district.”<sup>1</sup> The Oregon Supreme Court has long recognized that this provision creates “a dichotomy between ‘administrative’ matters, as to which the initiative and referendum are not available, and ‘legislative’ matters, as to which such powers are available.” *Foster v. Clark*, 309 Or 464, 472 (1990) (citing *Long v. City of Portland*, 53 Or 92, 98 (1908); *Monahan v. Funk*, 137 Or 580, 587 (1931)). The court has stated that a particular activity is “administrative” and not “legislative” “if it does not set a new policy, but merely carries out legislative policies and purposes already declared.” *Lane Transit District v. Lane County*, 327 Or 161, 168 (1998), (citing *Monahan*, 137 Or at 584).

In *Lane Transit District*, the court reviewed a proposed initiative measure that, if enacted, would reduce the current salary of the district’s general manager and establish procedures by which the salary could be increased, concluding that the measure was “administrative” in nature. The court explained that existing statutes “declare as legislative policy of the state that the board of the transit district shall have the power to appoint a general manager for the district, to fix the

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<sup>1</sup> Article IV, section 1(2) states that the people “reserve to themselves the initiative power, which is the power to propose laws and amendments to the Constitution and enact or reject them at an election independently of the Legislative Assembly.”

terms of employment for that position, including compensation (*i.e.*, salary and benefits), and to remove the general manager.” 327 Or at 169. That existing statutory structure “constitutes a ‘completed legislative plan’ for [the district]’s appointment, compensation, and removal of a general manager.” *Id.* (quoting *Foster*, 309 Or at 473).

In *Foster*, the court held that a proposed initiative measure to rename Martin Luther King, Jr., Boulevard was administrative, not legislative, in nature. The court explained that determining whether a particular activity is administrative or legislative “often depends not on the nature of the action but the nature of the legal framework in which the action occurs.” 309 Or at 474. The legal framework in that case consisted of Portland City Code (PCC) provisions that “contain a complete scheme for changing Portland city street names, including rules on petition forms, fees, review by various City officials, and final consideration by the City Council.” *Id.* at 473. Those PCC provisions, the court concluded, amounted to “a completed legislative plan, requiring no further legislative contribution.” *Id.*

In *Rossolo v. Multnomah County Elections Div.*, 272 Or App 572 (2015), the Court of Appeals held that a petition that sought to refer parts of an ordinance that amended county code provisions regulating transient lodging taxes was administrative, not legislative, in nature. The court explained that the proposed measure “precludes a particular expenditure of transient lodging taxes, a closely circumscribed factual situation, and does not establish or repeal general policies applicable to expenditures of tax funds.” *Id.* at 587. “Most importantly, adoption of the pledge of tax funds and the convention center hotel bond funding portions of the ordinance were preordained and compelled by the previously adopted intergovernmental agreement and board resolution.” *Id.* at 587-88. Legislative choices, the court explained, “are discretionary in nature, and are not required to be made.” *Id.* at 588.

In *State ex rel Dahlen v. Ervin*, 158 Or App 253 (1999), the Court of Appeals held that a proposed initiative that would amend the Multnomah County Charter to establish new requirements for the siting of community corrections facilities was legislative, not administrative, in nature. The court explained that, unlike the proposed initiatives at issue in *Foster and Lane Transit District*, this initiative “does not attempt to change a specific siting decision of the county but, rather, to change the framework within which the county makes siting decisions.” *Id.* at 257. The court concluded that “[a]dopting a policy, and establishing procedures for implementing that policy, are the essence of legislation.” *Id.*

In making a determination as to the constitutionality of Initiative PDX-24-OL-02, Louise Hansen, the City’s Elections Officer, noted that some of the initiative’s provisions “veer toward the administrative, rather than the legislative.” Those provisions identified by Hansen were Section 2-1101 “governing the number of patrol officers, and requiring what could be a one-time increase in their numbers,” and Section 2-1105 “requiring Council to issue an annual report, which is the type of activity that has historically been assigned to executive or administrative functions of the City.” Nonetheless, the City, through Hansen, determined the initiative to be constitutional, noting however that the decision was a “limited review of constitutional conformity.”

Petitioner Davis disagrees with the City’s determination of constitutional compliance. Petitioner Davis focuses on the provision for increasing patrol officer numbers as violative of Article IV, section 1(5). Intervenor Aitchison, in contrast, supports the City’s determination of constitutionality as to the patrol officer provision, arguing that a mandate to increase patrol officers does not constitute an administrative decision because it does not require that any particular staffing decision be made once the initiative passes.

The Court agrees with the arguments put forth by Petitioner and *Amicus* Home Forward, rather than the City and Intervenor. With regard to increasing patrol officers, the proposed initiative seeks to dictate a decision within the existing legislative plan, rather than amending the existing legislative plan. Portland Police Bureau Directive 0060.40 “establishes standardized protocols for the movement of personnel within the Bureau.” Initiative PDX-24-OL-02 clearly contemplates that an increase in patrol officers would come from other units or divisions in PPB. This initiative clearly seeks to increase the size of the PPB patrol division within the existing administrative framework for officer allocation and the transfer of individual officers from other divisions into patrol. For this reason, the Court finds that the Initiative proposes an impermissible administrative change in the consideration about how and whether to transfer PPB officers from other positions into the patrol division.

#### **B. Single Subject Test**

Petitioner also challenges whether Initiative PDX-24-OL-02 meets constitutional requirements for an initiative to cover but a single subject. Because this Court has determined that the Initiative is impermissibly administrative and cannot appear as drafted on the ballot, there is no need to reach the single subject analysis. If this Initiative returns to the Circuit Court for review, it could be in a substantially revised form. Should that occur, the single subject analysis would be performed again on different language—making any analysis here moot.

#### **IV. CONCLUSION**

For the reasons set forth above, Petitioner’s constitutional argument prevails and this ballot

title, as written, may not appear on the November ballot.

Petitioner is invited to submit a judgment consistent with this ruling.

It is SO ORDERED this 9<sup>th</sup> day of May, 2024.

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Katharine von Ter Stegge  
Circuit Court Judge