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3  
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
5 FOR THE COUNTY OF MULTNOMAH

6 ANDREW HOAN, an individual,

7 Plaintiff,

8 v.

9 MARY HULL CABALLERO, City of  
10 Portland Auditor, LOUISE HANSEN, City of  
Portland Elections Officer,

11 Defendant.

Case No. 22CV23479

CITY OF PORTLAND’S ANSWER AND  
COUNTERCLAIM

Filing fee – ORS 21.135(1),(2)(f)

Fees deferred at filing pursuant to ORS 20.140

12  
13 For its answer to Plaintiff’s Complaint, the City of Portland (“City”) responds to  
14 Plaintiff’s allegations in correspondingly numbered paragraphs as follows:

15 1.

16 The City is without sufficient information to admit or deny the allegations set forth in  
17 paragraph 1 and thus denies those allegations.

18 2.

19 The City admits the allegations set forth in paragraph 2.

20 3.

21 The City denies the allegations set forth in paragraph 3.

22 4.

23 The City admits that Exhibit 1 is a true copy of the City Elections Officer’s December  
24 16, 2020, decision. Exhibit 1 speaks for itself and thus requires no response. The City  
25 denies the remaining allegations set forth in paragraph 4.  
26

1 5.

2 Paragraph 5 contains legal conclusions and thus requires no response.

3 6.

4 The City admits that Exhibit 2 contains the full measure referred by the Charter  
5 Commission. The City denies the remaining allegations set forth in paragraph 6.

6 7.

7 The City admits that some elements of the Charter Commission’s measure are listed  
8 in paragraph 7. The City denies the remaining allegations set forth in paragraph 7.

9 8.

10 The City admits that the Charter Commission’s measure includes elements, some of  
11 which are enumerated in the bullet points included in paragraph 8. The last bullet point  
12 stating “Other unrelated changes” is vague and ambiguous, thus the City is without sufficient  
13 information to admit or deny that allegation. The City denies the remaining allegations set  
14 forth in paragraph 8.

15 9.

16 Paragraph 9 contains legal conclusions and thus requires no response.

17 10.

18 Paragraph 10 contains legal conclusions and thus requires no response.

19 11.

20 The Charter Commission’s report speaks for itself and thus requires no response. The  
21 City admits that Exhibit 3 contains the full Charter Commission report. The City denies the  
22 remaining allegations set forth in paragraph 11.

23 12.

24 Paragraph 12 contains legal conclusions and thus requires no response. The City  
25 specifically denies the implication that a City elections officer has a constitutional duty to  
26 conduct pre-election reviews of referred measures. The City denies the remaining allegations

1 set forth in paragraph 12.

2 13.

3 Paragraph 13 contains legal conclusions and thus requires no response.

4 14.

5 Paragraph 14 contains legal conclusions and thus requires no response.

6 15.

7 Paragraph 15 contains legal conclusions and thus requires no response.

8 16.

9 Paragraph 16 contains legal conclusions and thus requires no response.

10 17.

11 Paragraph 17 contains statements of law that, as such, require no response.

12 18.

13 Paragraph 18 contains statements of law that, as such, require no response.

14 19.

15 Paragraph 19 contains statements of law that, as such, require no response.

16 20.

17 Paragraph 20 contains statements of law that, as such, require no response.

18 21.

19 Paragraph 21 contains statements of law that, as such, require no response.

20 22.

21 Paragraph 22 contains statements of law that, as such, require no response.

22 23.

23 The City denies the allegations set forth in paragraph 23.

24 24.

25 The City denies the allegations set forth in paragraph 24.

26 ///

1 25.

2 The City denies the allegations set forth in paragraph 25.

3 26.

4 Paragraph 26 contains legal conclusions and thus requires no response.

5 27.

6 OAR 165-014-0028 and the cited caselaw speak for themselves and thus require no  
7 response. The remaining allegations set forth in paragraph 27 contain legal conclusions and  
8 thus require no response.

9 28.

10 Paragraph 28 contain statements of law that, as such, require no response. The City is  
11 without sufficient information to admit or deny the remaining allegations set forth in  
12 paragraph 28 and thus denies those allegations.

13 29.

14 The City admits that Exhibit 4 is a copy of the July 8, 2022, letter sent by Plaintiff to  
15 the City and that the City posted the letter on its website. The letter speaks for itself and thus  
16 requires no response.

17 30.

18 The City admits that Exhibit 5 is a copy of the July 12, 2022, letter sent by the City to  
19 Plaintiff and that the City posted the letter on its website. The letter speaks for itself and thus  
20 requires no response.

21 31.

22 The City denies the allegations set forth in paragraph 31.

23 32.

24 The City admits that Exhibit 6 is a copy of the March 2, 2022, memorandum  
25 published by the Charter Commission. The memorandum speaks for itself and thus requires  
26 no response.

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33.

The City is without sufficient information to admit or deny the allegations set forth in paragraph 33 and thus denies those allegations.

34.

The City is without sufficient information to admit or deny the allegations set forth in paragraph 34 and thus denies those allegations.

35.

The City is without sufficient information to admit or deny the allegations set forth in paragraph 35 and thus denies those allegations.

36.

The City is without sufficient information to admit or deny the allegations set forth in paragraph 36 and thus denies those allegations.

37.

The City is without sufficient information to admit or deny the allegations set forth in paragraph 37 and thus denies those allegations.

38.

The City is without sufficient information to admit or deny the allegations set forth in paragraph 38 and thus denies those allegations.

39.

The City is without sufficient information to admit or deny the allegations set forth in paragraph 39 and thus denies those allegations.

40.

The City is without sufficient information to admit or deny the allegations set forth in paragraph 40 and thus denies those allegations.

41.

The City admits that Commissioner Mingus Mapps was quoted in the Willamette

1 Week. The City is without sufficient information to admit or deny the remaining allegations  
2 set forth in paragraph 41 and thus denies those allegations.

3 42.

4 Paragraph 42 contains statements of law that, as such, require no response. The City  
5 denies the remaining allegations set forth in paragraph 42.

6 43.

7 The City denies the allegations set forth in paragraph 43.

8 44.

9 The City denies the allegations set forth in paragraph 44.

10 45.

11 Paragraph 45 contains statements of law that, as such, require no response. The City  
12 denies the implication that the cited law applies to this matter.

13 46.

14 The City admits the allegations set forth in paragraph 46.

15 47.

16 The City is without sufficient information to admit or deny the allegations set forth in  
17 paragraph 47 and thus denies those allegations.

18 48.

19 The City is without sufficient information to admit or deny whether Plaintiff is a  
20 registered voter and an elector of the City of Portland. The City denies the remaining  
21 allegations set forth in paragraph 48.

22 49.

23 The City denies the allegations set forth in paragraph 49.

24 50.

25 The City denies the allegations set forth in paragraph 50.

26 ///

1 51.

2 The City denies the allegations set forth in paragraph 51.

3 **FIRST CLAIM FOR RELIEF**

4 **(Review under ORS 246.910)**

5 The City reasserts and incorporates by reference all above responses to paragraph 1  
6 through 51.

7 52.

8 The City denies the allegations set forth in paragraph 52.

9 53.

10 The City denies the allegations set forth in paragraph 53.

11 54.

12 The City denies the allegations set forth in paragraph 54.

13 55.

14 The City denies the allegations set forth in paragraph 55.

15 56.

16 The City admits that the action was filed within 60 days of the Auditor's July 12,  
17 2022, letter. The City denies the remaining allegations set forth in paragraph 56.

18 57.

19 Paragraph 57 contains statements of law that, as such, require no response. The City  
20 denies the implication that the cited law applies to this matter.

21 58.

22 The City denies the allegations set forth in paragraph 58.

23 59.

24 The City denies the allegations set forth in paragraph 59.

25 **SECOND CLAIM FOR RELIEF**

26 **(Declaratory Judgment)**

1 **(In the alternative to the First Claim for Relief)**

2 The City reasserts and incorporates by reference all above responses to paragraph 1  
3 through 59.

4 60.

5 The City denies the allegations set forth in paragraph 60.

6 61.

7 The City denies the allegations set forth in paragraph 61.

8 62.

9 The City denies the allegations set forth in paragraph 62.

10 63.

11 The City denies the allegations set forth in paragraph 63.

12 **THIRD CLAIM FOR RELIEF**

13 **(Review under ORS 246.910, Portland City Code 2.04.055, and ORS 250.270)**

14 **(In the alternative to the First and Second Claims for Relief)**

15 The City reasserts and incorporates by reference all above responses to paragraph 1  
16 through 63.

17 64.

18 The City denies the allegations set forth in paragraph 64.

19 65.

20 The City denies the allegations set forth in paragraph 65.

21 66.

22 The City denies the allegations set forth in paragraph 66.

23 67.

24 The City admits that the action was filed within 7 days of the Auditor's July 12, 2022,  
25 letter. The City denies the implication that the cited law applies to this matter. The City  
26 denies the remaining allegations set forth in paragraph 67.



1 68.

2 The City denies the allegations set forth in paragraph 68.

3 69.

4 The City denies the allegations set forth in paragraph 69.

5 70.

6 The City denies that Plaintiff is entitled to the relief requested, including but not  
7 limited to Plaintiff's request for attorney's fees.

8 **FACTS IN SUPPORT OF AFFIRMATIVE DEFENSES AND COUNTERCLAIM**

9 71.

10 The City reasserts and incorporates by reference all above responses to paragraph 1  
11 through 70.

12 72.

13 The Charter Commission was appointed in December 2020. The Commission began  
14 its work by agreeing that any potential amendments would be evaluated based on the  
15 amendment's ability to advance six outcomes: "1. A participatory and growing democracy  
16 with more voices being heard in elections; 2. An accessible and transparent government with  
17 Councilors who are easy to reach; 3. A reflective government with Councilors who look like  
18 the community they represent; 4. A responsive government with Councilors who understand  
19 your community needs; 5. An accountable government with Councilors who answer to the  
20 people; and 6. A trustworthy government with Councilors who safeguard democracy."

21 73.

22 On June 14, 2022, seventeen of the twenty Charter Commissioners voted to advance a  
23 measure to change the structure of Portland's government to the November 2022 ballot. On  
24 June 21, 2022, seventeen of the twenty Charter Commissioners voted to clarify the effective  
25 dates of the measure. On June 29, 2022, the Commission presented the measure to City  
26 Council at a Council meeting. The margin of the Commission's vote authorized a direct

1 referral of the measure to Portland voters, and Council heard the presentation without taking  
2 further action.

3 74.

4 On July 8, 2022, the Auditor published the measure’s ballot title and explanatory  
5 statement on the Auditor’s webpage and in the Oregonian. On the same date, the Portland  
6 Business Alliance requested the Auditor review and reject the measure for allegedly violating  
7 the constitutional single-subject requirement. On July 12, 2022, the Auditor declined the  
8 Portland Business Alliance’s request to review the measure, stating:

9  
10 Portland City Code 2.04.055 and ORS 250.270 require the  
11 Elections Officer to determine whether a prospective petition  
12 meets Oregon’s constitutional requirements. A prospective  
13 petition is filed by a chief petitioner prior to circulation for  
14 signatures. A Charter Commission proposed measure is not an  
15 initiative petition and does not require signatures. Portland City  
16 Code 2.04.110 governs the process for bringing a Charter  
17 Commission measure to the voters and requires neither a  
18 prospective petition nor a constitutional review. Instead, it  
19 states that the Auditor’s Office ‘shall’ file the charter  
20 Commission measure to be placed on the ballot.

21 75.

22 Pursuant to Charter Section 13-302 and Portland City Code 2.04.110, when fifteen or  
23 more Charter Commissioners affirmatively vote to recommend a measure to amend  
24 Portland’s Charter, the role of the Auditor is ministerial. Because seventeen of twenty  
25 Commissioners voted to advance the measure to the November 2022 ballot for approval or  
26 rejection by Portland voters, the margin of the Commission’s vote triggered several  
ministerial acts by the Auditor. The Auditor fulfilled all those acts, including the filing of the  
measure as a report from the Commission to the Council and placing the report on the  
Council agenda; forwarding the measure to Council and then to the City Attorney for  
preparation of a ballot title and explanatory statement; and publishing notice that any elector

1 may file a petition for review of the ballot title and explanatory statement.

2 76.

3 Article IV, Section 1 of Oregon’s Constitution provides two single-subject rules. The  
4 first rule applies to initiative petitions and is the only rule that applies to acts of both the  
5 Oregon Legislature and local governments. The single-subject requirement in Article IV,  
6 section 1 applies only to initiative petitions and does not apply to measures referred by local  
7 governing bodies like the Charter Commission.

8 77.

9 The second single-subject rule is found in Article IV, Section 20, which provides, in  
10 relevant part: “Every Act shall embrace but one subject, and matters properly connected  
11 therewith, which subject shall be expressed in the title.” Unlike the first single-subject rule  
12 governing initiative petitions, the second single-subject rule contains no language extending  
13 the rule to local legislative acts.

14 78.

15 Contrary to Plaintiff’s allegations, the Auditor has no duty to conduct a constitutional  
16 review of the measure under the Oregon Constitution. Because the constitutional single-  
17 subject rule applies only to initiative petitions and acts of the Oregon Legislature, of which  
18 the measure referred by the Charter Commission is neither, the Auditor lacks the duty and the  
19 authority to conduct a constitutional review of the Commission’s measure.

20 79.

21 ORS 250.270 provides that a city elections officer shall determine whether an  
22 initiative measure meets the requirements of Article IV, Section 1 (2)(d) of the Oregon  
23 Constitution.

24 80.

25 Contrary to Plaintiff’s allegations, the Auditor has no duty to conduct a  
26 constitutional review of the Charter Commission’s referral measure under ORS 250.270

1 because that statute only applies to initiative measures, so the Auditor lacks the duty and the  
2 authority to conduct a constitutional review of the Commission’s measure.

3 81.

4 ORS 246.910 provides judicial review to a person who is “adversely affected or  
5 aggrieved by any act or failure to act by the Secretary of State, a county clerk, a city elections  
6 officer or any other county, city or district official under any election law, or by any order,  
7 rule directive or instruction made by [those same government officials and entities], may  
8 appeal therefrom to the circuit court for the county in which the act or failure to act occurred  
9 or in which the order, rule, directive or instruction was made.”

10 82.

11 Contrary to Plaintiff’s allegations, the Auditor has no duty to conduct a constitutional  
12 review of the Charter Commission’s referral measure under ORS 250.270 because that  
13 statute only applies to initiative measures, so the Auditor lacks the duty and the authority to  
14 conduct a constitutional review of the Commission’s measure. Therefore, the Auditor has no  
15 basis under which to “act” or “fail to act” for the purposes of providing an appeal under ORS  
16 246.910.

17 **AFFIRMATIVE DEFENSES**

18 **FIRST AFFIRMATIVE DEFENSE**

19 (Lack of Jurisdiction-Review under ORS 246.910)

20 83.

21 For the reasons set forth in paragraphs 71 through 82 above, ORS 246.910 does not  
22 apply to the Charter Commission’s referral of the ballot measure at issue in this litigation.

23 84.

24 This Court lacks jurisdiction to conduct review under ORS 246.910.

25 **SECOND AFFIRMATIVE DEFENSE**

26 (Failure to State Ultimate Facts- Review under ORS 246.910)

1 85.

2 To state a claim for relief under ORS 246.910, Plaintiff must show that they are  
3 adversely affected or aggrieved by an act or failure to act by the Auditor.

4 86.

5 Plaintiff has failed to state ultimate facts to support a finding that they are adversely  
6 affected or aggrieved.

7 87.

8 For the reasons set forth in paragraphs 71 through 82 above, Plaintiff has failed to  
9 state ultimate facts to support a finding that the Auditor acted or failed to act or had any  
10 obligation or authority to do so.

11 88.

12 This Court lacks jurisdiction over Plaintiff's First and Third Claims for Relief seeking  
13 review under ORS 246.910.

14 **THIRD AFFIRMATIVE DEFENSE**

15 (Lack of Standing-Review under ORS 246.910)

16 89.

17 To establish standing for review under ORS 246.910, Plaintiff must show that they  
18 are adversely affected or aggrieved by an act or failure to act by the Auditor.

19 90.

20 For the reasons set forth in paragraphs 71 through 82 above, Plaintiff has failed to  
21 state ultimate facts to support a finding that they are adversely affected or aggrieved.

22 **FOURTH AFFIRMATIVE DEFENSE**

23 (Failure to State Ultimate Facts- Declaratory Judgment)

24 91.

25 To support a claim for declaratory judgment under ORS 28.010, a litigant must  
26 demonstrate that there is a justiciable controversy between the parties.

1 92.

2 For the reasons set forth in paragraphs 71 through 82 above, Plaintiff has failed to  
3 demonstrate that there is a justiciable controversy between the parties.

4 93.

5 Plaintiff has failed to state ultimate facts sufficient to support a claim for declaratory  
6 judgment.

7 **FIFTH AFFIRMATIVE DEFENSE**

8 (Failure to State Ultimate Facts- Review under ORS 246.910, Portland City Code 2.04.055,  
9 and ORS 250.270)

10 94.

11 For the reasons set forth in paragraphs 71 through 82 above, the Charter  
12 Commission's referral is not an initiative under Oregon's Constitution.

13 95.

14 For the reasons set forth in paragraphs 71 through 82 above, Plaintiff has failed to  
15 state ultimate facts to support a finding that the Charter Commission's referral subject to  
16 review under ORS 246.910, Portland City Code 2.04.055, and ORS 250.270.

17  
18 **COUNTERCLAIM**

19 **(Declaratory Judgment)**

20 96.

21 For the reasons set forth in paragraphs 71 through 82 above, the Charter  
22 Commission's referral is not an initiative.

23 97.

24 For the reasons set forth in paragraphs 71 through 82 above, the single-subject  
25 requirements of the Oregon Constitution do not apply to the Charter Commission's referral.

26 ///

1 98.

2 The City is entitled to declaratory judgment that the Charter Commission’s referral is  
3 not subject to the single-subject requirements of the Oregon Constitution; that the Auditor  
4 has neither the duty nor the authority to conduct a constitutional review of the referral under  
5 the Oregon Constitution or ORS 250.270; that where the Auditor has a duty to act, they have  
6 done so properly; and that regardless of the above, the Charter Commission’s referred  
7 measure meets the single-subject requirement and this Court’s single-subject determination is  
8 final.

9  
10 WHEREFORE, having fully answered Plaintiff’s Complaint, the City prays for  
11 judgment in its favor on all counts and against Plaintiff, denial of Plaintiff’s attorney’s fees  
12 and for the City’s reasonable costs and disbursements incurred herein.

13  
14 DATED: July 27, 2022.

15 Respectfully submitted,

16 /s/ Maja K. Haium

17 Maja K. Haium, OSB No. 101042

18 Senior Deputy City Attorney

19 Email: [maja.haium@portlandoregon.gov](mailto:maja.haium@portlandoregon.gov)

20 *Of Attorneys for Respondent*

1 **CERTIFICATE OF SERVICE**

2  
3 I hereby certify that I served the foregoing CITY OF PORTLAND’S ANSWER AND  
4 COUNTERCLAIM on:

<p>5 Steve Elzinga 6 Sherman, Sherman, et al. 7 693 Chemeketa St. NE 8 PO Box 2247 9 Salem, OR 97308-2247 <a href="mailto:steve@Shermlaw.com">steve@Shermlaw.com</a> <i>Attorneys for Plaintiffs</i></p>	<p>Margaret S. Olney Bennett Hartman, LLP 210 SW Morrison Street, Suite 500 Portland, OR 97204 <a href="mailto:margaret@bennetthartman.com">margaret@bennetthartman.com</a> <i>Attorneys for Amicus</i></p>
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10 on July 27, 2022, by causing a full, true and correct copy thereof, addressed to the last-known  
11 address (or fax number) of said attorney, to be sent by the following method(s):

- 12  by e-filing using the court’s Odyssey File and Serve system.
- 13  by **mail** in a sealed envelope, with postage paid, and deposited with the U.S. Postal  
14 Service in Portland, Oregon.
- 15  by **hand delivery**.
- 16  by **facsimile transmission**.
- 17  by **email**.

18  
19  
20  
21 /s/ Maja K. Haium  
22 Maja K. Haium, OSB No. 101042  
23 Senior Deputy City Attorney  
24 Email: [maja.haium@portlandoregon.gov](mailto:maja.haium@portlandoregon.gov)  
25 *Of Attorneys for Respondent*