

**Portland  
City Auditor**  
Elections



February 15, 2024

William B. Aitchison  
1628 NW 32nd Ave.  
Portland, OR 97210

**Delivered by Certified Mail**  
(Return Receipt Requested)

**Delivered Electronically**  
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anil@pslglawyers.com

**Notice of Determination**  
**Constitutional Requirements Not Met**  
Prospective Initiative Petition PDX24OL-01

Dear Chief Petitioner Aitchison:

On February 7, 2024, you filed a prospective initiative petition with the City Elections Office. As required by ORS 250.270(1) and City Code Section 2.04.055, we have assessed whether the prospective petition meets the requirements of Article IV of the Oregon Constitution, sections 1(2)(d) and (5). We have determined that Prospective Initiative Petition PDX24OL-01, "Strengthening Recruitment, Retention, Training, and Accountability for the Portland Police Bureau," does not meet the requirements of Article IV.

**Various Sections of PDX24OL-01 Are Administrative, Not Legislative**

Article IV, section 1(2)(d) provides that an "initiative petition shall include the full text of the proposed law" and the "proposed law ... shall embrace one subject only and matters properly connected therewith." Article IV, section 1(5) further provides that the initiative powers reserved to the people in subsection 2 "are further reserved to the qualified voters of each municipality ... as to all local, special and municipal legislation of every character in or for their municipality or district."

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As the Oregon Supreme Court has explained, the Oregon Constitution’s “limitation of the initiative and referendum powers to ‘municipal legislation’ has been spelled out over the years as creating 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 cases). As the court further explained, legislative matters involve “making laws of general applicability and permanent nature” whereas administrative ones are “decisions implementing such general rules.” *Id.*

In addition, Oregon courts have clarified that where a petition pertains to tasks that are to be taken under an existing legal framework or legislative policy, the petition is administrative, not legislative, in nature. See, e.g., *Lane Transit Dist. v. Lane Cnty.*, 327 Or 161, 169 (1998). Thus, in determining whether a proposed law is administrative or legislative in nature, “Oregon courts assess the law to determine if it makes policy of general applicability and is more than temporary in duration (and is thus legislative in nature), or if it applies previous policy to particular actions, or is otherwise compelled in substance or process by predicate policy (and is thus executive, administrative, or adjudicative in nature).” *Rossolo v. Multnomah Cnty. Elections Div.*, 272 Or App 572, 584 (2015).

Against this backdrop, our Office concludes that the petition fails because certain PDX24OL-01’s proposed amendments are administrative and not legislative in nature. Specifically, we find new Section 2-1005(a) regarding “Recruiting and Retaining Police Officers” to be administrative, as well as new Section 2-1005(b) regarding “Training Police Officers.” Our reasons include:

First, recruiting and retaining Portland Police Bureau officers has been the subject of collective bargaining under the Public Employee Collective Bargaining (“PECBA”). PECBA is a “a comprehensive statutory scheme authorizing and regulating collective bargaining between municipal and other public employers and employees, administered by ERB.” *City of Roseburg v. Roseburg City Firefighters, Loc. No. 1489*, 292 Or 266, 268 (1981). The proposed initiative petition would create benefits for Portland Police Association members that the union did not achieve through the PECBA-required statutory framework. The City’s bargaining and resulting collective bargaining agreement are administrative actions carried out under the overall PECBA statutory framework and the collective bargaining process cannot be dictated by initiative petition.<sup>1</sup>

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<sup>1</sup> We also note that the new Section 2-1005(a)(1) requires additional compensation to police officers who go through the Police Corp program provided for in the proposed Charter amendment. Differences in pay are dictated by the statutory scheme contained in ORS 652.220.

Second, the City classifies “human resources and personnel services including employee training and education” as “administrative services.” Code Section 3.15.020. Similarly, Code provides that the responsibilities of the “Bureau of Human Resources shall include coordination and control of the administrative and technical activities relating to maintenance of a comprehensive human resources system for the City,” which includes classification and compensation, training and workplace development, and employee benefits. Code Section 3.15.080.A. As the Oregon Supreme Court has held, “whether a particular municipal activity is ‘administrative’ or is ‘legislation’ often depends not on the nature of the action but the nature of the legal framework in which the action occurs.” *Foster v. Clark*, 309 Or 464, 474 (1990). The City has established that actions such as determining benefits, retention strategies, and training are “administrative” in nature in the City’s organizational structure.

Third, the text of the proposed amendment pertaining to training officers expressly recognizes that the actions envisioned are acts compelled by predicate policy in that it states that Council shall ensure officers “continue to receive training that reflects best practices...” (Emphasis added.)

Fourth, “effective training for police” is the subject of an extensively-negotiated, court-approved settlement agreement between the City of Portland and the Department of Justice. This, too, is reason that requiring “continue[d]” training of officers is administrative, because it is compelled by a predicate policy of the City (and Department of Justice).

Finally, the function of the proposed amendments in new Section 2-1005(a) and (b) is primarily not to make policy of general applicability, but to compel actions that would apply to (and in some circumstances, economically benefit) a limited class of City employees.

In light of these issues, we determine that PDX24OL-01 does not comply with Article IV of the Oregon Constitution. To the extent you intend to resubmit the petition or challenge our decision, we reserve the right to identify additional reasons supporting our determination.

### **Notice of Limited Review**

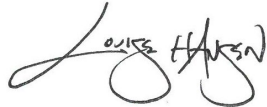
This determination is a limited review of constitutional conformity and does not necessarily identify all potential constitutional difficulties that may preclude the proposed measure from proceeding.

## **Challenge Rights**

As provided in ORS 250.270(4), any elector dissatisfied with the current constitutionality determination may petition the circuit court of the judicial district in which the City is located for review within 7 business days of the issuance of this written determination.

If you have any questions, please feel free to reach out to our Office.

Thank you,

A handwritten signature in black ink that reads "Louise Hansen". The signature is written in a cursive style with a large initial "L" and "H".

Louise Hansen  
City Elections Officer