



CITY OF  
**PORTLAND, OREGON**  
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INTEROFFICE MEMORANDUM

TO: Charter Commission

FROM: Maja K. Haium, Deputy City Attorney  
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SUBJECT: Oregon Constitutional Requirements for Ballot Measures

**Introduction**

The Charter Commission has requested information on the constitutional requirements for ballot measures proposing amendments to the Portland City Charter.<sup>1</sup> This memo sets forth the constitutional requirements and summarizes recent decisions on those requirements. Our office expects that additional court decisions in the next few months may affect the interpretation of these requirements, and we are tracking those developments closely.

This memo does not analyze any proposed amendments. Once the Charter Commission begins to develop specific proposals, our office will continue to work with the Commission to ensure conformance with constitutional requirements.

**Oregon Constitutional Requirements**

The Oregon Constitution requires ballot measures to meet two requirements: (1) the full-text requirement; and (2) the single-subject requirement. Article IV, section 1(2)(d) of the Oregon Constitution provides, in relevant part: “An initiative petition shall include the full text of the proposed law or amendment to the Constitution. A proposed law or amendment to the Constitution shall embrace one subject only and matters properly connected therewith.”<sup>2</sup>

The constitutional requirements cited above explicitly apply to “initiative petitions.”<sup>3</sup>

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<sup>1</sup> Neither the Portland City Charter nor the Portland City Code impose substantive requirements on charter amendments.

<sup>2</sup> Legislative acts of the Oregon State Legislature are also required to meet a single-subject requirement. “Every Act shall embrace but one subject, and matters properly connected therewith, which subject shall be expressed in the title.” Oregon Constitution, Article IV, section 20.

<sup>3</sup> See Or. Const. Art. IV, section 1(5) (“The initiative and referendum powers reserved to the people by subsections (2) and (3) of this section are further reserved to the qualified voters of each municipality and district as to all local, special and municipal legislations of every character in or for their municipality or district.”).

However, we have found no case law defining ballot measures referred by a local government – including ballot measures referred by the Charter Commission – as initiative petitions. Initiative petitions require a petitioner and a certain number of signatures to be placed on the ballot,<sup>4</sup> while measures referred by a local government are placed on the ballot by a majority vote of the governing body of the local government. A persuasive argument could be made that ballot measures referred by a local government are not initiative petitions that must meet the constitutional requirements cited above. Nevertheless, the city of Portland has historically taken the approach most likely to avoid legal challenge by ensuring that ballot measures referred to voters by the Portland City Council or by the Portland Charter Commission meet the full-text and single-subject requirements.

### Full-Text Requirement

Article IV, section 1(2)(d) of the Oregon Constitution provides, in relevant part: “An initiative petition shall include the full text of the proposed law[.]” The purpose of the full-text requirement is to “provide sufficient information so that the registered voters can intelligently evaluate whether to sign the initiative petition.” *Kerr v. Bradbury*, 193 Or App 304, 320 (2004).

While the purpose of the full-text requirement is clear (e.g. voters need sufficient information to evaluate how to vote), the scope of the requirement is not clear (e.g. how much information is required to allow voters to evaluate how to vote). Only two recorded cases interpret the full-text requirement. First, in 1964 the Oregon Supreme Court ruled that “[n]o useful purpose would be served by quoting at length \* \* \* the related statutes referred to in the proposed measure but left unchanged thereby[.] \* \* \* Since such matter is no part of the proposed law, it need not be made a part of the initiating petition.” *Schnell v. Appling*, 238 Or 202, 204-205 (1964). Second, in 2004 the Oregon Court of Appeals ruled that an initiative petition would have changed the meaning of certain existing statutes, even though the petition did not seek to change any of the words of those statutes. *Kerr*, 193 Or App at 6. Accordingly, the initiative petition was required to include the full text of the existing statutes whose meaning the proposed initiative petition would change, together with the full text of existing statutes whose actual text would change. The Oregon Supreme Court did not review the lower court’s ruling in *Kerr* because the initiative petition failed to gain enough signatures to qualify for the ballot, rendering the issue moot.

Because *Schnell* and *Kerr* can be read to provide conflicting standards for the full-text requirement, the approach most likely to avoid legal challenges to ballot measures referred

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<sup>4</sup> Portland City Code (PCC) defines “initiative petition” as “a petition to initiate a measure for which a prospective petition has been filed but that is not yet a measure.” PCC 2.02.010 (F). “Initiative petition” is not defined in state law. Both Oregon statute and Portland code define “prospective petition” identically as “the information, except signatures and other identification of petition signers, required to be contained in a completed petition.” ORS 250.005 (4); PCC 2.02.010 (K).

by the Charter Commission would be to include the full text of laws whose words would be amended and the full text of laws whose meaning may be impacted.

Additional legal developments of note:

*2022 Initiative Petitions<sup>5</sup> to Limit Campaign Contributions*

- Relying on *Kerr*, Secretary of State Fagan rejected three petitions for failure to include the full text of the law at issue, including the complete text of a statute that would remain textually unchanged.
- Petition supporters have stated their intent to appeal Secretary Fagan’s rejection to the Oregon Supreme Court.

*2018 Initiative Petition to Enact Portland Clean Energy Community Benefits Program*

- City Elections Officer Scroggin determined that the initiative petition met the constitution’s full-text requirement.
- Petition opponents challenged Officer Scroggin’s determination.
- The Multnomah County Circuit Court upheld Officer Scroggin’s determination.<sup>6</sup>

Single-Subject Requirement

Article IV, section 1(2)(d) of the Oregon Constitution provides, in relevant part: “A proposed law or amendment to the Constitution shall embrace one subject only and matters properly connected therewith.” Caselaw provides a two-part analysis that governs whether a proposed law comports with the single-subject requirement. First, is there a unifying principle logically connecting all provisions in the measure? Second, if a unifying principle exists, are other matters in the proposed law properly connected to the unifying principle? *Anantha v. Clarno*, 302 Or App 196, 284-285 (2020).

In *Anantha*, the Court of Appeals overruled Secretary of State Clarno’s determination that three proposed initiative petitions failed to comply with the single-subject requirement. In its decision overruling Secretary Clarno, the Court stated that the single-subject requirement “should be liberally construed to uphold legislation” and the term subject “‘is to be given a broad and extensive meaning’ to give legislative drafters ‘full scope to include in one act all matters having a logical or natural connection.’” *Id.* at 285 (internal citations omitted). The petitions at issue sought to protect forests and included provisions to tighten the state’s arial herbicide spraying laws, restricted logging in landslide-prone areas and prohibited conflicts

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<sup>5</sup> Because the initiative petition certification process can be lengthy, it’s not uncommon for a campaign to submit multiple petitions – with slightly different wording – for certification before choosing one of the certified petitions to circulate for signature gathering.

<sup>6</sup> ORS 250.270 provides that “[t]he review by the circuit court [of a City Auditor’s determination that an initiative petition meets constitutional standards] shall be the first and final review, and shall be conducted expeditiously to ensure the orderly and timely circulation of the petition.”

of interest for appointees to the state Board of Forestry. The Court reasoned that “it is relatively easy to identify a logical, unifying principle connecting the provisions of each measure: the regulation and protection of forestlands. All of the provisions in each measure address that subject or \* \* \* are matters ‘properly connected’ to the regulation and protection of forestlands.” *Id.* at 286. Ultimately, the measures’ supporters and opponents negotiated an agreement on forest protections and the measures were not placed on the ballot.

Measures referred to Portland voters by the Charter Commission will meet the single-subject requirement if each measure has a unifying principle logically connecting all provisions in the measure and if other matters in the measure are properly connected to the unifying principle.

Additional legal developments of note:

*2022 Initiative Petitions to Permit School Choice*

- Secretary of State Fagan rejected the petitions for violating the single-subject requirement because by asking for changes to school funding laws and laws barring state funding of religiously-based education, the petitions were actually geared at changing several constitutional statutes.
- Petition supporters have stated their intent to appeal Secretary Fagan’s rejection.

*2020 Initiative Petitions to Support Clean Energy*

- Secretary of State Clarno rejected the petitions for violating the single-subject requirement because the inclusion of fair labor standards for clean energy projects was too far removed from requiring Oregon to produce all of its electricity using renewable energy and carbon-free sources by January 1, 2045.
- The Marion County Circuit Court overruled Secretary Clarno and held that labor standards and clean-energy mandates could be encompassed within a single subject.

*2020 Initiative Petition to Reform the Portland City Council*

- City Elections Officer Hansen determined that the initiative petition did not meet the full-text requirement because the petition did not clearly set out the changes to existing law it proposed to make. City Elections Officer Hansen also determined that the initiative petition did not meet the single-subject requirement because no unifying principle connected the provisions to increase the number of City Council members with the provisions changing the number and names of internal bureaus.
- The petitioner did not challenge Officer Hansen’s determination.

*2015 Initiative Petition to Reform the Portland City Council*

- City Elections Officer Scroggin determined that the initiative petition met the single-subject requirement. The petition sought to change Portland’s Council to nine

members, with seven elected by district, and managed by a Mayor with executive authority.

- The petitioner did not submit signatures for the petition, rendering the petition void.

### **Single-Subject versus Separate-Vote Requirement**

The single-subject and the separate-vote requirements in the Oregon Constitution are often conflated, so the separate-vote requirement is quickly described here. The separate-vote requirement is a more strenuous requirement that applies only to proposed amendments to the Oregon Constitution. The separate-vote requirement does not apply to measures placed on the ballot by the Portland City Council or the Charter Commission.

Article XVII, section 1 of the Oregon Constitution states: “When two or more amendments shall be submitted to the voters of this state at the same election, they shall be submitted so that each amendment shall be voted on separately.” A proposed amendment violates the separate-vote requirement if it makes more than one substantive change to the Oregon Constitution and those changes are not “closely related.” *Armatta v. Kitzhaber*, 327 Or 250, 277-284 (1998). An amendment that proposes constitutional changes that are not closely related violates the separate-vote requirement “because it would prevent voters from expressing their opinion as to each proposed change separately.” *Meyer v. Bradbury*, 341 Or 288, 297 (2006).

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