

**OREGON STATE BAR
GOVERNMENT LAW SECTION**

***Elections Today: Initiative, Referendum,
Recall and Ethics***

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The Initiative/Referendum Process

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Elections Law Provisions

State Law

Oregon Constitution

Article 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 legislation of every character in or for their municipality or district. *The manner of exercising those powers shall be provided by general laws, but cities may provide the manner of exercising those powers as to their municipal legislation.* In a city, not more than 15 percent of the qualified voters may be required to propose legislation by the initiative, and not more than 10 percent of the qualified voters may be required to order a referendum on legislation.” (emphasis added)

Article II, section 14a

Cities required to hold regular elections for officers at same time as general biennial elections for state and county officers are held.

Article II, section 18

Every public officer in Oregon subject to recall by the electors from district that elected the officer.

Statutes

Recall & Candidates

ORS 249.009(2) Regardless of city charter or ordinance must use recall form designated by statute.

ORS 249.013(5) No person may be a candidate for more than one city office at an election.

ORS 249.035(3) Filing officer for city office is chief city elections officer.

ORS 249.088(1) Two candidates for a non-partisan office shall be nominated at the primary election unless the home rule charter provides otherwise.

ORS 249.865 to 249.877 Procedure for recall of public officers.

Initiative & Referendum

ORS 250.035(1) Required ballot title form for other than state measure.

ORS 250.036 Required ballot title form for property tax measures (50% turnout).

ORS 250.037 Required ballot title form for bond measures.

ORS 250.038 Required ballot title form for local option taxes.

ORS 250.041 Regardless of contrary city charter or ordinances provisions, ORS 250.005 to 250.037 apply to exercise of initiative and referendum powers.

ORS 250.255 If city charter or ordinances provide otherwise, then ORS 250.265 to 250.346 do not apply to exercise of initiative or referendum powers for a city measure under Oregon Constitution, Article IV, section 1.

*ORS 250.270 One subject determination by city elections officer.
ORS 250.296 Procedures of ballot title challenge in circuit court.*

ORS 250.355 Date of election as provided in ORS 221.230 that limit elections on city measure and offices to four dates per year, except for emergency election.

Conduct of Elections

ORS 254.016 Chapter applies to all primary, general and special elections in the state.

ORS 254.035 All elections for city officer must be held at the same time and place as elections for state and county officers. Unless city charter or ordinance provide otherwise, ballots and labels used for state and county elections arranged to include city offices and measures.

ORS 254.046 Cities must pay for special elections held other than on dates of primary and general elections.

ORS 254.095 Chief city elections officer must file notice of city office elections and measures with county clerk at least 61 days before election.

ORS 254.565 Duties of chief city elections officer after primary and general elections.

ORS 254.575(1) When there is a tie vote for a public office for which the elections officer is other than the Secretary of State, the elections officer must have the candidates meet publicly to decide by lot who is elected.

City Law

Model Charter

Section 4 City has all powers expressly or impliedly granted or allowed.

Section 6 All powers vested in council unless charter provides otherwise.

Section 24 Council terms, elections at each general election.

Section 25 Mayor term, election at general election.

Section 26 City elections must conform to state law unless charter or ordinances provide otherwise. All city elections are nonpartisan.

Section 27 Council and mayor qualifications for office.

Section 28 Council must adopt ordinance prescribing nominations for mayor and councilor positions.

Section 29 Terms beginning and end.

Section 30 Oath of office.

Section 31 Vacancies in mayor and council offices.

Section 32 Requirements and procedures for filling vacancies.

Sample Elections Code

Section 1.01.02 Definition of elector is individual who may vote in city election. Measure includes proposition or question submitted to voters by council

Section 1.02.02 Sets number of signatures for candidate nomination petition.

Section 1.02.04 Sets earliest date for filing candidacy.

Section 1.03.03 Determines procedure for filling council vacancy

Section 1.04.01 Requires that chief petitions are city electors

Section 1.04.02 Requires city attorney to prepare explanatory statement

Section 1.04.04 Sets petition signature requirements at constitutional limits.

Section 1.04.05 Provides for ballot title appeal to circuit court by city elector

Section 1.04.06 Allows chief petitioners to withdraw a verified petition

SAMPLE CITY ELECTIONS CODE

Sections

- 1.01.01** **Introduction**
- 1.01.02** **Candidates**
- 1.01.03** **Vacancies in Office**
- 1.01.04** **Initiative and Referendum**

INTRODUCTION

1.01.01 **State Law Applies**

As provided by city charter section 26¹, state elections laws apply to matters not regulated by this subchapter. The city charter and this subchapter prevail over any conflicting state laws.

1.01.02 **Definitions**

Words or phrases have the following meanings unless the context clearly requires a different meaning:

“Candidate” means an individual whose name appears or is expected to appear on an official ballot.

“City legislation” means an ordinance or proposed ordinance, or a proposed amendment, revision or repeal of the city charter.

“Elective city position” means the office of mayor or councilor.

“Elector” means an individual eligible under state and city law to vote in a *city election*².

“Initiative” means proposed city legislation submitted to electors by a petition of qualified electors.

“Measure” means city legislation, or a *proposition or question* for city electors.

“Prospective petition” means information required for a completed petition, except for signatures and other identification of petition signers.

“Qualified elector” means an individual qualified to vote under section 2, Article II, Oregon Constitution.

“Recorder” means the city recorder or authorized representative.

“Referendum” means city legislation submitted to electors by the council or by a petition of qualified electors, or a *proposition or question submitted to city electors by the council*.

¹ This is the section number in the 2004 LOC Model Charter. It may be different section numbers or not exist in specific city charters.

² The words and phrases in **bold italics** are changes from state statute provisions.

“Regular election” means a city election held at the same time as a primary or general biennial election for electing federal, state or county officers.

“Special election” means a city election not held on the date of a regular election.

“Term of office” means the term of office of the last person elected to the office.

CANDIDATES

Sections:

- 1.02.01 Eligibility**
- 1.02.02 Nomination Petition or Declaration of Candidacy**
- 1.02.03 Petition or Declaration Contents**
- 1.02.04 Filing**
- 1.02.05 Deficient Petitions**
- 1.02.06 Withdrawal of Candidacy; Refund of Filing Fee**
- 1.02.07 Certificate of Nomination**
- 1.02.08 Applicability of State Law**

1.02.01 Eligibility

A qualified elector who has resided in the city during the 12 months immediately preceding the election may be a candidate for an elective city position.

1.02.02 Nomination Petition or Declaration of Candidacy

A. An eligible elector may become a candidate for an elective city position by filing a nomination petition or a declaration of candidacy in a form prescribed by the Secretary of State and available from the recorder.

B. A declaration of candidacy must be accompanied by the filing fee established by council resolution.

C. A nomination petition must contain signatures of not fewer than **10³** city-qualified electors as follows:

1. No elector may sign more than three petitions. If more than three are signed, the signature is valid only on the first three valid petitions filed.

2. The signatures need not all be attached to one paper, but each separate paper of the petition must be attached to an affidavit of the circulator showing the number of signers and stating that each signature is the genuine signature of the person.

3. Each signature must have next to it the signer’s residence, by its street and number or other description.

4. The recorder must certify the signatures in the nomination petition for genuineness by comparing them and the other required information with the elector registration cards on file with the county clerk.

³ Many cities require the signatures of 20 electors.

5. After the petition is filed with the recorder, the recorder has **10⁴** days to verify the signatures, and attach to the petition a certificate stating the number of signatures believed genuine.

1.02.03 Petition or Declaration Contents

- A. A nomination petition or declaration of candidacy must contain:
1. The name by which the candidate is commonly known. A candidate may use a nickname in parentheses in addition to the candidate's full name;
 2. The residence address of the candidate;
 3. The office or position number for which the candidate seeks nomination;
 4. A statement that the candidate is willing to accept the office if elected;
 5. A statement that the candidate will qualify if elected;
 6. A statement of the candidate's occupation, educational and occupational background, and prior governmental experience; and
 7. The signature of the candidate.
- B. A declaration of candidacy must include a statement that the required fee is included with the declaration.

1.02.04 Filing

- A. A nomination petition or declaration of candidacy must be filed with the recorder.
- B. The recorder will date and time stamp immediately upon filing a nominating petition, declaration of candidacy, withdrawal or other document required to be filed.
- C. A nomination petition or declaration of candidacy will be filed not sooner than the first day of **June⁵** of the election year and not later than 75 days before the election date.

1.02.05 Deficient Petitions

If a nomination petition is not signed by the required number of qualified electors or the declaration of candidacy is not complete, the recorder will notify the candidate within five days after the filing. The recorder will return it immediately to the candidate, and state in writing how the petition is deficient. The deficient petition may be amended and filed again as a new petition, or a substitute petition for the same candidate may be filed within the time requirements for filing petitions.

1.02.06 Withdrawal of Candidacy; Refund of Filing Fee

- A. A candidate who has filed a nomination petition or declaration of candidacy may withdraw not later than the 67th day before the election date by filing a statement of withdrawal with the recorder. The withdrawal must be made under oath and state the reasons for the withdrawal.
- B. If requested not later than 67 days before the election date, the recorder will refund the filing fee of a candidate who dies, withdraws or becomes ineligible for the nomination.

1.02.07 Certificate of Nomination

⁴ Ten days should be sufficient to allow verification, but city recorder should confirm.

⁵ This provides a reasonable period, but some cities may prefer a longer filing period.

The recorder will certify the nominations to the county clerk in accordance with the time requirements of state law stating the offices and the terms of office for which the candidates are nominated.

VACANCIES IN OFFICE

Sections:

- 1.03.01 Vacancy in Office**
- 1.03.02 Filling of Vacancy**
- 1.03.03 Appointment by Council**

1.03.01 Vacancy in Office

A city elective office becomes vacant as provided by city charter section 32.

1.03.02 Filling of Vacancy

A. Upon becoming aware of a vacancy in an elective office, the council must promptly determine and declare the date of vacancy.

B. A vacancy in an elective office must be filled as provided by city charter section.

1.03.03 Appointment by Council

A. In filling a vacancy, the council may make inquiries and hold interviews as it considers necessary for the appointment. The appointment may be made at a regular or special council meeting.

B. The council will use the following procedures in the appointment process:

1. Public notice to appropriate neighborhood organizations, civic groups, a newspaper of general circulation and other recognized groups.
2. Deadline for submitting applications at least two weeks after the notice.
3. Appointment from those applicants nominated and seconded for consideration by members of the council. The recorder will announce the results of each ballot and will record each councilor's ballot. An applicant who receives a majority of the votes by the current council members will be appointed to the vacant position. If no applicant receives a majority vote on the first ballot, the council will continue to vote on the two applicants who receive the most votes until an applicant receives a majority of the councilors voting.

INITIATIVE AND REFERENDUM

Sections:

- 1.04.01 Prospective Petition**
- 1.04.02 Ballot Title; Appeal**

- 1.04.03 Petition and Circulation**
- 1.04.04 Filing and Percentage Requirements; Verification**
- 1.04.05 Measures Referred by Council**
- 1.04.06 Adoption or Election**
- 1.04.07 Election Notice and Procedure**

1.04.01 Prospective Petition

A. Before circulating a petition proposing an initiative or referendum for city legislation, the chief petitioners must file a prospective petition with the recorder. The recorder will provide the form showing:

1. The signatures, printed names and mailing addresses of at least two and not more than three chief petitioners, *all of whom must be city electors*;
2. For initiative petitions, the text of the city legislation proposed for adoption, and, where applicable, the title, ordinance number, and charter or code section numbers proposed for amendment, revision or repeal;
3. For referendum petitions, the text of the city legislation proposed for referral, and where applicable, the title, ordinance number or code section numbers of the city legislation proposed for referral; and
4. Whether one or more persons will be paid for obtaining signatures on the petition.

B. The recorder must date and time stamp any prospective petition filed.

C. After the recorder determines that the prospective petition complies with this subchapter and state law, the recorder will certify to one of the chief petitioners that petitions may be circulated among city electors in accordance with section 1.04.03.

1.04.02 Ballot Title; Appeal

A. Prior to the end of the fifth business day after a prospective initiative petition is filed and meets all legal requirements, the recorder will review the text of the proposed initiative to determine if it complies with the single subject requirement and if it proposes city legislation.

B. If the proposed text does not meet the requirements of subsection A, the recorder will notify a chief petitioner by certified mail, return receipt requested, that the prospective petition does not meet the single subject or city legislation requirement.

C. Any city elector dissatisfied with the recorder's determination may file a petition for review in circuit court. The petition for review must be filed not later than the seventh business day after the written determination by the recorder.

D. If the proposed initiative meets the requirements of subsection A or a referendum petition is certified for circulation, the recorder will send two copies of the prospective petition to the city attorney. The city attorney has five business days after receipt to prepare a ballot title for the proposed measure *and an explanatory statement*⁶ for the voter's pamphlet. The ballot title must conform to the requirements of state law.

1. The explanatory statement must consist of an impartial, simple and understandable statement of not more than 500 words explaining the measure and its effect.

⁶ OAR 165-022-0040(2) permits an explanatory statement for any initiative or referendum by petition only if required by a local government ordinance.

2. After preparing the ballot title *and explanatory statement*, the city attorney will return one copy of the prospective petition, ballot title and explanatory statement to the recorder and one copy to one of the chief petitioners.

E. After receiving a ballot title from the city attorney, the recorder must publish in a newspaper of general circulation in the city a notice of receipt of the ballot title. The notice must state that a city elector may file a petition for review of the ballot title not later than the date referred to in subsection F.

F. After receiving the prospective petition, ballot title from the city attorney, the recorder must write the date of receipt on it. Within seven business days after that date, any city elector may petition in circuit court to challenge the ballot title prepared by the city attorney. After the seven-day period, or following the final adjudication of any legal review, the recorder must certify the ballot title as prepared by the city attorney or as prescribed by the court to a chief petitioner.⁷

G. Any city elector filing a petition of review with the circuit court must file a copy of the challenge with the recorder not later than the end of the business day next following the date the petition is filed with the circuit court. This requirement does not invalidate a petition that is timely filed with the circuit court.

H. The procedures in subsections A through G also apply to referendum measures. However, the completion of these procedures is not a prerequisite to the circulation of petitions for referendum measures under section 1.04.03. Ballot titles need not be stated on petitions circulated to propose referendum measures.

1.04.03 Petition and Circulation Requirements

A. After the requirements of section 1.04.01C are met for referendum petitions and after the requirements of section 1.04.02F are met for initiative petitions, the chief petitioners may circulate a petition for the measure among city electors. The petition (cover sheet and signature sheet) must conform to the requirements of state law.

B. The petition identification number will be assigned by the recorder.

C. Each signature sheet of a referendum petition must contain the title, ordinance number or code section numbers of the city legislation proposed by referral and the date it was adopted by the council.

D. No signature sheet may be circulated by more than one person. Each signature sheet must contain a statement signed by the circulator that each elector who signed the sheet did so in the circulator's presence, and, to the best of the circulator's knowledge, each such elector is a legal elector of the city and that the information placed on the sheet by each elector is correct.

1.04.04 Filing and Percentage Requirements; Verification

A. The recorder will accept for signature verification only petitions that comply with the requirements of this subchapter and other applicable law.

B. No petition may be accepted for filing unless it contains at least the required number of verified signatures to submit the measure to the electors, as prescribed by subsections G, H or I.

⁷ The 2006 City Elections Manual adopted by OAR 165-020-0005 requires the ballot title challenge is complete before the measure is filed with the county elections filing officer.

C. No initiative petition may be accepted for signature verification more than six months after the date of the recorder's certification under section 1.04.02F.

D. Any petition to refer legislation adopted by the council must be submitted for signature verification not more than 30 days after the council's adoption of the legislation.

E. An initiative or referendum petition may not be accepted for signature verification if it contains less than 100 percent of the required number of signatures.

F. Upon the acceptance of a petition, the recorder must verify the signatures. The verification may be performed by random sampling in a manner approved by the Secretary of State. Within 30 days after the recorder's acceptance of a petition, the recorder must certify to the council whether the petition contains a sufficient number of qualified signatures to require the submission of the proposed measure to city electors. The recorder must state in the certificate the number of qualified signatures prescribed by subsections U, H or I to require the proposed city legislation to be submitted to city electors. The petition is considered filed as of the date of the recorder's certification.

G. An initiative measure proposing the amendment, revision or repeal of the city charter will be submitted to the electors if the number of qualified signatures on the petition equals or exceeds **15**⁸ percent of the total number of registered voters in the city on January 1 of the calendar year the petition is filed.

H. An initiative measure proposing the adoption, amendment or repeal of any other city legislation will be submitted to the electors if the number of qualified signatures on the petition equals or exceeds **15** percent of the total number of registered voters in the city on January 1 of the calendar year the petition is filed.

I. A referendum measure will be submitted to the electors if the number of qualified signatures on the petition equals or exceeds **10** percent of the total number of registered voters in the city on January 1 of the calendar year the petition is filed.

1.04.05 Measure Referred by Council

A. The council may directly refer to the electors any ordinance or any proposed ordinance, property tax, bond or other proposition or question. It may also directly refer to the electors any proposed amendment, revision or the repeal of the city charter.

B. The city attorney will prepare a ballot title and *explanatory statement*⁹ that conforms to the requirements of state law. The council will certify and file the ballot title and explanatory statement with the recorder.

C. The recorder will publish in a newspaper of general circulation in the city a notice of receipt of the ballot title including notice that an elector may file a petition for review of the ballot title not later than the date set in subsection D.

D. Any city elector may petition the circuit court to challenge the ballot title certified by the council. Such petition must be filed with the circuit court within seven business

⁸ The percentages in this section are the maximum allowed by the Oregon Constitution. Some cities require lesser percentages. For example, the Gresham City Code section 2.04.060 provides for 5% for a referendum petition and 3% for an initiative petition.

⁹ Some cities make the city manager responsible for the explanatory statement. OAR 165-022-0040(1) requires an explanatory statement for any measure referred to the voters by any local government governing body.

days of council filing of the ballot title. Any person filing a petition of review with the circuit court must file a copy of the challenge with the recorder not later than the end of the business day next following the date the petition is filed with the circuit court. This requirement does not invalidate a petition that is timely filed with the circuit court.

E. A measure will be considered filed under this section as of the date the council delivers its certified ballot title to the recorder.

1.04.06 Withdrawal, Adoption or Election

A. *The chief petitioners may withdraw a verified petition at any time before council action to adopt the proposed legislation or submit it to the electors. Any withdrawal must be either by written or oral declaration made at a council meeting and entered in the minutes of that meeting.*

B. *Unless a petition is withdrawn*, after receiving a certification from the recorder that a petition has sufficient signatures to require the proposed city legislation to be submitted to the electors under section 1.04.04F, the council may either adopt the proposed legislation by ordinance, or call an election to submit the legislation to the electors. The council may also call an election to submit matters to the electors upon referral under section 1.04.05.

C. The council must call the election on the next election date available under state law that is not sooner than the 90th day after the date of the recorder's certificate of sufficient signatures. For a council referral, the election on the referendum of city legislation may be held on the next election date available under state law.

1.04.07 Election Notice and Results

A. Notice of elections on measures submitted to city electors on regular or special election dates must be given in accordance with state law.

B. Measures referred by the council will be designated on the ballot: "Referred to the Voters by the City Council."

C. Measures proposed by referendum petition will be designated on the ballot: "Referred by Petition."

D. Measures proposed by initiative petition will be designated on the ballot: "Proposed by Initiative Petition."

E. The recorder must certify the election results to the council at the first council meeting after the results are certified by the county clerk.

F. A measure adopted by the electors takes effect 30 days after the election, unless the measure expressly provides a different effective date.