

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO)	ORDINANCE NO. 25-1528
CODE CHAPTER 9.02 (BALLOT MEASURES,)	
INITIATIVE AND REFERENDUM) TO)	Introduced by Chief Operating Officer
IMPROVE CLARITY AND INCORPORATE)	Marissa Madrigal in concurrence with
PLAIN LANGUAGE BEST PRACTICES AND)	Council President Lynn Peterson
DECLARING AN EMERGENCY)	

WHEREAS, the Office of Metro Attorney reviews Metro Code chapters when circumstances arise that require Metro to adhere to the requirements and processes outlined in Metro Code, and

WHEREAS, the Office of Metro Attorney also reviews Metro Code chapters to ensure they properly align and comport with state and constitutional law; and

WHEREAS, Metro Code Chapter 9.02 (Ballot Measures, Initiative and Referendum) supplements state law regarding special district elections, ballot measures, initiatives, and referendums; and

WHEREAS, when recently reviewing Metro Code Chapter 9.02's requirements related to Metro Council referrals, the Office of Metro Attorney determined that Metro Code Chapter 9.02 currently contains an unnecessary, potentially confusing, and constitutionally inapplicable code requirement related to Metro Council referrals and that this requirement should be removed; and


WHEREAS, in December 2022 the Metro Council adopted Resolution No. 22-5293, which, among other things, required that Metro code chapters use plain and inclusive language best practices to improve readability, transparency, and understanding of Metro's requirements and procedures, and further required that when staff brings forth a code update for Metro Council consideration staff should also conduct a review of the entire code chapter for potential plain language improvements; and

WHEREAS, the Office of Metro Attorney has conducted a review of Metro Code Chapter 9.02 in its entirety and has incorporated plain language best practices that improve readability without substantively changing Metro Council policy; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Metro Code Chapter 9.02 (Ballot Measures, Initiative and Referendum) is amended as set forth in Exhibit A, with inserted text underlined and deleted text in strikethrough.
2. That this ordinance being necessary for the immediate preservation of public health, safety and welfare to ensure the Metro Council can refer measures expeditiously to the voters with clarity of Metro Code requirements, an emergency is declared to exist, and this ordinance takes effect immediately upon adoption pursuant to Metro Charter Section 38(1).

ADOPTED by the Metro Council this 27th day of February 2025.



Lynn Peterson, Council President

Attest:

Approved as to Form:



Georgia Langer, Acting Recording Secretary



Carrie MacLaren, Metro Attorney

Metro Code Chapter 9.02 (Ballot Measures, Initiative and Referendum) is amended as follows, with underlined text representing inserted text and ~~strikethrough~~ representing deleted text.

CHAPTER 9.02

BALLOT MEASURES~~REFERRALS~~, INITIATIVES, AND REFERENDUMS

Section	Title
9.02.010	Application of State Law; Definitions
9.02.020	Referrals by the Metro Council
9.02.030	Initiatives and Referendums
9.02.040	Election Procedures; <u>Certification; Effective Date</u>

9.02.010 Application of State Laws; Definitions

- (a) ~~The~~ This Chapter's provisions of ~~this Chapter~~ shall supplement state law regarding special district elections, including ballot measures, initiatives, and referendums. These provisions, and shall prevail over any conflicting state law provisions of state law to the maximum extent permissible under the Oregon Constitution and the laws of the State of Oregon.
- (b) Unless otherwise defined, ~~terms a term~~ used in this Chapter ~~have~~ has the definitions given to ~~them it~~ in ORS Chapter 255 or any successor statute, ~~and references to ORS Chapter 255 shall be deemed references to ORS Chapter 255 or any successor statute.~~
- (c) In determining the number of words in a ballot title or explanatory statement, any combination of characters, ~~including hyphens, abbreviations, and dollar amounts,~~ that contain no spaces but are preceded and followed by a single space ~~shall count as one word, except that a bullet points shall does not count as a words.~~ The combination of characters may include hyphens, abbreviations, and dollar amounts. [Ord. 93-517B, Sec. 1; Ord. 02-977, Sec. 1; Ord. 17-1404.]

9.02.020 Referrals by the Metro Council

- (a) The Metro Council may directly refer any measure or any proposed Metro Charter amendment ~~of the Metro Charter~~ to the electors for ~~their~~ approval or rejection.
- (b) The Metro Council ~~shall act~~ must adopt a resolution to refer any measure or Metro Charter amendment, ~~by adoption of a resolution.~~ The resolution ~~shall~~ must include ~~the full text of the measure or Charter amendment, the ballot title, and any other material required by law.~~

Exhibit A to Ordinance No. 25-1528

- (c) The Metro Attorney ~~shall~~ must prepare the ballot title and explanatory statement for a referral by Metro Council ~~all referrals by the Metro Council. An~~ The explanatory statement ~~shall~~ must be an impartial, simple, and understandable statement of no more than 500 words, explaining the referral and its effect. The Metro Attorney ~~shall~~ must file the explanatory statement with the elections officer at the same time the Metro Attorney files ~~as~~ the ballot title.
- (d) An elector who wishes to challenge the ~~The~~ ballot title ~~and or~~ explanatory statement ~~may be challenged exclusively in accordance with~~ must do so in Multnomah County Circuit Court under the procedures set forth in ORS 255.155 for review of district ballot titles. ~~However, except that~~ any petition to the circuit court ~~shall~~ must name the Office of Metro Attorney as respondent, and not the Metro Attorney personally. The circuit court ~~shall~~ must give deference to the ballot title and explanatory statement prepared by the Metro Attorney. [Ord. 93-517B, Sec. 1; Ord. 02-977, Sec. 1; Ord. 17-1404.]

9.02.030 Initiatives and Referendums

- (a) A petitioner must file a prospective initiative or referendum petition with the Multnomah County elections officer. The coversheet of any prospective initiative or referendum petition ~~shall~~ must designate the name and residence address of not more than three persons as chief petitioners. No petition for initiative or referendum ~~shall be~~ is valid unless all chief petitioners are electors of the Metro area at the time of filing and remain electors of the Metro area throughout the initiative or referendum process, including the election.
- (b) The chief petitioners of any proposed referendum measure ~~shall~~ must file ~~with the prospective petition~~ a full and correct copy of the Metro ordinance proposed for referral with the prospective petition, including the title and ordinance number. An ordinance in its entirety ~~may be~~ is subject to referendum, but not any portions ~~thereof of the ordinance.~~
- (c) The chief petitioners of any proposed initiative measure ~~shall~~ must file ~~with the prospective petition~~ a full and correct copy of the ordinance to be initiated with the prospective petition.
- (d) Upon filing ~~of a~~ prospective petition for initiative or referendum with the elections officer, the elections officer ~~shall~~ must send a copy of it to the Metro Attorney (without ~~determining making any determination~~ whether it meets the requirements of the Oregon Constitution, the Metro Charter, or the Metro Code).
- (e) Not later than the tenth business day after receiving a prospective petition for an initiative or referendum from the elections officer, the Metro Attorney ~~shall~~ will notify the elections officer in writing whether the initiative or referendum complies with ~~meets~~ the applicable requirements of Section 1(2)(d) and Section 1(5), Article IV, of the Oregon Constitution, Metro Charter Sections 34, 38 and 39 ~~of the Metro Charter~~, and Metro Code Section 9.02.030(1), below. An elector dissatisfied with the Metro Attorney's decision pursuant to this subsection may only challenge that determination as set forth in ORS 255.140(4) and (5). ~~The Metro Attorney's decision~~

Exhibit A to Ordinance No. 25-1528

~~pursuant to this Section 9.02.030(e) may be challenged exclusively in accordance with the procedures set forth in ORS 255.140(4) and (5).~~

- (f) If the Metro Attorney determines that the initiative or referendum measure does not comply with ~~fails to meet~~ the applicable requirements of the Oregon Constitution, the Metro Charter, and the Metro Code, the elections officer ~~shall~~ must immediately notify at least one of the chief petitioners, in the manner required by law.
- (g) If the Metro Attorney determines that the initiative or referendum ~~meets~~ complies with the applicable requirements of the Oregon Constitution, the Metro Charter, and the Metro Code, then the Metro Attorney will prepare and send the elections officer a ballot title not later than the fifteenth business day after providing written notice to the elections officer of this determination, ~~the Metro Attorney shall prepare and send to the elections officer a ballot title and may, at the Metro Attorney's election,~~ The Metro Attorney may, at the Metro Attorney's sole discretion, also prepare and send an explanatory statement to the county elections officer.
- (h) The elections officer ~~shall~~ must furnish a copy of the ballot title and any explanatory statement to at least one of the chief petitioners and publish notice of receipt of the ballot title as set forth ~~in accordance with~~ ORS Chapter 255. Unless the circuit court certifies a different title or explanatory statement (if any), the ballot title prepared by the Metro Attorney ~~will~~ shall be the title printed on the ballot and the explanatory statement prepared by the Metro Attorney ~~shall~~ will be the explanatory statement printed in the voter's pamphlet. The circuit court ~~shall~~ must give deference to the ballot title and any explanatory statement prepared by the Metro Attorney.
- (i) The elections officer ~~shall~~ may not accept ~~no an~~ initiative petition for signature verification more than six ~~(6)~~ months after the initial date that a petitioner filed the prospective initiative ~~was initially filed~~ with the elections officer.
- (j) If an initiative petition contains the required number of verified signatures, the election on the measure ~~shall be held~~ will occur on the first Tuesday following the first Monday of the next November for which the election deadlines set forth in ORS 255 are met.
- (k) If a referendum petition contains the required number of verified signatures, the election on the measure ~~shall be held~~ will occur at the next scheduled regular district election for which the election deadlines set forth in ORS 255 are met.
- (l) Every amendment to the Metro Charter proposed by initiative (and not by the Metro Council) must be separately stated. When two or more amendments are proposed by initiative at a single election, they must be separately voted upon, and the votes in favor and against must be cast separately. ~~The requirement in this Section 9.02.030(l) for a separate vote is to be interpreted to have the same meaning~~ The separate vote requirement of this subsection has the same meaning as the separate vote requirement set forth in the Oregon Constitution Section 1, Article XVII, and cases interpreting it. [Ord. 17-1404.]

9.02.040 Election Procedures; Certification; Effective Date

Exhibit A to Ordinance No. 25-1528

- (a) Measures referred by the Metro Council ~~shall~~will be designated on the ballot as “Referred to the People of the Metro region by the Metro Council.”
- (b) Measures proposed by referendum petition ~~shall~~will be designated on the ballot as “Referred by Petition of the People.”
- (c) Measures proposed by initiative petition ~~shall~~will be designated on the ballot as “Proposed by Initiative.”
- (d) ~~Not more than~~ Within 30 days following any election, the elections officer ~~shall~~must certify the election results to the Metro Council. The Metro Council ~~shall~~thereafter will proclaim the results in the records of the Metro Council. If ~~the Metro Council finds that~~ two or more approved measures on the same subject contain conflicting provisions, the measure receiving the greatest number of affirmative votes becomes the adopted measure. The Metro Council ~~shall~~will proclaim ~~determine in the proclamation which of the conflicting measures~~ is effective.
- (e) A measure is ~~Measures shall be~~ effective upon the Metro Council’s proclamation of the results, unless a measure expressly provides a later effective date. [Ord. 93-517B, Sec. 1; Ord. 02-977, Sec. 1; Ord. 17-1404.]

IN CONSIDERATION OF ORDINANCE NO. 25-1528, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 9.02 (BALLOT MEASURES, INITIATIVE AND REFERENDUM) TO IMPROVE CLARITY AND INCORPORATE PLAIN LANGUAGE BEST PRACTICES AND DECLARING AN EMERGENCY

Date: February 10, 2025
Department: Office of Metro Attorney
Meeting Date: February 20, 2025

Prepared by: Shane Abma
Presented by: Shane Abma
Length: 10 minutes

ISSUE STATEMENT

The Office of Metro Attorney (OMA) periodically reviews Metro Code chapters when circumstances arise that require Metro to adhere to the requirements and processes set forth in Metro Code. The Metro Council is considering referring a ballot measure to the voters related to Metro's Supportive Housing Services Program.

While reviewing Metro Code Chapter 9.02 (Ballot Measures, Initiative and Referendum) to ensure that Metro follow its applicable requirements for ballot measure referrals, OMA determined that Chapter 9.02 contains an unnecessary, potentially confusing, and constitutionally inapplicable code requirement related to Metro Council referrals. OMA recommends removing this inapplicable requirement from Code. Further, as required by Resolution No. 22-5293, OMA also conducted a review of Chapter 9.02 in its entirety for potential plain and inclusive language improvements. This ordinance therefore also includes several non-substantive updates to Chapter 9.02 to improve readability.

ACTION REQUESTED

OMA requests that Metro Council adopt Ordinance No. 25-1528 (updating Metro Code Chapter 9.02 *Ballot Measures, Initiative and Referendum*).

IDENTIFIED POLICY OUTCOMES

- 1) Remove a potentially confusing, unnecessary, and inapplicable requirement related to Metro Council measure referrals (the "full text" requirement, discussed below).
- 2) Improve the readability of Chapter 9.02 by applying plain and inclusive language best practices as required by Metro Council Resolution No. 22-5293.

POLICY OPTIONS FOR COUNCIL TO CONSIDER

- Adopt this ordinance. This will remove an unnecessary, potentially confusing, and constitutionally inapplicable code requirement related to Metro Council referrals, while also improving the readability of Chapter 9.02.
- Do not adopt this ordinance. A failure to adopt this ordinance may cause uncertainty and confusion regarding an otherwise unnecessary and constitutionally inapplicable

Metro Code requirement related to Metro Council referrals. This could potentially delay final certification of any ballot measure referral in the future.

- Direct OMA to update only those sections of current code that are confusing and not legally required for referrals, initiatives, and referendums, without also incorporating suggested plain language improvements.

STAFF RECOMMENDATIONS

OMA recommends that Metro Council adopt Ordinance No. 25-1528, which will improve the readability of Metro's Code Chapter 9.02 relating to Referrals, Initiatives, and Referendums and remove an unnecessary, potentially confusing, and constitutionally inapplicable code requirement related to Metro Council referrals.

STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION

The Office of Metro Attorney seeks a Metro Code that is easy to read and understand with clear requirements. Regular code updates help ensure that the Metro Code remains current with plain and concise language, is consistent with state and constitutional law requirements, and provides appropriate guidance to those governed by the Code.

- *Known Opposition/Support/Community Feedback*

There is no known opposition. However, because of the administrative nature of this code chapter, OMA did not perform external outreach related to these changes.

- *Legal Antecedents*

Current Metro Code Chapter 9.02, Metro Charter, ORS Chapter 255, the Oregon Constitution, and the Oregon Secretary of State's *County, City, and District Initiative and Referendum Manual*.

- *Anticipated Effects*

The Metro Code will be easier to read and understand, and these changes will remove a potentially confusing, unnecessary, and inapplicable requirement related to Metro Council measure referrals.

- *Financial Implications (current year and ongoing)*

There are no financial implications.

BACKGROUND

Oregon law authorizes three kinds of ballot measures: citizen initiatives, citizen referendums on adopted legislation, and government referrals to voters for new legislation. The Oregon Constitution requires that ballot *initiatives* contain the "full text of the proposed law []". (Oregon Constitution Article IV, section (1)(2)(d)). Notably, Oregon's constitutional "full text" requirement does not apply to *referendums* or *referrals*; it only applies to initiatives.

Metro Code Chapter 9.02 governs Metro's procedures for referrals, initiatives, and referendums. Metro Code Section 9.02.020(b) currently states that a Metro Council *referral* must contain "the full text" of the measure. ("The [referral] resolution shall include the full text of the measure.") OMA interprets this provision to mean that Metro must include the complete text of any measure or ordinance adopted by the Metro Council and for which the Council is referring to voters for approval. For example, this means that Metro Council could not simply refer a measure by reference, such as "Metro Council refers Ordinance No. ____", without including the text of the ordinance as well.

Unfortunately, one could erroneously misinterpret Metro Code's "full text" requirement with respect to referrals to require something beyond what is constitutionally required of referrals, when in fact "full text" is a term of art that only applies to initiatives.

Thus, OMA recommends removing any reference to a "full text" requirement in Metro Code for *referrals* because that constitutional requirement does not apply to referrals. Preserving it in Metro Code could create confusion and delay final ballot title certification.

ATTACHMENTS

None.