

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.