



STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

February 26, 2024

Representative Mark Gamba
900 Court Street NE H477
Salem OR 97301

Re: Referral of urban growth boundary expansion measure to city election

Dear Representative Gamba:

You have followed up on advice we provided last week regarding the -1 amendments to House Bill 4026. You inquire about the City of North Plains and ask whether the Secretary of State has “a different interpretation of these constitutional provisions and therefore allowed the ballot initiative to move forward?” We conclude that while a determination of constitutionality regarding a referral petition must be made, in the case of a city election it is to be made by the city elections officer, not the Secretary of State. Additionally, while under state law this determination is to be made in writing, we have been unable to locate any written determination of legality. We cannot therefore comment on any grounds that the city elections officer, namely the North Plains City Recorder, relied upon in making this determination.

In our previous memorandum, we examined the proposed HB 4026-1 amendments, which amend ORS 197.626. These amendments seek to add a new subsection (5) that provides: “A local government determination described in subsection (1) of this section is not subject to being referred to voters by referendum petition and is reviewable exclusively under this section.” We opined that this amendment would likely have limited legal impact. We concluded that the relevant measures are likely already not subject to referral to the voters. Conversely, if such measures are subject to referral, the exercise of the voters of the initiative and referendum power under Article IV, section 1, of the Oregon Constitution, cannot be limited statutorily. The Legislative Assembly may not through a statutory change alter the text or meaning of the Oregon Constitution.

We understand that the City of North Plains City Council passed an ordinance that will expand the city’s urban growth boundary (UGB).¹ An adequate number of North Plains voters subsequently submitted signatures to refer the UGB expansion proposal to voters, to be voted on at the May 2024 election. If effective, the -1 amendments to HB 4026 would then appear to bar this referendum from the ballot. Again, we expect that the same result would occur if this question were considered by an Oregon court.

There are specific procedures in place in North Plains to exercise the powers reserved by Article IV, section 1 (5), to North Plains voters to refer North Plains legislation to the ballot. The North Plains City Code provides a process by which persons interested in referring a legislative action undertaken by the North Plains City Council may file a prospective petition with

¹ City of North Plains Ordinance No. 490, adopted September 18, 2023.

the City Recorder.² After receiving the prospective petition, the City Recorder determines whether the prospective petition “complies with . . . state law. . . .”³ Also, prior to the end of the fifth business day after a prospective petition is filed, the City Recorder, among other duties, is to determine if the prospective referendum petition refers city legislation.⁴ This process aligns with the provisions of ORS 250.265 to 250.346, which govern the exercise of initiative or referendum power regarding city measures.

To answer your current question, we observe that, because this is a city ordinance referred to a city election, it is the city elections officer, namely the North Plains City Recorder, who is tasked with making a determination of constitutionality when presented with a referendum petition, not the Secretary of State. This direction issues from both the North Plains City Code, and more precisely, the relevant ORS provisions regarding city elections. State law directs a city elections officer to “determine in writing” the specific question of compliance with Article IV, section 1 (2)(d) and (5).^{5,6} Further, the city elections officer must publish a statement that the measure has been determined to comply with Article IV, section 1 (2)(d) and (5), as part of the required newspaper publication of the notice regarding the ballot title.⁷

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Very truly yours,

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Legislative Counsel



By
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² North Plains City Code section 33.50 (A).

³ North Plains City Code section 33.50 (C).

⁴ North Plains City Code section 33.51 (A) (prospective initiative petition must propose city legislation) and section 33.51 (H) (procedures in section 33.51 (A) through (G) also apply to referendum measures).

⁵ ORS 250.270.

⁶ Article IV, section 1 (2)(d), is the requirement that the proposed law or amendment embrace one subject only.

⁷ ORS 250.270, 250.275.