



**ADMINISTRATIVE SERVICES COMMITTEE**

**\* SPECIAL MEETING \***

**Agenda**

**Wednesday, March 2, 2011**

**4:00 pm**

**Madison Avenue Meeting Room**

**500 SW Madison**

- |                                   |                                                            |
|-----------------------------------|------------------------------------------------------------|
| <b>Discussion/Possible Action</b> | I. Local Option Levy Explanatory Statement<br>(Attachment) |
| <b>Information</b>                | II. Other Business                                         |

**Next Scheduled Meeting**

Wednesday, March 9, 2011 at 4:00 pm

Madison Avenue Meeting Room

500 SW Madison Ave

**Agenda**

Second Quarter Operating Report

Financial Policies Review

# MEMORANDUM

February 23, 2011

TO: Administrative Services Committee

FROM: Nancy Brewer, Finance Director *NB*  
Jim Brewer, Deputy City Attorney

SUBJECT: Local Option Levy Explanatory Statement

## I. Issue

To approve language for an explanatory statement for the May 17, 2011 local option levy election voters' pamphlet.

## II. Discussion

ORS 251 governs what a local government can place in an explanatory statement that would be published in the voters pamphlet for a local option tax levy. Requirements include a limit on the number of words (500) and that the language in the statement must be impartial, simple and understandable.

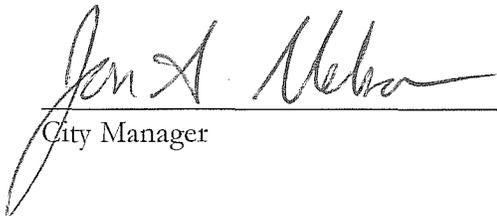
Staff has prepared a draft explanatory statement (attached). This draft language has been reviewed by the Elections Division of the Secretary of State's Office to ensure it meets their rules. Following Council action to adopt an explanatory statement, there is an appeal period when citizens may appeal the language in the explanatory statement and request judicial review.

Once an explanatory statement has been approved, it will be submitted to Benton County Elections for publication in the voters' pamphlet. The ballot title and the explanatory statement will also be the only information the City has on its web site or available in offices during the election period (March 7 through May 17).

## III. Requested Action

Review the draft explanatory statement, modify if necessary, and recommend the City Council adopt an explanatory statement for the May 17, 2011 local option levy election.

Review & Concur:

  
\_\_\_\_\_  
City Manager

DRAFT EXPLANATORY STATEMENT 500 WORD LIMIT (331 words)

The City of Corvallis proposes that the voters impose a local option property tax levy at the rate of \$.45 per \$1,000 of assessed value, lasting for three years and beginning July 1, 2011. This measure may cause property taxes to increase more than three percent.

The tax revenue from this measure would be used to support operations of the Library, the Osborn Aquatic Center and the Chintimini Senior Center, as well as for allocations to social service agencies. In addition to tax revenue from this measure, general fund money would be required to continue funding these operations. The revenue from the levy would be restricted to these uses. Among these uses, distribution of the revenue would also be restricted in the following manner:

23.03% of the levy each year (approximately \$412,200 for fy 2011-12) toward for year-round operation of the Osborn Aquatic Center, including programs such as swimming lessons, therapy classes, youth special needs classes, water safety, High School swim practice, swim meets, fitness classes, and lap swimming;

17.22% of the levy each year (approximately \$308,200 for fy 2011-12) for year-round operation of the Chintimini Senior Center, including programs such as life long learning classes, support groups, health and fitness programs, senior meals, tax aide assistance, volunteer recruitment and coordination;

11.79% of the levy each year (approximately \$211,000 for fy 2011-12) for year-round Library open hours on Mondays;

42.22% of the levy each year (approximately \$755,730 for fy 2011-12) for operation of the Corvallis-Benton County Public Library, including programs such as preschool reading readiness services for families and child care providers; for volunteer recruitment and coordination; and for the acquisition of books, periodicals, and other library materials; and

5.74% of the levy each year (approximately \$102,870 for fy 2011-12) for funding social service programs that provide emergency or transitional assistance, such as aid in obtaining food, water, shelter, warmth, clothing, safety, acute health care, or access to information about obtaining this assistance.

The requested rate is estimated to raise approximately \$1,790,000 in fiscal year 2011-2012, \$1,850,870 in fiscal year 2012-2013, and \$1,924,900 in fiscal year 2013-2014 or a total of \$5,565,770 for all three years.

# Attachment A

## DRAFT EXPLANATORY STATEMENT 500 WORD LIMIT (331 words)

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# Attachment B

## EXPLANATORY STATEMENT

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5.74% of the levy each year (approximately \$102,870 for fy 2011-12) for funding social service programs that provide emergency or transitional assistance, such as aid in obtaining food, water, shelter, warmth, clothing, safety, acute health care, or access to information about obtaining this assistance.

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Attachment C

**CITY ATTORNEY'S OFFICE  
MEMORANDUM**

To: Administrative Services Committee  
From: Jim Brewer, Deputy City Attorney  
Date: March 2, 2011  
Subject: Election Division Draft Rule/Information Only

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Issue:

Due to concerns regarding election law prohibitions on using public resources to maintain historic documents that could be considered to contain advocacy for a measure or candidate on the City's website, our office has been in contact with the elections division, seeking clarification about this topic. In response, the Elections Division has supplied us with an early version of a draft rule. Unfortunately, that rule will not be in place during the May 2011 election. For your information, we've supplied you with the email correspondence and the draft rule.

Background:

The City had hoped that the elections division would give some firm assurance that one of several proposed ways to manage existing web content would not be seen as a violation of elections laws prohibiting the use of public resources for advocacy purposes during an election. Elections division staff agreed to consider written questions from the City. In responding to questions, the elections division replied with a draft rule which, if adopted, would provide clear guidance. Unfortunately, that rule will not be in place for the May 2011 election, leaving the City with the same risks to its employees as in prior elections. We thought you might be interested in the conversation and possible rule, especially as people inquire about why some content will be removed from the City's website during the election season.

**OAR 165-013-00??**

**Documents exempt from ORS 260.432, Timeframes documents are regulated by ORS 260.432**

(1) Documents produced and distributed by a governing body exempt from the requirements of ORS 260.432 are:

- a. minutes of meetings relating to the measure,
- b. a resolution placed before the governing body to refer the measure,
- c. surveys and polls pertaining to whether to refer the measure to the ballot and
- d. budget items pertaining to the measure presented to the governing body.

(2) Any public employee work time used to change, amend, edit, post, distribute, etc., a document found to be opposing or supporting a measure between the date the measure is certified to the elections official until the date of the pertinent election will be a violation of ORS 260.432. The amount of time a public employee spends to change, amend, edit, post, distribute, etc., a document supporting or opposing the measure is not significant to whether ORS 260.432 was violated.

## Jim Brewer

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**From:** Carla M CORBIN [carla.m.corbin@state.or.us]  
**Sent:** Tuesday, February 22, 2011 4:27 PM  
**To:** Jim Brewer  
**Subject:** RE: City of Corvallis concerns regarding website and election laws  
**Attachments:** ORS 260.432 Document Rule.pdf

Jim

I have a very early draft of the rule we discussed. It is attached. I scheduled an appointment with my Director and Deputy for tomorrow morning to discuss the rule. I will let you know how and where we are going after this meeting.

Carla

>>> "Jim Brewer" <jkbrewer@peak.org> 2/22/2011 11:56 AM >>>  
Thanks, Carla.

Jim

**From:** Carla M CORBIN [<mailto:carla.m.corbin@state.or.us>]  
**Sent:** Tuesday, February 22, 2011 11:52 AM  
**To:** Jim Brewer  
**Subject:** RE: City of Corvallis concerns regarding website and election laws

Jim

I am trying to complete the process ASAP. However I can't guarantee the process will be completed by the May election. Once I have a draft I will send it your way so that you will know where we are coming from.

Carla

>>> "Jim Brewer" <jkbrewer@peak.org> 2/22/2011 11:49 AM >>>  
Carla:

Is it safe to say the rulemaking process will not be complete until after the May 17, 2011 election?

Jim

**From:** Carla M CORBIN [<mailto:carla.m.corbin@state.or.us>]  
**Sent:** Tuesday, February 22, 2011 11:42 AM  
**To:** Jim Brewer  
**Subject:** Re: City of Corvallis concerns regarding website and election laws

Jim

I am looking into drafting a rule that would draw a bright line between documents that would and would not violate ORS 260.432. Therefore I am afraid I must delay answering your questions. I will keep you apprized.

Carla

>>> "Jim Brewer" <jkbrewer@peak.org> 2/18/2011 2:58 PM >>>  
Dear Ms. Corbin:

When we spoke on the phone yesterday, you asked me to put the City's questions into writing, so that you could consider them and provide a written response. Here is some background, and the context for the city's questions, as well as the questions:

The City is asking for advice in how to comply with the Elections Division 2008 Restrictions on Political Campaigning by Public Employees, ORS 260.432, especially the provisions on pages 2 and 30, dealing with websites, and on pages 27 and 28 dealing with republication of historic documents that contain advocacy. The City anticipates that a ballot measure concerning a proposed operating levy will be certified soon. Documents found on the City's website, that were prepared prior to the certification of the measure, are likely to contain information which could be seen as advocating for the measure. These include staff reports, budget documents, financial plans and policies regarding funding alternatives, email, City newsletter articles, meeting minutes, and white papers regarding the City's budget problems.

In 2009, prior to an election regarding a measure forming an urban renewal district, the City was aware of a large number of documents on the City's website including newsletters, staff reports, workshop reports, citizen comments, volunteer advisory board memos, minutes, consultant plans, land use documents, visitor propositions, white papers, plans, frequently asked questions, editorials, newsletters, budgetary documents that contained advocacy for and against the formation of any urban renewal district, as well as advocacy for and against the specific urban renewal district proposed by the measure. In order to avoid any election violations, and prior to the measure being certified, the City searched the website, removed all documents containing any possible advocacy, and placed hard copies and electronic copies of these documents at the public library reference desk. The City tested this idea with Elections Division staff, who agreed that taking this course would avoid election law violations. The City is prepared to take the same cautious measures for the upcoming election, in order to ensure that employees who maintain the City's website and email services, and their supervisors, as well as the employees who have already published these documents to the website are not subject to accusations that they are violating election laws regarding public employee campaigning.

In 2009, the Corvallis League of Women Voters complained to the elections division regarding the City removing documents from its website. The elections division responded to the League that it would recommend to the

City that it replace the documents on the website.

In a subsequent letter to the City, the elections division director said that "If the City of Corvallis can provide some sort of separation on your website between the historical information that may contain advocacy language and the election information on your website that is, under state statute required to be neutral, we would not find a violation of the statute. We would not find that a "search" function on an election information webpage, something that a reader would proactively choose to gain access to minutes or other information elsewhere on the city's website, would result in an elections law violation".

The City of Corvallis' technical staff informed City management that separation of the documents on the website is not feasible. The nature of web browsers and cached pages makes it unlikely that the City could leave documents published on its website in a way that would allow a search function to work and also somehow create a meaningful separation so that a browser would not seek and find documents created prior to the certification of the measure as opposed to only those which were neutral on the measure. The City's technology has not changed since that time. However, the City's technical people have suggested two options:

The first option is for the City to search for key words related to a given measure, find those documents published to the website that contain those key words, remove the documents from the website, but republish them on a different portion of the website that is labeled as an archival site that contains materials created prior to the certification date. The city would create code which would warn people searching for those key words that documents contained in this archival site could contain material that would be considered advocacy if these documents had been created prior to the certification of the measure, and that the person would have to agree it still wanted to proceed with that search to enter that site. If a person identified a historic document as containing advocacy that the City had not moved to the archival site, the City would simply move any such document to that archival site. There would be costs to the city in time and personnel in creating the archival site, changing the format of historic documents to an archival format and maintaining the site.

Another option would be to have a similar code programmed on the City's entire site, that would popup when anyone tried to search the site for any document containing those key words, allowing the person to open the document only after agreeing that the person wanted to view the historic document that might contain advocacy. The cost to modify the site in this way is similar, but the time to find and move documents to a different portion of the site in a different format would not be as extensive.

The limiting factor for both these options (and for disconnecting access to documents on the site already in general, is that the City may simply miss a document which contains objectionable information, but was not responsive to any of the key words the City looked for. It would be possible, and least cost, to have code programmed which creates a pop-up information that all materials except those at a particular link, were prepared prior to the certification of the measure, and that proceeding to any part of the City's

site except for the linked area is entering an area that is archival in nature. This does seem to be the opposite of the separation suggested by the elections division, but we thought it was worth testing with you. From the City's point of view, removing the documents entirely from the website may still be the only way to give City staff confidence that they will not be found in violation of the elections law. If there is some other way to give City employees assurance that a particular method of dealing with these documents meets the election division's approval, we would like to know what that would be.

As an additional complication, in the past election, information was available in hard copy and electronic format at the public library. The levy is proposed to benefit the public library, and we have concerns that the reference librarians will be seen as advocating for the measure when they provide access to information that deals directly with funding their employment.

#### Questions:

1. Does the Elections division still take the position that the elections law only requires some sort of separation between documents that are archival or historic in nature and neutral elections information on the website?
2. Would placing a code that creates a pop-up warning searchers that the site contains documents prepared prior to the certification of the measure, that may contain advocacy, but that neutral information is available by following a specific link to that information be a sufficient separation of historic and neutral election materials?
3. Would placing a code that creates a pop-up that does not permit a person to continue a search of any of the City site except the neutral election materials, unless the person follows a link to the rest of the City's website be sufficient separation of historic and neutral election materials?
4. Would searching the site for materials that might have advocacy, republishing those to an archival site (removing them from the current locations), and having a link on the City's page to the archival site be sufficient separation?

5. Is placing hard copies of archival materials in the public library reference section still appropriate given the nature of the proposed levy?

Thank you for your attention to this matter. I would be happy to discuss this matter further with you if you need clarification.

Jim Brewer

Deputy City Attorney.

541-766-6906

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No virus found in this message.  
Checked by AVG - [www.avg.com](http://www.avg.com)  
Version: 10.0.1204 / Virus Database: 1435/3460 - Release Date: 02/22/11

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No virus found in this message.  
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