

City of Corvallis

January 26, 2018

Honorable Mayor Biff Traber and city councilors

Reference: February 5, 2018 Public Hearing / Voter-Approved Annexations

For several years activists in Oregon communities successfully petitioned to put the right to vote on annexations in their city charters. Corvallis did this in 1976 and your charted provision was challenged in the courts. The Supreme Court upheld your charter change, Heritage Enterprises vs the City of Corvallis.

Last year in direct violation of the Oregon Constitution, Lee Beyer's Senate Bill 1573 granted the Legislature the right to amend city charters and deprive hundreds of thousands of Oregonians their constitutional right to vote on annexations. Our Constitutional right to use our city charters to protect our communities from ill-conceived annexations by voting on annexations has survived repeated challenges in the Oregon legislature and courts.

The Primary Issue: citizen authority over city charters

The Oregon Constitution is very clear, only Oregon citizens have authority over city charters;

Article XI, Section 2 of The Oregon Constitution.

The Legislative Assembly shall not enact, amend or repeal any charter or act of incorporation for any municipality, city or town. The legal voters of every city and town are hereby granted power to enact and amend their municipal charter, subject to the Constitution and criminal laws of the State of Oregon, and the exclusive power to license, regulate, control, or to suppress or prohibit, the sale of intoxicating liquors therein is vested in such municipality; but such municipality shall within its limits be subject to the provisions of the local option law of the State of Oregon. (emphasis added).

SB 1573 amended our city charters to deny voter annexation wherever that right is included in a city charter or city ordinances. SB 1573 effectively means the Legislature can pre-empt, amend, repeal or revoke any city charter or provision for any reason.

This is why The League of Oregon Cities and the cities of Philomath and Corvallis are suing Governor Brown and the Legislature. Other groups involved in this historic court case; Associated Oregon Counties; Oregon Communities for a Voice in Annexation; The League of Oregon Women Voters. (Benton County Circuit Court Case 16CV17878; Court of Appeals No. A164595)

SB 1573 takes control of city charters away from Oregonians and sows confusion

1. **“delegation of annexation authority”**

Under SB 1573, the Legislature delegates annexation authority to landowners not to cities. provided the territory meets some relevant conditions. Provided the territory meets some relevant conditions the bill REQUIRES cities to agree to a demands for annexation by anyone with development rights to the territory proposed for annexation.

2. **“unfunded mandate”**

SB 1573 directive to cities amounts to an UNFUNDED MANDATE which appears to conflict with Oregon’s Unfunded Mandate Law:

Oregon Constitution, Article XI, Section 15:

Section 15. Funding of programs imposed upon local governments; exceptions. (1) Except as provided in subsection (7) of this section, when the Legislative Assembly or any state agency requires any local government to establish a new program or provide an increased level of service for an existing program, the State of Oregon shall appropriate and allocate to the local government moneys sufficient to pay the ongoing, usual and reasonable costs of performing the mandated service or activity. (Emphasis added)

3. **“unequal treatment, and unequal imposition of burden”**

SB 1573 imposes requirements on cities with “Voter Annexation” in their charters that it does not impose on cities without voter annexation, this appears to constitute unequal treatment and unequal imposition of burden, both prohibited by the Oregon Constitution.

4. **“annexation mandated by state law”**

Inappropriate or unfunded development creates public safety and health issues in Oregon not annexation voting. The Oregon Health Authority authorizes annexations deemed necessary to correct failing water and sewer systems. These “health hazard” annexations are mandated by state law. Many city charter amendments recognize the need for “health hazard” annexations by authorizing public votes on annexations except those “mandated by state law.”

5. **“affordable housing.”**

The real estate development market seems unable or unwilling too offer affordable housing. SB 1573 was included in a sham 4-bill “deal” claimed to “cure” the affordable housing crisis. But there is no evidence that increasing annexation approvals results in affordable housing.

6. **“proper use of emergency clauses.”**

Emergency clauses deny citizens ample time to use their Oregon constitutional right to amend or reverse bills before they are signed into law. SB 1573 included a completely unnecessary “emergency” clause to prevent citizen rejection of this unconstitutional bill.

7. **“citizen involvement”**

Oregon Statewide Planning Goal 1 leaves no doubt about citizen involvement:

To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process. (Emphasis added.)

SB 1573 requires cities to bypass Goal 1 by allowing only city councils to vote and by immediately adopting approved annexations into City Comprehensive Plans.

Real estate and development interests SB 1573 have trumped a century of Oregon constitutional authority granting citizens local control of city charters. The cities of Corvallis and Philomath have filed suit to defend their constituent's and city charters. It is disturbing that the city has scheduled a public hearing February 5th to consider withdrawing from the court challenge.

All parties involved in the court challenge know that this issue will be decided by the Oregon Supreme Court, not lower courts. Nothing new here. This case has statewide implications. The only question before the city is whether they feel their charter is worth defending.

Sincerely,
Jeffrey R. Lamb
Richard Reid
Co-Chairs OCVA

The history and details on SB 1573 are on the Oregon Communities For A Voice In Annexations website ocva.org