

ORDINANCE NO. 5812

AN ORDINANCE AMENDING ORDINANCE NO. 5806 AND CALLING FOR AN ELECTION TO
SUBMIT TO THE ELECTORS OF THE CITY OF ALBANY THE QUESTION OF REVISING THE
CITY OF ALBANY CHARTER CONCERNING VOTER AUTHORIZATION OF CITY
BORROWING

WHEREAS, on April 10, 2013, the City Council adopted Ordinance No. 5806 canvassing the vote of the March 12, 2013, Charter amendment election concerning Initiative Measure No. 22-117; and

WHEREAS, Section 5 of Ordinance No. 5806 directed the City Manager to bring forward recommendations for the formation of a Charter Review Committee to propose a Charter amendment that would put in place the principal provisions of Measure 22-117 while minimizing and avoiding unintended consequences and expenses; and

WHEREAS, the City Manager and City Attorney thereafter met with Tom Cordier, the chief petitioner of Measure 22-117, and Michael Wynhausen to discuss the formation of the Charter Review Committee and, in the course of these discussions, sought to identify the areas of difference and agreement; and

WHEREAS, as a result of the aforesaid discussions, the parties agreed that a Charter Review Committee was not needed and that the proposed measure, attached hereto as Exhibit A, would meet the stated goal of putting in place the principal provisions of Measure 22-117 while minimizing and avoiding unintended consequences and expenses; and

WHEREAS, the chief petitioner and City Council agreed that approval by the electors of the proposed measure will clarify the legal requirements of the City with regard to new borrowing and will therefore minimize delay and expense; and

WHEREAS, the City Council of the City of Albany finds that it is in the best interest of the City that the proposed measure be placed before the electors of the City of Albany at an election to be held on September 17, 2013.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1: Date of Election. An election with a question set forth in Section 2 of this ordinance shall be referred in the manner prescribed herein to the legal voters residing within the City of Albany, on the 17 day of September, 2013.

Section 2: Form of Question. Shall the Charter be amended to require a vote of the people prior to City borrowing?

Section 3: Ballot Title. The ballot title for the measure shall be as follows:

Caption: Charter amendment to require voter approval prior to City borrowing.

Question: Shall the Charter be amended to require a vote of the people prior to City borrowing?

Summary: This measure amends the City Charter in response to the vote on Measure 22-117 on March 12, 2013. That measure was not placed in the City Charter because it did not receive the required number of votes necessary, under the law, to be effective. Thereafter, the City in cooperation with the chief petitioner of Measure 22-117 agreed

upon this proposed Charter amendment as a method to require a public vote prior to new City borrowing while minimizing unnecessary expenses and avoiding unintended consequences.

The measure will require voter approval of City borrowing with the exception of borrowing to finance local improvements allowed by ORS Chapter 223(Bancroft Bonding Act) or any similar, replacement statute; borrowing authorized by an Oregon State Statute; borrowing to address an emergency situation that poses an immediate risk of significant economic loss to the City or an immediate risk to health, life, or property; or borrowing to refinance an existing City borrowing for financial savings.

Section 4: The presentation of the proposed Charter amendment measure eliminates the need for the Charter Review Committee called for in Section 5 of Ordinance No. 5806, the requirements of that section are deemed satisfied, and Ordinance No. 5806 is amended to delete that section in its entirety; and Section 6 of Ordinance No. 5806 is amended by striking "General Election held in November 2013" and inserting "September 17, 2013 election."

Section 5: Hours of Election. The election shall be by mail.

Section 6. Notice of Election. Notice of election shall be given by the County Clerks and City Elections Officer, as provided in the general election laws of the State of Oregon and the Charter of the City of Albany.

Section 7: Ballot Form. The City Attorney shall cause to be delivered to the City Elections Officer a Notice of Election and Ballot Title in substantially the form attached as Exhibit B.

Section 8: Emergency Clause. In as much as this ordinance is necessary for the immediate preservation of the public peace, health, and safety of the City of Albany, an emergency is declared to exist, and this Ordinance shall be in full force and effect when signed by the Mayor.

Passed by the Council: June 12, 2013

Approved by the Mayor: June 12, 2013

Effective Date: June 12, 2013



Mayor

ATTEST:




City Clerk

Ordinance No. _____
Ver. 5 - 06/04/13

EXHIBIT "A"

PROPOSED REPLACEMENT TO CHAPTER IX, SECTION 44 OF THE CITY CHARTER:

Section 44 Debt Limit.

After enactment of this section by the people, The City Council shall not authorize any borrowing unless the borrowing is specifically permitted by this Section 44.

a) Definition of Borrowing. "Borrowing" means any general obligation bond, revenue bond, full faith and credit financing agreement or subject-to-appropriation financing agreement or other contract in which a party agrees to advance money to the City in exchange for the City's agreement to repay the advanced funds with interest over a period of more than thirteen months.

b) New borrowings with voter approval. The City Council may borrow money if the borrowing is approved by the City's electors. A borrowing shall be deemed to be approved by the City's electors if the number of votes cast in favor of the borrowing exceeds the number of votes cast against the borrowing.

c) Local improvement district bonds. The City Council may borrow money without approval of the City's electors if the borrowing finances a local improvement pursuant to ORS Chapter 223 (the Bancroft Bonding Act) or any similar, replacement statute, the City Council will impose assessments for the cost of the local improvement on benefitted property owners, and the city expects to be able to pay the borrowing from assessment payments made by those benefitted property owners.

d) State law override. The City Council may borrow money without approval of the City's electors if an Oregon statute authorizing the borrowing provides that the authority is not limited by other laws, such as a local charter limitation.

e) Emergency borrowings. (1) The City Council may borrow money without approval of the City's electors if:

(i) the City publishes notice of the public hearing called for in this subsection e) in a newspaper of general circulation in the City at least two times before the hearing date;

(ii) the first notice of the public hearing is published not less than seven calendar days before the hearing date;

(iii) the hearing notice describes the date, time, place, and the amount proposed to be borrowed;

(iv) following the hearing, the City Council adopts an ordinance making a legislative determination that:

(A) an emergency exists,

(B) the borrowing must be done quickly to avoid or mitigate that emergency, and

(C) the project(s) to be financed with the borrowing are necessary to avoid or mitigate that emergency.

(2) For purposes of this subsection e):

(i) "emergency" means a situation that poses an immediate risk of significant economic loss to the City, or an immediate risk to health, life, or property.

(ii) "significant economic loss" means an economic loss that exceeds \$250 thousand.

(iii) "immediate risk" means a risk that, at the time of the hearing, has already resulted in a loss or harm, or that is expected to result in a loss or harm that will occur before the City can obtain approval of its electors for a new borrowing pursuant to subsection b) of this section.

f) Refinancings for savings. The City Council may borrow money without approval of the City's electors to refinance a City borrowing if the total principal and interest scheduled to be paid on the refinancing is less than the total principal and interest that was scheduled to be paid on the borrowing that is refinanced.

g) Personal Liability. All members of the City Council who vote to approve a borrowing in excess of the amounts permitted by this Section 44 shall be jointly and severally liable for the excess. However, a member of the City Council shall not be liable under this paragraph if the member voted in good faith and in reliance upon an opinion of the City Attorney, Bond Counsel, or other legal counsel engaged to provide an opinion concerning the borrowing in question, also given in good faith, that the borrowing for which the member voted is permitted by this Section 44.

The language of this section repeals and replaces, in its entirety, Section 44 of the City Charter as it then existed prior to the effective date of this section.

EXHIBIT "B"

Caption: Charter amendment to require voter approval prior to City borrowing.

Question: Shall the Charter be amended to require a vote of the people prior to City borrowing?

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