

# TITLE 21

## CITIES

- Chapter 221. Organization and Government of Cities  
222. City Boundary Changes; Mergers and Consolidations  
223. City Improvements and Works Generally  
224. City Sewers and Sanitation  
225. Municipal Utilities  
226. City Parks, Memorials and Cemeteries  
227. City Planning and Zoning
- 

## Chapter 221

### 1981 REPLACEMENT PART

### Organization and Government of Cities

- INCORPORATION OF CITIES**
- 221.005 Legislative findings; policy  
221.010 Definitions for ORS 221.020 to 221.100  
221.020 Authority to incorporate  
221.031 Petition to incorporate; filing; form; contents; approval by adjoining city  
221.040 Hearing on petition to incorporate; order fixing date of election on approved petition  
221.050 Notice of election given; returns canvassed and results proclaimed; situs of city  
221.061 Election costs  
221.070 Election of first city council; notice of election  
221.080 Nominating petition; names placed on ballot; cost of election  
221.090 Council candidates elected; terms of office; canvass of returns; proclamation  
221.100 Validation of incorporation under prior laws  
221.106 Prohibition against signing by person not legal voter, signing false name or multiple signing of incorporation petition
- CITY GOVERNMENT; OFFICERS; NOMINATIONS AND ELECTIONS; CHARTER AMENDMENTS**
- 221.110 City officers; eligibility  
221.120 The city council; terms; vacancies; powers; meetings  
221.130 Mayor; term; functions
- 221.140 Appointment of municipal judge and other city officers; removal; compensation  
221.145 Basing compensation of city officers upon fines or bail forfeitures prohibited  
221.150 Drawing lots in tie elections  
221.160 Special elections to fill council vacancies; appointment of council members when all positions vacant  
221.170 City elections; separate ballots and boxes for city at general election; costs; procedure  
221.180 Procedure for nomination of candidates for city offices in cities of 2,000 or more  
221.190 Procedure for nominating candidates in cities not required to hold primary elections  
221.200 Elections in cities; duties of city clerk, recorder or auditor  
221.210 Charter amendments; special election  
221.230 Election dates; procedure for emergency elections
- ORDINANCES; MUNICIPAL COURTS; APPEALS**
- 221.310 Effective date of ordinances; emergency measures  
221.315 Enforcement of ordinance and charter provisions; disposition of fines, costs and forfeited bail  
221.330 Publication or posting of ordinances; exceptions

## CITIES

- 221.340 Parking law violation; mode of charging defendant; notice as complaint; court jurisdiction
- 221.348 Disqualification of municipal judge for prejudice
- 221.349 Trial by jury in criminal cases
- 221.350 Appeals from conviction in municipal court
- 221.360 Appeal on issue of validity of charter or ordinance
- 221.370 Validity of charter or ordinance determined before merits
- 221.380 Appeal by city from invalidating order; release of defendant during appeal
- 221.390 Trial, procedure and sentence in circuit court on appeal from municipal court

### AUTHORITY TO REGULATE LOCAL MATTERS; LICENSING AND TAXATION

- 221.410 Power of city to control local affairs; limitation of floating indebtedness; cities affected
- 221.420 Municipal regulation of public utilities
- 221.450 Tax on public utilities operating without franchise; validation
- 221.460 Duration of franchises, privileges and permits
- 221.470 Removal of structures on expiration of grant or franchise

### DISINCORPORATION

- 221.610 Disincorporation of cities and municipal corporations; effective date
- 221.620 Petition for disincorporation; submission to vote
- 221.630 Notice of disincorporation election; ballots
- 221.640 Count and canvass of returns; number of electors determined
- 221.650 Property conveyed to county; cessation of corporate existence; records deposited
- 221.660 Application of general election laws

### MISCELLANEOUS

- 221.710 Filing of city charter and amendments; effect; certified copies furnished
- 221.720 Situs of cities; jurisdiction of cities coextensive with boundaries
- 221.735 Continuation of solid waste collection franchise after incorporation; authority of city
- 221.745 Sale of city real property
- 221.750 Right of cities to public areas not extinguished by adverse possession or statute of limitations
- 221.760 Prerequisites for cities in counties over 100,000 population to receive revenues from cigarette, gas and liquor taxes
- 221.770 Revenue sharing to cities; conditions for receipt; formula for distribution; report required from city on use of funds
- 221.780 Long-range financial planning report; form

### THE 1893 INCORPORATION ACT

- 221.901 Cities organized under 1893 Act; officers; "city" defined for ORS 221.901 to 221.928
- 221.902 City officers; elective; appointive; terms
- 221.903 Bond and oath of officers
- 221.904 Vacancies
- 221.905 Compensation of city officers
- 221.906 Election rules generally

- 221.907 Eligibility for office
- 221.908 Council meetings; notice; place of meetings
- 221.909 Council meetings; attendance; rules; records
- 221.910 Powers of council regarding qualification of members, elections, procedure for meetings
- 221.911 Rules on enactment of ordinances granting franchise or for payment of money
- 221.912 Formalities required to render ordinance effective
- 221.913 Claims against cities; how presented and paid
- 221.914 Prosecution for violation of ordinance; place of imprisonment; city liable for expenses
- 221.915 Nuisance defined
- 221.916 Powers of council generally
- 221.917 Functions and duties of mayor
- 221.918 Jurisdiction and duties of recorder; jury trial; witnesses; contempt powers; records
- 221.919 Powers and duties of marshal; removal from office
- 221.920 Duties of treasurer
- 221.921 Interest of officers in city contracts
- 221.922 Voting privilege subject to certain conditions
- 221.923 Working out fines for violation of ordinance
- 221.924 Authority to make public improvements
- 221.925 Tax deeds; tax warrants
- 221.926 Authority to enact ordinances
- 221.927 Approval or veto of ordinances; proceedings after veto
- 221.928 Record of ordinances; compilation accepted as evidence

### CROSS REFERENCES

- Alcoholism, treatment and rehabilitation services; grants, 430.370
- Appeal, right in municipal courts, 157 020
- Applicability of county ordinances inside incorporated city, 203.040
- Borrowing capacity of cities, determination, 287 010
- Building permits, issuance to unregistered builder prohibited, 701 055
- Buildings, public and government, requirements for use by handicapped, 447 235, 447 243, 447 235
- Cancellation of bond given to any public body, 743 755
- Child abuse, reporting of suspected cases, 418 740 to 418 775
- City-county consolidation, 199 705 to 199 755
- City financial administration, Ch 294
- Civil service for city employes and firemen, Ch 242
- Collective bargaining with employes, 243 650 to 243 782
- Community school program, 336 525
- Conservation and scenic easements, acquisition, 271.720
- Crime reporting for certain arrests, 181 511 to 181 560
- Discrimination against optometrists prohibited, 683 035
- Drugs and alcohol, local laws prohibited except traffic regulation and regulation identical to certain state laws, 430.325
- Economic development projects for cities over 300,000 in population, 280 410 to 280 485
- Economic emergency assistance, 280 710 to 280 740
- Emergency disaster financial assistance, 401.600 to 401 660
- Ethics Commission reporting requirements, notice, 244 195
- Highway advertising and information signs, transfer of control, 377 760

## ORGANIZATION AND GOVERNMENT OF CITIES

- Hospital facilities, authorization of public authorities; financing of construction, 441.525 to 441.595
- Housing for low income elderly, city to enter agreement with developer for construction, 456.470 to 456.495
- Identification cards for persons 60 years of age or older, 305.350 to 305.365
- Incorporated communities may regulate use of streets by animals, 487.660
- Industrial facilities, acquisition and disposition, 271.510 to 271.540
- Insurers, preemption by state of power to regulate, tax or license, 731.840
- Intergovernmental arbitration, 190.710 to 190.800
- Jail inmates, workers' compensation coverage, 656.041
- Law enforcement, city-county contracts for, 206.345
- Libraries, Ch. 357
- Life insurance provided by public employers for police officers and firemen, 243.015
- Liquor dispenser's license for use in city's public auditorium, 472.117
- Liquor laws, proper entertainment in licensed premises permitted in absence of local regulation, 471.265
- Local income and sales taxes, collection and distribution, 305.620
- Media persons as witnesses at governing body proceedings, 44.510 to 44.540
- Moneys collected in traffic offense proceedings, disposition of, 484.250
- Motor vehicle fuel tax refunds, 319.350
- Multiple-unit housing in urban areas, tax relief program, 307.600 to 307.690
- Peace Corps volunteers, leave of absence, 236.040
- Pedestrian malls, 376.705 to 376.825
- Police academies, reimbursement of local costs, 181.655
- Police officer, employment of uncertified officer for more than one year prohibited, 181.665
- Police officers and firemen employed by city, coverage under Public Employees' Retirement System, 237.610 to 237.640
- Police standards and training board, 181.620
- Property held under lease or lease-purchase by institution, organization or public body other than state, 307.112
- Public Contract Review Board functions, 279.055
- Public employes, provisions relating to, Ch. 236
- Public facilities, use by handicapped persons, design, 447.210 to 447.280
- Public transportation employes, retirement under Public Employees' Retirement System, exception, 237.015
- Regional correctional facilities, 169.610 to 169.680
- Relocation of municipal facilities, payment of costs by Department of Transportation, 366.321
- School traffic patrols, 336.480
- Siting procedure for child-caring facilities by cities and counties, 418.950 to 418.970
- Snowmobiles, regulation authorized, 483.755
- Transportation system, city to protect rights of employes when assuming operation, Const. Art. XI, §13
- Underground assessment district, creation, 758.220 to 758.270
- Uniform enforcement of regulations on use of vehicles on school grounds, 332.445
- Unprotected areas outside cities, authority to extinguish fires, 476.280
- Work and training programs, 411.855 to 411.870
- Wreckers, motor vehicle, regulation, limit on location and size, 481.353
- 221.010**
- "City" includes village or town, 174.100
- 221.010 to 221.090**
- Boundary commission authority over city incorporation, 199.410 to 199.519
- Conclusive presumption of validity of boundary proceeding one year after effective date, 12.270
- 221.020**
- Formation of incorporated cities, Const. Art. XI, §2
- Incorporation by consolidation or merger, Ch. 222
- 221.110**
- Prohibition of religious test as qualification for office, Const. Art. I, §4
- 221.120**
- Elections and appointments of city officials, Const. Art. VI, §7
- Filling of vacancies, Const. Art. VI, §9
- 221.140**
- Creation of municipal courts, Const. Art. VII (O), §1, Art. VII (A), §1
- 221.170**
- Conduct of elections, generally, Ch. 254
- Determination of population, 190.510 to 190.590
- District attorney as prosecutor of violations of charters and ordinances, 8.650
- Election contests, 258.006 to 258.085
- Recounts, 251.510 to 251.650
- Time and place of city elections, Const. Art. II, §14a, 254.035
- Vote recording systems, Ch. 258
- 221.190**
- Election documents, time for receipt of, 246.021
- 221.200**
- Conduct of elections for city officers in cities over 2,000, 254.035
- 221.210**
- Contest of election, 258.006 to 258.085
- Election documents, time for receipt of, 246.021
- Initiative and referendum on special and local laws, Const. Art. IV, §1a
- Recounts, 251.510 to 251.650
- ORDINANCES; MUNICIPAL COURTS; APPEALS**
- City ordinances, application to hearing on suspension of driving privilege for refusing breath test, 482.550
- City ordinances and city court rules to conform to traffic court rules made by Supreme Court, 1.520
- District court jurisdiction over violations of city charter and ordinances, 46.040, 46.045
- Traffic offense procedures, jurisdiction of city court, 484.030
- Uniform citations, adoption by Supreme Court, 1.525
- 221.315**
- District court procedures for violations of municipal ordinances, 46.047
- 221.340**
- Action by city to recover penalty, 30.310
- Actions for fines, forfeitures and penalties, 30.410
- Crime reporting for certain arrests, 181.511 to 181.560
- Enforcement of ordinances and resolutions, 30.315
- Juvenile court, transfer of certain proceedings involving children to, 419.478
- 221.349**
- Assessment in addition to fine or bail forfeiture for violation of ordinance, 137.015
- 221.350**
- Appeals in criminal actions, 157.010
- Juvenile court, transfer of certain proceedings involving children to, 419.478
- Probation and suspension of sentence by municipal courts, 137.010
- 221.360**
- Notice of appeal to plaintiff's attorney, 138.081

## CITIES

### 221.380

City not required to make appeal bond, 22.010

### 221.390

Probation and suspension of sentence on conviction for violation of ordinance, 137 010  
Setting aside prior conviction for violation of certain ordinances, 137 225

### 221.410

Airports and landing fields, Ch. 492  
Amusement rides, effect of city regulation upon state law, 460 380  
Assessments for local city improvements, 223.387 to 223 399  
Audits of public funds, financial records and accounts, Ch. 297  
Boats and boating, 488.028, 488.600  
Borrowing and bonds of cities, Ch 287  
Boxing and wrestling, Ch 463  
City boundary changes, Ch 222  
City control over milk standards, 621.291  
City financial administration, Ch 294  
City improvements and works, Ch 223  
City libraries, 357.410  
City parks, memorials and cemeteries, Ch 226  
City planning and zoning, Ch. 227  
City sewers and sanitation, Ch 224  
City utilities, Ch 225  
Civil service for city employes and firemen, Ch 242  
Condemnation by cities, Ch 223  
Consultant to be appointed from Portland and other cities imposing tax having multistate impact, 305.665  
Control of access to public highways, Ch 374  
Cooperation of governmental agencies, Ch 190  
Depositories of public funds and securities, Ch. 295  
District attorney as prosecutor of violations of charters and ordinances, 8.650  
Donation by city of county courthouse site, 276.726  
Education in homemaking and agriculture, funds, 343 910  
Electrical installations and products, effect of city regulation upon state law, 479.540, 479.820  
Financing of public projects, Ch. 280  
Fire protection, communications and street lighting, provisions concerning, 264.340, 476 030, 476 805 to 476 865, 478 300, 478.305, 478 310  
Food processing by-products, granting permits for transportation by vehicle with fluid leakage, 483 510  
Foreign trade zones, 307 850  
Housing, Ch. 456  
Labor conciliation services for public employes, 662 435  
Limitation on city taxing power, Const. Art. XI, §11  
Local Budget Law, 294 315 to 294 520  
Merger of cities, Const Art XI, §2a  
Noise sources, city regulation, 467 100  
Power to fix railroad speed limit in cities, 763.035  
Powers of cities under Home Rule, Const. Art XI, §2  
Prohibition against certain financial interests of cities, Const Art. XI, §9  
Public contracts and purchasing, Ch 279  
Public employes, Chs 236, 238, 242 and 243  
Recreation facilities, cooperation with State Recreation Director in developing, 390.140  
Rental, lease or purchase of real property for city, 271.390  
Restrictions on powers of cities in acts of incorporation, Const Art XI, §5  
Rights of way for public uses, Ch 772  
Roads and highways through cities, Ch. 373  
Sewage charge on water users, 224.510  
Subdivisions and partitions, Ch 92  
Timber, sale by city, 526 805  
Traffic control, cooperation with State Board of Higher Education, 352 360

Trailers, state regulations prescribing equipment supercedes city ordinances, 446.200  
Truck routes, authority of cities to designate streets as, 483 542, 483 544  
Unemployment insurance, 657 020, 657 065, 657 097, 657 505  
Urban renewal, Ch. 457  
Use or disposition of public lands, Ch 271  
Workers' compensation, 656 017

### 221.420

Public ownership of municipal utilities, Ch 225  
State highways, municipal regulation of utilities using, 373.020  
Utility regulation, Chs 756, 757  
Water supply systems, operations, regulation, inspection, protection, penalties, 448.205 to 448 325, 448 990

### 221.450

Utility not relieved of duty to repair streets, 373 020

### 221.460

Agreements in perpetuity with United States, 271.440

### 221.470

People's utility districts, works on city property, 261 305

### 221.610

City-county, disincorporation provisions do not apply, 199 750

### 221.710

Authority to amend city charters, Const Art. XI, §2  
Filing of amendments concerning boundary changes, 222 150 to 222 170

### 221.750

Suits to determine adverse claim to realty, 105.605

### 221.902

Elections in cities, Const Art. II, §§14, 14a  
Elections in cities over 2,000, 254 035

### 221.903

Oath of office, Const Art XV, §3

### 221.907

Prohibition against religious test as qualification for office, Const Art I, §4

### 221.913

Restrictions on financial power of cities, Const Art XI, §5

### 221.916

Milk control ordinances under milk marketing controls, 583.016

### 221.918

Disqualification for prejudice, 221 348  
Justice courts, Chs. 51, 52, 54, 156

### 221.919

Juvenile court, transfer of certain proceedings involving children, 419 478  
Scholarships, children of peace officers killed or disabled in line of duty, 348 270

### 221.922

Elections to be free, Const Art II, §1

## INCORPORATION OF CITIES

### 221.005 Legislative findings; policy.

The Legislative Assembly finds that the provisions of ORS 199.476, 221.031, 221.040, 221.061, 221.106, 221.735 and this section are necessary to provide for the orderly incorporation of territory adjoining existing cities. However, the Legislative Assembly does not intend that the incorporation of such territory affect the authority of special districts to enter into agreements with cities newly incorporated under ORS 199.476, 221.031, 221.040, 221.061, 221.106, 221.735 and this section for the performance of functions, services and activities by the district within the boundaries of the city. [1981 c.890 §1]

**Note:** 221.005 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 221 or any series therein by legislative action. See the Preface to Oregon Revised Statutes for further explanation

**221.010 Definitions for ORS 221.020 to 221.100.** As used in ORS 221.020 to 221.100, unless the context requires otherwise:

(1) "Voter" means a legal voter of the State of Oregon.

(2) "County court" means a county court or board of county commissioners.

(3) "City," except in the term "incorporated city" in ORS 221.020, means a city incorporated under ORS 221.020 to 221.100 or proposed to be incorporated.

(4) "Population" means a city's population as shown by the latest annual estimate made pursuant to ORS 190.520.

(5) "Urbanized area" means territory within three miles of a city. [Amended by 1965 c 579 §1, 1973 c 432 §1]

**221.020 Authority to incorporate.** The people of an area, no part of which lies in an incorporated city and in which 150 persons reside, may incorporate a city by approving at an election called and held according to ORS 221.031 to 221.060 a proposition provided by those sections for incorporating the city.

**221.030** [Amended by 1965 c 579 §2; 1973 c.432 §2, repealed by 1981 c.890 §2 (221.031 enacted in lieu of 221.030)]

**221.031 Petition to incorporate; filing; form; contents; approval by adjoining city.** (1) Before circulating a petition to incorporate unincorporated territory as a city, the petitioners shall file with the county clerk of the county in which the proposed city lies or,

should it lie in more than one county, to the county clerk of the county in which the largest part of its territory lies, a petition for incorporation in a form prescribed by rule of the Secretary of State. The county clerk shall immediately date and time stamp the prospective petition and shall authorize the circulation of the petition. The county clerk shall retain the prospective petition and shall immediately send two copies of the prospective petition to the appropriate county court.

(2) A petition for incorporation filed with the county clerk under subsection (1) of this section shall designate the name and residence address of not more than three persons as chief petitioners, who shall be legal voters residing within the boundaries of the proposed city. The petition shall contain the name of the proposed city. The petition shall also include a declaration of the rate of taxation, expressed in dollars per thousand dollars of assessed value, estimated to be sufficient to support an adequate level of municipal services. There shall be attached to the cover sheet of the petition a map indicating the exterior boundaries of the proposed city. The map shall not exceed 14 inches by 17 inches in size and shall be used in lieu of a metes and bounds or legal description of the proposed city.

(3) Each sheet of signatures shall be attached to a full and correct copy of the petition for incorporation. Not more than 20 signatures on each sheet of the petition for incorporation shall be counted. Each signature sheet shall be verified on its face by the signed statement of the circulator that the individuals signed the sheet in the presence of the circulator and that the circulator believes each individual is an elector registered in the county.

(4) Except as provided in section 5, chapter 890, Oregon Laws 1981, when any of the area proposed to be incorporated lies within an urbanized area, the petition required by subsections (1) and (2) of this section, in addition to the requirements of such subsections, and in order to be sufficient to allow for calling a public hearing under ORS 221.040, shall meet one of the following requirements:

(a) Be accompanied by a resolution approving the proposed incorporation adopted by the city or cities whose proximity would otherwise prohibit incorporation; or

(b) Be accompanied by an affidavit, signed by any person requesting incorporation, stating that the city or cities whose proximity

would otherwise prohibit incorporation have failed to take any action pursuant to the request within 120 days of its submission. [1981 c.890 §3 (enacted in lieu of 221.030)]

**Note:** Sections 5 and 12, chapter 890, Oregon Laws 1981, provide:

Sec 5 (1) When any of the territory proposed to be incorporated is within the jurisdiction of a local government boundary commission, if the area contains more than 20,000 residents and has an average population density greater than 1,920 persons per square mile, subsection (4) of section 3 of this 1981 Act shall not apply to the proposed incorporation

(2) When all of the area proposed to be incorporated lies outside the jurisdiction of a local government boundary commission and lies within the urban growth boundary of a city, if the area contains more than 20,000 residents and has an average population density greater than 1,920 persons per square mile, subsection (4) of section 3 of this 1981 Act shall not apply to the proposed incorporation. When subsection (4) of section 3 of this 1981 Act does not apply to a proposed incorporation by reason of this subsection, the county court to which the petition to incorporate is presented under ORS 221.030 shall, with regard to such petition, exercise the powers of a local government boundary commission granted under ORS 199.461, 199.462, 199.463, 199.465 and 199.480.

**Sec. 12.** Presentation of petitions for incorporation of territory to which subsection (4) of section 3 of this Act does not apply by reason of section 5 of this Act shall not be allowed after December 31, 1987. On that date, section 5 of this Act is repealed.

**221.040 Hearing on petition to incorporate; order fixing date of election on approved petition.** (1) When a petition for incorporation described in ORS 221.031 is signed by 20 percent or, in a county with a population over 300,000, by 10 percent, of the voters of the area proposed to be incorporated, the petition shall be filed with the county court of the county in which the proposed petition was filed under ORS 221.031. Upon the filing of the petition, the county court shall fix the time and place for the hearing of such petition and shall give notice thereof by publication once each week for two successive weeks in a newspaper published in the county where the petition is filed and of general circulation within said boundaries, and by posting the same for said period of time in three public places in the area proposed to be incorporated. The notice shall state the time and place of the hearing, describe the boundaries set forth in the petition and state the purpose of the petition. If any portion of the proposed incorporation of a city lies within another county or counties, then the notice shall be published in a newspaper of general

circulation in each of the counties and in the same time and manner.

(2) At the time and place fixed for the hearing, or at any time and place at which the hearing may be continued or postponed, any person interested may appear and present oral or written objections to the granting of the petition, the forming of the proposed incorporated city or the estimated rate of taxation set forth in the petition. The court may alter the boundaries as set forth in the petition to include all territory which may be benefited by being included within the boundaries of the proposed incorporated city, but shall not modify boundaries so as to exclude any land which would be benefited by the formation of the proposed city. No land shall be included in the proposed city which will not, in the judgment of the court, be benefited. If the court determines that any land has been improperly omitted from the proposed city and the owner has not appeared at the hearing, it shall continue the hearing and shall order notice given to the nonappearing owner requiring the owner to appear before it and show cause, if any the owner has, why the owner's land should not be included in the proposed city. The notice shall be given by publication and posting in the same manner as the original notice for hearing and for the same period. For the purposes of this subsection, "owner" means the legal owner of record except that if there is a vendee under a duly recorded contract, such vendee shall be deemed to be the owner.

(3) Upon the final hearing of the petition, the court, if it approves the petition as originally presented or in an altered form, shall make an order fixing a date for a special election relating to the incorporation of the proposed city, which date shall be on the same date as the next regular state-wide primary or general election. However, when an issue respecting the incorporation of a proposed area has been determined adversely by the voters thereof at two elections held within a one-year period, another election shall not be held until a period of one year has elapsed after the last election. The order shall contain:

(a) A description of the exterior boundaries of the proposed city as determined by the court. The description shall be a metes and bounds or legal description prepared by the county surveyor or county assessor. The description prepared under this paragraph shall accurately describe the exterior boundaries of the proposed city as indicated on the map filed

under ORS 221.031 (2) unless those boundaries were altered by the county court, in which case the description shall accurately describe the boundaries as altered;

(b) A provision requiring the county official in charge of elections to include on the ballot for the election a description of the boundaries of the proposed city using streets and other generally recognized features and a statement of the rate of taxation, expressed in dollars per thousand dollars of assessed value, estimated to be sufficient to support an adequate level of municipal services;

(c) The date on which the election will be held in the proposed city;

(d) The polling place or places at which the election will be held; and

(e) The appointment of three judges and a clerk for each polling place, who shall be registered voters in the proposed area.

[Amended by 1953 c.593 §3, 1979 c 316 §9; 1981 c 890 §7]

**221.050 Notice of election given; returns canvassed and results proclaimed; situs of city.** (1) The court shall cause the proposition for incorporation determined as provided in ORS 221.040 to be submitted to the voters at an election to be held in said area at the date fixed pursuant to ORS 221.040 and shall give notice thereof by publication once each week for three successive weeks in a newspaper published in said county and of general circulation in said area, and by posting the same for like period of time in three public places within said area. No person other than a registered voter resident within the boundaries determined by the court shall vote at said election. The notice shall be given in substantially the following form:

NOTICE OF ELECTION

On \_\_\_\_\_, 19—, at —, an election will be held from — a.m. until — p.m. for the purpose of submitting the proposition for incorporation to the registered voters residing within the boundaries described in the proposition: (Set forth here the proposition to be voted upon.)

County Court of \_\_\_\_\_ County  
By \_\_\_\_\_

(2) Within 10 days after an election held pursuant to subsection (1) of this section on a proposition to incorporate an area as a city, the county court calling the election shall

canvass the returns of the election and proclaim whether a majority of the votes cast on the proposition favors it. If it does, that area described in the notice of election is incorporated as a city from the date of the election.

(3) If the city lies in more than one county, the situs of the corporation shall be only the county of the court issuing the proclamation, except for the purposes of laws relating to reports of boundary changes and to the levy, assessment and collection of property taxes.

[Amended by 1953 c.593 §3]

**221.060** [Repealed by 1981 c.890 §8 (221 061 enacted in lieu of 221.060)]

**221.061 Election costs.** (1) When a majority of votes cast in an election held under this chapter for incorporation of a city favors incorporation, all expenses of the election and the preparation of the metes and bounds or legal description for the incorporation petition under ORS 221.040 (3)(a) shall be paid from the general fund of the newly incorporated city in the same manner that other claims against the city are paid.

(2) When a majority of votes cast in an election held under this chapter for incorporation of a city opposes incorporation, all expenses of the election and the preparation of the metes and bounds or legal description for the incorporation petition under ORS 221.040 (3)(a) shall be paid from the general fund of the county in the same manner that other claims against the county are paid. [1981 c.890 §9 (enacted in lieu of 221 060)]

**221.070 Election of first city council; notice of election.** (1) A county court which proclaims the incorporation of an area as a city shall cause an election to be held in the city on the next available election date in ORS 221.230 that is not earlier than 60 days after the incorporation for the purpose of electing five councilmen for the city. No person other than a voter residing in the city shall vote at the election.

(2) Within 30 days after a city has been incorporated the county court proclaiming the incorporation shall post in three public places in the city or publish in two consecutive issues of a newspaper of general circulation in the city a notice in the following form:

**NOTICE OF ELECTION**

On \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_, an election will be held from \_\_\_\_\_ a.m. until \_\_\_\_\_ p.m. for the purpose of electing five councilmen for the city of \_\_\_\_\_.

County Court of \_\_\_\_\_ County  
By \_\_\_\_\_

[Amended by 1979 c 316 §10]

**221.080 Nominating petition; names placed on ballot; cost of election.** (1) The county court which proclaims the incorporation of a city shall place on the ballot for electing the first councilmen of the city the name of every person nominated for the office of councilman of the city by a petition in the following form presented to the court within 40 days after the incorporation and signed by a number of voters of the city equal to five percent of the number of votes cast on the proposition for incorporating the city:

**PETITION FOR NOMINATION**

To the County Court of \_\_\_\_\_ County:

We, the legal voters of the city of \_\_\_\_\_, order that the name of \_\_\_\_\_ be included as a candidate for the office of councilman of the city on the ballot for electing the first councilmen of the city.

Name	Address
1. _____	_____

(2) The cost of electing the first councilmen of the city shall be borne by the city.

**221.090 Council candidates elected; terms of office; canvass of returns; proclamation.** (1) At an election for choosing the first councilmen of a city the candidates who receive the five highest number of votes shall be deemed elected. Of these five, those receiving the two highest number of votes shall hold office until the first council meeting of the year immediately following the second general election held after incorporation of the city, and those receiving the three next highest number of votes shall hold office until the first council meeting of the year immediately following the first general election held after the incorporation.

(2) Within 10 days after the first election of councilmen of a city the county court which

proclaims the incorporation shall canvass the returns of the election and proclaim which candidates at the election have been elected.

**221.100 Validation of incorporation under prior laws.** Only those cities which, prior to March 28, 1941, commenced incorporation according to the procedure provided in sections 1 to 9, chapter 345, General Laws of Oregon 1913, and actually completed incorporation according to sections 1 to 7, chapter 453, Laws of Oregon 1941, are regarded as legally incorporated cities under and subject to the provisions of ORS 221.010 to 221.090, 221.110 to 221.150 and 221.410, provided a majority of those voting on the proposition to incorporate were in favor of incorporation.

221.102 [1973 c 64 §1; repealed by 1975 c 326 §5]

221.104 [1973 c.64 §2, repealed by 1975 c 326 §5]

**221.106 Prohibition against signing by person not legal voter, signing false name or multiple signing of incorporation petition.** (1) No person may sign an initiative petition described in ORS 221.031 with a name not the person's own, or knowingly sign the person's name more than once to any such petition or sign any such petition when the person is not a legal voter.

(2) Violation of subsection (1) of this section is a Class A misdemeanor. [1973 c 432 §3, 1981 c 890 §11]

**CITY GOVERNMENT;  
OFFICERS; NOMINATIONS  
AND ELECTIONS; CHARTER  
AMENDMENTS**

**221.110 City officers; eligibility.** The officers of a city created under ORS 221.010 to 221.100 shall be five councilmen, a municipal judge and such other officers as the council deems necessary. Any resident of a city shall be eligible to hold an office of the city.

**221.120 The city council; terms; vacancies; powers; meetings.** Concerning the council of a city created under ORS 221.010 to 221.100:

(1) Three councilmen shall be elected biennially.

(2) At an election for electing councilmen the candidates who receive the three highest numbers of votes shall be deemed elected, and of these three the ones receiving the two highest numbers of votes shall hold office for four

years and the remaining one shall hold office for two years.

(3) A councilman's term of office shall begin at the first council meeting in the year immediately ensuing the year of his election.

(4) The council shall fill by appointment vacancies in its membership.

(5) The term of office of an appointee to an office of councilman shall be the remainder of the term of office of his immediate predecessor in the office.

(6) The powers of the city shall be vested in the council.

(7) A majority of the members of the council shall constitute a quorum for action by the council.

(8) No action by the council shall have legal effect unless concurred in by a majority of the council.

(9) The council shall meet publicly at least once each month.

**221.130 Mayor; term; functions.** Concerning the mayor of a city created under ORS 221.010 to 221.100:

(1) Only councilmen shall be eligible to serve as mayor.

(2) The council shall appoint a mayor at its first meeting of each odd-numbered year.

(3) The mayor's term of office shall be two years.

(4) He shall be presiding officer of the council and shall authenticate with his signature all ordinances which the council passes.

**221.140 Appointment of municipal judge and other city officers; removal; compensation.** The council of a city created under ORS 221.010 to 221.100 shall appoint a municipal judge and such other officers as it deems necessary for the proper government of the city, who shall be removable at the discretion of the council, receive such compensation as the council approves, and have such powers and duties as the council prescribes.

**221.145 Basing compensation of city officers upon fines or bail forfeitures prohibited.** The amount of compensation for city police officers, municipal judges or other city officers shall not be based upon the amount of revenues collected from fines or bail forfeitures or any set percentage thereof. [1981 c 402 §1]

**Note:** 221 145 was enacted into law by the Legislative Assembly but was not added to or made a part of

ORS chapter 221 or any series therein by legislative action See the Preface to Oregon Revised Statutes for further explanation.

**221.150 Drawing lots in tie elections.**

Where, at an election for choosing councilmen for a city created under ORS 221.010 to 221.100, it is impossible to determine from the vote which of two or more candidates has been elected or what are the respective terms of office of two or more candidates elected at the election, the determination shall be made by lots drawn by the candidates whom the question involves.

**221.160 Special elections to fill council vacancies; appointment of council members when all positions vacant.** (1)

Whenever because of death, resignation or other cause the number of the members of the governing body of any city is insufficient to constitute a quorum for the transaction of the business thereof, and the charter of such city does not otherwise provide, the mayor, or if there is no mayor, a majority of the remaining members of the governing body, may call a special election for the purpose of electing a sufficient number of persons to fill all the vacancies then existing in the governing body. For the purposes of such election the mayor, or if there is no mayor, a majority of the remaining members of the governing body, may appoint persons to act for all offices necessary to the holding of such election where such offices may be vacant. The appointments shall continue until a successor is selected as provided for by the charter or law governing such city.

(2) If all positions in the governing body of a city become vacant and if the charter of the city does not provide otherwise, the governing body of the county in which the city maintains its seat of government immediately shall appoint the number of persons sufficient to constitute a quorum for the transaction of city business. The persons appointed by the governing body of the county shall appoint a sufficient number of persons to fill any remaining vacancies existing in the governing body of the city. All persons appointed under this subsection shall serve until successors are elected and qualified to serve. [Amended by 1981 c 173 §7]

**221.170 City elections; separate ballots and boxes for city at general election; costs; procedure.** (1) Every city may provide by its charter for nominating and electing

candidates for its municipal offices on a ballot separate and distinct from the state and county ballot at the biennial primary and general elections and require that such city ballots shall be received by the election board clerks and deposited in a separate ballot box to be marked "city ballots." The separate ballot boxes shall be provided by the county clerk and delivered and returned to the county clerk as other election supplies are delivered and returned. In every case the city providing for separate city ballot and ballot boxes shall reimburse the county for the cost and expense thereof.

(2) Any city requiring separate city ballots and ballot boxes may provide for the nomination and election of its municipal officers by proportional representation. In such case the city ballot boxes and the ballots shall be returned to the county clerk who shall count and canvass the votes. The county clerk shall issue certificates of election to the candidates receiving the required proportion of votes.

(3) If any city charter provides for the filling of a vacancy that may occur in a municipal office by a recount of the ballots cast at the election at which such office was filled, the county clerk shall conduct the count. In all other respects the city elections and nominations shall be governed by the general election laws in so far as they are not in conflict with this section.

(4) For the purposes of this section, "county clerk" means the county clerk or the county official in charge of elections. [Amended by 1957 c 608 §225, 1979 c 317 §2]

**221.180 Procedure for nomination of candidates for city offices in cities of 2,000 or more.** (1) The nominating of candidates for municipal offices in all cities with a population of 2,000 or more, according to the last official federal or state census, shall be governed by the provisions of this section and ORS chapters 249 and 254.

(2) All nominating petitions and declarations of candidacy shall be filed with the city clerk, recorder or auditor. Candidates for nomination for offices of any such city shall qualify and file for nomination in the manner the city charter or ordinances provide; and if no such provision exists, then as the laws of this state provide. [Amended by 1957 c 608 §226; 1979 c 190 §408]

**221.190 Procedure for nominating candidates in cities not required to hold primary elections.** (1) The local voters of each city may make nominations for all municipal elective offices to be filled. In a city not required by law to hold a primary election for municipal offices, all nominations for elective offices within the city may be made in any of the following ways:

(a) By any regularly called convention of delegates representing the several wards of the city.

(b) By any convention of voters met for such purpose in any ward of the city making ward nominations.

(c) By any convention of voters met in city convention and representing the several wards in the city.

(d) By certificates of nomination signed by at least 25 voters in each ward in case of ward nominations or by at least 25 voters of the city in case of nominations at large.

(2) In any event, a certificate of nomination shall be made out and signed by at least 25 voters of the city and filed with the appropriate city officer on or before the 10th day preceding the day of any regular election, to entitle the names of candidates nominated to be placed upon the ballot. [Amended by 1957 c 608 §227]

**221.200 Elections in cities; duties of city clerk, recorder or auditor.** All laws regulating and governing general elections, proceedings and matters incidental thereto, shall apply to and govern elections in all cities. All certificates of nomination of candidates for city office to be filled by the electors at an election in any such city, and all acceptances and withdrawals shall be filed with the city clerk, recorder or auditor, as the case may be, who shall keep a register of nominations for city officers in the manner required by general laws to be kept by the county clerk. [Amended by 1957 c 608 §228; 1979 c.317 §3]

**221.210 Charter amendments; special election.** (1) Amendments to the charter of a city may be proposed and submitted to the people by the city council, with or without an initiative petition, but the same shall be filed with the city clerk for submission not less than 60 days before the election at which they are to be voted upon. No amendment of a city charter so made shall be effective until it is approved by a majority of the votes cast thereon by the people of the city to which it applies.

(2) The city council may by ordinance or resolution order special elections to vote on municipal measures.

(3) This section shall apply in every city in all matters, concerning the operation of the initiative and referendum in its municipal legislation, on which the city has not made or does not make conflicting provisions. [Amended by 1955 c.18 §1]

**221.230 Election dates; procedure for emergency elections.** (1) Except as provided in subsection (2) of this section, no election on a city measure or for a city office shall be held on any date other than:

- (a) The last Tuesday in March;
- (b) The third Tuesday in May;
- (c) The last Tuesday in June;
- (d) The second Tuesday in August;
- (e) The third Tuesday in September; or
- (f) The first Tuesday after the first Monday in November.

(2) An emergency election may be held on a date other than those provided in subsection (1) of this section, if the city governing body by resolution finds that an emergency exists which will require an election sooner than the next available election date to avoid extraordinary hardship to the community.

(3) A city governing body, with adequate notice, shall hold a public hearing, on a date other than a regularly scheduled council meeting, for the purpose of making findings substantiating the fact that an emergency exists before scheduling an election on a date other than those specified in subsection (1) of this section.

(4) Notice of a city's intent to hold an election shall be filed with the county election authority no later than 34 days preceding the desired election date. At the time the notice of election is given to the county election authority, the city shall also file with the election authority a certified copy of the ballot title, and a copy of the resolution and findings adopted by the city governing body to authorize the emergency election, as required under subsection (3) of this section.

(5) The county election authority in each county shall monitor emergency elections and shall make an annual report of the number and nature of such elections to the Secretary of State. The report shall include copies of city resolutions and findings of fact authorizing emergency elections which have been filed

with the county election authority in accordance with subsection (4) of this section. [1979 c.316 §4; 1981 c.639 §5]

## ORDINANCES; MUNICIPAL COURTS; APPEALS

**221.310 Effective date of ordinances; emergency measures.** (1) In cities having a population of 2,000 or more no ordinance, resolution or franchise shall take effect until 30 days after its passage by the council and approval by the mayor, unless it is passed over his veto. In that event, it shall not take effect until 30 days after final passage over the mayor's veto. However, measures necessary for the immediate preservation of the peace, health and safety of the city are excepted. These emergency measures shall become immediately effective if they state in a separate section the reasons why it is necessary that that they should become immediately effective and if they are approved by the affirmative vote of three-fourths of all the members elected to the city council, taken by ayes and noes, and also by the mayor. This subsection shall apply in every city in all matters concerning the operation of the initiative and referendum in its municipal legislation on which the city has not made or does not make conflicting provisions.

(2) Except for ordinances necessary for the immediate health, peace or safety, an ordinance enacted by the council of a city created under ORS 221.010 to 221.100 shall take effect 30 days after its enactment.

**221.315 Enforcement of ordinance and charter provisions; disposition of fines, costs and forfeited bail.** (1) Prosecution of violations of city charter or ordinances in district or justice's court shall be by the city attorney and in the name of such city. An agreement may be made, pursuant to ORS 190.010, between any city and the county in which all or part of such city is located, that such violations be prosecuted for such city in the district or justice's court by the district attorney in the name of the State of Oregon.

(2) All fines, costs and forfeited bail collected by the district or justice's court having jurisdiction of a violation of a city charter or ordinance shall be paid as follows:

- (a) One-half to the treasurer of the city whose charter or ordinance was violated.
- (b) One-half to the treasurer of the county

in which the court is located. [1973 c 645 §3; 1975 c 713 §2]

**Note:** The amendments to 221.315 by section 114, chapter 3, Oregon Laws 1981 (special session), become operative January 1, 1983. See section 5, chapter 3, Oregon Laws 1981 (special session) 221 315, as amended, is set forth for the users' convenience.

**221.315.** (1) Prosecution of violations of city charter or ordinances in district or justice's court shall be by the city attorney and in the name of such city. An agreement may be made between any city and, on behalf of the state, the presiding judge of the district court for the county in which all or part of such city is located, that such violations be prosecuted for such city in the district court by the district attorney in the name of the State of Oregon. An agreement may be made, pursuant to ORS 190.010, between any city and the county in which all or part of such city is located, that such violations be prosecuted for such city in the justice's court by the district attorney in the name of the State of Oregon.

(2) Except as otherwise provided by an agreement made under subsection (1) of this section in respect to the court, all fines, costs and forfeited bail collected by the district or justice's court having jurisdiction of a violation of a city charter or ordinance shall be paid as follows

(a) One-half to the treasurer of the city whose charter or ordinance was violated

(b) If collected by the district court, one-half to the Department of Revenue and deposited in the General Fund available for general governmental expenses.

(c) If collected by the justice's court, one-half to the treasurer of the county in which the court is located

**221.320** [Repealed by 1967 c 195 §1]

**221.330 Publication or posting of ordinances; exceptions.** Ordinances passed by cities must be posted or published in a newspaper if required by their respective charters; provided, that ordinances establishing rules and regulations for the construction of buildings, the installation of plumbing, electric wiring or other similar work, where such rules and regulations have been printed as a code in book form, may adopt such code or portions thereof by reference thereto without further publication or posting thereof. Not less than three copies of such code shall be filed, for use and examination by the public, in the office of the city recorder of the city, prior to the adoption thereof. Cities may adopt as ordinances any statute of the State of Oregon, the subject matter of which is within the scope of the charter authority by reference to the chapter or section, without further publication or posting thereof.

**221.340 Parking law violation; mode of charging defendant; notice as complaint; court jurisdiction.** (1) In all prosecu-

tions for violation of motor vehicle parking laws, it shall be sufficient to charge the defendant by an unsworn written notice if the same clearly states:

(a) The date, place and nature of the charge.

(b) The time and place for defendant's appearance in court.

(c) The name of the issuing officer.

(d) The license number of the vehicle.

(2) The notice provided for in subsection (1) of this section shall either be delivered to the defendant or placed in a conspicuous place upon the vehicle involved in the violation. The notice shall serve as the complaint in the case. In all other respects the procedure now provided by law in such cases shall be followed.

(3) A district court and a justice court have concurrent jurisdiction over parking offenses committed within the county, and a city court for offenses committed within the jurisdictional authority of the city. [Amended by 1973 c 737 §1]

**221.345** [Repealed by 1981 c 48 §8]

**Note:** 221.345 is repealed effective July 1, 1982. See section 9, chapter 48, Oregon Laws 1981. 221 345 (1979 Replacement Part) is set forth for the users' convenience

**221.345** The judge of the municipal court of Oregon City, in Clackamas County, at the close of business of each month, shall make a certified report to the county auditor of all fines and forfeited bails in state cases collected by him, and all commitments to the county jail during the month, showing the names of all persons committed and the date and term of sentence

**221.348 Disqualification of municipal judge for prejudice.** No judge of a municipal or city recorder's court having two or more judges shall hear to try any action, matter or proceeding if a party thereto or an attorney appearing therein moves the court for a change of judge on grounds of prejudice. The motion shall be supported by an affidavit stating that the judge before whom the action, matter or proceeding is pending is prejudiced against the party or attorney, and that the affiant or his client cannot or believes that he or his client cannot have a fair and impartial trial or hearing before the judge, and that such motion is not filed for the purpose of delay. The motion shall be filed before the action, matter or proceeding is to be tried or heard. No party or attorney shall make more than one application in any action, matter or proceeding. [1957 c 378 §1]

**221.349 Trial by jury in criminal cases.** (1) In all prosecutions for any crime or offense defined and made punishable by any city charter or ordinance the defendant shall have the right of trial by jury, of six in number. Juries shall be selected from the latest tax roll and registration books used at the last city election in the same manner in which juries are selected for circuit courts. The verdict of the jury shall be unanimous.

(2) Where provision is made for the payment of jury fees by the defendant as a deposit to insure a jury trial, and where the defendant is found not guilty, the deposit shall be returned to him.

(3) The deposit required by the municipal, city or recorder's court to insure the right of trial by jury, under the charter of the city, shall not be greater than that provided by ORS 10.060 in relation to justice courts for payment for each juror sworn multiplied by the number of jurors constituting a jury under the terms of the charter. [1959 c 502 §1, 2, 3, 1965 c 626 §1, 1971 c 633 §7, 1973 c 653 §1]

**221.350 Appeals from conviction in municipal court.** Whenever any person is convicted in the municipal court of any city of any offense defined and made punishable by any city charter or ordinance, unless the charter of the city prohibits appeals from such court, such person shall have the same right of appeal to the circuit court within whose jurisdiction the city has its legal situs and maintains its seat of city government as now obtains from a conviction from courts of justice of the peace. The appeal shall be taken and perfected in the manner provided by law for taking appeals from justice courts.

**221.360 Appeal on issue of validity of charter or ordinance.** In all cases involving the constitutionality of the charter provision or ordinance under which the conviction was obtained as indicated in ORS 221.350, such person shall have the right of appeal to the circuit court in the manner provided in ORS 221.350, regardless of any charter provision or ordinance prohibiting appeals from the municipal court because of the amount of the penalty or otherwise. An appeal may likewise be taken in such cases from the judgment or final order of the circuit court to the Court of Appeals in the same manner as other appeals are taken from the circuit court to the Court of Appeals in other criminal cases. Where the right of appeal in such cases depends upon there being involved an issue as to the consti-

tutionality of the charter provision or ordinance, the decision of the appellate court shall be upon such constitutional issue only.

[Amended by 1969 c.198 §78]

**221.370 Validity of charter or ordinance determined before merits.** Whenever the validity of a charter or ordinance provision of any city comes in issue in a trial for violation of charter or ordinance provision, the trial judge shall determine such issue of validity and make a decision and order thereon before making any decision as to the facts in the particular case.

**221.380 Appeal by city from invalidating order; release of defendant during appeal.** From an order declaring a charter or ordinance provision invalid, the city may appeal from the municipal or recorder's court to the circuit court of the county in which the city has its legal situs and maintains its seat of city government; and, from such order by a circuit court, may appeal to the Court of Appeals, in the same manner as appeals are taken in criminal cases to such courts. Upon the order of the appellate court upon such issue the case shall be remanded with direction. If a city so appeals, pending the appellate decision thereon, the defendant shall be released, with or without bond, for reappearance at the discretion of the trial court, until such time as the case is remanded. [Amended by 1975 c.227 §1]

**221.390 Trial, procedure and sentence in circuit court on appeal from municipal court.** (1) When any person convicted in a municipal court appeals to the circuit court as provided in ORS 221.350 and 221.360, such person shall be tried in the circuit court pursuant to the statutes which prescribe the procedure for trial of violations of the criminal statutes of the state, except that the prosecution shall be handled by an attorney provided by the city from the municipal court from which the appeal was taken.

(2) Within 10 days following the return of the verdict in the circuit court, the county clerk shall notify the recorder or corresponding officer of the city, in writing, of the outcome of the trial, and shall give like notice of any sentence imposed.

(3) Upon a verdict of guilty the circuit judge may impose any sentence within the limits prescribed by the charter or ordinance for violation of which the conviction was had, and if a fine is imposed, it shall be paid to the

county clerk and by him remitted, on or before the 10th day of the following month, to the proper city officer.

(4) This section does not apply where the appeal involves only an issue of constitutionality of the charter or ordinance.

221.400 [Repealed by 1971 c 633 §8]

### AUTHORITY TO REGULATE LOCAL MATTERS; LICENSING AND TAXATION

**221.410 Power of city to control local affairs; limitation of floating indebtedness; cities affected.** (1) Except as limited by express provision or necessary implication of general law, a city may take all action necessary or convenient for the government of its local affairs.

(2) No city, unless authorized to do so by its voters, shall contract a voluntary floating indebtedness in excess of the sum of \$5,000 for general city purposes. A city official or employe who creates or officially approves such an indebtedness in excess of the limitation shall be liable for the amount of the excess.

(3) Cities affected by subsections (1) and (2) of this section are those defined in ORS 221.010.

**221.420 Municipal regulation of public utilities.** (1) As used in this section:

(a) "Public utility" has the meaning for that term provided in ORS 757.005.

(b) "Commissioner" means the Public Utility Commissioner of Oregon.

(c) "Council" means the common council, city council, commission or any other governing body of any municipality wherein the property of the public utility is located.

(d) "Municipality" means any town, city or other municipal government wherein property of the public utility is located.

(e) "Service" is used in its broadest and most inclusive sense and includes equipment and facilities.

(2) Every city may:

(a) Determine by contract or prescribe by ordinance or otherwise, the quality and character of each kind of product or service to be furnished or rendered by any public utility, furnishing any product or service within such city, and all other terms and conditions upon which any public utility may be permitted to

occupy the streets, highways or other public property within such city and exclude or eject any public utility therefrom.

(b) Require any public utility, by ordinance or otherwise, to make such modifications, additions and extensions to its physical equipment, facilities or plant or service within such city as shall be reasonable or necessary in the interest of the public, and designate the location and nature of all additions and extensions, the time within which they must be completed, and all conditions under which they must be constructed.

(c) Fix by contract, prescribe by ordinance, or in any other lawful manner, the rates, charges or tolls to be paid to, or that may be collected by any public utility, furnishing any product or service within such city. No schedule of rates, charges or tolls, fixed in the manner provided in this paragraph, shall be so fixed for a longer period than five years. Whenever it is proposed by any city to enter into any contract, or to enact any ordinance, or other municipal law or regulation concerning the matters specified in this paragraph, a copy of such proposed contract, ordinance or other municipal law or resolution shall be filed with the Public Utility Commissioner of Oregon before the same may be lawfully signed or enacted, as the case may be, and the commissioner shall thereafter have 90 days within which to examine into the terms thereof. If the commissioner is of the opinion that in any respect the provisions of the proposed contract, ordinance or other municipal law or resolution are not in the public interest, he shall file, in writing, with the clerk or other officer who has the custody of the files and records of the city, his reasons therefor. If the objections are filed within said period of 90 days, no proposed contract, ordinance or other municipal law or regulation shall be valid or go into effect until it has been submitted to or ratified by the vote of the qualified electors of the city. Unless and until a city exercises its powers as provided in this paragraph, the commissioner is vested with all powers with respect to the matters specified in this paragraph. If the schedule of rates, charges and tolls is fixed by contract, ordinance or other municipal law or regulation and in the manner provided in this paragraph, the commissioner has no power or jurisdiction to interfere with, modify or change it during the period fixed thereby. Upon the expiration of said period such powers shall again be vested in the commissioner, to be exercised by him

unless and until a new schedule of rates for such service or product is fixed or prescribed by contract, ordinance or other municipal law or regulation in the manner provided in this paragraph.

(d) Provide for a penalty for noncompliance with the provisions of any charter provision, ordinance or resolution adopted by the city in furtherance of the powers specified in this subsection [Amended by 1971 c.655 §245]

**221.430** [Amended by 1967 c.359 §684; repealed by 1973 c 33 §1]

**221.440** [Repealed by 1973 c.33 §1]

**221.450 Tax on public utilities operating without franchise; validation.** The city council or other governing body of every incorporated city may levy and collect from every privately owned public utility operating for a period of 30 days within the city without a franchise from the city and actually using the streets, alleys or highways, or all of them, in such city for other than travel on such streets or highways, a privilege tax for the use of those public streets, alleys or highways, or all of them, in such city in an amount not exceeding five percent of the gross revenues of the utility concurrently earned within the boundary of the city. However, the gross revenues earned in interstate commerce or on the business of the United States Government shall be exempt from the provisions of this section. The privilege tax authorized in this section shall be for each year, or part of each year, such utility operates without a franchise. Nothing contained in this section invalidates or renders ineffective any privilege tax levied prior to March 10, 1934, by any incorporated city under the authority of chapter 234, Oregon Laws 1931, or chapter 466, Oregon Laws 1933. All such taxes levied prior to March 10, 1934, under authority existing at the time of the levy, are hereby ratified.

**221.460 Duration of franchises, privileges and permits.** All franchises, privileges or permits for the use of the public highways, streets or alleys granted after June 5, 1931, by any municipal corporation shall not be granted for a longer term than 20 years, and shall be subject to the provision of ORS 221.470.

**221.470 Removal of structures on expiration of grant or franchise.** (1) All property and materials (including poles, posts, towers, wires, conduits, mains, pipes, rails, tracks, ties, railways, pole lines, telegraph, telephone or electric transmission lines, or

structures or equipment of any kind) placed in, on, upon, over, under or beneath any public highway, street or alley of this state or municipal corporation, under or by virtue of any grant, privilege or franchise, shall be removed by the owners or owner of the same within one year after the expiration of the grant, privilege or franchise, which permitted the erection or installation of the same, unless further time is granted by the municipal corporation having authority so to do.

(2) Except as otherwise provided in subsection (3) of this section, if all the property and materials referred to in subsection (1) of this section are not removed within one year after the termination or expiration of the grant, privilege or franchise or such further time as may be granted by the state or municipal corporation, all and every part thereof shall be forfeited and escheated to the state or municipal corporation wherein situated

(3) The state or municipal corporation may notify the owner of the property and materials referred to in subsection (2) of this section that it waives forfeiture and escheat under subsection (2) of this section and may thereafter compel removal of such property and materials from the public highways, streets and alleys and restoration of the public highways, streets and alleys and may maintain court suit to require such removal and restoration by the owner or the payment of the cost thereof by the owner. [Amended by 1957 c.136 §1]

**221.480** [Repealed by 1981 c 288 §1]

**221.490** [Repealed by 1981 c 288 §1]

**221.500** [Repealed by 1981 c 288 §1]

## DISINCORPORATION

**221.610 Disincorporation of cities and municipal corporations; effective date.** (1) Any incorporated city or municipal corporation not liable for any debt or other obligation, may surrender its charter, disincorporate and cease to exist, provided a majority of the electors thereof authorize the surrender and disincorporation thereof as provided in ORS 221.620 to 221.660. The surrender and disincorporation shall become effective 60 days after the city or municipal corporation has authorized surrender and disincorporation.

(2) ORS 221.610 to 221.660 shall not apply to municipal irrigation districts.

**221.620 Petition for disincorporation; submission to vote.** (1) The question of disincorporation shall be submitted to the electors of the city or municipal corporation desiring to surrender its charter and disincorporate, as provided in ORS 221.620 to 221.640. The common council or other legislative or governing body of the corporation shall, upon receiving a petition therefor, signed by not less than five percent of the electors of the corporation, as shown by the number of votes cast at the last general election in the corporation, submit to the electors of the corporation the question of whether or not the corporation shall be disincorporated. Whenever it is desired to submit the question to the electors of any municipal corporation which does not have provision for holding of elections therein, as such corporation, the petition for disincorporation and surrender of charter shall be signed by not less than five percent of the electors of the corporation. The question whether the petition is signed by the necessary percentage of such electors shall be determined by the common council, or other legislative or governing body of the municipal corporation, which determination shall be set forth by such body in its records wherein shall be entered the order for the holding of an election as provided in this section. This determination shall be final and conclusive.

(2) In such cases the legislative or other governing body of the municipal corporation may call and provide for an election for the purpose of submitting the question to the electors of the corporation when petitioned for as provided by this section. The legislative or other governing body may in such event appoint judges and clerks for holding such election and make all necessary provision therefor. The question may be submitted at any special or regular city or municipal or general state election, provided the petition therefor is filed not more than 90 days nor less than 15 days before the date on which the election is held. The council or other legislative or governing body may, unless some special or regular election is to be held within the period of time provided for, call a special election to be held in the city or municipal corporation, to be held not later than 90 days nor less than 15 days from the date of the filing of the petition, for the purpose of submitting the question. After one such special election is held, another shall not be called until a period of one year has elapsed.

**221.630 Notice of disincorporation election; ballots.** The council or other legislative body shall give notice of the question to be voted on by publication in a newspaper of general circulation in the corporation at least 10 days prior to the election, and in addition by posting such notices in three public places in the city or municipal corporation. The notice shall distinctly state the question to be submitted and the electors shall be invited thereby to vote "yes" or "no" upon the question. The question shall be submitted upon a separate ballot to be called "Charter Surrender and Disincorporation Ballot" and to be substantially in the following form:

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Charter Surrender and  
Disincorporation Ballot

Shall the city (or municipal corporation) surrender its charter and be disincorporated? (The elector desiring to vote affirmatively on the above question shall place an "X" mark, in the space before the word "yes." If he desires to vote negatively, he shall place an "X" mark in the place before the word "no.")

\_\_\_\_\_ Yes.

\_\_\_\_\_ No.

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The city or municipal corporation shall provide a sufficient number of ballots to be used at the election.

**221.640 Count and canvass of returns; number of electors determined.** (1) The votes cast shall be counted and returned in the same manner as other votes cast at the election, except that the returns shall be made to the officer having charge and custody of the records of the incorporated city or municipal corporation. As soon as the returns from all precincts or voting places are in, the officer shall call to his assistance the county clerk of the county in which the city or municipal corporation is located and a justice of the peace resident in the county, and the three shall then canvass the returns.

(2) A written statement of the canvass shall be made and signed by the canvassers, or a majority of them, and filed with the officer having charge and custody of the records of the city or municipal corporation. The writing shall contain a statement of the whole number of votes cast on the question, the number of affirmative and negative votes cast on the question, and also a statement of the total number of electors in the city or municipal

corporation, the number to be determined as provided in subsection (3) of this section. As soon as the writing is completed, said officer shall file a certified copy thereof with the county clerk in his office.

(3) The number of electors in the city or municipal corporation shall be determined by the total number of votes cast at the election in the city or municipal corporation. If a majority of that number of electors votes affirmatively on the question it shall be deemed carried and the surrender and disorganization authorized.

**221.650 Property conveyed to county; cessation of corporate existence; records deposited.** Within 30 days after the authorization of the surrender of the charter and disorganization, the city or municipal corporation shall convey, grant, assign and deliver all its property real and personal, and property rights, by proper conveyance, to the county in which the city or municipal corporation is located for the benefit and use of the county. The city or municipal corporation at the end of 60 days from the date of the election authorizing the surrender shall cease to exist in its corporate capacity without any further or other formal action, and all its property rights and interests shall vest in the county, and the records of the city or other municipal corporation shall be deposited in the office of the county clerk by the auditor, clerk or other keeper of records in the city or municipal corporation.

**221.660 Application of general election laws.** All laws of this state relating to the ballot, to the manner of voting and to the duties of election officers so far as applicable in ORS 221.610 to 221.660 and not in conflict with the provisions of those sections hereby are included and made a part of those sections

## MISCELLANEOUS

**221.710 Filing of city charter and amendments; effect; certified copies furnished.** (1) All incorporated cities shall file with the Librarian of the Supreme Court Library a duly certified copy of the charter and all amendments thereto of the city. All charters and amendments thereto adopted through initiative process by the legal voters of any such city and which may be superseded by other charters or amendments thereto may by such authority be also filed in the same

manner. When so filed all courts of the state shall take judicial notice thereof and the same may be referred to and pleaded as a public statute of the state. Future amendments shall be filed in like manner and with like effect.

(2) The Librarian of the Supreme Court Library shall furnish, over his signature, a certified copy of any document required by subsection (1) of this section to be filed with him. He shall collect at the rate of 25 cents per folio of 100 words therefor. All fees so collected shall be remitted by said librarian to the State Treasurer at the end of every calendar month, who shall deposit the same in the General Fund.

**221.720 Situs of cities; jurisdiction of cities coextensive with boundaries.** (1) For the purpose of the administration of all laws relating to incorporated cities, other than ORS 221.070 to 221.090, every city shall be deemed to have its legal situs in the county in which the seat of the city government is situated.

(2) Notwithstanding any other provision of law the jurisdiction and application of government of cities shall be coextensive with the exterior boundaries of such cities, regardless of county lines.

**221.730** [Repealed by 1955 c.33 §1]

**221.735 Continuation of solid waste collection franchise after incorporation; authority of city.** When a city is incorporated after November 1, 1981:

(1) The city and the holder of any license, certificate or franchise for solid waste collection service within the city issued by a county under ORS 459.085 prior to incorporation may mutually agree on continued service within the city.

(2) When no agreement has been reached under subsection (1) of this section, the service shall continue within the city under the same terms and conditions including, without limitation, renewal. The city may exercise all the rights granted to the county by ordinance or governing document including the right to suspend, modify or revoke the right to continue service based on inadequate service. The city may determine the types of, and rates for, services and may otherwise adopt regulations necessary to maintain the quality and extent of service and to protect against nuisances or hazards to health, safety or the environment.

(3) The right to continue service under subsection (2) of this section is limited to two

years from the date of incorporation. [1981 c.890 §10]

**Note:** 221.735 and 221.745 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 221 or any series therein by legislative action. See the Preface to Oregon Revised Statutes for further explanation.

**221.740** [Repealed by 1955 c.33 §1]

**221.745 Sale of city real property.** (1) When any city council deems it to be for the best interests of the city to sell any real property, or any interest therein, acquired in any manner by the city, and such sale would create a parcel for which a building permit could legally be issued, it shall enter an order upon its records directing a city officer to sell the property, fixing the minimum price for which the property or interest may be sold and declaring the conditions and terms of sale. The order may be amended from time to time or revoked as the city council may deem proper.

(2) Sale of city real property, or any interest therein, under this section shall be made in the manner provided for sale of county land under ORS 275.120, 275.140 to 275.160 and 275.180 to 275.260, except that the city council shall perform the duties of the county court or the board of county commissioners and the designated city officer shall perform the duties of the sheriff.

(3) This section shall not apply when a city charter specifically provides a different procedure for the sale of real property, or any interest therein, acquired in any manner by the city and the charter procedure provides public notice and appraisal requirements which are at least equivalent to those under ORS 275.120, 275.140 to 275.160 and 275.180 to 275.260. [1981 c.602 §6]

**Note:** See note under 221.735

**221.750 Right of cities to public areas not extinguished by adverse possession or statute of limitations.** The right of cities and towns, whether incorporated or not, to land dedicated to or otherwise acquired for the public use for streets, highways, parks or public places, shall not be extinguished by any adverse possession, however long continued. No title to such lands as against any such city or town shall be hereafter acquired in this state through operation of the statute of limitations.

**221.760 Prerequisites for cities in counties over 100,000 population to receive revenues from cigarette, gas and**

**liquor taxes.** (1) The officer responsible for disbursing funds to cities under ORS 323.455, 366.785 to 366.820 and 471.805 shall disburse such funds in the case of a city located within a county having more than 100,000 inhabitants, according to the most recent federal decennial census, only if he reasonably is satisfied that the city meets the requirements set out in subsection (2) of this section, or if the city provides four or more of the following municipal services:

- (a) Police protection.
- (b) Fire protection.
- (c) Street construction, maintenance and lighting.
- (d) Sanitary sewers.
- (e) Storm sewers.
- (f) Planning, zoning and subdivision control.
- (g) One or more utility services.

(2) In the year in which any city is first incorporated and the following two years it shall be considered a city for the purposes of ORS 323.455, 366.785 to 366.820 and 471.805 if the city charter gives the city power to provide four or more of the municipal services enumerated in subsection (1) of this section.

[1969 c.634 §§1, 2]

**221.770 Revenue sharing to cities; conditions for receipt; formula for distribution; report required from city on use of funds.** (1) A share of certain revenues of this state shall be apportioned among and distributed to the cities of this state for general purposes as provided in this section. A city shall not be included in apportionments or receive distributions under this section for a fiscal year commencing on July 1 unless the city:

(a) Elects to receive distributions under this section for the fiscal year by enactment of an ordinance expressing that election and filing a copy of that ordinance with the Executive Department not later than July 31 of the fiscal year; and

(b) Holds at least one public hearing, after adequate public notice, at which citizens have the opportunity to provide written and oral comment to the authority responsible for approving the proposed budget of the city for the fiscal year on the possible uses of the distributions, including offset against property tax levies by the city for the fiscal year, and certifies its compliance with this paragraph or

the Executive Department not later than July 31 of the fiscal year;

(c) Holds at least one public hearing, after adequate public notice, at which citizens have the opportunity to provide written and oral comment to, and ask questions of, the authority responsible for adopting the budget of the city for the fiscal year on the proposed use of the distributions in relation to the entire budget of the city for the fiscal year, including possible offset of the distributions against property tax levies by the city for the fiscal year, and certifies its compliance with this paragraph to the Executive Department not later than July 31 of the fiscal year; and

(d) Levied a property tax for the year preceding the year in which revenue sharing is due under ORS 221.780, 471.810 and this section.

(2) Not later than 35 days after the last day of each calendar quarter ending March 31, June 30, September 30 and December 31, the Oregon Liquor Control Commission shall determine the amount of the net revenue under ORS 471.810, received during the preceding calendar quarter and shall certify that amount to the Executive Department.

(3) In addition to amounts otherwise apportioned to cities under ORS 471.810, not later than 20 days after the date the Executive Department receives a certification under subsection (2) of this section, the department shall apportion among the cities of this state in the manner provided in subsection (4) of this section an amount equal to 14 percent of the amount so certified, and shall pay to each city the amount so apportioned to the city. Payments shall be made from the General Fund, and amounts necessary to make those payments are appropriated to the Executive Department out of the General Fund.

(4) The amount apportioned to each city under subsection (3) of this section shall be a percentage of the total amount to be apportioned among the cities determined by dividing the adjusted population of the city by the sum of the adjusted populations of all cities. The adjusted population of a city shall be determined pursuant to the following formula:

$$\text{City population} \times \frac{\text{Local consolidated property taxes per capita for the city}}{\text{Average consolidated property taxes per capita for all cities}} + \frac{\text{State income per capita}}{\text{City income per capita}}$$

(5) The amount apportioned to each city shall be further limited to an amount no greater than the amount of all property taxes levied by the city during the year previous to the year in which distributions are made.

(6) For purposes of the formula set forth in subsection (4) of this section, "city population" is the population of a city as last determined under ORS 190.510 to 190.590.

(7) (a) For purposes of the formula set forth in subsection (4) of this section, "local consolidated property taxes" has the meaning given in subsection (8) of this section, for a city divided by the population of the city as last determined under ORS 190.510 to 190.590.

(b) The Executive Department shall determine the amounts of property taxes for each city during the fiscal year closing on June 30 preceding the fiscal year commencing on July 1 for which calendar quarter apportionments are made, and that determination shall be used for each calendar quarter apportionment for that fiscal year commencing on July 1.

(8) For purposes of subsection (7) of this section "consolidated property taxes" are the total of all compulsory contributions in the form of ad valorem taxes on property located within a city levied during a one-year period by the city, a county, any school district and any special governmental district for public purposes and in amounts as compiled by the Department of Revenue on the basis of application of consolidated tax rates to assessor code area valuations.

(9) For purposes of the formula set forth in subsection (4) of this section, "income per capita" is the estimated average annual money income of residents of this state and of residents of each city of this state, respectively, based upon the latest information available from the United States Department of Commerce.

(10) A city receiving a distribution under this section may return all or any part of the distribution to the Executive Department, which shall deposit the returned distribution or part thereof in the General Fund to be available for payment of the general expenses of the state.

(11) Each city that receives distributions under this section shall, upon completion of the audit report for the city for the fiscal year in which the distributions were received, submit to the Executive Department a report setting forth the amounts and purposes for

which the distributions were expended, obligated or otherwise used in the fiscal year, showing the relationship of the distributions to the budget of the city for the fiscal year and identifying differences between the actual use of the distributions and the proposed use thereof. The reports shall be in such form and detail and shall be submitted at such time as the Executive Department may prescribe. [1977 c 831 §1]

**221.780 Long-range financial planning report; form.** (1) As used in this section:

(a) "Expenditure" and "governing body" mean those terms as defined in ORS 294.311.

(b) "Financial planning report" means a policy making document which provides forecasts of projected resources, expenditures and recommendations derived therefrom which will provide a basis upon which elected officials of municipal corporations may make fiscal management decisions.

(c) "Municipal corporation" means a city with a population of 10,000 or more.

(2) To encourage long-range financial planning and sound fiscal policies, each municipal corporation receiving fiscal assistance under the provisions of ORS 221.770, 471.810 and this section, on or before January 15 of each year shall prepare a financial planning report which shall include a projection of estimated revenues and expenditures of the municipal corporation for each of the four fiscal years in the four-year period commencing on July 1 of the year following the year in which the projection is filed.

(3) The financial planning report shall not be considered part of the budget or budget document for the purposes of compliance with requirements of the local budget law.

(4) The governing body of the municipal corporation shall approve the financial planning report and that approval shall be set forth in the report. A copy of the financial report shall be sent to the Executive Department.

(5) The Executive Department, in consultation with the Department of Revenue and affected municipal corporations, shall designate the form and content of the required financial planning report not later than October 1, 1977. [1977 c.831 §2]

**221.845** [1955 c 475 §1, renumbered 190 510]

**221.850** [1955 c 475 §5, 1957 c 252 §1, renumbered 190 520]

**221.855** [1955 c 475 §6; 1957 c 252 §2, renumbered 190.530]

**221.860** [1955 c 475 §9, 1957 c 252 §3, renumbered 190 540]

**221.865** [1955 c 475 §2, renumbered 190 550]

**221.870** [1955 c.475 §3, renumbered 190 560]

**221.875** [1955 c 475 §4, renumbered 190 570]

**221.880** [1955 c 475 §7, renumbered 190 580]

**221.885** [1955 c 475 §8, renumbered 190 590]

**221.890** [1955 c 475 §10, renumbered 190 600]

**221.894** [1955 c 561 §1, repealed by 1957 c 241 §1]

**221.896** [1955 c 561 §2, repealed by 1957 c 241 §1]

**221.898** [1955 c 561 §3, repealed by 1957 c 241 §1]

**221.900** [1955 c 561 §4, repealed by 1957 c 241 §1]

### THE 1893 INCORPORATION ACT

**221.901 Cities organized under 1893 Act; officers; "city" defined for ORS 221.901 to 221.928.** (1) The officers of every municipal corporation organized under sections 1 to 6, pages 119 to 123, Oregon Laws 1893, shall be a mayor, six aldermen, a recorder, who shall be ex officio clerk of the common council, a marshal, a treasurer and such subordinate officers as are provided in ORS 221.902.

(2) Unless the context indicates otherwise, "city" as used in ORS 221.901 to 221.928 includes any area or territory incorporated under sections 1 to 6, pages 119 to 123, Oregon Laws 1893.

**221.902 City officers; elective; appointive; terms.** The mayor, aldermen, recorder, treasurer, and marshal of a municipal corporation organized under sections 1 to 6, pages 119 to 123, Oregon Laws 1893, shall be elected by the qualified electors of the city at general municipal elections to be held therein as prescribed by law. The mayor, aldermen, recorder, treasurer, and marshal shall hold office for a period of two years from and after the second Tuesday in January next succeeding the day of such election, and until their successors are elected and qualified, unless sooner removed for cause. The council in its discretion may appoint an attorney, a superintendent of streets, a civil engineer, and such police and other subordinate officers as in its judgment may be deemed necessary, and fix their compensation. These officers shall hold office

during the pleasure of the council. [Amended by 1981 c 173 §8]

**221.903 Bond and oath of officers.** The recorder, treasurer and marshal mentioned in ORS 221.902 shall, before entering upon the duties of their respective offices, each execute a bond to the city in such penal sum as the council by ordinance may determine upon, conditioned for the faithful performance of his duties, including in the same bond the duties of all offices of which he is ex officio incumbent under ORS 221.901 to 221.928. The bond shall be approved by the council before the officer enters upon the discharge of his duties. The bonds when approved shall be filed with the recorder, except the bond of the recorder, which shall be filed with the mayor. All the provisions of any law of this state relating to official bonds of officers shall apply to such bonds, except as otherwise provided in ORS 221.901 to 221.928. Every officer of the city, before entering upon the duties of his office, shall take and file with the recorder an oath to honestly and faithfully discharge the duties of his office, and that he will support the laws and Constitution of this state and of the United States to the best of his ability.

**221.904 Vacancies.** Any vacancy occurring in any of the offices provided for in ORS 221.902 shall be filled by appointment by the council. If such office is elective, the appointee shall hold office only until the next regular election, at which time a person shall be elected to serve for the remainder of the unexpired term. In case a council member is absent from the city for three consecutive meetings without permission of the council, his office shall by the council be declared vacant, and then filled as in the case of other vacancies.

**221.905 Compensation of city officers.** The mayor and aldermen mentioned in ORS 221.902 shall receive no compensation whatever for their services as such officers. The recorder, treasurer, marshal, police and other subordinate officers shall severally receive at stated times compensation to be fixed by ordinance by the council, which compensation shall not be increased nor diminished after their election, or during their several terms of office. Nothing contained in this section shall be construed to prevent the council from fixing several amounts of compensation, in the first instance, during the term of office of any such officer after his election. The compensation of all other officers shall be fixed from

time to time by ordinance, duly passed by the council.

**221.906 Election rules generally.** All elections in a city organized under sections 1 to 6, pages 119 to 123, Oregon Laws 1893, shall be held in accordance with the general election laws of this state, so far as the same may be applicable. No person shall be entitled to vote at such election unless he is a qualified elector of the county, and has resided in the city for at least 30 days next preceding such election. The council shall give such notice of each election as may be prescribed by ordinance, shall appoint judges and clerks of election and fix their compensation, and establish election wards and polling places, and may change the same.

**221.907 Eligibility for office.** No person shall be eligible to or hold any elective or appointive office in a city referred to in ORS 221.906 unless he is a resident and elector therein.

**221.908 Council meetings; notice; place of meetings.** The council shall meet the second Tuesday in January succeeding each general municipal election and take the oath of office. It shall hold regular meetings at least once in each month at such times as they shall fix by ordinance. Special meetings may be called at any time by the mayor or by three councilmen, by written notice delivered to each member then present within the city at least three hours before the time specified for the proposed meeting, which notice shall specify the object and purpose of such special meeting. No other business shall be transacted at any special meeting than that named in said notice and appurtenant thereto. All meetings of the council shall be public and held within the corporate limits of the city at such place as may be designated by ordinance.

**221.909 Council meetings; attendance; rules; records.** At any meeting of the council a majority of the councilmen shall constitute a quorum for the transaction of business. A less number may adjourn from time to time, and may compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance. The mayor shall preside at all meetings of the council when present, and in case of his absence the council may appoint a mayor pro tempore. In case of the absence of the recorder, the mayor or presiding officer pro tempore shall appoint one of the members of

the council recorder pro tempore. The person appointed to act as presiding officer during the absence of the mayor shall not be required to take the oath of office, but the records of the council shall show who is appointed to serve pro tempore at any meeting.

**221.910 Powers of council regarding qualification of members, elections, procedure for meetings.** The council shall judge of the qualifications of its members and all election returns and determine contested elections of all city officers. It may establish rules for the conduct of their proceedings and punish any member or other person for disorderly behavior at any meeting. It shall cause the recorder to keep a correct record of all their proceedings, and at the desire of any member shall cause the ayes and noes to be taken on any question and entered on such record.

**221.911 Rules on enactment of ordinances granting franchise or for payment of money.** No ordinance or resolution granting any franchise for any purpose shall be passed by the council on the day of its introduction nor within five days thereafter, nor at any other than a regular meeting. No resolution or order for the payment of money shall be passed at any other time than at a regular meeting. No such ordinance, resolution or order shall have any validity, unless passed by the votes of at least three councilmen. In case all the councilmen are present and equally divided upon any question, the mayor shall have the deciding vote.

**221.912 Formalities required to render ordinance effective.** The enacting clause of all ordinances shall be as follows: "Be it ordained by the common council of the city or town [as the case may be] of \_\_\_\_\_." Every ordinance shall be signed by the mayor, or passed over his veto, and attested by the recorder. A copy of the ordinance shall be published at least once in a newspaper published in such city; or, in lieu of such publication, three copies thereof shall be posted in at least three public places therein before it becomes a law.

**221.913 Claims against cities; how presented and paid.** (1) All claims and demands against any city referred to in ORS 221.906 shall be presented to and audited by the council in accordance with such regulations as it may by ordinance prescribe. Upon the allowance of any such claim or demand, the recorder shall draw a warrant upon the

treasurer for the sum, which warrant shall be countersigned by the mayor, and shall specify for what purpose the same is drawn.

(2) No claim against the city shall be paid until it is audited and allowed by the council and then only by a warrant drawn upon the treasurer by the recorder, countersigned by the mayor.

**221.914 Prosecution for violation of ordinance; place of imprisonment; city liable for expenses.** (1) The violation of any ordinance of a city referred to in ORS 221.906 shall be deemed a misdemeanor and may be prosecuted by the authorities of such city in the name of the people of such city, or may be redressed by civil action, suit or proceeding, at the option of said authorities.

(2) Any person sentenced to imprisonment for the violation of an ordinance may be imprisoned in the jail of such city; or, if the council by ordinance so prescribes, in the county jail of the county in which such city is situated, in which case the expense of imprisonment shall be a charge in favor of such county and against such city. Before any such person can be imprisoned in the county jail, the consent of the county court shall be first obtained.

**221.915 Nuisance defined.** Every act or thing done, or anything existing within the limits of any city referred to in ORS 221.906, which is or may be declared by any law of this state or by any ordinance of such city to be a nuisance, hereby is declared to be a nuisance, and shall be considered and treated as such in all actions, suits and proceedings whatsoever, unless such law or ordinance is declared void by a court of competent jurisdiction.

**221.916 Powers of council generally.** The mayor and aldermen shall compose the common council of any city organized under sections 1 to 6, pages 119 to 123, Oregon Laws 1893. At any regular council meeting, it may:

(1) Provide for lighting the streets and furnishing such city and its inhabitants with gas or other lights, and with pure and wholesome water. For such purpose it may construct such water, gas or other works, within or without the city limits, as may be necessary or convenient therefor. It may allow the use of the city streets and alleys to any person, company or corporation who may desire to establish works for supplying the city and inhabitants thereof with such water or lights upon

such reasonable terms and conditions as the council may prescribe.

(2) Permit, allow and regulate the laying down of tracks for streetcars and other railroads upon such streets as the council may designate, and upon such terms and conditions as the council may prescribe; and allow and regulate the erection and maintenance of poles, or poles and wires, for telegraph, telephone, electric light or other purposes, upon or through the streets, alleys or public grounds of such city; permit and regulate the use of alleys, streets and public grounds of the city for the laying down or repairing gas and water mains, for building and repairing sewers, and the erection of gas or other lights.

(3) Preserve the streets, lights, side and crosswalks, bridges, and public grounds from injury, prevent the unlawful use of the same, and regulate their use.

(4) Fix the maximum rate of wharfage, rates for gas or other lights, for carrying passengers on street railways, and water rates. No city shall ever deprive itself of the right through its common council of regulating and adjusting any such rates, so that the same shall be reasonable for the service rendered, at least once in any period of two years.

(5) License, tax, regulate, restrain and prohibit barrooms and tippling houses, and all places where spirituous, vinous or malt liquors are sold, or in any manner disposed of contrary to law. No license shall be issued for a less sum than that provided by law.

(6) Prevent and suppress gaming and gambling houses, and all games of chance, including lotteries and poolselling; prevent and suppress bawdyhouses, and lewd, lascivious cohabitation, opium-smoking houses, and places occupied or kept therefor. Nothing contained in ORS 221.901 to 221.930 shall be so construed as to oust the state courts of jurisdiction to indict or punish persons for offenses against any law of the state committed within the limits of any such city.

(7) License, regulate and control any lawful business, trade, occupation, profession or calling, carried on or conducted within the corporate limits of any such city.

(8) Suppress and prohibit anything which is injurious to the public morals, public safety or the public health of the inhabitants of any such city, including the power to define, suppress and prohibit nuisances of every kind, including those arising out of the receipt, sale

or disposal of intoxicating liquor in violation of law.

(9) Regulate, suppress and prohibit the running at large within the corporate limits of any and all domestic animals, including fowls, and provide for the impoundment and sale, after notice, of such animals.

(10) Exercise any and all police regulations concerning the public morals, public safety, public health and public convenience of the inhabitants of any such city.

(11) Provide for the surveying of blocks and streets of the city and for marking the boundary lines of such blocks and streets, and the establishing of grades of the streets, sidewalks and crosswalks.

(12) Prevent and punish trespass on real and personal property within the corporate limits of such city.

(13) Make bylaws and ordinances not inconsistent with the laws of the United States or of this state to carry into effect the provisions of ORS 221.901 to 221.928.

(14) Provide, in addition to such action as may be appropriate to carry into full effect the object to be achieved, for the punishment of persons violating any bylaws or ordinances by fine or imprisonment, or both, and the working of such persons on the city streets or at any other work. No fine shall exceed the sum of \$50, nor shall any imprisonment exceed 20 days.

**221.917 Functions and duties of mayor.** The mayor is the executive officer of any city referred to in ORS 221.902 and must exercise a careful supervision over its general affairs and subordinate officers. He shall at least once each year state to the council by message the condition, financial and otherwise, of the city, and recommend such measures for the peace, health, improvement and prosperity of the city as he may deem expedient. He shall perform such other duties as may be required of him by ORS 221.901 to 221.928 or by city ordinances.

**221.918 Jurisdiction and duties of recorder; jury trial; witnesses; contempt powers; records.** The recorder referred to in ORS 221.901 shall have jurisdiction over violations of city ordinances, and may hold to bail, fine, or commit persons found guilty thereof, and within the city shall have jurisdiction and powers like a justice of the peace. The law governing justices of the peace shall apply as far as applicable to all his proceed-

ings. He shall try, without a jury, all persons accused of violating the ordinances; unless the defendant on demanding a jury deposits in the court a sum sufficient to pay the per diem of such jury for one day. Witnesses in his court in such trials shall be entitled to no compensation for their attendance unless the council by ordinance otherwise provides. As recorder, he may punish witnesses and others for contempt, by a fine not to exceed \$10, or in default of payment of such fine by imprisonment in the city jail one day for every \$2 of such fine. He shall keep a journal of the proceedings of the council, and be ex officio assessor, and perform such other duties as required by ORS 221.901 to 221.928 or city ordinances.

**221.919 Powers and duties of marshal; removal from office.** The marshal shall be chief of police and shall have control over all policemen when on duty. He shall be a conservator of the peace, and shall arrest all persons guilty of a breach thereof, or of violations of the city ordinances, and take them before the recorder for trial. He shall make and enforce the collection of all delinquent city taxes, as the collection of delinquent county taxes is enforced, and shall perform such other duties as may be required of him by the common council. He may suspend any policeman for negligence or violation of duty until the case may be examined and determined by the council. On complaint being made, charging him with malfeasance or nonfeasance in office, the aldermen, by a unanimous vote without the concurrence of the mayor, or by a majority vote with the concurrence of the mayor, may remove the marshal from office at any regular meeting, after giving him an opportunity to be heard in his defense, provided they find the charge is true.

**221.920 Duties of treasurer.** The treasurer, as tax collector, shall collect and receipt for all taxes levied by the council and not returned as delinquent, and shall receive and faithfully keep the funds and moneys of any city referred to in ORS 221.906 and pay out the same as directed by ORS 221.901 to 221.928, or by city ordinances. When required by ordinance, he shall make and submit to the council a statement of the financial affairs of the city

**221.921 Interest of officers in city contracts.** No mayor, council member or any other officer of any city referred to in ORS 221.906, during the period for which he is

elected, shall be interested in any contract the expenses of which are to be paid out of the city treasury

**221.922 Voting privilege subject to certain conditions.** No person shall be allowed to vote at any municipal election who has not resided therein for 30 days next preceding the election, or who has refused, or neglected after proper demand, to pay any city fine, or tax legally imposed or assessed against him. The council may prescribe such oath as it may deem proper to ascertain such fact

**221.923 Working out fines for violation of ordinance.** When any person is convicted of an offense under any of the ordinances of any city referred to in ORS 221.906 and fails to pay an adjudged fine and costs, he may be sentenced to labor one day for every \$5 on such fine upon the streets or other public works of the city under such officer as the common council may prescribe. [Amended by 1961 c 290 §1]

**221.924 Authority to make public improvements.** The council may, whenever it deems it expedient, improve the public grounds within any city referred to in ORS 221.906, and establish and open additional streets and alleys therein. The power and authority to improve streets includes the power and authority to construct, improve, pave, repair, and keep in repair, sidewalks and pavements, and to determine and provide everything convenient and necessary concerning such improvements and repairs. [Amended by 1969 c 429 §5]

**221.925 Tax deeds; tax warrants.** In making a deed for any real property sold for delinquent taxes, it is not necessary to recite or set forth the proceedings prior to the sale, but it is sufficient, if it substantially appears from such deed that the property was sold by virtue of a warrant from any city referred to in ORS 221.906, and the date thereof for delinquent taxes, and the amount thereof, together with the date of the sale and the amount paid thereat by the purchaser. The style of the warrant for the collection of delinquent taxes shall be: "In the name of the city (or town) of \_\_\_\_\_" The warrant must require the marshal to forthwith levy upon sufficient property of the person or persons owing such taxes and sell the same in the manner provided by law, and return the proceeds of such sale to the city treasurer and the

warrant to the recorder, with his doings indorsed thereon, together with the receipts of the city treasurer for the proceeds of such sale as paid to him. The warrant shall have the force and effect of an execution against real and personal property, and shall be executed in a like manner, except as otherwise provided by law or this section. Real property when sold for delinquent taxes may be redeemed in like manner as real property is redeemed after sale thereof for county or state taxes, and not otherwise. The deed of the purchaser must express the true consideration thereof, which is the amount paid by the purchaser, and the return of the marshal executing the warrant must specify the amount for which each lot or part thereof is sold, and the name of the purchaser.

**221.926 Authority to enact ordinances.** Every city organized under sections 1 to 6, pages 119 to 123, Oregon Laws 1893, may pass any and all necessary ordinances for the purpose of carrying into force and effect any provisions of ORS 221.901 to 221.928 or any other laws concerning city government.

**221.927 Approval or veto of ordinances; proceedings after veto.** Upon the passage of any ordinance, the enrolled copy thereof, attested by the recorder, shall be submitted to the mayor by the recorder, and if the mayor approves the same he shall write upon it "Approved," with the date thereof and sign it with his name of office. Thereupon, unless otherwise provided, such ordinance shall become a law and be of force and effect. If the mayor does not approve of the ordinance

so submitted, he must, within 10 days from the receipt thereof, return the same to the recorder with his reasons for not approving it, and if he does not so return it, such ordinance shall become a law as if he had approved it. Upon the first meeting of the council after the return of an ordinance from the mayor not approved, the recorder shall deliver it to the council, with the message of the mayor, which must be read. The ordinance shall then be put upon its passage again, and if two-thirds of all the members constituting the council, as then provided by law, vote in the affirmative, it shall become a law without the approval of the mayor, and not otherwise.

**221.928 Record of ordinances; compilation accepted as evidence.** The ordinances passed by any common council or any municipal corporation within this state, organized under sections 1 to 6, pages 119 to 123, Oregon Laws 1893, shall be recorded in a book to be kept for that purpose by the recorder of any such city. When so recorded, the record so made shall be received in any court of this state as prima facie evidence of the due passage of such ordinance as recorded. When the ordinances of any such city are printed by authority of such municipal corporation, the printed copies thereof shall be received as prima facie evidence that such ordinances as printed and published were duly passed.

**221.929** [Repealed by 1953 c.57 §2]

**221.930** [Repealed by 1973 c.64 §3]

