

Council Study Session

September 20, 2021

Agenda Item	Discussion of Mandatory vs. Optional General Fund functions and service levels	
From	Gary Milliman	City Manager Pro Tem
Contact	Gary.milliman@ashland.or.us	
Item Type	Requested by Council <input checked="" type="checkbox"/> Update <input type="checkbox"/> Request for Direction <input type="checkbox"/> Presentation <input type="checkbox"/>	

SUMMARY

Financial review: Discussion of mandatory vs. option General Fund functions/service levels.

POLICIES, PLANS & GOALS SUPPORTED

Ashland Mission Statement; City Council Goals (2015)

BACKGROUND AND ADDITIONAL INFORMATION

Approved November 4, 2014 Mission Statement

To support a resilient, sustainable community that lives within its means and maintains the distinctive quality of life for which it has become known -- in the face of external change and internal development – via direct delivery of basic services and leveraged enablement of enhanced services.

The latest City Council Goals document is from 2019 and is attached. A more extensive Strategic Plan, which included goals, was adopted in July 2015. The “City Council Goals and Objectives” section of that report is also attached. The City Council scheduled a financial review study session concern for a policy discussion on mandatory vs. optional General Fund functions and service levels.

The definition of mandatory/essential and optional functions and service levels is not clearly delineated but may differ by community. Some cities may give higher value to certain services than citizens may do in another community, thus there may be a disparity in the allocation of resources when doing budget comparatives. Some functions are self-mandated through Charter provisions approved by the voters. Very few functions/service levels are mandated by other levels of government, although there are certain standards of service that are mandated should the City chose to provide a service. The City Manager Pro Tem has prepared some exhibits to assist the Council in this policy discussion. Some questions to consider:

- How do the functions and service levels of the City align with the Mission Statement and Goals? Do the Mission Statement and Goals need updating?
- What is an essential service versus an optional service?
- What do Ashland residents consider to be an essential service?
- The City Council and management should be utilizing the City’s Mission Statement and Goals as guiding principles in the City’s financial planning, organization development, service development and budget process. Is this being done?

STAFF RECOMMENDATION

Council discussion and consider updating the City’s Mission Statement and Goals.

REFERENCES & ATTACHMENTS

Attachment 1: City Manager Pro Tem memo concerning essential services

Attachment 2: Council Goals 2019

Attachment 3: Council Goals 2015

Attachment 4: “What is the difference between mandatory and non-, mandatory services” CGG publication
Attachment 5: “Maintenance of Essential Services” disaster management publication
Attachment 6: “Fundamentals of Home Rule” League of Oregon Cities

SOME THOUGHTS ON ESSENTIAL SERVICES

GARY MILLIMAN, CITY MANAGER PRO TEM

What is an “essential service”?

Do we reduce traditional essential services to make way for newly identified essential services?

How do we respond to the community’s changing perceptions of essential services?

Are the taxpayers willing to pay for adding new essential services?

How do we engage the community in this discussion?

What are “essential”, “mandated” and “desired but non- essential (i.e., “optional”)” services?

Here is my attempt at listing services in each of these categories...recognizing that some of these could move from one list to another depending upon what the citizens of Ashland determine to be essential or non-essential.

What are essential services? My sense is that most people would agree with the following traditional list.

- Police and Fire...frequently characterized as “public safety” is usually at the top of the list.
- Water. Potable water and water available for fire suppression.
- Wastewater disposal.
- Flood control.
- Solid waste disposal.

What are mandated services? These are services mandated by the State of Oregon

- Land Use Planning.
- Regulatory compliance associated with services the City chooses to provide.

What are optional mandated services provided by the City of Ashland through its Charter?

These are service that are optional for local government but are mandated by the citizens of Ashland.

- A Municipal Court.
- A Municipal Band.
- Parks
- Open Space Program

What are non-essential, non-mandated services?

- Citizen advisory commissions.

- Street development and maintenance. There is nothing that mandates that streets be paved; that we have traffic signals or sidewalks. In fact, many of our streets have no sidewalks. But if we do have sidewalks, then there are State/federal mandated standards for those sidewalks. And, are streets part of public safety?
- Landscape maintenance.
- Street trees.
- Services related to implementing policies enacted by the City Council, such as tree removal permits and historic district development review.
- Economic development.
- Housing.
- Tourism promotion.
- Water conservation – watershed management
- Community celebrations and events.
- Street lighting.
- Recreation – Senior Center – Pool – Golf
- Airport
- AFN
- Animal control

There are degrees of providing an essential service. Is maintaining fire staffing at a level necessary to retain an ISO rating of 5 essential? Is maintaining an average police response time of five minutes essential...or is it 10 minutes?

Within the realm of essential services we find “support services.” You can’t have Police Officers without paying them. You can’t provide the equipment needed to douse a fire without the revenue to pay for it. So, the administrative service, or support services, has evolved to perform these functions through devices such as budgets, payroll systems. HR, purchasing, legal and financial management...and taxes and fees.

An example of a new essential service proposed by an Ashland resident recently is providing a City Veterinarian whose task it would be to provide medical services to, and care for, injured wildlife. The proposal stemmed from the resident observation of injured deer in the community. Is it the City’s role to provide such services? No one from the Council contacted the City Manager to request that this item be placed on the agenda, so the presumption is that there no desire to consider providing such a service. But that does not mean that a group of like-minded citizens could not form and fund what they have deemed as an essential service through a non-profit/government organization (NGO). This is exactly the genesis of the program known as “Wildlife Images”.

As you know, I come from predominantly a small city background, so often think in those terms. But, I have also served as a City Manager in cities of 30,000 and 100,000.

Both of my cities of 30/100,000:

- Did not operate a Fire Department. Both were located within the boundaries of the Los Angeles County Fire Department, which had a separate property tax. Both were located within an ambulance district.
- Did not have a City Attorney staff. Both contracted for City Attorney, litigation, and specialized legal services as needed. In both cities, the City Manager and department managers prepared ordinances and contracts which were then reviewed by a contract City Attorney. Neither City had a municipal court.
- Did not operate a wastewater treatment plant. They were both located in a regional sanitation district.
- Did operate parks and recreation programs, including a golf course.... but not a swimming pool.
- The City of 30,000 contracted its AP/AR and payroll functions and did not have a Finance Department.
- Operated a Police Department...which was the City's largest department...and considered the City's most essential service.

What I have learned in serving as City Managers in cities both large and small is that you don't always need to provide an essential service with City employees; the City is not the sole provider of essential services; and providing an essential service is optional.

About fees...when I started working for the City of Bell Gardens in 1971 there were hardly any fees for anything. The City was funded through property and sales tax. I remember growing up in a neighboring community where my parents never paid a water or sewer bill...it was included in their property tax. Now, we have this intricate system of fees for service...driven by the tax limitation movement and the expansion of government services...and increased regulation and competition for talent within what has become a government profession. Fees for service has morphed from being a mechanism to have certain users of city services...such as building inspection... pay for those services rather than the general taxpayer so that the tax burden...shared by all...supports essential services while those needing special services "pay their way." But wait...now everyone pays separately for some essential services...like water and sewer...so the fee system has been expanded to fill gaps in traditional tax revenues.

Hopefully, this paper will assist in the City Council discussion concerning essential, mandatory, and optional services.

RESOLUTION NO. 2019-27

**A RESOLUTION REPEALING RESOLUTION 2019-02 AND REPLACING WITH
2019-27 TO ADOPT THE CITY COUNCIL'S 2019-2021 BIENNIAL GOALS**

RECITALS:

- A. The City Council desired to develop overall city goals for 2019-2021;
- B. The City Council held a listening session, on January 7, 2019 to allow for broad public input on City goals/issues and held two public meetings, on January 18, 2019 and February 1, 2019, focused on developing City Council goals utilizing a facilitator.
- C. The City Council adopted Resolution No. 2019-02 which outlined the City Council goals to be used in the preparation, review and adoption of the 2019-2021 biennial budget.

THE CITY OF ASHLAND RESOLVES AS FOLLOWS:

SECTION 1. The 2019-2021 goals set forth below are adopted and will be used during the time period of 2019-2021.

SECTION 2. The City Council goals are as follows:

- A. Prioritize the “Essential Services”, set forth below, including the associated infrastructure:**
 - a. Electric Service
 - b. Municipal Court
 - c. Planning & Building Inspections/Plan Review
 - d. Sewer
 - e. Streets
 - f. Water
 - g. Stormwater
 - h. Fire
 - i. Police
 - j. Parks Maintenance

B. Develop and/or enhance the following "Value Services" by leveraging the City's resources. The list of Value Services represents the priority Council is placing on these value services as the 2019-2021 biennial budget is prepared, given the progress that has been made to date to address them and the urgency with which they need to be addressed.

A. Tier 1: Higher Priority

- a. Emergency Preparedness
- b. Address Climate Change

B. Tier 2: Moderate Priority

- a. Reduce Wildfire and Smoke Risk
- b. Economic Development
- c. Housing Needs
- d. Multi-Modal Transportation
- e. Homeless Services
- f. All-Age Friendly Community

C. Tier 3: Lower Priority

- a. Acquisition of New Parks
- b. Downtown Parking
- c. Water Conservation

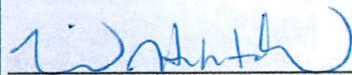
~~C. Utilize City resources as leverage to develop and/or enhance prioritized Value Services.~~

D. Develop current and long-term budgetary resiliency.

E. During the 2019-2021 Biennium Analyze various departments/programs with the goal of gaining efficiencies, reducing costs, and improving City services.

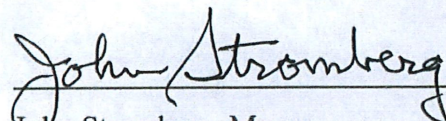
F. Enhance and improve transparency and communication

This resolution was duly PASSED and ADOPTED this 17th day of September 2019, and takes effect upon signing by the Mayor.

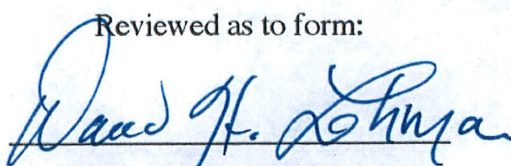


Melissa Huhtala, City Recorder

SIGNED and APPROVED this 17th day of September, 2019.


John Stromberg, Mayor

Reviewed as to form:


David H. Lohman, City Attorney

City Council Goals and Objectives

Approved November 4, 2014

Mission Statement

To support a resilient, sustainable community that lives within its means and maintains the distinctive quality of life for which it has become known -- in the face of external change and internal development – via direct delivery of basic services and leveraged enablement of enhanced services.

Please note:

Goals and objectives highlighted in **red** are **Priority Strategic Planning Goals and Objectives** for the City Council.

Goals and objectives in **brown** were determined to be Council policy calls that can be pursued by the Council at its discretion.

Goals and objectives in **green** are NOT recommended by the Council for priority funding in the 2015-17 budget cycle.

Items highlighted in **blue** are proposed staff actions to achieve the priority objectives.

Government

1. ***Leverage our regional and state relationships to increase effectiveness in relevant policy arenas***
 - 1.1 Maintain coordination and regular communication with State Legislators/county commissioners.
 - 1.1.a Potential for regular reports to Council from assigned Councilor from Legislative hotline (during legislative session only).
 - 1.1.b Explore the utilization of other forms of legislative representation (lobbyist, dedicated staff, etc).
 - 1.1.c Develop a local legislative agenda prior to the session (possibly with Ashland Coalition partners).
 - 1.2. Develop plan for coordination with Jackson County on the following:
 - 1.2.a County Road Improvements within the City limits
 - 1.2.b Weed abatement on County land within the UGB.
2. ***Promote effective citizen communication and engagement***
 - 2.1 Engage community in conversation about core services, desired service levels and funding mechanisms.
 - 2.2 Engage boards and commissions in supporting the strategic plan.
 - 2.3 Evaluate existing communication tools currently in use, such as:
 - 2.3.a Open City Hall
 - 2.3.b Listserve
 - 2.3.c RVTV

- 2.3.d Newspapers
- 2.3.e City website
- 2.3.f Expand and promote those tools that are most effective, meaningful and efficient for the public to use for understanding an issue (fact gathering), enabling participation, providing avenues for input to Council and being made aware of decisions made.
- 2.3.g Repackage and make more accessible Council Communication documents to assist in informing the public on issues.
- 2.3.h Explore the use of Town Hall style meetings for Council/public interaction.
- 2.3.i Explore "City Walk" style outreach program (Council and staff proactive personal engagement in the community).
- 2.4 Use the Mayor's State of the City (SOC) address to honor, recognize and appreciate community/volunteer involvement.
 - 2.4.a Incorporate Ragland Award activities (and other potential volunteer related activities) with SOC.

3. *Support and empower our community partners*

- 3.1 Look for ways to monitor and support changes at Southern Oregon University.
- 3.2 Monitor and support Mt. Ashland as a major regional recreational facility.
 - 3.2.a Continue City oversight of the environmental impacts of the ski area as they relate to Ashland.
- 3.3 Support the non-profit and cultural entities in the community.
- 3.4 Support RVTD in fulfilling and expanding its mission.

Organization

- 4. ***Evaluate real property and facility assets to strategically support city mission and goals.***
 - 4.1 Identify and evaluate underperforming assets.
 - 4.2 Cultivate external funding opportunities.
 - 4.3 Examine city hall replacement and other facility needs.
 - 4.4 Examine long term use of Imperatrice property.

People

- 5. ***Seek opportunities to enable all citizens to meet basic needs.***
 - 5.1 Examine means and methods by which to improve access to mental health services for Ashland citizens who need them.
 - 5.2 Support and promote, through policy, programs that make the City affordable to live in.
 - 5.2.a Pursue affordable housing opportunities, especially workforce housing. Identify specific incentives for developers to build more affordable housing.
 - Adjust infill strategies in order to promote housing development along major transportation corridors.
 - Complete five-year update of City of Ashland Consolidated Plan as a participant in the Community Development Block Grant Program.
 - Evaluate the effectiveness of reforms enacted to address barriers to affordable housing.

- 5.3 Leverage partnerships with non-profit and private entities to build social equity programming.
- 5.4 Encourage the ongoing effectiveness of the Resource Center.
- 6. ***Develop supports to enable citizens to age in Ashland.***
 - 6.1 Support and augment existing programs.
 - 6.2 Provide links to local non-profit support organizations on City web site.
 - 6.3 With Parks Commission, explore expansion of the Senior Center and senior services.
- 7. ***Keep Ashland a family-friendly community.***
 - 7.1 Support educational and enrichment programs in the community.
 - 7.2 Provide City promotion and marketing of family-oriented events.
 - 7.3 Support land-use plans and policies that encourage family-friendly neighborhoods.
 - Draft pocket neighborhood code that allows for the construction of small scale, cottage housing projects.

Environment

- 8. ***Protect the integrity and safety of the watershed.***
 - 8.1 ***Implement and maintain the Ashland Forest Resiliency project.***
 - Complete first phase of work on the current 7,600 acre footprint by end of 2017.
 - If weather allows, complete at least 150 acres of prescribed burning in spring of 2015 and 200 acres in 2016.
 - Support implementation of the Ashland Forest All-lands Restoration (AFAR) project through staff time and commission support.
 - Seek funding for the completion of the project.
 - Continue to pursue the "Joint Chief's Landscape Restoration Partnership" grant.
 - Maintain the public outreach component of the Ashland Forest Resiliency project to improve the public's awareness of the importance of forest and watershed values.
 - 8.2 ***Educate and engage the community in watershed stewardship.***
 - 8.2.a ***Declare a "year of the watershed" and coordinate activities around it.***
 - Continue community education and outreach as work progresses. Outreach will continue via the project and City websites, City Source, Facebook, community events, email, news media and education in schools.
 - Film and market the fourth AFR video describing the increased use of prescribed burning in the watershed by April 2015.
 - Forest Lands Commission will jointly staff public events with AFR project staff and continue to promote City forestlands as an example of successful wildfire mitigation and forest health maintenance. The commission will host at least one public event to get input on the Ashland Forest Plan update.
 - Complete the Ashland Forest Plan update in the 2016-2017 biennium, including public outreach and input
 - 8.3 ***Maintain current Firewise communities and implement the Fire Adapted Communities model.***
 - Through thinning and prescribed burning, complete at least 50 acres of fuels maintenance each year.
 - Work with the existing Firewise communities to maintain certification
 - Certify at least 10 new communities by June, 2015 and 2-3 each year after

- Through thinning and prescribed burning, complete at least 50 acres of fuels maintenance each year.
 - Work with the existing Firewise communities to maintain certification
 - Certify at least 10 new communities by June, 2015 and 2-3 each year after
 - Complete the re-write of the Community Wildfire Protection Plan
- 8.4 Complete the expansion of the city's wildfire hazard zone to accurately reflect risk.
- Update the Wildfire Hazard Zone ordinance to allow for Citywide application and schedule for Council consideration.
- 8.5 Fund the AFR & AIR programs.
- Seek City funding at \$175,000 per fiscal year to encourage outside investment and serve as a fund for maintaining vegetation as it grows back. City investment will yield at least 175 acres of vegetation treatments per year.
 - Actively seek outside funding to enable completion of the initial AFR footprint by the end of 2017.
 - Use experience and data collected on City forestlands and AFR itself to prioritize the most effective treatments for fiscal investment.
 - Funding permitting, continue to conduct AIR workshops highlighting emergency preparedness strategies for our citizens. Bring in subject matter experts on the various topics association with disaster risk management.
 - Continue to provide 72-hour kits to participants at a reduced cost.
- 8.6 Continue to engage state and federal representatives on the AFR project.
- Host tours and meetings as needed to update state and federal representatives on the need for AFR funding. Produce a report on AFR progress at least twice a year and distribute to state and federal representatives.
- 8.7 Weed abatement on County land within the UGB (exotic species).
- On City and Forest Service lands adjacent to the City limits and UGB, continue to proactively search for and manage exotic species populations.
 - Include a comprehensive list of invasive/exotic species in the Ashland Forest Plan
9. **Enhance and expand natural and recreational resources.**
- 9.1 Work with the local bicycle community on enhancement of recreational opportunities.
- 9.2 Analyze and expand eco-tourism opportunities.
- 9.3 Support Mt. Ashland in diversifying eco-friendly recreational opportunities.
- 9.4 Support the local trails organizations and trail mapping.
- Work with Ashland Woodlands and Trails Association to upgrade and maintain the City's trail system.
 - Begin work on an update to the existing Trails Master Plan and include trails on City forestlands not addressed in the previous plan.
- 9.5 Examine and improve the process for obtaining permits for bicycle and road race events.
10. **Support local micro-agriculture and food production.**
- 10.1 Design policies that allow and encourage micro-agriculture.

- 10.1.a Encourage the development of community gardens, farmer's markets, truck gardens and infrastructure.
 - Analyze land use ordinance and identify potential barriers that could discourage community gardens, farmer's markets and truck gardens and follow up with appropriate code reforms if necessary.
- 11. **Prepare the community for natural and human-made disasters.**
 - 11.1 Address the seismic vulnerability of downtown.
 - Consider adoption of a seismic rehabilitation/retrofit ordinance.
 - 11.2 Develop a comprehensive, at-home disaster preparedness program for all citizens.
- 12. **Update the Comprehensive Plan.**
 - Consider an update of the Housing Element of the Comprehensive Plan in order to incorporate background information and key findings of recent studies.
- 13. **Develop and support land use and transportation policies to achieve sustainable development.**
 - 13.1 Create incentives and ordinances for energy-efficient buildings.
 - 13.2 Develop infill and compact urban form policies.
 - Update infill strategy along major transportation corridors to promote housing and business development, as well as alternative transportation choices.
 - 13.3 Support alternative transportation choices.
- 14. **Encourage and/or develop public spaces that build community and promote interaction.**

Economy

- 15. **Seek opportunities to diversify the economy in coordination with the Economic Development Strategy.**
 - 15.1 Support film industry growth.
 - 15.2 Evaluate barriers to business start up and expansion.
- 16. **Nurture emerging new technologies.**
 - 16.1 Position ourselves as a location where high-tech businesses want to grow.
 - 16.2 Promote the e-commerce zone.
- 17. **Market and further develop the Ashland Fiber Network.**
 - 17.1 Complete and implement the AFN business plan.
- 18. **Diversify transportation and shipping options.**
 - 18.1 Strengthen the Ashland municipal airport as an enterprise.
 - Update the Airport Overlay code and approval process for hangar development.
 - 18.2 Develop and encourage alternative transportation options.
- 19. **Ensure that commercial and industrial areas are available for development.**
 - 19.1 Examine Croman redevelopment plan.
 - 19.2 Evaluate the prospects for the redevelopment of the railroad property.
 - Engage the Regional Solutions Team to evaluate a plan and timeline for property clean-up.
 - 19.3 Use existing financial tools to support re-development.
 - 19.4 Create predictable pathways for development of employment land.
- 20. **Embrace and plan ahead for emerging social trends that might impact the economy and vitality of the community.**



Energy and Infrastructure

21. ***Be proactive in using best practices in infrastructure management and modernization.***
 - 21.1 Complete downtown parking management and traffic circulation plan.
 - 21.2 Expand public transportation options.
 - 21.3 Re-examine and review master plans and SDCs on regular basis.
22. ***Prepare for the impact of climate change on the community.***
 - 22.1 Develop and implement a community climate change and energy plan.

Public Safety

23. ***Support innovative programs that protect the community.***



What is the difference between mandatory and non-mandatory services?

MANDATORY

Many of the services we deliver are classified as mandatory which means there is a statutory or legislative requirement, law or regulation that says they must be provided to the community. Examples of mandatory services include (but not limited to) the following;

Service

Town Planning

Animal control

Fire and Emergency Services

Community Engagement

State Legislation/Regulation

Dog Act/Cat Act/Local Government Act

Integrated Planning Framework

While these services are mandatory, the level to which they are provided can be discretionary. The level of service was discussed by the previous Community Panel in February/March 2014. (See Range and Level of Services Community Panel Summary Report in your Day One Desk Pack)

NON-MANDATORY

The City also delivers a number of non-mandatory services which we are not bound by laws or regulations; these are provided because the City believes the community needs or wants them. You will be given a list of +95 non-mandatory services currently being provided by the City. Your task will be to prioritise these services so we can assess which services are most valued and which services are least valued. This will assist Council decision-making regarding the services we continue to provide and those we discontinue.

Why are Summit participants prioritising non-mandatory services?

Last year the City engaged with the Community Panel regarding the level of services we provide. Although the Community Panel gave the City a real insight into the level of service the community wants and expects, we now need to know which services the community most values and the services it may be more willing to do without.

At the Community Summit participants will be asked to review our non-mandatory services and develop a priority list of services they believe the community values and should continue to be provided.

Why are Summit participants NOT reviewing mandatory services?

Parallel to the Community Summit, the City's Executive Management Team is reviewing all the mandatory services we provide to determine if, and how, a reduction in the level of service can be achieved whilst ensuring we still meet our statutory or legislative obligations. This work will be informed by the recommendations of the last Community Panel. This requires the interpretation of a multitude of government acts, legislation and regulations and will be no easy task.

However, while the primary task of participants at the Community Summit is to provide a prioritised list of non-mandatory services, participants will also have a chance to make recommendations, which may include recommendations on the level of mandatory services.

However, at the end of both of these processes the City will be able to provide Council with a priority list of services, both mandatory and non-mandatory, to assist in Council decision making.



MAINTENANCE OF ESSENTIAL SERVICES



PREPAREDNESS

This tool will help you to:

- Identify *essential services* in a municipality
- Create a Continuity of Government Plan
- Help all sectors create Continuity of Operations Plans for essential services

Who will implement this tool:

- The mayor or the *municipal leadership team*
- All sectors, agencies, businesses, and organizations that provide essential services for the municipality

WHAT ARE ESSENTIAL SERVICES?

Essential services are the services and functions that are absolutely necessary, even during a pandemic. They maintain the health and welfare of the municipality. Without these services, sickness, poverty, violence, and chaos would likely result.

While each municipality will need to determine what its essential services are, here are some examples:

- Executive governance (the mayor, or his/her designee, who is in charge and has the authority to make executive decisions and enact policies)
- Healthcare
- Fire and police protection
- Provision of clean water
- Basic sanitation, including sewage and garbage removal
- Maintenance of communication infrastructure (e.g., telephone system, radio, internet)
- Maintenance of utilities (e.g., gas and electricity)
- Provision of food and other essential goods (see below)
- Transportation
- Road maintenance/repair
- Banking
- Payroll departments
- Tax collection

Essential goods are the food and other supplies that a municipality needs to survive, such as medical supplies and gasoline.

Essential workers are the personnel needed to maintain essential services.

Non-essential services are the services that are not essential to a municipality's survival and can be stopped or closed down during a pandemic. Some examples are:

- Tourism
- Culture/entertainment
- Libraries
- Retail stores
- Barber shops



Fundamentals of Home Rule

The League of Oregon Cities was first established in 1925 to protect against the erosion of local “home rule” by the state Legislature. The League has fought to protect home rule since that time. But what, exactly, is “home rule,” and why does it matter?

In Oregon, home rule forms the legal basis for city governments to act. Home rule is thus an important legal concept with real-world implications for a city’s ability to serve the needs of its citizens. The following article briefly explains the origins of home rule in Oregon, how home rule impacts city government authority, and the continuing fight between city and state government over the scope of local authority.

CITIES DERIVE THEIR EXISTENCE FROM THE STATES

The United States of America is a “federal republic,” meaning that government authority is divided between the federal government and the states. The United States Constitution grants limited powers to the federal government and reserves the remaining powers to the state governments. But what about local governments, such as cities and counties?

Interestingly, the United States Constitution makes no mention of local governments. Instead, it places all government authority not granted to the federal government with the states. Thus, the courts have uniformly concluded that cities derive their authority and existence from state governments and lack any inherent authority. In fact, the Supreme Court of the United States has stated that cities are simply “convenient agencies”¹ of their states, and that states may abolish or reorganize cities at any time.

DILLON’S RULE

Under the United States Constitution, cities derive their authority from the states. For that reason, judges and legal scholars took the view that city governments could only act in areas expressly authorized by a state legislature. That principle is often called “Dillon’s Rule,”² and is still followed in many states.

1 *Hunter v. City of Pittsburgh*, 207 US 161, 178-79 (1907).

2 Dillon’s Rule is named for John F. Dillon, an Iowa Supreme Court Justice and federal judge. See 1 *John F. Dillon, The Law of Municipal Corporations*, § 9(b), at 93 (2d ed 1873).

MORE INFORMATION ON HOME RULE

For a more detailed examination of home rule in Oregon, please see “**The Origins, Evolution, and Future of Municipal Home Rule in Oregon**” (June 2017), available at <https://bit.ly/2D0buNX>.

In a Dillon’s Rule state, local governments lack authority to act unless they can show how a state law allows them to take an action, such as levying property taxes, maintaining a fire department, or operating a parks system.

The Dillon’s Rule model allows a state legislature to closely control local government structure, the methods of financing local government activities, local procedures, and local government authority to address local problems.

DILLON’S RULE IN OREGON

In the late 1800s, the Oregon Supreme Court formally endorsed the Dillon’s Rule model of state-local relations.³ Under Dillon’s Rule, Oregon’s cities were not able to effectively respond to local problems, as no local action could be undertaken without permission from the state Legislature, which only met for short biennial sessions.

THE SHIFT TOWARDS HOME RULE

In the early twentieth century, a wave of political populism began to sweep the country. As a part of that political movement, cities and political reformers in Oregon began to push for a “home rule” amendment to the Oregon Constitution.

Frustrated by the special interests that dominated the legislature and by the time it took to address local problems, a group of Oregonians led by William Simon U’Ren sought to amend the Oregon Constitution and vest in the voters the authority over local affairs through the adoption of home rule charters. In U’Ren’s view, such cities would exist independently from the Legislature and would derive their authority from the charter, not from the state.

3 *City of Corvallis v. Carlile*, 10 Or 139 (1882).

In 1906, consistent with a wave of home rule reform sweeping the nation, the voters of Oregon adopted a constitutional amendment that granted the people the right to draft and amend municipal charters. That provision states:

“The Legislative Assembly shall not enact, amend or repeal any charter or act of incorporation for any municipality, city or town. The legal voters of every city and town are hereby granted power to enact and amend their municipal charter, subject to the Constitution and criminal laws of the state of Oregon[.]”⁴

At the same election, the voters of Oregon “reserved” initiative and referendum powers “to the qualified voters of each municipality and district as to all local, special and municipal legislation of every character in or for their municipality or district.”⁵

Note that the home rule amendments do not use the term “home rule,” nor do they specifically confer substantive lawmaking authority. Rather, the amendments prevent the legislature from enacting or amending municipal charters, and free cities from the burden of seeking approval from the state before amending their charter. What that means, in practice, is that cities—and their voters—now possess substantial lawmaking authority independent of the state, although the precise relationship between cities and the state has evolved over the last 100-plus years, primarily through judicial interpretation of the home rule amendments. One of the most significant aspects of that relationship is the ability of the legislature to preempt certain municipal policy decisions.

HOME RULE CHARTERS

For a city to become a home rule city, its residents must vote to adopt a home rule charter. By doing so, a community vests all possible legal authority in its city government. A city charter operates much like a state constitution in apportioning authorities to various officials and setting out the system of government for that community, whether it be a commission, mayor-council, council-manager, or strong mayor form of government. Today, all 241 cities in Oregon have home rule charters.

Once adopted, a home rule charter vests in the city the authority to do all things necessary to address matters of local concern without legislative authorization. The League’s

⁴ Or Const, Art XI, § 2.

⁵ Or Const, Art IV, § 1(5).

“The legal voters of every city and town are hereby granted power to enact and amend their municipal charter.”

– Oregon Constitution

HOME RULE INCLUDES THE POWERS TO:

- Regulate for protection of public health, safety, morals & welfare;
- To license;
- To tax; and
- To incur debt.

Home rule is the right to local self-government, without express or implied legislative authorization.

model charter, based on the council-manager form of government, was written to provide a city with as much authority as permitted under the Oregon Constitution.

Oregon is a home rule state, which gives voters the authority to establish their own form of local government and empowers that government to enact substantive policies. Unlike a Dillon’s Rule state, home rule authority allows cities to act as policy innovators and quickly address social problems, especially when faced with inaction from the state and federal government.

PREEMPTION

The following list highlights some of the areas in which the state has preempted local governments from acting. Please note that the list is not comprehensive. For a comprehensive list of preemptions on local authority, please see the Legal Guide to Oregon’s Statutory Preemptions of Home Rule (November 2017), available at www.goo.gl/RsyPnn.

Taxing

- ▶ Cities may not impose or collect a business license tax from licensed real estate brokers.

(continued on page 6)

In a home rule city, the community vests all possible legal authority in its city government.

Fundamentals of Home Rule

STATE OF OREGON



All **241 cities** in Oregon have home rule charters

- ▶ The state has the exclusive right to tax tobacco products.
- ▶ The state has the exclusive right to tax alcoholic beverages.

General Governance

- ▶ Cities must hold elections in compliance with Oregon election law.
- ▶ Public officials, including city officials, must comply with the Oregon Ethics Code.
- ▶ City government must comply with Oregon's public records and meetings law.

Land Use

- ▶ Cities are required to comply with statewide land use and development goals.
- ▶ Cities may not prohibit certain types of housing.

Personnel

- ▶ Cities must offer PERS coverage to police and firefighters.
- ▶ State minimum wage laws preempt contrary city ordinances or charter provisions.
- ▶ State sick leave requirements preempt contrary city ordinances or charter provisions.
- ▶ State law restricts the use of credit score reports for hiring purposes.

Regulatory Authority

- ▶ State preemption of regulations on vending machines that dispense tobacco or e-cigarette systems.

ONLINE RESOURCES

LOC-TV: HOME RULE

Learn more about home rule in Oregon by viewing the free LOC-TV episode on the League's YouTube channel: <https://bit.ly/343uya4>. The episode provides a comprehensive overview of home rule topics including:



- Where do local governments get their legal authority?
- What is home rule and where does it come from?
- What is preemption and the legal standard by which we evaluate whether legislation is preemptive?

- ▶ State preemption of local laws concerning various liquor uses and consumption.
- ▶ State building code preempts local ordinances.
- ▶ Preemption of local ordinances that makes a shooting range a nuisance or trespass.
- ▶ Preemption of local regulations on cell phone use in vehicles. ■