



## City Attorney's Office

# MEMORANDUM

TO: Sweet Home City Council  
FROM: W. Blair Larsen, City Attorney  
DATE: January 16, 2026  
RE: Proposed Charter Provision Prohibiting Reelection after 10 Unexcused Absences from Regular Council Meetings

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### Introduction

At the December 9<sup>th</sup> City Council Work Session, the Council reviewed new City Charter provisions recommended by the City Charter Review Committee. One provision was of particular concern to some of the Council, who requested a legal review. That provision, located in Section 3.1, states:

“Any Mayor or Councilor who is absent for 10 or more regular City Council meetings within a 365-day period, which are not excused by a majority vote of Council at the meeting when the absence occurs or the following meeting, shall not be eligible to seek office in the following election.”

### Relevant Law

The ability of an individual to run for public office is protected by the First Amendment, and therefore any restriction would undergo strict scrutiny by a federal court. To pass strict scrutiny, the government agency must show that the restriction serves a compelling government interest. *Mancuso v. Taft*, 1973.

In 2022, Oregon voters approved Ballot Measure 113, which amended the Oregon Constitution to disqualify any legislator with 10 or more unexcused absences during a term from holding office for “the term following the election after the member’s current term is completed.” In 2024, this provision was challenged before both the Oregon Supreme Court, and the US Court of Appeals for the 9<sup>th</sup> Circuit (Federal). In the Federal case, *Linthicum v. Wagner*, the Court upheld the provision and found that it did not violate the first amendment. The State case, *Knopp v. Griffin-Valade*, only dealt with interpretation of the constitutional amendment, but in the absence of any other arguments against it, one can presume that the amendment is valid and enforceable.

The current City Charter includes a provision that makes a council seat vacant after a Councilor’s absence “from the city for a period of 30 days without the consent of the council” (Sweet Home Charter, Section 12). Many other Oregon cities have a similar provision, and the typical interpretation is “absence from council meetings” rather than physical absence from the city.

### Analysis

Discussion of this provision at Charter Review Committee meetings made it clear that the goal was to impose a minimum attendance standard. In a given year, there are usually about 18 to 22 regular council meetings. The Charter requires that the Council meet once a month, but the



usual practice has been to meet twice a month, unless a meeting is canceled because of lack of business or holidays (such as Christmas or Independence Day). Therefore, the proposed Charter provision would only be triggered if a Councilor or Mayor missed around half of the regular Council meetings without being excused. In the last 10 years this has never happened.

While this provision would likely infringe on a Councilor's first amendment rights, the City has a good argument that such a provision serves a compelling government interest. Legislative bodies all over the state and nation have attendance requirements, and a governmental body has a compelling interest in doing the work its members were elected to do. The provision arguably punishes only very extreme absences—around half per year, if unexcused. Other, more restrictive attendance regulations among elected bodies have been upheld as constitutional, and there is little reason to think that this provision would not likewise be upheld. In addition, the provision is content-neutral—that is, it applies to all councilors regardless of their beliefs, actual speech, or voting behavior.

The similarity to common Charter provisions throughout other cities in Oregon also supports the constitutionality of this provision. Councilors can be removed from office in other cities for missing all regular meetings in a 30-day period—which would amount to two meetings in Sweet Home. Of course, those other cities' charters simply make the council position vacant immediately—they don't impact the Councilor's next term. However, this difference supports the idea that the proposed provision is more lenient than what is done in other cities—the Councilor doesn't immediately lose their seat and could continue to serve on the council and seek excusal of the absences from the rest of the Council.

Finally, the similarity of the proposed provision to Ballot Measure 113 also supports its constitutionality. If Ballot Measure 113 is constitutional, (which, according to the Oregon Supreme Court and the 9<sup>th</sup> Circuit Court of Appeals, it is) then it is very likely that a city charter provision would also be upheld. A City Council has the same interest in attendance as the state legislature, and the City's version of Ballot Measure 113 is much easier to comply with—it allows for a longer period of absences before it is triggered, leaving more time to seek excusal or resolve the cause of the absences.

### **Relation to Other Proposed Charter Provisions**

As mentioned above, the existing Charter declares an office vacant upon the incumbent's "absence from the city for a period of 30 days without the consent of the council." At the December 9<sup>th</sup> work session, the consensus of the Council was to revise this language to make it plain that a Councilor would not lose their seat just because of an extended vacation. I propose to amend it similar to how other cities have amended theirs—by focusing on regular council meetings. My amendment would instead read "absence from regular city council meetings for a period of 30 days without the consent of the council."

If both this amendment and the proposed charter provision discussed above are adopted, then if a Councilor is absent from regular meetings for 30 days without being excused, their office could be declared vacant, however they could likely run again for office at the next election. However, if that same councilor also has ten total unexcused absences for the previous 365-day period, then it is possible that their seat could be declared vacant, and they would not be eligible to run in the next election. Nothing would forbid that same Councilor from running again in the election following that one, though.

I have not found any laws or cases that would invalidate this other provision, and I believe it would pass constitutional muster for the same reasons specified above.



## **Conclusion**

The proposed charter provision does not appear to exist in other city charters in Oregon, however it is very similar to Measure 113, which has been upheld by both State and Federal courts. Even though it can be seen as a restriction on councilors' first amendment rights, the City has a compelling interest in ensuring a baseline of attendance, and the provision is content-neutral. This amendment to the charter, if it were to be adopted, would very likely be upheld by State or Federal courts as a valid requirement for eligibility for City office.