



CITY MANAGER'S OFFICE

555 Liberty St SE / Room 220 • Salem, OR 97301-3513 • 503-588-6255 • Fax 503-588-6354

City of Salem Testimony RE: HB 3399 A-Engrossed

Salem is opposed to this bill for the following reasons:

- 1) HB 3399A likely violates Article XI, Section 2 of the Oregon Constitution, and unnecessarily removes local control over cities' form of government.

Article XI, Section 2 of the Oregon Constitution provides; “[T]he Legislative Assembly shall not enact, amend or repeal any charter or act of incorporation for any municipality, city or town.” The qualifications for the municipal judge are established in the charter for many cities in Oregon; the qualifications mandated by the bill would run counter to the charter provisions in these cities. Even if only established by city ordinance, the qualifications for a municipal judge are the province of each jurisdiction. It is an unnecessary encroachment on the discretion and authority of local governing bodies to mandate certain qualifications for municipal judges.

- 2) Scope of requirement to record “all misdemeanor or felony proceedings.”

HB 3399 mandates that municipal courts “keep a transcript or audio record of *all misdemeanor or felony criminal proceedings.*” “Proceedings” include more than simply trials or hearings on motions. Pre-trial conferences, ex parte matters, and other pre-trial matters are often conducted in a municipal judge’s chambers or outside the presence of the jury and public. It is unclear if the bill is intended to require recordings of these items. Circuit court judges frequently conduct these matters without recording them. As drafted, the bill would impose more stringent requirements for justice and municipal courts, than circuit courts.

- 3) Record of a proceeding is unnecessary for a *de novo* trial at circuit court.

Supporters of HB 3399 claim that the bill does not mandate that municipal courts become “courts of record.” If that is the case, then defendants will still have the right to a *de novo* trial at circuit court. A verbatim transcript will be useless to a circuit court in such cases.

- 4) Unfunded Mandate.

HB 3399 would impose an unfunded mandate on cities, not only by requiring cities to purchase recording equipment, but for additional staffing to monitor and operate the equipment, and for maintenance of the recording system, and storage costs for the data.

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HB 3399 would raise costs for municipalities by mandating recording of “all misdemeanor or felony criminal proceedings,” at a time when local governments have already prepared and are in the process of adopting budgets, and are ill-equipped to identify resources to pay for this function.

The claims that an inexpensive simple digital recorder will be adequate to properly record all criminal proceedings are in error. Many municipal court rooms were built decades ago and have poor acoustics. Many municipal courts conduct proceedings in ad hoc courtrooms where a simple digital recorder is inadequate. Further, some municipal courts conduct telephonic or video arraignments by connecting via video and/or audio feed to the local jail. This process saves time and resources by not transporting defendants from the jail to the court. It is unrealistic for municipal courts to record these proceedings unless a modern and versatile recording system is used. Such systems are not cheap, and must be operated and maintained.

5) Qualifications for Municipal Judges.

The requirement for a “Juris Doctor” degree is ambiguous. As noted by the Honorable Judge Lemhouse in written testimony provided on May 18, 2015, section 8 of the engrossed bill, if it is needed at all, should be amended to allow for any type of law degree from an ABA accredited law school.

The requirement for judges to complete a National Judicial College (NJC) course is unduly restrictive. The NJC program costs approximately \$10,000 per judge. An Oregon based program through the Oregon Supreme Court and Oregon State Bar would be a better, lower cost alternative.

Sincerely,

Kacey Duncan
Interim City Manager