

Mayor
Honorable Lori DeRemer



City Manager
Jason A. Tuck

February 5, 2015

Chair Williamson and Vice-Chairs Gilliam and Hoyle,
House Committee on Rules
900 Court Street NE, Salem, OR 97301

Re: Oppose HB 4130

Dear Chair Williamson, honorable vice-chairs, and members of the Committee,

HB 4130 requires cities and other local governments to fulfill complicated public records requests within infeasible and subjective timeframes. This legislation seeks to improve the transparency of public records production, however the City is concerned that HB 4130 will confound customer service and exhaust limited public dollars. In addition, HB 4130 contains unrelated language proposing new and unnecessary requirements for the filing of initiative measures. The City of Happy Valley urges your opposition to HB 4130 for the following reasons:

1. HB 4130 accounts for neither the diversity of public records nor their soft costs.

Happy Valley strongly believes that public records should be accessible to the public. Often, a record request requires minimal effort to fulfill. In such instances, the cost of producing a public record is negligible, and local governments frequently forego fee collection. HB 4130, however, fails to consider that not all public record requests are easily fulfilled. Larger, more complex requests may require staff time, additional temporary staff, specialty printing services and other public resources. These resources are funded through public dollars. The City agrees that public records fees should be reasonable to maintain the accessibility of public records, however we urge the committee to remember that arbitrarily capping public records fees at \$30 per hour requires the community to subsidize an employee's time with public funding.

2. HB 4130 imposes difficult time constraints on local governments.

HB 4130 requires a local government to acknowledge receipt of a public records request within five business days and then the local government must produce, or estimate the time needed to produce, the public record within 30 days. Failure to meet these deadlines may be considered a denial of a public record.

HB 4130 again fails to consider that highly complex record requests require time. Records often pre-date electronic storage repositories, therefore a record's retrieval requires physical examination of tangible records, following paper trails and maintaining the integrity of original documents. It is unlikely that a smaller governing unit can sufficiently fulfill a complex records request in the proposed timeframe.

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Consequently, local governments are unlikely to recover the costs of larger record requests, again placing a burden on the community to subsidize private requests through public dollars.

Furthermore, HB 4130 operates under a faulty assumption that local governments exert control over all parties involved in the fulfillment of a records request, namely a city's attorney. A local government's attorney or attorney firm often serves several local governments. A local government cannot control the schedule or availability of a city attorney to review records. Unless the attorney was to reprioritize existing casework at the expense of another local body, the proposed timeframe may be infeasible, thereby placing liability on local governments.

3. HB 4130 imposes subjective standards of efficiency on local governments.

As proposed by HB 4130, if a local government has not furnished a public record within the proposed deadline, a person may petition the Attorney General to review the public record to determine if it may be withheld from public inspection or to determine if the public body is being unreasonably slow in responding to the request.

The term "unreasonably slow" is highly subjective and does not take into account the variability of local government resources. Many local governments, such as Happy Valley, are smaller employers. Every employee serves a critical function to a jurisdiction's operation. When a public employee must fulfill a complex records request, that employee is diverted from his or her critical functions. Critical functions cannot be stopped for extended durations of time as a matter of public safety. Therefore, the local body must balance municipal administration with the fulfillment of a highly complex public records request.

4. HB 4130 imposes unnecessary requirements for the filing of local initiatives.

HB 4130 suggests that upon receiving a prospective petition for an initiative measure, a city elections officer must provide notice to the Secretary of State. The Secretary would then provide statewide notice of the local initiative. This proposal creates additional and unnecessary requirements for the placement of initiatives on the ballot. Oregon Law already governs the process through which initiative petitions are handled, and the current process is sufficient for handling these petitions.

In addition, the proposed statewide notification will more often than not be highly inappropriate for the subject matter of the petition. Local petitions pertain to localized issues. Why then should communities outside of the affected location, even outside the state, be given opportunity to influence a community's decision? Happy Valley believes that local communities have the right to self-determine the outcome of their communities without undue influence from outside sources.

Concurrently, the proposed statewide notification is an unfunded mandate. Section 10 of HB 4130 suggests the statewide notification be subsidized by the general fund, however no fiscal amount has been suggested. Happy Valley is greatly concerned that this unfunded mandate will result in higher filing fees for citizens seeking to place a matter on the ballot. Higher filing fees would greatly diminish the accessibility of our democratic system.

Finally, Happy Valley would strongly suggest that the committee clarify whether Section 9 would equally affect the filing of initiatives referred by the City or just citizen petitions.

5. HB 4130 improperly uses an emergency clause.

Just over a year ago, local governments worked with the Oregon State Archivist to adopt a revised City Records Retention Schedule (OAR 166-200-0200). Administrative overhauls of local policies take time to

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review and incorporate into municipal policies. Imposing an emergency clause is unreasonable and inappropriate for this matter. Local governments should be allotted at minimum 60 days to incorporate new requirements into policy.

6. Dash One amendments discriminate against smaller governments.

The City adamantly opposes Dash One amendments, which if incorporated would require a public body to pay a public records requester a sum of \$100 per day that the public body is unable fulfill the request after the state's arbitrary deadline. As stated above smaller governments are less likely to feasibly meet the deadline due to staff requirements and other related limitations. Therefore, smaller governments are most likely to be penalized by this requirement, resulting in a gross mishandling of limited public funds. Similarly, the City is greatly concerned that this requirement would encourage private parties to abuse public records requests for monetary gain.

Taking into consideration the diverse range of public records requests, the soft costs of fulfilling requests, the infeasible timelines set forth, the imposition of inappropriate processes for local initiatives, and the regressive nature of proposed punitive measures, Happy Valley urges your opposition to HB 4130.

Sincerely,

A handwritten signature in black ink that reads "Lori DeRemer". The signature is written in a cursive, flowing style.

Lori DeRemer, Mayor

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