

**ELECTIONS
(Chapter 4)**

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INTRODUCTION

Oregon special districts must hold elections to select board members, obtain voter approval of new or increased tax rates or bond measures, and for most boundary changes, such as formation, annexation, consolidation, merger, and dissolution of the district. Elections also are required when voters petition for a referendum on a district ordinance or revenue bond, or when the board seeks an advisory vote from the electorate before enacting local legislation.

ORS chapter 255 governs most special district elections. Two types of districts – drainage districts (ORS chapter 547) and irrigation districts (ORS chapter 545) -- have different election processes, and the principal Act for other types of districts may include specific additional requirements, so before planning an election it's a good idea to check the principal Act.

Laws and rules governing local elections are administered statewide by the Secretary of State's Election Division, and by the county clerk for each county who serves as the elections officer for local elections. When a special district measure is to be submitted to voters, the district board must notify the county clerk, who can explain necessary requirements. Depending on the subject matter of the election, certain statutory procedures will apply, and each county may impose specific additional requirements or require information to be submitted on county-generated forms.

Election processes can be complex and non-negotiable deadlines apply, so districts should start early working with the county clerk to ensure that all steps are completed properly.

ELECTION DATES

Special district elections generally are held on the following dates:

- The second Tuesday in March.
- The third Tuesday in May.
- The third Tuesday in September.
- The first Tuesday after the first Monday in November.

Special districts may propose ballot measures at any of the four election dates, with the following exceptions:

- A measure to form a new special district with a permanent tax rate must be held at either the May or November election. If no tax rate is being sought, the formation measure may be submitted to voters at any election, or an election may not be necessary if the proposed district is located entirely within a single county and that county's board agrees to form the district without an election.
- If a new district is being formed, the initial board is elected at the time of formation.

- Board elections for existing boards are held at the May election in odd-numbered years.

A special election may be held on a date other than the four regular election dates if the district board adopts a resolution finding that an election sooner than the next available election date is required on a measure to finance repairs to property damaged by fire, vandalism or a natural disaster.

ELECTIONS TO FILL BOARD VACANCIES; TERMS

When a district board position becomes vacant between elections, the vacancy must be filled by appointment of the remaining board members, or by the county board of commissioners if the district board can't agree or there are insufficient remaining board members to fill the vacancy.

For districts subject to ORS chapter 255, the person appointed to fill a vacancy will serve until June 30th following the next regular district board election in May of the next odd-numbered year. The successor elected at the May election then serves for the remainder of the unexpired term, which may be less than a standard board term. This ensures that the board terms remain staggered and multiple vacancies aren't created at once.

For districts not subject to ORS chapter 255 (such as drainage districts and irrigation districts), the term of the appointed board member expires the day before the first Monday in January of the year following the election of the successor board member. The elected successor takes office on the first Monday in January of the year following the election, then serves the remainder, if any, of the term for which the appointment was made.

ELECTION NOTICES

Board Elections. Four to five months before the date of the board election (specific time frames are established by statute) the county clerk is required to deliver to each special district a form for updating information on members of district boards. At minimum, the form must include board positions to be filled at the next election and certain information about the candidates. The district must return the completed form by the stated deadline. If it fails to do so, the county clerk may complete the form with the most current information available; or, if the form is returned after the deadline, the county may require the district to pay the cost of correcting the notice of election.

Using the information in the completed form, the county clerk publishes a notice stating the date of the election, the board positions to be voted upon, and the latest date when candidates may file petitions for nomination or declarations of candidacy. The clerk must print the notice

once in a newspaper of general circulation in the district not later than the 40th day before the last day for filing a petition for nomination or declaration of candidacy. In addition to publishing the notice in the newspaper, the clerk may publish a notice on the county's website for a minimum of seven (7) days. In addition to or in lieu of publication by newspaper and website, the clerk may mail the notice, postage prepaid, to each elector of the district, no later than the 40th day before the last day for filing a petition for nomination or declaration of candidacy.

Bond Measures or Other Ballot Measures. Typically, the district board authorizes by resolution any district ballot measure to be submitted for election. The district must deliver a Notice of Election to the county clerk at least 61 days before the election, along with a proposed ballot title. ORS 255.085 requires the ballot title to be prepared "with the assistance of the district attorney for the county of the elections officer or an attorney employed by the district." [It may be worth asking if the county district attorney will assist with the ballot measure, but it is likely the county will expect the special district to hire its own counsel for this process. Election planning should include budgeting funds for legal assistance.]

A notice of election called to approve the issuance of bonds must include:

- (a) The purpose for which the bonds are to be used;
- (b) The amount and the term of the bonds;
- (c) The kind of bonds proposed to be issued; and
- (d) If the bond election is authorized by ORS 450.900 [relating to improvements by sanitary authorities], the additional notice requirements in ORS 450.905.

Although uncommon, local citizens may also submit initiative or referendum petitions for district measures to the county clerk to be included on the ballot. The number of signatures required for initiative and referendum petitions are described in ORS 255.165(1), and ORS 255.085(4) describes the notice and publication requirements to be followed by the county clerk for measures submitted by citizen petition. Petitioners must complete and file the Secretary of State's form SEL 803 (Local Initiative and Referendum Prospective Petition), available at sos.oregon.gov/elections/Documents/SEL803.pdf. The text of the proposed measure being initiated, or the district ordinance being referred, must be included, as well as a Petition for Local Measure (SEL 370), sos.oregon.gov/elections/Documents/SEL370.pdf.

After receiving the prospective initiative petition, the county elections official must notify the chief petitioners no later than five (5) business days after the proposed initiative is filed that the text complies with the procedural requirement contained in the Oregon Constitution, Article IV, Section 1 and ORS 255.140.

Once it is approved, circulation of the petition may begin. Circulation requirements are described in ORS 255.135 and can be obtained from the county clerk.

CANDIDATES FOR DISTRICT OFFICE

Elections for special district boards are non-partisan.

Except as provided in ORS 255.400 to 255.424 (the Oregon Voting Rights Act, primarily pertaining to elections for school districts and education service districts), a district board candidate can be nominated by filing with the county clerk either:

- (a) A petition for nomination signed by at least 25 electors, or 10 percent of the electors, residing in the election district for the office, whichever number is less; or
- (b) A declaration of candidacy accompanied by a filing fee of \$10.

The petition or declaration of candidacy for the district board must be filed no sooner than the 40th day before the filing deadline, which is the 61st day before the date of the district election if the election is a regular district election or the first district board election; or the 70th day before the date of the district election if the election is held on the date of a primary election or general election (i.e., in May or November of even-numbered years).

Candidates for special district offices filing by petition or declaration must submit the following forms to the county clerk before circulating the petition:

- Filing of Candidacy for Special District Nomination (SEL 190)
sos.oregon.gov/elections/Documents/SEL190.pdf
- Statement of Organization (SEL 220)
sos.oregon.gov/elections/Documents/SEL220.pdf
- If you receive or spend campaign contributions, you may have to submit a Statement of Organization for Petition Committee (SEL 222)
sos.oregon.gov/elections/Documents/SEL222.pdf

Forms are supplied by the Oregon Secretary of State and provided to each county clerk. The nominating petition or declaration of candidacy must contain:

- The name by which the candidate is commonly known. A candidate may use a nickname in parentheses in connection with the candidate's full name.

- Address information as required by the Secretary of State by rule.
- The office and department or position number, if any, for which the candidate seeks nomination, and the zone board members are elected by zone.
- A statement that the candidate is willing to accept the nomination or election if elected.
- A statement that the candidate will qualify if elected.
- The signature of the candidate.
- A statement of the candidate's occupation, educational and occupational background and prior governmental experience.
- Information regarding the candidate's race and ethnicity (optional).
- A statement that the required fee is included with the declaration.

A nominee may withdraw the nomination not later than 5 p.m. of the last day specified for filing by filing a written withdrawal of candidacy with the county clerk. The withdrawal must state the reasons for withdrawal and be signed by the nominee. The form for Withdrawal of Candidacy or Nomination (SEL 150) is available at the following link:

sos.oregon.gov/elections/Documents/SEL150.pdf

Candidates for public office have specific duties and responsibilities if they accept campaign contributions. Those responsibilities are not fully described in this chapter. Prospective candidates should review the 2020 Campaign Finance Manual at sos.oregon.gov/elections/Documents/campaign-finance.pdf, which is prepared by the Oregon Secretary of State.

Abstracts and Certificates of Election. Not later than the 20th day after an election, the county clerk must prepare an abstract of the votes and deliver it to the district election authority (i.e., the board). By the 40th day after receiving the abstract, the district elections officer (i.e., the board) must determine the results of the election. This is generally done by resolution, or by formal vote of the board.

The county clerk must issue a certificate of election after the district elections officer has notified the county clerk in writing of the result of the election.

ELECTION CONTESTS, RECOUNT, AND RECALL

Procedures for election contests, recount, and recall for special districts are the same as for any other election in the state. Provisions regarding election contests and recounts are found in ORS chapter 258. Provisions regarding recall are found in ORS chapter 249.

RESTRICTIONS ON POLITICAL CAMPAIGNING

This Chapter provides general information on restrictions that apply to political campaigning by elected officials and public employees of special districts. It is not intended to be a substitute for legal counsel. Public officials and candidates should seek legal advice for specific issues and questions.

In general, campaign restrictions on public officials are intended to prevent the use of public funds to advocate for specific political causes or candidates. If a district or candidate wants to promote a cause or candidate, the appropriate approach is to have interested citizens form a Political Action Committee (PAC), which can legally solicit contributions and produce/distribute advocacy materials. The processes for creating a PAC are not addressed in this Chapter, but forms and guidebooks for forming and operating a PAC are available from the county clerk.

General. Public agencies are prohibited from using public funds to support or oppose a ballot measure or candidate. Furthermore, ORS 260.432 prohibits public employees from spending time “while on the job during working hours” promoting or opposing a ballot measure or candidate.

The definition of “public employee” in this context includes any public official who is not elected, whether they are paid or unpaid (i.e., volunteers), and includes members of appointed boards and commissions.

The Oregon Secretary of State and the Oregon Attorney General have authority to enforce violations of ORS chapter 260, which may include assessing civil penalties, or imposing criminal penalties for intentional violations. Individual elected officials and employees also may be found personally liable for misuse of public funds under ORS 294.100, which is part of the Local Budget Law.

Preparation and Distribution of Written Material. All materials about the measure or candidate that are paid for with public funds, or which are distributed by local elected officials or employees, must be factual and impartial. The information may describe the expected effects of a ballot measure and give the public a fair presentation of relevant facts, but it may not advocate for a particular position or outcome. For example, “proceeds from the proposed bond measure will be used to build a new fire station on Main Street,” is acceptable. “Voters should approve the proposed bond measure if they don’t want their houses destroyed by fire” would not be.

Staff may spend work time doing research and preparing information that fairly assesses the effects of the measure on the district, and local officials can use such information in meeting with individuals and organizations, e.g., newspaper editors and reporters, legislators, local civic organizations, and special interest groups to explain objectively the measure’s impact on the agency.

Factors that may be used to determine the line between information and advocacy may include the following:

- The timing of the material relative to an election date.
- The balance of factual information including pros and cons about the measure.
- Have facts been presented neutrally so they inform rather than persuade?
- Is the tone of the text and headings dispassionate rather than enthusiastic for one side or the other?
- Does the material refer to supporting or opposing PACs or citizen groups or individuals in a way that suggests a preferred outcome?
- Does the content explicitly urge a “yes” or “no” vote?

The Secretary of State’s Office will review materials prior to printing and distribution to ensure that the content is appropriately neutral. Good campaign planning should include time to submit the information, obtain the approval, and make changes if needed.

The Governing Body. A governing body of elected officials (i.e., the board of directors) is presumed to be in support of its own ballot measures, but it may also take official positions on ballot measures proposed by other public entities; for example, “the Board of Directors of XYZ Water District supports the City of ABC’s proposed bond measure to build a new water treatment plant.”

Whether for its own or another agency’s ballot measure, if the endorsement is part of the board’s official business, staff can record votes and type resolutions of support or opposition if that is part of their normal work duties. Staff can also do research during work hours to provide information to the governing body to inform its decision-making, such as providing background information on the measure and describing its potential effects, both pro and con, and may use the district’s office facilities to copy the resolution and share it in response to a records request.

Elected Officials. Restrictions on campaign activities by public employees do not apply to individual elected officials. Elected officials are generally expected to take positions on major issues, particularly those that affect the governmental body on which they serve. However, elected officials must be careful not to involve support staff in their advocacy efforts. For example, district staff are not permitted to type advocacy statements or speeches for elected officials on work time.

District Staff. When an employee is on duty, he or she may provide factual information on a proposed ballot measure but may not advocate for any particular position or outcome. For example, the district manager may attend the local Chamber of Commerce meeting to

announce the district's proposed bond measure on the September ballot and the reasons why it's being proposed; but the District Manager may not tell, or even encourage, attendees to vote for the measure, or even just encourage them to vote.

Agency staff *may* advocate for ballot measures or candidates on their personal time, including during breaks or vacations from work, but when they do so they should make it clear that they are not representing or speaking for their employer. For example, an employee may write a letter to the newspaper in support of or opposing a particular measure, but if there is a possibility the reader could confuse the employee's individual status with that of the individual's status as an employee, the letter should specifically explain that the individual is speaking in his or her personal capacity and not on behalf of the district.

Subject to limited regulation by the employer to avoid disruption in the workplace or to avoid suggesting to the public that the employee's personal political views are endorsed by his or her employer, public employees may express their personal opinions on the job and may wear buttons or engage in other activities which are protected under their right to free speech.

A public employee may not be coerced or pressured to vote for a measure or candidate, or to work to advocate for or against the measure or candidate. For example, a board member or the manager of the public agency may tell employees about the possible effects of a measure, such as possible layoffs, but may not threaten them with financial loss or other repercussions if they vote in a particular way.

Each public employer is required to post in a conspicuous place a notice that outlines legal restrictions on the political activity of their employees while on the job during working hours. The text of the notice is provided in ORS 260.432(3).

RESOURCES

The Oregon Secretary of State's Elections Division prepares and provides several publications at no cost that summarize the requirements for elections. These are available on-line at sos.oregon.gov/elections/Pages/manuals-tutorials.aspx. They include:

- *County, City and District Initiative and Referendum Manual.*

The manual is used by Oregon's 36 county clerks who are responsible for overseeing special district elections. It is available at sos.oregon.gov/elections/Documents/countycitydistrictir.pdf. It is updated regularly to provide a current elections calendar and filing dates.

- *Campaign Finance Manual* for candidates and political committees.

This manual is a must for any district candidate or political committee that will be

accepting financial contributions. It can be found at sos.oregon.gov/elections/documents/campaign-finance.pdf.

- The Oregon Secretary of State provides a useful quick reference guide on political campaign restrictions: sos.oregon.gov/elections/documents/260.432_quickref.pdf.