

**IN THE SUPREME COURT OF THE STATE OF OREGON**

City of Damascus, James B. De Young,  
Jeanne Robinson, Mark Fitz, and  
William Wehr,

Petitioners,

v.

State of Oregon, by and through Kate  
Brown, its Governor and Bev Clarno, its  
Secretary of State,

Respondents.

Supreme Court Case No. \_\_\_\_\_

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**PETITION FOR REVIEW  
UNDER  
OREGON LAWS 2019, CHAPTER 545, SECTION 4**

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**PETITION FOR REVIEW UNDER  
SECTION 4, CHAPTER 545, OREGON LAWS 2019**

Petitioners seek review with this Court to determine whether Oregon Laws 2019, chapter 545, sections 1 to 3 (“Sections 1-3”) (“the 2019 Act”), (APP-1-2) are unconstitutional under Article IV section 1(5) and Article XI section 2 of the Oregon Constitution (municipal home rule); Article III section 1 of the Oregon Constitution (separation of powers); Article IV section 23 of the Oregon Constitution (special or local law); or the equal protection and due process requirements of the United States Constitution. This review is authorized by Section 4 of the 2019 Act (“Section 4”).

**1. This Court has original jurisdiction, and this proceeding must be afforded the Court’s highest priority.**

Section 4 of the 2019 Act confers original jurisdiction on this Court to determine whether Sections 1-3 are valid under the laws of Oregon, and the Oregon and the United States Constitutions. Review must be given priority over all other matters before this Court. Section 4 provides in pertinent part:

(2) Original jurisdiction to determine the validity of sections 1 to 3 of this 2019 Act is conferred on the Supreme Court.

(3)(a) Any person interested in or affected or aggrieved by sections 1 to 3 of this 2019 Act may petition for judicial review under this section

\* \* \*

(4) Judicial review under this section shall be limited to: (a) the question of whether sections 1 to 3

of this 2019 Act are valid under the laws of this state and the United States and Oregon Constitutions.

\* \* \*

(8) Proceedings for review under this section shall be given priority over all other matters before the Supreme Court.

As set forth below, this petition challenges Sections 1-3 as violative of the Oregon Constitution<sup>1</sup>.

**2. This Petition is timely.**

Section 4(3)(a) of the 2019 Act requires that a petition for review be filed “within 30 days after the effective date of [the] 2019 Act.” The effective date of the 2019 Act was July 15, 2019.<sup>2</sup> This Petition was filed on August 14, 2019, and is therefore timely.

**3. Petitioners are interested in, affected, or aggrieved by Sections 1-3.**

**a. The nature of the 2019 Act**

The 2019 Act was adopted as a response to the Court of Appeals’ May 1, 2019 decision in *De Young v Brown*, 297 Or App 355 (2019). That decision arose from a contested election wherein the legislature improperly attempted to

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<sup>1</sup> Petitioners preserve arguments that various other sections of the 2019 Act violate both the United States and Oregon Constitutions, however the 2019 Act did not give original jurisdiction of those sections to this court nor require such challenges to take place within 30 days of the effective date.

<sup>2</sup> Governor Brown signed the 2019 Act on July 15, 2019. The 2019 Act became effective that date per Section 5 thereof.

refer disincorporation to the voters of Damascus (the same election that is the subject of this 2019 Act). The Court of Appeals held that the election did not dissolve the City because the election was required to comply with ORS 221.610 and ORS 221.621 and it did not. *DeYoung* at 358.<sup>3</sup>

In response to this the legislature passed the 2019 Act wherein Section 2 authorizes the Legislative Assembly to refer “an Act” (all language contemplates a future referral) to the people of a city on the question whether to disincorporate the city, “notwithstanding ORS 221.610, 221.621 and 221.650.” That appears to present a tautology, because the legislature merely authorizes itself to – sometime in the future – adopt an act amending statutes. However, Section 2 further adopts procedural and substantive provisions that conflict with dates and substantive election requirements of a city charter, such as Damascus that were adopted pursuant to “home rule” authority, including whether an absolute majority is required, and whether a dissolution election may be held only at general elections to ensure better turn-out and avoid a heated group from taking improvident actions.

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<sup>3</sup> The Court of Appeals explained that among the legal deficiencies created by that defect was that an “absolute majority” (a majority of the number of electors of the city, not merely a majority of the people voting) was required to dissolve the City. *De Young* at 364. Further, the election needed to be held at a general election, not a special election. *De Young* at 365. Last, the court pointed out that the legislature had not created a process to make a legitimate referral to the voters in regard to the 2016 Measure 93 special election. *De Young* at 367.

Parts of Section 2 may be an act of general application, but the rest of the 2019 Act is not.

Section 3 of the 2019 Act states that Section 2 applies retroactively.

Section 1 of the 2019 Act delegates authority to the Secretary of State to make a determination whether the Damascus disincorporation election of May 2016 satisfies the conditions of Sections 2 and 3. It purports to cover any election during a six month period, but the state referred no other disincorporation issues to city voters. *See*, <https://sos.oregon.gov/elections/Pages/electionhistory.aspx> showing no other election results for referrals to cities during the relevant period.<sup>4</sup>

**b. A brief history of the City of Damascus**

The city of Damascus has had a turbulent history, in part because its boundaries included people holding too many disparate views of what the City should become and look like – there was no cohesive “community.” This problem started with a large expansion of Metro’s urban growth boundary in 2002, and pressure from non-residents of Damascus to organize the large area into one city for ease of governance. The plan was that the City would eventually become the home of some 40,000 or more people.

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<sup>4</sup> The only measure was the Damascus disincorporation referral, with results <https://sos.oregon.gov/voting/Documents/P16Abstract.pdf> at p.101.

A study group advised the foregoing action, mostly to make land use planning more convenient. But that did not consider the views of the people who live in Damascus. The City boundaries reflected convenience to comply with state land use laws, not the desires of the community that would have to adopt compliant land use regulations (e.g., a comprehensive plan and zoning ordinances). That is, the boundaries, together with land use planning requirements, created a political difficulty.<sup>5</sup>

In 2011, the City completed its comprehensive planning process, and a comprehensive plan was submitted to the Department of Land Conservation and Development (“DLCD”) as required by law. (APP-5). The plan was accepted and partially acknowledged by DLCD. *Id.* It was found to be in compliance with certain land use goals, and a multi-year schedule was adopted to bring it into compliance with the remaining goals, a common scheduling process for newly adopted comprehensive plans. However, differing views about the comprehensive plan led the voters both to reject a referendum on the plan, and to adopt a charter amendment in 2012. The new charter section 7 required voter approval of a comprehensive plan by an “absolute majority” (a majority of the total number of electors of the city) or in a general election in an

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<sup>5</sup> *See, e.g.*, Testimony from Metro submitted to the Legislative Affairs Committee in support of the -2 amendment to SB 226, to disincorporate Damascus, dated June 5, 2019 (submitted June 3, 2019). (App-4).

even numbered year. As a result, the comprehensive plan of 2011 was not considered valid, despite its partial acknowledgment by DLCD<sup>6</sup>.

In 2014, in an attempt to reach a consensus, the Damascus voters were offered three comprehensive plans, each of which was adopted through a planning process. The three plans received nearly equal majorities in opposition to them (about 1/3 in favor) in the 2014 election. By then, the participants were tired of the process, and *ad hominem* attacks became too common. Both political and personal differences among factions hardened. The ordinary political processes for resolution were not able to bring about a compromise, and the voices of extremists grew louder. In 2013, during this process, an initiative petition on disincorporation of the City went to the voters and failed to gain the required majority of the electors of the city (an “absolute majority” under Section 27 of the City Charter and Oregon law), but a majority of those voting, voted in favor. Litigation over its passage ensued, and the City prevailed, further inflaming some dissidents.<sup>7</sup>

Then, in the 2014 legislative session, dissidents caused a bill (HB 4029) to be adopted, that would allow property owners to withdraw their land from the City (also called “de-annexation”). The Court of Appeals struck the

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<sup>6</sup> The determination by the City might be incorrect, if state land use law pre-empted such a determination.

<sup>7</sup> *Hawes v. City of Damascus*, Circuit Court of Oregon for Clackamas County, No. CV131205.

legislation as unconstitutional. *City of Damascus v. Brown*, 266 Or App 416 (2014).<sup>8</sup> However, a full-fledged anti-City, (and to some, an anti-government) public campaign was well underway, and it continues to this date, although a fair number of participants no longer live in the City (as discussed below).

In pursuing a multi-pronged attack on the City, in 2015 the dissidents sought and achieved a referral from the Legislative Assembly on disincorporation of the City, in HB 3085 (2015). That legislation forms the basis for this case, through the 2019 Act. The 2015 referral (“Measure 93”) purported to dissolve the City upon approval by only a majority of the voters who actually cast ballots on the question, rather than a majority of the electors of the City. Because it was a state referral, the City Council had no opportunity to declare that it failed under the City Charter. In a challenge, the Clackamas County Circuit Court declared the election valid, and the City followed many of the procedures for disincorporation during the period of an appeal, despite the efforts of Petitioner James B. De Young (“De Young”) to prevent it. As for the City itself, the City Council (in divided votes) prevented City agents, including attorneys for the City, from appearing in the action, so only petitioner De Young argued and appealed. On May 1, 2019, the Court of Appeals reversed

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<sup>8</sup> However, the City lacked standing, and the petitioner with standing appealed only three of the many cases, so the vast majority of the de-annexations appear to have been upheld, the properties withdrawn from the City, and the boundary moved.

the Circuit Court's dissolution decision, and agreed with Mr. De Young's statutory arguments. *De Young v Brown*, 297 Or App 355 (2019). The City is now back in operation (limited by lack of funds), after a period of dormancy.

In response to the 2019 decision in *De Young*, the dissidents, through the Legislative Assembly, acted again. The Legislative Assembly adopted the 2019 Act, directed the Secretary of State to retroactively declare the outcome of the 2016 election, held three years ago, under newly adopted terms. Notably, the legislature did not re-refer another measure to the voters of Damascus.

However, during the period of City dormancy, a large number of land owners, and many of the dissident group, withdrew their lands from the City, annexed to the City of Happy Valley, and the time limit to challenge those annexations appears to limit any resistance the City of Damascus might raise to the boundary changes.

The Damascus City Council adopted Resolution 19-703 in July 2019, (APP-6-7), directing the mayor and city attorney to reach an agreement with Happy Valley and any other necessary government to locate a mutual boundary, taking into account the needs and desires of the people affected, as well as efficient delivery of local governmental services. *Id.* See also, *City of Damascus v. Brown*, *supra*, upholding the majority of the de-annexation decisions for lack of standing.

The interim (2014-2019) modifications of city boundaries, which can be agreed upon by the cities, and recognized by Metro and the State, appear to have greatly ameliorated many dissident anti-City issues, so a municipal solution is now possible.

Both the 2014 and 2015 acts were ineffective - either unconstitutional or ineffective because they did not take other statutes into effect, or both. The latter of these acts was declared to be ineffective for its intended purpose (to disincorporate the City) by the Court of Appeals on May 1, 2019. *De Young v Brown, supra*. It was not appealed, and the final appellate judgment awaits only a determination of attorney's fees.

This 2019 Act now attempts to retroactively overturn the Court of Appeals decision, overrule or amend the City Charter, and direct the Secretary of State to proclaim the new results of the 2016 election upon application of any interested or aggrieved person. The "decision" of the Secretary of State is pre-ordained, unless this court, or the Secretary of State independently determines that the 2019 Act is unconstitutional or otherwise invalid.

The 2019 Act purports to retroactively "cure" defects in the earlier procedure, and "ratify" the results of the 2016 election. Section 4(1). Such a determination intrudes into the judicial power, violates the constitution, as well as violating the requirements of the City Charter.

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**c. Standing.**

The Legislative Assembly may grant standing to citizens to bring suit addressing the validity of a state law. *See Couey v. Atkins*, 357 Or 460 (2015) (for “public actions or cases that involve matters of public interest”); *see also Kellas v. Department of Corrections*, 341 Or 471 (2006) (“legislature has empowered citizens to initiate a judicial proceeding to vindicate the public's interest in requiring the government to respect the limits of its authority under law”).

The Legislative Assembly has exercised that authority here. Section 4 (3)(a) authorizes “[a]ny person interested in or affected or aggrieved by sections 1 to 3 \* \* \* [to] petition [this Court] for judicial review” to determine “the validity of sections 1 to 3.”

The standard for standing — “interested in or affected or aggrieved” — is a standard employed by the Legislative Assembly in other legislation.

For instance, in *Automobile Club of Oregon v. State*, 314 Or 479, 481 n. 4 (1992), this Court found that under the 1991 grants of standing, the petitioner, AAA Oregon/Idaho, was “affected, because its members pay the gasoline storage assessment indirectly and pay the emission fee directly, and because [its members] are users of the highways of this state, [it was] aggrieved by the dedication of proceeds from the assessment and fee to purposes other than those permitted for the state’s Highway Fund.”

This Court also found a towing company was “affected” within the meaning of 1991 grants of standing because the towing company was “the owner of underground storage tanks from which motor vehicle fuels are sold to the public, because it owns vehicles subject to the emission fee, and because the assessments and fees will not be dedicated to the Highway Fund.” *Id.* See also *Larson v. Heintz Const. Co.*, 219 Or 25, (1959) (assuming “travelers on the highway[s]” are “beneficiar[ies]” of construction contracts paid for by State Highway Fund).

From this authority, persons who are residents of the City, persons who are taxpayers of the City, persons who voted in the 2016 election on disincorporation of the City, persons who did not vote, believing that act of not voting was a “no” vote, and the City of Damascus itself, have standing to bring suit under Section 4.

**d. The City has standing.**

The City is a “person” within the meaning of the 2019 Act because the term “person” incorporates the ordinary meaning of the word, and that includes entities such as corporations, public and private. The 2019 Act purports to invalidate or override (1) the existence of the City as a municipal corporation (i.e., to terminate it), (2) the City’s Charter and (3) the City’s Resolution No. 19-705 (App-8) adopted July 2019, which interprets the Charter to have the meaning of the election laws of the state when the Charter was adopted. In

addition, the City stands in the shoes of its electors in defending the validity of its charter, ordinances and resolutions from disruption by the state.<sup>9</sup>

The City is acting to protect the interests of its citizens, residents, and landowners. Landowners in the City are served by City services, and may demand services such as water, sewer, streets, transit, etc. The City also collects taxes to provide such services where the citizens must receive them from the county, which spends its revenues county-wide, instead of locally. Thus, the City protects both the collection and use of taxes paid by landowners for such services.

The City has standing to defend its own existence, the most important feature of constitutional home rule, as well as lawfully adopted City resolutions and ordinances. Indeed, the Oregon Constitution specifically recognizes the need to protect cities from the interference of the Legislative Assembly with

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<sup>9</sup> With a private corporation, in *Automobile Club of Oregon, surpa*, this Court said a corporation had standing to sue as a party “interested in or affected or aggrieved” based upon the effect of the challenged assessments on its members. Here, City residents are voters, landowners, taxpayers, and City service recipients, who are affected by the 2019 Act which determines whether the City exists. In any event, according to *Macpherson v. DAS*, 340 Or 117, 123–24 (2006), to establish standing under ORS 28.020 in a case in which there are multiple plaintiffs, only one plaintiff must show standing. *See also League of Oregon Cities v. State of Oregon*, 334 Or 645, 657-58 (2002). Because the standard for standing to sue under section 4 of the 2019 Act appears to be the same as the standard under ORS 28.020 (“[a]ny person interested”), so long as one Petitioner has standing to sue, the lack of another petitioner’s standing should not affect the ability of all petitioners to participate in this proceeding.

city charters. Article XI, section 2, Oregon Constitution. [“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(.)]

In addition, the 2019 Act purports to disincorporate the City retroactively, and the City has an interest in adhering to the ruling of the Court of Appeals in *De Young v. Brown*, resuming its governing operations, as well as protecting its citizens from the unlawful results of the 2019 Act.

**e. The individual petitioners have standing.**

Under the standard, Petitioners are interested, affected, and aggrieved.

(1) First Petitioner

Petitioner De Young is an elector of the city, a taxpayer of the City, the Mayor of Damascus. He served as a city Councilor when the 2016 election was held, participated in the 2016 election at issue, and he is the Appellant in the 2019 Court of Appeals decision that this 2019 Act purports to overturn. He will be directly affected in his role as mayor by losing his ability to serve in that capacity, in having the Council’s Resolution 19-705 invalidated, in having his 2016 vote invalidated retroactively by this 2019 Act, and in having the Court of Appeals decision overruled, in his appeal.

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(2) Second, Third, and Fourth Individual Petitioners.

Jeanne Robinson, Mark Fitz, and William Wehr are electors of the City, and taxpayers (when the city collects taxes). William Wehr serves as City Council President, and both Mark Fitz and Jeanne Robinson serve on the City Council. All three voted in the May 2016 disincorporation election.

This case is clearly adversarial, and the parties well represent the interests of the public in this important issue. The case is ripe, not moot, and the decision of this court will make an actual difference to the parties.

**4. Grounds upon which the Petition is based.**

**a. The 2019 Act violates the City Charter, Articles XI Section 2, and Article IV, Section 1(5), of the Oregon Constitution.**

**(1) This court's judicial power to review unconstitutional legislative Acts.**

This court has the power to overrule the legislative branch. The power of the Legislative Assembly is sometimes described as “plenary,” but although that word is used, the power is limited by both the Oregon and United States Constitutions. Each limit legislative power by express language, and by inherent limitations. This Court pulled together the strings of legislative limitations in 2006 in the matter of *Macpherson v. DAS*, 340 Or 117, 126-28 (2006), stating:<sup>10</sup>

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<sup>10</sup> This quotation is long, but states a lucid summary of the topic.

In Oregon, the Legislative Assembly and the people, acting through the initiative or referendum processes, share in exercising legislative power. See Or. Const., Art. IV, §§ 1(1), (2)(a), (3)(a) (vesting in both bodies the power to propose, enact, and reject laws). Respecting the nature of that power, this court previously has explained that

"[p]lenary power in the legislature, for all purposes of civil government, is the rule, and a prohibition to exercise a particular power is an exception. It, therefore, is competent for the legislature to enact any law not forbidden by the constitution or delegated to the federal government or prohibited by the constitution of the United States."

*Jory v. Martin*, 153 Or. 278, 285, 56 P.2d 1093 (1936). Thus, limitations on legislative power must be grounded in specific provisions of either the state or federal constitutions. See, e.g., *State v. Hirsch/Friend*, 338 Or. 622, 639, 114 P.3d 1104 (2005) ("any constitutional limitations on the state's actions must be found within the language or history of the constitution itself" (internal quotation marks and citation omitted)).

Plaintiffs argue that constitutional limits on legislative power need not be express, but can be implied. We agree with that general proposition. As this court previously has stated:

"Our constitution, like all other state constitutions, is not to be regarded as a grant of power, but rather a limitation upon the powers of the legislature. The people[,] in adopting it, committed to the legislature the whole law making power of the state, which they did not expressly or impliedly withhold."

*Wright v. Blue Mt. Hospital Dist.*, 214 Or. 141, 144-45, 328 P.2d 314 (1958) (emphasis added). However, even implied limitations must find their source in some constitutional provision. That is so because, "without such a conflict with a written constitutional provision, there is no basis for any general judicial power to invalidate a law if it is 'bad' enough." *Hans Linde, Without "Due Process: Unconstitutional Law in Oregon*," 49 Or. L. Rev. 125, 130 (1970). A treatise that plaintiffs themselves cite recognizes that same principle:

"The inhibition of a Constitution may be either express or implied; that is[,] the Constitution may expressly prohibit any specified act of the legislature, or the Constitution by its inherent terms may of necessity prohibit certain acts of the legislature by reason of inherent conflict that would arise between the terms of the Constitution and the power claimed in favor of the legislature."

Thomas M. Cooley, 1 *A Treatise on the Constitutional Limitations* 176 n. 4 (8th ed 1927) (emphasis added).

Thus, this court has endorsed the 1868 view of Thomas Cooley, a noted jurist and Republican Party legal theorist, whose treatise was written a decade after the Oregon constitutional convention and ratification, and after the civil war. But, the pre-constitutional convention, pre-civil war, Democratic Party view (Oregon was settled primarily by Democrats, and at least 40 of the 60 constitutional convention delegates were Democrats)<sup>11</sup> was a bit less deferential

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<sup>11</sup> See, David Alan Johnson, *Founding the Far West, California, Oregon and Nevada, 1840-1890* (1992) at 67, and 358-61.

to the legislative power, and more empowering to the judiciary to overrule the legislative branch when it exceeded its powers.

For example, New York jurist E. Fitch Smith wrote a treatise *Commentaries on Statute and Constitutional Law* (1848),<sup>12</sup> (App-9-10), in which he restates the understanding of many judges and commentators, that both state constitutions *and natural law* limit state legislative powers. *Id.* at 306-07 (“we have effectively annihilated the strongest fortress which the human intellect, and the most subtle sophistry, has been able to rear in defense (sic) of the absurd position that the legislature have a legitimate right to pass laws retrospective in nature, and retrospective in effect.”) Natural law, in his view, was primarily confined to what we now call inherent limitations on the legislative power, but they are not insignificant, and extend past the express terms of the constitution to include other, unenumerated rights. *See also*, Article 1, section 33, of the Oregon constitution, recognizing unenumerated rights. Article I, section 33 forms an express source of the inherent limitations that govern the legislative branch when it violates either individual rights, such as voting rights (in this case), or the essential republican form of state and local government.

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<sup>12</sup> This treatise was cited by this Court numerous times in the 19<sup>th</sup> century, until constitutional interpretation shifted closer to Cooley’s Republican views, when Democratic Party views were discredited in the aftermath of the civil war. Such is the evolution of constitutional law.

Indeed, the need for a more powerful judiciary arose out of legislative excesses in the decades before 1850 and became popular political positions (especially of the Democratic Party) beginning at the New York constitutional convention of 1848. *See, Economic Crisis and the Rise of Judicial Elections and Judicial Review*, Jed Handlesman Shugarman, 123 Harvard L Rev 1, 5 (2010). These positions were adopted into most western state constitutions, including Oregon's, at least until the civil war. *Id.* Accordingly, this court has the authority to overturn legislative acts when they are unconstitutional or exceed the legislature's authority.

**b. Article XI, Section 2, of the Oregon Constitution expressly prohibits the 2019 Act.**

The Legislative Assembly's attempt to modify the Charter is invalid under Article XI, section 2, Oregon Constitution, and the Charter itself. Article XI, section 2, of the Oregon Constitution provides in relevant part:

**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(.)

(Emphasis added.)

The 2019 Act attempts to amend the Charter by excepting a disincorporation election, the most important city action after incorporation,

from Section 27. The 2019 Act would exempt a disincorporation election from the charter requirements that (1) only the city council may call an election on disincorporation, not the legislative assembly, (2) disincorporation of a city requires assent by a majority of all the electors of the city (an absolute majority), and (3) disincorporation must be submitted only at a general election, not a special or primary election. These same issues were the holding of the Court of Appeals in *De Young, supra*, under the applicable statutes. There is no difference in the result under the Charter, but *De Young* Court did not need to reach the constitutional, home rule, issue. This court must.

Soon after it incorporated, the City adopted its Charter, (App-11-15), which contained two provisions applicable to this matter — Section 4 and Section 27. Section 4 provides:

Section 4. Powers. The city shall have all powers that the constitution, statutes and common law of the United States and Oregon expressly or impliedly grant or allow the city, as though this charter specifically enumerated each of those powers.

Section 27 provides:

Section 27. State Elections Law. City elections must conform to state law except as this charter or ordinances provide otherwise.

The Damascus City Council has interpreted section 27 as follows:

The City Council interprets section 27, \* \* \* as **incorporating the state elections laws as they existed at the date of adoption of the Charter...** City Council and any authorized elections official or court must enforce such laws as set forth at

that date, and interpret all municipal elections (including the results of elections) as provided under such laws, unless expressly amended, modified or supplemented by action of the City Council or electors through legislative action. **Any subsequent amendment of state election laws after the effective date shall become effective under the City Charter section 27 only when expressly adopted by appropriate City legislative action.**

Damascus Resolution No.19-705. (Emphasis added.)

The City Council has interpreted Section 27 of its Charter to mean that the Charter incorporated the then-existing provisions of Oregon election law into the Charter, and that later amendments must be specifically adopted by the City, which has not occurred.<sup>13</sup>

The interpretation of a charter by a city council is given great deference when it addresses matters of local concern, such as elections. *Clark v. Jackson County*, 313 Or 508 (1992); *Siporen v. City of Medford*, 349 Or 247, 258 (2010), and their progeny. In this instance, the interpretation of the City Council easily satisfies the tests of both decisions: It is not contradictor to any express term, it is reasonable, and it is plausible. Indeed, the interpretation may be redundant with existing constitutional (non-delegation) requirements, as well as being consistent with the City Council's application of it to the 2013

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<sup>13</sup> This is a requirement of Article 1, section 21, of the Oregon Constitution, which prohibits a legislative body from delegating its legislative power to the state. *Brinkley v Motor Veh Division*, 47 Or App 25 (1980).

dissolution election, which received a similar majority of the votes cast, but not an absolute majority of the votes of the electors of the City.

At the time the Charter was adopted, the relevant state elections laws governing disincorporation were ORS 221.610, 221.621 and 221.650. They did not change until adoption of the 2019 Act, which purports to add a section to the elections laws and rendering ORS 221. 610, 221.621 and 221.650 inapplicable to the 2016 election. Those statutes “are the only statutes that address disincorporation” of a city, *De Young* at 368, and their terms were adopted into the Charter before the 2019 Act, purporting to render them inapplicable, was adopted.

As a result, the final determination of the Court of appeals in *De Young supra* must stand. Neither Measure 93, nor this “cure” or “ratification” attempt follows state law or the City Charter for disincorporation. A petition for review was not filed in *De Young*, and it is a final determination. The Court of Appeals held that Oregon statutes did not allow the electors of a City to exempt themselves from state law in the 2016 election. The 2019 Act purports to “cure” the procedural defects of that election, and “ratify” the results that were judicially determined to be invalid. Section 4(1). Anticipating the State’s counterargument, this Court cannot hold that the City voters also amended the City Charter through the May 2016 election on Measure 93 (2016) for a number of reasons, including violations of the “separate vote,” “full text” and “single

subject” requirements, in that three kinds of actions would have been involved in one vote: a statutory amendment, a charter amendment, and disincorporation. *See, Armatta v. Kitzhaber*, 327 Or 250 (2003) (separate vote).

- c. **Article IV, Section 1(5), Oregon Constitution expressly delegates the exclusive power over municipal and local affairs to the City, unless a law of general jurisdiction provides otherwise.**

Article IV, Section 1(5), of the Oregon Constitution states:

**(5) The initiative and referendum powers reserved to the people by subsections (2) and (3) of this section are further reserved 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. The manner of exercising those powers shall be provided by general laws, but cities may provide the manner of exercising those powers as to their municipal legislation.** In a city, not more than 15 percent of the qualified voters may be required to propose legislation by the initiative, and not more than 10 percent of the qualified voters may be required to order a referendum on legislation.

(Emphasis added.)

Here, the City voters adopted a Charter, and it governs city elections in Section 27.

The voters of Damascus are very concerned about their right to home rule or local control. In the 2008 general election, they amended their Charter, adding Section 6(a), which states:

Any change to the general laws of the State of Oregon regarding the processes for the use of the initiative, referendum and recall by city voters shall not be valid, unless such change has been proposed by the initiative petition and approved by a majority of the voters in a general election.

Section 6(a) Damascus Charter.

The 2019 Act fails to satisfy Section 6(a) or any exception to the requirements of Section 6(a). The Court of Appeals held that the 2016 election failed under ORS 221.610 and 221.621 because a “petition” for disincorporation was required. *De Young, supra*, at 367-68. That “petition” was required to have been filed as an initiative, and that, in turn was subject to section 6(a) of the Charter. ORS 221.162(2) states:

the requirements for preparing, circulating and filing a petition and calling an election under this section shall be as provided for an initiative measure under ORS(.)

Thus, any change to the disincorporation election provisions of law, affected the initiative and referendum, and required a city initiative petition, not a state referendum to change it under the Charter, to modify the “absolute majority”, general election or Council referral requirements.

As set forth above, the City Council has interpreted the Charter to include the meaning of the state elections laws when the Charter was adopted. That interpretation is controlling. That is not merely a plausible interpretation, it is the required one under the doctrine of non-delegation of legislative authority of

Article I, section 23, of the Oregon Constitution. *See, Brinkley v Motor Veh. Div.*, 47 Or App 25 (1980) (city drunk driving ordinance incorporated a state statute, and could not automatically include statutory amendments. The ordinance was rendered unenforceable by a general statute of statewide applicability).

In this case, the 2019 Act is not a general statute of statewide applicability that might override the Charter. It applies only to the one disincorporation election ordered by the legislative Assembly, held in May 2016, and that was for Damascus. The legislative history of the 2019 Act makes clear that only Damascus is affected, and the retroactive applicability (Section 1(1)(a)) was tightly drawn to include only the state referral about Damascus three years earlier. Petitioners request that judicial notice of the testimony and documents before House and Senate Rules Committees, commencing June 3, 2019, be taken. *See*, <https://olis.leg.state.or.us/liz/2019R1/Measures/Exhibits/SB226> The 2019 Act has no general applicability and is special or local legislation, as discussed further below. It violated the City Charter requirements, and was not effective to supersede or override the Charter.

The Oregon Supreme Court has held that matters of local self-government are matters of home rule under Article IV, section 1(5), and Article XI, section 2 of the Oregon Constitution, stating:

these constitutional provisions are concerned with the structural and organizational arrangements for **the exercise of local self-government, with the power of local voters to enact and amend their own municipal charters and to employ the initiative and referendum for `local, special and municipal legislation.'** They address the manner in which governmental power is granted and exercised, not the concrete uses to which it is put.

*LaGrande/Astoria v. PERB*, 281 Or 137, 141-42, *aff'd on rehearing* 284 Or 173

(1978). (Emphasis added.) That Court also discussed the manner in which statutes and home rule legislation are to be balanced, based on these constitutional provisions:

When a statute is addressed to a concern of the state with the structure and procedure of local agencies, the statute impinges on the powers reserved by the amendments to the citizens of local communities. Such a state concern must be justified by a need to safeguard the interests of persons or entities affected by the procedures of local government.

"Conversely, a **general law addressed primarily to substantive** social, economic, or other **regulatory objectives of the state prevails** over contrary policies preferred by some local governments if it is clearly intended to do so, unless the law is shown to be irreconcilable with the local community's freedom to choose its own political form. In that case, such a state law must yield in those particulars necessary to preserve that freedom of local organization.

*LaGrande/Astoria* at 156 (footnote omitted). (Emphasis added.)

The 2019 Act does not, and cannot change the City Charter unless or until it is done through a general law rather than through local or special

legislation. Article IV, Section 1(5). This court has defined local and special laws and explained:

A statute ...which is plainly intended to affect a particular person or thing, or to become operative in a particular place or locality and looks to no broader or enlarged application, may be aptly characterized as special and local and falls within the inhibition. \* \* It may be stated as a positive rule of general application that all acts or parts of acts [\*\*\*8] attempting to create a classification of cities ... by any device or subterfuge exclude other cities from ever coming within their purview, or based upon any classification which in relation to the subject concerned is purely illusory, or founded upon unreasonable \* \* distinctions," are special and local.

*State ex rel. Gray v. Swigert*, 59 Or 132, 136 (1911).

"A special statute is one that is only applicable to particular individuals or things. 'They are those made,' says Mr. Sutherland, 'for individual cases, or for less than a class, requiring laws appropriate to its peculiar condition and circumstances; local laws are special as to place.' *Suth. Stat. Const.*, § 127." *Maxwell v. Tillamook County*, *supra*.

*Evert v. Or. & W. Colonization Co.*, 123 Or 225, 228-29 (1927).

A local law is one operating upon persons or property within a limited boundary or specified locality. "To be local legislation, it must apply to and operate exclusively upon a portion of the territory of the state and the people living therein," and upon no other persons or property, "for if it applies to and operates on persons or property beyond such locality, it is not local."

*Id.*, citing *Maxwell v. Tillamook County*, 20 Or 495 (1891).

Here, the 2019 Act is not a general law that addresses state regulatory objectives, but is, rather, local or special, applying only to a single city election, to determine whether that city will exist or not, and how that city determines what majority of votes are required to dissolve the city. There is nothing more special or local than a particular city's formation and dissolution. The 2019 Act is not general, and does not override the City Charter.

In determining whether a statute or statutory program is “procedural” or “substantive” in nature, in relation to the local legislation the Oregon Supreme Court has focused on the “dominant character” of the state laws at issue. *LaGrande/Astoria, supra*. The “dominant character” of the 2019 Act is set out in section 4(1): “to cure any defect in the procedures” and then “ratify the results” of that cure. Thus, the legislation requires procedural matters to predominate before any potentially substantive ratification is addressed. Petitioners dispute that there were any procedural defects – the 2015 referral (HB 3085 (2015)) merely said what it said, as determined by the Court of Appeals in *De Young, supra*. However, in the 2019 Act, the Act itself states that procedure predominates. Because the 2019 Act attempts to improperly overturn the Charter, the Charter terms apply, even if the 2019 Act were a statute of general application under the “home rule” charter.

Here, Charter sections 27 and 6(a) prohibit (1) a state act of that is not of general applicability and (2) a state act affecting the city initiative and referred powers from superseding the Charter. This 2019 Act violates both provisions.

First, the legislative materials from and after June 3, 2019 make clear that the 2019 Act applies only to the 2016 Damascus election on disincorporation. The records of the Secretary of State show no other such state referral during the relevant time period.

Second Charter section 6(a) requires that any effect on the initiation and referendum be legislatively adopted by the City – which ORS 221.610 and 221.621 affect by changing the number of votes required. *See, De Young, supra*. The 2019 Act violates the City’s home rule authority, and is invalid.

**d. The 2019 Act Purports to overturn a judicial decision, in violation of Article III, section 1, of the Oregon Constitution.**

The Oregon Court of Appeals decision in *De Young* held that the 2016 election on Measure 93 (2016) did not disincorporate the City of Damascus. That decision is final, and it remanded the proceedings back to the trial court to enter judgment, as is the standard practice, holding:

In summary, we conclude that, at the time of the Measure 93 election, ORS 221.610 and ORS 221.621 provided the only means by which a city could disincorporate and that the legislature did not effectively exempt the election from complying with their terms...there is no factual—or legal—dispute that the special election did not comply with ORS

221.610 and ORS 221.621. Thus, the **trial court erred in** awarding summary judgment to defendants and in **denying summary judgment to plaintiff, who, for the reasons stated above, is entitled to prevail as a matter of law.**

Reversed and remanded.

*De Young* at 370-71. (Emphasis added.)

There can be no question that the express purpose of the 2019 Act was to reverse this judicial decision. SB 226, as introduced, had nothing to do with its final text. It was completely amended after the May 1, 2019 decision, starting in a June 3, 2019 hearing. The bill was a “gut and stuff” in the parlance of legislators, containing none of its original language, only the Damascus dissolution provisions. The legislative history is replete with statements about its sole applicability to Damascus beginning with the June 3, 2019 testimony. (One letter refers to it as the “Damascus Euthanization Bill” (APP-16-18)).

The 2019 Act has a stated purpose – to “cure any defect in the procedures” of the 2016 Measure 93 election, and to “ratify the results” of the election. Section 4(1). Both purposes overturn the decision of the Court of Appeals.

The Court of Appeal was not identifying procedural defects in the election. Rather, it held that *De Young*’s motion for summary judgment should have been granted as a matter of law, and the election should never have even taken place. The “defects” that the 2019 Act attempts to cure are simply to

overturn the result of *De Young v. Brown* – including by changing three matters: the absolute majority requirement, the general election date requirement, and the home rule violations (which the Court of Appeals did not address).

There is no other election to which the Act could apply. It is a blatant attempt to interfere with the judicial process, and an attempt to obviate any appeal of that decision. The 2019 Acts purports to exercise judicial power by retroactively affecting “an election held on the date of a primary election before the effective date of this 2019 Act.” Section 4(1). It violates Article III, section 1, of the Oregon Constitution.

In addition to the Article III, section 1 violation above, this Court adopted a rule that the legislative department may not overturn a final judicial determination, in *English v Multnomah County*, 348 Or 417 (2010). That rule did not apply to a legislative change that became effective during the pendency of an appeal. *Bleeg v Metro*, 229 Or App 210 (2009) (relying on the earlier Court of Appeals decision in *English*.)

In this case, no appeal is pending in *De Young*. The decision is final. An election to dissolve the City requires an absolute majority. This case is different from *Bleeg*, and similar to the decision in *English*. This Court should not allow the Legislative Assembly to retroactively overturn a final, unappealed court decision deciding an election. The rationale for that kind of rule is important

here. Mr. De Young prevailed on his statutory claims, thereby dictating the outcome of the election: that the disincorporation did not happen. Mr. De Young would be deprived of potentially prevailing on his constitutional claims as well, because the State did not appeal its loss.

An election case is especially susceptible to political manipulation, and legislative interference after the fact should not take place, especially without a pending appeal. *See, e.g., Smith, Commentaries, supra.* (App-9-10)

Because Oregonians have long sought a strong judiciary, independent of legislative interference, this Court should not allow retractive application of a statute to the unappealed decision of the Court of appeals.

This 2019 Act has the effect of reviving the expired appeal period in the *De Young* case, in violation of Article III, section 1, of the Oregon Constitution.

**e. The 2019 Act violates Article IV, section 23, of the Oregon Constitution as a special and local law.**

Article IV section 23 provides:

**Section 23. Certain local and special laws prohibited.** The Legislative Assembly, shall not pass special or local laws, in any of the following enumerated cases, that is to say:—

Regulating the jurisdiction, and duties of justices of the peace, and of constables;

\* \* \*

Providing for changing the venue in civil, and Criminal cases;

A “local law” under this section is a law limited to a specific geographic area or particular locality. *State ex rel. State Pub. Welfare Comm. v. County Court of Malheur County*, 185 Or 392, 412 (1949). The 2019 Act applies only to one election, the May 2016 held only within the City of Damascus. It is a local law. The legislative history makes that fact clear.

The 2019 Act affects the jurisdiction and duties of the Clackamas County Justice of the Peace and the venue of the Justice Court that arise under the intergovernmental agreement between Clackamas County and the City (APP-19-21). The 2019 Act also affects the duties of the court of justice by eliminating jurisdiction for City code violations in the justice court. The City recently reinstated the municipal court in Resolution 19-704 , (APP-22-24), if it had been dissolved during the dormancy of the City. An action modifying the jurisdiction of the justice court over local, municipal matters, could only be initiated by the City (or the County), not the Legislative Assembly, especially not through special, local, and retroactive legislation.

A “special law” is one that is only applicable to particular individuals or things. *State ex rel. State Pub. Welfare Comm. v County Court of Malheur County, supra*. The same arguments apply to the 2019 Act as a special law as applied to it as a local law.

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**(f) The 2019 Act violates the Equal protections and Due process requirements of the 14<sup>th</sup> amendment to the constitution of the United States.**

This 2019 Act retroactively grants the voters in favor of Measure 93 (2016) powers they did not have at the time of the election, to dissolve the City by a mere majority, when an absolute majority was required at the time of the election. This legislative re-determination of the election's outcome and changing election standards violates the equal protection and due process requirements of the constitution of the United States. *See e.g., Bush v Gore*, 531 US 98 (2000).

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## 5. Conclusion

The 2019 Act is unconstitutional and unenforceable. This Court should declare that it is not effective in dissolving the City of Damascus, as set forth above.

*DATED this 14th day of August, 2019.*

JORDAN RAMIS PC  
Attorneys for City of Damascus

By: /s/ Edward H. Trompke  
Edward H. Trompke, OSB #843653  
ed.trompke@jordanramis.com

*DATED this 14th day of August, 2019.*

Tyler Smith & Associates PC  
Attorneys for Individual Petitioners

By: /s/Tyler Smith  
Tyler D. Smith, OSB #075287  
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# Enrolled Senate Bill 226

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Secretary of State Dennis Richardson)

CHAPTER .....

## AN ACT

Relating to elections; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

**SECTION 1.** (1) Notwithstanding ORS 221.610, 221.621 and 221.650, a city shall be deemed to be disincorporated and shall cease to exist in accordance with subsection (2) of this section, upon a determination by the Secretary of State that:

(a) An election was held in the city on or after January 1, 2016, and before July 1, 2016, which included the question of whether to disincorporate the city;

(b) A majority of voters voting on the question in the election voted in favor of disincorporation;

(c) Following the election, the city charter was surrendered to the county in which the city is situated; and

(d) The Department of Revenue approved a boundary change map or maps under ORS 308.225 that eliminated the city boundaries.

(2) For all purposes whatsoever, the date on which a city was disincorporated and ceased to exist under subsection (1) of this section shall be the date on which the city charter was surrendered to the county.

**SECTION 2.** (1) Notwithstanding ORS 221.610, 221.621 and 221.650:

(a) The Legislative Assembly may refer an Act to the people of a city on the question of whether to disincorporate the city.

(b) If the Legislative Assembly refers an Act under this section:

(A) The election on the measure shall be held on the date of the next primary election held throughout this state that occurs after the enactment of the referred Act; and

(B) The measure shall be approved if a majority of the voters voting on the question in the election votes in favor of disincorporation.

(c) An Act referred by the Legislative Assembly under this section may include any other provision applicable to the disincorporation of a city that does not absolve the city from satisfying outstanding debts or other obligations.

(2) Any other departure or deviation from the election procedures provided under ORS 221.610, 221.621 or 221.650, or from any other law whatsoever, appearing in an Act referred by the Legislative Assembly as described in subsection (1) of this section, and any conflict between the election procedures or any other law whatsoever and the referred Act, shall be

resolved in favor of the referred Act so that the consequent election shall be considered valid and without defect.

(3) Notwithstanding any other provision of law, any Act enacted by the Legislative Assembly that requires action as a consequence of the approval of a measure referred as described in subsection (1) of this section becomes operative on the date on which the voters of the city approve the measure.

**SECTION 3.** Section 2 of this 2019 Act applies to Acts enacted or referred, and elections held, before the effective date of this 2019 Act.

**SECTION 4.** (1) It is the intent of the Legislative Assembly by enacting sections 1 to 3 of this 2019 Act to cure any defect in the procedures, and to ratify the results, of any vote on the question of the disincorporation of a city in which the disincorporation was approved by a majority of the voters of the city voting on the question at an election held on the date of a primary election held throughout this state before the effective date of this 2019 Act.

(2) Original jurisdiction to determine the validity of sections 1 to 3 of this 2019 Act is conferred on the Supreme Court.

(3)(a) Any person interested in or affected or aggrieved by sections 1 to 3 of this 2019 Act may petition for judicial review under this section. A petition for review must be filed within 30 days after the effective date of this 2019 Act.

(b) The petition must state facts showing how the petitioner is interested, affected or aggrieved and the grounds upon which the petition is based.

(4) Judicial review under this section shall be limited to:

(a) The question of whether sections 1 to 3 of this 2019 Act are valid under the laws of this state and the United States and Oregon Constitutions; and

(b) Legislative history and any supporting documents related to the question described in paragraph (a) of this subsection.

(5) Judicial review under this section shall proceed as follows:

(a)(A) First, the court shall determine whether section 1 of this 2019 Act is valid.

(B) If the court determines that section 1 of this 2019 Act is valid, the Secretary of State shall make the determination described in section 1 (1) of this 2019 Act.

(b)(A) Second, only if the court determines that section 1 of this 2019 Act is invalid under paragraph (a) of this subsection, the court shall determine whether sections 2 and 3 of this 2019 Act are valid.

(B) If the court determines that sections 2 and 3 of this 2019 Act are valid, the court shall issue an order so stating.

(6)(a) Any party interested in or affected by section 1 of this 2019 Act may request the Secretary of State to make the determination described in section 1 (1) of this 2019 Act:

(A) If no petition is filed under subsection (3) of this section within the time allowed for filing; or

(B) In any other circumstances requiring such action in order to have the determination made.

(b) The request must be accompanied by all information and documents necessary for the Secretary of State to make the determination. The request may be amended as necessary to include any additional information or documents the Secretary of State may reasonably require.

(c) The Secretary of State shall make the determination as soon as practicable following receipt of a complete request under this subsection.

(7) In the event the Supreme Court determines that there are factual issues in a petition filed under this section, the Supreme Court may appoint a special master to hear evidence and to prepare recommended findings of fact.

(8) Proceedings for review under this section shall be given priority over all other matters before the Supreme Court.

(9) If the Supreme Court determines that sections 1 to 3 of this 2019 Act are invalid, sections 1 to 3 of this 2019 Act are repealed on the date on which the court issues a decision holding sections 2 and 3 of this 2019 Act to be invalid.

**SECTION 5.** This 2019 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect on its passage.

Passed by Senate June 17, 2019

.....  
Lori L. Brocker, Secretary of Senate

.....  
Peter Courtney, President of Senate

Passed by House June 25, 2019

.....  
Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2019

Approved:

.....M.,....., 2019

.....  
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2019

.....  
Bev Clarno, Secretary of State

**Testimony of Randy Tucker, Legislative Affairs Manager  
In Support of Senate Bill 226, -2 Amendment  
Senate Committee on Rules  
June 5, 2019**



Chair Burdick and Members of the Committee:

As you know, Metro is the regional government of the Portland metropolitan area. Among our major responsibilities is ensuring that the urban growth boundary of the greater Portland region has enough land to accommodate 20 years of residential and employment growth. In 2002, under the rules that existed at the time (which have since been significantly changed), the Metro Council brought the Damascus area into the urban growth boundary.

As suggested above, the purpose of bringing land into the boundary is to efficiently accommodate urban development. However, after Damascus incorporated as a city, the city's voters enacted a series of ballot measures that effectively prevented the orderly urbanization of the area. Eventually, in 2013 and then again in 2016, the voters expressed their desire to dissolve the city.

Since the 2016 disincorporation vote, Happy Valley has developed and begun to implement a plan to annex and develop a portion of the former city over a 20-year timeline.<sup>[1]</sup> More than 1000 acres that were formerly part of Damascus have already been annexed into Happy Valley, at the request of the landowners. The recent court decision throws this process and the status of these properties into confusion and uncertainty.

The Metro Council believes that the best way to proceed in securing the future that the residents of the Damascus area have said they want is to finalize the dissolution of the former city. If residents of the area wish to incorporate in the future, the Council believes a new city approved by the voters and unconstrained by the former city charter is far preferable to the resurrection of the city that the voters chose to dissolve.

With this in mind, the Metro Council urges you to support SB 226 as amended by the -2 amendment.

---

<sup>[1]</sup> Several people have suggested in various forums that Metro continues to count the eastern part of Damascus as part of the region's buildable land supply, despite the fact that the area is unlikely to see urban development for decades, if ever. This is not true. As I testified in the House Interim Committee on Agriculture and Natural Resources on September 19, 2017, about half of the territory of the former city has been entirely excluded from Metro's buildable land analysis; in other words, Metro is counting zero capacity on that land.



# Oregon

John A. Kitzhaber, M.D., Governor

## Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: (503) 373-0050

Fax: (503) 378-5518

[www.oregon.gov/LCD](http://www.oregon.gov/LCD)



July 22, 2011

Steve Spinnett, Mayor  
City of Damascus  
19920 S.E. Highway 212  
Damascus, Oregon 97089

Dear Mayor Spinnett,

I am pleased to notify the City of Damascus that Oregon's Land Conservation and Development Commission (LCDC) and the Department of Land Conservation and Development (DLCD) has completed the attached final order acknowledging the City of Damascus' comprehensive plan and map complies with Oregon's Statewide Planning Goals 1, 3, 4, and 13.

The City of Damascus's comprehensive plan does not yet comply with Statewide Planning Goals 2, 5, 6, 7, 8, 9, 10, 11, 12, and 14 for reasons set forth in the final order. The department and the City of Damascus agree that the additional work toward compliance with Statewide Planning Goals 2, 5, 6, 7, 8, 9, 10, 11, 12, and 14 can be completed as detailed in the attached compliance schedule.

Completing the comprehensive plan is an important step in preparing your city for a successful future and protecting the unique features that make Damascus a great Oregon community.

Thank you again for the community's commitment and partnership in developing Damascus's first comprehensive plan. Please feel free to contact me directly if you have any questions about the acknowledgment process.

Our regional representative, Jennifer Donnelly, is ready to work with your staff and city officials as you complete the planning process. Please contact Jennifer at 971.673.0963 or [jennifer.donnelly@state.or.us](mailto:jennifer.donnelly@state.or.us).

Regards,

Jim Rue  
Acting Director

Attachment: LCDC Continuance and Compliance Order

cc: Dan O'Dell, City Manager  
Anita Yap, Community Development Director  
Harvey Cummings, Planning Commission Chair  
Kevin Reedy, Committee for Citizen Involvement Chair  
Mike McCallister, Clackamas County  
Ray Valone, Metro  
Commenter List

CITY OF DAMASCUS  
Resolution No. 19-703

**WHEREAS**, there is unclear legal status of lands that were declared to be in the City of Damascus, but have also been subject to annexation actions by the City of Happy Valley during the interval when the City of Damascus's continued existence was unclear due to a trial court determination that the city had been disincorporated, which decision was overruled by the Court of Appeals; and

**WHEREAS**, the Office of City Attorney recommended to the City Council that the City commence discussions and negotiations with the City of Happy Valley, Clackamas County and any other relevant person or entity, to fix the boundary between the two cities; and

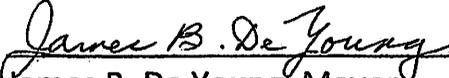
**WHEREAS**, the City of Damascus does not desire to force people to reside in the City who do not desire to live in the City, taking into account the need for continuous and contiguous city lands, for the efficient delivery of urban services, as well as the divisiveness and turbulence that has marred the City's past.

**NOW, THEREFORE, BE IT RESOLVED THAT:**

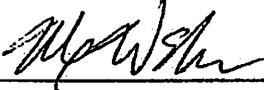
**Section 1:** The Mayor and/or City Attorney are authorized and directed to confer and to approach the City of Happy Valley and any other jurisdiction they deem appropriate, to commence discussions about how and where to locate and fix the jurisdictional boundaries of the two cities, taking into account the need for efficient and effective delivery of urban services, as well as the needs, desires and thoughts of the residents of this City and any other persons directly affected by such boundaries.

**Section 2:** The Mayor and/or City Attorney shall report back to Council all discussions, with the goal of presenting a proposed Intergovernmental Agreement with the affected jurisdiction(s).

PASSED AND ADOPTED on 7/25/19, 2019.

  
James B. De Young, Mayor

ATTEST

  
Bill Wehr, Council President

CITY OF DAMASCUS  
Resolution No. 19-705

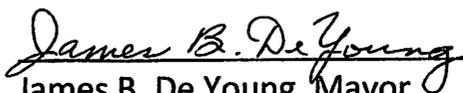
**Whereas**, that the City Council has at the request of the Mayor, considered the meaning of section 27 of the City Charter, adopted in 2006, which states:

Section 27. State Elections Law. City elections must conform to state law except as this charter or ordinances provide otherwise. All elections for city offices shall be nonpartisan.

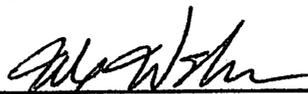
**NOW, THEREFORE, BE IT RESOLVED THAT:**

The City Council interprets section 27, adopted in 2006, as incorporating the state elections laws as they existed at the date of adoption of the Charter in 2006. City Council and any authorized elections official or court must enforce such laws as set forth at that date, and interpret all municipal elections (including the results of elections) as provided under such laws, unless expressly amended, modified or supplemented by action of the City Council or electors through legislative action. Any subsequent amendment of state election laws after the effective date shall become effective under the City Charter section 27 only when expressly adopted by appropriate City legislative action.

PASSED AND ADOPTED on 7/25/ 2019.

  
James B. De Young, Mayor

ATTEST

  
Bill Wehr, Council President

COMMENTARIES  
ON  
S T A T U T E  
AND  
CONSTITUTIONAL LAW  
AND  
STATUTORY AND CONSTITUTIONAL CONSTRUCTION,

CONTAINING

AN EXAMINATION OF ADJUDGED CASES ON CONSTITUTIONAL LAW UNDER  
THE CONSTITUTION OF THE UNITED STATES, AND THE CONSTITUTION  
OF THE RESPECTIVE STATES CONCERNING LEGISLATIVE POWER,  
AND ALSO THE CONSIDERATION OF THE RULES OF LAW  
IN THE CONSTRUCTION OF STATUTES AND  
CONSTITUTIONAL PROVISIONS.

By E. FITCH SMITH,  
COUNSELLOR AT LAW.

" Ex antecedentibus et consequentibus fit optima interpretatio."—2 Inst. 317.  
" Quoties in verbis nulla est ambiguitas ibi nulla expositio contra verba fenda est." [WING'S MAXIMS, p. 24.  
" Nova constitutio futuris formam imponere debet non preteritis."—2 Inst. 292.

ALBANY :  
PUBLISHED BY GOULD, BANKS & GOULD,  
LAW BOOKSELLERS, 104 STATE STREET ;  
AND BY BANKS, GOULD & CO.  
144 NASSAU STREET, NEW YORK.  
1848.

this qualification only—that under a pretext of a remedy, the government should not give a death-going stroke to contracts between the parties, or vested rights of property, or to personal rights.

§ 169. If the view which we have presented is a correct one, then it seems to us, that instead of such statutes being, as they have by some been understood to be, infringements upon or exceptions to the rule, that the legislature should not pass retrospective laws, they are in no sense as a rule prospective; and are not either an encroachment upon the rule, nor are they in fact exceptions to it; but on the contrary, when properly understood, are in perfect harmony with the position, that laws ought not to be either retrospective in their enactment, nor retroactive in their effect. Hence, the fact that such laws have received judicial sanction, is not conclusive as an argument in favor of the position that the enactment of laws clearly retroactive is within the legitimate powers of the legislature.

§ 170. Is it asked what we have gained by establishing the point, that statutes of limitation are not exceptions to the rule, that retrospective laws cannot be passed by the legislature, as they are not, in any proper sense, to be regarded as prospective. We answer, that in almost every instance in which the right to pass such laws has been attempted to be vindicated, and this power in the legislature sustained, such statutes constitute the great chain of precedent, by which it is attempted to bind down the intellects of men to a forced concession of such power; nay more, they, and other statutes of the same nature and standing upon the same basis, constitute the only links in the chain of evidence, or arguments deduced on this subject. If we have successfully destroyed that chain of precedent—if we have shown that such statutes are not precedents in support of this right, or instances of the exercise of such power by the legislature,

then we have effectually annihilated the strongest fortress which the human intellect, and the most subtle sophistry, has as yet been able to rear in defence of the absurd position, that the legislature have a legitimate right to pass laws *retrospective* in their nature, and retroactive in their effects.

§ 171. A learned and eminent counsellor, as well as highly respected author, has, in our opinion, fallen into an error as to the real nature and effect of such acts of legislation, and thus been led to entertain an opinion opposite to the one we have expressed. He has endeavored to support it on the authority of such acts having been held valid acts of legislation. In view of various cases of this character, in which such acts have been sanctioned, he remarks: "From the preceding review of the opinion of eminent jurists, and of adjudged cases, it manifestly appears that there are by the law of all states many cases in which the sovereign power may enact laws which, theoretically speaking, are retrospective. And whence, it may be asked, does this arise? From the necessary imperfections in human society. If society were so perfect, as never to be in need of occasional remedial and equitable regulations, by means of retrospective laws, it would perhaps hardly need any laws. But, we shall be asked, perhaps, if there is no limitation to this power of enacting retrospective laws? Unquestionably there is, in all communities, by that tacit consent, which has been before mentioned; and to what particular such consent is given must be learned from the habits and principles of the particular people who compose any such community. When, therefore, it is once admitted, that there are certain limitations of the absolute rights of men, it becomes a mere question of expediency with the sovereign power of the state, to what extent such limitation shall be carried, subject only to this restriction, that the retrospective provisions of

# CHARTER

## City of Damascus, Clackamas County, Oregon

We, the voters of the City of Damascus, Clackamas County, Oregon exercise our power to the fullest extent possible under the Oregon Constitution and laws of the state, and enact this Home Rule Charter.

### Chapter I

#### *Names and Boundaries*

Section 1. Title. This charter may be referred to as the 2005 City of Damascus Charter.

Section 2. Name. The City of Damascus, Clackamas County, Oregon, continues as a municipal corporation with the name City of Damascus.

Section 3. Boundaries. The city includes all territory within its boundaries as they now exist or are legally modified. The city will maintain as a public record an accurate and current description of the boundaries.

### Chapter II

#### *Powers*

Section 4. Powers. The city shall have all powers that the constitution, statutes and common law of the United States and Oregon expressly or impliedly grant or allow the city, as fully as though this charter specifically enumerated each of those powers.

Section 5. Construction. The charter will be liberally construed so that the city may exercise fully all powers possible under this charter and under United States and Oregon law.

Section 6. Distribution. The Oregon Constitution reserves initiative and referendum powers as to all municipal legislation to city voters.

(a) Any change to the general laws of the State of Oregon regarding the processes for the use of initiative, referendum and recall by city voters shall not be valid, unless such change has been proposed by initiative petition and approved by a majority of the voters in a general election. *(Approved by the voters at the November 4, 2008 election)*

(b) The qualified voter signature percentages required to propose a city initiative, a referendum or a recall shall not exceed the respective percentage requirements set forth in the Oregon Constitution for statewide initiative, referendum and recall. *(Approved by the voters at the November 4, 2008 election)*

This charter vests all other city powers in the council except as the charter otherwise provides. The council has legislative, administrative and quasi-judicial authority. The council exercises legislative authority by ordinance, administrative authority by resolution, and quasi-judicial authority by order. The council may not delegate its authority to adopt ordinances.

Section 7. **Additional Powers Retained by Citizens.** After March 1, 2011, the council shall not submit any ordinance or plan to Metro, the L.C.D.C., the D.L.C.D. or their successors until it is ratified by a majority vote of the city's qualified electors voting in an election where at least 50 percent of the registered voters cast a ballot, or the election is a General Election in an even-numbered year.

The council shall provide by law a means of summarizing for the ballot the key material provisions of any such ordinance or plan, including the economic impact and the costs imposed on residents and property owners within the city.

(Note: This Section ("Additional Powers Retained by Citizens") was approved by the voters at the March 13, 2012 election, and subsequent charter sections were renumbered accordingly).

### **Chapter III**

#### *Council*

Section 8. **Council.** The council consists of a mayor and six (6) councilors nominated and elected from the city at large. The council shall receive no compensation other than reimbursement for expenses of attending meetings and other city functions.

Section 9. **Mayor.** The mayor presides over and facilitates council meetings, preserves order, enforces council rules, and determines the order of business under council rules. The mayor is a voting member of the council and has no veto authority. With the consent of council, the mayor appoints members of commissions and committees established by ordinance or resolution. The mayor must sign all records of council decisions. The mayor serves as the political head of the city government.

Section 10. **Council President.** At its first meeting each odd numbered year, the council must elect a president from its membership. The president presides in the absence of the mayor and acts as mayor when the mayor is unable to perform duties.

Section 11. **Rules.** The council must by resolution adopt rules to govern its meetings. Where possible, the rules adopted by the Council shall provide for public involvement in Council proceedings.

Section 27. State Elections Law. City elections must conform to state law except as this charter or ordinances provide otherwise. All elections for city offices shall be nonpartisan.

Section 28. Qualifications.

(a) The mayor and each councilor must be a qualified elector under state law, and reside within the city for at least one year immediately before the election or appointment to office.

(b) No person may be a candidate at a single election for more than one city office.

(c) Neither the mayor nor a councilor may be employed by the city.

(d) The council is the final judge of the election and qualifications of its members.

Section 29. Nominations. The council must adopt an ordinance prescribing the manner for a person to be nominated to run for mayor or a city councilor position.

Section 30. Terms. The term of an officer elected at a general election begins at the first council meeting of the year immediately after the election, and continues until the successor qualifies and assumes office.

Section 31. Oath. The mayor and each councilor must swear or affirm to faithfully perform the duties of the office and support the constitutions and laws of Oregon and the United States.

Section 32. Vacancies. The mayor or council office becomes vacant:

(a) Upon the incumbent's

- (1) Death,
- (2) Adjudicated incompetence, or
- (3) Recall from the office.

(b) Upon declaration by the council after the incumbent's:

- (1) Failure to qualify for the office within 10 days of the time the term of office is to begin,
- (2) Absence from the city for 30 days without council consent, or from all council meetings within a 60-day period,
- (3) Ceasing to reside in the city,
- (4) Ceasing to be a qualified elector under state law,
- (5) Conviction of a public offense punishable by loss of liberty,
- (6) Resignation from office, or

- (10) Perform other duties as directed by the council;
- (11) Delegate duties, but remain responsible for acts of all subordinates.

(f) The manager has no authority over the council or over judicial functions of the municipal judge.

(g) When the manager is temporarily disabled from acting as manager or when the office of manager becomes vacant, the council must appoint a manager pro tem. The manager pro tem has the authority and duties of manager, except that a pro tem manager may appoint or remove employees only with council approval.

(h) No council member may directly or indirectly attempt to coerce the manager or a candidate for the office of manager in the appointment or removal of any city employee, or in administrative decisions regarding city property or contracts. Violation of this prohibition is grounds for removal from office by a majority of the council after a public hearing. In council meetings, councilors may discuss or suggest anything with the manager relating to the city business.

#### Section 35. Municipal Court and Judge.

(a) A majority of the council may appoint and remove a municipal judge. A municipal judge will hold court in the city at such place as the council directs. The court will be known as the Municipal Court.

(b) All proceedings of this court will conform to state laws governing justices of the peace and justice courts.

(c) All areas within the city and areas outside the city as permitted by state law are within the territorial jurisdiction of the court.

(d) The municipal court has jurisdiction over every offense created by city ordinance. The court may enforce forfeitures and other penalties created by such ordinances. The court also has jurisdiction under state law unless limited by city ordinance.

(e) The municipal judge may:

- (1) Render judgments and impose sanctions on persons and property;
- (2) Order the arrest of anyone accused of an offense against the city;
- (3) Commit to jail or admit to bail anyone accused of a city offense;
- (4) Issue and compel obedience to subpoenas;
- (5) Compel witnesses to appear and testify and jurors to serve for trials before the court;
- (6) Penalize contempt of court;
- (7) Issue processes necessary to enforce judgments and orders of the court;

(8) Issue search warrants; and  
 (9) Perform other judicial and quasi-judicial functions assigned by ordinance.

(f) The council may appoint and may remove municipal judges pro tem.

(g) The council may transfer some or all of the functions of the municipal court to an appropriate state court.

Section 36. Other Officers. The council may, by ordinance, establish other city officers and provide for their appointment. The Council may designate any appointive officer to supervise any other appointive officer, except the Municipal Judge in the exercise of judicial functions.

## **Chapter IX**

### *Public Improvements*

Section 37. Procedure. The council may by ordinance or resolution provide for procedures governing the making, altering, vacating, or abandoning of a public improvement. A proposed public improvement may be suspended for six months upon remonstrance by owners of the real property to be specially assessed for the improvement. The number of owners necessary to suspend the action will be determined by ordinance.

Section 38. Special Assessments. The procedure for levying, collecting and enforcing special assessments for public improvements or other services charged against real property will be governed by ordinance.

## **Chapter X**

### *Miscellaneous Provisions*

Section 39. Citizen Rights. It shall be the intent of the city that every individual shall have an equal opportunity to participate fully in the life of the City.

Section 40. Debt. City bonded indebtedness may not exceed debt limits imposed by state law. A charter amendment is not required to authorize city indebtedness.

Section 41. Ordinance and Resolution Continuation. All ordinances and resolutions consistent with this charter in force when it takes effect remain in effect until amended or repealed.

To: Whom it may concern serving in the Oregon Legislature or their staff

FR: Mark Fitz, Resident of Damascus, Oregon

RE: SB 226-2 Damascus Euthanization Bill

DT: June 3<sup>rd</sup>, 2019

I apologize for any typos as I discovered that SB 226-2 was before you this morning. This is a deep subject and I am moving faster than I should in providing written testimony. I urge you to consider the bigger realities of this bill and find a better solution. The best solution for Damascus and all of Oregon would be for this bill to clarify a municipalities responsibility to meet Oregon's Land Use requirements and that this responsibility cannot be delegated locally. That Oregon pre-empts local city councils and county commissions to be solely responsible for answering to LCDC on passage, update, or meeting Statewide Land Use Goals.

### **Background of Damascus**

If you are new to this story, as someone who got involved later, let me tell you an outsider coming into it perspective. The City of Damascus was formed due to the force of personality and political capital of a retired Fire Chief named Dee Wescott. This man is a legend and had profound ideas with great intentions. He was loved and well known.

He organized and put in motion the first new city in Clackamas since Happy Valley decades prior. He made that city's foot print as big as Gresham, which is where it's problem started. He dreamed big and brought in a diverse coalition of people to realize it. Dee was the first Mayor of Damascus. Dee passed away before finalization of the first Damscus comprehensive plan, and left a vacuum that the next two Mayor's could not fill. The third mayor after him advocated for Disincorporation though she could never get a majority of the City Council to go with her on that.

Into that vacuum of leadership came some Charter changes due to ballot measure. One of these being a vote for any land use plan change or adoption. In that time the City Council has passed four different Comprehensive Plans which failed voter approval. Though repeatedly advised by our legal council that the Charter does not apply to the administrative requirements placed on a City Council specifically by Oregon's Land Use system and it's law, the previous City Councils abided by it seeking voter approval.

That brings us here to today. Where a functional City Council is meeting, can and will pass a plan to LCDC, and seeks the Legislature to give time for them to correct the problems of the past once and for all.

In fact, if you adjusted this Bill to direct that a City Charter cannot restrict any Municipality in the State of Oregon from answering and finalizing it's land use obligation to LCDC, that would fix this problem better than what you are seeking. As it would settle once and for all the pre-emptive power of Oregon land use over a local municipality on this issue (as other cities have tried to refer Comprehensive Plan changes to voters, and no doubt will again).

### Damascus Today

Damascus is legally a City. Under Oregon's Constitution that enables it rights you are seeking to deny it.

Under Section 4 of SB 226-2 the Legislative intent is to "cure any defect in the procedure" which is interesting. Because the whole procedure of the Legislature attempting to destroy a City's Charter violates the Home Rule clause of the Oregon Constitution. I also cite in Section 1 of SB 226-1 that your legislation discusses the "surrender" of the Damascus Charter. That's you legislating a change to a Home Rule Charter.

This is the Legislature's third time at bat on this subject. You might want to examine the one-off nature guided directly at one single city. This clearly violates Oregon's Home Rule Charter provision of our Constitution.

***Article XI, section 2, of the Oregon Constitution, provides in part: "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[.]"***

What the Legislature keeps attempting to do can be described as a legislative sniper shot to legally assassinate the City of Damascus. It would be one thing if the City of Damascus adjusted the voter turn out and threshold requirements. Of course you could not get the full City Council of Damascus to buy in on that. So this is doomed to be overturned by the courts as it has in the past.

In fact today you have a City Council meeting. This City Council is also capable of referring a Plan to LCDC (the true sin of Damascus) to comply with the legitimate Pre-emption needs of Oregon and it's Land Use laws. You should support this! It would be a happy ending for all of Oregon.

If this wasn't Damascus but another city it would be clear. Ironically, given the lack of support for Damascus, The League of Oregon Cities even states that their moto for this year's Legislative Session is "Let Cities Work and that they will be "encouraging the preservation of Home Rule." Home Rule matters and must be upheld.

It is important at this moment of convenience to realize that bigger things are at stake here. In Donald Trump's America, the progressive voter focused institutions must be preserved. Many seek to degrade our values, and we must be vigilant to protect against today's political convenience thinking of a bigger picture of resilient local yet messy democratic public process. Home Rule Charter and the democratic local control associated with it may be inconvenient, but they matter.

To quote a League of Oregon Cities white paper on the subject of State Pre-Emption and Municipal Home Rule and it's history (The Origins, Evolution and Future of Municipal Home Rule in Oregon, League of Oregon Cities, 2017, <http://www.orcities.org/Portals/17/Library/HomeRuleWhitePaper6-15-17.pdf>):

***[I]n nineteenth-century Oregon, only the Legislative Assembly had the power to incorporate new cities and to establish and amend city charters. If a group of citizens wanted to incorporate a city, the Legislature had to pass special legislation that both created the city and provided the new city with specified, limited powers. The populist movements of Gilded Age***

***America, however, led to fundamental changes in city-state relationships across the country, including in Oregon. Beginning in 1901, the Oregon Legislature began to consider constitutional amendments that would redistribute power over local charters to their respective localities. That effort coincided with the push for an initiative and referendum amendment to the Oregon Constitution. Eventually, 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 their own municipal charters, independent of special legislative approval.***

At the dawn of the 20<sup>th</sup> Century the Oregon Legislature left behind local city formation for a reason. The local control and direct democracy of a Home Rule charter is up there with universal suffrage and civil rights. Please honor this Oregon history.

The case law on this subject is very clear as well. You are seeking to dissolve a City because its own citizens seek to keep a city. The last few years have actually put Damascus in a better place. Rare in politics is it that the whole opposition gets up and annexes into a neighboring city. The sitting City Council does not seek to change those annexations. They only seek to pick up where they left off given the solution provided by people moving to neighboring Happy Valley.

Please honor local control and the intent of the Oregon Constitution. Do not allow SB 226-2 to continue.

Mark Fitz

Resident of Damascus, Oregon

Clackamas County Planning Commissioner

Most recent Chair, Damascus Planning Commission

Personal Email: [eradroma@gmail.com](mailto:eradroma@gmail.com)

Personal Cell: 503-260-2815

## **INTERGOVERNMENTAL AGREEMENT TO PROVIDE JUDICIAL SERVICES**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made and entered into as of the last date of signature indicated below (the "Effective Date"), by and between Clackamas County ("County"), a political subdivision of the State of Oregon, and the City of Damascus ("City"), an Oregon municipal corporation (collectively, the "Parties" and individually "Party").

### **RECITALS**

- A. Pursuant to ORS Chapter 190.010, governmental entities such as County and City are authorized to enter into written agreements for the performance of any or all functions and activities that either Party has the authority to perform on its own.
- B. The City currently performs judicial services through its Municipal Court. The County currently performs judicial services through its Justice Court.
- C. Any City may enter into an agreement pursuant to ORS 51.035-.037, and ORS 190.010 with a County in which a Justice of the Peace district is located for the provision of judicial services. A Justice of the Peace providing services to a City pursuant to such an agreement shall have all judicial jurisdiction, authority, powers, functions and duties of the Municipal Court of the City, the judges thereof with respect to all or any violations of the Charter or Ordinances of the City;
- D. The City is wholly within the jurisdiction boundaries of the County and wholly within the Justice of the Peace District for Clackamas County;
- E. The Justice Court is a state court authorized by Article VII, Sections 1 and 2 of the Oregon Constitution;
- F. Under Damascus Charter Section 35(G), the City may transfer functions of the municipal court to a state court, such as the Justice Court; and
- G. City and County have deemed it to be their mutual advantage and in the best interest of their citizens and residents to enter into this Agreement for the purposes of providing judicial services and the Justice Court shall have all the judicial jurisdiction, authority, powers, functions and duties of the Municipal Court of the City and the judges thereof with respect to all or any violations of the Charter or Ordinances of the City.

NOW THEREFORE, the Parties agree as follows:

## TERMS

1. **Services Provided.** While this Agreement is in effect, the County, by way of its Justice of the Peace and Justice Court, shall provide judicial services to the City, and shall have and exercise the judicial jurisdiction, authority, powers, functions, and duties of the Municipal Court of the City and the judges thereof with respect to all or any violations of Charter or Ordinances of the City. The Parties further agree that the Justice Court will not hear any matters that would require the provision of indigent counsel to a defendant.
  - 1.1 The Justice Court and the Justice of the Peace shall assume jurisdiction of all violations that are pending adjudication in the municipal court, as well as the authority to enforce all existing municipal court judgments and orders entered by the municipal court before the effective date of this Agreement.
  - 1.2 The Justice Court shall assume jurisdiction over all matters that concern the enforcement of any violations of the Charter or Ordinances of the City.
  - 1.3 Except as otherwise provided in this Agreement, the County shall provide all necessary court personnel, equipment and supplies and pay all expenses incurred in connection with Justice Court operations, including prosecutions under provisions of the City Charter and Ordinances, except the following expenses of City Charter or Ordinances prosecutions which shall be paid by the City: the services of a prosecuting attorney, witness fees and expenses, interpreter fees and expenses, all costs, fees and expenses of trials. Both parties to this Agreement understand that responsibility for prosecuting all City Charter and Ordinance violations shall be with the City.
2. **Payment.** After paying the replacement fine, assessments, and other sums, as required by state law, the County shall receive  $\frac{1}{2}$  of all fines and forfeited bail collected, and all fees collected on municipal court judgments enforced by the Justice Court under terms of this Agreement and the City shall receive the other  $\frac{1}{2}$  of fines and forfeited bail collected.
  - 2.1 For City Charter or Ordinance violations, after paying the replacement fine, assessments, and other sums, as required by state law, the County shall receive  $\frac{1}{2}$  of all fines and forfeited bail collected, and all fees collected on judgments entered in the Justice Court; the City shall receive the other  $\frac{1}{2}$  of fines and forfeited bail collected on such judgments.
  - 2.2 Justice Court shall provide a quarterly accounting to the City for sums collected on judgments for fines and forfeited bail collected

on all judgments and transfer the City's proportional share of said funds to the City.

- 2.3 The City shall be responsible for the cost to physical transport all case files from Municipal Court to Justice Court. If the files are recorded or maintained in electronic format, then the City shall be responsible for the cost to have those files converted to a format usable by the Justice Court, or provide the Justice Court with access to the City's software, either by way of license or added user. The City shall train or be responsible for the cost to train Justice Court staff on the use of the software to access the Municipal Court files.
- 3. Police Services.** The City contracts with the Clackamas County Sheriff's Office for police services. The City agrees that while this Agreement is in force, all citations initiated by or filed by the Clackamas County Sheriff or Sheriff's Deputies for traffic violation offenses that occur within the City shall be deemed to be prosecutions by a City police officer for the purpose of ORS 153.645.
- 4. Effective Date.** This Agreement is effective when both parties have executed it. Upon effective execution, this Agreement supersedes and replaces all previous agreements pertaining to Justice of the Peace services entered into between the City and the County.
- 5. Staffing.** Parties shall continue to serve as employer of their respective employees.
- 6. Termination of Agreement.** This Agreement shall continue in effect so long as there is a Justice Court and the Justice of the Peace District for Clackamas County, or until terminated by either party as provided herein. Either Party may terminate this Agreement by providing ninety (90) days notice in writing to the other Party. In the event of termination of the Agreement, City shall pay all costs and fees required under this Agreement which are incurred, up until the date of termination. Such termination shall be without prejudice to any obligations or liabilities of either party accrued prior to such termination. If County terminates, it will transfer to City any documents and court files for cases filed in Justice Court by the City and take such other transition steps as may be reasonably necessary to assist City.
- 7. Amendment Provisions.** The terms of this Agreement may be amended by mutual agreement of the Parties. Any amendment shall be in writing, shall refer specifically to this Agreement, and shall be executed by the Parties.

CITY OF DAMASCUS  
Resolution No. 19-704

**WHEREAS**, the City of Damascus is a municipal corporation of the State of Oregon;

**WHEREAS**, pursuant to City Charter, the City of Damascus has authority to establish and operate a Municipal Court;

**WHEREAS**, the City previously established a municipal court that ceased operations pursuant to an Intergovernmental Agreement (IGA) with Clackamas County in 2014. This resolution is intended to re-establish the prior municipal court after termination of the IGA; and

**WHEREAS**, the City of Damascus desires to establish a Municipal Court.

**NOW, THEREFORE, BE IT RESOLVED THAT:**

**Section 1.** The City of Damascus Municipal Court (“Municipal Court”) is re-established. As authorized by ORS 221.336 and 221.342, the Municipal Court is hereby declared to be a court of record. The Municipal Court shall commence operations after termination of the IGA.

**Section 2.** The Municipal Court; Municipal Court judge, Municipal Court judges pro tempore, as well as the court clerk, deputy court clerks and other court personnel shall have all the appropriate powers, duties and responsibilities provided under the Oregon Revised Statutes, City Charter, Ordinances, and general law for a municipal court established pursuant to City laws and Oregon statutes as a court of record.

**Section 3.** The chief judge of the Municipal Court and all pro tempore judges shall be attorneys licensed to practice law in the state of Oregon.

**Section 4.** All proceedings in the Municipal Court shall be recorded.

The judge shall have his or her performance and conduct measured against the following standards:

- a. A judge shall observe high standards of conduct so that the integrity, impartiality and independence of the judiciary are preserved, and shall act at all times in a manner that promotes public confidence in the judiciary and the judicial system.
- b. A judge shall not commit a criminal act.
- c. A judge shall not engage in conduct that reflects adversely on the judge's character, competence, temperament or fitness to serve as a judge.
- d. A judge shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.
- e. A judge shall not allow family, social or other relationships to influence judicial conduct or judgment.
- f. A judge shall not use a position to advance the private interests of the judge or any person, nor shall a judge convey or permit anyone to convey the impression that anyone has a special influence with the judge, but a judge may provide a character or ability reference for a person about whom the judge has personal knowledge.

**Section 12.** All areas within the City are within the territorial jurisdiction of the Municipal Court.

**Section 13.** The Municipal Court has jurisdiction over every offense created by City Ordinance. The Municipal Court may enforce forfeitures and penalties created by such Ordinances. The Municipal Court also has jurisdiction under state law unless limited by City Ordinance.

**Section 14.** The Municipal Court judge may:

- a. Render judgments and impose sanctions on persons and property;
- b. Order the arrest of anyone accused of a jailable offense against the City;
- c. Commit to jail or admit to bail anyone accused of a jailable City offense;

- d. Issue and compel obedience to subpoenas;
- e. Compel witnesses to appear and testify and jurors to serve for trial before the Municipal Court;
- f. Penalize for contempt of court;
- g. Issue process necessary to enforce judgment and orders of the Municipal Court;
- h. Issue search warrants; and
- i. Perform other judicial and quasi-judicial functions assigned by City Charter or Ordinance.

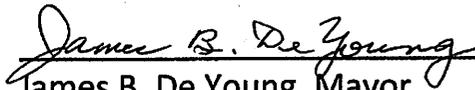
**Section 15.** The Council may transfer some or all of the functions of the Municipal Court to an appropriate state court.

**Section 16.** Each Municipal Court judge and judge pro tempore may exercise all powers inherent in the position of Municipal Court judge.

**Section 17.** The Municipal Court judge shall serve at the pleasure of the Council, and shall be considered an independent contractor and not a City employee. The Municipal Court judge may be assisted by a Municipal Court clerk who may be an employee of the City.

**Section 18.** The Council declares it necessary for the preservation of the public health, welfare and safety that this Resolution take effect immediately upon its passage and therefore declares an emergency.

PASSED AND ADOPTED on 7/25, 2019.

  
James B. De Young, Mayor

ATTEST

  
Bill Wehr, Council President

**CERTIFICATE OF COMPLIANCE WITH BRIEF LENGTH AND TYPE REQUIREMENTS, AND CERTIFICATE OF FILING AND SERVICE**

I certify that this brief complies with the word-count limitations in ORAP 5.05 and the word-count of this brief is 7936 words.

I certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes.

I certify that I electronically filed this Brief with the Appellate Court Administrator on this date.

I certify that service of a copy of this Brief will be accomplished on the following participants in this case by both e-mail and FedEx delivery prepaid on this date:

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*DATED this 14<sup>th</sup> day of August, 2019.*

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