



League of Oregon Cities Board of Directors Meeting

June 14, 2019 | 9:00 am – 4:00 pm

Springfield Justice Center | 230 4th St. Springfield, OR 97477

or via Conference Call: Dial 1-800-504-8071 and Enter Access Code 2196588#

AGENDA

A. Welcome & Pledge of Allegiance (<i>President Greg Evans</i>)	-
B. Consent Calendar* (<i>President Greg Evans</i>)	-
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D. Website Demonstration (<i>Catherine Veraghen, Happy, Inc.</i>)	-
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F. Fiscal Year 2019/2020 Accepted Budget* (<i>Mike Cully</i>)	50
G. University of Oregon’s Sustainable City Year Program (<i>Megan Banks, UO</i>)	-
H. Harassment Training (<i>Katie Kammer, CIS</i>)	104
I. Portland State University’s Center for Public Service (<i>Phil Keisling, PSU</i>)	-
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O. LGPI Dues Increase* (<i>Mike Cully</i>)	125
P. Other Business (<i>President Greg Evans</i>)	-
Q. Adjournment (<i>President Greg Evans</i>)	-

* Agenda items denoted with an asterisk indicate a motion is recommended. The sample motion will appear in the agenda item’s associated materials.

difference times, and thus her claims did not arise out of a single accident or occurrence, meaning that the limit on liability should not apply at all. Plaintiff is arguing that only some causes of action are subject to the tort limit, while others are not.

Clackamas County submitted a request to the League for *amicus* support in the appeal. The League's Legal Advocacy Committee considered the request and decided that the legal issue raised by the case was sufficiently important to merit League participation. The LAC thus made a recommendation to the Executive Director in favor of League participation and urged the League to seek assistance from AOC. Mike Cully gave his approval for League participation. The *amicus* brief was filed on February 19, 2019. Parties are awaiting a decision from the court.

City of Corvallis v. State of Oregon

League's Status: Originally an intervenor in the circuit court, now participating as an amicus
Current Venue: Oregon Court of Appeals
Attorney: League's Legal Research Division
General Topic: Can the state preempt voter approved annexations required by a city's charter?
Current Status: Oral argument was heard July 13, 2018. Awaiting a decision.

This case involves a challenge to Senate Bill 1573 (2016), originally filed by the city of Corvallis. SB 1573 attempts to preempt city charters that require a vote on annexations when a petition to annex meets specific requirements. Pursuant to Board direction, the League intervened at the circuit court level in this case as a plaintiff-intervenor to challenge SB 1573 on the basis that the legislation is contrary to the people's initiative power under Article IV, Section 1(2)(a) of the Oregon Constitution and the home rule authority of cities as guaranteed by Article XI, Section 2 of the Oregon Constitution. The city of Philomath also intervened as plaintiff.

On February 24, 2017, the circuit court judge issued his opinion, and disagreed with both cities and the League, basing his decision on two rationales. The court first determined that the Philomath and Corvallis city charters provide that annexations are not subject to a vote when the annexation is "mandated by state law." Second, even though not all cities in Oregon with voter-approved annexations have charter provisions like Corvallis and Philomath, the judge reasoned that the state could still force annexation on a city because state law requires cities to establish an urban growth boundary, thereby giving both the property owners within that boundary and the city a legal expectation of future annexation.

The trial court reasoned that because annexations under SB 1573 would only involve territory that is already within a city's UGB, the city had already made the decision to act in an extramural fashion by designating land within a UGB and anticipating future growth in that territory.

League staff mistakenly believed it did not have to file its own Notice of Appeal to continue as an intervenor at the appellate level. By not filing its own Notice of Appeal, the League is prohibited from participating as an intervenor before the Oregon Court of Appeals. The mistake is unfortunate and one that League staff regrets as it prohibits the arguments related to those cities with charter provisions that do not include the language "mandated by state law" from being raised and further discussed at the appellate level. After consulting with respected appellate attorneys and the appellate clerks, League staff determined that it can still be of use to its member

cities by seeking the Court's permission to file an amicus brief in support of Corvallis and Philomath, focusing exclusively on the constitutional home-rule issue.

The League contacted all parties to the case to ask if the parties objected to the League filing an amicus brief. All parties indicated they had no objections. The League filed its notice of amicus support, along with its brief, on August 29, 2017. The Court of Appeals accepted the League's brief.

In its amicus brief, the League argued that SB 1573 infringes on municipal home rule by interfering with cities' freedom to choose their own political form. The key to the League's home-rule argument lies in distinguishing the *act* of annexation from the *decision* to annex. While the case law in Oregon establishes that the act of annexation is an extramural action and, therefore, cities lack inherent authority to annex territory outside their borders, the League argued the decision to annex territory into a city, and the process by which that decision is made, are intramural actions that fall within a city's corporate structure.

Corvallis and Philomath filed their opening brief on October 9, 2017. The State filed its answering brief on December 21, 2017. Corvallis filed a reply brief on February 8, 2018. The Oregon Court of Appeals heard argument on July 13, 2018 and we are awaiting a decision.

State of Oregon v. Victor Uroza-Zuniga

League's Status:	Amicus
Current Venue:	Oregon Supreme Court.
Attorney:	League's Legal Research Department
General Topic:	Does a local law prohibiting the consumption of alcohol in public places conflict with a state law prohibiting cities from adopting laws that penalize the drinking of alcohol?
Current Status:	The Oregon Supreme Court ruled in favor of the State and upheld the lower court's decision that the Beaverton ordinance does not violate state law.

This case deals with an arrest of three men by the Beaverton Police Department for violating Beaverton Code (BC) 5.02.083, which prohibits consumption of alcohol in public places. ORS 430.402 prohibits municipalities from adopting any local law that penalize public drinking, "except as to places where any consumption of alcoholic beverages is generally prohibited." BC 5.02.083 prohibits the consumption of alcohol "in or upon any public place * * *" with certain limited exceptions. The legal question is whether ORS 430.402 preempts BC 5.02.083.

On August 2, the Court of Appeals ruled that the city of Beaverton's ordinance prohibiting people from consuming alcohol in a public place is not preempted by state law. The Court of Appeals held that ORS 430.402(1) allows a city to enact an ordinance prohibiting the consumption of alcohol in a public place so long as the prohibition is a general ban on public drinking.

Mr. Uroza-Zuniga had also argued that the penalty provisions in Beaverton's ordinance were more extensive than in the state's "open container" statute, ORS 811.170, which prohibits people from consuming alcoholic beverages in motor vehicles located on public highways. Arguing that