

## COMMENTARY

### BALLOT MEASURE 24-292: A FLAWED PROPOSAL

By Mark Shipman



In May of 2010, Marion County voters will either approve or deny Ballot Measure 24-292 ("*Measure 24-292*"). The petitioners of Measure 24-292 seek to substantially change the governance structure of Marion County from a "general law" system to a "home rule charter" system. Over the last 140 years, Marion County has worked and grown effectively under its current general law system. In fact, the majority of counties in Oregon (27 out of 36) are general law counties.

Recently, there has been a small push for the county to adopt a home rule charter. In certain situations, home rule charters can be crafted to account for specific and unique features of a particular jurisdiction. However, the proposed home rule charter in Measure 24-292 is poorly crafted and flawed. If the measure is approved by voters it will hurt businesses in Marion County. It is important for Marion County citizens and business owners to understand how the county currently operates and how the system will be changed if Measure 24-292 is approved.

#### SO, WHAT SHOULD YOU KNOW ABOUT MEASURE 24-292?

##### 1. INCREASES GOVERNMENT SPENDING

Measure 24-292 petitioners claim that the measure is cost neutral. However, the proposed charter would increase the *Marion County Board of Commissioners* (the "*Board*") from three members to five. This will result in additional salaries, benefits, equipment, office space, and overhead. Two more senior policy advisors will also be added, along with their salaries and benefits. These changes alone will constitute an initial and ongoing increase of more than \$400,000 to Marion County's annual budget.

In addition to these costs, there are other costs both known and hidden associated with Measure 24-292. For example, charters can only be adopted, amended, or repealed through an election process. If the election is not held during a general election, any change to the charter will require a special election that will cost the county an additional \$100,000 to \$250,000. Additionally, if Measure 24-292 passes, Marion County will need to hold a special election immediately thereafter to elect two new commissioners at a cost of \$100,000 to \$250,000.

Another cost relates to the elimination of the office of Marion County Treasurer. The charter proposes that this position will be incorporated into the finance department. On its face, this change may seem cost neutral. However, in order to hire the same level of professional manager at the finance department, the current level of the treasurer's salary and benefits will need to be increased significantly.

##### 2. WEAKENS PUBLIC REPRESENTATION AND PUBLIC ACCOUNTABILITY

Presently, Board members are elected "at large," which means they serve all of the residents of Marion County. Under the proposed charter each Board member would be elected by one of five districts. Under this approach, Marion County residents will have reduced access to their local elected officials because they will only have access to the commissioner in their own district, not to the entire Board.

Under the current Board structure, the three members hold public meetings whenever they conduct county business. This is the most transparent form of government in Oregon. However, under the proposed charter, the Board could avoid the state's "Sunshine Laws" by holding private conversations between two and then three commissioners, without the requirement of a public hearing. Key decisions could be made in a secretive manner without the public's knowledge and even without the involvement of all of the county commissioners.

Currently there are several checks and balances between the County Treasurer's office and the finance department with respect to county finances. If the finance department absorbs the duties of the treasurer, the checks and balances provided by the treasurer's office will be lost. The proposed charter also gives the county clerk increased duties and powers. The clerk would be empowered to appoint the compensation board for the county, set elections, and immediately redistrict the seats for the entire Board after each year's census.

### 3. INCREASES BUREAUCRACY AND SPECIAL INTERESTS

Increasing the number of commissioners will slow the county's operations and increase red tape. Commissioners will be less likely to vote for what is best for the county as a whole because they will be elected to individual districts within the county. Although the intent of the charter is to make the Board more non-partisan, the practical result will be that the districts will be pitted against each other for funds, projects, and the like.

More importantly, Measure 24-292 is being promoted by a small special interest group, The Friends of Marion County. This group is primarily concerned with controlling and prohibiting new growth in the county by stopping the expansion of urban growth boundaries.

### 4. VIOLATES CONSTITUTION AND WILL CREATE LITIGATION

Numerous provisions of the proposed charter violate the Oregon Constitution. For example, the charter proposes that justices of the peace are to be appointed by the Board. However, the Oregon Revised Statutes and the Oregon Constitution require that justices of the peace be elected. The charter also prohibits county employees from running for public office which is in violation of the Oregon Constitution.

Additionally, there are multiple ambiguities in the proposed charter that will lead to unnecessary litigation. The charter is unclear as

to whether the five members will share or split the salaries of the three current members, or whether the new members will receive additional salaries. The election dates for the new commissioners are also unclear and may occur as early as September 2010 or as late as January 2011. Furthermore, the requirements for the county assessor position in the proposed charter differ from the current statutory requirements. In addition to these ambiguities, the proposed charter is poorly written causing legitimate concern as to whether the petitioners realized when they drafted the proposal the effect that certain provisions in the charter will have.

### SO, WHY SHOULD YOU CARE ABOUT MEASURE 24-292?

If Measure 24-292 passes, you will not see new growth in Marion County for some time. Urban growth boundaries will not be expanded which will create a false scarcity of developable land in our cities and harm our competitive advantage in recruiting new businesses to the mid-Willamette Valley. In addition, it will be more difficult for existing businesses to grow and flourish. While you may not work directly with Marion County or with the Board, the passage of Measure 24-292 will significantly affect all of Marion County's residents, and the businesses that they depend on, well into the future.

Measure 24-292 is a flawed proposal. Marion County's current general law system allows it to make necessary changes to its structure and function, without wholesale changes to its governance system. If there is a problem with the structure or function of the county's system, the county administrator and Board will act in the best interests of the county as a whole to fix the problem. This will not happen if Board members are elected to contrived districts and subject to the influence of a few special interest groups. Please vote NO on Measure 24-292.

*Mark Shipman serves as the leader of the Real Estate and Land Use Practice Group at Saalfeld Griggs PC. He is also a Vice President of the Salem Area Chamber of Commerce and is a point person for the Chamber on Measure 24-292.*