



FAQ on Oaths of Office

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Oaths of office are common occurrences in government circles. It is generally understood that newly elected officials and certain public employees will take an oath of office before assuming their new positions. Despite the frequency with which oaths are taken and administered in cities across Oregon, the LOC consistently receives inquiries on the topic. Questions range from who is legally required to take an oath of office to what are the legal ramifications for failing to take an oath.

This document answers the questions most frequently posed to the LOC regarding oaths of office. It is not intended to provide an exhaustive legal analysis on the topic, nor is it intended to be a substitute for legal advice. It is meant to serve as a baseline for understanding oaths of office in Oregon. Each city in Oregon is subject to its own individual charter, municipal code, and rules of procedures—any person reading this FAQ is strongly encouraged to conduct a thorough review of applicable charter provisions, municipal code sections, and your respective city’s rules of procedures.¹

1. What is an Oath of Office?

An oath of office is a sworn promise and a statement of fact that the oath taker will uphold the law and perform his or her duties with integrity and to the best of their abilities.

2. Which Elected Officials are Required to Take an Oath of Office?

In Oregon, there is no constitutional article or state statute which requires an elected city official to take an oath of office. However, city charters across the state, from Portland to Greenhorn, require elected officials to take an oath of office before assuming office. A thorough review of a city’s charter and municipal code is necessary to fully answer this question.

3. Is any Government Official Besides an Elected Official Required to Take an Oath of Office?

Oregon does not require public employees to take an oath of office. However, city charters and municipal codes commonly require oaths of office for a variety of public positions, including: police officers, firefighters, municipal judges, and board or committee members.

Charters are typically shorter documents that are easier to review when trying to determine if an oath of office is required. Municipal codes are lengthy documents with multiple chapters and various sections. When reviewing a municipal code to determine if an oath of office is required for a particular position, LOC encourages cities to review any chapter or section directly pertaining to the position in question. Additionally, most

¹ LOC Model Charter for Oregon Cities includes Oath. See Section 7.7:
<https://www.orcities.org/application/files/3015/7228/7626/ModelCharterUpdate03-15-19.pdf>

municipal codes have a chapter entitled “Administration” – oaths of office are commonly found within such a chapter.

4. When Must an Oath of Office be Taken?

The requirements for when an oath of office must be taken, if such requirements exist, will typically be found in a city’s charter or municipal code. Generally speaking, oaths of office are required to be taken the day the person takes office or begins their employment with the municipality.

5. Who is Qualified to Administer an Oath of Office?

ORS 44.320, authorizes the following persons to administer an oath of office:

- Judge;
- Clerk of a court;
- Justice of the peace;
- Certified shorthand reporter; or
- A notary public.

However, as neither the constitution nor state law requires city officials (both elected and appointed) to take an oath of office, it is entirely appropriate for cities to establish other individuals who are qualified to administer an oath of office. Several jurisdictions, either via their municipal code or rules of procedures, grant the city recorder authority to administer an oath of office.

In the event a city’s governing documents dictate that a particular position, like the recorder, administers all oaths of office, it may be wise for that city to consider amending these documents to allow the recorder to designate someone to administer oaths of office in the event the recorder is unavailable.

6. What Content is Required in an Oath of Office for it to be Valid?

Article 1, section 7 of the Oregon Constitution requires that the administration of any oath of office occur in a manner that binds “upon the conscience of the person to whom such oath or affirmation may be administered.” In other words, the oath should be administered in such a way that the person making it recognizes the importance of the words they are uttering, so that it binds their “conscience.”

Occasionally, city charters or municipal codes may specify the exact wording for administering an oath of office. These oaths typically require the oath taker to affirm that he or she will uphold and defend the constitution, all laws, and honestly perform his or her duties.

7. Does the LOC have a Sample Oath of Office?

I, [insert name of oath taker], do solemnly swear and affirm that I support the Constitution and laws of the United States and the state of Oregon, and of the charter, ordinances, and rules of procedures for the City of [insert name of applicable city], and that I will faithfully and honorably perform the duties of the office for which I am about to assume.²

8. Are Oaths of Office Required to be Reduced to Writing and Signed?

The state of Oregon does not require oaths of office to be reduced to writing and/or signed. However, it is possible that certain city's may have such a requirement. Again, in order to answer this question fully, a thorough review of a city's charter, municipal code, and rules of procedures should be undertaken.

9. If an Oath of Office is Required to be Reduced to Writing and/or Signed, What are the Retention Protocols?

If a city requires an oath of office to be reduced to writing and/or signed, the oath of office becomes a public record subject to the state's public records law and said law's minimum retention requirements. OAR 166-200-0380(10) requires oaths of office to be retained for a minimum of six years "after most recent oath expired."

A review of a city's charter and municipal code, as well as the city's own public records retention schedule, should occur to determine if oaths of office that have been reduced to writing need to be retained for more than six years.

10. What if a Person Fails to Take a Required Oath for Office?

Oregon recognizes the "de facto officer" doctrine and has done so since the Oregon Supreme Court's decision in *Smith v. City of Jefferson*.³ Under the de facto officer rule, if a public official is not technically qualified to hold an office, but the person actually possesses the office and acts under a "color of right," the official is a de facto officer. The official actions of a de facto officer have the same legal effect as the official actions of any other officer.

For example, the charter of City A requires elected officials to take an oath of office, but one of the newly elected councilors failed to take this required oath of office. The councilor's failure to comply with the charter does not mean that her vote during a council meeting is invalid. Because the councilor in question qualifies as a de facto officer, the councilor's vote is most likely still valid under Oregon law.

² LOC has been advised that some cities have modified their oaths of office regarding adherence to *all* laws of the United States. The status of marijuana in Oregon is at odds with federal laws regarding the substance. Because of this disconnect, some cities are considering recognizing this disconnect in their oaths of office.

³ 75 Or 179 (1915).