

Land use planning would be changed under '10'

Measure 10 on the November ballot could throw Oregon's land-use planning experiment into chaos.

On the other hand, it could leave planning stronger than ever.

That's how far the scenarios range regarding the land use planning constitutional amendment. About the only thing that appears certain is that lawyers and judges will have plenty of work to do if it passes.

Provisions in the measure state the following:

The 19 statewide land-use goals now in effect will expire March 8, 1979.

The state legislature will establish a new set of goals, redefine planning terms and draw up planning and zoning procedures.

The state Land Conservation and Development Commission will also go out of existence March 9, 1979. The Legislature may set up a new state agency that would have "advisory, arbitration and administrative" powers.

Oregonians would have the right to refer state or local legislative planning acts to the voters. Legislative acts cover large areas, such as the recent rural plan amendment in Clackamas County or the study area around Strebin Road east of Troutdale.

Property owners must be notified before their land is rezoned.

Regional planning districts, such as the new MSD, must be approved by voters.

If the Legislature decides to restrict development in an area of "statewide significance," property owners in the area must be compensated.

In short, the measure could do a lot, or it could do very little, depending on what the Legislature and the courts do.

Questions on the measure begin with its intent. Just what do its sponsors have in mind?

"It's to try to get rid of land-use planning," said state Rep. Glen Whallon (D-Milwaukie).

Frank Josselson, a Portland land-use attorney, was more charitable. "I don't think the sponsors of the initiative are conscious of the destructive force of the amendment," he said.

Jim Allison, sponsor of the original initiative petition, called both of these "wild statements."

"We're looking for three things," Allison said. "It requires the Legislature to set the goals and establish procedures. It provides for notification of property owners. And it allows voters to decide on plan changes."

Legislature

If the measure passes, just what will the Legislature do? Most sources expect few changes in the goals themselves.

"I fully expect the Legislature to adopt the (same) 19 goals with some modifications," Allison said.

"All we would end up doing is OK'ing the goals and guidelines," Whallon said.

Portland attorney Terry Morgan said problems could arise if the Legislature decides to take out some goals and adds others. "The danger comes if the Legislature doesn't pass goals in areas now covered," he said.

For example, if the Legislature did not adopt a goal of providing sufficient housing as it now has, cities and counties could clamp down on building and stifle growth.

The March 9 deadline raises other questions. Can the Legislature draw up and pass a bill in 60 days? Whallon said no. "I can't see where we could have public hearings all over the state in 60 days," he said.

State Sen. Walt Brown concurred. Property taxes will be the Legislature's first order of business, no matter what verdict the voters give on Measures 6 and 11, he said.

If the Legislature does not pass a new set of goals before March 9, comprehensive planning in the state will fall into limbo until at least October.

Without state goals to

guide them, local governments could conceivably do anything they wished with their plans.

Realistically, attorney Morgan said, there won't be very much change. "I don't think there's a local government in the state that would stop planning efforts."

Whatever changes are made in the goals, some confusion may result. "The new goals would present uncertainty and ambiguity until they stood the test of time and litigation — both of which spell costly delays for developers," said Portland attorney Steve Janik.

LCDC role

Measure 10 reduces LCDC to an "advisory, arbitration and administrative agency." But Allison said that's really no change at all.

Allison pointed to a clause in the measure that says LCDC may "perform such other duties as may be prescribed by law consistent with this article."

"Ad administrative body historically has had enforcement powers," Allison contended. His conclusion: LCDC would lose only the powers the measure gives specifically to the Legislature: to define terms, adopt goals and establish procedures.

Morgan was less sure. "The question is whether 'advisory' will be interpreted as having the forces of law," he said. "I'm not sure how it would be answered."

Other supporters of the measure imply it would weaken LCDC. An argument in the voters' pamphlet submitted by Edmond Keim of Eastside states that land-use planning "must be done by elected officials responsible to the citizens, not appointed bureaucrats."

Another argument submitted by Robert Hale of Coos Bay states the measure "would restore the citizen-voter as supreme in Oregon."

Currently, the argument says, "Citizen-voters and their elected officials can be ignored and overruled."

Notification

Allison pointed to the notification provision as another of the measure's selling points. The 1977 Legislature passed a law requiring and funding such notification, but it was vetoed by Gov. Bob Straub. Placing it in the state constitution would require the state to fund it.

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The Oregon Department of Transportation has won a second place award in the annual Federal Highway Administration-Keep America Beautiful, Inc. (KAB) competition for state highway departments for its anti-litter program.

This is the fifth time in the six years of the competition that the department has won a high award. In announcing the award, Roger W. Powers, president of KAB, said, "Everyone involved with your program should be especially proud of receiving this honor because the judges had a difficult time choosing winners from the outstanding entries, which become more sophisticated and comprehensive with every passing year."

Oregon's entry in the contest cited the anti-litter program of the State Highway Division, including the outstanding efforts of the Youth Litter Patrol, according to H. Scott Coulter, state highway engineer. It also included the enforcement efforts of the State Police, and the educational programs of Keep Oregon Livable (KOL) and Stop Oregon Litter and Vandalism (SOLV), aimed primarily at youngsters. The efforts of programs involving young people in preserving Oregon's environment and keeping its roadsides clean were also emphasized.

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Referendum

Both arguments rely on the measure's referendum provision to "restore the voter as supreme."

The provision applies only to large-scale changes, however. For example, if LCDC did not accept the city of Gresham's comprehensive plan, voters could then petition to place the plan on the ballot.

Just who would be eligible to vote on the plan is undetermined. "That's something we would have to determine ourselves," Whallon said.

Janik saw the provision as more of a threat. "What this will mean is that a handful of citizens can enjoin a land use action, force it to a vote of the community, and delay its effectiveness for over a year until the next election," he argued.

"The danger can be illustrated by a community such as Wilsonville. If Tektronix obtains a comprehensive plan change to allow construction of a major plant, approximately 50 citizens could delay this project and place it on the next election ballot."

"Business cannot operate with this kind of delay and uncertainty," Janik said. "This argument is designed to scare certain large developers and erode our support," Allison responded. A comprehensive plan change such as in Janik's Wilsonville example would not be subject to referendum, he said.

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Measure 2 seeks approval of appointees

Ballot Measure 2 would add a section to the Oregon Constitution which would require the state Senate to approve or disapprove the governor's appointees. Appointees could not serve until approved and could not serve at all if disapproved.

This amendment includes gubernatorial appointments for vacancies in elective offices except judges, U.S. Senator and representative, district, county and precinct offices.

The measure's wording includes "elective offices," but it does not pinpoint exactly which state offices would be included. Some elective state offices that may be included under the definition are the attorney general, secretary of state, state treasurer and superintendent of public instruction.

Sen. Dick Groener, D-Oregon City, is backing a yes vote for the senate confirmation amendment.

"It's been traditional that appointments are approved," Groener said. "Also, there could be a governor who appoints the wrong people to boards and committees," he said.

A need for examining the past experiences of appointees to weed out unqualified persons also was expressed by Groener.

"I think they need somebody to check out the background of the people the governor appoints," he said. There could be some reason why a person shouldn't serve."

Appointments of political cronies and other favors could be controlled by requiring Senate confirmation, Groener said.

"Besides, they require Senate confirmation on the national level. We should do it here at the state level," he added.

Sen. Walt Brown D-Lake Oswego, supports a no vote on Ballot Measure 2. He

doesn't think there is enough reason to make a change to the state constitution, he said.

"In order to make a substantial change like that, you need to have a good reason. I don't think there is one," he said.

Power would be shifted away from the governor and the measure would put too much power into the hands of the Senate, Brown said.

The measure also would put the confirmation power to a small committee when the Senate is not in session, Brown said. It is concentrating too much power into the hands of few people.

"If we had a full-time legislature here in Oregon, I might look on this a little more favorably," Brown said. "But with a part-time legislature, it lets a small number of people take care of confirmations. It gives an inordinate amount of power to a handful of people who represent a fraction of the

people," he said. Special interest groups could also sway confirmation decisions by testifying against appointees who might crack down on them, Brown said.

He cited the 1977 case of Ron Wyden, an attorney nominated by Gov. Straub to the Oregon State Board of Examiners of Nursing Home Administrators.

Wyden was a supporter of senior citizen rights and may have been viewed as a threat to the state nursing home

industry which testified against him at a Senate hearing, Brown said.

Oregon's constitution was virtually copied from the Indiana Constitution, a state that had a Senate confirmation rule, but threw it out after a few years and some bad experiences with it, according to Brown.

"I just don't think it's a good check and balance," Brown said.

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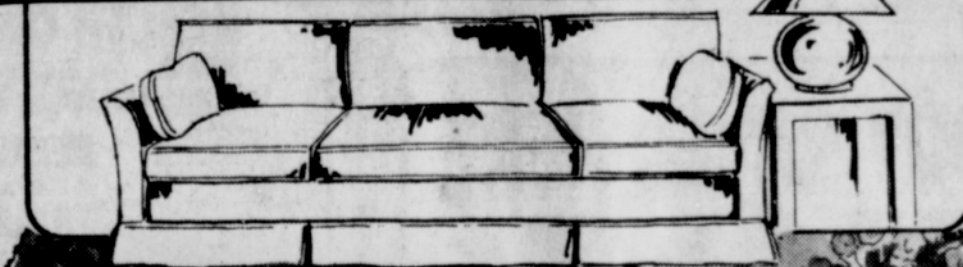
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