

1 Staff notified the applicant and the respective submitters of the objection prior to the
2 January 3, 2024 public hearing, advising that they would have an opportunity to present
3 argument in regards to the objection.

4 **Commission Findings and Decision Upon Objections**

5 Based upon written and oral testimony, and lack thereof, the Commission deliberated,
6 found, and voted upon objections, which this Order memorializes, as follows:

7 **1. Exhibit G-626 Kohlhoff 12-23-2023**

8 Exhibit G-626 was received within the deadline of December 26, 2023. Following the
9 applicant's objection, the submitter presented written argument in response to the applicant's
10 objection on January 2, 2024 (Exhibit G-631), stating that the new evidence contained within
11 Exhibit G-626 was in response to the City's submission of Exhibit F-017 on December 15, 2023,
12 which was further addressed by Exhibit F-020 on December 22, 2023. The applicant did not
13 submit further argument than as stated in its Exhibit F-021.
14

15 The Commission finds that Exhibit G-626 is sufficiently in response to Exhibit F-017 (as
16 further addressed by Exhibit F-020) that Exhibit G-626 should be considered as submitted.
17

18 Commission Vote: Pursuant to motion, the Commission rejected the applicant's
19 objection and shall consider Exhibit G-626 as part of the Record to be considered by the
20 Commission in its deliberation upon the application. (Vote: 6-0, 1 absent; January 3, 2024
21 Commission Video).

22 **2. Exhibit G-628 Schwartz 12-26-2023**

23 Exhibit G-628 was received within the deadline of December 26, 2023. The applicant did
24 not submit further argument than as stated in its Exhibit F-021. No argument was submitted by
25 the submitter of Exhibit G-628.
26

1 The Commission finds that Exhibit G-628 is a statement of position of the submitter of
2 Exhibit G-628, as Exhibit G-628 does not identify any part of a written exhibit filed prior to
3 December 18, 2023 to which it is presenting new *evidence* in response. The applicant, staff, and
4 Commission are not obliged to search Exhibit G-628 for what responding evidence it may
5 contain, nor what written evidence was submitted into the Record prior to December 18, 2023
6 to which it may be responding.
7

8 Commission Vote: Pursuant to motion, the Commission granted the applicant’s
9 objection and shall not consider Exhibit G-626 as part of the Record to be considered by the
10 Commission in its deliberation upon the application. (Vote: 6-0, 1 absent; January 3, 2024
11 Commission Video).
12

13 **B. Exhibits Received After December 26, 2023**

14 Based upon written and oral testimony, and lack thereof, the Commission deliberated,
15 found, and voted upon objections, which this Order memorializes, as follows:

16 **1. Exhibit F-022 Applicant Rebuttal to New Evidence 1-2-2024**

17 Exhibit F-022 was submitted on January 2, 2024. This exhibit is the applicant’s rebuttal
18 to Exhibit G-629, which was submitted on December 26, 2023. Staff objected to the
19 Commission’s consideration of Exhibit F-022, on the basis that LOC 50.07.003.4.a.xi(1) and ORS
20 197.763(6)(b) does not allow an additional time period for sur-rebuttal of exhibits submitted
21 after December 26, 2023. The applicant made no argument.
22

23 The Commission finds that, pursuant to LOC 50.07.003.4.a.ix(1) and its statutory basis,
24 ORS 197.763(6)(b), rebuttal evidence may not be submitted after the close of the seven-day
25 period. Thus, Exhibit F-022 was not submitted within the December 26, 2023 deadline.
26

1 Commission Vote: Pursuant to motion, the Commission rejected the applicant’s
2 objection and shall not consider Exhibit F-022 as part of the Record to be considered by the
3 Commission in its deliberation upon the application. (Vote: 6-0, 1 absent; January 3, 2024
4 Commission Video).

5
6 **2. Exhibit G-631 Kohlhoff 12-30-2023**

7 This exhibit was submitted on December 30, 2023. As noted in Section A.1 of this Order,
8 the submitter asks the Commission to take official notice of certain facts which the submitter
9 asserts would meet the requirements of LOC 50.07.003.4.c.iii:

10 The hearing body may take official notice of all **adjudicative facts and law which may be**
11 **judicially noticed pursuant to ORS 40.060 to 40.090¹**, including an ordinance,
12 comprehensive plan, resolution, order, written policy or other enactment of the City of
13 Lake Oswego. Matters officially noticed need not be established by evidence and may
14 be considered by the hearing body in determination of the matter.

15 Initially, the Commission notes that LOC 50.07.003.4.c.iii is addressed to the
16 Commission’s discretion, in that it authorizes, but does not require, the Commission to act.

17 The Commission finds that it need not consider whether to take official notice of certain
18 facts because the time for the request for submission of evidentiary *facts* to be considered by
19 the Commission would have been prior to either December 18, 2023, or December 26, 2023 if
20 in response to written evidence submitted prior to December 18, 2023. The request was not

21
22
23 _____
24 ¹ The relevant statutory section for judicial notice of facts is ORS 40.065:

25 **ORS 40.065 Rule 201(b). Kinds of facts.** A judicially noticed **fact must be one not subject to**
26 **reasonable dispute in that it is either:**

 (1) **Generally known** within the territorial jurisdiction of the trial court; or

 (2) **Capable of accurate and ready determination** by resort to sources whose accuracy cannot
 reasonably be questioned.

1 timely filed and it would not be fair under the principles of due process for the Commission to
2 take official notice of *facts* after the close of the Record to all parties.

3 Further, the Commission finds that the facts requested to be taken notice of – signature
4 counts of an initiative measure for a charter amendment submitted to the city recorder in 2021
5 and their percentage of the then-registered voters – are not facts that are either “readily
6 known” within Lake Oswego or capable of accurate and ready determination without resort to
7 the official records pursuant to ORS 40.065, and the time for submission of those records has
8 passed.
9

10 Accordingly, the Commission finds that the request to take official notice was not timely
11 filed, and even if it had been, the Commission declines to take official notice of the requested
12 facts stated in Exhibit G-631, and those stated facts in Exhibit G-631 shall not be considered by
13 the Commission in its deliberation.
14

15 Commission Vote: Pursuant to motion, the Commission rejects the submitter’s request
16 to take official notice of certain asserted facts stated in Exhibit G-631 and the Commission shall
17 not consider the certain asserted facts in Exhibit G-631 as part of the Record to be considered
18 by the Commission in its deliberation upon the application. (Vote: 6-0, 1 absent; January 3,
19 2024 Commission Video).
20

21 **3. Exhibit G-632 Bregar 1-2-2024**

22 Exhibit G-632 was submitted on January 2, 2024. Staff objected to the Commission’s
23 consideration of Exhibit G-632, on the basis that it was not timely filed prior to December 18,
24 2023. Furthermore, even if Exhibit G-632 was filed prior to December 26, 2023, as being in
25 response to new written evidence filed prior to December 18, 2023, and even if it was
26

1 presenting new *evidence* in response to written evidence submitted prior to December 18
2 (which it is not), it was not submitted prior to December 26, 2023. The submitter made no
3 argument in response.

4 The Commission concurs with the basis stated by staff's objection.

5
6 Commission Vote: Pursuant to motion, the Commission granted the objection and shall
7 not consider Exhibit G-632 as part of the Record to be considered by the Commission in its
8 deliberation upon the application. (Vote: 6-0, 1 absent; January 3, 2024 Commission Video).

9 **ORDER**

10 This Order is adopted to memorialize the above Commission findings and vote.

11 //

12
13 AYES: Arthur, Dewes, Leek, O'Connor, Poinsette, and Sangrey

14 NOES: None

15 ABSTAIN: None

16 EXCUSED: Bates

17 DATED this 16th day of January, 2023.

18
19
20 /s/ Randy Arthur
Randy Arthur, Chair

21
22 ATTEST:

23
24 /s/Kat Kluge
Kat Kluge, Administrative Support