



OREGON LAW COMMISSION

RE: Legislative History of ORS 221.389
Date: August 19, 2026

Question Presented

What is the legislative history of ORS 221.389 going back to when it was enacted as it relates to limitations on the right to appeal (and *City of Eugene v. Lincoln*, 183 Or. App. 36, 50 P.3d 1253 (2002))?

Overview

ORS 221.389 was created by HB 2460 in 2025. Despite being a new statute, its language is pulled from ORS 221.359 (originally enacted as ORS 221.350) and ORS 221.360. The first section of the memorandum covers language found within ORS 221.389(5) which originates from ORS 221.359[350]. The second section of this memorandum covers language found within ORS 221.389(6) which originates from ORS 221.360.

ORS 221.389(5)

The language, as seen in the text of HB 2460, is presented as completely new.

- A. ORS 221.389(5)
 - i. 2025 c.268 §43a (HB 2460)
 - a. Language

221.389 Appeal and cross-appeal by defendant; cases involving constitutionality of charter provision or ordinance. (1) Except as provided in subsection (6) of this section, in a proceeding involving a violation or misdemeanor, a defendant may appeal from:

- (a) A judgment convicting the defendant of one or more charges and imposing sentence, regardless of the type of sentence imposed.**
 - (b) A judgment ordering payment of restitution but not specifying the amount of restitution, or a supplemental judgment awarding restitution.**
 - (c) A judgment or order imposing or executing a sentence upon revocation of probation or sentence suspension.**
 - (d) A judgment or order that is an amended or corrected version of a judgment or order described in paragraphs (a) to (c) of this subsection.**
- (2) A defendant may appeal as provided in ORS 221.405 (3).**
- (3) In a proceeding involving a violation, the defendant may appeal an order denying a motion for relief from default under ORS 153.105.**
- (4) A defendant may cross-appeal when the prosecution appeals an order prior to trial suppressing evidence as provided in ORS 221.392 (2)(c). The failure to file a cross-appeal under this subsection does not waive a defendant's right to assign error to a particular ruling of the municipal court on appeal from the judgment of conviction and sentence.**

(5) Whenever a person is convicted in the municipal court of any city of an offense defined and made punishable by a city charter or ordinance, that person has the same right of appeal to the circuit court as for a conviction of an offense defined by state law.

(6) In all cases involving the constitutionality of the charter provision or ordinance under which the conviction was obtained as indicated in subsection (5) of this section, such person shall have the right of appeal to the circuit court in the manner provided in subsection (5) of this section, regardless of any charter provision or ordinance prohibiting appeals from the municipal court because of the amount of the penalty or otherwise. An appeal may likewise be taken in such cases from the judgment or final order of the circuit court to the Court of Appeals in the same manner as other appeals are taken from the circuit court to the Court of Appeals in other criminal cases. Where the right of appeal in such cases depends on there being involved an issue as to the constitutionality of the charter provision or ordinance, the decision of the appellate court shall be upon such constitutional issue only. [2025 c.268 §43a]

b. Testimony

At the House Judiciary Committee hearing on February 2, 2024, Larry Wycoff, a private citizen who resides in the City of Lebanon, expressed support for amending HB 2460 to include municipal courts not of record in order to broaden appeal rights for defendants. Mr. Wycoff stated the municipal court system “isn’t remotely fair or transparent and we need better safeguards.”

B. ORS 221.359

Originally numbered ORS 221.350, ORS 221.359 was amended in 2003 through HB 2594.

i. 2003 c687 §8 (HB 2594)

a. Language

221.359. (1) Except as provided in subsection [(2)] **(3)** of this section, whenever a person is convicted in municipal court of any city of any offense defined and made punishable by any city charter or ordinance, such person shall have the same right of appeal to the circuit court within whose jurisdiction the city has its seat of city government as now obtains from a conviction from justice courts. The appeal shall be taken and perfected in the manner provided by law for taking appeals from justice courts, except that in appeals taken under this section, ORS 221.360, 221.380, or 221.390:

- (a) The notice thereof shall be served upon the city attorney;
- (b) When the notice of appeal has been filed with the court from which the appeal is being taken, the appellate court shall have jurisdiction of the cause. Failure to serve a notice of appeal on the appropriate attorney shall not preclude jurisdiction in the appellate court; and
- (c) No undertaking providing for the payment of costs and disbursements shall be required.

(2) Except as provided in subsection (3) of this section, in a prosecution of any offense defined and made punishable by any city charter or ordinance, a plaintiff may appeal to the circuit court within whose jurisdiction the city has its legal situs and maintains its seat of city government in the manner provided by ORS 157.020 (2) for taking appeals from justice courts.

[(2)] **(3)** The provisions of this section apply only to municipal courts that have not become courts of record under ORS 221.342. Appeals of criminal judgments in municipal courts that have become courts of record under ORS 221.342 shall be as provided in ORS chapter 138 for appeals from judgments of circuit courts.

Section 9: The amendments to ORS 221.359 by section 8 of this 2003 Act apply only to prosecutions commenced on or after the effective date of this 2003 Act.

b. Testimony

There was no relevant discussion pertaining to appeals rights.

C. ORS 221.350

As the original statute, ORS 221.350 was enacted in the early 1900s. It was first amended in 1985 (HB 2097), with subsequent amendments in 1989 (HB 2125) and 1995 (HB 2625).

i. 1985 c342 §16 (HB 2097)

a. Language

221.350. Whenever any person is convicted in the municipal court of any city of any offense defined and made punishable by any city charter or ordinance, *[unless the charter of the city prohibits appeals from such court,]* such person shall have the same right of appeal to the **district court, or if there is no district court, to the** circuit court, within whose jurisdiction the city has its legal situs and maintains its seat of government as now obtains from a conviction from courts of justice of the peace. The appeal shall be taken and perfected in the manner provided by law for taking appeals from justice courts.

b. Testimony

There was debate between the House and Senate about the extent of expansion for appeal rights. Within the House Committee on Judiciary, members went back and forth on whether or not to expand the cases the statute would cover. At first, amendments were added to provide for an appeals process for all traffic and misdemeanor cases, this way the appeals process would be parallel for all cases. However, the Committee later struck these amendments, only restoring the appeal right for traffic infractions. The Senate wanted to expand the bill to provide for appeals of all cases (aside from violations) originating in both justice and municipal courts not of record. These appeals would go to district court. The Senate Judiciary Committee recommended

restoring the amendments for all traffic cases, stating the district court was better equipped to handle traffic cases/appeals. The language was reinstated and adopted.

ii. 1989 c123 §2 (HB 2125)

a. Language

221.350. Whenever any person is convicted in the municipal court of any city of any offense defined and made punishable by any city charter or ordinance, such person shall have the same right of appeal to the district court, or if there is no district court, to the circuit court, within whose jurisdiction the city has its legal situs and maintains its seat of government as now obtains from a conviction from courts of justice of the peace. The appeal shall be taken and perfected in the manner provided by law for taking appeals from justice courts[.], **except that in appeals taken under this section, ORS 221.360, 221.380 or 221.390:**

(1) The notice thereof shall be served upon the city attorney;

(2) When the notice of appeal has been filed with the court from which the appeal is being taken, the appellate court shall have jurisdiction of the cause. Failure to serve a notice of appeal on the appropriate attorney shall not preclude jurisdiction in the appellate court; and

(3) No undertaking providing for the payment of costs and disbursements shall be required.

b. Testimony

Testimony and notes conclude that this language was added to ORS 221.350 as a reaction to a court case (*City of Pendleton v. Martin*, 64 Or. App. 181 (1980)) where an appeal was dismissed because the appellant served the city attorney rather than the district attorney. There was no other relevant discussion pertaining to appeals rights.

iii. 1995 c658 §98 (HB 2625)

a. Language

221.350. Whenever any person is convicted in the municipal court of any city of any offense defined and made punishable by any city charter or ordinance, such person shall have the same right of appeal to the *[district] circuit* court[, or if there is no district court, to the circuit court,] within whose jurisdiction the city has its legal situs and maintains its seat of government as now obtains from a conviction from courts of justice of the peace. The appeal shall be taken and perfected in the manner provided by law for taking appeals from justice courts, except that in appeals taken under this section, ORS 221.360, 221.380 or 221.390:

(1) The notice thereof shall be served upon the city attorney;

(2) When the notice of appeal has been filed with the court from which the appeal is being taken, the appellate court shall have jurisdiction of the cause. Failure to serve a notice of appeal on the appropriate attorney shall not preclude jurisdiction in the appellate court; and

(3) No undertaking providing for the payment of costs and disbursements shall be required.

b. Testimony

There was no relevant discussion pertaining to appeals rights.

ORS 221.389(6)

A. ORS 221.360

ORS 221.360 was enacted in 1953 and was amended only twice: first in 1969 (HB 1195) and a second time in 1985 (HB 2097).

i. 1969 c198 §78 (HB 1195)

a. Language

221.360. In all cases involving the constitutionality of the charter provision or ordinance under which the conviction was obtained as indicated in ORS 221.350, such person shall have the right to appeal to the circuit court in the manner provided in ORS 221.350, regardless of any charter provision or ordinance prohibiting appeals from municipal court because of the amount of the penalty or otherwise. An appeal may likewise be taken in such cases from the judgment or final order of the circuit court to the ~~[Supreme Court]~~ *Court of Appeals* in the same manner as other appeals are taken from the circuit court to the ~~[Supreme Court]~~ *Court of Appeals* in other criminal cases. Where the right to appeal in such cases depends upon there being involved an issue of constitutionality of the charter provision or ordinance, the decision of the appellate court shall be upon such constitutional issue only.

b. Testimony

There was no relevant discussion pertaining to appeals rights.

ii. 1985 c342 §17 (HB 2097)

a. Language

221.360. In all cases involving the constitutionality of the charter provision or ordinance under which the conviction was obtained as indicated in ORS 221.350, such person shall have the right to appeal to the **district court or** circuit court in the manner provided in ORS 221.350, regardless of any charter provision or ordinance prohibiting appeals from municipal court because of the amount of the penalty or otherwise. An appeal may likewise be taken in such cases from the judgment or final order of the **district court or** circuit court to the Court of Appeals in the same manner as other appeals are taken from the **district court or** circuit court to the Court of Appeals in other criminal cases. Where the right to appeal in such cases depends upon there being involved an issue of constitutionality of the charter provision or ordinance, the decision of the appellate court shall be upon such constitutional issue only.

b. Testimony

There was no relevant discussion pertaining to appeals rights.

