

2020 Elected Essentials Workshops

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citycounty insurance services
cisoregon.org



Elected Essentials 2020

Agenda

Live Q&A with the speakers will follow each topic.

| Time | Topic | Speaker |
|-------------------------|---|---|
| 8:30 a.m. – 8:35 a.m. | Introductory Remarks | Andrew Over, Regional Market Vice President, Regence BlueCross BlueShield of Oregon; Angela Dowling, President, Regence BlueCross BlueShield of Oregon; and Patrick Priest, Executive Director, CIS |
| 8:35 a.m. – 10:10 a.m. | <u>Roles/Authority/High Functioning Councils</u> | Patty Mulvihill, LOC General Counsel; and LOC Board Member |
| 10:10 a.m. – 11:00 a.m. | <u>Public Records</u> | Patty Mulvihill, LOC General Counsel |
| 11:00 a.m. – 11:15 a.m. | Break | - |
| 11:15 a.m. – 12:30 p.m. | <u>Ethics</u> | Jayme Hafner, LOC Assistant General Counsel |
| 12:30 p.m. – 1:00 p.m. | Lunch Break | - |
| 1:00 p.m. – 2:20 p.m. | <u>Public Meetings</u> | Patty Mulvihill, LOC General Counsel |
| 2:20 p.m. – 3:30 p.m. | <u>Legal Powers & Impediments Affecting Elected Officials</u> | Kirk Mylander, CIS General Counsel |



Resources and Information

What is the LOC

The LOC is the trusted, go-to resource that helps Oregon city staff and elected leaders serve their cities well and speak with one voice.

We are here to provide cities what they need to build thriving communities, through advocacy, training and information. Created in 1925 through an intergovernmental agreement of incorporated cities, the LOC is essentially an extended department of all 241 Oregon cities.

[LOC Board of Directors](#)

[LOC Staff](#)

[Constitution, Bylaws and other Governing Documents](#)

What Do We Do?

The LOC provides advocacy, training and information to empower Oregon cities to build vibrant, resilient communities.

Advocacy

The LOC speaks with one voice for all cities in Oregon to preserve home rule.

The LOC advocates for Oregon's 241 cities and keeps LOC members apprised of the activities of the Oregon Legislature, state boards, commissions and agencies. We also monitor key issues at the federal level and file *amicus* briefs to ensure city perspectives are represented in state and federal courts.

Learn more about [LOC's legislative advocacy](#):

- [Legislative priorities](#) for the 2021 session
- Status of [current and past legislation](#)
- [Legislative policy committees](#) that help develop LOC's priorities

Learn more about [LOC's legal advocacy](#).

Training

Sharing our knowledge to strengthen our cities.

The LOC provides training to both elected city officials and city staff on a variety of core and specialized topics. Workshops and conferences are scheduled throughout the year in a variety of locations across the state and many are free of charge to LOC members.

- [Training opportunities](#) on a broad range of municipal topics
- [LOC Annual Conference](#) is the largest municipal gathering each year in Oregon, bringing city officials together to network and learn about emerging issues from leading experts
- [Small Cities Program](#) includes quarterly meetings in 12 regions around the state

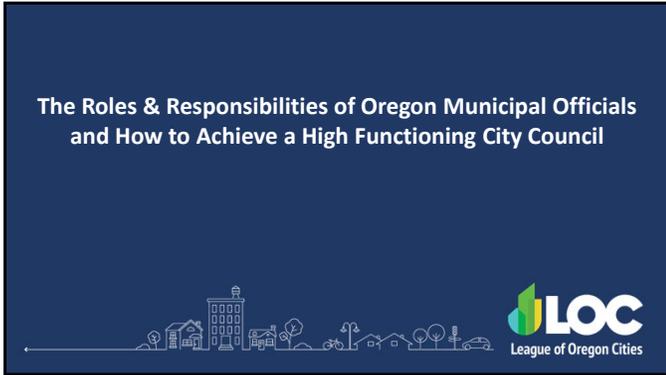
Information

The LOC is your first stop for all things city.

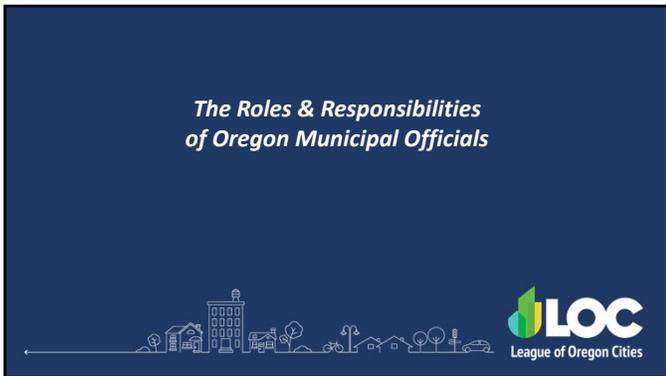
We offer a wide variety of resources to help municipal officials, both elected and appointed, support their cities effectively and legally.

- The [Oregon Municipal Handbook](#) is a comprehensive resource providing city officials an understanding of the purpose, structure, authority and nuances of municipal governance in Oregon.
- [Reference Library](#) includes model ordinances, guidebooks, FAQs and white papers
- [Topics A-Z](#) is a comprehensive collection of information categorized into fundamental city governance topics
- [Legal and technical assistance](#) on municipal matters ranging from city operations to policy development
- [Municipal research and reports](#) focusing on current issues and trends facing local government
- [City Directory](#) of contact information for city halls, including city officials (mayors, councilors, city managers and department heads)
- [Local Focus magazine](#) is published quarterly and includes articles on topics and trends important to cities.
- The [LOC Bulletin](#) is weekly e-newsletter includes the latest legislative happenings, training opportunities, statewide news and more.
- [City Focus](#) podcast features discussions on policy, legal issues and advocacy matters in a relaxed, conversational style designed to inform and educate.

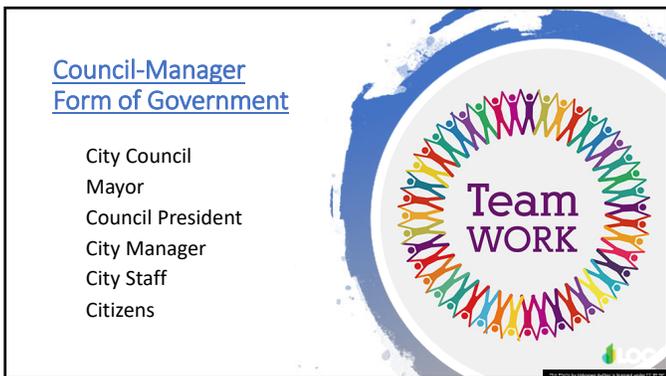
Visit www.orcities.org for the latest resources and information.



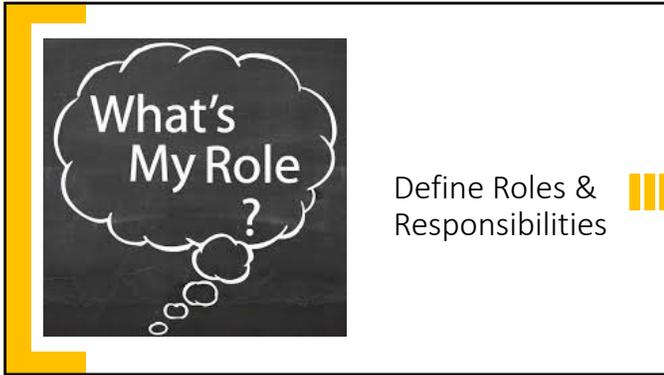
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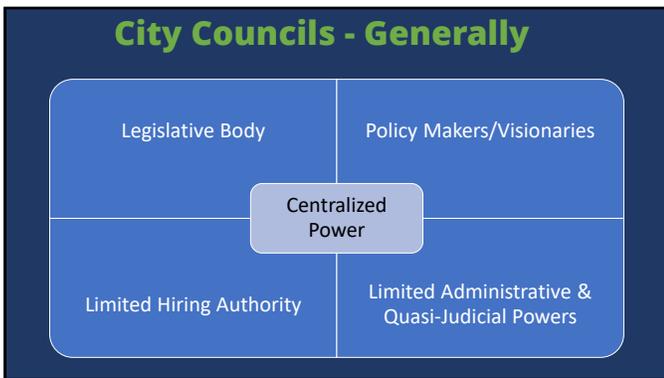
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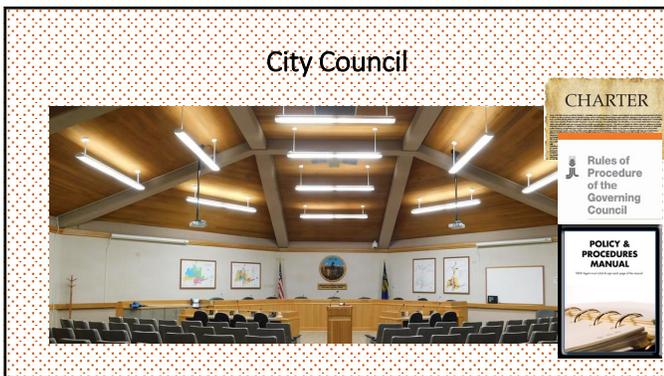
What's My Role?

Define Roles & Responsibilities

4



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City Council

CHARTER

Rules of Procedure of the Governing Council

POLICY & PROCEDURES MANUAL

6

Mayors Generally



- Public Face of Community**
 - Represent city at events
 - Council spokesperson
- Presiding Officer**
 - Keeps order
 - Sets agendas
 - Appoints committee members
 - Signs documents
- Chief Facilitator**
 - Facilitates discussions between councilors
 - Facilitates dialogue between council and manager

7

Council President - Generally



- Acts as the Mayor when the Mayor is absent.
- In some cities, the Council President is elected to represent and be the head of the Councilors.
- Depending on charter or council rules, some Council Presidents retain authority to vote when acting as Mayor.

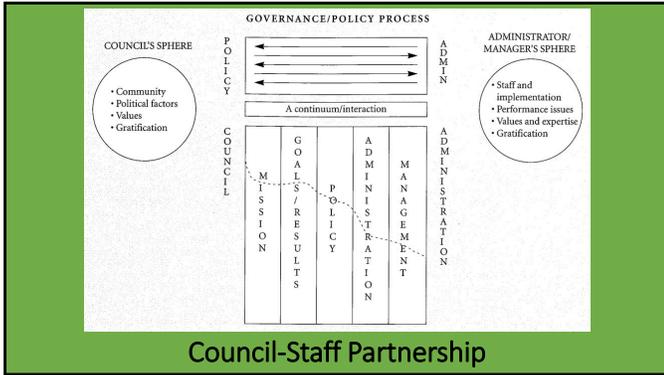
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City Managers Generally

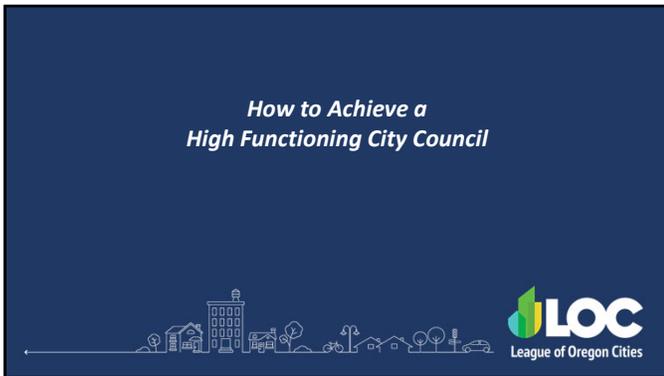


- Chief Executive Officer of the City**
 - Manages the city and its personnel
 - Recruits, hires, supervises and terminates city employees
 - Prepares the budget (or oversees its preparation) for the council's consideration
 - Responsible for ensuring the council's vision and strategic plans are brought to fruition
- Chief Advisor to the City Council**
 - Provides the council with objective information about local operations
 - Provides reasoned analysis and assessments of the benefits and consequences of city council actions
 - Makes policy recommendations for the council to consider

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Group vs. Team

| <i>Group</i> | <i>Team</i> |
|--|--|
| <ul style="list-style-type: none">• Consists of people who are independent of each other and each member has a different set of tasks.• Because members work individually, their work product is also valued independently. | <ul style="list-style-type: none">• Consists of people and tasks that are interdependent and rely on each other.• People are dependent on one another, share responsibilities and are judged as a collective. |



14



Building a
Team

15

Principles of a Team

- Shared Understanding
- Shared Ownership
- Everyone Contributes
- Room for Everyone to Express Ideas & Opinions
- No Person Feels Threatened by Conflict
- Atmosphere of Trust & Encouragement
- Participative Decision-Making

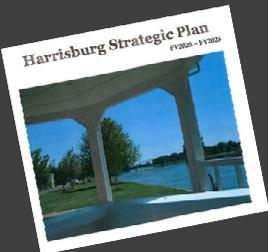


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Habits of Highly
Effective Councils
(a.k.a. Teams)

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Harrisburg Strategic Plan
FY2009 - FY2022

Strategic Goals
Our Strategic Plan has five goals, which reflect the City's Mission and Vision.

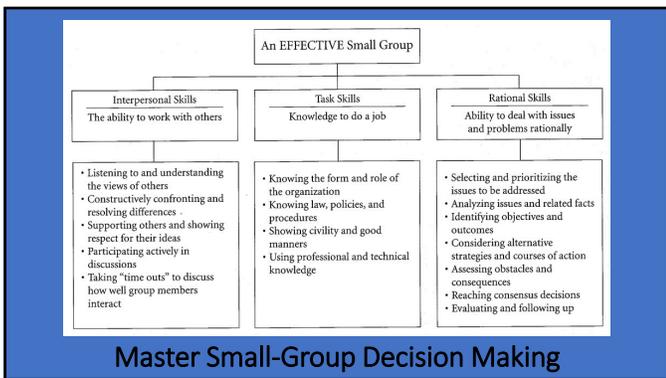
- Keep Citizens Safe
- Provide Cooperative Shared Leadership Involving Council, Staff and Community
- Encourage Economic Opportunities
- Facilitate Sustainable, Manageable Growth
- Maintain, Operate and Expand our Infrastructure to Meet Community Needs

Think & Act Strategically

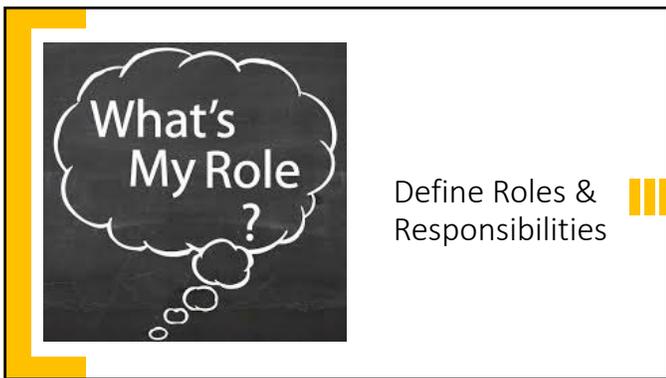
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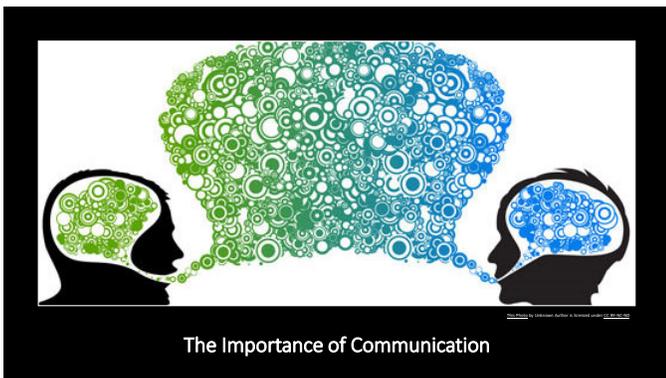
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| Debate | Dialogue |
|--|---|
| <p>Assumes there is one right answer (and you have it)</p> <p>Style is combative, attempting to prove the "other side" wrong</p> <p>Listens to find flaws and counter argue</p> <p>Critiques only the other position</p> <p>Defends your own views at all costs</p> <p>Encourages searches for differences</p> <p>Creates a winner/loser & discourages further conversation</p> <p>Involves no focus on feelings, often actively seeking to belittle or offend</p> | <ul style="list-style-type: none">• Assumes others have pieces of an answer & you can craft a solution together• Style is collaborative, seeks to find common understanding• Listens to understand• Critiques all views, including your own• Allows others' thinking to improve yours• Encourages search for basic agreement• Creates an open end, leaving the topic open for further discussion• Involves a real concern for the other, doesn't actively seek to alienate or offend |

28

7 Ways to Improve Communication During a Conflict

1. Focus on Behaviors and not your Interpretations
2. Avoid the use of "Always" and "Never"
3. Use "I" Statements
4. Say what you Want and not what you Don't Want
5. Beware of Non-Verbal messages
6. Apologize for YOUR contribution
7. Give others a chance to speak



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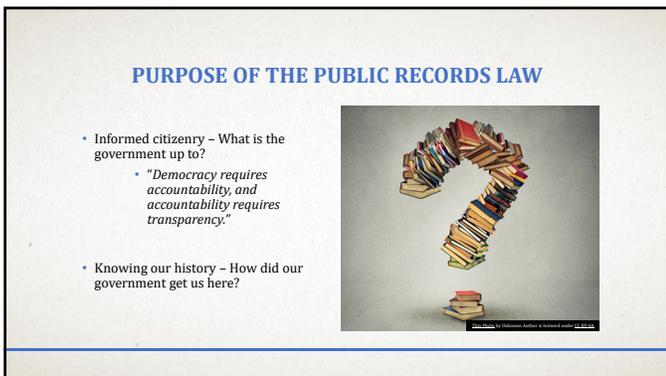
League of Oregon Cities
Call: (503) 588-6550 or (812) 360-2106
Email pmulvihill@orcities.org



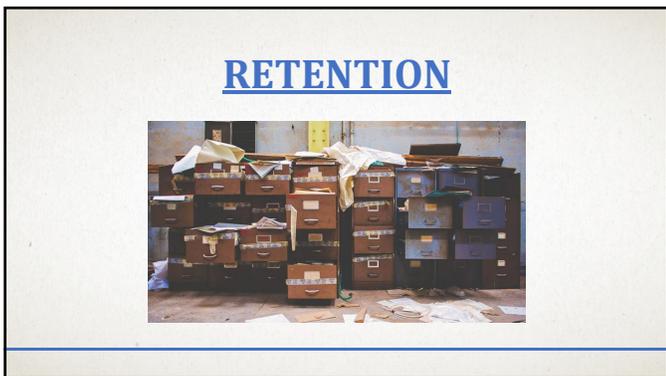
The logo for the League of Oregon Cities (LOC) is located in the bottom right corner of the blue box. It features the letters 'LOC' in a bold, sans-serif font, with a green and yellow graphic element to the left. Below the logo, the text 'League of Oregon Cities' is written in a smaller font. Along the bottom edge of the blue box, there is a white line-art illustration of various city-related icons, including a school, a house, a factory, a bicycle, a car, and a person.



1



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3

WHAT IS A PUBLIC RECORD?



- A public record is any information that:
 - Is prepared, owned, used or retained by the city;
 - Relates to any activity, transaction or function of the city; and
 - Is necessary to satisfy the fiscal, legal, administrative or historical policies, requirements or needs of the city.

4

WHAT IS NOT A PUBLIC RECORD?



- Examples include:
 - Extra copies of a document, preserved only for convenience of reference;
 - A stack of publications;
 - Messages on voice mail or on other telephone message storage and retrieval systems;
 - Spoken communication that is not recorded.

5

CITY'S OBLIGATION TO RETAIN ITS RECORDS?

Each city is required to maintain all of its public records, or accurate copies thereof, in accordance with the retention scheduled established by the State Archivist.



6

TAMPERING WITH OR DESTROYING PUBLIC RECORDS

It is a crime to destroy, mutilate, conceal, remove, make a false entry in, or falsely alter any public record.



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7

RECORDS CUSTODIAN

Each city is required to designate a records officer to coordinate its records management program and to serve as a liaison with the State Archivist.



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8

STATE ARCHIVIST - THERE TO HELP

Oregon Secretary of State - Archives Division

800 Summer St. NE
Salem OR 97310
503-373-0701
Fax 503-378-4118

sos.oregon.gov

9

DISCLOSURE



10

WHAT IS A PUBLIC RECORD?

A public record is any writing that:

- Contains information relating to the conduct of the city's business;
- Which is prepared, owned, used or retained by the city;
- Regardless of the writing's physical form or characteristics.

11

WHAT IS NOT A PUBLIC RECORD?

- A public record does **not** include any writing that:
 - Does not relate to the conduct of the city's business; and
 - That is contained on a privately owned computer.



12



RIGHT TO INSPECT

Every person has a **RIGHT** to inspect any public record of the city, except as expressed provided by 192.338, 192.345 and 192.355.

13

CERTAIN RECORDS EXEMPT

| ORS 192.345 - CONDITIONALLY EXEMPT | ORS 192.355 - PARTICULARIZED FINDING |
|--|--|
| <ul style="list-style-type: none"> Records are conditionally exempt - exempt unless the public interest requires disclosure in a particular incident. 40 Potential Exemptions - Not all are applicable to cities. "The policy underlying the conditional exemption statutes is that disclosure decisions should be based on balancing those public interests that favor disclosure of governmental records against those public interests that favor governmental confidentiality, with the presumption always being in favor of disclosure." | <ul style="list-style-type: none"> Does not contain the condition that records be withheld "unless the public interest requires" like ORS 192.345 does. 42 Potential Exemptions - Not all are applicable to cities. Each exemption expressly requires a particularized weighing of the public interest in disclosure. |

14

VOLUNTARY DISCLOSURE BY THE CITY

- Cities can generally choose to disclose records that are considered conditionally exempt.
- The Attorney General has determined that under certain circumstances, a city is allowed to release a record to one person, and not the rest of the public.
 - "[W]here limited disclosure of a public record does not thwart the policy supporting the exemption, the public body does not thereby waive its prerogative not to disclose the record to others."



15

DEADLINES FOR RESPONDING TO RECORDS REQUESTS

- Cities have 5 days to acknowledge receipt of a public records request.
- Cities have 10 days from the date required to acknowledge receipt to fulfill the request or provide a written estimation of how long it will take to fulfill the request.



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16

CHALLENGES TO DENIED REQUESTS FOR PUBLIC RECORDS



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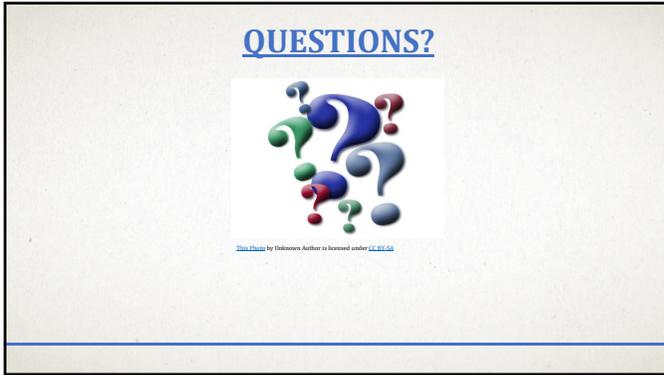
- If the city or an **appointed city official** denies a request for public records, an appeal may be filed with the county's district attorney.
- If an elected official for the city denies a request for public records, an appeal may be filed with:
 - Marion County Circuit Court; or
 - The Circuit Court wherein the elected official is located.

17

RESOURCES

- [The Oregon Attorney General's Public Records Manual;](#)
- [The Oregon Secretary of State's Retention Schedule for Cities;](#)
- The League of Oregon Cities' Policy Manual on the Use, Retention, Ownership, Disclosure of Public Records; and
- [The League of Oregon Cities' FAQ on Assessing Fees for the Production of Public Records;](#)

18



19

Ethics Awareness

Understanding Your Legal Obligations



League of Oregon Cities

1

Goals

- Learn about the law
- Who is in charge
- Jurisdiction
- Topics:
 - Gifts
 - Prohibited Use of Office
 - Conflicts of Interest
 - Nepotism
 - Outside Employment
 - Verified Annual Statements of Economic Interest



League of Oregon Cities

2

Oregon Government Ethics Law

Today's focus:
Oregon Revised Statute chapter 244 &
Administrative Rule chapter 199



All public officials in Oregon must comply with the Oregon Government Ethics Law.

3

“Public Official”

- “[A]ny person * * * serving the State of Oregon or any of its political subdivisions or any other public body, as an elected official, appointed official, employee or agent, irrespective of whether the person is compensated for the service.”

TLD
If you are a city elected official, staff member, employee, or volunteer → you are a public official.

4

Who Administers the Ethics Law?

Oregon Government Ethics Commission

- Review and Investigation
- Resolution
- Advice

<https://www.oregon.gov/ogec/public-records/Pages/Advice-and-Opinions.aspx>

5

What is NOT Under the Jurisdiction of the OGEC



- Demeanor
- Misinformation
- Financial management
- Campaign finance
- Moral compass

The OGEC only oversees violations of the **state** ethics laws.

6

Gifts



7

What is a Gift?



TL;DR
If you received an item or discount that wasn't available to members of the general public under the same terms and conditions, it's probably a gift.

"[S]omething of economic value given to a public official, a candidate or a relative or member of the household of the public official or candidate:

- Without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others on the same terms and conditions; or
- For valuable consideration less than that required from others who are not public officials or candidates."

8

"Relative"

- Spouse;
- Child or child-in-law;
- Parents and stepparents
- Siblings and stepsiblings;
- Same members of the official's in-laws (spouse's child, spouse's parent, spouse's sibling);
- Anyone for whom the public official has a legal support obligation;
- Anyone receiving benefits of the public official's public employment; and/or
- Anyone from whom the candidate receives benefits arising from that individual's employment.

Definition



9

Limitations on Gifts

A public official, relative or household member may not:

- Solicit or receive any gift;
- With a value exceeding \$50;
- From any single source; and
- Reasonably known to have a legislative or administrative interest.

10

“Legislative or Administrative Interest”

. “[A]n economic interest, distinct from that of the general public, in:

Any matter subject to the decision or vote of the public official acting in the public official’s capacity as a public official; or

Any matter that would be subject to the decision or vote of a candidate who, if elected, would be acting in the capacity of a public official.



11

What are Not Gifts?

- Gifts from relatives or household members.
- Admission provided to or the cost of food and beverage consumed by the public official, relative, household member, or staff member accompanying the official at a reception, meal or meeting while representing the city.
- Reasonable food, travel or lodging expenses provided to a public official, relative, household member, or staff member of a public official accompanying the official while official is representing the city on an officially sanctioned trade promotion or fact-finding mission or in officially designated negotiations or economic development activities where the receipt of expenses is approved in advance.
- Food or beverage consumed by the public official or candidate at a reception where the food or beverage is provided as an incidental part of the reception and no cost is placed on the food or beverage.

12

What are Not Gifts?

- Entertainment provided to the public official, candidate, or relative or household member that is incidental to the main purpose of the event.
- Entertainment provided to the public official, relative, or household member where the public official is acting in an official capacity while representing the city for a ceremonial purpose.
- Reasonable expenses paid by a unit of government, a membership organization in which a public body pays membership dues, or a not-for-profit 501(3)(c) corporation for attendance at a convention, fact-finding mission or trip, conference or other meeting if the public official is delivering a speech, making a presentation, participating on a panel or representing the city.
- Expenses provided by one public official to another for travel inside Oregon to or from an event that bears a relationship to the receiving official's office and at which the official participates in an official capacity.
- Informational or program material, publications or subscriptions related to the recipient's performance of official duties.

13

What are Not Gifts?

- Waiver or discount of registration expenses or materials provided at a continuing education event that the public official or candidate may attend to satisfy a professional licensing requirement.
- Unsolicited tokens or awards in the form of a plaque, trophy, desk item, wall memento or similar item, with a resale value reasonably expected to be less than \$25.
- Anything of economic value offered, solicited or received by the public official, candidate, relative or household member as part of the usual and customary practice or the official's private capacity that bears no relationship to the public official's or candidate's official position or public office.
- Contributions to a legal expense trust fund established for the benefit of the public official.

14

What to Ask Yourself Before Accepting a Gift

-  Is it a "gift" within the definition under ORS 244.020?
-  Do any exceptions apply?
-  Does the source have a legislative or administrative interest in my position?
-  Is the value greater than \$50?

15



Gift Hypothetical #1

A mayor's residence recently suffered property damage due to flooding. Members of the public have set up a donation drive for the mayor.

May the mayor accept the donations?

16



Gift Hypothetical #2

A nationwide cell phone carrier is offering free cell service to first responders for 10 years. The promotion will only be available to active duty first responders in certain positions within state, local, or tribal government public safety agencies which contract agency wide with the carrier.

May a city firefighter take advantage of the promotion?

17



Gift Hypothetical #3

You are a city staff member and it's your manager's birthday. The two of you have known each other for years and are close friends. You decide to purchase a nice birthday present.

May your manager accept your gift?

18

Prohibited Use of Office



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Prohibited Use of Office - The "But For" Prohibition

Public officials cannot use their public positions for:

- Financial Gain or Avoidance
- Promise of Future Employment
- Use of Confidential Information Gained Through Public Office
- Representation Before the Governing Body for Fee

ASK: But for my position as a public official, would I have been provided with or offered the same opportunity?

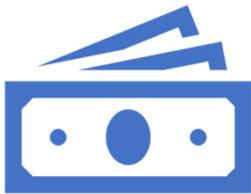
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Financial Gain or Avoidance

Public Officials are prohibited from using or attempting to use their official position or office to:

- Obtain financial gain, or
- Avoid financial detriment.

• For themselves, a relative or a household member



No matter how minimal

21

Gifts as an Exception to Use of Office Prohibition

If a public official or relative accepts a lawful gift, or a lawful financial benefit that qualifies as an exception to the definition of a gift, ORS 244.040(1) does not prohibit the acceptance.

“Unlike gifts, which come from outside sources, [the prohibited use of office provision] focuses on the public official’s own action.”

22

Exceptions – What is NOT Financial Gain

-  Official compensation package.
-  **Honorarium** related to the public official’s position with a max value of \$50 or related to a private occupation/avocation/expertise.
-  Reimbursement of approved expenses.
-  Unsolicited awards for professional achievement.
-  Contributions to a legal expense trust fund.

23

Definition “Honorarium”



- Payment or something of economic value given in exchange for services upon which custom or propriety prevents the setting of a price.
- Services include: speeches or other services rendered in connection with an event.

- The offer of a payment or something of economic value cannot be arranged or agreed to before the public official provides service.
- The services provided by the public official must precede the offer of payment or something of economic value.
- The payment or something of economic value must be delivered in return for and following the delivery of services.

24



Financial Gain Hypothetical #1

A public works employee stores her parents' motor home in an otherwise empty city storage facility typically used for storing heavy equipment. The storage facility is only accessible to city staff.

May the employee do this?

25



Financial Gain Hypothetical #2

A volunteer firefighter is preparing the exterior of his house for painting. The fire department has a power washer available to loan out to the general public.

May the firefighter borrow the power washer?

26



Financial Gain Hypothetical #3

Two city councilors would like to attend a local event called the City Community Leadership Awards and Auction. The event recognizes and honors community leaders who demonstrate leadership in volunteerism, business, and educational achievement. The event includes a sit-down dinner at an upscale event center.

May the councilors' request the city pay for their tickets to attend the event?

27

Promise of Future Employment



A public official may not solicit or receive, either directly or indirectly, and a person may not offer or give to any public official any pledge or promise of future employment, based on any understanding that the vote, official action or judgment of the public official would be influenced by the pledge or promise.

28

Use of Confidential Information Gained Through Public Office



- A public official may not attempt to further their personal gain through the use of confidential information gained in the course of or by reason of holding their position or the activities of the public official.
- This includes any attempt after the public official ceases to be a public official.

29

Representing a Client Before a Governing Body For a Fee

A person may not attempt to represent or represent a client for a fee before the governing body of the public body of which the person is a member. This prohibition does not apply to the person's employer, business partner or other associate.

30



Representing a Client For a Fee Hypothetical

A city councilor would like to engage in a private business endeavor wherein the councilor would help landowners and developers plan their developments by assembling the teams of experts needed for a project, such as lawyers, architects, civil engineers, surveyors; preparing the application required to be submitted to the appropriate land use body; and representing the owner where authorized and necessary.

The councilor proposes to represent clients before the Planning Commission; however, if any decision is to be made by the City Council, either quasi-judicial or legislative in nature, where the councilor may appear to have a personal interest the councilor will step down and leave the Council chambers.

Can the councilor represent a firm before the Planning Commission?

31

Conflicts of Interest



32

What is a Conflict of Interest?

Participation in an official action that *would or could* result in a financial benefit to the public official, a relative or a business in which either are associated.

- **Potential conflict:** when the action taken by the public official *could* have a financial impact on that official, relative or business.
- **Actual conflict:** when the action taken by the public official *would* have a financial impact on that official, relative or business.

33

Potential vs. Actual Conflicts of Interest



Potential Conflicts of Interest

The public official must announce or disclose the conflict.



Actual Conflicts of Interest

The public official must announce or disclose the conflict and recuse themselves.

34

How to Disclose a Conflict as an Elected Official



- Publicly announce the nature of the conflict.
- The notice must be recorded in the official records of the public body.
- An announcement of the conflict must be made at each meeting or on each occasion the issue is discussed or debated.
- This includes when the official is an appointed member of a board or commission.

35

How to Disclose a Conflict as a Public Employee



- Disclose the conflict in writing to the appointing or employing authority.
- Upon receipt of a request, the appointing authority must designate an alternate to dispose of the matter or direct the official to dispose of the matter in a manner specified by the appointing authority.

36

Exceptions:

- The conflict arises from a membership or interest held in a particular business, industry, occupation, or other class that was a prerequisite for holding the public position.
- The financial impact of the official action would impact the public official, relative or business to the same degree as other members of an identifiable group or class.*
- The conflict arises from a membership in or membership on the board of directors of a nonprofit section 501(c) corporation.

37

Rule of Necessity



- An actual conflict of interest exists but the public official's vote is necessary to meet the minimum number of votes required for official action.
- The public official may vote out of necessity.
- Does not apply when there are insufficient votes because of a member's absence.
- **Only applies when a quorum is lacking, solely because the member must refrain due to the conflict.**
- Must still disclose and refrain from any discussion on the matter.

38

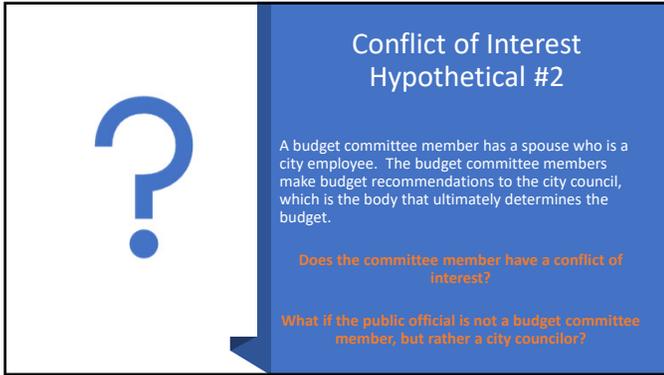
Conflict of Interest Hypothetical #1



In her private capacity, a city councilor is employed as the executive director of a 501(c) nonprofit economic development organization that advocated for the healthy economic development of the southern Oregon region and provides its members with a common voice on shared issues. The city council is considering whether to allocate and disburse funds to the organization such as approving the city's membership fees to the organization and authorizing city funds for staff and councilors to attend the organization's events and conferences.

May the councilor take any action, decision or vote on whether to allocate or disburse funds to the organization?

39



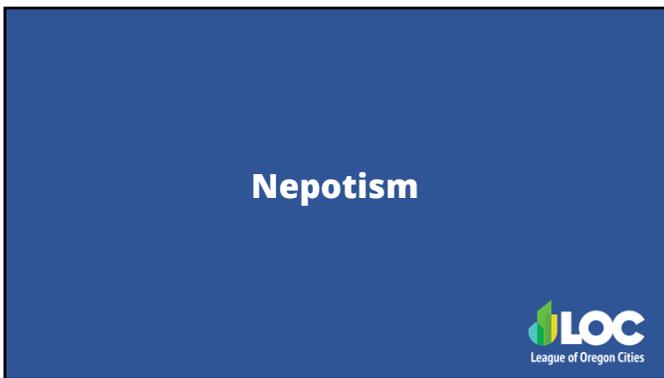
Conflict of Interest Hypothetical #2

A budget committee member has a spouse who is a city employee. The budget committee members make budget recommendations to the city council, which is the body that ultimately determines the budget.

Does the committee member have a conflict of interest?

What if the public official is not a budget committee member, but rather a city councilor?

40

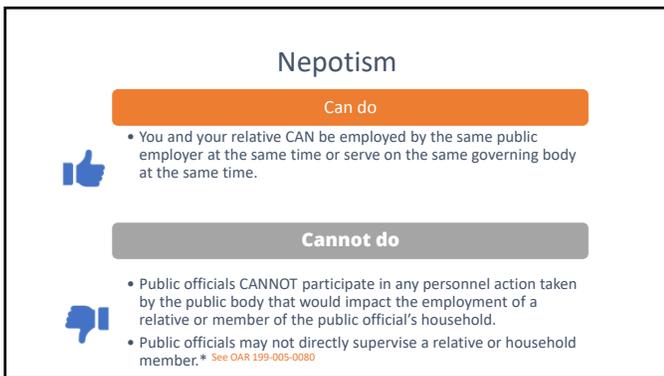


Nepotism



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41



Nepotism

Can do

- You and your relative CAN be employed by the same public employer at the same time or serve on the same governing body at the same time.

Cannot do

- Public officials CANNOT participate in any personnel action taken by the public body that would impact the employment of a relative or member of the public official's household.
- Public officials may not directly supervise a relative or household member.* See OAR 199-005-0080

42

Private Employment by Public Officials



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43

Guidelines for Private Employment

- Public officials are not to engage in private business activities on their city's time.
- A city's supplies, facilities, equipment, employees, records or any other public resources are not to be used to engage in private business interests.
- The position as a public official is not to be used to take official action that could have a financial impact on a private business with which the public official, a relative or member of public official's household are associated.
- Confidential information gained as a public official is not to be used to obtain a financial benefit for the public official, a relative or member of the public official's household or a business with which any are associated.
- Watch for conflicts of interest.



44

Statement of Economic Interest



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45

Annual Filing Requirement

- The SEI must be filed every year by all elected officials, the city manager (or principal administrator), municipal judges and planning commission members.
 - This is not an exclusive list! See ORS 244.050.
- Completed online.
- April 15 deadline.

46

What Does the SEI Disclose?

- Business interests;
- Sources of income;
- Ownership interests in real property other than the principal residence;
- Honorarium received in excess of \$15 in value;
- Names of compensated lobbyists with associated business interests;
- Name of entities in which the official received over \$50 to participate in conventions fact-finding missions, trips, negotiations, economic development activities or other meetings.

Complete list in ORS 244.060 and 244.070.

47

What are the Penalties for Not Timely Filing SEI?

- Late filing fee of \$10 for each of the first 14 days after April 15th.
- Late filing fee of \$50 for each day after the first 14 days until the maximum penalty of \$5,000 is reached.



48

Resources

Oregon Government Ethics Commission

Website: www.oregon.gov/OGEC

Email: ogec.mail@oregon.gov

Phone: 503-378-5105

"A Guide for Public Officials" <https://www.oregon.gov/ogec/Pages/Guide-for-Public-Officials.aspx>

Your City Attorney.

The League of Oregon Cities.

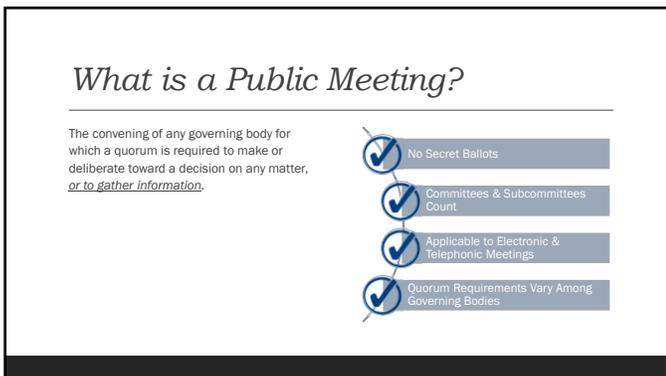




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2



3

What are the Legal Requirements?

- 1. Notice**
 - Reasonably calculated to give actual notice to interested person and the media
 - Must include a list of the principal subjects to be considered
 - Must give at least 24 hours notice UNDER STATE LAW (unless it's an emergency)
- 2. Be held within the city's jurisdiction**
- 3. Be held in an accessible location**
 - Accommodations must be made for all types of disabilities
 - The location of the meeting cannot discriminate against persons
- 4. Minutes of the meeting must be taken**
 - May written, audio, digital or video
 - Must include all members present and all motions made and their outcomes
 - The votes of each member
 - Substance of any discussion & reference to any document discussed



4

Serial Meetings



"Daisy chain" by Ben Bowdler is licensed under CC BY-NC-ND 2.0.

5

What is an Executive Session?

Any meeting, or part of any meeting, of a city public body which closed to certain persons for deliberation on certain matters permitted by law.

- Notice Must List Statutory Authority for the Meeting
- The News Media Has the Right to be Present
- Final Decisions are Prohibited
- All the Legal Requirements Applicable to a Regular Meeting Still Apply

6

Reasons to Hold an Executive Session

To consider the initial employment of a public officer, employee or staff member, but not to fill a vacancy in an elected office, or on public committees, commissions or advisory groups

- Chief Executive Officers:
1. Position Advertised
 2. Standardized Hiring Procedure Publicly Adopted
 3. Public Provided Opportunity for Input



7

Reasons to Hold an Executive Session

To conduct employee evaluations, if the employee does not request an open hearing.



8

Reasons to Hold an Executive Session



To consider dismissal or discipline of, or to hear complaints or charges brought against a public officer, employee, staff member or individual agent, unless the person requests an open hearing.

9

Reasons to Hold an Executive Session

- To conduct **labor negotiations** or discuss **labor negotiations** with a negotiator.
- To discuss **real estate transactions** with a negotiator.



10

Reasons to Hold an Executive Session



To review **security programs** related to the security of utilities, telecommunications or data transmissions.

11

Reasons to Hold an Executive Session

- To consider **records exempt from public inspection**.
- To consult with your attorney regarding **"current litigation or litigation likely to be filed."**
- To conduct **trade negotiations** where the city is competing with governing bodies in other states.



12

What Happens if we Hold an Executive Session That's Not Allowed?

The Oregon Government Ethics Commission hears complaints and renders decisions about allegations of impermissible executive sessions.



Fines are against individual city officials.

Advise of your city attorney can provide safe harbor.

13

Can the Public Participate in Meetings?



- Oregon's Public Meetings Law requires public attendance, not public participation.
 - Exceptions include land use and budget hearings.
- City's governing documents typically require both public attendance and public participation.
 - Check your charter
 - Check your ordinances
 - Check your rules of procedure

14

Public Comment = Protected Speech

First Amendment to the U.S. Constitution.

- Ensures that "debate on public issues should be uninhibited, robust and wide open."

"Citizens have an enormous First Amendment Interest in directing speech about public issues to those who govern their city."

Article 1, Section 8 of the Oregon Constitution.

- Contest-based restrictions on speech are not permitted.

15

Time, Place & Manner Restrictions



- Dictate the time for public comment.
- Dictate the location where public comment is made.
- Limit the topic of the comment - CAREFUL HERE
- Dictate the length of time for public comment
- All speakers treated EQUALLY.

16

Can We Remove People From Public Meetings?



- You can remove people from public meetings if they are actually disrupting the meeting.
- Offensive conduct that does not disrupt a meeting may be allowed.

17

Can We Arrest People Who Disrupt Public Meetings?

Law enforcement officers can arrest persons who disrupt public meetings if the conduct of the person meets the elements of the crime known as Disorderly Conduct. In Oregon, Disorderly Conduct includes disturbing lawful assemblies like a city council meeting.



18

Can We Suspend People From Attending Future Council Meetings?



Probably Not. Federal courts have consistently held that councils cannot prospectively exclude individuals from public meetings just because they disrupted previous public meetings.

But, if you think the person poses a threat to public safety, you might be able to suspend them from future meetings. Before you do, CALL YOUR ATTORNEY & CIS.

19

Best Practices



20

Establish Procedures

• Establish Council Rules of Procedure, and then make sure everyone on the council, with the staff, and members of the public follow the adopted rules.

• Establish an Agenda-Setting Policy. This assures all members of the Council that they will have the opportunity to get things that matter to them heard.



21

Common Procedures for Public Comment



- *The chair begins the public comment period by reading the Council's rules related to public comment.
- *Utilize sign-in sheets.
- *Council members should listen during public comment, and not engage with the public.
- *If councilors have questions because of information learned during public comment, the Council should direct staff to look into the issue.

22

How Can You Help Your Council Meeting Run Smoothly?

- *Read your packet before the meeting and share any possible concerns or questions with staff before the meeting.
- *Read, regularly review, know and adhere to your Rules of Procedure.
- *Arrive to meetings on time. If you can't attend a meeting, let city manager/mayor know ASAP.
- *Approach every agenda item with the belief that everyone has something to contribute and may have information you do not yet possess.
- *Avoid making assumptions and listen to learn.
- *Focus on the policy being discussed, not the people discussing it.
- *Acknowledge other's reasoning and make sure you explain your own reasoning.
- *Keep cell phones and other distractors of the dais.



23

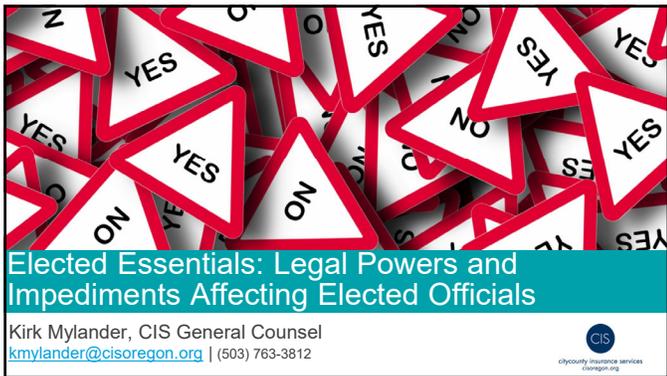
Tips for Virtual Public Meetings

1. Test the technology you're using before the meeting occurs.
2. Arrive early to the meeting in case any technology matters arise.
3. Make sure you have appropriate lighting and sound.
4. Have a policy that all participants should be muted upon arrival - and remain muted unless they have permission from the chair to speak.
5. Remember to remain professional, in your words and your appearance.
6. Remember to be gracious, for most of us, virtual meetings are still new.
7. If you plan to record the meeting, make sure everyone knows that they are being recorded.
8. Don't allow the fact that you are at an in-person meeting to give you permission to do "other work" or "something else" during the meeting. It still deserves your full and undivided attention.
9. If you have the ability, have everyone identify themselves in their profiles.

24



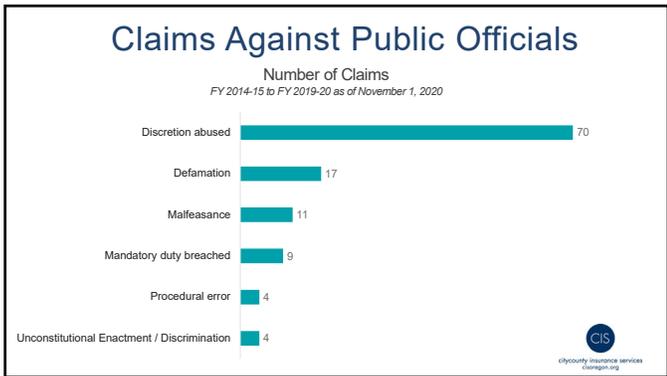
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3



4

Common Claims Against Public Officials

1. Employment decisions: termination, layoff
2. Defamation: (or, explaining how your city manager is a horrible, corrupt person and you had to fire him/her on your first day)
3. Causing a "hostile work environment" for staff: (or, doing the city manager's job instead of yours)
 - Often outside the scope of your authority
4. Failure to provide due process when terminating

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cliamgmt.org

5

Common Claims Against Public Officials

5. Removing disruptive citizens
6. Open meetings laws/Executive Sessions
7. Using office for personal gain
 - Harassing parking enforcement employee
8. Actions relating to land-use and zoning
9. Conflict of interest claims

CIS
citycounty insurance services
cliamgmt.org

6

Coverage for Ethics Charges

CIS provides help to public officials in crafting response to ethics charges

\$7,500 per individual/year

\$15,000 per city/year



7

Common Claims Against Cities

CIVIL RIGHTS

BAD
Employment Cases

WORSE
Law Enforcement Filing Employment Cases

WORST
Law Enforcement Cases



8

“Average” Employment Claim Costs

Employment claim for police = \$114,949

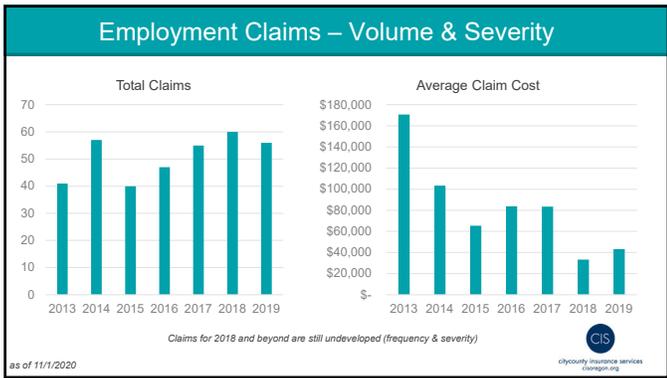
All other employee groups = \$49,900

Legal costs of litigated employment claim = \$74,620

Ten Years (10-11 through 19-20) as of 11/1/2020



9



10

CIS Provides Employment Law Advice

Pre-Loss Goal: Develop a strategy with the member to minimize the likelihood of a claim or lawsuit against the member.

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citycounty insurance services
cismgmt.org

11

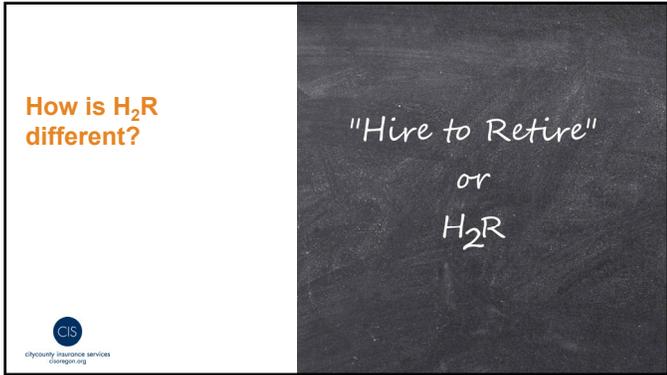
CIS Provides Employment Law Advice

Pre-Loss Strategy:

1. Terminations that Pass Legal Scrutiny
2. Terminations that Appear "Fair"

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cismgmt.org

12



13



14

Pre-Loss/H₂R Saves Money

- No cost for the hundreds of claims that never occur. (1,324 from 2014-16)
- **Lower cost for claims when Pre-Loss is involved (\$26,668 less on average)**

Yet, majority had no Pre-Loss contact (62%)

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denvergov.org

15

In This Together

THERE ARE NO EASY ANSWERS

But using H₂R, along with CIS' Pre-Loss services, is your city's best defense against employment claims.

What Can You Do?
Tell staff you want them to utilize H₂R and PreLoss!



16



ANY QUESTIONS?



17

Additional Resources

GUIDE

CITY HALL



Guide to Executive Sessions

APRIL 2019

Table of Contents

| | |
|---|----|
| Introduction | 3 |
| Disclaimer | 3 |
| Definitions | 4 |
| Location of Executive Sessions | 5 |
| Accommodations for Persons with Disabilities at Executive Sessions..... | 5 |
| Attendance at Executive Sessions by Telephone or Electronic Means..... | 6 |
| Notice Requirements for an Executive Session | 6 |
| Permitted Reasons for an Executive Session | 7 |
| News Organizations | 11 |
| Starting an Executive Session | 12 |
| Final Actions or Final Decisions Prohibited | 12 |
| Minutes..... | 13 |
| Violations and Liability..... | 13 |
| Additional Resources | 14 |
| Conclusion..... | 14 |
| Appendix A - Model Notice of Executive Session | 16 |
| Appendix B – Model Notice of Executive Session..... | 17 |
| Appendix C – Model Notice of Executive Session..... | 18 |
| Appendix D – Model Notice of Executive Session..... | 19 |
| Appendix E – Model Notice of Executive Session | 20 |
| Appendix F – Model Notice of Executive Session | 21 |
| Appendix G – Model Notice of Executive Session..... | 22 |
| Appendix H – Model Notice of Executive Session..... | 23 |
| Appendix I – Model Notice of Executive Session | 24 |
| Appendix J – Model Notice of Executive Session..... | 25 |
| Appendix K – Formal Attorney General Opinion No. 8291..... | 26 |
| Appendix L – League’s Opinion on Media and Executive Sessions | 48 |
| Appendix M – Model Media Policy..... | 51 |
| Appendix N – Sample Script to Announce Start of Executive Session..... | 56 |

Introduction

The policy behind the Oregon public meetings law is that government, including municipal government, requires an informed citizenry to be “aware of the deliberations and decisions of governing bodies and the information upon which such decisions were made.”¹ Within the Oregon public meetings law’s policy statement is an affirmative declaration that a governing body’s decisions “be arrived at openly.”² Executive sessions are the antithesis of the Oregon public meetings law’s policy as an executive session is a meeting of a governing body that “is closed to certain persons for deliberation on certain matters.”³ Because holding an executive session so contravenes the overarching purpose of the Oregon public meetings law, this type of meeting may only be used in limited circumstances, and in most instances members of the media must be allowed to attend.

This “Guide to Executive Sessions” (“guide”) provides a comprehensive review of where, when and how municipal governments may conduct executive sessions. Additionally, the guide summarizes the rights provided to news media as they relate to executive sessions, while also providing a legislative history of why news organizations are given an opportunity to attend executive sessions when the general public is prohibited. Finally, the guide contains various model forms and policies that may be useful for public officials to review in creating their own forms and policies. Any model document provided by the League is intended to be used as a starting point in an individual city’s development of their own documents. Each city is unique and any document or policy so adopted should be individually tailored to meet the city’s unique needs.

Disclaimer

This guide is not intended as a substitute for legal advice. Some of the legal issues highlighted herein are not settled law; a city should consult with its city attorney before choosing a course of action based on how much risk the city is willing to take.

¹ ORS 192.620.

² *Id.*

³ ORS 192.610(2).

Definitions

Below are definitions for several relevant and often-used terms when discussing executive sessions in Oregon. These definitions are found in state law.

Decision means any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of a governing body is required, at any meeting at which a quorum is present.⁴

Executive session means any meeting or part of a meeting of a governing body which is closed to certain persons for deliberation on certain matters.⁵

Governing body means the members of any public body which consists of two or more members, with the authority to make decisions for or recommendations to a public body on a policy or administration.⁶

Public body means the state, any regional council, county, city or district, or any municipal or public corporation, or any board, department, commission, council, bureau, committee or subcommittee or advisory group, or any other agency thereof.⁷

Meeting means the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. It does not include: (1) any on-site inspection of any project or program; or (2) the attendance of members of a governing body at any national, regional or state association to which the public body or the members belong.⁸

It is important to note that the Oregon public meetings law, and the executive session provisions contained therein, is applicable to all of Oregon's 241 cities. The law applies to executive sessions held by any of the following:

- City councils;
- Subcommittees of a city council if the subcommittee requires a quorum to conduct business and the subcommittee has the power to make policy or administrative decisions for the council itself or make recommendations to the council;
- City boards or commissions, provided the board or commission requires a quorum to conduct business and the board or commission has the power to make policy or administrative decisions on its own or make recommendations to the council;

⁴ ORS 192.610(1).

⁵ ORS 192.610(2).

⁶ ORS 192.610(3).

⁷ ORS 192.610(4).

⁸ ORS 192.610(5).

- Intergovernmental agencies created pursuant to agreements adopted in accordance with ORS Chapter 190; and
- Any other public body which requires a quorum to conduct business and has the authority to make policy or administrative decisions or make recommendations to a governing body with authority to make policy or administrative decisions.⁹

Location of Executive Sessions

Executive sessions are to be held within the geographic boundaries over which the public body holding the session has jurisdiction.¹⁰ These sessions should typically be held at city hall—or any location where the city council usually holds its regular public meetings.¹¹ If the executive session cannot be held within the city’s jurisdiction, it must be held at the nearest practical location.¹²

There may come a time when a city council, or one of a city’s boards or commissions, needs to hold an executive session with another governing body of a different jurisdiction. In that circumstance, the executive session is to be held within the geographic boundaries controlled by one of the public bodies participating in the session.¹³

In Oregon, public bodies are not permitted to hold an executive session in any place that discriminates against any person on the basis of race, color, creed, sex, sexual orientation, national origin, age or disability.¹⁴

Accommodations for Persons with Disabilities at Executive Sessions

Public bodies are required to hold executive sessions in locations that are accessible to persons with disabilities.¹⁵ If a hearing-impaired person will attend an executive session, the governing body holding the session is required to provide the hearing-impaired person with an interpreter if a request for such an interpreter is made at least 48 hours in advance of the session.¹⁶

Also, the U.S. Americans with Disabilities Act (ADA) imposes requirements on public bodies that exceed those required by Oregon. For example, the ADA requires cities to ensure that their communications with persons with disabilities are as effective as communications with persons who have no disabilities.¹⁷ Persons with vision impairments may need to be accommodated if written

⁹ ORS 192.610 and 42 Op Atty Gen 187, 188 (1981).

¹⁰ ORS 192.630(4).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ ORS 192.630(3).

¹⁵ ORS 192.630(5)(a).

¹⁶ ORS 192.630(5)(b).

¹⁷ 42 USC 12131(2), 12132; 28 CFR 35.160.

materials are used during public meetings. Cities should be aware that they generally cannot charge a disabled person to cover the cost of providing the additional services or aides.

Attendance at Executive Sessions by Telephone or Electronic Means

An executive session can be held via the use of a telephone or other electronic means, provided all other requirements of the Oregon public meetings law are satisfied.¹⁸ If an executive session is being conducted via telephone or other electronic means, it is imperative that the media be provided the ability to attend the meeting. For example, if an executive session is being held via telephone and an access code is required to join the teleconference, the media should be provided the access code.

Notice Requirements for an Executive Session

If the only type of meeting to be held is an executive session, the governing body holding the executive session is required to give notice of the session to the following persons or entities:

1. Each member of the governing body (no member of the governing body can be excluded from receiving notice of the executive session – even if it is known that the member is unable to attend the meeting);
2. The general public; and
3. Any news media which has requested to be notified of executive sessions. If a news organization has requested to receive notice of all public meetings of the governing body without specifically referencing a desire to be notified of executive sessions, the news organization in question should also be notified of each executive session.¹⁹

When providing notice of an executive session, the notice is required to state the specific provision of the Oregon public meetings law that authorizes the executive session.²⁰ Unless the executive session is necessary to respond to an emergency, the notice of the session must be provided with a minimum of 24 hours' notice.²¹ A "Model Notice of Executive Session" for each instance authorized by the Oregon public meetings law is included in this guide (see Appendices B through J).

Executive sessions are often held in conjunction with regular public meetings of the governing body. In these instances, the notice required for the executive session, in compliance with the requirements described above, shall be given simultaneously with the notice of the regular meeting.²² The regular meeting shall be noticed in such a way that it is "reasonably calculated to give actual notice to interested persons" of the time and place of the regular meeting.²³ Any news organization that has

¹⁸ ORS 192.670(1).

¹⁹ ORS 192.640(2).

²⁰ *Id.*

²¹ ORS 192.640(3).

²² ORS 192.640(1).

²³ *Id.*

requested to be notified of regular meetings is required to receive notice of the regular meeting and should also be provided notice of the executive session being held in conjunction with the regular meeting.²⁴

To ensure compliance with the requirement that reasonable accommodations be provided to those with disabilities, any notice published for either an executive session or a regular session should direct those with disabilities to an appropriate city employee who can obtain interpreters and/or equipment that ensures the meeting is accessible to all.

Because of the subject matter often discussed in executive sessions, it is not uncommon for executive sessions to be part of a governing body's response to an emergency. When executive sessions are held due to an emergency, it may only be held if notice is given "as is appropriate for the circumstances," and the minutes of the emergency executive session "describe the emergency justifying less than 24 hours' notice."²⁵ It is recommended that, even in the event of an emergency executive session, all members of the governing body be notified of the session and that any news organization who has requested notice of meetings also be provided notice.

Permitted Reasons for an Executive Session

As already noted, executive sessions are only permitted for specific statutorily authorized reasons. Note, even when a topic or issue is permitted to be discussed during an executive session, a governing body may choose to discuss the issue during an open public meeting.

The Oregon Legislative Assembly has identified 14 circumstances in which an executive session is authorized. Of the 14 circumstances in which an executive session may be held, 10 are likely to be used by municipalities and are discussed herein.

1. To consider the employment of a public officer, employee, staff member or individual agent.²⁶ This does not allow an executive session to be held to:

- Employ a chief executive officer, public officer, employee or staff member unless:
 - The position vacancy has first been advertised;
 - There already exists an adopted regular hiring procedure;
 - In the case of a public officer, the public has had the opportunity to comment on the employment of the officer; and
 - In the case of a chief executive officer, there already exists adopted hiring criteria and policy directives. The adopted hiring criteria and policy directives

²⁴ *Id.*

²⁵ ORS 192.640(3).

²⁶ ORS 192.660(2)(a).

had to be discussed and adopted in a meeting open to the public and wherein the public had an opportunity to provide comments on the criteria and directives.²⁷

- Fill a vacancy in any of the following: elected office; public committee; public commissions; or advisory group;²⁸
 - Consider general employment practices, like adopting a personnel manual; or
 - Discuss an officer's salary in connection with the hiring of that officer.²⁹
2. **To consider the dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent who does not request an open hearing.**³⁰ In order to allow the affected person time to request an open hearing, sufficient notice of the hearing date and time should be provided. Note, absent a local ordinance, personnel manual provisions, or collective bargaining agreements to the contrary, nothing requires that the affected person be allowed to attend the hearing or receive a continuance of the hearing.
 3. **To conduct deliberations with persons designated by the governing body to carry on labor negotiations.**³¹ This provision allows city officials to hold an executive session to conduct deliberations with the person they have designated to act on the city's behalf during labor negotiations. Also of note, this is one of the few times news organizations and the media can be excluded from an executive session.³²
 4. **To conduct deliberations with persons designated by the governing body to negotiate real property transactions.**³³ This provision allows city officials to hold an executive session to conduct deliberations with the person they have designated to act on the city's behalf regarding real property transactions. A real property transaction may include the purchase of real property, the sale of real property, and/or negotiations of lease agreements. The deliberations conducted during an executive session held under this provision must concern a specific piece of property or properties—the executive session may not be used as a general discussion of a city's long-term property needs or goals.³⁴

²⁷ ORS 192.660(7)(d).

²⁸ ORS 192.660(7)(a) and (b).

²⁹ ORS 192.660(7)(c) and 42 Op Atty Gen 362 (1982).

³⁰ ORS 192.660(2)(b).

³¹ ORS 192.660(2)(d).

³² ORS 192.660(4).

³³ ORS 192.660(2)(e).

³⁴ Letter of Advice dated May 18, 1990, to Representative Carl Hosticka (OP-6376).

- 5. To consider information or records that are exempt by law from public inspection.**³⁵ In order to hold an executive session under this provision, the information and records to be reviewed must be those identified in:
- ORS 192.368 (home address, personal telephone number or email address of certain individuals);
 - ORS 192.371 (identification card or badge of an employee that contains the employee’s photograph unless the employee has provided his/her consent);
 - ORS 192.398 (mental or physical health records of a living person that are less than 75 years old; records sealed under a court order that are less than 75 years old; records of a person who was in state custody or under state supervision if they are less than 25 years old; or student records);
 - ORS 192.345 (Records which are conditionally exempt from disclosure. The list of such records is long and should be viewed by reading this statute in its entirety); or
 - ORS 192.355 (Additional records exempt from disclosure. The list of such records is long and should be viewed by reading this statute in its entirety).
- 6. To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations.**³⁶ A governing body may use this provision to meet in executive session when it has good reason to believe it is in competition with other governments regarding the matters intended for discussion.³⁷
- 7. To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.**³⁸ The attorney general believes that city councils “should be able to engage in a private and candid discussion with counsel about the legal issues raised by the litigation. Such discussion may include not only procedural options, but also substantive analysis of the legal merits, risks and ramifications of the litigation.”³⁹ A governing body is to exclude any member of the press if the news organization the reporter represents is a party to the litigation being discussed.⁴⁰

³⁵ ORS 192.660(2)(f).

³⁶ ORS 192.660(2)(g).

³⁷ 42 Op Atty Gen 392, 397 (1982).

³⁸ ORS 192.660(2)(h).

³⁹ *Attorney General’s Public Records and Meetings Manual*, Public Meetings Chapter, Page 162 (November 2014).

⁴⁰ ORS 192.660(5).

8. To review and evaluate the employment-related performance of the chief executive officer of any public body, a public officer, employee, or staff member who does not request an open hearing.⁴¹ In order to allow the affected person time to request an open hearing, sufficient notice of the hearing date and time should be provided. Note, with the exception of a local ordinance, personnel manual provisions, or a collective bargaining agreement to the contrary, nothing requires that the affected person be allowed to attend the hearing or receive a continuance of the hearing. An executive session under this provision may not be used to do the following:

- Conduct a general evaluation of a city goal, objective or operation, or any directive given by the city council to personnel considering said goal, objective or operation;⁴² or
- Discuss an officer’s salary in connection with his or her job performance evaluation.⁴³

9. To carry on negotiations under ORS Chapter 293 with private persons or businesses regarding proposed acquisition, exchange or liquidation of public investments.⁴⁴ While this provision allows cities to conduct negotiations during an executive session, remember that a final decision or resolution to the negotiations must occur in an open public meeting.

10. To discuss information about review or approval of programs relating to the security of any of the following:

- A nuclear-powered thermal power plant or nuclear installation;
- Transportation of radioactive material derived from or destined for a nuclear-fueled thermal power plant or nuclear installation;
- Generation, storage or conveyance of:
 - Electricity;
 - Gas in liquefied or gaseous form;
 - Hazardous substances as defined in ORS 453.005(7)(a)(b) and (d);
 - Petroleum products;
 - Sewage; or
 - Water.
- Telecommunication systems, including cellular, wireless or radio systems; or

⁴¹ ORS 192.660(2)(i).

⁴² ORS 192.660(8).

⁴³ 42 Op Atty Gen 362 (1982).

⁴⁴ ORS 192.660(2)(j).

- Data transmissions by whatever means provided.⁴⁵

Labor negotiations may occur in executive session if both parties to the negotiation agree to such an executive session. If a labor negotiation occurs in an executive session, the notification requirements of ORS 192.640 are not applicable.⁴⁶

News Organizations

Representatives of the news media must be allowed to attend all but two types of executive sessions.⁴⁷ The news media may be excluded from an executive session held to conduct deliberations with a person designated by the governing body to carry on labor negotiations or an executive session held by a school board to discuss certain student records.⁴⁸ Also, remember that a city council or other public body is to exclude any member of the press if the news organization the reporter represents is a party to the litigation being discussed during the executive session.⁴⁹

Even though news organizations are permitted to attend virtually every executive session, governing bodies may prohibit news organizations from disclosing certain specified information.⁵⁰ Unless a governing body specifies what information is prohibited from disclosure, news organizations are free to report on the entire executive session. An example of how to specify what information the news organization may not report is provided in the Sample Script to Announce the Start of an Executive Session located in Appendix N. *It is important to note that there is no penalty for a news organization reporting on a portion of an executive session which the city asked to be kept confidential.*

The term “representatives of the media” is not defined by the ORS or by any judicial opinion to date. However, the Oregon Attorney General’s office has issued an advisory opinion wherein it concluded that under Oregon law “news-gathering representatives of institutional media” are permitted to attend executive sessions and the term is “broad and flexible enough to encompass changing technologies for delivering the news.”⁵¹ The conclusion reached by the attorney general seems to imply that bloggers and other social media news entities are authorized to attend executive sessions. In reaching this conclusion, the attorney general relied heavily on what it believes are the stated reasons the Legislative Assembly allowed the media to attend executive sessions when the law was originally adopted. A copy of the attorney general opinion is provided in Appendix L.

The League also analyzed the legislative history of the purpose behind allowing the media to attend executive sessions. The League’s analysis and conclusions differ slightly from the attorney general’s conclusions. A copy of the League’s analysis is provided in Appendix M.

⁴⁵ ORS 192.660(2)(n).

⁴⁶ ORS 192.660(3).

⁴⁷ ORS 192.660(5).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Op Atty Gen 8291 (2016).

Because there is no bright line determination as to why the Legislature permitted the press to attend executive sessions, the question of which entities or persons qualify as the press is also a question with no steadfast answer. A conservative reading of the law and legislative analysis leads one to conclude that any person providing the public with news, including internet bloggers, are to be permitted into executive sessions. However, a more liberal interpretation of the law may allow cities to exclude non-traditional media representatives from executive sessions, and arguably may further allow cities to limit the number of reporters in the executive session to no more than one. Taking the conservative interpretation is the safest way to ensure compliance with state law and provides the best chance at avoiding litigation. If a city wishes to follow a more liberal reading of the executive session statutes that relate to news organizations, the League strongly encourages the city to undertake a meaningful and in-depth discussion with its city attorney before proceeding down such a path. A liberal reading of the statutes may result in costly litigation.

The League, following a more conservative reading of state law, has updated its model media attendance policy, which is included as Appendix N.

Starting an Executive Session

When starting an executive session, there are four things the presiding officer should keep in mind.

- First, to ensure accurate minutes, the presiding officer should specifically note that the meeting is being held in executive session.
- Second, the presiding officer should publicly announce the ORS provision that allows for the meeting to be held in executive session.
- Third, the presiding officer should announce those persons who are required to exit the meeting space.
- Fourth, the presiding officer should advise the media in attendance of what they can and cannot disclose to the public.

A model script of how a presiding officer should start an executive session is provided in Appendix N.

Final Actions or Final Decisions Prohibited

Final actions and/or final decisions cannot legally be made in an executive session.⁵² This does not prohibit city councils or other public bodies from reaching a consensus in the executive session, but just ensures that the consensus is formally announced in an official fashion during a public meeting wherein the citizenry can witness the announcement. The reason a city council's decision, or other

⁵² ORS 192.660(6).

public body’s decision, must be made in a public meeting is to ensure that the public is made aware of the result of the city council’s deliberations and discussions.

Minutes

Even though executive sessions are held outside of the eye of the public, minutes are still required to be taken and maintained. ORS 192.650(2) requires the minutes to include, at a minimum, the following information:

1. Names of all members of the governing body present at the meeting;
2. All proposals, resolutions, orders, ordinances, measures or topics discussed;
3. The substance of any discussion on any matter; and
4. A reference to any document being discussed at the meeting.

Minutes of executive sessions do not have to be reduced to writing; rather, they can be kept in the form of a sound or video tape or digital recording.⁵³ The executive session recording does not have to be transcribed unless required by law (for example, if ordered to do so by a court).⁵⁴

The materials discussed and reviewed during an executive session do not have to be revealed or made public if doing so is “inconsistent with the purpose for which a meeting” in executive session is authorized.⁵⁵ If excluded materials from an executive session become relevant to a court case, the judge is permitted to review the materials privately to render a determination as to whether the materials must be disclosed to a particular party in the litigation or made public.⁵⁶

Oregon law requires minutes to be retained in accordance with the Secretary of State’s Retention Schedule. Pursuant to OAR 166-200-0235(5), executive session minutes are to be retained for a minimum of ten years.⁵⁷ Audio or visual recording devices made during the executive session shall be retained for a minimum of one year after the date the official minutes have been prepared and approved.⁵⁸ Any other records related to the executive session but not put forth as part of the minutes are to be retained for a minimum of five years.⁵⁹

Violations and Liability

In addition to the general penalty provisions for violations of the public meetings law described in ORS 192.680, violations of the executive session provisions of the public meetings law carry their

⁵³ ORS 192.650(2).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Cities may adopt their own retention schedules which require these minutes to be retained for longer than 10 years.

⁵⁸ OAR 166-200-0235(5).

⁵⁹ *Id.*

own unique penalties. A person who believes that an executive session has been held in violation of state law may file a complaint with the Oregon Government Ethics Commission (“commission”).⁶⁰ It is the commission’s responsibility to review the allegation and investigate the complaint.⁶¹

As part of its investigation into any allegation of an executive session violation, the commission may do the following: interview witnesses; review minutes; review other records; and obtain and consider any other information pertaining to the executive session in question.⁶² The city is required to provide the commission the documents it needs to conduct its investigation, but the documents still retain their confidentiality.⁶³

If the commission determines that a violation of the executive session statutes occurred, it may impose a civil penalty in an amount that does not exceed \$1,000.⁶⁴ The civil penalty is imposed on individual public officials (i.e., city council members) for violating any executive session provision.⁶⁵ Public officials can avoid the risk of this civil penalty by taking one simple action—getting a legal opinion from the city attorney wherein the city attorney advises that the executive session is lawfully permitted under Oregon law.⁶⁶ As long as a city attorney has advised a governing body that the executive session is legally permissible, the individual city officials cannot have a civil penalty imposed on them by the commission.

Should the commission decide not to pursue a complaint of an executive session violation at any time before a contested hearing on the matter occurs, the public official who is the subject of the complaint may be entitled to reimbursement of expenses he or she incurred in defending him/herself, including attorney fees.⁶⁷ Any such reimbursement is to be deposited in a fund controlled by the governing body.⁶⁸

Additional Resources

The Oregon Attorney General’s Manual on Public Records and Public Meetings has several additional resources public officials may use when determining whether an executive session is appropriate or when holding an executive session. The manual is available on the attorney general’s website.

Conclusion

Executive sessions are deviations from the standard rule that the public is entitled to attend public meetings and be privy to discussions held by governing bodies. Because of this deviation, the

⁶⁰ ORS 192.685(1).

⁶¹ *Id.*

⁶² ORS 192.685(2).

⁶³ *Id.*

⁶⁴ ORS 244.350(2)(a).

⁶⁵ *Id.*

⁶⁶ ORS 244.350(2)(b).

⁶⁷ ORS 192.685(3).

⁶⁸ *Id.*

standards and procedures established by the Legislative Assembly are nuanced and require a thorough understanding by any governmental official who wishes to utilize an executive session. Considering the financial penalties that may be imposed upon public officials who violate the executive session statutes, consultation with the city attorney in advance of any executive session is strongly recommended. Executive sessions are an important tool in successfully governing communities, but the tool should be used wisely and in full compliance with all applicable laws.

APPENDIX A - Model Notice of Executive Session

To Consider the Employment of a Public Officer, Employee or Staff Member

NOTICE OF EXECUTIVE SESSION

The City Council of [insert name of city], Oregon, will hold an executive session on [insert month, day and year] at [insert time of day, including a.m. or p.m.] at City Hall, [insert complete street address].

The executive session is being held pursuant to ORS 192.660(2)(a), to consider the employment of a public officer, employee, staff member or individual agent.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours prior to the executive session. Please contact [insert name of city employee who will handle accommodation requests] at [insert phone number of relevant city employee] to make a request for an interpreter or other accommodations for persons with disabilities.

Distributed to:

- All members of the city council;
- [Individually list all news media organizations provided a copy of the notice];
- [Individually list any other person or entity provided a copy of the notice]; and
- Posted and/or displayed publicly at [insert all applicable locations].⁶⁹

⁶⁹ It is recommended that whoever posts and/or distributes the notice keeps a record of the date and time the notice was posted and/or distributed.

APPENDIX B – Model Notice of Executive Session

To Consider the Dismissal or Disciplining of, or to Hear Complaints or Charges Brought Against, a Public Officer, Employee, Staff Member or Individual Agent

NOTICE OF EXECUTIVE SESSION

The City Council of [insert name of city], Oregon, will hold an executive session on [insert month, day and year] at [insert time of day, including a.m. or p.m.] at City Hall, [insert complete street address].

The executive session is being held pursuant to ORS 192.660(2)(b), to consider the dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours prior to the executive session. Please contact [insert name of city employee who will handle accommodation requests] at [insert phone number of relevant city employee] to make a request for an interpreter or other accommodations for persons with disabilities.

Distributed to:

- All members of the city council;
- [Individually list all news media organizations provided a copy of the notice];
- [Individually list any other person or entity provided a copy of the notice]; and
- Posted and/or displayed publicly at [insert all applicable locations].⁷⁰

⁷⁰ It is recommended that whoever posts and/or distributes the notice keeps a record of the date and time the notice was posted and/or distributed.

APPENDIX C – Model Notice of Executive Session

*To Conduct Deliberations with Persons Designated to Carry on Labor Negotiations on
Behalf of the City*

NOTICE OF EXECUTIVE SESSION

The City Council of [insert name of city], Oregon, will hold an executive session on [insert month, day and year] at [insert time of day, including a.m. or p.m.] at City Hall, [insert complete street address].

The executive session is being held pursuant to ORS 192.660(2)(d), to conduct deliberations with a person designated to carry on labor negotiations on behalf of the city.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours prior to the executive session. Please contact [insert name of city employee who will handle accommodation requests] at [insert phone number of relevant city employee] to make a request for an interpreter or other accommodations for persons with disabilities.

Distributed to:

- All members of the city council;
- [Individually list all news media organizations provided a copy of the notice];
- [Individually list any other person or entity provided a copy of the notice]; and
- Posted and/or displayed publicly at [insert all applicable locations].⁷¹

⁷¹ It is recommended that whoever posts and/or distributes the notice keeps a record of the date and time the notice was posted and/or distributed.

APPENDIX D – Model Notice of Executive Session

*To Conduct Deliberations with Persons Designated by the City to Negotiate
Real Property Transactions*

NOTICE OF EXECUTIVE SESSION

The City Council of [insert name of city], Oregon, will hold an executive session on [insert month, day and year] at [insert time of day, including a.m. or p.m.] at City Hall, [insert complete street address].

The executive session is being held pursuant to ORS 192.660(2)(e), to conduct deliberations with persons designated by the city to negotiate real property transactions.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours prior to the executive session. Please contact [insert name of city employee who will handle accommodation requests] at [insert phone number of relevant city employee] to make a request for an interpreter or other accommodations for persons with disabilities.

Distributed to:

- All members of the city council;
- [Individually list all news media organizations provided a copy of the notice];
- [Individually list any other person or entity provided a copy of the Notice]; and
- Posted and/or displayed publicly at [insert all applicable locations].⁷²

⁷² It is recommended that whoever posts and/or distributes the notice keeps a record of the date and time the notice was posted and/or distributed.

APPENDIX E – Model Notice of Executive Session

To Consider Information or Records that are Exempt by Law from Public Inspection

NOTICE OF EXECUTIVE SESSION

The City Council of [insert name of city], Oregon, will hold an executive session on [insert month, day and year] at [insert time of day, including a.m. or p.m.] at City Hall, [insert complete street address].

The executive session is being held pursuant to ORS 192.660(2)(f), to consider information or records that are exempt by law from public inspection, specifically:

- Records exempt under ORS 192.368;
- Records exempt under ORS 192.371;
- Records exempt under ORS 192.398;
- Records exempt under ORS 192.345; or
- Records exempt under ORS 192.355 [check the applicable box].

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours prior to the executive session. Please contact [insert name of city employee who will handle accommodation requests] at [insert phone number of relevant city employee] to make a request for an interpreter or other accommodations for persons with disabilities.

Distributed to:

- All members of the city council;
- [Individually list all news media organizations provided a copy of the notice];
- [Individually list any other person or entity provided a copy of the notice]; and
- Posted and/or displayed publicly at [insert all applicable locations].⁷³

⁷³ It is recommended that whoever posts and/or distributes the notice keeps a record of the date and time the notice was posted and/or distributed.

APPENDIX F – Model Notice of Executive Session

To Consider Preliminary Negotiations Involving Matters of Trade or Commerce in which the City is Competing with Governing Bodies in Other States or Nations

NOTICE OF EXECUTIVE SESSION

The City Council of [insert name of city], Oregon, will hold an executive session on [insert month, day and year] at [insert time of day, including a.m. or p.m.] at City Hall, [insert complete street address].

The executive session is being held pursuant to ORS 192.660(2)(g), to consider preliminary negotiations involving matters of trade or commerce in which the city is competing with governing bodies in other states or nations.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours prior to the executive session. Please contact [insert name of city employee who will handle accommodation requests] at [insert phone number of relevant city employee] to make a request for an interpreter or other accommodations for persons with disabilities.

Distributed to:

- All members of the city council;
- [Individually list all news media organizations provided a copy of the notice];
- [Individually list any other person or entity provided a copy of the notice]; and
- Posted and/or displayed publicly at [insert all applicable locations].⁷⁴

⁷⁴ It is recommended that whoever posts and/or distributes the notice keeps a record of the date and time the notice was posted and/or distributed.

APPENDIX G – Model Notice of Executive Session

To Consult with Legal Counsel Concerning the Legal Rights and Duties of the City with Regards to Litigation

NOTICE OF EXECUTIVE SESSION

The City Council of [insert name of city], Oregon, will hold an executive session on [insert month, day and year] at [insert time of day, including a.m. or p.m.] at City Hall, [insert complete street address].

The executive session is being held pursuant to ORS 192.660(2)(h), to consult with legal counsel concerning the legal rights and duties of the city with regards to litigation.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours prior to the executive session. Please contact [insert name of city employee who will handle accommodation requests] at [insert phone number of relevant city employee] to make a request for an interpreter or other accommodations for persons with disabilities.

Distributed to:

- All members of the city council;
- [Individually list all news media organizations provided a copy of the notice];
- [Individually list any other person or entity provided a copy of the notice]; and
- Posted and/or displayed publicly at [insert all applicable locations].⁷⁵

⁷⁵ It is recommended that whoever posts and/or distributes the notice keeps a record of the date and time the notice was posted and/or distributed.

APPENDIX H – Model Notice of Executive Session

*To Review and Evaluate the Employment-Related Performance of the Chief Executive Officer,
a Public Officer, Employee or Staff member*

NOTICE OF EXECUTIVE SESSION

The City Council of [insert name of city], Oregon, will hold an executive session on [insert month, day and year] at [insert time of day, including a.m. or p.m.] at City Hall, [insert complete street address].

The executive session is being held pursuant to ORS 192.660(2)(i), to review and evaluate the employment-related performance of the chief executive officer, a public officer, employee or staff member.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours prior to the executive session. Please contact [insert name of city employee who will handle accommodation requests] at [insert phone number of relevant city employee] to make a request for an interpreter or other accommodations for persons with disabilities.

Distributed to:

- All members of the city council;
- [Individually list all news media organizations provided a copy of the notice];
- [Individually list any other person or entity provided a copy of the notice]; and
- Posted and/or displayed publicly at [insert all applicable locations].⁷⁶

⁷⁶ It is recommended that whoever posts and/or distributes the notice keeps a record of the date and time the notice was posted and/or distributed.

APPENDIX I – Model Notice of Executive Session

*To Carry on Negotiations under ORS Chapter 293 Regarding Proposed Acquisition,
Exchange or Liquidation of Public Investments*

NOTICE OF EXECUTIVE SESSION

The City Council of [insert name of city], Oregon, will hold an executive session on [insert month, day and year] at [insert time of day, including a.m. or p.m.] at City Hall, [insert complete street address].

The executive session is being held pursuant to ORS 192.660(2)(j), to carry on negotiations under ORS Chapter 293 regarding proposed acquisition, exchange or liquidation of public investments.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours prior to the executive session. Please contact [insert name of city employee who will handle accommodation requests] at [insert phone number of relevant city employee] to make a request for an interpreter or other accommodations for persons with disabilities.

Distributed to:

- All members of the city council;
- [Individually list all news media organizations provided a copy of the notice];
- [Individually list any other person or entity provided a copy of the notice]; and
- Posted and/or displayed publicly at [insert all applicable locations].⁷⁷

⁷⁷ It is recommended that whoever posts and/or distributes the notice keeps a record of the date and time the notice was posted and/or distributed.

APPENDIX J – Model Notice of Executive Session

To Discuss Information about Review or Approval of Programs Relating to Security

NOTICE OF EXECUTIVE SESSION

The City Council of [insert name of city], Oregon, will hold an executive session on [insert month, day and year] at [insert time of day, including a.m. or p.m.] at City Hall, [insert complete street address].

The executive session is being held pursuant to ORS 192.660(2)(n), to discuss information about the review or approval of programs relating to security, specifically:

- A nuclear-powered thermal power plant or nuclear installation;
- Transportation of radioactive material derived from or destined for a nuclear-fueled thermal power plant or nuclear installation;
- Generation, storage or conveyance of: electricity, gas in liquefied or gaseous form, hazardous substances as defined in ORS 453.005(7)(a)(b) and (d), petroleum products, sewage or water;
- Telecommunication systems, including cellular, wireless or radio systems; or
- Data transmissions by whatever means provided [check the applicable box].

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours prior to the executive session. Please contact [insert name of city employee who will handle accommodation requests] at [insert phone number of relevant city employee] to make a request for an interpreter or other accommodations for persons with disabilities.

Distributed to:

- All members of the city council;
- [Individually list all news media organizations provided a copy of the notice];
- [Individually list any other person or entity provided a copy of the notice]; and
- Posted and/or displayed publicly at [insert all applicable locations].⁷⁸

⁷⁸ It is recommended that whoever posts and/or distributes the notice keeps a record of the date and time the notice was posted and/or distributed.

APPENDIX K – Formal Attorney General Opinion No. 8291

APPENDIX L – League’s Opinion on Media and Executive Sessions

Introduction

This memorandum addresses the purposes behind the executive session provision in Oregon’s public meetings law. Specifically, this memorandum answers why the Oregon Legislature included a requirement that “representatives of the news media” be allowed to attend executive sessions, even though other members of the public were excluded from those same meetings.

The legislative history of Oregon’s public meetings law demonstrates that the Legislature believed that members of the news media should be allowed to attend executive sessions for primarily two reasons: (1) information gathering for future reporting, and (2) to act as a “watchdog” over a governing body, in light of the fact that no other member of the public would be in attendance. The following analysis lays out the evidence supporting those two purposes.⁷⁹

Analysis

The Legislature first enacted the public meetings law as Senate Bill (SB) 15 (1973). *Or Laws 1973, ch 172*. As introduced, SB 15 did not require governing bodies to allow members of the media to attend executive sessions. SB 15 moved to the Joint Special Committee on Professional Responsibility. At a committee meeting on February 26, co-chair Robert Ingalls noted that “newspapers” had traditionally attended school board meetings and labor negotiations, and asked if the bill would end that practice. *Minutes, Joint Special Committee on Professional Responsibility (SB 15), Feb. 26, 1973, at 6*. Various witnesses responded that many governing bodies had informal agreements with the press to allow the press to attend closed meetings. Those witnesses opined that the practice could continue under the new law.

The committee met again on March 5 and heard extensive testimony on SB 15. Relevant here, some witnesses testified that the press should be allowed to attend executive sessions because, otherwise, no one from the public could act as a watchdog on the governing body. For example, Woodburn Common Council member Harold Reaume testified that the city regularly held non-public pre-meetings, at which the press was welcome to attend. Mr. Reaume worried that if the press was excluded from those non-public meetings, “undesirable” things would occur, such as public officials reaching a consensus on an issue out of the public eye. *Minutes, Joint Special Committee on Professional Responsibility (SB 15), March 5, 1973, at 2*. *Oregonian* education reporter Bill Keller

⁷⁹ This memorandum uses the terms “representatives of the news media,” “members of the news media,” and “the press” synonymously. The Attorney General takes the view that “representatives of the news media” means:

“[I]ndividuals who gather news and who have a formal affiliation, whether through employment, by contract or some other agency authorization from or with an institutional news media entity, including both general interest media and media that cover specific subject areas for special audiences.”

Op Atty Gen No 8291, at 2 (April 18, 2016).

echoed that concern, but also noted that the press needed access to private meetings for information gathering purposes. Mr. Keller acknowledged that school board business should sometimes be conducted privately, but even in those circumstances the press should be allowed to attend as “observers.” Mr. Keller testified that the press was under no obligation to refrain from reporting on matters in the public interest. *Id. at 3-4.*

The committee held another hearing on March 12. Most of the witnesses who testified at the March 12 meeting took the view that the press should be allowed to attend executive sessions for information gathering purposes. For example, Wally Cowen of the Oregon Newspaper Publishers Association testified that the “press” and “public” were the same thing, and the press was simply a vehicle for conveying information to the public at large. *Minutes, Joint Special Committee on Professional Responsibility (SB 15), March 12, 1973, at 1-2.* Mr. Cowen further argued that SB 15 should permit members of the press to attend executive sessions to ensure that the wider public had access to “the workings of democracy.” *Id.* Other witnesses made similar comments, emphasizing the important role of the press in conveying information to the public.

Following the March 12 meeting, SB 15 was amended to permit, but not require, representatives of the news media to attend executive sessions. The amendment specified that the press could attend under such conditions that covered the disclosure of information “as may now exist” and may be agreed to by the governing body and the representatives of the news media. *Amendments to Second Amended Draft, SB 15, § 6(3) (1973).* The committee considered those amendments to SB 15 at a March 19 work session. Senator Fadeley suggested making the requirement mandatory and co-chair Ingalls suggested deleting the “as may now exist” language. The committee adopted both suggestions. As amended on March 19, 1973, SB 15 stated, in part:

“Representatives of the news media shall be allowed to attend executive sessions under such conditions governing the disclosure of information as may be agreed to by the governing body and the representatives of the news media.”

SB 15, § 6(3), March 19, 1973.

At the April 2 committee meeting, Senator Carson moved to delete Section 6(3), viewing it as “dangerous.” In Senator Carson’s view, if a meeting concerned something in the public interest, the entire public should be allowed to attend, not just the press. *Minutes, Joint Special Committee on Professional Responsibility (SB 15), April 2, 1973, at 7.* Senator Carson further argued that allowing only the press to attend executive sessions may foster adverse relationships between the press and the governing body. Co-chair Ingalls replied that, in his view, the press was not permitted to attend executive stories to simply report on the meeting. Rather, the press would use the information from the meeting as background for future reporting. *Id.* Co-chair Ingalls then asked Roger Williams, the representative from the Oregon Newspaper Publishers Association, for his thoughts. Mr. Williams agreed with co-chair Ingalls’ understanding of the media’s role; that is, Williams agreed that members of the media would use access to executive sessions as a way of gathering background information for new stories. *Id. at 8.*

Ultimately, as enacted by the Legislature, SB 15 required governing bodies to allow representatives of the news media to attend executive sessions, but left the details regarding disclosure of information up to agreements between the media and the governing body:

“Representatives of the news media shall be allowed to attend executive sessions under such conditions governing the disclosure of information as may be agreed to by the governing body and the representatives of the news media prior to such executive session.”

Or Laws 1973, ch 172, § 6(4), codified at ORS 192.660(4).

The Legislature has amended ORS 192.660 numerous times since 1973. See, e.g., Or Laws 1975, ch 664, § 2; Or Laws 1979, ch 644, § 5; Or Laws 1985, ch 657, § 2; Or Laws 1995, ch 779, § 1; Or Laws 1997, ch 173, § 1; Or Laws 2003, ch 524, § 4; Or Laws 2007, ch 602, § 11; Or Laws 2015, ch 421, § 2; Or Laws 2015, ch 666, § 3. For example, the Legislature specified that representatives of the news media are not entitled to attend executive sessions held under ORS 192.660(2)(d) (labor negotiations) or ORS 332.061 (executive sessions allowed to consider expelling minor student from a public school or to examine the medical records of a minor student). Interestingly, in 2015 the Legislature amended ORS 192.660 to provide that the Oregon Government Ethics Commission “may not adopt rules that establish what entities are considered representatives of the news media that are entitled to attend executive sessions[.]” ORS 192.660(10). Those amendments may affect what types of executive sessions the media can attend, but does not alter the basic purpose for allowing the media to attend such meetings.

Conclusion

The foregoing legislative history demonstrates that the Legislature had two purposes in mind when crafting a law that would permit members of the media to attend executive sessions. First, witnesses at the committee hearings spoke of the role of the media as a “watchdog” for the governing body, and worried about adverse consequences if the press was excluded from executive sessions. Second, legislators themselves (such as co-chair Ingalls) expressed the view that members of the media would use the information learned during an executive session as “background” material for future news stories. Those purposes, of course, are not mutually exclusive. But, because the lawmakers who ultimately enacted the law emphasized the fact-finding function of the media in attendance at an executive session, the scale likely tips more towards that purpose than towards the oversight purpose.

APPENDIX M – Model Media Policy

City of [Insert name of City] Executive Session News Media Attendance Policy

WHEREAS, Oregon public meetings law provides that representatives of the news media shall be allowed to attend certain executive sessions of public bodies, but may be requested to not disclose specified information (ORS 192.660(4)); and

WHEREAS, because at the time state law relating to media attendance at executive session was adopted, “news media” consisted of entities that were institutionalized and structured to support compliance with the requirements of ORS 192.660(4), the law includes no express mechanism for enforcing those requirements; and

WHEREAS, technological advances since the time the public meetings law was initially adopted have resulted in development of communication mechanisms allowing virtually any individual or entity to disseminate information widely; and

WHEREAS, the city council finds that in that absence of a statutory definition of “news media” as that term is used in ORS 192.660(4) it is necessary to adopt a policy that implements the intent of the public meetings law relating to executive session attendance without precluding attendance by internet-based or other “non-traditional” information disseminators that are institutionalized and committed to compliance with ORS 192.660(4); and

WHEREAS, the city council recognizes that this policy is solely for determining eligibility to attend executive sessions, which requests non-disclosure of specified information from executive sessions, and is not intended to otherwise define “news media” or to determine eligibility to report on the city’s activities or to limit access to other city meetings by any person;

The city council hereby adopts the following policy:

1. Recognized News Media Organizations. The following entities are recognized as news media organizations eligible to attend executive sessions:
 - (A) Daily newspapers, non-daily, and small-market newspapers/publications, as well as those publications that are released as digital and multiplatform products; or
 - (B) A newspaper or publication that the city uses for publication of public notices and that meets the requirements of ORS 193.020; or
 - (C) An entity that is organized and operated to regularly and continuously publish, broadcast, transmit via television, radio or the internet or otherwise disseminate news to the public, and that regularly reports on activities of public concern.
2. Attendance at Executive Sessions. Representatives of news media organizations recognized pursuant to Section 1 of this policy shall be allowed to attend executive sessions, except as described below in paragraphs (C) and (D) of this section, pursuant to the following process:
 - (A) The representative must provide substantial evidence persuading the city that he or she is a news reporter for the recognized news media organization. In making its

determination whether to recognize the person as a representative of the news media organization, the city may require:

- (a) A press badge or identification issued by the recognized news media organization, plus proof of identity (such as a driver's license); or
- (b) A recently published news article in the recognized news media organization publication or broadcast, with the person's byline, or a masthead showing the person's name as a member of the news gathering staff of the news media organization, plus proof of identity; or
- (c) A letter on letterhead from an editor of the recognized news media organization in which the editor states that the reporter is covering the meeting for the news media organization, plus proof of identity.
- (d) Any other credentials or evidence sufficient to demonstrate that the individual is a representative of the news media.

The city requires that requests to be recognized as a representative of a news media organization be made in writing on a form provided by the city. The form shall require disclosure of the person's name, and the entity for which he or she is a representative and shall require submission of evidence described in subsections 2(A) of this policy. The form shall also include a certification that the person is a representative of a recognized news media organization, that the information given is true, and that the person agrees to comply with ORS 192.660(4). The form will be made available on the city's webpage and upon request by any individual.⁸⁰

- (B) The city council is prohibited from making final decisions on any matter in executive session. Therefore, representatives are requested to provide the above evidence to persuade the city that they are a representative of the recognized new media organization in advance of the schedule executive session. In the event that a person claiming to be a representative of the news media fails to provide advance evidence of their credentials, the representative should either be allowed to attend the executive session, or the executive session shall be postponed until a later time.⁸¹
- (C) Representatives of the news media are not permitted to attend executive sessions involving deliberations with persons designated to carry on labor negotiations. ORS 192.660(4).

⁸⁰ A model form is included below.

⁸¹ The process for postponement will depend upon each individual city's local procedures. One method may be for the presiding officer and city manager to decide to postpone the executive session prior to the meeting being called to order.

- (D) If the executive session is being held to confer with counsel about current litigation or litigation likely to be filed, the city shall exclude any member of the news media from attending if the member is a party to the litigation to be discussed or is an employee, agent or contractor of a news media organization that is a party to the litigation. ORS 192.660(5).
- 3. Recording Devices Prohibited. Cameras, tape recorders and other recording devices shall not be used in executive sessions, except for the official executive session tapes made by city staff.
- 4. Application to Boards and Commissions. These policies and procedures shall apply to the city council and all of its boards and commissions.

Model Recognized New Media Representative Application

Pursuant to the City of [city name]'s Media Policy, those claiming to be representatives of the news media are requested to complete this form. Please provide the requested information below, complete and sign the certification section, and submit the completed form to [designated staff member's name] in advance by: (1) personal delivery to [designated staff member]; (2) sending the completed form via e-mail to [e-mail address]; or (3) delivering a completed copy to city hall located at [address].

NOTE: If the city is unable to verify this information prior to the start of an executive session, your attendance at the executive session may be denied or the executive may be postponed.

YOUR NAME

NAME OF THE NEWS MEDIA ORGANIZATION REPRESENTED

CERTIFICATION OF REPRESENTATION:

I, _____ certify the following to be true and accurate:

I represent the following:

- A daily newspaper, non-daily, or small-market newspaper/publication, or publication that is released as a digital or multiplatform product.
- A newspaper or publication that the city uses for publication of public notices and meets the requirements of ORS 193.020.
- A news media organization that is organized and operated to regularly and continuously publish, broadcast, transmit via the internet or otherwise disseminate news to the public, and that regularly reports on actives of the city or matters of the nature under consideration by the city council.

The news media organization that I represent is committed to complying with the requirement that confidential executive session information be undisclosed.

I have provided the following credentials sufficient to allow the city to determine that I am a representative of the above identified news media organization (select all that apply):

- A press badge or identification issued by the news media organization, plus proof of my identity;
- A copy of a recently published news article showing my name as a member of the news gathering staff of the news media organization, plus proof of my identity;
- A letter on letterhead from an editor of the news media organization that states that I am covering the meeting for the news media organization, plus proof of my identity; or

The following evidence sufficient to show that I am a representative of the above identified news media organization: _____

As a representative of the news media, I agree to comply with ORS 192.660(4).

SIGNATURE

DATE

APPENDIX N – Sample Script to Announce Start of Executive Session

Given by Presiding Officer

“The city council will now meet in executive session for the purpose of [cite the specific purpose(s) for each subject to be discussed – this should mirror the language found on the notice of the executive session].

“The executive session is held pursuant to ORS 192.660 [cite the specific statute that authorizes the executive session for each subject to be discussed – this should mirror the section(s) found on the notice of the executive session].

Representatives of the news media and designated staff and other persons⁸² shall be allowed to attend the executive session. All other members of the audience are asked to leave the room.

Representative of the news media are specifically directed not to report on any of the deliberations during the executive session, except to state the general subject of the session as previously announced.

No decision will be made in this executive session.

At the end of the executive session, we will return to open session and welcome the audience back into the room.”

⁸² The city council may choose to allow other specified persons to attend the executive session.

FAQ

PROCUREMENT



Emergency Procurement FAQ

UPDATED OCTOBER 2020

FAQ – Emergency Procurements

Oregon’s public contracting code is lengthy and can be challenging for the average public official to navigate and understand. And while the code may be cumbersome at times, it serves a valuable public purpose — ensuring that public dollars are spent wisely and justly by requiring that public contracts be awarded through a fair, open and competitive process. While an open and competitive process serves a valuable public policy purpose, and is typically required in Oregon, what about those emergency situations when public officials must act quickly and do not have the time to follow the normal public procurement process?

This Emergency Procurements Frequently Asked Questions (FAQ) publication provides answers to the questions most often posed to the LOC about public procurements during emergency situations. It is not intended to provide an exhaustive legal analysis on the topic, nor is it intended to be a substitute for legal advice. This FAQ is meant to serve as a baseline for understanding emergency public procurements 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 their city’s rules of procedures to ensure that those provisions do not provide additional requirements to be followed when purchasing goods or services during an emergency.

1. What is an Emergency?

Oregon’s Public Contracting Code defines an “emergency” to mean “circumstances that: (A) Could not have been reasonably foreseen; (B) Create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and (C) Require prompt execution of a contract to remedy the condition.”¹ For some cities, the term may also be defined under local contracting rules.²

2. What is an Emergency Procurement?

An emergency procurement is any contract that a city enters into in response to an emergency in the hopes of remedying the effects of the emergency.

3. Do Emergency Procurements Follow the Normal Competitive Procurement Process Required by the Oregon Revised Statutes?

No. Under state law, local officials do not need to follow the normal competitive procurement process for emergency procurements. Oregon’s Public Contracting Code³ and the Model Rules under Oregon Administrative Rules (OAR) Chapter 137, Divisions 46 through 49, provide for an emergency exception to the local procurement process. Note, however, that the scope of this exception is also subject to local contracting rules.⁴

¹ ORS 279A.010(1)(f).

² See, e.g., PORTLAND, OR. CODE § 5.33.130 (2020).

³ ORS chapters 279A, 279B and 279C.

⁴ See ORS 279A.065.

4. Are there Any Limits under State Law on an Emergency Procurement?

Yes. Under state law, these contracts must be limited to “*emergency* procurements of goods or services.”⁵ As such, they cannot be used to purchase non-emergency goods or alleviate non-emergency needs.

In general, emergency procurements should not cover goods or services that are not immediately necessary in an emergency. For example, if an earthquake causes such severe structural damage to a city-owned building that it is in imminent danger of collapsing and causing harm to the public, an emergency procurement can be utilized to immediately stabilize the building to keep it from collapsing. Once stabilized, if there is time to allow the normal public procurement process to be utilized for other repairs or replacements, the normal process should be used.

When awarding an emergency procurement to a contractor, state law also requires that cities: **(A)** document the nature of the emergency and **(B)** describe the method used for selecting the contractor.⁶

Finally, state law also requires cities to foster competition, especially in the context of construction projects — see Question 6.

5. Are there Any Limits Under Local Law on an Emergency Procurement?

Possibly. Oregon’s Public Contracting Code authorizes cities to develop their own contracting rules, and these rules can be more stringent than the state’s requirements.⁷ If a city’s purchasing policy addresses emergency procurements, these additional rules must be followed. For this reason, local officials must review their city’s ordinances and policies before making an emergency procurement to ensure compliance.

6. Are Local Officials Still Required to Foster Competition when Awarding Emergency Procurements?

Yes. Even in emergencies, the Model Rules under OAR Chapter 137 require local officials to procure city goods and services “with competition that is reasonable and appropriate under the circumstances.”⁸ For anything other than construction projects, the state’s regulations do not specify a competitive process to ensure there is competition.⁹ As noted in Question 5, however, a city may choose to adopt a competitive process for emergency procurements under its local contracting rules.

⁵ ORS 279B.080(1).

⁶ *Id.*

⁷ *Id.*

⁸ OAR 137-047-0280.

⁹ *Id.*

For emergency procurements of **construction services**, state law is more specific.¹⁰ Generally, state law requires cities to “set a solicitation schedule” for construction contracts that is reasonable for the circumstances.¹¹ If the construction contract is a matter “of extreme necessity,” then the city may proceed with a written or oral request for quotes, or may even “make direct appointments without competition.”¹²

Readers may note that this law, ORS 279B.080(2), applies only to “construction services that are not public improvements.”¹³ The Model Rules simplify this by providing that *all* “emergency contracts for construction services” are not public improvements.¹⁴ As such, this law applies generally to all contracts for construction services, regardless of whether they meet the other criteria of a public improvement.¹⁵

7. Who Can Authorize an Emergency Procurement?

The head of the city, or a person delegated by the city as someone who can effectuate public procurements, is the person who may authorize an emergency procurement.¹⁶ Often, city managers are authorized to approve emergency procurements.¹⁷

¹⁰ See OAR 137-049-0150.

¹¹ ORS 279B.080(2).

¹² *Id.*

¹³ *Id.*

¹⁴ OAR 137-049-0140(1).

¹⁵ *Id.*

¹⁶ ORS 279B.080(1); see also ORS 279A.075.

¹⁷ See, e.g., BEND, OR., CODE § 1.55.030 (2020).

MODEL



Model Fee Waiver Ordinances

Considerations and Examples from Oregon Cities

UPDATED JANUARY 2020

Fee Waiver Ordinances
Policy Considerations for Oregon Cities

Table of Contents

Introduction..... 1

Policy Considerations 1

Issues and Questions to Consider 1

Legal Challenges 2

Examples of Fee Waiver Ordinances and Policies..... 4

 Portland Bureau of Development Services Neighborhood Inspections Code Enforcement
 Fee Waiver Application 4

 Excerpts from Albany’s Business License Ordinance 7

 Astoria Utility Assistance Program 8

 Aumsville Fee Schedule (including fee exemption and reduction) 10

 Excerpts from Redmond’s Fee Waiver Policy for Special Event Permits..... 16

 Wilsonville Resolution to Allow Waiver of Building, Planning and Engineering Permit
 Fees for Affordable Housing Projects..... 22

Introduction

A city may consider a fee waiver policy for a variety of reasons. Fee waivers can provide access to city services and programs that would not otherwise be available to certain populations. In addition, a properly executed fee waiver policy can incentivize certain organizations to conduct business within the city. Regardless of why a city chooses to create fee waivers, special consideration must be taken depending on the type of waiver offered.

Policy Considerations

Due to the various types of possible waivers, a one-size-fits-all approach will not be appropriate. For example, a fee waiver policy for admission to the city's aquatic center may look very different than a fee waiver policy for a building permit. In addition to the type of subject matter, certain types of fee waivers are governed by state law. For example, the Oregon Public Records Law specifically addresses how fee waivers may be applied to public records request fees.¹ A city should develop a department-by-department approach to the development of fee waivers. The council can designate the fee waiver itself, authorize the city manager to set waivers, or authorize specific department heads.

Issues and Questions to Consider

When developing a fee waiver policy, a city must determine what types of waivers to allow, whether to allow reduced fees, who will oversee the fee waivers, who may approve the fee waivers, and what type of discretion is allowed once a policy is in place. The following are some of the questions and concerns addressed by various cities in their ordinances:

1. What fees will the policy address?
 - Public records requests?
 - Special event permits?
 - Park rentals?
 - Aquatic center admission?
 - Late library material return penalties?
 - City-sponsored youth sport programs?
 - Building, inspection, and permitting fees?
 - Business and other licenses?
2. What preexisting laws may apply to these fee waivers?
 - Oregon Public Records Law?
 - Building Code Inspection Services?
3. Who will be responsible for administering these waivers?

¹ "The custodian of a public record may furnish copies without charge at a substantially reduced fee if the custodian determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public." ORS 192.324(5).

- City council?
- Department heads?
- City administrator?
- Other city staff?

4. How will the city determine eligibility and qualification for the fee waiver?

- Proof of public assistance?
- Federal poverty guidelines?
- Non-profits?
- Local entities?
- In the public interest?

5. How will consistency be maintained?

- Set guidelines?
- Limited discretion?

6. How will the city budget for the anticipated loss in revenue due to fee waivers?

7. How will fee waivers be tracked?

- A developed system for tracking aggregate fee waivers processed by the city may be helpful for decision makers to accurately project budgets and plan for strategic decision making.

Legal Challenges

Before implementing a new ordinance, it is necessary to consider what legal conflicts may arise.

1. Does the city have the power to set a fee waiver for a particular program?

- Public records request fee waivers are addressed specifically by state law.
- Cities may be restricted from imposing fee waivers or reductions for system development charges.

2. Will there be an appeals process?

- An appeals process is important to ensure constitutional due process rights are upheld. Many cities provide an appeals process by authorizing the city administrator or a department head to oversee the initial request for a fee waiver and allowing review by the city council.²

² An appeal of a city's decision to deny a fee waiver or fee reduction for a public records request is separately governed by ORS 192.324(6) which provides, in part: "A requester who believe that there had been an unreasonable denial of a fee waiver or fee reduction may petition the attorney general or the district attorney in the same manner as a requester who petitions when inspection of a public record is denied under ORS 192.311 to 192.478."

3. What happens if a court finds a portion of the ordinance is invalid?
 - Some cities include “severability” clauses in the ordinances so that if one portion is deemed invalid, the remainder of the ordinance is still deemed valid and enforceable while the invalid portion is dropped from the ordinance.

Example Fee Waiver Policies

City of Portland Bureau of Development Services Neighborhood Inspections Code Enforcement Fee Waiver Application



City of Portland, Oregon - Bureau of Development Services

1900 SW Fourth Avenue • Portland, Oregon 97201 • 503-823-7300 • www.portlandoregon.gov/bds



Code Enforcement Fee Waiver Application

The Bureau of Development Services Neighborhood Inspections has developed code enforcement fee waivers to assist eligible property owners in correcting the violations of the City of Portland Maintenance Regulations, Title 29.

Waivers provide for temporary suspension of code enforcement fees and are available on a limited basis.

A waiver may be available in cases where a property owner has documentation of little or no income or another hardship; is in the process of an extensive renovation; is the new owner of the property; or the violations are limited to exterior paint and/or roof work. The attached informational sheet provides more information about the types of waivers.

A property owner, or their authorized agent, must submit a completed waiver application in order to determine waiver eligibility. They must also provide an explanation, additional information, or supporting documentation that may be relevant. The property owner or agent will be notified in writing about the application results.

APPLICANT: Complete and return this form to: Waivers, Neighborhood Inspections, City of Portland, Oregon, Bureau of Development Services, 1900 SW 4th Avenue, Suite 5000, Portland, OR 97201. Or you may FAX it to 503-823-7915. **Please print legibly.**

Property Address _____

Case # _____ Tax # _____ Lein # _____

Property Owner _____

Mailing Address _____

City _____ State _____ Zip Code _____

Day Phone _____ Alternate Phone _____

Signature _____ Date _____

Income-based waiver: Total annual household* income is _____

* All persons 18 years of age or older.

See information on reverse

1

Information About a Code Enforcement Fee Waiver Application

A waiver provides for temporary suspension of code enforcement fees assessed against a property. Waivers are available on a limited basis. Call 503-823-7891 for more information.

Income-Based Waiver

Upon approval of this waiver, monthly code enforcement fees may be suspended for (twelve) 12 months. The following requirements must all be met before the waiver may be granted:

1. All cited fire, life, and safety violations must be corrected, inspected, and approved by the Housing Inspector; or the property is vacant with no significant exterior fire, life, and safety violations; and
2. The property is clear of any other code violation administered by Neighborhood Inspections; and
3. The housing case is currently open; and
4. The dwelling is a one or two family residence; and
5. Property owner(s) must meet the income requirements by providing required documentation;
6. The property is owner-occupied or vacant.

Residential Renovation Waiver

Upon approval of this waiver, monthly code enforcement fees may be suspended for six (6) months. These requirements must all be met before the waiver may be granted:

1. All cited fire, life, and safety violations must be corrected, inspected, and approved by the Housing Inspector; or the property is vacant with no significant exterior fire, life, and safety violations; and
2. The property is clear of any other code violations administered by Neighborhood Inspections; and
3. The housing case is currently open; and
4. The building is attached to a permanent foundation or has an issued and active permit for foundation work; and
5. Paid and issued building permit fees of at least
 - A. \$500 or a project value of \$15,000 for one and two family dwellings; or
 - B. \$1,000 or a project value of \$30,000 for properties with 3-10 units; or
 - C. \$1,500 or project value of \$45,000; for properties with 11-19 units; or
 - D. \$2,000 or project value of \$60,000; for properties with 20+ units
6. A submitted work plan that demonstrates a project valuation of non-permit work to be done (or a combination of permit and non-permit work that demonstrates the required valuation as listed above) to rehabilitate the property.
7. A completed waiver application must be received in addition to the above listed requirements before a waiver can be considered.

Note: If permits are required, they must be paid for and issued before the waiver will be granted

All information is subject to change.

Excerpts from City of Albany's Business License Ordinance

Chapter 5.08 PEDDLERS – SOLICITORS

5.08.050 License fee.

(1) Except as herein specifically exempted for payment of fees, all persons applying for a license shall pay a fee in the sum of [_____] as an application and license fee. Licenses may be renewed on an annual basis upon payment of a license fee in the amount of [_____].

(2) All licenses run from January 1st to December 31st, inclusive. (Ord. 5013 § 1, 1992; Ord. 4580 § 3, 1983; Ord. 4332 §§ 1, 2, 1980; Ord. 2764 § 5, 1958).

5.08.055 License application fee exemptions.

The provisions of this chapter requiring a license application and application fee shall not apply to:

- (1) One selling products of the farm or orchard actually produced by the seller;
- (2) A newspaper carrier soliciting subscriptions;
- (3) A person calling upon business firms soliciting orders for goods or services which are regularly used by the business firm in their regular course of business; or
- (4) Milk, groceries, or other merchandise, deliveries or services ordered by a resident or sold by an area merchant and delivered to the purchaser as a service;
- (5) Schools or other nonprofit corporations or organizations which have obtained federal tax exempt status and the agents thereof. (Ord. 5013 § 1, 1992; Ord. 4580 § 4, 1983).

City of Astoria Utility Assistance Program:

Utility Assistance Program

If you are having trouble paying your current water/sewer bill, you may be eligible for Financial Assistance if you are at or below the federal income level in the table below.

Any credit and/or waived fees which may be authorized will be applied to the amount you owe. However, processing for a credit qualification may take more time than is allowed for the turn off notice, so you must still pay your current bill. The due date is not waived because you are applying for a credit. If you do not pay your bill in full, you will be turned off.

Utility Assistance Program Application Process

1. Customers may contact the Water/Sewer Department at (503) 338-5172, at any time, to obtain program information and to complete an application;
 - The City Utility Clerk will review delinquent accounts and provide Utility Assistance Program information to customers when following up on expected payments;
2. An initial phone assessment will take place to determine eligibility;
 - Water conservation educational materials will be provided;
3. An eligibility verification appointment will be scheduled at which time the customer will present their documentation, which includes the following:
 - An identification card; and
 - Proof of income for the past 30 days;
 - If applicable, the green door hanger notice or gold late notice (customers do not need to have received a late notice or shut-off alert in order to apply for assistance)
 - The resident will be required to sign a form attesting to and listing all members within the household.
4. If approved, eligible residents will:
 - Have late fees and door hanger fees waived (as applicable);
 - Receive a credit applied to their utility bill based on the table below;
 - Be provided with water conservation educational materials.

| UAP Credit Guideline Table | | |
|-----------------------------------|-----------------------|-------------------------|
| Family Size | Monthly Income | Potential Credit |
| 1 | \$1,792 | \$25 |
| 2 | \$2,344 | \$50 |
| 3 | \$2,895 | \$75 |
| 4 | \$3,446 | \$90 |
| 5 | \$3,998 | \$100 |
| 6 or more | \$4,549 | \$125 |

Gross income means all household income before any deductions.

City of Aumsville [Fee Schedule \(including fee exemption and reduction\)](#)

RESOLUTION NO. 14-17

**A RESOLUTION ESTABLISHING UPDATED CITY SERVICE FEES AND PUBLIC RECORDS/
INFORMATION REQUEST POLICY**

WHEREAS, service fees are necessary for the purpose of defraying administrative costs of the city associated with services to ensure that these costs are being paid by the service user; and

WHEREAS, the actual personnel costs and costs associated with materials used in providing services were analyzed and cost comparisons completed as documented on the attached Exhibit A.

NOW, THEREFORE BE IT RESOLVED that the following service fees and public records/information request policy is established:

SECTION 1. Fee Schedule.

| | |
|--|--|
| Copy Page Supplied by customer | \$.80 each copy, one-sided, regardless of size. |
| Copy Page Retrieved -Non-Archived Record | \$ 1.20 each copy, one-sided, regardless of size. |
| Email/Scan Non-Archived Record | \$15.00 flat rate. |
| Public Record Request Retrieval | \$45.00 hr in quarter hour increments plus \$.80 per copy page. The Oregon Public Records Law allows public bodies to recover their actual costs in fulfilling a public records request. If the estimated fee is greater than \$25, the City of Aumsville will provide the requestor with written notice of the estimated amount of the fee. In such instances, the City of Aumsville will not fulfill the public records request until the requestor makes a deposit in an amount of the estimated fee. |
| Appeals Transcript Fees | The fee shall be determined based on \$.80 per page rate for the copying, and personnel costs as an hourly rate equivalent to the salary plus benefits (computed at an hourly rate) of each employee involved in the preparation of the transcript. The total cost of the transcript shall not exceed \$500.00 |
| Research Requests Requiring Attorney /City Planner/Engineer Assistance | Actual Staff & Contract Staff Costs |
| Photographs/ Audio Tapes / Non-Paper or Oversize Materials | Actual Cost |
| Police Report Charge (Up To 50 Pages) | \$63.62 |
| Each Additional Report Page | \$.65 |
| The Development Ordinance | \$25.00 |
| The Comprehensive Plan | \$25.00 |
| The Public Works Standards | \$25.00 |

Administration/Finance

Faxing - Outgoing \$3.00 for the first page/ 1.00 for additional pages
Faxing – Receiving \$.40 each page
Non-Sufficient Funds \$30.00

Community Center Rental:

Resident/ City Staff/Aumsville Business/Property Owners: \$20.00 per hour, in half-hour increments after the first hour. Non-Resident, except for city staff and owners of businesses and other property within the city limits: \$40 per hour, in half-hour increments after the first hour. Public agencies, non-profit organizations or others may submit requests to the city administrator to obtain fee reductions or waivers. The city administrator will review all such requests and may approve or deny the request based on the ability to pay, the number of Aumsville residents served, whether the facility is available, and/or the value of the service to the community. The Aumsville City Council may also grant other fee reductions and waivers.

Security requirements/criteria:

All social activities, when the numbers of guests are expected to be 75 or more or any other event where the Police Chief deems that security is in the best interest of all parties concerned shall require a charge for police officers at an hourly rate of \$25 per officer.

Deposits:

\$200.00 deposit when beverages/food is served, \$50.00 deposit when they are not served. \$50.00 of deposit is non-refundable upon cancellation/no show.

Newsletter Advertisements

Black and white: full page \$50, half page \$30, and quarter page \$20.
Full color: full page \$175, half page \$100, and quarter page \$50.
One color only: Full page \$85, half page \$50, and quarter page \$30.

Park Facility Rental:
Fees & Deposit

Porter-Boone Park Recreational Facility can be reserved for large groups of 75 or more attendees. Smaller groups may use facilities on a first-come-first-serve basis. Applicants will be charged a non-refundable per use fee and a

refundable \$50.00 deposit. In addition, a security fee shall also be required when deemed applicable. Rental fees: Resident/ City Staff/Aumsville Business & Property Owners: \$60.00 for over 75 people. Non-Resident: \$120.00 for over 75 people. Public agencies, non-profit organizations or others may submit requests to the city administrator to obtain fee reductions or waivers. The city administrator will review all such requests and may approve or deny the request based on the ability to pay, the number of Aumsville residents served, whether the park is available, and/or the value of the service to the community. The Aumsville City Council may also grant other fee reductions and waivers.

| | |
|--|--|
| Mill Creek Ball Field Reservation | \$50.00 reservation fee. Teams can reserve the ball field for team practices during a season. Must provide proof of liability insurance and the list of requested dates and times for practices. |
| Building Permits | 20% of county permit fee for zoning review (No longer accepting plumbing, mechanical or electrical permit applications). |
| Business Licenses | No fee – Licenses are effective July 1 st – June 30 th and must be renewed annually. Licenses are required to do business within the Aumsville City Limits. |
| Peddler/Solicitor Permits | \$50 – Permits are good for 30 days from date of approval. Permits are required to do business within the Aumsville City limits. \$25 for renewal if within same fiscal year. |
| Liquor License Application or Renewal | \$25.00 Annually |
| DMV Auto Sales License | \$ 25.00 Annually |
| Communications Franchise Fee | <u>Except as provided below</u> , Communications Providers using the rights of way that Provide Communications Service to Customers within the city shall pay an annual fee of: TLECS -7% and CLECS - 4% of gross revenue from the provision of communications services to customers in the City. "Gross Revenues" means any and all revenue, of |

any kind, nature or form, without deduction for expense, less net uncollectables, subject to all applicable limitations imposed by federal or state law.

Communications Providers whose only facilities in the right of way are facilities mounted on structures within the right of way, which structures are owned by another person, and with no facilities strung between such structures or otherwise within, under or above the right of way, shall pay an annual attachment fee of \$1,000 per attachment in lieu of the percent of revenue provided in the previous paragraph.

Communications Providers that do not provide communications service to customers within the City shall pay an annual fee of: \$2.50 per lineal foot of Communications Facilities in the City right of way.

Communications Providers shall pay a minimum annual franchise fee of \$500 per year if this amount is greater than the applicable fee calculated pursuant to the previous three paragraphs.

Communications Right of Way Use Fee

Communications Providers that own Communications Facilities in the rights of way within the city without a franchise shall pay an annual fee of: The greater of (i) the applicable percentage of revenue set forth in the Communications Franchise Fee; (ii) \$2.50 per lineal foot of Communications Facilities in the City right of way; or (iii) the minimum annual Communications Franchise Fee.

Communications Providers using the rights of way to provide Communications Service to Customers within the city but not subject to the franchise requirement shall pay an annual fee of: The applicable percentage of revenue set forth in the Communications Franchise Fee.

Communications Franchise
Application Fee

\$500 deposit, provided that expenses exceeding

the deposit will be billed to the applicant or the unused portion of the deposit will be returned to the applicant following the determination granting or denying the franchise.

Communications Registration
Application Fee \$50

Court/ Police

Police Report/Copies See Public Records Above
 Administrative Court Fee (After 30 Days) \$45.00
 No-show Court Fee \$25.00
 DMV Suspension Submittal \$15.00
 Tow Release \$100.00
 Seat Belt Class \$50.00
 DMV Reinstatement Fee \$15.00
 Fix-It Fee \$45.00

Public Works

Customer Request Shutoff & Turn On \$40.00
 Delinquent Account Reconnect \$30.00
 Utility Billing Late Charge \$ 3.00
 Water Meter Metering Equipment Actual cost plus 20% administrative fee
 Meter Error Test Deposit \$25.00
 Information Records Request/Other \$40 per hour, in quarter hour increments after the
 Special Services first half-hour, and materials or cost billed to the city
 Mapping Duplication Actual Cost Plus 20% Administrative fee
 Engineering Review Actual Cost Plus 20% Administrative fee

SECTION 2. Written Requests. Unless otherwise provided by these rules, request for inspection and/or copies of public records shall be in writing on a form prescribed by the city.

SECTION 3. Procedure.

- 3.1 Requests for public records shall include the following:
- a) The name, address and signature of the person making the request or their authorized representative;
 - b) A statement of sufficient specificity to determine the nature, content and probable department within which such record may be located;
 - c) The date of such request.

- 3.2 Except as otherwise provided by these rules, public records shall not be released for inspection or as copies to members of the public or city staff or officials unless the city has received payment of the established fee from the requesting party. The person making the request should be advised that the requested materials will not be released without the city's receipt of the fee for providing such service as described in this resolution. Failure to so advise the requesting party of such obligation shall not relieve the requesting party of the obligation to pay the prescribed fee.
- 3.3 Upon receipt, the request shall be date stamped.
- 3.4 Written requests for inspection or copies of city records shall be submitted to the city hall or the police department where a list of fees prescribed by this resolution are on file, for processing public records/information requests and staff shall respond to all such requests.
- 3.5 If the request is not complied with, a written response explaining why the city is unable to process the request shall be prepared and mailed to the requesting party.

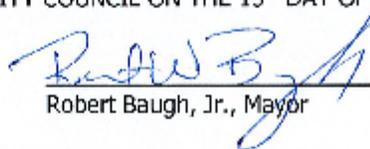
SECTION 4. City Administrator Authority. The city administrator or designee shall have the authority to:

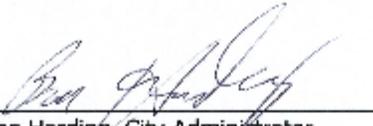
- a) Waive the requirement that the records request must be in writing or on a form provided by the city;
- b) Waive or reduce fees and waive required compliance with this resolution when it is determined all right.

SECTION 5. Exemption from Fees and Fee Reductions. The following individuals, groups or organizations shall be exempt from the fees prescribed for providing public records, and other service fees may be reduced as outlined in Section 1 - Fee Schedule:

- a) Any member of the city council, city staff, or a board or commission of the city, other government agencies or the media, unless it is for a personal reason; and
- b) The city shall not charge fees for costs incurred by the city when an employee of the city, in the employee's role as custodian of the records, is a witness in a trial or other court proceeding; and
- c) Any crime victim requesting a copy of a police report pertaining to the crime in which they have been made a victim (applies to first copy only).

CONSIDERED AND PASSED BY THE AUMSVILLE CITY COUNCIL ON THE 13th DAY OF NOVEMBER, 2017.


Robert Baugh, Jr., Mayor

Attest: 
Ron Harding, City Administrator



Special Events

Redmond City Code

411 SW 9th Street
Redmond, OR 97756
(541) 923-7710
Fax: (541) 548-0706
www.ci.redmond.or.us

Special Event – Public Assembly Permit Fee

| | |
|---|-----------------|
| Event with no street closures | \$75.00 |
| Event with street closures | \$150.00 |
| Event on 5 th Street or 6 th Street | \$200.00 |
| Public Works staff time | \$30.00 an hour |
| Deposit for trash and restroom clean up | \$250.00 |

Special Events

7.350 Definitions. As used in Sections 7.352 to 7.394, the following shall mean:

Assembly. Except as provided in Section 7.354, the term assembly includes all gatherings of a group or groups of the public of more than 100 persons, indoors or outdoors, in a public park or on public property.

City Manager. The City Manager of the City of Redmond or designee.

Council Approved Street Closures. Streets which require the approval of Redmond City Council in order for closure to occur to support a special event or public assembly. These include applications which request any closure of any portion of either 5th or 6th streets. Council shall consider these requires using variables identified in City Policy CD 101.

Festival Street. Streets designed and identified by the Redmond City Council to support community events.

Parades. A large public procession that impacts the streets for no more than four hours.

Public property. Property owned or under the control of the City of Redmond or premises open to the public as defined in ORS 801.400.

Special Events. As used in this chapter, a "Special Event" is an assembly or gathering of persons for entertainment, recreation, the display or sale of goods or services, or other common purpose to be undertaken by a person other than the City that may involve use or closure of public right-of-way of City-owned property.

Traditional Events. Recognized, community oriented events whose applications do not require approval from Redmond City Council. These events are defined in City Policy CD 101.

[Section 7.350 amended by Ord. #2014-06 passed March 11, 2014]

7.352 Permit Required.

1. Any event with an expected attendance of 100 or more persons in a public park, on public right-of-way or on public property must obtain a Public Assembly Permit from the City of Redmond.
2. One permit shall be required for each assembly. No permit shall be transferable or assignable without the consent of the issuing body.
3. Liability for failure to comply with the provisions of Sections 7.352 to 7.394 shall attach to persons who are responsible for obtaining permits under those provisions.

[Section 7.352 amended by Ord. #2014-06 passed March 11, 2014]

7.354 Exemptions.

1. The following activities are exempted from the provisions of Sections 7.350 to 7.394:
 - A. The annual Deschutes County Fair.
 - B. Events at the Deschutes County Fairgrounds.
 - C. Any regularly organized and supervised school district activity or program of the City or athletic contests organized by the Redmond Parks and Recreation District which do not utilize public streets and rights-of-way.
2. Events that close down a public right-of-way for less than four hours are exempted from the provisions of Sections 7.360(5) and 7.366(1)(B).
3. Events in public parks within the city limits are exempted from the provisions of Sections 7.360(3), 7.360(5), and Section 7.366, unless they involve street crossings at which time they will be required to provide certified flaggers per Section 7.360(3) but not a Traffic Control Plan.

[Section 7.354 amended by Ord. #94-22 passed July 26, 1994]

[Section 7.354 amended by Ord. #2014-06 passed March 11, 2014]

7.356 Fees – Fee Waivers.

1. The fee for the permit to cover the cost of administering and issuing the permit prior to the event, and inspecting facilities prior to and during the event as needed, shall be as established in the City of Redmond Fee Schedule.
2. The City Manager may waive some or all of the permit fees on finding that the applicant or event provider is the City or other local government. The City Manager's decision to waive some or all of the permit fees may be appealed to the City Council whose decision on the appeal is final.
3. All events shall require a deposit as established by the City of Redmond Fee Schedule. If all provisions of the event are adhered to, then the deposit will be returned to the applicant within 14 (fourteen) calendar days from the last day of the event. If the City of Redmond incurs any costs associated with the event due to a lack of compliance with the permit provision, then the City shall retain full cost recovery of those expenses from the deposit and return any remainder to the applicant. This includes costs incurred by the Redmond Police Department or other departments should incident responses be required on the premises of the event.
4. The applicant shall be responsible to the City the sum total of the costs related to the management by the City of the special event that is in excess of the ordinary management costs of the City for the ordinary and usual use of public property, parks, public streets, rights-of-way and sidewalks. These costs do not include the nonrefundable application fee and shall be identified by the City Manager.
5. The following parades are exempt from Assembly Permit fees: 4th of July Parade, Deschutes County Fair Parade, Veterans Day Parade, and the Redmond School District noise parades.

[Section 7.356 amended by Ord. #97-42 passed November 11, 1997]

[Section 7.356 amended by Ord. #2014-06 passed March 11, 2014]

7.358 Application Procedure.

1. Applications must be received by City per the following schedule:
 - A. Applications which request Council Approved Street Closures (5th and 6th Street) must be received 120 (one hundred twenty) days in advance of the event.
 - B. Applications which request other public right-of-way closures must be received at least 90 (ninety) days in advance of the event.
 - C. Applications for events in the public parks that exceed 250 attendees must be received at least 90 (ninety) days in advance of the event.
 - D. Applications for all other events in the city limits must be received at least 45 (forty-five) days in advance of the event.

2. Applications shall be on forms furnished by the City and shall be signed by the person or persons organizing and sponsoring the assembly. Each application shall at a minimum state the location to be used for the assembly, the number of persons reasonably anticipated to attend, and that the applicant will abide by all rules and regulations of Section 7.352 to 7.394 and other regulations and laws for the protection of the health, morals, peace and safety of the persons employed at the location, the patrons or participants, and the public.
3. If the City receives an application with less than the minimum requirement established in Sections 7.358(1) and 7.358(2) of this code, then the applicant waives all time periods for response and appeal rights referenced in this code.
4. Each application submitted shall be evaluated on its own merits, and there shall be no presumption that special events occurring annually or otherwise periodically will qualify for a subsequent special event license, except those events designated as Traditional Events by City Policy CD 101.
5. The application shall be completed in its entirety by the applicant prior to any review of it. Additional information may be required by the City. The City is not obligated to begin review of applications which have incomplete information.
6. Any facilities or structures to be constructed or erected in conjunction with the special event shall comply with all applicable federal, state or local laws, regulations, codes and ordinances.
7. The applicant may request as part of its application that it be granted an exclusive right to determine which vendors or concessionaires are permitted to operate within the defined venue of the special event. However the City is not required to approve requests and has the authority to suggest modifications.
8. Upon receipt of an application, the City Manager or designee shall route copies of the completed application to the following departments and agencies for review: Public Safety, Public Works, Community Development, Risk Management, Parks, and any other departments and agencies deemed necessary. Written approval and assurance must be obtained from each of the appropriate city officials or departments that demonstrate satisfactory arrangements have been made by the applicant to comply with all of the conditions specified in Sections 7.360 to 7.374. The officials or departments may approve the permit, subject to conditions necessary to assure compliance with the appropriate criteria enumerated in those sections. When any type of physical facility is required or subject to approval, preliminary approval may be granted based upon specific plans proposed and submitted by the applicant.
9. The city Manager or designee shall review the approvals and comments and issue or deny the permit accordingly.
10. In the case of a closure on either 5th or 6th streets (per section 7.350), the Redmond City Council shall consider the application for approval after review and comments by the City departments and partner agencies.
11. If the application is denied, the City Manager or designee shall notify the applicant of the denial within 45 days of receipt by the City of a completed application. The denial shall also notify the applicant of the appeal procedures found in this code.

[Section 7.358 amended by Ord. #2014-06 passed March 11, 2014]

7.360 Application Requirements.

1. **Scaled Site Plan.** The applicant must provide a scaled drawing of the event indicating location of activities, amenities, and other provisions required by the Public Assembly Permit application.
2. **Public Safety.** The applicant shall provide a Public Safety Plan.
 - A. Adequate traffic control and crowd protection policing shall be contracted for or otherwise provided by the applicant. The City Manager or designee may also require at least one traffic control person for each 200 persons expected or reasonably expected to be in attendance at any time during the event. The City may also require at least one crowd control person for each 500 persons expected or reasonably expected to be in attendance at any time during the event.
 - B. The applicant shall submit the names and necessary background information on forms provided by the City Manager or designee for all traffic control and crowd control

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personnel to be used during the assembly for investigation by the City as to fitness. All personnel must meet the following minimum standards in order to be approved as suitable by the City:

1. Be 21 years of age or older.
 2. Be in good physical health.
 3. Never have been convicted of a felony or misdemeanor involving moral turpitude.
 4. Have received reasonable minimum training in law enforcement or have on-the-job experience in law enforcement.
- C. The policing personnel must wear appropriate identification and must be on duty during the entire assembly unless a relief schedule has been planned and approved. A relief schedule will be approved by the City Manager or designee only when sufficient policing strength on duty has been maintained to meet the minimum strength standards described above.
- D. It shall be the duty of the policing personnel to report any violations of law to the City and to take whatever action is necessary to enforce the terms of the permit.
3. **Traffic Control Plan.** The applicant shall provide a Manual on Uniform Traffic Control Devices (MUTCD) Traffic Control Plan by a Certified Traffic Control Supervisor. The Traffic Control Plan must state that a Certified Traffic Control Supervisor will oversee the set-up and break-down of traffic diversion for the event, and that certified flaggers will be used for any street crossings that do not involve a street closure.
4. **Sanitary Facilities Plan.** The applicant shall provide a Sanitary Facilities Plan indicating how many sanitation facilities will be provided and where they will be located. If the applicant is utilizing existing public sanitation facilities to comply with the Sanitary Facilities requirement, then the applicant will be responsible for cleaning and maintaining the facilities during the course of the event. The number of Sanitation Facilities required for the event will be at the discretion of the City Manager or designee. Parades do not require a Sanitary Facilities Plan and are not required to provide additional sanitation facilities.
5. **Parking Facilities Plan.** The applicant shall provide a parking plan with the application. The parking plan needs to identify parking facilities for the event vendors, event customers, and event participants. Public parking facilities are reserved for the regular course of daily business associated with the area in which the event is taking place, unless the City Manager approves use of those facilities for the event. The parking plan should be provided as a scale drawing. Adequate access shall be provided for the parking area to facilitate the movement of vehicles at any time to or from the parking area. If buses are used to transport the public to the event, it shall be shown that public parking or parking as described above is available at a site from which buses are scheduled to pick up persons to transport them to the event. Events that close a public right-of-way for less than four hours do not need to provide a parking plan with the application. Events located in a public park in the city limits that anticipate less than 250 people are not required to provide a parking plan.
6. **Trash Facilities Plan.** The applicant shall provide a plan for all trash removal during and at the end of the event. The applicant shall clean the public space, within the approved site plan, within 24 hours of the conclusion of the event. If the applicant fails to clean up the refuse, the clean-up shall be arranged by the City and the costs charged to the applicant.
7. **Marketing and Promotion Plan.** The applicant shall provide a plan indicating the marketing that will be done to promote the event. All signs, posters and other promotional items must comply with city code.

[Section 7.360 amended by Ord. #2014-06 passed March 11, 2014]

7.362 Fire Protection Standards. If required, applicant shall show that the Fire Chief has approved the type, size, number and location of fire protection devices and equipment available at, in or near any location, including outdoor sites, buildings, tents, stadiums or enclosures, where more than ten persons may be expected to congregate at any time during the course of the assembly.

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7.364 Medical Services. If required, each assembly of more than 1,000 persons shall have at least one first-aid station approved by the Fire Chief and staffed by a person trained for emergency medical care. If the assembly exceeds 2,500 persons, at least one ambulance or rescue vehicle shall be in attendance at all times.

7.366 Public Notice Requirements.

1. All events that involve the closure of a public right-of-way must provide:
 - A. Notice of the event to those agencies representing the neighborhoods in which the event is taking place, i.e. the Redmond Chamber of Commerce, Redmond Downtown Association, Neighborhood Associations, etc.
 - B. Notice to impacted frontages of the planned event (business and residences directly impacted and those within a 300' radius), including a copy (electronic or otherwise) of the Site Plan, the Traffic Control Plan, the Parking Plan and any other materials the City Manager or designee deems necessary. Proof of delivery of the notice needs to be provided to the City at least 30 (thirty) days in advance of the event. Traditional Events, events that are closing the public right-of-way for less than four hours are exempt from this noticing requirement.
 - C. Notice to the media of the planned street closures two days in advance of the event.
2. Events in the public parks that anticipate less than 250 people are exempt from this noticing requirement.

[Section 7.366 amended by Ord. #2014-06 passed March 11, 2014]

7.368 Street Closures. All events that involve closing any portion of either 5th or 6th Streets require approval of the Redmond City Council. Traditional Events are exempt from this requirement. The decision of the City Council shall be considered final.

1. Applications for events that require street closures involving any portion of 5th or 6th need to be received at least 120 days in advance of the event; requests to close all other streets need to be received ninety (90) days in advance of the event.
2. Events closing a state street need to attach ODOT's approval and Certificate of Liability to the application.

[Section 7.368 amended by Ord. #2014-06 passed March 11, 2014]

7.370 Inspection of Required Facilities. All facilities shall be in existence in sufficient time, but not less than two hours before the event for which an application has been submitted, and shall be subject to inspection by the appropriate officials. If the actual facility or construction fails to meet the standards approved in the proposed plans, preliminary approval shall be withdrawn and all permits granted subject to such approval shall be withdrawn.

7.374 Insurance. The permit applicants shall be required to furnish evidence of general liability insurance with minimum limits acceptable to the City of Redmond, naming the City of Redmond, its officers, directors, agents, employees and volunteers as an additional insured by endorsement. The additional insured endorsement shall provide primary, non-contributory coverage and provide coverage for any and all claims for bodily injury and property damage arising from or caused by the assembly for which the permit is granted.

[Section 7.374 amended by Ord. #94-26 passed August 11, 1994]

[Section 7.374 amended by Ord. #2010-01 passed February 23, 2010]

[Section 7.374 amended by Ord. #2012-03 passed May 8, 2012]

7.378 Permit Approval.

1. The City Manager shall grant and issue the assembly permit if, after consideration, the Manager finds:

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- A. All city officials and departments have issued their approval pursuant to Sections 7.358 to 7.374;
 - B. The proposed activity and use will not unreasonably interfere with or detract from the promotion of public health, welfare, safety and recreation;
 - C. The facilities desired have not been reserved for other use at the day and hour required in the application;
 - D. The conduct of the activity will not substantially interrupt the safe and orderly movement of traffic;
 - E. The conduct of the activity will not require the diversion of so great a number of police officers of the City to properly police the activity and the contiguous areas as to prevent normal police protection to the City;
 - F. The conduct of the activity is not reasonably likely to cause injury to persons or property so as to incite violence, crime or disorderly conduct; and
 - G. The proposed activity or use of a park or park facility will not unreasonably interfere with or detract from the general public enjoyment of the park.
2. In order to assure compliance with the criteria of this section, the City Manager may impose reasonable conditions on the granting of a permit.

[Section 7.378 amended by Ord. #2014-06 passed March 11, 2014]

7.380 Permit Denial. The City Manager shall deny the assembly permit if the City Manager finds that the criteria of Section 7.378 have not been or cannot be complied with. If the permit is denied, the applicant shall be notified of the denial and the reason for denial.

[Section 7.380 amended by Ord. #2014-06 passed March 11, 2014]

7.382 Appeal. If the permit is denied, the applicant may appeal the denial to the City Council in accordance with the provisions of Section 7.228.

7.384 Permit Information. A permit issued pursuant to Sections 7.350 to 7.378 shall contain the following information and must be retained by the applicant on site during the event:

- 1. Site Plan.
- 2. Date of the activity.
- 3. Location of the activity, including, if applicable, restrictions to certain areas of a park.
- 4. Hour when the activity will start and terminate.
- 5. Special conditions imposed on the activity.
- 6. A copy of the approved Parking Plan if applicable.
- 7. A copy of the approved Sanitary Facilities Plan if applicable.
- 8. A copy of the approved Trash Plan if applicable.
- 9. A copy of the approved Traffic Control Plan if applicable.
- 10. A copy of the approved Public Notice Plan if applicable.

[Section 7.384 amended by Ord. #2014-06 passed March 11, 2014]

7.386 Inspection. The City Manager or designee or authorized representatives shall have the right to go on the premises or facilities for which the permit has been granted for the purpose of inspection and enforcement of this code and state law.

[Section 7.386 amended by Ord. #2014-06 passed March 11, 2014]

7.388 Crowd Limitation. If at any time during the assembly the size of the crowd exceeds by 10 percent or more the number of persons reasonably anticipated to be in attendance, the Chief of Police may require the permittee or sponsor to limit further admissions until sanitation, parking, fire, health, medical, traffic and crowd control requirements have been brought into conformity with the standards under which the permit was issued.

City of Wilsonville Resolution to Allow Waiver of Building, Planning and Engineering Permit Fees for Affordable Housing Projects

RESOLUTION NO. 2126

A RESOLUTION OF THE CITY OF WILSONVILLE ESTABLISHING A PROGRAM TO ALLOW WAIVER OF BUILDING, PLANNING AND ENGINEERING PERMIT FEES FOR AFFORDABLE HOUSING PROJECTS.

WHEREAS, the City has a deficit in the number of needed housing units affordable by households earning less than 60% of area median annual income; and

WHEREAS, the City's Comprehensive Land Use Plan states that, "The City of Wilsonville shall provide opportunities for a wide range of housing types, sizes, and densities at prices and rent levels to accommodate people who are employed in Wilsonville"; and

WHEREAS, Comprehensive Plan Implementation Measure 4.1.4.m states: "The City will consider the use of the following tools identified by Metro to improve availability of sufficient housing affordable to households of all income levels and manufactured housing to assure a diverse range of available housing types. *** (3) provision of fee waivers and property tax exemptions for projects developed by non-profit organizations or governments serving people at or below 60% of area median income"; and

WHEREAS, the City of Wilsonville has established a policy of approving tax exemptions for projects developed by non-profit organizations or governments serving people at or below 60% of area median income; and

WHEREAS, sixty percent (60%) of 2008 area median household income in the Portland Metro Area for a family of four is \$40,740; and

WHEREAS, according to Oregon Employment Department 2007 Wage Information for Multnomah and Washington Counties, approximately 50% of job classifications pay a average annual wage of less than \$40,000, and nearly one-third pay less than \$30,000 on average annually; and

WHEREAS, those job classifications include such jobs as technicians, aides, and assistants in the medical field, construction workers, product assembly workers, food industry workers, teachers and teaching, and personal care workers, all of which are essential employment categories in our economy; and

WHEREAS, the City of Wilsonville currently has a 2-1 jobs/housing ratio which negatively impacts local and area transportation facilities and livability of the community; and

WHEREAS, permit fees to be waived average around \$1,842 per unit; and

WHEREAS, the primary applicants for waivers under this program in the short/mid-term will likely be the remaining mental health housing units in Villebois, which total approximately 175 additional units, likely over a 10-year period; and

WHEREAS in order to be objective in granting waivers, establishment of criteria for evaluating requests for waivers is essential,

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

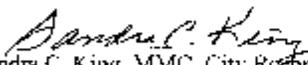
1. A building, planning and engineering permitting fee waiver program is hereby established in the City of Wilsonville for affordable housing projects.
2. The City Manager, or the manager's designee, shall determine whether or not a waiver shall be granted, and if granted, whether the waiver shall be in whole or in part of some or of all of the applicable building, planning, and engineering fees.
3. The evaluation criteria for granting waivers are as follows:
 - a. The proposed project is being developed by a non-profit organization or a government agency;
 - b. The project will serve households earning at or below 60% of area median income;
 - c. The project will maintain affordability at or below 60% of area median income for a minimum of 40 years;
 - d. The applicant shall supply financial data sufficient to illustrate that the waiver will materially benefit the project;
 - e. The City Manager or designee may request such other information to be provided to the City by the applicant that the City Manager determines is reasonable and necessary for a full and complete waiver determination.
4. This resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 16th day of June 2008, and filed with the Wilsonville City Recorder this date.



CHARLOTTE LEHAN, MAYOR

ATTEST:


Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Charlotte Lehan, Mayor - Yes
Alan Kirk, Council President - Yes
Tim Knapp, Councilor - Yes
Michelle Ripple, Councilor - Yes
Celia Núñez, Councilor - Yes

Every two years, the League of Oregon Cities (LOC) conducts a survey to gauge the general fiscal condition of the cities in Oregon. The 2019 results indicate steady increases in the ability of cities to meet their financial needs. While many cities perceive their situation to be the same or better than the previous year, the smallest cities appear to have declined in their ability to meet fiscal needs. Cities have kept pace with service demands and are more optimistic than previous years that they can meet increasing demands. These findings indicate an increasing optimism about the state cities in Oregon. In certain cases, this has come at the expense of deferred maintenance for water and wastewater systems. Despite this fact, city infrastructure, as a significant cost driver, declined in 2019.

For most cities, the primary sources of revenue are property taxes and utility franchise fees. Studies by the LOC in 2016 and again in 2018 revealed that franchise fee revenues often do not keep pace with inflation. Additionally, the property tax constraints of Measures 5 and 50 have created a system that limits the amount of taxable revenue available to local governments. This means that traditional revenue sources for cities are steadily shrinking, forcing local governments to either rely on alternative revenues, cut spending or eliminate services.

In the effort to overcome the structural deficiency in Oregon's property tax system, new revenues have most often come from additional fees and from taxes on recreational marijuana. In certain regions, population increases, and economic growth have a strong correlation to city financial health, as was true two years ago. This has resulted in a growing divide in the general fund balances of member cities.

Surprisingly, primary cost drivers for cities have shifted in the last year. Wages, employee healthcare, and the Public Employees Retirement System (PERS) remain important financial drivers for cities. Infrastructure has fallen from the second-most important to the fourth-most important driver.

KEY FINDINGS

- Financially, cities are the same or better-off in 2019 compared to 2017. Despite the structural defect in Oregon's property tax system, revenue is expected to keep up with service level demands in the future.
- The majority of cities across the state are maintaining their spending levels from the previous year as well as maintaining similar levels of staffing and services (excepting in city hall and library services).
- Both large and small cities are now seeing an increased demand for services, indicating a growing demand in small cities following several years of the demand growth primarily occurring in larger cities.
- Rates of deferred maintenance have fallen dramatically but remain significant in water infrastructure and city administrative facilities.

This survey collected data between December 10, 2019 and January 10, 2020, with 105 cities responding. These cities represent the majority of the LOC's members. However, without the participation of the city of Portland, the respondents represent only 1.1 million city residents, or

“ I think biggest challenge is keeping pace with payroll costs: wages, PERS, benefits. The expenditure increases far outweigh the modest increase in revenues we have available. ”

- City of Gold Beach

38.7% of the city residents in Oregon. In addition, survey respondents were overrepresented by cities with a population greater than 5,000 and cities with a population between 1,301-3,250 residents.

RESULTS

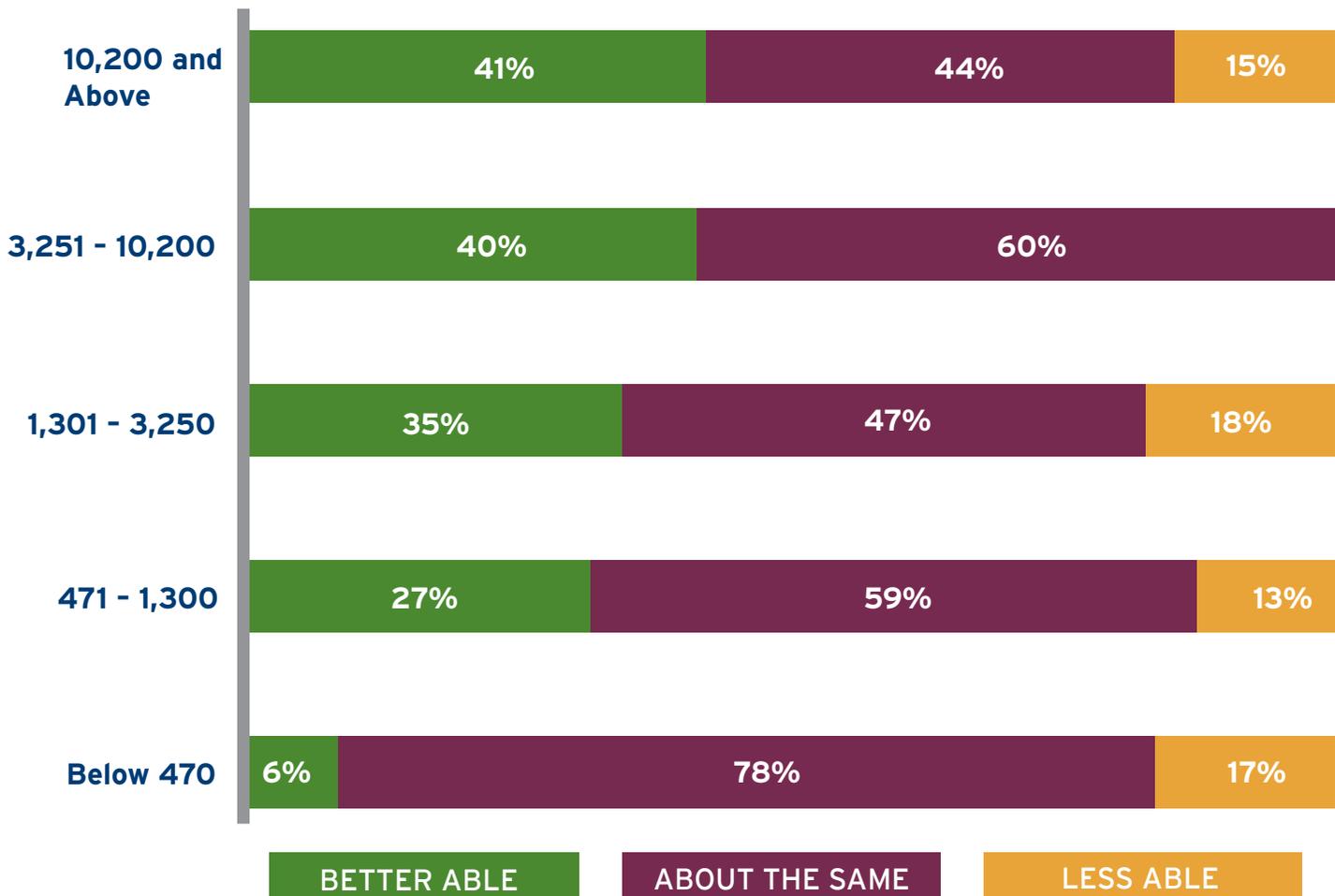
Most cities reported their financial condition as better or about the same as last year. Thirty-one percent of cities reported they were better able to meet financial needs, as opposed to 57% which answered, “About the same.” This is consistent with what was seen in 2017. Cities with a population greater than 10,000 were more likely to answer, “Better able.” This was also more likely in the Willamette Valley, Central Oregon and Southern Oregon regions. What is striking is the change from responses to this question two

years ago. While 19.2% of cities in the 1st quintile¹ expected to be better able to meet fiscal conditions in late 2017, that number has dropped to just 6%. All other population categories increased their perceived fiscal condition from 2017. In fact, no city in the 4th quintile (between 3,251-10,200 population) reported being less able to meet fiscal needs from previous year.

When asked about the anticipated state of their finances in the next fiscal year, cities were far more optimistic than previous years. Seventy-two percent of cities anticipated general fund revenue to keep pace or exceed current needs in the future. This was more common a response from cities with a population greater than 3,250. Overall, 58% of cities statewide have witnessed demand increases and expect increases in the future.

(continued on page 3)

OVERALL, IS YOUR CITY BETTER ABLE TO MEET ITS FINANCIAL NEEDS THAN LAST FISCAL YEAR? (BY POPULATION)



2020 STATE OF THE CITIES

Most cities maintained their financial practices from the previous year. Among the surveyed actions taken in FY2020, the majority of cities:

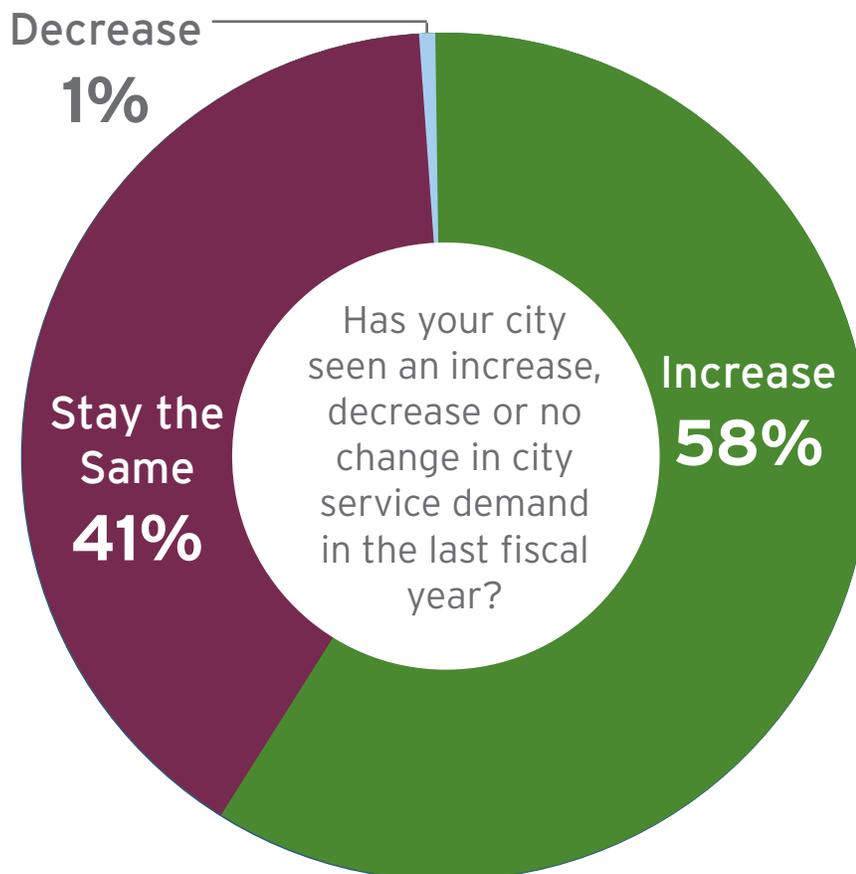
- Maintained Service Levels (81%);
- Increased Employee Wages (70%);
- Maintained Employee Healthcare Contributions (64%);
- Maintained Public Safety Spending (62%); and
- Maintained FTE Count (54%).

Cities in the 5th quintile were most likely to increase charges and fees. This set of actions shows that cities are holding firm on their spending habits, while adopting a conservative approach to spending in most cases. Despite a more optimistic mood among member cities, spending patterns have remained relatively identical to 2017. Only 23% of responding cities added new revenue sources in FY2020, most of which were miscellaneous fees, utility increases and transient lodging taxes. This indicates cities have maintained spending and filled gaps with fees and utility increases. It should be noted that cities with a population greater than 10,200 were most likely to take on new revenue sources. For most smaller cities, no new revenue sources exist.

Member cities are also reducing hours and staffing levels across their operation. Respondent cities reduced staffing, services, and or hours of operation in the following areas:

- City Hall (46% of cities)
- Libraries (75%)
- Senior Services (4%)
- Planning/Permitting (5%)
- Public events/arts/etc. (9%)
- Police (5%)
- Fire Services (1%)
- Social Services (1%)
- Transit/transportation services (3%)
- Recreational facilities and/or activities (8%)
- Parks/green spaces/natural areas (8%)

City fiscal health is also reflected in their end-of-year general fund balances. Sixty-four percent of cities saw an increase in their general fund balance in FY2019. While this does appear to be good news, 24% of cities also saw a decrease. This shows a gap in the financial welfare of cities over the last year. Cities with a population greater than 3,250, as well as cities in the Metro, North Willamette Val-



ley and Southern Oregon regions were most likely to have increasing fund balances.

The fiscal health of cities is also determined by the demand for services. In the last year, the majority of cities (57 percent) saw increases in service demand, particularly those in Willamette Valley regions, Metro, and Southern Oregon regions, as well as those with a population of more than 10,200 people. This is consistent with results from the LOC's last State of the Cities Survey two years ago. However, differing from what was seen in that survey, a near identical proportion of cities (57%) expect future demand to increase. This is a significant shift from the 70% expecting demand increase in late 2017. It should be noted that the expectation in demand was statistically more likely in cities in the 5th quintile and that no city responded to expecting lower service demand in the future.

Though less of a factor in this year, many cities are deferring maintenance on facilities and infrastructure in FY2020. It makes sense that deferrals of maintenance would persist if spending remained the same in many cities. The most common deferred maintenance projects are water, wastewater and stormwater infrastructure (31.7%), and city administrative facilities like a city hall (14.4%).

Forty-two percent of cities were not deferring maintenance on facilities, a significant increase from the 18% figure for the same question two years ago. This indicates that while spending may remain the same, cities are finding the funds to maintain facilities and catch up with facilities work delayed in previous years.

When asked to rank the most important factors in their city's financial health, LOC members listed wages, pensions, and healthcare as the highest cost drivers. This is a return to what has been observed over many years. In 2017, LOC saw infrastructure as the second highest driver, now at 4th. A fall in infrastructure may indicate improvement in this area (especially supported by the decrease in maintenance deferral). Debt service also dropped in the rankings from 6th to 8th place. Marijuana legalization, now below "other" as a cost driver, is likely no longer an important cost driver and could be removed in future iterations of this survey.

CONCLUSION

Prospects for cities appear to be increasing compared to the survey conducted two years ago. Cities report increasing ability to meet fiscal needs from the previous year and anticipate being able to meet demand in the future. This is further enunciated by reduced maintenance deferrals and a decline in debt servicing as a cost driver.



CITY COST DRIVERS

1. Wages/Salary Cost
2. PERS Contributions
3. Employee Healthcare
4. City Infrastructure
5. Law Enforcement
6. City Insurance
7. Fire/EMS
8. Debt Service
9. Other
10. Marijuana Legalization

However, it appears that despite this optimism, some cities in Oregon are not in a healthy condition. Cities with a population less than 470 have shown that they are not better able to meet fiscal needs compared to late 2017. Additionally, reductions in staff and services in certain areas (such as city hall and library facilities) demonstrate that it is not all good news for every Oregon city. ■

¹ Cities are divided into population quintiles or groups of cities representing roughly one-fifth of the 241 total cities. This is done to provide more accurate comparison of differences among city populations. If the League randomly selected cities from each quintile, we would expect 20 percent to come from each of the five quintiles.



LEAGUE OF OREGON CITIES

WHITE PAPER

Legal Guide to Handling Disruptive People in Public Meetings

MAY 2017



citycounty insurance services
cisoregon.org

Prepared in Cooperation with:
CIS (Citycounty Insurance Services)



Introduction

Almost every local government official will be in a public meeting at some point in his or her career and experience the near or total derailment of the meeting by a disruptive member of the public. Whether it's the person who refuses to relinquish his or her position at the podium during public comment or the audience member who repeatedly shouts his or her dismay about a comment being made by a recognized speaker, such disruptions can be annoying, and in some cases so severe that officials are unable to conduct the public's business.

These types of situations can be challenging, as the governing body attempts to find a way to deal with the disruption without escalating the situation, or worse, inviting a lawsuit.

Sometimes, the governing body simply ignores the disruption. In other situations, it may be necessary to end the meeting and resume at a later date, hoping a period of cooling off will prevent a disruption when the meeting is resumed. If those efforts don't work, public officials are often left wondering if they can legally remove the person, and if so, whether they can prohibit the person from returning to future meetings. Public officials also refer to the removal of a person from a public meeting or their suspension from future meetings as "trespassing a person." The purpose of this guide is to explore those latter options for dealing with disruptive behavior.

This guide begins with an overview of public meetings law and whether and when the public has a right to speak at public meetings. The guide then turns to the constitutional issues on what types of speech are protected, and the issues that are involved in removing someone from a council meeting. Finally, the guide summarizes the relevant case law in this area and concludes with some practical advice for addressing members of the public who are disruptive to a city council meeting.

Public Attendance Versus Public Participation

Although Oregon's public meetings law requires governmental meetings to be open to the public, it is not a law that requires the government to allow the public to participate in its meetings. In relevant part, ORS 192.630(1) states that "all meetings of the governing body of a public body shall be open to the public and all persons shall be permitted to attend any meeting." Oregon's attorney general has explicitly said that the "right of public attendance guaranteed by the Public Meetings Law does not include the right to participate by public testimony or comment."¹

Although Oregon's public meetings law does not require governments to allow public participation, it is often required by other state laws or local ordinances. For example, state law requires a city to hold a public hearing before adopting its budget. State law also requires city councils to hold public hearings when making certain land use decisions. In addition, many cities have adopted rules of procedure for their city council meetings that allow the public to speak on certain matters of public concern at a council meeting.

¹ *Public Records and Meeting Manual*, Public Meetings Page 151 (2014).

Controlling Public Participation

When state or local rules allow the public to speak, any restrictions that a city desires to impose must fall within constitutional parameters.

A. Constitutional Amendment Protections Provided to Public Meetings

In the United States, the First Amendment ensures that “debate on public issues should be uninhibited, robust, and wide-open.”² “Citizens have an enormous first amendment interest in directing speech about public issues to those who govern their city.”³ However, cities are not required to “grant access to all who wish to exercise their right to free speech on every type of government property, at any time, without regard to the disruption caused by the speaker’s activities. Even in a democracy, the government need not tolerate actual disruptions of government business.”⁴

In recognition of the fact that public meetings are a highly important place for the public to share concerns with their governing leaders, and equally recognizing the importance of a governing body’s need to actually govern, a city council meeting (or other public meeting) is considered to be a limited public forum. In general, a limited public forum is a forum created by the government for expressive activity, wherein the activity can be moderately limited through time, place and manner restrictions, with the caveat that the restrictions are viewpoint neutral.

Article I, Section 8 of the Oregon Constitution also protects the free speech rights of the public. Although the Oregon courts have not decided a case involving free speech and public meetings, they have made clear that any content-based restriction is unconstitutional under the Oregon Constitution. Consequently, where the law allows the public to speak, the council must take extreme caution to not take action that limits what the person is allowed to say.

B. Time, Place and Manner Restrictions

Under the federal constitution, it is clear that city councils may impose content neutral time, place and manner restrictions. Time, place and manner restrictions are simply that: a rule regulating the specific time in which a person may speak, the location from which a person can speak, and the manner in which the speech can be made. For example, a city council may choose to limit public comment to certain points in a proceeding and (subject to any state law) limit the amount of time a person may speak. For example, a rule that “the public may provide testimony only during that time noted as ‘Public Comment’ on the agenda, with said testimony being provided from the designated podium, and shall be limited to no more than three minutes per speaker” has been upheld by the Oregon Court of Appeals and the Ninth Circuit Court of Appeals.

² *Walsh v Enge*, 154 F Supp 1113, 1119 (D Oregon 2015) (quoting, *N.Y. Times Co. v Sullivan*, 376 US 254, 270, 84 S Ct 710, 11 L Ed2d 686 (1964)).

³ *White v City of Norwalk*, 900 F2d 141, 1425 (9th Cir 1990).

⁴ *Walsh* at 1119.

The more difficult part for governing bodies in controlling people’s speech during public meetings is ensuring that the control measures imposed are both viewpoint neutral and enforced consistently and equally to all speakers. A measure which “serves purposes unrelated to the content of expression and only incidentally burdens some speakers, messages, or viewpoints” is considered viewpoint neutral.⁵ For example, the court has noted that requiring a member of the public to limit his or her testimony to the topic presently being discussed by the overall governing body is an acceptable viewpoint neutral regulation.

C. Removing Disruptive People from Public Meetings

Disruptive people can be removed from public meetings (public officials often refer to this removal as “trespassing”). However, the person must actually be disrupting the meeting. The Ninth Circuit has specifically stated, “Actual disruption means actual disruption. It does not mean constructive disruption, technical disruption, virtual disruption, *nunc pro tunc* disruption, or imaginary disruption.”⁶ A *nunc pro tunc* disruption is one where the speech could cause a disruption after the fact.

To that end, individuals who refuse to sit down when their allotted speaking time has ended can be removed from the public meeting. Persons who interrupt a meeting’s proceeding by repeatedly shouting out and yelling can also be removed. Even individuals located in a different room than an actual public meeting who are protesting so loudly that it interferes with the meeting can be removed from the area. On the other hand, a person who rolls his or her eyes, repeatedly sighs, shakes their head or guffaws is probably not actually interrupting the meeting. A person who is merely a distraction is not necessarily an actual disruption, and thus, should be ignored.

Because the requirement is that an actual disruption of the proceedings occur, it is not appropriate to remove a person because of some type of symbolic expression that does not interrupt or halt the meeting itself. For example, the Ninth Circuit found that while a person giving a Nazi salute may be offensive, giving the salute did not interfere with or interrupt the public meeting itself. And because the actual meeting was not interfered with by the salute, the removal of the person giving the salute from the meeting amounted to “viewpoint discrimination” by the governing body. Having a person removed from a public meeting because his view on a matter is offensive to some or all of the other people in attendance at the meeting is not legally permissible.

The Nazi salute case is one to be particularly cognizant of because it is applicable to audience members. The federal courts recognize that audience members in limited public forums (like city council meetings) are “subject to the same constitutional rules that apply to those addressing the chamber.”⁷ In practice, this means that audience members who wear clothing that may generally be described as offensive, who make what is commonly thought of as crude or

⁵ *Alpha Delta Chi-Delta Chapter v Reed*, 648 F3d 790, 800 (9th Cir 2011) (quoting, in part, *Ward v Rock Against Racism*, 491 US 781, 791, 109 S Ct 2746, 105 L Ed2d 661 (1989)).

⁶ *Norse v City of Santa Cruz*, 629 F3d 966, 976 (9th Cir 2010).

⁷ *Reza v Pearce*, 806 F3d 497, 505 (9th Cir 2015).

inappropriate hand gestures, and in some instances (absent a rule or ordinance prohibiting otherwise) passively hold signs or symbols that some find distasteful, may only be removed from the public meeting if those actions truly impede the public body's ability to conduct the meeting.

D. Suspending Disruptive Persons from Future Public Meetings

It is not uncommon for a person desiring to make their point to cause several disruptions at the same meeting or over a series of meetings. The constant disruption of public meetings by the same person, despite repeated warnings and removals, often leads public officials to consider suspending the person from future public meetings (otherwise known as issuing a trespass order). While the temptation to bar a disruptive person from future meetings is great, the legal ability to do so is questionable.

Two relatively recent federal court opinions held that prohibiting a disruptive person from attending future meetings, and from entering the entirety of a government facility, is not permitted under the First Amendment to the U.S. Constitution. The federal district court for Oregon specifically held in *Enge v. City of Portland* that a government may not “prospectively exclude individuals from future public meetings merely because they have been disruptive in the past.” In a separate decision, *Reza v. Pearce*, the Ninth Circuit Court of Appeals ruled that “imposing a complete ban” on a person’s entry into a government building “clearly exceeds the bounds of reasonableness” established under First Amendment jurisprudence. Both decisions are explained below more fully.

1. *Enge v. City of Portland*

In the *Enge* case, the city of Portland’s municipal code permitted the city to indefinitely suspend a person from city hall and the city council’s chambers if the person disrupted a city council meeting. During a city council meeting, Mr. Walsh raised his voice and interrupted the meeting to the point that he was asked to leave by the mayor. After the meeting concluded, Mr. Walsh received a notice of exclusion from the city which prohibited him from attending any city council meeting or appearing in city hall for a period of 60 days.

The Oregon District Court found that the Portland ordinance violated the First Amendment to the U.S. Constitution. In its decision, the court noted that if Portland’s ordinance was permitted to stand, it could “lead to officials shutting the government’s doors to those whose viewpoints the government finds annoying, distasteful, or unpopular. Permanent or even lengthy exclusions for past disruptive behavior conduct could become a convenient guise for censoring criticism directed toward the powerful. The First Amendment’s guarantees, although not absolute, are not so flimsy.”⁸

In issuing its ruling, the Oregon District Court noted that the suspension from future meetings was not reasonable under First Amendment jurisprudence. In order for the ordinance to have been found reasonable, the ordinance would need to fulfill a legitimate need. Portland argued that the ordinance was needed for two reasons. First, the ordinance was necessary to protect the public’s safety. Second, even though Mr. Walsh was prohibited from attending city council

⁸ *Walsh* at 1119.

meetings, he had ample alternatives to communicate his concerns with Portland’s governing leaders. Neither of Portland’s arguments were held to be valid by the court.

The court noted that while public safety is a legitimate concern and could potentially allow for a person to be prospectively banned from attending a city council meeting, there was nothing in the record that showed that Mr. Walsh himself was a threat to any person. “Mere speculation that some persons may make others feel unsafe or engage in additional disruptions is an insufficient basis upon which to erect a governmental power to bar those who wish to express their views from participating in public debate.”⁹ The court was particularly insistent that if Mr. Walsh was disruptive in the future, he could simply be escorted out of the meeting.

In addition, the court found that Portland’s ordinance did not provide Mr. Walsh with any reasonable alternatives to voice his concerns about public matters. The court appears to recognize that there is a fundamental difference between making a verbal statement at a city council meeting on a matter of public concern and sending in a letter. In its holding the courts stated, “prospective exclusions defeat the very purpose of the forum: to provide the opportunity for discourse on public matters.”¹⁰

2. *Reza v. Pearce*

In this case, Arizona State Senator Pearce issued an order barring Mr. Reza from the state Capitol because he had previously been disruptive during a hearing chaired by Senator Pearce on an omnibus immigration bill. In addition to barring Mr. Reza from the Capitol, Senator Pearce adopted a new rule which required individuals who disrupted the Senate’s proceedings from being excluded from the Capitol for two weeks for a first offense and for 60 days for any subsequent offenses. When Mr. Reza attempted to enter the Capitol to attend a previously-scheduled meeting with another senator to discuss obtaining permits for a protest, he was refused entry to the building.

The Ninth Circuit specifically held that banishment from the state Capitol was unreasonable under the First Amendment. In the opinion, the court specifically notes that the ban at issue excluded Mr. Reza “from all future hearings on any subject, based on the purported fear that he could be disruptive in the future”.¹¹ The court additionally noted that the ban prevented Mr. Reza from “visiting his elected representatives to urge legislative action on any subject.”¹² And while the court noted that public safety can be a reasonable ground to deny entry to a public building, there was no real threat to public safety established in the case, and the ban was therefore not reasonable.

3. *Public Safety Exception*

In both of the appellate cases described above, the courts reference that public safety concerns may be a legitimate reason to prospectively prohibit a person from entering and participating in a public meeting. But in both cases, the court found no real threat to public safety. These cases

⁹ *Walsh* at 1132.

¹⁰ *Walsh* at 1133.

¹¹ *Reza* at 507.

¹² *Id.*

leave open the possibility that if a city council establishes that a real threat to public safety exists, it may be able to prospectively prohibit a person from attending a future public meeting. However, as there is no decision on point, it is reasonable to assume that any such suspension should be significantly limited in duration.

After conferring with legal counsel, if a city determines that a person should be prospectively prohibited from entering and participating in a public meeting, the attached Appendix A, entitled “Notice of Exclusion,” may be used as starting point in drafting an appropriate exclusion order. Any such notice of exclusion must be carefully crafted to ensure that the following occurs: (1) definitive evidence of a threat to public safety is established; (2) the subject of the order is provided appropriate due process; and (3) the subject of the order is given an opportunity to appeal the notice.

E. Arresting Individuals Who Disrupt Public Meetings

Having a disruptive person removed from a public meeting often results in the person simultaneously being arrested for disorderly conduct. Oregon has two criminal statutes related to disorderly conduct, one pertaining to disorderly conduct in the first degree, the other pertaining to conduct in the second degree. Both statutes generally prohibit a person, in relevant context to this discussion, “with intent to cause public inconvenience, annoyance or alarm,” or creating a risk thereof, from: engaging in violent or threatening behavior; making unreasonable noise; or disturbing lawful assemblies. The fundamental purpose behind both disorderly conduct statutes is “to protect the general public from conduct that threatens to erode the community’s sense of safety and security.”¹³

Individuals have challenged the validity of the disorderly conduct statutes on the basis that they violate a person’s right of free speech and expression under Article 1, Section 8 of the Oregon Constitution. The Oregon Court of Appeals has determined that this type of constitutional challenge to the disorderly conduct statutes requires a court to determine if an arrest for disorderly conduct “had as its objective the prevention of some harm within its power to prevent or whether its objective was to prevent protected speech.”¹⁴

In *State v Rich*, a defense attorney was arrested outside of a courtroom for disorderly conduct when he yelled at a police officer for more than a minute. The yelling was so loud that it could be heard outside in a hallway and in offices that opened to the hallway. At least some employees of the courthouse indicated the yelling was so loud it stopped them from working. The defense attorney argued that his arrest for disorderly conduct violated Article 1, Section 8 of the Oregon Constitution in that he was arrested because the officer did not like the words he was yelling (the defense attorney was using profane language).

After reviewing the matter, the Court of Appeals determined that the defendant was not arrested because of the words he was uttering, but rather, as a result of the volume at which he was uttering those words. Finding that the basis of the disorderly conduct arrest was “the speech’s

¹³ ORS 166.023 and 166.025.

¹⁴ *State v Rich*, 218 OR App 642, 647, 180 P3d 744, 747 (2008).

noncommunicative elements,” the court found that the arrest was proper and Constitutional. It was the volume of the speech and the effect it had on the public (causing work to cease) that caused the disorderly conduct, not the words themselves.

When a person is arrested at a public meeting for disorderly conduct, it should be clear that the person is not only disrupting the meeting from occurring, but that the person’s behavior (and not the words being used) is what is eroding the public’s sense of safety and security.

Conclusion

Public officials do not have to allow people to disrupt or derail their ability to conduct the people’s business. It is perfectly acceptable for a governing body to establish rules that dictate when public comment can be made, how long the public comment can be given, and the topic that the public comment must surround. Governing bodies are also permitted the right to remove any person from a public meeting when that person actually disrupts the meeting. If a person’s disruption of a meeting is so deleterious that it threatens the safety and security of the public, the governing body can request that the person in question be arrested for disorderly conduct. And while public officials may wish to prospectively ban consistently disruptive people from future meetings, officials are warned that the only time such an action may even be legally permissible is if the officials can prove that the disruptive person proves to be an actual threat to the public safety—and even then, a limited suspension is perhaps most prudent. As a general rule, cities should utilize the least restrictive option to a disruptive citizen’s rights when trying to regain and retain order of a public meeting.

APPENDIX A

NOTICE OF EXCLUSION

Dear [SIR/MADAM]:

You are hereby excluded from the following property: [LOCATION/ADDRESS] (“property”).

This letter is to inform you of the conditions and processes associated with your Notice of Exclusion. This exclusion is effective as of [DATE TRESPASSED]. You are prohibited from entering the property for a period of [LENGTH OF EXCLUSION/HOURS/EVENT].

In order to facilitate necessary actions or protected activities, you may be permitted upon prior approval to enter the property by giving at least one-day advance notice to [EXCLUDING AUTHORITY]. This Notice of Exclusion is given pursuant to ORS 164.245, as well as [MUNICIPAL/COUNTY CODE §]. Your entry upon the property without express permission may result in adverse consequences including, but not limited to, initiation of civil or criminal proceedings against you.

Should you feel this Notice of Exclusion has been made in error, or you desire to contest this Notice of Exclusion, an appeal may be made to the Municipal Court pursuant to [MUNICIPAL CODE §] by filing a notice of appeal within ____ days of your receipt of this Notice of Exclusion. The exclusion from the property shall remain in effect pending your appeal. On appeal, evidence may be offered and arguments made before an impartial hearings officer. You are not entitled to court appointed counsel at that appeal, however, you may retain counsel at your own expense.

Should you choose to not to appeal, this exclusion will expire by its own terms on [DATE EXCLUSION ENDS].

Sincerely,

[Signed by Person Authorized to Issue]