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## Committee, Commission, Boards

*CCB's meet at Community Center, Conference room D unless otherwise specified.*

### [Committees]

- **Together for Talent Committee**
  - Meets 1<sup>st</sup> Tuesday of each month at 5:00pm, Conf. rm. D
  - Chair David Spinney, spinney1@gmail.com  
§ Phone: (541) 633-0745
  - Vice Chair  
§ Phone:
  - Secretary Kat Garrido, kathybbarrido@gmail.com  
§ Phone: (775) 741-0296
  - Committee email: togetherfortalent@cityoftalent.org
  - Council Liaison: Councilor Ponomareff
  - Staff Liaison: Tessa DeLine
- **Public Arts Committee**
  - Meets 1<sup>st</sup> Monday of each month at 5:00pm, Conf. rm. D
  - Chair Donna Ruiz, bertucciruiz.donna@gmail.com  
§ Phone: (541) 973-5177
  - Vice Chair Cathy Dorris, cdswinebar@gmail.com  
§ Phone: (541) 821-0651
  - Secretary Parsina Dias, parsina.kurth@gmail.com  
§ Phone: (541) 601-3741
  - Committee email: publicarts@cityoftalent.org
  - Council Liaison: Councilor Paré-Miller
  - Staff Liaison: *currently, there is no assigned staff liaison*
- **Urban Forestry Committee**
  - Meets 2<sup>nd</sup> Wednesday of each month at 6:30pm, Conf. rm. D
  - Chair Julie Spelletich, jspelletich@gmail.com  
§ Phone: (541) 951-1744
  - Vice Chair Jane Ellen, janeellenblossom@gmail.com  
§ Phone: (541) 918-1921
  - Secretary Payson Collins, payson@valleyviewnursery.com  
§ Phone: (541) 841-0723
  - Committee email: urbanforestry@cityoftalent.org
  - Council Liaison: Councilor Daniel Collay
  - Staff Liaison: City Manager Gary Milliman
- **Architectural Review Committee**
  - Meets 3<sup>rd</sup> Monday of each month at 4:00pm, Conf. rm. D
  - Chair Jenny Kueck, jenny.m.kueck@gmail.com  
§ Phone: (541) 890-8104
  - Vice Chair, Jack Latvala, jacklatvala@gmail.com

- § Phone: (541) 301-5999
  - Committee email: *none*
  - Council Liaison: *none*
  - Staff Liaison: Nick Schubert
- **Budget Committee**
  - Meets in Town Hall in spring, meetings set by Budget Officer
  - Chair elected at 1<sup>st</sup> budget committee meeting
  - Vice Chair elected at 1<sup>st</sup> budget committee meeting
  - Committee email: *none*
  - Council Liaison: *none*
  - Staff Liaison: City Manager or Finance Director
- **Harvest Festival Committee**
  - Meets in Community Center Conf. rm. D at request of festival organizer
  - Chair is City Recorder or assigned city staff
  - Committee email: harvestfestival@cityoftalent.org
  - Council Liaison: *none*
  - Staff Liaison: assigned city staff

[Commissions]

- **Economic Development Commission** - *currently not meeting*
- **Planning Commission**
  - Meets 4<sup>th</sup> Tuesday of each month at 6:30pm at Community Center
  - Chair Joi Riley, joigeoff@gmail.com
    - § Phone: (541) 944-0440
  - Vice Chair, Lisa Shapiro, lisa.shapiro5@gmail.com
    - § Phone: (541) 601-7651
  - Commission email: planningcommission@cityoftalent.org
  - Ex-Oficio: Mayor Ayers-Flood
  - Ex-Oficio: Councilor Pastizzo
  - Staff Liaison: Nick Schubert
- **Traffic Safety & Transportation Commission** - *currently not meeting*
- **Parks and Recreation Commission**
  - Meets 2<sup>nd</sup> Wednesday of each month at 6:30pm on Zoom
  - Chair Ted Hilton Walker, hiltonwalker.ted@gmail.com
    - § Phone: (503) 867-9435
  - Vice Chair Melissa Hendricks, melissatpoint@gmail.com
    - § Phone: (503) 754-6788
  - Secretary, Mark Krause, markkrause007@gmail.com
    - § Phone: (541) 621-3716
  - Commission email: parkscommission@cityoftalent.org
  - Council Liaison: Councilor Byers
  - Staff Liaison: *currently, there is no assigned staff liaison*

[Boards]

- **Urban Renewal Agency**
  - Meets 3<sup>rd</sup> Wednesday of each month at 6:00pm at Town Hall, before council meeting
  - Chair: Mayor Darby Ayers-Flood, [mayor@cityoftalent.org](mailto:mayor@cityoftalent.org)
    - § Phone:
  - Vice Chair: Collete Paré-Miller, [councilor1@cityoftalent.org](mailto:councilor1@cityoftalent.org)
    - § Phone:
  - Executive Director: City Manager Gary Milliman
  - Secretary: City Recorder or appointee
  - Board email: [tura@cityoftalent.org](mailto:tura@cityoftalent.org), [urbanrenewal@cityoftalent.org](mailto:urbanrenewal@cityoftalent.org)
- Urban Renewal Agency Budget Committee
  - Meets in spring, before Urban Renewal Agency meeting
  - Meeting dates published locally

[Ad Hoc]

- Weed Team - *currently not meeting*



# Committee/Commission Roles

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There are various roles within each committee and commission. Below is a basic outline of the purpose of each role.

- **Chair** - The Chair sets the agenda, runs the meetings, and coordinates with the Council Liaison and staff.
- **Vice Chair** – The Vice Chair assumes Chair responsibilities when the Chair is absent.
- **Secretary** - The Secretary records the meeting minutes.
- **Council Liaison** – The Council Liaison acts as the go-between for the committee/commission and City Council. They do not have voting power within the committee. At your meetings, they will share updates on what is going on at the Council level, will provide feedback on committee ideas, and can help when there are questions on process or procedures.
- **Staff** – A staff member formally liaises (is present at) all commission meetings. Committees don't have a formal staff member assigned to them. But in either case, we are here to help. Staff can help provide updates on what is going on at the City level, can provide feedback on commission ideas, and can do leg-work to help find more information. Staff time, however, is limited due to their other workload. Below are examples of the types of items staff can help with – whenever you need help, please reach out! If we don't have the capacity to support you, we will let you know, as well as point you to other resources you can use for help.
  - Posting committee/commission information on City communication channels
  - Sharing the history of certain projects/past decisions.
  - Price quotes for items
  - Making connections with staff and departments
  - Providing financial reports
  - Assisting with communications (Talent News and Reviews, city website)

# AGENDA TEMPLATE



Committee/Commission/ Board name

Meeting type, place

Date

Time

- I. Call to order
- II. Roll call
- III. Approval of minutes from last meeting
- IV. Brief Announcements from Chair and Committee Members
- V. Open issues
  - a) Description of open issue 1
  - b) Description of open issue 2
  - c) Description of open issue 3
- VI. New business
  - a) Description of open issue 1
  - b) Description of open issue 2
  - c) Description of open issue 3
- VII. Council Liaison Report
- VIII. Agenda Items for next meeting
- IX. Adjourn meeting



# Pre-Meeting Checklist

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## **PRE-MEETING CHECKLIST**

This is a set of recommended actions to take prior to your meeting.

### *Regular Meeting*

- Draft the agenda
- Email agenda to City Recorder to notice at least three days before meeting (72 hours) a meeting cannot take place unless posted 48 hours before the meeting - the extra day provides city staff enough time to notice.
- Compile consent calendar items
- Compile any information or reading that you would like members to review before the meeting
- Email reminder, agenda, and any compiled information to group members

### *Special Meeting*

- Decide on date, time, and location
- Draft the agenda
- Email agenda to City Recorder to notice at least three days before meeting (72 hours)
- Compile any information or reading that you would like members to review before the meeting
- Email reminder, agenda, and any compiled information to group members



# During Meeting Checklist

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## **DURING-MEETING CHECKLIST**

This is a set of recommended actions to take during your meeting.

### **CHAIR**

- Officially open the meeting (“This committee meeting is called to order on TIME and DATE”)
- Take roll
- Follow the agenda
- Officially adjourn the meeting (“This meeting is adjourned at TIME”)

### *Pro-Tips*

- Record meeting: delivering the meeting via Zoom allows for public attendance but also easy recording! Don’t forget to start recording as soon as possible.
- Keep meeting on topic: Is a non-agenda topic taking a lot of discussion time? Let the committee know you will place that topic on the next agenda and redirect to the current agenda item you’re on.
- Err on the side of caution: Unsure if a motion is needed? Go ahead and make a motion! Motions provide more clarity on what is being discussed and how the committee feels about it compared to a consensus or discussion.

### **SECRETARY**

- Write down the time the meeting is called to order
- Write down general discussion points
- If a motion is made, write down the exact wording of the motion and record who voted “yes,” who voted “no,” and who abstained from voting
- Write down the time the meeting is adjourned





# Post-Meeting Checklist

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## POST-MEETING CHECKLIST

This is a set of recommended actions to take after your meeting.

- Collect meeting minutes from the secretary, please note that meeting minutes are a requirement of the Oregon meeting laws – the protocols must be followed so that all business can be added to public records for transparency and clarity.
  
- Email Council recommendations to liaison, City Manager, and City Recorder. Include:
  - Exact language of motion
  - A short paragraph describing why recommendation was made
  - Date that it needs to go in front of Council (if there is time sensitivity)
  
- Email City Recorder the **approved and signed meeting** minutes for acknowledgement at next city council agenda during consent calendar.



## ***Meeting minutes musts***

After the meeting minutes must be signed by the chair and must include:

- All committee/commission members present
- All motions, proposals, and deliberations.
- The results of ALL votes.
- The substance of what was discussed .
- Any and all references to any document/published entity that may have been mentioned during meeting .
- Minutes do not need to be verbatim, just the basics of motions, actions, points of discussion, and voting results – direct quotes are not necessary
- Once minutes are approved by members and signed by the chair, they must then be submitted to the City Recorder to be placed on the council agenda for council acknowledgement at the **next regularly scheduled City Council meeting**.
  - *Having your minutes up-to-date and available to the public is good practice and encourages transparency. Please review Oregon Public Meeting Law for more details on how best to document the minutes requirement.*



# Recommendations to City Council

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**If your committee or commission has approved a motion that makes a recommendation to City Council...**

1. Email the exact wording of the motion and a paragraph describing the reasoning behind the motion to your Council Liaison, City Manager, and/or City Recorder.
2. City Staff will place the motion and paragraph into a staff report to present at the next Council meeting.
3. Before the Council meeting, the City Manager will work with staff to see if there is any feedback or concerns on the motion that was passed. The City manager will use their feedback to create a staff recommendation alongside the committee's recommendation.
4. The topic will be presented to Council at the next council meeting (1<sup>st</sup> and 3<sup>rd</sup> Wednesday of the month) unless a different date is agreed upon. Note, your Council liaison may ask you to be present at the meeting to help provide additional context.
5. Your Council liaison will share at your next committee or commission meeting what Council's decision was.



## **City of Talent Commission & Committee Appointment Policy** *(adopted by Council 7/3/2018)*

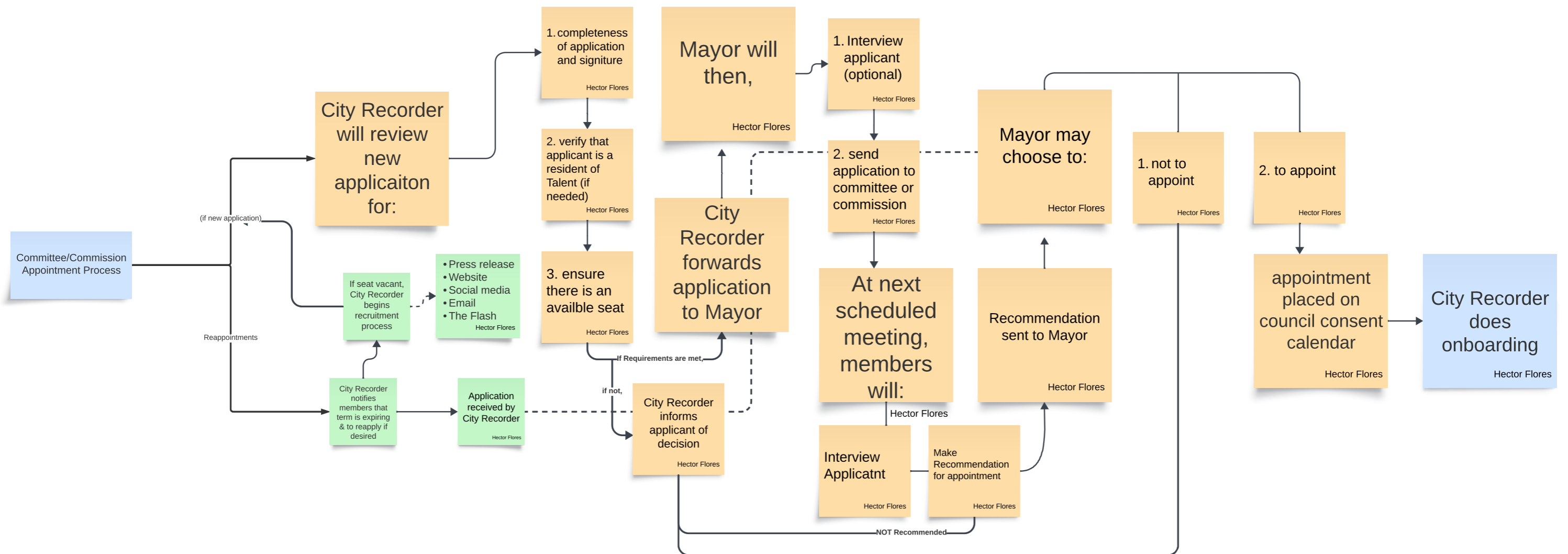
If a vacancy occurs on a City of Talent commission, committee, or advisory body, staff will place a vacancy notice on the City of Talent website, including the name and duties of the commission, committee, or advisory body, and the term of service for the vacant position(s). A notice will also be posted at City Hall, on the Talent Library Bulletin Board, and, if time allows, in the FLASH newsletter. The initial notice period will be two weeks. The notice period may be extended as needed in order to secure sufficient applicants for the position(s) available.

Staff will send completed applications to the Mayor and the applicable Commission/Committee for review. Applicants will be interviewed by the Mayor and the Commission/Committee. The Commission/Committee will make a recommendation to the Mayor, who will, if so desired, then make an affirmative recommendation to appoint at a Council meeting. Mayoral appointments, including the term of the appointment(s), will be placed on the Consent Agenda for Council. Re-appointments to a Commission or Committee will be made by the Mayor with approval from Council without the need for Mayor or Commission/Committee interviews.

In the case of a newly-constituted commission, committee or advisory body without appointed members, applicants will be interviewed by the Mayor and the applicable Council liaison, after which the Mayor will recommend to Council for approval any initial appointments.

# Committee & Commission Appointment Process

- document is in draft form and subject to change -





There are various ways you can communicate with the community. Listed below are some of the resources that are available to you, and how to submit content for them. Note, due to limited staff capacity, the sooner you can submit communication requests, the better likelihood that we can publish it!

## **City of Talent Website**

The main website for the City of Talent is located at [www.cityoftalent.org](http://www.cityoftalent.org). You can find subpages for all committees and commissions by clicking on the “Get Involved” icon on the main page. Each committee and commission subpage follows a similar template, providing visitors with background information, the mission, meeting dates and times, and contact information for the Chair. While staff does not provide individual logins to each Chair, they routinely update each page with new information as needed.

*How to update your committee/commission subpage:*

- Email City Recorder the wording/link/image/video you'd like posted.
- Please allow 2-3 days for city staff to process your request. Note that city staff may edit your request for clarity, grammar, punctuation, and appropriateness. If your request is denied, staff will provide an explanation for the decision.
- Once complete, staff will email you with a link to your page.

## **City of Talent Social Media**

The City of Talent is active on our own website, Facebook, Twitter, and You Tube. We've found that our social media and website are good tools to let folks know of upcoming meetings and events, or to point them to other website links.

*How to communicate:*

- Email City Recorder the wording/link/image/video you'd like posted.
- Please allow 2-3 days for city staff to process your request. Note that city staff may edit your request for clarity, grammar, punctuation, and appropriateness. If your request is denied, staff will provide an explanation for the decision.
- Once complete, staff will email you with a link to your page.

## **Talent News and Review - “The Flash”**

The Talent News and Review (English) and Caminos (Spanish) are local monthly publications that show up in nearly every mailbox. The City of Talent purchases a page in each publication, and we have dedicated a portion of that page as the “Committee Corner.” This is a dedicated space for committees or commissions to let the community know of upcoming events, recruit new

# Communication Tools

members, celebrate accomplishments, or provide updates on major projects.

*How to communicate:*

- Email your editorial the City Recorder by the publishing deadline, typically the 3<sup>rd</sup> Friday of the month.
- Editorial guidelines:
  - Send in a fully written article, what is referred to as “ready for print”
    - § *Please note that city staff reserves the right to edit articles for length or clarity*
  - Limit your word count to 175-225 words
    - § *This is about ¼ of a page in word*
  - Add an image or logo, it helps to attract readers to your text
    - § *Attach all images or QR codes SEPERATELY from your article*
  - Always add a way for readers to engage with your committee/commission
    - § *Add your committee/commission email, please do not use your personal email*
  - Deadline is **3<sup>rd</sup> Friday**, submit by the end of the workday at 5pm.
    - § *After this date, we will publish your editorial on the city website.*
- Please note that city updates take priority and publishing space. If your editorial is bumped, it will either be moved to a new month or for time sensitive information, it will be published on the website.

## Press Releases

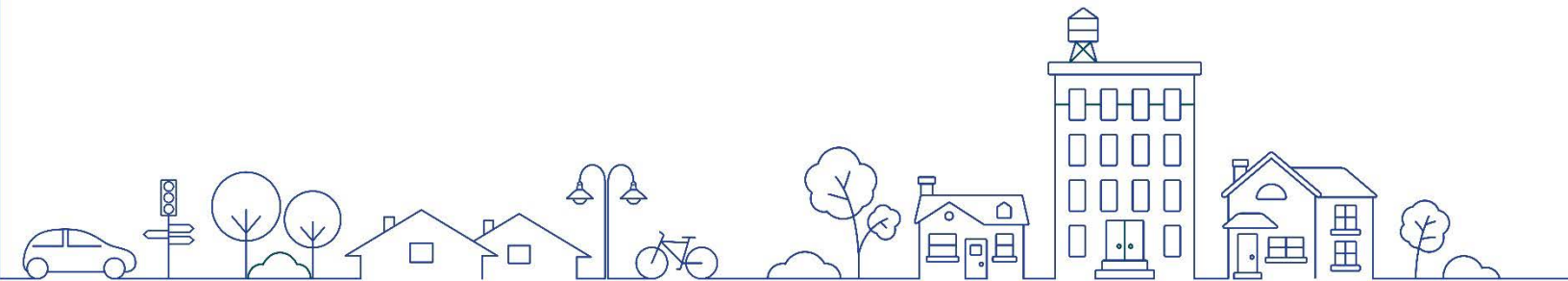
Press releases are official statements presented to newspapers, media outlets, and other platforms to give information on a particular matter. They are good tools to educate readers on detailed topics or ask for specific actions such as attendance at an event or providing feedback. Note, press releases are almost always text articles and they are sent to the major media outlets in the area.

*How to communicate:*

- Email City Recorder the wording for the press release at least one week before you would like it published.
- Please allow 2-3 days for city staff to process your request. Be aware that city staff may edit your request for clarity, grammar, punctuation, and appropriateness. If your request is denied, an explanation will be provided.

# — Oregon Municipal Handbook —

## **CHAPTER 7: MUNICIPAL BOARD COMMISSIONS AND COMMITTEES**





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# Chapter 7: Municipal Board Commissions and Committees

Municipal board commissions and committees (hereinafter referred to as “board commissions”) play an important role in city governance by assisting the governing bodies in addressing specific issues in detail, lending professional expertise, facilitating community decision-making and serving as a conduit between citizens, city staff and the governing body. Effective use of board commissions will result in a highly engaged community and facilitate the governing board’s decision making.

Certain board commissions, such as a planning commission and a budget committee, are authorized or required by law.<sup>1</sup> However, most operating governing board commissions form and operate at the discretion of the governing board. This chapter will discuss the basic considerations of formation and the essential elements of board commissions.<sup>2</sup> This chapter will also give practice tips for the effective use of board commissions.<sup>3</sup>

Although the focus of this chapter will be on board commissions, much of the same guidance can be applied to internal committees formed to advise city staff.<sup>4</sup> Internal committees are established by city staff for implementation of governing body policy, and the formation of such committees do not require the approval of the governing body. Some common examples of internal committees include an Americans with Disabilities Act committee, a code enforcement task force, and a policy review committees.

Please note that this chapter is meant to provide LOC members with an overview of effective formation and use of board commissions. Specific city charters and ordinances may provide additional restrictions or procedures not discussed below. LOC members with specific questions are encouraged to contact their city attorney.

## I. FORMATION

Understanding the reason for the formation of board commissions is essential for ensuring compliance with the law. There are two reasons for establishing a board commission: (1) the commission is authorized or required by law, or (2) the governing body exercises its

<sup>1</sup>See, e.g., ORS 294.414, ORS 227.020

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

discretion to form a commission. Note that some city charters require a regularly convened charter review committee to recommend amendments to the city charter.<sup>5</sup>

## **A. Authorized or Required by Law**

### **i. Budget committees**

For purposes of approving a budget, state law requires that the governing body of each city “establish a budget committee.”<sup>6</sup> The “budget committee shall consist of the members of the governing body” and an equal number of members of the public.<sup>7</sup> The purpose of the budget committee is to receive the budget message and the budget document and to ask questions and make comment on the budget document.<sup>8</sup> The budget committee “approves” the budget, and it is sent to the governing body for final approval.<sup>9</sup>

Although the membership and duties of the budget committee are required by law, the governing body has discretion in all other things not specified by law. For example, the governing body may determine that at least one budget committee member should have financial experience or work for another governmental entity.

### **ii. Planning commissions**

Planning commissions are authorized by statute.<sup>10</sup> Although it is discretionary for the governing body to form a planning commission, once authorized, state law places restrictions on the membership.<sup>11</sup> The law limits the planning commission to two voting members engaged “principally in the buying, selling or developing of real estate” and no more than two members “shall be engaged in the same kind of occupation, business, trade or profession.”<sup>12</sup>

Similar to budget committees where state law is silent, governing bodies have discretion to determine their own internal procedures and scope of review for planning commissions. State law expressly gives discretion to the governing body to determine the duties of an authorized planning commission.<sup>13</sup> Such duties may include recommending actions to the council related to traffic, industrial lands, housing, sanitation or conducting land use hearings.<sup>14</sup> However, the

<sup>5</sup> See e.g., Portland City Charter, Chapter 13 Charter Revision and Interpretation, Section 13-301.

<sup>6</sup> ORS 294.414.

<sup>7</sup> *Id.*

<sup>8</sup> ORS 294.426.

<sup>9</sup> ORS 294.428; ORS 294.456.

<sup>10</sup> ORS 227.020.

<sup>11</sup> ORS 227.030(4).

<sup>12</sup> *Id.*

<sup>13</sup> ORS 227.090.

<sup>14</sup> *Id.*

scope of the planning commission's duties and review is established by its comprehensive land use plan and implementing ordinances and once established, the governing body would need to follow the proper statutory procedure to amend these documents. Governing bodies should consult with their city attorney before action is taken to amend a planning commission's responsibilities.

### **iii. Other Examples**

State law requires a commission on the issue of consolidation of cities if a petition is deemed legally sufficient by the affected cities.<sup>15</sup> Similarly, state law requires a charter commission on the issue of consolidation of a city and county if the issue is properly initiated either by a governing body or electors.<sup>16</sup>

## **B. Established by Governing Body**

The most common type of board commission is where the governing body exercises its discretion to form a commission. A governing body may establish a commission by intergovernmental agreement, ordinance or resolution.

Commissions formed by intergovernmental agreement are often for the purpose of overseeing the functions delegated by one or more public entities to a separate entity. More information about working with such commissions is contained in Chapter 11, Working with Other Governments.<sup>17</sup>

A governing body is most likely to create a commission through a resolution or an ordinance. The decision on whether to use a resolution or ordinance will be determined by the governing body. An ordinance is a local law, prescribing general, uniform, and permanent law. In contrast, resolutions are less permanent enactments than ordinances and often deal with matters of a special or temporary character. For those commissions of a more long-standing nature, the governing body will enact an ordinance, and for those commissions that deal with a short-term goal or purpose, the governing body will pass a resolution.

<sup>15</sup> ORS 222.240.

<sup>16</sup> ORS 199.725. *See generally* ORS chapter 199.

<sup>17</sup> *See generally* LEAGUE OF OREGON CITIES, OREGON MUNICIPAL HANDBOOK (2022), CHAPTER 11, WORKING WITH OTHER GOVERNMENTS.

## II. ELEMENTS OF BOARD COMMISSIONS

Most governing bodies find that for efficiency and productive citizen engagement, it is necessary to state certain things in the ordinance or resolution, also known as the enacting documents. Specifically, the enacting documents should state the purpose, the membership, and the procedure for accomplishing the purpose.

Other than those commissions authorized or required by law as discussed above, i.e., planning commissions and budget committees, there are no known cases or statutes requiring any specific element or function of a commission. Even for commissions required or authorized by statute, many of the best practices discussed below can be incorporated into the city's practices.

### A. Defining Purpose

The most important element to a successful commission is to define the purpose of the commission. The governing body should define the purpose through the enacting documents. Clear statements of purpose from the governing body at the outset will help to define goals and purpose and prevent scope creep. Scope creep is the uncontrolled, unmanageable, and often inevitable widening of a commission's scope. Specific, measurable outcomes reported back to the governing body is another way to clearly state a commission's purpose.

Depending on the purpose, commissions can be established to be perpetual advisors or to provide specific feedback for a short duration. Some commissions are used to support a specific city function such as parks, airport, library, police citizen oversight, historic commission, or urban renewal area. Other commissions have a specific, identifiable goal such as ensuring diversity and equity, increasing access to childcare, promoting tourism or reviewing a city charter. Lastly, commissions can be used to serve as a communication conduit between the governing board and certain categories of citizens such as youth or senior citizens.

The governing body should consider whether the commission's purpose is to make decisions or whether to advise the governing body. Lastly, the governing body should consider whether to provide some sort of financial support to achieve the commission's objectives.

### B. Membership

The second necessary element in the enacting documents is to define who will compose the members of the commission. Recruiting and engaging the *right* members is critical in accomplishing the purpose of the commission.

Specifically, the enacting documents should provide the following information:

- *Number of members.* Try to select an odd number of members such as three, five or seven members so there is less likely to be a tie vote. A commission with too many or too few members may find it difficult to accomplish its purpose.
- *Composition of membership.* Depending on the commission purpose, the governing body may benefit from professional expertise. For example, it is common to recruit or specify that at least one member of the budget committee has financial experience. Or, in the case of an architectural review commission, the governing board may specify that one or more should be architects, landscape architects or other design professionals.
- *Term.* How long do you expect that the members will hold their position? Two years is a common appointment term. Do you wish to have term limits?
- *Appointing authority.* Who will appoint the members? Some city charters state that the mayor will appoint certain commission members and the rest will be appointed by the governing body.
- *Other requirements.* Is there a requirement in the ordinance or charter that requires that commission members be residents of the city? Are there any other restrictions in the law or city ordinance that places any requirements on the members such as serving on only one commission?
- *Governing body liaison.* In some cases, the governing body chooses to select one of its own members to participate in a board commission. Depending on the relationships developed with the commission, such participation may further link the communication between the two bodies.

Although not official members of the commission, staff members often provide the link between the commission members and the governing body. The city manager may choose to assign a staff liaison to each commission to provide support coordination and guidance. For example, staff can ensure that the required meetings occur and assist the commission chair prepare the monthly meeting agendas.

### **C. Procedures for Conducting Meetings**

The third element to a successful commission is to establish the procedures for the commission. The governing body's enacting documents or a commission charter (as discussed below in Practice Tips) may address the following issues:

- *Quorum.* Unless stated otherwise, a majority of the commission members must be present to constitute a quorum.
- *Chair duties.* The chair is usually elected annually by the commission members. The duties include setting the agenda, conducting the meetings, and act as the

spokesperson for the commission. The chair is also responsible to encourage the input of ideas, set a positive tone and facilitate the decision-making process.

- *Parliamentary procedure.* Commissions generally adopt a modified Robert’s Rules of Order. It is not necessary to recite all the parliamentary rules such as “point of order.” Rather, it is sufficient to state that the commission will generally follow Modified Robert’s Rules of Order.
- *Vacancy.* The procedures may establish how a vacancy is declared. In addition to a voluntary resignation, vacancies can be established by procedure if a member has too many unexcused absences or no longer meets the membership qualifications.

Some of the basic commission meeting procedures may be contained in the governing body’s enacting documents. As discussed below, more detailed meeting procedures may be contained in a commission charter that is the product of the appointing commission and approved by the governing body.

### III. LAWS THAT IMPACT BOARD COMMISSIONS

Several laws that impact cities also impact board commissions. The laws discussed below are Oregon Public Meetings Law, Oregon Public Records Law, and Oregon Government Ethics Law.

#### A. Public Meetings

A commission that has the authority to make recommendations to a public body on policy or administration is a “governing body” under the Oregon Public Meetings Law (OPML).<sup>18</sup> As such, any public meeting of the board commission requires proper notice of the meeting and that the meeting is accessible to people with physical and communication disabilities.<sup>19</sup> OPML requires that the public meetings must also be recorded, or written minutes are taken.<sup>20</sup>

As a practical matter, staff members will coordinate with volunteer commissions to ensure that OPML requirements are met. For example, staff often coordinates with the commission chair to ensure that an agenda is drafted, adequate notice is provided to the public, the meeting is available to the public in person and virtually, and the meeting is either recorded or minutes are taken.

<sup>18</sup> ORS 192.610(3).

<sup>19</sup> See generally LEAGUE OF OREGON CITIES, OREGON MUNICIPAL HANDBOOK (2020), CHAPTER 9, PUBLIC MEETINGS LAW.

<sup>20</sup> ORS 192.650(1).

Since a commission is likely a “governing body” under the OPML, it is possible for commission members to convene a public meeting through “serial communications” on a topic.<sup>21</sup> As discussed below in Practice Tips, the LOC recommends training commission members on public meetings.

## **B. Public Records**

Oregon Public Records Law applies to any documents containing “information relating to the conduct of the public’s business \* \* \* regardless of physical form or characteristics.”<sup>22</sup> Public records include: (1) emails, (2) text messages, and (3) social media posts.<sup>23</sup>

Public records are not limited to those prepared by the city or public body.<sup>24</sup> Rather, those records can include information sent or posted by individual commission members if the record contains information relating to the public’s business.<sup>25</sup>

As a practical matter, staff will store, retain and dispose of all public records prepared by the city in accordance with state law. Staff will also respond to all public records requests. It is important for public bodies to train staff and commission members to avoid the unintentional creation of public records.

## **C. Government Ethics**

Oregon Government Ethics Law applies to “public officials.” A volunteer such as a commission member is a “public official” if the person is appointed by a governing body.<sup>26</sup> Commission members who are concerned about the applicability of the rules discussed below are encouraged to discuss their concerns with the city attorney or the Oregon Government Ethics Commission. This discussion is intended to give a brief overview. For more detailed information, please see the [League of Oregon Cities Oregon Municipal Handbook, Chapter 8: Ethics](#).

Public officials are prohibited from using or attempting to use their “official position or office to obtain financial gain or avoidance of financial detriment” if the benefit would not otherwise be available but for the public official’s holding of the official position.”<sup>27</sup>

A public official must declare any conflicts of interest when participating in official actions such as a discussion, deliberation or decisions that would or could result in a financial benefit to the official or the official’s family.<sup>28</sup> Potential conflicts of interest are those that *could*

<sup>21</sup> See *Handy v. Lane County*, 274 Or App 644, 664-65 (2015), *reversed on other grounds*, 360 Or 605 (2016).

<sup>22</sup> ORS 192.311(5)(a). See generally LEAGUE OF OREGON CITIES, OREGON MUNICIPAL HANDBOOK (2020), CHAPTER 14, PUBLIC RECORDS (2021).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> See ODOJ, ATTORNEY GENERAL’S PUBLIC RECORDS AND MEETINGS MANUAL (2022).

<sup>26</sup> See generally LEAGUE OF OREGON CITIES, OREGON MUNICIPAL HANDBOOK (2020), CHAPTER 8, ETHICS.

<sup>27</sup> ORS 244.040(1).

<sup>28</sup> ORS 244.120.



result in a financial impact to the official or the official’s family.<sup>29</sup> Potential conflicts must be declared but the official can participate in the official action.<sup>30</sup> Actual conflicts of interest are those that *would* result in a financial impact to the official or the official’s family.<sup>31</sup> Actual conflicts must be declared and the official *cannot* participate in the official action.<sup>32</sup> A public official may be exempt from announcing the nature of the conflict of interest for specific circumstances.<sup>33</sup>

Except as allowed by law, a public official or relative may not solicit any gift exceeding \$50 from a single source having a legislative or administrative interest in a decision of the public official.<sup>34</sup>

A public official is prohibited from using their position to create the opportunity for additional personal income.<sup>35</sup>

Planning commission members must file a Statement of Economic Interest with the Oregon Government Ethics Commission by April 15 of each year.<sup>36</sup>

## IV. PRACTICE TIPS

### A. Commission Charter

Although a commission’s purpose is often stated in the enacting documents, the statement is short and lacks detail. Over time, with changes in commission membership or the governing body, this original purpose is often forgotten. Defining this purpose will keep the commission focused on the nature of the commission and prevent “scope creep.” Scope creep is the uncontrolled, unmanageable and often inevitable widening of a commission’s scope. The main reason for scope creep is the lack of clearly defined goals or purpose.

To combat scope creep, many cities require a commission to create a commission charter. The commission charter would be created (or amended) by the commission and approved by the governing body. The charter would state many of the considerations such as purpose, membership and procedures. The advantage of a commission charter is to provide more detail

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> See generally LEAGUE OF OREGON CITIES, OREGON MUNICIPAL HANDBOOK (2020), CHAPTER 8, ETHICS.

<sup>34</sup> ORS 244.025.

<sup>35</sup> ORS 244.040.

<sup>36</sup> ORS 244.050.

than a resolution or ordinance. Further, a commission charter may be more easily amended than a resolution or ordinance to fit the particular needs of the commission or governing body.

## **B. Annual Workplan**

One practice tip is for each commission to prepare and submit an annual work plan to the governing body. The governing body reviews the work plan and provides feedback annually to the commission. The work plan can include the results of the prior year's plan and if applicable, metrics of community involvement and participation in meetings.

The governing body can refer additional items to the commission for inclusion in the annual work plan. This annual review creates a communication conduit between the governing body and the commission and ensures that the commission continues to follow the governing body's purpose.

## **C. Commission Handbook**

A commission handbook is a reference guide that applies to board commissions. It provides an overview of the basic laws and procedures during a member's term and clarifies the roles and responsibilities of the commission in relation to the governing body, staff and the public. Some items to consider include:

- Member-signed acknowledgement of receipt of the handbook. Can include acknowledgement of rules of conduct, responsibility to follow public meetings, public records and ethics laws.
- General information about the city, the type of government and the commissions.
- Restrictions on appointments to commissions such as term limits or city residence requirements.
- Statements of the commission's goals, purposes and responsibilities.
- Roles and responsibilities of each commission members such as preparation, collaboration, and respect for each other. State expectations for conduct during public meetings.
- Define any mandatory training such as parliamentary procedure or ethics.
- Elaborate the role of staff liaisons. Define acceptable conduct with staff.
- The commission charter and any adopted procedures.

Many Oregon cities have created their own board commission handbooks such as the cities of Florence, Hillsboro, and Oregon City.<sup>37 38 39</sup>

## **D. Regular Trainings.**

Another practice tip is to provide regular trainings to all new committee members about topics such as parliamentary procedure, public meetings and public records. These trainings can be done virtually or taped for future use.

The LOC has trainings available online at:

<https://www.orcities.org/education/training/on-demand-trainings>

## **E. Public Recruitment**

Ensuring that the commission represents a diverse and inclusive pool of candidates facilitates the community decision-making process and better serves as a conduit between citizens, city staff and the governing body. Fully engaged city volunteers are often future fully engaged elected officials.

Regularly advertising commission vacancies is one method of ensuring that the governing body has a diverse pool. Other recruitment methods, such as building relationships with community organizations, can be used to build a stronger pool of interested and qualified commission members.

Candidates for the open commission positions can be invited to interview with the governing body in a public meeting. This allows the governing body to have an open and transparent discussion about the goals and purpose of the commission and sets the stage for a productive relationship.

## **F. Staff Liaison Handbook**

Creating a fully trained staff to support the needs of the governing body and commission is crucial to success. Staff liaisons will provide direction, guidance and clerical, organizational and administrative support. Creating a handbook outlining the staff expectations, will ensure

<sup>37</sup> See *Committee and Commission Manual*, CITY OF FLORENCE, [https://www.ci.florence.or.us/sites/default/files/fileattachments/commissions\\_and\\_committees/page/10801/committee\\_commission\\_manual.pdf](https://www.ci.florence.or.us/sites/default/files/fileattachments/commissions_and_committees/page/10801/committee_commission_manual.pdf) (last accessed Nov. 30, 2022).

<sup>38</sup> See *Advisory Groups, Member and Staff Handbook*, CITY OF HILLSBORO, <https://www.hillsboro-oregon.gov/home/showdocument?id=25660&t=637225437277930000> (last accessed Nov. 30, 2022).

<sup>39</sup> See *Boards and Commissions Orientation Manual*, OREGON CITY, [Boards and Commissions Orientation Manual | City of Oregon City \(orcity.org\)](https://www.orcity.org/boards-and-commissions-orientation-manual) (last accessed Nov. 30, 2022).

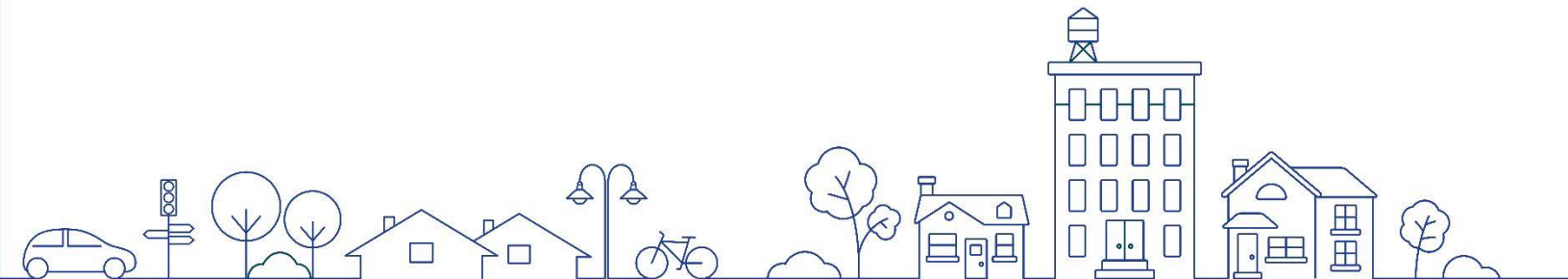
that staff is fully able to support board commissions. In addition to the topics discussed above for the commission handbook, some items to consider including in a handbook:

- Ensuring that the required commission meetings occur.
- Preparing meeting agendas in coordination with the commission chair.
- Properly noticing the public meetings. Recording or taking written minutes of the public meetings. Coordinating the in-person and virtual meetings.
- Researching and investigates the issues for the commission. Prepare alternatives and recommendations for the commission.
- Implements governing body decisions as they relate to the commission.
- Facilitating the communication of the commission interests, concerns, and recommendations to city staff.
- Support the creation of the commission charter and/or annual workplan.

In short, an effective and strong commission requires the coordination of staff, the commission and governing bodies.

# — Oregon Municipal Handbook —

## **CHAPTER 9: PUBLIC MEETINGS LAW**



**Published by the League of Oregon Cities**  
**September 2020 *(Updated October 2022)***

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## Chapter 9: Public Meetings Law

The purpose of the Oregon Public Meetings Law (OPML) is to make decision-making of state and local governing bodies available to the public. This policy is stated expressly in the law: “The Oregon form of government requires an informed public aware of the deliberations and decisions of governing bodies and the information upon which such decisions were made. It is the intent of [this law] that decisions of governing bodies be arrived at openly.”<sup>1</sup>

That policy is given effect through various substantive provisions contained under ORS 192.610 to ORS 162.690, discussed below.<sup>2</sup> Although compliance with these provisions might reduce the speed and efficiency of local decision-making, local residents benefit from a better understanding of the facts and policies underlying local actions. The required process and formality also can make it easier for cities to justify a decision if one is later challenged in an administrative or judicial proceeding.<sup>3</sup>

This chapter will touch on the basic requirements of the law, beginning with the criteria for what gatherings constitute “meetings” and what organizations constitute “governing bodies” under the OPML.<sup>4</sup> Where applicable, the OPML generally requires that meetings be open to the public unless an executive session is permitted, that proper notice be given, and that meeting minutes and votes be recorded.<sup>5</sup> The OPML also governs the location of meetings.<sup>6</sup> Finally, the OPML includes enforcement provisions for when these provisions are violated.<sup>7</sup>

Please note that this chapter is meant to provide LOC members with an overview of the OPML. LOC members with specific questions are encouraged to contact their city’s attorney. Further, note that this chapter of the Handbook is based extensively on material in the Oregon Attorney General’s Public Records and Meetings Manual (2019). LOC strongly recommends that cities purchase the print version of this manual, which is updated every two years. A free online version is available at <https://www.doj.state.or.us/oregon-department-of-justice/public-records/attorney-generals-public-records-and-meetings-manual/>. Finally, note that the Oregon Department of Justice (ODOJ) reserves its legal advice for the state of Oregon and its agencies; as such, cities with specific questions on the OPML again should consult their legal counsel.

<sup>1</sup> ORS 192.620.

<sup>2</sup> *Id.*

<sup>3</sup> *See, e.g.*, ORS 192.650. By recording the minutes of any meeting, including the “substance of any discussion on any matter,” cities build a record that shows the basis for their actions. This record can dispel claims that a city’s action is arbitrary, discriminatory, retaliatory, etc.

<sup>4</sup> ORS 192.610.

<sup>5</sup> ORS 192.630 to ORS 192.660.

<sup>6</sup> *Id.*

<sup>7</sup> ORS 192.680.

# I. COVERED ENTITIES

Understanding the scope of the OPML is critical for ensuring compliance with the law. In short, the OPML applies to **(A)** governing bodies of a public body that **(B)** hold meetings for which a quorum is required to make a decision or deliberate toward a decision on any matter.<sup>8</sup> The first of those elements addresses the *who* of the OPML — that is, which entities are subject to the law. The second of those elements addresses the *what* of the OPML — that is, what types of meetings are subject to the law. This section addresses the first of those elements.

## A. Governing Bodies of Public Bodies

The OPML applies only to the “governing bodies” of a public body.”<sup>9</sup> A public body includes state bodies, any regional council, a county, a city, a district, or any other municipal or public corporation.<sup>10</sup> A “public body” also includes a board, department, commission, council, bureau, committee, subcommittee, or advisory group of any of the aforementioned entities.<sup>11</sup> A “governing body,” meanwhile, does not just mean city council; it means two or more members of any public body with “the authority to make decisions for or recommendations to a public body on policy or administration.”<sup>12</sup> The following subsections examine in more detail the authority to make decisions and recommendations, and what entities might in turn qualify as a “governing body.”

### Examples:

A city is a public body under ORS 192.610(4), and a five-member city council is a governing body of the city. Further, a planning commission of a city is also a public body, and a three-member board of commissioners is a governing body of the planning commission. ORS 192.610(3).

### i. A body that makes decisions for a public body

A body with the authority to make decisions for a public body on “policy or administration” is a governing body.<sup>13</sup> For instance, cities are public bodies and their governing bodies are city councils. Sometimes, cities delegate decision-making authority to lower bodies, such as planning commissions; these too are governing bodies for the purposes of the OPML.

<sup>8</sup> ORS 192.610(5); ORS 192.630(1).

<sup>9</sup> ORS 192.630(1).

<sup>10</sup> ORS 192.610(4).

<sup>11</sup> *Id.*

<sup>12</sup> ORS 192.610(3).

<sup>13</sup> ORS 192.610(3).



**ii. A body that makes recommendations to a public body**

A body that has the authority to make recommendations to a public body on policy or administration is itself “a governing body” under the OPML.<sup>14</sup> These recommending bodies are sometimes called “advisory bodies.”<sup>15</sup> From time to time, a local government agency or official may appoint a group or committee to gather information about a subject. If this “advisory body” makes a recommendation to a governing body, then it shares the title of governing body and becomes subject to the OPML.<sup>16</sup>

For cities, common examples of bodies that make recommendations to a governing body include subcommittees of the city council and city boards and commissions. The OPML applies to local advisory bodies and all of their members, including private citizens. The language of the OPML is not limited to public officials; rather, it applies to all “members” of a body making decisions or recommendations to a public body, even if all of the members are private citizens.<sup>17</sup>

**B. Governing Bodies of Certain Private Bodies**

Technically, only “public bodies” are covered by the OPML.<sup>18</sup> However, it is at least possible that some private bodies might fall under the gamut of the law if they assume clear public functions.

There is no test for determining whether or when a private entity should be considered a “public body” for purposes of the OPML. Therefore, cities should consult their attorney when in doubt about whether a private body is covered by the law. Note that the Oregon Supreme Court follows a six-part test for determining when a private entity is the “functional equivalent” of a “public body” under Oregon’s Public Records Law.<sup>19</sup> Those factors include (1) the entity’s origin, (2) the nature of the functions, i.e., whether the function performed is traditionally private or public, (3) the scope of authority exercised by the entity, (4) whether the entity receives financial support from the government, (5) the degree of government control over the entity, and (6) the status of the entity’s offices and employees.<sup>20</sup> That said, the OPML has its own definition of “public body,” and so it is not clear whether these factors apply in the meetings context.<sup>21</sup>

<sup>14</sup> ORS 192.610(3).

<sup>15</sup> ODOJ, ATTORNEY GENERAL’S PUBLIC RECORDS AND MEETINGS MANUAL 138 (2019).

<sup>16</sup> ORS 192.610(3).

<sup>17</sup> ORS 192.610(3).

<sup>18</sup> ORS 192.610.

<sup>19</sup> See *Marks v. McKenzie High School Fact-Finding Team*, 319 Or 451, 463-65 (1998) (interpreting ORS 192.311).

<sup>20</sup> *Id.*

<sup>21</sup> ORS 192.610(4).

## II. COVERED MEETINGS

The previous section explained that the OPML applies to the “governing bodies” of a public body.”<sup>22</sup> Not every action that a governing body takes, of course, is subject to the OPML. Only a “meeting” of a governing body of a public body is subject to the law.

The OPML defines a meeting as (1) the “convening of a governing body” in order to (2) “make a decision or deliberate toward a decision” and for which (3) “a quorum is required.”<sup>23</sup> Taken together, a meeting only occurs where a governing body convenes, reaches a quorum, and discusses or deliberates on city matters.<sup>24</sup> This section examines each of these elements under the OPML and how courts have interpreted them.

Before reviewing the meeting elements, please note that at least two categories of gatherings that might otherwise qualify as “meetings” under the OPML have been exempted by statute.<sup>25</sup> As such, these gatherings are not “meetings” for the purposes of the OPML.

- The on-site inspection of any project or program; and
- A gathering of any national, regional, or state association to which the public body or its members belong. This includes any monthly, quarterly, or annual gatherings of the League of Oregon Cities or National League of Cities.

### A. ‘Convening’ a Meeting

For governing bodies, the most natural method of convening is in person. Of course, modern technology provides many other ways for members of a governing body to convene with one another. Because convening might occur by accident, members of governing bodies need to be mindful about how they communicate with each other and staff to avoid holding a “meeting” under the OPML.

Outside in-person meetings, the OPML applies to teleconferences, web conferences, and more generally to “telephone or electronic communications.”<sup>26</sup> Moreover, the OPML applies in exactly the same way to these meetings as it does to in-person meetings.<sup>27</sup> Inherent in this are

<sup>22</sup> ORS 192.630(1).

<sup>23</sup> ORS 192.610(5).

<sup>24</sup> *Id.* Under the OPML, a decision is any action that requires a “vote of the governing body.” ORS 192.610(1).

<sup>25</sup> ORS 192.610(5).

<sup>26</sup> ORS 192.670.

<sup>27</sup> *Id.*

logistical issues, such as guaranteeing public attendance to the meeting and ensuring that the medium of communication can accommodate everyone who wishes to attend. Local governing bodies must solve these issues and comply with all other OPML requirements if they hold a meeting that it is not in-person.<sup>28</sup>

It may be possible for a governing body to convene through serial communications on a topic.<sup>29</sup> In 2015, the Oregon Court of Appeals found that three county commissioners — a quorum of the governing body — had violated the OPML by using a series of phone calls and emails to reach a county decision.<sup>30</sup> While the Oregon Supreme Court reversed the ruling, the court did not express an opinion one way or the other on serial communications.<sup>31</sup> Therefore, that portion of the Court of Appeals ruling still holds at least some weight.

The Court of Appeals noted “not all private, serial communications among members” are OPML violations.<sup>32</sup> Just as it is with meeting in person, members of a governing body may correspond through email or voicemail on topics unrelated to city business. These serial communications may become an issue only when they are “conducted for the purpose of deliberation or decision.”<sup>33</sup>

## **B. Meeting ‘Quorum’**

By law, a meeting cannot take place without a “quorum” of the governing body.<sup>34</sup> Oddly enough, the term “quorum” is not defined in the OPML. For cities, quorum requirements often are set by charter, bylaws, council rules, or ordinance. In the absence of a specific definition, the general definition of “quorum” under state law is a majority of the governing body.<sup>35</sup>

If a quorum of members convenes, then the OPML will apply unless the subject matter discussed is completely unrelated to a city decision or recommendation. Conversely, if less than a quorum convenes, then a “meeting” has not taken place, as that term is defined in the law.

Quorum is a technical requirement. As a practice, cities should take care not to deliberate toward decisions or recommendations in small groups. Gatherings that are below quorum and

<sup>28</sup> *Id.*

<sup>29</sup> See *Handy v. Lane County*, 274 Or App 644, 664-65 (2015), *reversed on other grounds*, 360 Or 605 (2016).

<sup>30</sup> *Id.*

<sup>31</sup> See *generally Handy v. Lane County*, 360 Or 605 (2016).

<sup>32</sup> See *Handy*, 274 Or App at 664-66 (2015).

<sup>33</sup> *Id.* The Court of Appeals noted that a plaintiff likely needs “some evidence of coordination, orchestration, or other indicia of a purpose...to deliberate or decide out of the public eye.” *Id.*

<sup>34</sup> ORS 192.630.

<sup>35</sup> ODOJ, ATTORNEY GENERAL’S PUBLIC RECORDS AND MEETINGS MANUAL 142 (2019).

clearly deliberations violate (if nothing more) the policy of OPML, which is to include the public in the decision-making process.<sup>36</sup>

Significantly, meetings that do not require a quorum are not “public meetings” under the OPML. As such, meetings with staff generally do not constitute public meetings. A single city council member may meet with staff to discuss city business because staff are not members of the city council.

### C. Meeting for a ‘Decision’

By law, members of a governing body only meet for purposes of the OPML if they are making or deliberating toward a “decision.”<sup>37</sup> The OPML defines a “decision” as the following:

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.<sup>38</sup>

In other words, only topics that relate to the business of the governing body trigger the OPML. This subject matter requirement means that members of a governing body are free to gather to discuss a number of topics — sports, television, literature — as long as these do not concern the work of the governing body. Similarly, if a quorum of a governing body meets to discuss matters on which it has no authority to make a decision, it is not a “meeting” under the OPML either.<sup>39</sup>

**Social Gatherings?** A quorum of a governing body is permitted to meet in a social setting without triggering the OPML. Care must be taken, however, to avoid any discussion of public policy or administration, lest the social gathering evolve into an illegal public meeting.

Yet where the topics do relate to matters concerning the governing body, any discussion by a quorum of the body will trigger the OPML. As noted by the ODOJ, even meetings “for the sole purpose of gathering information” fall under the OPML.<sup>40</sup> Accordingly, the LOC recommends that members of governing bodies avoid discussing with each other any of the facts or context of local matters unless they are participating in a proper public meeting.

<sup>36</sup> ORS 192.620.

<sup>37</sup> ORS 192.610(5).

<sup>38</sup> ORS 192.610(1)

<sup>39</sup> ODOJ, ATTORNEY GENERAL’S PUBLIC RECORDS AND MEETINGS MANUAL 144 (2019) (citing 38 Op Atty Gen 1471, 1474, 1977 WL 31327 (1977)).

<sup>40</sup> *Id.*

## III. REQUIREMENTS

The last two sections answered the *who* and the *what* of the OPML, namely what entities and what meetings of those entities are subject to the law. Now comes the meeting requirements, including rules on notice, meeting location, and the recording of minutes and votes. The OPML also requires public attendance, and many laws further require public participation. This section addresses these requirements and the challenges that accompany it.

### A. Meeting Types and Notice

As a reminder, each city in Oregon is subject to its own individual charter, municipal code and rules of procedures. Public notice is a common topic of local procedure. As such, the LOC recommends that cities conduct a thorough review of applicable charter provisions, municipal code sections, and their respective city's rules and procedures to ensure that those provisions do not provide additional requirements to be followed when creating and posting a public notice. This section will address the minimum notice requirements under state law.

#### i. When Notice is Required

The OPML requires public notice to be given any time a governing body of a public body holds a "meeting" as defined under the law.<sup>41</sup> Therefore, all regular, special, and emergency meetings require notice, though the amount of notice depends on the meeting type. Generally, notice is required for any interested persons and any media outlet that has requested notice.<sup>42</sup>

#### ii. Contents of the Notice

ORS 192.640(1) requires a notice for meetings which are open to all members of the public to contain, at a minimum, the following information:

- Time of the meeting;
- Place of the meeting; and
- A list of the principal subjects anticipated to be considered at the meeting.

While the first two items are self-explanatory, the list of principal subjects is less clear. While publishing the agenda along with the notice is generally sufficient for this requirement, the

<sup>41</sup> ORS 192.640.

<sup>42</sup> *Id.*

ODOJ recommends that the list of principal subjects “be specific enough to permit members of the public to recognize the matters in which they are interested.”<sup>43</sup> This means that notices should avoid repeating generic descriptions, such as “consideration of a public contract,” and should instead state qualities specific to the subject, such as “consideration of contract with X company to provide Y services.”<sup>44</sup>

Occasionally, a governing body may wish to discuss a subject that was not on the list, perhaps because the issue arose too late to be included in the notice. As a matter of state law at least, the absence of a subject from a notice does not preclude the governing body from discussing it; under the OPML, the list of *anticipated* subjects does “not limit the ability of a governing body to consider additional subjects.”<sup>45</sup>

Beyond these requirements, a common practice is to include information in the notice for persons with disabilities. The OPML mandates that public bodies make all meeting locations accessible to persons with disabilities.<sup>46</sup> The ODOJ suggests that notices include the name and telephone number of a city employee who can help a person in need of a reasonable accommodation.<sup>47</sup>

### **iii. Amount of Notice**

The number of days in advance a city must give notice of a public meeting depends on the type of meeting to be conducted. For regularly scheduled meetings, notice must be “reasonably calculated” to provide actual notice of the time and place of the meeting “to interested persons including news media which have requested notice.”<sup>48</sup>

For special meetings, i.e. non-regular meetings, notice must be provided at least 24 hours in advance to “the general public” and again to “news media which have requested notice.”<sup>49</sup> The only exception to the 24-hour notice rule for special meetings is an emergency meeting.

For an emergency meeting, the governing body must show that “an actual emergency” exists and must describe the circumstances of the emergency in the meeting minutes.<sup>50</sup> Even these meetings require notice; the OPML requires that emergency meetings be noticed in a

<sup>43</sup> ODOJ, ATTORNEY GENERAL’S PUBLIC RECORDS AND MEETINGS MANUAL 151 (2019).

<sup>44</sup> *Id.*

<sup>45</sup> ORS 192.640.

<sup>46</sup> ORS 192.630(5).

<sup>47</sup> ODOJ, ATTORNEY GENERAL’S PUBLIC RECORDS AND MEETINGS MANUAL 151 (2019).

<sup>48</sup> ORS 192.640(1).

<sup>49</sup> ORS 192.640(3).

<sup>50</sup> *Id.*

manner that is “appropriate to the circumstances.”<sup>51</sup> Furthermore, an emergency meeting may only be used to discuss matters pertaining to the emergency.<sup>52</sup> In *Oregon Association of Classified Employees v. Salem-Keizer School District*, the Oregon Court of Appeals found that a school district had violated the OPML by using an emergency meeting held for budget reasons to discuss a “contract approval,” a non-emergency matter.<sup>53</sup> The LOC recommends that cities use emergency meetings only in clear emergencies and only as a way to respond to the emergency.

#### iv. Noticing Executive Sessions

If the type of meeting to be held is an executive session, the governing body holding the executive session is required to give notice in the manner described above.<sup>54</sup> In addition, the notice must be sent to each member of the governing body.<sup>55</sup> 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. In addition, when providing notice of an executive session, the notice is required to state the specific provision of the OPML that authorizes the executive session.<sup>56</sup> Finally, 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.<sup>57</sup>

The LOC Guide to Executive Sessions explores these issues and offers sample notices.<sup>58</sup>

### B. Proper Meeting Space

The OPML requirements for a public meeting space fall roughly into four categories. First, the meeting space must have appropriate **capacity**.<sup>59</sup> Second, the meeting space must be within the right **geography**.<sup>60</sup> Third, the meeting space must satisfy criteria for **accessibility**.<sup>61</sup> Fourth, the space must be a place of **equality**.<sup>62</sup>

<sup>51</sup> *Id.*

<sup>52</sup> *See* Or. Ass’n of Classified Employees v. Salem-Keizer Sch. Dist. 24J, 95 Or App 28, 32 (1989).

<sup>53</sup> *Id.*

<sup>54</sup> ORS 192.640(2).

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> ORS 192.640(3).

<sup>58</sup> LEAGUE OF OREGON CITIES, GUIDE TO EXECUTIVE SESSIONS (2017), <https://www.orcities.org/application/files/7415/6772/9151/GuidetoExecutiveSessions-03-27-19.pdf> (last accessed June 29, 2020).

<sup>59</sup> ORS 192.630(1).

<sup>60</sup> ORS 192.630(4)

<sup>61</sup> ORS 192.630(5).

<sup>62</sup> ORS 192.630(3).

**i. Capacity**

The OPML provides that any and all public meetings must “be open to the public” and that anyone interested in attending “shall be permitted to attend.”<sup>63</sup> Based on this language, it should be inferred that governing bodies need to anticipate roughly how many citizens will be interested in a meeting and plan accordingly. A meeting space that is woefully inadequate for the expected turnout likely is a violation of the OPML.

**ii. Geography**

The OPML lays out certain criteria for the location of a governing body’s meeting. The provisions are presented in an “either/or” list, and so not all of the criteria need to be satisfied. The OPML requires that a meeting space *either* be (1) “within the geographic boundaries” of the public body, (2) at the public body’s “administrative headquarters,” *or* (3) the nearest practical location.<sup>64</sup> Generally speaking, the LOC recommends public meetings be held within the city unless exigent circumstances arise. In the event of “an actual emergency necessitating immediate action,” these criteria do not apply and the governing body may hold an emergency meeting at a different location than the ones described here.<sup>65</sup>

**iii. Accessibility**

In three main ways, the OPML requires accessibility for persons with disabilities.<sup>66</sup> First, meetings subject to the OPML must be held in places accessible to individuals with mobility and other impairments.<sup>67</sup> Second, the public body must make a “good-faith effort” to provide an interpreter at the request of deaf or hard-of-hearing persons.<sup>68</sup>

Third, due to the coronavirus pandemic, the government—state and local—were forced to adapt to virtual public meetings to meet the strict standards of allowing public access to the elected official and public policy decision-making process. Oregon Legislature passed House Bill 2560 in the 2021 session, requiring those remote options to continue.<sup>69</sup> This amendment became effective January 1, 2022 and requires government agencies, whenever possible, to allow

<sup>63</sup> ORS 192.630(1).

<sup>64</sup> ORS 192.630(4). A fourth option for most public bodies is to hold a public meeting within “Indian country.” *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> See ORS 192.630(5)(a).

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> ORS 192.670 (HB 2560) - Meetings by Means of Telephone or Electronic Communication.



the public to remotely attend public meetings — through telephone, video or other electronic means — as well as give the public the ability to testify remotely.<sup>70</sup>

The amendment emphasizes the requirement of governing bodies to make most public meetings (excludes executive sessions) remotely accessible when it’s “reasonably possible.”<sup>71</sup> Members of the media already have access to most executive sessions, but ORS 192.670 does not specify if governing bodies must also provide remote access to the media for these meetings.

Cities can find guidance on the first requirement, and the potential penalties for failure to comply, under laws and regulations of the Americans with Disabilities Act (ADA). As for the “good faith” requirement, this can be enforced only through the OPML.<sup>72</sup> The law defines a “good-faith effort” as “including ... contacting the department or other state or local agency that maintains a list of qualified interpreters and arranging for the referral of one or more qualified interpreters to provide interpreter services.”<sup>73</sup>

#### **iv. Equality**

Public bodies are prohibited from holding meetings where discrimination is practiced on the basis of race, color, creed, sex, sexual orientation, national origin, age, or disability.<sup>74</sup> Generally, a public body may not hold a meeting at a location that is used by a restricted-membership organization, but may if the location is not primarily used by such an organization.<sup>75</sup>

### **C. Recording and Retaining Minutes**

The OPML requires that the governing body of a public body provide for sound, video, or digital recording, or written minutes, of its public meetings.<sup>76</sup> Whatever the format, the record of the meeting must include the following categories of information:

- (a) All members of the governing body present;
- (b) All motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition;
- (c) The results of all votes and, except for public bodies consisting of more than 25 members unless requested by a member of that body, the vote of each member by name;<sup>77</sup>

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> See ODOJ, ATTORNEY GENERAL’S PUBLIC RECORDS AND MEETINGS MANUAL 154-55 (2019).

<sup>73</sup> ORS 192.630(5)(e).

<sup>74</sup> ORS 192.630(3).

<sup>75</sup> *Id.*

<sup>76</sup> ORS 192.650(1).

<sup>77</sup> Note that the recording of minutes requires the “vote of each member by name” to either be recorded or made available on request. This means that members of a governing body cannot vote anonymously. The Court of Appeals

- (d) The substance of any discussion on any matter; and
- (e) Subject to ORS 192.311 to 192.478 relating to public records, a reference to any document discussed at the meeting.<sup>78</sup>

When recording minutes, the objective is not to include every word said at the meeting, but rather to provide “a true reflection of the matters discussed at the meeting and the views of the participants.”<sup>79</sup> Upon conclusion of the meeting, the minutes must also be available to the public “within a reasonable time.”<sup>80</sup> The ODOJ notes that, with some exceptions, the minutes should also be “available to persons with disabilities in a form usable by them, such as large print, Braille, or audiotape.”<sup>81</sup>

Finally, the OPML requires that minutes or another record of a public meeting must be preserved for a reasonable time.<sup>82</sup> However, the Secretary of State’s Retention Schedule for cities requires minutes of non-executive session meetings to be retained permanently.<sup>83</sup> Executive session minutes must be retained for 10 years.<sup>84</sup> The LOC recommends that cities consult with their attorney before setting a retention schedule for meeting minutes.

## **D. Public Attendance and Participation**

The OPML is a public attendance law, not a public participation law. Generally, meetings of a governing body of a public body are open to the public unless otherwise provided by law.<sup>85</sup> Yet while the law guarantees the right of public attendance, the law does *not* guarantee the right of public participation. In fact, the OPML only expressly mentions public participation in two specific contexts: the opportunity for “public comment” on the employment of a public officer and the opportunity for “public comment” on the standards to be used to hire a chief executive officer.<sup>86</sup>

Importantly, public participation laws *do* exist elsewhere under state and local laws. In many cases, public participation might be required by another statute, a state regulation, or by a local charter or ordinance. For example, a city ordinance may require the city council to hear

has held, however, that the “absence of a recorded vote alone is not reversible error.” *See* ODOJ, ATTORNEY GENERAL’S PUBLIC RECORDS AND MEETINGS MANUAL 158-59 (2019) (citing *Gilmore v. Bd. of Psychologist Examiners*, 81 Or App 321, 324 (1986)).

<sup>78</sup> ORS 192.650(1).

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> ODOJ, ATTORNEY GENERAL’S PUBLIC RECORDS AND MEETINGS MANUAL 161 (2019).

<sup>82</sup> *Id.* at 162 (citing *Harris v. Nordquist*, 96 Or App 19 (1989)).

<sup>83</sup> OAR 166-200-0235.

<sup>84</sup> *Id.*

<sup>85</sup> ORS 192.630(1).

<sup>86</sup> ORS 192.660(7)(d)(C); ORS 192.660(7)(d)(D).

public comment when the council considers whether to condemn private property for public use. Similarly, state law requires cities to provide an opportunity for public testimony during the annual budgeting process.<sup>87</sup> State regulations, meanwhile, require that “[c]itizens and other interested persons [have] the opportunity to present comments orally at one or more hearings” during the periodic review of a local comprehensive plan.<sup>88</sup> For this reason, the LOC cautions cities to consult their attorney before choosing to withhold opportunities for public comment. Note that there is no rule *against* public participation if cities wish to allow it at meetings.

### **i. Maintaining Order**

For cities, the charter ordinarily designates a specific person with authority to keep order in council meetings, often the mayor or the council president. For other governing bodies serving the city, the one with this authority likely is the leader of the body, such as the head, chair, or president of a particular committee, group, or commission. Generally speaking, a city may adopt meeting rules and a violation of these rules can be grounds for expulsion. For more information on maintaining order in council meetings, consult the LOC’s Model Rules of Procedure for Council Meetings.<sup>89</sup>

Reasonable restrictions also may be placed on public participation. However, care must be taken to protect the freedom of speech under the First Amendment and Article 1, Section, of the Oregon Constitution. For example, the First Amendment protects the interest of citizens who are “directing speech about public issues to those who govern their city.”<sup>90</sup> Speech is a protected right that can be enjoyed not only through **actual speech** but also through **expressive conduct**, such as making a gesture, wearing certain clothing, or performing a symbolic act.<sup>91</sup> While the right to speech is “enormous,” it is subject to content-neutral limitations.<sup>92</sup> Further, no city is 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.”<sup>93</sup>

<sup>87</sup> ORS 294.453

<sup>88</sup> OAR 660-025-0080(2).

<sup>89</sup> LEAGUE OF OREGON CITIES, MODEL RULES OF PROCEDURE FOR COUNCIL MEETINGS (2017), <https://www.oregocities.org/application/files/1115/7228/7626/ModelRulesofProcedure3-15-19.pdf> (last accessed July 9, 2020).

<sup>90</sup> See *White v City of Norwalk*, 900 F.2d 1421, 1425 (9th Cir 1990).

<sup>91</sup> See *Virginia v. Black*, 538 U.S. 343, 358 (2003).

<sup>92</sup> See *White*, 900 F. 2d at 1425 (1990).

<sup>93</sup> See *Walsh v Enge*, 154 F. Supp. 3d 1113, 1119 (D. Or. 2015) (quoting *Cornelius v. NAACP*, 473 U.S. 788, 799 (1985)).

### a. The Time, Place, and Manner of Speech

Under federal law, a city’s council meeting or similar meeting is considered a limited public forum.<sup>94</sup> At a minimum, any expression of speech at a limited public forum in Oregon can be limited through time, place and manner restrictions.<sup>95</sup> Time, place and manner restrictions are simply that — rules regulating the **time** in which a person may speak, the **place** in which a person can speak, and the **manner** in which the speech can be made. An important caveat is that all of these restrictions must be viewpoint neutral.<sup>96</sup> The restrictions also must serve a “legitimate interest” and provide “ample alternatives for the intended message.”<sup>97</sup>

Because these restrictions are constitutional, local governing bodies generally can establish a specific format for speech at a council meeting or other public meeting. For example, a city’s budget committee may choose to limit public comment to the start of a hearing and limit the amount of time a person may speak. Limiting public comment to the start of a public hearing is not legally contentious.

The challenge of time, place, and manner restrictions is ensuring that the restrictions are enforced consistently and equally to all speakers and that the restrictions cannot be construed as discriminating against a given viewpoint.<sup>98</sup> That said, cities generally will avoid triggering the First Amendment if their restrictions serve “purposes unrelated to the content of expression.”<sup>99</sup> This is true even if an otherwise valid restriction, under particular circumstances, “*incidentally* burdens some speakers, messages or viewpoints.”<sup>100</sup>

### b. Disruptive Conduct

A good example of an “incidental” restriction on speech is rules on disruptive conduct. As noted above, cities and other governments are not required to tolerate “actual disruptions” when carrying out government business. So, even if the disruptive activity is a voice or some

<sup>94</sup> See *White*, 900 F. 2d at 1425 (1990).

<sup>95</sup> See *State v. Babson*, 355 Or 383, 408 (2014). Under federal law, expressions of speech in a limited public forum can also be subject to “content-based” rules, provided those rules are both “viewpoint neutral” and “reasonable.” *Engel*, 154 F. Supp. 3d at 1128. Thus, under federal law, a city council could limit the *content* of a public comment to the subject-matter at hand as long as it did not apply this rule unevenly. *White*, 900 F. 2d at 1425 (1990). In Oregon, however, the free speech clause Oregon Constitution appears to prohibit any “content-based” regulation of speech. See *Outdoor Media Dimensions, Inc. v. Dept. of Transp.*, 340 Or 275, 288 (2006). Cities should err on the side of caution by permitting speech on any “subject” at meetings and limiting only its time, place, and manner.

<sup>96</sup> See *White*, 900 F. 2d at 1425 (1990).

<sup>97</sup> See *Babson*, 355 Or at 408 (2014).

<sup>98</sup> See *Norse v City of Santa Cruz*, 629 F3d 966, 976 (9th Cir 2010) (noting that viewpoint neutrality is a key element under the First Amendment),

<sup>99</sup> *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)).

<sup>100</sup> *Id.*

form of expressive conduct, i.e., speech, it can be regulated.<sup>101</sup> The rule against actual disruptions means that governing bodies may override one's freedom of speech in certain circumstances, such as when an audience member is shouting loudly at others or when an individual refuses to sit down long after their allotted speaking time has ended. The general rule of thumb is that the disruption has to be preventing the governing body from completing its work.

Conversely, cities must allow any actions that are not “**actual**” disruptions to the governing body's ability to conduct business.<sup>102</sup> In *Norse v. City of Santa Cruz*, for example, the Ninth Circuit Court of Appeals found that an audience member giving the Nazi salute did not actually interfere with or interrupt the public meeting and that the city therefore had not been justified in removing the individual from the meeting.<sup>103</sup> In reaching its decision, the *Norse* Court found that “[a]ctual disruption means actual disruption. It does not mean constructive disruption, technical disruption, virtual disruption, *nunc pro tunc* disruption, or imaginary disruption.”<sup>104</sup>

### c. Barring Disruptive Individuals

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. Unfortunately, any efforts to suspend or ban individuals from future hearings are highly suspect and likely unconstitutional.

On two separate occasions, federal courts have 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. In *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 ... as a response to a single act of disruption.”<sup>105</sup> Similarly, in *Walsh v. Enge*, a federal district court found that the city of Portland could not “prospectively exclude individuals from future public meetings merely because they have been disruptive in the past.”<sup>106</sup> Note, however, that a district court decision is not binding precedent. While neither of these cases conclusively answers the question of whether a frequently disruptive individual can be barred from future hearings, they cast serious doubt that a court would uphold such an action.

<sup>101</sup> *Norse*, 629 F.3d at 976.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Reza v Pearce*, 806 F.3d 497, 505 (9th Cir 2015).

<sup>106</sup> *See Walsh v Enge*, 154 F. Supp. 3d 1113, 1119 (D. Or. 2015).

For a description of these cases and a more detailed overview of the options available to cities for handling disruptive members of the public at public meetings, see the LOC's Legal Guide to Handling Disruptive People in Public Meetings (2017).<sup>107</sup>

## IV. EXECUTIVE SESSIONS

An executive session is a public meeting that is closed to members of the general public. Executive sessions may only be held for certain reasons and the other meeting requirements discussed above still apply, such as notice, location, and minute-keeping requirements.<sup>108</sup>

For a thorough assessment of how executive sessions apply to cities, including sample notices and a model media policy, consult the LOC Guide to Executive Sessions.<sup>109</sup>

### A. Executive Sessions for Municipalities

The Oregon Legislative Assembly has identified 14 circumstances in which an executive session is authorized.<sup>110</sup> Of these, 10 circumstances are likely to be used by municipalities:

#### 1. Employment of a public officer, employee, staff member or individual agent.

Members of governing bodies may generally deliberate whether to employ individuals that meet this description. That said, this exception does not apply to any public officer, employee, staff member, or chief executive officer unless (1) the position has been advertised (2) and there already exists an adopted regular hiring procedure. In addition, with respect to public officers, the public must have had an opportunity to comment on the officer's employment. With regard to chief executive officers, there must be adopted hiring criteria and policy directives. This type of executive session cannot be used for either of the following purposes:

- To fill a vacancy in any elected office, public committee or commission, or advisory group;<sup>111</sup> or
- To discuss an officer's salary.<sup>112</sup>

<sup>107</sup> LEAGUE OF OREGON CITIES, LEGAL GUIDE TO HANDLING DISRUPTIVE PEOPLE IN PUBLIC MEETINGS (2017), <https://www.orcities.org/application/files/2715/6116/0383/LOCWhitePaperonDisruptiveCitizens-FINAL5-5-17.pdf> (last accessed June 29, 2020).

<sup>108</sup> See ORS 192.660; see also ORS 192.610(2) (defining an executive session as a "meeting.").

<sup>109</sup> LEAGUE OF OREGON CITIES, GUIDE TO EXECUTIVE SESSIONS (2017), <https://www.orcities.org/application/files/7415/6772/9151/GuidetoExecutiveSessions-03-27-19.pdf> (last accessed June 29, 2020).

<sup>110</sup> ORS 192.660.

<sup>111</sup> See ORS 192.660; see also ORS 192.660(7)(a)-(d).

<sup>112</sup> See generally 42 Op Atty Gen 362, 1982 WL 183044 (1982).

## **2. Dismissal, disciplining, or hearing complaints or charges relating to a public officer, employee, staff member or individual agent who does not request an open hearing.**

A governing body may hold an executive session on disciplinary matters; however, the subject of the deliberations must be provided with an opportunity to request an open hearing.<sup>113</sup> Clearly, this means that the governing body must notify the individual well in advance and determine whether they wish to have an open hearing.

Generally, cities should be aware that public employees have a property interest in their employment. When in doubt, cities that are members of CIS are encouraged to consult the CIS Pre-Loss Legal Department before taking disciplinary action. Failing to do so can negatively impact a city's deductible if a lawsuit or wrongful termination complaint is subsequently filed.

## **3. Persons designated by the governing body to carry on labor negotiations.**

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.<sup>114</sup> Note that this is one of the few meetings where news organizations and the media can be excluded from an executive session.<sup>115</sup>

## **4. Persons designated by the governing body to negotiate real property transactions.**

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.<sup>116</sup> A real property transaction likely may include the purchase of real property, the sale of real property, and/or negotiations of lease agreements.<sup>117</sup> The deliberations conducted during an executive session held under this provision must concern a specific piece of property or properties — the session may not be used to discuss a city's long-term property needs.<sup>118</sup>

## **5. Information or records that are exempt by law from public inspection.**

In order to hold an executive session under this provision, the information and records to be reviewed must otherwise be exempt from public inspection under state or federal law.<sup>119</sup> The

<sup>113</sup> ORS 192.660(2)(b).

<sup>114</sup> ORS 192.660(2)(c).

<sup>115</sup> ORS 192.660(4).

<sup>116</sup> ORS 192.660(2)(e).

<sup>117</sup> ODOJ, ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL 165 (2019).

<sup>118</sup> *Id.* (citing Letter of Advice to Rep. Carl Hosticka, 1990 WL 519211 (OP-6376) (May 18, 1990)).

<sup>119</sup> ORS 192.660(2)(f).

most common source for public records exemptions is Oregon’s Public Records Law and the attorney-client privilege under ORS 40.225.

**6. Preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations.**

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 on a “trade or commerce” issue.<sup>120</sup>

**7. Rights and duties of a public body as to current litigation or litigation likely to be filed.**

A governing body may use executive sessions as a way to consult with legal counsel about current or pending litigation.<sup>121</sup> In the event the litigation is against a news organization, the governing body must exclude any journalist who is affiliated with the news organization.<sup>122</sup>

**8. 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.**

A governing body may hold an executive session to evaluate an employee’s performance; however, the subject of the deliberations must be provided with an opportunity to request an open hearing.<sup>123</sup> Clearly, this means that the governing body must notify the individual well in advance and determine whether they wish to have an open hearing.

Generally, cities should be aware that public employees have a property interest in their employment. When in doubt, cities that are members of CIS are encouraged to consult the CIS Pre-Loss Legal Department before taking disciplinary action. Failing to do so can negatively impact a city’s deductible if a lawsuit or wrongful termination complaint is subsequently filed.

**9. Negotiations under ORS Chapter 293 with private persons or businesses regarding proposed acquisition, exchange or liquidation of public investments.**

This provision allows cities to conduct negotiations about certain public investments.<sup>124</sup> The final decision on these investments must occur in an open public meeting (see below).<sup>125</sup>

**10. Information on the review or approval of certain security programs.**

<sup>120</sup> ORS 192.660(2)(g).

<sup>121</sup> ORS 192.660(2)(h).

<sup>122</sup> ORS 192.660(5).

<sup>123</sup> ORS 192.660(2)(i).

<sup>124</sup> ORS 192.660(2)(j).

<sup>125</sup> ORS 192.660(6).



In order to hold an executive session under this provision, the security program must be related to one of the areas identified under ORS 192.660(2)(n). These include telecommunication systems and the “generation, storage or conveyance of” certain resources or waste.<sup>126</sup>

## **B. Final Decision Prohibition**

Under the OPML, executive sessions must not be used “for the purpose of taking any final action or making any final action.”<sup>127</sup> While final decisions cannot be made, city councils and other public bodies may still reach a consensus during an executive session. This provision simply guarantees that the public is made aware of the deliberations. Thus, a formal vote in a public session satisfies the requirement, even if the vote merely confirms the consensus reached in executive session.<sup>128</sup>

## **C. Media Representation at an Executive Session**

Representatives of the news media must be allowed to attend all but two types of executive sessions.<sup>129</sup> 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.<sup>130</sup> Also, remember that a city council or other public body must 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.<sup>131</sup>

Even though news organizations are permitted to attend virtually every executive session, governing bodies may prohibit news organizations from disclosing certain specified information.<sup>132</sup> Unless a governing body specifies what information is prohibited from disclosure, news organizations are free to report on the entire executive session. It also is worth noting that there is no penalty or punishment under the OPML against a news organization that shares information from an executive session without the city’s permission.

The term “representatives of the media” is not defined by the OPML or in case law. However, the Oregon attorney general recently 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

<sup>126</sup> ORS 192.660(2)(n).

<sup>127</sup> ORS 192.660(6).

<sup>128</sup> See ODOJ, ATTORNEY GENERAL’S PUBLIC RECORDS AND MEETINGS MANUAL 173-75 (2019).

<sup>129</sup> ORS 192.660(5).

<sup>130</sup> *Id.*

<sup>131</sup> ORS 192.660(5).

<sup>132</sup> ORS 192.660(4).

technologies for delivering the news.”<sup>133</sup> 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.<sup>134</sup>

Due to the ambiguity around who is or isn’t a “representative of the media,” the LOC recommends that cities generally permit any person providing the public with news, including internet bloggers, to attend executive sessions. Some cities may seek to establish a stricter media attendance policy and, if so, those cities need to undertake a meaningful and in-depth discussion with their city attorney before drafting such a policy. Denying “representatives of the media” access to meetings can lead to costly litigation.

## V. ENFORCEMENT

### A. General Enforcement

Any person affected by a decision of a governing body of a public body may file a lawsuit to require compliance with, or prevent violations of, the OPML by members of the governing body.<sup>135</sup> Lawsuits may be filed by “any person who might be affected by a decision that might be made.”<sup>136</sup>

A plaintiff may also file suit to determine whether the OPML applies to meetings or decisions of the governing body.<sup>137</sup> Under ORS 192.680(5), any suit brought under the OPML must be commenced within 60 days following the date the decision becomes public record.<sup>138</sup>

A successful plaintiff may be awarded reasonable attorney fees at trial or on appeal.<sup>139</sup> Whether to award these or not is in the court’s discretion.<sup>140</sup> If a court finds that a violation of the OPML was the result of willful misconduct by a member or members of the governing body, each is liable for the amount of attorney fees paid to the successful applicant.<sup>141</sup>

<sup>133</sup> See generally Op Atty Gen 8291 (2016).

<sup>134</sup> *Id.*

<sup>135</sup> ORS 192.680(2).

<sup>136</sup> See *Harris v. Nordquist*, 96 Or App 19, 23 (1989).

<sup>137</sup> ORS 192.680(2).

<sup>138</sup> ORS 192.680(5).

<sup>139</sup> ORS 192.680(3).

<sup>140</sup> *Id.*

<sup>141</sup> ORS 192.680(4).

If a governing body violates the OPML in a decision, the decision is not necessarily void. In the case of an unintentional or non-willful violation of the OPML, the court has discretion to void a decision, but such an action is not mandatory.<sup>142</sup> The law permits a governing body that violates the OPML to reinstate the decision while in compliance with the law.<sup>143</sup> If a governing body reinstates an earlier decision while in compliance with the law, the decision will not be voided and the decision is effective from the date of its initial adoption.<sup>144</sup>

Importantly, reinstatement of an earlier decision while in compliance with the law will not prevent a court from voiding the earlier decision “if the court finds that the violation was the result of intentional disregard of the law or willful misconduct by a quorum of the members of the governing body.”<sup>145</sup> In that case, the court will void the decision “unless other equitable relief is available.”<sup>146</sup>

## **B. Civil Penalties for Violations of ORS 192.660**

Apart from the enforcement provisions described above, the Oregon Government Ethics Commission may review complaints that a public official has violated the executive session provisions of the OPML as provided in ORS 244.260.<sup>147</sup> The commission has the authority to interview witnesses, review minutes and other records, and obtain other information pertaining to executive sessions of the governing body for purposes of determining whether a violation occurred.<sup>148</sup> If the commission finds a violation of the executive sessions provisions, the commission may impose a civil penalty not to exceed \$1,000.<sup>149</sup> If, however, the violation occurred as a result of the governing body acting on the advice of its legal counsel, the civil penalty may not be imposed.<sup>150</sup>

<sup>142</sup> ORS 192.680(1).

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> ORS 192.680(3).

<sup>146</sup> *Id.*

<sup>147</sup> ORS 192.685(1).

<sup>148</sup> ORS 192.685(2).

<sup>149</sup> ORS 244.350(2)(a).

<sup>150</sup> ORS 244.350(2)(b).

# House Bill 2560

Sponsored by Representative MEEK, Senator STEINER HAYWARD; Representatives REARDON, SALINAS (Pre-session filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires governing body of public body, to extent reasonably possible, to make all meetings accessible remotely through technological means and provide opportunity for members of general public to remotely submit oral and written testimony during meetings to extent in-person oral and written testimony is allowed. Imposes same requirements on hearings under ORS chapters 197 and 215.

## A BILL FOR AN ACT

1  
2 Relating to expanding remote participation of public in self-government through use of technology;  
3 amending ORS 192.670.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 192.670 is amended to read:

6 192.670. (1) Any meeting, including an executive session, of a governing body of a public body  
7 which is held through the use of telephone or other electronic communication shall be conducted in  
8 accordance with ORS 192.610 to 192.690.

9 (2) When telephone or other electronic means of communication is used and the meeting is not  
10 an executive session, the governing body of the public body shall make available to the public at  
11 least one place where, or at least one electronic means by which, the public can listen to the com-  
12 munication at the time it occurs. A place provided may be a place where no member of the gov-  
13 erning body of the public body is present.

14 **(3) All meetings held by a governing body of a public body, excluding executive sessions,**  
15 **must provide to members of the general public, to the extent reasonably possible, an oppor-**  
16 **tunity to:**

17 **(a) Access and attend the meeting by telephone, video or other electronic or virtual**  
18 **means;**

19 **(b) If in-person oral testimony is allowed, submit during the meeting oral testimony by**  
20 **telephone, video or other electronic or virtual means; and**

21 **(c) If in-person written testimony is allowed, submit during the meeting written testi-**  
22 **mony by electronic mail or other electronic means.**

23 **(4) The provisions of subsection (3) of this section:**

24 **(a) Apply to hearings under ORS 197.763, 215.402 to 215.438 and 215.700 to 215.780 regard-**  
25 **less of whether a governing body or governing body's designee, including a hearings officer,**  
26 **conducts the hearing; and**

27 **(b) Do not apply to contested case hearings under ORS chapter 183.**  
28

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.



# Calendar Recommendations

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## CALENDAR RECOMMENDATIONS

Below are general recommendations of when to incorporate specific decisions into your agendas to better fit in with the City Council's goal setting and budgeting process. It is a little wonky – the election cycle runs the calendar year, while the budgeting cycle runs on the fiscal year starting on July 1.

January	Elect Chair, Vice Chair, and Secretary
Feb/March	Fiscal Year Goal Setting
April/May	Fiscal Year Budgeting
May	Submit fiscal year budget request
July/August	Determine Harvest Festival Involvement
October	Harvest Festival
December	Summarize accomplishments to date!



## Definitions and meanings:

**ADA (Americans with Disabilities Act):** a federal civil rights law that prohibits discrimination against people with disabilities in everyday activities, signed into law 1990

**Best Practices:** set of guidelines, ethics, or ideas that represent the most efficient or prudent course of action

**Codify:** to reduce to code, to standardize and break down, to clarify a law

**Consent Agenda:** groups the routine, procedural, information and self-explanatory non-controversial items typically found in an agenda so they can be presented in a single motion. A matter can be moved to the full agenda if requested if the item needs further discussion.

**Declaration:** a formal or explicit statement of announcement, an affirmation

**DEI (Diversity, Equity, and Inclusion):** a term used to describe policies and programs that promote representation and participation of different groups of individuals

**Mandate:** to administer or assign, to officially require, to direct someone to take action

**Motion:** a formal proposal by a member of a deliberate assembly that the assembly take an action

**Municipality:** a city or town that has corporate status and local government

**Notice of meeting (notice):** a person of authority making it known that a meeting of an organization will occur – a notice includes, name of the organization, day, date, time, place, purpose, and those invited, within 72 hours of a meeting if possible

**Ordinance:** a law or decree by a municipality, a local law

**Parliamentary Procedure:** accepted rules, ethics, and customs governing meetings of an assembly or organization, it is supposed to represent the will of the majority.

**Resolution:** an official expression of the opinion of a voting body, usually includes a written motion or a proposal

**Robert's Rules of Orders:** the foremost guide and protocol for parliamentary procedure, written by U.S. Army officer Henry Martyn Robert in 1876 as an adaption of the United States Congress operational rules.

## Helpful links

League of Oregon Cities: <https://www.orcities.org/>

Oregon Blue Book: <https://sos.oregon.gov/blue-book/Pages/default.aspx>

Oregon Department of Justice: Public Records and Meetings Law: <https://www.doj.state.or.us/oregon-department-of-justice/public-records/public-records-and-meetings-law/>