



**CORVALLIS  
MAYOR-ELECT/COUNCIL-ELECT  
ORIENTATION**

**December 16, 2014  
7:00 pm**

**Madison Avenue Meeting Room  
500 SW Madison Avenue**

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**I. WELCOME**

**II. CITY ATTORNEY'S OFFICE**

- A. Introduction of Fewel, Brewer & Coulombe
- B. Role of the City Attorney
- C. Laws of the City
- D. Public Meetings and Executive Sessions
- E. Liability of Council Members
- F. Council's Role in Personnel & Purchasing
- G. Ethics Laws
- H. Land Use Primer
- I. Council Procedures
- J. Municipal Court
- K. Questions and Answers

**III. ADJOURNMENT**

For the hearing impaired, a sign language interpreter can be provided with 48 hours' notice prior to the meeting. Please call 541-766-6901 or the Oregon Communications Relay Service at 7-1-1 to arrange for TTY services. A large print agenda can be available by calling 541-766-6901.

*A Community That Honors Diversity*

CITY ATTORNEY'S OFFICE

MEMORANDUM

December 2014

To: Mayor and City Council  
From: Scott Fewel, City Attorney  
Subject: City Attorney's Office

In general, these memoranda are intended to provide an introduction to various procedural and legal issues. They are not meant to serve as a complete summary of each area, but rather should highlight issues that should raise a warning flag when you encounter them. The purpose of this Memorandum is to provide information regarding the operation of our office.

Role of City Attorney: The City Attorney is the chief legal officer of the corporate entity known as the City of Corvallis. The City Attorney or Deputy City Attorneys have the responsibility to protect you and the public by ensuring that the activities of the Council are carried out within the boundaries of the law. For these reasons, our office staffs all Council meetings and planning commission meetings. We staff Council committee meetings and Board and Commission meetings as needed. You should feel free to contact me or one of the lawyers in the office whenever you have a question of a legal nature. It is our goal to be part of the city team. The City Manager is the chief executive officer for the City and we will work for the City Manager, even though we are a Council-appointed position. We also provide legal guidance to boards, commissions and staff, and can provide some information to interested citizens. However, we are not the attorney for the individual citizens and we do not provide legal advice to citizens.

Office Staff: The law firm of Fewel, Brewer & Coulombe is a private law firm with a contract to provide legal services to the City. There are four full-time lawyers on our staff with myself as the designated City Attorney. As the City Attorney, I work directly with the City Manager and department heads in general, and, of course, with the City Council. Jim Brewer, David Coulombe, and Dan Miller are Deputy City Attorneys working with various Council Committees, City Staff, Boards and Commissions on a number of issues, including planning

issues, policy and ordinance review, contract reviews, and other areas of municipal law. Dan

Miller also serves as the City Prosecutor for Municipal Court cases. Our staff support consists of Paralegal Kristen Rosser, who has been with the firm for 27 years, and Nancy Miller, Legal Assistant, who has been with the firm for 12 years. Our attorneys and staff are not City employees.

What can the Council expect from the City Attorney?: Over the years, the Council has defined what it expects from the City Attorney through annual evaluations. Our office acts as parliamentarian for Council meetings and other public meetings. We do participate in Council discussions, usually when asked (and sometimes when we feel the issue requires us to provide you legal advice). We also provide information regarding the City Charter, City ordinances and policies. The City Attorney will keep you updated on developments in relevant State or Federal laws. The City Attorney does not set policy or direct or manage City employees, although we do provide legal advice.

The attorney/client privilege of confidentiality applies to the Council/City Attorney relationship, therefore, our conversations are private and we cannot share the contents without the consent of the other party. The privilege belongs to the Council as a body, not the individual members. We will also keep you updated on legal actions involving matters that affect the City as they occur.

CITY ATTORNEY'S OFFICE

MEMORANDUM

December 2014

To: Mayor and City Council

From: James K. Brewer, Deputy City Attorney

Subject: Public Meeting Requirements

Our office and the City Recorder receive requests for information related to the requirements of Oregon's public meeting laws. The City Recorder has gathered the attached information comprised of the Council Policy and selections from the Attorney General's Manual on Public Meetings. In general, this information describes the areas of responsibility of the various council committees, and highlights the policies behind the State's Public Meetings Law requirements that "the meetings of governing bodies at which decisions about the public's business are made or discussed are open to the public, ORS 192.630(1), (2); that the public has notice of the time and place of meetings, ORS 192.640; and that the meetings are accessible to persons wishing to attend. ORS 192.630(4), (5)." The Corvallis City Charter, Section 18, requires that "[a]ll deliberations and proceedings of the council shall be public, except as provided by State law." The Municipal Code requires that "[a]ll meetings of the Council, its committees, and its advisory boards and commissions shall be conducted in accordance with the open meetings law of the State of Oregon and the Charter of the City." CMC 1.19.010.040. In addition to these legal requirements, there are also practical concerns in ensuring compliance with the law.

To summarize Oregon's Public Meetings Law, it may be useful to begin with ORS 192.620, which is titled "Policy". This section states that "[t]he 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 ORS 192.610 to 192.690 that decisions of governing bodies be arrived at openly." The rest of the Public Meetings Law is designed to implement that policy. If there is a conflict between that policy and the efficient administration of government, then it is the city's responsibility to sacrifice efficiency in favor of public access. A key component of public access is that the public and the press must be given notice of the time and place and principal subjects of meetings. ORS 192.640(1). In the case of a special meeting which does not involve an actual emergency, the City must give at least 24 hours notice to the members of the governing body, the news media and the general public. ORS 192.640(3). For purposes of the Public Meetings Law, a "governing body" means the members of any public

body which consists of two or more members with the authority to make decisions for, or recommendations to, a public body on policy or administration. ORS 192.610(3). In terms of the location of meetings, the statute requires that meetings be held in places which are open to all members of the public. The statute specifically forbids governing bodies from holding meetings at any place where discrimination on the basis of race, creed, color, sex, age, national origin or disability is practiced. ORS 192.630(3). The statute also states that "[i]t shall be considered discrimination on the basis of disability for a governing body of a public body to meet in a place inaccessible to the disabled. . ." ORS 192.630(5)(a). In addition, upon a request of a hearing impaired person, the governing body must make a good faith effort to provide an interpreter. If a special meeting is held upon less than 48 hours notice, then a good faith effort must be made to have an interpreter present, whether there is a request or not. ORS 192.630(5)(a), (b), (c). It should be noted that the accessibility of the place of the meeting to disabled persons does not require a request by a disabled person to attend the meeting or knowledge on the part of the governing body that disabled persons may intend to attend the meeting.

While the general rule is that meetings must be open for public attendance and observation, the public meeting law does not require public participation in every aspect of Council meetings. In terms of public participation beyond attendance and observation, the Council generally allots time at each meeting for comments from the public, and holds public hearings in a number of areas. On the other hand, the public meeting law also permits the Council to meet in executive session for specific purposes set out in ORS 192.660. The general public may be excluded from executive sessions, and the Council has particular rules that it must follow regarding the notice and description of executive sessions.

Because the three-member standing committees of the Council are considered "governing bodies" for purposes of the public meetings law, the law prevents two members (a quorum) for discussing an agenda item for the committee on the phone, by email, or at a social encounter, unless public notice and public access requirements have been met. Similarly, because the quorum for the City Council is only five, Council members need to be aware that the public meeting notice requirements apply when five members of the City Council meet, even if the purpose is only to observe or to gather information to inform their future decisions regarding City business. In particular, Council members should be very cautious about attending the meetings of standing committees to which they have not been appointed, so that notice requirements can be met should a quorum attend.

Because of the convenience of telephones and email, the public meetings laws specifically allow members of governing bodies to attend and participate in meetings electronically. However, the same requirements for public notice and access apply to these meetings. Council members need to be aware that electronic communications conducted over time, never including a quorum at any one time, but leading to a quorum of the members gathering information or making decisions are very likely subject to the public meetings notice and access requirements. These discussions

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and decisions need to be conducted at the meetings, even though it is not always convenient.

From a practical stand point, one of the most efficient ways for the City to provide notice of public meetings is through the *Gazette Times*' "For Your Information" feature in the Saturday paper. In order to be published as an FYI item, the City Recorder needs to know the time, place, date and a list of the principal subjects anticipated to be considered at the meeting by 10:00am Friday of the week prior to the meeting. The City Recorder appreciates as much lead time as possible so that mailed notices to persons who have expressed interests in the topics, the press and other members of the governing body can be mailed.

If you have further comments, questions or concerns related to these issues, please contact me at 541-766-6906.

[Oregon DOJ Home](#) | [Legal Resources](#) | [Public Records and Meetings Law](#) | [Citizen's Guide to Public Records and Meetings](#)

## Citizen's Guide to Public Records and Meetings

Oregon's open government laws promote democracy by ensuring that all state, regional and local governments conduct their business with transparency. Oregon citizens have a right to know how their government is spending their tax dollars and exercising the powers granted by the people. The public performs a vital watchdog role by invoking the Public Records and Public Meetings Laws to seek and disseminate information about how the government is functioning.

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#### 1. PUBLIC RECORDS

##### What is a public record? ▲

With a few exceptions, *all* government records *of any kind* are considered public records. Specifically, a "public record" is any writing that contains information relating to the conduct of public business that is prepared, owned, used or retained by a public body.

##### Who is subject to Public Records Law? ▲

The law applies to every "public body," which includes every state officer, agency, department, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation or any board, department, commission, council or agency thereof.

##### How do I request a public record? ▲

You **must** make a public records request to the "custodian" of the record. The "custodian" of a public record is the government agency or official who has possession or control of the record or a copy of it. It is preferable to make the request in writing, which includes email. You are entitled to request a copy of a record or the opportunity to inspect it. The more specific your request, the easier it will be for the public body to respond in a timely manner. If you are unsure about the potential scope of a request, it is helpful to begin with a narrow request. Once the public body has responded to your initial request, you can seek additional records. All public bodies in Oregon **must** make available a written procedure for making public records requests. Public bodies are required to respond to records requests in a reasonable amount of time. You may [Submit a Public Records Request](#) electronically for records that are in the possession of the Oregon Department of Justice.

##### Can a government agency charge citizens for copies of public records? ▲

Public agencies may charge a fee to recover the cost of fulfilling a records request. An agency cannot charge more than \$25 without first providing an estimate. A public agency may require that you pay the estimated cost up front. You also have the right to ask for the fee to be waived or reduced because it is in the public's interest to release the records. You can appeal a public agency's refusal to waive the fee. The appeals process is explained below.

##### Are all public records subject to disclosure? ▲

Most public records are subject to disclosure, but there are exemptions. Records related to an active criminal investigation are generally exempt from disclosure until the case is resolved. Confidential communications between government officials and government lawyers are generally exempt from disclosure. If a public body claims an exemption, it generally must show that the need for confidentiality outweighs the public interest in disclosure under the particular circumstances. When making a public records request, it can be helpful to describe the public interest in releasing the records. If a public agency rejects your request and you appeal, the public body will be required to show that its denial was consistent with the law. For a list of exemptions and a discussion of their application, you may consult the [Attorney General's Public Records and Meetings Manual](#). Please note that the current version does not reflect changes made by the Legislature in 2009.

#### **What can I do if a government agency denies my request for public records?** ▲

A public records denial by a state agency, board or commission may be appealed free of charge to the Oregon Attorney General (see [Appeal a State Agency's Denial of Your Request for Records](#)). It is helpful to forward the agency's written explanation for denying your request. A denial by a local government such as a county, city, school district or special district must be appealed to the county district attorney. If the Attorney General or District Attorney denies your appeal, you may file a lawsuit challenging the ruling in Circuit Court.

#### **What can I do if my records request is denied by an elected official?** ▲

If an elected official, such as a mayor or a sheriff or a statewide elected official denies your request for public records, you cannot appeal to the Attorney General or District Attorney. To challenge the decision, you must file the lawsuit in Circuit Court.

## **2. PUBLIC MEETINGS**

#### **What is a public meeting?** ▲

A public meeting is any meeting conducted by a state, regional or local governing body to decide or consider any matter. For the meeting to be subject to open meeting law, a majority must be present.

#### **What agencies are required to hold public meetings?** ▲

The public meetings law applies to the governing body of any state agency, regional government, city, county, school district, special district or municipal corporation. It also applies to any subcommittee of any of these public bodies. Staff meetings generally are not covered by the Public Meetings Law. If less than a majority is present, the meeting is not covered by the Public Meetings Law.

#### **What are the notice requirements for public meetings?** ▲

A governing body must provide notice that is reasonably calculated to inform the public and all interested parties about the time, place and agenda of public meetings.

#### **Can public meetings be conducted by telephone or other electronic means?** ▲

Public meetings may be conducted electronically, but the public must have adequate notice and access to the meeting - no matter how it is conducted.

#### **Can members of the public be excluded from a public meeting?** ▲

A meeting can be closed to the public if a governing body goes into Executive Session. The law governing Executive Session is designed to allow a public body to have confidential discussions, but does not allow any decisions to be made in secret. All decisions by a governing body must be made in public. Reasons for Executive Session include discussions about labor negotiations or the hiring or disciplining of a public employee. Journalists may attend most Executive Sessions, but cannot report or broadcast what was said. A list of exempt meetings and reasons for executive sessions are in the online [Attorney General's Public Records and Meetings Manual](#).

#### **What are the rules for keeping minutes?** ▲

Public bodies must keep a record of their public meetings. Written minutes are acceptable, as are audio or video recordings. Written minutes must include the members present; all motions, resolutions and other actions; any votes that were taken; and the substance of any discussion.

#### **How does the public enforce violations of the Public Meetings Law?** ▲

A citizen who believes that a public body has violated the Public Meetings Law can file a lawsuit in Circuit Court. If you believe that a public official has violated Executive Session provisions of the law, you may file a complaint with the Oregon Government Ethics Commission. Neither the Attorney General nor a district attorney may assist a citizen in enforcing the Public Meetings Law.

Note: This general information about Oregon's Public Records and Meetings Laws is provided for informational purposes only. This summary is not intended to be complete and the reader is responsible for any conclusion drawn from this information. This summary is not legal advice or an opinion of the Attorney General (see official [Attorney General's Public Records and Meetings Manual](#)).

Protecting the public's right to know

# A QUICK REFERENCE GUIDE TO OREGON'S PUBLIC MEETINGS LAW

For local and state officials, members  
of Oregon boards and commissions, citizens,  
and non-profit groups

This guide is published as a public service by  
Open Oregon: a Freedom of information Coalition  
and the Oregon Attorney General's office.



## **A Time Saving Reference**

This guide is brought to you free of charge as a joint project between Open Oregon: A Freedom of Information Coalition and Oregon Attorney General Hardy Myers. Funding for this booklet came from the National Freedom of Information Coalition through a grant from the John S. and James L. Knight Foundation.

## **How to Use This Guide**

This summary is intended as a quick reference to the Oregon Public Meetings Law. The entire law may be found in Oregon Revised Statutes 192.610 to 192.690. Additional information may be obtained by sending an e-mail request to [info@open-oregon.com](mailto:info@open-oregon.com) or visiting [www.open-oregon.com](http://www.open-oregon.com)

For a comprehensive analysis of the law, refer to the latest edition of the Attorney General's Public Records and Meetings Manual, available for a nominal fee by calling (503) 378-2992 or writing to Department of Justice, Administrative Services, 1162 Court Street NE, Salem, Oregon 97301-4096.

## **What is Open Oregon?**

Open Oregon: A Freedom of Information Coalition is a non-profit educational and charitable organization with a single purpose: to assist and educate the general public, students, educators, public officials, media and legal professional to understand and exercise:

- Their rights to open government.
- Their rights and responsibilities under the Oregon public meetings and records laws.
- Their rights under the federal Freedom of Information Act.

**Open Oregon** is a 501(c)(3) non-profit corporation.

# The Spirit of Oregon's Public Meetings Law

## **The Value of Openness**

Understanding the letter of the Public Meetings Law is critical. Equally important is understanding and committing to the spirit of that law. Public bodies should approach the law with openness in mind. Open meetings help citizens understand decisions and build trust in government. It is better to comply with the spirit of the law and keep deliberations open.

*“Government accountability depends  
on an open and accessible process.”*

•

**Hardy Myers**  
Oregon Attorney General

“Public bodies must conduct business  
in public - it’s really that simple.”

•

**Bill Bradbury**  
Oregon Secretary of State  
Honorary Co-Chair, Open Oregon

“Oregon needs to protect its tradition  
of openness.”

•

**Dave Frohnmayer**  
President, University of Oregon  
Honorary Co-Chair, Open Oregon

# **Oregon's Public Meetings Law**

“Open government” or “sunshine” laws originally were enacted nationwide in the early 1970s because of growing public unhappiness with government secrecy. As a result, every state and the District of Columbia enacted laws requiring government to conduct its business openly, rather than behind closed doors.

Open government laws benefit both government and the public. Citizens gain by having access to the process of deliberation - enabling them to view their government at work and to influence its deliberations. Government officials gain credibility by permitting citizens to observe their information-gathering and decision-making processes. Such understanding leads to greater trust in government by its citizens. Conversely, officials who attempt to keep their deliberations hidden from public scrutiny create cynicism, erode public trust and discourage involvement.

## **Policy**

Oregon's Public Meetings Law was enacted in 1973 to make sure that all meetings of governing bodies covered by the law are open to the public. This includes meetings called just to gather information for subsequent decisions or recommendations.

The law also requires that the public be given notice of the time and place of meetings and that meetings be accessible to everyone, including persons with disabilities.

The Public Meetings Law guarantees the public the right to view government meetings, but not necessarily to speak at them. Governing bodies set their own rules for citizen participation and public comment.

## Who is covered?

Because questions often arise about what groups must comply with the public-meetings law, it is useful to look at the definitions in the law. The law says that any "governing body" of a "public body" is required to comply. It offers these definitions:

- A "**public body**" is any state, regional, or local governmental board, department, commission, council, bureau, committee, subcommittee, or advisory group created by the state constitution, statute, administrative rule, order, intergovernmental agreement, bylaw or other official act.
- A "**governing body**" is two or more members of a public body who have the authority to make decisions for or recommendations to a public body on policy or administration. A group without power of decision is a governing body when authorized to make recommendations to a public body, but not when the recommendations go to individual public officials.

### Example

- *A school board must meet in public.*
- *So must most advisory committees that the school board creates, such as a budget committee.*
- *But if the school board chair asks several business leaders to meet with him to discuss future building needs, that meeting may be held in private.*

Private bodies, such as non-profit corporations, do not have to comply with the public-meetings law, even if they receive public funds, contract with governmental bodies or perform public services.

### Example

- *A school district contracts with Regence BlueCross BlueShield of Oregon to provide health insurance for district employees. The BlueCross BlueShield board of directors is not required to meet in public.*

Public agencies contracting with private bodies may require a private body to comply with the law for pertinent meetings. Federal agencies are not subject to Oregon's Public Meetings Law.

## What is a Public Meeting?

A public meeting is the convening of any governing body for which a quorum is required to make or deliberate toward a decision on any matter, or to gather information. Decisions must be made in public, and secret ballots are prohibited. Quorum requirements may vary among governing bodies.

### Example

- *A county commission's goal-setting retreat is a public meeting if a quorum is present and they discuss official business.*
- *A training session for the commissioners is not a public meeting, unless a quorum is present and the commissioners discuss official business.*
- *A staff meeting absent a quorum of commissioners, whether called by a single commissioner or a non-elected official, is not a public meeting.*

Meetings accomplished by telephone conference calls or other electronic means are public meetings. The governing body must provide public notice, as well as a location where the public may listen to or observe the meeting.

Governing bodies must hold their meetings within the geographic boundaries of their jurisdiction. However, a governing body may meet elsewhere if there is an actual emergency requiring immediate action or to hold a training session, when no deliberation toward a decision is involved.

### Example

- *A library board is free to rotate meetings at different libraries in its district, but it may not meet outside its district.*

Federal and state law requires that meetings be held in places accessible to individuals with mobility and other impairments.

## What is Exempt from the Law?

On-site inspections, staff meetings and gatherings of associations to which a public body or its members belong are not considered public meetings. Chance social gatherings are not considered meetings as long as no official business is discussed.

### Example

- *Three out of five city councilors inspect a new landfill site. Their inspection does not constitute a public meeting, unless they deliberate toward a decision on a city matter.*
- *Later, the three city councilors attend a League of Oregon Cities conference. Again, this is not a public meeting, unless the councilors discuss official city business.*
- *That evening, the three councilors chat during a concert intermission. As long as they talk about the music, this is not a public meeting. But if they stray into discussion of official city business, then it is.*

Also exempt from the Public Meetings Law are:

- Meetings of state or local lawyers assistance committees.
- Meetings of medical peer review committees.
- Meetings of multidisciplinary teams reviewing child abuse and neglect fatalities.
- Judicial proceedings. However, see Oregon Constitution, Section 10.
- Review by the Workers' Compensation Board and the Employment Appeals Board of hearings on contested cases.
- Meetings of the Energy Facility Siting Council when it reviews and approves security programs.
- The Oregon Health and Science University regarding presidential selection process, sensitive business matters, or meetings of faculty or staff committees.
- Mediation by the agricultural mediation service program.

For some entities, the deliberation process alone is exempt, although information-gathering and decision-making must be public. This applies to the State Board of Parole, the Psychiatric Security Review Board, and state agencies conducting hearings on contested cases under the Administrative Procedures Act.

## **Notice of Meetings**

Governing bodies must give notice of the time, place and agenda for any regular, special or emergency meeting.

Public notice must be reasonably calculated to give actual notice to interested persons and media who have asked in writing to be notified of meetings and general notice to the public at large.

Governing bodies wishing to provide adequate notice should strive to provide as much notice as possible to ensure that those wishing to attend have ample opportunity – a week to 10 days for example.

At least 24-hour notice to members of the governing body, the public and media is required for any special meeting, unless the meeting is considered an emergency meeting. Appropriate notice is required for emergency meetings and should include phone calls to media and other interested parties. Notice for emergency meetings must also cite the emergency.

A meeting notice must include a list of the principal subjects to be considered at the meeting. This list should be specific enough to permit citizens to recognize matters of interest. However, discussion of subjects not on the agenda is allowed at the meeting.

### **Example**

*The State Board of Higher Education plans to discuss building new college campus in Burns. An agenda item that says "Discussion of public works" would be too general. Instead, the agenda should say something like "Discussion of proposed Burns campus."*

## **Executive Sessions**

Governing bodies are allowed to exclude the public - but generally not the media - from the discussion of certain subjects. These meetings are called executive sessions.

Executive sessions may be called during any regular, special or emergency meeting. A governing body may set a meeting solely to hold an executive session as long as it gives appropriate public notice. Notice requirements for executive sessions are the same as for regular, special or emergency meetings. However, labor negotiations conducted in executive sessions are not subject to public notice requirements.

Notice of an executive session must cite the specific law that authorizes the executive session. This authorization also must be announced before going into the executive session.

Governing bodies may formally specify that the media not disclose information that is the subject of the executive session. Governing bodies should not discuss topics apart from those legally justifying the executive session. Media representatives may report discussions that stray from legitimate executive session topics and are not required to inform the governing body when they intend to do so.

No final action may be taken in executive session. Decisions must be made in public session. If a governing body expects to meet publicly to make a final decision immediately after an executive session, it should try to announce the time of that open session to the public before the executive session begins.

### **Example**

*• City councilors meet in executive session to discuss the city manager's performance. A local reporter attends. During the meeting, the councilors discuss whether the city should put a bond measure on the next ballot. The reporter may write a story on the council's bond-measure discussion, because that discussion was not allowed under the executive session rules. The reporter may not write about the city manager's performance.*

## **Executive Sessions Criteria**

Executive sessions are allowed only for very limited purposes. Those include:

- 1. To consider the initial employment of a public officer**, employee or staff member, but not to fill a vacancy in an elected office, or on public committees, commissions or advisory groups. These sessions are allowed only if the position has been advertised, standardized procedures for hiring have been publicly adopted, and the public has had an opportunity for input on the process. Executive sessions are not allowed to consider general employment policies.
- 2. To consider dismissal**, discipline, complaints or charges against a public official, employee, official, staff or individual agent, unless that person requests a public hearing.
- 3. To review and evaluate the job performance** of a chief executive officer, or other officer or staff member, unless that person requests an open hearing. Such evaluation must be pursuant to standards, criteria and policy directives publicly adopted by the governing body following an opportunity for public comment. The executive session may not be used for the general evaluation of agency goals, objectives, programs or operations, or to issue any directive to personnel on the same.
- 4. To deliberate with persons designated to conduct labor negotiations.** The media may be excluded from these sessions.
- 5. To conduct labor negotiations** if both sides request that negotiations be in executive session. Public notice is not required for such meetings.
- 6. To consider records** that are exempt by law from public disclosure.
- 7. To consult with counsel** concerning litigation filed or likely to be filed against the public body. Members of the media that are a party to that litigation, or represent a media entity that is a party, may be excluded.
- 8. To consult with persons designated to negotiate** real property transactions.

**9. To discuss matters of trade** when the governing body is in competition with other states or nations.

**10. To negotiate with a private person** or business regarding public investments.

**11. To discuss matters of medical competency** and other matters pertaining to licensed hospitals.

**12. To consider information obtained by a health professional** regulatory board or State Landscape Architect Board as part of an investigation of licensee or applicant conduct.

**13. To discuss information relating to the security of:** a nuclear power plant; transportation of radioactive materials; generation, storage or conveyance of electricity, gas hazardous substances, petroleum, sewage or water; and telecommunications and data transmission.

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## **Media at Executive Sessions**

Media representatives must be allowed to attend executive sessions, with three exceptions. Media may be excluded from:

- Strategy discussions with labor negotiators.
- Meetings to consider expulsion of a student or to discuss students' confidential medical records.
- Meetings to consult with counsel concerning litigation to which the media or media representative is a party.

A governing body may require that specific information not be reported by the media. This should be done by declaration of the presiding officer or vote. In the absence of this directive, the executive session may be reported. Any discussion of topics apart from those legally justifying the executive session may be reported by the media.

The media also is free to report on information gathered independently from executive session, even though the information may be the subject of an executive session.

#### **Example**

*• A reporter attends the executive session on the city council's discussion of the city manager's performance. Afterwards the reporter asks a councilor what she thinks of the city manager's performance. She shares her criticism. The reporter may use that interview to develop a story, even though the reporter first heard the information at the executive session.*

## **Minutes**

Written, sound, video or digital recording of minutes are required for all meetings.

The meetings law says minutes must be made available within a "reasonable time" after each meeting, but does not specify the time. Generally, this time frame should not exceed three weeks. Minutes must be preserved for a "reasonable time." This is generally interpreted to be at least one year. Minutes of many governing bodies are subject to records retention rules and schedules established by the State Archivist.

### **Minutes must indicate:**

- Members present
- All motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition.
- The result of all votes by name of each member (except for public bodies consisting of more than 25 members). No secret ballots are allowed.
- The substance of discussion on any matter.
- A reference to any document discussed at the meeting.

Minutes are not required to be a verbatim transcript and the meeting does not have to be tape recorded unless so specified by law. Minutes are public record and may not be withheld from

the public merely because they will not be approved until the next meeting. Minutes of executive sessions are exempt from disclosure under the Oregon Public Records Law.

Governing bodies are allowed to charge fees to recover their actual cost for duplicating minutes, tapes and records. A person with a disability may not be charged additional costs for providing records in larger print.

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## **Enforcement**

County district attorneys or the Oregon Attorney General's Office may be able to answer questions about possible public meetings law violations, although neither has any formal enforcement role and both are statutorily prohibited from providing legal advice to private citizens.

Any person affected by a governing body's decision may file a lawsuit in circuit court to require compliance with or prevent violations of the Public Meetings Law. The lawsuit must be filed within 60 days following the date the decision becomes public record.

The court may void a governing body's decision if the governing body intentionally or willfully violated the Public Meetings Law, even if the governing body has reinstated the decision in a public vote. The court also may award reasonable legal fees to a plaintiff who brings suit under the Public Meetings Law.

Complaints of executive session violations may be directed to the Oregon Government Ethics Commission, 3218 Pringle Road SE, Suite 220, Salem OR, 97302-1544; 503-378-5105, for review, investigation and possible imposition of civil penalties.

Members of a governing body may be liable for attorney and court costs both as individuals or as members of a group if found in willful violation of the Public Meetings Law.

**For additional copies of this guide or information about Open Oregon, contact:**

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info@open-oregon.com  
www.open-oregon.com

**Additional resources:**

- **Oregon Attorney General's Public Records and Meetings Manual**, available by calling 503-378-2992 or writing to Department of Justice, 1162 Court Street NE, Salem, OR 97301-4096; [www.doj.state.or.us/oregonians/pubs.shtml](http://www.doj.state.or.us/oregonians/pubs.shtml)
- **Oregon Revised Statutes 192.610 to 162.690**, the Oregon Public Meetings Law, available in most libraries and on the internet at [www.leg.state.or.us](http://www.leg.state.or.us).
- **Oregon Newspaper Publishers Association**, 503-624-6397. Offers legal advice to member newspapers and general information about public records and meetings requirements; [www.orenews.com](http://www.orenews.com)
- **League of Oregon Cities**, 1201 Court St. NE, Salem, OR 97301. 503-588-6550; [www.orcities.org](http://www.orcities.org)
- **Association of Oregon Counties**, 1201 Court St. NE, Salem, OR 97301. 503-585-8351; [www.aocweb.org](http://www.aocweb.org)
- **Oregon School Boards Association**, 1201 Court St. NE, Salem, OR 97301. 503-588-2800; [www.osba.org](http://www.osba.org)
- **Special Districts Association of Oregon**, PO Box 12613, Salem, OR 97301-0613, 503-371-8667; [www.sdao.com](http://www.sdao.com)

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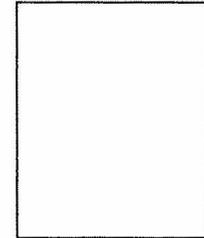
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# Lessons from Lane County

## How a Recent Lawsuit in Lane County Might Just Change the Way Cities Conduct Business

At the beginning of 2010, two citizens sued Lane County and three of its commissioners alleging violations of Oregon's public meeting laws, ORS 192.610 – 192.710. The circuit court recently issued a 44-page written decision in the case holding two of the three commissioners personally liable for violations of the law. The circuit court's decision does not necessarily dictate how the issues litigated in this case will be decided if raised in a different case in the future. Nonetheless, the court's decision raises at least four issues to which city officials and employees should pay attention. Even though this article briefly summarizes these issues, city officials and employees are encouraged to read the court's decision and seek advice from their respective city attorneys about how best to comply with the public meeting laws.

### **Lesson #1 – Use of a personal computer and a private e-mail account to conduct city business may subject your personal computer or private e-mail account to disclosure under a public records request or in a litigation discovery request.**

The League of Oregon Cities and city attorneys across the state have advised city officials and employees for several years that using a personal computer or a private e-mail account to conduct city business may subject the hard drive of the personal computer or the private e-mail account to disclosure under a public records request or in a litigation discovery request. This issue first arose several years ago in a litigation matter where the court required city councilors to have the hard drives of their personal computers searched as part of a litigation discovery request. In the Lane County case, once again, local government officials were asked about and required to produce documents sent from private e-mail accounts. While the issue of whether disclosure was required was not a significant issue in the case, the fact that it occurred is another reminder to city officials and employees that conducting city business on a personal computer or using a private e-mail account will not shield those communications from disclosure.

### **Lesson #2 – Use of e-mail by a quorum of a public body might constitute a meeting under Oregon's public meeting laws.**

It has long been an open question regarding whether a quorum of a governing body could violate the public meeting laws by communicating through the use of e-mail. (See the League's April 2009 edition of *Local Focus*, available at [www.orcities.org](http://www.orcities.org), for a more in-depth article on this issue.) ORS 192.670(1) states that “[a]ny meeting, including an

executive session, of a governing body of a public body which is held through the use of telephone or other electronic communication shall be conducted in accordance with [the public meeting laws].” In the Lane County case, the circuit court concluded that e-mail is an “electronic communication” as that term is used in ORS 192.670(1). (Slip Opinion at p. 33.) Thus, for the first time in Oregon, a court has concluded that a meeting can occur through the use of e-mail.

Notwithstanding that the court concluded that e-mail was an electronic communication for the purposes of the public meeting laws, the question remained whether the e-mail communications in question constituted a “meeting.” ORS 192.610(5) defines a meeting as “the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter.” The defendants argued that the e-mails in this case were more like a letter or short telephone message that didn't amount to making a decision or deliberating toward a decision. The court, however, rejected this argument. The court stated, “[b]ased on the evidence presented in the present case, this court rejects defendants' analogy to e-mail as the equivalent of a letter. As the various e-mails show, they are far more like the normal back and forth in conversation than correspondence in letter form. There is the opportunity for immediate viewing and response. That in fact occurred in several e-mails in this case.” (Slip Op. at p. 34, n. 32.)

In the end, the court stated that its determination that the use of e-mail could result in a meeting was “probably of no consequence” to its final decision that a violation of the public meeting laws occurred. This is because e-mails in question were about a decision for which that statute of limitations period had expired. Nonetheless, the court's determination is the strongest warning yet for city officials and employees that communications made through e-mail involving a quorum of a governing body might constitute a meeting under the public meeting laws.

### **Lesson #3 – Serial meetings may violate Oregon's public meeting laws**

As discussed above, the public meeting laws define a meeting as “the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter.” (ORS 192.610(5).) Historically in Oregon, this definition required the convening of a quorum of a governing body in the same place (or on the same conference call) before a

meeting could occur. However, in the Lane County case, the court concluded for the first time in Oregon that a violation of the public meeting laws can occur even when a quorum of a public body never meets at the same time to make a decision or deliberate toward a decision.

The court set forth the following test to determine whether a meeting occurred: (1) did at least a quorum of the governing body; (2) make a decision or deliberate toward deciding a matter; (3) in any setting that was private and not open to the public. (Slip Op. p. 34.) In this case, the court reached a factual conclusion that a quorum of the Lane County Board of Commissioners had private conversations and meetings in which they deliberated and reached a collective decision on what to include in a supplemental budget even though a quorum of the commission never discussed the issue together at the same time outside the scope of a public meeting. As explained by the court, “[t]he evidence did not show that any three [of the five] commissioners were ever in the same room at the same time talking about this matter. That does not mean that the continuing multiple conversations were not a deliberation. All involved knew that a quorum of the board was working towards a final decision outside of the public meeting context. . . In effect, the public meeting vote on December 9 was a sham. It was orchestrated down to the timing and manner of the vote to avoid any public discussion.” (Slip Op. at pp. 36-37.)

Although this is the first time in Oregon that a court has found that these types of communications constitute a meeting, courts and attorney generals in other states have reached similar conclusions for many years. (See, e.g., *Roberts v. City of Palmdale*, 20 Cal. Rptr. 2d 330, 337 (Cal. 1993); *Dewey v. Redevelopment Agency of the City of Reno*, 119 Nev. 87, 64 P. 3d 1070 (2003); Fla. Atty. Gen. Op. 96-35 (1996); 2/23/94 Idaho Atty. Gen. Op. to Mike Wetherall.)

These types of meetings, often called “serial” or “seriatim” meetings, occur when deliberations or decisions of a quorum of a governing body take place through one-on-one meetings or in meetings with groups less than a quorum, outside of official public meetings, in a deliberate attempt to build a majority for or against a matter. As explained by the California Supreme Court in the *Roberts* case mentioned above, “[o]f course the intent of [California’s open meeting laws] cannot be avoided by subterfuge; a concerted plan to engage in collective deliberation on public business through a series of letters or telephone calls passing from one member of the governing body to the next would violate the open meeting requirement.” (20 Cal. Rptr. 2d at 337.)

Thus, for example, in the *Dewey* case mentioned above, the Nevada Supreme Court analyzed whether a violation of that state’s public meeting laws occurred when staff of a redevelopment agency met with the entire governing body

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## Lessons from Lane County

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of the agency outside the scope of a public meeting in separate groups of less than a quorum. The Nevada Supreme Court concluded that no violation occurred because staff did not share the thoughts, questions or opinions of the members who attended one briefing with the members who attended another briefing. Further, the court stated that there was no evidence of polling by the staff to determine the opinions or votes of the members of the governing body. In addition, the court concluded that there was no evidence in the record that the briefings resulted in the governing body taking action or deliberating on the issue outside of a public meeting. *Dewey v. Redevelopment Agency of the City of Reno*, 119 Nev. 87, 64 P.3d 1070 (2003)

Likewise, the Florida attorney general has advised that a school board member may prepare and circulate an informational memorandum or position paper to other board members without violating that state's open meeting laws. However, the attorney general cautioned that use of a memorandum to solicit comments from other board members or the circulation of responsive memoranda by other board members would violate the open meeting laws as such actions would constitute deliberations. (Fla. Atty. Gen. Op. 96-35 (1996); see also, Fla. Atty. Gen. Op. 01-20 (e-mail communication of factual background information from one council member to another is a public record but does not constitute a meeting subject to the Florida's open meeting laws when it does not result in the exchange of council members' comments or responses on subjects requiring council action).

Following in the footsteps of these other states, the Lane County decision provides the first instance in Oregon where a court has found a violation of the state's public meeting laws because of the use of serial meetings. Because of this, city officials and employees in Oregon should be careful not to engage in serial meetings where the thoughts, questions or views of a quorum of a governing body are shared. One way communications are likely still permissible, but communications that could constitute deliberations or, even worse, reaching a decision should be avoided.

**Lesson #4 – Knowledge of the requirements of the public meeting laws and failure to comply with those requirements might constitute willful misconduct that would subject individual city councilors to personal liability.**

State law includes provisions that require a public body to pay the attorney fees of a plaintiff that is successful in proving a violation of Oregon's open meeting laws. (ORS 192.680(3).) The law further provides that if the violation is the result of willful misconduct by any individual member or members of the governing body, that the member or members shall be jointly and severally liable to the public body for the amount required to be paid to the plaintiffs.

(continued on next page)



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(ORS 192.680(4).) The open meeting laws, however, do not define what constitutes “willful misconduct” for the purposes of determining the liability of individual members of a governing body.

In the Lane County decision, the court set forth two different tests that could be used to determine if a public official engaged in willful misconduct in the context of a violation of the public meeting laws. First, the court explained that willful misconduct could require that a public official act with “a conscious objective to violate those particular statutory provisions.” In other words, it is conduct that is intended to cause a particular result—a violation of the law. Second, the court explained that willful misconduct could occur if an official “had knowledge of the law’s requirements and thereafter failed to follow those requirements.” (Slip Op. at 39.) Because the court concluded that two of the commissioners engaged in willful misconduct under either standard, the court did not decide which standard the public meeting laws require to be proven before liability may be imposed on individual public officials. As part of its conclusion, however, the court specifically mentioned the fact that the commissioners ignored advice from the county counsel to cease engaging in deliberations outside the scope of a public meeting. (Slip. Op. at p. 41.)

As a consequence of the court’s decision, city officials should be mindful that a court could very well apply the lesser standard—knowledge of the law’s requirements and

a failure to follow those requirements—to any violations of the public meeting laws. As such, city officials are encouraged to consult with their city staff and city attorneys when there is uncertainty about what the public meeting laws require. Likewise, city officials should adhere to advice provided by their city staff members and city attorneys, as failure to do so might result in a finding of willful misconduct.

The Lane County decision may still be appealed to the Court of Appeals and the Oregon Supreme Court, either of which could reverse the decisions made by the circuit court. Nonetheless, until such time as a reversal occurs, city officials and employees should be mindful of the lessons learned from the Lane County decision.

A copy of the circuit court’s decision in the Lane County case is available on the League’s web site at: [www.orcities.org/Portals/17/Publications/Newsletters/Weekly/dumdi-handy-openmeetingdecision-2011-01-18.pdf](http://www.orcities.org/Portals/17/Publications/Newsletters/Weekly/dumdi-handy-openmeetingdecision-2011-01-18.pdf). ■

***Editor’s Note:** Because of the complexities and nuances of the law in this area and of the court’s opinion, this article is necessarily general and is not intended to provide legal advice. This article should not serve as a substitute for competent legal counsel. Please consult with your city attorney to ensure that you fully comply with Oregon’s public meeting laws.*

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## WHAT EVERY ELECTED OFFICIAL NEEDS TO KNOW

By Chad Jacobs, LOC General Counsel

Making government decisions behind closed doors in rooms filled with cigar smoke might make for a good scene in a movie, but such actions will likely get you in trouble in Oregon. State law requires that city councils deliberate and make decisions at open meetings under the public's watchful eye. Provisions of local law might also require that council meetings be open to the public.

The following article provides a brief overview of Oregon's public meeting laws. Councilors are encouraged to familiarize themselves with these laws by following the four steps below as well as seeking the continued advice of their city attorney. Failure to do so could result in violations of the public meeting laws, which could have the consequences of voiding government decisions and/or personal liability in an enforcement action brought by the Oregon Government Ethics Commission.

### STEP 1:

#### Understand the purpose of Oregon's Public Meeting Laws

To understand your obligations related to Oregon's public meeting laws, it is important to first understand the purposes behind the laws. As explained in ORS 192.690:

*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 [Oregon's public meeting laws] that decisions of governing bodies be arrived at openly.*

Local officials who keep this policy in mind when conducting the public's business will go a long way towards avoiding any violations.

### STEP 2:

#### Understand when you are engaged in a meeting subject to Oregon's Public Meeting Laws

Understanding when the law applies is one of the most important tools available to avoid violations. Oregon's public meeting laws apply only to (1) gatherings of a governing body (2) for which a quorum is required (3) in order to make a decision or to deliberate toward a decision on any matter. All three of these requirements must be met in order for the public meeting laws to apply.

- (1) **A Governing Body:** A governing body is defined by the public meeting laws as a deliberative body of the city that consists of two or more members who have the authority to make decisions or recommendations for the city. This includes all city councils, as well as planning commissions, budget committees, library boards, citizen advisory committees, council committees, and others, even if their functions are purely advisory. It does not include ad hoc committees of department heads or other city employees.

The public meeting laws apply when one of these governing bodies convenes on any matter to make a decision or to deliberate toward a decision. It includes "conference call" telephone meetings. If such meetings are held, arrangements must be made for the public to hear what is said, such as providing loud speakers attached to the telephone system.

- (2) **A Quorum:** It is crucial to remember that in order for the laws to apply, a "quorum" of the governing body must be present. For city councils, a quorum is generally defined by local law in the city charter, or by council bylaws or rules of order. If local law is silent,

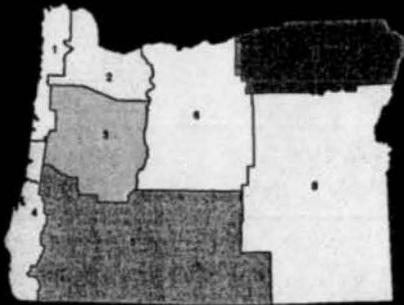
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## Small Cities Support Network

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For the latest meeting details, please visit [www.orcities.org/smallcities](http://www.orcities.org/smallcities).

For more information: Contact Mandy Allen, Small Cities Support Network Coordinator, at [mallen@orcities.org](mailto:mallen@orcities.org) or 503-588-6550. ■



### Schedule of Upcoming Meetings

Time: 11:00 a.m. to 1:00 p.m.

- Region 1: November 20 – Tillamook
- Region 2: September 9 – Lafayette
- Region 3: November 13 – Turner
- Region 4: November 6 – Dunes City
- Region 5: September 16 – Myrtle Creek (new date!)
- Region 6: September 17 – Maupin
- Region 7: October 22 – Pilot Rock
- Region 8: October 21 – Haines

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Contact: Kim Shook, Training Coordinator – [kshook@orcities.org](mailto:kshook@orcities.org) or (503) 588-6550. ■



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a quorum is defined by state law as a majority. Accordingly, as a general rule, a quorum is 50 percent of the members, plus one.

- (3) **Decisions or Deliberations:** City councilors should keep in mind that the public meeting laws apply only to gatherings at which a quorum of a governing body is making a decision or deliberating toward a decision in any matter. For the purposes of the public meeting laws, a meeting solely to gather information that will serve as the basis for a subsequent decision or recommendation by the governing body constitutes deliberating toward a decision.

The discussions, however, must be about matters within the governing body's jurisdiction in order for the public meeting laws to apply. Thus, for example, purely social gatherings of the members of a governing body are not covered by the law. In such situations, it is important to make sure that the members of the governing body avoid any discussions of official business.

### STEP 3:

#### Understand the procedural requirements of the law

In addition to the basic requirement that governing body meetings be open to the public, meetings may not be held at a place where discrimination on the basis of race, color, sex, age, or national origin is practiced. Further, meetings must be held at a place accessible to the disabled, and a good faith effort must be made to have an interpreter available for the hearing impaired when requested to do so. In general, meetings may not be held outside the city, although there are some exceptions to that rule. Smoking is prohibited at public meetings.

For a regular meeting, there must be reasonable notice to the public of the time and place of the meeting. The notice must include a list of the principal subjects to be discussed and must identify any matters to be taken up in executive session. Additional subjects not anticipated or listed may be considered at the meeting. The notice must be reasonably calculated to give actual notice to interested persons including news media that have requested notice. Steps cities take to provide reasonable notice include: sending press releases; sending agendas to mailing lists; and placing agendas on notice boards and the Internet. Except in an emergency, all public meetings (including executive sessions) must be called with at least 24 hours prior notice.

Written minutes of all meetings are required, except that executive sessions may be tape-recorded without written minutes. Minutes should be approved at a subsequent meeting. Written minutes need not be a verbatim transcript of the meeting, but, at a minimum, minutes must contain: (1) members present; (2) motions, proposals, resolutions, orders, ordinances, and measures proposed and their disposition; (3) results of all votes; (4) the substance of any discussion on any matter; and (5) a reference to any public document discussed at the meeting.

### STEP 4:

#### Understand when a meeting may be held in private

The public meeting laws permit governing bodies to meet in private in limited circumstances. These meetings, called executive sessions, are defined by state law to include "any meeting or part of a meeting of a governing body which is closed to certain persons for deliberation on certain matters." Governing bodies must generally permit members of the media to attend an executive session.

*(continued on page 22)*

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## Public Participation at Council Meetings

Oregon's public meetings law requires city councils to conduct business in noticed meetings open to the public. This permits the public to be aware of the deliberations and decisions of city councils and the information upon which such decisions are made. But to what extent does the law require a city council to permit public participation and comment at council meetings?

The short answer is not at all. As explained by the Oregon Attorney General (AG), "the public meetings law is a public attendance law, not a public participation law." Accordingly, the AG has advised that "[t]he right of public attendance guaranteed by the public meetings law does not include the right to participate by public testimony or comment."

As with most laws, there are exceptions to this rule. The public meetings law requires public participation in two situations. First, the law requires an opportunity for "public comment" on the employment of a public officer. (ORS 192.660(7)(d)(C).) Second, the law requires an opportunity for "public comment" on standards to be used in hiring a chief executive officer. (ORS 192.660(7)(d)(D).) Other than these exceptions, the public meetings law does not require a city to permit public participation or comment at council meetings.

In addition to these exceptions, state statutes, city ordinances, or council rules outside of the public meetings law may require city councils to permit public participation and comment at their meetings. For example, section 2.04.070 of the city of Ashland's Municipal Code provides all Ashland citizens with the right to speak on any item not on the council's agenda during a portion of the council meeting known as public forum. Likewise, sections 4.1 and 4.3 of the city of Gresham's Council Rules require a time period for public comment at most council meetings. Gresham's rules permit citizen comments on both agenda and non-agenda issues, and as a general rule, each speaker is limited to a three-minute comment period. Under these rules, the Gresham city council may in its discretion and by consensus terminate public comment or lengthen or shorten an individual's comment period. In the absence of requirements such as these, a city council may conduct a meeting without public participation or comment.

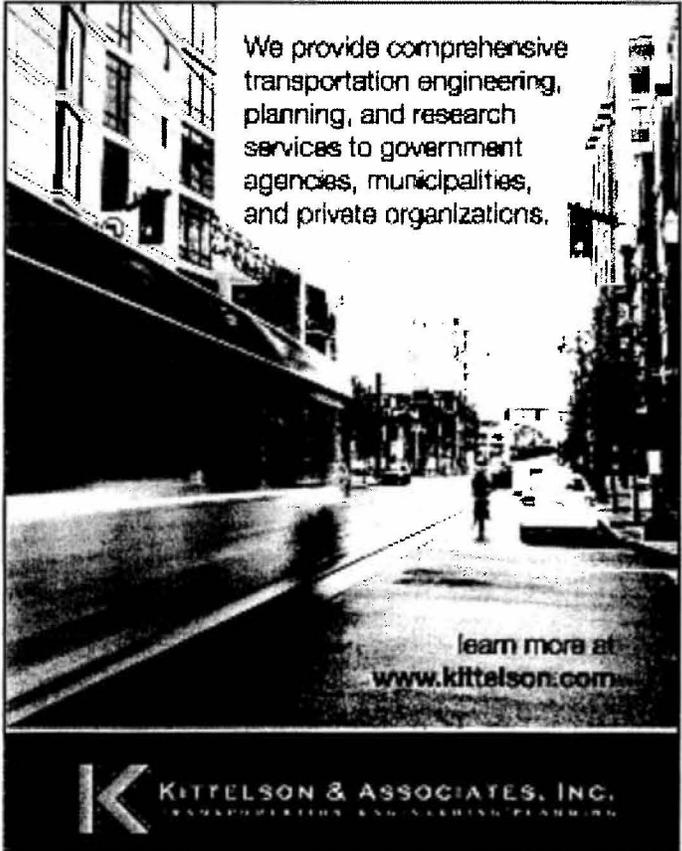
Finally, even if public comment is permitted, the city council, through its presiding officer, has the authority to keep order and to impose any reasonable restrictions necessary

for the efficient and orderly conduct of a meeting. According to the attorney general, any person who fails to comply with reasonable rules of conduct, or who causes a disturbance, may be asked or required to leave and upon failure to do so, becomes a trespasser. The attorney general has advised, however, that it is questionable whether a city council may exclude a member of the public because the person engaged in misconduct at a previous meeting. ■

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**Editor's Note:** The LOC Legal Services Program is not a substitute for local legal representation and is not intended to serve as a city's legal counsel, but rather to provide informational, research and inquiry services. Cities are encouraged to consult with their city attorney regarding legal issues.

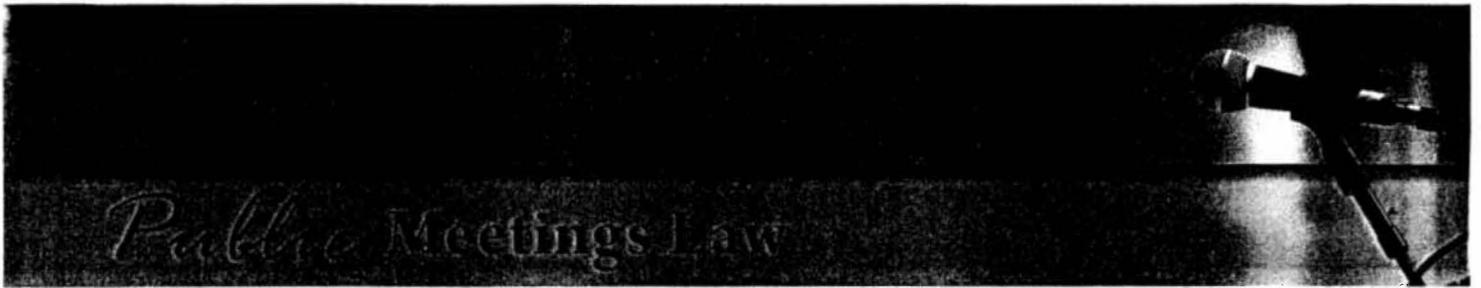
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## Can't We All Just Get Along?

By Dorothy Burton

**M**utual respect, common courtesy, civility, diplomacy. These are fundamental principles that are fundamentally missing from the body politic today. Not just inside the Beltway, but in hometown America as well.

Many council chambers are being transformed into torture chambers by ax grinders who run not to serve—but to divide, obstruct, confuse, and cast suspicious doubt on the efforts and motives of colleagues and staff—not for the common good, but for their own selfish, sometimes even vengeful good.

Far too many leaders are leading by the seat of their pants as nerves fray beneath the pressure to provide more services with fewer dollars. The dollars have deflated while egos have inflated, and the slightest disagreement during the course of a council or town meeting can turn into a name-calling, finger-pointing, free-for-all whereby feelings are left bruised and the public's trust is again abused.

May I share an open secret with you? It no longer matters how good we are, how long we have been in office or our pedigree. Voters have had it with elected officials who, like spoiled little brats, pitch fits when things don't go their way. They are kicking to the curb those who can't find a way to play well with others and those who fail to understand that the pursuit of the common good is paramount to the pursuit of personal gain.

Time has long past to put aside petty bickering, and as leaders it is time to start working better together to help resolve the challenging issues that continue to rattle us all. Our country is in crisis, our economy is in crisis, and our communities are in crisis. While what happens in D.C. obviously drives the national agenda, we as local leaders, particularly in these turbulent times, owe it to our constituents to become the change they so desperately long to see in their elected and appointed leaders.

When parents consistently bicker, the children in the home lose their sense of security and their confidence plummets. As elected leaders, when we consistently bicker, the residents and business owners in our communities experience the same.

As council members, selectmen, aldermen, commissioners, town councilors, and town administrators, the methods by

which we choose to respond, react and interact with our colleagues will to a large degree determine our success, define our failure, or determine if we are viewed by those we represent and by those with whom we serve as an asset or liability. The latter can be the kiss of death for any political career.

So, how does one serve and work with people whom they literally cannot stand and who cannot stand them? What is the secret for getting along with people who don't want to get along with you? How can you work for the common good with people who find little good in anything or anyone? It may not be as difficult as you think—and the answer can be found in the acronym—SIFT.

In addition to my role as mayor pro tem for my city, my "real" job involves spending a lot of time working with local leaders throughout various parts of the country, and more downtime in airports than I would sometimes like. While between flights several months ago, I ran across a familiar quote I had seen dozens of times, but on that particular day, the words seemed to jump from the page. It was the quote by Gandhi, "Be the change you want to see in the world."

I instantly thought of my council back home, because like most councils, we have some interesting challenges led by some interesting personalities! I determined on the plane home that I would do just that—become the change I wanted to see on my council.

While you may never be able to change a colleague's dislike or disdain for you or the projects you promote, you can change the way you choose to respond to them. And by responding from a place of control, rather than from a place of anger, over time you will become far less stressed, much more focused, more productive, and will develop the admirable ability to keep your head while others around you are losing theirs.

To that end, I developed the pyramid model SIFT. It is designed to foster communication that is more productive, help individuals influence group dynamics in order to move issues forward in a more positive way, and to equip leaders to more quickly sift through emotional minutiae in order to respond in a manner that will defuse rather than further ignite heated debate. Below is an abbreviated view of the model:

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## Can't We All Just Get Along?

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**S Shut your mouth** – Not every statement requires a response and not every question requires an answer. In fact, oftentimes the best response is no response at all. If by responding you only add fuel to an already raging fire, or if your response would not add value to the discussion nor change the person's mind then keep your mouth closed. Silence can be a powerful tool.

**I Ignore** – Ignore ignorance and innuendo. It's not what people call you—it's what you answer to. Ignore the dumb stuff, or in the words of philosopher William James, "The art of being wise is knowing what to overlook."

**F Forgive** – Practice forgiveness or, in other words, let things go. Recognize that no one is perfect, not even you. Don't harbor resentment. Resentment gives birth to twins—revenge and retaliation. If you spend your time nursing these ugly babies, they will grow to make you miserable, bitter, angry, ineffective, and will eventually cause you to become ostracized and minimized. No one will want to work with you—and lone ranger council members can do little to help those they have been elected to represent. Moreover, whatever or whomever consumes your time, controls your life. Ironically, the more time you spend talking about and thinking about ways to get back at the object of your resentment, the more of your life that person invariably controls—whatever consumes your time, controls your life. So in essence, you don't get back at the object of your resentment, it keeps getting back at you. For your own sake and for the sake of those you represent, forgive, let go, and move on. Your life and your time in office are too short to do otherwise.

**T Think** – Think before you speak by first seeking to understand your colleague's position. During heated discussions, be mature enough to set aside personal feelings and actively listen. If a response is warranted, before responding, take a deep breath, slowly exhale, and repeat what you understood them to say. This simple act will force you to give a calmer, more reasoned response as opposed to an emotional, off-the-cuff reaction. The deep breath will relieve your tension and repeating the question will buy you time and help prevent you from saying the first impulsive thing that comes to your mind—something you may later regret. Even more important, this method of responding in an argumentative situation will bring further clarity and focus to the issue rather than to the person putting

*(continued on next page)*

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forth the issue. Argue the points rather than arguing with the person.

Without question, SIFT requires discipline, maturity, and a real desire to deviate from business as usual. But isn't this what the voting public is screaming for? It may boot you out of your comfort zone, but it will grow you in ways that will make you a more effective leader and communicator. The results can be astounding.

Be forewarned, you may lose an ally or two, or be accused of nothing short of treason by some on your council. But that's okay. It is often difficult for some to accept change and growth in others because it can painfully reveal the lack of the same in them.

Mark Twain once quipped, "Few things are harder to put up with than the annoyance of a good example." Start annoying some people on your council by becoming the positive change you want to see.

If you want more diplomacy, be more diplomatic. If you want respect, try showing respect—even when colleagues refuse to do the same. It may take some time, but over time, you will begin to see positive change. It is an inexplicable part of life—even life in politics—we generally get back what we give out.

Change begins with one person and oftentimes from within. Sometimes we are the problem and not our colleagues. But we can never change what we won't confront, especially when it means confronting ourselves.

Become the change you would most like to see in others and who knows? Through the power of one, we may all yet learn to get along—one person at a time. ■

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Dorothy Burton is mayor pro tem of Duncanville, Texas. She is a professional speaker and writer, and a member of the National League of Cities' Women in Municipal Government Board of Directors. This article has been reprinted here with her permission.

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## Public Meetings Law

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The public meeting laws provide authority to a governing body to hold executive sessions for specific reasons set forth in state law including:

- Initial employment of public officials and employees;
- Dismissal or disciplining of an officer or employee or performance evaluation of an officer or employee, unless the officer or employee requests an open meeting;
- Matters pertaining to the functions of a public hospital medical staff;
- Deliberations with persons designated to negotiate real property transactions;
- Deliberations with persons designated to conduct labor negotiations;
- Discussion of records that are exempt from public inspection;
- Negotiations involving matters of trade and commerce when the unit of government is in competition with other areas;
- Legal rights and duties of a public body with regard to current litigation or litigation likely to be filed;
- Review and evaluation of an executive officer, public officer, employee or staff member, unless an open hearing is requested by the person being reviewed; or
- Negotiations regarding public investments.

To hold a meeting that is an executive session only, notice must be given in advance, the same as for any other meeting, but the statutory authority for the executive session must be stated in the notice.

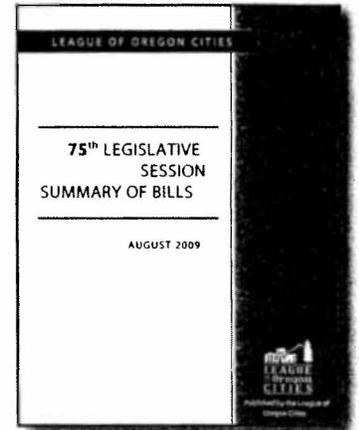
**Editor's Note:** Because of the complexities and nuances of Oregon's public meeting laws, this article is necessarily general and is not intended to provide legal advice. This article should not serve as a substitute for competent legal counsel. Please consult with your legal counsel to ensure that you fully comply with Oregon's public meeting laws. ■

## LOC Bill Summary Available on League Web Site

The League's biennial publication summarizing legislation that it lobbied during the recent legislative session is now available on the LOC Web site: [www.orcities.org](http://www.orcities.org). More than 3,000 bills were introduced during the session and League lobbyists reviewed over 1,000 of them.

*75<sup>th</sup> Legislative Session – Summary of Bills* is an excellent resource for city officials. It reviews the bills that were the most significant for cities, either in terms of actions taken or not taken during the session. They are categorized by issue, then numerically by bill number, and finally on the basis of whether or not the bill passed and became law.

The League has elected to distribute only electronic versions of the document this year. Cities that would like a printed version can call the League office and request one. CD-ROM versions of the summary will also be distributed at the League's Annual Conference in Portland, October 1-3, and are also available upon request. ■



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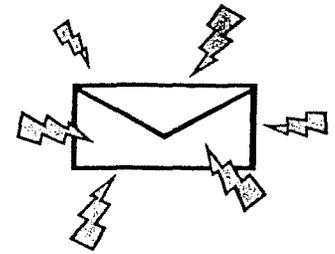


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# YOU'VE GOT MAIL

## Open Meetings Law and the Internet

by Christy Monson, LOC Legal Counsel



**T**his article is the second of a two-part series summarizing how Oregon's open meetings and public records law apply to the municipal use of technology. This article will focus on navigating Oregon's open meetings law in the Internet era. It is only a summary of the open meetings law as it pertains to the use of technology.

Nothing in this series is meant to convey legal advice. As always, you should check with your city attorney if you have specific questions regarding Oregon law.

### The General Rule: Keep it Open

The general rule for adhering to Oregon's open meetings law is simple: your city council meetings must be open to the public. The purpose for this rule is equally simple. In Oregon, we have decided that an informed public is essential to the democratic process.

So what does "open to the public" mean? Generally, if a quorum of your city council meets to deliberate or decide a matter, you must: 1) provide a publicly accessible location; 2) give reasonable notice of the time and general subject matter of your meetings; and 3) take and store meeting minutes.\*

There are, of course, exceptions and distinctions within the open meetings law. For example, Oregon law (ORS 192.660) allows for executive sessions under limited circumstances. Additionally, the legal definitions of terms such as "meeting", "decision", and "governing body" are subject to certain

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\*See ORS 192.690-.650 for the finer points of these requirements. Additionally, the Attorney General's Public Records and Meetings Manual provides easy to read summaries of the law and a very handy flow chart of these requirements on page B-2. To obtain a copy of this book, call (503) 378-2992.

distinctions. These distinctions may be used to properly limit the accessibility of some meetings. However, responsible municipal policy will create an open and accessible government rather than walling off the democratic process.

### Know Your Quorum Rules

Often, open meetings questions concern the use and application of the term "quorum". Admittedly, this can be confusing. The term "quorum" is doubly important in open meetings law because it affects two key definitions. The definition of a "meeting" is determined in part by whether a quorum is required to make a decision [ORS 192.610 (1)]. The definition of "decision" is determined in part by whether a "quorum" is required to take an action [ORS 192.610 (5)].

For these reasons, it is important to establish your own quorum rules through your city's charter, by-laws, or rules of order. If your city has not established quorum rules, the public meetings law will assume that a quorum is a majority of your council (see ORS 174.130).

### Using Technology

As city decision makers increasingly use the internet, questions about satisfying open meetings requirements arise. Surprisingly, most of these questions can be answered by applying the very same tests to the "e-meetings" as you would to the "live" meetings. In fact, ORS 192.670 expressly sets the same standards for virtual meetings as for live ones.

An example: three city councilors who are friends participate in a casual electronic chat room conversation from their home computers. The initial subject matter of the conversation is local politics. However, the conversation turns towards suggested



revisions to the city's municipal land use policy.

Applying the general rule above without regard to the difference between an electronic meeting and a real life meeting, we can pose three questions to assist us in deciding if the open meetings law applies: 1) Do three councilors constitute a quorum in this city? 2) Would a quorum normally be required to decide municipal land use policy? 3) Did the councilors deliberate or gather information regarding the development of municipal policy? If you can answer "yes" to any of these questions, the open meetings law likely applies. Of course, there are always fine points to consider, but generally this test will allow you to recognize a situation in which you may need to exercise caution or contact your city attorney.

Note that in the above hypothetical situation, it did not matter whose computer the councilors were using, whether the councilors were old buddies, or whether the original purpose of the conversation was non-governmental. The focus of the test was on the subject matter of the conversation and participants to the conversation.

### Using E-Mail

The above hypothetical uses a chat room scenario. Electronic chat rooms (and other devices for simultaneous e-conversations) qualify as "meetings" under the open meetings law. Like telephone meetings, the participants are conversing in "real" time. But how does e-mail, where there is a lag between responses, qualify? The answer to this question is unclear; however there is an argument that e-mail correspondence is no different than letter correspondence. As such, these letters may not be subject to the open meetings law. It is likely that they are, however, subject to retention and disclosure under the public records law. In any case, it is important to acknowledge and abide by the spirit of the open meetings law by avoiding scenarios in which a quorum of

decision makers are deliberating public decisions in private. If you have questions regarding this issue, you should contact your city attorney.

### Listening In

The open meetings law establishes another requirement at ORS 192.670(2). It mandates that cities that use telephonic or electronic means to deliberate provide a place where the public can "listen in" to the conversation.

(Remember also that, if requested, your city must make reasonable accommodations for the listener.) Meeting this "listening in" requirement may take some technological know-how.

To comply, some cities are establishing public-access web sites to monitor councilor e-mail. Others are installing computer programs which prohibit a quorum of the city council from engaging in real-time e-mail conversations. Lastly, some cities are adopting policies which prohibit a quorum of the city council from using electronic means to deliberate towards city-related decisions.

### Knowledgeable Decision Makers

The decision-makers in your city need to know that the law restricts their ability to conduct city business in private. While it is easy to praise the concept of open government in the abstract, it can be

difficult to put it into practice. Creating an open, accessible city government is not always convenient and requires forethought and discipline.

Lastly, your city may have established more stringent open meeting rules than the State's. In this case, your councilors should familiarize themselves with your city standards. Keeping government "open" may be less time effective and less convenient, but the benefits to our cities and our citizens far outweigh the challenges.

CITY ATTORNEY'S OFFICE

MEMORANDUM

December 2014

To: Mayor and City Council

From: James K. Brewer, Deputy City Attorney

Subject: Council Meetings

The Oregon open meetings law was one of the "sunshine" statutes enacted around the nation in the 1970's. This Memorandum discusses the provisions of the Charter, Corvallis Municipal Code Chapter 1.19, Council policy, and the state open meetings laws as they relate to Corvallis Council sessions.

What is a "Meeting"?: A meeting exists whenever a "public body" conducts "public business". There must be a **quorum** for there to be a "public body". Under the Corvallis Charter, a quorum is a majority of the members of the Council. A majority is simply 50 percent plus one of the members. Generally, five Council members are required to be present to form a quorum for a Council meeting.

"Public business" includes discussing any policy or administrative matters that pertain to the City of Corvallis. Gatherings for a non-public purpose are permitted as long as they do not turn into what would be a closed "meeting." For example, it is possible for a quorum of Council members to attend a wedding, funeral, lecture, or party and not violate the law— so long as there is no discussion of public business at the gathering. If public business is discussed by a quorum, even if there is no voting, and even if the meeting is solely for the purpose of gathering information, then a meeting is being held – and the rules about notice, location, and deliberations discussed below must be complied with. A "workshop" is a public meeting.

The law does not prevent two Council members from discussing what will happen at a Council meeting. However, when a committee consists of only three Councilors, the law prevents two members of a Council committee (who would therefore constitute a quorum for that committee) from discussing an agenda item for the committee on the phone or even, for example, at a casual meeting at a restaurant or park. An email interchange between two or more members of a

Council Committee discussing the business of that Committee would also be considered an electronic meeting, and must meet the public meeting requirements for public notice and public access.

When and where are Council meetings held?: Corvallis Municipal Code Chapter 1.19.010.010 requires that regular Council meetings will be held on the first and third Mondays of each month starting at 6:30 p.m. Council policy provides that meetings end at 11:00 p.m. Evening meetings can be extended beyond 11:00 p.m. by half-hour increments upon a majority Council vote. If either the first or third Monday falls on a holiday, the meeting will be held on the next business day following the holiday. No item of business shall be discussed at the noon meeting unless the discussion is unanimously approved by the Council members present. The Council meetings are held in the downtown Fire Station meeting room, 400 NW Harrison, Corvallis.

What is the Standard Council Meeting Agenda?: Corvallis Municipal Code Chapter 1.19.010.050 establishes the agenda for Council meetings. The Council generally proceeds through the agenda, taking each item in order, except that public hearings, visitors' propositions, and other items as requested, are held over to the evening meeting. Consent agenda items are considered as a single item without debate or discussion, except for simple clarification. Any member of the Council may remove any item from the consent agenda prior to the vote to approve it. Any items removed are taken up individually in the order they appear on the Council agenda.

Following the evening roll call, the Mayor announces that visitors' propositions will be heard. At that time, anyone in the audience who wishes to address the Council on any subject not already on the agenda may speak to the Council. Occasionally, you will be contacted by constituents regarding a matter they want to bring to the Council's attention. You could suggest that they appear and speak to the Council during visitors' propositions.

At the time set in the public notice, any scheduled public hearings begin. Some public hearings are required, such as those concerning land use planning issues (Comprehensive Plan amendments, annexation requests, street vacations, etc.) and some are held as the Council deems desirable (such as a hearing regarding surplus property). The purpose of public hearings is: 1) to provide input to the Council in the form of information and opinions from affected parties and citizens of Corvallis; and 2) to provide an opportunity for Corvallis citizens to be involved in municipal affairs. Public hearings may be continued to another meeting if necessary or desirable.

After all items on the agenda have been addressed, the meeting is adjourned.

Can the Council hold special Council meetings?: A special meeting may be called by the Mayor or at the request of at least three Council members. (City Charter Section 14). If a special

meeting is called, the Mayor must notify all Council members who are then in the City of the time, place, and subject(s) for the proposed meeting. If a special meeting is set during a regular Council meeting, the notice to individual Council members is not required. Notice must be given to the media at least 24 hours, but not more than 72 hours, before the special meeting is held. If the notice provision has not been complied with, the meeting is not proper. In the event of an actual emergency, the meeting can be held on lesser notice.

Are all Council meetings open to the public?: Section 18 of the Corvallis Charter and ORS 192.630 require Council meetings to be conducted publicly. All deliberations and proceedings of the Council are open to the public, unless an **executive session** is called (subject to the requirements listed below). Although all meetings are open to the public, there is not necessarily an opportunity for the public to testify at every public meeting on every topic.

What are the requirements that apply to executive sessions?: An executive (closed) session may be called to discuss the matters listed below, but no executive session may be held to take final action or make a final decision. Only the Council, specific staff members, persons invited by the Council and media representatives can attend executive sessions. The press may not report the substance of an executive session until the matter is acted upon at a public session. A major reason for allowing members of the news media to attend such sessions is to keep them informed concerning the background of deliberations, so that they have a better understanding of any decisions made as a result of the meeting. Material discussed during an executive session should not be disclosed if such disclosure would defeat the purpose for which the executive session was called.

The following are the topic areas for which an executive session may be called:

1. To consider the employment of a public officer, employee, staff member, or individual agent. This applies only to the employment of specific individuals.
2. To consider the dismissal of, disciplining of, or to hear complaints or charges against a public officer, employee, staff member, or individual agent, unless the individual requests an open hearing.
3. To deliberate with persons designated by the governing body to carry on labor negotiations.
4. To conduct labor negotiations when both parties request an executive session.
5. To consider records exempt by law from public inspections.

6. To deliberate with persons designated by the governing body to negotiate real estate transactions.
7. To consult with counsel concerning legal rights and duties with regard to current litigation or litigation likely to be filed.
8. To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations.
9. To carry on negotiations with persons or businesses regarding public investments.
10. To review and evaluate the employment-related performance of the chief executive officer, a public officer, employee, or staff member, unless the person whose performance is being reviewed and evaluated requests an open hearing.

If the subject does not specifically fall within the terms of the above list, it cannot be the subject of an executive session. Additionally, just because a matter could be discussed in an executive session, there is not a requirement that the matter must be considered in a closed session.

The enforcement of public meeting statutes has recently been given to the Ethics Commission of the State of Oregon. Any person violating the Public Meetings Law can be fined up to \$1,000, but it is a defense to the violation of the law that the action was done on advice of counsel.

An executive session may be called during a regular, special, or emergency meeting or may be called separately. No formal actions can be taken during an executive session. Normally, the Council members indicate and discuss their opinions until an informal consensus is reached. When the Council reconvenes in open session, formal action may then be taken.

What information is included in the minutes?: The minutes are the permanent record of the proceedings of the Council. They must be approved by the Council at a subsequent meeting.

Written minutes must include the following information:

1. Members present;
2. Motions, proposals, resolutions, orders, ordinances, and measures proposed and their disposition;
3. Result of all votes;

4. The substance of any discussion on any matter; and
5. A reference to any document discussed at the meeting.

While the City Recorder creates very thorough minutes, minutes are not transcripts and Council members and the public should not expect verbatim reproduction of meeting discussions. Video and audio recordings may be relied upon for transcription purposes, if needed.

CITY ATTORNEY'S OFFICE

MEMORANDUM

December 2014

To: Mayor and City Council  
From: James K. Brewer, Deputy City Attorney  
Subject: Liability of Council Members

This memorandum is intended to provide a general framework for the types of litigation that might involve the City of Corvallis and Council members.

**STATE LAW**

1. Oregon Tort Claims Act:

- a. What is a "tort?": A "tort" is a legal term that is defined as the breach of a civil legal duty that is imposed by law (as opposed to a duty arising from a contract). Examples of torts are assault, false arrest, defamation, or negligence.
- b. How does the Oregon Tort Claims Act affect the City?: The Oregon Tort Claims Act is a statute that provides that the City can be sued for its torts and for torts committed by its officers, employees, and agents acting within the scope of their employment or duties. (ORS 30.265(1)). When an officer, employee or agent is sued for his/her official actions, the City is responsible for defending the case and for paying any damages to the plaintiff. If the officer, etc., is acting outside his or her municipal responsibilities, then the City is not liable and the officer, etc., is personally responsible.
- c. When is the City not liable?:
  - The City is not liable if the officer, employee, or agent who committed the act or omission in question is not liable. (ORS 30.265(2)).
  - The City is generally not liable for the Municipal Judge's judicial acts, the City Prosecutor's prosecutorial decisions, and City Councilors' statements

made in the course of the legislative or quasi-judicial process at Council meetings.

- The City is not liable concerning claims covered by the Workers' Compensation Law, or claims involving the assessment and collection of taxes (which includes, for example, street improvement assessments). (ORS 30.265(6)(a) and (b)).

d. What are "discretionary functions" of government?:

- The City is not liable concerning the performance of "discretionary functions." (ORS 30.265(6)(c)). A precise definition of "discretionary functions" is difficult, as there are no hard and fast rules. Non-liability for discretionary functions is based on the idea that certain important public decisions should not be reviewed by a court or jury. The process leading up to the decision is important in determining if a function is discretionary. Routine decisions are not discretionary, but policy choices may be discretionary. The policy choice need not be made by the Council, so long as the decision maker was properly given the authority to make that choice. Express delegation of that discretion may be required to extend the immunity.

Examples of situations found to be "discretionary" are: a city council's policy decision, expressed in the budget, to reduce the frequency of sidewalk inspections; the decision whether or not to post warning signs or signals at a particular intersection; or making personnel recommendations regarding public employees. In contrast, nondiscretionary situations include: matters of maintenance; review of applications for compliance with applicable codes and regulations; placement of traffic signals; or removal of accumulated debris.

- e. How much is the City liable for?: In 2009 the Oregon Tort Claims Act established new limits for municipal tort liability for personal injury and death that began at \$500,000 for causes of action arising on or after July 1, 2009, and then escalates each following year until 2015. For fiscal year 2012-2013, the limit was \$600,000; for fiscal year 2013-2014, the limit was \$633,300; for fiscal year 2014-2015, the limit is \$666,700. The total liability for the City and officers, employees, agents for all claimants under any claim began at \$1,000,000 in 2009 and escalates each year until 2015. For fiscal year 2012-2013, the limit was \$1,200,000; for fiscal year 2013-2014, the limit was \$1,266,700. For fiscal year 2014-2015, the limit is \$1,333,333. Going forward from 2015, the limits will be increased or decreased based on a determination made by the State Court

Administrator in accordance with the appropriate consumer price index published by the Bureau of Labor Statistics of the US Department of Labor. For claims related to property damage, the limits are \$100,000 to any single claimant and \$500,000 to all claimants, with that number adjusted each year by the State Court Administrator. Because insurance coverage is not typically available in the increments that set the limit, the City purchases greater coverage, and typically requires contractors to also obtain greater coverage.

The Tort Claims Act does not allow punitive damages against the City. (ORS 30.269(1)). However, punitive damages – which are intended to punish the defendant rather than compensate the victim – may be assessed against city officials, employees, or agents individually.

- f. What happens when a person files a tort claim against the City?: Generally, a notice of claim must be given to the City within 180 days after the alleged loss or injury. The formal complaint or suit must be filed in court within two years after the alleged loss or injury.

The Act provides that the City is required to insure payment or indemnify its officers, employees, or agents against tort claims if they occurred in the performance of an official duty. This means that the City Attorney or the City's insurance carrier would defend the City Council member or City employee alleged to have injured a third party. If the Councilor or employee were found liable, any damages would be paid for by the City, not the Councilor or employee. The only time the City would not defend an officer or employee is when the person failed to perform their job properly, or willfully neglected their duty. Any activity that involved corruption or official misconduct would not be covered by the indemnification requirements of state law.

2. Liability for Municipal Financial Administration: Any public official who expends public money in excess of the amounts legally authorized, or for any other or different purpose than legally authorized, is personally liable for returning the money. (ORS 294.100). For example, spending bond proceeds for a purpose other than that stated in the bond election notices can result in personal liability. Also, as the Oregon Constitution prohibits lending of credit to benefit private parties, public and private partnerships should always raise a question about personal liability for assurances and guarantees made by the City. However, good faith reliance on the City Attorney's legal advice is a defense.

3. Where Else May Liability Arise Under State Law?: Other state laws impose requirements that can subject you or the City to liability for actions taken. Examples are:

- a. Public contracting laws: The public contracting laws specify how contracts are to be awarded to the lowest responsible bidders. If contracts are not awarded in conformance with legal requirements, then unsuccessful bidders can sue the City.
- b. Employment discrimination: Oregon law prohibits employment discrimination and has established the Labor Commissioner as the enforcement officer. Employees of the City and unsuccessful job applicants can file complaints for such things as race, sex, and age discrimination, for which the City may be liable.
- c. "Takings": Federal and State constitutional provisions generally prevent government from appropriating private property without just compensation.

4. Defamation: Unlike the areas of law discussed previously, the subject of defamation will concern you both as a potential plaintiff as well as a potential defendant. "Defamation" is communication that injures a person's reputation. "Libel" arises from written communication or radio and TV transmission; "slander" arises from oral communication.

In the course of heated public debate, many things can be said by and about members of the City Council. As a City Council member, you are a "public figure" and you cannot sue another person for defamation unless you can prove that the communication was false and that the person who defamed you knew what they were saying was false or they acted in reckless disregard of its truth or falsity.

As for being sued by someone else, you are privileged to say things or publish material in the course of your Council responsibilities that would otherwise be libelous or slanderous. This privilege applies only when you are acting in the course of your official duties. For example, statements to the press outside of a Council meeting are not part of your official duties, unless the Council as a whole has authorized you to speak on the Council's behalf. Statements, of course, must be relevant to the Council proceeding in order to qualify for the privilege.

## **FEDERAL LAW**

### 1. Civil Rights Statutes:

- a. What is "Section 1983" litigation?: After the Civil War, Congress enacted Section 1983 of the United States Code. Section 1983 is a broadly worded statute that provides all citizens a remedy for a violation of their constitutional rights by any person acting with official authority. In 1978, municipalities became liable for the acts of their officers and employees under this statute. This has created a massive amount of litigation around the nation in such unrelated areas as land development, hiring practices, police misconduct, and termination of utility services. The City of Corvallis has had Section 1983 cases involving the towing

of a vehicle abandoned on the street, false arrest, sex discrimination, and requirements for building permits.

- b. How does a Section 1983 case differ from a state tort claim?: Section 1983 is, in a sense, a tort claim procedure for alleged violations of constitutional rights. Claims can be filed in both the state and federal courts. As with tort claims, councilors may not be sued for actions taken in the course of Council proceedings. However, other City officials and employees may cause the City to be liable if their actions violate clearly established constitutional law. Negligent conduct alone will not lead to liability under Section 1983. The City will generally only be liable when actions taken by officials or employees are part of some official policy or custom. As under the Tort Claims Act, punitive damages may be assessed against the offending official. In contrast to the Tort Claims Act, punitive damages may also be assessed against the City. In addition, Section 1983 cases are not limited by the liability limits of the Tort Claims Act. Therefore, a Section 1983 claim can potentially subject the City to liability in excess of \$1,266,000. In addition, attorney fees may be assessed against the City if it loses – and in many Section 1983 cases, attorney fees greatly exceed the actual damages awarded.

Municipal liability under Section 1983 is a relatively new and rapidly developing area of law and there are many questions that courts and attorneys must answer. The City Attorney's Office will keep you advised of developments as they occur.

## 2. Anti-Trust Laws:

- a. How do the federal anti-trust laws affect the City?: The purpose of the federal anti-trust statutes is to promote an open marketplace where everyone has an opportunity to compete for goods and services. The statutes prohibit the City from using its authority and power to interfere with the marketplace or to favor one private entity over another. The City is not liable for monetary damages, but instead, the City is subject to injunctions (such as cease-and-desist orders) for anti-trust violations.
- b. When is the City liable under the anti-trust laws?: In the last few years the federal courts have made it harder to sue cities under the anti-trust laws. Basically, if the City acts according to state law, then the City will not be violating the anti-trust laws even if competition is restricted as a result. For example, an exclusive franchise for solid waste disposal, or an exclusive contract for city-wide ambulance services, or refusal to provide utility services outside of city limits, or zoning regulations preventing developments from competing with downtown, all are restrictions on competition. However, these do not violate the anti-trust laws so long as they are specifically authorized by state law.

In anti-trust cases, federal courts are looking not only at evidence of what a municipality did, but also at its motive or intent in taking the action. Therefore, comments made by Councilors at meetings or to the media can be "used against you" later in court. This is another developing area in the law in which the City Attorney's Office will keep you advised when there are potential legal concerns.

### **CONCLUSION**

This memorandum has addressed the subject of Council liability in a broad sense. There are many times that a question arises in which a Council member wants to know the legal ramifications of taking a certain action. In such an event, it is certainly proper for you to call the City Attorney for advice. If the question arises at a Council meeting, you might inquire whether it is appropriate to go into executive session to consider a course of action, if it could lead to potential litigation. The job of being a member of the City Council is hard enough without having to worry about potential areas of liability. For that reason, the City Attorney's Office will play a more active role in Council deliberations when the City Attorney or Deputy City Attorneys perceive that the Council is entering an area of potential litigation or liability.

If you have any questions concerning these matters, please do not hesitate to bring them to our attention.

CITY ATTORNEY'S OFFICE

MEMORANDUM

December 2014

To: Mayor and City Council

From: James K. Brewer, Deputy City Attorney

Subject: Council's Role in Personnel and Purchasing

The Corvallis City Charter establishes a Council/Manager form of government, with the City Manager the chief executive and administrative officer of the City. The Council's role in personnel is limited to that permitted by the Charter: appointment of the City Manager, City Attorney and Municipal Judge.

Appointments by Council:

Corvallis City Charter Section 11 requires the City Council to appoint the City Manager, Municipal Judge, and City Attorney.

Employees:

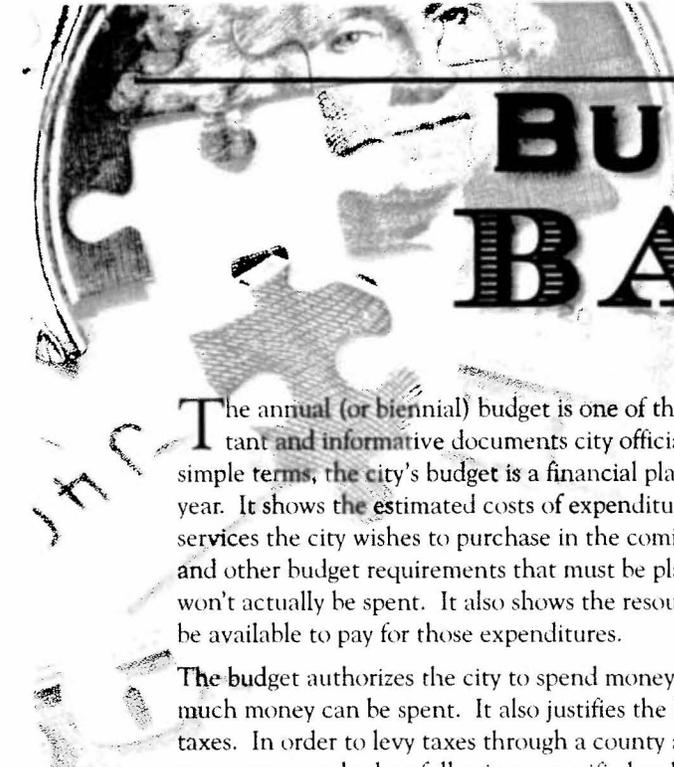
Except for Council Appointments, set out in the Charter, the City Manager makes all employment decisions for the City.

Section 23 of the Charter, in addition to setting out general provisions granting the Manager the authority to appoint, manage, control and transfer employees and appointed officers of the City, specifically prohibits the City Council from directly or indirectly interfering with the City Manager's administration, hiring, transferring or firing of City employees. The Charter requires a Council member who does interfere with the City Manager's administration of employees or purchasing to forfeit the offender's office. The Charter makes it clear this does not prohibit any Councillor from discussions in open sessions of Council meetings.

Purchasing:

Section 23 of the Charter also prohibits City Council from directly or indirectly interfering with the City Manager's purchase of supplies.

Of course, the Council has budgetary authority, determines appropriations, and provides the policy direction for the City. These decisions determine what resources are available to the City Manager in meeting the policy directions from the Council.



# BUDGETING BASICS

The annual (or biennial) budget is one of the most important and informative documents city officials will use. In simple terms, the city's budget is a financial plan for one fiscal year. It shows the estimated costs of expenditures (items or services the city wishes to purchase in the coming fiscal year) and other budget requirements that must be planned for, but won't actually be spent. It also shows the resources that will be available to pay for those expenditures.

The budget authorizes the city to spend money and limits how much money can be spent. It also justifies the levy of property taxes. In order to levy taxes through a county assessor, cities must prepare a budget following a specific local budgeting process. The budgeting process in Oregon has four steps, in which the budget is: 1) prepared; 2) approved; 3) adopted; and 4) executed. After adopting the budget, the governing body makes the necessary appropriations and certifies to the county assessor the tax to be imposed.

Cities in Oregon operate within a fiscal year that begins July 1 and concludes the following June 30, or some cities will use a biennial budget, which covers a 24-month period beginning July 1 of the first fiscal year and ending on June 30 of the second fiscal year.

## Oregon's Local Budget Laws

In Oregon, cities are required to adhere to the state's local budget law, a group of statutes that requires local governments to prepare and adopt annual or biennial budgets following a very specific process. Budget laws have been written to accomplish very specific objectives, including:

- Setting standard procedures for preparing, presenting and using budgets for most of Oregon's local governments;
- Encouraging citizen involvement in the preparation of the budget before it's formally adopted;
- Giving a method for estimating expenses, resources and proposed taxes; and
- Offering a way of outlining the programs and services provided by the local governments, and the fiscal policy used to carry them out.

Preparing a budget allows a city to look at its needs in light of the funds available to meet those needs. In Oregon, all local governments must plan a balanced budget, meaning that the resources and requirements are equal. A city cannot plan to purchase more items or services than it has money to pay for them.

## A City's Budget Process

### Phase I: The Budget Officer Puts Together a Proposed Budget.

Each city must designate a budget officer, who may be appointed by the governing body (the city council) or designated in the city's charter. The budget officer is responsible for preparing the budget or supervising its preparation. The budget officer must prepare the proposed budget in a format designed by the Oregon Department of Revenue, which meets the requirements set out in state statutes.

The first step in the budget process is the development of the budget calendar, which maps out all the steps that must be followed for the legal adoption of the city budget. A budget calendar is not required by law, but is highly recommended. By scheduling the steps of budget preparation, a city can be more certain that it is allowing sufficient time to complete the entire budget process before June 30, as required by state law. After the budget calendar is set, the budget officer begins to develop the estimates of resources and requirements for the coming year. A sample budget calendar, including all of the required steps, is shown in the adjacent box.

A city budget is comprised of several funds, each with a specific purpose. The city budget should include enough different funds to clearly show what a local government is doing and how it is paying for resources. However, it is advisable to not have too many funds, as this makes the budget harder to read and understand.

There are seven types of funds used in most city budgets:

- **General Fund** – records expenditures needed to run the daily operations of the local government and the money that is estimated to be available to pay for these general needs.
- **Special Revenue Fund** – accounts for money that must be used for a specific purpose and the expenditures that are made for that purpose.
- **Capital Project Fund** – records the money and expenses used to build or acquire capital facilities, such as land or buildings. This is a type of special revenue fund and is only used while a project is being done.
- **Debt Service Fund** – records the repayment of general obligation bonds. The expenditures in the fund are the bond principal and interest payments. Money dedicated to repay bonds cannot be used for any other purpose.

Sample Budget Calendar	Sample Dates	Your Dates
1. Appoint budget officer	December 7	
2. Appoint budget committee members	January 5	
3. Prepare proposed budget	February 28	
4. Print first notice of budget committee meeting (not more than 30 days before the meeting)	March 16	
5. Print second notice of budget committee meeting (at least 5 days after first notice, but not less than 5 days before the meeting)	March 24	
6. Budget committee meets	March 30	
7. Budget committee meets again, if needed	April 6	
8. Publish notice of budget hearing (5 to 30 days before the hearing)	April 19	
9. Hold budget hearing (governing body)	May 4	
10. Enact resolutions to: adopt budget, make appropriations, impose and categorize taxes	June 29	
11. Submit tax certification documents to the assessor by July 15	July 12	

- **Trust and Agency Fund** – accounts for money for a specific purpose that you hold in trust for someone else. Example: investments or securities given to the city with provisions that the income be used to aid the library or park system.
- **Reserve Fund** – accumulates money to pay for any service, project, property or equipment that the city can legally perform or acquire. It functions as a savings account. A special resolution or ordinance of the governing body is needed to set up a reserve fund.
- **Enterprise Fund** – records the resources and expenses of acquiring, operating and maintaining a self-supporting facility of service—such as a city water or wastewater utility.

Oregon budget law requires that each year a city's budget provides a short history of each fund. To meet this requirement, the annual budget will include: the actual or audited resources and expenditures for the prior two years; the current year's budget; estimated actual resources and expenditures for the current year; the next year's budget as proposed by the budget officer (must balance); and columns for the budget approved by the budget committee and the final budget adopted by the council. The budget also includes a column for the descriptions of expenditures and resources. The box on page 18 illustrates typical resources and expenditures found in a city budget.

## Phase 2: The Budget Committee Approves the Budget.

As defined by statute, a budget committee is an advisory group, comprised of the city council and an equal number of appointed members. If the city council cannot identify enough citizens willing to serve on the budget committee, then the committee is made up of the citizens who have volunteered to serve along with the entire city council.

The appointed members of the budget committee must be electors of the city, meaning they must be qualified voters who have the right to vote on the adoption of any measure. The members of the budget committee are appointed for staggered three-year terms, and cannot be employees, officers or agents of the city. No member of the budget committee can receive compensation for serving on the committee except reimbursement of expenses incurred while serving.

## The Budget Message

Among its many functions, the budget committee conducts public meetings to hear the budget message and review the budget proposed by the budget officer. One of its most important functions is to listen to comments and questions from interested citizens and consider their input while deliberating on the budget. The budget committee can revise the proposed budget to reflect changes it wants to make in the local government's fiscal policy. When the committee is satisfied, it approves the budget. (Note: the budget committee does not have the authority to negotiate employee salaries.)

The budget message gives the public and the budget committee information that will help them understand the proposed budget. The budget message is required by statute to contain a brief description of the financial policies reflected in a proposed budget and, in connection with the financial policies, explain the important features of the budget. The budget message must also explain proposed changes from the prior year's budget and explain any major changes in financial policies.

The budget message should be in writing so it can become part of the budget committee's records. It is delivered at the first meeting of the budget committee by the budget officer, the chief executive officer or the governing body chair.

*(continued on page 18)*

## Budgeting Basics

*continued from page 17*

### Budget Committee Meetings

A quorum, or more than one-half of the committee's membership, must be present in order for a budget committee to conduct an official meeting. Any action taken by the committee first requires the affirmative vote of the majority of the membership. In the event that only a quorum is present at a meeting, all members must then vote in the affirmative for an action to be taken.

Local budget law requires that a budget committee hold at least one meeting for the purpose of receiving the budget message and the budget document; and to provide the public with an opportunity to ask questions about and comment on the budget. Prior public notice is required for the meeting(s) held for these two purposes. If the budget committee does not invite the public to comment during the first meeting, the committee must provide the opportunity in at least one subsequent meeting. The notice of the meeting(s) must tell the public at which meeting comments and questions will be taken.

When approving the budget, the budget committee must also approve a property tax rate or the tax amounts that will be submitted to the county assessor. The budget committee should make a motion to approve the property tax so that the action is documented in the minutes of the committee.

Upon approval by the budget committee, the budget officer completes the budget column labeled "approved by budget committee," noting any changes from the original proposed budget. Upon completion, a summary of the approved budget is published with notice of a public hearing to adopt the budget no more than 30 days nor less than five days before the hearing.

### Phase 3: The Budget is Adopted and Property Taxes are Certified (when appropriate).

The city council conducts a budget hearing to deliberate on the budget approved by the budget committee and to consider any additional public comments. The council can make any adjustments that it deems necessary (with some restrictions) to the approved budget before it is adopted

*(continued on next page)*

## Common Resources & Expenditures in a City Budget

### Resources:

**Net Working Capital** – fund balance from previous year

**Taxes** – estimated taxes to be received during year

**Franchise Fees** – user fees charged by the city for use of public rights-of-way

**Fines and Forfeitures** – fines issued by city such as traffic fines, code enforcement fines, municipal court fines, drug enforcement forfeitures

**Charges for Services** – charges for services provided to individuals by the city such as water and sewer charges

**Interest Income** – interest earned by investing city funds

**Intergovernmental** – revenues received from other governments such as grants, shared revenues and gas taxes

**Transfers and Inter-fund Loans** – funds received through a transfer from another city fund

**Licenses, Fees and Permits** – revenues from the sale of municipal licenses such as business licenses, fees for services such as planning fees and park user fees, and permits issued by the city

**Miscellaneous Revenue** – revenues that do not fit within one of the other major categories

### Expenditures:

**Personal Services** – employee wages, insurance, workers' compensation, retirement and other payroll benefits

**Materials and Services** – includes a wide range of expenses such as property and liability insurance, utilities, building rent, supplies, vehicle maintenance, gas, and professional services contracts

**Capital Outlay** – purchase of items that are considered to be capital assets. Defined either by a set amount in financial policies or based on useful life of the item. Capital outlay can include furniture, vehicles, buildings, land and other types of equipment.

**Debt Service** – principal and interest payments made on city loans and bonds

**Transfers Out** – transfers to another city fund to pay for expenditures or to repay an interfund loan

**Contingency** – money that is budgeted for use during the year to deal with unexpected operating situations

**Unappropriated** – money that is planned to be left in the fund at the end of the year for which you are budgeting. The purpose is to ensure that the city begins the following year with enough cash to operate until tax revenues are received. Cannot be spent during the year it is unappropriated except in emergency situations caused by a natural disaster or civil disturbance.

prior to July 1. The following are the types of changes the governing body can make:

- Increasing expenditures in any fund up to \$5,000 or 10 percent, whichever is greatest. If the increase needs to be greater than these limits, the council must republish the budget summary and hold a second public hearing (before July 1).
- Reducing expenditures of any fund—does not require republishing.
- Increasing the amount or rate of taxes to be imposed above what the budget committee approved—this can only be done if the budget is republished and a second budget hearing is held. However, the council cannot raise taxes above legal limits—permanent rate limit, local option tax rate or dollar amount, and bond principal and interest requirements.
- Reducing the tax rate or amount approved by the budget committee—does not require republishing.
- Adjusting the other resources in each fund—does not require republishing.

### Adoption of the Budget

Interestingly, it is not a requirement that the budget be adopted at the hearing. The council has the option to wait until closer to the end of the fiscal year to formally adopt the budget. By waiting, the budget can include a better estimate of resources. However, the budget must be adopted by June 30.

To adopt the budget, the city council enacts a resolution or ordinance. The resolution (or ordinance) provides the legal authority to: establish or dissolve funds; make appropriations for expenditures; adopt a budget; impose and categorize taxes; and perform all other legal actions pertaining to budgeting and making tax levies. To accomplish this, cities do not have to pass multiple resolutions (or ordinances). All the resolution statements can be combined into one resolution, which must be signed by the mayor before submission to the county assessor's office.

By July 15 of each year, cities must submit two copies of the resolution (or ordinance) adopting the budget, making appropriations, and imposing and categorizing the tax to the county tax assessor. In addition, the notice of property tax certification (form LB-50) and successful ballot measures for local option taxes or permanent rate limits must be submitted.

In addition to the county tax assessor's copies, a copy of the resolutions required by ORS 221.770 must be submitted to the Oregon Department of Administrative Services by

July 31. Finally, a copy of the completed budget document, including the publication and tax certification forms, must be submitted to the county clerk's office by September 30.

### Phase 4: Changing the Adopted Budget.

Once it is adopted, cities begin operating within that specific budget. While it is possible for changes to be made to an adopted budget once the fiscal year begins, this can only happen under specific circumstances. Two such examples are resolution transfers and supplemental budgets. These are actions that must be taken before more money is spent beyond what is appropriated in the adopted budget, or before money is spent for different purposes than what is appropriated in the adopted budget.

It is unlawful to spend public money in excess of the amounts budgeted or for a different purpose than budgeted. Public officials can be sued for such actions if the expenditure is found to be malfeasance in office or willful or wanton neglect of duty. Creating a supplemental budget or a resolution transfer after the expenditure is made does not protect the governing body members from a lawsuit. ■



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CITY ATTORNEY'S OFFICE

MEMORANDUM

December 2014

To: Mayor and City Council  
From: James K. Brewer, Deputy City Attorney  
Subject: Ethics Law and Regulations

In the wake of Watergate, a number of states adopted comprehensive ethics laws for public officials. The purpose of such laws was to try to ensure that government officials promoted the interests of the general public and not private, pecuniary interests. In 1974, Oregon voters adopted by referendum a statutory scheme that addresses the following areas:

1. Abuse of office;
2. Regulation of conflicts of interest;
3. Filing statements of economic interests; and
4. Ethics Commission.

In addition, the City Charter, City Ordinances, and City Policies establish ethical requirements for City Council members. In some cases, those local requirements are more stringent than State law.

1. Abuse of Office:

- a. Who does the ethics law apply to? Only "public officials" are required to comply with the terms of the State ethics law. The definition of "public official" is broad and includes any person who serves state or local government as an officer, employee, or agent. It includes Council members, the City Manager, the

City Attorney, City employees, volunteer members of boards and commissions, and persons who perform work for the City on contract. You are a public official regardless of whether you are compensated or not.

b. What does the ethics law prohibit?

**Councilors should not use their position for monetary benefit.**

Officials are prohibited from using their offices to obtain financial gain for themselves, their families, or their businesses. For example, if a councilor owned a business, he or she could not lobby the other councilors to have a contract awarded to the business. Also, if a councilor owned property in an assessment district, it would be improper to seek to have the City pay the assessment for the councilor's property.

Example: A State Senator exercised considerable authority over the Workers' Compensation Division laws and budgets. The Senator also received considerable fees in his business for services to individuals interested in contracts and referrals from the Workers' Compensation Division. The Senator introduced his client to State officials for the purpose of promoting his client's business.

Held: Senator was guilty of unethical conduct. Received maximum fines and penalty. Groener v. OGEC, 59 Or App 459, 651 P2d 736 (1982).

**Councilors should avoid large gifts.**

The law prohibits municipal candidates, officials, and their relatives from soliciting or receiving any gifts over \$50 from any single source that could reasonably be known to have an interest in the City's business. A gift is anything of economic value but the definition excludes campaign contributions, gifts from relatives, and food and lodging when the official participates in an event like a conference or convention in an official capacity. The law also prohibits anyone from offering an illegal gift to an official. Corvallis Municipal Code prohibits any employee or officer of the City from accepting any gift from any person to which any purchase order or contract "is or might" be awarded except where given for the use and benefit of the City.

Example: A Mayor, Council President, and City Manager went to New York City to present the City's bond proposal to the investment rating services. The travel expenses of the spouses of the officials were paid for by a financial institution who helped the City prepare the bond package.

Held: The travel expenses were an illegal gift. The officials were fined twice the value of the reimbursed expenses. Keller v. OGE, 106 Or App 727 (1991).

**Councilors should not reveal "confidential" information.**

Officials may not use confidential information gained in their official capacity in any way for personal gain. Council members are privy to information presented in executive sessions, confidential memorandums, etc., that is not available to members of the general public. It is improper for a Council member to reveal for money or other value that the City intends to acquire a piece of real property or has a certain amount of money approved for a condemnation action.

**Councilors should not seek or accept employment promises.**

Officials cannot solicit or receive promises of future employment when there is any relationship or understanding that the promise will be affected by the officials' vote. The law also prohibits persons from offering or giving such promises to officials. Oregon's law is not as strict as other "revolving door" statutes, but it does prohibit the exchange of an official action for a promise of future employment.

Violation of any of the four rules mentioned above constitutes an abuse of public office. Violation of these rules would result in action by the Ethics Commission, even if the Council member declared or disclosed the potential conflict of interest.

2. Conflicts of Interest:

- a. What is a potential conflict of interest? A potential conflict exists whenever a public official, acting in an official capacity, takes any action or participates in any decision or recommendation that affects the official's financial interest. If a Council member voted on the re-zoning of his or her own property, awarded a contract to a person the Council member was indebted to, or approved a collective bargaining agreement if the Council member's spouse worked in the union, then a potential conflict of interest exists. A conflict is present even if the

official would lose money by voting in a particular fashion. When a member of the official's household or a business associated with a person in the household would be affected by a decision of the public body, the law also calls that a potential conflict of interest.

Example: If a Council member is a member of a church which requests a zone change, does the Council member have a potential conflict of interest?

Answer: No. Although the Council member's vote could benefit the church, it would not provide a "private pecuniary benefit or detriment" to the Council member or his/her household. A.G. Op. 8034 (1981).

Are there exceptions? The major exception to the definition of a potential conflict is what is known as the class exemption. Whenever the Council's action would affect other members of a large class the same degree as it affects the Council member with the conflict, then the law does not treat the matter as a potential conflict of interest. For example, if the Council were considering an income tax proposal, then Council members who worked in the City would have a potential conflict of interest were it not for the "class exemption." There are enough members of the class that the interest of the Council member is small compared to all of the other members of the class. Conversely, if a Council member owned property about to be re-zoned with other properties, a conflict of interest exists, because the number of other property owners who are members of the class is too small.

- b. What do I do if I have a potential conflict of interest?: The simple answer is to announce the potential conflict of interest publicly. For example, if you are at a public hearing regarding a subject on which you have a potential conflict, then you obtain the attention of the presiding officer and announce that "I have a potential conflict of interest because . . ." and state the reason or facts giving rise to the conflict. The recorder must include the declaration in the minutes of the meeting. The minutes are the best evidence you have to show the Ethics Commission that you have acted appropriately. Once you have declared the potential conflict, you may discuss or vote on the matter.
- c. When do I have to announce my potential conflicts?: A conflict must be declared whenever you are present at a meeting and the issue is discussed, acted upon, or in any way considered. Thus, a conflict should be declared when the public hearing begins, when the Council acts upon an ordinance, when the

public hearing is set, when the discussion begins on the item, at Committee deliberations on the subject, and any other time you are present in your official capacity the subject comes up. The law does not require you to continually declare a conflict in the course of an ongoing debate, but you should make more than one declaration if other business is discussed between the time of the Council's consideration of the subject giving rise to the conflict. The conflict must be announced even if you do not intend to say anything and even if you do not intend to vote on the issue.

- d. What do I do if I have an actual conflict of interest?: The law clearly requires a Council member to declare actual and potential conflicts of interest. The Ethics Commission has advised that if an official has an interest that will result in financial gain, the official should abstain.

### 3. Statements of Economic Interest:

- a. Who must file a statement?: Every elected city official, planning commissioner, city manager, and municipal judge must file a statement of economic interest with the Ethics Commission every year.
- b. When must I file the statement?: The City Recorder is required to notify all persons who must submit a statement before they take the oath of office or the first meeting of the new Council. For each subsequent year, the report is due on April 15, just like your taxes. If you leave office, you must file a statement within 30 days after you cease your public responsibilities.
- c. What do I do if I have questions about the statement?: The City Recorder and our office has traditionally provided assistance to Council members and planning commissioners who are unfamiliar with the questions on the form. In general, the information that is required centers on the sources, rather than the amount, of income. If you would like your statement reviewed confidentially prior to submitting it to the Commission, my office would be happy to do so.
- d. What if I do not file the statement or file it wrong?: If the statement is not received, the Ethics Commission will investigate and may impose a penalty by day up to \$5,000. If a statement is found to be willfully false, the Commission can recommend criminal prosecution for false swearing in addition to the civil penalty. The major problem the Commission has experienced is officials who

inadvertently fail to disclose some business investment or transaction. I advise Council members when they have doubts about whether to include something on the form to go ahead and disclose it. However, you should be aware that the statements are public documents and are available to members of the press and your constituents.

4. Ethics Commission:

- a. What does the Commission do?: The Ethics Commission is composed of seven citizens appointed by the Governor to oversee the laws enacted by the people and the Legislature in this area. They investigate complaints, conduct hearings, promulgate rules, and issue advisory opinions to public officials. If you have any questions about your responsibilities under the ethics laws, we can request the opinion of the Commission. The purpose of the Commission is to secure compliance with the Ethics statutes, not to "trip up" local officials; and they are generally very helpful when a question is presented for their consideration.

Example: An employee of a state agency desired to buy a new car as an "add on" to the agency's purchasing order. He contacted the attorney who handled the agency's business and asked if his purchase would violate the ethics statute. The attorney advised that it did not. The Ethics Commission found that the purchase violated the law against using one's public office for financial gain.

Held: The employee abused his position in ordering the car. Usually, the advice of an attorney provides the officials with a "good faith" defense to liability. However, the Court found that only the Ethics Commission is authorized to issue advisory opinions and the employee should have contacted the Commission if he had a question about whether the law was violated or not. Davidson v. OGEC, 300 Or 415 (1985).

- b. How are alleged violations of the ethics law handled?: The enforcement process is the same whether the violation concerns the monetary gain provisions, the conflict of interest provisions, or the statement of economic interest provisions. A complaint can be made with the Ethics Commission by any person. In the experience of the Commission, the complainant is generally mad at the public official for some reason apart from the ethics matter but uses the ethics charge to embarrass and punish the official.

The Commission investigates the complaint. They may hold hearings, subpoena records, or take any other steps necessary for a full evaluation of the case. All of the proceedings of the Commission are open to the press and the public.

If the Commission finds no evidence of a violation, they will dismiss the complaint and issue a statement absolving the official from any misconduct. If the Commission finds the complaint is proper, they may fine the official up to \$1,000 and impose a penalty equal to twice the amount of the gain received by the official.

### **CONCLUSION**

This memo has touched on some of the current requirements of the Oregon ethics laws. No attempt has been made to answer all potential ethics questions. Hopefully, you are now aware of some of the issues that could arise and can ask questions when you face a problem. If you have any questions, please do not hesitate to call my office.

CITY ATTORNEY'S OFFICE

MEMORANDUM

December 2014

To: Mayor and City Council  
From: James K. Brewer, Deputy City Attorney  
Re: Land Use Decisions

The purpose of this memorandum is to provide a brief overview of the land use process.

**I. Introduction**

Quasi-judicial land use decisions concern a single property or a small group of properties. Decisions on planned development applications are perhaps the most common example in Corvallis. Others include historic preservation permits, annexations, conditional developments, zoning district changes or Comprehensive Plan amendments relating to a small area. These quasi-judicial decisions are typically made by the Historic Resource Commission, Land Development Hearings Board, Planning Commission or City Council following a public hearing or a public notice and comment period.

The term "quasi-judicial" implies that the decision maker is expected to act like a judge deciding a case. Both state and local law mandate certain procedures that must be followed.

This memo is intended as an educational and reference tool to help City Councilors, Planning Commissioners, Historic Resource Commissioners and City staff understand and implement the quasi-judicial decision making process. Questions about the process, in general or in relation to a specific fact situation, should be directed to the City Attorney's Office.

**II. Required Disclosures and Announcements**

At the beginning of each public hearing before the Land Development Hearings Board, the Historic Resource Commission, the Planning Commission or the City Council, after stating the case and calling the hearing to order, the chair must request disclosure of all ex parte contacts (including site visits), any bias on the part of a decision-maker, and any conflicts of interest. Following these disclosures, certain ground rules must be announced before opening the hearing

to testimony.

**A. Ex Parte Contacts**

1. Definition

Ex parte contacts are communications by a party with the decision maker that are related to the application being considered, which occur outside the official record. They may include site visits, newspaper articles, web sites, and television programs, as well as verbal or written communications from any party to the proceeding. Communications with staff generally are not considered ex parte contacts, but staff cannot act as a conduit of information from a party to a decision maker. Therefore, if staff relays information communicated by a party, an ex parte communication occurs. Generally, communications *prior* to filing of the application are not ex parte communications. Nevertheless, it is a good practice to disclose such contacts.

2. Disclosure required

The substance of ex parte contacts must be disclosed, because the parties to a quasi-judicial proceeding are entitled to have the decision made on the basis of the evidence presented in the course of the hearing process. Disclosure ensures that all facts relied upon by the hearings body have been publicly disclosed and made subject to rebuttal by all interested parties. It also ensures that all facts upon which the decision is based are in the record and will be available to support the decision on appeal. Finally, disclosure ensures that all members of the decision-making body are able to base their decisions on the same information.

Undisclosed ex parte contacts may lead to invalidation of the decision by LUBA. Prompt and full disclosure protects the decision. ORS 227.180(3). As a general rule, if in doubt, disclose the contact and its substance on the record.

In order to gain the protection of ORS 227.180(3), a hearings body member who has received an ex parte communication must publicly declare the contact and place its substance on the record. In the case of a site visit, the substance includes any facts or impressions the member gained that he or she may consider in making the decision, such as traffic levels, hazardous conditions, etc. Following disclosure, the chair must announce that any person may rebut the information disclosed. Rebuttal need not be allowed immediately; it may be included in testimony taken in the ordinary course of the hearing, but usually the chair provides a time for rebuttal after disclosures.

The required disclosure must occur at the earliest possible time. Horizon Construction, Inc. v. City of Newberg, 114 Or App 249, 253 (1992). That means disclosure should be made at the beginning of the first meeting at which the matter is considered following the communication. If, during the proceeding, a member recalls an ex parte communication, he or she should disclose that communication at once, and invite all parties who have already testified to rebut its substance.

## **B. Bias**

The parties to a quasi-judicial action have a right to a decision by an impartial decision maker. Any member of the decision-making body who has a personal bias or interest in the outcome, such that he or she is unable to make a fair decision based on the evidence presented in the hearing process, should announce the nature of the bias at the outset of the hearing, and then withdraw. The member should not participate in the remainder of the hearing or the decision, nor should he or she sit with the body during the hearing.

Only actual bias is cause for disqualification. The *mere* appearance of bias is not. Whenever a member is aware of circumstances that may cause the parties to suspect bias, those circumstances should be disclosed. If the member feels that he or she can make a fair and impartial decision solely on the basis of the evidence presented and the applicable criteria, he or she should so state on the record following disclosure. In the absence of an actual conflict of interest, as explained in the next section, the member may continue to participate.

## **C. Conflict of Interest**

State law requires that any member of a decision-making body who has an actual or potential conflict of interest disclose that conflict publicly at the outset of the proceeding. ORS 244.120(2); 244.135.

### **1. Actual conflict**

According to the statute, an actual conflict of interest arises when the effect of the decision would provide an *actual* financial benefit or detriment to: the member or the member's relative. *Relative* is defined to include: spouse, parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law of the public official or candidate, the parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law of the spouse of the public official or candidate or any individual for whom the public official or candidate has a legal support obligation or any individual for whom the public official provides benefits arising from the public official's public employment or from whom the public official receives benefits arising from that individual's employment, or any individual from whom the candidate receives benefits arising from that individual's employment. ORS 244.020(1), & (15). A member is "associated" with a business if he or she is an owner, officer, director, employee, or agent of the business, or has owned stock in the privately held business worth at least \$1000 at any time during the preceding calendar year, or if the member has owned stock worth at least \$100,000 in a publicly held business, or if the public official is required to file a statement of economic interest under ORS 244.050 and a business is listed as a source of income. ORS 244.020(3). Benefit to a tax-exempt non-profit organization with which the member or a relative is associated in an unpaid capacity does not constitute an actual conflict of interest. 244.020(2).

When faced with an actual conflict of interest, the member must withdraw from the decision,

*unless* the matter is an appeal to the City Council *and* the member's vote is needed to take official action. In that case, the member may sit with the public body and cast a vote, but may not participate in any discussion or debate on the issue. ORS 244.120(2)(b)(B).

Planning Commission members with a direct or substantial financial interest may *not* vote or participate *even* if their disqualification results in the lack of a quorum. ORS 244.135. A disqualified member should not sit with the hearings body during the proceeding.

2. Potential conflict

A "potential conflict of interest" exists when the decision *could*, but will not necessarily, be to the private pecuniary benefit or detriment of the member, a relative, or a business with which the member or a relative is associated. ORS 244.020(12). Decisions which would affect all members of a class to which the member or a relative belong (such as a profession) to the same degree, do *not* create potential conflicts of interest, nor does membership on the board of directors of a tax-exempt non-profit organization. ORS 244.020(12)(b),(c).

A member with a potential conflict of interest must announce it on the record, but may continue to participate in the proceeding. ORS 244.120(2)(a); 244.135.

3. Telling the two apart

It may be difficult to distinguish an actual conflict of interest from a potential one. The Government Standards and Practices Commission (GSPC), which administers the state ethics law, offers some guidelines in its pamphlet entitled *Oregon Government Standards and Practices Laws: A Guide for Public Officials*. Of particular interest in this context, the Commission states that the difference is determined by the words "would" and "could". If a member participates in an action that would affect the financial interests of the member, then the member has an actual conflict of interest. If the action could affect the member's financial interest, then the member has a potential conflict of interest.

As a general rule, anything that the member thinks might constitute a potential conflict should be declared on the record, both to satisfy the ethics law and to forestall allegations of bias. If a councilor is uncertain as to whether a conflict is potential or actual, and wishes to participate in the decision, he/she may ask the City Attorney or the GSPC for advice. Only a formal opinion from the GSPC, obtained in advance, will protect the councilor from the penalties that apply to violations of the state ethics law. If in doubt, the most cautious course is to announce the situation and withdraw.

**D. Required Announcements**

State law requires the local government to announce, at the commencement of each quasi-judicial land use hearing: 1) the applicable substantive criteria from the Code and Comprehensive Plan to be applied; 2) that testimony and evidence must be directed toward those

criteria, or others that the person testifying believes apply to the decision; 3) that failure to raise an issue, accompanied by statements or evidence sufficient to afford the decision maker and the parties an opportunity to respond to the issue, precludes appeal to LUBA based on that issue; and 4) that failure of the applicant to raise constitutional or other issues related to proposed conditions of approval with sufficient specificity to allow the local government to respond to the issue, precludes an action for damages in circuit court. ORS 197.763(5)(a) through (c).

If one or more relevant approval criteria are omitted from the list given in the notice of hearing and at the opening of the hearing, the local government loses the advantages of the waiver rule with respect to those criteria. Any person who chooses to appeal the decision can raise issues concerning omitted criteria before LUBA, without having to have raised them in the local proceeding.

In Corvallis, the usual procedure is for the chair to make the announcement that the staff report will list the applicable criteria, and then to make the second through fourth announcements listed above before calling for presentation of the staff report. The list of criteria is incorporated in the staff report, and is also available on handouts for the audience.

### **III. Order of Proceedings**

Generally, the order of proceedings will be a staff report overview, followed by the applicant's presentation and then a detailed staff report, then testimony by the proponents, testimony by the opponents, neutral testimony, rebuttal and surrebuttal.

### **IV. Ground Rules for Testimony**

Reasonable time limits may be imposed on persons testifying. If testimony appears to wander from the approval criteria, the chair may ask which criteria are being addressed. Irrelevant testimony may be excluded. The chair should announce the basic ground rules for giving testimony at the beginning of the proceeding.

The public testimony portion of the hearing is the opportunity for members of the public to present their points of view. Members of the hearings body may always ask clarifying questions, but it is not appropriate to debate with, badger, or belittle the participants.

Frequently, participants may wish to ask questions of staff. All testimony should be directed to the hearings body, who in turn may choose to relay questions to staff at that time or during deliberations. Questions likely to bring up new factual information, or likely to warrant a response from participants, should be raised before the close of the hearing. Questions on matters peripheral to the development proposal under consideration should be deferred to another time. Staff may be directed to initiate contact outside the hearing to provide answers on these matters.

## V. Continuances and Holding the Record Open

Once all public testimony has been taken, the chair should declare the public hearing closed, unless a member of the body or a party requests that it be continued. A motion and a vote to close the hearing are not required.

In certain circumstances it may be necessary or desirable to prolong the proceeding beyond the initial meeting at which it is considered. A hearing may be continued to allow further public testimony, or the hearing may be closed with the written record still held open.

## VI. Some Possible Procedural Pitfalls

1. A member of the hearings body realizes during the course of a hearing that he or she has failed to announce an ex parte contact. Action: The member should announce the contact as soon as he or she recalls it, and place its substance on the record. The chair should then announce the right of any person who has testified or will testify to rebut the substance of the contact.
2. The applicant introduces new evidence in rebuttal. Action: If any person requests, the hearing must be reopened to allow any person present to respond to the new evidence. Response should not be limited to persons who have already testified in opposition. If any participant so requests, the record must be left open, or at the option of the body, the hearing must be continued.
3. After the public hearing is closed, staff introduces new evidence in response to questions from the hearings body. Action: The hearing must be reopened to allow opponents and/or the applicant to respond to the new evidence. If the new evidence supports the application, a continuance must be granted on request. In the alternative, the hearings body could specifically state that it will not consider the new evidence in making its decision.
4. A person testifies as a "neutral" party, but the testimony given either favors or opposes the application. The applicant or opponents, as appropriate, should be permitted to rebut the "neutral" testimony during the rebuttal period. The "neutral" party has no rebuttal rights.

## CITY ATTORNEY'S OFFICE

### MEMORANDUM

December 2014

To: Mayor and City Council

From: James K. Brewer, Deputy City Attorney

Subject: Council Procedures

The Council is like any other deliberative body; it has public business to conduct and must process it in accordance with rules and procedures adopted by law. This Memorandum discusses the sources of our rules, types of motions, and voting procedures.

The formal decisions you make as the City's governing body will be in the form of ordinances, resolutions, or motions. This Memo introduces the City Charter and City's General Ordinances. Then, with this background, the Memo presents the purpose behind and formal procedures involved in the adoption of ordinances, resolutions, and motions.

### CITY CHARTER

1. What is the Corvallis City Charter?: The Charter is "the supreme law of the City" and sets out the overall structure of City government. It is like a Constitution for the City of Corvallis. The Charter defines the roles of the Mayor, the Council, the City Manager, and other officials of the City. Among other things, the Charter provides for a nine-ward council and an at-large Mayor, and establishes the Council-Manager form of organization. The City Charter specifies the manner in which Council meetings shall be conducted (Chapter 4), how vacancies in office shall be filled (Chapter 7), how ordinances are passed (Chapter 8), and how public improvements can be made (Chapter 9). The Council must comply with rules found in the Charter because they were enacted by the voters of the City and only the voters can change or alter a Charter provision.
2. How is the Charter amended?: The Charter can only be amended by a majority of voters at an election. The current Charter was adopted by the voters of Corvallis in 1948. The voters have occasionally caused the Charter to be amended to address new issues or to change the allocation of authority between officials. For example, prior to 1976, the City Council made final decisions on the annexation of property to the City. However, the voters approved an amendment to the Charter that requires electoral approval of all annexation proposals. Proposed amendments must be referred to the voters by the Council by resolution or through the initiative process in Article

IV, Section 1 of the Oregon Constitution. You will be provided a copy of the Charter.

## **ORDINANCES**

1. What is an Ordinance?: If the Charter is like a Constitution, then an ordinance can be thought of as a statute. The ordinances are the laws that govern the City of Corvallis. An ordinance can establish a standard of conduct; for example, the building code requires houses to be constructed a certain way and the criminal code provides sanctions should people harm or infringe the rights of others. Also, an ordinance can describe procedures for how the public's business shall be conducted. The procedures found in the ordinances can be amended by the Council, but only by following the process for enactment of a new ordinance.

An ordinance is a local law of the City, and it is the most formal action you will take. In many cases, the form of the decision will be dictated by federal, State, or local law. For example, State law requires that the formation of a local improvement district be done by ordinance (while the adoption of the City's annual budget must be done by resolution). Similarly, the City Charter requires that Council ward boundaries be established by ordinance.

2. What are the two types of ordinances?: Ordinances can be general or special. General ordinances commonly apply to all members of the community. They are intended to have a permanent effect and generally adopt rules and procedures. Examples are the Land Development Code, Criminal Code, Traffic Code, and Building Code. Special ordinances are limited in their application, whether limited in time or in persons affected or in properties affected, or in some combination. Examples include an ordinance vacating a street, calling a special election, authorizing a bond sale, forming an improvement district, or spreading assessments for a public improvement.

3. What are the "General Ordinances of the City of Corvallis"?: These are the General Ordinances enacted by the City and contained in the Municipal Code. They apply to the community as a whole.

4. How are ordinances enacted?: Ordinances are introduced to the Council at a Council meeting by a "first reading." Generally, ordinances are read by title only. Each ordinance receives two readings, unless the ordinance is approved by a unanimous vote of the Council or is defeated at its first reading. If there are any dissenting votes, the ordinance is presented again at the next Council meeting.

Ordinances may be amended by motion after any reading, prior to passage by the Council, without the necessity of repeating that reading. After an ordinance is enacted, it can only be amended or repealed by the enactment of another ordinance.

In addition, ordinances can be proposed and enacted through the initiative process. Upon the filing of an initiative petition signed by the number of voters equal to 10 percent of the votes cast for mayor at the last election, the Council must either adopt the initiative measure, refer the initiative measure to a vote, or refer a competing measure, along with the initiative measure, to a vote.

5. When does an ordinance go into effect?: Under the Charter, an ordinance becomes effective on the 10th day after its passage by the Council and approval by the Mayor, unless an emergency is declared. If an emergency is declared, the ordinance may take effect immediately. The Council may also provide for a specific future effective date.

6. What if the Mayor vetoes the ordinance?: The Mayor has three days to sign or veto an ordinance following its passage by the Council. If the Mayor vetoes an ordinance, he/she must, within 10 days from receiving the ordinance, return it to the City Recorder with a statement of the reasons for not approving it. The ordinance is then forwarded to the City Council, along with the information from the Mayor regarding his/her veto. The veto may be overridden by a two-thirds vote of all the members constituting the Council. If the Mayor does not sign or veto an ordinance, then if it contains an emergency clause, it becomes effective on the third day after its passage by the Council. If the ordinance does not contain an emergency clause, it becomes effective 10 days after the Mayor could have exercised her/his veto authority.

## **RESOLUTIONS**

1. When does the Council act by resolution?: Resolutions generally relate to municipal matters of a temporary or special concern. They are usually administrative in nature and often execute laws already in effect. Some common types of resolutions are: stating the City's intent to improve a street, sidewalk, waterline, etc.; adopting the budget; and submitting measures to the voters.

Unlike ordinances, which automatically go to a vote after reading, a Council member must formally move for the adoption of the resolution. Resolutions are adopted by a majority vote of those members of the Council present at the Council meeting at which the resolution is presented. They become part of the Council minutes. Resolutions may be rescinded or amended at a subsequent meeting by the adoption of another resolution.

2. What is the format of a resolution?: The format for resolutions is as follows: as a part of the minutes, a resolution contains the date of the Council meeting during which it was adopted. It also contains the name of a Council member submitting the resolution for the Council's consideration (generally a Councilor who voted with the majority). The "whereas" clauses state the purpose or background of the resolution. They are followed by the formal action(s) which are "resolved." The resolution is signed by the Councilor who submitted it. The signature is

followed by a declaration clause indicating that the resolution was adopted.

## **MOTIONS**

When are motions used?: Motions are used in conducting the routine business of the Council. They are the least formal action that the Council can take. Motions are used, for example, to approve committee minutes, to authorize staff to carry out Council requests, or to approve the consent agenda. Motions can be proposed by any Councilor during Council meetings. General Council procedures are set out in Municipal Code Chapter 1.19. Section 1.19.020.010 adopts the Sturgis Standard Code of Parliamentary Procedure to govern Council proceedings not otherwise addressed by the City Charter, ordinance, or resolution.

## **POLICY MANUAL**

The Council Policy Manual contains Council decisions and practices and was pulled together from a variety of sources, beginning in 1970. Decisions and practices contained in these Policies are those which do not need enforcement action, are not governed by the State, and are not in other permanent records or legislation. They are an expression of local standards and an attempt to ensure that Councils act consistently. Examples include: the financial policies, the naming of public facilities and lands, Council liaison roles, policy on the use of electronic mail by Mayor and Councilors, City compensation policy, Code of Conduct on Library premises, street lighting, social service funding, etc. Council Policies usually are addressed by one of the standing committees before adoption by the Council.

There is also an Administrative Policy Manual which is administered and adopted internally by staff. This Manual contains policies such as energy conservation, preparation of agenda and materials for Council meetings, position classification, an equipment management system, a neighborhood improvement program, policy on the use of e-mail by staff, and procedures and guidelines for license approval for carnivals. While many of these policies address Council programs or policies, they set forth the manner of implementing Council's direction.

## **COUNCIL VOTES**

How may the Council vote?: Voting on matters that come to the Council is one of your fundamental rights and obligations as elected officials. The public meetings law requires that all votes are public and not secret. The minutes of the meeting will reflect how each of you votes on motions or ordinances. Occasionally, voting will be by ballot (for example, the election of Planning Commissioners), however, Council members will need to sign the ballots and the votes will be shown in the minutes.

## **PARLIAMENTARIAN**

Who is the Parliamentarian?: The City Attorney performs the duties of parliamentarian for the Council. The Mayor, or presiding officer, actually makes decisions or issues rulings on matters that come before the Council. The parliamentarian simply offers advice to the deliberative body, which it may accept or reject. At any time during a Council meeting, the Mayor or any member of the Council may seek the advice of the City Attorney. It is often very helpful for a Council member to state an objective and ask the parliamentarian how that can best be achieved. Parliamentary procedure is a tool to accomplish the purposes of the deliberative body, not a barrier to their implementation.

### **CONCLUSION**

It is the City Attorney's responsibility to review all legislation for consideration by the City Council. Often times, ordinances and resolutions will be drafted by a particular department and the department may have to answer specific questions, but our office will answer general questions regarding legislation.

CITY ATTORNEY'S OFFICE

MEMORANDUM

December 2014

To: Mayor and City Council  
From: James K. Brewer, Deputy City Attorney  
Subject: Municipal Court

One municipal service that affects Corvallis citizens directly is our Municipal Court. The Court is often where the policies and standards adopted by the Council are ultimately enforced. Many people appear in court each year, and their interaction with the Court may be their only direct exposure to City Government. This Memorandum will explain some fundamental aspects of our Court so that Councilors can respond to any questions from your constituents.

Why do we have a Municipal Court? Each community, through its governing body, adopts ordinances or laws which reflect the standards for conduct by its citizens. The City has chosen to have a Municipal Court to enforce its local ordinances in a manner consistent with community standards.

Where do we get the authority to have a Municipal Court? The Oregon Constitution, Article VII, Section I, states: "Municipal Courts may be created to administer the regulations of incorporated towns and cities." The City has authorized the creation of the Corvallis Municipal Court in its City Charter. Section 24 of the Charter establishes the Municipal Judge as a judicial officer of the City and establishes the jurisdiction of the Court over all crimes and offenses contained in the ordinances and committed within the City, and over all property owned or controlled by the City.

What kinds and how many cases are prosecuted? The vast majority of cases involve traffic and parking (although major traffic offenses, such as DUII, are handled exclusively through the Circuit Court). Non-traffic cases, such as alcohol related offenses, assault, trespassing, shoplifting, etc., are also handled by the Municipal Court if the charge violates the Municipal Code. On occasion, the Court also handles "civil" cases involving building codes, sidewalk repairs and fire cases. Judge Dunfield provides the Council with an annual assessment of the Court's caseload over the past year.

Where and when is court held? The City Charter (and state law) requires that court be held

within the City. The courtroom is located in the Municipal Court Building, 560 SW Madison Avenue.

Regular hours for conducting court business have been established. The defendant's first appearance (arraignment) is scheduled for the defendant's entry of a plea (guilty, not guilty, no contest). Arraignments are held at 3:00 p.m. on Mondays, 8:30 a.m. on Wednesday and 8:30 a.m. and 3:00 p.m. on Thursdays. Most trials are tried to the judge ("bench trials"), but some cases are tried to a jury. The Court averages eight jury trials a year, and they are usually held on Wednesdays. Trials to the judge are held on Thursdays. Special court appearances are scheduled throughout the week as necessary to accommodate defendants who have been lodged in the correctional facility, and to accommodate victims' schedules. The Municipal Court office is open 8 a.m. to 5 p.m. Monday through Friday, except the office is closed on City holidays, and Tuesdays from 8:00 a.m. to 12:00 p.m.

What are the roles of the participants in Municipal Court?

**Municipal Judge:** As noted above, the Municipal Judge is the "judicial officer" of the City of Corvallis. The Municipal Judge is appointed by and serves at the pleasure of the Council. Section 24 of the City Charter describes the authority of the judge. His responsibilities are further defined in a contract between the Judge and the Council. Those duties include presiding over court appearances and reviewing correspondence from attorneys and defendants regarding specific cases. Chris Dunfield is the Municipal Judge.

**Pro Tem Judges:** When the Municipal Judge is unavailable, either because of illness or absence from the City, or if he has a conflict of interest in a case because of prior contact with a defendant, a pro tem judge acts in his place. The Council approves the list of attorneys who serve as pro tem judges.

**City Prosecutor:** The City Prosecutor is the attorney representing the City in the prosecution of ordinance violations. It is the Prosecutor's responsibility to appear for the City in criminal trials and other criminal matters, such as hearings for contempt of court, or regarding the release of a defendant from corrections. The City Prosecutor reviews all citations issued for offenses other than traffic offenses, and endorses such citations if the Prosecutor believes there is sufficient cause to prosecute the matter. These cases generally consist of matters such as violent conduct, open container of alcohol in public, furnishing alcohol to minors, trespass, and shoplifting. The City Prosecutor appears every Thursday for pre-trial and other criminal matters. The City's Prosecutor is Deputy City Attorney Daniel W. Miller. In addition, the City Prosecutor is involved in the implementation of victims' rights, such as seeking restitution in an assault case.