

1. 9:30 A.M. Agenda

Documents:

[2023-01-05 City Council WS And Regular Meeting.pdf](#)

2. Meeting Material

Documents:

[Council Training Material - Local Govt Law Group.pdf](#)



**CITY OF YACHATS
CITY COUNCIL WORK SESSION AND REGULAR MEETING**

441 Hwy 101 N. Civic Meeting Room

Yachats OR 97498

Thursday January 5, 2023 at 9:30 am

To Be Held Via Zoom & In-Person

Join Zoom Meeting

<https://us02web.zoom.us/j/84651149572>

Meeting ID: 846 5114 9572

One tap mobile

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AGENDA

- I. Heide Lambert, City Manager call the first meeting to order to present the Oath of office to the Incoming Mayor, Craig Berdie and Councilor Catherine Whitten-Carey.
- II. Close meeting

Council Work Session

- I. Meeting Called to Order
- II. Council Training - Ross Williams, City Attorney

Regular Council Meeting

- I. Meeting Called to Order
- II. Announcements, Proclamations, and Correspondence
- III. Citizens' Concerns (limited to items not on the agenda, 5-minute limitation per person)
- IV. Other Business
 - a. From Mayor
 - b. From Council
 - c. From Staff
- V. Action Items
 - a.
 - b.
 - c.

The Yachats City Council meetings are open to the public and interested citizens are invited to attend via Zoom. These are open meetings under Oregon law, but a work session is not a community forum; audience participation is at the discretion of the Council. Meetings are audio-recorded. The meeting are accessible to persons with disabilities. For accommodations, please call (541) 547-3565, or Oregon Relay 1-800-735-2900 TDD) two days in advance. City of Yachats does not discriminate on the basis of race, color, religion, creed, gender, national origin, age, disability, marital or veteran status, sexual orientation, or any other legally protected status. Sign language or foreign language interpreter may be available, with advance notice. Call City Hall at 541-547-3565 or Oregon Relay 1-800-735-2900 (TDD) two days in advance.

POSTED January 3, 2023 BY: Kimmie Jackson

Council Basics and Beyond

Ross Williamson
City of Yachats – January 2023

Local Government Law Group PC
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Eugene, OR 97401
Telephone: 541.485.5151
Ross M. Williamson (ross@localgovtlaw.com)

1/5/2023

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Council Authority

- Who has the power?
Sources of overlapping jurisdictions:
- Federal Law
 - State Law
 - County Partners
 - City Partners
 - Special District Partners
 - Tribal Law

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Councilor Authority

- City Charter § 6 vests power “in the council” except where Charter provides otherwise
- City Charter § 7: “The council consists of a mayor and four councilors...”

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Council Authority

Council authority requires two things:

- **Legal authority** (home rule, statutes, ordinances and policies)
- **Numbers** (majority vote from a quorum)

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Council Authority

No individual authority to act on behalf of the City without prior authorization via law or Council action (specific action, ordinance, policy)

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Councilor Roles

- City Charter "Council" vs. "Councilor"
 - Electioneering vs. Governing
 - Entity vs. Individual
 - Confidentiality
- City Charter "Mayor"
 - Presides over meetings (§ 8)
 - Appointments, with consent of council (§ 8)
 - Signs records (§ 8)

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Council Duties

- Goal Setting and Policy Making
- Seeking Public Participation / Transparency (and Limits)
- CEO Relationship
- Oversight / Risk Management
- Intergovernmental Relations

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Council as Employer

- Charter § 32 creates the City Manager as officer of the City appointed by the Council.
- Charter § 32(e)(4): The Manager shall: "Appoint, supervise and remove city employees."

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Council as Employer

- Charter delegations of operational powers to City Manager
- City Manager operates the City and hires/supervises staff
- Council is only the direct supervisor for City Manager and Muni Judge
- Common for Mayor to act as point-person for Council in its role as supervisor

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Councilor Roles

- Speaking for City
 - Clear delegation vs. assumed delegation
- Speaking individually
 - Recognize impact on City and staff
- Campaigning
- Providing constituent services
- Speaking to the media
- Speaking about union matters (danger!)

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City and Councilor Liability

City vs. Individual Liability

- Action against public body, not individual.
ORS 30.255; *but also* 42 USC §1983.
- City duty to defend and indemnify.
ORS 30.285.

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Councilor Liability

- ORS 294.100: Misexpenditure of Funds
- Ethics / Executive Sessions
- Elections
- Public Meetings
- Criminal Actions
- Civil Actions – Acting Outside Scope of Duties/Authority

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the internet disconnected

Questions?

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Public Meetings

Resources to Know and Use

- ORS Chapter 192
- Attorney General's Public Meetings and Open Records Manual (2019)
- Staff

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Public Meetings

Purpose of Public Meetings Law

ORS 192.620:

- "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 ORS 192.610 to 192.690 that decisions of governing bodies be arrived at openly." (Emphasis added.)

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Public Meetings

What are the requirements of a public meeting?

- Notice
- Space, Location, Accessibility and Attendance
- Record of Voting
- Record of Documents
- Electronic attendance (HB 2560)

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Public Meetings

"A quorum of a governing body may not meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as otherwise provided by ORS 192.610 to 192.690." (Emphasis added.)

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Public Meetings

Dumdi v. Handy (2011)

The court found commissioners' actions violated the public meetings law because:

- at least a quorum of the governing body;
- made a decision or deliberated toward deciding a matter;
- in a setting that was private and not open to the public (including via e-mail)

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Public Meetings

Dumdi v. Handy (2011)

- Under settlement agreement:
 - two commissioners agreed to pay a fine of \$20,000 each;
 - County agreed to pay the plaintiffs \$350,000.

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Public Meetings

Handy v. Lane County (Nov. 2015)

- Serial Meetings.
 - Contemporaneous gathering of a quorum not required to “meet.”
 - Series of communications between members may be a meeting – with communications including e-mails, texts, or even communications through an intermediary.

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Public Meetings

Handy v. Lane County (Nov. 2015)

- Administrative matters.
 - Meeting requirements do not apply to a discussion on a purely administrative matter.

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Public Meetings

Practical Tips

- Avoid replying to e-mails when City business information is shared
- Avoid conversations (in person or via e-mail) between Councilors where the views of a fellow Councilors are shared
- Avoid sharing firm opinions or views on items the Council would need to vote on

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Public Meetings

Practical Tips

- Must set realistic agenda
- Circulate materials/minutes in advance
- Keep it formal
- Have simple rules
- Public participation does not mean public conversation
- Use work sessions
- Restate vote, note if staff must follow up
- Get comfortable having discussions in public
 - no need to shy away from public discourse or dissent

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Questions?

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Public Records

What is a public record?

- Any writing that contains public business information that is prepared, owned, used, or retained by a public body regardless of physical form or characteristics

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Public Records

Oregon law favors disclosure.

- Not a confidentiality law. Must disclose unless exempt under the law.
- Even when exempt, often subject to public interest balancing tests.

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Public Records

Records Custodian.

- City Recorder is records custodian.
- Council must cooperate with staff in matters related to public records.

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Public Records

Practical Tips

- Use City email for City business
- Use private email for private business
- Avoid texting for City business
- Limit creation of public records
- Respond promptly to staff requests

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Questions?

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Mandatory Reporting

Effective January 1, 2022

Elected officials at state and local level will be "mandatory reporters" under Oregon's abuse reporting laws

- Child abuse; elder abuse; and vulnerable adult abuse.

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Ethics

3 Ethics Rules for Public Officials

A "public official" is:

- An elected official
- An appointed official
- An employee
- A volunteer

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Ethics

Rule 1:

Don't use your position for personal gain.

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Ethics

The "BUT-FOR" Test 244.040(1)

A public official cannot use position

- To get \$ or to avoid losing \$
- For the PO OR for a relative or a member of the household
- If that opportunity would not be available BUT FOR your position

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Ethics

DOES NOT INCLUDE

- Compensation or Reimbursement
- Unsolicited awards, or legal expense donations
- Or GIFTS and honoraria (within limits)

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Ethics

"Relative" 244.020(15)

- Spouse
- Children of the PO or of the PO's spouse
- Brother or stepbrother of the PO or of the PO's spouse
- Sister or stepsister of the PO or of the PO's spouse

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Ethics

"Relative" (cont.)

- Parents or stepparents of the PO or of the PO's spouse
- Son-in-law or daughter-in-law of the PO or of the PO's spouse
- Anyone for whom the public official has a legal support obligation or is a beneficiary of the PO's employment benefits

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Ethics

Rule 2:

Gifts are limited to \$50 per year, per giver.

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Ethics

"Gift" 244.020(5)

- Something of economic value
- Given to public official, the PO's relative or member of the PO's household
- Without receiving value back and
- NOT given to the general public on the same terms

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Ethics

The GIFT RULE:

1. You (your relative or a member of household)
2. Cannot ask for or receive
3. Gifts over \$50 from any single source in one year
4. IF your source has an interest in your official actions: i.e., a decision or vote

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Ethics

A Gift is Not Limited if it is a:

- Campaign Contribution
- Present from relatives or household members
- Unsolicited award/token of appreciation with resale value <\$25
- Discounted registration at professional education event

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Ethics

A Gift is Not Limited if it is a (cont.):

- Informational material related to your official duties
- Part of a customary private business practice and not related to your public office
- Incidental food, beverage, and entertainment
- Food, beverage, and entertainment when acting in official capacity, representing the City

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Ethics

Rule 3:

Confront conflicts of interest.

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Ethics

"Actual Conflict" (Will Happen)
Vs.
"Potential Conflict" (Could Happen)

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Ethics

"Actual Conflict" (Will Happen)

- An action, decision, or recommendation
- By a *public official*
- That **will** result in a financial benefit or detriment for PO or a relative or business associated with PO or relative

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Ethics

"Potential Conflict" (Could Happen)

- An action, decision, or recommendation
- By a *public official*
- That **could** result in a financial benefit or detriment for PO or a relative or business associated with PO or relative

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Ethics

"Business with which Person is Associated"

- Any private business in which you or a relative are an owner, director, officer, or employee or in which you or a relative has \$1,000+ worth of interest
- Any publicly held corporation in which you or a relative has \$100,000 of interest or you or a relative is an officer/director

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Ethics

"Business with which Person is Associated"

- OR if you file a Statement of Economic Interest, if more than 10% of your total annual household income comes from the business

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Ethics

Conflicts of Interest Rules
(Both Actual and Potential)

Make a record of your conflict:

- State the nature of your conflict
- Do it before voting or discussing the matter
- Do it on the record
- Do it each meeting issue is discussed

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Ethics

Actual Conflict Only

- State your conflict ... and then no participation.
- Same rules as Potential Conflict, but no talking and no voting.
- Unless Council cannot act without you (but still no talking)

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Ethics

It is not a conflict if the financial benefit happens because of:

- Membership in a class (any large, distinguishable group of citizens that the Commission determines is a class)
- Membership in a non-profit (501(c) status)

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