

1. 10:00 A.M. Agenda

Documents:

[2024-06-11 Planning Commission Work Session Agenda.pdf](#)

2. 10:00 A.M. Meeting Materials

Documents:

[Draft Code Amendments 6-11-24.Pdf](#)

[LOC Public Meetings Law.pdf](#)

[Oregon Public Meeting Law.pdf](#)

[Planning Commission Issues List.pdf](#)



CITY OF YACHATS
PLANNING COMMISSION WORK SESSION
Tuesday, June 11, 2024, at 10:00 am
To Be Held Via Zoom & In Person Located at:
Commons Bldg., Civic Meeting Room 1
441 Hwy 101 N., Yachats OR 97498

Join Zoom Meeting

<https://us02web.zoom.us/j/87461950197>

Meeting ID: 874 6195 0197

Work Session

- I. Review of proposed amendments to YMC Title 9
- II. Discussion of Oregon Public Meetings Law

This meeting is open to the public and all interested persons are invited to attend the ZOOM Meetings. This meeting will be audio taped. All items to be considered by the Commission must be submitted to City Hall no later than one week prior to the meeting. The minutes of this meeting are the Audio Tape which will added to the packet after the meeting within 24 hours. In accordance with ORS 192.630, City of Yachats will make a good faith effort to provide accommodations for any person desiring to attend a public meeting, if the request is made at least 48 hours in advance of the meeting time; a 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 6/7/2024 By: Neal Morphis, City Clerk

Section 9.04.020 **Purpose.**

~~The purpose of this title is to promote the public health, safety and general welfare and to assist in carrying out comprehensive plans for the City including all future lands and subdivisions annexed into the incorporated City.~~

“The purpose of this title is to establish a set of zoning, subdivision, and land development regulations for the City designed to protect and promote the public health, safety, and general welfare, advance the position of Yachats as a small, coastal community, and achieve the following objectives:

1. Fulfill the goals of the City of Yachats Comprehensive Land Use Plan.
2. ~~Encourage~~ ~~Ensure that~~ land uses ~~that~~ complement the natural beauty of Yachats’ location and its environment, which has led to Yachats’ long-standing reputation as “The Gem of the Oregon Coast.”
3. Guide the establishment of public, commercial, professional and residential uses, including their siting, design materials, and landscaping, within reasonable variation, so that they shall enhance rather than detract from the quiet coastal ambiance of the City.
4. ~~Encourage~~ ~~Ensure that~~ sufficient vacant and redevelopable buildable land ~~shall~~ be zoned for residential uses to accommodate the projected increases in year-round and part-time populations and to provide a choice of housing location, type and price, to meet the needs of the Yachats community.
5. ~~Encourage~~ ~~Ensure that~~ new businesses ~~shall~~ be of an appropriate scale to retain and enhance the small-town, oceanside character of the Yachats community.
6. Protect residential, commercial, and public areas from the intrusion of incompatible uses, and ~~ensure~~ ~~insure~~ preservation of adequate space for commercial, professional and other activities necessary for a healthy economy.
7. Promote safe and efficient movement of people and goods without sacrifice to the quality of Yachats’ environment, and to provide for adequate off-street parking.
8. Encourage new development to use energy-efficient ~~and sustainable~~ design, siting, and construction materials and methods.
9. Protect and enhance the City’s natural, historic, and scenic resources, including the Yachats River estuary, City shorelands, and City water supply.

10. Regulate activities within geologic hazard areas of the City and limit development that may affect the integrity of steep slopes or impact fire hazards."

Section 9.04.030 **Definitions.**

As used in this title:

~~"Apartment" means a dwelling unit as defined in this section.~~

"Bed and Breakfast Facility" means any single-family dwelling containing rooms for rent in accordance with Section 9.72.050 of YMC, excluding any dwelling that meets the definition of Dwelling, Vacation Rental.

"Building Code" means building, fire, safety, and other codes adopted by state, county and municipal agencies.

"Building Coverage" means the portion of the lot area that is covered by buildings. The area of the buildings shall be measured at their exterior perimeter. Buildings include dwellings, accessory structures, garages and carports.

"Clear Vision Area" means a triangle defined on two (2) sides by a minimum distance along vehicle pathways from the intersection of the curb line or, where no curb exists, the edge of the street, alley, or driveway surface edge, and on the third side by the line across the corner of the non-intersecting ends of the two (2) other sides. See the regulations of Section 9.64.010 (A) of this Title.

~~"Deck/porch" means an outside walking area, the floor of which is elevated more than eight inches from grade.~~

"Deck" means an unenclosed structure or platform, constructed outdoors, that may either be independent or attached to a building and is intended for the purpose of outdoor dining, lounging, and other similar accessory use.

"Dwelling" means a building or portion thereof which is occupied in whole or in part as a residence ~~or sleeping place~~, either permanently or temporarily, by one or more families, but excluding hotels, motels, and ~~tourist courts~~ resorts, with permanent provision for living, sleeping, eating, food preparation, and sanitation. Dwellings include both buildings constructed on-site and manufactured homes.

~~"Dwelling, Accessory" means an accessory structure specifically designed and permitted as an additional dwelling, which is incidental, appropriate, and subordinate to a primary dwelling on a property.~~

"Dwelling, Vacation Rental" means a single-family dwelling, duplex, or multi-family dwelling which is rented, or held out as available for rent, either in full or in part, for periods of less than thirty (30) days, such as by the day or week, excluding any facility that meets the definition of "bed and breakfast facility." The dwelling may consist of individual units or be in a contiguous form to be considered a vacation rental dwelling but; however: a) each individual unit is to be considered separately for licensing and regulation purposes in accordance with Chapter 4.08 of YMC.; and b) no more than one (1) individual unit may be located in a single dwelling in the R-1 District; no more than two (2) individual units may be located in the R-2 District; and no more than five (5) individual units may be located in the R-3, R-4, and C-1 Districts. A dwelling that is listed with an agent as a vacation rental, advertised, available by referral, word of mouth, commendation or reputation are some of, but not limited to, the ways of identifying a vacation rental.

“Existing grade” means the existing condition of the elevation of the ground surface at the time of permit application and which represents (1) the natural grade prior to placement of fill on the site or the excavation or removal of earth from the site, or (2) the manufactured grade following the completion of an approved grading operation including grading approved in conjunction with the subdivision of a site.

“Finished grade” means the plane on which the footprint of the structure meets the ground.

“Finished grade” means the final grade of the site after all clearing and grading has been completed that conforms to an approved clearing and grading plan.

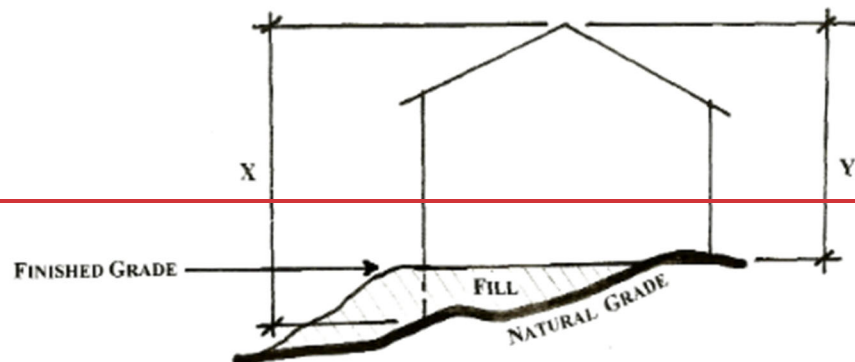
“Height of building”

means the vertical distance from the average finished grade to the highest point of the building plus any fill above the natural grade. To determine building height, calculate the average building height for each side: Add the shortest building height and the tallest building height, then divide the two building heights by two. Add together the average height for each side and divide by the number of sides.

TO DETERMINE BUILDING HEIGHT

“Height of building” means the vertical distance from the average finished grade to the highest point of the building plus any fill above the natural grade.

Step 1. Calculate the average height for each side of structure.



X = tallest building height

Y = shortest building height

$(X + Y) / 2 = \text{Average height (H)}$

Step 2. Add together the height for each side and divide by the number of sides.

$$\frac{H_1 + H_2 + H_3 + H_4}{4} = \text{average building height}$$

"Height of Building" means the maximum vertical height of a building or structure measured from average finished grade to the highest point of a building or structure. (See Section 9.52.171 of the YMC for determining the height of a building.)

~~"Hotel" means any building containing guest rooms which are rented or hired out to be occupied for sleeping purposes for guests, excluding any facility which meets the definition of "bed and breakfast facility."~~

"Hotel" means any building used for lodging other than a motel or resort, containing six (6) or more guest rooms available for rent on a short-term [thirty (30) or fewer days], ~~or long term (extended stay),~~ basis. The building has a lobby and check-in area, and is designed with interior corridors for accessing rooms without being outside. Guest rooms may include kitchen facilities, and guest amenities may include pool, gym, lounge, and accessory commercial uses such as restaurants, bars, gift shop, or day spa.

"Hostel" ~~means transient~~ means budget-priced transient lodging where a traveler typically rents a bed in a shared room with communal bathrooms and access to shared kitchen facilities.

"Impervious Surface" means a surface that has been compacted or covered with a layer of material so that it prevents or is resistant to the infiltration of water, including, but not limited to, structures such as roofs, buildings, storage sheds; other solid, paved, or concrete areas such as streets, driveways, sidewalks, parking lots, patios, decks, porches, tennis or other paved courts; or athletic playfields comprised of synthetic turf materials.

"Impervious Surface Ratio" means a measure of the intensity of the use of a piece of land. It is measured by dividing the total area of all impervious surfaces within a site by the gross lot area.

"Inn" - ~~Synonymous with~~ See Hotel or Motel.

"Lot line, Street Side" means the side lot line at abutting street. ~~Katherine I have a note that you were going to reference the sections of the YMC that applied to this definition~~

~~"Motel" means a series of sleeping units, each having a separate entrance, composed of one or more bedrooms and bathroom, excluding any facility which meets the definition of "bed and breakfast facility."~~

"Motel" means any building or group of buildings used for transient lodging other than a hotel or resort, containing six (6) or more guest rooms or units ~~available~~ for rent on a short-term [thirty (30) or fewer days] basis. The building(s) is designed so that ingress/egress to guest rooms is from outside the building and a short distance from parked vehicles. Guest rooms may include kitchen facilities, and guest amenities may include a pool, gym, limited food and beverage services, lounge, and accessory commercial uses such as a gift shop.

"Parking Space, Accessible" means an off-street parking space for handicap access to or from a vehicle, designed in accordance with any local, state or federal laws, including the federal Americans with Disabilities Act (ADA).

"Parking Space, Off-street" ~~"Off-street parking space"~~ means a parking space located outside of public right-of-way ~~with minimum dimensions of 18 feet long and nine feet wide, the numbers, and dimensions and construction materials~~ of which are as required by Chapter 9.48 of YMC. ~~Off-street parking spaces shall have all weather surfaces such as gravel, pavement, tile, brick or concrete suitable for parking a vehicle.~~

~~Required off-street parking spaces shall not be located in a required yard that abuts a street.~~

“Patio” means a paved outdoor area adjoining a structure.

~~“Porch” means an outside walking area, the floor of which is elevated more than eight inches from the ground.~~

“Porch” means a covered area adjoining an entrance to a building and usually having a separate roof.

~~“Resort” means a tourist-oriented establishment, having recreational, eating and sleeping accommodations located on the premises.~~

“Resort” means any building or group of buildings used for transient lodging other than a hotel, motel, or inn, containing six (6) or more guest rooms or units available for rent on a short-term [thirty (30) or fewer days] basis, and designed primarily to accommodate vacationers, conferences, or events such as weddings. The building(s) have a lobby and a check-in area, and often occupy sufficient land area for multiple lodging options, conference facilities, guest amenities (ex. pool, tennis, gym), vehicle (including RV) parking, and accessory commercial uses, such as restaurants, bars, gift shop, day spa, and the like.

“Site Plan” means a two dimensional plan accurately drawn, clear, measurable, and fully dimensioned, of a property (or group of adjacent parcels or lots under the same ownership) that is subject to a permit application under this code.

“Transient Lodging” means any facility, structure, or portion thereof occupied or intended or designed for occupancy by a guest or guests who pay rent or other consideration for dwelling, lodging, or sleeping purposes for a period of thirty (30) or fewer days.

~~“Yard” means a space other than a court on the same lot with a building open from the ground.~~

“Yard” means an open space on the same lot with a building, unoccupied and unobstructed from the ground upward except as otherwise provided herein.

~~Yard, Front. “Front yard” means a yard extending across the full width of the lot, the depth of which is the minimum horizontal distance between the front lot line and a line parallel thereto at the nearest point of the foundation of the main building.~~

“Yard, Front” means an area lying between the side lot lines, the depth of which is a specified horizontal distance between the street line and a line parallel thereto on the lot.

~~Yard, Rear. “Rear yard” means a yard extending across the full width of the lot between the most rear main building and the rear lot line; but for determining the depth of the required rear yard it shall be measured horizontally from the nearest point of the rear lot line; or, if the rear lot line adjoins an alley, then from the center line of the alley, toward the nearest part of the foundation of the main building.~~

“Yard, Rear” means an area lying between side lot lines, the depth of which is a specified horizontal distance between the rear property line and a line parallel thereto on the lot.

~~Yard, Side. “Side yard” means an area adjacent to any side lot line the depth of which is the specified horizontal distance measured at right angles to the side lot line and being parallel with the side lot line.~~

“Yard, Street Side” means a yard on a corner lot that is adjacent to a street between the front yard and the rear lot line measured horizontally and at right angles from the side lot line to the nearest point of a building.

*Amending **Chapter 9.24 R-4 Residential Zone, Section 9.24.020 Permitted Uses**, by modifying paragraph K. as follows:*

“K. Motel, hotel, inn, or resort on a minimum of 1.0 acre with direct access provided from U.S. Highway 101 only and with or without accessory commercial uses.”

*Amending **Chapter 9.24 R-4 Residential Zone, Section 9.24.030 Conditional Uses**:*

by modifying paragraph P. as follows:

“P. Motel, hotel, inn, or resort on less than 1.0 acre with direct access provided from U.S. Highway 101 only and with or without accessory commercial uses.”

and by adding a new paragraph Q. as follows:

“Q. Hostels.”

(Note to Commission and City Planner: We need to be sure that an applicant for a hotel, motel, inn, or resort cannot come in under paragraph K. of Conditional Uses.)

*Amending **Chapter 9.24 R-4 Residential Zone, Section 9.24.040 Standards**:*

by deleting paragraph A.4 in its entirety and re-lettering the remaining provisions;

by modifying paragraph G. Vehicle Access, by striking the words “...or to a motel..” from the first sentence.

*Amending **Chapter 9.28, C-1 Retail Commercial Zone, Section 9.28.020 Permitted Uses**, by modifying paragraph N. as follows:*

“N. Motel, hotel, inn, or resort on a minimum of 1.0 acre with direct access provided from U.S. Highway 101 only and with or without accessory commercial uses.”

*Amending **Chapter 9.28, C-1 Retail Commercial Zone, Section 9.28.030 Conditional Uses**:*

by modifying paragraph T. as follows:

“T. Motel, hotel, inn, or resort on less than 1.0 acre with direct access provided from U.S. Highway 101 only and with or without accessory commercial uses.”;

by modifying paragraph V.1, for formula businesses, as follows:

“1. Motel, hotel, inn, or resort on a minimum of 1.0 acre with direct access provided from U.S. Highway 101 only and with or without accessory commercial uses.”

and by adding a new paragraph U., and re-lettering thereafter, as follows:

“U. Motel, hotel, inn, or resort on a minimum of 1.0 acre, without direct access provided from U.S. Highway 101, and with or without accessory commercial uses.”

and by adding a new paragraph W. as follows:

“W. Hostels.”

Amending Chapter 9.52. Supplementary Use and Design Standards, by adding a new Section 9.52.190 Standards for Hotels, Motels, Inns, and Resorts:

“A. Standards for motels, hotels, inns, or resorts:

1. Ingress or egress to a motel, hotel, inn, or resort shall not be allowed from less than a thirty-five (35) foot public street right-of-way and a twenty-five (25) foot all weather travel surface, accessible to emergency vehicles;
2. Motels, hotels, inns, and resorts shall not have vehicle access to or from a cul-de-sac or dead end street;
3. Parking areas associated with motels, hotels, inns, and resorts which are adjacent to or within residential zones or adjacent to residential uses shall be designed to minimize disturbance of residents by the erection between the uses of a sight-obscuring fence of not less than five (5) feet in height, except where vision clearance is required;
4. Motels, hotels, inns, and resorts shall be designed to provide safe and direct access by emergency vehicles, as determined by the Yachats Rural Fire Protection District;
5. Except for security lighting for pathways, parking areas, and building doors, outdoor lighting fixtures for motels, hotels, inns, and resorts shall be extinguished every day between the hours of 11:00 p.m. to 5:00 a.m..”

Amending Chapter 9.72. Conditional Uses, Section 9.72.010 Authorization to grant or deny conditional use permits, by adding a new paragraph B as follows, and re-lettering the paragraphs that follow:

- B. Prior to taking action on a conditional use permit application, the Planning Commission shall consider whether the proposed use complies with the following general standards and criteria:
1. The proposed use conforms with the Yachats Comprehensive Plan.

2. The proposed use is consistent with the intended character of the base zone and the operating characteristics of the neighborhood.
3. The proposed use will be compatible with existing or anticipated uses in terms of size, building scale and style, intensity, setbacks, and landscaping or the proposal mitigates difference in appearance or scale through such means as setbacks, screening, landscaping, or other design features.
4. The transportation system can support the proposed use in addition to the existing uses in the area. Evaluation factors include street capacity and level of service, on-street parking impacts, access requirements, neighborhood impacts and pedestrian safety.
5. Public services for water, sanitary and storm sewer, water management, and for fire and police protection, can serve the proposed use.
6. The proposal will not have significant adverse impacts on the livability of nearby residentially zoned lands due to: (a) Noise, glare, odor, litter, or hours of operation. (b) Privacy and safety issues.
7. The proposal complies with all applicable provisions of the Yachats Municipal Code, or where the applicant has identified where the proposal does not comply, the applicant has obtained a Variance for such in accordance with Chapter 9.80 of this Code.
8. Activities and developments within special purpose districts must comply with the regulations described in Section 9.52.050 (Geologic Hazard), Chapter 9.36 (Estuary Natural), and Section 9.54 (Flood Hazard), as applicable.

Amending Chapter 9.72. Conditional Use, Section 9.72.020, Procedure for Taking Action on a Conditional Use Application, to read as follows:

- A. "A property owner, contract purchaser, etc. may initiate a request for a Conditional Use by filing an application with the City Recorder.
- B. The application shall consist of a completed Conditional Use application form signed by the property owner and contract purchaser or agent, if applicable, and a Basic or Detailed Site Plan, as specified below.
- C. Application for approval of the following uses permitted by Conditional Use shall include the submittal of a Basic Site Plan:
 1. Home Occupation
 2. Temporary Real Estate Office
 3. Bed and Breakfast Facility
 4. Residential Facility
 5. Private Boat Dock
- D. Basic Site Plan – Two dimensional plan accurately drawn, clear, measurable, and fully dimensioned, showing the following information:
 1. Written scale, graphic scale, and north arrow.
 2. Property boundaries with dimensions of each boundary.
 3. Building setbacks to property lines.
 4. Required off-street parking spaces and space dimensions.
 5. Required yards, including streetside setback, if applicable.

6. Driveway and point(s) of ingress and egress.
 7. Existing fences, walls, and hedges at property boundaries.
 8. All zoning tabulations.
- E. Application for approval of all other uses permitted by Conditional Use shall include submittal of a Detailed Site Plan.
- F. Detailed Site Plan – Two dimensional plan accurately drawn, clear, measurable, and fully dimensioned, showing the following information:
1. Date drafted, space(s) for revision date, with north arrow, drawn to scale of one inch equals twenty (1"=20') feet, unless otherwise approved by the City Planner.
 2. Written and graphic scale, if other than 1"=20'.
 3. Total gross and net land areas of the entire site. ("Net" is minus the square footage of any land proposed for dedication to the public, not including easements.)
 4. Label and show the lengths of all existing property lines of the development site.
 5. Label and show the zoning designations, property boundaries, land uses, and approximate building locations of all adjacent properties.
 6. Label and show the locations, widths, and names of all existing or platted adjacent public streets, alleys, sidewalks, planter strips, curbs, and other public rights-of-way, and other important features such as City boundary lines.
 7. Either as part of the detailed site plan, or on a separate sheet drawn to the same scale as the site plan, existing site features shall be shown, including ground topography (contours), wooded or naturally vegetated areas, trees of 8 inches diameter of breast height (DBH) or greater, floodplains, shorelines, wetlands, riparian corridors, geologic hazard zone, and any existing buildings, roads, trails, fences, or other physical improvements, and all existing easements.
 8. Label and show all existing natural drainage patterns, flow arrows showing existing and proposed drainage patterns, and existing and proposed swales, ditches, or other drainage ways.
 9. Location, dimensions, use, coverage, and height of proposed buildings and proposed improvements in relation to property and street lines. Clearly indicate and label existing and proposed building elements, and their dimensions to adjacent property lines.
 10. Dimensional features showing compliance with the applicable area, width, coverage, yard, vision clearance, natural resource protection standards, and other design standards as specified in this Chapter.
 11. Location, dimension, and arrangements of proposed site elements including sidewalks, parking areas, site access, and interior circulation, off-street loading and unloading, trash disposal areas, and lighting for these areas.
 12. Zoning tabulations based on the underlying zone or zones if split, including minimum lot area and proposed lot area (measured in square feet, or acres if exceeding one (1) acre); maximum gross floor area and proposed gross floor area, if applicable; maximum residential density and proposed residential density (measured in dwelling units per acre), if applicable; minimum yard areas and proposed yard areas; maximum building height and proposed building height, as

defined and calculated in accordance with Section 9.52.171 of the Yachats Municipal Code; maximum building and impervious lot coverage and proposed building and impervious lot coverage; and minimum required parking and proposed (off-street) parking.

13. Location, dimensions, and arrangement of all areas devoted to open space, retention of existing trees and vegetation, proposed ground cover, trees and other native plantings, and recreation.
 14. A copy of the last recorded subdivision plan of which the property is part.
 15. Locations and designs of all on-site and off-site improvements related to access control and traffic capacity.
 16. State or County Road Approach Permit, if applicable.
 17. Any application for conditional use shall be accompanied by fully dimensioned design drawings, elevations, and plans for any proposed principal building or structure, or any addition to an existing principal structure. Drawings shall provide building height, materials, and colors to be used.
- G. In the case where any or all of the above are unnecessary as in the case of a change of use in an existing structure, the City Planner shall determine which items in subsection (1) through (17) of this section will not be required for application. The Planning Commission may request additional items if they determine that these additional items are necessary to understand and make a decision on the application.
- H. If the request for Conditional Use meets the requirements of this title, the City Recorder shall set a time for a public hearing on the request before the Planning Commission within forty (40) days from the filing thereof and shall cause notice to be given in accordance with Section 9.88.060.
- I. At the conclusion of the public hearing, the Planning Commission may approve, approve with conditions, or deny the request, based upon the general and specific standards addressing the Conditional Use, pursuant to Chapter 9.88.

Amending Chapter 9.72. Conditional Uses, Section 9.72.050 Standards and Procedures Governing Conditional Uses, by deleting paragraph A.

Amending Chapter 9.48 Off-Street Parking and Loading, Section 9.48.010 General Requirements by modifying paragraph L.3 as follows:

“3. Motel, hotel, inn, or resort: one (1) space per guest room; hostel: one-half (1/2) space per bed.”

Section 9.52.171 Determining Height of Building - Version 1

See also:

Section 9.04.030 Definitions

Section 9.52.170 General exceptions to building height limitations

Height limitations as noted in other Sections

Calculating the maximum vertical Height of Building shall be accomplished as follows:

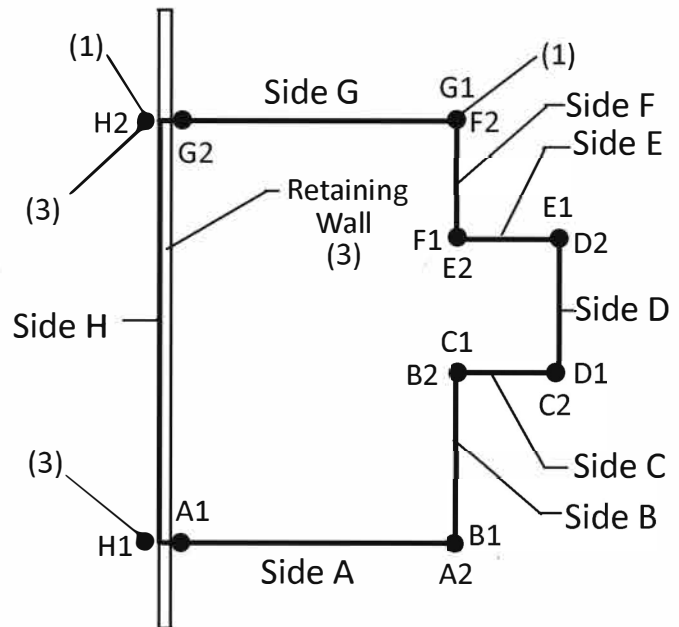
(1) Establish the finished grade immediately adjacent to the building or structure's primary walls at each corner.

(2) For each side of the building or structure calculate the average finished grade. Utilize grades at each corner of each side of the building, and divide by two. See Example.

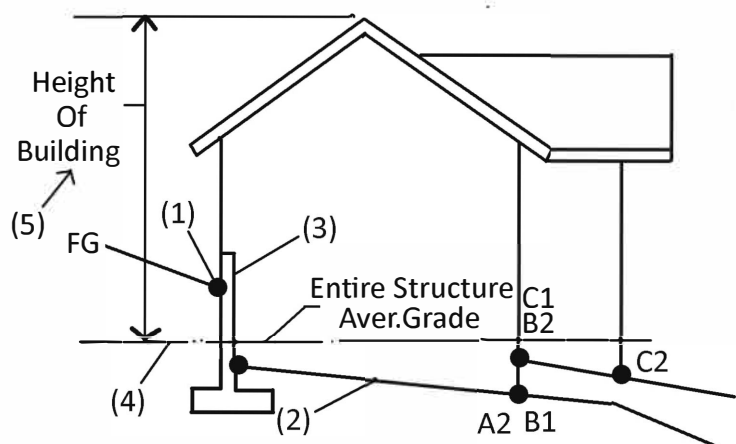
(3) Where a retaining wall occurs on one or more sides, the finished grade at the high side of retaining wall shall be used for that side, and the finished grade at the low side of the retaining wall shall be used for the adjacent intersecting sides.

(4) Add the average finished grades for all sides and divide by the number of sides = Average Finished Grade for the entire structure. See Example.

(5) **Height of Building** shall be the distance from the Average Finished Grade for the entire structure to the highest point of the building or structure.



(2) EXAMPLE: Side Average = $\frac{A1 + A2}{2}$



(4) EXAMPLE: Average Grade for Entire Structure
= $\frac{A+B+C+D+E+F+G+H}{8}$

§ 9.52.171 Determining Height of Building - Version 2

See also:

Section 9.04.030 Definitions

Section 9.52.170 General exceptions to building Height limitations.

Limitations in other Sections of this Ordinance.

Calculating the maximum vertical Height of Building shall be accomplished as follows:

(1) Establish finished grades:

See EXAMPLE 1.

1a. Establish the finished grade immediately adjacent to the building or structure's primary walls at each corner.

1b. Where a retaining wall occurs on one or more sides, the finished grade at the high side of retaining wall shall be used for that side, and the finished grade at the low side of the retaining wall shall be used for the adjacent intersecting sides.

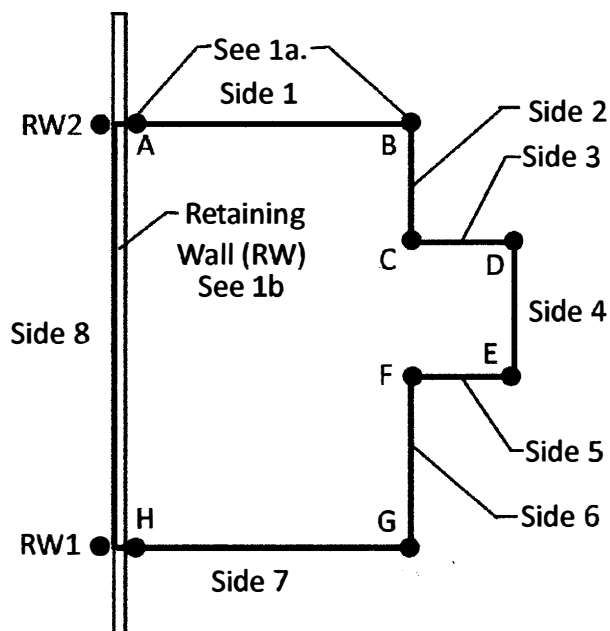
(2) Calculate average finished grades:

2a. For each side of the building or structure calculate the average finished grade. Utilize grades at each corner of each side of the building, and divide by two. See EXAMPLE 2a.

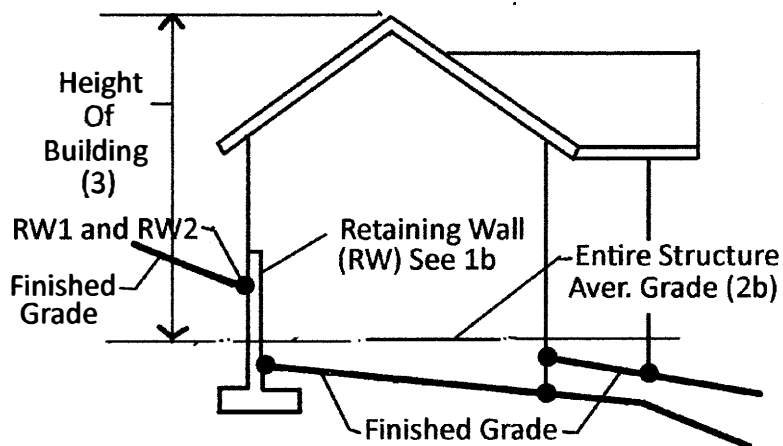
2b. The Average Finished Grade for The Entire Structure is the sum of all wall calculations divided by the number of walls; Add the average finished grades for all sides and divide by the number of sides. See EXAMPLE 2b.

(3) Height of Building shall be the distance from the Average Finished Grade for the Entire Structure to the highest point of the building or structure.

EXAMPLE 1: Establish Finished Grades



EXAMPLE 2a, Average Side 1 = $\frac{A + B}{2}$



EXAMPLE 2b: Average Finished Grade for Entire Structure
= $\frac{\text{Sum of the Average Grades for All Sides}}{\text{Number of Sides}}$

— Oregon Municipal Handbook —

CHAPTER 9: PUBLIC MEETINGS LAW



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Chapter 9: Public Meetings Law

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

That policy is given effect through various substantive provisions contained under ORS 192.610 to ORS 192.690, discussed below.² Although compliance with these provisions might reduce the speed and efficiency of local decision-making, local residents benefit from a better understanding of the facts and policies underlying local actions. The required process and formality also can make it easier for cities to justify a decision if one is later challenged in an administrative or judicial proceeding.³

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

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

¹ ORS 192.620.

² *Id.*

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

⁴ ORS 192.610.

⁵ ORS 192.630 to ORS 192.660.

⁶ *Id.*

⁷ ORS 192.680.

I. COVERED ENTITIES

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

A. Governing Bodies of Public Bodies

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

Examples:

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

i. A body that makes decisions for a public body

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

⁸ ORS 192.610(5); ORS 192.630(1).

⁹ ORS 192.630(1).

¹⁰ ORS 192.610(4).

¹¹ *Id.*

¹² ORS 192.610(3).

¹³ ORS 192.610(3).

ii. A body that makes recommendations to a public body

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

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

B. Governing Bodies of Certain Private Bodies

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

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

¹⁴ ORS 192.610(3).

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

¹⁶ ORS 192.610(3).

¹⁷ ORS 192.610(3).

¹⁸ ORS 192.610.

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

²⁰ *Id.*

²¹ ORS 192.610(4).

II. COVERED MEETINGS

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

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

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

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

A. ‘Convening’ a Meeting

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

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

²² ORS 192.630(1).

²³ ORS 192.610(5).

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

²⁵ ORS 192.610(5).

²⁶ ORS 192.670.

²⁷ *Id.*

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

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

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

B. Meeting ‘Quorum’

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

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

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

²⁸ *Id.*

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

³⁰ *Id.*

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

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

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

³⁴ ORS 192.630.

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

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

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

C. Meeting for a ‘Decision’

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

Any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of a governing body is required, at any meeting at which a quorum is present.³⁸

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

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

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

³⁶ ORS 192.620.

³⁷ ORS 192.610(5).

³⁸ ORS 192.610(1)

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

⁴⁰ *Id.*

III. REQUIREMENTS

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

A. Meeting Types and Notice

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

i. When Notice is Required

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

ii. Contents of the Notice

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

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

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

⁴¹ ORS 192.640.

⁴² *Id.*

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

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

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

iii. Amount of Notice

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

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

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

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

⁴⁴ *Id.*

⁴⁵ ORS 192.640.

⁴⁶ ORS 192.630(5).

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

⁴⁸ ORS 192.640(1).

⁴⁹ ORS 192.640(3).

⁵⁰ *Id.*

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

iv. Noticing Executive Sessions

If the type of meeting to be held is an executive session, the governing body holding the executive session is required to give notice in the manner described above.⁵⁴ In addition, the notice must be sent to each member of the governing body.⁵⁵ No member of the governing body can be excluded from receiving notice of the executive session, even if it is known that the member is unable to attend the meeting. In addition, when providing notice of an executive session, the notice is required to state the specific provision of the OPML that authorizes the executive session.⁵⁶ Finally, unless the executive session is necessary to respond to an emergency, the notice of the session must be provided with a minimum of 24 hours’ notice.⁵⁷

The LOC Guide to Executive Sessions explores these issues and offers sample notices.⁵⁸

B. Proper Meeting Space

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

⁵¹ *Id.*

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

⁵³ *Id.*

⁵⁴ ORS 192.640(2).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ ORS 192.640(3).

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

⁵⁹ ORS 192.630(1).

⁶⁰ ORS 192.630(4).

⁶¹ ORS 192.630(5).

⁶² ORS 192.630(3).

i. Capacity

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

ii. Geography

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

iii. Accessibility

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

Cities can find guidance on the first requirement, and the potential penalties for failure to comply, under laws and regulations of the Americans with Disabilities Act (ADA). As for the “good faith” requirement, this can be enforced only through the OPML.⁶⁹ The law defines a “good-faith effort” as “including ... contacting the department or other state or local agency that maintains a list of qualified interpreters and arranging for the referral of one or more qualified interpreters to provide interpreter services.”⁷⁰

⁶³ ORS 192.630(1).

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

⁶⁵ *Id.*

⁶⁶ See ORS 192.630(5)(a).

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ See ODOJ, ATTORNEY GENERAL’S PUBLIC RECORDS AND MEETINGS MANUAL 154-55 (2019).

⁷⁰ ORS 192.630(5)(c).

iv. Equality

Public bodies are prohibited from holding meetings where discrimination is practiced on the basis of race, color, creed, sex, sexual orientation, national origin, age, or disability.⁷¹ Generally, a public body may not hold a meeting at a location that is used by a restricted-membership organization, but may if the location is not primarily used by such an organization.⁷²

C. Recording and Retaining Minutes

The OPML requires that the governing body of a public body provide for sound, video, or digital recording, or written minutes, of its public meetings.⁷³ Whatever the format, the record of the meeting must include the following categories of information:

- (a) All members of the governing body present;
- (b) All motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition;
- (c) The results of all votes and, except for public bodies consisting of more than 25 members unless requested by a member of that body, the vote of each member by name;⁷⁴
- (d) The substance of any discussion on any matter; and
- (e) Subject to ORS 192.311 to 192.478 relating to public records, a reference to any document discussed at the meeting.⁷⁵

When recording minutes, the objective is not to include every word said at the meeting, but rather to provide “a true reflection of the matters discussed at the meeting and the views of the participants.”⁷⁶ Upon conclusion of the meeting, the minutes must also be available to the public “within a reasonable time.”⁷⁷ The ODOJ notes that, with some exceptions, the minutes should also be “available to persons with disabilities in a form usable by them, such as large print, Braille, or audiotape.”⁷⁸

⁷¹ ORS 192.630(3).

⁷² *Id.*

⁷³ ORS 192.650(1).

⁷⁴ Note that the recording of minutes requires the “vote of each member by name” to either be recorded or made available on request. This means that members of a governing body cannot vote anonymously. The Court of Appeals has held, however, that the “absence of a recorded vote alone is not reversible error.” *See* ODOJ, ATTORNEY GENERAL’S PUBLIC RECORDS AND MEETINGS MANUAL 158-59 (2019) (citing *Gilmore v. Bd. of Psychologist Examiners*, 81 Or App 321, 324 (1986)).

⁷⁵ ORS 192.650(1).

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ ODOJ, ATTORNEY GENERAL’S PUBLIC RECORDS AND MEETINGS MANUAL 161 (2019).

Finally, the OPML requires that minutes or another record of a public meeting must be preserved for a reasonable time.⁷⁹ However, the Secretary of State’s Retention Schedule for cities requires minutes of non-executive session meetings to be retained permanently.⁸⁰ Executive session minutes must be retained for 10 years.⁸¹ The LOC recommends that cities consult with their attorney before setting a retention schedule for meeting minutes.

D. Public Attendance and Participation

The OPML is a public attendance law, not a public participation law. Generally, meetings of a governing body of a public body are open to the public unless otherwise provided by law.⁸² Yet while the law guarantees the right of public attendance, the law does *not* guarantee the right of public participation. In fact, the OPML only expressly mentions public participation in two specific contexts: the opportunity for “public comment” on the employment of a public officer and the opportunity for “public comment” on the standards to be used to hire a chief executive officer.⁸³

Importantly, public participation laws *do* exist elsewhere under state and local laws. In many cases, public participation might be required by another statute, a state regulation, or by a local charter or ordinance. For example, a city ordinance may require the city council to hear public comment when the council considers whether to condemn private property for public use. Similarly, state law requires cities to provide an opportunity for public testimony during the annual budgeting process.⁸⁴ State regulations, meanwhile, require that “[c]itizens and other interested persons [have] the opportunity to present comments orally at one or more hearings” during the periodic review of a local comprehensive plan.⁸⁵ For this reason, the LOC cautions cities to consult their attorney before choosing to withhold opportunities for public comment. Note that there is no rule *against* public participation if cities wish to allow it at meetings.

i. Maintaining Order

For cities, the charter ordinarily designates a specific person with authority to keep order in council meetings, often the mayor or the council president. For other governing bodies serving the city, the one with this authority likely is the leader of the body, such as the head, chair, or president of a particular committee, group, or commission. Generally speaking, a city may adopt

⁷⁹ *Id.* at 162 (citing *Harris v. Nordquist*, 96 Or App 19 (1989)).

⁸⁰ OAR 166-200-0235.

⁸¹ *Id.*

⁸² ORS 192.630(1).

⁸³ ORS 192.660(7)(d)(C); ORS 192.660(7)(d)(D).

⁸⁴ ORS 294.453

⁸⁵ OAR 660-025-0080(2).

meeting rules and a violation of these rules can be grounds for expulsion. For more information on maintaining order in council meetings, consult the LOC's Model Rules of Procedure for Council Meetings.⁸⁶

Reasonable restrictions also may be placed on public participation. However, care must be taken to protect the freedom of speech under the First Amendment and Article 1, Section, of the Oregon Constitution. For example, the First Amendment protects the interest of citizens who are “directing speech about public issues to those who govern their city.”⁸⁷ Speech is a protected right that can be enjoyed not only through **actual speech** but also through **expressive conduct**, such as making a gesture, wearing certain clothing, or performing a symbolic act.⁸⁸ While the right to speech is “enormous,” it is subject to content-neutral limitations.⁸⁹ Further, no city is required to “grant access to all who wish to exercise their right to free speech on every type of government property, at any time, without regard to the disruption caused by the speaker’s activities.”⁹⁰

a. The Time, Place, and Manner of Speech

Under federal law, a city’s council meeting or similar meeting is considered a limited public forum.⁹¹ At a minimum, any expression of speech at a limited public forum in Oregon can be limited through time, place and manner restrictions.⁹² Time, place and manner restrictions are simply that — rules regulating the **time** in which a person may speak, the **place** in which a person can speak, and the **manner** in which the speech can be made. An important caveat is that all of these restrictions must be viewpoint neutral.⁹³ The restrictions also must serve a “legitimate interest” and provide “ample alternatives for the intended message.”⁹⁴

⁸⁶ LEAGUE OF OREGON CITIES, MODEL RULES OF PROCEDURE FOR COUNCIL MEETINGS (2017), <https://www.oregoncities.org/application/files/1115/7228/7626/ModelRulesofProcedure3-15-19.pdf> (last accessed July 9, 2020).

⁸⁷ See *White v. City of Norwalk*, 900 F.2d 1421, 1425 (9th Cir. 1990).

⁸⁸ See *Virginia v. Black*, 538 U.S. 343, 358 (2003).

⁸⁹ See *White*, 900 F.2d at 1425 (1990).

⁹⁰ See *Walsh v. Enge*, 154 F. Supp. 3d 1113, 1119 (D. Or. 2015) (quoting *Cornelius v. NAACP*, 473 U.S. 788, 799 (1985)).

⁹¹ See *White*, 900 F.2d at 1425 (1990).

⁹² See *State v. Babson*, 355 Or. 383, 408 (2014). Under federal law, expressions of speech in a limited public forum can also be subject to “content-based” rules, provided those rules are both “viewpoint neutral” and “reasonable.” *Enge*, 154 F. Supp. 3d at 1128. Thus, under federal law, a city council could limit the *content* of a public comment to the subject-matter at hand as long as it did not apply this rule unevenly. *White*, 900 F.2d at 1425 (1990). In Oregon, however, the free speech clause Oregon Constitution appears to prohibit any “content-based” regulation of speech. See *Outdoor Media Dimensions, Inc. v. Dept. of Transp.*, 340 Or. 275, 288 (2006). Cities should err on the side of caution by permitting speech on any “subject” at meetings and limiting only its time, place, and manner.

⁹³ See *White*, 900 F.2d at 1425 (1990).

⁹⁴ See *Babson*, 355 Or. at 408 (2014).

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

The challenge of time, place, and manner restrictions is ensuring that the restrictions are enforced consistently and equally to all speakers and that the restrictions cannot be construed as discriminating against a given viewpoint.⁹⁵ That said, cities generally will avoid triggering the First Amendment if their restrictions serve “purposes unrelated to the content of expression.”⁹⁶ This is true even if an otherwise valid restriction, under particular circumstances, “*incidentally* burdens some speakers, messages or viewpoints.”⁹⁷

b. Disruptive Conduct

A good example of an “incidental” restriction on speech is rules on disruptive conduct. As noted above, cities and other governments are not required to tolerate “actual disruptions” when carrying out government business. So, even if the disruptive activity is a voice or some form of expressive conduct, i.e., speech, it can be regulated.⁹⁸ The rule against actual disruptions means that governing bodies may override one’s freedom of speech in certain circumstances, such as when an audience member is shouting loudly at others or when an individual refuses to sit down long after their allotted speaking time has ended. The general rule of thumb is that the disruption has to be preventing the governing body from completing its work.

Conversely, cities must allow any actions that are not “**actual**” disruptions to the governing body’s ability to conduct business.⁹⁹ In *Norse v. City of Santa Cruz*, for example, the Ninth Circuit Court of Appeals found that an audience member giving the Nazi salute did not actually interfere with or interrupt the public meeting and that the city therefore had not been justified in removing the individual from the meeting.¹⁰⁰ In reaching its decision, the *Norse* Court found that “[a]ctual disruption means actual disruption. It does not mean constructive

⁹⁵ See *Norse v. City of Santa Cruz*, 629 F.3d 966, 976 (9th Cir 2010) (noting that viewpoint neutrality is a key element under the First Amendment),

⁹⁶ *Alpha Delta Chi-Delta Chapter v Reed*, 648 F.3d 790, 800 (9th Cir 2011) (quoting, in part, *Ward v Rock Against Racism*, 491 US 781, 791, 109 S Ct 2746, 105 L Ed2d 661 (1989)).

⁹⁷ *Id.*

⁹⁸ *Norse*, 629 F.3d at 976.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

disruption, technical disruption, virtual disruption, *nunc pro tunc* disruption, or imaginary disruption.”¹⁰¹

c. Barring Disruptive Individuals

It is not uncommon for a person desiring to make their point to cause several disruptions at the same meeting or over a series of meetings. The constant disruption of public meetings by the same person, despite repeated warnings and removals, often leads public officials to consider suspending the person from future public meetings. Unfortunately, any efforts to suspend or ban individuals from future hearings are highly suspect and likely unconstitutional.

On two separate occasions, federal courts have held that prohibiting a disruptive person from attending future meetings, and from entering the entirety of a government facility, is not permitted under the First Amendment. In *Reza v. Pearce*, the Ninth Circuit Court of Appeals ruled that “imposing a complete ban” on a person’s entry into a government building “clearly exceeds the bounds of reasonableness ... as a response to a single act of disruption.”¹⁰² Similarly, in *Walsh v. Enge*, a federal district court found that the city of Portland could not “prospectively exclude individuals from future public meetings merely because they have been disruptive in the past.”¹⁰³ Note, however, that a district court decision is not binding precedent. While neither of these cases conclusively answers the question of whether a frequently disruptive individual can be barred from future hearings, they cast serious doubt that a court would uphold such an action.

For a description of these cases and a more detailed overview of the options available to cities for handling disruptive members of the public at public meetings, see the LOC’s Legal Guide to Handling Disruptive People in Public Meetings (2017).¹⁰⁴

IV. EXECUTIVE SESSIONS

An executive session is a public meeting that is closed to members of the general public. Executive sessions may only be held for certain reasons and the other meeting requirements discussed above still apply, such as notice, location, and minute-keeping requirements.¹⁰⁵

¹⁰¹ *Id.*

¹⁰² *Reza v. Pearce*, 806 F.3d 497, 505 (9th Cir 2015).

¹⁰³ *See Walsh v. Enge*, 154 F. Supp. 3d 1113, 1119 (D. Or. 2015).

¹⁰⁴ LEAGUE OF OREGON CITIES, LEGAL GUIDE TO HANDLING DISRUPTIVE PEOPLE IN PUBLIC MEETINGS (2017), <https://www.oregocities.org/application/files/2715/6116/0383/LOCWhitePaperonDisruptiveCitizens-FINAL5-5-17.pdf> (last accessed June 29, 2020).

¹⁰⁵ *See* ORS 192.660; *see also* ORS 192.610(2) (defining an executive session as a “meeting.”).

For a thorough assessment of how executive sessions apply to cities, including sample notices and a model media policy, consult the LOC Guide to Executive Sessions.¹⁰⁶

A. Executive Sessions for Municipalities

The Oregon Legislative Assembly has identified 14 circumstances in which an executive session is authorized.¹⁰⁷ Of these, 10 circumstances are likely to be used by municipalities:

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

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

- To fill a vacancy in any elected office, public committee or commission, or advisory group;¹⁰⁸ or
- To discuss an officer's salary.¹⁰⁹

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

A governing body may hold an executive session on disciplinary matters; however, the subject of the deliberations must be provided with an opportunity to request an open hearing.¹¹⁰ Clearly, this means that the governing body must notify the individual well in advance and determine whether they wish to have an open hearing.

Generally, cities should be aware that public employees have a property interest in their employment. When in doubt, cities that are members of CIS are encouraged to consult the CIS

¹⁰⁶ LEAGUE OF OREGON CITIES, GUIDE TO EXECUTIVE SESSIONS (2017), <https://www.orcities.org/application/files/7415/6772/9151/GuidetoExecutiveSessions-03-27-19.pdf> (last accessed June 29, 2020).

¹⁰⁷ ORS 192.660.

¹⁰⁸ See ORS 192.660; see also ORS 192.660(7)(a)-(d).

¹⁰⁹ See generally 42 Op Atty Gen 362, 1982 WL 183044 (1982).

¹¹⁰ ORS 192.660(2)(b).

Pre-Loss Legal Department before taking disciplinary action. Failing to do so can negatively impact a city's deductible if a lawsuit or wrongful termination complaint is subsequently filed.

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

This provision allows city officials to hold an executive session to conduct deliberations with the person they have designated to act on the city's behalf during labor negotiations.¹¹¹ Note that this is one of the few meetings where news organizations and the media can be excluded from an executive session.¹¹²

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

This provision allows city officials to hold an executive session to conduct deliberations with the person they have designated to act on the city's behalf regarding real property transactions.¹¹³ A real property transaction likely may include the purchase of real property, the sale of real property, and/or negotiations of lease agreements.¹¹⁴ The deliberations conducted during an executive session held under this provision must concern a specific piece of property or properties — the session may not be used to discuss a city's long-term property needs.¹¹⁵

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

In order to hold an executive session under this provision, the information and records to be reviewed must otherwise be exempt from public inspection under state or federal law.¹¹⁶ The most common source for public records exemptions is Oregon's Public Records Law and the attorney-client privilege under ORS 40.225.

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

A governing body may use this provision to meet in executive session when it has good reason to believe it is in competition with other governments on a "trade or commerce" issue.¹¹⁷

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

¹¹¹ ORS 192.660(2)(c).

¹¹² ORS 192.660(4).

¹¹³ ORS 192.660(2)(e).

¹¹⁴ ODOJ, ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL 165 (2019).

¹¹⁵ *Id.* (citing Letter of Advice to Rep. Carl Hosticka, 1990 WL 519211 (OP-6376) (May 18, 1990)).

¹¹⁶ ORS 192.660(2)(f).

¹¹⁷ ORS 192.660(2)(g).

A governing body may use executive sessions as a way to consult with legal counsel about current or pending litigation.¹¹⁸ In the event the litigation is against a news organization, the governing body must exclude any journalist who is affiliated with the news organization.¹¹⁹

8. Employment-related performance of the chief executive officer of any public body, a public officer, employee, or staff member who does not request an open hearing.

A governing body may hold an executive session to evaluate an employee's performance; however, the subject of the deliberations must be provided with an opportunity to request an open hearing.¹²⁰ Clearly, this means that the governing body must notify the individual well in advance and determine whether they wish to have an open hearing.

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

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

This provision allows cities to conduct negotiations about certain public investments.¹²¹ The final decision on these investments must occur in an open public meeting (see below).¹²²

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

In order to hold an executive session under this provision, the security program must be related to one of the areas identified under ORS 192.660(2)(n). These include telecommunication systems and the "generation, storage or conveyance of" certain resources or waste.¹²³

B. Final Decision Prohibition

Under the OPML, executive sessions must not be used "for the purpose of taking any final action or making any final action."¹²⁴ While final decisions cannot be made, city councils and other public bodies may still reach a consensus during an executive session. This provision simply guarantees that the public is made aware of the deliberations. Thus, a formal vote in a

¹¹⁸ ORS 192.660(2)(h).

¹¹⁹ ORS 192.660(5).

¹²⁰ ORS 192.660(2)(i).

¹²¹ ORS 192.660(2)(j).

¹²² ORS 192.660(6).

¹²³ ORS 192.660(2)(n).

¹²⁴ ORS 192.660(6).

public session satisfies the requirement, even if the vote merely confirms the consensus reached in executive session.¹²⁵

C. Media Representation at an Executive Session

Representatives of the news media must be allowed to attend all but two types of executive sessions.¹²⁶ The news media may be excluded from an executive session held to conduct deliberations with a person designated by the governing body to carry on labor negotiations or an executive session held by a school board to discuss certain student records.¹²⁷ Also, remember that a city council or other public body must exclude any member of the press if the news organization the reporter represents is a party to the litigation being discussed during the executive session.¹²⁸

Even though news organizations are permitted to attend virtually every executive session, governing bodies may prohibit news organizations from disclosing certain specified information.¹²⁹ Unless a governing body specifies what information is prohibited from disclosure, news organizations are free to report on the entire executive session. It also is worth noting that there is no penalty or punishment under the OPML against a news organization that shares information from an executive session without the city's permission.

The term “representatives of the media” is not defined by the OPML or in case law. However, the Oregon attorney general recently issued an advisory opinion wherein it concluded that under Oregon law “news-gathering representatives of institutional media” are permitted to attend executive sessions and the term is “broad and flexible enough to encompass changing technologies for delivering the news.”¹³⁰ The conclusion reached by the attorney general seems to imply that bloggers and other social media news entities are authorized to attend executive sessions. In reaching this conclusion, the attorney general relied heavily on what it believes are the stated reasons the Legislative Assembly allowed the media to attend executive sessions when the law was originally adopted.¹³¹

Due to the ambiguity around who is or isn't a “representative of the media,” the LOC recommends that cities generally permit any person providing the public with news, including internet bloggers, to attend executive sessions. Some cities may seek to establish a stricter media

¹²⁵ See ODOJ, ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL 173-75 (2019).

¹²⁶ ORS 192.660(5).

¹²⁷ *Id.*

¹²⁸ ORS 192.660(5).

¹²⁹ ORS 192.660(4).

¹³⁰ See generally Op Atty Gen 8291 (2016).

¹³¹ *Id.*

attendance policy and, if so, those cities need to undertake a meaningful and in-depth discussion with their city attorney before drafting such a policy. Denying “representatives of the media” access to meetings can lead to costly litigation.

V. ENFORCEMENT

A. General Enforcement

Any person affected by a decision of a governing body of a public body may file a lawsuit to require compliance with, or prevent violations of, the OPML by members of the governing body.¹³² Lawsuits may be filed by “any person who might be affected by a decision that might be made.”¹³³

A plaintiff may also file suit to determine whether the OPML applies to meetings or decisions of the governing body.¹³⁴ Under ORS 192.680(5), any suit brought under the OPML must be commenced within 60 days following the date the decision becomes public record.¹³⁵

A successful plaintiff may be awarded reasonable attorney fees at trial or on appeal.¹³⁶ Whether to award these or not is in the court’s discretion.¹³⁷ If a court finds that a violation of the OPML was the result of willful misconduct by a member or members of the governing body, each is liable for the amount of attorney fees paid to the successful applicant.¹³⁸

If a governing body violates the OPML in a decision, the decision is not necessarily void. In the case of an unintentional or non-willful violation of the OPML, the court has discretion to void a decision, but such an action is not mandatory.¹³⁹ The law permits a governing body that violates the OPML to reinstate the decision while in compliance with the law.¹⁴⁰ If a governing body reinstates an earlier decision while in compliance with the law, the decision will not be voided and the decision is effective from the date of its initial adoption.¹⁴¹

Importantly, reinstatement of an earlier decision while in compliance with the law will not prevent a court from voiding the earlier decision “if the court finds that the violation was the result of intentional disregard of the law or willful misconduct by a quorum of the members of

¹³² ORS 192.680(2).

¹³³ See *Harris v. Nordquist*, 96 Or App 19, 23 (1989).

¹³⁴ ORS 192.680(2).

¹³⁵ ORS 192.680(5).

¹³⁶ ORS 192.680(3).

¹³⁷ *Id.*

¹³⁸ ORS 192.680(4).

¹³⁹ ORS 192.680(1).

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

the governing body.”¹⁴² In that case, the court will void the decision “unless other equitable relief is available.”¹⁴³

B. Civil Penalties for Violations of ORS 192.660

Apart from the enforcement provisions described above, the Oregon Government Ethics Commission may review complaints that a public official has violated the executive session provisions of the OPML as provided in ORS 244.260.¹⁴⁴ The commission has the authority to interview witnesses, review minutes and other records, and obtain other information pertaining to executive sessions of the governing body for purposes of determining whether a violation occurred.¹⁴⁵ If the commission finds a violation of the executive sessions provisions, the commission may impose a civil penalty not to exceed \$1,000.¹⁴⁶ If, however, the violation occurred as a result of the governing body acting on the advice of its legal counsel, the civil penalty may not be imposed.¹⁴⁷

¹⁴² ORS 192.680(3).

¹⁴³ *Id.*

¹⁴⁴ ORS 192.685(1).

¹⁴⁵ ORS 192.685(2).

¹⁴⁶ ORS 244.350(2)(a).

¹⁴⁷ ORS 244.350(2)(b).

Oregon Public Meetings, Public Records, Record Retention and Ethics Laws

Shannon O'Fallon

Senior Assistant Attorney General

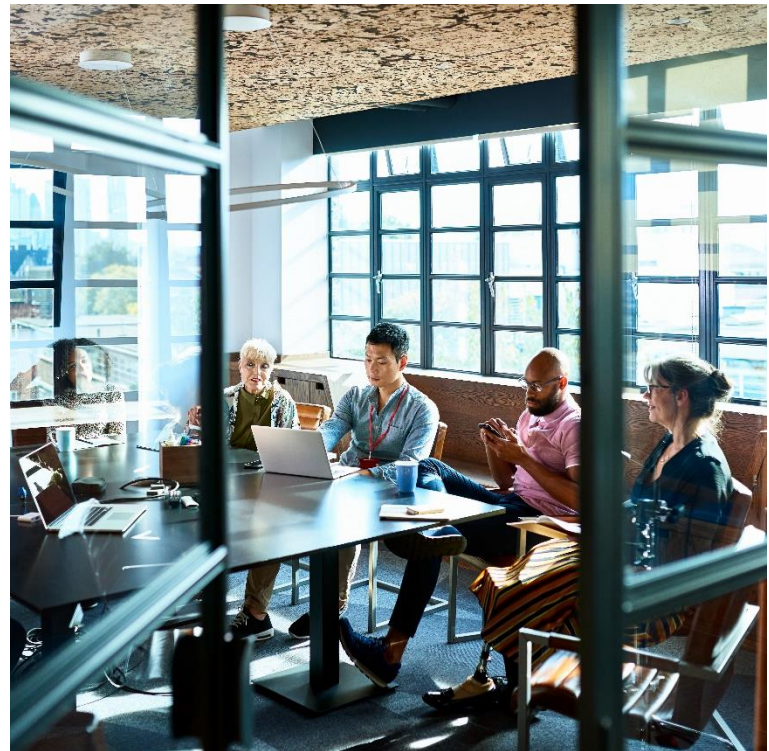
Oregon Department of Justice

Public Meetings Law



Who Does the Public Meetings Law (PML) Apply To?

- Governing bodies of public bodies.
- Advisory body or subcommittee of a public body if it has authority to make decisions for or recommendations to a public body on policy or administration.



What is a Governing Body?

- "**Governing body**" means the members of any public body consisting of *two or more members* with authority to:
 - Make decisions for a public body on policy or administration;
or
 - Make recommendations to a public body on policy or administration. ORS 192.610(3).

Type of meetings that must comply with the PML

- The convening of a governing body for which a quorum is required to make a decision or deliberate toward a decision on any matter. Includes:
 - In-person or phone meetings
 - Group email communications
 - “Serial” email communications
 - Lunch meetings
 - Phone calls
- The purpose of the meeting defines whether it must comply with the PML.



Basic Requirements of the PML

- Meetings must be open to the public unless executive session authorized
- Advance notice to interested parties of meetings, location, principal subjects
- Minutes must be taken at meetings or the meetings must be recorded
- Votes must be cast publicly and recorded; and
- Meetings must be accessible to persons with disabilities

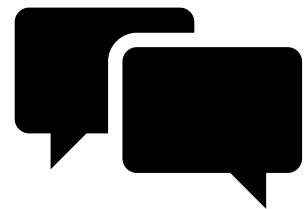
Minutes or Recording Required

- Must record (audio recording) or document in minutes:
 - Member attendance
 - All motions, proposals, resolutions and disposition
 - Results of votes and how each member voted
 - Substance of all discussions
 - Reference to all documents discussed (except for confidential records exempt from disclosure)
 - For emergency meetings, a description of the emergency justifying the meeting



Electronic Public Meetings

- Meetings may be held by phone or other electronic means, but all procedural and formal requirements for meetings apply (access by the public, minutes, notice, etc.).
- Except for executive sessions, public must be able to listen in real time to the meeting.
- Meetings may be conducted with some members of the governing body appearing at the meeting location while others attend electronically.



Public Vote Required

All official actions by a governing body must be taken by public vote.

The vote of each member must be recorded if the public body has 25 or fewer members.

If the public body consists of more than 25 members, recording the vote of each member is mandatory only if a member of that body requests it.

No voting in executive session.

Secret ballots are prohibited.

Serial/Private Communications



- A series of private communications, via email, for example, can violate the PML. The Oregon Court of Appeals has noted that a staff member's e-mails and phone calls with various board members deliberating towards the resolution of a public records request could be a violation of the PML.
- It is recommended that board members not meet in private to discuss business, or exchange private communications about business, even if those involved constitute less than a quorum.

Executive Sessions

- Notice of the meeting must cite specific legal provision authorizing the executive session under ORS 192.660(2).
- Before going into executive session, the presiding officer must announce the specific statutory authority for the executive session.
- Take minutes or record executive session but keep separate from general session minutes.
- Members of the media may attend executive session, with limited exceptions. News media must be instructed not to report about what happened at the beginning of executive session or they may do so.
- Discussions in executive session must stay within the bounds of the specific purpose of the executive session.
- No final action or final decision can be made in executive session. ORS 192.660(6).





Public Records Law

Oregon Public Records Law (PRL)

- General expectation that government will be transparent.
- Government records are available to the public.
- There are exceptions to this “openness” but laws exempting records from disclosure under the PRL are construed narrowly.
- Public Records Law: ORS 192.311 - 192.478.
- The Oregon version of the federal Freedom of Information Act (FOIA).

Who Can Make a Public Records Request? (PRR)



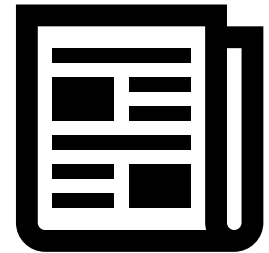
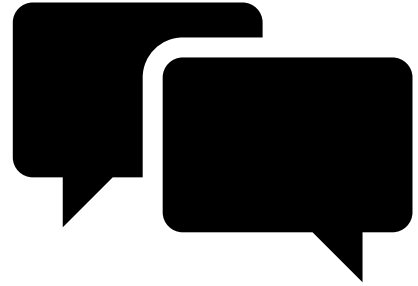
- Every “person” has the right to inspect any non-exempt public record of a public body of this state.
- “Person” includes:
 - Natural person (you and me)
 - Corporation
 - Partnership
 - Firm
 - Association
 - Member or committee of the Legislative Assembly

What is a Public Record?

- “[A]ny writing that contains information relating to the conduct of the public’s business that is prepared, owned, used or retained by a public body regardless of physical form or characteristics.”
- Includes records that were received from someone else.
- “Public record” does not include any writing that does not relate to the conduct of the public’s business and that is contained on a privately owned computer.”

ORS 192.311





What is a “Writing”?

Any information stored on
virtually any medium,
including voice mails, texts,
e-mail, photos.

Making a Public Records Request



A PRR can be in any format but the agency may require that it be in writing.



Agencies must make a written procedure for making a PRR available to the public.



<https://www.oregon.gov/oha/ERD/Pages/Records.aspx>.

Exemptions From Disclosure Under the PRA

Internal communications

- ORS 192.355(1)

Personal privacy

- ORS 192.355(2)

Information submitted in confidence

- ORS 192.355(4)

Disclosure prohibited under state or federal law

- ORS 192.355(8) and (9)



Public Records Retention

- Definition of “public record” differs slightly from what a “public record” is for purposes of the PRL (it’s narrower).
- For purposes of retention, the public record must be necessary to satisfy the fiscal, legal, administrative or historical policies, requirements or needs of the agency, in order for the retention requirement to apply.

ORS 192.005

What Public
Records Have
to Be
Retained

Public Records Retention Schedules

- Public records must be retained for a period determined by the applicable retention schedule. ORS 192.105; ORS 192.108.
- Retention schedules are set by the State Archivist within the Secretary of State's Office.
- Example: Oregon Public Health Advisory Board Meeting Records:
 - (a) Retain meeting minutes, agendas and exhibits permanently, transfer to State Archives after 5 years
 - (b) Retain all other records 10 years, destroy

How to Retain

- Archive emails if automatically deleted after certain period of time.
- Print and retain in file.
- Some types of records may be challenging to retain in their original format (e.g., text messages and social media posts). These may be copied and printed.

Penalties

- Knowingly destroying public records without authorization is a class A misdemeanor.



Oregon Ethics Law

- The Oregon Government Ethics Law is a code of ethical conduct for persons who serve public bodies in Oregon. ORS 244
- The Oregon Government Ethics Commission enforces the law.

What is the Oregon Government Ethics Law?

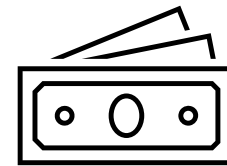
Who does the ethics law apply to?

- All “public officials.”
- “Public official” includes any person who is serving the State of Oregon as an elected official, appointed official, employee or agent, irrespective of whether the person is compensated for the services. ORS 244.020(15).



Basic Requirements of the Ethics Law

- A public official may not use or attempt to use official position or office to:
 - Obtain financial gain
 - Avoid financial detriment for the public official
- Prohibition applies to financial gain or avoidance of financial detriment for relatives, members of the public officials' household, or businesses with which the public official or a relative or member of the household of the public official is associated.
- Must consider whether the financial gain or avoidance of financial detriment would not otherwise be available but for the public official's holding of the official position or office.



Conflicts of Interest

- **Actual conflict of interest** = Any action, decision or recommendation by a person acting in a capacity as a public official, that is to the private pecuniary benefit or detriment of the person, the person's relative, or any business with which the person or a relative of the person is associated unless the pecuniary benefit or detriment arises out of the circumstances of a potential conflict of interest.
- **Potential conflict of interest** = Any action, decision or recommendation by a person acting in a capacity as a public official, that could be to the private pecuniary benefit or detriment of the person, the person's relative, or a business with which the person or the person's relative is associated, unless the pecuniary benefit or detriment arises out of the following:
 - An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.
 - Any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or the person's relative is associated, is a member or is engaged.



Declaring Conflicts

- If a member of the board has an actual or potential conflict of interest the member must:
 - If it's a potential conflict of interest, announce publicly the nature of the potential conflict prior to taking any action; or
 - If it's an actual conflict of interest, announce publicly the nature of the actual conflict and:
 - (A) Except as provided in (B) refrain from participating as a public official in any discussion or debate on the issue out of which the actual conflict arises or from voting on the issue.
 - (B) If the member's vote is necessary to meet a requirement of a minimum number of votes to take official action, be eligible to vote, but not to participate as a public official in any discussion or debate on the issue out of which the actual conflict arises.
- When a board member gives notice of an actual or potential conflict of interest, OHA shall record the actual or potential conflict in its official records.
- ORS 244.120, 244.130



Questions?

PLANNING COMMISSION ISSUES LIST as of 05/21/24

Item #	Description	Assigned	Due Date	Status
1	Schedule next training session	KG		03/12: KG to talk to Hui about guidance on best practices to update Comp Plan. 02/23: Coordinate with Hui on next topic(s) and date.
2	Complete Wetland Inventory	KG		05/21: KG contacted by State Lands. We are next in line for review. 04/16: KG sent email to State for update. 04/09: No update. 03/12: No update from ODSD. Link to State Lands Inventory to be added to links page. 02/23: Pending response from ODSD.
3	Continue Implementation of Yachats Parking Mgmt Plan	LD		05/14: Public works to provide city with update. 04/16: LD to meet with Public Works tomorrow for update. 03/19: LD sent email and will meet with Public Works to discuss. 03/12: Public Works will probably implement portions of the plan at a time. LD to meet with Public Works to discuss next steps.
4	Obtain City Council approval of updates to Title 9			5/21: Final draft approved by commission. KG to advise DLCD of changes. 05/14: At DLCD for review. Completed review of draft with PC today. Final review 05/21. Postponed public meeting to 07/16. 04/09: Waiting on marked up version. Review in 05/14 Work Session. Present in public meeting 06/18. 03/12: PC members to review and familiarize themselves with content. Need review schedule added to application. KG to put out marked up version. 02/23: Need review by DLCD.
5	Amend Title 9 for Housing Implementation Plan			05/21: Will start review of Plan for new commissioner in 06/11 meeting. 05/14: Funding for implementation approved by state. Waiting to see review scope of work document from Cascadia Partners. Will review plan with PC. 03/12: Waiting to see if 2024 State budget contains money to fund another round of grants. KG to check if what other communities. 02/23: Determine if there will be a next round of DLCD funding. Contact Cascadia Partners to get estimate of cost of hiring them to complete task. have made changes for HIP.

6	Revise/update City Comprehensive Plan			03/12: PC to wait on #1, #5 or #8 before proceeding. 02/23: Commissioners to review existing and prioritize which section(s) to work on.
7	Update application fees	KG		03/12: Bobbie committed to meet with KG soon. 02/23: KG to meet with Bobbi to set fees.
8	Ordinance for ADU's			05/14: On hold to see if can be included with HIP. Collecting information from various sources. 04/09: Present concept in public forum prior to writing ordinance. 03/12: KG to look at getting copies of Waldport ordinance as well as relevant parking ordinances.
11	Consolidate minor updates to ordinances			04/16: Minor error in Fences and Hedges standard pointed up need to identify and consolidate into one list other minor changes/corrections to ordinances. KG to retrieve existing list for review.

CLOSED PLANNING COMMISSION ISSUES

9	Add to Urban Growth Boundary			4/09: State passed legislation allowing for increase of UGB up to 50 acres with reduced requirements. Should city pursue? With no expressed need to expand, decided not to pursue. CLOSED
10	Credit at COG			05/14: With state funding for HIP and money in budget from planning consultation, will not need COG. CLOSED. 04/09: City has credit at COG for possible consultant. Could we use for HIP? Bobbi to look into this. May not be that straightforward.