

Special committees are established to study and make recommendations to the whole council on specific problems or decisions. They cease to exist after they have completed their assignments. Examples of special committee assignments might include site investigations for a proposed public facility or study of a proposal to consolidate the police and fire departments.

The power to establish and appoint committees may be fixed by charter. The Model Charter for Oregon Cities prepared for LOC by Thomas Sponsler, Beery Elsner Hammond (2004) provides that the mayor “appoints members of commissions and committees established by ordinance or resolution.” In the absence of a charter provision, the council is free to create its own procedures. However, committees are subject to the same open meeting laws and requirements as the council (see Section D, below).

## D. COUNCIL MEETINGS

### PUBLIC MEETINGS LAW

[ORS 192](#)

Oregon's Public Meetings Law, ORS 192.610 to 192.710, requires that decisions of public bodies be arrived at openly and, to that end, gives members of the public the right to attend all meetings of governing bodies at which decisions about the public's business are made or discussed, with a few specific exceptions. In addition, a city charter or local ordinances may contain provisions which regulate open meetings.

**GOVERNING BODIES SUBJECT TO THE PUBLIC MEETINGS LAW A** governing body is defined by the Public Meetings Law as a deliberative body of a governing body such as a city that consists of two or more members who have the authority to make policy or administrative decisions or recommendations for the city. This includes all city councils, as well as planning commissions, budget committees, library boards, citizen advisory committees, council committees, and others, whether their functions are to make decisions or are purely advisory and only make recommendations. Ad hoc committees of department heads or other informal groups will generally not be subject to the Public Meetings Law, but it is always wise to consult the Public Meetings Law directly beforehand to make sure.

**MEETINGS SUBJECT TO THE PUBLIC MEETINGS LAW** The Public Meetings Law applies when a quorum of a governing body subject to the law convenes on any matter to conduct public business. Public business is conducted whenever the public body discusses any policy or administrative matters that pertain to the city, make a decision, or deliberate toward a decision on those matters.

A public meeting may be held using different forms of technology such as the telephone, email or newer forms of electronic communications such as texts. Care must be taken so as not to inadvertently hold a public meeting, through the use of electronic communications, such as chat rooms or even e-mail which can easily happen if a quorum of city councilors are discussing a city matter preliminary to making a decision. The best practice is to limit such communications to among fewer than a quorum of the public body. If the public body desires to hold a public meeting by telephone conference call or other form of electronic communication, arrangements must be made for the public to hear what is said, such as attaching speakers to the telephone system. It may be more difficult to meet the requirements of the public meetings law for meetings using other forms of electronic communication until that form of communication can be made available to the public.

Note that although judicial proceedings and state agency contested cases (as defined by state law) are not subject to the Public Meetings Law, a quasi-judicial proceeding (see [Section E](#), below) conducted by a city council, such as a hearing and deliberation on a zone change, is not exempt from the open meeting requirements because it is not considered a judicial proceeding, and land use decisions are required to be made in public.

**LOCATION AND NOTICE REQUIREMENTS** In addition to the basic requirement that governing body meetings be open to the public, meetings may not be held at a place where discrimination on the basis of race, color, sex, age or national origin is practiced. In addition, meetings are to be held at a place accessible to the disabled, and a good faith effort to have an interpreter available for the hearing impaired when requested to do so should be made. Smoking is prohibited at public meetings.

In general, meetings may not be held outside the city limits, although there are some exceptions to that rule. One exception is for training sessions, so long as no public business is discussed or conducted. Another exception is for joint meetings between public bodies. In that case, the meeting must be held within the geographic boundaries of the area over which one of the bodies has jurisdiction, or at the nearest practical location.

Except in emergencies, reasonable notice of the time and place of any public meeting must be provided to the public. Reasonable notice is at least 24 hours; fewer than 24 hours notice may be provided only in cases of emergency in which case notice must be provided as soon as practicable.

The notice must include a list of the principal subjects to be discussed and must identify any matters to be taken up in executive session. However, additional subjects not anticipated or listed may be considered at the meeting. The notice must be given to the “interested persons including news media that have requested notice.” Because unintentional violations

of open meeting requirements may strain relations with the media, councils should be especially careful to make sure that media receive notice of all meetings, including executive sessions.

**MINUTES** Written minutes of all meetings are required, ORS 192.650, except that executive sessions may be just tape recorded. The written minutes serve as a source of information for the governing body and the public. Minutes of a council meeting validate or prove that ordinances and other actions have been approved. Minutes are always available to the public under the Public Records Law. ORS 192.410 to 192.505. The minutes must be approved at a subsequent meeting of the public body, subject to any corrections.

Minutes generally include a record of what took place, but not every word that was said. Speeches, statements or discussions are not ordinarily transcribed verbatim, except when the information is necessary to understand what took place. Some council rules or policies may provide for more detailed information in written minutes.

The written minutes and contain the following minimum information: (a) members present; (b) motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition; (c) results of all votes; (d) the substance of any discussion on any matter; and (e) a reference to any document discussed at the meeting. For a meeting called with less than 24-hour notice, the minutes must also describe the emergency justifying the short notice.

The city clerk or recorder is usually responsible for recording, indexing and storing council minutes.

**EXECUTIVE SESSIONS** Closed-door executive sessions are authorized in limited and specifically identified circumstances. No final action may be taken at these meetings and the media generally cannot be excluded from attendance.

Executive sessions may be held to discuss certain matters specified by law, ORS 192.660, including:

- Initial employment of public officials and employees;
- Dismissal or disciplining of an officer or employee or performance evaluation of an officer or employee, unless the officer or employee requests an open meeting;
- Matters pertaining to the functions of a public hospital medical staff;
- Deliberations with persons designated to negotiate real property transactions;

[OAMR: City Recorders Procedures Manual](#)

[ORS 192](#)

- Deliberations with persons designated to conduct labor negotiations;
- Discussion of records that are exempt from public inspection (for these executive sessions, media may be excluded);
- Negotiations involving matters of trade and commerce when the unit of government is in competition with other areas;
- Legal rights and duties of a public body with regard to current litigation or litigation likely to be filed;
- Review and evaluation of an executive officer, public officer, employee or staff member, unless an open hearing is requested by the person being reviewed; or
- Negotiations regarding public investments.

Labor negotiations otherwise subject to the public meetings law may be held in executive session at the request of both sides.

Executive sessions must be noticed in the same manner as any other meeting as to time and place. However, in lieu of specific information regarding the subject matters to be discussed, the statutory authority for the executive session must be stated in the notice.

As noted above, representatives of the news media may attend executive sessions, (except those involving labor negotiations) but the council may direct them not to publish specific information. This is done by the presiding officer giving specific instructions to any news media in attendance at the beginning of the executive session. If, however, the news media reveal information obtained at an executive session, there is no legal sanction for the violation. The council may adopt rules regarding who qualifies as news media for executive session purposes, which is increasingly important in today's electronic information age amidst the proliferation of news sources.

During executive session, the public body may deliberate and discuss, but the Public Meetings Law prohibits it from making a final decision during an executive session. To take action, the public body must return to an open session.

Councilors should not disclose what was discussed in an executive session with persons who were not in attendance. Disclosure negates the public policy protections provided by the Public Meetings Law and may result in a waiver of any confidentiality privilege attached, such as with respect to discussions with legal counsel. Although nothing in the Public Meetings Law prohibits disclosure, the council's rules of procedure, city ordinances, or the city charter may prohibit disclosure and impose penalties ranging from public censure to loss of office. In addition, disclosure may violate an

individual's privacy rights, exposing the councilor and the city to liability. Willful disclosure for the purpose of harming another or for pecuniary gain could constitute an ethics violation or official misconduct. ORS 162.415, 162.425 and 244.040(4). Lastly, disclosure violates the trust and confidence of the public and other city officials in you and the council as a whole.

**ENFORCEMENT PROCEDURES** A person adversely affected by a decision of the governing body may file an action in circuit court claiming the governing body has violated the public meetings law. If the person bringing the action prevails in court, the governing body or its members individually may be liable for attorney fees. The court may issue an injunction to prevent further violations, or it may require the body to repeat the action that was the subject of the violation. Complaints alleging violation of the law may also be made to the Oregon Ethics Commission. Such complaints are directed to members of the body as individuals and are handled the same as ethics laws violations. For additional information on this subject, see [Chapter 4 – Ethics and Conflicts of Interest](#).

However, violation of the public meetings law does not necessarily make action of the governing body invalid. The law provides that a decision shall not be voided if the governing body reinstates the decision in compliance with the law. This means that, generally when a lawsuit is filed for a violation of the public meetings law, the result will be a court order requiring the governing body to comply with the law or a determination that the law does not apply. However, a court could void a governing body's action if after considering the circumstances, it concluded that other remedies would be inadequate because the violation was the result of intentional disregard, or willful misconduct of the members.

The policy statement of the law makes it clear that legal interpretations of close questions should be resolved in favor of public access to information.

[Example of Council Rules of Procedure](#)

LOC A-Z Index:  
Resources on Sample Rules, etc.

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## **RULES OF PROCEDURE**

Most city councils in Oregon have adopted resolutions or ordinances establishing rules of procedure for meetings. These rules are designed to promote efficiency and consistency in conducting council business and to avoid waste of council, staff and citizen time.

[ORS 192](#)

LOC A-Z Index:  
[Resources on Ordinance](#)

Rules commonly cover the time and frequency of meetings, order of business, method of designating the presiding officer and mayor pro tem, decorum and behavior, limitation of debate, voting, parliamentary procedure, preparation and distribution of agendas, and preparation of council minutes.

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## AGENDA

The agenda is a list of items of business to be considered at a specific meeting. The items on the agenda should follow the formal order of business prescribed in the council's adopted rules.

Essentially a tool designed to aid in transacting business expeditiously and fairly, the agenda also may be an effective public relations tool. For instance, the agenda may be written to give the background for at least the major items of business and may include some explanation of council rules and other information to help citizens understand council proceedings.

Responsibility for preparation of the agenda usually rests with the city clerk or recorder with the assistance of the city manager or administrative officer. The mayor or any councilor may have a matter placed on the agenda if that is permitted by the rules, and the agenda may be reviewed and approved by the mayor before it is distributed.

Relevant background material, reports, and supporting documents are prepared to aid councilors in analyzing matters on the agenda. The agenda and supporting material should be made available to councilors well in advance of meetings. In many cities the media also receive the agenda and related materials, so they can disseminate the information in the community. Agenda outlines, without background material, are normally posted at city hall and on the city's website in addition to being made available to the public at the meeting.

**CONSENT CALENDAR** Routine items of business that require a vote but are not expected to require discussion or explanation are often placed on part of the agenda called the consent calendar. They are voted on as one item and help to reduce the length of the agenda and the council meetings.

When the consent calendar is used there should be a note of explanation to the public, that items on the calendar are not discussed separately, because the procedure might be misunderstood by persons who are not familiar with the process. Cities that use a consent calendar provide in the council rules for transfer of items from the consent calendar to the regular agenda on request of a councilor or by vote of the council.

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## PARLIAMENTARY PROCEDURE

Parliamentary procedure is a set of rules that regulate and standardize the way deliberative bodies conduct business. They supplement and are subordinate to the rules of procedure established by statute, charter, ordinance or resolution.

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## E. PUBLIC RECORDS

The Oregon Public Records Law protects the public's right to information. Under these laws, the written record of public business is available to any person, regardless of the person's identity, motive, or need, with some important exceptions. Thus, a basic principle behind the Public Records Law is that the burden of proof regarding nondisclosure of a public record falls on the public body or public official, not on the person asking for the record. The exceptions to the Public Records Law are known as exemptions. Despite the lengthy catalogue of exemptions contained in the Public Records Law, the law must always be viewed in favor of disclosure, unless the law expressly prohibits disclosure.

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### PUBLIC BODIES COVERED BY THE PUBLIC RECORDS LAW

[ORS 192](#)

The Public Records Law, ORS 192.410 to 192.505, applies to all public bodies, including governing bodies, officers, departments, commissions, etc. Based on the above definition, all city councils are subject to the Public Records Law and the Law will by extension apply to all departments, committees and agencies of the city.

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### RECORDS COVERED BY THE PUBLIC RECORDS LAW

The Public Records Law broadly defines a public record to implement the policy that the Public Records Law is primarily a disclosure law. The definition of public record in ORS 192.410(4) makes it clear that the Public Records Law applies to all government records of any kind. A public record is "any writing that contains information relating to the conduct of the public's business . . . regardless of physical form or characteristics." ORS 192.410(4). A "writing" is also broadly defined to include all formats, from handwriting to electronic formats. ORS 192.410(6). Consequently, a public record includes handwritten notes taken at a council meeting, and all forms

of electronic communications, including e-mails, so long as the record contains information relating to the conduct of the public's business.

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## DISCLOSURE OBLIGATIONS AND PROCEDURES

Every person has a right to inspect any nonexempt public record, regardless of who they are or why they want to see the record. Thus, a city's disclosure obligation extends to any request regardless of the identity, motive, or nature, unless an exemption from disclosure permits consideration of those factors. [▲ Back to top](#)

Of course, city officials need not allow anyone to inspect every file in city hall and the Public Records Law allows the city council to adopt reasonable rules to protect the records and the continuing functioning of city government. It is also permissible to establish reasonable fees to reimburse the city for the cost of making records available, which can include personnel as well as copying costs. The Public Records Law provides, however, that any person may request a fee waiver which the city must grant if the public interest warrants doing so.

All governing bodies subject to the Public Records Law are required to designate a records officer and have a public records disclosure policy and in many cities, the city recorder is the public records officer. The public records disclosure policy will typically require that all public records requests be submitted to the records officer on a form provided by the city. The form will require the person requesting the disclosure to identify the records to be examined so they can be located and made available in a reasonable manner. The form will also ask if the person would like to simply inspect the records or receive copies. For large requests, the city will be required to provide a written estimate of the total fees and may require a deposit.

If the records contain both exempt and nonexempt material, the portions that are exempt may be deleted or redacted and the cost of doing so may be included in the fees charged.

A public records request is usually directed to the city, but there may be circumstances when it is direct to a public official, such as a city councilor. It is generally only appropriate to submit the request to a city councilor when the city councilor has custody of the record in question, in which case the city councilor will have the obligation to respond to the request. If the city has custody of the record, then it would be appropriate to direct the request to the city to respond to the request.

The city is required to provide a written response to all requests for disclosure of public records within a reasonable period of time after receiving the request. The response must provide a reasonable opportunity to inspect the requested nonexempt records, or provide the requested copies. The

contents of the response must meet the statutory requirements in ORS 192.440.

If the city denies access to a record or denies a fee waiver request, the requestor may petition the district attorney to issue an order reversing the city's denial. There is no statutory time limit within which the petition must be filed, although the statute does impose strict time limits on the city's response to the petition. The decision of the district attorney may be appealed to the circuit court. If an elected official denies access to a record the requestor may bypass the district attorney and petition the circuit court directly. If the city loses at circuit court, the city will be ordered to pay the prevailing party's attorney fees and costs. Otherwise, there is otherwise no penalty for improper denial.

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## EXEMPTIONS

While there are many, the exemptions from disclosure under the Public Records Law are limited in nature and scope. These limitations flow from the emphasis on disclosure and open government. As a consequence, courts interpret public records law exemptions narrowly and presume that the exemptions do not apply. Even if a public record is exempt from disclosure, that does not prohibit the public body from disclosing the information, except for a few instances where the disclosure is prohibited by law. In most cases, the public body has discretion to disclose a record or information that falls into one of the exemptions under the law because an exemption means that the public body is not required to disclose it, not that it is required withhold disclosure. Finally since most exemptions are not stated in absolute terms, a case-by-case evaluation of the record request in light of the public interest of disclosure will need to be weighed against the interest in confidentiality.

Most of the exemptions under the public records law are contained in ORS 192.501 and 192.502. All of the exemptions in ORS 192.501 are considered conditional exemptions because the record may be withheld from disclosure "unless the public interest requires disclosure." The city's decision applying a conditional exemption must show why the need for confidentiality outweighs the public interest in disclosure. The conditional exemption list in ORS 192.501 includes records pertaining to litigation, trade secrets, criminal investigations, personnel examinations, private business operations, real estate appraisals (prior to acquisition or sale), employee relations, circulation of library books, collection agency investigations, personnel discipline actions, computer programs, and archaeological sites.

ORS 192.502 lists several additional conditional exemptions that conditionally exempt from disclosure such records as internal advisory communications, information of a personal nature, and confidential submissions. These records are exempt from disclosure only if the public

[ORS 192](#)

[ORS 192](#)

interest does not warrant disclosure but each exemption has its own slightly different test for evaluating public interest. The remainder of the exemptions in ORS 192.502 are stated in absolute terms and do not require a balancing of interests because the state legislature has already determined that the confidentiality interests outweigh public disclosure interests as a matter of law.

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As of January 1, 2012, records, communications and information received counties and cities in connection with applications for economic development funds, services, support or assistance are exempt from disclosure. However, records relating to those incentives become public after they are awarded. ORS 192.502.

In evaluating a conditional exemption, the identity of the person requesting the information and the circumstances of the request are *irrelevant* to the determination of whether the information fits within the category of the exemption, but may be relevant in weighing the public interest in disclosure.

Lastly, as noted above, if a record contains both exempt and nonexempt material, it may be appropriate to disclose only the nonexempt material.

## F. SAMPLE AGENDAS

### CITY OF X

#### Council Agenda/Meeting Procedures

January 1, 2050 - 7:00 p.m.

- I. Call to Order
- II. Roll Call
- III. Approve Minutes of meeting held 9 June 1986
- IV. Business from the City Recorder
- V. Business from Public Works Superintendent
- VI. Business from Police Chief
- VII. Business from Fire Chief
- VIII. Business from Audience
- IX. Correspondence:
  - a. Letter from Port of Umatilla (copy attached)
  - b. Letter from Anderson-Perry & Associates (copy attached)