

From the:

**STATE OF OREGON DEPARTMENT OF JUSTICE
ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS
MANUAL**

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**PUBLIC MEETINGS LAW APPENDIX J
FREQUENTLY ASKED QUESTIONS**

Q. May a three-member governing body meet with staff in carrying out its administrative functions, without complying with all the notice and other requirements of the Public Meetings Law?

A. If the governing body is meeting in order to obtain information on which it later will deliberate, or to deliberate or decide on substantive matters, it must comply with the notice, public attendance and recordkeeping requirements of the Public Meetings Law.

Q. As a member of a three-member governing body, must I notify the press and public and arrange for their attendance every time I drop into a colleague's office or make a telephone call to another member?

A. Yes, if you discuss the business of the governing body. The law requires that the public have access to any meeting of a quorum of a governing body of a public body when the governing body meets to gather information on which it will later deliberate, or to deliberate or make a decision on any matter of policy or administration.

Q. Is a "retreat" of a governing body subject to the Public Meetings Law?

A. The answer depends on the matters discussed at the retreat. If the retreat is confined, for instance, to general principles of decision-making or personal interaction, the Public Meetings Law would not apply. However, if at the retreat the governing body deliberates toward or makes a decision on official business, or gathers information on which it later will deliberate, the meetings law applies. In addition, any retreat or training session that includes deliberations must be held inside the governing body's jurisdiction.

Q. What about a "retreat" for other employees and administrators of the public body attended by members of the governing body?

A. Such a "retreat" can be organized to avoid the meeting of a quorum of the governing body for the purpose of gathering information or deliberating toward decisions on matters within their responsibility, in which case the meetings law would not apply. However, it also is very easy for information gathering or policy deliberations by members of the governing body to occur, in violation of the Public Meetings Law.

Q. May a quorum of members of a governing body participate in a "community retreat" sponsored by a chamber of commerce?

A. Yes, so long as they avoid getting together as a group for any deliberations.

Q. What is a quorum?

A. The Public Meetings Law does not define quorum. It may be defined by city charter, rules of order or some other source. For public bodies, absent other controlling authority, a quorum is a majority. ORS 174.130. Even if a group decides to operate by consensus, the meetings law will apply if a quorum of the group's members are required to make a decision or recommendation. See also discussion of Quorum in Appendix C.

Q. Is an on-site inspection subject to the Public Meetings Law?

A. No. On-site inspections are not "meetings" subject to the meetings law.

Q. Does the Public Meetings Law apply to a chamber of commerce?

A. No.

Q. Is a people's utility district board subject to the Public Meetings Law?

A. Yes.

Q. How about an electric cooperative?

A. No. That is a private body.

Q. How about a nonprofit corporation that receives all of its funds from the state or local government?

A. No, unless it is formally acting as an advisory body to a public body or is required by contract to open its meetings. If the corporation is the "functional equivalent" of a public body, it may also be subject to the Public Meetings Law. See discussion of Private Bodies.

Q. Are homeowners associations and rental associations subject to the Public Meetings Law?

A. No.

Q. Are neighborhood associations subject to the Public Meetings Law?

A. It depends on whether the particular neighborhood association is a "governing body of a public body." Determining whether a neighborhood association is subject to the Public Meetings Law requires an analysis of several factors, including the specific responsibilities and authority of that particular neighborhood association. Notwithstanding the analysis under the Public Meetings Law, some cities require, as a condition of their recognition of a neighborhood association, that neighborhood association meetings be open to the public.

Q. Is an administrative hearing subject to the Public Meetings Law?

A. The deliberations of state agencies conducting contested cases in accordance with the Administrative Procedures Act, and of several specifically named agencies, are exempt from the meetings law. However, the information-gathering portions of the contested cases are subject to the meetings law if conducted by a governing body. Proceedings in the nature of contested cases conducted by local governing bodies are subject to the meetings law. Contested cases conducted by an individual

hearings officer are not subject to the law, because a hearings officer is not a governing body. See discussion of Statutorily Exempt Public Meetings.

Q. Does the Public Meetings Law apply to the Oregon legislature?

A. The application of the Public Meetings Law to the Legislative Assembly has not been directly addressed in an opinion by the courts or the Attorney General. However, the Oregon Constitution and rules of both chambers require that deliberations of floor sessions and committee meetings, but not caucus sessions, be open to the public and members of the media. See Letter of Advice, dated June 19, 1981, to Edward Fadeley, State Senator (OP-5206).

Q. How far in advance must a public body give notice of its regular meetings?

A. Far enough in advance reasonably to give interested persons actual notice and an opportunity to attend. Because the notice must specify the principal subjects to be covered, it must be given separately for each meeting even though the public and news media know that the body meets every Wednesday evening.

Q. Is a notice posted solely on a bulletin board sufficient?

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A. It is not. However, such a notice may be used with news releases and mailing lists to meet the notice requirements. See discussion of Notice.

Q. Must meeting notices be published as legal notices?

A. No.

Q. Does the Public Meetings Law notice requirement require the purchase of advertising?

A. No, it requires only appropriate notice.

Q. May a governing body issue a single notice for a "continuous session" that may last for several days?

A. Probably yes, if the body can identify the approximate times that principal subjects will be discussed.

Q. Must a notice be provided for a meeting that is exclusively an executive session?

A. Yes. The notice requirements are the same and must include statutory authority for the executive session.

Q. Is a media request to receive notice of any meetings sufficient to require notice of special and emergency meetings?

A. Yes.

Q. If a news medium requests notice of meetings, is it sufficient for that notice to be mailed "general delivery" to that news medium?

A. Probably yes, if mailed far enough in advance. It is up to the news medium to establish procedures to ensure that the proper person receives the notice. For a special or emergency meeting, a telephone call or a fax to a responsible person is advisable.

Q. Is a meeting without proper notice an illegal meeting?

A. A meeting without notice violates the Public Meetings Law. See discussion of Enforcement of the Law.

Q. Must a governing body notify the public when a meeting has been cancelled, for example, when bad weather requires a last-minute cancellation?

A. The Public Meetings Law does not require a governing body to notify the public when a meeting has been cancelled. Although not required, it is certainly appropriate for a governing body to notify the public that a meeting has been cancelled when it is feasible to do so.

Q. May governing bodies hold public meetings at a location outside of the geographic boundaries of their jurisdiction if there is no appropriate meeting site within their geographic boundaries?

A. The Public Meetings Law requires, with two exceptions, public bodies to hold meetings within their geographic boundaries, at their administrative headquarters or “at the nearest practical location.” The two exceptions are when a public body is meeting with another public body or with the elected officials of a federally recognized Oregon Indian tribe and the meeting is within the jurisdiction of that other body or tribe. If, for example, there was no available meeting place within a public body’s geographic boundaries or administrative headquarters, and the only alternative was to hold the meeting at someone’s home (which most likely would not meet the requirements of the Americans with Disabilities Act), it probably would be acceptable for the body to hold the meeting outside of its boundaries—provided the meeting is held at the “nearest practical location.”

Q. If during an executive session, the members of the governing body discuss matters outside its proper scope, what is the proper role of media representatives present? May they begin taking notes?

A. The Public Meetings Law does not prohibit media representatives from taking notes of executive sessions they attend, whether or not the discussion includes matters outside the lawful scope of the executive session. The law merely permits the governing body to require that specified information discussed during executive session not be disclosed. If the discussion exceeds the lawful scope of the executive session, media representatives freely may disclose matters outside the session’s proper scope. Nonetheless, it always is proper for those representatives politely to call the governing body’s attention to the fact that it has strayed from the specified subject or subjects to be discussed in executive session.

Q. May a governing body restrict the number of media representatives attending an executive session?

A. Perhaps. A governing body probably would be able to limit attendance to one representative of each medium wishing to be represented. The body should be able reasonably to limit total attendance to a number that would not interfere with its deliberations.

Q. May a reporter who has a personal stake in a matter, or who has a close relationship to someone who is personally interested, be excluded from an executive session?

A. With one exception, the law does not so provide. If the attendance of a reporter with *direct* personal interest would frustrate the purpose of the executive session, a governing body could justify barring the individual. A reporter's mere relationship to someone with a personal stake in the matter is probably not sufficient justification, but the employer news medium reasonably should comply with a request to assign a reporter other than, for example, a close relative of a property owner whose selling price is the subject of an executive session of a governing body that proposes to buy the property. The exception is for executive sessions held to confer with legal counsel about current litigation or litigation likely to be filed. The governing body must exclude any member of the news media if the member is a party to the litigation or is an employee, agent or a contractor of a news media organization that is a party to the litigation.

Q. May a governing body reviewing or evaluating a public employee's performance in executive session exclude the employee from attending?

A. If the public employee requests a public session, the meeting must be held in public, and the employee may not be excluded. If the employee makes no such request, then the employee may be excluded. Sufficient advance notice must be given to the employee to allow the employee to choose whether to request a public meeting.

Q. Must reporters be permitted access to executive sessions conducted by electronic conference?

A. Yes.

Q. May a governing body reach a decision in an executive session?

A. It may not reach a final decision, but it may informally decide or reach consensus. This is proper so long as the body goes into public session to act formally on the matter. See discussion of Executive Sessions, Final Decision Prohibition.

Q. What if the decision is to take no action? For example, a complaint with respect to a public official, informally concluded to be without sufficient merit to warrant discipline?

A. It is appropriate, but probably not required, to announce in public session that the matter was not resolved, that no decision was reached or that in the absence of a motion for action, no action will be taken. If, however, a final "no action" decision is made by vote of a quorum of a governing body, the decision must be made and announced in public session.

Q. If a city council meets in executive session to discuss litigation, must the council meet in public session to vote to file a lawsuit or appeal?

A. Yes. Final decisions must be made in public.

Q. Does the meetings law's smoking prohibition apply to executive sessions?

A. The prohibition applies if the executive session is held in the same room in which the public meeting later will continue. However, the executive session itself probably is not a public meeting and, if held in a separate room, is not covered by the prohibition.

Q. May I tape record a public meeting?

A. Yes. 38 Op Atty Gen 50 (1976). You may also videotape a meeting, subject to reasonable rules of the public body to avoid disruption.

Q. Must I inform the governing body before I tape record?

A. No. Although ORS 165.540(1)(c) prohibits the tape recording of conversations unless all the participants are specifically informed that the conversation is being recorded, subsection 6(a) of the statute specifically states that the prohibition does not apply to public or semipublic meetings.

Q. May a public body refuse to use a microphone during its public meetings?

A. The meetings law does not specifically address what steps public bodies must take to ensure that the general public can sufficiently monitor public meetings. However, ORS 192.630(5)(a) and the Americans with Disabilities Act imposes certain requirements on public bodies to ensure that their communications at public meetings with persons with disabilities are as effective as communications with others. See the discussion on Accessibility to Persons with Disabilities.

Q. Does the Public Meetings Law grant me the right to testify before a public body?

A. No, the Public Meetings Law only guarantees the public a right to monitor the meetings of public bodies; it does not grant members of the public the right to interact with public bodies during those meetings.

Q. May a person who has disrupted prior meetings, assaulted board members, etc., be excluded from a public meeting?

A. It is doubtful that a person may be excluded for prior conduct. The person who causes the disruption may be arrested for trespass.

Q. Are written minutes required?

A. Written minutes or a sound, video or digital recording is required for any meeting, including an executive session.

Q. What do I do when a public body's minutes are inconsistent with the notes I took during a meeting?

A. You should work directly with the public body to correct discrepancies that you believe exist in the minutes. In so doing, it may be useful to speak with other attendees to determine if your recollection is accurate. In addition, other attendees may be able to lend support if you have difficulty convincing the public body that the minutes are inaccurate.

Q. How can a suit be filed for a meetings violation?

A. A suit should be filed in circuit court. The timing of the suit depends on the relief sought, but no action under the meetings law may be commenced more than 60 days after the decision challenged became public record. A complaint for violation of the executive session provisions of the Public Meetings Law may be filed with the Oregon Government Ethics Commission.