

MEMORANDUM OF LAW

TO: City Council Candidates

FROM: Jonathan Kara, City Attorney

DATE: June 1, 2022

RE: **Public Meeting and Election Law Summary**

Public Meetings 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. The specific intent of the Oregon legislature when it adopted the Public Meetings Law (**PML**) was decisions of governing bodies be arrived at openly. All decisions must be made at a meeting and all meetings must be (1) open to and accessible by the public and (2) noticed accordingly (the so-called **PML formalities**).

Applicability

The PML applies to any governing body of a public body. Public bodies include the State of Oregon, any regional district, any municipal or public corporation or subdivision, or any agency of those entities, such as an advisory group, board, commission, committee, or council. If two (2) or more members of any public body have the authority to make decisions for or recommendations to a public body on policy or administration, they are a governing body under the PML.

Meetings

A *meeting* is defined as the convening of a governing body (i.e., the City Council) of a public body (i.e., the City of The Dalles) for which a quorum is required to decide or deliberate toward a decision on any matter. A meeting does not include any on-site inspection of any project or program. To comply with the PML, all meetings must meet the PML formalities.

If the Council meets solely for the purpose of receiving information to make a recommendation or decision, the PML applies. If the Council chooses to establish subcommittees which will investigate certain issues and prepare a report to the Council, the meetings of the subcommittees are subject to the PML.

Three (3) Councilors is sufficient to constitute a *quorum*. The PML does not forbid a chance or social meeting of the members of a quorum of a governing body. However, if three (3) or more Councilors happen to be attending the same social event, the members should avoid any discussion of the Council's business.

Generally, Councilors are free to contact a City staff member or another Councilor outside of a public meeting to discuss an item on an upcoming Council agenda. This general rule does not

apply to quasi-judicial matters, such as land use proceedings, which have their own unique set of administrative rules and procedures. Councilors should be aware their discussions outside of public meetings should not result in decisions being made outside of public meetings. If these discussions significantly impact how a Councilor may vote on a particular issue, a Councilor should disclose the substance of those discussions at a public meeting so the public can better understand the rationale for the decision.

Notice

The Council is required to give notice of its meetings reasonably calculated to give actual notice of the time and place for the meeting to interested persons, including news media which have requested notice. The notice must be given far enough in advance to give interested persons actual notice and an opportunity to attend (typically: ten (10) days). The notice does not have to be published as a legal notice.

Notice of any meeting must include a list of the principal subjects anticipated to be considered at the meeting. The agenda is not required to provide precise detail for each topic, but it should be sufficiently descriptive to allow interested persons an accurate picture of the agenda topics. The PML does not require every proposed item of business be described in the notice—under Oregon law, the list of principal topics shall not limit the ability of a governing body to consider additional subjects.

A special meeting of the Council requires least 24 hours' notice to Councilors, the news media which have requested notice, and the general public. In the event of an emergency, an emergency meeting can be called on less than 24 hours' notice, but an actual emergency must exist, and the minutes of the governing body must describe the emergency justifying less than 24 hours' notice. Special meetings are much more common than emergency meetings.

Attendance

In selecting a meeting site, the Council should meet where there is sufficient room to handle expected attendance. The meeting must be held at a location within the geographic boundaries over which the City has jurisdiction (typically: within city limits). The Council can hold a public meeting at a private place, such as a restaurant or a residence, if sufficient public notice is given and arrangements are made to take minutes of the meeting and provide for convenient public attendance.

The PML is a public *attendance* law, not a public *participation* law: the right of public attendance guaranteed by the PML does not include the right to participate by public testimony or comment. The Council may conduct a meeting without any public participation at its discretion. Consistent with the City Council Rules, the Mayor or Council President may regulate the order and length of public testimony and limit testimony to presentations of relevant points. Any person who fails to comply with reasonable rules of conduct or who creates a disturbance may be required to leave the meeting. Smoking is banned at public meetings.

Executive Session

The PML allows governing bodies to meet in executive session in certain, enumerated, and limited situations. An executive session is closed to the general public, but members of the news media are allowed to attend executive sessions, with certain limited exceptions. Oregon law provides certain specific reasons for executive sessions, such as deliberating with persons designated by the governing body to negotiate real property transactions or to consult with legal counsel. Permissible executive session topics are listed in ORS 192.660.

An executive session cannot be held for the purpose of taking any final action or making any final decision. The person presiding over the meeting must announce the statutory authority for the executive session before going into the closed session. A meeting solely consisting of an executive session may also be called. The same notice requirements apply for executive sessions and the agenda should set forth the statutory basis for the session but is not required to provide any further specifics of discussion.

Prior to beginning discussion at an executive session, the news media must be advised the discussion is *off the record*—if this announcement is not made, the proceedings can be reported to the public. Councilors must restrict discussion to the topic of the executive session and any extraneous matter may be reported by the news media.

Minutes

The PML requires written minutes be taken at all meetings. The minutes, at a minimum, must include the following:

- the members present;
- all motions, proposals, resolutions, orders, ordinances, and measures proposed and their disposition;
- the results of all votes, except for public bodies consisting of more than 25 members unless requested by a member of that body, and the vote of each member by name;
- the substance of any discussion on any matter; and
- subject to the Oregon Public Records Law, a reference to any document discussed at the meeting.

Minutes need not be a verbatim transcript and the meeting does not have to be recorded unless otherwise required by law. Executive session minutes may be kept in the form of a tape recording rather than written minutes.

Political Campaigning

Oregon law prohibits public employee involvement in promoting or opposing any political committee or any initiative, referendum or recall petition, measure, or candidate, while on the job during working hours. An elected official, such as the Mayor or a City Councilor, is not

considered a *public employee* for purposes of this prohibition, including a person who is appointed to fill a vacancy on an elected governing body. Generally, an elected City official could personally advocate for or against candidates or measures on the official's work time.

Members of the Council are free to communicate with their constituents about elections issues. However, it is important elected officials do not involve public employees when engaging in conduct during their regular working hours with the potential to be construed as supporting or opposing a candidate or a measure (e.g., writing letters or speeches, issuing press releases for the official, or preparing election reports or campaign related material).

City Councilors can vote as a body to support or oppose a measure and publicly discuss that vote. However, care must be taken not to involve public employee staff time in this area but staff can be used for ministerial functions like preparing minutes of the discussion or the resolution of opposition or support for the measure. Historically, the City Council has had a general policy of not taking positions on pending issues or measures on the ballot.