



## City of Gladstone Volunteer Orientation and Training January 28, 2020

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# Introduction and Overview

- Goals for tonight...
  - You don't need to be an expert
  - Try to gain tools to recognize issues
  - And then, ask for assistance!
  
- Discussion Topics
  - Authority
  - Public Meetings
  - Public Records
  - Government Ethics Laws
  - Political Activities



THANK YOU!



# Authority

- Remember You Can Act Only As A Body...
  - Generally speaking, neither the Charter nor the Municipal Code grant power to individual members of the City Council or boards and commissions to act on behalf of the City.
  - Members are expected to abide by the decisions of their body, whether or not the member voted on the prevailing side.
  - If an individual member is authorized to represent the City before the public or another government agency, the member must support and advocate for the official city position.
  - Personal opinions and comments should be expressed only if the member makes clear that they are acting in an individual capacity and not representing the City's position.



# Open/Public Meetings

- Generally
  - Under ORS 192.660 *et seq.*, elected and appointed officials must meet in public to make or deliberate towards decisions.
  - The purpose is to encourage transparency in government.
- Who is subject to the law?
  - A “governing body” of a public body.
    - City councils, county boards of commissioners, school boards, etc.
    - Planning commissions, park boards, subcommittees, etc.
    - Citizen groups formed to advise a public body.



# Legal Requirements

- Notice
  - Notice of time and place must be “reasonably calculated” to inform interested persons – usually at least 24 hours in advance.
  - Personal notice must be given to those who have requested it.
  - Principal subjects to be discussed.
    - Specific enough to permit a person to decide if they feel it is necessary to attend.
    - Public body is not precluded from considering additional items during the meeting.



# Legal Requirements

- Location considerations
  - Must be within jurisdictional boundaries, unless . . .
    - Attending a “training” where no deliberations will occur or meeting with another governing body
    - May conduct meeting by telephone or other electronic communication
  - Location must be of a sufficient size relative to expected interest in the meeting.
  - Location need not be held in a government building, but may not be held in a location where discrimination based on race, creed, color, sex, age, national origin or disability is practiced.
  - Must be accessible to persons with disabilities.



# Legal Requirements

- Voting
  - Votes must be tallied and attributed to each member of the governing body.
  - May use paper ballots, but cannot be secret.
- Minutes/recordkeeping
  - Minutes need not be verbatim, but must contain:
    - Roll call (including at executive sessions)
    - Motions, resolutions, actions, etc.
    - Results of votes
    - Substance of all discussions
  - Under some circumstances an audio or video record of the meeting will be sufficient instead of minutes.
  - Records of executive session discussion must be kept.



# What is a “meeting”?

- State law addresses public meetings in two ways:
  - All **meetings** of a public body must be in public
    - All meetings of the governing body of a public body shall be open to the public and all persons shall be permitted to attend any meeting except [Executive Sessions]. 192.630(1)
  - A quorum may not **meet** in private
    - A quorum of a governing body may not meet in private for the purpose of deciding on or deliberating towards a decision on any matter except for [Executive Sessions]. 192.630(2)



# What is a “meeting”?

- “Meeting” means the convening of a governing body of a public body for which a **quorum** is required in order to **make a decision** or to **deliberate toward a decision** on any matter.
- “Meeting” does not include any on-site inspection of any project or program.
- “Meeting” also does not include the attendance of members of a governing body at any national, regional or state association to which the public body or the members belong.



# What is a “quorum”?

- There is always some minimum number of members that must participate in order for a body to transact business. This is the quorum of the body.
- State law does not define “quorum” but rather defers to local law.
- Under GMC 2.10.050(3), “[a] majority of the voting members shall constitute a quorum for the conduct of business and concurrence of a majority of those members present shall be required to decide any matter.”
- Under GMC 2.10.030(4), “Unless otherwise specified, all boards, commissions and committees will consist of seven members.” So a quorum usually equals four voting members.



# What is a “meeting”?

- A gathering of less than a quorum of a governing body is not a “meeting.”
- Sub-committees of a body constitute governing bodies in and of themselves, and as such, the quorum would be a majority of the sub-committee.
- Remember, however, a quorum of a governing body may not **meet** in private for the purpose of **deciding on** or **deliberating toward** a decision on any matter.



## When does a body “meet”?

- In *TriMet v. Amalgamated Transit Union Local 757*, 362 Or. 484, 412 P.3d 162 (2018), the Oregon Supreme Court explained that it is possible for a “quorum of a governing body” to “meet” in violation of ORS 192.630(2), even if there is no “meeting”.
- The Court determined that persons comprising a governing body can “meet” even when not “convening a meeting.”
- In other words, members of a governing body may violate the Oregon Public Meeting Law’s prohibition on meeting in private even if a quorum never gathers contemporaneously.



# Serial Meetings

- Serial meetings occur when a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action takes place between a quorum of a governing body.
- This is true even though at no given time does a quorum of the governing body communicate contemporaneously about the topic in question.



# Public Meetings

- Executive Sessions:
  - Public bodies may meet in executive sessions only in specified situations.
  - An “executive session” is defined as “any meeting or part of a meeting of governing body that is closed to certain persons for deliberation on certain matters.”
  - The public body may hold an open session even when the law permits it to hold an executive session. A public body is authorized to hold closed sessions regarding the following subjects: Real Property Transactions; Exempt Public Records; Pending or Threatened Litigation; Employees; and Labor Negotiations.



# Public Meetings

- Executive Sessions:
  - No executive session may be held for the purpose of taking any final action or making any final decision.
  - The purpose of the “final decision” requirement is to allow the public to know the results of the discussions. Taking a formal vote in open session satisfies that requirement, even if the public vote merely confirms consensus reached in executive session.
  - If the body meets in executive session, members should attempt to provide direction or consensus to staff. All contact with other parties must be left to the designated staff or representative(s) handling the issue.
  - Unless required by law, no member of a board or commission should make public the discussions or information obtained in executive session.



# Public Meetings

- Executive Sessions:
  - Must follow specific procedures when going into executive session.
    - The person presiding at the meeting must announce the statutory authority for the executive session before going into closed session.
    - The body must announce if they plan to return to open session to take action.
  - Media permitted to attend in most situations but may not report – can use information to follow other leads though!



# Social Gatherings

- Can a quorum of a governing body meet in social settings?
- Yes, with a few caveats:
  - Must be purely social.
  - Governing body should avoid any discussion of official business.
  - At some point, such discussion may turn a social gathering into a meeting.
  - **Remember:** attendance at a conferences, trainings, etc. excluded from the definition of “meeting.”



# Control of public meetings

- Generally speaking, under state law, the public has a right to attend and observe but not participate in public meetings.
- Sometimes state law, municipal ordinances or the bylaws of a board or commission permit limited public participation, i.e., public comment period.
- Generally can establish time limits for public comment, but such standards need to be applied equally to all.
- May not remove a member of the public from a meeting unless you can clearly demonstrate the individual is disrupting the meeting in a manner that precludes your board or commission from conducting business.



# Public Meeting Best Practices

- Board/commission members should refrain from using the “reply all” function on emails.
- Board/commission members should refrain from “serial communications” via e-mail, telephone, face-to-face or even social media postings, such as Facebook.
- Board/commission members should not use staff or other individuals as intermediaries.
- Query...how to handle discussions with members of the community that could create a serial meeting...



# Public Meeting Take Away

- You should not make or deliberate towards making a decision with a quorum of your board or commission outside of a properly noticed public meeting.



# Public Records

- Oregon law requires both inspection and preservation.
- Public records include any “writing” containing information relating to the conduct of the public’s business.
- The term “writing” is defined expansively by ORS 192.410(6) to mean: handwriting, typewriting, printing, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, files, facsimiles or electronic recordings.
- May charge reasonable fees for inspection.
- Exemptions exist that permit City to keep certain documents confidential.



# Public Records

- City must follow record retention policy approved by Secretary of State archives division.
- Must keep one official copy of each record for applicable retention period.
- Destruction of public records in a manner inconsistent with the approved record retention policy is a criminal offense.



# Public Records

- Duty extends to elected and appointed officials, not just employees (which means social media posts and emails to home computers must be retained).
- Even after individual e-mail messages are “deleted” from an individual’s computer work area, the messages may continue to exist on computer back-up tapes for at least a short period of time. E-mails on back-up tapes remain public records. As with any public record, a public body must make all nonexempt e-mail available for inspection and copying regardless of its storage location.



# Public Records Take Away

- Make sure that at least one copy of any “record” you use related to your official capacity is being kept in accordance with the City’s record retention policy.



# Government Ethics

- Oregon's Government Ethics laws
  - The policy is “that service as a public official is a public trust, and that, as one safeguard for that trust, the people require all public officials to comply with the [the law]”
  - The law has various parts:
    - Abuse of Office
    - Reporting Requirements
    - Conflicts of Interest
    - Nepotism
    - Gifts
    - Use of Confidential Information
    - The Ethics Commission
    - Penalties



# Government Ethics

- Abuse of Office
  - Public officials may not use or attempt to use their position to obtain financial gain or avoid financial detriment that would not otherwise be available but for holding of the official position.
  - Applies to the public official and “relatives” and “members of the household” of the public official.
  - There are a variety of actions that a public official may take or participate in that could constitute the prohibited use or attempted use of the public official position. The use of a position could be voting in a public meeting, placing a signature on a government agency’s document, making a recommendation, making a purchase with government agency funds, conducting personal business on a government agency’s time or with a government agency’s resources [i.e. computers, vehicles, heavy equipment or office machines].



# Government Ethics

- Abuse of Office
- Relatives include:
  - ✓ the spouse, parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law of the public official;
  - ✓ the parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law of the spouse of the public official;
  - ✓ any individual for whom the public official has a legal support obligation; and
  - ✓ any individual from whom the candidate receives benefits arising from that individual's employment.
- Members of the household include any person who resides with the public official.



# Government Ethics

- What is a conflict of interest?
  - A conflict of interest arises when a decision or recommendation you are making **would or could** result in a “private pecuniary benefit or detriment” to you, your relatives, or a businesses with which either you or your relatives are associated. Conflicts of interest come in two forms – actual conflicts and potential conflicts.
- What is the difference between an actual and potential conflict of interest?
  - An actual conflict of interest arises when any decision or act by you **would** result in a “private pecuniary benefit or detriment” to you, your relatives or an associated business; while a potential conflict arises when a decision or act by you **could** result in such an outcome.



# Government Ethics

- Businesses with which a person is associated include:
  - A private business if: the person is a director, officer, owner, or employee or agent of the business; or if a person owns or has owned more than \$1000 worth of stock, equity interest, stock options, or debt interest of a private business in the preceding calendar year.
  - A publicly held corporation if: the person is an officer or director of the publically traded company, or if the person owns or has owned more than \$100,000 worth of stock in the preceding calendar year.
  - A business that is a “source of income” that produces 10 percent or more of the person’s total annual household income and the person is required to file an annual statement of economic interest.



# Government Ethics

- What do I do if I have a conflict?
  - For actual conflicts you must:
    1. publicly announce the conflict; and
    2. refrain from participation in any official action on the issue including **any discussion** of the matter.
  - For potential conflicts you must:
    1. publicly announce the potential conflict every time the issue arises; and
    2. after disclosure you may participate in any official action on the issue, **including discussions and votes.**



# Government Ethics

- Are there exceptions?
  - Nonprofits. The definition of a “business” does not include nonprofits where the associated public official receives no remuneration.
  - Class exception. Seek legal advice prior to relying on this exceptions.



# Government Ethics

- Gifts
  - The law prohibits public officials, relatives of public officials and members of a public official's household from soliciting or receiving any gifts over \$50 in a calendar year from any source that has, or could reasonably be expected to have, a legislative or administrative interest in the public official's decisions or votes.
  - Always look to source of the gift!



# Government Ethics

- Gifts
  - A gift is anything of economic value, but the definition excludes things such as:
    - gifts from relatives or members of the household of the public official;
    - gifts in the form of tokens, plaques, trophies or mementos with a resale value less than \$25; and
    - gifts received as part of one's private business, employment or volunteerism.
  - Several other exemptions from definition of gifts.



# Government Ethics

- Confidential Information:
  - Members of boards and commissions must keep all written materials provided to them on matters of confidentiality under law in complete confidence to insure the City's position is not compromised. No mention of the information read or heard should be made to anyone other than other fellow members, City staff participating in the matter, or the City Attorney's Office.
  - All public statements, information or press releases relating to a confidential matter will be handled by designated staff.
  - State law specifically prohibits public officials from attempting to use confidential information gained because of the position held or by carrying out assigned duties to further the public official's personal gain.



# Government Ethics Take Away

- Be on the look out for any actions you may take related to the City, whether in a personal or official capacity, that may affect the financial interests of you, your relatives, businesses with which either you or your relatives are associated, or members of your household.



# Political Activity

- ORS 260.432(1) states that a person - including public employers and elected officials - may not require a public employee to promote or oppose any political committee or any initiative, referendum or recall petition, ballot measure or candidate.
- ORS 260.432(2) states that public employees (including school administrators, city managers, police chiefs, etc.) may not be involved in promoting or opposing any political committee or any initiative, referendum or recall petition, measure or candidate “while on the job during working hours.”



# Political Activity

Under Oregon Law regarding political activity for public officials, **elected officials** (City Council) and **appointed officials** (all other board and commission members) are treated differently



# Elected Officials

- Elected Officials MAY:
- ✓ Advocate a political position at any time, including endorsement of candidates for public office
- ✓ Perform campaign activity at any time, but must exercise caution not to involve any public employee's work time
- ✓ Vote as part of City Council to support or oppose a measure, but must not use public employee staff time to assist with such activities, except for ministerial functions (such as the City Recorder's preparation of minutes reflecting the vote)
- ✓ Use their own designated public office space and equipment in advocacy activities, but only consistent with the City's otherwise applicable policies concerning use of public property and equipment.



# Elected Officials

- Elected Officials MAY NOT:
- ✗ Request a public employee—either on or off duty—to perform any political activity
- ✗ Have an opinion piece or letter advocating a political position published in a public entity’s newsletter or other publication produced or distributed by public employees.



# Appointed Officials

- Appointed Officials MAY NOT:
- ✘ Promote or oppose election petitions, candidates or measures while acting in their official capacity.
- ✘ Appointed officials are acting in their official capacity when they are:
  - At meetings of the board or commission;
  - Working on a duty assigned by the board or commission;
  - Working on a official publication for the board or commission; or
  - When appearing at an event in their official capacity.



# Appointed Officials

- Appointed Officials MAY:
- ✓ Use personal time to participate in volunteer political activity. (Appointed officials may want to keep a record of their time).
- ✓ Use their titles to engage in political activity as long as they are not acting in an official capacity (Appointed officials need to make clear that their title is being used for identification purposes only. Make a clear statement to this effect. Example: *Julie Smith, Board member – title used for identification only*)



# Political Activity

- When do the political activity laws kick in?
  - For initiative, referendum and recall petition efforts, as soon as a prospective petition is filed with the appropriate elections filing officer;
  - For ballot measures referred to the ballot by the City, as soon as the measure is certified to the ballot;
  - For candidate issues, as soon as the person becomes a candidate under the definition in ORS 260.005(1)(a); and
  - For actions related to a political committee, whenever the political committee is active



# Political Activity Take Away

- Except in limited situations that apply only to elected officials, do not engage in political activity in an official capacity and do not ask or require City staff to do so at all.



# Questions

- Please feel free to call or email with any questions or comments.
- Thank you!

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