

**PUBLIC RECORDS AND PUBLIC MEETINGS LAW SUMMARY
FOR
PORTLAND CHARTER REVIEW COMMISSION
2011**

A. OREGON’S PUBLIC RECORDS LAW

1. To Whom Does the Public Records Law Apply?

The Public Records Law applies to every public body, as defined by ORS 192.410(3), and includes the City and “any agency thereof” and that includes the City’s boards and commissions.

2. Presumption for Disclosure

“Every person has a right to inspect any public record of a public body in this state, except as otherwise provided....” ORS 192.420(1).

3. What is a public record?

“‘Public Record’ includes any writing that contains information relating to the conduct of the public’s business, ... used or retained by a public body regardless of physical form or characteristics.” (ORS 192.410(4)(a)).

“‘Writing’ means handwriting, 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.” (ORS 192.420(6)).

Note – this includes email if it discusses the City’s business.

4. Retention of Records

Once a record is created, a public body is responsible for retaining that record according to the retention schedules adopted by the body. The public body’s custodian of records is also responsible for making public records available upon request.

5. Use of home computers

Oregon’s public records laws apply to e-mail correspondence about city business among and between Charter Commission (Commission) members even when exchanged solely on their personal computers and to documents created by Commission members about the work of the Commission. As a result,

Commission members have a responsibility to ensure retention of such e-mails and documents.

Whether an e-mail or document contains information relating to the conduct of the public's business is case specific. Generally, if an e-mail or document discusses procedural or substantive aspects of the Commission's work, it will meet this test. A purely personal e-mail does not become a public record simply because it is sent by a public official. Whether the e-mail or document is prepared, owned, used or retained by a public body is also fact dependent. A document not in the possession of the government still can be a public record by virtue of being used or prepared by a public body.

What this means in practice is that if Commission members choose to use private computers to create Commission related documents or to correspond with one another regarding Commission business, they may be responsible for retaining the correspondence in accordance with city document retention schedules. Administratively, Commissioner Fritz's staff has been delegated the responsibility for retaining documents and e-mails that they send to and receive from Commission members. If there are e-mails among Commission members or other documents that staff does not receive, Commission members should retain them or provide copies to staff. Knowingly destroying public records can constitute a criminal offense. ORS 162.305.

6. Exemptions

State law provides that certain public records may be withheld from disclosure if they fall within a statutory exemption. Very few of these exemptions would apply to the Commission's work. Generally, exemptions do not prohibit disclosure; they allow the public body to decide whether to release a record. The presumption is in favor of disclosure and a requestor may challenge a public body's decision not to release a record.

7. Sources for More Information

- a. Assigned City Attorney Linly Rees
- b. Attorney General's Public Records and Meetings Manual (on-line)

B. OREGON'S PUBLIC MEETINGS LAW

1. Meetings Subject to the Law

Meetings of the Commission are subject to the public meetings laws.

“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 as otherwise provided [in the Public Meetings Law].” (ORS 192.630(1)).

- a. “Governing body”-- “the members of *any* public body which consists of two or members, *with authority to make decisions for or recommendations to* a public body or administration.” ORS 192.610(3) (Emphasis supplied).
- b. “Public Body”-- “the state, any regional council, county, city or district, or any municipal or public corporation, or any board, department, *commission, council, bureau, committee, or subcommittee, or advisory group or agency thereof.*” ORS 192.610(4) (Emphasis supplied).
- c. “Meeting” -- “the convening of a governing body of a public body *for which a quorum is required* in order to *make a decision or deliberate toward* a decision on any matter.” ORS 192.610(5)(Emphasis supplied).

2. Gatherings Exempt from the Law

‘Meeting’ does not include an on-site inspection of a project or program; attendance of members of a governing body at any national, regional or state association to which the public body or the members belong; or gatherings of a quorum of a board or commission where no official business is discussed.

3. Quorum Requirement

Under state law, eleven (11) members constitute a quorum of the Commission. If eleven members of the Commission get together and deliberate on official business, regardless of the setting, there is a violation of the public meetings law if the required notice was not provided. If there is a gathering of less than a quorum of the Commission, there is no public meeting. These rules apply to quorums of any subcommittees formed by the Commission as well.

4. Other Situations

Purely social gatherings of the Commission do not create a public meeting unless there is quorum and it decides to discuss matters relevant to its work. It is best not to discuss business at all during a social gathering.

If you have a quorum present, even if the sole purpose of the meeting is to gather information to serve as the basis of future decisions or recommendations, then it is a public meeting

In addition, electronic communication among a quorum of the Commission can constitute a public meeting, especially if the communications are sent within a short time frame.

5. What is required for a public meeting

- **Notice**

- Calculated to give actual notice to interested persons
- States time and place
- Lists principle subjects
- Special and emergency meetings have different requirements

- **Location**

Meetings of governing bodies of public bodies shall be held within the geographic boundaries of the area over which the public body has jurisdiction, at the public body's administrative offices (if any) or "at the other nearest practical location."

Must be at a place largest enough to hold the anticipated attendance and must be a place that does not discriminate on the basis or race, color, creed, sex, sexual orientation, national origin, age or disability. Site must be one that people with disabilities can access.

- **Public Attendance**

As a general rule, the right to know about and attend a public meeting does not include a right to testify. The public meetings law is a public attendance law, not a public participation law

- **Control**

The presiding officer is authorized to keep order at a meeting and, where there will be public participation, may determine the length of time people may speak and in what order the testimony will be taken.

- **Voting**

- All official action must be by public vote.

- No secret ballots.
- The vote of each member must be recorded unless there are 26 or more members.
- Written ballots are allowed but each ballot must identify the member voting and the vote must be announced.
- As a general rule, no proxy voting.
- No absentee voting. That is, no voting by a member who did not participate whether in person or electronically as by telephone.

- **Minutes**

There shall be sound, video, written notes or digital recordings of all meetings. These need not be verbatim but must “give a true reflection of the matters discussed at the meeting and the views of the participants.” ORS 192.650(1). There are minimum requirements for the minutes and these include who was present, the substance of discussion and the results of the vote.

6. Executive Sessions

An executive session is a meeting or portion of a meeting of a governing body that is closed to the general public. An executive session is not closed to the media. However, the governing body may require that the media not disclose specified information.

There are limited purposes for an executive session which include employment, employee discipline, labor and real estate negotiations, and consultation with legal counsel regarding current or potential litigation. A governing body may also go into executive session to consider records exempt from public inspection. For example, a governing body may meet in executive session to discuss written legal advice from counsel because the written advice is exempt from public inspection as a privileged document.

A governing body may not make a final decision in executive session. To make a final decision, the chair must continue the decision to a public meeting or call the executive session into open session. Preliminary determination of whether there is a consensus may occur in executive session but the final vote must be in open session. A governing body may not remain in executive session to discuss or deliberate on matters other than the matter for which the session was convened.