

MEMORANDUM

TO: City Council Candidates

FROM: Gene Parker, City Attorney

RE: Summary of Public Meeting and Election Law

Oregon law defines a “meeting” as “the convening of the 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”. A “meeting” does not include any on-site inspection of any project or program. In the absence of a special definition, a quorum is defined as a majority. For the City Council, three (3) members would constitute a quorum.

Under Oregon law, all meetings of the Council will be open to the public. Even if the Council meets solely for the purpose of receiving information in order to make a recommendation or decision, the public meeting law applies. If the Council chooses to establish subcommittees which will investigate certain issues and prepare a report to the Council, the meetings of the subcommittee are subject to the public meeting law.

The public meeting law does not forbid a chance or social meeting of the members of a quorum of a governing body. However, if three or more members of the Council happen to be attending the same social event, the members should avoid any discussion of official City business during such a social gathering.

As a general rule, Council members are free to contact a City staff member or another Council member, 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 rules and procedures. Council members should be aware that their discussions outside of public meetings should not result in decisions being made outside of public meetings. If these discussions significantly affect how a councilor may vote on a particular issue, the councilor should disclose the substance of those discussions at a public meeting so that the public can better understand the rationale for the decision.

The Council has adopted a policy concerning the use of electronic messages (emails). Under Oregon law, any exchange of emails between Council members which effectively would result in a decision concerning an issue, or where it appears that Council members are deliberating on an issue, or appear to be gathering information to engage in future deliberation on an issue, could be construed to constitute a public meeting. The use of email messages by Council members to engage in active deliberations or discussion, including the expression of opinions or the promotion and discussion of ideas related to a particular issue, is strongly discouraged.

The Council is required to give notice of its meetings which is reasonably calculated to give actual notice of the time and place for the meeting to interested persons, including representatives of the news media who have requested notice. The notice must be given far enough in advance to give interested persons actual notice and an opportunity to attend. 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 does not have to go into precise detail for each topic, but it should be sufficiently descriptive so that interested persons will get an accurate picture of the agenda topics. The public meeting law does not require that every proposed item of business be described in the notice. Under ORS 192.640(1), the list of principal topics shall not limit the ability of a governing body to consider additional subjects during the meeting.

A special meeting of the Council should not be called without at least 24 hours notice to members of the Council, 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. An actual emergency must exist, and the minutes of the governing body must describe the emergency justifying less than 24 hours notice.

In selecting a meeting site, the Council should meet where there is sufficient room to handle expected attendance, and the site must be accessible to disabled individuals. The meeting needs to be held at a location within the geographic boundaries over which the City has jurisdiction. The Council can hold a public meeting at a private place, such as a restaurant or a residence, as long as sufficient public notice is given, and sufficient arrangements are made to provide for convenient attendance.

Under Oregon law, the right of public attendance guaranteed by the public meeting law does not automatically include the right to participate by public testimony or comment. The Council may conduct a meeting without any public participation at its meetings, subject to the scheduling of a public hearing which ensures the right of the public to present testimony to the Council. The Council has established rules and procedures for public hearings, which regulate the order and length of public testimony and limit the 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.

The public meeting law allows governing bodies to meet in executive session in certain limited situations. An executive session is closed to the general public, but members of the news media are allowed to attend executive sessions, subject to certain exceptions. Oregon law provides certain 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.

An executive session cannot be held for the purpose of taking any final action, or making any final decision. If the Council reaches a consensus in executive session, the Council then will return to open session and take a formal vote to allow the public to know the results of the discussions in executive session. The person presiding over the meeting must announce the

statutory authority for the executive session, before going into closed session. A meeting that will be solely an executive session may be called. The same notice requirements apply, and the agenda should set forth the statutory basis for the executive session.

Prior to beginning discussion at an executive session, representatives of the media attending the session must be advised the discussion is off the record. If this announcement is not made, the proceedings can be reported. Council members must restrict their discussion to the topic of the executive session. Any extraneous matter could be free to be reported by the news media.

The public meeting law requires that written minutes be taken at all meetings. The minutes, at a minimum, must include the following:

1. The members present;
2. All motions, proposals, resolutions, orders, ordinances, and measures proposed and their disposition;
3. The results of all votes and, except for public bodies consisting of more than 25 members unless requested by a member of that body, the vote of each member by name;
4. The substance of any discussion on any matter; and
5. Subject to the public records law, a reference to any document discussed at the meeting.

Minutes need not be a verbatim transcript of what occurred during the meeting, 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.

ORS 260.432(2) provides that public employees 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. An elected official such as the Mayor or a City Councilor is not considered to be a “public employee” for purposes of ORS 260.432, including a person who is appointed to fill a vacancy on an elected governing body. This means that 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 that elected officials do not involve public employees in engaging in conduct during their regular working hours, that could be construed as supporting or opposing a candidate or a measure (such as writing letters or speeches, issuing press releases for the official or preparing election reports or campaign related material).

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

