

Public Meetings:

What Every Elected Official Needs to Know

INTRODUCTION

To ensure that the public is aware of the deliberations and decisions of governing bodies, as well as the information that forms the basis of those decisions, Oregon law contains a policy of open decision-making at the various levels of government.¹

The key requirements of the Oregon Public Meetings Law (OPML) include:

- ▶ Conducting meetings that are open to the public—unless an executive session is authorized;
- ▶ Giving proper notice of meetings; and
- ▶ Taking minutes or another record of meetings.

Further, the law imposes other requirements regarding location, voting and accessibility to persons with disabilities.

Please note that this article is not a substitute for legal advice, nor is it comprehensive. The OPML is quite complicated and public officials are encouraged to speak with their legal counsel for case-by-case advice.

ENTITIES SUBJECT TO THE PUBLIC MEETINGS LAW

Understanding which entities are subject to the OPML is critical for ensuring compliance with the provisions of the law. In short, the OPML applies to any (1) governing body of a public body, (2) when that governing body holds a meeting for which a quorum is required to make a decision or deliberate toward a decision on any matter. ORS 192.610(5); ORS 192.630(1).

The OPML applies to meetings of a “governing body of a public body.” A public body is the state, any regional

“A quorum may be subject to the public meetings law even if it does not engage in a formal ‘meeting’.”

council, a county, a city, a district, or any other municipal or public corporation. A “public body” also includes a board, department, commission, council, bureau, committee, subcommittee, or advisory group of any of the entities in the previous sentence. If two or more members of any public body have “the authority to make decisions for or recommendations to a public body on public body on policy or administration,” they are a “governing body” for purposes of the OPML.

MEETINGS SUBJECT TO THE PUBLIC MEETINGS LAW

Not every action that a governing body takes, of course, is subject to the OPML. The law defines a “meeting” as the convening of any of the “governing bodies” subject to the law “for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter.” Thus, the definition of a meeting has three elements: (1) the convening of a governing body; (2) for which a quorum is required; (3) to make a decision or deliberate toward a decision on any matter. The first of those elements was addressed in the previous section.

The term “quorum” is not defined in the OPML. For cities, quorum requirements are often set by charter, bylaws, council rules, or ordinance. A gathering of less than a quorum of a

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¹ ORS 192.160 establishes Oregon’s policy of open decision-making through public meetings:

“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. It is the intent of ORS 192.610 to 192.690 that decisions of governing bodies be arrived at openly.”

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An **executive session** is defined as “any meeting or part of a meeting of a governing body which is closed to certain persons for deliberation on certain matters.”

governing body of a public body is not a “meeting” under the OPML.²

Finally, staff meetings are typically not covered by the OPML, as they are usually held without a quorum requirement. A staff meeting called by a single official is not subject to the law because the staff do not make decisions for or recommendations to a “governing body.” Importantly, however, if a quorum of a governing body, such as a five-member commission, meets with staff to deliberate on matters of “policy or administration,” the meeting is within the scope of the OPML.

REQUIREMENTS OF THE LAW

The last two sections covered which entities are subject to the law, and what meetings of those entities trigger the OPML. This section addresses the substantive requirements of the OPML, including notice, space and location, accessibility, public attendance, control of meetings, voting, and minutes and recordkeeping.

2 In *Handy v. Lane County*, 274 Or App 644, 664-65 (2015), the Oregon Court of Appeals held that a series of discussions among a quorum of a governing body of a public body, even without a contemporaneous gathering of that quorum—a so-called “serial meeting”—could give rise to a violation of the prohibition set out in ORS 192.630(2). In other words, even in the absence of a formal “meeting” under ORS 192.630(1), a governing body of a public body could violate the OPML through a series of discussions among members of the governing body that added up to a quorum. On review, the Oregon Supreme Court held that the evidence in the case failed to show that a quorum of county commissioners did deliberate towards a decision, meaning there was not violation of the OPML, and thus the court declined to address the “serial meetings” issue raised by the Court of Appeals. See *Handy v. Lane County*, 360 Or 605 (2016). Recently, in *TriMet v. Amalgamated Transit Union Local 757*, 362 Or 484 (2018), the Oregon Supreme Court held that ORS 192.630(2)—which states that 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”—is broader than the requirement in ORS 192.630(1). In other words, a quorum of a governing body may be subject to the public meetings law even if it does not engage in a formal “meeting.”

Notice

The OPML requires that notice be provided of the time and place of public meetings, including regular, special and emergency meetings as defined in ORS 192.640. For regular meetings, notice must be reasonably calculated to provide actual notice to the persons and the media that have stated in writing that they wish to be notified of every meeting. Special notice requirements apply to executive sessions.

Space, Location, and Accessibility

For any meeting, the public body should consider the probable public attendance and should meet where there is sufficient room to accommodate that attendance. In the event of an unexpectedly high turnout, the public body should do its best to accommodate the greater number of people.

► Geographic Location

The OPML states that meetings of a governing body of a public body must be held within the geographic boundaries of the area over which the public body has jurisdiction, at its administrative headquarters, or at “the other nearest practical location.” In the case of an actual emergency necessitating immediate action, however, a governing body may hold an emergency meeting at a different location than one described in ORS 192.630(4).

► Nondiscriminatory Site

Governing bodies are prohibited from holding meetings at any place where discrimination based on race, color, creed, sex, sexual orientation, national origin, age or disability is practiced. A governing body may hold a meeting at a location that is also used by a restricted-membership organization if the use of the location by such an organization is not its primary use.

► Accessibility to Persons with Disabilities

The OPML imposes two requirements relating to accessibility to persons with disabilities (*see* ORS 192.630(5) (a)). First, meetings subject to the OPML must be held in places accessible to individuals with mobility and other impairments. Second, the public body must make a good-faith effort to provide an interpreter at the request of deaf or hard-of-hearing persons.

Voting

All official actions by a governing body of a public body must be taken by public vote. The vote of each member must be recorded unless the governing body has 26 or more members. Even then, any member of the governing body may request that the votes of each member be recorded. The governing body may take its vote through a voice vote or through written ballots, but ballots must identify each member voting and the vote must be announced. Secret ballots are prohibited. State law preempts any local charter or ordinance that permits voting through secret ballots.

Recorded or Written Minutes

The OPML requires that the governing body of a public body provide for sound, video or digital recording, or written minutes, of its public meetings. The record of the meeting—in whatever format—must include at least the following information:

- The members present;
- All motions, proposals, resolutions, orders, ordinances, and measures proposed and their disposition;
- The results of all votes and, except for governing bodies consisting of more than 25 members unless requested by a member of the governing body, the vote of each member by name;
- The substance of any discussion on any matter; and
- Subject to the Oregon Public Records Law, ORS 192.410 to 192.505, a reference to any document discussed at the meeting.³

Written minutes need not be a verbatim transcript and sound or video recordings need not contain a full recording of the meeting. Rather, the record must provide “a true reflection of the matters discussed at the meeting and the views of the participants.” The record must be made available to the public “within a reasonable time after the meeting.”

³ Note that reference to a document in meeting minutes does not change the status of the document under public records law. ORS 192.650(3).

ONLINE RESOURCES

LOC-TV: PUBLIC VS. PRIVATE MEETINGS

Do you know what qualifies as a public meeting? Confused about what's required under Oregon law? This training video answers those questions and others to help you ensure compliance with Oregon public meetings law.



LOC-TV: HOW TO DO EXECUTIVE SESSIONS RIGHT

This LOC-TV episode covers the basic guidelines for holding private meetings as a public body, known as executive sessions. Laws outlining approved topics, notice requirements, media attendance and procedural requirements are discussed, along with consequences and available resources.

Find LOC-TV episodes online at www.orcities.org/training/loctv.

EXECUTIVE SESSIONS

Governing bodies are permitted to meet in executive (closed) sessions in certain circumstances (*see* ORS 192.660). An “executive session” is defined as “any meeting or part of a meeting of a governing body which is closed to certain persons for deliberation on certain matters.”

Executive sessions are not the same thing as meetings that are exempt from the OPML. Indeed, an executive session is a type of public meeting and must conform to all applicable provisions of the OPML. Importantly, the authority to go into executive session does not relieve a governing body of its duty to comply with other requirements of the OPML.

Permissible Purposes

A governing body is permitted to hold an open meeting even when the law permits it to hold an executive session, but a governing body may only hold an executive session in certain

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circumstances. ORS 192.660 lists the circumstances in which a governing body may hold an executive session. Those purposes include:

- ▶ Employment of public officers, employees and agents;
- ▶ Discipline of public officers and employees;
- ▶ Performance evaluations of public officers and employees;
- ▶ Labor negotiation consultations;
- ▶ Real property transactions;
- ▶ Discussion of public records exempt from disclosure; and
- ▶ Discussions with legal counsel.

Final Decision Prohibition

The OPML provides: “No executive session may be held for the purpose of taking any final action or making any final decision.” Although a governing body may reach a final consensus in an executive session, the purpose of the final-decision prohibition is to allow the public to know of the result of any such consensus. A formal vote in a public session satisfies the requirement, even if the vote merely confirms the consensus reached in executive session.

Method of Convening an Executive Session

A governing body is permitted to hold a public meeting consisting of only an executive session. The notice requirements for such a meeting are the same as those for any other meeting (*see* ORS 192.640). In addition, the notice must cite to the statutory authority for the executive session.

Alternatively, an executive session may be called during a regular, special, or emergency meeting for which notice has already been given in accordance with ORS 192.640. The person presiding over the meeting must announce the statutory authority for the executive session before going into the executive session.

CONCLUSION

The OPML is an important, nuanced law. A single article cannot fully describe all of its provisions or how it applies in various factual circumstances. For more detail on the OPML, please see the Oregon Attorney General’s Public Records and Meetings Manual (2014), available at www.goo.gl/ikzw5B. ■

ONLINE RESOURCES

GUIDE TO EXECUTIVE SESSIONS (2017)

A comprehensive review of where, when and how cities may conduct executive sessions, complete with model forms and policies.

Available at: www.goo.gl/HFgDce.



HANDLING DISRUPTIVE PEOPLE IN PUBLIC MEETINGS (2017)

A legal guide to help cities know their options for dealing with disruptive behavior. The guide covers when the public has a right to speak at public meetings, constitutional speech protections, and issues involved in removing someone from a council meeting.

Available at: www.goo.gl/rDpDGq.

MODEL RULES OF PROCEDURE FOR COUNCIL MEETINGS (2017)

A guide providing cities with a starting point in creating their rules of procedure, where required by the city charter, or where a council so desires.

Available at: www.goo.gl/zRt7of.

FAQ ON NOTICE REQUIREMENTS FOR PUBLIC MEETINGS (2017)

Answers to common questions about the notice requirements associated with public meetings.

Available at: www.goo.gl/qtLttE.