

A Quick Reference Guide to Oregon's Public Meetings Law

The Spirit of Oregon's Public Meetings Law

Understanding the letter of the Public Meetings Law is critical. Equally important is understanding and committing to the spirit of that law. Public bodies should approach the law with openness in mind. Open meetings help citizens understand decisions and build trust in government. It is better to comply with the spirit of the law and keep deliberations open.

Oregon's Public Meetings Law

"Open government" or "sunshine" laws originally were enacted nationwide in the early 1970's because of growing public unhappiness with government secrecy. As a result, every state and the District of Columbia enacted laws requiring government to conduct its business openly, rather than behind closed doors.

Open government laws benefit both government and the public. Citizens gain by having access to the process of deliberation -- enabling them to view their government at work and to influence its deliberations. Government officials gain credibility by permitting citizens to observe their information-gathering and decision-making processes. Such understanding leads to greater trust in government by its citizens. Conversely, officials who attempt to keep their deliberations hidden from public scrutiny create cynicism, erode public trust and discourage involvement.

Policy

Oregon's Public Meetings Law was enacted in 1973 to make sure that all meetings of governing bodies covered by the law are open to the public. This includes meetings called just to gather information for subsequent decisions or recommendations.

The law also requires that the public be given notice of the time and place of meetings and that meetings be accessible to everyone, including persons with disabilities.

The Public Meetings Law guarantees the public the right to view government meetings, but not necessarily to speak at them. Governing bodies set their own rules for citizen participation and public comment.

Government accountability depends on an open and accessible process.
• **Hardy Myers**
Oregon Attorney General

Who is Covered?

Because questions often arise about what groups must comply with the open-meetings law, it is useful to look at the definitions in the law. The law says that any "governing body" of a "public body" is required to comply. It offers these definitions:

- A "**public body**" is any state, regional, or local governmental board, department, commission, council, bureau, committee, subcommittee, or advisory group created by the state constitution, statute, administrative rule, order, intergovernmental agreement, bylaw or other official act.
- A "**governing body**" is two or more members of a public body

Example

- A school board must meet in public
- So must most advisory committees that the school board creates, such as a budget committee.
- But if the school board chair asks several business leaders to meet with him to discuss future building needs, that meeting may be held in private.

Private bodies, such as non-profit corporations do not have to comply with the open-meetings law, even if they receive public funds, contract with governmental bodies or perform public services.

Example

- A school district contracts with Blue Cross / Blue Shield to provide health insurance for district employees. The Blue Cross / Blue Shield board of directors is not required to meet in public.

Public agencies contracting with private bodies may require a private body to comply with the law for pertinent meetings. Federal agencies are not subject to Oregon's Public Meetings Law.

What is a Public Meeting?

A public meeting is the convening of any governing body for which a quorum is required to make or deliberate toward a decision on any matter, or to gather information. Decisions must be made in public, and secret ballots are prohibited. Quorum requirements may vary among governing bodies.

Example

- A county commission's goal-setting retreat is a public meeting if a quorum is present and they discuss official business.
- A training session for the commissioners is not a public meeting, unless a quorum is present and the commissioners discuss official business
- A staff meeting absent a quorum of commissioners, whether called by a single commissioner or a non-elected official, is not a public meeting.

Meetings accomplished by telephone conference calls or other electronic means are public meetings. The governing body must provide public notice, as well as a location where the public may listen to or observe the meeting.

Governing bodies must hold their meetings within the geographic boundaries of their jurisdiction. However, a governing body may meet elsewhere if there is an actual emergency requiring immediate action or to hold a training session, when no deliberation toward a decision is involved.

Example

- A library board is free to rotate meetings at different libraries in its district, but it may not meet outside its district.

Federal and state law requires that meetings be held in places accessible to individuals with mobility and other impairments

*'Information is power. Keeping meetings
and records open empowers citizens.'*

• **Phil Keisling**
Oregon Secretary of State
Honorary Co-Chair, Open Oregon

Notice of Meetings

Governing bodies must give notice of the time, place and agenda for any regular, special or emergency meeting.

Public notice must be reasonably calculated to give actual notice to interested persons and media who have asked in writing to be notified of meetings, and general notice to the public at large.

Governing bodies wishing to provide adequate notice should strive to provide as much notice as possible to ensure that those wishing to attend have ample opportunity -- a week to 10 days for example.

At least 24-hour notice to members of the governing body, the public and media is required for any special meeting, unless the meeting is considered an emergency meeting. Appropriate notice is required for emergency meetings and should include phone calls to media and other interested parties. Notice for emergency meetings must also cite the emergency.

A meeting notice must include a list of the principal subjects to be considered at the meeting. This list should be specific enough to permit citizens to recognize matters of interest. However, discussion of subjects not on the agenda is allowed at the meeting.

Example

- The State Board of Higher Education plans to discuss building a new college campus in Bend. An agenda item that says "Discussion of public works" would be too general. Instead, the agenda should say something like "Discussion of proposed Bend campus."

Executive Sessions

Governing bodies are allowed to exclude the public -- but generally not the media -- from the discussion of certain subjects. These meetings are called executive sessions.

Executive sessions may be called during any regular, special or emergency meeting. A governing body may set a meeting solely to hold an executive session as long as it gives appropriate public notice. Notice requirements for executive sessions are the same as for regular, special or emergency meetings. However, labor negotiations conducted in executive session are not subject to public-notice requirements.

Notice of an executive session must cite the specific law that authorizes the executive session. This authorization also must be announced before going into the executive session.

Governing bodies may formally specify that the media not disclose information that is the subject of the executive session. Governing bodies should not discuss topics apart from those legally justifying the executive session. Media representatives may report discussion that strays from legitimate executive session topics and are not required to inform the governing body when they intend to do so.

No final action may be taken in executive session. Decisions must be made in public session. If a governing body expects to meet publicly to make a final decision immediately after an executive session, it should try to announce the time of that open session to the public before the executive session begins.

Example

- City councilors meet in executive session to discuss the city manager's performance. A local reporter attends. During the meeting, the councilors discuss whether the city should put a bond measure on the next ballot. The reporter may write a story on the council's bond measure discussion, because that discussion was not allowed under the executive session rules. The reporter may not write about the city manager's performance.

Executive Sessions Criteria

Executive sessions are allowed only for very limited purposes.

Those include:

1. To consider the initial employment of a public officer, employee or staff member, but not to fill a vacancy in an elected office, or on public committees, commissions or advisory groups. These sessions are allowed only if the position has been advertised, standardized procedures for hiring have been publicly adopted, and the public has had an opportunity for input on the process. Executive sessions are not allowed to consider general employment policies.
2. To consider dismissal, discipline, complaints or charges against a public official, employee, official, staff or individual agent, unless that person requests a public hearing.
3. To review and evaluate the **job performance** of a chief executive officer, or other officer or staff member, unless that person requests an open hearing. Such

evaluation must be pursuant to standards, criteria and policy directives publicly adopted by the governing body following an opportunity for public comment. The executive session may not be used for the general evaluation of agency goals, objectives, programs or operations, or to issue any directive to personnel on the same.

4. To deliberate with persons designated to conduct **labor negotiations**. The media may be excluded from these sessions.
5. To conduct **labor negotiations** if both sides request that negotiations be in executive session. Public notice is not required for such meetings.
6. To consider **records that are exempt** by law from public disclosure.
7. To consult with counsel concerning **litigation** filed or likely to be filed against the public body. **Members of the media** that are a party to that litigation, or represent a media entity that is a party, may be excluded.
8. To consult with persons designated to negotiate **real property** transactions
9. To discuss **matters of trade** when the governing body is in competition with other states or nations.
10. To negotiate with a private person or business regarding **public investments**.
11. To discuss matters of **medical competency** and other matters pertaining to licensed hospitals.
12. To consider information obtained by a **health professional regulatory board** as part of an investigation of licensee or applicant conduct.

'Oregon needs to protect its tradition of openness.'

• **Dave Frohnmayer**
President, University of Oregon
Honorary Co-Chair, Open Oregon

Media at Executive Sessions

Media representatives must be allowed to attend executive sessions, with three exceptions. Media may be excluded from:

- Strategy discussions with labor negotiators
- Meetings to consider expulsion of a student or to discuss students' confidential medical records.
- Meetings to consult with counsel concerning litigation to which the media or media representative is a party.

A governing body may require that specific information not be reported by the media. This should be done by declaration of the presiding officer or vote. In the absence of this directive, the executive session may be reported. Any discussion of topics apart from those legally justifying the executive session may be reported by the media.

The media also is free to report on information gathered independently from executive session, even though the information may be the subject of an executive session.

Example

- A reporter attends the executive session on the city councilor's discussion of the city manager's performance. Afterward, the reporter asks a councilor what she thinks of the city manager's performance. She shares her criticism. The reporter may use that interview to develop a story, even though the reporter first heard the information at the executive session.

Minutes

Written minutes are required for all meetings, except tape recordings are allowed for executive sessions.

The meetings law says minutes must be made available within a "reasonable time" after each meeting, but does not specify the time. Generally, this time frame should not exceed three weeks. Minutes must be preserved for a "reasonable time". This is generally interpreted to be at least one year. Minutes of many governing bodies are subject to records retention schedules established by the State Archivist.

Minutes must indicate:

- Members present.
- All motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition.
The result of all votes by name of each member (except for public bodies consisting of more than 25 members). No secret ballots are allowed.
- The substance of discussion on any matter.
- A reference to any document discussed at the meeting.

Minutes are not required to be a verbatim transcript and the meeting does not have to be tape recorded unless so specified by law. Minutes are public record and may not be withheld from the public merely because they will not be approved until the next meeting. Minutes of executive sessions are exempt from disclosure under the Oregon Public Records Law.

Governing bodies are allowed to charge fees to recover their actual cost for duplicating minutes, tapes and records. A person with a disability may not be charged additional costs for providing records in larger print.

Enforcement

County district attorneys or the Oregon Attorney General's Office may be able to answer questions about possible public meetings law violations, although neither has any formal enforcement role and both are statutorily prohibited from providing legal advice to private citizens.

Any person affected by a governing body's decision may file a lawsuit in circuit court to require compliance with or prevent violations of the Public Meetings Law. The lawsuit must be filed within 60 days following the date the decision becomes public record.

The court may void a governing body's decision if the governing body intentionally or willfully violated the Public Meetings Law, even if the governing body has reinstated the decision in a public vote. The court also may award reasonable legal fees to a plaintiff who brings suit under the Public Meetings Law.

Complaints of executive session violations may be directed to the Oregon Government Standards and Practices Commission, 100 High Street SE, Suite 220, Salem, OR 97310, (503) 378-5105, for review, investigation and possible imposition of civil penalties.

Members of a governing body may be liable for attorney and court costs both as individuals or as members of a group if found in willful violation of the Public Meetings Law.