



**PORTLAND SCHOOL DISTRICT 1J
BOARD OF EDUCATION
PUBLIC MEETING NOTICE**

The Board of Directors of Portland Public Schools will hold a Training Session on the following date:

Date: Tuesday, July 25, 2017
Time: 5:15pm
Location: Mazama Conference Room
Blanchard Education Service Center
501 N. Dixon Street
Portland, Oregon 97227

The Session will include training on Oregon Public Meeting Law and Public Records Law

The Public is welcome to attend.

Portland Public Schools Nondiscrimination Statement

Portland Public Schools recognizes the diversity and worth of all individuals and groups and their roles in society. The District is committed to equal opportunity and nondiscrimination based on race; national or ethnic origin; color; sex; religion; age; sexual orientation; gender expression or identity; pregnancy; marital status; familial status; economic status or source of income; mental or physical disability or perceived disability; or military service.

This notice is provided in accordance with the
Oregon Public Meetings Law
Board Support Services
July 21, 2017

Chinese

學校翻譯委會

這通告有關波特蘭公立學校教育委員會.若閣下需要有關議會資料內容翻譯或通譯. 請聯絡以下的語言聯絡人員:

Russian

Это сообщение для проведения открытых совещаний Руководящего Совета Портленского государственного школьного округа. Если вам нужно, чтобы эта информация была переведена на ваш родной язык или вы хотите пригласить переводчика на это совещание, пожалуйста, позвоните:

Somali

Hadii aad u baahantahay turjubaan, ama in laguu turjubaano waxyaabaha looga hadlaayo kulanka dadweynaha iyo gudiga sare ee iskoolada Portland, fadlan la xariir:

Spanish

Aviso para la reunión pública de la Mesa Directiva del Distrito Escolar de Portland. La reunión se llevará a cabo en un lugar accesible para personas con discapacidad. Las personas que asistirán a esta reunión y necesiten interpretación favor de comunicarse por lo menos con 48 horas de anterioridad a fecha de la reunión, para poder hacer los arreglos necesarios. Personas que desean testificar ante la Mesa Directiva deben apuntarse en la lista para los comentarios públicos antes de que inicie la reunión.

Vietnamese

Lời Phủ Nhận Của Ban Điều Hành Giáo Dục

Đây là thông cáo về buổi họp công cộng của Ban Điều Hành Giáo Dục Sở Học Chánh Portland. Nếu quý vị cần thông dịch những tin tức này, hoặc cần thông dịch viên trong buổi họp, xin liên lạc:

Interpretation & Translation Services
(503) 916-3427

OVERVIEW OF THE OREGON PUBLIC MEETINGS LAW FOR SCHOOL DISTRICTS

Prepared by Jeffrey G. Condit, Miller Nash Graham & Dunn LLP

I. PUBLIC MEETINGS GENERALLY (ORS 192.610 TO 192.690)

A. General Rules.

1. All meetings of a governing body of a public body shall be open to the public. ORS 192.630(1).
2. No quorum of a governing body shall meet in private for the purpose of deciding on or deliberating toward a decision on any matter. ORS 192.630(2).
 - A “decision” means any determination on which a vote of the governing body is required, at any meeting at which a quorum is present. ORS 192.610(1).
 - Note that the law covers meetings at which decisions are made and meetings where the body is deliberating toward a decision. This has been construed by the Attorney-General to include virtually any discussion of any public business by a quorum.
3. School Districts are public bodies subject to the law. ORS 192.610(3).
4. ORS 192.620 establishes a presumption in favor of open meetings in cases of doubt. See Oregonian Publishing v. Bd. of Parole, 95 Or App 501, 769 P2d 795 (1989).

B. "Governing Bodies" Subject to the Law Includes More Than Just the School Board.

The law is applicable to any “governing body” of a public body, which is broadly defined as “the members of any public body which consists of two or more members, with the authority to make decisions for or recommendations to a public body on policy or administration.” (Emphasis added.) ORS 192.610(3)

1. Does this include any appointed subcommittees or ad hoc committees of the board? The answer is “yes” if the subcommittee has been authorized to make decisions or recommendations by vote. The answer is “no” if the subcommittee only has the authority to gather information for the full committee. 42 Op Atty Gen 187, 188 (1981).
2. Does this include a subcommittee appointed by an individual public official to advise that official? No, unless the public official must pass its recommendations on to a public body for final action. 44 Op Atty Gen 69

(1984).

C. Definition of “Meeting”.

A “meeting” is any convening of a quorum of a governing body which makes a decision or deliberates toward a decision on any matter. ORS 192.610(5).

1. Does this include social gatherings at which a quorum of members is present? As a general rule the answer is “no,” because it is the purpose of a meeting that triggers the law. Harris v. Nordquist, 96 Or App 19, 771 P2d 637 (1989). BUT if a quorum gathers together and starts deliberating on official business during the social gathering, a violation occurs. Attorney General Letter of Advice, 12/14/1988 (OP-6292).
2. Does this include purely informational meetings, goal setting sessions, or work sessions regarding public business? Yes. 38 Op Atty Gen 1471, 1474 (1977); Oregonian Publishing Co. v. Board of Parole, 95 Or App 501, 505-506, 769 P2d 795 (1989).
3. Does this include electronic communications among a quorum? Yes. ORS 192.670(1). There can be a problem with e-mail, particularly with “groups” and “reply all.”
4. Does this include training sessions on improving personal interaction among the governing body’s members? The Attorney General has opined that if the training session is carefully structured to avoid any discussion of official business, it is not covered.
5. The statute excludes from the definition of meeting any on-site inspection of any project or program, or the attendance of the members of a governing body at any national, regional, or state association to which the public body or the members belong. ORS 192.610(5).

D. Handy v. Lane County (Sequential Deliberations Among a Quorum is a Potential Violation).

In Handy v. Lane County, 274 OR 644, 362 P3d 867 (2015) rev. allowed, 358 Or 550 (2016), the court concluded that any private discussion by a quorum of a governing body of a decision that requires a vote of the governing body violates the Public Meetings Law, even if those conversations do not occur among a quorum at the same time.

1. Facts. The plaintiff, a former Lane County Commissioner, sued the county and three sitting commissioners for violating the Public Meetings Law with regard to a decision to release a letter pursuant to a public records request. The letter was from an attorney to the district attorney alleging that solicitation by the plaintiff of his client for funds to help him pay a debt to the county violated ethics and campaign finance laws. The

evidence in the record as to the "meeting" included a series of e-mails and phone calls among the county administrator and the three members of the five-member Board of Commissioners who constituted the agenda team.

2. Holding. The court determined that "meet," as used in ORS 192.630(2), was different from the defined term "meeting" in ORS 192.610(5). (The latter definition requires the "convening" of a quorum and thus would require the actual gathering of a quorum at the same time.) The court concluded:

"In short, the text, structure, context, purpose and history of the Public Meetings Law indicate that the prohibition in ORS 192.630(2) contemplates something more than just a contemporaneous gathering of a quorum. A series of discussions may rise to the level of prohibited 'deliberation' or 'decision;' the determinative factors are whether a sufficient number of officials are involved, what they discuss, and the purpose for which they discuss it—not the time, place, or manner of their communications." 274 Or App at 664-665.

3. The Supreme Court's Decision. The Court of Appeals decision was appealed to the Supreme Court, which accepted review but ducked the question on the merits. The Supreme Court concluded that evidence was insufficient to show that a quorum of the commissioners had actually deliberated on the decision, serially or not (It was the county administrator, not one of the other commissioners, that forwarded the e-mail string from two commissioners to the third commissioner, and the third commissioner did not respond on the merits). The Court therefore expressly declined to reach the issue of whether the Public Meetings Law applies to serial deliberations among a quorum.
4. Impact. The Supreme Court's decision legally vacated the Court of Appeals decisions, so it is no longer binding precedent. But because the Supreme Court's decision was not based on the merits of the Court of Appeals interpretation, the Court of Appeals and the lower courts are likely to follow the Court of Appeals interpretation unless and until the Supreme Court takes the matter up again. Our advice to clients is that unless you want to be the test case, you should follow Handy. After Handy, any attempt by a quorum of a governing body to deliberate on or orchestrate a decision that requires a vote of the governing body through one-on-one meetings or serial communications is now clearly a violation of ORS 192.630(2). What is much less clear is when that boundary is crossed. In Handy, the decision was discrete and the communications proximate. If Handy only applies to decisions that are pending before the governing body, then its reach is much more limited. The problem is that

many policy discussions can and frequently do evolve into decisions that require a vote. The court's decision indicates that the question turns on whether the topic could result in a decision and not on the timing of such discussions. If the topic is likely to involve or could lead to a future decision, then a governing body could get itself in trouble by serial discussions among a majority of its members. At some point it would seem that serial conversations would be too far apart in time and differ too greatly to be deliberations by a quorum on a decision. Unfortunately, as the dissent notes, "with unpredictable hindsight, a court can now conflate all the unwitting discussions together into one so-called 'sequential meeting.'" 274 Or App at 692.

5. Practice Tips.

- A board member should avoid communications with his or her colleagues outside of a public meeting if it involves a topic that will or could reasonably be expected to come before the governing body for a decision.
- Board members should avoid use of e-mail or texting to communicate about potential pending decisions because there is no way to control distribution once the member hits "send."
- If e-mail is used, beware of the "forward," "reply," "forward all," and "reply all" buttons and review all e-mail strings before hitting "send."
- When discussing business with a governing body colleague, remember with whom previously discussions have taken place regarding the matter and remind the colleague to be careful about with whom they discuss the same topic.
- Review the public body policies to determine or clarify which decisions have to be made by the vote of a governing body. For example, a decision to disclose a public record does not require a vote of the governing body under the Public Records Law (the fact that he county decided to take the matter to the board of commissioners for a vote was the determinative factor in Handy).
- Public body staff should be very careful not to become the conduit for communications among a quorum.

E. Public Meeting Requirements

1. **Location:** Meetings must be held within the geographic boundaries over which the governing body has jurisdiction, at the administrative headquarters of a public body, "or at the other nearest practical location." ORS 192.630(4). The only exceptions are training sessions at which no deliberations are held, joint meetings with other governing bodies, and

emergency meetings. Meetings cannot be held at any place which discriminates on the basis of race, creed, sex, sexual orientation, age, disability, or national origin. ORS 192.630(3).

2. **Conference calls.** Public meetings can be held by conference call. ORS 192.670. If the meeting is an executive session, however, the public body must make at least one place available for the public to listen to the conversation.
3. **Smoking prohibited.** Smoking is prohibited in a room “rented, leased or owned” by a public body where a public meeting is being held or will continue after a recess. ORS 192.710.
4. **Right to request interpreter.** An interpreter must be provided if one is requested by a hearing impaired person at least 48 hours in advance of the public meetings. ORS 192.630(5).
5. **No Public Right to Participate:** Under the Public Meetings Law, the right to attend does not include the right to participate.
 - The right to attend a public meeting does not include the right to disrupt or disturb a public meeting. Any person who fails to comply with reasonable rules of conduct or who causes a disturbance may be asked or required to leave, and upon failure to do so becomes a trespasser. State v. Marbet, 32 Or App 67, 573 P2d 736 (1978); July 13, 1983, Letter of Advice, OP-5468. Absent a present threat to disrupt the meeting, a person cannot, however, be excluded based on past behavior.
 - Although a presiding officer may place reasonable restrictions on the use of cameras, tape recorders, or other recording devices, the governing body may not issue a blanket prohibition against unobtrusive recording of a public meeting. 38 Op Atty Gen 50 (1976).
6. **Types of Meetings:** The Public Meetings Law provides for regular meetings, special meetings, emergency meetings, and executive sessions.
 - **“Regular meetings”** are the regularly scheduled meetings of the governing body.
 - **“Special meetings”** are ad hoc meetings called as needed. Special meetings may only be held with at least 24-hour advance notice to the governing body, the press, and the general public. ORS 192.640(3).
 - **“Emergency meetings”** are special meetings called with less than 24-hour notice. An “actual emergency” must exist and the minutes must explain why the nature of the emergency required a meeting with less

than 24 hours' notice. Finally, the governing body must give as much notice as is practicable under the circumstances.

- “**Executive Sessions**” (meetings closed to the public) are permitted under ORS 192 660. See Section II, below.

7. **Notice:** The governing body must provide for notice of public meetings which is “reasonably calculated to give actual notice to interested persons including news media which have requested notice.” The notice must include “a list of the principal subjects anticipated to be considered at the meeting,” but does not prevent the governing body from considering additional subjects. ORS 192.640(1).
8. **Minutes:** ORS 192.650 now requires written minutes or creation and retention of a sound, digital, or video recording of the meeting. Tapes or minutes have to be made available to the public “within a reasonable time after the meeting.” ORS 192.650. Draft minutes may not be withheld from public inspection pending approval.

Written minutes do not have to be a verbatim transcript, but must include the following information:

- A list of the members of the governing body present.
- The nature and disposition of all motions, proposals, resolutions, orders, ordinances, and measures proposed.
- The results of all votes by name, unless the governing body has more than 25 members. Secret ballots are not allowed. “Yay” and “nay” votes are allowed as long as it is clear who voted for what and that fact is recorded in the minutes. Voting by written ballot is also allowed as long as the ballots are signed and the votes are recorded.
- The substance of any discussion.

F. Consequence of Violation

1. **Decision voidable.** A decision made in violation of the Public Meetings Law is voidable. ORS 192.680.
2. **Curing the violation.** A decision made in violation of the Public Meetings Law can be reinstated by making the decision a second time in compliance with the law. A reinstated decision is effective from the date of the original decision. ORS 192.680(1).
3. **Willful misconduct or intentional disregard.** A decision cannot be reinstated if the violation was the result of intentional disregard of the law or willful misconduct by a quorum of the governing body. ORS

92.680(3). If a court finds willful misconduct, the members of the governing body are personally liable for attorney fees. ORS 192.680(4). In an earlier case involving Lane, the Lane County Circuit Court found three commissioners had willfully violated the Public Meetings Law by serially orchestrating a decision and required them to pay the County's and Plaintiff's attorney fees.

II. EXECUTIVE SESSIONS (ORS 192.660)

A. Permitted Purposes.

Executive sessions (meetings closed to the public) may be called to discuss a number of specified topics. The following arise most often in a school district context:

1. **192.660(2)(a) - Employment:** Allows executive session to consider the initial hiring of a public officer or employee, except elected officials or members of public committees. BUT, the public body may only consider employment of the chief executive officer in executive session if it has adopted the standards, criteria, and process for such employment in a public session and the public is allowed to comment. ORS 192.660(7)(d)(D). A governing body also may not use a chief executive officer evaluation for the purpose of discussing overall agency goals, objectives, operations, or programs.

Note: The Attorney General's office has concluded that the exception does not permit the discussion of salary in executive session.
45 Op Atty Gen 362 (1982).
2. **192.660(2)(b) - Employee Discipline:** Allows executive session to consider discipline of, or to hear complaints or charges against, a public officer or employee. BUT, if the employee requests an open hearing, the public body must hold such meeting in open session. The public body must give sufficient advance notice to the employee of their right to a hearing.
3. **192.660(2)(d) - Labor Negotiations Strategy:** Allows executive session to discuss contract negotiation strategy with designated staff.
4. **192.660(2)(e) - Real Property Transactions:** Allows executive session to discuss negotiating the sale, lease, purchase, or transfer of real property.
5. **192.660(2)(f) - Exempt Public Records:** Allows executive session to discuss any record exempt from disclosure pursuant to the Public Records Law (for example: Advice from counsel, personnel discipline records, medical records, student records, mental health files, etc.).
6. **192.660(2)(h) - Potential Litigation:** Allows executive session to consult

with legal counsel regarding pending litigation or “litigation likely to be filed.”

7. **192.660(2)(i) - Employee Performance Evaluations:** Covers employee performance evaluations. BUT:
 - As with Section 2(a), the standards, criteria, and policy directives used to review performance of officers must first be adopted in a public session.
 - As with (2)(b), if the employee requests an open meeting, the meeting must be open and the employee must receive advance notice of this right; and
 - The governing body may not use an evaluation of a public officer to evaluate or deliberate on general agency goals, objectives, or operations.
 - As with 2(b), the Attorney General has concluded that salary may not be discussed in executive session.
8. **192.660(2)(k) - School Safety Plans.** The 2015 Legislative Assembly amended ORS 192.660(2) to add meetings “[t]o consider matters relating to school safety or a plan that responds to safety threats made toward a school” to the list of meetings that may be held in executive session. ORS 192.660(2)(k). Oregon Laws 2015, chapter 421, section 2.
9. **192.660(3) - Labor Negotiations:** Labor negotiations must be held in open session unless a executive session is agreed to by both sides. Executive sessions for labor negotiations are not subject to the notice requirements of ORS 192.640.
10. **Other executive sessions (e.g. Student Expulsion):** Other statutes allow executive sessions on particular matters. For example, ORS 332.061 authorizes school boards to consider student expulsion in executive session.

B. Attendance at Executive Sessions.

A governing body may choose to allow any number of other specified persons to attend an executive session as it deems necessary to discussion. Barker v. City of Portland, 67 Or App 23, 676 P2d 1391 (1984).

C. Media Representation.

The media may attend all executive sessions except labor negotiation strategy sessions held pursuant to ORS 192.660(2)(d) and student expulsion discussions under ORS 332.061. ORS 192.660(4). The media may not report the substance

of the meeting, but only when the governing body specifically prohibits disclosure to any media representative present.

1. Although members of the news media have the right to attend executive sessions, the statute does not give them the right of access to minutes or tapes of the session beyond that given to the general public. See ORS 192.650(2); 192.502(9).
2. What qualifies as a “news medium” has been a perennial problem. On April 18, 2016, Attorney General Ellen Rosenblum issued a formal opinion (Op-8291) on the topic. It is a significant opinion because it attempts to address what qualifies as a news medium in the age of electronic communication and because it modifies prior advice on the topic given in earlier opinions and the Attorney General’s Public Records and Meetings Manual § II.E.4 (2014). She concludes:
 - "Representatives of the news media" include news-gathering representatives (including employees, agents, and contractors) who have a formal affiliation with an institutional news medium.
 - "Specialty publications and broadcasts may qualify to attend (a change from prior advice that such media entities could only attend if they ordinarily report on the activities of the governing body).
 - Bloggers qualify *if* they represent an institutional news medium. This is determined based upon factors that "might include its business structure, the nature of its overall operations, regular public dissemination of the news, and similar factors that demonstrate that it is formally organized for the purposes of gathering and disseminating news."
3. Regulation of Attendance by the News Media. In Op-8291, Attorney-General Rosenblum also reconsidered advice in the manual regarding the ability of governing boards to regulate attendance by the news media. She concludes:
 - A governing body cannot cap attendance or limit the number of representatives of the new media that can attend.
 - The sole statutory justification for excluding a representative is if the representative or medium is a party to litigation with the public body.
 - Media representatives cannot be excluded for disclosure of confidential information from prior executive sessions.
 - Local governments cannot adopt their own rules or policies that attempt to regulate who is considered the representative of the news media.

4. Attorney/Client Privilege Issues. ORS 40.280 provides that voluntary disclosure does occur when the news media attends executive sessions or if the media discloses information from an executive session when they have been directed not to.

D. Calling Executive Sessions.

An executive session may be called during any appropriately noticed public meeting by announcing the specific provision under which it is being called. ORS 192.660(1). Executive sessions should be listed on the agenda by citing the correct provision if the governing body is aware at the time of agenda setting that an executive session will be called. If the only purpose of a public meeting is to consider a matter in executive session it must be so noticed. ORS 192.640.

E. No Final Decision.

A governing body may not make a final decision in executive session. ORS 192.660(6). In order to make a final decision, the Chair must continue the decision to a public meeting or call the executive session into open session. Preliminary consensus or informal decisions can be made in executive session as long as the formal decision is made in open session. If the meeting has been noticed solely as an executive session, however, the decision must be continued to a meeting noticed as a public session. If the governing body goes into executive session at the end of an open session, but reasonably anticipates returning to open session to make a decision, that intent should be stated at the time that the meeting is called into executive session to put persons on notice that a decision in open session could be made.

F. Penalties.

In addition to the general Public Meetings Law remedy provisions discussed above, ORS 192.685 allows potential violations of the executive session law to be made to the Oregon Ethics Commission (“OEC”). The OEC is empowered to investigate and penalize such violations in the same manner as a violation of the Code of Ethics, except that the civil penalty is limited to \$1000. ORS 244.350(2)(a). A civil penalty may not be imposed, however, if the governing body was acting on advice of legal counsel. ORS 244.350(2)(b).

G. Potential Liability for Disclosing Executive Session Information.

It is very important for participants in an executive session to not disclose information learned in executive session to the press or to third parties outside of the meeting because doing so can result in liability or damage to the position of the public body. If executive session information is disclosed to the press outside of the meeting, the press is free to report on it. For example:

1. Waiver of Attorney-Client Privilege. Disclosure of confidential legal advice provided in executive session could potentially waive the attorney-

client and damage the Public Body's legal case.

2. Potential Employee Lawsuits. Employees have a liberty interest in their professional reputations. Disclosure of confidential personnel matters outside of executive session can give an employee a claim against the District.
3. Unfair Labor Practices. Discussion of confidential labor negotiation information outside of executive session can provide the basis for an unfair labor practice ("ULP"). The Public Employees Collective Bargaining Act is very strict about how communications can occur between labor and management during negotiations. In a recent case, a member of a city council commented in the press on her perception of the merits of the unions's position, the union filed a ULP, and the City was found in violation. Such communications also undermine the authority of public body's bargaining team by encouraging end runs to the governing body.
4. Damaging Negotiating Positions. Discussing real property transactions outside of executive session can damage negotiations by revealing strategy.

H. Further Information.

The Attorney-General's Public Records and Meetings Manual contains the definitive discussion and interpretations of the Public Records and Meetings Laws, along with appropriate case citations and references to legislative history and AG Opinions. It can be purchased from:

Department of Justice
100 Justice Building
1162 Court Street
Salem, Oregon 97310
Phone: (503) 378-2992, ext. 325.

It is also reviewable on line at:

http://www.doj.state.or.us/public_records/manual/index.shtml

III. CONCLUSION

This presentation is intended as an overview of the law and not as legal advice. You should always consult your own legal counsel.