

Legal Issues Training

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Outline

- Public meetings law update
- Conflicts of interest
- Quasi-judicial land use
 - Ex-parte contacts and bias
- Social media
- Managing meetings

Public Meetings

House Bill 2805 (2023)

- For years, the term “meeting” has been defined as: “. . . 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(7)(a) (emphasis added).

Public Meetings

The term “convening” is now defined as:

- “(a) Gathering in a physical location;
- (b) Using electronic, video, or telephonic technology to be able to communicate contemporaneously among participants;
- (c) Using serial electronic written communication among participants; or
- (d) Using an intermediary to communicate among participants.”

Public Meetings

The term “**deliberation**” is now defined as a:

“ . . . discussion or communication that is part of a decision-making process.”

* Note that the definition of “meeting” uses the term “deliberate” not “deliberation.”

Public Meetings

Now expressly excludes communications between or among members of a governing body that are:

- Purely factual or educational in nature and that convey no deliberation or decision on any matter that might reasonably come before the governing body

Public Meetings

Now expressly excludes communications between or among members of a governing body that are:

- Not related to any matter that, at any time, could be reasonably foreseen to come before the governing body for deliberation and decision

Public Meetings

Now expressly excludes communications between or among members of a governing body that are:

- Nonsubstantive in nature, such as communication relating to scheduling, leaves of absence and other similar matters

Public Meetings

HB 2805 requires training for members of governing bodies

- Attend an in-person or virtual public meetings training provided, or approved, by the OGEC
- Training required once per term of office

Public Meetings

New OGEC public meeting oversight

- Grievances must first be filed with the public body within 30 days of the alleged violation
- Public body must:
 - Acknowledge and respond to grievance within 21 days
 - Send copy of response to OGEC

Public Meetings

Tips

- Be aware of public perception of actions
- Keep it formal but simplify rules
- Public participation does not mean public conversation
- Understand limits of “controlling” public
- Get comfortable having discussions in public

Ethics

“Relative” 244.020(15)

- Spouse
- Children of the PO or of the PO’s spouse
- Brother or stepbrother of the PO or of the PO’s spouse
- Sister or stepsister of the PO or of the PO’s spouse

Ethics

“Relative” (cont.)

- Parents or stepparents of the PO or of the PO’s spouse
- Son-in-law or daughter-in-law of the PO or of the PO’s spouse
- Anyone for whom the public official has a legal support obligation or is a beneficiary of the PO’s employment benefits

Ethics

“Business with which Person is Associated”

- Any private business in which you or a relative are an owner, director, officer, or employee or in which you or a relative has \$1,000+ worth of interest
- Any publicly held corporation in which you or a relative has \$100,000 of interest or you or a relative is an officer/director

Ethics

“Business with which Person is Associated”

- OR if you file a Statement of Economic Interest, if more than 10% of your total annual household income comes from the business

Ethics

“Actual Conflict” (Will Happen)

Vs.

“Potential Conflict” (Could Happen)

Ethics

“Actual Conflict” (Will Happen)

- An action, decision, or recommendation
- By a *public official*
- That **will** result in a financial benefit or detriment for P.O. or a relative or business associated with P.O. or relative

Ethics

“Potential Conflict” (Could Happen)

- An action, decision, or recommendation
- By a *public official*
- That **could** result in a financial benefit or detriment for P.O. or a relative or business associated with P.O. or relative

Ethics

Conflicts of Interest Rules (Both Actual and Potential)

Make a record of your conflict:

- State the nature of your conflict
- Do it before voting or discussing the matter
- Do it on the record
- Do it each meeting issue is discussed

Ethics

Actual Conflict **Only**

- State your conflict ... and then no participation.
- Same rules as Potential Conflict, but **no** talking and **no** voting.
- Unless Council cannot act without you (but still no talking)

Ethics

It is **not** a conflict if the financial benefit happens because of:

- Membership in a class (any large, distinguishable group of citizens that the Commission determines is a class)
- Membership in a non-profit (501(c) status)

Quasi-Judicial Land Use

Characteristics:

- Deciding (Judging) a specific land use proposal that will apply to one or a few
- Must apply criteria in Code – limited discretion
- Testimony and evidence directed towards applicable criteria
- Includes Council acting as appeal body, reconsidering Planning Commission decision

Quasi-Judicial Land Use

Impartial decision-making (Judging)

- No bias – must be able to be fair and impartial
- No ex-parte contacts – decision must be based on information in record
- Address conflicts of interest

Quasi-Judicial Land Use

Bias

- Incapable of basing decision on evidence and argument presented
- Prior statements may be used as evidence of prejudgment bias
- Rehabilitation is possible if decision-maker can make a fair and impartial decision based solely on the record

Quasi-Judicial Land Use

Ex-parte

- Verbal, written, visual contact not in record
- Examples: Newspaper articles, site visits, conversations with neighbors, prior knowledge, independent research
- Avoid and keep track
- Disclose at meeting when public may respond, before record is closed
- Extra caution during closed-record period

Social Media

O'Connor-Ratcliff v. Garnier

Lindke v. Freed

- Separate personal social media from City social media
- “A public official who fails to keep personal posts in a clearly designated personal account therefore exposes himself to greater potential liability.”

Social Media

- A public official's social media activity constitutes state action under §1983 only if the official:
 - Possessed actual authority to speak on the government's behalf; and
 - Purported to exercise that authority when he spoke on social media.

Social Media

Tips

- Label personal pages/profiles as personal
- Label personal posts as personal and not the viewpoint of the City
- Mixing personal posts with City posts increases exposure to liability risks
- Update job descriptions for social media authority

Managing Meetings

- Council rules
- Facilities Code of Conduct
- Authority over public meetings

Managing Meetings

Council rules

- Governs Councilors' conduct
- Procedure “guided by” Robert's Rules
- Robert's Rules are complex
- Rules and formality can stand in the way of coherent decision-making and transparent governance

Managing Meetings

Facilities Code of Conduct

- Enforced by City staff
- Recognizes that City Hall and other City facilities are workplaces
- Recognizes that a workplace is not a public forum subject to strict free speech rights

Managing Meetings

Authority over public meetings

- Mayor/Chair has authority to govern meetings
- First Amendment limits authority
- Free expression vs. actual disruption
 - Council Rules Preservation of Order
- Consider recess or reconvening
- Speaker name and contact information

City of Florence Sheltering Exclusion Map - Draft 2

