



Local Government

The Basics

13 Essentials for City Officials



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Home Rule Fundamentals

The League of Oregon Cities (LOC) was established in 1925 to protect against the erosion of local “home rule” by the state Legislature. The LOC has fought to protect home rule since that time. But what, exactly, is “home rule,” and why does it matter?

In Oregon, home rule forms the legal basis for city governments to act. Thus, home rule is an important legal concept with real-world implications for a city’s ability to serve the needs of its citizens. This article briefly explains the origins of Oregon’s home rule, how home rule impacts city government authority, and the continuing fight between city and state government over the scope of local authority.

CITIES DERIVE THEIR EXISTENCE FROM THE STATES

The United States of America is a “federal republic,” meaning that government authority is divided between the federal government and the states. The United States Constitution grants limited powers to the federal government and reserves the remaining powers to the state governments. But what about local governments, such as cities and counties?

Interestingly, the United States Constitution makes no mention of local governments. Instead, it places all government authority not granted to the federal government with the states. Thus, the courts have uniformly concluded that cities derive their authority and existence from state governments and lack any inherent authority. In fact, the Supreme Court of the United States has stated that cities are simply “convenient agencies”¹ of their states, and states may abolish or reorganize cities at any time.

DILLON’S RULE

Under the United States Constitution, cities derive their authority from the states. For that reason, judges and legal scholars took the view that city governments could only act in areas expressly authorized by a state legislature. That principle is often called “Dillon’s Rule,”² and is still followed in many states.

In a Dillon’s Rule state, local governments lack authority to act unless they can show how a state law allows them to take an action, such as levying property taxes, maintaining a fire department, or operating a parks system.

The Dillon’s Rule model allows a state legislature to closely control local government structure, the methods of financing local government activities, local procedures, and local government authority to address local problems.

DILLON’S RULE IN OREGON

In the late 1800s, the Oregon Supreme Court formally endorsed the Dillon’s Rule model of state-local relations.³ Under Dillon’s Rule, Oregon’s cities were not able to effectively respond to local problems, as no local action could be undertaken without express permission from the Oregon Legislature, which only met for short biennial sessions.

HOME RULE INCLUDES THE POWERS TO:

- Regulate for protection of public health, safety, morals & welfare;
- To license;
- To tax; and
- To incur debt.

Home rule is the right to local self-government, without express or implied legislative authorization.

OREGON’S SHIFT TOWARDS HOME RULE


In the early 20th century, a wave of political populism began to sweep the country. As a part of that political movement, cities and political reformers in Oregon began to push for a “home rule” amendment to the Oregon Constitution.

Frustrated by the special interests that dominated the Legislature and by the time it took to address local problems, a group of Oregonians, led by William Simon U’Ren, sought to amend the Oregon Constitution. Their goal was to vest authority over local affairs in the voters, through the adoption of home rule charters. In U’Ren’s view, cities would exist independently from the Legislature and would derive their authority from the city charter, not from the Legislature.

1 *Hunter v. City of Pittsburg*, 207 US 161, 178-79 (1907).

2 Dillon’s Rule is named for John F. Dillon, a Justice of the Iowa Supreme Court and later federal judge. See 1 John F. Dillon, *THE LAW OF MUNICIPAL CORPORATIONS*, § 9(b), at 93 (2d ed 1873).

3 *City of Corvallis v Carlile*, 10 Or 139 (1882).



“The legal voters of every city and town are hereby granted power to enact and amend their municipal charter.”

– Oregon Constitution

In 1906, consistent with a wave of home rule reform sweeping the nation, the voters of Oregon adopted a constitutional amendment that granted the people the right to draft and amend municipal charters. That provision states:

“The Legislative Assembly shall not enact, amend or repeal any charter or act of incorporation for any municipality, city or town. The legal voters of every city and town are hereby granted power to enact and amend their municipal charter, subject to the Constitution and criminal laws of the state of Oregon[.]”⁴

At the same election, the voters of Oregon “reserved” initiative and referendum powers “to the qualified voters of each municipality and district as to all local, special and municipal legislation of every character in or for their municipality or district.”⁵

Note that the home rule amendments do not use the term “home rule,” nor do they specifically confer substantive lawmaking authority. Rather, the amendments prevent the Legislature from enacting or amending municipal charters, and free cities from the burden of seeking approval from the state before amending their charter. What that means, in practice, is that cities—and their voters—now possess substantial lawmaking authority independent of the state, although the precise relationship between cities and the state has evolved over the last 100-plus years, primarily through judicial interpretation of the home rule amendments. One of the most significant aspects of that relationship is the ability of the Legislature to preempt certain municipal policy decisions.

HOME RULE CHARTERS

For a city to become a home rule city, its residents must vote to adopt a home rule charter. By doing so, a community vests all possible legal authority in its city government. A city charter operates much like a state constitution in apportioning authorities to various officials and setting out the system of government for that community, whether it be a commission, mayor-council, council-manager, or strong mayor form of government. Today, all 241 cities in Oregon have home rule charters.

⁴ Or Const, Art XI, § 2.

⁵ Or Const, Art IV, § 1(5).

ONLINE RESOURCES

ORIGINS, EVOLUTION AND FUTURE OF HOME RULE



This white paper examines the origin of the “home rule” doctrine in Oregon, how that doctrine has changed over time, and the current legal fight over the meaning of Oregon’s home rule provisions. Available in the LOC’s online Reference Library: tinyurl.com/home-rule

HOME RULE 101

A two-page overview of home rule in Oregon. Available at: tinyurl.com/home-rule-101

GUIDE TO STATUTORY PREEMPTION OF HOME RULE

This legal guide is designed to provide city leaders with general information regarding specific examples of how and when municipalities are preempted from taking certain actions or regulating particular conduct. Available at: tinyurl.com/preempt-guide

OREGON MUNICIPAL HANDBOOK – Chapter 2: Home Rule & Its Limits

This Handbook chapter explores in detail the “home rule” authority granted to cities by the Oregon Constitution and the limits placed on it by state and federal authority.

Find it online at: tinyurl.com/handbook-2

Once adopted, a home rule charter vests in the city the authority to do all things necessary to address matters of local concern without legislative authorization. The LOC’s model charter, based on the council-manager form of government, was written to provide a city with as much authority as permitted under the Oregon Constitution.



All 241 cities in Oregon have home rule charters

Oregon is a home rule state, which gives voters the authority to establish their own form of local government and empowers that government to enact substantive policies. Unlike a Dillon's Rule state, home rule authority allows cities to act as policy innovators and quickly address social problems, especially when faced with inaction from the state and federal government.

PREEMPTION

The following list highlights some of the areas in which the state has preempted local governments from acting. Please note that the list is not comprehensive. For a comprehensive list of preemptions on local authority, please see the LOC's Legal Guide to Oregon's Statutory Preemptions of Home Rule (tinyurl.com/yc83xlxn).

Taxing

- ▶ Cities may not impose or collect a business license tax from licensed real estate brokers.
- ▶ The state has the exclusive right to tax tobacco products.
- ▶ The state has the exclusive right to tax alcoholic beverages.

General Governance

- ▶ Cities must hold elections in compliance with Oregon election law.
- ▶ Public officials, including city officials, must comply with the Oregon Ethics Code.
- ▶ City government must comply with Oregon's public records and meetings law.

Land Use

- ▶ Cities are required to comply with statewide land use and development goals.
- ▶ Cities may not prohibit certain types of housing.

Personnel

- ▶ Cities must offer PERS coverage to police and firefighters.
- ▶ State minimum wage laws preempt contrary city ordinances or charter provisions.
- ▶ State sick leave requirements preempt contrary city ordinances or charter provisions.
- ▶ State law restricts the use of credit score reports for hiring purposes.

Regulatory Authority

- ▶ State preemption of regulations on vending machines that dispense tobacco or e-cigarette systems.
- ▶ State preemption of local laws concerning various liquor uses and consumption.
- ▶ State building code preempts local ordinances.
- ▶ State preemption of local ordinances that makes a shooting range a nuisance or trespass.
- ▶ State preemption of local regulations on cell phone use in vehicles. ■





From the Sidelines to the Playing Field: The Importance of Council Teamwork and Knowing Your Role

A high functioning city government requires multiple roles to be adequately fulfilled. Equally important is for individuals to understand their role in order to better serve the city as a whole. Building a high functioning city council requires subscription to the theory of how local government functions, hard work, and commitment to the responsibility of the council role. In other words, a high functioning city council must act as a team and work towards shared goals.

HOW DO INDEPENDENTLY ELECTED INDIVIDUALS BECOME A TEAM?

According to Robert Maddux, author of *Team Building: An Exercise in Leadership*,¹ the below seven principles outline how a group of individuals can transform into a team:

1. **Shared Understanding:** There is a shared understanding between the members that personal and team goals can be achieved best with mutual support.
2. **Shared Ownership:** Members feel a shared ownership of their work and the team's goals and are committed to the commonly established rules.
3. **Everyone Contributes:** Everyone can contribute their personal and professional competencies to the success of the team's goals.
4. **Room for Everyone to Express Ideas and Opinions:** There is room to express ideas and opinions, and team members are making effort to understand each other.
5. **No Person Feels Threatened by Conflict:** No one person feels threatened by conflict and conflict is viewed as a normal aspect of teamwork.

¹ *Team Building: An Exercise in Leadership*, Robert B. Maddux, 1986.

6. **Atmosphere of Trust and Encouragement:** There is an atmosphere of trust and encouragement, and members are encouraged to improve their skills and competencies.

7. **Participative Decision-Making:** The decision-making process is participative, and no one is left out or unheard.

HOW DO TEAM PRINCIPLES TRANSLATE INTO EFFECTIVE CITY COUNCILS?

With a teamwork mindset in place, it is equally important for each individual to know their role and responsibility to the team. Imagine a football team where no one had a defined position, and everyone tried to play quarterback—this does not paint a championship picture. Just like positions on a football team, a city and its council have defined roles and responsibilities. Each city's charter and locally adopted council rules of procedure set forth the parameters of each person's roles and responsibilities. While every city is governed slightly differently, the majority of cities in Oregon practice a variation of the council-manager form of government. In this form of government, the following are a few roles:

The Team Captain: Mayor

The mayor serves on council but is generally limited to the role of presiding officer in council meetings and is the city's ceremonial head. In some cities, the mayor only votes to break a tie, and in others, the mayor votes along with the rest of the council.

The Offense: City Councilors

Under the council-manager form of government, the city council acts as a whole to develop the city policy and legislation—with little to no authority vested in any individual councilor. Individual councilors bring their unique skills and learned experience to the

A high functioning city council must act as a team and work towards shared goals.



table, but must work with one another to effectuate city policy and legislation. Think of the council members as the quarterback, running back, wide receiver, fullback, tight end, and offensive line. Each player holds an important role, and they must work together to complete a successful play.

The Coach: City Manager/City Administrator

The city manager serves as the city's chief executive officer and takes the policy implemented by the council and sees it to fruition. Oftentimes, the city manager is the only city staff member who is supervised by the council. As the city's "CEO," the city manager oversees all city staff, and the council must respect the manager's role and not overstep into managing staff who are not under their direct supervision.

The Fans: Citizens

Finally, the city's voters also play a role on the team. Citizens vote to elect the city council members and vote on any charter amendments or ordinances put out for a vote. Most importantly, the city's voters may also recall individual city council members as well as the mayor.

"TALENT WINS GAMES, BUT TEAMWORK AND INTELLIGENCE WIN CHAMPIONSHIPS." – MICHAEL JORDAN

Conflict, in the form of robust discussion wherein all participants are open to learning from others, can lead to creative solutions that no single person could have developed. To win the proverbial "championship game" requires a high functioning council, where individual members of the council contribute their individual knowledge and work together to form a solution. However, there is no requirement that everyone on council votes unanimously on all issues. After all, there are many ways to win a game. In fact, the advantage a council holds is that it is comprised of diverse individuals. Ultimately, a council is there to serve its city and to effectuate long-term and long-lasting change that benefits their constituents. Even if a councilor votes against a certain decision and the majority of the council votes in favor, the councilor's role is to stand with the team and be a united front. The council only has power as a collective and speaking against the collective only acts as a disservice.

We've all seen the post-game interviews where an athlete is interviewed about the team's performance. Imagine if that player called out their teammates for performing badly? Instead, the athlete typically will focus on the positive actions of their teammates and when necessary, address avenues for improvement. Individual athletes take responsibility for their team's performance whether they win or lose a game. Athletes focus on working together and stand up for their fellow teammates—council members should

ONLINE RESOURCES

MODEL RULES OF PROCEDURE FOR COUNCIL MEETINGS



The purpose of this guide is to provide cities with a starting point in creating their rules of procedure, where required by the city charter, or where a council so desires. Available in the LOC's online Reference Library: tinyurl.com/council-rules

FAQ ON LEGISLATIVE, ADMINISTRATIVE AND QUASI-JUDICIAL COUNCIL DECISIONS

Most cities vest all powers of government in their city council, which functions as the legislative, executive and judicial body. Because a single council plays multiple roles in city government, the council's actions may have different legal ramifications. As this FAQ demonstrates, the nature of a council's actions has important consequences for a city and its residents. Available at: tinyurl.com/faq-council-decisions

OREGON MUNICIPAL HANDBOOK – Chapter 3: Municipal Officials

This Handbook chapter provides an overview of the common roles of municipal officials, including roles of elected council members, mayors, and city staff.

Find it online at: tinyurl.com/handbook-3

too. Remember, since council members have limited authority as an individual, council members should speak as a single group and not necessarily as an individual member unless they had authority to act individually. Like their athletic counterparts, council members should take responsibility for their council's decisions—whether they are popular or not. Win or lose, councils are a team and working together is the most important step towards victory. ■



Public Meetings:

What Elected Officials Need to Know

INTRODUCTION

Oregon law sets the policy for open decision-making at various levels of government. These laws ensure that the public is aware of the deliberations and decisions of governing bodies, as well as the information that forms the basis of the governing bodies' decisions.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 being held within their jurisdiction; and
- Taking minutes or another record of meetings.

Further, the OPML 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 complicated, and public officials are encouraged to speak with their legal counsel for legal advice, case-by-case.

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 governing body of a public body, 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.²

The OPML applies to meetings of a “governing body of a public body.” A public body is the state, any regional 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 policy or administration,” they are a “governing body” for purposes of the OPML.

1 ORS 192.260 establishes Oregon’s policy of open decision-making through public meetings.

2 ORS 192.610(5); ORS 192.630(1).

MEETINGS SUBJECT TO THE PUBLIC MEETINGS LAW

Not every action that a governing body takes 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 governing body of a public body is not a “meeting” under the OPML.

However, case law recently established that a “serial meeting” can take place if there are “contemporaneous gatherings of a quorum and ORS 192.630(1) applies to such meetings.”³ The Oregon Attorney General recommends that members of a governing body should not meet in private to discuss business, or exchange private communications about business, even if those involved constitute less than a quorum.⁴

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, the OPML applies if a quorum of a governing body, such as a five-member commission, meets with staff to deliberate on matters of “policy or administration.”

REQUIREMENTS OF THE LAW

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

3 *Handy v. Lane County*, 274 Or App 644, 658 (2015).

4 ODOJ, Attorney General’s Public Records and Meetings Manual 145 (2019).



Notice

The OPML requires that notice be provided of the time and place of public meetings, including regular, special and emergency meetings.⁵ 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. Additionally, effective January 1, 2022, state law requires governing bodies to provide members of the public, “to the extent reasonably possible” an opportunity for virtual access to meetings held.⁶

► 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.”⁷ 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. 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.

⁵ ORS 192.640 provides for both regular and executive session notice requirements.

⁶ ORS 192.670.

⁷ ORS 192.630(4) provides for both geographic location as well as accessibility of these locations.

ONLINE RESOURCES

GUIDE TO EXECUTIVE SESSIONS (2019)



A comprehensive review of where, when and how cities may conduct executive sessions, complete with model forms and policies. Available at: tinyurl.com/exec-sessions.

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: tinyurl.com/disruptive-people.

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: tinyurl.com/model-rules-proc.

FAQ ON NOTICE REQUIREMENTS FOR PUBLIC MEETINGS (2021)

Answers to common questions about the notice requirements associated with public meetings. Available at: tinyurl.com/notice-reqs.

OREGON MUNICIPAL HANDBOOK – Chapter 9: Public Meetings Law

This Handbook chapter touches on the basic requirements of the Oregon Public Meetings Law. Find it online at: tinyurl.com/handbook-9.



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.⁸ 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.**⁹ 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, a reference to any document discussed at the meeting.¹⁰

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.”¹¹

EXECUTIVE SESSIONS

Governing bodies are permitted to meet in executive (closed) sessions in certain circumstances.¹² 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.”¹³ Executive sessions are not exempt from the OPML. 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.

8 ORS 192.650(1)(c).

9 39 Op Atty Gen 525, 526-528, 1979 WL 35618 (1979).

10 ORS 192.410 to 192.505. Note that reference to a document in meeting minutes does not change the status of the document under public records law; see also ORS 192.650(3).

11 ORS 192.650(1).

12 ORS 192.660.

13 ORS 192.610(2).

Permissible Purposes

A governing body is permitted to hold an open meeting even when the law permits it to hold an executive session. However, a governing body may only hold an executive session in certain circumstances set forth in ORS 192.660. These permissible 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.”¹⁴ 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.¹⁵ In addition, the notice must cite 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 important and nuanced. 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 (2017), available at tinyurl.com/opml-manual. ■

14 ORS 192.660(6).

15 ORS 192.640.



Property Tax Basics

Oregon's current property tax system was shaped by Measures 5 and 50, from two constitutional amendments passed in the 1990s. Prior to Measures 5 and 50, Oregon jurisdictions used a levy-based system for assessing property taxes. Put simply, each taxing district (city, county, etc.) imposed a levy in the amount needed to cover the taxing district's budget, which was based on community service demands. County assessors estimated the real market values (RMV) of all properties in the state. The levy for each taxing district was then divided by the total RMV in the district to arrive at a district tax rate. The taxes each district imposed equaled its tax rate, multiplied by its RMV. Generally, levies for each district were constitutionally limited to an annual growth rate of 6%, and levies that would increase by more than 6% required voter approval. The levy system was dramatically altered with the passage of Measure 5 in 1990.

MEASURE 5: TAX LIMITS AND COMPRESSION

In 1990, Oregon's voters amended the state constitution by approving Ballot Measure 5, which set limits on the amount of tax that a taxing jurisdiction could impose on the RMV of property. For example, education districts could levy no more than \$5 per \$1,000 of RMV and general government districts (including cities and counties) could levy no more than \$10 per \$1,000 of RMV. The caps apply only to operating tax levies, not bonds. If property tax rates exceed the limits, the taxes must be reduced until they meet the limits imposed by Measure 5. Reducing the property tax rate to meet Measure 5 limits is commonly called "compression," and results in millions of dollars of lost revenue for taxing districts every year.

MEASURE 50: PERMANENT RATES, ASSESSED VALUE AND GROWTH LIMITS

In 1997, the voters of Oregon again decided to profoundly alter the property tax system by approving the passage of Ballot Measure 50. First, Measure 50 imposed a permanent operating tax rate limit on all existing taxing districts. The permanent rate for each taxing district was primarily determined by combining the levies that existed locally when Measure 50 was passed.

Neither a taxing district nor the voters can alter Measure 50 permanent rates—they remain at 1997 levels in perpetuity.

Second, Measure 50 also changed the concept of assessed value, to which the tax rates are applied. Assessed value is no longer equal to the RMV of a property. Instead, the amount of tax is based on the property's "assessed value" as defined by Measure 50. Measure 50 stated that a property's assessed value is calculated by reducing the property's RMV in the 1995-96 tax year 10%. That method of calculating assessed value codified inequities between comparable properties. Prior to Measure 50, the RMV of properties within a county was determined across a six-year reappraisal cycle. When Measure 50 passed, some properties had been recently assessed, while other properties had not been assessed for four or five years.


Third, Measure 50 limited the annual growth rate of taxable property to 3% of assessed value—well below the average rate of inflation. By setting assessed values at 90% of 1995-96 market levels and capping the annual rate of growth, Measure 50 permanently codified imbalances in assessed values. As a result, similarly valued properties may pay dramatically different property tax amounts.

For new properties, or those that undergo a significant change such as remodeling, new construction, rezoning, or subdivision, the assessed value is determined according to Oregon Revised Statutes 308.149 to 308.166, known as the changed property ratio (CPR) statutes. The new assessed value is determined by applying the ratio of the assessed value to the market value of all existing property within the same class (residential, commercial, etc.) in either the city or the county to the improved or changed property. In most of the state, CPR is calculated on a county-wide basis. In Multnomah County, cities can elect to calculate CPR on a city-wide basis, provided the city passes an ordinance or resolution as required by law.

MEASURES 5 & 50 IMPACTS

Measures 5 and 50 have caused significant revenue challenges for taxing authorities in Oregon. Following the passage of Measure 50, statewide property tax revenue immediately fell by \$51.4

Neither a taxing district nor the voters can alter Measure 50 permanent rates – they remain at 1997 levels in perpetuity.



Reducing the property tax rate to meet Measure 5 limits is commonly called **“compression,”** and results in millions of dollars of lost revenue for taxing districts every year.

million due to the changing of the property tax system to one based on assessed values rather than one based on market values. Since 1997, inflation has regularly exceeded the 3% limit set out in Measure 50, particularly for city expenses like employee healthcare and pension costs. Thus, cities have seen a growing disparity between property tax revenue relative to costs, even as property values continue to rise.

For a detailed look at the effects of Measures 5 and 50 over time, please see the LOC’s Primer on Measures 5 and 50 in the LOC’s online Reference Library (tinyurl.com/measures5-50).

COMPRESSION EFFECTS

To determine a property’s tax obligation each year, a county assessor must determine the property’s assessed value (as required by Measure 50) and the property’s RMV (as required by Measure 5). When a property’s assessed taxes exceed the Measure 5 limits, the tax obligation is compressed to the Measure 5 limits. The difference between the assessed value and the compressed limit is forever lost to the taxing district—typically, millions of dollars every year across the state. In fiscal year 2016-17, for example, more than 65% of Oregon’s cities were negatively affected by compression, representing \$31.4 million in lost property tax revenue.

The LOC continues to seek reforms to Oregon’s property tax system that is fair for property owners, effective for cities, and does not inhibit economic growth. ■

ONLINE RESOURCES

MEASURE 5 & 50 PRIMER

A detailed look at the effects of Measures 5 and 50 over time. Available in the LOC’s online Reference Library: tinyurl.com/measures5-50



CITY PROPERTY TAX REPORT (2016)

Statistical information regarding property taxes for cities, counties, school districts and special districts. The report includes data on tax revenues received, assessed and real market values, city tax rates, compression losses and property tax exemptions. Available at: tinyurl.com/prop-tax-report

NORTHWEST ECONOMIC RESEARCH CENTER OREGON PROPERTY TAX REPORT (2014)

This research report examines how differences in property taxes due to measures 5 and 50 have impacted the real estate market in Oregon. Available at: tinyurl.com/nerc-report





Five Things to Know About Public Records

1. WHAT ARE PUBLIC RECORDS?

State law defines a public record as: “[A]ny writing that contains information relating to the conduct of the public’s business * * * prepared, owned, used or retained by a public body regardless of physical form or characteristics.”¹ The term “writing” is defined broadly and includes any “handwriting, typewriting, printing, photographing and every means of recording, including letters, words, pictures, sounds or symbols, or combination thereof, and all papers, maps, files, facsimiles or electronic recordings.” When determining whether a record is public, the question is whether the record relates to the business of the public, not the format of the record. This often means that emails, text messages and social media posts—even those created, delivered and stored on a personal device—could be considered a public record. If a record has a relationship to a city’s business, then it is a public record.

2. DUTIES OF A CITY AND PUBLIC RECORDS

Cities have the duty to make available a written procedure for making public records requests.² The procedure must include the name of at least one city contact to whom requests may be sent, and the amounts of and manner of calculating fees that the city charges for responding to public records requests.

Once received, a city must acknowledge receipt of the public records request or provide a copy of the requested record within five business days.³ Within 10 business days of the date it was required to acknowledge the request, the city must either complete its response to the request, or provide a written statement that it is still processing the request, along with an estimated completion date. These timeframes do not apply if compliance would be impracticable.⁴ However, a city must still complete the request as soon as practicable and without unreasonable delay.

3. PUBLIC RECORDS DISCLOSURE

The public has the right to inspect any public record in a city’s possession.⁵ A city may withhold certain public records from disclosure if they are exempt by law.⁶ Cities must segregate exempt records from nonexempt records and disclose all nonexempt material. The primary list of public records exemptions may be found under ORS 192.345 and 192.355, though exemptions are scattered throughout both state and federal law. There are two primary types of exemptions: conditional and unconditional. Conditional exemptions require a city to consider the public’s interest in disclosure.⁷ Unconditional exemptions either require their own separate consideration or none at all.⁸ Remember, when in doubt, Oregon law favors disclosure.

4. PUBLIC RECORD REQUEST FEES

A city may assess reasonable fees to get reimbursed for the actual costs incurred while responding to a public records request.⁹ The city may assess a fee for the time spent by city officials and staff researching the records, providing redactions, and the city attorney’s time spent reviewing the records and redacting exempt materials. If the city wishes to charge a fee greater than \$25, the city must notify the requester in writing of the estimated amount of the fee and the requester must confirm in writing that it wishes to proceed. The city may request prepayment. If the actual cost incurred by the city is less than the amount paid, the city must promptly refund any overpayment.¹⁰

5. APPEALS AND CONSEQUENCES TO THE CITY

A person who is denied access to a public record may appeal the city’s denial.¹¹ The appeal may be made to the district attorney in the county in which the city is located, if the denial was by the city/a city official. If the district attorney denies any part of a petition, the requester may seek review in the circuit court for the county in which the city is located or the Marion County Circuit Court.

If the denial was made by an elected official, the appeal may be made by petitioning the circuit court for the county in which the elected official is located or the Marion County Circuit Court. If the requester prevails in full, the city is required to compensate the requester for the cost of litigation and trial. If the requester prevails only in part, an award of costs and attorney’s fees is discretionary.

Additional guidance regarding public records is available on the LOC’s website and in the Oregon Attorney General’s Public Records and Meetings Manual available online at: tinyurl.com/opml-manual. ■

- 1 Generally public records law is covered by ORS Chapter 192.
- 2 ORS 192.324(7).
- 3 Generally, public records request timeline covered by ORS 192.324 and ORS 192.329.
- 4 Reasons where compliance would be impracticable include staffing, performance of other necessary services, or the volume of other simultaneous public records requests.
- 5 ORS 192.318(2).
- 6 See Oregon Attorney General’s Public Records and Meetings Manual (2019), Public Records Section (I)(E); see also Oregon Department of Justice Attorney General Public Records Exemptions at <https://justice.oregon.gov/PublicRecordsExemptions>.
- 7 ORS 192.345.
- 8 ORS 192.355.
- 9 See ORS 192.324.
- 10 Oregon Attorney General’s Public Records and Meetings Manual (2019), Public Records Section (I)(D)(7).
- 11 ORS 192.415.



Gift Limitations: What You Need to Know

GIFT BASICS

A public official, candidate, or relative or member of the household of the public official or candidate cannot receive a gift if all the below elements are met in the calendar year:¹

1. Solicit or receive
2. Directly or indirectly
3. Any gifts with an aggregate value above \$50
4. From any single source
5. If the source is reasonably known to have a legislative or administrative interest

A GIFT IS...

1. Something of economic value
2. Without cost, at a discount, or as forgiven debt
3. Not available to the general public on the same terms.

Examples: meals; lodging; event tickets²

LEGISLATIVE OR ADMINISTRATIVE INTEREST MEANS...

1. Economic interest
2. Distinct from that of the public
3. In a matter subject to the decision or vote of a public official acting in that capacity

THE FOLLOWING ARE PERMISSIBLE GIFTS:

- Gifts from relatives or members of the household
- Unsolicited token of appreciation with a resale value less than \$25
- Publications and subscriptions related to official duties
- Campaign contributions
- Waiver or discount of certain registration expenses or materials at a continuing education event to satisfy a professional licensing requirement
- Entertainment that is incidental to the main purpose of the event
- Received as part of the usual and customary practice of one's private business or employment and unrelated to holding public office
- Offers of lawful benefits to public officials offered by the public entity the public official represents.

ONLINE RESOURCES

OREGON MUNICIPAL HANDBOOK – Chapter 8: Ethics

This Handbook chapter covers ethics laws regarding public officials' ethics and conflicts of interest provided by various federal and state constitutional and common law provisions, state statutes and, occasionally, local charters or ordinances. Find it online at: tinyurl.com/handbook-8.



OREGON ETHICS COMMISSION GUIDE FOR PUBLIC OFFICIALS

This guide discusses how the provisions in Oregon's statutes apply to public officials and summarizes the Commission's procedures. tinyurl.com/zrjmr8e8

WHAT TO ASK YOURSELF BEFORE ACCEPTING A GIFT³

1. **Is it a “gift?”** A gift is something of economic value not offered to others who aren't public officials (relatives or household members) on the same terms and conditions.
2. **Exceptions:** Do any of the exceptions apply?⁴
3. **Source:** Does the gift giver have a legislative or administrative interest in my decisions or votes?
4. **Value:** If so, does the value of the gift, along with any other gift received from that source this calendar year, exceed \$50? ■

1 ORS 244.025.

2 For additional information, see Oregon Government Ethics Commission “Guide for Public Officials” at tinyurl.com/zrjmr8e8 at page 26-27.

3 See also League of Oregon Cities Municipal Handbook – Ethics (tinyurl.com/handbook-8).

4 See ORS 244.020(7)(b).



Budgeting 101

A city's adopted budget is one of the most important and informative documents city officials use. This budget is prepared for each fiscal period and serves as a city's financial plan. Cities in Oregon may operate within a fiscal year, beginning on July 1 and concluding the following June 30; or cities may use a biennial budget, covering a 24-month period, beginning July 1 of the first fiscal year and ending on June 30 of the second fiscal year.

The adopted budget is a legal document establishing the authorization for the city to receive and spend money, and limits how much money can be spent for a specific activity or program. The budget presents the estimated costs of expenditures—goods or services the city plans to purchase in the coming fiscal year—and other budget requirements—contingency for unanticipated expenses—that must be planned for but may not actually be spent. The budget also presents the anticipated and actual revenues that will be available to pay for those expenditures.

Preparing a budget allows a city to look at its needs in light of funds available to meet those needs. In Oregon, all local governments must plan a balanced budget, meaning that the resources and requirements are equal. A city cannot plan to purchase more items or services than it has money to pay for them.

A CITY'S BUDGET PROCESS

Appoint a Budget Officer

The budget officer—who is either appointed by the city council or defined in the city charter—prepares the proposed budget in a format that meets the requirements set out in state statutes. The budget officer develops the budget calendar, which maps out all the steps that must be followed for the legal adoption of the city budget. A budget calendar is not required by law but is highly recommended.

Appoint Electors to the Budget Committee

The budget committee is an advisory group comprised of the city council and an equal number of appointed members. The appointed members of the budget committee must be electors of the city. Budget committee members are appointed for staggered three-year terms, and cannot be employees, officers, or agents of the city. All members of the budget committee have the same degree of authority and responsibility.

THE BUDGET PROCESS

1. Appoint a budget officer.
2. Appoint electors to the budget committee.
3. Budget officer prepares a proposed budget.
4. Public notice of budget committee meeting.
5. Budget committee meets.
6. Budget committee approves the budget.
7. Budget summary and notice of budget hearing are published.
8. Hold budget hearing.
9. Adopt budget, make appropriations, impose taxes, categorize taxes.
10. Certify taxes.
11. Post-adoption budget changes.

Source: Local Budgeting Manual 150-504-420, found under Forms & Publications at www.oregon.gov/DOR.

Budget Officer Prepares a Proposed Budget

After the budget calendar is set, the budget officer begins to develop the estimates of resources and requirements for the coming fiscal year or biennial cycle.

Every city budget will have at least one fund—the general fund—which accounts for daily operations. In practice, a city budget will



have a number of funds, each designed to account for a specific purpose. A budget should include enough different types of funds to clearly show what services and programs a local government is providing and how it is paying for expenditures. However, it is advisable to not have too many funds, as this makes the budget harder to read and understand.

There are seven types of funds used in most city budgets:

1. **General Fund** – records expenditures needed to run the daily operations of the local government.
2. **Special Revenue Fund** – accounts for money that must be used for a specific purpose.
3. **Capital Project Fund** – records the money and expenditures used to build or acquire capital facilities, such as land, buildings or infrastructure.
4. **Debt Service Fund** – records the repayment of general obligation and revenue bonds and other financing obligations.
5. **Trust and Agency Fund** – accounts for money that is held in trust for a specific purpose as defined in a trust agreement or when the government is acting as a custodian for the benefit of a group.
6. **Reserve Fund** – functions as a savings account to pay for any service, project, property, or equipment that the city can legally perform or acquire in the future.
7. **Enterprise Fund** – records the resources and expenditures of acquiring, operating, and maintaining a self-supporting facility or service—such as a city water or wastewater utility.

Oregon budget law requires a city’s budget to provide an annual financial history of each fund. The financial history must include:

- The actual revenues and expenditures for the prior two years;
- The budgeted revenues and expenditures for the current year;
- The estimated balanced budget, as proposed by the budget officer, for the coming year which includes columns for the budget approved by the budget committee; and
- The final budget adopted by the governing body.

The budget also includes a column for the descriptions of expenditures and resources.

Public Notice of the Budget Meeting

The budget committee must hold at least one public meeting for the purpose of receiving the budget message and the budget document, and to provide the public with an opportunity to ask questions about and comment on the budget.

The city must give public notice for the budget meeting(s) either by: (1) printing notice two times in a newspaper of general

THE BUDGET MESSAGE

The budget message gives the public and the budget committee information that will help them understand the proposed budget. It is required by statute to contain a brief description of the financial policies reflected in a proposed budget and, in connection with the financial policies, explain the important features of the budget. The budget message must also explain proposed changes from the prior year’s budget and any major changes in financial policies.

circulation; or (2) once in the newspaper and posting it on the city’s website. If the budget committee does not invite the public to comment during the first meeting, the committee must provide the opportunity for public comment in at least one subsequent meeting. The notice of the meeting(s) must tell the public at which meeting comments and questions will be taken.

Budget Committee Meets

The budget message is prepared in writing so it can become part of the budget committee’s records. It is delivered at the first meeting of the budget committee by the budget officer, the chief executive officer, or the governing body chair.

A quorum—more than one-half of the committee’s membership—must be present for a budget committee to conduct an official meeting. Any action taken by the committee first requires the affirmative vote of the majority of the membership.

Budget Committee Approves the Budget

One of the budget committee’s most important functions is to listen to comments and questions from interested citizens and consider their input while deliberating on the budget. The budget committee can revise the proposed budget to reflect changes it wants to make in the city’s fiscal policy, provided that the revisions still produce a balanced budget. When the committee is satisfied, it approves the budget.

When approving the budget, the budget committee must also approve a property tax rate or the tax amounts that will be submitted to the county assessor. The budget committee should make a motion to approve the property tax so that the action is documented in the committee meeting minutes. Upon approval of the budget by the budget committee, the budget officer completes the



budget column labeled “approved by budget committee,” noting any changes from the original proposed budget.

Any action by the budget committee requires approval by a majority of the entire committee. For example, if the budget committee has 10 members, six are present at a meeting (a quorum), but only five of the six present agree with a motion to approve the proposed budget, then the motion does not pass. It is up to the budget committee to negotiate a budget and tax that is acceptable to a majority of its members.

Budget Summary and Notice of Budget Hearing are Published

A summary of the approved budget, which includes a narrative description of prominent changes to the budget from year to year, is published in the local newspaper with the notice of a public hearing to adopt the budget five (5) to thirty (30) days before the budget hearing date.

Hold Budget Hearing

The city council must conduct a budget hearing by June 30 to receive the budget committee’s approved budget, conduct deliberations, and consider any additional public comments. The council can make any adjustments it deems necessary (with some restrictions) to the approved budget before it is adopted by June 30. The budget hearing and the resolutions or ordinances necessary to adopt the budget and impose taxes can be conducted at the same public meeting.

Adopt Budget, Make Appropriations, Impose Taxes, Categorize Taxes

The city council may adopt the budget at any time after the budget hearing so long as it is adopted by June 30. It is not a requirement that the budget be adopted at the hearing.

To adopt the budget, the city council enacts a resolution or ordinance which provides the legal authority to:

- Establish or dissolve funds;
- Make appropriations for expenditures;
- Adopt a budget; impose and categorize taxes; and
- Perform all other legal actions pertaining to budgeting and authorizing tax levies.

All enacted statements can be combined into one resolution (or ordinance), which must be signed by the mayor before submission to the county assessor’s office.

Certify Taxes

Any property taxes must be certified to the county assessor annually, even if the city adopts a biennium budget. By July 15 of each year, a city must submit two copies of the resolution (or

ONLINE RESOURCES

OREGON DEPARTMENT OF REVENUE RESOURCES

LOCAL BUDGETING MANUAL

An introduction to the requirements of Local Budget Law, including information on biennial budgets. Available at www.goo.gl/gGdnwk.

LOCAL BUDGETING IN OREGON

A supplement to the Local Budgeting Manual, covering the requirements of Oregon’s Local Budget Law. Available at www.goo.gl/h5ptkS.

LOCAL BUDGET LAW WEBPAGE

A webpage dedicated to helping local governments prepare and adopt their budgets. The page contains forms, glossary of terms, sample budgets and information on free training sessions. Available at www.goo.gl/JckgSE.



ordinance) to the county tax assessor. In addition, the notice of property tax certification (form LB-50) and successful ballot measures for local option taxes or permanent rate limits must be submitted.

In addition to the county tax assessor’s copies, a copy of the resolutions required to receive shared revenue must be submitted to the Oregon Department of Administrative Services by July 31. Finally, a copy of the published adopted budget document, including the publication and tax certification forms, must be submitted to the county clerk’s office by September 30.

Post-Adoption Budget Changes

While it is possible for changes to be made to an adopted budget once the fiscal year begins, this can only happen under specific circumstances. Two such examples are council-approved resolution transfers of funds, and supplemental budgets that make changes to adopted expenditure appropriations and estimated resources. These are actions that must be taken before more money is spent beyond what is appropriated in the adopted budget. Any changes made to the adopted budget require that the budget remain in balance after the change. ■



Successful Code Enforcement Considerations

Code enforcement can be a tricky job. Striking the balance between properly enforcing a city's codes and providing good customer service to its constituents is no easy task. Code enforcement works to protect the health and safety of the city through ensuring the city's codes are enforced, in areas such as land use code, environmental code, and building code. Generally, a city will use a complaint-based system of enforcement and will focus first on code violations that present serious risk to public health and safety.

A successful code enforcement officer excels in these six areas:

1. Knowing their code. Successful code enforcement officers are experts on their city's codes. They are extremely proficient at knowing what the code regulates and what it does not. The best code enforcement officers can point to relevant sections of their city's code when questioned by superiors and members of the public.

2. Reviewing their city's code annually. Code enforcement officers likely work with their city's codes more than any other city employee. It is often the code enforcement officer who finds the code's flaws or the proverbial loopholes. Successful code enforcement officers annually review their city's code so that, when necessary, appropriate amendments can be submitted to their city council.

3. Believing in interdepartmental cooperation. An exemplary code enforcement officer works cooperatively with employees from various city departments. Code enforcement officers regularly interact with problem properties that necessitate the involvement of numerous city departments. Knowing which employees in the various departments need to be involved in resolving the issues at a property is a unique and ideal skill.

4. Participating in successful community outreach. A quality code enforcement officer not only knows their city's code, they also educate property owners and community members about the code's requirements. Code enforcement officers with high rates of success are those who frequent neighborhood association meetings, engage with the chamber of commerce, and have regular contact with key stakeholders in the community. Making sure the community knows the code as well as they do is the mark of a successful code enforcement officer. To accomplish this, code enforcement officers may need to communicate code changes to residents in ways such as putting information in utility bills or publishing updates in a city newsletter.

5. Engaging with citizens who are in violation of the city code. Notifying property owners that they are in violation of the city's code is never a fun task. While it can be easier to try and deal with code violations via written notices, emails, and phone calls, effective code enforcement officers know that sometimes face-to-face contact is the most efficient way to remedy a violation. Meeting with a person whose property is in violation of the city code allows the code enforcement officer the opportunity to fully explain the violation, listen to the reasons behind the violation, and engage with the property owner in how to successfully and most expeditiously achieve compliance.

6. Enforcing the city's code consistently and equally. Successful code enforcement officers are fair code enforcement officers. A fair code enforcement officer is one that enforces the city's code equally against all property owners, regardless of their position in the community or the location of the property. ■





Public Employees & Political Campaign Restrictions

Each election season, the LOC is asked to clarify the restrictions on political campaigning by public employees. Generally, public employees are prohibited from using their work time to support or oppose measures, candidates, recalls, petitions, or political committees.¹ Furthermore, elected officials cannot direct their employees to engage in political activity.

Who is a Public Employee?

A public employee is any person employed by the state of Oregon, a county, a city, or a special district.² Examples of public employees include: full-time city employees; part-time city employees; city volunteers that receive no compensation for their service; and appointed board or commission members when they are acting in their official capacity.

Elected officials are not public employees.³ State law prohibiting public employees from supporting or opposing measures, candidates, recalls, petitions, and political committees do not apply to elected officials. Elected city mayors, councilors, and auditors are not public employees. Contractors are also not public employees. However, contractors cannot be directed to engage in political activity as part of the contractual service they are providing a city.

When are Public Employees “On the Job?”

An employee is “on the job” when he or she is performing work for the city in an official capacity, regardless of when and where the work is performed. For example, if a city’s parks director is required to attend a chamber of commerce event in their official capacity, the parks director is prohibited from asking event attendees to support a local ballot measure that would raise money for the city to build a new swimming pool.

Some common activities that are always considered to be performed in an official capacity include, but are not limited to:⁴

- Posting material to an official city website;
- Drafting or distributing an official city publication; and
- Appearing at an event as the city’s representative.

How Does a Public Employee Engage in Political Campaigning During their Personal Time when Everyone in the Community Identifies Them as a Public Employee?

Some public employees are in high profile positions that make them regularly known in their communities. In some small communities, public employees are known by all residents as working for the city. In these instances, it can be hard for members of the public to distinguish whether the public employee is speaking on behalf of the city as opposed to speaking on behalf of themselves. Similarly, a public employee who wishes to engage in political campaigning during their own private time should make it clear to all that they are acting in their personal capacity and are not working for or representing the city.

Can Public Employees Express their Own Personal Political Views While on the Job?

Yes. Public employees can express their own personal political views while at work. Employees can display political stickers on their personal vehicles and wear political buttons on their clothing (providing such an action does not violate the city’s uniform or personnel policies).

Also, public employee unions can have designated bulletin boards in city buildings to post information. The content of union bulletin boards is determined through a collective bargaining process and is not subject to ORS 260.432.

Conclusion

Understanding and knowing when and how public employees can engage in political campaigning can be confusing. To assist public employees and elected officials in understanding and complying with ORS 260.432, the LOC has created a document entitled “FAQ about Restrictions on Political Campaigning by Public Employees,” available in the online Reference Library at tinyurl.com/FAQ-campaigning. If city employees or leaders have questions about ORS 260.432, they are encouraged to consult with their city attorney for additional guidance. ■

1 ORS 260.432.

2 See ORS 260.432.

3 ORS 260.432(6)(a).

4 See Secretary of State Quick Reference on Restrictions on Political Campaigning for Public Employees - tinyurl.com/4csrymye



Tips for Handling Difficult Social Media Interactions

Elected officials typically run for office to better their community. In order to see this goal to fruition, elected officials seek tools to reach their constituents in an effective manner. One tool that elected officials have at their disposal is social media. Social media takes many forms, but all platforms typically share the following common traits: (1) communication is done electronically or digitally; (2) the platform is widely accessible to the public; and (3) the platform is interactive.

Whether using Facebook, Twitter, Instagram, webpages, or other platforms, social media has benefits that cities and their elected officials can utilize. First, cities and their officials can instantly broadcast notices and information to their residents. Second, cities and officials can receive feedback from residents on any topic. Lastly, social media is fast, affordable, and an effective alternative to other mediums of communication.

However, elected officials often find the main pitfall that comes with social media is how to properly manage and handle challenging interactions with members of the public. Elected officials must exercise caution in their interactions with members of the public while on social media platforms.

GOVERNMENT OR PRIVATE?

Generally, the initial reaction in handling a difficult interaction on a social media page is to limit and restrict comments, or perhaps even blocking individual members of the public from the account. Prior to restricting individuals interacting on a social media account, the public official should take the following steps:

- Identify whether it is a private account or a designated government/public account; and
- Regardless of the designation, identify whether the posted content is personal in nature or public business/public promotion.

Public officials are cautioned that although their social media account may have been created in a personal capacity, there could be instances when the account will be categorized by the legal

ONLINE RESOURCES

MODEL SOCIAL MEDIA POLICY

This model policy addresses legal risks such as violations of public records law and protections on free speech. This model does not address the off-duty private use of social media accounts that do not relate to public business. Available at tinyurl.com/model-sm-policy



OREGON MUNICIPAL HANDBOOK – Chapter 28: First Amendment Law

This Handbook chapter focuses on the First Amendment to the U.S. Constitution. Topics include what is protected under the First Amendment, who it applies to, and enforcement. Find it online at: tinyurl.com/handbook-28.

system as a government/public account because of the manner in which the account is used. It is important for a public official to distinguish whether an account is purely private, or if an account is government/public.

If a social media account is deemed to be public (i.e. government managed), the members of the public who interact with the account have First Amendment free speech protections under the federal and state constitutions. Unfortunately, Oregon courts have yet to interpret and provide guidance on what a government account is. However, best practice is to err on the side of

Public officials should be mindful of how they designate their social media accounts and what type of content they disseminate.



caution and assume that if the social media account is used for any type of government business or public promotion, that it will be deemed to be a government account.

IMPOSING RESTRICTIONS

The Oregon Constitution has been interpreted to mostly prohibit the government (and its officials) from implementing content-based restrictions on public speech, whether that speech is verbal or written. This content-based prohibition applies to social media accounts that are governmental in nature (this is determined by usage and content). Any restriction on speech must be content-neutral. This means that an official might be able to prohibit outcomes, such as disruptions, but the official cannot do so by targeting a specific type of content. While cities and city officials are encouraged to verify any type of restriction with their attorney prior to taking action, since the law is fluid and nuanced, the following is a list of restrictions that are likely permissible:

- Removing actual disruptive behavior such as high frequency repetitive posting or posting that is unintelligible;
- Banning the promotion of a hostile or unhealthy online environment such as postings that are sexually explicit or depict excessive violence;
- Banning the encouragement or promotion of criminal activity; and
- Banning advertising.

Another avenue in which officials can stay clear of difficult social media interactions is to disable all commenting options on posts. This restriction avoids exposure to constitutional claims but still allows for the delivery of information to the public.

If a social media account is deemed to be public, the members of the public who interact with the account have First Amendment free speech protections under the federal and state constitutions.

OTHER TIPS FOR HANDLING ONLINE INTERACTIONS

In addition to avoiding the constitutional free speech pitfalls highlighted above, the following are actions public officials should avoid doing on their social media accounts:

- Sending incorrect information;
- Making commitments the official cannot follow through on;
- Issuing long statements;
- Blaming others; and
- Engaging with negative comments and online “trolls.”

Ultimately, public officials should not be scared away from utilizing social media platforms. However, public officials should be mindful of how they designate their social media accounts and what type of content they disseminate. If public officials choose to moderate the actions of individuals on their social media accounts, they must also be aware that the moderation may expose them to liability and potential legal implications. ■





A City's Role in the Land Use Process

By Joanna Lyons-Antley, Of Counsel, Campbell Phillips

Land use is defined as what is built or developed, or what activities take place on a piece of property. A city's role in land use is to ensure that both public and private development are aligned with the standards set out in the city's comprehensive plan, zoning maps and development code.

STATEWIDE GOALS

Land use planning in Oregon is quite different when compared to other states. The Oregon land use planning program was created in 1973 when the Legislature passed the Oregon Land Use Act (SB 100) in response to Oregon's rapid population growth. Under this program, all cities and counties throughout Oregon have adopted comprehensive plans that meet 19 statewide planning goals that deal with land use, development, housing, transportation, and conservation of natural resources.

LOCAL COMPREHENSIVE PLANNING

Oregon's statewide goals are achieved through local comprehensive planning. State law requires each city and county to adopt a comprehensive plan and the zoning and land division ordinances needed to put the plan into effect. The local comprehensive plans must be consistent with the statewide planning goals. Once approved by the state's Land Conservation and Development Commission (the Commission), the plan is said to be "acknowledged," and along with state law, becomes the controlling document for land use in the city.

CITY PROCEDURES FOR LAND USE DEVELOPMENTS

Any development, whether a new single-family home or a shopping center, must receive prior approval from a city to ensure that it conforms to the land use plan and ordinances for health and safety and other local objectives. Typical land use decisions include variances, site and design review, conditional use permits, partitions, subdivisions, and zone changes.

To obtain city approval for a development, the landowner must submit the specified land use and demonstrate how the development proposal meets criteria set out in the code.

A city's land use code sets out the procedures it uses to consider land use applications. Certain kinds of development, such as an

addition to a home, may be approved quickly at the staff level, while others, such as a home based business or small office complex in a residential zone, may require conditional use approval by the planning commission. More complicated actions or policy changes, such as a new mixed-use zone or zone change from multi-family residential to retail commercial, may require approval of the city council.

CITY ROLES & DECISION-MAKING

According to state law, there are three main types of land use decisions: legislative, quasi-judicial and ministerial. For legislative decisions, city officials act like a legislature, considering changes to the land use code to establish local land use policies. In most cities, proposed legislative amendments to the comprehensive plan or zoning code are considered first by the planning commission, which holds one or more public hearings. The commission's recommendation is then considered by the governing body which holds at least one public hearing before taking final action.

For quasi-judicial decisions, city officials act like the judiciary, reviewing a landowner's land use application, holding hearings, considering testimony, and applying code criteria to decide whether the city must approve or deny the proposed development. To ensure a fair process, city officials should consider all testimony and evidence. Also, city officials should not read or talk about the pending application outside of the formal hearing and review process. If such an ex parte communication does occur, the city official must declare such communication. Decisions must be based on written findings addressing the application's consistency with the approval criteria from the code.

Ministerial land use decisions are made by planning staff based on clear and objective standards and requirements applicable to a specific development proposal or factual situation. Ministerial decisions do not require a public notice or hearing. ■

Ms. Lyons-Antley has more than 20 years of general counsel local government experience, advising her clients with practical and cost-effective solutions.



Oregon Water Rights Basics

By Olivier Jamin

With increasing stress imposed on water resources from drought and climate change, securing a safe and reliable water supply is a priority concern for every Oregon community. Many cities in Oregon operate their own water systems, while others are served by various water districts or contracts with other cities. Compared to irrigated agriculture, municipal and industrial water use constitutes just a fraction of the total amount of water withdrawn from streams or pumped from aquifers. But efforts to acquire or expand municipal water supplies attract a lot of attention and sometimes controversy. Because building new infrastructure takes time, local leaders often must forecast demand and supply over the long term. Meanwhile, the availability of new water rights is shrinking, as regulatory requirements expand.

Oregon water law, as in other western states, follows the rule of Prior Appropriation, often described as “first in time is first in right.” Prior to enactment of Oregon’s water code in 1909, the common law was that whoever first diverts water out of a stream for a beneficial use can prevent latecomers from interfering with that use. There is no sharing of shortages under this “wild west” rule of prior appropriation.

WATER RIGHTS ADMINISTRATIVE PROCESS

1. Application filed with the Oregon Water Resources Department (OWRD);
2. If water is available, the OWRD issues a permit; and
3. Once construction is complete, a Claim of Beneficial Use is filed with the OWRD by the permittee.

New water rights follow a three-step process. First, an application is filed with the Oregon Water Resources Department (OWRD), and the date of the application establishes the priority date. That’s important because the entire water right process can take considerable time to complete. Second, if the OWRD finds that water is available for appropriation, and withdrawal would not “impair or be detrimental to the public interest,” then it issues a permit. The public has a right to file a protest, possibly because the new right would deprive fish of needed flows or interfere with existing water rights. A permit allows development of water works and initial use. Third, when construction is complete, the permittee files a Claim of Beneficial Use with the OWRD that documents how the water is being used, which may differ from the rate of diversion or volume of water specified in the permit. The OWRD then issues a certificate, which is conclusive evidence of a fully vested water right.

As long as the certificate holder continues to use the water in accordance with the certificate, the right continues in perpetuity. Generally, certificated water rights may be forfeited following five consecutive years of non-use. However, municipal water rights are the exception and cannot be lost for non-use.

While somewhat simple in theory, the practice of applying for a new water right has become increasingly complicated. Most streams are over appropriated, so new permits for surface water are virtually a thing of the past, and groundwater is becoming increasingly regulated, to the point where water rights transfers may soon be the primary mechanism to acquire water rights.


WATER RIGHT TRANSFERS

A water right transfer is necessary to change one of the main components of a water right, such as the place of use, character of use, or point of diversion. The test is whether other water right holders may be “injured” by the change. An example of this is a change in point of diversion higher up in the watershed, which could mean withdrawals of water above someone else’s diversion. Proposed transfers are also subject to protest and hearings.

Because new water rights are becoming increasingly difficult to obtain, acquiring an existing water right and applying to transfer its place of use or character of use could soon become the primary way to secure water resources. In the last few years, the OWRD adopted a new position at odds with its long-standing practice, and with what some believe is their statutory duty, by refusing to process transfer requests specific to storage water rights. The OWRD’s current interpretation states that holders of storage water rights are not able to change the location of a dam or other reservoirs, even if such a change is required for safety purposes. The issue is currently in front of the courts.

MUNICIPAL EXTENSIONS OF TIME

Generally, a new permit will include a date to commence and complete construction, usually within the first year. That date can be extended for five years for good cause. The problem is that cities must plan for long-term growth. The goal of most cities is to lock in a supply that will meet anticipated demand for decades to come. A city would then develop a system in increments when it was confident the demand would be there, along with the ratepayers to carry the debt service. This reality has created tension between the legal requirement of prompt development and responsible municipal planning.



States throughout the western U.S. are also increasingly looking at water recycling and reuse programs to maximize water use and efficiency.

For decades, the OWRD had simply issued successive five-year municipal extensions to avoid this problem. That practice was disallowed by the courts in 2004. Then, in 2005, the Legislature enacted special laws pertaining to municipal water right extensions. Under that statute, new municipal water permits would extend the initial development period to 20 years, with the possibility of additional extensions of time. Following a 2013 court decision, water right permits that have not been fully developed must go through a special process that includes the potential for limits on withdrawals under the permit to protect fish flows.

ALTERNATIVE APPROACHES TO WATER SUPPLIES

Some municipalities have started purchasing existing water rights from farmers or other cities. Others pay farmers to improve irrigation efficiency, for example to install sprinklers to replace flood irrigation, or pipe to replace open canals. As a result of those efficiency improvements, additional water may be available to municipalities.

States throughout the western U.S. are also increasingly looking at water recycling and reuse programs to maximize water use and efficiency. For a long time, water reuse and recycling were limited to irrigation purposes, but drought conditions have forced states and regulators to expand those programs. In 2022, Colorado became the first state to adopt official rules governing potable water reuse. There are sure to be new opportunities for local governments moving forward to pilot new reuse and recycling programs as part of their water planning strategy.

Water resources continue to diminish around the western U.S. while competition for this scarce and precious resource increases. For local governments, this means that water planning for the next 50-100 years should start now for a better understanding of future supply and demand and to identify potential additional sources of water. The League of Oregon Cities, in collaboration with other stakeholders, is working hard to ensure that the Legislature and the courts understand the imperative and support public water supplies. ■

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Resources for City Officials

The League has a large online library of publications, guides, FAQs and models available to assist public officials in carrying out their duties. All of these are available at www.orcities.org under **Resources > Reference Materials**.

- Guide to Recruiting a City Attorney
- Manual for Ordinance Drafting and Maintenance
- Guide to Drafting a Sign Code
- Borrowing and Bonds for Oregon Municipalities
- Guide to the Local Regulation of Marijuana in Oregon
- Guide to Recruiting a City Administrator
- Guide to Local Government Regulation of Firearms
- Legal Guide to Collecting Transient Lodging Tax in Oregon
- So You Want to Run for Public Office - A Guide for Prospective City Elected Officials
- Home Rule 101
- Guide to Incorporation
- Guide to Public Display of Flags on Government Buildings
- Guide to Persons Experiencing Homelessness in Public Spaces
- FAQ on Initiative and Referendum in Oregon
- FAQ on Oaths of Office
- FAQ on Surplus Property
- FAQ on Municipal Audits
- FAQ on Urban Renewal
- FAQ on Public Record Fees
- FAQ on Vacating the Public Right of Way
- FAQ on Single-Use Plastic Bags and Straws
- FAQ on Oregon's Rent Control Laws
- FAQ on Emergency Procurement
- Telecom Toolkit
- Model Noise Ordinance
- Model Business License Ordinance
- Model System Development Charge Ordinance
- Model Beekeeping Ordinance
- Model Rules of Procedure for Council Meetings
- Model Charter for Oregon Cities
- Model Animal Ordinance
- Model Equipment Rental Agreement
- Model Technology Use Policy
- Model Fee Waiver Ordinances
- Model Motor Vehicle Fuel Tax Ordinance
- Model Cable Television Franchise Agreement
- White Paper on Disruptive Citizens in Public Meetings
- White Paper on Incorporating a City in Oregon
- Understanding Oregon's Unfunded Mandate Law
- And many more



Top Three Ways New Elected Officials Get Into Trouble

By Kirk Mylander, CIS General Counsel

INTRODUCTION

Newly elected councilors brim with energy and good intentions. Sometimes, however, a new council-person's enthusiasm can lead him or her to make avoidable mistakes. Here are the top three mistakes of the newly-elected.

I. Terminating Staff on Your First Day/Week/Month

We at CIS watch city council elections closely, as we're very interested in who we will be working with, and working for, the next few years. In the not-too-distant past, I received a call in late December from a person whom I knew had won his race for mayor.

"Congratulations on your election!" I said. "That's great. You must be very excited."

"Well, I am excited to make some changes," he told me. "That's why I'm calling you, because I have asked the city manager for his resignation."

There was a pause. A long pause. Mr. Mayor-Elect had not even been sworn in yet and he was firing the city manager?

The mayor continued.

"I know you have this PreLoss program at CIS, so that's why I'm calling. So, you know, to give you guys the heads up. Because if the city manager doesn't resign, then I'm going to fire him at our first meeting."

After 20 years of legal practice, not much can catch me off guard. This totally caught me off guard. I didn't know where to start.

"But, you're not sworn in... you don't have the authority to fire someone by yourself, it requires a majority vote, and..."

"Oh, I got the votes!" the mayor interrupted. "City manager resigns, or he's gone. This is why I ran for office."

So, then I had to explain to the mayor-elect how we could not support this termination, and his city would be required to pay the Pre-Loss deductible if he went through with it now. However, CIS could support a termination where he and other new councilors take some time to observe the city manager after they get into office. And if they see deficiencies in his job performance, then to provide the city manager with a specific list and give him a certain amount of time to improve, like 90 to 120 days. Also, provide the city manager with training and the support he

needs to do the job the correct way; demonstrate that the city council is there to help the city manager succeed. Then, with the clear expectations, training, support, and additional time, if the city manager does not raise his job performance to meet your metrics, let him go. And really, that's the pattern we want to see for all terminations at any level—where someone is told what's wrong, given the time and tools to improve, but for whatever reason they decide not to make a change. That's a winning, defensible scenario that is fair to everyone. But my new mayor friend wasn't having it.

"We're just going to have to agree to disagree on this one, Kirk. The people elected me to make a change, two other councilors agree with me, and we're going to do what we were elected to do."

And sure enough, at Mr. Mayor's very first meeting he made a motion to fire the city manager. The city manager had waived his right to an open meeting, so council chambers was packed with his supporters. When the vote started, those supporters were LOUD. The people were so loud that the mayor couldn't even hear how the councilors were voting. The mayor then shouted at the people, "Come on people, act like adults!" People in the audience shouted back, "YOU act like adults, terminating our city manager on your first day!" It was a circus.

When all the yelling and shouting was over, the city manager was fired and the citizens were mad mad mad—so mad, in fact, can you guess what happened exactly six months later?

That's right, the mayor and the two other councilors who voted to terminate the city manager were all three recalled. And do you know why it was exactly six months later? Yes! Because there is a six-month "safe harbor" during which a newly sworn in elected official cannot be recalled. Which shows how the people in this town were just waiting for those six months to be up.

II. Believing You are the City CEO and Causing a "Hostile Work Environment" for Staff: (or, doing the city manager's job instead of your own)

There's a type of person who often runs for a city council or mayor position on the basis of their experience and success in the private sector. And their success is to be commended; their skills and leadership learned in the business world can absolutely contribute to their success as an elected official. But occasionally, a councilor who is used to being the CEO of his or her own



company, and having the power to make final decisions on their own, forgets that the public sector is very different. The power of a city council comes from acting as a group. Individual councilors and mayors have no power at all. If you're newly elected and you want to effect the mandate of your election, you do that by convincing a majority of the council to vote in concert with you to pass resolutions or ordinances. You alone can't do much of anything. As a group you can make law.

But like I was saying, some people who have been a successful CEO and who have strong leadership skills, they move too fast after being elected. They don't take the time to learn how the "new company" (the city) is different from their old company, and that they must follow different rules. Instead, they start individually managing city staff, and start ordering quick changes to staffers' duties, titles, and job locations. This makes the permanent city staff feel stressed. They start complaining of a "hostile work environment" cause by the micromanaging city councilor.

Here's where this can get dangerous for you as an elected official: managing staff is outside your scope of authority. You don't have the power to manage the daily activities of staff. Those duties belong to the city manager or city administrator. City staff typically know this, and so they may threaten to file, or actually file, a "hostile work environment" claim against you.

There's good news and bad news when it comes to staff filing lawsuits against you. The good news is that Oregon statutory law requires your city to "indemnify and defend" you for any lawsuits that are filed against you for actions taken "within the scope of your authority" as an elected official. Your own personal checkbook will never be on the line for lawsuits that flow from your official duties. However, like I said, there's bad news too. In the example above, the councilor who is micromanaging staff is NOT acting with(in) the course and scope of his or her official duties. Managing staff is the city manager's job. So, if you cause a lawsuit by micromanaging staff, you will be getting sued for actions that you took outside of your authority. And you will have to pay to defend yourself, most likely.

There's nothing to get scared about here. It's an easy fix. Just let the city manager manage the staff. If you see an issue that simply must be addressed, talk to your city manager about it. That's all you need to do. You are a city councilor now—you get to leave that day-to-day stuff to others!

III. Using Your Office for Personal Gain — The Six Words You Never Want to Hear Yourself Say

Now that you're a city councilor, people are going to treat you differently around town. That's unavoidable. When you have the power (when acting with your co-councilors) to make laws, people will view you in a different light than they used to. But you shouldn't view yourself in a different light. It leads to all sorts of problems. Here's one example.

There is a city in Oregon just large enough to have parking meters in its downtown core. Just the main drag downtown. Well, a person who had just successfully run for city council had a business that fronted that metered boulevard. This fellow owned an auto body shop, and he liked to park his own personal hot rod right out in front. So, what did he stop doing the day after he was sworn in as a new city councilor? You guessed right again; he stopped paying the parking meter in front of his shop.

So that day, the city meter reader began her shift by working her way down that city's primary downtown street. And the new councilor started watching her while he worked. He saw her moving from one car to another, checking meters and writing tickets. He watched until she reached his hot rod, parked directly in front of his store.

Now this meter reader, she was not a big imposing person like the councilor. She was petite and barely five feet tall.

The new city councilor saw the meter reader check his meter, get out her ticket book, and start writing out a ticket. Well, he rushed toward the street, burst out the front door of the store, threw his hand up and yelled. He yelled the six words that you never want to hear come out of your mouth as long as you are a city councilor: "DO YOU KNOW WHO I AM!?"

You never want to hear yourself say those six words, because that will be the beginning of the end for your time in public service. It never ends well after that. The meter reader burst into tears as the councilor continued yelling about how his position at the city compared to hers. She left and went back to her manager.

Her manager did all the right things. He told her how she had nothing to worry about, that she was only doing her job, and how the councilor was out of line. The manager told her to take the rest of the day off, and he would talk to his own boss, the city manager. When the city manager heard what the councilor had



done, he also said all the right things. He said he would talk to the councilor, that the meter reader had nothing to worry about and that she had done the right thing when she ticketed the councilor's car.

Now just as the manager was leaving, who comes storming into City Hall and goes straight into the city manager's office and slams the door closed? The councilor with the shop on main street. And he was still mad. He was yelling loud enough that staff could hear him shouting that he wanted the city manager to fire the meter reader, and to do it now! Who do you suppose the staff shares this with? The meter reader. The next day she emails her boss and says that the city councilor has created a hostile work environment, based upon her applying the parking regulations to the councilor the same as she applies them to everybody else. So, she got a lawyer and sued the councilor and the city.

CIS had to settle this case because the meter reader was right. The councilor did expect her to bend the rules for him, just because he was a councilor. And when she didn't, he demanded that she be fired. In a perfect world, she would have got her job back and the councilor would have been the one who got fired. But councilors can't be fired. You are in a unique position that way, and you do have a lot of responsibility. Use it judiciously and go out of your way to make sure that everyone knows you expect to live by the same rules as everyone else in town.

And never, ever, say to anyone, "Do you know who I am?!"

CONCLUSION

We want your tenure in office to be a success, and hope that you can now avoid these three common potholes that have made the

ONLINE RESOURCES

CIS WEBSITE

www.cisoregon.org

CIS (Citycounty Insurance Services) has been the trusted provider of insurance coverage for Oregon's cities and counties since 1981.



CIS LEARNING CENTER

The CIS Learning Center provides in-person and free online training and resources to help members achieve their goals. Find it online at: cis.sabacloud.com.

wheels come off a few elected officials who have gone before you. Remember that your power comes from acting as a group, not alone; you're free of the day-to-day stuff, which belongs to the city manager alone; and never act or talk like you deserve special treatment because of your position, or you're going to wind up all alone. ■



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