

**Board of Commissioners**

Robert Stevens – Chairman  
Frank Spence – Vice-Chair  
Tim Hill – Secretary  
James Campbell – Treasurer  
Dirk Rohne – Assistant Secretary/Treasurer

422 Gateway Ave, Suite 100  
Astoria, OR 97103  
Phone: (503) 741-3300  
Fax: (503) 741-3345  
[www.portofastoria.com](http://www.portofastoria.com)

**Workshop Session**

September 19, 2023 @ 12:30 PM  
10 Pier 1, Suite 209

---

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting by calling the Port of Astoria at (503) 741-3300.

\*This meeting will also be accessible via Zoom. Please see page 2 for login instructions.

**Agenda**

1. CALL TO ORDER
2. ROLL CALL
3. PLEDGE OF ALLEGIANCE
4. CHANGES/ADDITIONS TO THE AGENDA
5. PUBLIC COMMENT:  
This is an opportunity to speak to the Commission for 3 minutes regarding any topic. In person, those wishing to speak must fill out a public comment form. Those participating via Zoom may raise their hands during the public comment period.
6. ACTION:
  - a. Authorize Letter to DEQ Regarding NPDES Permit Requirements ..... 3
  - b. Funding Agreement – Industrial Development Revolving Fund ..... 5
7. PRESENTATION:
  - a. Commission Training – Port Counsel Eileen Eakins ..... 7
8. COMMISSION COMMENTS
9. EXECUTIVE DIRECTOR COMMENTS
10. UPCOMING MEETING DATES:
  - a. Regular Session – October 3, 2023 at 4:00 PM
  - b. Workshop Session – October 17, 2023 at 4:00 PM
11. ADJOURN

Please Note:

Agenda packets are available online at: <https://www.portofastoria.com/CommissionMeetings/AgendaMinutes.aspx>

Please allow time for the normal posting procedure for agendas and meeting packets.



## Board of Commissioners

### **HOW TO JOIN THE ZOOM MEETING:**

**Online:** Direct link: <https://us02web.zoom.us/j/86905881635?pwd=amhtTTBFcE9NUElxNy9hYTZFPQTizQT09>  
Or go to [Zoom.us/join](https://zoom.us/join) and enter Meeting ID: 869 0588 1635, Passcode: 422

**Dial In:** (669) 900-6833, Meeting ID: 869 0588 1635, Passcode: 422

This meeting is accessible to persons with disabilities or persons who wish to attend but do not have computer access or cell phone access. If you require special accommodations, please contact the Port of Astoria at least 48 hours prior to the meeting by calling [\(503\) 741-3300](tel:5037413300) or via email at [admin@portofastoria.com](mailto:admin@portofastoria.com).

September 19, 2023

Trinh Hansen  
Water Quality Permit Coordinator  
Department of Environmental Quality  
4026 Fairview Industrial Dr SE  
Salem, OR 97302

Re: Da Yang Seafoods Individual NPDES Permit Requirements

On August 30, 2023, DEQ held a public hearing concerning the conditions proposed within the Da Yang Seafoods (“DYS”) Individual NPDES wastewater permit. During that meeting, DEQ staff stated that written testimony will be given the same consideration as verbal testimony provided during the public hearing. Pursuant to the public hearing, the Port of Astoria submits this letter to DEQ for its consideration.

The seafood industry depends on sustainable fisheries. For citizens to enjoy the many benefits that these fisheries provide requires a collaboration of interests - seafood processors, commercial fishermen, citizens and regulators alike must work together to ensure sustainability.

Collaboration is defined as *“the action of working with someone to produce or create something.”* The conditions proposed in the current DYS Individual NPDES wastewater permit are not a collaborative effort, rather a cudgel whose unquestioned repercussions will harm not only Oregon’s seafood industry, but its environment.

While there are many reasons for this potential harm, two proposed components bear specific scrutiny: copper and effluent. As currently contemplated, DYS process water contains more copper than will be allowed through the Individual NPDES permit limits. This effectively means that DYS – and any other seafood processor in Oregon – will potentially be required to “treat” municipal water by reducing naturally-occurring copper concentrations to levels that are not achievable with available technology. Effluent requirements are especially perplexing.

Currently, Da Yang’s effluent may be recycled into a protein paste used in the production of pet food. As proposed in the Individual NPDES permit conditions, DEQ will mandate effluent



treatment whose resulting toxicity may only be taken to a landfill instead of recycled. This is contrary to DEQ's mission "*...to be a leader in restoring, maintaining and enhancing the quality of Oregon's air, land and water.*"

The Port of Astoria's mission also includes environmental responsibility: "*...to generate economic growth and prosperity in a safe and environmentally responsible manner for its citizens through creation of family wage jobs and prudent management of its assets.*" To fulfill its environmental responsibilities, the Port must protest the unsustainable conditions proposed within DYS Individual NPDES permit. The Port's economic responsibilities are another consideration: with 500-700 jobs maintained on Port properties depending on season, seafood processing is the Port's most recognizable generator. Should DEQ not heed the advice of the many testimonies provided at the August 30, 2023 public hearing, the seafood industry and the many economic benefits that it provides to Oregonians will be imperiled.

The public engagement process is only helpful if DEQ representatives will evaluate the compelling information presented by those most vested in the industry - seafood processors, commercial fishermen and the various chemical engineers, consultants, and industry experts working on their behalf. It is the Port's hope that DEQ will consider this information to craft a more collaborative, sustainable solution.

Sincerely,

Port of Astoria Board of Commissioners

Robert Stevens

Frank Spence

James Campbell

Tim Hill

Dirk Rohne

## FUNDING AGREEMENT

### Industrial Development Revolving Fund

This Funding Agreement (“Agreement”) is made and entered into this 13th day of September, 2023, by and between **Clatsop County**, a political subdivision of the State of Oregon, (“**County**”) and the **Port of Astoria**, an Oregon special district (“**District**”).

County and District hereby agree as follows:

1. Funding. Clatsop County has established and maintains an Industrial Development Revolving Fund per Oregon Revised Statutes (ORS) 275.318. Upon execution of this Agreement, the County will provide a single payment of \$250,000.00 (“Funds”) to the District from the Industrial Development Revolving Fund for the purpose herein described.
2. Purpose: The District shall use the Funds for development-related expenses pertaining to the 26-acre Airport Industrial Park (AIP) owned and operated by the District. The District represents that it shall use the Funds for the exclusive purpose of preparing the AIP site for industrial development, including but not limited to plans, studies, permitting, and infrastructure.
3. Term: This Agreement shall be effective September 13, 2023 and shall terminate upon the County’s receipt of the District’s final report to the County Commissioners pursuant to section 5 of this Agreement or September 30, 2025, whichever first occurs.
4. Indemnity; Insurance: The District shall indemnify and hold the County harmless for any claim arising out of the use or application of the Funds. The District shall maintain general liability insurance in an amount sufficient to satisfy the current Oregon Tort Claim Act limits, and for the duration of this Agreement shall name the County as an additional insured on such policy.
5. Compliance and Reporting: Allocation of Funds under this Agreement is subject to the requirements of ORS 275.318 and all other applicable laws and regulations. The District shall provide quarterly financial updates to the County Finance Department describing funded activities, milestones and expenditures, and shall present a final report to the County Board of Commissioners.
6. General: Funding under this Agreement is subject to the following additional terms and conditions:
  - (A) Funding is allocated by the Clatsop County Board of Commissioners and may be modified at the sole discretion of the County Commission.
  - (B) Upon termination of this Agreement, any funds not expended for the specific purpose described in this Agreement shall be returned to the County;

**COUNTY:**

---

Name, Title

---

Date

---

Signature

**PORT OF ASTORIA:**

---

Name, Title

---

Date

---

Signature

---

District Address

---

District Phone

## PORT OF ASTORIA TRAINING 2023

# Authorities, Duties, and Liabilities of Port Commissioners and Staff

Eileen G. Eakins  
Northwest Local Government Legal Advisors, LLC  
[eileen@lgl-advisors.com](mailto:eileen@lgl-advisors.com), (503) 607-0517  
<https://localgovernmentlegal.net>

1

- Powers and Protections of the Port
- Roles and Responsibilities of the Commission
- Public Contracting
- Public Meetings
- Ethics

2

2

## Powers and Protections of the Port

3

### **“Dillon’s Rule.”**

A local government may exercise powers that are expressly provided for by law or are necessarily implied.

4



### **Expressly provided authority.**

- ORS Chapter 198
- “Principal Act” of District
- Other statutes, e.g.:
  - Elections (ORS Ch. 255)
  - Bonds (ORS Ch. 280)
  - Contracts (ORS Ch. 279A, B, C)
- Administrative Rules
- Ordinances

5

### **Necessarily implied authority, e.g.:**

- Purchasing supplies
- Employing staff
- Entering into contracts
- Incidental tasks relating to exercise of authority

6

## **Sovereign Immunity.**

- Protects a government body from being sued unless the “sovereign” (e.g., the state of Oregon) grants permission to do so through legislation
- The legislation may dictate the method and terms of the suit

7

## **Legal actions against public bodies [ORS 30.320].**

- Contracts: Treated like any private party.
- Quiet title: Treated like any private party.
- Tort: Only as provided in ORS 30.260 to 30.300 [Oregon Tort Claims Act]

8

## Oregon Tort Claims Act.

“Subject to the limitations of ORS 30.260 to 30.300, every public body is subject to action or suit for its torts and those of its officers, employees and agents acting within the scope of their employment or duties... The sole cause of action for any tort of officers, employees or agents of a public body acting within the scope of their employment or duties ... shall be an action against the public body only... No other form of civil action or suit shall be permitted.”

9

## Oregon Tort Claims Act Damage Caps

*(July 1, 2023 – June 30, 2024)*

### Personal injury or death:

-State, single claimant:	\$2,490,600
-State, aggregate claims:	\$4,981,300
-Local government, single claimant:	\$ 830,300
-Local government, aggregate claims:	\$1,660,400

### Property damage:

-State and local, single claimant:	\$ 136,200
-State and local, aggregate claims:	\$ 680,900

10

## Duties and Authorities of the Board of Commissioners

11

### **Duties of the Board:**

- Ensure the Port operates in a legal and fiscally responsible manner
- Enter into legal agreements on behalf of the Port
- Oversee financial operations
- Establish legislation by ordinance when appropriate
- Establish district-wide policies
- Delegate authority when appropriate
- Supervise the chief executive officer

12

## **Board Members:**

- Must be qualified to serve on the Commission (“elector”)
- Can be “compensated” up to \$50/day or portion thereof, and be reimbursed for expenses

13

- Are entitled to indemnity under OTCA for claims of negligence against Board
- Are not entitled to indemnity if acting outside “course and scope”
- Can be found personally liable for repayment of unlawful expenditure of public funds (ORS 294.100)

14

- Elected board members can be recalled, but usually can't otherwise be removed.
- However, elected officials can become ineligible for office if the official:

15

- ✓ Is “a member of, or affiliated with, any organization which teaches the doctrine of, or advocates, the overthrow of the Government of the United States by force or violence” (ORS 236.030)
- ✓ Is convicted of an infamous crime, or any offense involving the violation of the oath of the incumbent while in office
- ✓ Refuses or neglects to take the oath of office, or to give or renew the official bond of the incumbent, or to deposit such oath or bond within the time prescribed by law

16

- ✓ Has their election or appointment declared void by a competent tribunal
- ✓ Is found to be a mentally diseased person by a competent tribunal
- ✓ Ceases to possess any other qualification required for election or appointment to such office (ORS 236.010) or

17

- ✓ Agrees to engage in, or does engage in, a duel, or “curry a challenge” to a duel to another person (Or. Const. Art. II, Section 9)

18

Individual Board members have the power to engage in the following tasks without the consent of the rest of the Board (choose all that apply):

- A. Attend board meetings by telephone.
- B. Establish policies.
- C. Review personnel records.
- D. Direct staff.
- E. Sign contracts.

19

Individual Board members have the power to engage in the following tasks without the consent of the rest of the Board (choose all that apply):

- A. Attend board meetings by telephone.**
- B. Establish policies.
- C. Review personnel records.
- D. Direct staff.
- E. Sign contracts.

20



Individual Board members are legally obligated to:

- Exercise fiduciary duties on behalf of District:
  - Duty of care
  - Duty of loyalty
  - Duty of obedience
- Act within the course and scope of their duties

21

**Duty of Care.** Board members must:

- Give the same care and concern to their board responsibilities as any prudent and ordinary person would.
- Actively participate in board meetings and on committees.
- Actively work with other board members to advance the Port's mission and goals.

22

**Duty of Loyalty.** Board members must:

- Place the interests of the Port ahead of their own interests at all times.
- Publicly disclose any conflicts of interests and not use board service as a means for personal or commercial gain.

23

**Duty of Obedience.** Board members must:

- Make sure that the Port is abiding by all applicable laws and regulations and doesn't engage in illegal or unauthorized activities.
- Carry out the Port's mission in accordance with its statutory authority and adopted policies.

24

## **Acting within “course and scope”:**

- Exercising only authority granted by law or board policy
- Engaging in activities permitted:
  - Directly by statute
  - Within the role of a member of the governing body
  - Delegated by the rest of the governing body

25

## **Acting outside “course and scope”:**

- Engaging in activities:
  - Not authorized by law or board policy
  - Outside the role of the governing body
  - Not expressly delegated by the rest of the Board
  - That interfere with the Port’s contractual relationships

26

## **Five Essentials for Managing Risk Exposure**

1. All decisions of the Board must be made by majority vote at a properly noticed public meeting.
2. No individual board member is authorized to speak for, or represent, the Board without the express (formal) approval of a majority of the Board.

27

## **Five Essentials for Managing Risk Exposure**

3. The Board (acting collectively) must clearly understand its role as a legislative and policy-making body and remain within this scope at all times.
4. Neither the Board nor any individual Board member should engage in processes or decision-making that A) is delegated elsewhere; or B) is outside the scope of duties of the governing body.

28

## **Five Essentials for Managing Risk Exposure**

5. If the Board intends to delegate any of its administrative authority – by contract or by vote – it should clearly understand what authority it is delegating and specifically describe the limitations of the authority.

If the authority is delegated by contract, the Board must adhere to the contract.

29

30

## **Commission Decision-Making**

30

## **Board action.**

- Must be at a properly called public meeting
- Requires a quorum to be present
- Generally requires approval by a majority of the board
- All votes must be taken publicly (no secret ballots)

31

## **Regular voting procedures.**

- Affect day-to-day operations
- Recorded in the minutes
- No other documentation necessary

32

## **Resolutions.**

- Establish formal policy of the Port or the board.
- Govern internal operations
- Simple adoption procedures

33

- Create a written record of important board decisions and district policy
- May be required by statute
- Simple adoption requirements
- Include in published meeting agenda
- Must be approved by majority of board

34

## **Ordinances.**

- Create local law.
- Require statutory authority
- Formal adoption procedures

35



36



Public Contracting Code: Oregon’s laws governing public contracting, specifically [ORS 279A, 279B, and 279C]

Oregon Attorney General’s Model Public Contracting Rules (“Model Rules”): OAR Chapter 137, Divisions 46 through 49.

Local Contracting Rules. Internal rules for contracting that apply to the Port. Adopted by resolution of the board. May expressly adopt some or all of the Model Rules, and/or establish specific local rules

37

### **Public Contract.**

A sale or other disposal, or a purchase, lease, rental or other acquisition, by a contracting agency of personal property, services, including personal services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement.

Does not include:

- Grants
- Contracts for the purchase or sale of real estate
- Intergovernmental agreements (IGAs)
- Contracts for which no district funds are used

38

### **Local Contract Review Board (“LCRB”).**

The Port Commission, exercising specific contracting authority granted under the Public Contract Code.

Unlike other contracting authority granted to the Commission, the duties of the LCRB may not be delegated elsewhere.

39

### **Authority to Approve Contracts.**

- The Board of Directors must approve all contracts, unless they have delegated this authority elsewhere, such as to the Executive Director, Fire Chief, or General Manager.
- The Local Rules may describe the scope of delegation for approval of contracts, including assigning dollar limits to this authority.

40

## **Competitive Bidding.**

Required for all public contracts unless exempted:

- By statute
- By Local Rule
- By resolution of the board (“special procurement”)

41

Exempted by Statute, e.g.:

- Small or intermediate procurements
- “Piggyback” Contracts. Contracts for purchase or lease of personal property entered into by another public agency that allows for “piggybacking” onto the contract terms, according to ORS 279A.205 through 279A.215 (“Cooperative Procurements”).

42

## Exempted by Resolution of the LCRB (“Special Procurement”):

- The Local Contract Review Board may exempt certain contracts or classes of contracts from competitive bidding requirements after adopting written “findings” to support the exemption, holding a public hearing (for construction contracts), and adopting a resolution declaring the exemption.

43

## Exempted By Local Rule, e.g.:

### Emergency contracts:

- Define “emergency,” e.g.: “Circumstances that (a) could not have reasonably been foreseen; (b) create a substantial risk of loss, damage, or interruption of services or a substantial threat to property, public health, welfare or safety; and (c) require prompt execution of a contract to remedy the condition.”
- Establish process for awarding contract.

44

### **Methods for Awarding Contracts.**

- Direct Award (no bidding): “Any manner deemed practical and convenient.”
  
- Informal Bidding (three quotes): “Best serves the interests of the contracting agency, taking into account price as well as considerations including, but not limited to, experience, expertise, product functionality, suitability for a particular purpose and contractor.”
  
- Formal Bidding: Lowest responsive, responsible bidder.
  - Responsive: Substantially complies with requirements for submission.
  - Responsible: Has all necessary qualifications and resources to do the job.

45

### **Types of Contracts.**

Public contracts in Oregon fall into one of the following categories:

- Personal services (professional services)
- Procurements (purchase of goods, or services that are not personal services)
- Public improvements (construction)
- Surplus property (disposing of things you don't need)

The contracting process varies, depending on the type of contract.

46

## **Personal Services Contracts.**

Local Rules define this. For example:

“Personal Services” include those services that require specialized technical, creative, professional or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary judgment, and for which the quality of the service depends on attributes that are unique to the service provider. Such services include, but are not limited to: Architect, engineer; surveyor; photogrammetrist; attorney; accountant; auditor; computer programmer; artist; designer; performer; consultant; outreach educator; and workshop facilitator.

47

**Contract for an architect, engineer, surveyor, or photogrammetrist:**

- If \$100,000 or more, must be formally bid and qualification-based selection (QBS) will apply.
- If under \$100,000, award like other personal services contracts.

48

Personal services contract NOT for architectural, engineering, surveying, or photogrammetry services over \$100,000:

- Local Rules prescribe how the contract may be awarded. Follow those rules.

49

### **Procurements.**

Any purchase of goods, or of services that are not personal services contracts, is a “procurement.”

50

- Small Procurement - Under \$25,000\*, no competitive process is required. Get the best deal you can for the Port.
- Intermediate Procurement - \$25,000 and \$250,000\*, get at least three competitive quotes from qualified vendors. Written quotes are always recommended; required if bids will exceed \$75,000.
- Formal Procurement - more than \$250,000\*, contract must be advertised and competitively bid unless the LCRB grants an exemption by resolution. May use an invitation to bid or a request for proposals. Consult applicable statutes in ORS chapter 279B.

\* Effective September 25, 2024 [SB 1047 (2023)]

51

## **Public Improvements.**

Construction performed “by or for” a public agency is a public improvement.

A public improvement for \$50,000 or more is called a “public work.” Prevailing wages must be paid.

52



- Under \$10,000, no competitive process is required. Get the best deal you can for the Port.
- Between \$10,000 and \$100,000, obtain at least three competitive quotes from qualified vendors. Written quotes are always recommended; required if bids will exceed \$75,000.
- More than \$100,000, contract must be advertised and competitively bid unless the LCRB grants an exemption by resolution. Consult applicable statutes in ORS chapter 279C.

53

- If more than \$50,000, prevailing wages must be paid, regardless of the method of making the award. The advertisement or request for bids, and the contract itself, must state this requirement. Consult applicable statutes in ORS chapter 279C.
- If more than \$100,000, a bid bond, performance bond, and payment bond are required.

54

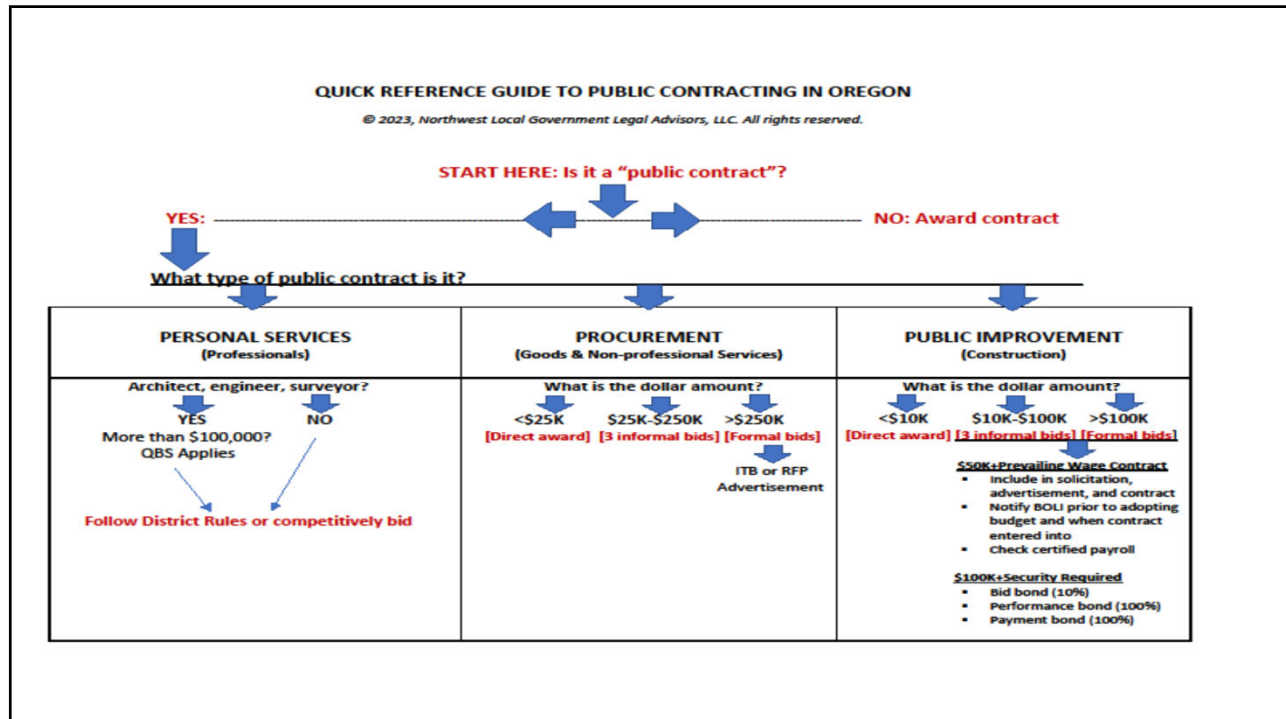
## Surplus Property.

Selling publicly owned property is a “public contract” under the Contracting Code. It must be competitively bid and sold to the highest bidder unless the Local Rules provide for a different process.

Local Rules should define “surplus property.” For example:

*“Surplus Property” is defined as any personal property of the Port that has been determined by the Board as being of no use or value to the Port.*

55



56

# Public Meetings

57

## **Oregon statutory policy.**

“The Oregon form of government requires an informed public aware of the deliberations and decisions of governing bodies and the information upon which such decisions were made. It is the intent of [the public meetings law] that decisions of governing bodies be arrived at openly.”

ORS 192.620 [1973]

58

- To open meetings of governing bodies to the public;
- To give notice of the time and place of meetings; and
- To make meetings accessible to those wishing to attend.
- No requirement to let the public talk.
- “Public meeting” vs “public hearing.”

59

### **“What is a ‘public meeting’?”.**

Any meeting where a quorum of the decision-making body is present and is discussing or “deliberating toward” a matter of business is a public meeting.

Any meeting of a body formed to advise a public body is a public meeting.

60

**LEGISLATIVE UPDATE:**

**HB 2805 (2023): “Deliberations” do not include:**

Communications between or among members of a governing body that are:

- (A) Purely factual or educational in nature and that convey no deliberation or decision on any matter that might reasonably come before the governing body;
- (B) Not related to any matter that, at any time, could reasonably be foreseen to come before the governing body for deliberation and decision; or
- (C) Nonsubstantive in nature, such as communication relating to scheduling, leaves of absence and other similar matters.

61

Which of the following is allowed at a public meeting? (Choose all that apply.)

- A. Shouting at each other.
- B. Meeting outside the Port’s boundaries.
- C. Meeting on the second floor of a building with no elevator.
- D. Holding the meeting when no notice was given.
- E. Smoking

62

Which of the following is allowed at a public meeting? (Choose all that apply.)

- A. **Shouting at each other.**
- B. Meeting outside the Port.
- C. Meeting on the second floor of a building with no elevator.
- D. Holding the meeting when no notice was given.
- E. Smoking

63

For a seven-member board, which is NOT a public meeting?

- A. Three members call a fourth one on the phone, to discuss firing the manager.
- B. Four members go fishing together.
- C. The chair sends a group email to the rest of the board to ask how they plan to vote at next week's board meeting.
- D. Five members attend a work session at the home of the chair, to hammer out some personnel policies.

64

For a seven-member board, which is NOT a public meeting?

A. Three members call a fourth one on the phone, to discuss firing the manager.

B. **Four members go fishing together.**

C. The chair sends a group email to the rest of the board to ask how they plan to vote at next week's board meeting.

D. Five members attend a work session at the home of the chair, to hammer out some personnel policies.

65

What is the difference between a legal public meeting and an illegal public meeting?

66

## True or false:

There are specific situations when sending out a meeting notice is not required.

67

## “How much notice is required?”

Provide *general* notice to the public at large, and *actual* notice to specifically interested persons:

- Executive session only: Same as for any other meeting.
- Special meeting: At least 24 hours’ notice to public and media.
- Emergency meeting: As much notice as possible under the circumstances.

68



### **“What if we don’t give proper notice?”**

Any member of the media or anyone affected by a decision of the public body may sue.

- A successful suit makes the meeting illegal.
- Decisions may be voidable or void.
- Successful plaintiff can receive attorney fees.
- Board members can be held *personally* liable for abusing the executive session privilege; civil penalties up to \$1,000 per violation and attorney’s fees under Oregon’s Government Standards and Practices (ethics) laws.

69

### **True or false:**

Meeting minutes are required for all public meetings, including executive sessions.

70

**“Can we tape record the meeting instead?”**

Yes. Minutes may be taken in writing, or by sound, video, or digital recording.

Final transcript or recording must “give true reflection of matters discussed and views of the participants.” The public may be charged for the cost of a written transcript made from a recording.

71

**“Can’t we just post a running notice somewhere, giving the time and date of the meetings?”**

Yes, if the notice includes an agenda.

But if possible, you should publish notice for each general meeting, along with a proposed agenda.

72

## **“What should be in the minutes?”**

### **At minimum:**

- Names of every board member present.
- A general summary of each topic discussed.
- How each topic was resolved.
- The outcome of any votes taken, including who voted, and how.
- Reference to any document discussed at the meeting.

73

### **True or false:**

The board chair has the discretion to decide the topics that will be discussed in executive session.

74

## **Executive Sessions.**

“Executive session” means any meeting or part of a meeting of a governing body which is closed to certain persons for deliberation on certain matters. ORS 192.610(2)

75

## **No final votes – discussion only.**

“No executive session may be held for the purpose of taking any final action or making any final decision.” ORS 192.660(6).

76

## **“Who may attend an executive session?”**

- Board members.
- Anyone authorized by the board.
- Member(s) of the media\*.

*\* Unless the executive session is to discuss litigation in which the news medium is a party.*

77

## **ORS 192.630:**

(1) All meetings of the governing body of a public body shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by ORS 192.610 to 192.690.

(2) A quorum of a governing body may not meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as otherwise provided by ORS 192.610 to 192.690.

78

## **Notice required.**

- Notice must be given for executive sessions as with any other public meeting.
- Notice should state the statutory authority for the executive session.
- The board chair also should state the statutory authority when convening the executive session so it is recorded in the minutes.

79

## **Minutes required.**

- Minutes of executive session minutes are usually exempt from public records disclosure. But they can be reviewed by a court of law.
- Information discussed in executive session is confidential to the Board and anyone else who attends.
- Disclosure by one waives the right to confidentiality for everyone.

80

## **Permissible reasons to call an executive session**

81

To consider the employment of a public officer,  
employee, staff member or individual agent, IF:

- Vacancy advertised;
- Regular hiring procedures adopted;
- If officer (i.e., management), public has had opportunity to comment;
- If CEO, hiring criteria and procedures were adopted in public meetings with opportunity for public comment.

82

Does NOT apply to:

- The filling of a vacancy in an elective office.
- The filling of a vacancy on any public committee, commission or other advisory group.
- Consideration of general employment policies.
- The employment of the chief executive officer, other public officers, employees and staff members if requirements are not met.

83

- To consider the dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent who does not request an open hearing.
- To review and evaluate the employment-related performance of the chief executive officer of any public body, a public officer, employee or staff member who does not request an open hearing.

84



- To conduct deliberations with persons designated by the governing body to carry on labor negotiations.
- To conduct deliberations with persons designated by the governing body to negotiate real property transactions.
- To carry on negotiations under ORS ch. 293 with private persons or businesses regarding proposed acquisition, exchange or liquidation of public investments.

85

- To consider information or records that are exempt by law from public inspection.
- To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

86

- To discuss information about review or approval of programs relating to the security of ... generation, storage or conveyance of:
  - Electricity;
  - Gas in liquefied or gaseous form;
  - Hazardous substances;
  - Petroleum products;
  - Sewage;
  - Water;
  - Telecommunication systems (cellular, wireless, radio);
  - Data transmissions by whatever means.

87

### **Penalties for Violation.**

- Failure to comply with executive session laws is punishable under Oregon's Ethics Laws for Public Officials.
- It is personal to the elected official.
- The maximum fine is \$1,000 per violation but excused if decision made in reliance on advice of public body's legal counsel.

88

## Recent Law Changes.

**HB 2805 (2023).** “Convening” a public meeting means: (a) Gathering in a physical location; (b) Using electronic, video or telephonic technology to be able to communicate contemporaneously among participants; (c) Using serial electronic written communication among participants; or (d) Using an intermediary to communicate among participants.

89

**HB 2805 (2023).** The Oregon Ethics Commission is required to conduct training on public meetings laws.

Every board member of a district with total expenditures for a fiscal year of \$1 million or more is required to attend or view training prepared provided by the Oregon Ethics Commission at least once during the member’s term of office and verify the member’s attendance. Members of smaller governing bodies are encouraged, but not required, to attend.

90

**HB 2805 (2023).** Anyone who believes a governing body has violated public meetings laws may, within 30 days of the alleged violation, file a written grievance with the board, setting forth the specific facts and circumstances of the alleged violation. The board must provide a written response within 21 days acknowledging receipt, denying the claim and setting out corrected facts and circumstances; admitting to them and explaining why they are not a violation; or admitting the violation happened and setting out a plan to address it. The written grievance and the response must be filed with the Oregon Ethics Commission.

The Ethics Commission will investigate the claim and may assess penalties if a violation is found.

91

**SB 207 (2023).** The Ethics Commission may investigate claims of violations of executive session laws on its own without necessarily receiving a complaint.

92

# Ethics for Public Officials



Harvard Business Review, September 2010

- Oregon Government Ethics Commission (OGEC) is the administrative agency that enforces Oregon's ethics laws.
- Created in 1974 by a state-wide ballot measure following the Watergate scandal.
- Ethics laws for public officials were enacted at the same time (ORS chapter 244).

95

### **Scope of Ethics Laws**

- Economic conflicts of interest.
- Undue influence.
- Use of political office for financial gain.
- Public disclosure.

96

**Ethics laws apply to public officials, their businesses, and their relatives.**

Includes, but is not limited to:

- Current board members
- Former board members
- Employees
- Volunteers
- Candidates for public office

97

“Relative” includes:

- Spouse, parent, stepparent, child, sibling, stepsibling, son-in-law, daughter-in-law of the public official, or of the public official’s spouse. (Now also includes “First Person,” to include the spouse or partner of the Governor).
- Any individual for whom the public official has a legal support obligation; or who benefits financially from the public official’s employment with the public entity.

98

**Public officials may not:**

- Participate in employment decisions regarding relatives or household members.
  - Does not apply to unpaid volunteers or if the decision affects a large class of people.
- Directly supervise a relative employed with the public entity.
- Use their official position to obtain financial gain or avoid financial detriment that would not otherwise be available *but for* the public official's position. ORS 244.040.
  - Applies to the official, a relative, or a business owned by the official or the official's relative.
- Accept gifts valued at \$50 or more from a source with a "legislative or administrative interest" in the public official's role.

99

**Public officials may not:**

- Solicit or accept the offer, pledge or promise of **future employment** based on any understanding that a vote, official action or judgment would be influenced by the offer.
- Use or attempt to use **confidential information** gained through their positions as public officials for financial gain. *[Also applies to former public officials.]*
- Directly receive a beneficial interest in a contract which they authorized for the two years following the contract's authorization.
- Make official decisions without declaring potential or actual conflicts of interest.

100



**What is NOT unlawful financial gain?**

- Official salary and benefits.
- Unsolicited honoraria under \$50 or related to private employment.
- Reimbursement of expenses.
- Unsolicited awards for professional achievement.
- Gifts under \$50 from a source without an administrative or financial interest in the public official or the entity he/she represents (includes meals, beverages, and entertainment unless part of an official event).

101

**Permissible gifts include:**

- Gifts of any value if the giver does not have a legislative/administrative interest in the public entity.
- Gifts of \$50 or less from a single source with a legislative/administrative interest in the public entity.
- Gifts that bear no relationship to the person's public position.
- Informational or program material, publications or subscriptions related to the recipient's performance of official duties.

102

- Reasonable expenses paid by a public or non-profit entity for attendance at a convention, fact-finding mission or trip, conference or other meeting if the public official is scheduled to deliver a speech, make a presentation, participate on a panel or represent a government entity.
- Unsolicited awards of appreciation with a resale value of less than \$25 dollars (e.g., engraved plaques).
- Unsolicited honoraria of less than \$50.
- Reasonable expenses provided to the public official, relatives, or staff when the public official is representing the public entity or speaking in an official capacity.
- Contributions to the public official's legal expense trust fund established under ORS 244.209.

103

**Potential conflict of interest.**

*Could* result in financial gain or avoidance of financial detriment.

- Disclose for the record.
- You may still discuss.
- You may still vote.

**Actual conflict of interest.**

*Will* result in financial gain or avoidance of financial detriment.

- Disclose for the record.
- Abstain from discussion.
- Do not vote (unless action cannot be taken without member's vote).

104

### **Penalties:**

- Maximum penalty for most ethics violations is \$5,000.
- Penalty for violation of executive session law \$1,000. Excused if decision made in reliance on advice of public body's legal counsel.
- In addition, if a public official financially benefited, the OGEC can impose a civil penalty in an amount equal to twice the amount the public official realized as a result of the violation.
- No penalty if official or candidate relied in good faith on Ethics Manual or Ethics Commission opinion.
- Prevailing party may file a petition in Marion County Circuit Court seeking attorney fees, which the court may award if the award was not "substantially justified" or other circumstances make the award "unjust," and provided the funds are "available to the Commission."

105

### **Recent Law Changes:**

**HB 2805 and SB 207 (2023).** The Oregon Ethics Commission now has oversight authority over violations of public meetings laws generally, not just executive sessions. See legislative updates to public meetings law section.

106

## LEGISLATIVE UPDATE (2023)

107

**HB 2004 (2023).** Requires ranked choice voting for federal and major statewide elective offices. Optional for local governments.

**HB 3073 (2023).** Requires Secretary of State to establish provision to be included in each nominating petition or declaration of candidacy that allows candidate to check box indicating that candidate does not want candidate's residence address to be publicly disclosed except in response to written public records request.

108

108

**SB 442 (2023).** When soliciting for a contract for a procurement, the contracting agency may give preference to procuring goods that are fabricated or processed, or services that are performed, entirely within Oregon if: (A) The goods or services cost not more than five percent more than goods or services that are not fabricated or processed, or services that are not performed, entirely within this state and the contracting agency can reasonably and credibly determine that procuring the goods or services at the higher price offsets environmental costs that are attributable to transporting the goods or the service providers from outside this state; or (B) The goods or services otherwise cost not more than 10 percent more than goods that are not fabricated or processed, or services that are not performed, entirely within Oregon.

**SB 168 (2023).** Expressly prohibits public employees, while on job during working hours or while otherwise working in official capacity, from promoting or opposing appointment, nomination or election of public officials.

109

**SB 814A (2023).** The Shipping Act of 1937 gave antitrust protection to ports that serve “common carriers,” meaning commercial enterprises that move cargo or passengers for a fee. The Federal Maritime Commission recently notified the Northwest Marine Terminal Association that certain Oregon ports (including the Port of Astoria, Port of Coos Bay, and Port of Columbia County) did not qualify for this protection because they don’t serve “common carriers.”

SB 814A clarifies that Oregon ports can enter into agreements with other ports for public cargo and passenger transport without violating antitrust laws

**SCR 3 (2023).** Designates potato as official vegetable of Oregon.

110

# Thank You.

Eileen G. Eakins

**Northwest Local Government Legal Advisors, LLC**

[eileen@lgl-advisors.com](mailto:eileen@lgl-advisors.com)

<https://localgovernmentlegal.net>

(503) 607-0517