



Success, Achievement, Together ... for All Students

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Under Oregon law, all meetings of governing boards and governing boards' sub- and advisory committees are subject to the Public Meetings Law (ORS 192.610-192.695), which covers state and local governmental boards, commissions, councils, committees or subcommittees consisting of two or more members.

The Public Meetings Law also applies to committees without decision-making authority when they are delegated to advise a public body, except when the committee's sole purpose is to advise an individual public official. School councils under the Oregon Educational Act for the 21st Century are covered by the Public Meetings Law. (For definition of such councils, see ORS 329.704.)

Which meetings does the law apply to?

a. What is considered a governing body:

The Public Meetings Law applies to any governing body of a public body. ORS 192.610 (4) defines public body" a state, any regional council, county, city or district, or any municipal or public corporation; or any agency of those entities, such as a board, department, commission, council, bureau, committee, subcommittee, or advisory group. A key indicator of whether an entity is a public body is whether it was created by or pursuant to the state constitution, a statute, administrative rule, order, intergovernmental agreement, bylaw, or other official act (e.g. appointment by school board). However, a single official, such as the Superintendent, is not a public body for purposes of meetings law.

If two or more members of any public body have "the authority to make decisions for or recommendations to a public body on policy or administration," they are a "governing body." For example, a seven member school board is a governing body as is a three-member committee of the school board.

A body meets this standard if its decision-making authority is equivalent to the authority to exercise governmental power, where it has the power and authority to act. Thus, a three-member subcommittee that has authority only to gather information for the full committee is not a governing body. Even though the subcommittee decides when to meet and determines what procedures it will use to gather and report information, it is not vested with the authority to decide the direction in which the District will move on an issue of policy or administration it is not a public body. In contrast, if the subcommittee possesses the authority to make policy or hiring decisions for a public body, then it is a governing body.

Dave Novotney, Ph.D.
Superintendent

However, a body (e.g. committee) that has authority to make recommendations to a public body on policy or administration is a governing body. If the committee however is making a recommendation to an individual official (e.g. Superintendent, principal etc.) and does not exercise other governmental powers committee meetings are not subject to the Public Meetings Law. In a situation though where the official lacks authority to act on the recommendations and must pass those recommendations unchanged to a public body then the Public Meetings Law applies to the committee's meetings.

When evaluating whether the committee or advisory body is a governing body it is not relevant whether or not there are public officials on the committee or the committee is made up entirely of private citizens, it is still subject to the Public Meetings Law.

a. What is considered a meeting?

ORS 192.610 (5) defines a meeting as the convening of any governing body “for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter”. 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, unless an exception applies.

In a case decided by the Oregon Supreme Court, it was made clear the prohibition on a quorum meeting in private “reach[es] some decision-making of a governing body that does not occur in a meeting.” That is, “Public Meetings Law applies not only to formal ‘meetings’ of governing bodies * * * but also to circumstances in which a quorum * * * ‘meets’ to deliberate toward or make a decision outside of the context of a ‘meeting.’”

While a quorum is not defined in the Public Meetings Law, the default quorum is a simple majority of the governing body.

A governing body may only make a decision at a meeting at which a quorum is present.

A gathering of less than a quorum of a governing body is not a “meeting.” However, members of a governing body should not gather as a group or groups composed of less than a quorum for the purpose of conducting business outside the Public Meetings Law. Such a gathering creates the appearance of impropriety, and runs contrary to the policy of the Public Meetings Law, which supports keeping the public informed of the deliberations of governing bodies. In addition, such a gathering creates a risk of violating ORS 192.630(2) through serial communications.

Even if a meeting is for the sole purpose of gathering information to serve as the basis for a subsequent decision or recommendation by the governing body, the meetings law will apply. This requirement serves the legislative policy that an informed public must be aware not only of the decisions of government, but also of “the information upon which such decisions were made.” Hence, except for on-site inspections, which are discussed below, information gathering and investigative activities of a governing body are subject to the law.

Purely social gatherings of the members of a governing body are not covered by the law. For example, the Court of Appeals held that social gatherings of a school board, at which members sometimes discussed “what’s going on at the schools,” did not constitute a violation. The purpose of the meeting triggers the requirements of the law. However, a purpose to deliberate on any matter of official policy or administration may arise during a social gathering and lead to a violation. Members constituting a quorum must avoid any discussions of official business during such a gathering. And they should be aware that some citizens may perceive social gatherings as merely a subterfuge for avoiding the Public Meetings Law.

A governing body risks violating meetings law through a series of private communications, even if a quorum isn't involved in any single communication. Courts have held “the determinative factors are whether a sufficient number of officials are involved, what they discuss, and the purpose for which they discuss it—not the time, place, or manner of their communications.”

The Public Meetings Law expressly recognizes that meetings may be conducted by telephonic conference calls or “other electronic communication.” Such meetings are subject to the Public Meetings Law. Consequently, notice and opportunity for public access must be provided when meetings are conducted by electronic means.

a. Location of meetings

ORS 192.630 (4) requires the governing body meet within its geographical boundaries, at its administrative headquarters, or at the nearest practical location.

b. Notice requirements

ORS 192.640 requires reasonable notice of time and place is required for all board meetings. The Public Meetings Law requires the notice for regular meetings to be “reasonably calculated to give actual notice to interested persons including news media which have requested notice.”

Twenty-four-hour notice is required for special meetings. Appropriate notice is required for emergency meetings. In this case, notice should include phone calls and emails to media representatives.

Notice that includes an executive session must cite the section and subsection of the statutory authorization for the executive session.

Any meeting notice must list the principal subjects to be considered at the meeting; however, this does not preclude the discussion of other subjects at the meeting.

Please let me know if you have further questions or would like some additional clarification.

Sincerely,

Lisa M. Freiley

Lisa M. Freiley
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