

Agenda

City Manager Sounding Board to House Our Neighbors
April 14, 2021, 9 a.m. to 11 a.m.



CITY OF BEND

Virtual Meeting

Zoom Link:

<https://bendoregon-gov.zoom.us/j/97793968228?pwd=QnFRakIzWTQvZkdUTIB6cUxaWFpiZz09>

9:00 a.m. City Manager Sounding Board: Homelessness Solutions:
Megan Perkins, Barbara Campbell, Katherine Austin, Briana Manfrass, Hans Jorgenson, Dana Richards, Stacey Witte, Erik Tobiason, Scott Winters, Jeff Payne (alt.)

- 1. Welcome and Introductions (City Councilor Megan Perkins, all, 15 minutes)**
- 2. Purpose of Sounding Board, draft schedule, draft Charter (Susanna Julber, Snr. Policy Analyst, 20 minutes)**
- 3. Overview of Legal Requirements for Committee Members (Ian Leitheiser, Assistant City Attorney, 20 minutes)**
- 4. Discussion of Pending State Legislation regarding Homelessness Land Use Solutions (Susanna, 10 minutes)**
- 5. Discussion/ Overview of Shelter Types (Pauline Hardie, Senior Planner, Susanna, 30 minutes)**
- 6. Summary of Action Items (Susanna, 10 minutes)**
- 7. Public Comment (10 minutes total)**
- 8. 11 a.m. Adjourn**

Next meeting date: April 28, 2021, 9 a.m. to 11 a.m.



This meeting/event location is accessible. Sign and other language interpreter service, assistive listening devices, materials in alternate format such as Braille, large print, electronic formats, language translations or any other accommodations are available upon advance request at no cost. Please contact the meeting organizer no later than 24 hours in advance of the meeting at sjulber@bendoregon.gov or fax 385-6676. Providing at least 2 days notice prior to the event will help ensure availability.

City Manager's Sounding Board to House Our Neighbors Draft Charter

Sounding Board Establishment

There are approximately 1,000 people who are experiencing homelessness in Central Oregon on any given night. This number includes families with children and youth who do not live with an adult. The City of Bend is working with public agencies and community partners to support homelessness solutions for our community. This includes finding ways to keep people in their homes, provide temporary transitional housing, and increase the availability of affordable housing. As part of the City's overall strategy to implement solutions for people experiencing homelessness, the City has formed a 9-person City Manager-appointed Sounding Board, comprised of representatives of existing City committees, and local experts on homelessness.

Sounding Board Purpose

City Council Goal: Housing provides, "Take meaningful action to make this statement a reality: People who live and work in Bend can afford housing in Bend."

Strategy: Invest in programs and partnerships that result in collaborative, concrete actions toward ending homelessness in Bend.

1. Partner with Deschutes County to create an Emergency Homelessness Task Force that results in a 5- year Community Action Plan aimed at eliminating homelessness
2. Modify City codes to allow for managed camps, shelters and other facilities to address homelessness
3. Explore and increase funding sources to obtain housing/facilities and related supportive services to serve community members who are housing insecure or experiencing homelessness
4. Create housing or facilities to house 500 homeless individuals on a temporary or permanent basis

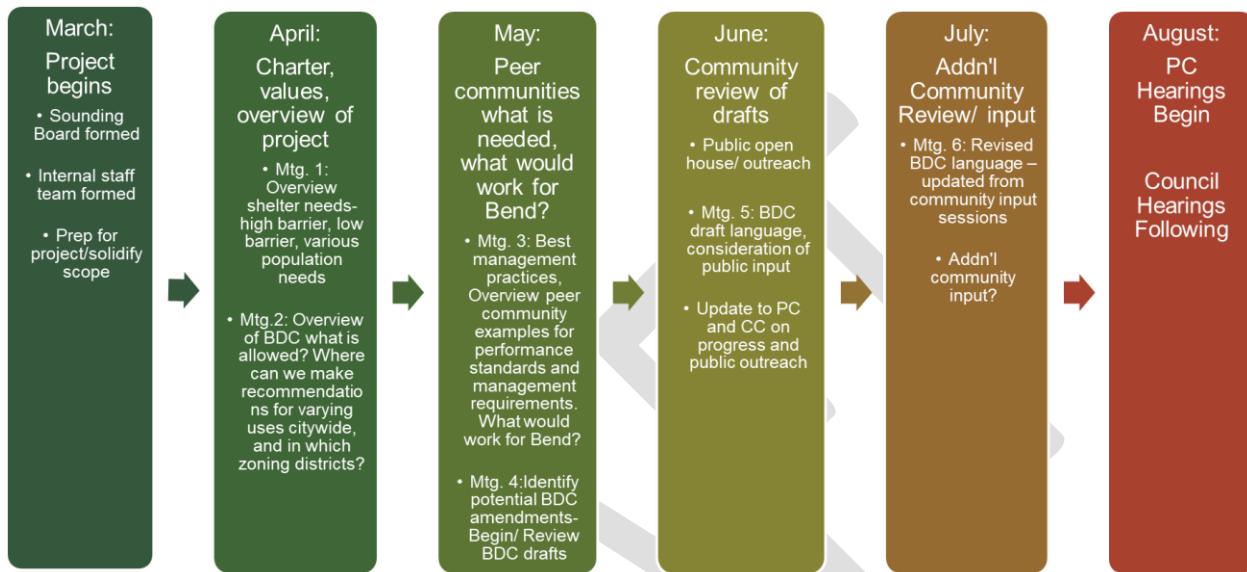
The role of the Sounding Board is to develop and recommend strategies to City Council to assist in attaining numbers 2, and 4, above. In addition, with significant actions regarding homelessness and transitional housing opportunities provided via state legislation, the Sounding Board will build recommendations that are reflective of these new regulations.

Sounding Board Schedule

The Sounding Board's schedule is relatively tight to develop implementable regulations by August 2021. The Board is envisioned to meet twice monthly in April and May, and

then once monthly until the initial Planning Commission hearing. With potential passage of state legislation (HB 2006) which would allow transitional housing as a permitted use citywide, the focus on the Board's work may shift to uses allowed following the sunset of the legislation on July 1, 2022.

The Sounding Board's draft schedule and meeting topics are outlined below:



Sounding Board Composition

Sounding Board members are appointed by the City Manager. Committee membership includes:

- City Council – Megan Perkins
- City Council (alt.) – Barb Campbell
- City Planning Commission Rep- Scott Winters
- City Planning Commission Rep (alt.)- Jeff Payne
- Homeless Leadership Coalition Rep – Dana Richards, 211
- Homeless Leadership Coalition Rep- Erik Tobiason, COVO
- City AHAC rep- Katherine Austin
- City BEDAB rep– Briana Manfrass
- City NLA rep- Hans Jorgenson
- Homelessness Service Provider- Stacey Witte, REACH

City Staff Support: As a rule, meeting materials will be distributed by e-mail one week in advance of meetings. In some cases, materials may need to be distributed at meetings.

Decision Making – Quorum and Voting

The committee will operate primarily under a consensus-building model. Committee members will attend meetings and review material as needed to learn about needs and projects. Committee members will ask questions, respect differing views, and work

together to provide guidance and recommendations. When the committee is not able to agree on a specific recommendation, the recommendation of a majority of the committee will be identified as the primary recommendation. A minority opinion may be included. Committee guidance and recommendations will be provided to City staff and City Council for their consideration during final decision making.

A majority of the group's members constitutes a quorum; a quorum is necessary to meet or take any other official action. Alternate members may participate and vote if their presence is necessary to establish a quorum.

At the Chair's discretion, a vote of the voting members may be called. In the event of a vote, a simple majority of voting members present can make a recommendation or decision.

Meeting Schedule

The committee will generally hold meetings one to two times per month. At the chair's discretion and in consultation with city staff, monthly meetings may be cancelled for lack of agenda topics.

Time Involved

The time commitment for committee participation will vary, but generally will not exceed an average of six hours a month to include a meeting and follow-up time to research issues.

Working Groups

The committee may establish working groups as required to research specific issues and make recommendations to the committee. Working groups may draw upon members from the committee and may include outside resources as necessary.

Communication Outside of Meetings

Because the group will be making a recommendation(s) to Council, its meetings are subject to the Public Meetings law. Discussions and deliberations must take place in a public setting, and a majority of members may not discuss issues before the committee outside of a public setting. At any time other than during a public meeting, more than half of the members may not discuss or deliberate issues that are or could be before the group in person, in emails, or other electronic communication. Please do not use "reply-all" when responding to any emails from the group or City staff. (See more thorough memo from Legal Department).

A-Engrossed

House Bill 2006

Ordered by the House March 15
Including House Amendments dated March 15

Sponsored by Representative KOTEK; Representatives CAMPOS, FAHEY, GRAYBER, KROPF, MARSH, MEEK, MORGAN, NERON, NOBLE, WILDE, WILLIAMS, ZIKA

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Defines "emergency shelter." Requires local governments to allow siting of qualifying emergency shelters by qualifying entities notwithstanding land use laws and regulations. Sunsets requirement July 1, 2022.

Expands description of transitional housing accommodations to include motor-vehicle camping. *[Removes three-vehicle limit on motor-vehicle camping on religious institution property.]* **Expands motor-vehicle camping that political subdivisions may allow.**

Expands uses of Emergency Housing Account to include developing technical assistance regarding emergency shelters or transitional housing accommodations.

Authorizes Housing and Community Services Department to use Emergency Housing Account to fund grants and technical assistance for organizations to develop or operate low-barrier emergency shelters, develop supportive facilities or provide rapid rehousing services and support.

Authorizes Oregon Department of Administrative Services to distribute funds to develop navigation centers that must be operating on or before July 1, 2022.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1 Relating to housing; creating new provisions; amending ORS 203.082, 446.265 and 458.650; and de-
2 claring an emergency.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. Sections 2 and 3 of this 2021 Act are added to and made a part of ORS**
5 **chapter 197.**

6 **SECTION 2. (1) As used in this section, "emergency shelter" means a building or cluster**
7 **of buildings that provides shelter on a temporary basis for individuals and families who lack**
8 **permanent housing.**

9 **(2) A building or cluster of buildings used as an emergency shelter under an approval**
10 **granted under section 3 of this 2021 Act or section 11, chapter 12, Oregon Laws 2020 (first**
11 **special session):**

12 **(a) May resume its use as an emergency shelter after an interruption or abandonment**
13 **of that use for two years or less, notwithstanding ORS 215.130 (7).**

14 **(b) May not be used for any purpose other than as an emergency shelter except upon**
15 **application for a permit demonstrating that the construction of the building and its use could**
16 **be approved under current land use laws and local land use regulations.**

17 **(3) An approval of an emergency shelter under section 3 of this 2021 Act or section 11,**
18 **chapter 12, Oregon Laws 2020 (first special session) is void unless the shelter is operating**
19 **within two years following the approval.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 **SECTION 3.** (1) A local government shall approve an application for the development or
2 use of land for an emergency shelter, as defined in section 2 of this 2021 Act, on any prop-
3 erty, notwithstanding ORS chapter 195, 197, 197A, 215 or 227 or any statewide plan, rule of
4 the Land Conservation and Development Commission or local land use regulation, zoning
5 ordinance, regional framework plan, functional plan or comprehensive plan, if the emergency
6 shelter:

7 (a) Includes sleeping and restroom facilities for clients;
8 (b) Will comply with applicable building codes;
9 (c) Is located inside an urban growth boundary or in an area zoned for rural residential
10 use as defined in ORS 215.501;
11 (d) Will not result in the development of a new building that is sited within an area des-
12 ignated under a statewide planning goal relating to natural disasters and hazards, including
13 flood plains or mapped environmental health hazards, unless the development complies with
14 regulations directly related to the hazard;

15 (e) Has adequate transportation access to commercial and medical services; and
16 (f) Will not pose any unreasonable risk to public health or safety.
17 (2) An emergency shelter allowed under this section must be operated by:
18 (a) A local government as defined in ORS 174.116;
19 (b) An organization with at least two years' experience operating an emergency shelter
20 using best practices that is:

21 (A) A local housing authority as defined in ORS 456.375;
22 (B) A religious corporation as defined in ORS 65.001; or
23 (C) A public benefit corporation, as defined in ORS 65.001, whose charitable purpose in-
24 cludes the support of homeless individuals, that has been recognized as exempt from income
25 tax under section 501(a) of the Internal Revenue Code on or before January 1, 2018; or
26 (c) A nonprofit corporation partnering with any other entity described in this subsection.

27 (3) An emergency shelter approved under this section:
28 (a) May provide on-site for its clients and at no cost to the clients:
29 (A) Showering or bathing;
30 (B) Storage for personal property;
31 (C) Laundry facilities;
32 (D) Service of food prepared on-site or off-site;
33 (E) Recreation areas for children and pets;
34 (F) Case management services for housing, financial, vocational, educational or physical
35 or behavioral health care services; or
36 (G) Any other services incidental to shelter.

37 (b) May include youth shelters, winter or warming shelters, day shelters and family vi-
38 olence shelter homes as defined in ORS 409.290.

39 (4) An emergency shelter approved under this section may also provide additional ser-
40 vices not described in subsection (3) of this section to individuals who are transitioning from
41 unsheltered homeless status. An organization providing services under this subsection may
42 charge a fee of no more than \$300 per month per client and only to clients who are financially
43 able to pay the fee and who request the services.

44 (5) The approval of an emergency shelter under this section is not a land use decision
45 and is subject to review only under ORS 34.010 to 34.100.

1 **SECTION 4. (1) Section 3 of this 2021 Act is repealed on July 1, 2022.**

2 **(2) The repeal of section 3 of this 2021 Act by subsection (1) of this section does not affect**
3 **an application for the development of land for an emergency shelter that was completed and**
4 **submitted before the date of the repeal.**

5 **SECTION 5.** ORS 446.265 is amended to read:

6 446.265. (1) Inside an urban growth boundary, a local government may authorize the establish-
7 ment of transitional housing accommodations used as individual living units by one or more indi-
8 viduals. Use of transitional housing accommodations is limited to [persons] **individuals** who lack
9 permanent or safe shelter and who cannot be placed in other low income housing. A local govern-
10 ment may limit the maximum amount of time that an individual or a family may use the accommo-
11 dations.

12 (2) Transitional housing accommodations are intended to be used by individuals or families on
13 a limited basis for seasonal, emergency or transitional housing purposes and may include yurts, huts,
14 cabins, fabric structures, tents and similar accommodations, **as well as areas in parking lots or**
15 **facilities for individuals or families to reside overnight in a motor vehicle, without regard to**
16 **whether the motor vehicle was designed for use as temporary living quarters.** The transitional
17 housing accommodations may provide parking facilities, walkways and access to water, toilet,
18 shower, laundry, cooking, telephone or other services either through separate or shared facilities.
19 The Oregon Health Authority may develop public health best practices for shared health and sani-
20 tation facilities for transitional housing accommodations.

21 (3) Transitional housing accommodations are not subject to ORS chapter 90.

22 (4) As used in this section, "yurt" means a round, domed tent of canvas or other weather re-
23 sistant material, having a rigid framework, wooden floor, one or more windows or skylights and that
24 may have plumbing, electrical service or heat.

25 **SECTION 6.** ORS 203.082 is amended to read:

26 203.082. [(1) *Any political subdivision in this state may allow churches, synagogues and similar*
27 *religious institutions to offer overnight camping space on institution property to homeless persons living*
28 *in vehicles.*]]

29 [(2) *In addition to any conditions or limitations imposed by a political subdivision, a religious in-*
30 *stitution located within the political subdivision and offering camping space described under subsection*
31 *(1) of this section must:*]

32 [(a) *Limit camping space at the institution site to three or fewer vehicles at the same time; and*]

33 [(b) *Provide campers with access to sanitary facilities, including but not limited to toilet, hand*
34 *washing and trash disposal facilities.*]]

35 (1) **Any political subdivision may allow any public or private entity to allow overnight**
36 **camping by homeless individuals living in vehicles on the property of the entity.**

37 (2) **A political subdivision may impose reasonable conditions upon offering camping space**
38 **under this section, including establishing a maximum number of vehicles allowed.**

39 (3) **Entities providing camping spaces under this section must also provide access to**
40 **sanitary facilities, including toilet, handwashing and trash disposal facilities.**

41 **SECTION 7.** ORS 458.650 is amended to read:

42 458.650. (1) The Emergency Housing Account [shall be] **is** administered by the Housing and
43 Community Services Department to assist homeless [persons] **individuals** and those [persons] **indi-**
44 **viduals** who are at risk of becoming homeless. An amount equal to 25 percent of moneys deposited
45 in the account pursuant to ORS 294.187 is dedicated for expenditure for assistance to veterans who

1 are homeless or at risk of becoming homeless. For purposes of this section, "account" means the
2 Emergency Housing Account.

3 (2) The Oregon Housing Stability Council, with the advice of the Community Action Partnership
4 of Oregon, shall develop policy for awarding grants to organizations that shall use the funds:

5 (a) To provide to low and very low income [persons] **individuals**, including but not limited to,
6 [persons] **individuals** more than 65 years of age, persons with disabilities, farmworkers and Native
7 Americans:

8 (A) Emergency shelters and attendant services;

9 (B) Transitional housing services designed to assist [persons] **individuals** to make the transition
10 from homelessness to permanent housing and economic independence;

11 (C) Supportive housing services to enable [persons] **individuals** to continue living in their own
12 homes or to provide in-home services for such [persons] **individuals** for whom suitable programs do
13 not exist in their geographic area;

14 (D) Programs that provide emergency payment of home payments, rents or utilities; or

15 (E) Some or all of the needs described in subparagraphs (A) to (D) of this paragraph.

16 (b) To align with federal strategies and resources that are available to prevent and end
17 homelessness.

18 (3)(a) The council shall require as a condition of awarding a grant that the organization demon-
19 strate to the satisfaction of the council that the organization has the capacity to deliver any
20 service proposed by the organization.

21 (b) Any funds granted under this section [*shall*] **may** not be used to replace existing funds.
22 Funds granted under this section may be used to supplement existing funds. An organization may
23 use funds to support existing programs or to establish new programs.

24 (c) The council, by policy, shall give preference in granting funds to those organizations that
25 receive grants from the Housing Development Grant Program established under ORS 458.625.

26 (4) The department may expend funds from the account for:

27 (a) **The administration of the account as provided for in the legislatively approved budget, as**
28 **that term is defined in ORS 291.002, for the department.**

29 (b) **The development of technical assistance and training resources for organizations de-**
30 **veloping and operating emergency shelters as defined in section 2 of this 2021 Act and tran-**
31 **sitional housing accommodations as described in ORS 446.265.**

32 **SECTION 8. Section 9 of this 2021 Act is added to and made a part of ORS 458.600 to**
33 **458.665.**

34 **SECTION 9.** (1) **As used in this section, "low-barrier emergency shelter" means an**
35 **emergency shelter, as defined in section 2 of this 2021 Act, that follows established best**
36 **practices to deliver shelter services that minimize barriers and increase access to individuals**
37 **and families experiencing homelessness.**

38 (2) **The Housing and Community Services Department shall award grants and provide**
39 **technical assistance to organizations to fund:**

40 (a) **The construction, purchase or lease of facilities to be used as low-barrier emergency**
41 **shelters;**

42 (b) **The operation, use or staffing of low-barrier emergency shelters, including the costs**
43 **to provide clients with access to the shelters;**

44 (c) **The development or use of amenities or facilities that provide no-cost services to in-**
45 **dividuals and families who are homeless, including restroom and hygiene facilities, laundry**

1 facilities, dining facilities, storage for personal property, meeting or gathering spaces and
2 facilities providing case management services; or

3 (d) Rapid rehousing services and supports for individuals and families.

4 (3) In awarding grants and providing technical assistance under this section, the department
5 shall:

6 (a) Ensure that funds are distributed among different regions of the state; and

7 (b) Prioritize funding areas of highest need as identified in the August 2019 Oregon
8 Statewide Shelter Study.

9 (4) Grants under this section must be awarded:

10 (a) Through a competitive process that emphasizes collaborative proposals; or

11 (b) To one or more community action agencies.

12 **SECTION 10.** (1) As used in this section, “navigation center” means a low-barrier emergency
13 shelter, as defined in section 9 of this 2021 Act, that is open seven days per week and
14 connects individuals and families with health services, permanent housing and public benefits.

15 (2) The Oregon Department of Administrative Services may award grants to local governments to:

16 (a) Plan the location, development or operations of a navigation center;

17 (b) Construct, purchase or lease a building for use as a navigation center;

18 (c) Operate a navigation center that has been constructed, purchased or leased under
19 paragraph (b) of this subsection; or

20 (d) Contract for the performance of activities in this subsection.

21 (3) The department shall require that each local government receiving a grant under this
22 section agree to return all moneys granted unless the local government has developed a
23 navigation center that is operating on or before July 1, 2022.

24 **SECTION 11.** Notwithstanding ORS 458.650 (2) and (3), the Housing and Community Services
25 Department may expend funds from the Emergency Housing Account to award grants
26 and provide technical assistance under section 9 of this 2021 Act.

27 **SECTION 12.** Sections 9, 10 and 11 of this 2021 Act are repealed on January 2, 2024.

28 **SECTION 13.** This 2021 Act being necessary for the immediate preservation of the public
29 peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect
30 on its passage.

31

A-Engrossed

House Bill 3261

Ordered by the House March 25
Including House Amendments dated March 25

Sponsored by Representative MARSH

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Limits local government's restrictions on conversions of certain properties into emergency shelters or affordable housing.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to conversion of properties for living spaces; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS chapter 197.

SECTION 2. (1) Except as provided in this section and notwithstanding any statewide land use planning goals or land use regulations, a local government shall unconditionally allow the conversion of the lawful use of a property:

(a) From use as a hotel or motel, to use as an emergency shelter.

(b) From use as a hotel or motel, or a hotel or motel that was converted to an emergency shelter under paragraph (a) of this subsection, to use as affordable housing.

(2) This section applies only to areas:

(a) Within an urban growth boundary;

(b) Not designated by the local government as specifically for heavy industrial uses;

(c) With adequate transportation access to commercial and medical services; and

(d) Not within an area designated for a statewide land use planning goal relating to natural disasters or hazards, including flood plains or mapped environmental health hazards, unless the converted use complies with regulations directly related to the disasters or hazards.

(3) A local government may require a converted use under this section to comply with:

(a) Applicable building codes;

(b) Occupancy limits; or

(c) For uses under subsection (1)(b) of this section, reasonable standards relating to siting or design, if the standards do not, individually or cumulatively, prohibit the conversion through unreasonable costs or delay.

(4) A conversion under this section is not a land use decision as defined in ORS 197.015.

(5) A local government is not required to consider whether the conversion significantly affects an existing or planned transportation facility for the purposes of implementing a statewide land use planning goal relating to transportation.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 **(6) As used in this section:**

2 (a) "Affordable housing" means housing in which all units are affordable to households
3 with incomes equal to or less than 60 percent of the area median income as defined in ORS
4 458.610 and whose affordability is enforceable by an affordable housing covenant, as described
5 in ORS 456.270 to 456.295, for a duration of no less than 30 years.

6 (b) "Conversion" includes an alteration to a building that changes the number of units
7 but does not expand the building footprint.

8 (c) "Emergency shelter" means a building that provides shelter on a temporary basis for
9 individuals and families who lack permanent housing.

10 (d) "Lawful use" includes a nonconforming use as described in ORS 215.130 (6) or any
11 other local land use regulation allowing for the continuation of a use that was lawful when
12 first enacted.

13 **SECTION 3. Section 2 of this 2021 Act applies to conversions or applications for conver-
14 sions on or after January 1, 2021.**

15 **SECTION 4. This 2021 Act being necessary for the immediate preservation of the public
16 peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect
17 on its passage.**



CITY OF BEND

MEMORANDUM

To: Sounding Board to House Our Neighbors
From: Ian Leitheiser, Assistant City Attorney
Re: Public Meetings and Public Records
Date: April 8, 2021

This memo is to give you legal and policy background for your role as a community advisory committee to the City Council on the basics of Oregon's public meetings and public records laws. Some of you may know the framework already, but to be sure we are all on the same page, please review the discussion below. If you have questions, you are welcome to contact me or any of the lawyers in the City Attorney's Office.

Open Meetings Law and Advisory Committees:

There is a fundamental policy behind Oregon's Public Meetings Law (ORS 192.610 to 192.690):

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 ORS 192.610 to 192.690 that decisions of governing bodies be arrived at openly. ORS 192.620.

The term "governing body" is important in understanding the scope of Oregon Public Meetings Law. As defined by the law, "governing body" includes not only the City Council, but every other board, committee, commission, task force, or subcommittee that makes a decision for the City or a recommendation to any other "governing body". Because this group is charged with making recommendations to the City Council, it is considered a "governing body" subject to the Oregon Public Meetings Law. That is the case even though some members may be private members of the community. The Oregon Public Meetings Law extends to private community members who have no decision-making authority when they serve on a group that is authorized to furnish advice to a public body.

Whenever a quorum (majority) gathers in order to make a decision or deliberate toward a decision on any matter, it is a meeting. If a subcommittee of the group is formed to make a recommendation to the larger group (as opposed to simply fact-finding), the notice and quorum rules then apply to the subcommittee. However, purely social gatherings of the members of a governing body are not covered by the law. The purpose of the meeting triggers the requirements of the law.

Successive Conversations and Electronic Communications as “Meetings”.

The main point of the Oregon Public Meetings Law is to require that all decisions and deliberations toward a decision by a governing body be made in a public meeting. The terms “deliberate” or “deliberation” are not defined, but are broadly applied. Any discussion or communication regarding a subject that is before (or could be before) the body constitutes deliberation. See Attorney General’s Public Meetings Manual at 139-40. Therefore, even a meeting for the purpose of gathering information to serve as the basis for a subsequent decision or recommendation of the governing body must comply with public meetings law.¹ *Oregonian Publishing Co. v. Oregon State Board of Parole*, 95 Or App 501 (1988); see also ORS 192.620 (policy that the public has the right to know the “information” that a body is basing its deliberations or actions on).

While some personal discussion between members of less than a quorum of a governing body is allowed, any communications between two members of a committee regarding a substantive matter before the committee creates at least some risk of an Oregon Public Meetings Law violation. There are two main ways this can happen. The first is a series of conversations that eventually involves a quorum of the body. If one member suggests a course of action to two other members of a seven-member committee, and then each of those has a follow-up conversation with another member, the conversation has now included a quorum of the committee and is an Oregon Public Meetings Law violation if the conversations constitute deliberation.

The other common way that the Oregon Public Meetings Law can easily be violated is by electronic communication. A substantive email sent by one member of a committee to all or a quorum of the committee may constitute deliberation or conveying of information that should only be done in a public meeting. A “reply all” message on the same substantive subject could likely be found to be a violation. A series of emails, even if none of them involve a quorum, may constitute a meeting under the law. See *Dumdi v. Handi*, Findings of Fact and Conclusions of Law, Lane County Circuit Court No 16-02760 (Jan. 14, 2011) (series of meetings and emails among or at the direction of certain Lane County Commissioners constituted a meeting that should have been public). The Oregon Court of Appeals held that a series of communications, some by email and some by phone or in-person conversations, among members of a governing body could constitute a violation of the Oregon Public Meetings Law, even if no communication involved a quorum of the body. *Handy v. Lane County*, 274 Or App 644

¹ This does not mean that there can be no written communications to a governing body by staff or outside sources; however, if there are, those communications need to be made available to the public and included as part of the record of the proceeding.

(2015). If the communications constituted deliberation, then they violated Public Meetings Law.

In addressing the issue of whether a quorum needs to be in simultaneous contact, the court stated:

The legislative objective could be easily defeated if the statute rigidly applied only to contemporaneous gatherings of a quorum. For example, officials could be polled through an intermediary. In group email messages, officials could deliberate and declare their positions on upcoming issues. The same could be done through rapid, serial, group text messages in the moments before convening for an official meeting. In those examples, a quorum would have “deliberated” or “decided” the matter in “private” just as effectively as if all of the members had gathered secretly in a room and reached agreement before the public meeting. Given the purpose of the statute, we see no reason to treat those situations differently. *Oregonian Publishing Co.*, 95 Or App at 506.

The safest approach to compliance with the Oregon Public Meetings Law by committee members is to simply avoid substantive communication about committee business with other members of the committee outside of public meetings. Communication with staff is normally not a violation of public meeting law,² so all substantive communication outside of a public meeting should be with staff.

Finally, emails are not the only potential means of violating the Oregon Public Meetings Law – texts and social media posts may also constitute deliberation if related to the recommendation to council. Discussions via social media between members of the committee about matters before the committee is also best avoided.

Decisions made in violation of the public meetings law are voidable (meaning a court can invalidate the decision, depending on findings of intent or willful misconduct) and can award attorney’s fees against the public body or even individual members of the governing body for egregious violations.

Information for Advisory Committees and Public Records

Information. Documents, reports, etc., shared by committee members either directly or through staff are public records since they contain “information related to the conduct of the public’s business”. ORS 192.410(4)(a) and 192.420. All email related to the committee work should be copied to City staff. Staff will maintain copies of all communications and documents between the City and the committee, and respond in the event of a public records request.

However, if any committee members use personal email for committee business that is *not* copied to staff, it could be subject to a public records request and the committee

² Committee members cannot use staff to communicate with other members of the committee – the communications should be directed solely to staff.

member would be responsible for searching their email. Therefore, any such personal email exchanges between committee members or with others is strongly discouraged. The same is true for texting (substantive text, not texts about meeting times, etc.) or social media. It does not matter if the communication takes place on personal computers or personal cell phones. If the content of the communication relates to the public's business, it will likely be considered a public record and subject to disclosure on request.

With regard to public records requests, Oregon law allows any person to make a request, and there is a presumption in the law in favor of disclosure. This means that every public record will be subject to disclosure to whomever asks, regardless of who they are, unless a recognized exemption applies.

Public records must be maintained. Destruction of public records is a misdemeanor. If you do communicate about committee business, you must keep copies of all communications. By copying staff on all communications, we can ensure the records are properly maintained.

These subjects are not always intuitive, even for those with experience in the public sector. Please don't hesitate to contact us at any time should you have questions.