

## Design and Historic Landmarks Commissions- Legal Refresher

January 2024

Senior Deputy City Attorney Lauren King

All public hearings must conform to the rules of procedure adopted by the review body. The rules of procedure must comply with the Oregon Public Meetings law, statutory land use hearing requirements, and Portland City Code Title 33.

Ex-Parte Contact is communication between a party and a decisionmaker made outside the hearing regarding a matter pending before the decisionmaker. The communication may be oral, written, a site visit or from an editorial.

Prior to rendering a decision, a decisionmaker may not communicate directly or indirectly, with any person interested in the outcome concerning the decision or action pending before the review body. If a communication occurs, at the next hearing, the decision maker must:

1. Announce the content of the communication and provide any person the opportunity to rebut the substance of the communication; and
2. If the communication was in written or tangible form, place a copy of the communication into the record.

\*Staff communication is not considered ex parte contact.

Conflicts of Interest: Public officials have a conflict of interest when they participate in an action that could (potential conflict) or would (actual conflict) result in financial benefit or detriment to the official, a relative or a business with which either is associated.

Public Meetings Law applies to all meetings for which a quorum is required in order to make a decision or deliberate toward a decision. This includes committees, subcommittees, and advisory groups if two or more members have “the authority to make decisions for or recommendations to” the commission. Considerations under public meetings law:

- Notice must be reasonably calculated to inform the public and all interested parties about the time, place and agenda of public meetings.
- Public meetings may be conducted electronically, but the public must have adequate notice and access to the meeting - no matter how it is conducted.
- A meeting can be closed to the public if a governing body goes into Executive Session.
- Public bodies must keep a record of their public meetings. Written minutes are acceptable, as are audio or video recordings. Written minutes must include the members present; all motions, resolutions and other actions; any votes that were taken; and the substance of any discussion.

Oregon Public Records Law: applies to every public body, including the City’s boards and commissions.

Presumption for Disclosure— “Every person has a right to inspect any public record of a public body in this state, except as otherwise provided...” ORS 192.314(1)

“Public Record’ includes any writing that contains information relating to the conduct of the public’s business, ... used or retained by a public body regardless of physical form or characteristics.” ORS 192.311

“Writing’ means handwriting, 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.” ORS 192.311. Drafts are also public records.

Public records may include an email or text message if it discusses the City’s business, regardless of whether the record is located on City network or equipment or on personal electronic devices.

#### Retention of Records

Once a record is created, a public body is responsible for retaining that record according to the retention schedules adopted by the body. The public body’s custodian of records is also responsible for making public records available upon request.

#### Use of Home Computers (and other electronic devices)

Oregon’s public records laws apply to e-mail correspondence about City business even when exchanged solely on City employees’ or volunteers’ personal computers (or other electronic devices). As a result, employees and volunteers have a responsibility to ensure retention of such e-mails and documents.

Knowingly destroying public records can constitute a criminal offense. ORS 162.305.