



MEMORANDUM CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

FROM: Sherilyn Lombos, City Manager

DATE: January 14, 2019

SUBJECT: Work Session for January 14, 2019

6:00 p.m. (15 min) – City Council Committee Assignments. Attached is the Committee Assignments sheet that includes all local and regional committees that have a Tualatin Council member assigned to them. Once assignments are made, staff will notify the committee of the Tualatin representative and an updated sheet will be distributed and available on the City's website.

6:15 p.m. (30 min) – Public Meetings – a Briefing. The City Attorney will give an informational briefing about public meetings. Topics to be covered include information about the types of public meetings, legal requirements, case law regarding public meetings, as well as tips to avoid violating public meeting laws.

6:45 p.m. (10 min) – Council Meeting Agenda Review, Communications & Roundtable. Council will review the agenda for the January 14th City Council meeting and brief the Council on issues of mutual interest.



STAFF REPORT

CITY OF TUALATIN

City Council Work Session

Meeting Date: 01/14/2019

Subject: Council Committee Assignments

Through: Sherilyn Lombos, Administration

Assignment Lists

COMMITTEE ASSIGNMENTS – TUALATIN CITY COUNCIL

| COMMITTEE | REP / ALTERNATE | STAFF | MEETING TIME | ISSUES |
|--|-------------------|----------|--|--|
| Architectural Review Board (<i>ARB</i>) | | Koper | Wednesdays @ 7:00pm on call | Building and site design |
| Arts Advisory Committee | | Ludemann | 3 rd Tuesday every month, 6:30p | Public Art |
| Budget Committee | All Council | Hudson | | |
| Core Area Parking District Board (<i>CAPD</i>) | | Reynolds | Wednesday following 3 rd Mon @ 12 | Downtown parking |
| Council Committee on Advisory Appointments (<i>CCAA</i>) | Need 3 Councilors | Morris | 1 st Monday of month (as needed) | Appoint advisory committee/board members |
| Science and Technology Scholarship Committee | Need 2 Councilors | Thompson | Meets on call [<i>twice in spring</i>] | Screens scholarships |

LOCAL / REGIONAL COMMITTEES

| COMMITTEE | REP / ALTERNATE | STAFF | MEETING TIME | ISSUES |
|---|---|--------------------------|--|--|
| Clackamas County Coordinating Committee (C4) | | Hurd-Ravich/ Prior | 1 st Thursday @ 6:45p | Clackamas Co issues-transport/infrastructure |
| C4 Sub-Committee | | Hurd-Ravich/ Prior | 3 rd Wednesday @ 7:30a | Clackamas Co. coordination on JPACT and MPAC agenda items |
| Greater Portland, Inc. Small Cities Consortium | | Taylor | 4 th Thursday @ 1:30p | Economic Development |
| Joint Policy Advisory Committee on Transportation (JPACT) | Cornelius Mayor Dalin is Tualatin's rep | Hurd-Ravich/ Prior | 3 rd Thursday @ 7:30a | Transportation issues |
| Metro Policy Advisory Committee (MPAC) | Forest Grove Mayor Truax is Tualatin's rep | Hurd-Ravich /Perl Fox | 2 nd & 4 th Wednesdays, 5-7p | Regional land use |
| Metropolitan Area Communications Commission (MACC) | Need rep + alternate | Russell | Quarterly-June, Sept, Nov/Dec, Mar/April @ 1:30 | Cable / Telecommunications |
| Metropolitan Mayors Consortium | Bubenik | | 4 th Thursday @ Noon | |
| Oregon Passenger Rail Corridor Forum | | Hurd-Ravich /Prior | Meets on call | Passenger Rail in Oregon |
| Region 1 Area Commission on Transportation | Beaverton Mayor Doyle is Tualatin's rep | Prior | 3 rd Thursday @ 7:30-9:30a | ODOT directed regional transportation efforts |
| Regional Water Providers Consortium | | Fuchs | Quarterly – February, June, October, Wednesdays from 6:30 to 8:30 at Metro. The next meeting is Feb. 6 th | Water supply |
| Southwest Corridor Steering Committee | | Hurd-Ravich /Prior | 2 nd Monday, 9:00 a.m. | High capacity transit connecting Portland to Bridgeport |
| Washington Co Consolidated Communications Agency (911) | Need rep + alternate | Steele | Quarterly – 3 rd Thursday @ 3p | Safety communications |
| Washington County Coordinating Committee (WCCC) | Need rep + alternate | Prior | 2 nd Monday @ 12-1:30p | Washington County transportation issues |
| Washington County Mayor's Meeting | Bubenik | Lombos | 2 nd Friday @ 12 | |
| Washington County Policy Advisory Board (PAB) | Bubenik | Lombos | 2 nd Thursday @ 7p | Block Grants, etc. |
| Willamette River Water Coalition | | Fuchs | Quarterly - Tuesdays from 5 to 7 in Tigard. The next meeting is Feb 12 th . | Water supply; water rights |



STAFF REPORT

CITY OF TUALATIN

City Council Work Session

Meeting Date: 01/14/2019

Subject: Public Meetings Briefing

Through: Sherilyn Lombos, Administration

PowerPoint



City of Tualatin

Public Meetings

CITY COUNCIL WORK SESSION

JANUARY 14, 2019

Sean Brady
City Attorney

Overview

- What is a Public Meeting?
- Types of Public Meetings
- Requirements of Public Meetings Laws
- Serial Meetings
- Dumdi and Handy Cases – Lane County
- Information Gathering
- Tips to Avoid Violations



Public Meetings Law Purpose

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



What is a Public Meeting?

- “[T]he convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter.”



What is a Public Meeting?

- **Governing Body**
 - Council
 - Advisory bodies when charged with making a consensus recommendation to the Council
- **Quorum** - number of members present for a governing body to conduct business
 - *Charter*: “Three Councilors and the Mayor or Mayor pro tem”
 - Conduct business by concurrence of a majority of the members of the Council present at meeting

What is a Public Meeting?

- **Decision or Deliberation**
 - Making a Decision
 - Considering Policies
 - Considering Facts on which to make a decision
 - Wrestling with (deliberating toward) a decision
- **“On Any Matter”**
 - City Business
 - Anything within City’s jurisdiction



Not Public Meetings by Statute

- On-site inspections
- Social gatherings
- Attendance at national, regional, or state association meetings



Types of Public Meetings

- **Regular Meetings**

- ▣ Work Session

- **Executive Sessions**

- **Special Meetings**

- ▣ Called outside of normal meeting schedule

- ▣ May be regular or executive session

- ▣ Includes Emergency Meetings

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MEETINGS

Public Meeting Requirements

- ❑ **Open to the Public** - Except Executive Sessions
- ❑ **Notice Requirements**
 - ❑ Post in Public Place and send to Media
 - ❑ Time and Place of Meeting
 - ❑ List of “principal subjects anticipated to be considered”
 - Does not limit the Governing Body from considering and taking action on additional subjects
 - ❑ State Law - Post 24 hours in advance
 - Emergency exception
 - ❑ City Ordinance – Council and ARB only
 - Special Meetings Posted 48 Hours in advance
 - No Emergency Exceptions



Public Meeting Requirements

- ❑ **Accessible Location**
- ❑ **Minutes**
 - ❑ Written; Audio; Video; Digital
 - ❑ Must Include
 - Members Present
 - All motions, ordinances, resolutions considered
 - Result of All Votes
 - Vote of Each Member by Name
 - Substance of Discussions
 - Reference to Documents Discussed



Executive Sessions

- Call Separate Executive Session
 - Notice
- During a Meeting
 - Announce
- News media allowed to attend
 - Except labor negotiations
 - Except if news organization is party to litigation
- Cannot take final action or make final decision
- ORS 192.660 and OAR 199-040-020 through 050



Reasons for Executive Session

□ **Employment Reasons**

- **Initial Employment** - public officer, employee, staff, or agent provided vacancy advertised; regular hiring procedures adopted; and public opportunity to comment [ORS 192.660(2)(a) and (7)]
- **Discipline; Complaints** - public officer, employee, staff, or agent unless the person requests an open meeting [ORS 192.660(2)(b)]
- **Performance** - Chief Executive, officers, employees, and staff, unless the person requests an open meeting [ORS 192.660(2)(i)]
- **Cannot Discuss Compensation in Exec Session**
 - OAR 199-040-0020(2): “[c]ompensation, including salaries and benefits, must not be discussed or negotiated during an executive session under ORS 192.660(2)(a), (b) or (i).

Reasons for Executive Session

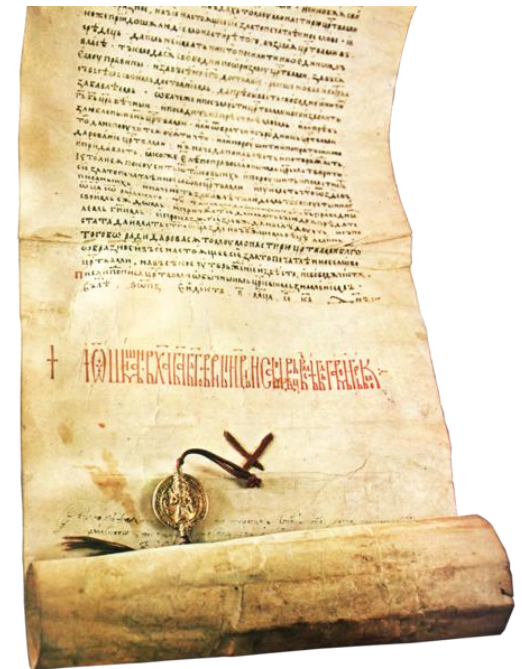
- **Labor Negotiations** - Conduct deliberations with persons designated to negotiate [ORS 192.660(2)(d)]
- **Confer with Legal Counsel**
 - Litigation or litigation likely to be filed [ORS 192.660(2)(h)]
 - Attorney-Client Communications - Consider information and records exempt by law from public inspection [ORS 192.660(2)(f)]
- **Real Estate Transactions** - Conduct deliberations with persons designated to negotiate real estate transactions [ORS 192.660(2)(e)]
- **Exempt Public Records** - Consider information and records exempt by law from public inspection. [ORS 192.660(2)(f)]

Executive Session - Violations

- ORS 192.660 and OAR 199-040-0020 through 050 Govern Executive Sessions
- Violations of Executive Session are investigated and prosecuted by the Oregon Gov't Ethics Commission (OGEC)
- Attendance at Executive Session is Considered Participation for Purposes of Complaints
- Common Violations
 - Discussing Topics Not Authorized by Law to Discuss in Executive Session
 - Deficient Minutes

Special Meetings – Charter

- Charter- Special Meetings may be called by:
 - Mayor Alone
 - 3 or more Councilors
 - Consent of All members



Special Meetings – City Code

- City Code – TMC 1-4-020
 - ▣ Applies to Council and ARB only
 - ▣ 48 hours Notice to Public and Councilors
 - No Emergency Exception
 - Council personally served with notice or personally telephoned by the City Recorder
 - ▣ Notice
 - Posted in four public and conspicuous places in the City
 - Provide time, place, date, and purpose(s) of the meeting
 - No matters other than those stated in the notice can be acted upon or decided by the Council



City of Tualatin

Violations of Public Meetings Laws

- ORS 192.680 - enforcement provisions and outlines consequences
 - Negligent decision is “voidable”
 - “Cure” Opportunity by holding lawful meeting and re-decide
 - A court “shall void the decision” intentional disregard of the law or willful misconduct by a quorum, unless other equitable relief is available
 - Members who participated “shall be jointly and severally liable to the governing body or the public body of which it is a part for the amount paid by the body”
 - Attorneys fees available to the successful plaintiff
 - Anyone affected by a decision of the governing body may seek injunctive or declaratory relief
 - Executive Session Violations - OGEC can impose civil penalties
- Under certain circumstances, affected person may have constitutional due process complaint
 - Outside of the Public Meetings Law statutory scheme

Serial or Sequential Meetings

- A meeting of a quorum of the governing body in a sequential manner
- Two Lane County Cases
 - ▣ Dumdi v. Handy
 - ▣ Handy v. Lane County



Serial or Sequential Meetings

- “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 [executive sessions].” ORS 192.630(1)
- “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 [executive sessions].” ORS 192.630(2)



Dumdi v. Handy - Circuit Court

□ FACTS

- Two members of the Lane County Commission wanted to secure funding for their staff through a supplemental budget
- Commissioners engaged in a series of in-person discussions and emails about funding the positions
- Commission votes in public on final supplemental budget, which includes funding for the position

□ COURT FINDINGS

- Series of meetings were “orchestrated to avoid having to discuss the matter in public”
- “Serial communications” constituted a meeting under the Public Meetings Law
- Commissioners engaged in “willful misconduct”

□ SETTLEMENT

- Lane County Pays \$300,000
- Each Commissioner involved pays \$20,000 personally



Handy v. Lane County

□ FACTS

- Handy sought contributions to a political committee for settlement of the *Dumdi* case.
- A letter sent to the DA that claims this is a violation of law
- Media makes a public records request for the letter
- County Executive meets with three Lane County Commissioners (quorum) over an 18 hour period by email and in person
 - Whether to call special meeting
 - Whether to release the letter to the media
- PUBLIC MEETING VIOLATIONS ALLEGED BY PLAINTIFF
 - Deciding to hold a special meeting
 - Deciding on whether to release the letter
- PROCEDURALLY UNIQUE -limited discovery

Handy – Court of Appeals

- Serial Meetings between a quorum is a Public Meetings Law Violation
- Not a Violation to Decide Whether to Hold a Special Meeting
 - ▣ Administrative Matter – Quorum not required to call meeting
- Distinguished between Information Gathering and Deliberating



Handy – Oregon Supreme Court

- Supreme Court assumed without deciding that Serial Meetings violate Public Meetings Law
- Supreme Court Decision
 - ▣ Not enough evidence in the record to find a violation
 - ▣ Sent back to lower court to determine whether additional discovery should occur



Serial Meetings after Handy

- Supreme Court decision means the law remains unclear
 - ▣ Court of Appeals and Circuit Court held serial meetings violate Public Meetings Law
 - ▣ *Tri-Met v. Amalgamated Transit Union Local 757*, 276 Or App 513, (2016), 362 Or 484 (2018)



- **Risk**: If four or more Councilors are involved in a series of communications and there is a common topic of discussion regarding City business, there is a significant risk that a court finds a violation of the Public Meetings Law.

Information Gathering

- Court of Appeals Handy Case Distinguished between Information Gathering and Deliberations
 - No longer good law
- Cases do not establish a “bright-line” as to what constitutes Information Gathering
- Public Meetings Law Policy – “the information upon which such decisions were made.”
- AG Opinions



Information Gathering

- Quorum
 - Is a Public Meeting when:
 - Conducting Work Sessions
 - Meeting for the purpose of gathering information which will be used later to make a decision or recommendation
 - De Facto Work Sessions
 - Deliberations Occur
- Less than a Quorum
 - Not a Public Meeting

Scenario 1

- City Publishes Notice of an Executive Session
- The Notice states the purpose of the meeting is “Training”

**Does this Meet the Notice Requirements?
Why or Why Not?**

Scenario 2

- ❑ Lawsuit filed involving a slip and fall on a sidewalk
- ❑ Executive Session noticed for “litigation or litigation likely to occur” and the proper subsection provided in the notice
- ❑ At the meeting, Councilors discuss the lawsuit with the City Attorney
- ❑ At the end of the meeting, the Councilors then discuss whether they should amend an ordinance to change the responsibility for sidewalks

**Was the Topic of the Executive Session Lawful?
Was the Discussion Lawful?**

Scenario 3

- ❑ One Member of 7-member Council claims to the press that the process used to select applicants to the Planning Commission was unfair
- ❑ Two Councilors approach the Mayor about providing a Council response to the allegations
- ❑ The Mayor asks one Councilor to draft a media release and circulate it to the other Councilors
- ❑ The Councilor drafts the release and circulates it to the other Councilors by email
- ❑ Six Councilors review, make edits, and agree on final language and the Mayor sends out the Media Release

Did this violate the Public Meetings Law?

Tips to Avoid Public Meeting Violations

- ❑ Do not Discuss City business with a Quorum, unless it is during a Public Meeting
- ❑ Avoid Serial Communications - Majority of Councilors communicating about a common topic of City Business
 - ❑ In-Person
 - ❑ Telephone
 - ❑ Electronic – emails, texts, etc.
 - ❑ Intermediary
- ❑ Stay on topic in Executive Session



Questions on Public Meetings

