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**WELCOME PACKET
PLANNING COMMISSION**



**Planning Division
(503) 682-4960**

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Planning Commission/DRB 2024 Scheduled Meeting Dates
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**City of Wilsonville
2024 Scheduled Meeting Dates
DEVELOPMENT REVIEW BOARD – PLANNING COMMISSION**



<i>Development Review Board Panel A</i>	<i>Development Review Board Panel B</i>	<i>Planning Commission Committee for Citizen Involvement</i>
January 8, 2024	January 22, 2024	January 10, 2024
February 12, 2024	February 26, 2024	February 14, 2024
March 11, 2024	March 25, 2024	March 13, 2024
April 8, 2024	April 22, 2024	April 10, 2024
May 13, 2024	May 27, 2024*	May 8, 2024
June 10, 2024	June 24, 2024	June 12, 2024
July 8, 2024	July 22, 2024	July 10, 2024
August 12, 2024	August 26, 2024	August 14, 2024
September 9, 2024	September 23, 2024	September 11, 2024
October 14, 2024	October 28, 2024	October 9, 2024
November 11, 2024*	November 25, 2024	November 13, 2024
December 9, 2024	December 23, 2024	December 11, 2024

*City Holiday – alternate hearing dates may be scheduled.

Panel A Board Members	Panel B Board Members	Planning Commissioners
<p>Yara Alatawy Rob Candrian Jordan Herron Clark Hildum Jean Svadlenka</p>	<p>John Andrews Rachelle Barrett Megan Chuinard Alice Galloway Kamran Mesbah</p>	<p>Matt Constantine Ron Heberlein Nicole Hendrix Andrew Karr Samuel Scull Yana Semenova Jennifer Willard</p>

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2024 ROSTERS

City Council

Julie Fitzgerald, Mayor
Kristin Akervall
Caroline Berry
Katie Dunwell
Joann Linville

Development Review Board, Panel A

Yara Alatawy
Rob Candrian
Jordan Herron
Clark Hildum
Jean Svadlenka

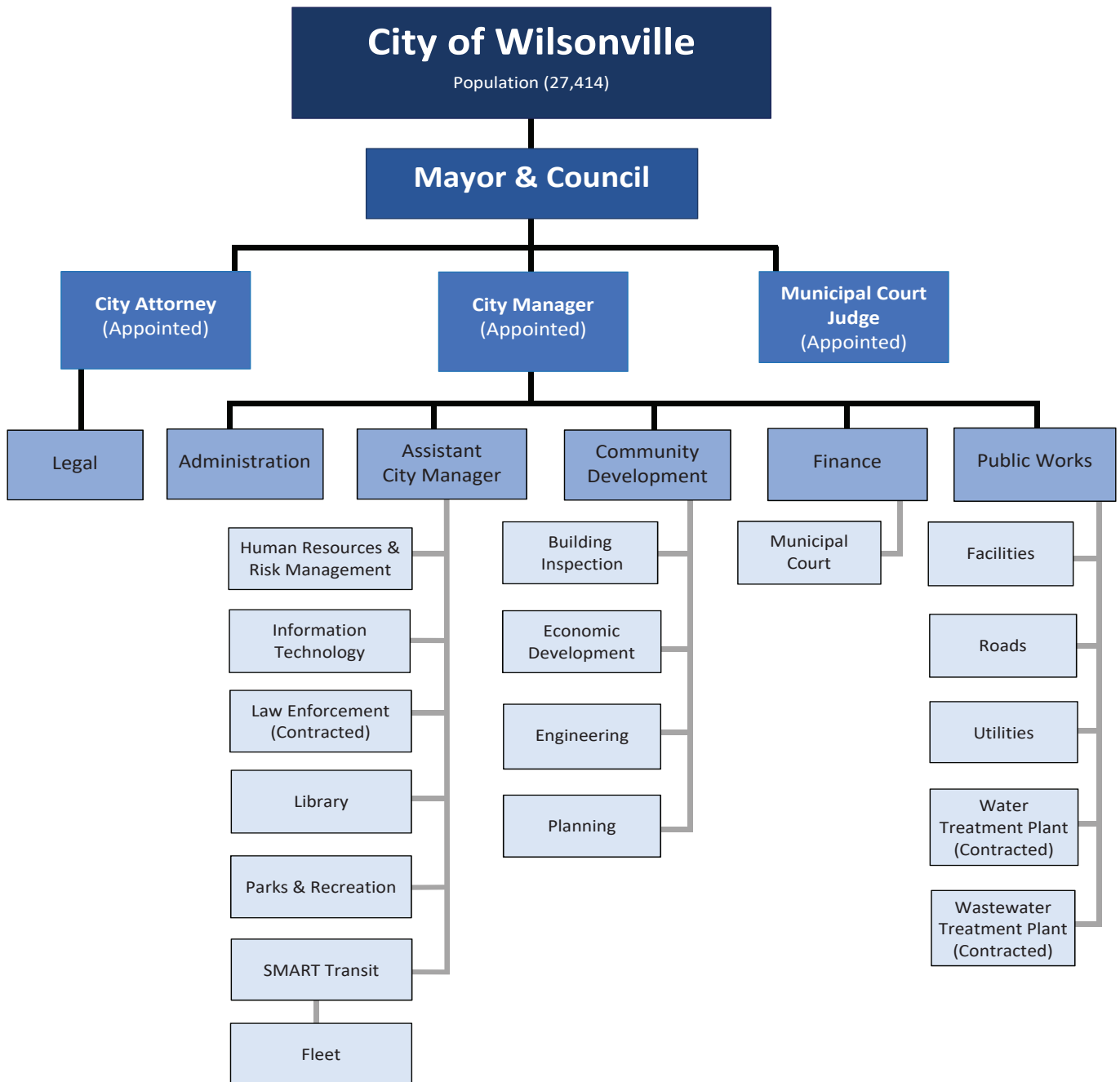
Development Review Board, Panel B

John Andrews
Rachelle Barrett
Megan Chuinard
Alice Galloway
Kamran Mesbah

Planning Commission

Matt Constantine
Ronald Heberlein
Nicole Hendrix
Andrew Karr
Samuel Scull
Yana Semenova
Jennifer Willard

Organization Chart



Boards & Commissions

- Arts, Culture, and Heritage Commission
- City Council
- Budget Committee
- Development Review Board
- Diversity, Equity, and Inclusion Committee
- Parks & Recreation Advisory Board
- Kitakata Sister City Advisory Board
- Library Board
- Planning Commission
- Tourism Promotion Committee
- Urban Renewal Agency
- Wilsonville-Metro Community Enhancement Committee

Chapter 4 of City Code – Authority of Planning Commission
Chapter 2.320 Planning Commission Members

Section 4.032. - Authority of the Planning Commission.

- (.01) As specified in Chapter 2 of the Wilsonville Code, the Planning Commission sits as an advisory body, making recommendations to the City Council on a variety of land use and transportation policy issues. The Commission also serves as the City's official Committee for Citizen Involvement and shall have the authority to review and make recommendations on the following types of applications or procedures:
- A. Legislative zone changes and changes to the text of Chapter 4 of this Code;
 - B. Legislative changes to, or adoption of new elements or sub-elements of, the Comprehensive Plan;
 - C. Initial review of requests for legislative annexations to the City of Wilsonville; and
 - D. Street vacations, where no specific development application has been filed for the subject property. If a specific development application has been filed for the subject property, the vacation request shall be considered by the Development Review Board. Action of the Planning Commission or Board on a street vacation request shall be a recommendation to the City Council.

2.320. - Planning Commission Members.

- (1) (a) The City Planning Commission is hereby reestablished and shall consist of seven (7) members who are not employees of the City. Members of the City Planning Commission shall be residents of the City who are appointed by the Mayor with the consent of the City Council and may be removed by the Mayor with the consent of the City Council. Provided, however, that not more than two (2) Planning Commissioners may be appointed who do not reside within the City of Wilsonville if they are:
 - (i) Registered architects, landscape architects, professional engineers, or members of the American Institute of Certified Planners, and their particular expertise if found to be needed on the Commission; or
 - (ii) Property owners, or actively engaged in business or employment in the City. The purpose of this subparagraph is to encourage participation by the Wilsonville business community.
- (b) Not more than two members shall be engaged principally in the buying, selling or developing of real estate for profit as individuals, or be members of any partnership or officers or employees of any corporation engaged principally in the buying, selling or developing of real estate for profit. Not more than two voting members shall be engaged in the same kind of business, trade or profession.
- (c) One member of the City Council shall serve as an ex officio non-voting member of the Planning Commission.
- (d) One member of the Planning Commission shall be designated as the liaison to represent the Planning Commission at City Council meetings when Planning Commission recommendations are considered. The liaison role may be rotated among the Planning Commission members.
- (2) Planning Commission members shall make every effort to attend all meetings and to notify the chair to prearrange absences other than emergencies. Unexcused absences from three meetings in any calendar year may be grounds for removal.
- (3) The Planning Commission shall annually elect a Chair and Vice-Chair who shall be voting members. This election shall take place at the first regular meeting each year.

(Ord. No. 453, 3-18-1996; Ord. No. 518, 4-17-2000)

2.321. - Planning Commission Terms of Office.

- (1) Each member of the Planning Commission shall serve a four-year term or until a successor is appointed. Provided, however, that the terms of two of the Commissioners shall expire at the end of calendar year 1997, two shall expire at the end of 1998, and three shall expire at the end of 1999. Any vacancy shall be filled for the unexpired term of the predecessor in the office. No member shall hold appointment for more than two full consecutive terms, but any person may

be appointed again to the Commission after an interval of one year. However, an appointee may subsequently be appointed to a maximum of two consecutive four-year terms after completing the unexpired term of another commissioner.

(Ord. No. 453, 3-18-1996)

2.322. - Planning Commission Powers and Duties.

- (1) The Commission shall meet at least once a month and may make and alter rules and regulations for its government and procedure consistent with the laws of this State, the City Charter and this Code. Four members of the Commission constitute a quorum. A quorum is required to take final action on an issue.
- (2) Except as otherwise provided by law, it shall be the duty of the Planning Commission and it shall have power to:
 - (a) Recommend and make suggestions to the City Council and to all other public authorities concerning betterment of transportation and public transit, including, but not limited to, the layout, widening, extending, and locating of streets, sidewalks, bicycle lanes and boulevards, parking of vehicles and bicycles, relief of traffic congestion and improvement of traffic safety; the betterment of housing and sanitation conditions; the establishment of regulations applying to zones or districts, including but not limited to, limiting the use, height, area, bulk, and other characteristics of buildings and structures relating to land development; setting standards relating to land development; setting standards for the division of property and setting standards for landscaping; and the protection and assurance of access to incident solar radiation and to wind for potential future electrical generation or mechanical application.
 - (b) Recommend to the City Council and all other public authorities:
 1. Plans for regulation of the future growth, development and beautification of the municipality in respect to its public and private buildings and works, streets, parks, grounds and vacant lots, and plans consistent with future growth and development of the City in order to secure to the City and its inhabitants sanitation, proper service of all public utilities, harbor, shipping and transportation facilities; and
 2. Plans for the promotion, development and regulation of the industrial and commercial economic needs of the community in respect to such pursuits.
 - (c) Do and perform all other acts and things necessary or proper to carry out the provisions of this Code and of applicable portions of the Oregon Revised Statutes.
 - (d) Study and propose in general such measures as may be advisable for promotion of the public interest, health, safety and welfare of the City and of the planning area within six miles thereof.

- (e) Consider and make recommendations to the City Council on proposed amendments to the text of Chapter Four of the Wilsonville Code and the text of the Comprehensive Plan, including sub elements and facility plans.
 - (f) Consider and make recommendations to the Wilsonville Urban Renewal Agency Board on proposed redevelopment plans.
 - (g) Review and make recommendations to the City Council on all Petitions or Applications that are determined to be legislative land use proposals, including proposed policies, Code amendments and Comprehensive Plan amendments that are legislative in nature. Before taking final action on any such matters, the City Council shall carefully consider the reports and recommendations of the Planning Commission.
- (3) The Planning Commission shall conduct its meetings and deliberations in accordance with the laws of the State of Oregon and the Wilsonville Code. All recommendations made to the City Council by the Planning Commission shall be in writing, except under emergency circumstances, in which case the Planning Director, or the Director's designee, shall be authorized to convey such recommendations orally.
- (4) The Planning Commission shall have all the powers which are now or may hereafter be given to it to perform legislative functions under the laws of the State of Oregon and the Wilsonville Code.
- (5) The Planning Director shall be responsible for determining whether a petition or application for a land use proposal is quasi-judicial or legislative in nature, after consultation with the City Attorney.

(Ord. No. 453, 3-18-1996)

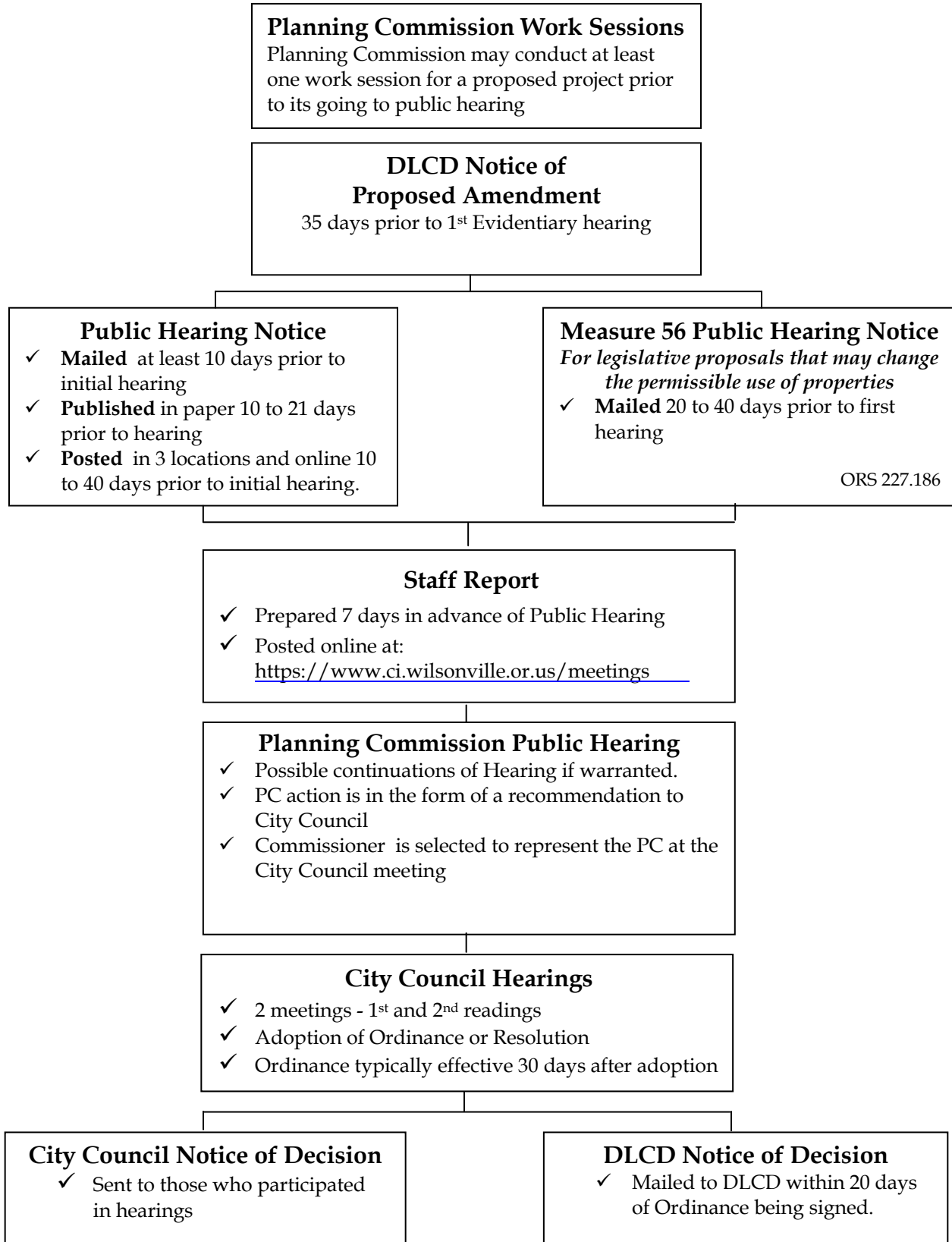
2.323. - Planning Commission Expenditures.

- (1) The Planning Commission shall have no authority to make any expenditures on behalf of the City, or to obligate the City for the payment of any sums of money.
- (2) Planning Commission members shall receive no compensation but shall be reimbursed for expenses.

(Ord. No. 453, 3-18-1996)

PC Timelines Flow Chart
Memo: Making Motions 01.23.2020

Typical Process & Timelines for Applications before the Planning Commission.





MEMORANDUM

TO: DRB Member

FROM: Barbara A. Jacobson, City Attorney

DATE: January 23, 2020

RE: Making Motions – a Refresher

I. Introduction

Below is a recap of basic parliamentary procedure, along with sample motions to cover most everything you may encounter at a public hearing.

II. Basic Meeting and Motion Procedure

- The Chair calls the meeting to order (see the attached script for more detail).
 - The Chair reads the prehearing statements about the hearing and testimony.
 - Only those who are recognized by the Chair may speak during the hearing.
 - The Chairperson is generally addressed as Mr. Chairman, Madam Chairwoman, or other proper title, where preference is expressed.
 - During the hearing, members may ask questions of the applicant or staff, or clarify or expand upon issues raised by other DRB members.
 - Once the hearing is closed, members may consult with staff but not the applicant or members of the audience.
 - In order to discuss the matter after the hearing is closed, a motion must be made. This is the time for debate and discussion among the members but it may not occur until a motion is made and seconded, but before the question is called. The Chair asks, “Do I have a motion?”
 - After being recognized, the DRB member who wishes to discuss a topic should state: “I move that _____ (*description of desired action*).” If there is a motion and there is no second, the motion dies. If seconded, Parliamentary
-

Rules require that the Chair re-state the motion and then call for discussion. (Prior to the Chair's restatement of the motion, the motion maker may amend the motion.)

- Once the motion is restated, the motion is discussed and voted on. If any member wants to modify the original motion, that member must move to amend the original motion (“I move that the current motion be amended to . . .”) If the amending motion fails to get a second, it dies.
- Because our decision making bodies are not so procedure bound, the bodies have often discussed the motion after it is seconded, without a restatement by the Chair. This enables the motion maker to withdraw and remake the seconded motion, or accept an amended motion without the formal amendment process discussed above. This is a matter of group preference. Therefore, in the past, for motions that are likely to change with discussion, debate occurs after the initial motion is seconded but before it is repeated by the chair to allow for more formal amendment. This panel can elect to follow Robert’s Rules, or continue with the less formal approach.
- If debate has been exhausted, the Chair may ask, “Is there any further discussion?” and/or “Are you ready for the question?” If there is no further discussion, the Chair will restate the motion (“The motion before the Board is to _____.”). [Note: Chairs will obviously have to take notes sufficient to restate the motion for the benefit of the body and the transcriptionist. All members should also have notes in order to correct any error or discrepancy.] The Chair then calls for the vote (“All in favor, say aye; all opposed, nay.”).
- The Chair announces the vote, and follows with post-hearing statements (e.g., announcing appeal process – see script).
- At the end of the meeting, the Chair asks for a “motion to adjourn.”

III. Sample Motions

The following are examples of common motions to be made, based upon what happens during testimony.

1. *If staff announces any proposed corrections or changes to the staff report:* If, as often happens, staff announces changes or corrections to the staff report, then you will say, “I move to amend the staff report as read into the record by Sylvester Staffer.”
2. *If there is a change captured by a new exhibit:* If a party (usually a proponent) modifies the proposal by way of a new exhibit to be entered into evidence, then the movant states: “I move to amend the staff report description of the proposal on page ___ of ___ as provided by Exhibit ___.” If new conditions or findings are similarly incorporated in an exhibit, make the same kind of motion. (“I move to amend Finding / PF Condition ___ on page ___ of the staff report to incorporate Finding / Condition ___ on Exhibit ___ to read _____.” — or — “I move to amend condition of approval PF ___ on page ___ of the staff report to read _____.”) Be sure to state page numbers, making clear whether the page numbers refer to the staff report or to the new exhibit.

3. *If a change is verbalized at the meeting and is relatively complex:* If the City Attorney or another staff member has clearly read into the record the substance of amendments to the proposed enactment, condition, or finding, then the movant should state: “I move to amend Finding ___ on page ___ of the staff report as read into the record by the City Attorney.” If the change is easy to state in its entirety, please do so yourself. For example, “I move to replace the word ‘may’ on line ___ of the proposed resolution with the word ‘must.’”
4. *If there is a proposed change after the Chair restates the motion:* If the Chair has restated the motion and someone wants to change it further, then movant states: “I move to amend the main motion by adding _____ / deleting _____.” If the amending motion is seconded, the Chair will restate the amended motion. Following discussion, the Chair will call for a vote.
5. **Practical Example:** What if a motion is made that you agree with in part but not in full? For example, a motion is made to approve a resolution. You would be willing to approve the resolution but without the requested height waiver that is currently allowed by the resolution. What do you do? After the main motion has been made and seconded and repeated by the chair, but before the vote, you can make a secondary motion to amend the first motion. “Chairman O’Neil, I move to approve the resolution, amended to remove the height waiver.” If that secondary motion is seconded, then that is the motion that is voted on before the main motion. If it passes, the main motion fails. If it fails and there are no further secondary motions, the chair calls the question for the main motion. If the main motion passes and there are no other motions, the hearing is closed. Thus, anyone who doesn’t like the main motion has the opportunity to offer an alternative motion in the form of a secondary motion to amend, which will be considered and voted on before the main motion.

IV. Tips

1. It is helpful, as a matter is brought forward, for members to decide who will be making the motion. Too often, the Chair asks for a motion and nobody has kept careful notes of the changes or can articulate the desired motion. All members should be following the discussion and noting the proposed changes, but the actual motion maker must track all the elements of the motion. Preferably, he or she writes the motion prior to making it. Keep in mind that if the motion is not completely clear to the Board, then any changes that are to be made by a motion can be misinterpreted. Note that the Chair of the DRB is empowered to make a motion, as are all DRB members.
2. All remarks should be addressed to the Chair or the body as a whole, not to individual DRB members, except for specific questions to the staff, applicant, City Attorney, or person providing testimony.
3. Keep remarks brief, specific, and germane to the pending question.
4. Members are required to be impartial and courteous.

5. Voting is a duty of every DRB member. Absent compelling circumstances, including but not limited to conflict of interest, members should not abstain from voting.
6. *Tip for making clear motions:* The most common motion is to adopt a staff report and to approve the resolution proposed by the staff report. However, in the course of the presentation, the staff report may have changed. Therefore, the following is suggested as the clearest way to make a motion that first amends the staff report and then passes the Resolution:

The first motion is a motion to amend the staff report. Following passage of the motion to amend the staff report, a member should make a motion to adopt the Resolution. Because the Resolution language adopts the staff report *as amended*, the second motion is simply: “I move to adopt Resolution No. ____.”

Oregon Planning Commissioner Handbook



Oregon Planning Commissioner Handbook

APRIL 2015



Planners Training Team

ACKNOWLEDGEMENTS

With the deepest thanks, the Department of Land Conservation and Development and the Oregon Chapter of the American Planning Association would like to thank the members of the Planners Training Team – John Andersen, AICP; Carole Connell, AICP; and Ardis Stevenson – for allowing us to reprint their Planning Commissioners Training Manual. This document is based almost entirely upon their work – updated and reformatted to be able to link the digital version of this document to the vast amount of information that is now available via the internet.

This manual is designed to assist those who deal with Oregon's land use program including planning commissioners, city and county governing bodies, members of advisory committees (design review boards, historic landmark commissions etc.), professional staff, and interested citizens. Its purpose is to serve as an initial introduction to newly elected or appointed officials and be a useful reference for those with more experience.

Additional information regarding statewide planning is available from the Department of Land Conservation and Development at www.lcd.state.or.us and from the Oregon Chapter of the American Planning Association at www.oregonapa.org.

*The **Department of Land Conservation and Development** helps communities and citizens plan for, protect, and improve the built and natural systems that provide a high quality of life. In partnership with citizens and local governments, we foster sustainable and vibrant communities and protect our natural resources legacy.*

Visit us at www.lcd.state.or.us.

*The **Oregon Chapter of the American Planning Association** is an independent, statewide, not-for-profit educational organization that provides leadership in the development of vital communities by advocating excellence in community planning, promoting education and citizen empowerment, and providing the tools and support necessary to meet the challenges of growth and change.*

Visit us at www.oregonapa.org.

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CHAPTER 1:

Introduction to Planning

Congratulations and thank you for having the courage to make a commitment to your community and all the people of the great state of Oregon. You are now part of a large family composed of planning commissioners from throughout our state. Like all families, it has many individuals, each with their own particular skills and priorities. Yet all are bound together by important responsibilities, traditions, legal and economic concerns, as well as common needs and experiences. Some will function in large, diverse communities that are facing rapid change, others will fight the battles associated with static or declining populations. Everyone will likely work in an environment with insufficient resources to do all of the important work they'd like to do. What are the issues you and your fellow planning commissioners face? What are the resources that effective land use planning can bring to bear to help solve those problems?

Land use planning is not an answer to every concern. However, good community plans can do much to help a community face the issues that need to be confronted. Effective decision-making that involves the community members avoids the worse hazards, and optimizing local resources is what planning can do to make your city or county a better place.

Every community must develop its own list of issues and concerns, find its own solutions, and, most importantly, identify a vision for its future than can be accepted and achieved by the community's current and future residents. In Oregon, that process also includes complying with the Statewide Planning Goals using a set of policy statements that serve as parameters for city and county comprehensive land use plans and development regulations.

The following chapters are designed to help you understand how to make the Oregon planning program work for your community. This document is not meant to replace actual experience in working with your comprehensive plan and development regulations. Time will cure that deficiency in your knowledge. The information here will help you to understand the basics, and help you through the initial adjustments you will be making to fulfill your new responsibilities.

As you gain experience and comfort with land use processes, regulations, and other duties in your position as a planning commissioner, you will want to explore your ability to craft effective, long-range plans for your community and to broker

agreements between people and organizations within your area. A clear vision for what your community is to become, an understanding of the political and fiscal realities of your area, as well as knowledge of the Statewide Planning Goals, will be important parts of how you approach your planning commission duties. Because you are part of a bigger system, you will be expected to represent all of your community and not just yourself.

This chapter will provide you with some basic information and understanding to help you carry out your duties. As you gain experience, you will develop the vision and knowledge required to fashion a pathway into the future for your community that is composed of many individual site decisions and a commitment to longer-term community-wide goals.

Before we progress any further in discussing land use planning, it is appropriate to understand the basic foundations for the process and the institution. The following sections will describe what land use planning is, how the process works, some of the reasons for planning, as well as a history of planning in Oregon. With this information you can understand the character of, and context for, planning in Oregon. While this foundational information will be relatively comprehensive, it will only be a simple introduction sufficient to help you and those you work with to understand the reasoning for planning and its basic processes.

LAND USE PLANNING - WHAT IS IT?

Planning itself is about making decisions. Those judgments may be about community priorities, or about housing needs, natural resource protection, or appropriate widths for local streets. Whatever the content of the decision, they are primarily about making effective, efficient, and appropriate determinations that achieve the desired results. Planning is therefore a decision-making process.

Land use planning is about making quality decisions about how the land is to be used. Every activity that occurs on the planet has to take place somewhere. That place may be a home, office, business, factory, or public service building – whatever the place, it will use a piece of land, need to be supported by services, have an impact on others and need to avoid certain hazards. Planning can help achieve those needs more efficiently than would occur without planning.

Planning is also more complex than just making land use decisions. There are responsibilities to others (the public, government entities, current and future generations, etc.) and values that need to be addressed in the process. The following is a listing of how planning has been described by some leading professionals in the profession:

Planning is:

- Determining community needs and setting goals in an organized manner
- Organizing events and activities
- The art and science of anticipatory problem solving
- A forward thinking process
- A tool to bridge the gap from now to then – from today’s realities to tomorrow’s possibilities
- Deciding in advance to do something
- Defending the common interest in the face of parochial/special/individual interests.

If the preceding is what planning is to accomplish, then it must have certain characteristics or conditions in place in order to accomplish those ends. Planning is a process that recognizes it must affect the future by analyzing the past within the context of today’s realities and perceptions. Planning must be composed of the following if it is to be successful:

- Be a rational process
- Use facts as the basis for all decisions
- Create a common understanding of what the community needs versus what individuals may need
- Believe in the importance of involving people in a complex process that balances all interests
- Consider all reasonable alternatives
- Prepare a program to take action

While the previous definitions consider planning generally, this handbook is meant to focus on land use planning because that field is the medium for the state’s goals and the overall planning program. In addition, Oregon’s approach to planning is reflective of our citizens’ political and philosophical beliefs.

The following definition provides some insight not only about planning, but also about how Oregonians like to see planning conducted.

Definition of Land Use Planning

Land use planning:

- Is a process occurring within a public forum
- Where factual information is gathered
- Where community needs are identified and prioritized
- Is based upon a values consensus resulting in a community vision
- Is used to make decisions regarding particular activities or issues as they pertain to a specific geographic location,

with the intent to achieve the best possible long-term outcome.

The preceding wordy definition contains several important concepts that are identified separately below:

- **Process.** A system for making decisions with predictable steps and responsibilities.
- **Public forum.** Oregon believes in public involvement and in an informed citizenry.
- **Factual information.** The use of scientifically confirmable information, rather than perceptions or assumptions.
- **Community needs.** The overall community, not just particular groups or individuals.
- **Decisions.** Decision-making is what the process is all about and by making them in advance, it is more likely they will meet the community needs and be more equitable than incremental individual decisions.
- **Particular activities or issues.** By defining the concern to a particular permit or use, the issue can be more effectively defined and objectively decided.
- **Geographic location.** The land is the focus for these decisions, and the venue for considering the impact on others.
- **Long-term outcome.** The building, use or impact will be in place for some time – maybe generations – and this is the opportunity to decide whether that will be beneficial or not.

The Land Use Planning Process

The land use planning process can be diagrammed to demonstrate how the various elements tie together. These steps must occur in the correct sequence if the process is to be successful. It can be too easy to “skip ahead” and to forget the thoughts and issues that needed to be considered at each point in the process. This continuity is particularly important to assure that all elements of the community are brought into the process and that they are part of, and committed to, the consensus that is developed.

The International City/County Management Association describe the steps to create a typical general plan process:

- Step 1: Identify issues, opportunities, and assumptions
- Step 2: Formulate goals
- Step 3: Collect and analyze data
- Step 4: Revise goals and determine objectives
- Step 5: Develop and evaluate alternative plans
- Step 6: Select and adopt the preferred plan
- Step 7: Implement the plan
- Step 8: Monitor and amend the plan

Everyone of these steps should include public participation and interagency coordination. While it can be used as a general framework for many planning processes, each jurisdiction is likely to modify it to fit their particular circumstances and needs.

Why Plan?

Now that you know something about what planning is and how it occurs, you should consider why you should undertake such a complex, expensive, and time consuming activity. Communities plan for a variety of reasons and the particular combination of concerns will fluctuate with the needs of local people, conditions within the community, state law or other mandates, and the basic values and history of the local area's residents.

Some of the common reasons for communities to plan are to:

- **Accommodate the present.** Particularly to assure that the public facilities are effective and efficient
- **Prepare for the future.** Wise choices improve everyone's future
- **Anticipate change.** Its coming whether you are ready or not
- **Maximize community strengths.** Planning can leverage more benefits
- **Minimize community weaknesses.** Local deficiencies can be reduced or overcome
- **Identify and seize opportunities.** Consensus can help assure the right course can be taken when the chance is presented
- **Respond to mandates.** Legislation, Statewide Planning Goals, and other relevant state and federal requirements
- **Protect scarce resources.** Knowing what you have and what you want to keep helps to assure the things you need will be there when required
- **Build a sense of community quickly when people are uncertain.** They often create less productive social and political conditions within the community
- **Provide for the public's health, safety, and welfare.** Each community defines this separately and it changes as time progresses, but it is this mandate from the federal and state constitutions that creates the basis for planning and related activities

Why is your city or county planning? What is it that you want to protect? When the future is the present what will you and your community be doing, and is that what you value? Take a few minutes to think about these questions.

THE NEED FOR LAND USE PLANNING IN OREGON

It is unthinkable that a builder would attempt to construct a building without having a set of drawings, plans, and specifications. For a residence, the plans would be designed to accommodate the various activities and needs of a family – shelter, warmth, eating, sleeping, leisure time, entertaining, recreation – and the plumbing and electrical systems would be designed to support those activities at the various locations within the structures.

On a much larger scale, a state and its communities cannot develop in a logical, coordinated manner to accommodate the needs and activities of their citizens unless some advance planning is done to guide the continuing development and change that occurs.

There are relatively few individuals who may be responsible for making decisions relative to the construction of a residence. However, there is a very large number of diverse individuals, organizations, businesses, public agencies, corporations, etc., which have various responsibilities for making decisions relative to the development of a community and the state.

These decisions represent a wide variety of beliefs and priorities as to what, where, how, and when development should occur, what is most important and what is less important, and who should have what responsibilities.

In Oregon, the consequences of a lack of coordinated planning became evident to a majority of the state's residents, and its citizens determined that land use planning guided by statewide policy is the most logical way to assure that development will be guided in a direction that will provide maximum satisfaction of the needs and desires of everyone. The Oregon Land Use Act of 1973 is the basis for this coordinated land use planning effort.

Roots of Land Use Planning In Oregon

Land use planning in Oregon began in the cities of our state. Urban settings created urban needs for coordinated approaches to particular uses of the land.

Recognizing this, the 1919 Oregon Legislature passed enabling legislation allowing cities in Oregon to plan in an orderly way for the challenges that resulted from steady growth. This legislation enabled cities to establish planning commissions and required planning commission approval for subdivision plats. After World War II, Oregon counties were similarly authorized to establish planning commissions, at a time when rapid growth created increasing urban problems in many unincorporated areas.

Through most of the 20th century, Oregon state government's role in planning was limited. The state legislature authorized local planning to occur and provided for coordination with the federal government when the need arose (during depression-era dam building projects, for example), but did not preempt or control local guidance of development and growth.

However, as Oregon grew dramatically in population and income during and after World War II, it became increasingly evident that our system of permissive, local-option planning was not adequate to accommodate complex regional and statewide pressures and trends that crossed many jurisdictional boundaries.

State government during this period began slowly, but with growing speed spurred by popular concern, to respond to the challenges resulting from rapid growth and development. A Department of Environmental Quality was established, backed by clean air and water laws as well as pollution bonds; landmark Oregon legislation created significant laws on beaches, bottle deposits, bike paths, and billboard removal.

It was apparent that land use difficulties were at the root of many of the problems resulting from growth. Oregon's most productive farmland, the 100-mile-long Willamette Valley, was also home to 80 percent of the state's population. Oregon's population increased by nearly 40 percent between 1950 and 1970, and 80 percent of that occurred in the Willamette Valley. The result was significant growth in cities of the Valley, with the subsequent loss of prime farmland.

Spurred by the losses of farmland and prodded by first-term Governor Tom McCall, the 1969 Oregon Legislature passed Senate Bill 10, which required all cities and counties to adopt comprehensive land use plans and zoning regulations. SB 10 ended the view that selective local option planning alone would suffice to meet regional and area-wide land use challenges, which could significantly affect the economic and environmental bases of this state.

Not only were zoning and subdivision regulations required of every jurisdiction in the state, but statewide goals were set out which addressed conservation of prime farm and forest lands and other vital state concerns, including air and water quality, open space, natural scenic resources, timely development of public facilities, well-considered transportation systems and orderly transition from rural to urban uses with a careful view to protecting the basic character of Oregon.

Unfortunately, the 1969 legislation contained no assistance to meet the cost of compliance, and its enforcement provisions proved inappropriate. This led to a strong effort on the part of Governor McCall and key state legislators to work together to develop an acceptable proposal that would

make statewide land use planning a reality, rather than a platitude, in every jurisdiction in the state.

The Oregon Land Use Act of 1973

The 1973 Legislature convened with bipartisan support for strengthening state oversight of local planning. The result of its effort, the Oregon Land Use Act of 1973 (Senate Bill 100), established the framework that in major part governs and guides land use planning in Oregon today.

The Act was passed by substantial margins in both chambers of the legislature. It remains a controversial piece of legislation but has withstood numerous challenges in the legislature, in courts, and at the polls. It also represents the concerns, and has received the support of various groups representing agriculture, business, homebuilders, local governments, and environmental organizations.

Developing the Statewide Planning Goals

Once the Land Use Act was on the books, sleeves were rolled up throughout Oregon as the work of implementation began. The first task for the Land Conservation and Development Commission (LCDC) was creation of the Statewide Planning Goals against which each local comprehensive plan would be measured.

After more than a year of public workshops and hearings in 20 locations around the state involving over 3,000 Oregonians, LCDC adopted 14 statewide land use-planning goals in late 1974. Later, coastal goals and a Willamette River Greenway goal were added to bring the total to 19 goals.

LCDC'S Responsibilities

LCDC itself acts mainly through the acknowledgement (initial approval), periodic review, and post-acknowledgement review processes. It may issue enforcement orders, which specify areas of noncompliance in local planning decision, and specific corrective actions required.

LCDC conducts studies through its staff (the Department of Land Conservation and Development, or DLCD) and writes administrative rules refining the provisions of the goals. Often it is in this forum where discussion and consensus building can take place that best works to define Oregon's planning program.

All city and county comprehensive plans and implementing regulations were "acknowledged" by LCDC as complying with the Statewide Planning Goals. Acknowledgment was needed before the local government could rely on its plan for making land use decisions without showing goal compliance for every land use decision. Once a comprehensive plan (including the implementing ordinances and regulations) gains acknowledgment, the plan – not the statewide goals –

controls land use decision-making for the local government. Any amendment to an acknowledged plan must be shown to comply with the goals so that the whole plan maintains acknowledgment.

It is important to note that LCDC's enforcement powers relate primarily to city and county compliance with the land use statutes and the goals. Cities and counties themselves remain responsible for assuring that individual land use actions comply with their local comprehensive plan. Local government is the primary enforcement entity, and appeals of final local decisions go to the Land Use Board of Appeals (LUBA), not LCDC.

Purpose of the Goals: Development and Preservation

Taken as a whole, the goals are best understood as devoted to creating and maintaining sustainable, livable, and equitable communities. First, they seek to protect the natural resources on which much of Oregon's economy depends (in particular, farm and forest land) and our environmental quality. Second, the goals promote efficient urban development and an orderly transition from rural to urban use.

Implicit in both purposes of the goals is the encouragement of economic development through orderly growth. That change must occur in a manner that does not threaten the long-term economic foundations of Oregon.

The twin concerns – development and preservation – meet in Goal 14. This urbanization goal requires that a city, in consultation with the county, local special districts, and neighboring jurisdictions, draw a boundary around itself to establish the projected limits of urban growth for about 20 years. Data to support the boundary is required, including 20-year growth forecasts. All land within the boundary – called an urban growth boundary (or UGB) – will be considered either urban or potentially urban, while land outside the UGB must remain predominantly rural in character.

The 19 Statewide Planning Goals can be generally grouped into three categories:

1. **Process Goals**, which ensure citizen participation and set forth basic requirements and procedures for local planning and development regulations (Goals 1 and 2)
2. **Development Goals**, which address the interrelated factors of economy, housing, public facilities, transportation, energy, and urbanization (Goals 9-14)
3. **Conservation Goals**, which address the preservation of natural resources of various types:
 - Land resources – agricultural and forest (Goals 2 and 4)

- Coastal resources – estuaries, shorelines and dunes, and the ocean (Goals 16-19)
- Managing resources – environmental quality; recreational and resort areas; scenic, historic, and natural resource areas, and natural hazards (Goal 5-8)
- Willamette River – special regulations relating to particular concerns and values of this major waterway (Goal 15)

UNDERSTANDING THE TOOLS OF PLANNING

What is a Comprehensive Plan?

Your comprehensive plan is a series of generalized, coordinated policy statements, accompanied by a land use map, through which your community has set out its vision of its future. It includes a text describing goals and policies, and the factual data and projections on which the policies were based, together with a map, which generally designates future locations of various types of public and private uses of the land for residential, commercial, industrial, open space, and public uses.

The first element of all comprehensive plans include for factual information, with which you should become familiar. That “facts” chapter or series of chapters outlines the basic characteristics of the community. The facts contained within the document will set the basic parameters for the later decisions and priorities in the plan. Check to see that the important trends and statistics are there and are accurate. For example, population growth, new job development, housing inventories, historical listings or locations of gravel deposits are the foundation upon which you will build the future. Also, the people of your city or county will expect you to be familiar with what is happening and to be able to use that information in making your decisions.

Comprehensive plan goals provide the basic parameters for your community's future. The statewide goals help to define your options locally but it is the local goals that will set the agenda for your jurisdiction. While the state goals set minimum expectations, they are not the most that you can do. Take the opportunity to advocate for your community's needs. The people who placed you in authority will expect you to address their needs. Properly written, local goals will provide a clear vision of what your citizens desire for the future.

Types of Land Use Regulations

Though each comprehensive plan contains a map and general policy statements, the implementing ordinances establish the

particular criteria, standards, and procedures through which the plan will be carried out. These ordinances prescribe laws governing the way in which land may be used and divided.

The most common types of regulation are the zoning and subdivision regulations. You will encounter both of these traditional forms of land use regulation frequently as you go about your duties, although some communities have combined the two related measures into a single “land development code.”

Zoning is the placement of various land use “labels” (such as residential, commercial, or exclusive farm use) on particular geographic areas in your community. Zoning describes the uses permitted and generally establishes criteria and standards for each use (such as lot size, setbacks, and parking). In designating these areas and establishing the conditions, the zoning ordinance will usually allow for flexibility and accommodation of special concerns. Typically, provisions for variances, nonconforming uses, conditional uses, design review and other special provisions will be built into the zoning ordinances.

Subdivision regulations control the particular ways in which parcels of land are divided. Typically, provision is made for design and layout of sites, roads, utility easements, public areas, etc. Many subdivision and partitioning regulations require that the applicant make or guarantee certain public improvements upon dividing the property.

Non-regulatory measures include a wide array of government programs that assist a city or county in carrying out its comprehensive plan. They may include incentive programs for economic development, capital improvement programs, and low-income housing programs.

Intergovernmental agreements seek to ensure the consistency of neighboring or overlapping jurisdictions’ planning with each other, describe the relationship between cities and counties, and establish priorities for extending city services into unincorporated areas. LCDC acknowledgment of city plans requires a growth management agreement between each city and its county. This describes the coordination of plan implementation in areas between city limits and the UGB, as well as methods for coordinating future plan amendments. Cooperative agreements with all special districts providing urban services also are required.

AMENDING AN ACKNOWLEDGED PLAN

A change to the text of the comprehensive plan (including goals, policies, and the factual base), the comprehensive plan map, zoning regulations, or the zoning map The Oregon Legislature has created two processes for changing local plans: post-acknowledgement review and periodic review.

Post-Acknowledgement Review

Post-acknowledgement review allows cities and counties to prepare amendments to comprehensive plans and associated inventories, studies, and implementing codes (i.e., zoning, subdivision, etc.) and then consider the amendment in a public process. Adoption of a post-acknowledgment plan amendment can be completed only by the governing body (city council or board of county commissioners) at public hearing.

Cities and counties are required to submit changes to plans and codes to DLCDC. DLCDC provides notice of all plan amendments throughout the state and publishes them on its Web site. DLCDC may review and evaluate the amendment for compliance with the goals. Changes not involving the topics within the Statewide Planning Goals do not have to be submitted to DLCDC.

If a party (such as a citizen, an advocacy group, or DLCDC) believes the plan amendment does not comply with applicable goals, administrative rules, or land use statutes, the recourse is the appeal the amendment to LUBA.

Land Use Board of Appeals

The Land Use Board of Appeals, or LUBA, is a panel of administrative hearings officers charged with deciding appeals of local government land use decisions, including plan amendments, zone changes, and permits. LUBA was created to simplify the appeal process, speed resolution of land use disputes, and provide consistent interpretation of state and local land use laws.

Prior to LUBA’s creation, land use appeals were heard by LCDC and the circuit courts. The tribunal is the first of its kind in the United States. The governor appoints the three-member board to serve four-year terms. The appointments are confirmed by the Oregon Senate. The board members must be members of the Oregon State Bar.

Periodic Review

Periodic review is required for certain cities based on population. The process begins with an evaluation of the plan to determine how well the comprehensive plan is serving local needs and whether it continues to comply with state law. The plan evaluation must be completed in public to determine what changes are needed or desired by the community. Once the local government has developed a work program, DLCDC will review the proposed work scope and any objections to it. If complete, the DLCDC director will approve the work program.

Monitoring Change

Your plan contains a variety of assumptions and projections regarding the nature and magnitude of change and development. Regular monitoring of real work experience will help you to keep the plan on track. Not only are monitoring and small updating activities less expensive, but

also they are often more accepted within the community you serve. Annual or bi-annual reviews allow the creation and evaluation of a database describing your community. Often this is as simple as tracking land use applications, population, and economic changes, along with working with state or local agencies concerning particular environmental or social issues.

CHAPTER TWO:

Planning Values

“Planning is a process” is a phrase that you will hear constantly with your new responsibilities, because that is the basis for planning. But process is not all there is to planning. If that were true, planning could be left to the courts and attorneys. Planning is much more than just good process; it is the achieving of good results.

The planning process must continuously pursue and faithfully serve the public interest.

Achievement of that goal requires a clear understanding of the public need (sometimes called the public interest). Public needs include long-term health, safety, and welfare. A planner or planning commissioner must try to understand the values that motivate and guide the people of your community. This is not an easy task, and it will be subject to continuous and sometimes acrimonious debate.

To help you in that process, the American Planning Association (the national entity created to promote the interests of planning and those involved with planning) and the American Institute of Certified Planners (an organization chartered for professional planners to promote and certify their competency) have prepared inventories of planning values, which serve as a basis for the following lists.

The planning process should:

- Recognize the rights of citizens to participate in planning decisions
- Strive to give citizens, including those who lack formal organization or influence, full, clear, and accurate information on planning issues and the opportunity to have a meaningful role in the development of plans and programs
- Strive to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of disadvantage groups and persons
- Assist in the clarification of community goals, objectives and policies in plan making
- Ensure that reports, records and any other non-confidential information which is, or will be, available to decision makers is made available to the public in a convenient format and sufficiently in advance of any decision
- Pay special attention to the inter-relatedness of decisions and the long range consequences of present actions

- Provide for a rational system of management decisions that relies on facts, reasonable conclusions and predictable application of standards

While the preceding values address how the planning process should be conducted, there are also substantive values that should be considered by planners (appointed, elected, or professional) as they make planning decisions. Planners are selected to make their community a better place – now and for future generations. The following are some of the values commonly used by planners in the United States to create the kind of places that people and their children want to live.

It is the responsibility of planning commissioners, planning staff, and elected officials to:

- **Protect the public health, safety, and welfare.** Arising from U.S. and Oregon Constitutions, this is the reason for local government and the authority to conduct planning activities is provided to achieve these basic goals.
- **Conserve resources.** If a community is to survive and prosper over time, the materials and environment that make a community possible must be preserved, which sometimes means protecting those resources that provide identity and a sense of community as well as those with an economic basis.
- **Seek efficiency in the use of the land and public facilities.** Activities that use the land ineffectively or spoil the land for future uses, as well as the location or sizing of utilities so that they do not need to be replaced.
- **Foster beauty.** The protection and enhancement of a community’s aesthetic qualities can do much to make life in that place more productive, satisfying and thereby ultimately more efficient and beneficial.
- **Assure equity.** Basic to making the American system of government work is that all people in similar circumstances will be treated the same.
- **Recognize pluralism.** Associated with equality is the importance of providing for the great variety of cultures and perspectives that are blended into the fabric of our society and communities.
- **Promote individuality.** Protection of the basic rights of the individual is important to our society and preparation of good plans – plans that preserve resources needed for future options for those many individuals that are yet unborn, rather promoting the interests of the few, as always the needs of the few must be balanced against the common good.
- **Encourage democratic participation.** To make the system work people need to be involved in an effective and meaningful way, but they must take on the burden of behaving in a responsible manner)

- **Assure that a long-term perspective is taken in the decisions:** It is not easy to remember that decisions must be made with those not at the hearing and those yet unborn in mind, as well as the applicant.

Using these values will not always be easy, but they will provide the effective principles needed to make good decisions and to guide your part of Oregon towards the

future it wants and deserves.

It is the combination of good process with good values that will lay the foundation for good planning in your community. With the help of decades of diligent effort, one decision at a time, the kind of future the people in your family, neighborhood, district, city, county, region, and state want and deserve can be obtained.

CHAPTER THREE: Roles and Responsibilities

SUMMARY OF ROLES AND RESPONSIBILITIES

Responsibilities of the various participants in local land use planning are discussed in detail in following pages of this chapter. However, this list has been developed over the years by participants in planning commission training sessions and is included at the request of many of those participants.

Planning Staff

- Administer the land use process (including staff reports and notices)
- Advise and assist planning commission
- Educate and assist the public
- Know laws and ordinances
- Long range planning (including studies and analysis)
- Negotiate and facilitate
- Coordinate with other departments and units of government
- Enforcement of conditions
- Continuity (policy, documents, people)

Governing Body

- Represent constituents
- Set policy and enact ordinances
- Set budget
- Hire and fire the manager
- Appoint planning commission
- Act on recommendations and appeals

Planning Commission

- Reflect community values
- Recommend policies
- Interpret and apply ordinances
- Educate public/provide forum
- Do homework
- Make land use decisions
- Communicate with staff, elected officials
- Visioning/long range planning

Planning Commission Chair

- Conduct meeting (the only task that is the sole responsibility of the chair)
- Diffuse hostility
- Elicit relevant testimony
- Keep commission on track
- Ensure participation among all commissioners
- Lead commission to conclusions
- Define issues
- Promote planning
- Set agenda (often a staff function)

ROLES AND RESPONSIBILITIES

Land use planning, as described earlier, is a process by which factual information is applied to a particular issue or set of land use issues in a rational manner and within a public forum, in order to achieve the best possible long-term outcome. This process can be summarized in the following seven steps:

1. Gather facts
2. Determine goals
3. Identify alternatives
4. Select preferred alternative
5. Implement
6. Evaluate
7. Return to Step 3

Planning commissioners, elected officials, citizens, and staff all have roles in this process. The preparation and update of a plan is an integral part of the process, but often the only portion of planning seen by the public is the permitting on the lot next door. Part of the responsibilities of participants in the community's planning process is to help the public better understand planning, and that understanding needs to begin with you. Your job of making land use decisions will be made easier with some understanding of the groups with whom you will work and the roles and responsibilities of each.

RESPONSIBILITIES OF THE GOVERNING BODY

Duties of city and county governing bodies include:

1. Adopt and amend comprehensive plans and implementing ordinances and approve related ordinances and policies (such as for parks, public facilities, transportation, and economic development). At the local level planning primarily involves the city or county elected officials, the professional staff (public

employees or contract consultants) and the appointed planning commission. Each fills a different but vital role.

2. Establish planning commissions, hearing officer positions, standing and ad hoc committees, and other bodies as needed, and appoint members to them.
3. Adopt and provide adequate support for a public involvement program.
4. Hear and decide appeals of staff or planning commission decisions, if so provided by local ordinances.
5. Support the planning program with an adequate budget and monitor local planning and development activities.

Another way of looking at the responsibilities of the elected officials is to consider them in terms of their affect on the planning commission:

Role of Elected Body	Effect on Planning Commission
Represent Constituents	Because they are elected, they are “political,” therefore, responsive to local concerns and political pressure.
Adopt Plans & Ordinances	Only the elected body can enact plans, etc. Know when the PC has final authority and when it recommends.
Hear Land Use Appeals	Know if appeals are “de novo” or “on the record”. If de novo, know the governing body may hear different information. If on the record, make adequate findings and conclusions to support PC’s decision.
Adopt Local Budget	Budget decisions affect the quality and quantity of staff, ability to enforce conditions of approval, opportunities for professional development, etc.
Hire City/ County Manager	The manager’s attitude about planning can affect staff levels. The manager, not the PC, hires/fires staff.
Appoint Planning Commissioners	For appointed planning commissioners, this may be the most important role. For PCs with vacancies, there may be a concern about governing body responsibilities.

Working Relationships

As a planning commissioner, do you feel that too many of

your recommendations or decisions are overturned by the elected officials? Or, as an elected official, do you wonder what “wild” direction the planning commission will take next? The following eight ideas to improve working relationship focus on what planning commissions can do, but also apply to city councils and county boards.

1. Clearly understand the responsibilities and authority of the planning commission.
2. Clearly understand the responsibilities and authority of the governing body.
3. Remember that the planner’s first responsibility is to the manager or other supervisor.
4. Make sound decisions with adequate findings to insure that the reasons for your actions are clear to the elected officials.
5. Ask for clarification of the governing body’s policies or actions that are unclear.
6. Include questions or points of view that are not obvious in your decisions and findings in the planning commission minutes.
7. Request annual joint work sessions to discuss priorities, communications, etc.
8. Recognize the elected officials’ responsibilities to the voters.

PLANNING STAFF RESPONSIBILITIES

The planning staff plays a vital role in the land use planning process and the effectiveness of the planning commission. It is the staff’s responsibility to perform the tasks associated with administering the land use regulations. The staff performs necessary research, prepares plans and reports, as well as distributing and explaining the results of that work.

As professional planners, they have been trained to perform research, write reports, make public presentations and carry out the routine tasks of their jobs. They will do this utilizing their training in economics, geology, landscape design, law, statistics or other education and experience. All of this talent is ready to serve your needs – if you know how to use it.

To be really effective, the planning commission and staff must work as a team. The commission provides perspective on community needs and attitudes points out work that needs to be done and gives endorsement to plans, reports, and recommendations.

The staff provides technical advice on procedure and content and keeps the commission informed of developments in the community. Planning commissioners can expect that minutes accurately reflect your deliberations and actions, and that

staff reports are readable and are received with adequate time for review (but recognize that sometimes flexibility is need if things are to be accomplished).

To work well as a team, both groups must treat each other with respect and consideration. Demeaning or rude behavior from either side creates tension and unproductive work environments.

As a commission member, do not hesitate to call on the staff for research information, advice on law, history, land use or other pertinent information. But remember, the staff has real time and budget restraints and must deal with the attitudes and priorities of the governing body and the bureaucracy in city hall or the courthouse. (Small hint: if you see an error or omission in a staff report, tell the staff about it before the public meeting. If you wait for the meeting to bring it up, you may appear rude, embarrass the staff, and discredit the professionalism of your community’s planning program.)

Consider the staff’s advice and, if you reject it, give your reasons so that everyone can learn from the experience. In quasi-judicial situations, give your reasons for changes to the staff report to assure adequate findings.

Do not hesitate to tell staff your perceptions of community needs, attitudes, concerns and priorities. The staff needs that information, although they may not always like to hear it. Candor and honesty help to establish a lasting, cooperative team.

Finally, remember, the staff is human too. They have good days and bad. Treat them as you wish to be treated.

The affects the staff and its work may have on Planning Commission include the following:

Staff Role	Effect on Planning Commission
Explains land use at the counter	Staff’s explanation and attitude affect the tone and content of testimony to PC
Accepts/rejects applications	Staff insuring that applications are complete saves time and confusion at PC meetings
Prepares staff reports	Staff provides identification of issues and criteria that assists PC with decisions and citizens with testimony
Handles public notice and other administration	Avoids legal challenges to PC decisions; reduces “no one notified me” claims at public hearings
Stays current on regulations court cases, rulings, etc.	Prevents PC errors from lack of current information

Clear understandings by the planning commissioners and staff of one another’s roles will increase the effectiveness of both. Be sure that everyone has the same expectations.

PLANNING COMMISSION RESPONSIBILITIES

State statutes and local charters or ordinances define the authority and responsibilities of planning commissions – duties, number of commissioners, terms and manner of appointment, etc. Planning commissions should also have bylaws that provide further detail. Beyond these legal requirements, planning commissioners have roles which, when fulfilled, enhance their individual and collective effectiveness.

The role of planning commissions is to develop, maintain, and implement the comprehensive plan, to protect the integrity of your community’s planning process, and to foster the community’s long-term interests.

Planning commissioners roles, as defined by more than 1,000 land use officials at past training events, are these:

- **Understand land use planning:** Know that planning is evolving and ongoing. Know about the statewide land use program and local land use history. Be aware of interrelationships of planning to community goals, priorities and budget constraints.
- **Reflect the values of the community:** As a volunteer who obviously is committed to your community, you can see or sense what is needed. Use your unique position (separate from the elected “political” process and from the government payroll) to articulate local values.
- **Educate the public on land use:** Planning commission meetings often are citizens’ first contact with local government and with land use. Act in ways that increase understanding and respect for the responsiveness of government.
- **Understand opportunities and limits of PC authority:** Recognize that you can be proactive – the initiator of new or changed policies -- and that there are limits to what you can do. Be clear about when your role is advisory and when it is that of the final decision maker.
- **Understand the legislative and quasi-judicial processes:** See the “Land Use Decisions” chapter.
- **Interpret and apply zoning ordinance provisions.**
Apply facts to criteria: Your planning staff and legal counsel and the information in this manual will assist you.
- **Make decisions/recommendations:** Be courageous. Don’t avoid hard decisions.

APPLICANT RESPONSIBILITIES

Applicants for land use approvals have significant

responsibilities just as do the planning commission, elected officials, and staff. The applicant bears the burden of proof!

If what the applicant wants to do with the land were allowed outright, there would be no need for an application. The request (for a zone change, conditional use permit, etc.) is for a change in what is customarily allowed. The one asking for the change is responsible for demonstrating that the request conforms with your comprehensive plan and ordinance requirements.

Property owners who are unfamiliar with the land use process may be daunted by the requirement that they prove their case. Generally staff works hard to help applicants understand the criteria on which a decision will be based and offer advice on the kind of information to present.

HEARING OFFICER RESPONSIBILITIES

Some local jurisdictions hire a hearings officer to conduct quasi-judicial land use hearings while the planning commission considers legislative issues.

Generally, the hearing officer is an attorney with land use experience. It is this individual's job to weigh an application against the local comprehensive plan and ordinances, determine the findings of fact, and require appropriate conditions of approval. There are several benefits to having a hearings officer:

- Planning Commissions in communities with high levels of land use activities can be freed of time-consuming quasi-judicial hearings to concentrate on long-range planning and updating of plans and ordinances.
- Jurisdiction in which land use is a hot political issue can benefit from transferring controversial issues to a trained legal practitioner.
- Some decisions may be made more quickly when only one person (the hearings officer) rather than several (the planning commission) needs to approve a final order.

ROLES AND RESPONSIBILITIES OF OTHERS

Others – in addition to staff, elected and appointed officials – often are concerned with land use decisions. Being aware of who these interests are can assure better decisions.

State and federal agencies often are involved in local decisions. Frequently, state and federal regulations require their involvement. For example, the Oregon Department of Transportation cares when a land use action involves access to a state highway. Development in natural resource lands may involve the Corps of Engineers, Department of State Lands, or the Oregon or U.S. Department of Fish and Wildlife. There are many other examples. These agencies have missions to carry out that are affected by local land use decisions, so

they may participate in hearings.

Neighboring property owners are entitled to mailed notice if their property is within a certain distance of the site for which a quasi-judicial land use action is proposed. State law sets the distances for various types of proposals. In addition, voters approved an amendment to the Oregon Constitution that establishes requirements for mailed notice. Legislative rezones now require notice to every affected property owner.

City-county coordination is required for land use actions that involve urban growth boundaries or unincorporated land within the urban growth boundary. Coordination is desirable in many instances even when it is not required. Overlooking this coordination and ignoring mutual interests usually will cause problems.

Citizens and neighborhood groups can be strong advocates or opponents of an application. They also can create political pressure for their positions.

LCDC Goal 1 (Citizen Involvement) and Goal 2 (Planning Process) are good starting points for decisions on what groups to involve in land use actions and how to do it. DLCDC offers two useful publications: *How to Put the People into Planning* and *Collaborative Approaches to Decision Making and Conflict Resolution*.

In addition, see the “Effective Participation Citizen Involvement” section of this manual.

Characteristics of Quality Planning Commissions

- A conviction that planning is important
- The ability to make decisions
- Time and energy to devote to the commission
- Ability to accept the will of the majority
- Courage
- Professional respect for the staff
- Ability to communicate well

These characteristics apply to successful government bodies too. Planning commissioners and elected officials become ineffective when they:

- Become involved in office administration
- Allow personal feelings towards peers or staff to affect their judgment
- Allow personal interest to control public policy interests
- Neglect their duties
- Are afraid to make decisions or take firm stands
- Adopt an arrogant or paternalistic attitude toward the

public or staff

BUILD A BETTER COMMISSION

Finally, in this discussion of roles and responsibilities, the Institute for Education in Local Government at Berkeley, California, offers these 14 ways to build a better planning commission:

1. Develop and adopt bylaws and procedures and stick to them.
2. Develop good and reliable information, data, and maps and make them available to anyone who wants them.
3. Prepare and maintain an adequate general plan, refer to it, make decisions that are consistent with its policies, and implement them.
4. Annually reexamine what you are doing as a commissioner, how well you are doing it and how to do it better.
5. Outline a year's work on active planning and stick to it. Do not confuse development permit processing (reactive planning or plan review) with real planning.
6. Ask to participate in preparing the planning agency's budget.
7. Meet periodically with your city council or county board to exchange ideas and to assess your mutual objectives.
8. Consider a public forum every year or so. Ask people ("your clients") how things are going and what they want done (if anything)
9. Tell your staff what you want, how you want materials presented to you, etc. Do not be a passive commission that waits for "the experts" to tell you what to do next.
10. Attend some short courses on new planning techniques or the latest in land use law, and expect your staff to do the same.
11. Tour about as a commission to see what others are doing. Sometimes you will be uplifted to find out how many light years ahead of your neighbors you really are, and sometimes you'll get some ideas worth borrowing.
12. Appoint a commission representative to appear before the elected body when it is necessary to explain or sell an action. Don't expect staff to do your job.
13. Lobby for good planning. If you won't, who will?
14. Take time to orient new commissioners to the job. (Remember how tough it was to get the hang of it when you were a new member of your commission)

CHAPTER 4:

Making Land Use Decisions

A newly elected or appointed official often takes his or her seat on the decision-making body under the belief that land use decisions are made based on each individual's opinion. That is, each person votes according to what he or she thinks is in the best interest of the community. It is a surprise to learn that state law requires that there be standards or criteria against which the decision must be made and procedures that must be followed. Consequently, jurisdictions must make their decisions accurately and consistently. This section outlines the role of the comprehensive plan, the classification of land use decisions, how to make a decision correctly, and the essential steps in conducting a public hearing.

THE ROLE OF THE COMPREHENSIVE PLAN

The comprehensive plan and the zoning code play important roles in each land use decision. However, zoning code is often seen as the controlling document. Nevertheless, three Oregon court cases confirmed that the plan is the legally controlling document.

The courts have stated that the comprehensive plan controls land use decisions. Zoning controls only to the extent that it is in accord with the plan. In summary:

- The comprehensive plan is the controlling document.
- Zoning cannot allow more intense use of the site than the plan allows, but it can limit the use to less intense use. This is often done where the services are not available.
- The plan policies control over the plan map and zoning map, unless specifically exempted by the Oregon Legislature.

It is important to ensure that the comprehensive plan and the zoning code are consistent with each other.

TYPES OF LAND USE DECISION

The first step in making a decision is determining what type of decision the request involves. The statutory definition of a "land use decision" is long, detailed, and legalistic (see ORS 197.015(10)). To summarize for our purposes here, a land use decision is a final decision that concerns the adoption, amendment or application of the Statewide Planning Goals, a comprehensive plan provision, a land use regulation; or a new land use regulation and that requires the use of discretion.

Land use decisions are either "legislative" or "quasi-judicial." Approval of a use based on clear and objective standards (i.e., one that does not require discretion) is "ministerial" and is not a land use decision. (See the chart on the following page for definitions.) Each of these types is covered in some detail in this manual.

Law provides for two other types of decisions: limited land use decisions and expedited land divisions. They are mentioned here for completeness but, since they are seldom used, this manual does not cover them in detail.

Limited land use decisions apply inside urban growth boundaries (UGBs) and are a final decision made by the local government. This type of decision can apply to preliminary subdivision and partition plats and to discretionary design standards that apply to an outright permitted use (ORS 197.020). Limited land use decisions are similar to a quasi-judicial decision because of process and notice, but appeals of local decisions bypass LUBA and go straight to the Court of Appeals.

Expedited land divisions (ORS 197.360) apply to partitions of residential land inside a UGB, when the action creates parcels at 80 percent of the maximum allowed density or higher, and satisfies street standards. These are considered neither a land use nor a limited land use decision. Decisions must be made within 63 days and no hearing is required. A special appeal process is provided.

Quasi-judicial Versus Legislative Land Use Decisions

What are the differences between a quasi-judicial and a legislative decision? The Oregon Supreme Court set this three-part test for a quasi-judicial decision: It is quasi-judicial if:

- The process is bound to result in a decision
- The decision is bound to apply pre-existing criteria to concrete facts.
- The action is directed at a closely circumscribed factual situation involving a relatively small number of persons.

Many cases are not clear-cut. The more definitively the above factors are answered in the negative, the more likely the decision is legislative. Otherwise, the decision is quasi-judicial. No single answer controls.

The second factor – whether the decision is bound to apply pre-existing criteria – is present to some extent in most land use decisions, so it is given less weight by the courts. Generally, if the first and third factors are answered negatively, it is a legislative decision.

Kinds of Decisions and Their Characteristics

	Legislative	Quasi-Judicial	Ministerial
Who makes the decision?	Elected officials Planning Commission makes recommendations	Staff, hearings officer, or planning commission Local appeals go to hearings officer, planning commission, and/or elected officials	Staff
Subject of the decision	Adoption and amendment of policies and ordinances and, on appeal of a quasi-judicial decision, the definitive local interpretation of those policies and ordinances	Application of pre-existing criteria and requiring the exercise of discretion Usually initiated by an application from a property owner	Implementation of zoning provisions by applying pre-existing criteria that require no exercise of discretion
Scope	Large geographic area Many ownerships	Single or few ownerships	Usually site specific
Action required?	No	Yes	Yes
Examples	Comprehensive Plan text amendment such as a new policy or an updated transportation system plan New or amended ordinance implementing the plan such as adding or deleting a permitted use or changing a height limitation	Zone change for one or a few properties Permits such conditional use and variance Land divisions	Site plan review Building permit Enforcement
Public involvement and notice	Substantial, with published notice, and with multiple public hearings by multiple bodies; mailed notice under certain circumstances	Opportunity for at least one public hearing with mailed notice to area property owners and to neighborhood associations	None
Decision-maker considerations	No limits on contacts State ethics laws apply	Declare ex-parte contacts No bias or actual conflicts Unlimited staff contact	No limits on contacts

Quasi-Judicial Land Use Decisions

Oregon Supreme Court decisions provide the basis for quasi-judicial procedural requirements. These requirements establish the framework for the land use hearings process and the rights to which the parties are entitled. The rights are:

Procedural requirements:

1. An opportunity to be heard
2. An opportunity to present and rebut evidence
3. A right to an impartial tribunal having had no pre-hearing or ex-parte contact concerning the land use action at issue

4. A right to findings of fact, and

5. A right to a record of the proceedings

The right to an impartial tribunal has been modified by the legislature. The statutes provide that no decision shall be invalid due to an ex-parte contact or to bias resulting from an ex-parte contact with a member if the member:

- Places on the record the substance of a written or oral ex-parte communication concerning the decision, and
- Has made a public announcement of the content of the communication made at the first hearing following the communication where action will be considered or taken on the subject to which the communication is related.

Applicable Standards and Criteria

Statutes require a land use decision to be based on approval criteria. The decision must apply the approval criteria to the facts. The decision-maker must apply the adopted criteria for approval that are contained in the zoning code. If the applicant demonstrates compliance with these criteria, the application must be approved even if the decision-maker disagrees with the criteria, or believes that additional, un-adopted criteria should be applied. Conversely, if the applicant fails to demonstrate compliance with the applicable criteria, the decision-maker must deny the application even if it believes that the applicable criteria are unreasonable.

Regarding interpretation of criteria, if the wording is clear and unambiguous, it must be followed regardless of legislative intent. A hearing body may not insert what has been omitted or omit what has been inserted. If two provisions conflict, the more specific provision controls. For example, if a property is located in a zone that allows certain uses, but is subject to an overlay zone that restricts several of those uses, the overlay zone restrictions will control.

Findings

Findings are statements of the relevant facts as understood by the decision-maker and a statement of how each approval criterion is satisfied by the facts. A brief statement that explains the criteria accompanies approval or denial and standards considered relevant to the decision, states the facts relied upon and explains the justification for the decision.

The purposes of findings are to:

- Ensure that the hearings body applied the criteria prescribed by statute, administrative rule, and its own regulations and did not act arbitrarily or on an ad hoc basis.
- Establish what evidence the reviewing body relied on in making the decision
- Inform the parties why the hearings body acted as it did and explain how the conclusions are supported by substantial evidence.
- Demonstrate that the reviewing body followed proper procedures.
- Aid careful consideration of criteria by the reviewing body.
- Keep agencies within their jurisdictions.

Statutes require:

- An explanation of the standards considered relevant to the decision.
- A statement of the facts supporting the decision.

- An explanation of how the standards and the facts dictate the decision.

The words “brief statement” indicates the legislative intent that the statement need not be exhaustive, but rather that it contain a summary of the relevant facts. No particular form is required, and no magic words need be employed. Judicial review will look for:

A clear statement of what the decision-making body found, after hearing and considering all of the evidence, to be the relevant and important facts upon which its decision is based and

The reasons these facts support the decision based on the relevant criteria. Conclusions alone are not sufficient.

The findings must address all of the applicable criteria. Failure to make a required finding creates a void in the record and renders the order legally insufficient. It is a defect that alone will result in a remand.

A remand takes time and adds expense because it generally requires gathering more evidence, mailing additional notice, and holding another hearing. In addition, the local government may decide to change the decision after a remand if the record cannot be developed to support the original decision. Such delays or reversals are costly. The best course of action is to determine whether the criteria can be satisfied before the initial hearing is held. This requires the applicant to submit a complete application.

The best way to prepare findings is to:

1. Identify all of the applicable criteria
2. Start with the first criterion and deal with each element separately; for example, “The criterion is that the property is not subject to landslides, floods, or erosion.”
3. State the criterion as a conclusion; e.g., “The property is not subject to landslides because...”
4. State the fact that leads to the conclusion the property is not subject to landslides; e.g., “...because the topography on the property has a 0% grade and the property is located on a lava bed.”
5. Repeat the process for each element of every applicable criterion.
6. Where there is a criterion or element of a criterion that is not applicable, state why it is not applicable.
7. Where there is conflicting evidence, the safest course is to state there was conflicting evidence, but the hearings body believed certain evidence for certain reasons. This however, is not required.

Common problems with findings include:

- Failure to identify all applicable standards and criteria.
- Failure to address each standard and criterion.
- Deferring a necessary finding to a condition of approval.
- Generalizing or making a conclusion without sufficient facts.
- A mere statement that the criteria have been met.
- Simple restatement of the criterion.
- Failure to establish causal relationship (direct observation, reports from other people), between facts and ultimate conclusions.

To survive a legal challenge, keep these tips in mind:

- State all assumptions.
- Articulate the link between the project impact and the conditions being imposed.
- If project is modified, add new findings.
- Make sure findings address criteria.
- Avoid findings that restate the law.
- Put in clear, understandable language.
- Make sure it is not class-specific discrimination (or PC may be liable).

Past Decisions as Precedent

A planning commission is not bound by an interpretation of a provision made in a prior case, as a matter of law, unless the particular provision has been construed by LUBA or the courts. As a matter of policy, however, consistent application of the same rules is desirable. Be mindful of the need to be consistent, but do not let consistency blind you to arguments that a clearly erroneous past interpretation should be corrected. Do not perpetuate a mistake!

Although the governing body also is not bound by its past interpretations of a provision, the planning commission should heed interpretations by the elected officials and let the disagreeing party argue to the governing body that it should change its mind.

Evidence

The applicant has the burden of proof. The applicant must introduce evidence that shows that all of the approval criteria are satisfied. The opponents, on the other hand, have the duty to show that the applicant's facts are incorrect or that the applicant has not introduced all of the facts necessary to satisfy the burden of proof. The questions that arise are:

- What is relevant evidence in the record?
- How much evidence is required to support a finding; that is, what does substantial evidence mean?

- How does the reviewing body address conflicting evidence in the findings?

The decision must be based on **relevant evidence** in the record. Evidence in the record is evidence submitted to the reviewing body. The reason for limiting the basis for the decision to evidence in the record is to assure that all interested persons have an opportunity to review the evidence and to rebut it.

A reviewing body may support an application in concept or members may have personal knowledge of facts that would satisfy the approval criteria, but it cannot approve the application on that alone. There must be substantial evidence in the record. Personal knowledge is not evidence in the record. In reality, such applications are approved but they will be remanded if appealed to LUBA. It is also important to note that an application cannot be denied on the basis of facts not in the record.

Relevant evidence is evidence in the record that shows an approval criterion is or is not satisfied. Testimony about effects on real estate values is not relevant unless the approval criteria require a finding on the effect on real estate values.

A statute provides that LUBA may reverse or remand a local government decision when the local government has “made a decision not supported by **substantial evidence** in the records as whole.” The term “substantial evidence” does not go to the volume of evidence. Substantial evidence consists of evidence that a reasonable mind could accept as adequate to support the conclusion.

Where the evidence is such that reasonable persons may fairly differ as to whether it establishes a fact, there is substantial evidence to support the decision. In other words, what is required is enough evidence to show that an approval criterion is satisfied. If two people agree that there is not substantial evidence, there is not enough evidence.

When the applicant's evidence is countered by the opponents, there is **conflicting evidence**. Where there is conflicting testimony based on different data, but any of the data is such that a reasonable person might accept it, a conclusion based on any of the data is supported by reasonable evidence. That is, the hearings body may select any of the information for its decision provided it is reasonable that a person would accept the data as correct. The best course of action is for the hearings body to state what evidence it believes and why when it prepares its findings of fact.

The Decision

The job of the reviewing body is to ascertain the facts and to apply the approval criteria to the facts. The decision (due

within 120 days of complete application for cities and 150 days for counties) will take one of three forms:

1. **Approval.** The reviewing body found that the facts in evidence indicate the criteria are satisfied
2. **Approval with conditions.** The reviewing body has found that the facts in evidence do not demonstrate the criteria are fully satisfied, but, through the application of conditions, the criteria can be satisfied. This assumes the ordinance authorizes the application of conditions for approval
3. **Denial.** The reviewing body has found that the facts in evidence have not demonstrated that the criteria are satisfied and the application cannot be made to comply with conditions attached to it.

Conditions of Approval

Many decisions come with a list of conditions tied to the approval. Once the conditions have been satisfied, the land use or building permit may be issued. Jurisdictions should exact conditions carefully, based on local or statutory authority. Conditions should not be a replacement for adequate findings of fact. Conditions or exactions should have a clear relationship to the applicable standards and criteria. They should relate to the evidence relied upon for the decision. The conditions should be enforceable by the administrator. The original approving body should typically make any changes to conditions.

Conditions or exactions should also meet the traditional constitutional tests of the Fifth and Fourteenth Amendments (due process and civil rights). Two important U.S. Supreme Court cases, *Nollan v. California Coastal Commission*, 1987, and *Dolan v. City of Tigard*, 1994, provide guidelines for the constitutional limits test.

The *Nollan* case said there must be a connection (a “rational nexus”) between the condition and the applicable regulations and that there must be a legitimate public purpose for the condition. Most importantly, the public purpose must be related to the impact of the specific proposal. The *Nollan* case involved a building permit for a beachfront residence and the California Coastal Commission’s requirement that the applicant dedicate a 10-foot wide pedestrian easement across the parcel’s beach frontage. The condition was based on a finding that the house would block the view of the beach and would be a “psychological barrier” because the public could not see the beach. The court held the trail dedication constituted a taking. *Nollan* tells local governments that there must be a connection between the condition and the applicable regulations.

The *Dolan* case also provides a constitutionality test and said there must be a “reasonable proportionality” between

the exaction and the condition based on an individualized determination of the property’s impact. The case involved the doubling of an existing 9000 square-foot plumbing supply store and addition of 39 paved parking spaces. The city required a 7000 square-foot dedication for storm water and a bicycle path, based on drainage and bicycle master plans, under the assumption customers and employees could use the path and it would offset some traffic impact. The city held that flood protection and reduction in traffic congestion are legitimate public purposes and that the conditions would substantially advance those purposes. The U.S. Supreme Court held that:

We think a term such as “rough proportionality” best encapsulates what we hold to be the requirement of the Fifth Amendment. No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development....

Both cases reinforce a shifting of the burden to the local governments when it comes to developing exactions.

The Final Order

The preparation of a final order can be time-consuming and costly to local governments. There are three ways to reduce the time and costs:

1. Require the applicant to submit a complete application, which includes facts relevant to each of the approval criteria.
2. Limit the preparation of in-depth detailed final orders to those matters that are anticipated to be appealed.
3. Require the winning party to prepare the final order.

Minor or less complex decisions can be made at the hearing based on findings and the hearing body official must sign them.

Appeals of Quasi-Judicial Decisions

The law requires that notice of a quasi-judicial decision be sent to all parties to a proceeding. Local zoning codes provide for internal appeals (for example, from the planning commission to the board of commissioners) before the decision is final. In that case, the applicant has a certain number of days from the time of receiving the notice of decision in which to file notice of appeal, but any internal appeal procedure must be completed within 120/150 days from the time a complete application was filed.

Several variations and levels of review exist among Oregon’s cities and counties. The scope of your jurisdiction’s appellate review is defined by local ordinances, and can range from a

review of the previous hearing record to a de novo hearing, which is held as if the prior decision had not been rendered. The latter has the advantage of providing an opportunity to correct bad decision or procedural errors. But it can be costly, repetitious and time-consuming.

A final quasi-judicial land use decision can be appealed to the Land Use Board of Appeals. Notice of an appeal to LUBA must be filed within 21 days of a final decision. A person may appeal if he or she appeared at the local level, either orally or in writing, and was entitled to notice and a hearing or has interests adversely affected by the decision.

Tort Liability

Sovereign immunity is a common law doctrine based on the theory that “the king can do no wrong” and under this doctrine, government cannot be sued unless it consents to it. The Oregon Tort Claims Act enacted by the Legislature in 1967 is consent to be sued, and it abolished sovereign immunity in Oregon. There is however, a second kind of common law immunity, not to be confused with sovereign immunity, called public official immunity. The Tort Claims Act does not abolish it. Rather, it is specifically incorporated into the Act in the provisions of ORS 30.265(2).

The rationale underlying the public official immunity is based on a public policy favoring freedom of action. Public officials would be unduly hampered and intimidated in the discharge of their duties if they were continually subject to suit. The threat of vexatious lawsuits might discourage public service and might influence decisions.

Immunity is given because there is no way to determine guilt or innocence without a trial and, in the words of Judge Learned Hand, “Subjecting an official to the burden of a trial and to the inevitable danger of its outcome would dampen the ardor of all but the most resolute or the most irresponsible, in the unflinching discharge of their duties. Again and again, the public trust calls for action which may turn out to be founded on a mistake, in the face of which an official may find himself hard put to it to satisfy a jury or his good faith.”

Judges and legislators are granted absolute immunity while they are acting within the scope of their duties. Absolute immunity means they are immune no matter the motivation for their action. The question is whether this immunity extends to lesser legislative bodies and whether it extends to quasi-judicial bodies.

Planning commission members and elected officials have public official immunity while acting on planning matters in their official capacity. Acting in their official capacity means acting on a land use matter in a public meeting called for the purpose of deliberating toward a decision on the matter.

Public official immunity does not extend to actions taken outside a public meeting.

The Public Hearing

Many applicants and most citizen opponents have never before testified at a hearing. They come to the hearing with no knowledge of how the hearing will be conducted, what they should do and say, and how the decision will be made. They find it very confusing and the confusion leads to frustration and hostility and, in some cases, suspicion about how the decision was made.

The situation is further complicated by the testimony being irrelevant and repetitious. The reviewing body members find it difficult to concentrate on the testimony, and people leave feeling they weren't heard. This further convinces them that “you can't fight city hall.”

These problems can be overcome by having a chairperson give a thoughtful and careful explanation of the hearings process. The explanation should explain:

- How the hearing will be conducted
- Parties' rights and responsibilities
- How the decision will be made
- What constitutes relevant testimony

Regarding relevant testimony, state statute requires that a statement be made at the outset of the hearing that:

1. Lists the applicable substantive criteria
2. States that testimony, arguments and evidence must be directed toward those criteria or other criteria in the plan or land use regulation that the person believes to apply to the decision
3. States that failure to raise an issue in enough detail to allow the decision-maker and the parties an opportunity to respond to the issue precludes appeal to the board based on that issue (“raise it or waive it”).

The explanation of relevant testimony is supported if the approval criteria are posted on the wall. The chairperson should read the approval criteria – usually by section number, but if they are few they can be recited in full – and then give examples of relevant and irrelevant testimony. Relevant testimony relates to whether one of the criteria is satisfied. People often want to talk about property values. If maintenance of property values is not a criterion, testimony on this subject would be irrelevant. In other words, any testimony that does not show that one of the criteria is or is not satisfied is irrelevant testimony.

Imposition of time limits is another factor that creates hostility. It is at the discretion of the chairperson whether to impose them. Often, a simple explanation that they can be

imposed will cause people to limit their testimony.

State land use law does not provide detailed hearing procedures, but following the outline below will ensure that the process is fair and that the general requirements will be satisfied. Once the opponents hear the staff report and applicant's presentation, they have an understanding of the probable outcome. In some situations, the opponents at this point realize it is in their interest to focus on recommending conditions of approval that will make the proposal an integral part of the neighborhood. The end result is a better decision and a project that through its design takes into consideration the needs of the community.

State law is quite specific regarding parties' rights to present and rebut evidence and to have the record left open for additional testimony. Before the chair closes the hearing, any participant may request an opportunity to present additional evidence or testimony regarding the application. The reviewing body must grant the request by continuing the public hearing or by leaving the record open for additional written evidence or testimony.

If the reviewing body grants a continuance, the hearing shall be continued to a date, time, and place certain at least seven days from the date of the initial hearing. An opportunity to present and rebut new evidence or testimony must be provided at the continued hearing. If new written evidence is submitted at the continued hearing, anybody may request, prior to the conclusion of the continued hearing, that the record be left open for at least seven days to submit additional written evidence or testimony for the purpose of responding to the new written evidence.

If, after the initial hearing, the reviewing body leaves the record open for additional written evidence or testimony, the record must be left open for at least seven days. Any party may file a written request with the local government for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the reviewing body must reopen the record.

Unless the applicant waives its right, the reviewing body must allow the applicant at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence.

Outline for Conduct of a Quasi-Judicial Public Hearing

1. Chair opens hearing
2. Chair describes procedures for testimony, evidence, and making the decision, including required statements

3. Declare actual or potential conflicts of interest, ex parte contact or personal bias
4. Staff report
 - a. Approval criteria
 - b. Proposed findings
 - c. Conclusion and recommendation
5. Applicant's testimony
6. Proponents' testimony
7. Opponents' testimony
8. Neutral testimony
9. Applicant's rebuttal
10. Consider requests for continuance or for the record to be left open

If the hearing is continued, the process starts again at step 1 at the commencement of the next hearing. Step 3 does not need to be repeated.

11. Close the hearing

If the hearing is not continued, but the record is left open for further testimony or evidence, the initial meeting will end here.

12. Discussion
13. Motion and second
14. Deliberation, amendments to motion (if any)
15. Vote

It is common that discussion will commence prior to the motion, but there should always be an opportunity for deliberation of the motion before the vote. The chair should restate the motion on the table to make sure the members understand it.

LEGISLATIVE LAND USE DECISIONS

As explained earlier in this chapter, legislative proceedings relate to policy issues or matters that affect a broad area, or both. An amendment to the text of the comprehensive plan or zoning code is nearly always a legislative matter. A plan or zoning map amendment may be legislative depending on its scope and whether it is initiated by an applicant or the local government. The procedures for hearing a legislative matter are different from those for a quasi-judicial proceeding. The laws are less detailed and the hearings less structured.

Notice of Legislative Decisions

Individual mailed notices must be sent to all property owners whose property would be rezoned by a legislative action. This includes a change to the base zoning designation and a change to text "in a manner that limits or prohibits land uses

previously allowed in the affected zone.” This is commonly referred to as “Measure 56 notice.” The individual notice specifically must inform the owner that a rezoning “may reduce the value of your property.” If no property is to be rezoned, local legislative hearing notice requirements need to be followed.

Legislative Hearings

In a quasi-judicial setting, there are always proponents and often opponents to the proposal. In a policy matter, an individual may support part of the proposal and object to others. Parties may support the objective but disagree with some of the wording. Therefore, testimony at a legislative hearing is more open. There is no “raise it or waive it” requirement. Segmenting testimony into “proponents” and “opponents” is inappropriate.

Since legislative matters affect policy or a broad area, an individual’s rights are handled differently from a quasi-judicial process. There are no limits on ex parte contact so there is no time set aside for ex parte declarations at the commencement of the hearing.

While the Statewide Planning Goals and perhaps statutes apply to many legislative matters, criteria are not as central to these hearings as they are in quasi-judicial matters. Since the planning commissioner is not applying facts to criteria, bias and objectivity are not as tightly controlled. The correct policy is what matters, not whether a criterion is satisfied. Decision-maker opinions in this arena are acceptable – even expected. Conflicts of interest still matter, however.

A planning commission does not decide a legislative matter, but rather makes a recommendation to the elected body. However, as the dedicated planning body for the jurisdiction, the elected officials depend on the planning commission to fully consider matters and forward thoroughly evaluated, reasoned recommendations.

Outline for Conduct of a Legislative Public Hearing

1. Chair opens hearing
2. Chair describes procedures for testimony and outcome of the hearing

3. Staff report
4. Testimony from citizens, interest groups, state agencies, and other units of government

Requests to continue the hearing do not need to be observed, but the planning commission may continue a legislative hearing as needed. If the continuance is to a date, time, and place certain, no new notice is required.

5. Close the hearing
6. Discussion
7. Motion and second
8. Deliberation, amendments to motion (if any)
9. Vote on a recommendation

APPEALS AND TIMING

The “120-Day Rule”

A city’s final land use decision must be made within 120 days from acceptance of a complete application including time needed for appeal. Most city ordinances allow the staff 30 days to determine that what was submitted is complete and then to send written notice to the applicant. Date of that notice starts the 120-day clock. Counties face similar requirements but are allowed 150 days rather than 120 for cases outside UGBs.

If a decision cannot be made within the time limits, the local government can ask the applicant if he or she will waive the rule. Often that is agreeable since the alternative may be denial of the application. If the clock runs out and the deadline has not been waived, the applicant may ask the court to grant a writ of mandamus. If granted, the writ allows the application to proceed without local government approval.

Appeals

The final consideration in a legislative or quasi-judicial decision is the potential of an appeal – from a staff decision to the planning commission or hearings officer, from the planning commission to the governing body or from the elected officials to LUBA. Time frames for these actions are set out in state law and local ordinances.

CHAPTER FIVE: Ethical Principles of Planning

According to the Oregon Ethics Guide for Public Officials, “a public office is a public trust.” Planning issues commonly involve a conflict of values, and often there are significant private interests at stake. These accentuate the necessity for the highest standards of fairness and honesty among all participants.

The American Planning Association (APA) and the American Institute of Certified Planners (AICP) have adopted a Code of Ethics and Professional Conduct (<https://www.planning.org/ethics/ethicscode.htm>) which we recommend all professional planners and planning commissioners follow when making land use decisions.

PRINCIPLES TO WHICH WE ASPIRE

1. Our Overall Responsibility to the Public

Our primary obligation is to serve the public interest and we, therefore, owe our allegiance to a conscientiously attained concept of the public interest that is formulated through continuous and open debate. We shall achieve high standards of professional integrity, proficiency, and knowledge. To comply with our obligation to the public, we aspire to the following principles:

- We shall always be conscious of the rights of others.
- We shall have special concern for the long-range consequences of present actions.
- We shall pay special attention to the interrelatedness of decisions.
- We shall provide timely, adequate, clear, and accurate information on planning issues to all affected persons and to governmental decision makers.
- We shall give people the opportunity to have a meaningful impact on the development of plans and programs that may affect them. Participation should be broad enough to include those who lack formal organization or influence.
- We shall seek social justice by working to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of the disadvantaged and to promote racial and economic integration. We shall urge the alteration of policies, institutions, and decisions that oppose such needs.
- We shall promote excellence of design and endeavor to conserve and preserve the integrity and heritage of the

natural and built environment.

- We shall deal fairly with all participants in the planning process. Those of us who are public officials or employees shall also deal evenhandedly with all planning process participants.

2. Our Responsibility to Our Clients and Employers

We owe diligent, creative, and competent performance of the work we do in pursuit of our client or employer’s interest. Such performance, however, shall always be consistent with our faithful service to the public interest.

- We shall exercise independent professional judgment on behalf of our clients and employers.
- We shall accept the decisions of our client or employer concerning the objectives and nature of the professional services we perform unless the course of action is illegal or plainly inconsistent with our primary obligation to the public interest.
- We shall avoid a conflict of interest or even the appearance of a conflict of interest in accepting assignments from clients or employers.

3. Our Responsibility to Our Profession and Colleagues

We shall contribute to the development of, and respect for, our profession by improving knowledge and techniques, making work relevant to solutions of community problems, and increasing public understanding of planning activities.

- We shall protect and enhance the integrity of our profession.
- We shall educate the public about planning issues and their relevance to our everyday lives.
- We shall describe and comment on the work and views of other professionals in a fair and professional manner.
- We shall share the results of experience and research that contribute to the body of planning knowledge.
- We shall examine the applicability of planning theories, methods, research and practice and standards to the facts and analysis of each particular situation and shall not accept the applicability of a customary solution without first establishing its appropriateness to the situation.
- We shall contribute time and resources to the professional development of students, interns, beginning professionals, and other colleagues.
- We shall increase the opportunities for members of underrepresented groups to become professional planners and help them advance in the profession.
- We shall continue to enhance our professional education

and training.

- We shall systematically and critically analyze ethical issues in the practice of planning.
- We shall contribute time and effort to groups lacking in adequate planning resources and to voluntary professional activities.

OUR RULES OF CONDUCT

We adhere to the following Rules of Conduct, and we understand that our Institute will enforce compliance with them. If we fail to adhere to these Rules, we could receive sanctions, the ultimate being the loss of our certification:

1. We shall not deliberately or with reckless indifference fail to provide adequate, timely, clear and accurate information on planning issues.
2. We shall not accept an assignment from a client or employer when the services to be performed involve conduct that we know to be illegal or in violation of these rules.
3. We shall not accept an assignment from a client or employer to publicly advocate a position on a planning issue that is indistinguishably adverse to a position we publicly advocated for a previous client or employer within the past three years unless (1) we determine in good faith after consultation with other qualified professionals that our change of position will not cause present detriment to our previous client or employer, and (2) we make full written disclosure of the conflict to our current client or employer and receive written permission to proceed with the assignment.
4. We shall not, as salaried employees, undertake other employment in planning or a related profession, whether or not for pay, without having made full written disclosure to the employer who furnishes our salary and having received subsequent written permission to undertake additional employment, unless our employer has a written policy which expressly dispenses with a need to obtain such consent.
5. We shall not, as public officials or employees, accept from anyone other than our public employer any compensation, commission, rebate, or other advantage that may be perceived as related to our public office or employment.
6. We shall not perform work on a project for a client or employer if, in addition to the agreed upon compensation from our client or employer, there is a possibility for direct personal or financial gain to us, our family members, or persons living in our household, unless our client or employer, after full written disclosure from us, consents in writing to the arrangement.
7. We shall not use to our personal advantage, nor that of a subsequent client or employer, information gained in a professional relationship that the client or employer has requested be held inviolate or that we should recognize as confidential because its disclosure could result in embarrassment or other detriment to the client or employer. Nor shall we disclose such confidential information except when (1) required by process of law, or (2) required to prevent a clear violation of law, or (3) required to prevent a substantial injury to the public. Disclosure pursuant to (2) and (3) shall not be made until after we have verified the facts and issues involved and, when practicable, exhausted efforts to obtain reconsideration of the matter and have sought separate opinions on the issue from other qualified professionals employed by our client or employer.
8. We shall not, as public officials or employees, engage in private communications with planning process participants if the discussions relate to a matter over which we have authority to make a binding, final determination if such private communications are prohibited by law or by agency rules, procedures, or custom.
9. We shall not engage in private discussions with decision makers in the planning process in any manner prohibited by law or by agency rules, procedures, or custom.
10. We shall neither deliberately, nor with reckless indifference, misrepresent the qualifications, views and findings of other professionals.
11. We shall not solicit prospective clients or employment through use of false or misleading claims, harassment, or duress.
12. We shall not misstate our education, experience, training, or any other facts which are relevant to our professional qualifications.
13. We shall not sell, or offer to sell, services by stating or implying an ability to influence decisions by improper means.
14. We shall not use the power of any office to seek or obtain a special advantage that is not a matter of public knowledge or is not in the public interest.
15. We shall not accept work beyond our professional competence unless the client or employer understands and agrees that such work will be performed by another professional competent to perform the work and acceptable to the client or employer.
16. We shall not accept work for a fee, or pro bono, that we know cannot be performed with the promptness required by the prospective client, or that is required

by the circumstances of the assignment.

17. We shall not use the product of others' efforts to seek professional recognition or acclaim intended for producers of original work.

18. We shall not direct or coerce other professionals to make analyses or reach findings not supported by available evidence.

19. We shall not fail to disclose the interests of our client or employer when participating in the planning process. Nor shall we participate in an effort to conceal the true interests of our client or employer.

20. We shall not unlawfully discriminate against another person.

21. We shall not withhold cooperation or information from the AICP Ethics Officer or the AICP Ethics Committee if a charge of ethical misconduct has been filed against us.

22. We shall not retaliate or threaten retaliation against a person who has filed a charge of ethical misconduct against

us or another planner, or who is cooperating in the Ethics Officer's investigation of an ethics charge.

23. We shall not use the threat of filing an ethics charge in order to gain, or attempt to gain, an advantage in dealings with another planner.

24. We shall not file a frivolous charge of ethical misconduct against another planner.

25. We shall neither deliberately, nor with reckless indifference, commit any wrongful act, whether or not specified in the Rules of Conduct, that reflects adversely on our professional fitness.

26. We shall not fail to immediately notify the Ethics Officer by both receipted Certified and Regular First Class Mail if we are convicted of a "serious crime" as defined in Section D of the Code; nor immediately following such conviction shall we represent ourselves as Certified Planners or Members of AICP until our membership is reinstated by the AICP Ethics Committee pursuant to the procedures in Section D of the Code.

CHAPTER SIX

Effective Participation – Be Fair

Other sections of this manual provide information on land use planning, legal requirements, public hearing procedures, etc. However, effective participation requires more, particularly in terms of how applicants, proponents, opponents, “interested citizens,” elected officials, and others view your work.

Golden Rule for Public Decision-Making: Be Fair

Unpopular decisions will be more readily accepted when people see the process as fair – when people understand the basis of the decision and feel that they had an opportunity to be heard. How meetings are conducted, how you listen and what you say affects your credibility and your image of fairness.

DOS AND DON'TS FOR CONDUCTING FAIR MEETINGS

Do

- **Arrive early.** If the hearing is scheduled for 7:00 p.m., the hearing should start at 7:00 p.m. If you have to wait for one or two others to have quorum, you are being unfair to all the people who came on time.
- **Dress appropriately.** If the shirt and tie are typical apparel, showing up in a tired Mickey Mouse tee shirt does not create the impression of much respect for the people at the hearing.
- **Your homework.** It is unfair to the applicant and your community to act on issues without adequate preparation and you may make some terrible decisions.
- **Focus on issues, not personalities.** Discussion and decisions will be more rational if they are impersonal.
- **Treat everyone with courtesy and respect.** The nasty neighbor, the sneaky business competitor, or the rude gadfly may not deserve it, but they should be treated with the same respect as the community's leading citizen, the best friend or your mother.

Don't

- **Use body language that suggests boredom, anger, disbelief, etc.** The Mickey Mouse shirt wearer will not improve the impression he makes by burying his head in his hands while people are testifying.
- **Mingle with people in the audience before the meeting**

or during a recess. Others may assume something secret is taking place.

- **Assume the role of fairy godmother.** It is not your job to “save” people from making bad decisions or to take on the applicant's burden of proof.
- **Let personal feelings dictate decisions.** How you feel about preserving wetlands or locating convenience stores in residential areas are not criteria for decisions unless ordinance standards say they are.

TIPS FOR GOOD COMMUNICATION

Our communication is 55 percent body language – posture, expression, gestures, breathing – and 38 percent how we say it – tone, speed, volume. Only 7 percent of our communication is in the choice of words.

Do

- **Be attentive.** Those presenting testimony probably have spent hours in preparation. The least you can do is listen and make them think you are as interested as you should be.
- **Actively listen.** Focus on what is said not on what you expect to hear or what reply you'll make.
- **Paraphrase what was said to confirm what was meant.** If someone wants “more professional development,” does that mean design review standards or training for staff and planning commissioners?
- **Summarize what you have heard.** Comment on which facts are important to the decision and which are not.
- **Show respect for the chair.** Say Madam Chair, Mr. Chair, Chairman Brown or whatever. This sets an example for applicants and encourages orderliness.
- **Treat people equally.** Don't use first names. If the first to testify is referred to as Mr. Jones, refer to the next as Mrs. Smith even if she's Mary, your sister-in-law.
- **Avoid the appearance of prejudging before a public hearing is closed.** Saying “this project will increase traffic” implies a decision is made. Instead say approval of this project would increase traffic.

Don't

- **Be trapped by “listening blocks.”** Be aware that most of us tune out comments we don't want to hear or ideas from people we don't like. Recognition of our personal listening blocks helps us hear in spite of them.
- **Make assumptions about what you hear.** Instead, ask open, rather than closed, questions. “Open” questions include words who, how, what, where, when and why and cannot be answered yes or no.
- **Interrupt a presentation except for essential and brief**

questions. People generally arrange their comments in a logical sequence and probably will get to your concern if you are patient.

- **Speak “Plannerese.”** Not everyone knows the meaning of UGB, LID, PUD, etc. The first time you use an acronym, be sure to explain what it means. (See Appendix for “Plannerese” and translations).

Try to answer technical questions, even if you know the answer. That’s the staff’s job; yours is to reflect community values and apply the plan and ordinances. When you give technical answers, you undermine the staff and diminish your real role.

Some of the above ideas may not fit your community or your planning commission, but we hope they alert you to thinking about how the public perceives how you work. You want to not only be fair, but be seen as fair, too.

OREGON’S OPEN MEETING LAW

Oregon’s open meeting law (ORS 192.610–192.690) requires that decisions of any “governing body” be arrived at openly so that the public can be aware and informed of the body’s deliberations and decisions.

A governing body is one with two or more members that decides for or recommends to a public body. The law applies to the state, cities and counties, and advisory bodies to those jurisdictions. Not only must meetings of city councils and boards of county commissioners be “open” – the meetings of planning commissions, design review boards and other appointed boards or commissions with the authority to make decisions or recommendations are also subject to the requirements.

With a few exceptions, a meeting exists any time a quorum of the body’s membership is present. “Closed meetings” (or executive sessions) are allowed to discuss employment, discipline or labor relations but decisions on these issues must be made at a public (open) meeting. Planning commissions will rarely hold business in an executive session.

Notice of public meetings is required, and the notice must include the time and place and principle subject to be discussed. Notice should be timed to give “reasonable” advance notice to the public. For “emergency” or special meetings, the law calls for 24 hours advance notice.

What’s required at the meeting?

Any public body must provide for the sound, video or digital recording or the taking of written minutes of all its meetings. Neither a full transcript nor a full recording of the meeting is required, but the written minutes or recording must give a true reflection of the matters discussed at the meeting and the views of the participants. All minutes or recordings must

be available to the public within a reasonable time after the meeting, and shall include at least the following information:

- All members of the body present
- All motions, proposals, resolutions, orders, ordinances, and measures proposed and their disposition
- The results of all votes and the vote of each member by name
- The substance of any discussion on any matter, and
- A reference to any document discussed at the meeting

Because a meeting is open to the public, it means that anyone can attend. But “open” does not mean that anyone has the right to speak. Planning commissions and governing bodies may hold work sessions and other meetings without allowing public comment.

Site Visits

Oregon’s open meeting law exempts “site inspections” from the meeting requirements. That means that the planning commission or governing body could go as a group, as a quorum, to visit a site. However, site visits are considered ex parte contact and should be disclosed at the first public hearing.

A second consideration is the assumptions, which may be made by the public when they realize that a majority of the decision-making body visited the site without everyone else who might be interested in having an opportunity to be there. What did they see? What was discussed? What did they decide?

RESOLVING LAND USE CONFLICTS

Land use issues can generate conflicts. We need to recognize issues that may produce conflicts, anticipate opportunities to deal with the problems and use techniques that encourage “win-win” solutions.

Elements in Every Conflict

- **Issues.** The “what” of a dispute (e.g. the wetland impact of proposed development)
- **Positions.** The “how” – a specific proposal about how to solve the dispute (“This wetland permit cannot be issued”)
- **Interests.** The “why” – the expression of needs that drive a person’s behavior (Why do you want...? Why is that important?)

Only by identifying the interest(s) underlying the issues and positions and recognizing the different levels of importance each party gives to these interests can the disputing parties create mutually satisfying, durable solutions to conflicts.

Interests may be:

- **Procedural.** Do people feel they are being treated fairly?
- **Psychological.** Do people feel they are listened to and their ideas respected?
- **Substantive.** Do people feel they will benefit from the result?

The above are excerpts from Collaborative Approaches to Decision making and Conflict Resolution for Natural Resource and Land Use Issues, published by the Oregon Department of Land Conservation and Development, June 1996.

POTENTIAL CONFLICTS IN LEGISLATIVE DECISIONS

Local jurisdictions generally set the schedule for legislative land use decisions. There is no 120-day rule. By identifying stakeholders, clearly presenting facts and alternatives, and really listening and responding to the ideas and suggestions from all of the interested parties, decisions will be made that people see as fair. Even when people disagree with the results, it's difficult to generate a conflict over a "fair" decision.

Opportunities to Resolve Potential Conflicts in Quasi-Judicial Decision

A pre-application meeting with neighbors, required by some jurisdictions, allows the applicant to identify any special neighborhood concerns and lets neighbors (who may be potential opponents) become part of developing solutions before positions solidify.

The pre-application conference is the first opportunity for the city or county to identify potential issues. Staff and the applicant often can find alternatives that avoid problems in a manner that is far more comfortable than as part of a public hearing.

Staff review of application, before "deeming it complete" and thereby triggering the start of the review clock, may be able to identify the stakeholders who might object, and initiate a collaborative approach to resolving conflicts.

Staff recommendations in the staff report may trigger conflict. If issues can be resolved easily, solutions can be presented at the public hearing.

Prior to an appeal to LUBA, the various parties to a conflict may have the greatest interest in resolving problems and saving the time and dollars that result in going to court.

Let Space Set Tone: Six Truisms

1. **The more crowded the space, the more emotional the crowd!** Crowding people together can encourage the enthusiasm of a pep rally or the anger of a lynch

mob. Vacant space creates calm and quiet. Select meeting place and space accordingly.

2. **The hotter the room, the hotter the audience.** Hot, stuffy rooms increase anger; cool rooms decrease it. Set the thermostat for the results you want.
3. **The more neutral the meeting site, the more neutral the crowd.** People who distrust government may become more distrustful when they step into city hall or the courthouse. Those who are suspicious of an individual become more so in that person's office or home. A neighborhood school can create a neighborly feeling.
4. **The more formal the seating arrangement, the more intimidated the participants.** A stage or raised platform separates "them" from "us." Everyone on the same level suggests equality. A speaker's rostrum suggests a shield for officials to hide behind, but also offers a prop for a nervous citizen.
5. **The bigger the desk, the more defensive the visitor.** The visitor sitting on the other side of an executive desk is less comfortable than one sitting across a clerk's desk. Even more comfortable is sitting at a conference table or side-by-side. And the person facing a window is at a disadvantage.
6. **The greater the distance between speaker and audience, the less the audience will participate, comment or question.** If you want participation, set up a minimum number of chairs, individually ask those in back to move up "so I'll be sure you can hear everything," and make your presentation from a spot 12 feet from the first occupied row. If you want little or no participation, do the opposite.

Techniques for a No-Conflict Style

- Lower your voice
- Speak more slowly
- Don't blame
- Paraphrase
- Don't challenge
- Use short sentences
- Pause between sentences
- Don't bait or be baited
- Play dodge ball- Mentally step aside
- Use deep breathing
- Don't answer non-questions, just acknowledge you heard
- Use "broken record" (I see. Yes, I understand, etc.)
- Disagree Diplomatically
- Find common ground before dealing with points of

disagreement

- Stick to the issue. Don't bring up minor details or past history
- Say what you mean in a simple straightforward manner
- Really listen to understand where the other person is coming from
- Be willing to change your mind if the other person's points are valid
- Look for compromise – the consensus both of you can live with

MEDIATION

Mediation is an important alternative to adversarial conflict. One of the signs of a thriving community is the ability to “think outside the box.” Inside the box, people's positions can get stuck, making progress hard to define and harder to achieve.

For instance, two groups could take opposing positions regarding whether development should or should not occur at a site rich with wetlands – a site which is also critical to an overall development vision for the heart of town. If the atmosphere is right for “thinking out of the box”, then the parties will be willing to relax a bit about their positions and talk about their interests.

It turns out the wetland group is most interested in these wetlands as an educational opportunity for urban kids. Others had a position that the site ought to be commercially developed, but their underlying interest is to see the city grow in a way that builds community. To achieve that, both sides agree, eventually the city will have to invest in a new library and an up-to-date commercial area.

And the upshot is a library designed to integrate with the wetlands and provide a starting-off point for wetland tours. The commercial area will go where the library had originally been intended. This is not compromise. Neither “side” gave up its interests. But together they made their mutual world of opportunities greater, and they each got a lot of what they want – and maybe more than they ever dreamed.

Creating the right atmosphere – the mix of structure and skills to support the type of expansive negotiation – is what mediation is all about. Mediation is a tool that can be used equally well when writing a new, controversial ordinance, or for any complex policy decision, as well as for specific land use issues. Perhaps the most important thing that mediation does is to take the energy behind conflict and use it to build community, rather than to tear it down. That's really thinking outside the box!

CHAPTER SEVEN: Public Involvement

ENCOURAGING EFFECTIVE CITIZEN INVOLVEMENT

How, and if, citizens become involved in your land use decisions can significantly affect results. The best road to success is to provide opportunities for meaningful public involvement throughout the process. Recognition of that fact may be the reason that the people of Oregon decided to make citizen involvement the first of the statewide land use planning goals.

Effective citizen involvement requires public awareness of:

- What is proposed?
- Who will be affected and how?
- Criteria for decisions
- Who makes decisions, when and where, and with what time line?

How to get feedback

The type of land use decision influences the approach to public participation.

For legislative decisions, be creative! Get outside the box. Choices are available when considering an amendment to the comprehensive plan or zoning code, adoption of a sign ordinance, and the like. The local elected and appointed officials need a broad range of ideas. There are no questions of ex parte contacts and there is no requirement that a decision be reached. (For example, if people don't like the idea of a new or revised ordinance, the idea can be dropped). Questionnaires, surveys, or focus groups can help identify the level of interest in an issue of proposal. Town hall meetings, forums, and open houses (with staff available to answer questions), as well as printed material, can attract interest prior to public hearing. Feedback will let citizens know that their opinions were heard and considered. Provide a summary or "feedback report" that lists major comments and impact, if any, on decisions.

People need to know what is proposed, why, and what alternatives exist. Describe how a decision may be reached and list timeframes. Provide this information several times in several ways. Notice of legislative hearings should be provided to those who have an interest, including residents, businesses, interest groups, neighborhood associations, state

and federal agencies, and other local governments. Since passage of Ballot Measure 56, property owners who may be affected receive direct, mailed notice.

For quasi-judicial decisions, follow the rules! Procedures for making these decisions are proscribed by law and local ordinances and limit involvement choices. (See Chapter 4). For example, when an applicant requests approval for a permit or a zone change for a specific area, criteria dictate the basis for a decision and a decision – approve, deny, or approve with condition – must be made. Minimum hearing opportunities must be offered, but these are minimums, not maximums! A local government can encourage or even require an applicant to provide public-involvement opportunities in the form of neighborhood meetings or open pre-application conferences, or through social media or direct mail. Public involvement in quasi-judicial decisions is ultimately at the public hearing(s).

HELP CITIZENS HELP YOU

Goal 1 requires opportunities for public involvement in land use planning. There are benefits beyond complying with that legal requirement:

- Citizens know their neighborhoods and community best.
- Residents and property owners can offer ideas on what is needed, what works and what doesn't.
- Members of the public who participate in development of a plan or ordinance take pride in their work and support the results
- Public involvement increases understanding of, and potentially support for, local government.

Explain the System

Citizens can make their greatest contributions to the planning process when they understand the system. How staff handles questions at the planning department and how planning commissioners conduct meetings can contribute to public understanding. Several local jurisdictions go beyond that and make special efforts to educate people on planning.

Stress Criteria for Decisions

A citizen whose testimony does not connect to the applicable criteria then sees the testimony dismissed and becomes frustrated, angry and distrustful of both local officials and local land use planning. The public needs to know that decisions are based on criteria in local ordinances. Make criteria stand out in the staff's written report, the oral presentation and in comments by the chair.

APPENDIX A:

Oregon Statewide Planning Goals

GOAL 1, CITIZEN INVOLVEMENT: To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

GOAL 2, LAND USE PLANNING: To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.

GOAL 3, AGRICULTURAL LANDS: To preserve and maintain agricultural lands.

GOAL 4, FOREST LANDS: To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.

GOAL 5, NATURAL RESOURCES, SCENIC AND HISTORIC AREAS, AND OPEN SPACES: To protect natural resources and conserve scenic and historic areas and open spaces.

GOAL 6, AIR, WATER AND LAND RESOURCES QUALITY: To maintain and improve the quality of the air, water and land resources of the state.

GOAL 7, AREAS SUBJECT TO NATURAL HAZARDS: To protect people and property from natural hazards.

GOAL 8, RECREATIONAL NEEDS: To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

GOAL 9, ECONOMIC DEVELOPMENT: To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

GOAL 10, HOUSING: To provide for the housing needs of citizens of the state.

GOAL 11, PUBLIC FACILITIES AND SERVICES: To plan and develop a timely, orderly and efficient arrangement

of public facilities and services to serve as a framework for urban and rural development.

GOAL 12, TRANSPORTATION: To provide and encourage a safe, convenient and economic transportation system.

GOAL 13, ENERGY CONSERVATION: To conserve energy.

GOAL 14, URBANIZATION: To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

GOAL 15, WILLAMETTE RIVER GREENWAY: To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.

GOAL 16, ESTUARINE RESOURCES: To recognize and protect the unique environmental, economic, and social values of each estuary and associated wetlands; and to protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity and benefits of Oregon's estuaries.

GOAL 17, COASTAL SHORELANDS: To conserve, protect, where appropriate, develop and where appropriate restore the resources and benefits of all coastal shorelands, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and recreation and aesthetics. The management of these shoreland areas shall be compatible with the characteristics of the adjacent coastal waters; and to reduce the hazard to human life and property, and the adverse effects upon water quality and fish and wildlife habitat, resulting from the use and enjoyment of Oregon's coastal shorelands.

GOAL 18, BEACHES AND DUNES: To conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dune areas; and to reduce the hazard to human life and property from natural or man-induced actions associated with these areas.

GOAL 19, OCEAN RESOURCES: To conserve marine resources and ecological functions for the purpose of providing long-term ecological, economic, and social value and benefits to future generations.

APPENDIX B:

Glossary of Common Land Use Planning Terms

Many specialized terms are used in issues related to land use. The terms listed here are among those more commonly used.

Accessory Use/Building: A use or structure associated with and incidental to the main use on the lot. Examples: private garages, fences, decks, tool sheds. Also known as secondary or ancillary uses.

Acknowledgement: An order of the Land Conservation and Development Commission that certifies a comprehensive plan and land use regulation or an amendment to a plan or regulation complies with the Statewide Planning Goals.

Annexation: The process of expanding the city boundaries to bring adjacent territory under the governmental jurisdiction of the city.

Appeal: The process of having a land use decision by the planning administrator, planning commission or hearings officer reviewed by the city council or county board of commissioners. Council and commission decisions may be appealed to the Land Use Board of Appeals (LUBA).

Buildable Lands: Lands in urban and urbanizable areas that are suitable, available and necessary for residential use. Hazard areas (steep slopes, floodplains, etc.) and natural resource lands (wetlands and riparian areas) are excluded.

Capital Improvement Program (CIP): A plan describing some or all of a community's planned capital improvements (roads, water, sewers, storm drains, etc.) including costs and timeframes.

Cluster Development: The concentration of structures on one part of a parcel to preserve the remainder of the property for open space, usually permitted under planned unit development ordinances.

Common Wall: A wall shared by two buildings and that lies along the property line between them.

Comprehensive Plan: An official document adopted by a local government, which sets forth general long-range policies on how the community's future development will occur.

Comprehensive Plan Map: A primary component of the comprehensive plan, which shows the geographic pattern of the land uses as defined in the comprehensive plan.

Conditional Use: Zoning ordinances generally specify two types of uses for each zone – uses that are permitted outright and those that may be permitted after review and approval by the local government. Those in the last category are often described as conditional uses. The list of conditional uses for each zone typically includes uses that may be appropriate for the zone, but case-by-case evaluation is needed to ensure compatibility with the neighborhood, and uses for which no specific zone exists (e.g., schools, churches, parks) and which may need specific development conditions. A conditional use procedure provides an opportunity for public review of any development being considered.

Conditions of Approval: Development requirement(s) in which the applicant, in order to adhere to standards of approval established by local governments in land use ordinances, must satisfy as a part of the approval and permit process.

Density: The measure of intensity of residential development on a particular piece of land, usually expressed in number of dwelling units per acre.

De Novo Hearing: A public hearing in an appeal in which all evidence and comment is accepted for consideration – not an appeal based on the record from a previous hearing (see “On the Record Hearing”).

Design Review: Review of certain types of development proposals to insure compliance with adopted standards for site layout, design and aesthetics (style, landscaping, building materials, parking, pedestrian circulation, etc.).

DLCD: The Department of Land Conservation and Development provides staff support to the Land Conservation and Development Commission, reviews plan and code amendments, provides technical assistance on planning matters, and manages grants to local jurisdictions for plan updates.

Down-zoning: Changing a zone from one allowing more intensive uses to one of less intensive use (e.g., a commercial zone to a residential zone).

Economic Opportunities Analysis (EOA): An element of an urban-area comprehensive plan that explains economic trends affecting the area, a description of employment land site needs, an inventory of employment lands and their development potential, and an assessment of community economic development potential. An EOA is used to establish the need for employment (i.e., commercial and industrial) land when reviewing whether to amend an urban growth boundary.

Eminent domain: A government's power to take private property for public uses if it pays “just compensation.”

Exactions: The charges, conditions and dedications demanded from a developer by a local government in return for approval of some development proposal.

Exception Area: An area for which a local jurisdiction has demonstrated that one or more Statewide Planning Goal should not apply. The term is most commonly used for a rural area with an acknowledged exception to Goal 3 (Agricultural Lands) or Goal 4 (Forest Lands) or both.

Exclusive Farm Use (EFU): A zoning district applied to agricultural land. Uses in EFU zones are prescribed in statute and regulated by administrative rules.

Ex Parte Contact: Contact outside of a public hearing or review conference in a land use case by a member of the decision making body and someone wishing to directly or indirectly influence the outcome of the case. This does not apply to legislative or policy issues such as code amendments nor does it apply to pre-hearing contact with staff.

Flag Lot: A lot that is mostly separated from the street by other lots but that has a long, narrow extension (the flag pole) that reaches to the street for access.

Floodplain: The area adjoining a stream, tidal estuary, or coast that is subject to regional flooding. The “100-year floodplain” is a standard statistical calculation used by engineers to determine the probability of severe flooding. It represents the largest flood which has a one percent chance of occurring in any one year as a result of periods of higher than normal rainfall or streamflows, extremely high tides, high winds, rapid snowmelt, natural stream blockages, tsunamis, or combinations thereof.

Floodway: The normal stream channel and that adjoining area of the natural floodplain needed to convey the waters of a regional flood while causing less than one foot increase in upstream flood elevations.

Functional Plan: A set of detailed information, policies and standards regarding some function of local government - transportation for example.

Grandfathered: Permitted to continue, despite the imposition of new laws that would otherwise prohibit the activity. A land use operating under a grandfather clause is often referred to as a “nonconforming use.”

Hearings Officer: An appointed official who conducts public hearings and renders a decision on land use cases involving discretionary permits and zone changes not requiring a comprehensive plan change.

Infill: Development that occurs on isolated vacant lots in a city. Such development usually is considered to be a boon to the community because it conserves land and reduces sprawl.

Infrastructure: The public facilities and services that support the functions and activities of a community (sewers, roads, water lines, storm drainage, etc.)

LCDC: Land Conservation and Development Commission is the state commission that establishes land use planning policy for the state and decides some land use cases. Its members are appointed by the Governor and confirmed by the senate.

Land Use Board of Appeals (LUBA): A state board comprised of three members appointed by the Governor that has authority to review appeals of final land use decisions made by local jurisdictions.

Legal Description: A description of the precise location and boundaries of a particular parcel of land.

Local Improvement District (LID): A small district formed for the purpose of carrying out local improvements (paving a street, developing a park, constructing a sewer system, etc.) Property owners within the LID are assessed for the costs of the improvements.

Lot: A legally defined unit of land that is the result of subdividing land.

Nonconforming Use: A use that was allowed by right when established or a use that obtained a required land use approval when established, but that subsequently, due to a change in the zone or zoning regulations, is a use that is now prohibited in the zone.

On the Record Hearing: A public hearing in an appeal in which evidence is limited to that presented at the previous public hearing in the land use case.

Ordinance: A law enacted by a local legislative body such as a city council or board of county commissioners.

Parcel: A legally defined piece of land that is the result of partitioning land.

Partition: The division of land into two or three parcels.

Planned Unit Development (PUD): A type of residential development in which the zoning code allows more flexibility of development standards than in a conventional subdivision, typically as a trade-off for a development amenity.

Plat: A map of a partition or subdivision. The plat usually shows the location of all public rights-of-way, the dimension of lots and various other items required by the local land division ordinance.

Pre-existing Use: A use that existed prior to the enactment of a land use regulation that now applies to it. Such a use can be one that conforms to the regulation, but most often this

phrase means a nonconforming use.

Public Facility Plan: A support document or documents to a comprehensive plan that describes the water, sewer, and transportation facilities that support the land uses designated in the comprehensive plan(s) within an urban growth boundary.

Public Hearing: A formal proceeding before the planning commission, hearings officer or governing body in which the public is permitted to provide testimony to be entered into the official record.

Public Meeting: A formal or informal proceeding before a public body without testimony to build a record. Typical public meetings include work sessions where the public may attend but not testify.

Quasi-Judicial Action: A legal action that involves the application of pre-existing criteria to specific properties. This type of action can be contrasted with legislative actions, which involve the creating policies and laws, and with ministerial actions, which involve routine administration of clear and objective requirements.

Rights-of-Way: A public or private area that allows for the passage of people or goods, such as freeways, streets, bike paths, alleys, and walkways. A public right-of-way is dedicated or deeded to the public for public use and is under the control of a public agency.

Riparian: Of, pertaining to, or situated on the edge of the bank of a river or other body of water.

Senate Bill 100 (SB 100): A bill passed into Oregon law in 1973, it established the Land Conservation and Development Commission and the legal framework for the statewide planning program.

Setback: The placement of a building a specified distance away from a road, property line, or other structure.

Standing: The legal designation of those individuals or groups who are entitled to receive notification of a pending land use case, to receive notice of the decision or to file an appeal of the decision. The term also applies to those who are legally entitled to initiate a land use action. Sanctioned or officially recognized neighborhood associations often have standing to be notified in all cases within their boundaries. The area of notification of property owners varies, depending on the type of land use case.

Subdivision: The division of land into four or more lots, usually including a street system.

Systems Development Charge (SDC): Also called a systems charge or impact fee, it is a fee charged by a local government to a developer in order to recoup some of the local government's general capital cost for sewer, water, storm drainage, streets, and parks.

Testimony: Formal statements made at a public hearing before an official body deciding an issue or a land use case. Testimony may be either presented in writing or orally prior to the close of the hearing.

Transportation System Plan (TSP): A plan for transportation facilities that are planned, developed, operated, and maintained in a coordinated manner to supply continuity of movement between modes, and within and between geographic areas.

Urban Growth Boundary (UGB): A line surrounding the land needed to accommodate 20 years of population and employment growth and related uses for an urban area. Land within this boundary is planned for eventual urban development and the provision of sewer, water, streets and other public facilities. Most UGBs include one city, but two or more cities are within one UGB in some cases.

Urban Area: Land inside an urban growth boundary.

Variance: An allowable deviation from the strict application of land development standards in the zoning or development code.

Vested Right: The right to continue to build a structure that does not conform to regulations imposed upon it after its construction was begun.

Zone Change: The reclassification of land from one zoning designation to another.

Zoning: A system of grouping similar or compatible land uses into geographic areas called "zones" or "zoning districts." The ordinances governing these land uses are referred to as the zoning or development code.

Zoning Map: A map showing locations of zoning districts in the jurisdiction.

APPENDIX C:

Sample Opening Statement for a Quasi-Judicial Land Use Hearing

Ladies and gentlemen, I call this hearing of [date] to order. My name is [your name]. I am the chair of the planning commission for [name of jurisdiction], Oregon. The members of the planning commission are appointed by the [title of the governing body] and serve as volunteers.

Our role is to conduct public hearings and to make decisions about land use matters in [name of jurisdiction]. In making those decisions, we must apply the law of [name of jurisdiction] and cannot vary from or change that law. If you think the law should be changed, you can work with the [city/county] to do that, but state law provides that applications must be judged based on the law that existed when the application was filed.

Members of the planning commission are to be unbiased. Before the start of the hearing on each item, I will ask the members of the planning commission whether they have any potential conflicts, such as family, financial, or business relationship with any of the applicants or with regard to the land in question. If such a potential conflict exists, I will ask whether the commissioner in question believes he or she is without actual bias or whether he or she would like to step down from the planning commission during the case.

I also will ask whether any of the planning commissioners have discussed the application in question with any of the parties or have independent knowledge of relevant facts, such as from a visit to the site in question. If any of the planning commissioners have had such contacts, I will ask the planning commissioner to disclose the substance of that contact.

If a planning commissioner has independent knowledge of relevant facts, I will ask the planning commissioner to summarize those facts.

During the testimony, a witness may challenge the impartiality of a planning commissioner and may rebut the substance of a planning commissioner's knowledge of the facts. The commissioner in question may respond to such a challenge.

A copy of the rules of procedure for the hearing, the agenda for today's hearing and copies of the staff reports are available [on the table in the back of the room]. We will consider cases one at a time in the order listed on the agenda.

I will start each case by asking staff to summarize its written report. Then the applicant and those in favor of the application testify. Then, witnesses who oppose the application or who have questions or concerns testify. If there is opposition or there are questions, the applicant can respond to them. The planning commissioners may also ask questions of the staff and the witnesses throughout the hearing until the record closes. If a witness introduces new evidence in response to opposition or questions, everyone gets a chance to respond to the new evidence. Then the applicant can make a closing statement without introducing new evidence. Then I will close the public portion of the hearing and the planning commission will deliberate about what to do with the application. During deliberations, the planning commission may re-open the public portion of the hearing if necessary to receive additional evidence before making a decision.

Any person with an interest in today's agenda may offer relevant oral or written testimony, or both. But please only speak when I identify you for that purpose. You must testify orally or in writing before the close of the public record to preserve your right to appeal my decision to [governing body] or the Land Use Board of Appeals, known as "LUBA." You must raise an issue clearly enough so people can understand what it is and offer evidence in support of it, or else you cannot raise that issue before the [governing body] or LUBA.

It is also important that you make your best case to the planning commission, because, although all of our decisions are subject to appeal, the [governing body] will decide the appeal based solely on the evidence in the record before us [note: local code may be different than the hypothetical]. If you feel you need more time to prepare, you can ask the planning commission to hold open the record or to continue the hearing. You must make that request before we close the public portion of the hearing.

If the planning commission holds open the record, you can submit additional written testimony and evidence into the record before the commission makes a decision.

If the planning commission continues the hearing, it means oral and written testimony, including new evidence, can be offered at a future hearing.

Regardless of whether the hearing is continued or the record is held open for any other reason, state law provides that we must hold open the record for at least seven days after it is closed to all other parties to allow the applicant to submit final written arguments in support of an application unless the applicant waives that right.

We also must comply with state law that requires the [city/county] to make a final decision, including all appeals,

within [120/150] days after the [city/county] staff found the application was complete, unless an applicant waives that right. So generally we cannot continue a hearing or hold open the record for very long.

Please make sure your testimony is related to applicable criteria. Planning staff will identify those criteria at the beginning of the hearing on each item.

Testimony also should not be repetitious. Please do not repeat testimony offered by yourself or earlier witnesses. If we think your testimony is irrelevant or repetitious, I may interrupt and ask you to continue with another subject.

Demonstrations from the audience are prohibited. Please refrain from them. Comments from the audience will not be part of the record.

If you wish to testify please fill out a [sign-up sheet or card]

and hand it to the secretary. When you testify, please come forward to the podium. Please begin your testimony giving your name and give your address. If you represent someone else, please say so. If you have any exhibits you want us to consider, such as a copy of your testimony, photographs, petitions, or other documents or physical evidence, please hand it to the secretary. The planning staff will keep exhibits until appeal opportunities expire, and then you can ask them to return your exhibits.

[Any questions?]

That concludes the introduction. We will begin with the first item on tonight's agenda, which is [name and/or number of case]. Does any planning commissioner wish to declare any potential conflict of interest, ex parte contact, or independent knowledge of relevant facts? No? Then would the staff please proceed with a summary of their written report?

APPENDIX D:

Planners' Acronyms and Translations

BLI: Buildable Lands Inventory

CCI: Committee for Citizen Involvement (advisory to local governments)

CIAC: Citizen Involvement Advisory Committee (to LCDC)

CIP: Capital Improvement Plan or Program

COG: Council of Governments

CPO: Community Planning Organization or Citizen Planning Organization

CU: Conditional Use

DRB: Design Review Board or Development Review Board

DU: Dwelling Unit

EESE: Economic, Environmental, Social, and Energy (LCDC Goals 2, 5, 14 and 16)

EIS: Environmental Impact Statement

EFU: Exclusive Farm Use

EOA: Economic Opportunities Analysis

FY: Fiscal Year

HO: Hearings Officer

LID: Local Improvement District

PC: Planning Commission

PFP: Public Facilities Plan

PUD: Planned Unit Development (also Public Utility District)

ROW: Right of Way

SDC: Systems Development Charge

TIF: Tax Increment Financing

UGB: Urban Growth Boundary

UGMA: Urban Growth Management Agreement

ZDO: Zoning and Development Ordinance

APPENDIX E:

Federal and State Agency and Statewide Land Use Related Organization Abbreviations

AOC: Association of Oregon Counties

BCD: Oregon Building Codes Division

BLM: Bureau of Land Management, U.S. Department of the Interior

COE: U.S. Army Corps of Engineers, U.S. Department of Defense

COG: Council of Governments

DEQ: Oregon Department of Environmental Quality

DLCD: Oregon Department of Land Conservation and Development

DOF: Oregon Department of Forestry

DOGAMI: Oregon Department of Geology and Mineral Industries

DSL: Oregon Department of State Lands

LCDC: Land Conservation and Development Commission

LOC: League of Oregon Cities

LUBA: Land Use Board of Appeals

LWCF: Land and Water Conservation Fund

NPS: National Park Service, U.S. Department of the Interior

OAPA: Oregon Chapter of the American Planning Association

OBDD: Oregon Business Development Department, dba Business Oregon

ODA: Oregon Department of Agriculture

ODF: Oregon Department of Forestry

ODFW: Oregon Department of Fish and Wildlife

ODOE: Oregon Department of Energy

OHCS: Oregon Housing and Community Services

OPRD: Oregon Parks and Recreation Department

OWRD: Oregon Water Resources Department

USFS: US Forest Service, Department of Agriculture

General Legal Issues

Public Meetings, Public Records, and Ethics

Amanda Guile-Hinman

City Attorney

January 9, 2023



WILSONVILLE
OREGON

Public Meetings

- ORS 192.610 – 192.695
- Relevant Definitions:
 - “Governing Body” – members of public body with authority to make decisions for or recommendations to a public body
 - “Public Body” – includes the City and any board, department, commission, council, committee, or other advisory group
 - “Meeting” – convening of a governing body for which a quorum is required in order to make a decision or deliberate toward a decision
- Quorum of the DRB/PC is a majority



Public Meetings (cont.)

- Meetings of the DRB/PC must be open to the public and people must be permitted to attend
 - Trainings are not “meetings” if no substantive issues discussed
- Decisions of the DRB/PC must be made during a public meeting
- Legal Requirements of a Public Meeting
 - Notice
 - Located within the City’s jurisdiction
 - Accessible location
 - Minutes



Communications Outside of Public Meetings

- When a quorum (majority)
 - No communications to decide or deliberate toward a decision on any matter
 - Serial communications can create a quorum
 - Don't "Reply All" to emails
- When not a quorum
 - Generally can discuss a matter (except quasi-judicial)
 - Best practice is to have discussions at the public meeting only
- When in doubt
 - Talk with staff
 - Avoid talking with other members of DRB/PC



Types of Decisions

- Legislative
 - Sit in the role of policymaker
 - Widely-applicable policies
 - Ex. Adopting the Frog Pond West Master Plan
- Quasi-Judicial
 - Sit in role of judge
 - Evaluate facts and apply specific rules or policies
 - Concerns about *ex parte* contact outside of meeting
 - Ex. Approving specific development within Frog Pond West
- Administrative/Ministerial
 - Internal workings of City
 - Generally, not the type of decisions that require a vote
 - Ex. Issuing Building Permit or Approval of Final Plat for development within Frog Pond West



Types of Decisions - Legislative

- Typically PC and Council
- Sit in the role of policymaker
 - Widely-applicable policies
 - PC recommends adoption of Comprehensive Plan amendments, Master Plans, Development Code revisions, and other long-range planning policies to the City Council
 - Council determines whether to adopt such policies
- Application
 - Affects the community as a whole, rather than a specific site
 - Not as prescriptive
- Process
 - Notice
 - Public Hearing



Types of Decisions – Quasi-Judicial

- Typically DRB and Council
- Sit in role of judge – no policy judgments (e.g., cannot disregard a policy because you don't like it)
 - Laws/regulations/policies to guide decision
 - Take evidence
 - Hear arguments
 - Make decisions
- Decisions
 - Apply existing laws/regulations/policies to the facts to arrive at decision
- Procedure
 - Notice
 - Hearing
 - Un-biased decision-maker
 - Decision confined to the record
 - Findings



Quasi-Judicial Decisions – Ex Parte Contact

- What is Ex Parte Contact
 - Off-the-record communications (outside formal proceedings)
 - Between an interested party and a member of the DRB
 - DRB is hearing/will hear application that interested party is discussing
- What to do if encounter Ex Parte Contact
 - Stop the conversation, tell the person to submit their comments orally or in writing before the decision-making body
 - Disclose the ex parte contact at the beginning of the hearing process



Public Records

- ORS 192.001-192.607
- Purpose
 - Informed public – what is the government doing?
 - Historic knowledge – how did our government get us here and why?
- What is a public record?
 - Prepared, owned, used, or retained by the City
 - Relates to any activity, transaction, or function of the City
 - Is necessary for the fiscal, legal, administrative, or historical policies, requirements, or needs of the City



Public Records (cont.)

- What is not a public record?
 - Extra copies of the same document
 - Messages on voicemail (if emailed, becomes a public record)
 - Spoken communication that is not recorded
 - Not relating to conducting City business
- Who is subject to the Public Records Law?
 - All public bodies
 - Includes Council and Committees of the City
- Cities must maintain all public records in accordance with state-mandated retention schedules
 - OAR 166-200-0200 – OAR 166-200-0405



Ethics

- ORS Chapter 244 and OAR Chapter 199
- All Public Officials must comply
- Are You a Public Official?
 - Member of DRB/PC
- Prohibited Use of Office
 - The “But For” Test
 - Cannot use or attempt to use position to obtain financial benefit if it would not be otherwise available
 - Applies to public official, public official’s relatives, public official’s household, and any of their businesses
- Gifts
 - Received by public official, relatives, or household members
 - Legislative or administrative interest
 - Not available to the public
 - Limited to \$50 per calendar year per source



Ethics – Conflict of Interest

- Potential and Actual Conflicts of Interest
 - Potential: take official action that could financially impact:
 - The public official
 - The official's relatives
 - A business with which the official is related
 - Actual: take official action that would financially impact official, relatives, or business
- If a Potential Conflict:
 - Announce potential conflict prior to taking any action on the matter
 - Can still participate
- If an Actual Conflict:
 - Announce conflict and refrain from participating in official capacity in any discussion or in voting on the matter



Resources

- Oregon Attorney General's Public Records and Public Meetings Manual
 - https://www.doj.state.or.us/wp-content/uploads/2019/07/public_records_and_meetings_manual.pdf
- League of Oregon Cities' Elected Essentials Videos and Online Books
 - <https://www.orcities.org/education/training/elected-essentials>
 - <https://www.orcities.org/application/files/2515/7427/7942/LocalGovernmentBasics-Updated11-20-19web.pdf>
 - https://www.orcities.org/application/files/5615/7487/0571/2018_EE_Binder_-_Final.pdf
- Oregon Government Ethics Commission's Guide for Public Officials
 - <https://www.oregon.gov/ogec/Documents/2021%20PO%20Guide%20Final%20Adopted.pdf>



Social Media Best Practices

Social Media

Best Practices

1. The Internet is not anonymous, nor does it forget. If you can find it, so can others.
2. There is no clear line between your work life and your personal life. Always be honest and respectful in both capacities.
3. Social Media may be subject to Public Records law and also has Open Meeting law implications.

Social Media

Best Practices (continued)

4. There are no deletions from the Internet- your old posts, even if deleted by you or Facebook, can be subpoenaed.
5. Do not use your title unless it is official business.
6. Do not blog, post, tweet when you are angry, frustrated, or intoxicated with respect to city related matters.
7. Do not return fire with respect to city related matters.

A Guide for Public Officials
Quick Reference Guide to Oregon's Public Meetings Law
Quick Reference Guide to Oregon's Public Records Law

OREGON GOVERNMENT ETHICS LAW

A GUIDE FOR PUBLIC OFFICIALS



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DISCLAIMER

This guide has been approved by the Oregon Government Ethics Commission pursuant to ORS 244.320. ORS 244.320 requires this publication to explain in understandable terms the requirements of Oregon Government Ethics law and the Oregon Government Ethics Commission's interpretation of those requirements. Toward that end, statutes and rules have been summarized and paraphrased in this guide. The discussion in this guide should not be used as a substitute for a review of the specific statutes and rules.

There may be other laws or regulations not within the jurisdiction of the Commission that apply to actions or transactions described in this guide.

A penalty may not be imposed under ORS Chapter 244 for any good faith action taken in reliance on the advice in this guide. "In reliance on" the advice in this guide means that the fact circumstances of the action taken are the same fact circumstances that serve as the basis for advice in this guide.

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INTRODUCTION

In 1974, voters approved a statewide ballot measure to create the Oregon Government Ethics Commission (Commission). The measure established laws that are contained in Chapter 244 of the Oregon Revised Statutes (ORS).

When the Commission was established, it was given jurisdiction to implement and enforce the provisions in ORS Chapter 244 related to the conduct of public officials. In addition, the Commission has jurisdiction for ORS 171.725 to 171.785 and 171.992, related to lobbying regulations, and ORS 192.660 and 192.685, the executive session provisions of Oregon Public Meetings law.

This Guide for Public Officials includes a discussion of some provisions that may also apply to lobbying activities. This is especially true when a lobbying activity involves paying the expenses for meals, lodging, travel, entertainment or other financial benefits of a legislative or executive official. Under specific circumstances, ORS Chapter 244 allows the payment of such expenses, but the public official may have a reporting requirement under ORS Chapter 244 and the source of the payment may be required to register as a lobbyist or report the expenditure. The Commission publishes a guide for lobbyists and clients or employers of lobbyists regulated under provisions in ORS Chapter 171. If you have questions regarding registering as a lobbyist, lobbying activity or reports for lobbying expenditures, please refer to our Guide to Lobbying in Oregon, which is available on our website.

ORS 192.660 lists the specific criteria a governing body must use when convening an executive session. Under this statutory authority, executive sessions are limited to discussion of specific matters. This guide does not discuss that portion of the Oregon Public Meetings law, but there is a detailed discussion of executive sessions, as set out in ORS 192.660, in the Attorney General's Public Records and Meetings Manual, available on-line at <https://www.doj.state.or.us/oregon-department-of-justice/public-records/attorney-generals-public-records-and-meetings-manual/>

This guide will discuss how the provisions in ORS Chapter 244 apply to public officials and will summarize Commission procedures. It should be used in conjunction with applicable statutes and rules, but should not be used as a substitute for a review of the statutes and rules. It is intended to be a useful discussion, in understandable terms, of topics and issues that are often the focus of inquiries the Commission receives from public officials and citizens.

You will find links to ORS Chapter 244, ORS Chapter 171.725 to 171.785 and 171.992, ORS 192.660 and ORS 192.685, relevant Oregon Administrative Rules (OAR), and other publications referenced in this guide on the Commission's website at <https://www.oregon.gov/ogec/Pages/default.aspx>. Questions or comments may be submitted to the Commission by email at ogec.mail@oregon.gov, by telephone to 503-378-5105, or by fax to 503-373-1456.

JURISDICTION

The jurisdiction of the Oregon Government Ethics Commission is limited to provisions in ORS Chapter 244, ORS 171.725 to 171.785 and 171.992, and ORS 192.660 and 192.685. Other Oregon statutes may also regulate the activities of elected officials and public employees. Some examples are:



- The Elections Division of the Secretary of State's Office regulates campaign finance and campaign activities.
- Federal, state, or local law enforcement has jurisdiction over alleged criminal activity.
- The Oregon Bureau of Labor and Industries investigates cases involving employment-related sexual harassment or discrimination on the basis of race, religion, disability or gender.
- The initial enforcement of the Public Records law lies with County District Attorneys and the Department of Justice.
- Enforcement of the Oregon Public Meetings law lies with the Oregon Circuit Courts, except that the Commission also has jurisdiction over the execution session provisions in ORS 192.660 and 192.685.

There are occasions when a public official engages in conduct that may be viewed as "unethical," but that conduct may not be governed by Oregon Government Ethics law. The following are some examples of conduct by public officials that may not be within the authority of the Commission to address:

An elected official making promises or claims that are not acted upon.

Public officials mismanaging or exercising poor judgment when administering public money.

Public officials being rude or unmannerly.

A person's private behavior unrelated to their actions as a public official.

While the conduct described above may not be addressed in Oregon Government Ethics law, other statutes and public agency policies may prohibit or redress the behavior. Please contact the Commission staff if you need further clarification regarding how the Oregon Government Ethics law may apply to circumstances you may encounter.

PUBLIC OFFICIAL: AN OVERVIEW

The provisions in Oregon Government Ethics law restrict some choices, decisions or actions of a public official. The restrictions placed on public officials are different than those placed on private citizens because service in a public office is a public trust and the provisions in ORS Chapter 244 were enacted to provide one safeguard for that trust.

Public officials must know that they are held personally responsible for complying with the provisions in Oregon Government Ethics law. This means that each public official must make a personal judgment in deciding such matters as the use of official position for financial gain, what gifts are appropriate to accept, when to disclose the nature of conflicts of interest, and the employment of relatives or household members. If a public official fails to comply with the operative statutes, a violation cannot be dismissed by placing the blame on the public official's government employer or the governing body represented by the public official.

One provision, which is the cornerstone of Oregon Government Ethics law, prohibits public officials from using or attempting to use their official positions or offices to obtain a financial benefit for themselves, relatives or businesses with which they are associated if that financial benefit or opportunity for financial gain would not otherwise be available but for the position or office held.

Oregon Government Ethics law limits and restricts public officials and their relatives as to gifts they may solicit or accept. Under specific circumstances, public officials may accept certain gifts. This guide will discuss those provisions. Public officials are allowed to receive salary and reimbursed expenses from their own government agencies.

Another provision that frequently applies to public officials when engaged in official actions is the requirement to disclose the nature of conflicts of interest. This guide will discuss the definition of a conflict of interest, the distinction between actual and potential conflicts of interest, and describe how a public official must disclose and dispose of a conflict of interest.

For some public officials who are elected to offices or hold other select positions, there is a requirement to file an Annual Verified Statement of Economic Interest. This guide will discuss that filing requirement.

It is important for both public officials and members of the general public served by public officials to know that the provisions in Oregon Government Ethics law apply to the actions and conduct of individual public officials and not to the actions of state and local governing bodies or government agencies. Each individual public official is personally responsible for complying with provisions in ORS Chapter 244. Before taking official action, making a decision, participating in an event, or accepting a gift that may raise potential ethics law violations, each public official must make a personal judgment. The Commission staff is available to discuss the issues and offer guidance in making such judgments.

The statutes and rules discussed or illustrated in this guide do not and cannot address every set of circumstances a public official may encounter. Since compliance is the personal responsibility of each public official, public officials need to familiarize themselves with the wide variety of resources that offer information or training on the provisions in Oregon Government Ethics law.

In addition to the statutes in ORS Chapter 244 and the Oregon Administrative Rules (OAR) in Chapter 199, see <https://www.oregon.gov/ogec/Pages/default.aspx>, the Commission's website, which offers information, training and links to this guide, ORS Chapter 244 and OAR Chapter 199. The Commission offers a variety of free training resources and many government agencies also offer internal training to their employees or the agencies may request training from the Commission's trainers. There are a number of membership organizations, such as The League of Oregon Cities, Association of Oregon Counties, Oregon School Boards Association and the Special Districts Association of Oregon, that provide training to public officials. It is imperative for government agencies or organizations that employ or represent public officials to ensure their public officials receive training in Oregon Government Ethics law. Those that fail to provide this training do a disservice to the public officials who they employ or who represent them.



A PUBLIC OFFICIAL

Are you a public official?

“Public official” is defined in ORS 244.020 as the First Partner and any person who, when an alleged violation of ORS Chapter 244 occurs, is serving the State of Oregon or any of its political subdivisions or any other public body as defined in ORS 174.109 as an elected official, appointed official, employee or agent, irrespective of whether the person is compensated for the services.

There are approximately 200,000 public officials in Oregon. You are a public official if you are:

- The First Partner, defined as the spouse, domestic partner or an individual who primarily has a personal relationship with the Governor.
- Elected or appointed to an office or position with a state, county, regional, or city government.
- Elected or appointed to an office or position with a special district.
- An employee of a state, county, city, intergovernmental agency or special district.
- An unpaid volunteer for a state, county, regional, city, intergovernmental agency, or special district.
- An agent of the State of Oregon or any of its political subdivisions.

The Commission has adopted, by rule, additional language used to clarify the use of “agent” in the definition of “public official.” The following clarification is in OAR 199-005-0035(7):

As defined in ORS 244.020(15), a public official includes the First Person and anyone serving the State of Oregon or any of its political subdivisions or any other public body in any of the listed capacities, including as an “agent.” An “agent” means any individual performing governmental functions. Governmental functions are services provided on behalf of the government as distinguished from services provided to the government. This may include private contractors and volunteers, depending on the circumstances. This term shall be interpreted to be consistent with Attorney General Opinion No. 8214 (1990).

If I am a volunteer, does that make me a public official?

The Commission recognizes that there are those who volunteer to work without compensation for many state and local government agencies, boards, commissions and special districts. Volunteers may be elected, appointed or selected by the government agency or public body to hold a position or office or to provide services. Among the public officials who volunteer, there are elected or appointed members of state boards or commissions, city councils, planning commissions, fire district boards, school district boards, and many others. There are also many who apply and are selected to perform duties for a government agency, board or commission without compensation, such as firefighters, reserve law enforcement officers, and parks or recreation staff members.

If the position for which you have volunteered serves the State of Oregon or any of its political subdivisions or any other public body, irrespective of whether you are compensated, you are a public official.

How are relatives and household members of public officials affected by Oregon Government Ethics law?

Public officials must always comply with state law when participating in official actions that could result in personal financial benefits and also when participating in official actions that could result in financial benefits for a relative or household member. Public officials should also know there may be limits and restrictions on gifts their relatives or household members may accept when offered.

There are provisions in ORS Chapter 244 that restrict or prohibit a public official from using or attempting to use official actions of the position held to benefit a relative or household member, limit the value of financial benefits accepted by a relative or household member of the public official, or require the public official to disclose the nature of a conflict of interest when a relative may receive a financial benefit. There are provisions that place restrictions on a public official regarding the employment or supervision of a relative or household member. These provisions are discussed more comprehensively in the use of position or office section starting on page 17, the gifts section starting on page 26, the conflicts of interest section starting on page 11, and the nepotism section starting on page 35.

Who is a relative?

Public officials need to know how Oregon Government Ethics law defines a “relative.” In everyday conversation the term “relative” is applied to a spectrum of individuals with “family ties” broader than those defined as relatives in ORS 244.020(16). When a provision in ORS Chapter 244 refers to “relative,” it means one of the following:

- The spouse, parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law of the public official or candidate;
- The parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law of

- the spouse of the public official or candidate;
- Any Individual for whom the public official or candidate has a legal support obligation
- Any Individual for whom the public official provides benefits arising from the public official's public employment
- Any Individual from whom the public official or candidate receives benefits arising from the individual's employment.

For purposes of the last two bulleted items, examples of benefits may include, but is not limited to, elements of an official compensation package such as insurance, tuition or retirement benefits.

Who is a “member of the household”?

Public officials need to know how Oregon Government Ethics law defines “member of the household” because there are provisions in ORS Chapter 244 that prohibit a public official from using or attempting to use their official position to financially benefit a member of their household.

A “member of the household” is any person who resides with the public official or candidate. [ORS 244.020] This definition includes any individual who resides in the same dwelling as the public official, regardless of whether that individual pays rent or not, and regardless of whether that individual is a relative or not.

What is a business with which a person is associated?

There are provisions in ORS Chapter 244 that restrict or prohibit a public official from using their position to benefit a business with which the public official or the public official's relative or household member is associated. Other provisions also require the public official to disclose the nature of a conflict of interest when their official actions would or could financially impact a business with which the official or their relative is associated.

As with the definition of relative, public officials need to know how Oregon Government Ethics law defines what a “business” is and how it defines a “business with which the person is associated.” The same sound judgment a public official exercises when participating in actions that could result in a financial benefit to the public official or a relative of the public official should be used when participating in actions that could result in a financial impact to a business with which the public official or the official's relative is associated.

ORS 244.020(2) provides the definition of a “**business**” for the purposes of the application of Oregon Government Ethics law. A “business” is a self-employed individual and any legal entity that has been formed for the purpose of producing economic gain.

- Excluded from this definition are income-producing corporations that are not-for-profit and tax exempt under section 501(c) of the Internal Revenue Code, if a public

official or a relative is associated only as a member, as a member of the board of directors, or in another unpaid position.

Example: An elected County Commissioner is a member of a credit union that operates without profit and is tax exempt under section 501(c) of the Internal Revenue Code. Because the public official is associated with the credit union only as a member, the credit union is not considered a “business” under the definition in Oregon Government Ethics law.

Example: The son of an elected city councilor is a teller employed by a credit union that operates without profit and is tax exempt under section 501(c) of the Internal Revenue Code. Because the public official’s relative is a paid employee of the credit union, the city councilor’s association with the credit union does not meet the exclusion above, and the credit union would be considered a “business” under the definition in Oregon Government Ethics law.

- Also excluded from the definition of business are entities, such as state and local governments or special districts, which are not formed for the purpose of producing income.

Example: An advisory board for the Department of Education awards grants to county, city or other local government entities. The advisory board’s members include public officials who are employed by a city police department and by a local fire district. These public officials would not have conflicts of interest when awarding grants to the city or to the fire district, because these government entities do not meet the statutory definition of a “business.”

Once a public official determines that an entity qualifies as a “business,” the public official must also determine if it is a “business with which the person is associated.” In accordance with ORS 244.020(3), a business is a “**business with which the person is associated**” for a public official or the relative or household member of the public official in any of the following circumstances:

- When a person, or their relative is a director, officer, owner, employee or agent of a private business or a closely held corporation.

Example: The Eugene City Recorder is a public official and her daughter is the president and owner of a private landscaping business. That business would be “a business with which the City Recorder’s relative is associated.”

- When a person or their relative currently holds, or held during the preceding calendar year, stock, stock options, an equity interest or debt instrument worth \$1,000 or more in a **private business or closely held corporation**.

Example: The Mayor of Seaside’s brother currently holds an equity interest of more than \$1,000 in a private business owned by a college friend. This would be a “business with which the Mayor’s relative is associated.”

- When a person or their relative currently owns, or has owned during the preceding calendar year, stock, stock options, an equity interest, or debt instruments of \$100,000 or more in a **publicly held corporation**.

Example: The procurement officer for the City of Portland recently inherited stock worth \$110,000 in Nike, which is a publicly held corporation. Nike is a “business with which the procurement officer is associated.”

- When a person or their relative is a director or officer of a **publicly held corporation**.

Example: A Planning Commissioner for Washington County is the son of a member of the Board of Directors for Intel, a publicly held corporation. Intel is a “business with which the Planning Commissioner’s relative is associated.”

- When a public official is required by ORS 244.050 to file an Annual Verified Statement of Economic Interest and the business is required to be listed as a source of household income, per ORS 244.060.

Example: A Bend city councilor is required to file an Annual Verified Statement of Economic Interest (SEI). A member of the city councilor’s household, not a relative, is a paid employee of a private business. The private business which employs the household member would be a “business with which the city councilor is associated” if it provides 10% or more of the councilor’s annual household income.



CONFLICTS OF INTEREST

How does a public official know when they are met with a conflict of interest and, if met with one, what must they do?

Oregon Government Ethics law identifies and defines two types of conflicts of interest. An **actual conflict of interest** is defined in ORS 244.020(1) and a **potential conflict of interest** is defined in ORS 244.020(13). In brief, a public official is met with a conflict of interest when participating in official action which would or could result in a financial benefit or detriment to the public official, a relative of the public official or a business with which either is associated.



The difference between an actual conflict of interest and a potential conflict of interest is determined by the words “**would**” and “**could**.” A public official is met with an **actual** conflict of interest when the public official participates in an official action, decision, or recommendation that **would** affect the financial interest of the official, their relative, or a business with which they or their relative is associated. A public official is met with a **potential** conflict of interest when the public official participates in an official action, decision, or recommendation that **could** affect the financial interest of the official, their relative, or a business with which they or their relative is associated. The following hypothetical circumstances are offered to illustrate the difference between actual and potential conflicts of interest and what is not a conflict of interest:

- **POTENTIAL CONFLICT OF INTEREST:** A school district has decided to construct a new elementary school and the school board is at the stage of developing criteria for the construction bid process. A recently elected school board member’s son owns a construction company in town. The school board member would be met with a potential conflict of interest when participating in official actions to develop the bid criteria, because the official actions she takes **could** financially impact her son’s construction company, a business with which her relative is associated.
- **ACTUAL CONFLICT OF INTEREST:** A school district is soliciting bids for the construction of a new elementary school. The bid deadline was last week and the district Superintendent has notified the school board that there are four qualified bids and the school board will be awarding the bid to one of the four bidders at their upcoming meeting. One of the qualified bids was submitted by the construction company owned by a school board member’s son. The school board member would be met with an actual conflict of interest when awarding this bid because the effect of her decision **would** have a financial impact (either positive or negative) on her son’s construction company, a business with which her relative is associated.

- **NO CONFLICT OF INTEREST:** A school district is soliciting bids for the construction of a new elementary school. One of the qualified bids was submitted by a construction company owned by a board member's best friend but neither the board member nor any relative are associated with the construction company. The school board member would **not** be met with a conflict of interest when awarding this bid because the effect of her official decision **would not or could not** have a financial impact on herself, a relative, or a business with which she or her relative is associated.

What if I am met with a conflict of interest?

A public official must announce or disclose the nature of a conflict of interest. The way the disclosure is made depends on the position held. The following public officials must use the methods described below:

Legislative Assembly:

Members must announce the nature of the conflict of interest in a manner pursuant to the rules of the house in which they serve. The Oregon Attorney General has determined that only the Legislative Assembly may investigate and sanction its members for violations of conflict of interest disclosure rules in ORS 244.120. [49 Op. Atty. Gen. 167 (1999) issued on February 24, 1999]

Judges:

Judges must remove themselves from cases giving rise to the conflict of interest or advise the parties of the nature of the conflict of interest. [ORS 244.120(1)(b)]

Public Employees:

Public officials who are hired as public employees, agents, or who volunteer with their public bodies must provide **written notice** to the person who appointed or employed them (their "appointing authority"). The notice must describe the nature of the conflict of interest with which they are met and request that their appointing authority dispose of the conflict. This written disclosure to the appointing authority satisfies the requirements of ORS 244.120 for the employee. The appointing authority must then designate an alternate person to handle the matter or direct the public official in how to dispose of the matter. [ORS 244.120(1)(c)]

Example of Disclosure and Disposal: A County employee's job includes issuing building permits. An application concerns property owned by the employee's stepfather. The employee would be met with a conflict of interest and would need to make a written disclosure of his conflict to his appointing authority, in this case his department supervisor, and ask that the supervisor dispose of the conflict. Once the employee makes the written disclosure, he has complied with the conflict of interest statute. Upon receipt of a written disclosure from an employee, the supervisor must respond by either delegating an alternative person to handle the matter or directing the public official in how to dispose of the matter. **Note:** If the supervisor directs the public official to dispose of the conflict by handling his

relative's permit the same as any other permit, the supervisor could be asking an employee to take official actions that may violate the prohibited use of position statute, ORS 244.040(1). See page 17.

Elected Officials or Appointed Members of Boards and Commissions:

Elected officials (other than legislators) and those appointed to Boards and Commissions must publicly announce the nature of the conflict of interest before participating in any allowable official action on the issue giving rise to the conflict of interest. [ORS 244.120(2)(a) and ORS 244.120(2)(b)] The announcement must be made in a public meeting, or if no public meeting is available, by other means reasonably determined to notify members of the public of the public official's disclosure. For elected officials who do not hold regular public meetings, such as a Sheriff, District Attorney, or the Secretary of State, other means of compliance could be through a press release or by posting the disclosure on the public body's website.

- **Potential Conflict of Interest:** Following the public announcement of the nature of a potential conflict of interest, elected officials (other than legislators) and those appointed to Boards and Commissions, may participate in official action on the issue that gave rise to the conflict of interest.

Example: A city has decided to solicit bids to develop a new computer system and the city councilors are developing criteria for the bid process. A city councilor's brother works for an IT firm in town. The councilor would be met with a **potential** conflict of interest when participating in official actions to develop the bid criteria, because the official actions she takes **could** financially impact her brother's employer, a business with which her relative is associated. The councilor should publicly disclose the nature of her conflict of interest at the council meeting when the development of bid criteria comes up for consideration. Following the public disclosure, she may continue to participate in discussions and votes on the issue.

- **Actual Conflict of Interest:** Following the public announcement of the nature of an actual conflict of interest, the public official must ordinarily refrain from further participation in official action on the issue that gives rise to the conflict of interest. [ORS 244.120(2)(b)(A)]

Example: The city council is meeting to award a bid for a new IT project. Qualified bidders include a company that employs a city councilor's brother. The city councilor has an **actual** conflict of interest because the effect of her decision **would** have a financial affect, whether positive or negative, on a business with which her brother is associated. The city councilor must publicly announce the nature of her conflict of interest at the meeting and then refrain from any discussion or vote on the matter.

Exception: If a public official is met with an actual conflict of interest and the public official's vote is necessary to meet the minimum number of votes required for official action, the public official may vote. The public official must make the required announcement of their conflict of interest and refrain from any discussion or debate, but may participate in the vote required for official action by the governing body. [ORS 244.120(2)(b)(B)]

Example: In the scenario above, the city councilor would be met with an actual conflict of interest. The city council has 5 members and it takes 3 votes for board action. At the time of this meeting, one seat is vacant, another member is absent, and the member with the actual conflict is present, but conflicted, leaving the city council without the requisite 3 votes to take action. In this instance, following her public disclosure, the conflicted city councilor must refrain from any discussion or debate on the issue, but she may vote in order for the council to take action. Alternatively, the council may choose to delay the vote until a later meeting when more city councilors are present.

The following circumstances may exempt a public official from the requirement to make a public announcement or give a written notice describing the nature of a conflict of interest:

- If the conflict of interest arises from a membership or interest held in a particular business, industry, occupation or other class **and** that membership is a prerequisite for holding the public official position. [ORS 244.020(13)(a)]

Example: The Oregon Medical Board requires that one Board member must be a practicing physician, any official action taken by the physician board member that affects all physicians to the same degree would be exempt from the conflict of interest requirements. The physician Board member need not disclose a conflict of interest and may participate in taking official action on the issue.

- If the financial impact of the official action would impact the public official, their relative, or a business with which they or their relative is associated, to the same degree as other members of an identifiable group or "class." The Commission has the authority to identify a group or class and determine the minimum size of that "class." [ORS 244.020(13)(b) and ORS 244.290(3)(a)] The number of persons affected **to the same degree** as the public official will help to determine whether this exception applies.

Only the Commission may determine whether a "class" exemption exists. A written request must be made to the Commission to make that determination in advance. If a public official determines that a "class" exception applies in their situation, without benefit of Commission advice, the Commission may later determine that a "class" exception does not apply to the situation, and could find a violation.

Example: A city council is considering a change to the local transient lodging tax collected and remitted to the city by hotels and motels. One of the city councilors owns a motel. The effect of official actions taken by the city councilor concerning this tax would impact all motel owners within the city. The Commission may determine that the city councilor is part of an identifiable group or “class” of 200 city motel/hotel owners, who would be affected to the same degree and thus exempt from the conflict of interest disclosure and participation restrictions.

Example: A city council is considering a change to the local transient lodging tax collected and remitted to the city by motels. One of the city councilors is a motel owner. The effect of official actions taken by the city councilor concerning this tax would impact all motel owners within the city. The Commission declined to find that the class exemption applies due to the size of the “class” because there are only 3 motels in the city, 2 of which are owned by the councilor. The class exemption would not apply in these circumstances and the councilor must comply with the conflict of interest disclosure and participation restrictions.

Example: A city council is considering a proposal to construct a by-pass route around the city’s business district. The city’s business district includes many businesses and restaurants, including a coffee shop owned by one of the city councilors and a drive-thru espresso stand owned by another resident. The effect of the by-pass would not affect all business owners in the city to the same degree. The class exemption would not apply in these circumstances and the councilor who owns the coffee shop must comply with the conflict of interest disclosure and participation restrictions.

- If the conflict of interest arises from a directorship on the board of, or membership in, a nonprofit corporation that is tax-exempt under 501(c) of the Internal Revenue Code. [ORS 244.020(13)(c)]

Example: A city councilor is also a board member of the local YMCA, a tax-exempt 501(c) organization. The decision, as a city councilor, to award a grant to that YMCA would be exempt from the conflict of interest disclosure and participation restrictions. [ORS 244.020(13)(c)]

How is the public announcement or written disclosure of the nature of a conflict of interest recorded?

- The public body served by the public official is required to record the disclosure of the nature of the conflict of interest in the public body’s official records (e.g. personnel file, meeting minutes, audio/video recording). It is to the public official’s benefit to ensure their conflict disclosure is recorded in their public body’s records. [ORS 244.130(1)]

Is a public official required to make an announcement of the nature of a conflict of interest each time the issue giving rise to the conflict of interest is discussed or acted upon?

Each time a public official is met with a conflict of interest, the nature of the conflict must be disclosed.

- For example, an elected member of the city council when met with a conflict of interest would have to make the public announcement one time, but only one time, **in each meeting** of the city council when the matter was raised. If the matter giving rise to the conflict of interest is raised at another meeting, the disclosure must be made again at that meeting.
- Public officials who are employees would need to submit separate written notices on each occasion when a conflict of interest arises. As an example, an employee in a city planning department would have to give a separate written notice before each occasion when they needed to take an official action involving property owned by a relative. [ORS 244.120(3)]

If a public official failed to announce the nature of a conflict of interest and participated in official action, is the official action voided?

- **No.** Any official action that is taken may not be voided by any court solely by reason of the failure of the public official to disclose an actual or potential conflict of interest. [ORS 244.130(2)] Even though the action may not be voided, the public official could face potential personal liability for the violation.



USE OF POSITION OR OFFICE

What are the provisions of law that prohibit a public official from using the position or office held for financial gain or avoidance of financial detriment?

ORS 244.040(1) prohibits every public official from using or attempting to use the position held as a public official to obtain a financial benefit, if the opportunity for the financial benefit would not otherwise be available but for the position held by the public official. The prohibited financial benefit can be either an opportunity for personal financial gain or an opportunity to avoid incurring a personal expense.



Not only is a public official prohibited from using the position as a public official to receive personal financial benefits, but the public official is prohibited from using or attempting to use their position as a public official to obtain financial benefits for a relative or a member of the public official's household. Also prohibited is using or attempting to use the public official's position to obtain financial benefits for a business with which the public official, a relative, or a member of the public official's household is associated.

There are a variety of actions that a public official may take or participate in that could constitute the prohibited use or attempted use of the public official's position. The use of a position could be voting in a public meeting, placing a signature on a government agency's document, making a recommendation, making a purchase with government agency funds, or using a government agency's time or resources (computers, vehicles, machinery) to obtain a personal financial benefit or avoid a personal cost.

The following examples are offered to illustrate what may constitute prohibited use or attempted use of office or position. Please note that this is not an exhaustive list:

- The mayor of a city signs a contract obligating the city to pay for janitorial services provided by a business owned by the mayor's relative.
- An executive director of an agency is ordering 10 new laptops for the agency, which qualifies for a bulk purchase discount of \$150 per laptop. He adds 2 laptops for his family to the agency's order to personally take advantage of the discount, and then reimburses the agency for the discounted cost of his personal laptops.
- A city billing clerk alters water use records so that the amount billed to the clerk's parents will be less than the actual amount due.
- A volunteer firefighter borrows the fire district's power washer to prepare the exterior of the volunteer's personal residence for painting.
- A county public works employee stores a motor home that is owned by the employee's parents in a county building used for storing heavy equipment.
- An employee of a state agency has a private business and uses the agency's computer to conduct the activities of the private business.

- A county commissioner uses the county's pickup truck to haul his own personal boat to and from his vacation home.
- A school district superintendent hires her sister's consulting business to provide an in-service training to teachers in her district.
- A teacher solicits her students' parents to hire her for paid tutoring services.

NOTE: While these examples are offered to illustrate the use of a public official's position prohibited by ORS 244.040(1), the examples illustrate occasions where a public official may also be met with a conflict of interest as defined in ORS 244.020(1) and (13). The provisions in ORS 244.040 apply regardless of whether a public official has properly disclosed a conflict of interest. [ORS 244.040(7)]. For further information, refer to the detailed discussion of conflicts of interest starting on page 11.

There are some additional prohibitions on how current and even former public officials use their offices or positions.

- ORS 244.040(3) prohibits a public official from, directly or indirectly, soliciting or accepting the promise of future employment based on the understanding that the offer is influenced by the public official's vote, official action or judgment.
- Public officials often have access to or manage information that is confidential and not available to members of the general public. ORS 244.040(4) specifically prohibits public officials from using or attempting to use confidential information gained because of the position held to further their own personal gain.
- ORS 244.040(5) prohibits a **former** public official from attempting to use confidential information for **any** person's financial gain if that confidential information was obtained while holding the position as a public official, from which access to the confidential information was obtained.
- ORS 244.040(6) also has a single provision to address circumstances created when public officials, who are members of the governing body of a public body, own or are associated with a specific type of business. The type of business is one that may occasionally send a representative of the business to appear before the governing body on behalf of a client for a fee. Public officials who are members of governing bodies and who own or are employed by businesses, such as a law, engineering, or architectural firm, may encounter circumstances in which this provision may apply.

Example: A member of a city council is an architect. A client developer of the architect's firm has a proposed subdivision to be approved by the city council. The architect/councilor may not appear before the city council on behalf of the client developer. Another person from the architect's firm may represent the client developer before the city council, but not the architect/councilor.

Aside from ORS 244.040, are there other prohibitions on public officials using their positions to avoid a personal financial detriment?

Yes. ORS 244.049 prohibits a holder of public office or candidates for public office from using public moneys or moneys received from a third party to make payments in connection with a non-disclosure agreement relating to workplace harassment if the alleged harassment occurred when the holder of public office or candidate was acting in that capacity. This prohibition applies to a person holding, or a candidate for, any elected state, county, district, city office or position.

Are there any circumstances in which a public official may use their position to accept financial benefits that would not otherwise be available but for holding the position as a public official?

Yes. ORS 244.040(2) provides a list of financial benefits that would not otherwise be available to public officials but for holding the position as a public official. The following financial benefits are not prohibited and may be accepted by a public official, and some may also be accepted by a public official's relative or member of the public official's household:

Not Prohibited:

- **Official Compensation:** Public officials may accept any financial benefit that is identified by the public body they serve as part of the “official compensation package” of the public official. If the public body identifies such benefits as salary, health insurance or various paid allowances in the employment agreement or contract of a public official, those financial benefits are part of the “official compensation package.” [ORS 244.040(2)(a)]



OAR 199-005-0035(3) provides a definition of “official compensation package”:
An “official compensation package” means the wages and other benefits provided to the public official. To be part of the public official's “official compensation package”, the wages and benefits must have been specifically approved by the public body in a formal manner, such as through a union contract, an employment contract, or other adopted personnel policies that apply generally to employees or other public officials. “Official compensation package” also includes the direct payment of a public official's expenses by the public body, in accordance with the public body's policies.

- **Reimbursement of Expenses:** A public official may accept payments from the public official's public body as reimbursement for expenses the public official has personally paid while conducting the public body's business. [ORS 244.040(2)(c)]



The “reimbursement of expenses” means the payment by a public body to a public official serving that public body, of expenses incurred in the conduct of official duties on behalf of the public body. Any such repayment must comply with any applicable laws and policies governing the eligibility of such repayment. [OAR 199-005-0035(4)]

If the payment of a public official’s personal expenses does not meet this definition, it may be a financial benefit prohibited or restricted by other provisions in ORS Chapter 244. There are occasions when someone will refer to the payment of a public official’s expenses by a person or entity other than the public official’s public body as a reimbursement of expenses. That is not the reimbursement of expenses as used in ORS 244.040(2)(c) and defined in OAR 199-005-0035(4).

- **Honoraria:** Most public officials are allowed to accept honoraria by ORS 244.040(2)(b) as defined in ORS 244.020(8). A public official must know how an honorarium is defined because there are many occasions when someone will offer them a financial benefit and call it an honorarium, but it does not meet the definition of honorarium in ORS 244.020(8).



For a payment to be defined as an honorarium, it must be made for a service, like a speech or other service rendered in connection with an event, for which no price is set and for which the public official required no fixed amount to be paid in return for providing the service. A payment or something of economic value given to a public official in exchange for services provided by the public official is an honorarium when the setting of the price has been prevented by custom or propriety.

A public official may not receive an honorarium when performing a service in the course of their duties as a public official. A public official may not accept honoraria if the value exceeds \$50, unless the honoraria is received for services performed in relation to the private profession, occupation, avocation, or expertise of the public official or candidate. [ORS 244.042(3)(a) and (b)].

Public officials must be sure, when they are offered a payment or something of economic value and it is referred to as an honorarium, that it does meet the definition in ORS 244.020(8). If it does not meet this definition, it may be a financial benefit prohibited or restricted by other provisions in ORS Chapter 244.

NOTE: The Governor, First Partner, Secretary of State, State Treasurer, Attorney General, and Commissioner of the Bureau of Labor and Industries are explicitly prohibited by ORS 244.042(4) from soliciting or receiving an honorarium, money or any other consideration for **any** speaking engagement or presentation.

- Awards for Professional Achievement: Public officials may accept an award, if the public official has not solicited the award, and the award is offered to recognize a professional achievement of the public official. [ORS 244.040(2)(d)]



Awards for professional achievement should not be confused with awards of appreciation, allowed by ORS 244.020(7)(b)(C), an honorarium allowed by ORS 244.040(2)(b), or gifts that are allowed or restricted by other provisions in ORS Chapter 244.

Awards for professional achievement are best illustrated by awards that denote national or international recognition of a public official's achievement, such as receipt of the Nobel Prize. These awards may also be offered by public or private organizations in the state that are meant to recognize a public official for a distinguished career, such as Oregon's Teacher of the Year award made by the Oregon Department of Education which includes a monetary prize and travel funds. Professional achievements recognized may be identified as a single accomplishment or an accomplishment achieved during a period of time, such as a calendar year or a public official's career upon retirement.

- Contributions to Legal Expense Trust Fund: There are provisions in ORS 244.209 that allow public officials to establish legal expense trust funds that are approved by the Commission. ORS 244.040(2)(h) allows a public official who has established this trust fund to solicit, accept and be the trustee for contributions to the established fund. This is discussed in a separate section of the Guide p.41.



- Certain Gifts: Public officials may accept some gifts without limitation on the quantity or aggregate value of gifts. Acceptance of these gifts does not constitute a prohibited use of office. See allowable gifts, page 33. [ORS 244.040(2)(e) to (g)]



PRIVATE EMPLOYMENT OF PUBLIC OFFICIAL

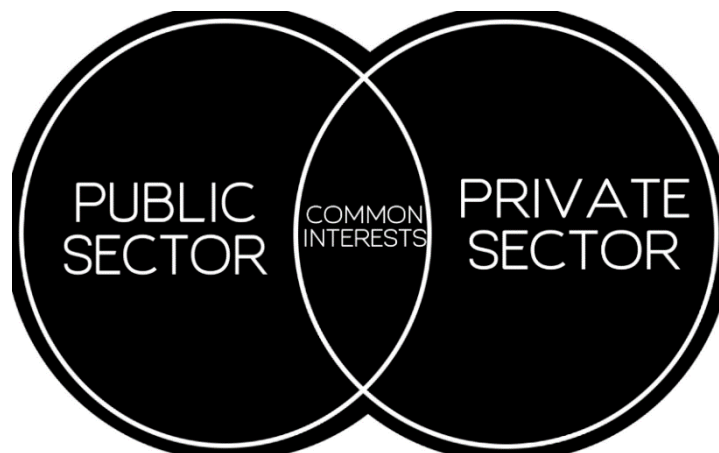
Does Oregon Government Ethics law prohibit a public official from owning a private business or working for a private employer while continuing employment with or holding a position with a public body?

No. As mentioned earlier, many public officials are volunteers, meaning there is little or no compensation for the public position. Other public officials may receive compensation from their public bodies, but still choose to seek additional sources of income. Some work for a private business and others establish a private business of their own. **NOTE: This guide does not address other statutes or agency policies that may limit private employment for public officials.**

In general, public officials may obtain employment with a private employer or engage in private income producing activity of their own, but they must keep a separation between their public positions and their outside employment or private business interests. The Commission has created the following guidelines for public officials to follow in order to avoid violating Oregon Government Ethics law when engaged in private employment or a personally owned business.

GUIDELINES FOR OUTSIDE EMPLOYMENT OF PUBLIC OFFICIALS

1. Public officials must not use their public position to create the opportunity for additional personal income.
2. Public officials may not use a government agency's supplies, facilities, equipment, employees, records or any other public resources to engage in their private employment or business interests.
3. Public officials are not to engage in private business interests or other employment activities on their government agency's time.
4. Confidential information gained as a public official is not to be used to obtain a financial benefit for the public official, a relative or member of the public official's household or a business with which any are associated.



EMPLOYMENT OF FORMER PUBLIC OFFICIALS

What are the restrictions on employment after I resign, retire or leave my public official position?

- ORS 244.040(1) prohibits public officials from using their official positions or offices to create a new employment opportunity; otherwise, most former public officials may enter the private work force with few restrictions.
- ORS 244.040(5) prohibits a former public official from using or attempting to use confidential information for the personal gain of any person if the confidential information was obtained while holding the position as a public official.
- Oregon Government Ethics law restricts the subsequent employment of certain public officials. The restrictions apply to positions listed below:

ORS 244.045(1) State Agencies:

Director of the Department of Consumer and Business Services
Administrator of the Division of Financial Regulation
Administrator of the Oregon Liquor Control Commission
Director of the Oregon State Lottery
Public Utility Commissioner

1. One year restriction on accepting employment from or gaining financial benefits from a private employer in the activity, occupation or industry that was regulated by the agency for which the public official was the Director, Administrator or Commissioner.
2. Two year restriction on lobbying, appearing as a representative before the agency, or otherwise attempting to influence the agency for which the public official was the Director, Administrator or Commissioner.
3. Two year restriction on disclosing confidential information gained as the Director, Administrator or Commissioner for the agency.

ORS 244.045(2) Department of Justice:

Deputy Attorney Generals
Assistant Attorney Generals

Two year restriction from lobbying or appearing before an agency that they represented while employed by the Department of Justice.

ORS 244.045(3) Office of the Treasurer:

State Treasurer
Deputy State Treasurer

1. One year restriction from accepting employment from or being retained by a private entity with which there was negotiation or contract awarding \$25,000 in a single year by the office of the State Treasurer or Oregon Investment Council.
2. One year restriction from accepting employment from or being retained by a private entity with which there was investment of \$50,000 in one year by the office of the State Treasurer or Oregon Investment Council.
3. One year restriction from being a lobbyist for an investment institution, manager or consultant, or from representing an investment institution, manager, or consultant, before the office of State Treasurer or Oregon Investment Council.

ORS 244.045(4) Public Officials who invested public funds:

1. Two year restriction from being a lobbyist or appearing before the agency, board or commission for which public funds were invested.
2. Two year restriction from influencing or trying to influence the agency, board or commission.
3. Two year restriction from disclosing confidential information gained through employment.

ORS 244.045(5) Department of State Police:

Member of State Police who has been designated by law and was responsible for supervising, directing or administering programs related to Native American tribal gaming or the Oregon State Lottery

1. One year restriction from accepting employment from or gaining financial benefit related to gaming from the Lottery or a Native American Tribe.
2. One year restriction from gaining financial benefit from a private employer who sells gaming equipment or services.
3. One year restriction from trying to influence the Department of State Police or from disclosing confidential information.

Exceptions include subsequent employment with the state police, appointment as an Oregon State Lottery Commissioner, Tribal Gaming Commissioner or lottery game retailer, or personal gaming activities.

ORS 244.045(6) Legislative Assembly
Representative
Senator

A person who has been a member of the Legislative Assembly, may not, within one year after ceasing to be a member of the Legislative Assembly, receive money or other consideration for lobbying as defined in ORS 171.725.

How would Oregon Government Ethics law apply when a former public official is employed by a business that has a contract with the public body previously represented by the former public official?



In addition to the restrictions on specific positions identified above, the restriction in ORS 244.047 applies to all former public officials. After a public official ceases serving a public body or being employed in a position as a public official, that public official may not have a direct beneficial financial interest in a public contract for two years after the date the contract was authorized by the person acting in their capacity as a public official.

Whether a public official authorizes a contract individually as an employee of a public body, or participated in the authorization of a contract in their official capacity as a member of a board, commission, council, bureau, committee or other governing body, the person is restricted from financially benefiting from that public contract for two years after the date of authorization. [ORS 244.047]

“Authorized by” is defined in OAR 199-005-0035(6) as follows:

As used in ORS 244.047, a public contract is “authorized by” a public official if the public official performed a significant role in the selection of a contractor or the execution of the contract. A significant role can include recommending approval or signing of the contract, including serving on a selection committee or team, or having the final authorizing authority for the contract.

GIFTS

Oregon Government Ethics law establishes restrictions on the value of gifts that can be accepted by a public official. If the source of a gift to a public official has a legislative or administrative interest in the decisions or votes of the public official, the public official can only accept gifts from that source when the aggregate value of gifts from that source does not exceed \$50 in a calendar year. [ORS 244.025].



The following framework of conditions applies when public officials, their relatives, or members of their households are offered gifts. To decide if a gift, or “something of value,” can be accepted with or without restrictions, the public official must analyze the offer and the source of the offer. As will be apparent in the following discussion, the burden of any decision on accepting a gift rests solely with the individual public official.

What counts as a “gift”?

When Oregon Government Ethics law uses the word “gift” it has the meaning in ORS 244.020(7)(a):

“Gift” means something of economic value given to a public official, a candidate or a relative or member of the household of the public official or candidate:

(A) Without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others who are not public officials or candidates or the relatives or members of the household of public officials or candidates on the same terms and conditions; or

(B) For valuable consideration less than that required from others who are not public officials or candidates.

In other words, a “gift” is something of economic value that is offered to:

- A public official or candidate or to relatives or members of the household of a public official or candidate,
- Without cost or at a discount or as a forgiven debt, and,
- The offer is not made or available to members of the general public who are not public officials, candidates, or their relatives or household members on the same terms and conditions.

Example: At a conference exclusively for city and county officials, a public official buys a raffle ticket and wins a big screen television. The television is a gift because the value of the television exceeds the cost of the raffle ticket and the opportunity to enter the raffle and win the television was not available to members of the general public on the same terms and conditions.

Example: Outside of a grocery store, a public official buys a raffle ticket from a local scout troop and wins a big screen television. The television is not a gift because, although the value of the television exceeds the cost of the raffle ticket, the opportunity to enter the raffle and win the television was available to members of the general public on the same terms and conditions.

Once a public official or candidate has determined that an offer is a gift, because it is something of economic value that is not offered to members of the general public who are not public officials or candidates on the same terms and conditions, the public official or candidate must then determine if the value of the gift, combined with any other gifts from the same source during the calendar year, exceeds \$50. If so, the public official must then determine if the source of the gift has a legislative or administrative interest.

Any discussion of gifts must begin with the reminder that if the source of a gift to a public official or candidate **does not** have a legislative or administrative interest in the decisions or votes of the public official or candidate if elected, the public official or candidate can accept unlimited gifts from that source. [ORS 244.040(2)(f)]

What is a “Legislative or Administrative Interest”?



Whether there is a legislative or administrative interest is pivotal to any decision a public official or a candidate, if elected, makes on accepting gifts. It will mean the difference between being allowed to accept gifts without limits, accepting gifts with an annual limit of \$50 on the aggregate value, or accepting gifts which are specified exceptions under ORS 244.020(7).

The definition of a legislative or administrative interest is set forth in ORS 244.020(10):

“‘Legislative or administrative interest’ means an economic interest, distinct from that of the general public, in:

(a) Any matter subject to the decision or vote of the public official acting in the public official’s capacity as a public official; or

(b) Any matter that would be subject to the decision or vote of the candidate who, if elected, would be acting in the capacity of a public official.”

When analyzing a set of circumstances and applying “legislative or administrative interest,” there are several factors to consider:

Source: The Commission adopted a rule that identifies the source of a gift as the person or entity that makes the ultimate and final payment of the gift’s expense. OAR 199-005-0030 places two burdens on a public official who accepts gifts. The public official must know the identity of the source and, if applicable, avoid exceeding the limit on the aggregate value of gifts accepted from that source. [OAR 199-005-0030(2)]

Distinct from that of the general public:

With regard to gifts, this phrase refers to a distinct economic interest held by the source of a gift. That economic interest is in the financial gain or loss that could result from any votes cast or decisions made by a public official. If the source of a gift would realize a financial gain or detriment from matters subject to the vote or decision of a public official, that source has an economic interest in that public official. That economic interest is “distinct from that of the general public” if the potential financial gain or detriment is distinct from the financial impact that would be realized by members of the general public from the matters subject to votes or decisions of that same public official.



There are decisions or votes that have an economic impact on single individuals or individuals from specific businesses or groups that are distinct from the economic impact on members of the general public. On the other hand, there are many votes or decisions made by public officials that have the same general economic impact on individuals, businesses, organizations and members of the general public. Some examples of decisions or votes that would likely have an economic impact on members of the general public would be those that change water usage rates for residential users, fees for pet licenses, or fines for parking violations.

To illustrate, private contractors have an economic interest in any public official who has the authority to decide or vote to award them contracts. The economic interest of these contractors is distinct from the economic interest held by members of the general public in those decisions or votes.

To further illustrate, real estate developers have an economic interest in any public official who has the authority to decide or vote to approve their land use applications or building permits. The economic interest of these developers is distinct from the economic interest held by members of the general public in those decisions or votes.

Vote: This has the common meaning of to vote as an elected member of a

governing body of a public body or as an appointed member of a committee, commission or board appointed by a governing body, Oregon Legislative Assembly, or the Office of the Governor.

Decision: A public official makes a decision when the public official exercises the authority given to the public official to commit the public body to a particular course of action. [OAR 199-005-0003(2)].



Whether to accept or reject the offer of a gift must be made individually by each public official. There will be some public officials who may accept unlimited gifts from a source and other public officials within the same public body that would have restrictions on gifts have the same authority, responsibilities or duties. Some may vote and make decisions, others may do one but not the other, and many will not vote or make decisions. This means that when gifts are offered to two or more public officials, one public official may be allowed to accept the gift without limits, and another public official may not be able to accept the gift at all, or may only be able to accept it with limits as to value or with other restrictions.

Example: A cellular service provider offers a discounted cell-phone plan for first responders. The discounted plan is available only to first responders who work for state or local governments. Because the discounted cell-phone plan is not available to members of the general public on the same terms and conditions, it is a gift subject to the restrictions and limitations in ORS 244.025. First responders who are in positions to make official decisions for their agencies that could financially affect the cellular service provider, such as Fire Chiefs or board members, could not accept the discounted cell-phone plan since the discount totals more than \$50 in a calendar year; however, first responders who are not in positions to make official decisions for their agencies that could financially affect the cellular service provider could accept the discounted cell-phone plan.

What obligations are placed on the giver of a gift?

Sources who offer gifts or other financial benefits to public officials must also be aware of the provisions in ORS Chapter 244. While the specific gift of paid expenses may be allowed by ORS 244.020(7)(b)(F), ORS 244.100(1) requires the source of this gift, if over \$50, to notify the public official in writing of the aggregate value of the paid expenses. There is also a notice requirement in ORS 244.100(2) for the source of an honorarium when the value exceeds \$15. Lobbyists, clients or employers of lobbyists, and others who provide gifts or financial benefits to public officials should also familiarize themselves with the provisions in ORS 171.725 through ORS 171.992 and Divisions 5 and 10 of Chapter 199 in the Oregon Administrative Rules. The Commission has published a “Guide to Lobbying in Oregon” that provides a summary of these regulations and rules.

What gifts may a public official accept regardless of value?

While gifts from a source with a legislative or administrative interest in the decisions or

votes of a public official may only be accepted up to the \$50 limit, there are some gifts that are excluded from the definition of a “gift,” when offered under specific conditions or when prerequisites are met. If the offer of a gift is excluded from the definition of a “gift,” the offer may be accepted by a public official, regardless of value.

The value of gifts that are allowed as exclusions does not have to be included when calculating the aggregate value of gifts received from that source in one calendar year. [ORS 244.020(7)(b)] Although some gifts are allowed by these exclusions, it should be remembered that a source may have a notice requirement or there may be reporting requirements for the public official or the source. If you are a public official accepting gifts or a source offering gifts, it is important that you become familiar with the requirements that may apply to you.

ORS 244.020(7)(b) provides a description of the **GIFTS THAT ARE ALLOWED** as exclusions to the definition of a “gift.” **NOTE:** Not all of these exclusions apply to gifts offered to candidates. These exclusions include:

- Campaign contributions as defined in ORS 260.005. [ORS 244.020(7)(b)(A)]
- Contributions to a legal expense trust fund established under ORS 244.209. [ORS 244.020(7)(b)(G)]
- Gifts from relatives or members of the household of public officials or candidates. [ORS 244.020(7)(b)(B)]
- Anything of economic value received by a public official or candidate, their relatives or members of their household when:

The receiving is part of the usual and customary practice of the person’s business, employment, or volunteer position with any non-profit or for-profit entity; [ORS 244.020(7)(b)(O)(i)] **and**

The receiving bears no relationship to the person’s holding the official position or public office. [ORS 244.020(7)(b)(O)(ii)]

- Unsolicited gifts with a resale value of less than \$25 and in the form of items similar to a token, plaque, trophy and desk or wall mementos. [ORS 244.020(7)(b)(C); OAR199-005-0010]
- Publications, subscriptions or other informational material related to the public official’s duties. [ORS 244.020(7)(b)(D)]
- Waivers or discounts for registration fees or materials related to continuing education or to satisfy a professional licensing requirement for a public official or candidate. [ORS 244.020(7)(b)(J)]

- Entertainment for a public official or candidate and their relatives or members of their households when the entertainment is incidental to the main purpose of the event. [ORS 244.020(7)(b)(M); OAR 199-005-0001; OAR 199-005-0025]
- Entertainment for a public official, a relative of the public official or a member of the public official's household when the public official is acting in an official capacity and representing a government agency for a ceremonial purpose. [ORS 244.020(7)(b)(N); OAR 199-005-0025(2)]
- Cost of admission or food and beverage consumed by the public official, a relative of the public official, a member of the public official's household or staff when they are accompanying the public official, who is representing a government agency, at a reception, meal or meeting held by an organization. [ORS 244.020(7)(b)(E); OAR 199-005-0015; OAR 199-005-0001]
- Food or beverage consumed by a public official or candidate at a reception where the food and beverage is an incidental part of the reception and there was no admission charged. [ORS 244.020(7)(b)(L); OAR 199-005-0001(3)]
- When public officials travel together inside the state to an event bearing a relationship to the office held and the public official appears in an official capacity, a public official may accept the travel related expenses paid by the accompanying public official. [ORS 244.020(7)(b)(K)]
- Payment of reasonable expenses if a public official is scheduled to speak, make a presentation, participate on a panel or represent a government agency at a convention, conference, fact-finding trip or other meeting. The paid expenses for this exception can only be accepted from another government agency, Native American Tribe, an organization to which a public body pays membership dues, or not-for-profit organizations that are tax exempt under 501(c)(3). [ORS 244.020(7)(b)(F); OAR 199-005-0020; OAR 199-005-0001]
- Payment of reasonable food, lodging or travel expenses for a public official, an accompanying relative, member of household, or staff, may be accepted when the public official is representing their government agency at one of the following: [ORS 244.020(7)(b)(H); OAR 199-005-0020; OAR 199-005-0001]
 - Officially sanctioned trade promotion or fact-finding mission; [ORS 244.020(7)(b)(H)(i)] **or**
 - Officially designated negotiation or economic development activity when receipt has been approved in advance. [ORS 244.020(7)(b)(H)(ii)]

[NOTE: Who may officially sanction and officially designate these events, and how to do so, is addressed in OAR 199-005-0020(3)(b).]

- Payment to a public school employee of reasonable expenses for accompanying students on an educational trip. [ORS 244.020(7)(b)(P)]
- Food and beverage when acting in an official capacity in the following circumstances: [ORS 244.020(7)(b)(I)]
 - In association with a financial transaction or business agreement between a government agency and another public body or a private entity, including such actions as a review, approval or execution of documents or closing a borrowing or investment transaction; [ORS 244.020(7)(b)(I)(i)]
 - When the office of the Treasurer is engaged in business related to proposed investment or borrowing; [ORS 244.020(7)(b)(I)(ii)]
 - When the office of the Treasurer is meeting with a governance, advisory or policy making body of an entity in which the Treasurer's office has invested money. [ORS 244.020(7)(b)(I)(iii)]

GIFTS AS AN EXCEPTION TO THE USE OF OFFICE PROHIBITION IN ORS 244.040

As covered in more detail in the discussion beginning on page 17, public officials are prohibited from using or attempting to use the position they hold to obtain a prohibited financial benefit. [ORS 244.040(1)] As covered in more detail in the discussion beginning on page 26, Oregon Government Ethics law does not prohibit public officials from accepting gifts, but it does place on each individual public official the personal responsibility to understand there are circumstances when the aggregate value of gifts may be restricted. [ORS 244.025] These provisions of Oregon Government Ethics law often converge and require analysis by public officials to determine whether the opportunity to obtain financial benefits represents the use of an official position prohibited by ORS 244.040(1) or a gift addressed with other provisions in ORS Chapter 244 [ORS 244.020(7), ORS 244.025 or ORS 244.040(2)(e),(f) and (g)].



ORS 244.040 was amended in 2007 to make the acceptance of gifts that comply with ORS 244.020(7) and ORS 244.025 exceptions to the prohibition on public officials' use or attempted use of an official position to gain financial benefits. [ORS 244.040(2)(e), (f) and (g)] If a public official, relative, or household member accepts a permissible gift or a financial benefit that qualifies as an exception to the definition of a gift, ORS 244.040(1) does **not** prohibit its acceptance. If a public official, relative, or household member accepts a gift that exceeds the restrictions or limitations set forth in ORS 244.025, then that gift would not qualify under the exceptions set forth in ORS 244.040(e), (f) and (g). Acceptance of that gift could constitute a violation of both ORS 244.025 and ORS 244.040(1).

When the Commission applies Oregon Government Ethics law to “something of economic value” offered to a public official that meets the definition of “gift,” it will first be analyzed to determine whether it is a violation of ORS 244.025. If the Commission determines that acceptance of the gift constitutes a violation of ORS 244.025 (unlawful acceptance of a gift), it will then determine if it also constitutes a violation of ORS 244.040(1) (prohibited use of office).

The following are examples to illustrate the Commission’s approach:

- The mayor of a town on the Oregon coast was a college roommate with Bob Smith, who now manages a company that owns many golf courses in Oregon and other states. One of the company’s golf courses is in the mayor’s town. The mayor and

Bob have remained friends ever since college. Recently, Bob invited the mayor to join him at the Masters' Tournament in Augusta, offering to fly him there on Bob's private jet, stay in Bob's condo, and host him at a private booth at the Tournament. The value of this trip exceeds \$50, and Bob has a legislative or administrative interest in the mayor's decisions as a public official, as one of Bob's golf courses is in the mayor's town. Since the value of the trip exceeds \$50, is not extended to others who are not public officials on the same terms and conditions, and is from a source with a legislative or administrative interest, it is a gift that the mayor cannot accept without violating ORS 244.025(1). It also does not qualify as an exception to ORS 244.040(1). [ORS 244.040(2)(e)]. Bob has been inviting his old college friend on this trip for at least 10 years, long before the friend was elected mayor recently. This and other evidence indicates that the mayor received this offer because he and Bob are friends, not because he is the town's mayor; therefore, the offer of this trip does not represent a financial gain that would not be available to the mayor but for his holding his public office. Thus, if the mayor accepted the gift of this trip, the mayor would violate ORS 244.025(1) (acceptance of an unlawful gift), but would not violate ORS 244.040(1) (prohibited use of office).

- A public works director for B City holds weekly breakfast meetings at a local diner. The public works director invites five main contractors in B City, all of whom do business with the city, to attend these meetings. The contractors take turns picking up the tab for the public works director's breakfast. Because the public works director has the authority to recommend the contractors for projects with the city, the contractors have economic interests distinct from that of the general public in the public works directors' decisions or recommendations. Over the course of a calendar year, each contractor pays for at least ten meals for the public works director, at a total aggregate cost exceeding \$50. These meals constitute unlawful gifts to the public works director, as their value exceeds \$50, they are not extended to others who are not public officials on the same terms and conditions, and they are from sources with distinct economic interests in the public works director's decisions or recommendations. The contractors would not pay for these meals if he were not the public works director. Thus, in addition to violating ORS 244.025(1), by accepting these meals the public works director also violates ORS 244.040(1).

The responsibility for judgments and decisions made in order to comply with the various provisions in Oregon Government Ethics law rests with the individual public official who faces the circumstances that require a judgment or decision. That is true of questions regarding gifts, use of an official position, announcing the nature of conflicts of interest and the many situations addressed in ORS Chapter 244.

NEPOTISM



Does Oregon Government Ethics law prevent two or more relatives from being employees of the same public body?

No. Public officials who are relatives can be employed by the same public body employer at the same time, or serve at the same time on the same governing body of a public body.

ORS Chapter 244 does, however, does address the issue of “nepotism.” The definitions of “member of household” and “relative” found in ORS Chapters 244.020(11) and 244.020(16) apply here: See page 7.

What are the provisions that address nepotism?

Public officials are restricted from participating in personnel actions taken by the public agency that would impact the *paid employment* of a relative or member of the public official’s household. If a public official has a relative or household member who has applied to be or serves as an *unpaid volunteer*, the public official may participate in any personnel action that involves the relative or member of the household.

Personnel actions addressed by this statute include:

- Appointing, employing or promoting a relative or member of the public official’s household; or
- Discharging, firing or demoting a relative or member of the public official’s household.

ORS 244.177(1)(a) provides that a public official may not appoint, employ or promote (or discharge, fire or demote) a relative or member of their household from a position with the public body that the public official serves or over which the public official exercises jurisdiction or control, unless the public official complies with the conflict of interest requirements of ORS Chapter 244. Even if the public official discloses a conflict of interest, a public official who takes such a personnel action for a relative or member of their household could still be found in violation of the use of office provisions of ORS 244.040(1).

Separately, ORS 244.177(1)(b) directs that a public official may not participate in any interview, discussion or debate regarding such personnel actions involving a relative or member of the public official’s household.

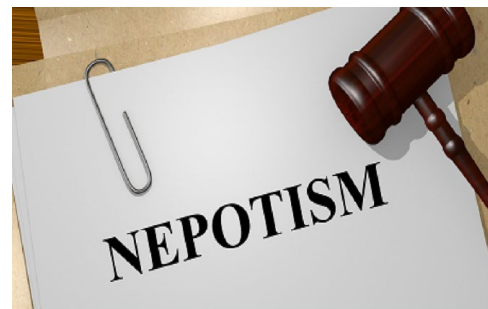
A public official who is assigned duties that include performing “ministerial acts” related

to any stage of a relative's employment is not prohibited from performing such acts. "Ministerial acts" would include mailing or filing forms or correspondence, taking and relaying messages, scheduling appointments or preparing documents and minutes for public meetings. A public official may serve as a reference or provide a recommendation for a relative who has applied for a position of employment, promotion, or is subject to any personnel action.

Exception: Public officials may not, however, participate in appointing a relative or member of the household to an unpaid position on the governing body of the public body that the public official serves or over which the public official exercises jurisdiction or control. [ORS 244.177(3)(a) and (b)]

Can public officials supervise their relatives or members of their households?

Nepotism also applies to supervision of relatives or members of the public official's household. ORS 244.179(1) prohibits public officials from directly supervising relatives or members of their household in paid positions. The public official may supervise an unpaid volunteer serving the public body, unless the volunteer position is as a member of a governing body of the public body. [ORS 244.179(3)]



Policy Exception: ORS 244.179(4) permits a public body to adopt policies that specify when a public official, acting in an official capacity for the public body, may directly supervise a relative or member of the public official's household in a paid position. OAR 199-005-0080 provides guidance to public bodies in developing such policies. Absent such a policy, a public official may not directly supervise a remunerated person who is a relative or member of the public official's household. [ORS 244.179(1)]

Direct supervision of a paid relative or household member includes official actions that would financially impact their relative or household member, such as:

- Conducting performance reviews
- Approving leave or vacation time
- Recommending or approving pay changes
- Assigning shifts
- Approving overtime
- Authorizing or approving reimbursements or travel expenses
- Authorizing worksite assignments or teleworking

Exception: Public officials who are elected members of the Oregon Legislative Assembly are not prohibited from participating in employment actions, including supervision of their relatives or household members on their personal staff [ORS 244.177(2)].

ANNUAL VERIFIED STATEMENT OF ECONOMIC INTEREST



There are approximately 5,500 Oregon public officials who must file an **Annual Verified Statement of Economic Interest (SEI)** with the Oregon Government Ethics Commission **by April 15** of each calendar year. The SEIs are now filed electronically through the Commission's Electronic Filing System (EFS).

ORS 244.050 identifies the public officials who are required to file SEIs. Please refer to that statute to see if your specific office or position requires you to file an SEI. In general, public officials who hold the following positions are required to file:

- State public officials who hold elected or appointed executive, legislative or judicial positions. This includes those who have been appointed to positions on certain boards or commissions.
- In counties, all elected officials, such as commissioners, assessors, surveyors, treasurers and sheriffs must file. Planning commission members and the county's principal administrator must also file.
- In cities, all elected officials, the city manager or principal administrator, municipal judges and planning commission members must file.
- Administrative and financial officers in school districts, education service districts and community college districts must file.
- Some members of the board of directors for certain special districts must file.
- Candidates for some elected public offices are also required to file.

The Commission staff has identified by jurisdiction the public officials whose position requires them to file the SEI. Each jurisdiction (city, county, executive department, board or commission, etc.) has a person (jurisdictional contact) who acts as the Commission's point of contact for that jurisdiction. [OAR 199-020-0005(1)]

The **jurisdictional contact (JC)** for each jurisdiction has an important role as a liaison between the Commission and the SEI filers in their jurisdiction. It is through the JC that the Commission obtains the current name, address and email address of each public official who is required to file. When there is a change in who holds a position through resignation, appointment or election, the JC periodically updates their jurisdictional records and beginning in January of each year the JC is asked to update and verify the required filers in the EFS system. Any necessary changes or updates in EFS are due by February 15. [OAR 199-020-0005(2)]

As with other provisions in Oregon Government Ethics law, it is each public official's personal responsibility to ensure they comply with the requirement to complete and submit the SEI by April 15. Those public officials who must file an SEI are well served if the JC for their jurisdiction ensures that the Commission has the correct name and email address of the public official. The JC should ensure that each SEI filer has been advised of the reporting requirements. Each filer should also receive information as to the procedures the jurisdiction follows to assist the filer in meeting the SEI filing requirement.

Again, the requirement to file the SEI is the personal responsibility of each public official. Each public official should comply and file timely, as the civil penalties for late filing are \$10 for each of the first 14 days after the filing deadline and \$50 for each day thereafter until the aggregate penalty reaches the maximum of \$5,000. [ORS 244.350(4)(c)]

SEI Filing

NOTE: Only public officials who hold a position that is required to file, and who hold that position on April 15 of the year the SEI is due, must file an SEI.

SEIs are filed online through the Commission's Electronic Filing System (EFS). Notifications and instructions for e-filing will be sent to SEI filers electronically via email addresses initially supplied in EFS by the JC and updated when necessary.

The following is a brief description of the information requested in the SEI electronic filing. The information needed to complete the filing pertains to the previous calendar year.

- Name, address and a brief description of each business in which a position as officer or director was held by the filer or household member. [ORS 244.060(1)]

Name, address and a brief description of each business through which the filer or household member did business. [ORS 244.060(2)]

Name, address, and brief **description** of the **sources** (*not amounts*) of income for the filer and household members that represent 10 percent or more of the annual household income. [ORS 244.060(3)]

Example: An SEI filer resides only with a spouse and their annual household income from the prior year is derived from the spouse's job at Walmart, the spouse's retirement, and the public official's salary as an employee at a public university. The respective "sources" would be: "Walmart", "Social Security" and "XX University"; respective "descriptions" would be "spouse's wages", "spouse's retirement" and "filer's salary".

- Ownership interests held by the filer or household members in real property, **except for their principal residence**, located within the geographic boundaries of the jurisdiction in which the filer holds the position or seeks to hold. [ORS 244.060(4)(a) and (b)] **NOTE: SEI filers who serve statewide and members of the Legislative**

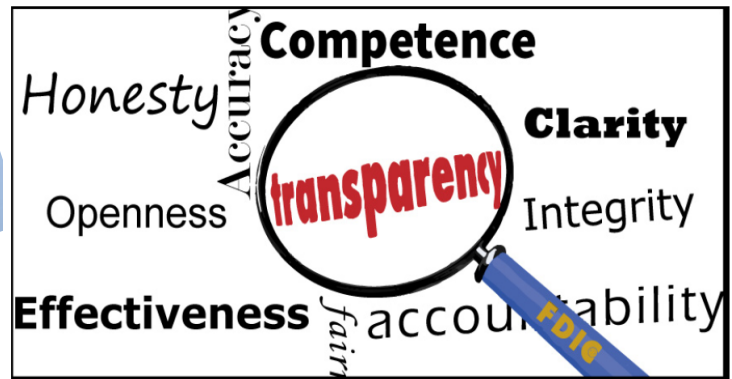
Assembly must report real property held within the entire state of Oregon. This applies to candidates for statewide office and the Legislative Assembly.

- Honoraria or other items allowed by ORS 244.042 that exceed \$15 in value given to the filer or household members. Include a description of the honoraria or item and the date and time of the event when the item was received. [ORS 244.060(7)] Remember that honorarium cannot exceed \$50. [ORS 244.042(3)(a)]
- Name of each lobbyist associated with any business with which the filer or household member is associated, unless the association is through stock held in publicly traded corporations. [ORS 244.090]
- If the public official received over \$50 from an entity when participating in a convention, fact-finding mission, trip, or other meeting as allowed by ORS 244.020(7)(b)(F), list the name and address of the entity that paid the expenses. Include the event date, aggregate expenses paid and the purpose for participation. [ORS 244.060(5) and ORS 244.100(1)] [Not required for candidates]
- If the public official received over \$50 from an entity when participating in a trade promotion, fact-finding mission, negotiations or economic development activities as allowed by ORS 244.020(7)(b)(H), list the name and address of the person that paid the expenses. Include the event date, aggregate expenses paid and nature of the event. [ORS 244.060(6)] [Not required for candidates]
 - **EXCEPTION:** Expenses paid by the public body to their own public officials need not be reported by the public official under ORS 244.060 [OAR 199-005-0035(4)].

The following is required if the information requested relates to an individual or business that has been doing, is doing or could reasonably be expected to do business with the filer's governmental jurisdiction, has a legislative or administrative interest in the filer's governmental jurisdiction, or over which the filer exercises any authority:

- Name, address and description of each source of income (taxable or not) that exceeds \$1,000 for the filer or a household member. [ORS 244.060(8)]
- Name of each person the filer or a household member owes or has owed \$1,000 or more in the previous calendar year. Include the date of the loan and the interest rate. Debts on retail contracts or with regulated financial institutions are excluded. [ORS 244.070(1)]
- Name, address and description of nature of each business in which filer or household member has beneficial interest over \$1,000 or investment held in stocks or securities over \$1,000. Exemptions include mutual funds, blind trusts, deposits in financial institutions, credit union shares and the cash value of life insurance policies. [ORS 244.070(2)]

- Name of each person from whom the filer received a fee of over \$1,000 for services, unless disclosure is prohibited by law or a professional code of ethics. [ORS 244.070(3)]



LEGAL EXPENSE TRUST FUND

The Oregon Government Ethics Commission can authorize a public official to establish a legal expense trust fund to be used to defray expenses incurred for a legal defense in any civil, criminal or other legal proceeding or investigation that relates to or arises from the course and scope of duties of the person as a public official. [ORS 244.205]

The provisions regarding the establishment of this fund are detailed in ORS 244.205 through ORS 244.221. If a public official is considering the need to establish a legal expense trust fund, these provisions should be reviewed. The Commission staff is available to provide guidance on the procedures. The following are some of the significant elements of a legal expense trust fund:

- A public official may only have one trust fund at any one time. [ORS 244.205(4)]
- The application to establish the fund must be submitted to the Commission for review and authorization. ORS 244.209 details what information and documents must accompany the application.
- The public official may act as the public official's fund trustee. [ORS 244.211(2)]
- Once authorized and established, any person may contribute to the fund. [ORS 244.213(1)]
- Contributions from a principal campaign committee are not allowed. [ORS 244.213(3)]
- Funds must be maintained in a single exclusive account [ORS 244.215].
- Quarterly reports of contributions and expenditures from the fund are required. [ORS 244.217]
- The fund may be terminated within six months after the legal proceeding for which the fund was established has been concluded. [ORS 244.219]
- When terminated, remaining funds must be returned to contributors on a pro rata basis. [ORS 244.221(1)]
- If the legal proceeding for which the fund was initiated resulted in any financial award or money judgment in favor of the public official, such moneys shall be distributed in the following order: outstanding legal expenses, to trust fund contributors on a pro rata basis, and to the public official or, if required by the trust agreement, to an organization exempt from taxation under section 501(c)(3) of the IRS Code. [ORS 244.221(2)]

Once established, can the public official solicit funds in order to pay for the cost of a legal defense?

Yes. An exception to the prohibited use of office provision explicitly allows a public official to solicit and accept funds for the official's legal expense trust fund. [ORS 244.040(2)(h)] Also, contributions to a legal expense trust fund are excluded from the definition of a "gift." [ORS 244.020(7)(b)(G)]

OREGON GOVERNMENT ETHICS COMMISSION

The Governor appoints all nine members of the Commission and each appointee is confirmed by the Senate. The commissioners are recommended as follows: [ORS 244.250]

- 2 Recommended by the Senate Democratic leadership
- 2 Recommended by the Senate Republican leadership
- 2 Recommended by the House Democratic leadership
- 2 Recommended by the House Republican leadership
- 1 Recommended by the Governor

The Commission members select a chairperson and vice chairperson annually. No more than three commissioners with the same political party affiliation may be appointed to the Commission to serve at the same time. The commissioners are limited to one four-year term, but if an appointee fills an unfinished term they can be reappointed to a subsequent four year term.

The Commission is administered by an executive director, who is selected by the Commission. Legal counsel is provided by the Oregon Department of Justice. Commission staff provide administration, training, guidance, issue written opinions and advice, and conduct investigations when complaints are filed with the Commission.

Training:

The Commission has designated training as one of its highest priorities. It has two staff positions to provide free training to public officials and lobbyists on the laws and regulations under its jurisdiction. Training is provided through presentations at training events, web-based training, informational links on the website, topical handouts and guidance offered when inquiries are received. Contact the Commission to obtain free training through our website at <https://www.oregon.gov/ogec/training/Pages/default.aspx>



Advice:



Questions regarding the Commission’s laws, regulations and procedures are a welcome daily occurrence. Timely and accurate answers are a primary objective of the staff. All members of the Commission staff are cross-trained in the laws and regulations under the Commission’s jurisdictions. Guidance and information is

provided either informally, over the telephone at 503-378-5105, by e-mail at ogec.mail@oregon.gov, or in the following written formal advice and opinions:

- **Staff Advice:** ORS 244.284 provides for informal staff advice, which may be offered in several forms, such as in person, by telephone, e-mail or letter. In a letter of advice, the proposed, hypothetical or actual facts are restated as presented in

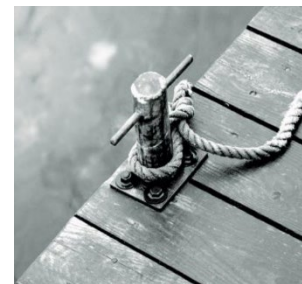
the request, along with the relevant statutes and administrative rules. The advice will discuss how the law applies to the questions asked or raised by the fact circumstances presented in the request.

- **Staff Advisory Opinion:** ORS 244.282 authorizes the executive director to issue a staff advisory opinion upon receipt of a written request. The Commission must respond to any request for a staff advisory opinion within 30 days, unless the executive director extends the deadline by an additional 30 days. The staff advisory opinion is issued in a letter that restates the proposed, hypothetical or actual facts presented in the written request and identifies the relevant statutes and administrative rules. The opinion will discuss how the law applies to the questions asked or raised by the fact circumstances presented in the request.
- **Commission Advisory Opinion:** ORS 244.280 authorizes the Commission to prepare and adopt by vote a Commission Advisory Opinion. Commission advisory opinions are reviewed by legal counsel before being adopted by the Commissioners. The opinion will identify the relevant statutes and administrative rules and will discuss how the law applies to the questions asked or raised by the fact circumstances provided in the request. The Commission must respond to any request for a Commission Advisory Opinion within 60 days, unless the Commission extends the deadline by an additional 60 days.

Public officials who request advice or formal opinions must describe the specific facts and circumstances that provide the basis for questions about how the Oregon Government Ethics law may apply. The facts and circumstances may be hypothetical or actual, but must be prospective, describing a proposed transaction or action, not one that has already occurred. If actual circumstances indicate that a violation may have already occurred, the staff cannot provide advice or an opinion because to do so could compromise the Commission's objectivity if a complaint were to be filed. As described below, whether a public official relied on Commission advice or opinions is relevant to sanctions, in the event a complaint is filed against the public official.

If a person requests, receives or relies on any of the advice or opinions authorized by ORS 244.280 through ORS 244.284, does that person have what is referred to as “safe harbor”?

There is no “safe harbor,” if the term is understood to mean that any person who relies on any advice or opinions offered by the Commission or the staff is protected from being a respondent to a complaint or from being found in violation of laws within the jurisdiction of the Commission.



There is, however, specific and conditional protection for any person who has requested and relied in good faith upon advice or an opinion from the Commission or its staff. The conditions and protection is as follows:

- The fact circumstances described in the request must not misrepresent, misstate or omit material facts.
- Reliance on the advice or opinion means that the action or transactions of the person were those described or suggested in the advice or opinion.
- The protection applies only during the penalty phase, after the Commission has determined that a violation has occurred. If there was reliance on staff advice or a Staff Advisory Opinion, the Commission may consider the reliance during the penalty phase. If reliance was on a Commission Advisory Opinion, the Commission may not impose a penalty.

The specific protections for the different forms of advice are as follows:

Staff Advice: If the Commission makes a finding that a public official violated provisions of law within its jurisdiction, and that public official acted in accordance with staff advice offered under the authority of ORS 244.284, the Commission may consider that information when sanctioning the violation. [ORS 244.284(2)] The Commission is not prevented from finding a violation, but the sanction imposed could be affected.

Staff Advisory Opinion: If the Commission determines that a public official violated provisions of law within its jurisdiction, and the public official acted in accordance with a staff advisory opinion under the authority of ORS 244.282, in sanctioning the violation, the Commission may consider whether the public official committed the violation when acting in reliance on the staff advisory opinion. [ORS 244.282(3)] The Commission is not prevented from finding a violation in these circumstances, but any sanction is limited to issuing a written letter of reprimand, explanation, or education, unless it finds that the person omitted or misstated material facts in the request for a staff advisory opinion.

Commission Advisory Opinion: The Commission may not impose a penalty on a person for any good faith action taken by the person while relying on a Commission Advisory Opinion, unless it is determined that the person who requested the opinion omitted or misstated material facts in the opinion request. [ORS 244.280(3)] For the Commission Advisory Opinion to be a factor in preventing the imposition of a penalty, it is important to understand that the circumstances described in the request must have been an accurate description of what occurred when the respondent committed the violation, and the actions of the respondent must have been those recommended or described in the Commission Advisory Opinion. The Commission is not prevented from finding a violation in these circumstances, but could be prevented from imposing a sanction.

Any person who has not requested advice or an opinion must be cautious when trying to apply advice or opinions offered to others. The advice and opinions given are based on and tailored to the specific fact circumstances presented in a request. Fact circumstances

vary from one situation to another and they vary from one public official to another. If a person reviews an opinion or advice issued to another for circumstances the person believes similar to those now met and relies on that advice, the person must ensure the similarity is sufficient for the application of law to be the same.

It is important to remember that the provisions of law apply to the individual actions of the person or public official. There are events or occasions when more than one public official may be present and participating in their official capacities. Depending on the circumstances and conditions for an event or transaction, the law may have a different application for one public official than for other public officials.

Published advice that the Commission has issued may be found at <https://www.oregon.gov/oqec/public-records/Pages/Advice-and-Opinions.aspx>



Compliance:

The Commission has a program manager who oversees the management and administration of the various reports that are filed with the Commission. There are approximately 1,000 lobbyists who must file or renew their lobbying registrations every two years. These lobbyists, and their clients or employers, must also file lobbying activity expense reports every quarter. Additionally, there are approximately 5,500 public officials who must file the Annual Verified Statement of Economic Interest each April 15. The program manager and Commission staff are available by telephone or e-mail to provide assistance and answer questions about registration and filing requirements and procedures.

Complaint Review Procedures:

Investigations are initiated through a complaint procedure. [ORS 244.260 and ORS 171.778] Any person may file a signed, written complaint alleging that there may have been a violation of Oregon Government Ethics law, Lobbying Regulation or the executive session provisions of Oregon Public Meetings law. The complaint must identify the public official believed to have violated the law, and must state the person's reason for believing that a violation may have occurred and include any evidence that supports that belief. The complaint must identify and be signed by the person filing it. Anonymous complaints are not accepted. The executive director reviews the complaint for jurisdiction and sufficiency. If additional information is needed, the complainant is asked to provide that information.

Complaints are filed online via the “Complaint Form” found on the Commission’s website homepage at <https://www.oregon.gov/ogec/public-records/Pages/Complaints.aspx>. All complaints must be signed, either through an e-signature if submitted through the online complaint system, or an inked signature if filed by paper. NOTE: The name of the complainant is furnished to the subject of a complaint.

If there is reason to believe that a violation of laws within the jurisdiction of the Commission may have been committed, a case will be initiated upon receipt of a complaint. The Commission may also initiate a case on its own complaint by motion and vote. Before approving such a motion, the public official against whom the action may be taken is notified and given an opportunity to appear before the Commission at the meeting when the matter is discussed or acted upon.

When a case is initiated, the public official against whom the allegations are made is referred to as the respondent. The respondent is notified of the complaint and provided with the information received in the complaint and the identity of the complainant. Whether based on a complaint or a motion by the Commission, the initial stage of the case is called the preliminary review phase. The time allowed for this phase is limited to 30 days (135 days for lobby cases) and ends when the executive director finalizes the preliminary review report.

A court may enjoin the Commission from continuing its inquiry during the preliminary review phase. Also, if a complaint is made against a candidate within 61 days of an election, the candidate may make a written request for a delay. [ORS 244.260(4)(a)]

During the preliminary review phase, the Commissioners and staff can make no public comment on the matter other than to acknowledge receipt of the complaint. It is maintained as a confidential matter until the Commission meets in executive session to consider whether to dismiss the complaint or find cause to conduct an investigation. Following the Commission’s consideration of the preliminary review report in executive session, the case file is subject to public disclosure.

If the Commission votes to dismiss the complaint, the matter is concluded and both the respondent and complainant are notified. If cause is found to investigate, then an investigatory phase begins. The investigatory phase is limited to 180 days. The investigatory phase may be suspended during a pending criminal investigation if the Commission determines that its own investigation cannot be adequately completed until the criminal investigation is complete, or if a court enjoins the Commission from investigation.

During the investigatory phase, Commission investigators will solicit information and documents from the complainant, respondent, and other witnesses and sources that are identified. Before the end of the 180 day investigatory period, an investigation report will be prepared. The investigation report is reviewed by the Commission’s legal counsel before being finalized by the executive director. The investigation report is presented to the Commission in the public session portion of its meeting. The Commission will then

consider the results of the investigation and generally will vote to either dismiss the complaint or make a preliminary finding that a violation of law was committed by the respondent. The preliminary finding of a violation is based on what the Commission considers to be a preponderance of evidence sufficient to support such a finding.

If a preliminary finding of violation is made, the respondent will be offered the opportunity to request a contested case hearing. At any time, either during the investigative phase or after a preliminary finding of violation is made, the respondent is encouraged to negotiate a settlement with the executive director, who represents the Commission in such negotiations. Most cases before the Commission are resolved through a negotiated settlement, with the terms of the agreement set forth in a Stipulated Final Order.

The Commission has a variety of sanctions available after making a finding that a violation occurred. Sanctions range from letters of education, reprimand, or explanation, to civil penalties and forfeitures. The maximum civil penalty that can be imposed for each violation of Oregon Government Ethics law is \$5,000, except for violations of ORS 244.045 (regulation of subsequent employment) where the maximum penalty is \$25,000 and for “willful” violations of ORS 244.040 (the “prohibited use of position or office” provision) where the maximum penalty is \$10,000. An additional civil penalty may be assessed equal to twice the financial gain that a respondent realized from a violation. Each violation of the executive session provisions in ORS 192.660 is subject to a maximum fine of \$1,000. Any monetary sanctions paid are deposited into the State of Oregon General Fund.

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Protecting the public's right to know

A QUICK REFERENCE GUIDE TO OREGON'S PUBLIC MEETINGS LAW

For local and state officials, members
of Oregon boards and commissions, citizens,
and non-profit groups

This guide is published as a public service by
Open Oregon: a Freedom of information Coalition
and the Oregon Attorney General's office.



A Time Saving Reference

This guide is brought to you free of charge as a joint project between Open Oregon: A Freedom of Information Coalition and Oregon Attorney General Hardy Myers. Funding for this booklet came from the National Freedom of Information Coalition through a grant from the John S. and James L. Knight Foundation.

How to Use This Guide

This summary is intended as a quick reference to the Oregon Public Meetings Law. The entire law may be found in Oregon Revised Statutes 192.610 to 192.690. Additional information may be obtained by sending an e-mail request to info@open-oregon.com or visiting www.open-oregon.com

For a comprehensive analysis of the law, refer to the latest edition of the Attorney General's Public Records and Meetings Manual, available for a nominal fee by calling (503) 378-2992 or writing to Department of Justice, Administrative Services, 1162 Court Street NE, Salem, Oregon 97301-4096.

What is Open Oregon?

Open Oregon: A Freedom of Information Coalition is a non-profit educational and charitable organization with a single purpose: to assist and educate the general public, students, educators, public officials, media and legal professional to understand and exercise:

- Their rights to open government.
- Their rights and responsibilities under the Oregon public meetings and records laws.
- Their rights under the federal Freedom of Information Act.

Open Oregon is a 501(c)(3) non-profit corporation.

The Spirit of Oregon's Public Meetings Law

The Value of Openness

Understanding the letter of the Public Meetings Law is critical. Equally important is understanding and committing to the spirit of that law. Public bodies should approach the law with openness in mind. Open meetings help citizens understand decisions and build trust in government. It is better to comply with the spirit of the law and keep deliberations open.

“Government accountability depends on an open and accessible process.”

•

Hardy Myers

Oregon Attorney General

“Public bodies must conduct business in public - it’s really that simple.”

•

Bill Bradbury

Oregon Secretary of State
Honorary Co-Chair, Open Oregon

“Oregon needs to protect its tradition of openness.”

•

Dave Frohnmayer

President, University of Oregon
Honorary Co-Chair, Open Oregon

Oregon's Public Meetings Law

“Open government” or “sunshine” laws originally were enacted nationwide in the early 1970s because of growing public unhappiness with government secrecy. As a result, every state and the District of Columbia enacted laws requiring government to conduct its business openly, rather than behind closed doors.

Open government laws benefit both government and the public. Citizens gain by having access to the process of deliberation - enabling them to view their government at work and to influence its deliberations. Government officials gain credibility by permitting citizens to observe their information-gathering and decision-making processes. Such understanding leads to greater trust in government by its citizens. Conversely, officials who attempt to keep their deliberations hidden from public scrutiny create cynicism, erode public trust and discourage involvement.

Policy

Oregon's Public Meetings Law was enacted in 1973 to make sure that all meetings of governing bodies covered by the law are open to the public. This includes meetings called just to gather information for subsequent decisions or recommendations.

The law also requires that the public be given notice of the time and place of meetings and that meetings be accessible to everyone, including persons with disabilities.

The Public Meetings Law guarantees the public the right to view government meetings, but not necessarily to speak at them. Governing bodies set their own rules for citizen participation and public comment.

Who is covered?

Because questions often arise about what groups must comply with the public-meetings law, it is useful to look at the definitions in the law. The law says that any “governing body” of a “public body” is required to comply. It offers these definitions:

- A **“public body”** is any state, regional, or local governmental board, department, commission, council, bureau, committee, subcommittee, or advisory group created by the state constitution, statute, administrative rule, order, intergovernmental agreement, bylaw or other official act.
- A **“governing body”** is two or more members of a public body who have the authority to make decisions for or recommendations to a public body on policy or administration. A group without power of decision is a governing body when authorized to make recommendations to a public body, but not when the recommendations go to individual public officials.

Example

- *A school board must meet in public.*
- *So must most advisory committees that the school board creates, such as a budget committee.*
- *But if the school board chair asks several business leaders to meet with him to discuss future building needs, that meeting may be held in private.*

Private bodies, such as non-profit corporations, do not have to comply with the public-meetings law, even if they receive public funds, contract with governmental bodies or perform public services.

Example

- *A school district contracts with Regence BlueCross BlueShield of Oregon to provide health insurance for district employees. The BlueCross BlueShield board of directors is not required to meet in public.*

Public agencies contracting with private bodies may require a private body to comply with the law for pertinent meetings. Federal agencies are not subject to Oregon's Public Meetings Law.

What is a Public Meeting?

A public meeting is the convening of any governing body for which a quorum is required to make or deliberate toward a decision on any matter, or to gather information. Decisions must be made in public, and secret ballots are prohibited. Quorum requirements may vary among governing bodies.

Example

- *A county commission's goal-setting retreat is a public meeting if a quorum is present and they discuss official business.*
- *A training session for the commissioners is not a public meeting, unless a quorum is present and the commissioners discuss official business.*
- *A staff meeting absent a quorum of commissioners, whether called by a single commissioner or a non-elected official, is not a public meeting.*

Meetings accomplished by telephone conference calls or other electronic means are public meetings. The governing body must provide public notice, as well as a location where the public may listen to or observe the meeting.

Governing bodies must hold their meetings within the geographic boundaries of their jurisdiction. However, a governing body may meet elsewhere if there is an actual emergency requiring immediate action or to hold a training session, when no deliberation toward a decision is involved.

Example

- *A library board is free to rotate meetings at different libraries in its district, but it may not meet outside its district.*

Federal and state law requires that meetings be held in places accessible to individuals with mobility and other impairments.

What is Exempt from the Law?

On-site inspections, staff meetings and gatherings of associations to which a public body or its members belong are not considered public meetings. Chance social gatherings are not considered meetings as long as no official business is discussed.

Example

- *Three out of five city councilors inspect a new landfill site. Their inspection does not constitute a public meeting, unless they deliberate toward a decision on a city matter.*
- *Later, the three city councilors attend a League of Oregon Cities conference. Again, this is not a public meeting, unless the councilors discuss official city business.*
- *That evening, the three councilors chat during a concert intermission. As long as they talk about the music, this is not a public meeting. But if they stray into discussion of official city business, then it is.*

Also exempt from the Public Meetings Law are:

- Meetings of state or local lawyers assistance committees.
- Meetings of medical peer review committees.
- Meetings of multidisciplinary teams reviewing child abuse and neglect fatalities.
- Judicial proceedings. However, see Oregon Constitution, Section 10.
- Review by the Workers' Compensation Board and the Employment Appeals Board of hearings on contested cases.
- Meetings of the Energy Facility Siting Council when it reviews and approves security programs.
- The Oregon Health and Science University regarding presidential selection process, sensitive business matters, or meetings of faculty or staff committees.
- Mediation by the agricultural mediation service program.

For some entities, the deliberation process alone is exempt, although information-gathering and decision-making must be public. This applies to the State Board of Parole, the Psychiatric Security Review Board, and state agencies conducting hearings on contested cases under the Administrative Procedures Act.

Notice of Meetings

Governing bodies must give notice of the time, place and agenda for any regular, special or emergency meeting.

Public notice must be reasonably calculated to give actual notice to interested persons and media who have asked in writing to be notified of meetings and general notice to the public at large.

Governing bodies wishing to provide adequate notice should strive to provide as much notice as possible to ensure that those wishing to attend have ample opportunity – a week to 10 days for example.

At least 24-hour notice to members of the governing body, the public and media is required for any special meeting, unless the meeting is considered an emergency meeting. Appropriate notice is required for emergency meetings and should include phone calls to media and other interested parties. Notice for emergency meetings must also cite the emergency.

A meeting notice must include a list of the principal subjects to be considered at the meeting. This list should be specific enough to permit citizens to recognize matters of interest. However, discussion of subjects not on the agenda is allowed at the meeting.

Example

The State Board of Higher Education plans to discuss building new college campus in Burns. An agenda item that says "Discussion of public works" would be too general. Instead, the agenda should say something like "Discussion of proposed Burns campus."

Executive Sessions

Governing bodies are allowed to exclude the public - but generally not the media - from the discussion of certain subjects. These meetings are called executive sessions.

Executive sessions may be called during any regular, special or emergency meeting. A governing body may set a meeting solely to hold an executive session as long as it gives appropriate public notice. Notice requirements for executive sessions are the same as for regular, special or emergency meetings. However, labor negotiations conducted in executive sessions are not subject to public notice requirements.

Notice of an executive session must cite the specific law that authorizes the executive session. This authorization also must be announced before going into the executive session.

Governing bodies may formally specify that the media not disclose information that is the subject of the executive session. Governing bodies should not discuss topics apart from those legally justifying the executive session. Media representatives may report discussions that stray from legitimate executive session topics and are not required to inform the governing body when they intend to do so.

No final action may be taken in executive session. Decisions must be made in public session. If a governing body expects to meet publicly to make a final decision immediately after an executive session, it should try to announce the time of that open session to the public before the executive session begins.

Example

• City councilors meet in executive session to discuss the city manager's performance. A local reporter attends. During the meeting, the councilors discuss whether the city should put a bond measure on the next ballot. The reporter may write a story on the council's bond-measure discussion, because that discussion was not allowed under the executive session rules. The reporter may not write about the city manager's performance.

Executive Sessions Criteria

Executive sessions are allowed only for very limited purposes. Those include:

- 1. To consider the initial employment of a public officer**, employee or staff member, but not to fill a vacancy in an elected office, or on public committees, commissions or advisory groups. These sessions are allowed only if the position has been advertised, standardized procedures for hiring have been publicly adopted, and the public has had an opportunity for input on the process. Executive sessions are not allowed to consider general employment policies.
- 2. To consider dismissal**, discipline, complaints or charges against a public official, employee, official, staff or individual agent, unless that person requests a public hearing.
- 3. To review and evaluate the job performance** of a chief executive officer, or other officer or staff member, unless that person requests an open hearing. Such evaluation must be pursuant to standards, criteria and policy directives publicly adopted by the governing body following an opportunity for public comment. The executive session may not be used for the general evaluation of agency goals, objectives, programs or operations, or to issue any directive to personnel on the same.
- 4. To deliberate with persons designated to conduct labor negotiations.** The media may be excluded from these sessions.
- 5. To conduct labor negotiations** if both sides request that negotiations be in executive session. Public notice is not required for such meetings.
- 6. To consider records** that are exempt by law from public disclosure.
- 7. To consult with counsel** concerning litigation filed or likely to be filed against the public body. Members of the media that are a party to that litigation, or represent a media entity that is a party, may be excluded.
- 8. To consult with persons designated to negotiate** real property transactions.

9. To discuss matters of trade when the governing body is in competition with other states or nations.

10. To negotiate with a private person or business regarding public investments.

11. To discuss matters of medical competency and other matters pertaining to licensed hospitals.

12. To consider information obtained by a health professional regulatory board or State Landscape Architect Board as part of an investigation of licensee or applicant conduct.

13. To discuss information relating to the security of: a nuclear power plant; transportation of radioactive materials; generation, storage or conveyance of electricity, gas hazardous substances, petroleum, sewage or water; and telecommunications and data transmission.

Media at Executive Sessions

Media representatives must be allowed to attend executive sessions, with three exceptions. Media may be excluded from:

- Strategy discussions with labor negotiators.
- Meetings to consider expulsion of a student or to discuss students' confidential medical records.
- Meetings to consult with counsel concerning litigation to which the media or media representative is a party.

A governing body may require that specific information not be reported by the media. This should be done by declaration of the presiding officer or vote. In the absence of this directive, the executive session may be reported. Any discussion of topics apart from those legally justifying the executive session may be reported by the media.

The media also is free to report on information gathered independently from executive session, even though the information may be the subject of an executive session.

Example

• A reporter attends the executive session on the city council's discussion of the city manager's performance. Afterwards the reporter asks a councilor what she thinks of the city manager's performance. She shares her criticism. The reporter may use that interview to develop a story, even though the reporter first heard the information at the executive session.

Minutes

Written, sound, video or digital recording of minutes are required for all meetings.

The meetings law says minutes must be made available within a "reasonable time" after each meeting, but does not specify the time. Generally, this time frame should not exceed three weeks. Minutes must be preserved for a "reasonable time." This is generally interpreted to be at least one year. Minutes of many governing bodies are subject to records retention rules and schedules established by the State Archivist.

Minutes must indicate:

- Members present
- All motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition.
- The result of all votes by name of each member (except for public bodies consisting of more than 25 members). No secret ballots are allowed.
- The substance of discussion on any matter.
- A reference to any document discussed at the meeting.

Minutes are not required to be a verbatim transcript and the meeting does not have to be tape recorded unless so specified by law. Minutes are public record and may not be withheld from

the public merely because they will not be approved until the next meeting. Minutes of executive sessions are exempt from disclosure under the Oregon Public Records Law. Governing bodies are allowed to charge fees to recover their actual cost for duplicating minutes, tapes and records. A person with a disability may not be charged additional costs for providing records in larger print.

Enforcement

County district attorneys or the Oregon Attorney General's Office may be able to answer questions about possible public meetings law violations, although neither has any formal enforcement role and both are statutorily prohibited from providing legal advice to private citizens.

Any person affected by a governing body's decision may file a lawsuit in circuit court to require compliance with or prevent violations of the Public Meetings Law. The lawsuit must be filed within 60 days following the date the decision becomes public record.

The court may void a governing body's decision if the governing body intentionally or willfully violated the Public Meetings Law, even if the governing body has reinstated the decision in a public vote. The court also may award reasonable legal fees to a plaintiff who brings suit under the Public Meetings Law.

Complaints of executive session violations may be directed to the Oregon Government Ethics Commission, 3218 Pringle Road SE, Suite 220, Salem OR, 97302-1544; 503-378-5105, for review, investigation and possible imposition of civil penalties.

Members of a governing body may be liable for attorney and court costs both as individuals or as members of a group if found in willful violation of the Public Meetings Law.

For additional copies of this guide or information about Open Oregon, contact:

Open Oregon: A Freedom of information Coalition
PO Box 172, Portland, Oregon 97207-0172
info@open-oregon.com
www.open-oregon.com

Additional resources:

- **Oregon Attorney General's Public Records and Meetings Manual**, available by calling 503-378-2992 or writing to Department of Justice, 1162 Court Street NE, Salem, OR 97301-4096; www.doj.state.or.us/oregonians/pubs.shtml
- **Oregon Revised Statutes 192.610 to 162.690**, the Oregon Public Meetings Law, available in most libraries and on the internet at www.leg.state.or.us.
- **Oregon Newspaper Publishers Association**, 503-624-6397. Offers legal advice to member newspapers and general information about public records and meetings requirements; www.orenews.com
- **League of Oregon Cities**, 1201 Court St. NE, Salem, OR 97301. 503-588-6550; www.orcities.org
- **Association of Oregon Counties**, 1201 Court St. NE, Salem, OR 97301. 503-585-8351; www.aocweb.org
- **Oregon School Boards Association**, 1201 Court St. NE, Salem, OR 97301. 503-588-2800; www.osba.org
- **Special Districts Association of Oregon**, PO Box 12613, Salem, OR 97301-0613, 503-371-8667; www.sdao.com

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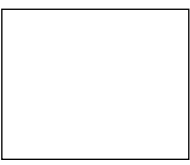
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Protecting the public's right to know

Protecting the public's right to know

A QUICK REFERENCE GUIDE TO OREGON'S PUBLIC RECORDS LAW

For elected and appointed local and state public officials, members of Oregon boards and commissions, citizens, and nonprofit groups

The guide is published as a public service by Open Oregon: a Freedom of Information Coalition in collaboration with the Oregon Attorney General's office.



“Every person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided...”

• Oregon Public Records Law

How to Use this Guide

This publication is a quick step-by-step guide to the Oregon Public Records Law for those seeking information from government as well as for those keeping the records. It is divided into 12 sections, and includes TIPS and EXAMPLES on accessing public records.

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The entire law may be found in Oregon Revised Statutes 192.410 to 192.505. Additional information may be obtained by sending an e-mail request to info@open-oregon.com or contacting Open Oregon, PO Box 172, Portland, Oregon 97207. For the Legislative Counsel text of the law as of the 2005 legislative session, go to www.open-oregon.com.

For a comprehensive analysis of the law, refer to the latest edition of the **Attorney General's Public Records and Meetings Manual**. The manual is reviewed and updated for consistency after each legislative session. Each new edition also incorporates appellate court decisions and Attorney General opinions interpreting the public records law. For information about purchasing the manual, go to www.doj.state.or.us/oregonians/pubs.shtml or call 503-378-2992, ext. 325, or write to Department of Justice, 1162 Court St. NE, Salem, OR 97301-4096.

THE SPIRIT OF OREGON'S PUBLIC RECORDS LAW

The state of Oregon has a policy of openness. The most important advocate for open government is the public itself. The news media often acts on the public's behalf in seeking public records to inform citizens about the work done in their name. Individual citizens also perform this watchdog function using the public records law to inform themselves about how well the government is functioning.

"Open records laws that are effective and well-understood are a fundamental component of democracy. Oregon's law ensures that public agencies conduct affairs in a transparent and accountable manner and provide that citizens have access to public processes."

• **Hardy Myers**
Oregon Attorney General

"Government can only serve the people when citizens have the tools they need to witness it in action. Public records give every American those crucial tools."

• **Bill Bradbury**
Oregon Secretary of State
Honorary Co-Chair, Open Oregon

"Public access to public records is an essential component for effective governance in a democracy. The Oregon Public Records Law enhances good government and serves the interests of the people of Oregon."

• **Dave Frohnmayer**
President, University of Oregon
Honorary Co-Chair, Open Oregon

1. OREGON'S PUBLIC RECORDS LAW

Oregon's public records law - ORS 192.410 to 192.505 - attempts to balance the need for efficient government with the public's need to know how government operates.

In 1973, Oregon joined many other states across the country in enacting the Public Records and Public Meetings Laws. At the time the Public Records law was passed, Oregon's law was one of the most sweeping in the nation. In the decades since, however, lawmakers have steadily added exemptions allowing more information to be kept from the public. While personal privacy was always protected by the law, recent heightened concerns about privacy, public safety and homeland security have caused agencies to further limit release of information. Ultimately, the law is intended to open government activities, not citizens' private lives, to the public.

The law makes an important distinction between elected officials and public bodies. The law applies to each similarly but two differences are noteworthy:

- The law imposes a seven-day deadline for elected officials to respond to a records request. Public bodies do not have a specific deadline; they simply must respond as soon as practicable and without unreasonable delay.
- The law provides for no administrative appeal of an elected official's denial; the requestor must file a lawsuit in court to pursue the denied records. Denials by non-elected public-body officials may be appealed to either the county district attorney or the state attorney general, depending on whether the agency is a state agency or a local agency; this appeal must precede the filing of a lawsuit.

TIP: Don't call it FOIA

The state public records law is similar to the federal Freedom of Information Act in some ways, but they are separate laws with different provisions. For information about seeking records from the federal government, go to the Reporters Committee for Freedom of the Press: <http://www.rcfp.org/foi.html>

2. POLICY

On its face, Oregon's public records law sounds simple. It applies to all government records and writings. The law favors disclosure as the rule, and agencies have the burden of proving an exemption allows them to withhold information.

In practice, though, the law is more complex. The attorney general's office, 36 county district attorneys and Oregon's courts all have a role in interpreting the application of the law.

3. WHO IS SUBJECT TO THE LAW

The law applies to any "public body," and it defines that term broadly: every state officer, agency, department, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission, council or agency thereof; and any other public agency of the state. Schools, police and fire departments, county and state agencies, cities: all are subject to the public records law.

The public records law does not apply to private entities such as nonprofit corporations. Even some organizations that sound public or conduct some public functions are not public bodies. Oregon Public Broadcasting and the Oregon School Activities Association, for example, are not public bodies, according to the Attorney General's office.

In 1994, however, the Oregon Supreme Court ruled that the law applies to an entity that is judged the "functional equivalent" of a public body.

Ruling on private bodies

- Was the entity created by government or independently?
- Is the entity's functions traditionally performed by government?

- Does it have authority to make binding decisions or only recommendations?
- How much financial and non-financial support does it receive from government?
- Does the government employ the entity's officers and employees?
- What is the scope of governmental control over the entity.

TIPS for seekers of public records:

- Invest time in learning about the agency and the records it creates or maintains and routinely releases to the public. If you are seeking fire department records, find out what reports are generated after a house fire or a hazardous materials incident. That helps you later when you need to know what record to request. It helps the agency to know the specific document title because that's the easiest and most efficient process for the agency.
- All public bodies are required to follow state-approved schedules defining categories of records and how long they are to be maintained. These Records Retention Schedules act as an index to government records. Unless you specifically know the name of the record you are seeking, first contact the agency's Records Management program or officer. If the agency does not have a program, you may find additional information on the Oregon State Archives' Records Management website:
<http://arcweb.sos.state.or.us/banners/recmgmt.htm>.
- Work the chain of command: Overworked public employees may deny release of a record that is indeed public. They might be uncertain, wrong or just busy. Refer the request to a supervisor in the agency who might be more knowledgeable or have more authority. Do this in a courteous and non-confrontational way.
- Ask whether the agency employs a public affairs or public information official. That person typically is well-versed in the requirements of the records law and often is the person who responds to records requests.

- If the agency does not employ a public information specialist, ask the public employee to seek legal advice on the issue of releasing records. Often a quick phone call to the county counsel or the local district attorney clears up the matter.

4. HOW IT WORKS

Requests - by regular citizens, reporters, attorneys or investigators - can be made in person, by letter, e-mail or phone. Most agencies prefer that initial requests be made informally to discuss the specific needs of the seeker. Media members, for example, often begin with a phone call and, if requested by the custodian, will follow up with a more detailed written request.

5. SEEKERS VS. KEEPERS

While most public records are readily provided to those requesting them, contentiousness can arise between those seeking records and the custodians of public body records.

Because disclosure is the spirit of the law and most records are available for public disclosure, regular seekers of records often simply assume that the records they seek exist and are accessible. Conflicts can occur when record keepers are unaccustomed to requests or don't realize that their only concern should be whether the law exempts a record from disclosure.

Example

When responding to a public records request, custodians should:

- Make sure that any claim that the records are exempt from disclosure is supported by the law.
- Make sure that processing fees are reasonable.

- Make sure that the seeker's reason for wanting the record doesn't inappropriately influence the response.

While a seeker's approach should not technically influence whether or not a custodian will release a record, the projection of a professional, courteous and flexible demeanor can go a long way in enlisting the record holder's cooperation.

Custodians say that most records seekers who work with them daily wisely try to build a level of trust with record keepers.

Example | Tips for those requesting records include

- Familiarization with the department to which the request is made. If you are uncertain which department is responsible for the records, ask.
- Patience, since many offices handle dozens of requests each day. Most requests are handled by workers in addition to their normal responsibilities.
- Avoid using offensive language and don't threaten the staff with lawsuits.
- Be clear with a request, which helps speed the information-gathering process. A written request could help with clarity.
- Don't stiff the record keeper, i.e. request a record, agree to the cost and then not follow through.
- A seeker does not need to provide a reason for wanting the records; however, it is often helpful to explain why disclosure of the record is in the public interest so that the proper information can be obtained.

TIP: Make sure to follow through

- If you requested records, be prompt at picking them up and paying for them.
- If, for some reason, you cannot get them right away, let the custodian know you still plan to pick them up.
- If you plan to make future requests, ask the custodian of the records if there is anything you can do to make filling the next request easier.

6. CITE THE LAW

A request in writing should: **1.** indicate that the request for records is allowable under the Oregon Public Records Law; **2.** be as specific as possible about the record sought, with record title and date if possible; **3.** include a request that the agency cite any exemption it relies on in its response; and **4.** include a provision that fees over a specified amount (say \$10 or \$50, depending on the scope of the request) should be discussed in advance. See the “Automated Form Letters” at www.open-oregon.com.

Example | Tips for a request

- Type of document sought, being as specific as possible about the subject matter.
- Specific date ranges of the document.
- Other information that can narrow the search, such as dates and names.
- Ask the custodian whether the record is kept in paper or electronic form.
- To keep costs at a minimum, especially for voluminous requests, ask first to inspect a file, then ask for copies of relevant pages. (Note: the agency could charge for staff time, so this may end up not being less expensive.)

If a seeker is uncertain of the title or exact nature of a specific document, a good approach is to tell the custodian what you are trying to learn and enlist his or her help in seeing if that information can be retrieved through public records.

TIP: Don't be adversarial

- Start with a phone call or a visit to ask about the availability of the records you are seeking. You might want to, or be asked to, put your request in writing, but a conversation in advance can clear up many issues. Some questions to ask: How hard is it to make the record available? How much time does the agency estimate it will need?

Is the agency even the custodian for the record at issue? What is the proper name for the record you are seeking?

- Keep in mind that records requests can add to busy government employees' regular duties. That's not to say they are not required by law to respond, but it is worth remembering that if you can make the task easier you might get the records more quickly.
- If you believe you ultimately will be in an adversarial position with the agency, start with a written request.
- Ask the agency to cite in writing any exemption it is relying on for withholding the information.

The law does not give a deadline for agencies to respond. Instead, it says the public body shall respond as soon as practicable and without unreasonable delay. The timing may depend, for example, on the size and scope of the request, how accessible the records are and whether legal review is necessary.

7. WHAT IS EXEMPT FROM DISCLOSURE UNDER THE LAW

The guiding principle of the records law is that every public record is subject to disclosure unless it is specifically exempted. However, most exemptions do not prohibit disclosure; they merely exempt the public body from the law's mandate to disclose public records.

Custodians presented with a records request should first ask themselves whether disclosure is prohibited by certain sections of the public records law or by another state or federal law.

If not, then ask whether the record is subject to a conditional exemption. Many exemptions are conditional in nature and disclosure is favored.

Examples

- Police might withhold investigatory information compiled for criminal law purposes if untimely release would compromise a specific investigation.
- Public bodies might withhold records generated by the threat of – or filing of – litigation if release would give a plaintiff an advantage in that litigation. Records qualifying for this exemption must be records developed for the litigation rather than records from ordinary public body business.
- Public bodies might withhold information regarding their real estate transactions if release might give the other party an advantage in negotiations.
- While the intent of the records law is to create a transparent government, it is mindful of personal privacy.

Technically, no such balancing is required for “unconditional” exemptions because the Legislature already has struck the balance of these competing interests and has concluded that confidentiality interests outweigh public disclosure interests as a matter of law. These include public employee addresses, Social Security numbers, birth dates and telephone numbers, as well as personal privacy information that would “constitute an unreasonable invasion of privacy.”

While the section of the law on “unconditional” exemptions does not specifically contain the “public interest” stipulation, some specific exemptions do contain language of condition. One of those exceptions, for example, involves the internal advisory communications exemption, which protects the confidentiality of advice and observations a public employee gives to a superior or associate.

However, the public body must show that the public interest in encouraging frank communication between its officials and employees clearly outweighs the public interest in disclosure.

8. PUBLIC INTEREST VS. CONFIDENTIALITY

The phrase “public interest in disclosure” is not defined in the records law. The Oregon Court of Appeals has stated, however, that the law “expresses the Legislature’s view that members of the public are entitled to information that will facilitate their understanding of how public business is conducted.” Similarly, the court has characterized the public interest in disclosure as “the right of citizens to monitor what elected and appointed officials are doing on the job.”

Federal courts have ruled that seekers must identify the public interest in disclosure with “reasonable specificity” whether they are simply seeking records or waivers of fees. Relevant specific factors include the seeker’s identity and purpose, the character of the information, whether the information is already in the public domain, and how able the seeker is to disseminate the information to the public.

For that reason, even though the identity and motive of anyone requesting a public record are considered irrelevant and are not required by law, the fact a news reporter is requesting it can weigh in favor of release.

The seeker’s motive (government accountability, say) and ability to spread the word (quickly and widely) often become deciding factors on whether a conditional exemption or disclosure shall rule.

Example

- Community concern can equal public interest. In one case, a district attorney ordered police shooting reports released because “(t)his matter has been one of great community concern ... (and) (f)ull disclosure can only prompt a more intelligent and informed public debate on the issues involved.”
- Public interest can mean furthering the public’s watchdog role and citizens’ interest in transparency. When a secret agreement

between an Oregon port and private companies was ordered released, the public interest was described this way: "It is inappropriate for a public body ... to participate with certain private enterprises in an investigation and evaluation of the pollution of the public waterways under circumstances hidden from public view. The public interest is not served by such secret agreements."

- There is more public interest in records involving top officials and - in general - when public safety, financial oversight or a pattern of problems is involved. A district attorney ordered a city agency to release its investigative findings in the public interest because "we are dealing with a high ranking public employee responsible for the expenditure of the public's money."

TIP: Keep lines of communication open

- If the request is routine, include in your written request a deadline. You can say that if you do not receive the records or a response by 5 p.m. on a specified date, you will consider the lack of response a denial for purposes of appeal, even though that determination is not binding. However, make sure your deadline affords the agency a reasonable time to respond.

- If you are not sure which record will be of the most use to you, narrow your request. Once you have reviewed one record, you can decide whether it is helpful. You can then go back and ask for the same records for a longer time period, for example. Additionally, you can ask the records custodian for advice about the types of records most applicable to your request.

- If an agency refuses to release a record, ask for more information about what - generally - the record contains. If all of the record is public, except for one section that includes someone's Social Security number - that discussion may help the agency worker realize he or she needs to redact the exempt section and release the rest of the record.

- If the agency balks at releasing records, ask it to briefly describe the records it has and which exemption it thinks applies to each record.

9. HOW RECORDS ARE MADE AVAILABLE

The “custodian” of the public record is the public body or person mandated to create, maintain, care for or control the records. The custodian is required to provide “proper and reasonable opportunities for inspection and examination” of such records. In short, custodians, or record holders, are directed to take “reasonable” steps to accommodate members of the public while they inspect records. That often includes copying of records, but custodians are not required to “create” a record for a seeker.

Custodians are required to adopt “reasonable” rules necessary to protect their records. For example, people requesting information don’t have the right to rummage at will through file cabinets, file folders or electronic files. The inspection of original documents that are not exempt from disclosure is ordinarily allowed if requested, but administrative measures may be adopted to supervise review of such documents.

10. HELPFUL HINTS FOR CUSTODIANS

- Designate one person to coordinate responses to requests.
- Make sure to listen to the seeker’s request. Not all requests for information need to be directed to the agency’s law office or risk management.
- If your agency is not responsible for the records, attempt to find the proper agency. Most records requests are made by people who are not familiar with government and they may be intimidated or not fully understand the bureaucracy. The more times a person is bounced from office to office, the more likely the situation will become adversarial.
- Clarify whether the seeker merely wants to inspect the records or actually wants copies.

- Seek clarification if a request is ambiguous, overly broad or misdirected.
- Estimate the time and expense required to respond.
- Consider whether any exemptions apply; if so, whether the public body wants to disclose the record despite an exemption.
- If you believe a record is exempt, discuss the request with a supervisor or anyone who may have more experience with such requests.
- Release of records may be delayed to consult with legal counsel about exemptions.
- When denying a request, cite the specific exemption(s) on which you rely.
- If no exemptions apply, coordinate release of the records in a timely manner.

11. FEES

Under the law, a public body may require a person to pay for the expense required to release public records. Fees are calculated to reimburse the agency for its “actual cost” in summarizing, compiling or tailoring a record to meet the person’s request - and no more. Charges may include time spent locating the records, reviewing in order to redact exempt material, supervision, attorney time, and copying and sending records.

Seekers who regularly request public records, such as media representatives, are often granted fee waivers or reductions. They ensure a fee is established before the work begins, and many will ask for a fee waiver if, in their opinion, the release of specific records is in the public’s interest.

Example

- A neighborhood association president seeking records concerning military aviation safety at an airbase near the neighborhood – to be disseminated to the general public – may satisfy the public interest standard for a waiver if it is demonstrated that fee requirements inhibit the neighborhood’s ability to obtain the government records in question. (Note: a more common reason to waive or reduce the cost is in instances in which it would cost more to calculate the fee than simply provide the requested record.)

Fee waivers are up to the agency, which can charge only a “reasonable amount.” The public body is directed to weigh the public interest issue when deciding on a waiver or reduction.

Agencies, however, are not required to grant a complete fee waiver, even if the public interest test is met. A seeker dissatisfied with a denial of either a waiver or a reduction may petition the attorney general or district attorney in the same manner as a person appeals when inspection of a public record is rejected.

TIP: Go narrow first

- To keep fees low, ask for just one document, review it and tailor your broader request.
- Ask to inspect the documents, rather than asking for copies. (Note: this could still cost the requestor in staff time.)
- Agencies should use lower-wage workers when possible, rather than top managers, to keep down the hourly cost of staff time assessed to seekers.

12. HOW TO APPEAL A DENIAL

If the initial request for a record is denied, the custodian should be prepared to give a written explanation for the refusal. It is suggested that upon first denial of access by a subordinate agency employee, the requestor should seek a decision at a higher agency level. In some cases there is a

negotiation that allows the release of portions of a record while protecting the privacy of those involved.

Make sure you have a written record of your original request and the denial. These documents will help with your appeal.

The offices of the state attorney general or local district attorney become involved when a record keeper has denied a citizen access to records or if the custodian has exceeded the "reasonable" amount of time responding to the request.

Once a public body denies a request, the seeker can file a public records petition with either the local district attorney or the state attorney general. See the "Automated Form Letters" at www.open-oregon.com.

▶ Example

The appeal should include:

- The name of the agency from which the records were requested and denied;
- Name of the custodian of the record and how to contact him or her;
- A copy of the denied request;
- A statement that the request was denied, and, if known, who denied it and when;
- The written response from the public agency, if available;
- Other information that clarifies the seeker's argument that the record should be disclosed.

Since the records law is one of disclosure and many of the exemptions are voluntary, the attorney general or district attorney may simply recommend that the public body in question release the records - even if they could be covered by an exemption. (Note: the attorney general or district attorney applies the law. Whether to choose to assert a

discretionary exemption that covers a requested record is for the agency to decide.)

If the agency refuses to disclose voluntarily, a petition for a public records order can be submitted to the attorney general for state agencies or district attorney for local public bodies. An order is issued within seven working days – to either deny the appeal or issue an order that the record be disclosed.

If a petition is denied, the requestor may still file a lawsuit in circuit court to try to force disclosure.

If a petition is granted, the public body has seven business days to decide what to do and then seven more days to actually do it. Typically, when ordered to release the records, agencies do so promptly. If the agency wishes to fight the order, it must file suit against the requestor in circuit court.



What is Open Oregon?

Open Oregon: A Freedom of Information Coalition is a nonprofit educational and charitable organization with a single purpose: to assist and educate the general public, students, educators, public officials, media and legal professionals to understand and exercise:

- Their rights to open government.
- Their right and responsibilities under the Oregon public records and meetings laws.
- Their rights under the federal Freedom of Information Act.

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Go to www.open-oregon.com for additional copies of this guide and other information about public records and meetings.

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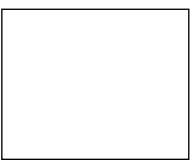




A Freedom of Information Coalition

P.O. Box 172

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Protecting the public's right to know

Now that You're on Board Booklet

FROM THE PLANNING COMMISSIONERS JOURNAL

Now that You're on Board:

How to Survive ... and Thrive ... as a Planning Commissioner

by Elaine Cogan



Now that You're On Board

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About the Planning Commissioners Journal

The *Planning Commissioners Journal* is a quarterly publication for citizens across the U.S. and Canada interested in local planning and development issues.

The *PCJ's* columns and articles provide clear and concise introductions to key planning & zoning topics. Effective planning boards and commissions depend on well-informed members. The goal of the *Planning Commissioners Journal* is to provide information that will help citizen planners better understand the challenging issues they face.

www.plannersweb.com

Introduction

Since 1991, Elaine Cogan has been sharing her wisdom and experience with *Planning Commissioners Journal* readers in her column, “The Effective Planning Commissioner.” Elaine has tackled a wide range of subjects with common sense and practical advice.

A few years ago, we asked our columnists what their single most important piece of advice for planning commissioners would be.

Here's what Elaine (succinctly, as usual) had to say: “Know yourself first, but put yourself last. What does that mean? Be self-critical, aware of your biases and preferences in terms of the issues the



planning board faces. After you know and understand yourself, be willing – if needed – to set personal opinions aside to serve the best interests of your community.”

Inside you'll find 25 practical tips for planning board members, some condensed from Elaine's past columns, others new. We hope that Elaine's insights – along with the sidebar comments from a number of citizen and professional planners – will help you not just “survive,” but “thrive” on your planning commission.

Wayne Senville – Editor, *Planning Commissioners Journal*

Now that You're on Board:

How to Survive ... and Thrive ... as a Planning Commissioner by Elaine Cogan

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Editor's Note: inside you'll find references to articles by Elaine Cogan and others published in the *Planning Commissioners Journal* (the *PCJ*). To save space, we've abbreviated these references to include the article's title and the *PCJ* issue number in which it was published. Most articles are available to download for a small charge from our PlannersWeb site: www.plannersweb.com. To locate an article, just enter its title in the Search box.

New to the Board

“Controversy is an inevitable part of the planning process.

How you deal with it is an important measure of your effectiveness.”

New to the Board

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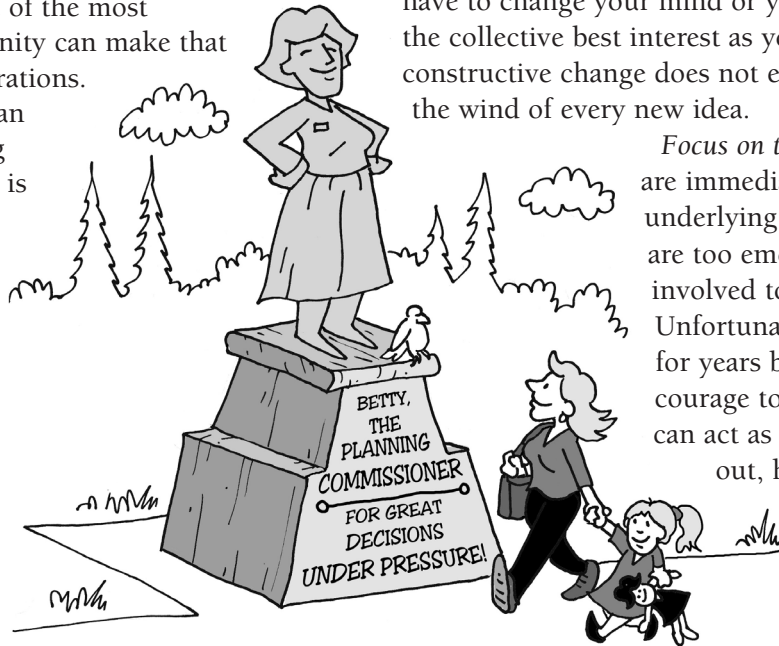
Controversial Issues: A Natural Part of Planning

There probably is not a community in this land that has ever thought of erecting a statue in honor of a planning commissioner!

As unrecognized men and women, you should be proud of your contributions to some of the most important decisions a community can make that broaden its horizons and aspirations. Unfortunately, controversy is an inevitable part of the planning process. How you deal with it is an important measure of your effectiveness.

If you do not lose sight of the fact that you are a member of the community and keep tuned in to its priorities, you should not be surprised when an action or potential one becomes controversial.

Deal with likely contentious issues early. Meet with



citizens informally in their neighborhoods or service clubs, city hall, or town library, and bring along staff to explain any technical aspects. Listen actively to what people tell you, giving them many opportunities to air their views in non-confrontational situations.

Do not make any promises you cannot deliver. Consider citizen comments carefully, but do not necessarily feel you have to change your mind or your vote if it is based on the collective best interest as you see it. Being open to constructive change does not equate with bending with the wind of every new idea.

Focus on the real issues. There often are immediate concerns and underlying issues – and some citizens are too emotional or personally involved to see the difference. Unfortunately, some problems fester for years because no one has the courage to tackle them directly. You can act as the catalyst to sorting them out, helping make needed short-range decisions, and agreeing on a process for dealing with the others.

The most effective commissioners are comfortable with their roles as laypeople who make planning decisions. They understand the technical aspects of what they are required to do while still bringing “real world” experiences and concerns to the table. After listening to all sides, your ultimate challenge when dealing with controversy is to feel comfortable with your decision,

even if it is unpopular, and then to do all you can to ensure that animosities and disagreements do not linger once the decision is made.

It should not require accolades to give you satisfaction that you are an effective and important bridge between the public and the sometimes esoteric, puzzling, and even controversial world of planning.

A Nose for NIMBYs

“Don’t worry if you are missing your favorite science-fiction show to conduct a public hearing at the Planning Commission. You may be lucky enough to see shape-shifters in real life. If you are considering a land use change that will affect a residential neighborhood, perfectly normal, rational people will grow fangs and acquire the ability to spit fire.

Changes in the neighborhood spark a primitive reaction in defense of home and family. As a planning commissioner, you need to keep your cool when confronted by angry neighbors, and recognize the difference between legitimate concerns and irrational fears. You need a nose for NIMBYs.

Your job is to look out for the whole community: townhouse dwellers as well as single family residents, and people living on through streets as well as those who want to live on dead-ends and put the traffic on other streets.

Ask questions or have staff find the information you need to evaluate the concerns. Is the traffic going to be greater than the standards for the street? Is the proposed land use so noxious that it would reduce property values, or is it simply something different from what’s there? Were the ‘promises’ made

by a city representative or by a realtor? If the concerns don’t hold up, don’t feel guilty about voting in favor of the project.

NIMBYs can have their positive side. No one else is so highly motivated to do research into the issues and the history of the area. Sometimes in their quest to stop a project, people will uncover information that does help your decision-making. Sometimes there’s an alternative that makes more sense. If these concerns have substance, respond to them; don’t treat a project as a ‘done deal.’

It’s easy to feel sorry for the beleaguered neighbors and do something that’s not in the interest of the community as a whole. It’s also easy to react the other way and dig in your heels in response to annoying and pushy people, just to show them you can’t be bullied. Try to separate the personalities from the substance of what they’re saying.

With a good nose, you will be able to tell when people cease making legitimate points and slide into NIMBYism. Make a note of the good points, and ignore the rest.”

From Chris Robbins’ “A Nose for NIMBYs,” in PCJ #51

Show Respect to All

As a planning commissioner, you have the obligation to be polite and fair to all the citizens in your community: newcomers and oldtimers, people you agree with as well as those you would never invite to dinner.

Though the worst personal traits often come out at public hearings, people are not necessarily wrong just because they are angry, obstreperous and noisy, do not speak English well, or are confused about bureaucratic procedures. As annoying as they may be, try to overlook these so that you can understand and respond to the substance of their comments.

It is important that you show respect to the questioner even when you doubt the question. People ask stupid questions ... hostile ones ... tough ones ... all of which you and your colleagues should answer as well

as you can, but always respectfully. Sometimes, you and a citizen will have to “agree to disagree,” but you should never show anger or lose your temper.

Whenever you are holding a public hearing or meeting, it is important to be aware of the nonverbal clues, behavior, or habits that may seem to indicate your inattentiveness or rudeness. You send a negative message to the public when you slouch in your chair or lean back so far you appear to be bored or dozing.



Likewise, they may be suspicious about what you are going to do with all your notes if you scribble constantly. Sit up straight, look at the person speaking, nod affirmatively, and otherwise show your interest. This becomes more difficult the later the hour, just the incentive you may need to call a halt to the proceedings and start fresh another day.

Do not chat with other commissioners or staff when a member of the public addresses the commission. While you may be discussing the subject at hand or have another legitimate purpose, you appear to be dismissing what the public has to say without really hearing it. Another habit to avoid is drumming your fingers or a pencil on the table



“Please add the annoyance of commissioners (or applicants or staff) who do not turn off their cell phones. There is nothing more disruptive than to have a commissioner conduct a telephone conversation, or walk out of the room to take a call, when an applicant or the public is trying to present their points. It falls under the category of side conversations. It is disrespectful.

A less frequent annoyance is the rolling break. When the hearings get long and go into late hours, take a break and let the public know it. Commissioners have sometimes stepped out individually to get food or go to the restroom. That is not fair to the public. They want your undivided attention.”

—Michael Dove, St. Petersburg, Florida

When They Speak Do You Listen?

“A clear clue that their minds are made up and the so-called ‘discussion’ is a farce is when planning commissioners read remarks obviously written beforehand.”

From Elaine Cogan’s “There’s Help for Dysfunctional Meetings,” in PCJ #17

“Don’t indicate by word or action how you intend to vote during the portion of the hearing devoted to presentations by the applicant, presentations by any persons appearing in objection, and comments by members of the staff. During this period your body is the judge and the jury and it is no more appropriate for you to express an opinion as to the proper decision, prior to hearing all of the testimony, than it would be for a judge or jury member to announce his firm conviction in the middle of a court trial regarding the guilt or innocence of the defendant. This is not clearly understood by a majority of persons sitting on hearing bodies.

It is not too difficult to phrase one’s questions or comments in a manner that implies that you are seeking information rather than stating an irrefutable fact and that your mind is closed to further argument.”

From “The Riggins Rules,” in PCJ #13

as if you are impatient to get this all over with.

These are some of the most common forms of annoying or distracting behavior. You may know others. The important point to remember is just as you want to be treated with respect, the public deserves no less when dealing with you and the other board members.

Ask Questions Until You Get Answers

It is midway through a rather routine planning board meeting. Until now, you have been considering issues that seem to be of more concern to technicians than to the public. Suddenly, you perk up. Next on the agenda is a presentation from an out-of-town developer, flanked by an articulate architect and well-connected local lawyers.

After a few formalities, they turn on their electronic show and urge you to approve the plans for their proposed development – today. Wow! The streets never looked as attractive, the kids never happier, the sun never brighter as in their digitally-enhanced pictures. Their spreadsheets, pro formas, and



other data also seem overwhelmingly positive.

Do not be surprised when applicants present their proposals in the best light. That's their job. Your responsibility as a planning commissioner is to get to the facts behind the pretty pictures and enticing words.

Avoid being overwhelmed by highly polished presentations. The color slides are enticing ... but there are no trees on the property today and the ones they show are twenty feet tall. What will the project really look like next year or the year after? Do the math yourself. After adding up the square footage of all the condos they anticipate, is the development more dense than their figures suggest?

Speak up. Ask questions.

Do not be pressured into making a precipitous decision even if the applicants earnestly plead for action now. They may say that their option on the property is running out or the financing is in jeopardy. Perhaps another community is begging them to locate there and yours needs more economic development. Resist the

Do not be surprised when applicants present their proposals in the best light. That's their job. Your responsibility as a planning commissioner is to get to the facts behind the pretty pictures and enticing words.

blandishments or threats. Your sole concern should be your community's interest, not theirs. None of these are reasons to make a decision ... either to approve or deny in haste. But neither is it fair to prolong the matter unduly.

Pressure to make a decision may come from others in the community, not just the applicant. Opposing citizens

Ask the Hard Questions

"My favorite is, 'Is this just your idea, or do you have any evidence to back it up?' No category of comment is more common at a zoning hearing than unsubstantiated 'fact.' Comments like, 'It will decrease my property values,' or 'The traffic impacts will hardly be noticeable' will plague you all your days. Sift through the testimony for relevant planning information corroborated by evidence. Keep in mind that aside from expert witnesses, and without evidence, one person's opinion is just about as valid as another's. Be fair, but be discriminating in what you choose to accept as truth."

From Steven R. Burt's "Being a Planning Commissioner," in PCJ #24

Rational Evaluation



"Elaine Cogan highlights the difference between rational and peripheral evaluation. Commissioners engaging in rational evaluation carefully consider the facts and arguments, assess the reasoning, and then reach a logical conclusion about the merits of the project. Rather than risk information overload, however, many people engage in peripheral evaluation, looking at external factors such as whether the speaker is likable or the presentation is impressive to decide whether to reject or accept the assertions being made. One of the most dangerous peripheral conclusions for a commissioner to reach: presuming that since 'everyone' seems to hate the proposed development, it must be a bad project."

—Debra H. Stein, President, GCA Strategies, San Francisco

may pack the meeting, wearing buttons or waving placards. They may disparage the applicant's claims and urge you to "just say no." They are as entitled to their say as is the applicant.

Use your staff as a resource. But if the project is complex and your staff does not have the expertise to answer all your questions, consider hiring a consultant for a neutral, professional review. It is worth the expense. Be sure to visit the site, ask your questions, get the answers, and then be willing to make a decision. Earn respect by insisting on and acting in the public interest.

Be Open to Verbal as Well as Written Information

Most planning commissioners are inundated with piles of documents, many written in legal or planning jargon. While you cannot act responsibly if you do not read this material carefully, you shortchange yourself if you base your opinions only on written information. You can add richly to your store of knowledge if you are willing to exchange ideas freely – among commissioners, between commissioners and staff, and with the public. However, the benefit from such verbal interchange can be impaired if you do not listen with an open and receptive attitude.

Do you “really” hear all sides? Do you automatically assume

that a developer is motivated only by greed when he proposes to cut down an ancient tree, or that an environmentalist has no concerns about economic growth when advocating saving a wetland? A “guilty before proven” attitude prevents you from understanding others’ points of view and adding to your understanding of complex issues.

Does your body language reveal your real thoughts? There are many non-verbal ways to express yourself that belie “nice” or friendly words. Among these signals are frowning, rolling your eyes, and inattentiveness. If your actions do not complement your words, people may become resentful and angry, thus preventing free and open dialogue.

Do you state your opinions so strongly that you discourage others from disagreeing? In most conversations, you gain an advantage if you use a conciliatory tone of voice, such as, “It seems to me,” or “As I look at the situation.”



Do you and the other commissioners sincerely welcome and encourage citizen input ... or do you really wish they would all just go away and let you tend to the business to which you were appointed?

There may be times you have to express your position in unequivocal terms, but if you are willing to be open-minded, most often people will listen and take notice when you do feel strongly or uncompromisingly about an issue.

Is your tone of voice sarcastic or angry?

No matter what you say, how you say it is very important. Avoid talking in such a way that others will feel compelled to side with someone else just because you are insulting or demeaning.

Are you reluctant to say, "I don't know"? These three little words show you are willing to admit fallibility and take responsibility for it. To have genuine credibility, however, the admittance should be followed up



Listen!

"Listening well means putting your own thoughts on the shelf (for a time) and concentrating all of your energy on understanding someone else. It isn't necessary to agree with them, but it is important to be accepting and approachable."

From Ilene Watson's "Listen!" in PCJ #51

"Don't interrupt a presentation until the question period, except for very short and necessary clarifying remarks or queries. Most applicants have arranged their remarks in a logical sequence and the thing about which you are so concerned will probably be covered if you can force yourself to be quiet for a few minutes. You can wreck his whole case by a long series of unnecessary questions at the wrong time. He will be your enemy forever."

From "The Riggins Rules," in PCJ #13

with, "But I will find out for you." Then, make sure you do. *Do you hold a monologue or a dialogue?* This is perhaps the most important aspect of good communication. In a true dialogue, you listen carefully to what the other person is saying and respond appropriately. It is still another signal you realize you are not always the repository of truth and goodness.

Reaching Out

“No one can be more effective than a citizen planning commissioner when presenting information about planning to a group of citizens.”

Reaching Out

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Different Ways to Gauge Public Opinion

How do you and the other planning commissioners keep your figurative fingers on the pulse of your community? There are many ways to ascertain public attitudes. Choose those that best suit your local planning issues and take the results seriously. Surveys, questionnaires, and other techniques are described below.

Scientific survey. This is generally the most reliable opinion research tool – and the most costly. They are usually conducted by phone calls to a statistically valid sample of the population. As the client, you should keep close control over the content of the questions to make sure they cover the issues you want to query. It is often helpful, at an additional fee, to poll a subset of the population such as low-income residents or people from a specific geographical area.

Written questionnaires. These can be duplicated and distributed broadly, with minimal cost. The questions should be

unambiguous and factual, neutrally worded, and relatively easy to answer. As the respondents are self-selected, it is important to find a way, such as asking for zip codes, to recognize whether one group is overrepresented in the replies.

Focus groups. Facilitated discussions usually involve no more than 10 or 12 participants, chosen to represent specific segments of the population. The validity of the results is dependent to a great extent on how accurately their opinions reflect those they represent. The skill of the discussion leader in soliciting information from a roomful of strangers is very important.

On-the-street interviews. Paying interviewers or soliciting volunteers to query people on the street, in malls, or at supermarkets is a marginally useful technique. The questions must necessarily be brief and require simple answers, and many people are too busy or suspicious to stop and talk. The primary value of this technique is less in the results and more in spreading the word that the planning board is



genuinely interested in public opinion.

Internet dialogue. Electronic town halls sponsored by local governments are becoming increasingly popular, and can provide a vehicle for obtaining feedback on various planning issues. Structure the conversation by providing a written questionnaire and keeping a tally of the answers, but also encourage an exchange of opinions. Though this technique allows you to answer questions from a variety of people and thus exhibit an openness to new ideas, it is important to guard against becoming defensive or belligerent.

Presentations and feedback. Whenever commission members and staff give speeches or presentations to community groups, include a time for questions. Have a staff person or volunteer keep a summary of audience comments and review them afterward as still another way to test public opinion.

Letters to the editor. Though only the most motivated people usually take the time to write, and they may be zealots or advocates for one point of view, this is yet another window into how people feel about an issue.

No single technique is sufficient in giving you and the commission a thorough understanding of public opinion on planning issues. It is best to use as many as you can, tailoring them to your situation and budget.

Citizen Surveys

“A growing number of communities are augmenting traditional meetings and forums with citizen surveys. Surveys are far more successful in capturing the typical community resident and making that resident’s opinion part of the community calculus.

A scientifically conducted survey of residents brings in the voice of the public like no forum, newspaper straw poll, or focused discussion. Whether conducted by phone or mail, a good citizen survey will provide the perspective of residents who are not the ‘usual suspects.’

Citizen surveys can be simple one-shot assessments of resident policy preferences. More valuable, however, is a citizen survey program – with periodic public surveys designed to track changing community demographics; evaluate quality of life and quality of community services; and measure the extent to which various community facilities and programs are being used.

In support of comprehensive plan updates, citizen surveys often include a set of general questions about the quality of life in the community and in neighborhoods. Questions like, ‘Taking all things into consideration, how would you rate your quality of life in Our Town?’ Other general questions deal with residents’ perceptions about Our Town as a place to raise children or as a place to retire, and opportunities for shopping, dining, volunteering, entertainment, and so on.

This can help create a baseline of information to be monitored as land use decisions are made and changed over the years. Furthermore, if done correctly, the survey can provide results for different parts of the community so that better facility and policy targeting can occur.”

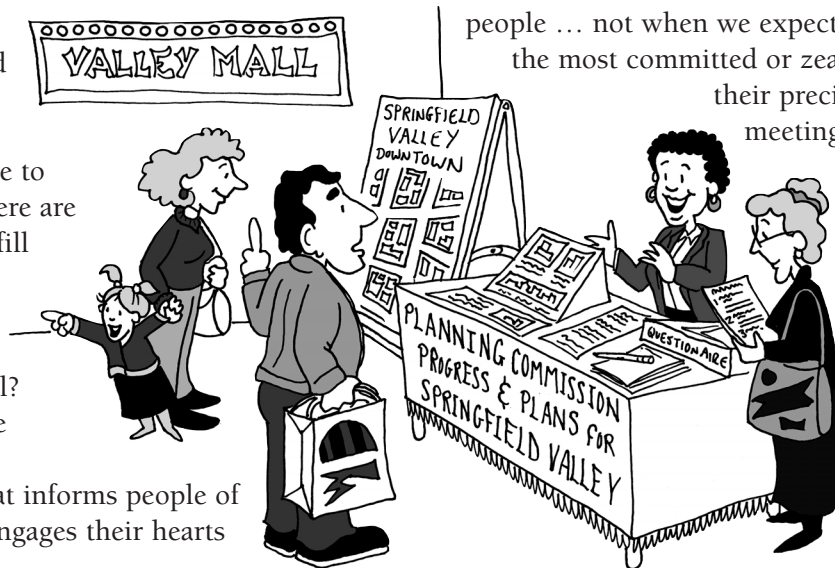
From Thomas Miller’s “Citizen Surveys,” in PCJ #35

Go Where the People Are

It is a sunny Saturday afternoon. As usual, throngs of people are at the local mall, shopping, strolling, greeting their friends and neighbors. Prominent among the storefronts, and attracting considerable attention, is something new: a display about Our Town ... what it is and what it might become, depending on the planning decisions that soon will be made.

Mounted attractively on tabletop boards are photos and drawings and easy-to-read text about alternatives. Staff in leisurely dress is available to answer questions and there are brief comment forms to fill out. There are even balloons for the kids. Why go to all that bother ... and at the mall? Because that is where the people are!

Public involvement that informs people of their choices and truly engages their hearts



and minds while remaining civil is increasingly difficult. People with strong opinions always will find ways to be heard. But isn't it at least as valuable, or even more informative, to learn what less vocal but still concerned folk think? In an ideal world, we can engage them before the controversy erupts, or perhaps diffuse it entirely with sound dialogue and conversation.

From more than 30 years experience designing and facilitating public participation processes, it is obvious to me that the most successful are those we take out to the people ... not when we expect them to come to us. Only the most committed or zealous citizens will spend their precious time at a public

meeting, no matter how important the planning board or staff thinks it is. There are many other ways. Consider these tips as part of your job.

As noted above, regularly display easy-to-read information at the local library, mall, or community center, ideally with staff present, always with opportunities for the

Talk to businesspeople and community activists at their civic clubs and in church basements. Take the issues to them and listen to what they tell you.

public to write down their comments.

Reach out with speeches and presentations. Deal with neighborhood concerns in the affected neighborhoods, meeting in living rooms, libraries, and schools. Talk to businesspeople and community activists at their civic clubs and in church basements. Take the issues to them and listen to what they tell you. This cannot displace your legally required public hearings, but does provide valuable additional forums.

Use the Internet actively. Nearly every community has a Web site, some more ambitious and attractive than others. Post your information there and invite (and answer) comments and questions, honestly and regularly. Read what bloggers say about community issues.

These ideas are just starters. What works in your community? Ask this uncommonly discussed question and you will think of many creative ideas. Most importantly, you will reach people who may never otherwise be involved in civic activity.

The Same Ten or Twenty People

“Montgomery County, which covers 360 square miles in rural southwestern Virginia, has a population of 86,000. Yet as the process for updating the comprehensive plan got underway, it was ‘the same ten or twenty people who were showing up at our public meetings.’ As Meghan Dorsett, the county’s comprehensive planner, admits, ‘the public participation process was failing miserably.’

Instead of throwing in the towel, the planning commission embarked on what Dorsett terms ‘evangelical planning.’ They decided to pull out all the stops in going out and getting county residents actively involved in the planning process.

The first step, as Dorsett relates, was to make sure ‘every possible group or organization heard about the planning process.’ That meant contacting not just neighborhood organizations, but service clubs, churches, African-American organizations, women’s groups, public schools, and even bowling leagues.

Second, each group was asked if they’d be willing to distribute a survey, and discuss community issues, at one of their organization’s own meetings.

But to make the process work, one other key step was taken. Dorsett asked each group to designate one of their own members to serve as their meeting’s facilitator – and invited each ‘community facilitator’ to first attend a training session on the planning process.

Eighty-eight groups ended up participating [and] a volunteer facilitator ran each meeting. ... As the plan was being developed, many of the facilitators continued to actively participate by serving on one of the eight workgroups set up to draft the plan. ... One last fringe benefit: three newly appointed planning commissioners got their first taste of planning as community facilitators.”

From “Bright Ideas,” in PCJ #61

Speak Out

As a planning board member, you see first hand the beneficial effects of good planning in your community. You spend hours in meetings and hearings and brief yourself with reports and field trips. Still, how much do you know about what planning issues are on the minds of the average citizen? How much do they know about the planning process and how it works?

This two-way sharing of information is invaluable to your optimal performance, but it requires you and the other commissioners to move off the dais and into the community. Although it may take time away from your business or family, it can be limited, and it definitely will be worthwhile.

If you are fearful of giving a talk, think again. No one can be more effective than a citizen planning commissioner when presenting information about planning to a group of citizens.

Enlist staff to help you organize a speech, possibly accompanied by slides, on the benefits of planning to your community and current projects of interest. Make sure it is free of jargon and “plannerese,” with examples to which people can relate. Show “before” and “after” pictures of how planning decisions have added to the quality of life in

your community and talk about unfinished business. Practice until you are comfortable with the text and the technology.

When you are sufficiently prepared, ask staff to notify service and civic clubs that you and the other planning board members are available for presentations at their meetings. You will be surprised at how many take you up on the offer.

Your speech should be no more than 15 minutes, with time for questions. This allows listeners to clear up any ambiguities or points they may not understand and gives you additional

opportunities to get your message across. Avoid arguments or feeling you should defend a specific decision, and of course, do not talk about any pending case.

Speak in well



No one can be more effective than a citizen planning commissioner when presenting information about planning to a group of citizens.

understood words and phrases. Even lay planning commissioners – if they have been around any length of time – can start talking in “plannerese.” That’s alright if your audience is staff or other commissioners.

It is not alright when talking to the public. Avoid jargon whenever you can, but if you must use words or acronyms

such as infill, density bonuses, PUDs, or FAR (or others particular to your location), explain what they mean.

Staff can help with displays and technical data, but the message is most powerful when citizens such as yourselves talk to other citizens. You may be challenged by a few, but most will be glad you came



More Suggestions

- Analyze the needs of your audience.
- Speak in well understood words and phrases.
- Use humor appropriately.
- Understand the importance of non-verbal signals in reinforcing your message.
- Respect the questioner even when you doubt the question.
- Do not promise more than you can deliver.
- Do not commit the commission or staff to any additional projects or work without first consulting them.
- One illustration is worth a thousand words – only if it is the right one.
- Remember that people are persuaded by people, not by information.

From Elaine Cogan's "You Too, Can Speak So People Will Listen!" in PCJ #25

The Eye of the Storm

“As a planning commissioner, you’re at the eye of a ferocious storm that’s sweeping the country – the storm of controversy over how our communities should grow. Always keep in mind what it means to be at the eye: You’re in the only place of perfect calm.”

From Dave Stauffer's "Smart Talk Aids Smart Growth," in PCJ #64

to talk with them and welcome your open attitude and willingness to share information.

Reach out and speak out when there is no controversy and people will tend to trust you when the inevitable contentious times arise.

The Importance of Reaching Out

Does anyone on your planning staff or board speak or understand Russian? Laotian? Spanish? How well do you communicate with the non-English speaking members of your community? How good is your pipeline to their concerns and viewpoints?

If you are not already actively doing so, consider extending your reach to the citizens of your community for whom English is not their first language. Just because they do not attend planning hearings or meetings that are natural to you and others in the majority community, it is folly to believe they do not care, especially if they live in areas affected by your decisions.

Reaching out takes time and special effort. For example, before considering sensitive land use changes in an area where there has been little or no response to your



familiar ways of communicating with citizens, do not give up. Contact church leaders, social workers, school principals, local business owners, and community leaders. Tell them you sincerely want to get a sense of the attitudes of the residents toward planning issues likely to be controversial or important to them.

Be prepared to be surprised and hear about concerns you may not have thought of. Pledge to take these into consideration when you deal with specific issues and give them feedback that shows you have listened, even if you feel you have to make a decision that may appear adverse to their interests.

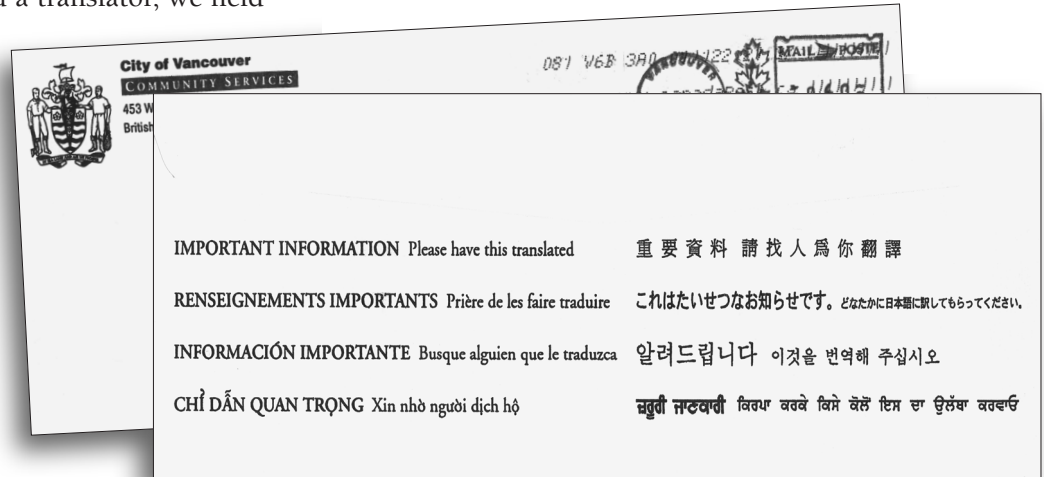
Non-English speaking people may come from cultures less familiar with and even suspicious of the democratic give-and-take we take for granted. Expecting more absolutes from government, they may think it is useless or even dangerous to express

How well do you communicate with the non-English speaking members of your community?

contrary opinions. It takes patience to help them overcome these perceptions.

In a recent planning project, we were having no success reaching Spanish-speaking people through regular means. After talking with community leaders, we found that this closely knit community was not comfortable going outside their neighborhood for public meetings. Instead, it was suggested we come to their church after religious services. Enlisting the help of their pastor and a translator, we held a very successful meeting, and heard concerns we never would

The City of Vancouver, B.C., mails out planning notices in envelopes which clearly urge recipients to have the enclosed information translated. According to Robert Rippon of the Community Services Department, “The languages printed on our envelopes are as follows: in the left column top to bottom: English, French, Spanish & Vietnamese; in the right-hand column (again, top to bottom): Chinese, Japanese, Korean & Punjabi. These languages represent the major ethnic components of Vancouver.”



have anticipated, at 11:30 Sunday morning.

Other outreach efforts should include placing notices in community newspapers and translating information about meetings and proposed planning actions into their common language. Employ local translators whenever possible.

You make important planning decisions that affect those who speak English – and those who do not. By doing everything you can to mitigate the negative effects of cultural and language barriers, you will enrich your community and truly be able to say that you plan for all.

Older Citizens Have Much to Offer

Although there always will be retirees who travel or migrate to other climes, most people are “aging in place,” staying in the communities where they have their roots. Reaching and engaging them is both a challenge and an opportunity for your planning board.

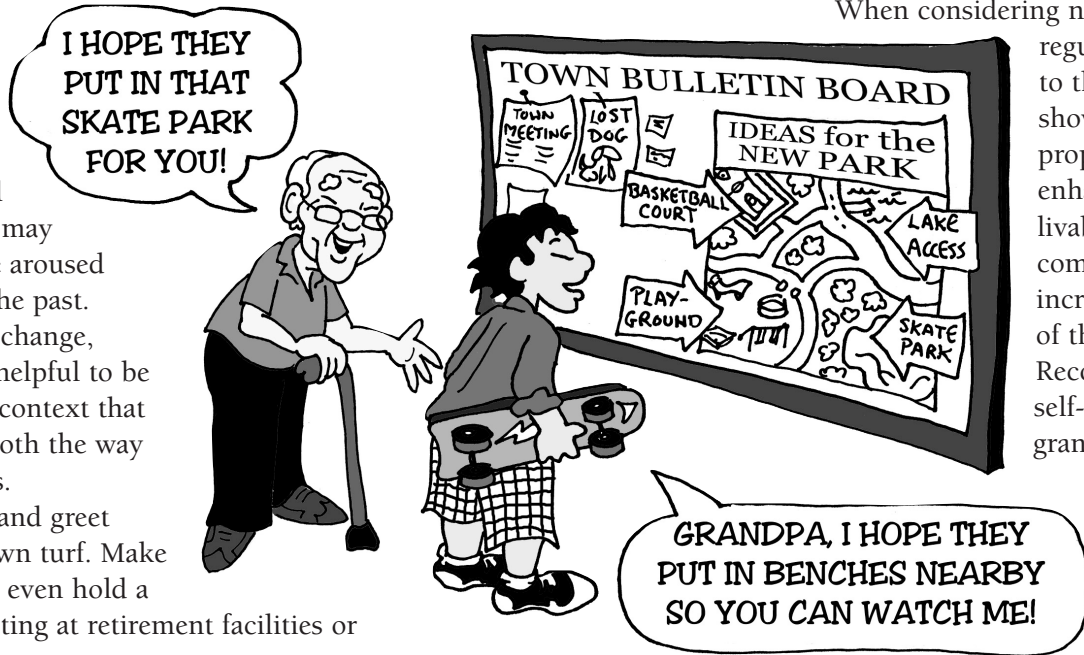
First, realize their worth. They have longevity and history, and well remember what may or may not have aroused controversy in the past. Certainly, times change, but it is always helpful to be apprised of any context that would help smooth the way for current ideas.

Second, meet and greet them on their own turf. Make presentations or even hold a community meeting at retirement facilities or

senior centers. They usually have ample meeting space and welcome visitors.

Accommodate their few special needs. Schedule some meetings in the daytime. For their easy reading, reproduce handouts or explanatory material in larger than normal print. If you are making a presentation in even a medium-sized room, use a microphone.

When considering new zoning regulations, appeal to their pride by showing how the proposals will enhance the livability of the community and increase the value of their homes. Recognize their self-interest as grandparents by showing how changes will benefit the younger generation.



Most people are ‘aging in place,’ staying in the communities where they have their roots. Reaching and engaging them is both a challenge and an opportunity for your planning board.

Ask their advice about their priorities and try to accommodate them. For your next workshop or public event, invite young people from a nearby high school to bring their grandparents or older friends. Encourage a dialogue between the generations. For example, when planning a new park, if you consider the needs of older citizens for benches and rest areas, they may be more inclined to support play areas and ball fields.

Older residents also can be valuable members of your planning board. Every commission benefits from having a healthy mix of ages and interests. If yours does not currently include an older citizen, find one who is willing to be involved when you have your next vacancy. If you have a citizens advisory board or special subcommittees, consider retirees for those positions as well.

Show retirees they still count by tapping into their wisdom and availability. Planning in your community will be enriched.



“Retirees can often bring expertise from their previous jobs. In addition, they may no longer have a conflict of interest with projects in the jurisdiction, especially if they are retired from realty, architecture or construction interests.

In Dearborn County, Indiana, retirees have often become county activists. They have researched and improved county road maintenance processes, pushing for widening and striping rural roads for safer nighttime driving. They have worked to improve sanitary sewer accessibility, scrutinized budgets, and enlightened politicians on past practices.”

–Christine Mueller, Lawrenceburg, Indiana

“Our aging population can offer valuable advice if we take the time to seek it. Current planning issues include sidewalk design and maintenance, connectivity, streetscape and traffic improvements, mixing work, live and play uses, and a new concept – “visitability,” that speaks primarily to helping individuals with mobility concerns to visit friends and family. These are all things that matter to everyone in our communities – whether we’re a parent of a child on a tricycle or in a stroller, a teen with a broken leg, or are aging and trying to stay in our homes and neighborhoods.

Attempting to tap into these personal challenges can help a community plan better. For example, a developer with a wheelchair bound parent is more likely to understand the need for wider doors, and think twice about having steps at every exterior exit. At every opportunity, give each age group a reason to be interested in planning.”

–Glynis A. Jordan, AICP, Winston-Salem, North Carolina

Planning Is Not Just for Adults

What do kids know about planning? Not much, if you use jargon such as zoning, setbacks, and conditional use. What can they contribute to planning in your community? Plenty! But only if you give them opportunities to express themselves in their own language and in their own way. Terminology familiar to professional and lay planners is sure to turn them off. But talk about putting a large retail store across from their favorite park, whether to build a skateboard facility near the high school, or put speed bumps downtown, and you will get their attention.

With a little care, you also can find rewarding ways to involve young people in the big picture – envisioning the future.

Have a contest, but keep it simple and uncomplicated. Ask children of all ages, “What do you want our community to be like when you grow up?” Encourage poems, essays, plays and stories, models and posters, and you will be surprised and delighted



at their imaginative and creative responses.

Seek media, business, and other sponsors. Local newspapers and television stations generally cooperate in highlighting good news about young people, and businesses like to have their names linked with such good works. Two high school visionaries in a project I managed wrote a rap song about the future and received front page coverage in the local press. They also were invited to sing at a luncheon of a civic club and on a local radio station. Their peers loved it, though most adults had difficulty understanding the words.

Involve the principals and the teachers in all the schools ... public and private, as well as those engaged in home schooling. Make the planning staff and commission members available to speak in classrooms, taking care to put the planning issues you are dealing with in terms of real situations young people face. Inspire the youth and you will inspire their parents.

Make it easy to participate. Have no rules except age limits. Supply



Young people's wisdom and insights not only can add to the quality and fabric of your community, but be a training lesson for future leaders.

sufficient application forms to all schools and community centers and make them available online.

Encourage all to participate. The contributions of grade schoolers will necessarily be less sophisticated than those of middle and high schoolers, but the depth of the ideas of all ages will surprise you. Make special efforts to involve young people in minority communities.

Give all participants recognition. Buttons or caps are as welcome as expensive prizes and can be paid for by business sponsors. The best recognition is to display the results prominently where people congregate. The local library, city hall, shopping mall ... each community has its own center of activity. Announce they will be shown at your next community meeting and you will attract a cadre of parents and grandparents who go wherever their children's creations are posted.

Most importantly, after the young people have had their say, make sure their comments are considered when the planning decisions are made. Given opportunities

The Enthusiasm of Children

"The enthusiasm of children whose voices are heard in the planning process is striking. When children are shown how to express their ideas, and see their ideas respected and included in the process their attitude of angry alienation changes to a strong desire to participate and an urge to show other children how to participate."

From Stanley King's "Fresh Eyes," in PCJ #19

to express themselves in their own special ways, young people's wisdom and insights not only can add to the quality and fabric of your community, but be a training lesson for future leaders.



Graphic from Center for the Built Environment: <www.cubekc.org>.

Be a Partner With Your Schools

In too many communities, planning stops at the school door. At the same time that boards of education are dealing with the challenges of overcrowded schools in one area and others that are under-utilized, planners are choosing housing policies that affect the demographics of these same schools. This behavior is encouraged when their governing bodies and sources of revenue are separate.

While such divisions of responsibility may have made sense in the past, this is less defensible in today's era of growing needs, finite resources, and a demanding citizenry. Enlightened planning commissioners should take the responsibility of bridging that divide without dividing the community.

Has your planning board ever met formally or informally with the school board? Do your planners work with school staff on issues that concern you both? Do you have early notice of plans for new schools or playgrounds? Do you



inform them of prospective zoning changes that affect the schools? If school officials need a zoning or comprehensive plan change, do they involve you in the pre-proposal stage? What community needs could be satisfied by joint planning?

Consider transportation. What can you do to help make schools easier to reach by foot or bike? Will the next new school be built in an area that is accessible for children walking or bicycling? Can school parking lots be used by neighborhood businesses when schools are closed?

Consider sharing. Few communities have enough libraries, parks, and places for community meetings and cultural events. Schools have many of these, often closed to the general public. Joint planning and/or co-ownership can benefit all.

Your planning board is the ideal body to initiate dialogue with school officials. Show them your plans in process and invite their comments. Ask them about their short and long-range facility and property needs. Talk about common issues and concerns and how they can be solved in a cooperative, cost-effective fashion. After laying the groundwork, agree on a project on which you can act jointly and direct your staffs to do everything possible to make it a success.

The most effective planning boards continually demonstrate their understanding that the community is served best if its individual components work as an



interdependent whole rather than a series of unrelated parts. By becoming partners with the schools you will demonstrate your commitment to serving the community, not enhancing your individual fiefdoms. All will benefit.

Schools & Communities

“School size, design, and siting are not just of interest to folks focused on education, nor should they be. Citizens and groups concerned about land use planning, community development, historic preservation, and public health, are also focusing on how to make better education investment decisions.

Cities are combining school revitalization funding with other municipal investments, using schools as a key component in efforts to stabilize entire neighborhoods. ... Suburban areas are also taking steps to have neighborhood schools help ‘center’ the community.

Where and how school investments are made have major consequences for the community. Planning commissioners can contribute substantially to school planning efforts and to the quality of life in their communities by bringing their insights and perspective to the table.”

From Tim Torma’s “Back to School for Planners,” in PCJ #56

Tomorrow’s School

“Tomorrow’s school will be a school without walls – a school that’s built of doors which open to the entire community. ... Tomorrow’s school will be the center of community life, for the grownups as well as the children: ‘a shopping center of human services.’ It might have a community health clinic, a public library, a theater, and recreation facilities. It will provide formal education for all citizens – and it will not close its doors anymore at 3 o’clock. It will employ its buildings round the clock and its teachers round the year. I am not describing a distant Utopia, but I am describing the kind of education which must be the great and the urgent work of our time.”

Remarks of President Lyndon B. Johnson to the American Association of School Administrators, Feb. 16, 1966.

Improving Your Commission's Effectiveness

“Strive to be open and cordial in all your relationships.

Your community deserves no less.”

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How to Work Effectively With Elected Officials

When was the last time the planning board spent weeks or months on an important issue, only to have your decision overturned by your elected city council or commission?

If this happens often, you should ask yourselves what steps you can take to make sure this is a rarity and that planning commission policies and decisions usually are supported by your elected body. It may be very interesting to sit in on your governing body's meeting when an appeal of one of your decisions is being considered. You may not enjoy hearing people disagree with your well-reasoned approach, but the experience should reveal other points of view you may need to consider in the future.

If the content or form of the planning commission's findings often are set aside or ignored,

AND AS COMMISSIONER
I PLAN TO PLAN.



AND AS YOUR MAYOR,
I PLAN TO HELP
YOU PLAN.



you may be able to find simple changes that will make them more acceptable; if the findings are okay but the governing body disagrees with your conclusions, revisit the issue with one or more officials or staff to find out why you are out of step. This knowledge may help you craft a winning strategy the next time.

Be acquainted with the political platforms of the members of the governing body. Did someone campaign for office and win by promising to end all planning in

your community?

Are some members strongly pro or anti-growth? That type of

information is a clue to how individuals may respond to specific planning issues. Even in the face of tacit opposition, you should not give up. You and the other commissioners should arrange a visit to explain your positions and the positive results of good planning on your community – and also listen attentively to the elected official's contrary ideas.

While planning boards should not expect their decisions to be rubber-stamped, neither should they be regularly overturned.

In such relationships, do not ask planning department staff to carry your message. It is most effectively conveyed, and received, if you do it yourselves. Politely but firmly insist that you speak to the appropriate elected official, not to staff.

Another relationship-building activity is to invite elected officials to a retreat or informal workshop where you try to reach consensus on a common vision, goals, objectives, and planning agenda. Even if the best you can do is agree to disagree, you will have heard each other and begun to form relationships that will be useful in the future.

Most importantly, strive to be open and cordial in all your relationships. Your community deserves no less.

The “P” Word

“Whether or not you accept the title, ‘politician,’ as a member of the planning board, you are certainly an important actor in the political processes of your community.”

From Elaine Cogan’s “It’s Time to Discuss the “P” Word,” in PCJ #16

More Engagement Strategies

“Although not mandated by code, most planning commissions would do themselves a huge favor if they invested the time to engage their local officials in planning. There are a variety of strategies a commission can use to enhance its working relationship with the governing body. Some of the more successful approaches include:

- **Planning Commission Annual Report.** A report documenting planning commission activities, and providing an overview of local planning issues and challenges, should be prepared annually and shared with the governing body. In some localities the report also contains the commission’s work plan for the coming year. If possible, have the report hand delivered by the commission chair at a regular meeting of the governing body, perhaps with a short accompanying oral presentation.
- **Joint Work Sessions.** It makes sense for the planning commission and the local governing body to meet at least once a year to discuss matters involving planning, land use, and community change management issues. A working dinner is a common approach. To avoid being haphazard and disjointed, an agenda should be developed and followed.
- **Joint Visioning Exercise.** Another useful engagement strategy, especially if your locality is preparing or updating its comprehensive plan, is a joint visioning exercise. By including the governing body in the actual planning process, especially at an early stage, the commission can incorporate the governing body’s perspective and concerns. This will reduce the chances of being ‘blind-sided’ by critical comments at the end of the process.”

From Michael Chandler’s “Linking Elected Officials with Planning,” in PCJ #48

Positive Media Relations Need Special Effort

As a public official, never consider the media friends who will do favors that are not in their self-interest. They have no obligation to provide free coverage for your agency. Most media are businesses whose owners expect to make a profit. Even the public or nonprofit media pick and choose the subjects they believe interest their audiences. With these caveats, the media serve as important conduits to your constituencies, and you can work together by recognizing their similarities as well as important differences.

Print – your daily or weekly newspaper – can cover stories in more depth than the other media. Know their deadlines and give them as much notice as possible. If the reporter cannot stay for an entire meeting, arrange to phone her or the editor as soon as the meeting is over and/or the decision is made. You might ask them to delay the report of the meeting so that the complete story can be written the next day, but they probably will not agree for fear of being scooped

by the other media.

Television cameras can be obtrusive especially when doing close-ups, but news crews can be asked politely to film from an angle that does not obstruct the public's view. Offer to brief the assigned print or television reporter before the meeting and give them a written outline of the issues under discussion. Whenever you are interviewed for TV, talk in short, succinct sentences and be prepared for a very brief segment to appear on the broadcast, regardless of the amount of time they filmed.

Radio listeners are most likely doing something else while listening. To communicate well over this medium, speak clearly in a friendly, informal voice.

Local call-in talk shows are a good vehicle for two-way communication with the public though a clever host will try to boost listenership and ratings by challenging you with controversial ideas or statements. Be prepared by ascertaining the format and style before you go on air.

There will be times when no matter how hard you have tried, a misleading or



damaging story will appear in print or be broadcast. Do not be swayed by your first frustrated or angry emotions. If other colleagues, staff, or friends do not think any harm was done, ignore it.

However, if you and others believe you have cause to complain, assess the situation. Was the entire treatment of the issue untrue? Or were the facts correct, but the

Communities on Camera

“They put faces on issues,” says Larry Nielsen, city manager of Bangor, Michigan in explaining why community videos can be so effective. Nielsen describes how making a community video helped involve many residents in the local planning process as the city began developing a new five-year plan. As Nielsen observes, “many people are more comfortable speaking to a video camera than at a public meeting.”

The Orton Family Foundation initiated the community video concept in 1998. Working with the American Planning Association, it has published a manual *Lights, Camera, Community Video* (available from APA’s Planners Book Service). As Helen Whyte, Senior Project Director with Orton explains, “producing a video provides a way to engage citizens in planning and develop a citizen-inspired set of priorities.” Videos, adds Whyte, need not be costly and assistance (and equipment) is often available from community access TV stations or area colleges. Most importantly, by involving the whole community, producing the video can energize the planning process.”

From “Communities on Camera,” in PCJ #61

Video Agendas

“During the years I worked as a planner in Burlington, Vermont, we filmed a ‘video agenda’ of projects scheduled for the upcoming planning commission meeting. The video was broadcast on the local access television station. When filming, I went out to the sites and explained what was being proposed – literally walking the viewer through what was being asked of the planning commission. We also augmented this with procedural information on how the project was being reviewed, under what criteria, those sorts of things.

The video agenda typically lasted about 20 minutes per show, and was broadcast leading up to the meetings, and then re-televised afterwards. People loved these broadcasts and felt they were really getting pertinent information.”

From Glynis Jordan in “Roundtable Discussion: Challenges We Face,” in PCJ #57

emphasis skewed? Were comments misquoted? Does the story unfairly damage your reputation or that of the commission? If any or all of the above is true, contact the reporter first and, only if necessary, the editor or station manager. If you discuss the issue without rancor, they may be receptive to printing a retraction, guest editorial or letter, or giving you rebuttal time on the air.

Above all, do not burn any bridges with the media. Over time, and with effort, you can build and nurture relationships that benefit all.

Dealing With Difficult People Requires Finesse

Planning issues can bring out the best and the worst in citizens. Your decisions affect the everyday lives of many people – the quality of their neighborhoods and the value of their homes and businesses. At some point in your commission career, you will chair or sponsor a public meeting where people are polarized, opinionated, and possibly rude and abusive. It may not be easy in these difficult circumstances, but it is essential that you keep your temper under control and your opinions to yourself.

Here are descriptions of some of the most common disrupters and suggestions about how to deal with them.

Arguers. Never answer an accusation with an angry retort nor ask a question that encourages people to continue their tirade. Remember that it takes two to argue; a reasoned and



fair-handed response may not convince the arguers, but may sway others to your side.

Attackers. Attackers are probably making you or the commission the scapegoat for a more generalized anger against the “system” or other matters you cannot control. They usually speak hurriedly and in loud voices. Put them off guard and slow down the momentum by answering deliberately and with assurance. If the attacker is a public official who seems to enjoy verbally abusing staff or volunteer commissioners, try to stay out of his way until he calms down. He will.

Gossip-spreaders. They speak in authoritative voices and will not be deterred by correct information. A simple, “Why, where did you hear that?” or “Does anyone know where we can get more information?” will often shame them, until the next time.

Hair-splitters. Sometimes their “picky” points are important to consider and perhaps a clue that you have neglected something. Do not take it up during the meeting. Refer the hair-splitters to a staff expert or

someone who can do research and help resolve the issue with the correct facts.

Old-timers. They may be garrulous, but they also are the keepers of valuable community memory. Appoint them to a subcommittee where their recollections can be put to good use.

Single-issuers. Every community has them. No matter the topic at hand, they are ready at every occasion to bring up the same issue. You may be talking about housing densities and they rant and rave about the sewers. You may be discussing park development and still they rail about sewers, and so on. After awhile, you will recognize them and probably can repeat what they have to say before they do. Listen and nod politely, but do not ask them any questions or encourage them in any way ... unless, of course, by some chance, you are talking about their favorite subject.

Yakkers. Strictly set and enforce time limits on all individual comments and use a bell or other audible means to keep yakkers in line. You may have to cut them off by calling on the next speaker, but it is important that everyone follow the same rules. The essence of democracy is to give equal time to many people with disparate points of view.

Deal with each situation with goodwill, fairness, and a

Skills You Will Need

“No matter how well you prepare intellectually for your role as commissioner, there is one simple fact you will learn and never forget: most people do not like change.

Be strong! Although knowledge, experience, and willingness to learn are important skills for a commissioner to have, they are less important than the personal skills you will need to rely on during all but the most perfunctory of meetings:

- *patience* to listen calmly to drawn out, repetitive, and angry comments by concerned citizens.
- *self-confidence* to speak out and ask those hard questions that need to be asked.
- *willingness* to ask for guidance from the staff planning officials and legal counsel.
- *objectivity*, in order to separate objectionable personalities from their otherwise reasonable claims.
- *courage* to make wise decisions for the betterment of your entire community.

And one last thought ... don't lose your sense of humor, for it may be your best ally for getting through a difficult evening.”

From “Welcome to the Commission! Advice from Six Planning Commissioners,” in PCJ # 39. This excerpt comes from Ann R. McReynolds, of Webster Groves, Missouri.

sense of humor. Call a recess if warring factions are out of control. Most importantly, realize that the tone and tenor of the meeting is often influenced by your own behavior.

On Being An Effective Commission Chair*

The critically important role of the chair of a planning board cannot be overemphasized. The planning process suffers if the chair is either weak and unfocused or too strong and intimidating.

These are some principles of effective leadership planning commission chairs should follow.

Be conversant with all the issues under discussion, but do not feel the need to be an expert on any. In fact, knowing too many technicalities may get in the way of encouraging and accepting the opinions of laypeople, a key role you should play.

Always show fairness and do not express your personal opinions, except when it is time to vote. If you must speak out, turn over the gavel to your vice chair. However, exercise that prerogative sparingly. If you do it too often, your ability to be an unbiased presiding officer will be questioned. Fairness also means you give everyone a chance to speak and deal quickly and decisively with those – either commission members or the public – who try to dominate the discussion.

Disdain the trappings of power. The gavel is all you should need to keep order, but it should seldom be used. Neither request, require, nor countenance special consideration from staff or from anyone else.

Display energy and enthusiasm, even at a hearing that has dragged on into the early morning hours.



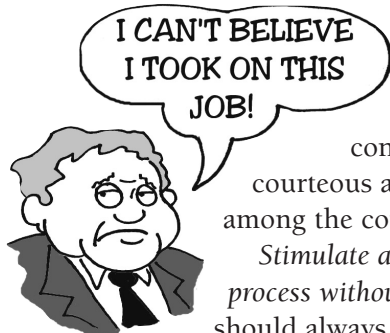
Most of us know good leadership when we see it, though we may not be able to define its exact qualities. One easy clue is attendance. If the commission has an effective chair, members will not be absent very often because too many productive and important decisions will be made without them.

Of course, an effective chair will not have allowed the meeting to go on that long, but in any event, you must always strive to be alert and positive, fair and courteous.

Use praise unsparingly. A good leader does not need praise; a good leader dispenses it when merited, but always sincerely. There should be much to laud: staff work

on a particularly difficult or onerous issue; public testimony that is fair and non-belligerent on a contentious subject; and courteous and intelligent discussion among the commissioners.

Stimulate and synthesize the group process without overwhelming it. You should always, figuratively at least, be



Who Should Chair?

“Don’t select chairmen on a seniority basis alone and don’t pass the office along from member to member as a reward and honor. The nicest guy in the world, the hardest working, the most interested, and your most valuable member can be indescribably horrible in the Chair. This is just one of those facts of life which is hard to explain, but, unfortunately, all too true. As occasion presents itself, give prospective chairmen a chance to preside, head up a sub-committee, report on special projects, and otherwise prepare themselves and demonstrate their abilities and leadership under pressure.”

From “The Riggins Rules,” in PCJ #13

looking to the right and the left and keeping your antennae out for verbal and nonverbal signals from the commission, staff, and the public. You do the best job as chair if you move the group to consensus more often than to a win/lose posture.

Most of all, a good planning commission chair enjoys the role and looks forward to tomorrow as another opportunity to exert enlightened and informed leadership.

*About the designation “chair” rather than chairman, chairwoman, or chairperson; all are in common use, and all are correct. However, the neutral term “chair” is more in keeping with similar terms for other leadership positions such as administrator, president, and chief executive officer.

Commission Members Also Can Be Leaders

In the previous Tip, I wrote about leadership and the importance of strong chairs. Their keen facilitation skills are vital to the success of each planning board meeting, and to the planning process itself.

But there is only one chair – there are many members – and most of us probably never will be (or even aspire to be) in that role. Moreover, even the best chair cannot do it alone. Everyone is important to the success and smooth functioning of the planning board. Members

do themselves and their community a disservice if they

just sit back, speak only when spoken to, or are otherwise passive.

In many ways, the roles of planning



board members are more subtle and not as easily defined as that of the chair. You do not have the title nor, for that matter, the gavel to give you authority. However, if you are willing to be thoughtful and reasoned participants, you will make important contributions to the proceedings. How, then, can planning board members be most effective?

Prepare yourself. Read all the pertinent written material, beforehand, review anything you do not understand with the planning director, and be ready with constructive questions or comments at the meeting.

Arrive on time so you can get your papers and thoughts in order.

Participate actively. Listen carefully to the presentations and comments of others and join in with remarks

of substance that advance the discussion.

Help out the chair but don't take over. You need

Everyone is important to the smooth functioning of the planning board; members do themselves and their community a disservice if they just sit back, speak when spoken to, or are otherwise passive observers.

not suffer silently if a weak or indecisive chair impedes discussion or the ability of the board to make decisions. There are several actions you can take that do not usurp the chair's authority but help keep things moving. Remind everyone of the time constraints ("according to our agenda, we have just five more minutes before the next item"), or sum up what has been said, followed by a recommendation or a motion. Finally, at the first opportunity, choose a more capable chair.

Be an expert – but not a know-it-all. Effective commissioners wisely take time to become more informed than the other members on a select number of subjects. However, even then, do not assume you know everything. Be open, and willing to consider the opinions of others. If you have to disagree with staff, commission members, or the public, be sure you have the correct information.

Watch your body language. Bored by the proceedings? Angry at the chair for cutting you off? Upset with the public for haranguing the commission unfairly? Resorting

Personal Relationships

"No commission or board can be effective or taken seriously if its members are constantly bickering. At all public meetings, you should respect each other regardless of your differences. If you absolutely cannot get along, you should seriously consider seeking intervention by a neutral, third party or asking for resignations from the warring parties."

From Elaine Cogan's "How Effective is Your Planning Board?," in PCJ #55

Developing a "Farm Team"

"Just as major league ball clubs develop future prospects through their 'farm teams,' your planning commission might want to consider ways of educating planning commissioners of tomorrow in the ways of planning. One approach is to hold workshops, perhaps annually, on planning and zoning basics open to all members of the community. This can have the fringe benefit of generating a constituency of community members who understand the benefits sound planning can bring to the community – and will support local planning efforts."

From Mike Chandler's "Citizen Planning Academies," in PCJ #29

to facial expressions that show displeasure, drumming your fingers on the table, crossing your arms – all are strong signals you should avoid.

Above all enjoy yourself and show it with humor and goodwill. As a planning commissioner, you are performing a task very important to the well-being of your community. The occasional slings and arrows should be worth your

Control the Meeting by Controlling the Agenda

Is this a description of your typical planning commission meeting? You start ten or more minutes late; go through the items prepared by staff; they are in no priority order, with the most important ones taken up several hours later; leave the public comment to the end when most everyone is tired and grumpy; and adjourn much later than anyone wants, with some important business held over to next time when you follow the same bad habits. There are many ways to rein in runaway meetings. A good

place to start is with the agenda.

Consider the items in order of their importance, not in the tiresome and non-productive usual sequence of “minutes, old business, new business.” It makes better

sense to tackle items that require your full attention when you are all at your freshest, and that is usually at the beginning of the meeting.

Allow ample and early time for issues that most concern the public. Too often, planners still put them last or next to last on the agenda even though they are well aware that these are just the matters certain to attract a large, opinionated crowd. It should be no surprise when people get restless and angry if they have to sit through several hours of deliberations that do not concern them. Put the contentious or controversial issues on the agenda early, and give them the time they deserve. Do not be offended if most of the crowd leaves as soon as you turn to other matters.

Place together routine items that require little or no discussion and consider them in a group. Some bodies call this the “consent agenda” and require one motion and one vote to approve them all.



Put the contentious or controversial issues on the agenda early, and give them the time they deserve. Do not be offended if most of the crowd leaves as soon as you turn to other matters.

But be careful that they are, indeed, routine items and not anything controversial you can be accused of “sneaking through.”

Do everything possible to help the public follow along with what may appear to be technical or difficult procedures. Print sufficient agendas for all to pick up as they arrive. Also, make sure there are sufficient copies of any graphics or explanatory material. Provide another handout with a simple explanation of the board’s processes ... What general rules of procedure do you follow? What is the purpose of a first reading? Second? On what issues do you require simple majorities and/or unanimous votes? What is your appeals process? What are the names of all the planning commissioners? Contact information about key staff?

All planning boards and commissions have some form of agenda. Examine yours closely to see if it is the best you can have as a way of contributing to orderly and productive meetings.

Organize for Business

- Set aside time on your agenda for dealing with vital, if not necessarily urgent, planning concerns.
- Distribute the agenda and background materials well in advance of the meeting.
- Have sufficient copies of these materials for the public.
- Start and end on time.
- Allow ample and early time for issues on which the public wants to participate.
- Be polite to each other and the public at all times.
- Discuss only one issue at a time.
- Know the rules of order but use them wisely.

From Elaine Cogan’s “Meeting Formats Should Follow their Functions,” in PCJ #35

First Impressions Matter

“Do create a good impression of city government. Remember that this is the first important contact that many of the people in the audience have had with the administration of their city and for some this is the most important matter in which they have ever been involved. Many will never be back again and many will never have another such contact and experience. Your performance will create in their minds the picture which they will always carry with them of ‘the way the city is run.’ Make it as pleasant and comforting a picture as possible.”

From “The Riggins Rules,” in PCJ #13

Voting Is Not Always Necessary

How often does the planning board engage in an informal but productive discussion when a member interrupts by making a motion?

Most likely, someone will offer a second, and you soon can be down a formal path, following rules of order you may not have needed at all. A motion made prematurely

or in the middle of a free and open conversation can stifle the very debate you need. Know when to cut off discussion, when to call for a vote, and when you can reach a decision by consensus or general agreement. The goal should be to give everyone the fullest opportunity to contribute to the smooth running and decision-making process of your planning board.



IT IS PRETTY CLEAR
THAT WE WANT TO.....

CONSENSUS
BUILDER

First, it is important to acknowledge that most, if not all, decisions on legal matters require a recorded vote. Many other issues, however, are best resolved by reaching consensus. Voting yea or nay can polarize board members by creating a winner/loser environment. While striving for consensus may be a longer and time-consuming process, it also encourages the group to come to general agreement without forcing individuals to take sides.

The consensus-builder is often not the chair. The role can be played by anyone who has the patience, aptitude, and interest. She relies on her ability to listen carefully to what people say or mean when they may appear to be rambling, and also on interpreting non-verbal behavior or body language. If you aspire to be the consensus-builder, you probably have to listen more than you participate in the discussion, all the while

watching participants' actions. Be alert for a momentary lull in the discussion, when it seems that all the points have been raised and the conversation is becoming repetitive. Head off a formal motion by using summary language such as "Now that it appears we have discussed all the options, it seems we generally agree on ..." or "It is pretty clear that we want to ..." or "We seem to have consensus on ..." Most times, members will nod in agreement and be relieved that someone is so perceptive. Thus, you can move on to another topic with impunity. If you have misread the situation, board members will most certainly tell you and the conversation can continue.

A consensus does not necessarily imply agreement. It can be reached when you are at an impasse and have exhausted the points to talk about. In this situation, the consensus builder can say, "It seems we will have to agree to disagree at this time; why don't we move on?"

Though most people find a consensus format very comfortable and preferable to constant voting, it may be unfamiliar and uncomfortable to some board members. Obviously, it can be used only if there is consensus to do so. Voting is a clear and direct method of reaching a decision. The consensus model is more intuitive and collaborative. Each has a proper place in the decision-making process of a well-functioning planning board.

Know when to cut off discussion, when to call for a vote and when you can reach a decision by consensus or general agreement.

On Building Consensus



"Consensus comes easier on non-controversial items. While this may seem blatantly obvious, you would be amazed (or maybe not) how much time is spent talking in circles on agenda items that will be passed unanimously.

The chair needs to bring any circular discussions to an end. The best way I have seen this done is by calling for a motion."

– Dale R. Powers, Senior Planner, Kendall County, Illinois, and Chair, APA Small Town & Rural Planning Division.

"Regardless of the circumstances our Chairman will go out of his way to assure that whoever wants to be heard receives their opportunity. We seem to reach consensus, at least to a great degree, in near all of our deliberations without a specific 'consensus builder.' ... Any of our members will take the lead as they deem necessary."

– Bob Steiskal, Jr., Member, Gulf Shores (Alabama) Planning Commission

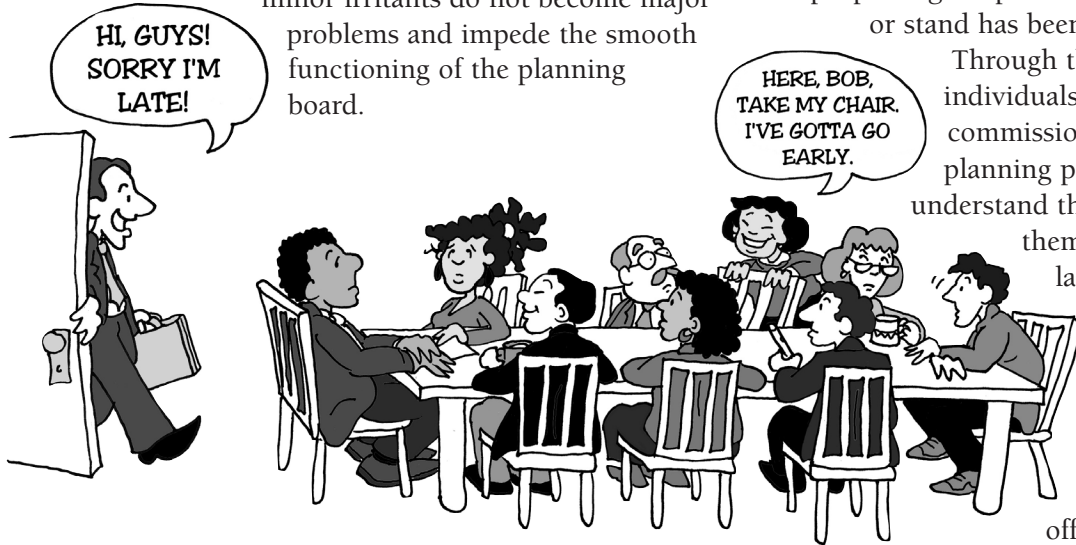
"My conviction about the value of consensus building couldn't be stronger. Democracy is, at its heart, dependent upon good citizens with fair minds who can work their way through all of the information and arguments and come to an agreement about their decision."

– Lois Merrill, Dodgeville, Wisconsin

Minor Irritants Can Become Major Problems

Members of planning boards and commissions should be chosen for their particular talents or backgrounds rather than their compatibility or congeniality. Still, it is important that you all work together, even though you may disagree on issues of substance. It may take concerted efforts to ensure that

minor irritants do not become major problems and impede the smooth functioning of the planning board.



Members themselves may, sometimes unwittingly, trigger the problems by:

- regularly arriving late.
- holding side conversations during the meeting.
- talking to each other and/or the public in rude or patronizing tones.
- expounding on every issue with a long-winded tirade.
- demanding excessive amounts of information before rendering an opinion.
- purporting to speak for the board when no official vote or stand has been taken.

Through this and similar behavior, individuals show disrespect for the other commissioners, the public, and for the planning process itself. Possibly, they may not understand the norms of behavior expected of them. More likely, by being chronically late arrivers – or chatting or disrupting the meeting – they send the message that their business is more important than the board's.

Always start your meetings on time and all but the worst offenders will soon mend their ways



“As a professional planning director and citizen planner, I have witnessed all of the behaviors mentioned. However, I have come to expect the unexpected in the planning forum, as the meetings are unrehearsed, the players are lay people, and the issues are often political and controversial.

Sun Tzu’s ‘The Art of War’ should be required reading for all people involved with community planning.”

– *Frank Wash, Walker, Michigan*

when they realize they miss important information or discussion if they arrive late.

Those who speak out of turn, are rude or condescending, or incorrectly speak on behalf of the commission, send the message that they need the limelight, no matter how much trouble it may cause. Be willing to interrupt them politely but firmly so that the public realizes they do not represent the rest of you.

It is important that each new set of commission officers make it clear to the media and to the public that the chair (or sometimes vice chair) is the designated spokesperson. Even that individual should not speak for the commission until you have taken official action.

How do you deal with commissioners who have tedious opinions on every subject or who ask for additional information incessantly? If the chair is not taking charge

firmly, members have to take the initiative. After a reasonable time enduring this monologue or endless questioning, look at your watch and say you think you have heard enough to move on, asking for the agreement of the others. Paraphrase what has been said already, or ask the recorder to read the record. Then, be willing to suggest that the board take action, if only to defer the matter to a later time. The individual who caused the problem may complain or even abstain, but if you have the majority on your side, you can move on.

While it is important to have rules of conduct, they should not be so onerous nor rigid that they stifle discussion or so lax that they permit unbridled misbehavior. Be reasonable and fair, but willing to discipline members who consistently impede the work you are expected to accomplish. Sometimes, the chair or another volunteer must take the responsibility to talk frankly with the troublemaker “off line.”

Commission business is jeopardized when board members consistently put themselves and their whims above those of the public or their fellow commissioners. Difficult situations can be assuaged if the board has generally agreed on standards of conduct beforehand, and if members are willing to stand firm and united when they are abused.

“Restraint and PATIENCE will serve you well in many situations that confront the planning board.”

“An effective planning commissioner realizes that PASSION can be a valuable tool.”

“There may be times when you have come to a principled conclusion that is neither popular nor supported by a majority of the board. If your colleagues respect you, they will respect your PERSISTENCE.”

The 3 P's of Being a Commissioner

The 3 P's of Being a Commissioner

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Patience Has Its Rewards

Restraint and patience serve you well in many situations that confront the planning board. Here is one example.

You and the other commissioners have endured three hours worth of testimony from citizens. It is late in the evening and the arguments on both sides have become repetitious. You haven't heard anything "new" in awhile. Some people are emotional or speaking in accented English or less than perfect grammar. Still, as the meeting or hearing continues, it is important that you show the same patience with the last presenter as you did with the first. Of course, rude or disruptive behavior should never be tolerated, but neither should legitimate citizen expression be curbed. Avoid any clues that may indicate your



impatience, such as tapping your pencil on the desk, whispering to your neighbor, interrupting, or answering abruptly.

Be forbearing with applicants. You see all kinds before the planning board: from savvy developers who appear to know the zoning code better than you do, to inexperienced newcomers who are understandably baffled by all the rules and regulations.

Put aside your biases and preconceptions. All applicants deserve your respect and patience as you consider their requests and decide how your community can be best served.

Be patient with the other commissioners.

You may know more than some about a particular subject and be inclined to rush to judgment after a cursory review of the situation, expecting them to take your advice without question. It is important to listen carefully to all your fellow commissioners, as ill informed as you think some may be. Even if you hear

All applicants deserve your respect and patience as you consider their requests and decide how your community can be best served.

nothing you did not know and your opinion does not change, everyone is entitled to participate in the process. Similarly, they may be more willing to be patient with you when you have to ask questions or carry on a discussion.

Show patience with your staff, especially in public. Ask questions for clarification, but not in an accusatory or demeaning manner. If you are dissatisfied with the contents of a report or its conclusions, wait until a less public opportunity. You can always ask to hold over a hearing if you need more information, but save your disagreements for private time when you are not embarrassing the people who work for you.

Have patience with the planning process. Yes, the procedures you have to follow may at times seem arduous and even unnecessary. Though in many cases they are there to protect your community from frivolous or precipitous action, they should not be sacrosanct and impervious to change. If the planning or approval processes can be improved to the benefit of the community, find ways to influence positive change. In the meantime, live with them, and each other, patiently.

When You Become an “Insider”

“It will not take long after you have joined the planning board to become an ‘insider.’ You will begin to understand professional planning jargon and may even be able to decipher plat maps and legal documents.

That knowledge, which is essential to doing a good job on the commission, can also cause you to be impatient with lesser informed citizens who slow down commission meetings with simple or elementary questions. If you are not careful, impatience can become paranoia and you can consider people who ask questions or demand answers as the ‘enemy.’

Patience may be the first attribute you lose ... when it should be the one you hold on to most tenaciously. Train yourself to be patient with the process and with all the participants, and you will go a long way toward increasing your effectiveness.”

From Elaine Cogan’s “Starting Out the New Year on the Right Foot,” in PCJ #8

Listen To Everyone

“Listen to all the people and not just those who fit into a neat stereotype of ‘desirable citizen.’ Worst traits often come out at a public zoning or planning hearing. But angry, obstreperous, or noisy people are not necessarily wrong.”

From Elaine Cogan’s “It’s Time to Discuss the ‘P’ Word,” in PCJ #16

Making the Case for Passion

Much planning is dispassionate. Citizens fill out the proper forms, pay the fees, meet the regulations, and receive approval from the planning staff or board. In our zeal to be objective and fair, it is easy to dismiss passion as an undesirable trait for planners and a suspect emotion for citizens.

To the contrary, passion is a powerful and admirable quality if it is not expressed in a hysterical or zealous, take-no-prisoners mode. It can be a positive model when you as a commissioner show a calm but passionate advocacy for the value of planning as a vital contribution to your community's present and future livability – and when you recognize that citizens can also be rightfully passionate about their neighborhoods, the natural environment, schools, playing fields, or other matters of concern.

Empathizing with the passions of others may help

inspire you and your fellow commissioners to deal constructively with controversy and find reasonable compromises.

Sometimes passion can cause you to be a loner. You may have patiently listened to all the arguments on a contentious issue, weighed the information, debated openly and fairly with your colleagues, and still reached a conclusion that is not supported by the majority on the planning board. This may not be a

comfortable position and would be ineffective if you are too often on the losing side. However, if you can express that passionate disagreement with conviction while not disparaging those who have other points of view, you will engender respect, and may even win over others.

An effective planning board member realizes that passion can be a valuable tool in advancing the cause of planning in their community.



No Apologies Needed

“Sometimes developers or citizens may make you feel uncomfortable for even being in a position to render a decision. Don’t fall into that trap! Acting properly, planning and zoning commissions perform a valuable service to the community as a whole. Since most communities make substantial investments in plans, parks, roads, sewer systems, and so on, they have every right to exert reasonable control, through planning and zoning, over how private development affects the community’s built environment and whether development conforms to the adopted master plan and ordinances. Don’t apologize for being a planning commissioner.”
From Steve Burt’s “Being a Planning Commissioner,” in PCJ #25

Pride & Satisfaction

“When I was first appointed to the city planning commission, I was told by a former commissioner that I was going to ‘have a lot of fun’ in my new position. I was totally mystified by that remark and couldn’t imagine a less-fun job than the one I now faced: a monthly commitment to attend boring meetings and a responsibility to bone up on the most mind-numbing kind of reading – ordinances, regulations, and statutes.

My first year was difficult, as I struggled to learn my duties and responsibilities and grappled with how best to deal with a fickle public. But now I think the ‘have fun’ directive was a piece of advice: Don’t take yourself too seriously. I have a tendency to do that anyway, so it took me a while to relax and enjoy what a planning commission can accomplish.

In my zeal to learn the ropes, I rolled up my sleeves and plowed through as many books and articles as I could find. Then, as each project or zoning

application was set to come before our board, I researched the applicable regulations and statutes before the meeting, because I didn’t want to make uninformed decisions – nor did I wish to look stupid in public.

The result was that I sometimes had a leg up on some of the other board members, and I occasionally found myself catching details others had missed. Yeah, that was fun.

Now in my eighth year on the board, I think I may have grasped some meaning in that comment and have concluded that, while his choice of words might have been better, he did know what he was talking about. Looking back at the projects and neighborhood issues that have passed through our hands on their way to the city council and then on to resolution and completion, I have to admit to feeling a sense of pride and accomplishment as well as one of satisfaction in knowing that I have had a hand in the future of my town.”

–*Roberta Peters, Sidney, Nebraska. From “Welcome to the Commission” (short essays by planning commissioners) in PCJ #39*

Guardian of the Public Physical Environment

“The modern American planning commission is the guardian of the public physical environment. When this responsibility is forsaken, all citizens of the community, present and future, suffer losses that are ecological, cultural, and economic, as well as aesthetic. The planning commission that does not plan to promote and protect the positive features of the physical environment is derelict in its duties and betrays a public trust.”

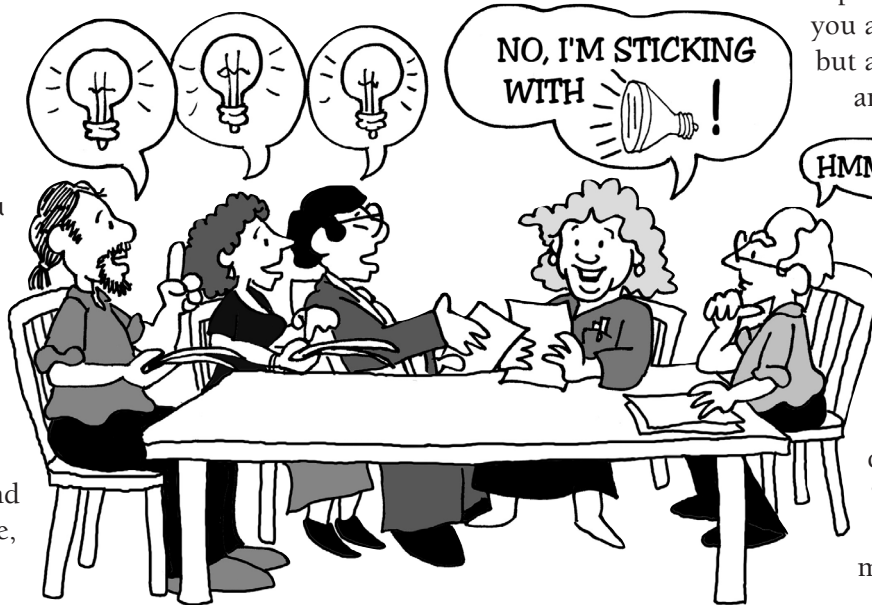
From Laurence C. Gerckens’ “Community Aesthetics and Planning,” in PCJ #8

Persistence Pays Off

In another Tip, I speak of the virtues of being patient. Too much patience, however, can lead to passivity and eventually paralysis.

You can be so intimidated by the consequences of the actions you are expected to take that you refuse to make anything but the most routine or mundane decisions.

In this Tip, let us consider the value of being persistent. Experience shows that problems not confronted only multiply and grow. You need not solve them all to gain community acceptance and credibility, but a willingness to be persistent in seeking answers, even if you take an unpopular stand on a controversial issue, is important.



Persistence also will cause you not to rely entirely on staff reports and recommendations. You should never feel too constrained by your lack of professional education to ask questions or even vote against a staff recommendation; neither should you appear to be looking over your shoulder, trying to anticipate and then vote according to the opinions of the majority of elected officials, or an influential segment of your community.

As a planning commissioner, you are expected to be fair, but also to be willing to express an informed opinion. But keep in mind that persistence is a trait that should be used sparingly.

A commissioner who is persistent to the point of being closed to other points of view and entrenched in his own can quickly become ineffective. "Don't pay attention to Joe. He never has an open mind on anything." Thus,

Persistence is a trait that should be used sparingly. A commissioner who is persistent to the point of being closed to other points of view and entrenched in his own can quickly become ineffective.

the board may politely hear Joe but not listen, because they believe Joe is not really listening to them.

If you tend to be persistent, examine your own motives. Do you know more about certain topics than other commissioners because of your background as a realtor, developer, attorney, planner, or other professional? Or, are you so reluctant to admit your lack of knowledge about some topic that stubbornly sticking to a position becomes a shield or defense mechanism?

In the first case, a willingness to share your knowledge with fellow board members may convince them of your point of view. In the latter, asking for information from the staff or others will win more points than staking out an unsubstantiated position.

All said, however, there may be times when you have weighed all the information, listened patiently to the public and the other commissioners, and still come to a principled conclusion that is neither popular nor

Out in Left Field?

“Do sit down and have a long soul searching session with yourself if you find that you are consistently ‘out in left field,’ that no one seems inclined to second your profound motions, and that you are quite often a minority of one. You might be theoretically right, and probably are, but give some thought to what is practical, possible, and just. Don’t be ‘stiff-necked’ in your opinions. Give a little.”

From “The Riggins Rules,” in PCJ #13

The First Law of Leadership

“You’ve thought hard about an important issue dividing your commission, and you have a reasonable compromise. But when you announce it, nothing happens. The other commissioners listen politely, then return to bickering.

What happened? You’ve just learned the first law of community leadership: To reason with people, you must understand – and deal with – what motivates them. Put another way, until you satisfy their instincts, you’re not likely to reach their intellect.

This is why the best civic leaders – those who consistently find creative solutions and win support for them – spend so much time studying others’ motivations. It’s the key to getting people to work together.”

From Otis White’s “The Secret to Compromise: Learning to Read Others,” in PCJ #16

supported by the majority of the board. If your colleagues respect you, they will respect your persistence. You may even win them over next time.

Staff, Customer Service, Burnout

“Let’s be honest. It is impossible to expect every commission meeting to be exciting and challenging.”

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Staff, Customer Service, Burnout

Staff Deserves TLC

Effective staff/commissioner relations are vital to the overall success of planning in your community, whether your agency has one, ten, or one hundred employees. Good will and an understanding of the pitfalls that impede sound relationships can help you solve the problems that inevitably arise.

Resist the temptation to “micro-manage.” The longer you are on the planning board, the more familiar you will become with planning jargon and its rules and regulations. Still, though you will know more than most citizens, you should not expect to be a professional planner. Indeed, you would be less effective as a citizen planning commissioner if you were. You should have more than enough to do studying the issues and participating in policy decisions. Play your job well and let the staff know you expect them to do theirs.

**WE ARE A GREAT TEAM
TOGETHER! WE CAN DO THIS!**



Avoid the appearance of favoritism. At social gatherings or at business or professional affairs, do not succumb to the lure of playing the insider's role by even hinting you have proprietary information on planning matters. Do not contact the planning director or a staff member to suggest they talk to a friend or relative involved in an issue. You may be innocent of any improper motives, but staff may interpret your request as a form of intimidation or

less than subtle directive to treat someone differently than other members of the public.

Control your public behavior.

Never berate, downgrade, or insult the staff at a public meeting. Abusing them by making them the target or scapegoat before an angry populace may gain you some transitory public support. In the end, however, it will deteriorate what should be a long-term, mutually respectful relationship.

Remember the importance of a simple “thank you – you did a great job at the hearing last night.” This can be just the right comment to uplift a harassed planning staff

when it appears the whole town has taken up arms against them. Take your planning director to lunch. Praise a particular piece of staff work at a public meeting. Write a letter of support to the mayor or city administrator. There are all manner of ways you can – and should – show your appreciation for your often overworked and undervalued planners.

Form and nurture a partnership. Accept the fact that

Respect & Understanding

“Cultivating an atmosphere of mutual respect between staff and commission is essential. Hopefully, commissioners will come to respect the hard work their staff does and the staff’s ability to act as counselors between conflicting stakeholders (oftentimes different departments within the city or county government), and their knowledge of the profession. No one says commissioners and staff have to agree, but showing respect is vital to the relationship.”

–Glynis Jordan, Winston-Salem, North Carolina

“From an organizational perspective, I also think it’s critical for staff and planning boards to have a clear understanding of their respective roles and responsibilities. In this context, as a staff planner I see my role as being in service to my boards, as broadly defined as needed to help us all do our jobs as best we can. This helps us work together efficiently and effectively. They don’t hang me out to dry; I don’t take it personally if they don’t agree with all of my recommendations.”

–Lee Krohn, Manchester, Vermont

Expectations

“Relationships involve expectations. What expectations will or should a planning commission have of the planning staff? Likewise, what expectations will or should the planning staff have of the commission? Without discussing the expectations each has of the other, misunderstandings are likely to result. ... The simplest way to overcome the guessing game is for commissioners and staff to share their expectations with one another.”

From Michael Chandler’s “Commission and Staff: Expectations of Each Other;” in PCJ #24

“Don’t forget that the staff is there to help you in any way possible. It is composed of very capable professional people with vast experience. Lean on them heavily. They can pull you out of many a bad spot if you give them a chance. Or they may just sit and stew, if you do not give them the respect which is their due. Remember that their usual practice is to remain silent unless they are specifically asked to comment. Most consider it presumptuous and unprofessional to inject any unsolicited comments into the hearings. Always ask them to comment prior to the final vote.”

From “The Riggins Rules,” in PCJ #13

there always will be some tension between commissioners and staff. You have different responsibilities and, often, different perspectives. But if you can develop a collegial partnership – and you can weather its ups and downs – everyone will benefit.

Customer Service Begins at the Front Door

The public sector seems to have recently discovered what the private sector has known for years – that satisfying its customers is a vital factor in assuring success. In planning, as in other fields of government, the citizen is the customer who should feel comfortable in the oftentimes alien environment of the planning office.

People who deal with planning departments can be divided into two general categories. There are the savvy contractors or developers who know all the rules and just want to get through the process as expeditiously and cheaply as possible. And there are the ordinary citizens who are requesting



permission to make any of a myriad of major or minor changes to their property. They, too, want to get through the process as quickly as possible, but they may never have dealt with planning or zoning matters before. As a result, they may be nervous, uncertain, and perhaps even hostile.

Though the first category can be expected to know their way around and not be as sensitive to the surroundings as a citizen visiting for the first time, you have a responsibility to see that the environment each customer faces is welcoming and respectful.

Approach your planning office by putting yourself in the shoes of a typical member of the public. What does the front entry communicate? Is it a heavy wooden or glass door that is always closed shut? Notice how much more friendly and welcoming the environment is if you leave it ajar during regular hours or, at the least, make sure the door is easy to open.

Look carefully at all the directions or signs. Are they in plain English? If you have a significant minority population, you may need translations. Are

people directed easily to the zoning and permit department, or to wherever they can go for general information?

If someone cannot be at the front counter at all times, is there a bell or buzzer and is it answered promptly? If customers have to wait, are they told about how long it will be and is that estimate reasonable and accurate? Are there comfortable chairs and timely reading materials? A children's play corner? A pot of freshly brewed coffee?

Look at the walls. Are there faded or outdated posters or calendars, or perhaps nothing at all? Contact your local historical society or library for interesting photos they can rent or lend you.

In many offices, the planning counter is where most of the interaction between applicant and planner happens. Is it unnecessarily high and intimidating? How can you make it more accessible? Some people may be reluctant to talk about private matters in an open public area. Can you help them feel more comfortable by providing a screened-off corner or private room?

If you work with staff to scrutinize your planning office from the perspective of the customer/citizen, you should be able to find many ways to improve the environment without much additional cost.

A Focus on Service

"If you read the business section of any news magazine, you have seen articles about the changes in our economy. These articles have explored how shifts from manufacturing to service have changed our workforce. These trends have also changed our traditional view of management. Control of resources and the production process is no longer management's primary concern. Their focus is now on customer service and the quality and timeliness of service delivery.

Neither local government nor planning is immune to such changes. Planning officials are now finding themselves interacting with a smarter, more sophisticated, sometimes hostile public. People like this new emphasis on service and expect the same from local government.

Some planning programs are not only surviving, but thriving. Programs that have become valued partners in the community's agenda. These programs have adopted a new view towards planning in their communities. This view is more pragmatic about how planning should be conducted and expects results, quickly. People are viewed as customers who have problems that need to be solved. Programs are structured to help people learn how to solve their problems on their own or in partnership with local government. Such programs focus on customer service and the quality and timeliness of service delivery.

One of the key ways of reflecting a customer service philosophy is through good communications between the planning program and its 'customers.' [This] is a two-way street. Good communications involves both listening to what your customers are saying, as well as providing the information they need."

From Ray Quay's "Customer Service," in PCJ #1

Recognize and Relieve Burnout

Let's be honest. It is impossible to expect every commission meeting to be exciting and challenging. But if you rarely find them stimulating, you have three choices: change your attitude, try to change how things are done, or resign. Assuming you are still committed, the following are ways to deal with some common problems.

Meetings – too frequent and too long. This situation, especially if it is more the rule than the exception, is unfair to citizen commissioners as well as the public. It is a rare commission meeting that should go over three hours. Moreover, it is important to start within five minutes of the agreed-upon time and end accordingly.

If overly long and crowded meetings are a common problem with your planning board, look critically at your agendas. Are they sensible for the time

allocated? It may be more productive to hold shorter, more focused meetings.

Place the most difficult or controversial issues early on the agenda when you, and the public, are fresh and alert. Appoint subcommittees to deal with issues that require in-depth review. And discipline yourselves to keep to the subject and avoid going off on tangents or irrelevancies.

Static roles and responsibilities. While only one person can and should be in charge of each meeting, it may be stimulating to rotate this responsibility. Even if you have a permanent chair, consider having someone with specific experience lead all or part of a meeting when that expertise is needed.

One format expected to fit all situations. Aside from formal hearings whose procedures are probably written down in state statute or your community's code, there are many ways your meetings can be flexible and innovative. Move out of city hall to a neighborhood school



You have three choices: change your attitude, try to change how things are done, or resign.

or community center. Hold a dialogue with the public before you make a decision. Consider “Robert’s Rules” as less than ironclad. There is no one “right way” or meeting format.

Different players – same old debates. Put yourself in each applicant’s shoes. Though you may think you have heard it all before, it is probably a new and intimidating experience for that individual. Do not lose sight of the contribution you make to good planning by maintaining and respecting your layperson’s perspective. If everything were cut and dried, staff could make all the decisions. Be alert to the nuances that make each situation different. Challenge yourself each time and you can react to even the most routine matters with enlivened interest.

The big picture. Fatigue, boredom, and burnout are more likely if you rarely have the chance to look at the larger overriding issues – for example, to consider the distinct values of your community and how they can be enhanced by planning without the urgency of having to make a big decision. Schedule retreats or set aside time at some of your meetings and you will be refreshed and recharged to deal with even the most routine matters.

When is Enough, Enough?

“Look for signals that a change may be needed. No one is indispensable and no one who really is not interested in continuing should be coerced into remaining on the commission.

Lack of attendance is a sure sign that the individual considers the planning commission less important than other commitments. The board cannot and should not allow this to continue unaddressed. There are also those who attend in body only, obviously inattentive or disinterested most or all of the time.

The responsibility for recognizing the signs that members have either served too long or never will serve well rests primarily with the chair, but other commission members should not be shy about bringing this to the chair’s attention.

But the most important duty is yours. If you personally feel tired and burned out, no matter how long or short a time you have served, do yourself and others a favor. Resign gracefully. If you know someone who fits that description, but is reluctant to seem to be a quitter, bring up the subject, tactfully but firmly.

The good of the community, and planning, deserves no less.”

From Elaine Cogan’s “When is Enough Enough?” in PCJ #36

Is burnout inevitable? No. Can it be avoided or turned around? Most likely. If you try at least some of the above and they do not work for you, do not consider it a personal failure. Be proud of the contributions you have made to your community’s good planning health and accept the fact it may be time to move on.



About the Author

Elaine Cogan, partner in the Portland, Oregon, planning and communications firm of Cogan Owens Cogan, has worked for more than thirty years with communities undertaking strategic planning and visioning processes. Since 1991, Ms. Cogan's "The Effective Planning Commissioner" column in the *Planning Commissioners Journal* has helped citizen planners across the country find ways of serving their communities most effectively.

Ms. Cogan has been honored for her work on a variety of citizen involvement projects, including "Complete Communities for Clackamas County," a comprehensive public outreach effort that received the American Planning Association's 2002 Public Education Award; an Award for Excellence from the International Association for Public Participation; and the National Association of Counties' Achievement Award.

In addition to her consulting for Cogan Owens Cogan, Ms. Cogan has served as an editorial columnist for the *Oregon Journal* and the *Oregonian* newspapers, while also providing radio and television commentary on a variety of public issues.

She is the author of *Successful Public Meetings: A Practical Guide*, published by the American Planning Association and now in its second edition, and co-author of *You Can Talk to (Almost) Anyone about (Almost) Anything: a Speaking Guide for Business and Professional People*, published by Portland State University. Ms. Cogan also wrote the chapters on public participation for the book, *Planners Use of Information*, and on public meetings for *Planning and Urban Design Standards*, both published by the American Planning Association.

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