

**CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS**

**Policy Session Worksheet**

**Presentation Date:** 1/19/21    **Time:** 2:30 pm    **Length:** 1 hour

**Presentation Title:** County Governance and legal Authority

**Department:** County Counsel

**Presenters:** Stephen L. Madkour, County Counsel

**Other Invitees:**

**WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?**

No action from the Board if required. This is a training.

**EXECUTIVE SUMMARY (why and why now):**

With the introduction of new commissioners County Counsel has historically provided a training on the structure of county government and the scope of board authority, and Oregon statutes that are directly applicable to everyday work of county commissioners such as public records, public meetings, and ethics laws.

**FINANCIAL IMPLICATIONS (current year and ongoing):**

Is this item in your current budget?     YES     NO

What is the cost?    \$0    What is the funding source?    N/A

Other than the staff time to produce the powerpoint presentation and provide the training, there is no cost to the county.

**STRATEGIC PLAN ALIGNMENT:**

- How does this item align with your Department’s Strategic Business Plan goals?
  - This training is in alignment with County Counsel’s goal to provide training to county elected officials and departments on matters of county concern.
  
- How does this item align with the County’s Performance Clackamas goals?
  - This policy is in alignment with the County’s goal to build public trust through good government.

**LEGAL/POLICY REQUIREMENTS:**

It is County Counsel's goal and objective to keep the governing body well informed on the applicable law.

**PUBLIC/GOVERNMENTAL PARTICIPATION:**

N/A

**OPTIONS:**

This presentation is a training and as such is informational only.

**RECOMMENDATION:**

**ATTACHMENTS:**

County Governance and Legal Authority Powerpoint Presentation

SUBMITTED BY:

Division Director/Head Approval Stephen L Madkour

Department Director/Head Approval Stephen L. Madkour

County Administrator Approval \_\_\_\_\_

<p>For information on this issue or copies of attachments please contact Stephen L. Madkour @ 503-655-8362</p>
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# COUNTY GOVERNANCE AND LEGAL AUTHORITY

Stephen L. Madkour  
Clackamas County Counsel

# OVERVIEW

- Functions of the County Government
- Legal Authority & Hierarchy
- Governance
- Legal Requirements of Public Officials

# GOVERNANCE



- Legislative Authority - BCC
- Executive Authority – County Administrator
- Judicial and Quasi-Judicial Authority

# Legislative Authority Vested in Board



- The board and the voters have legislative authority “over matters of county concern to the fullest extent permitted by the constitutions and laws of the United States and the State of Oregon”
- Authority to establish, alter and abolish administrative departments
- Authority to create advisory boards and commissions and to approve members
- Authority over specific administrative actions
- Authority to develop county policy
- The Board serves as the governing body for County, and at least nine special districts (Development Agency, ELED, 4H, CCSD #1 & #5, Tri-City, NCPRD, Library, Surface Water Management and Housing Authority)

# What is the General Legal Authority of Clackamas County?

- ❑ Constitution – Article VI, Sec 10
- ❑ Oregon Statutes – ORS Chapters 201-215
- ❑ Judicial Decisions
- ❑ Ordinances
- ❑ Resolutions
- ❑ Orders
- ❑ Proclamations
- ❑ Rules and Policies

To the people  
justice be established  
said this Constitution

# Oregon Constitution

Art VI, sec 10. The Legislative Assembly shall provide by law a method whereby the legal voters of any county, by majority vote of such voters voting thereon at any legally called election, may adopt, amend, revise or repeal a county charter. A county charter may provide for the exercise by the county of authority over matters of county concern.



# Oregon State Statutes

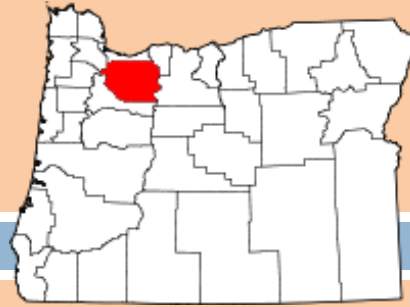


- ORS Chapters 201-215
- Confer responsibilities
- Regulate certain actions by Counties  
(e.g., DA, Sheriff, Clerk, Medical Examiner)
- Preempt certain actions by Counties  
(e.g., guns)

# Oregon Revised Statutes

- Clackamas County is a “statutory home rule” or “general law” county.
- The County is a political subdivision of the state. As such, each county is a body politic and corporate for the following purposes:
  - (1) To sue and be sued;
  - (2) To purchase and hold for the use of the county lands lying within its own limits and any personal estate;
  - (3) To make all necessary contracts; and
  - (4) To do all other necessary acts in relation to the property and concerns of the county.
- ORS 203.035 states that “the governing body or the electors of a county may by ordinance exercise authority within the county over matters of county concern, to the fullest extent allowed by Constitutions and laws of the United States and of this state.”
- The power granted by this statute is “in addition to other grants of power to counties, shall not be construed to limit or qualify any such grant and shall be liberally construed, to the end that counties have all powers over matters of county concern that it is possible for them to have under the Constitutions and laws of the United States and of this state.”
- The Oregon court have broadly construed this statute. *GTE Northwest, Inc v Oregon PUC*, 179 Or App 46 (2002); *Alison v Washington County*, 24 Or App 571 (1976).





# CLACKAMAS COUNTY GOVERNMENT

- Clackamas is a General Law or Statutory County
- Five full-time, non-partisan commissioners elected at large
- Elected Sheriff, Assessor, Clerk, Treasurer, District Attorney, and Justice of the Peace
- Qualifications of Elected Officials – Chapter 2.11
- County Administrator – Chapter 2.09

# Ordinances: Clackamas County Code

- \* Legislative actions by the Board with authority from State law
- \* Passed by a majority of the Board or voters
- \* Subject to initiative and referendum powers reserved to county voters
- \* Ordinances require two readings, 13 days apart
- \* Effective 90 days after passage unless declared as an Emergency ordinance
- \* County wide law
- \* Not enforced within cities absent consent

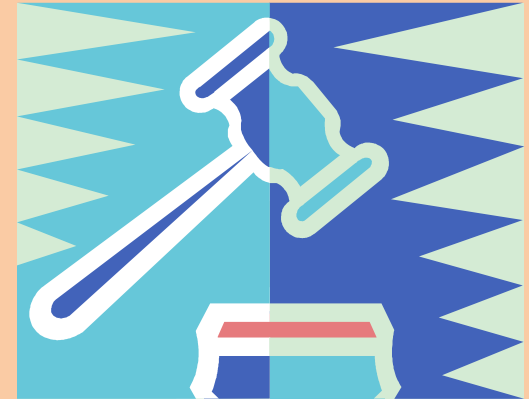
# RESOLUTIONS

- Administrative actions with authority from charter, state law or county ordinance
- Statements of Board policy
  - Condemnation actions
  - Declaring an emergency
  - Adopting Budgets
- Adopted in a single meeting



# ORDERS

- Formal action by the Board
- Adopted in a single meeting
  - Accepting/Vacating Roads
  - Transferring Jurisdiction
  - Bond Sales
  - Boundary Change
  - Decision of Board in quasi-judicial role – land use decisions



## PROCLAMATIONS

- Formal public statements by the Board
- Sometimes aspiration
- Adopted in a single meeting





# County Administrative Policies and Procedures

- ▶ Drafted by departments and approved by the Board
- ▶ Administrative actions with authority from Statute and Ordinance

# Board Functions

## County Code Section 2.11

- ❖ Chair sets agenda. Two + commissioners can place item on agenda
- ❖ The Board establishes policy
- ❖ The Boards formally acts through a quorum and an affirmative vote of the majority.
- ❖ At least three members of the Board must be present to constitute a quorum and to transact business.
- ❖ Board function is typically legislative but it may occasionally be quasi-judicial



# *Executive Authority Vested in County Administrator*

## *County Code Chapter 2.09*

- ★ *The County Administrator serves as the Chief Administrative Officer of the County and all County Service Districts*
- ★ *Serves as Budget Officer of the County and all service districts*
- ★ *Authority to appoint, direct and discharge all County Administration staff, department heads, except elected officials and County Counsel*
- ★ *Directs the use, maintenance and custody of county and district property*
- ★ *Board members may not direct any county employee in the performance of their duties other than County Administrator and County Counsel*

# Legal Requirements of Public Officials in Oregon



- ◆ Public Meetings Law
- ◆ Public Records Law
- ◆ Oregon Ethics Law

# Oregon's Public Meetings Law

ORS 192.610

- ▶ Oregon's Public Meetings Law requires that decisions of public bodies be arrived at openly.
- ▶ With few exceptions, members of the public have the right to attend all meetings of governing bodies at which decisions about the public's business are made or discussed.



# Public Meetings Law

- What is a public meeting?
- When is a public meeting required?
- What business may be accomplished in a public meeting?
- How is public meeting conducted?
- Location and notice requirements?
- Minutes are required
- When can the Board discuss issues in executive session?

# Purpose of Public Meetings Law

- ❑ The overarching principals of Oregon's Public Meetings Act are set forth in the purpose statement:
- ❑ "The Oregon form of government requires an informed public aware of the deliberations and decisions of governing bodies and the information upon which such decisions were made. It is the intent of [the Public meeting Law] that decisions of governing bodies be arrived at openly."
- ❑ Whenever new issues arise, courts look to the purpose statement.

# Who is subject to the law?

ORS 192.610(3)

“Governing body” means the members of any public body which consists of two or more members, with the authority to make decisions for or recommendations to a public body on policy or administration.”

# Advisory Bodies and Subcommittees

- Advisory bodies and subcommittees of a governing body are subject to the act.
  - Hamlets and Villages and other alphabet agencies.
- BCC subcommittees
  - If the subcommittee makes a collective recommendation to the BCC, it is subject to the act.
  - If the subcommittee members make individual recommendations to the BCC it is not subject to the act.
  - If the subcommittee is purely information gathering, it is exempt.

# What does the act require?

- All meetings of the governing body of a public body shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by law.
- A quorum of a governing body may not meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as otherwise provided by law
- Location
- Notice
- Minutes



# Executive Sessions



- ❖ An executive session is a properly noticed closed-door session where members of the public are excluded.
- ❖ The media is generally allowed to attend.
- ❖ Board may deliberate and discuss, but no final action may be taken in an executive session.
- ❖ Executive sessions may be held to discuss certain matters specified in the Public Meetings Law including: Pending litigation, labor negotiations, real property negotiations, and disciplining of an officer or employee or performance evaluation of an officer or employee.

# Serial Deliberations

- Dumdi v Handy – Lane County decision holding that serial, or successive deliberations can rise to the level of a violation of the public meetings.
- The court stated that searching for a bright line rule in these types of situations is a “fool’s errand.”
- Even though three commissioners were never in the same room at the same time discussing the same matter, the continuing multiple or serial conversations by board members amounted to private deliberations in violation of the Public Meeting law.
- The Public Meetings law does not prohibit the same two commissioners from privately meeting and gathering information, and later sharing it with their fellow board members, provided that it was done during a public meeting.

# Violations of Public Meetings Law

- Violations of Oregon's Public Meeting Law are civil in nature. Successful petitioner may recover their attorney fees
- A defect in the meeting is voidable
- If willful misconduct then officials jointly and severally liable for fees
- A complaint for violations of the executive sessions provisions of the Public Meetings Law may be filed with the Oregon Government Ethics Commission.

# Oregon's Public Records Law

ORS 192.410

- \* The overarching policy objective of Oregon's Public Records Law is that the public has a right to full disclosure of public records.
- \* Every person has a right to inspect any nonexempt public record, regardless of who they are or why they want to see the record.



# Public Records Law

- ▶ What is a public record?
  - ▶ “Any writing that contains information relating to the conduct of the public’s business . . . regardless of physical form or characteristics.”
- ▶ Is the public entitled to see every public record?
  - ▶ No, there are numerous exemptions from disclosure.
- ▶ How does the County deal with public records request?
  - ▶ The County has a formalized Public Records Request process.

# Public Records Law

- Violations
- A successful petitioner recovers their costs and attorney fees.
- Tampering with public records is a Class A misdemeanor

# Oregon Ethics Law

- Who does it apply to?
- What does it prohibit or limit?
- Use of position
- Release of confidential information
- Gifts
- Honoraria
- Employment
- Reporting – every April





# Ethical Prohibitions

## Oregon's Ethics Law Prohibits:

- ★ Conflicts of Interest
- ★ Solicitation and Acceptance of Gifts
- ★ Solicitation and Acceptance of Honoraria
- ★ Future Employment Opportunities
- ★ Use of Confidential Information
- ★ Representing Private Interests
- ★ Interests in Public Contracts
- ★ Reporting of Economic Interests
- ★ Nepotism



# Oregon's Limits on Gifts

ORS 244.025

- The general rule is that a public official, a relative, or household member of the public official may not solicit or receive any gift with a value in excess of \$50 in any calendar year from a source that could reasonably be known to have a legislative or administrative interest in that public official's actions, votes, or decisions.

- Due Process Clause of the 14th Amendment to the United States
- Constitution:
  - The right to an unbiased and impartial decision-maker
  - The right to a fair process
- *Fasano v Washington County*
  - Impartial decision maker,
  - Declare any bias
  - Conflict of interest
  - Ex parte contact or site visit related to the land use application.
- Prohibition on holding incompatible offices: Article II, section 10 of the Oregon Constitution – no person shall hold more than one lucrative office at the same time
- Bribery and threat prohibitions: Article II, section 7 of the Oregon Constitution – every person shall be disqualified from holding office who has been given a bribe during his or her term of office



# Elections Violations

ORS 260.432

The law prohibits public employees from: soliciting any money, influence, service or other thing of value or otherwise promoting or opposing (1) any political committee; (2) the nomination or election of a candidate; (3) the gathering of signatures on an initiative, referendum or recall petition; (4) the adoption of a measure; or (5) the recall of a public office holder, while “on the job during working hours.” For the purposes of this law, an elected official is not considered a “public employee”; however under no circumstances should a public employee or elected official use public funds or resources to promote or oppose any of the above activities.

# Conflicts of Interest



- An ***actual conflict*** of interest exists whenever the effect of any action, decision or recommendation by a public official would cause private pecuniary benefit or detriment for the person, or the person's relative, or any business with which the person or relative is associated
- How must public officials deal with actual conflict?
- Disclosure and no participation.

- ✘ A ***potential conflict*** of interest exists whenever the effect of any action, decision or recommendation by a public official could cause private pecuniary benefit or detriment for the person, or person's relative, or any business with which the person or relative is associated
- ✘ How must public officials deal with potential conflict?
- ✘ Disclosure and participation

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