

**CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS**  
Sitting/Acting as (if applicable)

**Policy Session Worksheet**

**Presentation Date:** 1/11/2023      **Approx. Start Time:** 11:00AM      **Approx. Length:** 1 hour

**Presentation Title:** County Governance Training

**Department:** County Counsel

**Presenters:** Stephen Madkour, County Counsel

**Other Invitees:** All staff interested in learning about general county governance

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

No action requested, information only.

**EXECUTIVE SUMMARY:**

This is a training on county governance that we provide to newly elected board members, other elected officials, and county staff. The content includes source and scope of county authority, legislative functions, public records law, public meetings law, and government ethics.

**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

**STRATEGIC PLAN ALIGNMENT:**

- How does this item align with your Department's Strategic Business Plan goals?

Provide leadership, oversight, and legal consultation services to the County, and its elected officials, departments, and special districts, so they can effectively implement their policy objectives, achieve success for County operations, and minimize risk and adverse results for the County.

- How does this item align with the County's Performance Clackamas goals?

Build Public Trust through Good Government.

**LEGAL/POLICY REQUIREMENTS:**

N/A

**PUBLIC/GOVERNMENTAL PARTICIPATION:**

This training is given when we have newly elected board members, other elected officials and county staff.

**OPTIONS:**

N/A

**RECOMMENDATION:**

**ATTACHMENTS:**

N/A

**SUBMITTED BY:**

Division Director/Head Approval: /s/ Stephen Madkour

Department Director/Head Approval: /s/ Stephen Madkour

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

For information on this issue or copies of attachments, please contact Stephen Madkour @ 503-655-8362
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# COUNTY GOVERNANCE AND LEGAL AUTHORITY

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STEPHEN L. MADKOUR

CLACKAMAS COUNTY COUNSEL



# OVERVIEW

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FUNCTIONS OF THE  
COUNTY GOVERNMENT

LEGAL AUTHORITY &  
HIERARCHY

GOVERNANCE

LEGAL REQUIREMENTS  
OF PUBLIC OFFICIALS

# GOVERNANCE

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Legislative Authority – BCC

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Executive Authority – County Administrator

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Judicial and Quasi-Judicial Authority

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# 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/OSU, WES formerly CCSD #1 & #5, and 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 – County Code

Orders

Resolutions

Proclamations

Rules and Policies

# Oregon Constitution

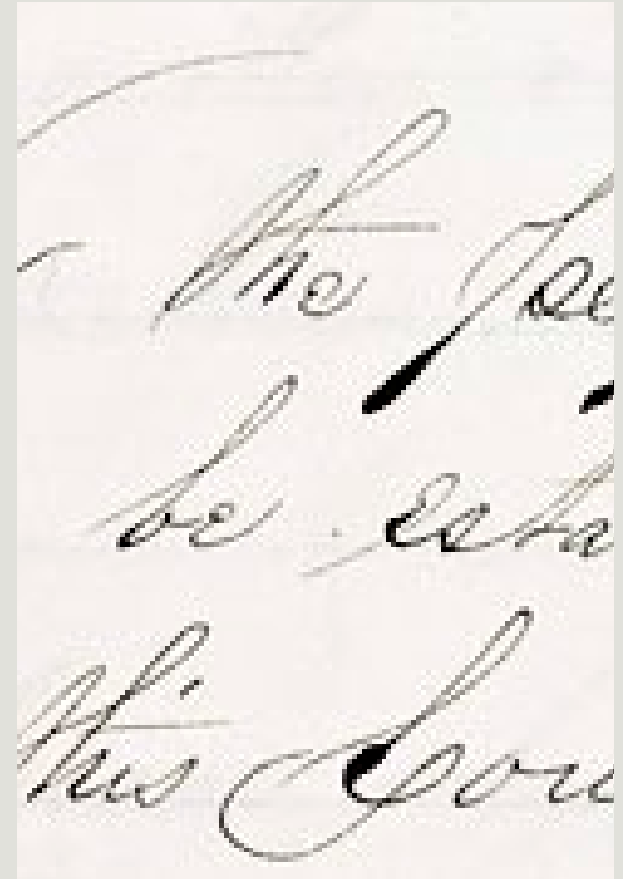
## Art VI,

**Section 6. County Officers:** There shall be elected in each county by the qualified electors thereof at the time of holding general elections, a county clerk, treasurer and sheriff who shall severally hold their offices for the term of four years.

**Section 7. Other officers.** Such other county, township, precinct, and City officers as may be necessary, shall be elected, or appointed in such manner as may be prescribed by law.—

**Section 8. County officers' qualifications; location of offices of county and city officers; duties of such officers.** Every county officer shall be an elector of the county, and the county assessor, county sheriff, county coroner and county surveyor shall possess such other qualifications as may be prescribed by law. All county and city officers shall keep their respective offices at such places therein, and perform such duties, as may be prescribed by law.

**Section 9. Vacancies in county, township, precinct and city offices.** Vacancies in County, Township, precinct and City offices shall be filled in such manner as may be prescribed by law.





# Oregon Constitution

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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

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- 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)



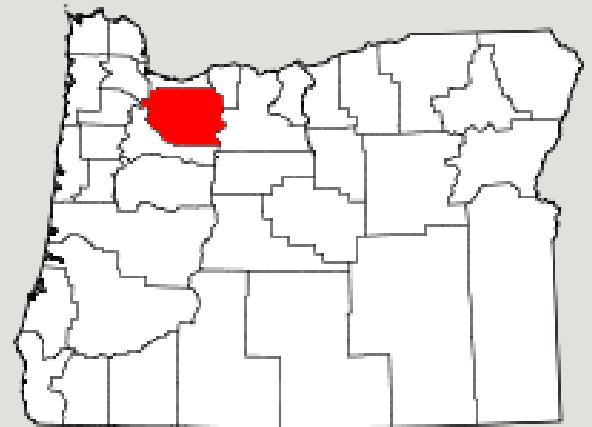
# Oregon Revised Statutes



- 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 County Commissioner – 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



# 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
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# PROCLAMATIONS

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

# 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



# County Administrative Policies and Procedures

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



Board  
Functions  
County  
Code  
Section 2.11

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Chair sets agenda. Two + commissioners can place item on agenda

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The Board establishes policy

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The Boards formally acts through a quorum and an affirmative vote of the majority.

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At least three members of the Board must be present to constitute a quorum and to transact business.

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Board function is typically legislative, but it may occasionally be quasi-judicial

- ★ *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*

*Executive Authority Vested in County Administrator  
County Code Chapter 2.09*

# Legal Requirements of Public Officials in Oregon

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- ◆ 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.

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?

# Public Meetings Law

## 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

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- ❖ 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 no vote and 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;
  - potential and 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 session's 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

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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.

# Quasi-Judicial Considerations

## 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

The law prohibits public employees from: soliciting any money, influence, service or other thing of value or otherwise promoting or opposing

- any political committee;
- the nomination or election of a candidate;
- the gathering of signatures on an initiative, referendum or recall petition;
- the adoption of a measure; or
- 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.

# Elections Violations

## ORS 260.432

# 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.

# Potential Conflicts of Interest

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



# Questions?

## Contact Office of County Counsel

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