

TO: Mayor and City Council |
THROUGH: Krishna Namburi, Interim City Manager |
FROM: Dan Atchison, City Attorney

SUBJECT:

Supplemental Staff Report

Oregon Government Ethics Commission (OGE) guidance on Oregon ethics and public meetings law.

Ward(s): All Wards
Councilor(s): All Councilors
Neighborhood(s): All Neighborhoods
Result Area(s): Good Governance

SUMMARY:

This supplemental staff report addresses new information in the form of a Frequently Asked Questions (FAQ) page concerning serial meetings provided by OGE late Friday.

ISSUE:

Information only.

RECOMMENDATION:

Information only.

FACTS AND FINDINGS:

On Friday, July 25, 2025, OGE Executive Director Susan Meyers provided a FAQ to Councilor Linda Nishioka in response to questions Councilor Nishioka has raised concerning serial meetings. The FAQ is expected to be published on OGE's website but has not at the time of this writing. The FAQ provide clarity on questions raised concerning communications with members of the public, neighborhood associations and the press. The FAQ affirmatively approves of members of governing bodies, such as the

City Council, meeting with and discussing pending governing body business with the public, including answering substantive questions, expressing councilor's opinion regarding the issues, and providing information and updates regarding council meetings.

Serial communications in general

The FAQ states that determining whether a communication is a *prohibited serial communication* involves the following factors;

1. Do the serial communications involve a quorum of the governing body,
2. Do the communications involve a matter within the governing body's jurisdiction, and
3. Did a quorum use the serial communications for the purpose of deliberating or deciding on that matter?

The FAQ reiterated that a quorum of a governing body may meet or have serial communications on topics that are not within their jurisdiction. For Council, there may be few substantive matters that are not or could not reasonably come before them, so council members should treat any meeting of a quorum or conducting serial communications in a quorum cautiously. Communications and meetings that are clearly exempt from the public records laws and prohibited serial meetings include informational communications such as informing members of the dates, times and agenda topics for meetings, non-City business, purely social gatherings, and training and team building exercises.

Speaking with constituents

The FAQ states that governing body members may speak to constituents about matters within the governing body's jurisdiction but warns against asking or directing third parties to be intermediaries that share information to a quorum of the governing body for the purpose of deliberating on a matter. The FAQ states "[t]he fact that a constituent communicates on their own with a quorum of the governing body does not mean the governing body engaged in prohibited serial communications. What remains unclear is whether the rule is violated if the member of the public shares councilors' opinions with other members constituting a quorum. Based on the FAQ statement that the sharing of the information must be "for the purpose of deliberating or deciding on a matter," it appears that if the governing body members did not intend to deliberate when discussing the matter with the constituent, then no prohibited serial meeting occurred. However, until OGEC provides further clarification, that should be treated with caution.

Speaking with the media.

The FAQ unequivocally states that nothing in Oregon public meetings law prohibits governing body members from speaking with the media.

Using staff as an intermediary.

The FAQ stated that asking staff to determine other governing body members' opinion on pending business and reporting that back would likely be a serial meeting violation. The FAQ made clear that serial communications between a quorum of a governing body, with or without an intermediary are permitted where;

- No deliberations or decisions occur,
- The topic is not within the governing body's jurisdiction,
- The topic is not substantive such as scheduling, etc.

The FAQ addresses a number of questions that have been raised by Salem and other jurisdictions over the past several months. It provides some needed clarity on OGEC interpretation of Oregon public meetings law and dispels some of the contrary guidance it has previously provided. Additional clarifications will likely be needed in the coming months and legislative changes to existing law are still warranted.

BACKGROUND:

The Oregon Legislature, in 2023, passed HB 2805, authorizing the OGEC the authority to enforce Oregon's Public Meetings Law and conduct rulemaking to clarify specific rules. After rulemaking that occurred in 2024, the OGEC proposed 16 rules in total, two of which were amendments to existing rules, found in Oregon Administrative Rule (OAR) Chapter 199—Division 40 (Executive Session) and Division 50 (Public Meetings). The OGEC voted to approve the final rules on September 20, 2024, and the rules became effective October 1, 2024.

Dan Atchison
City Attorney

Attachments:

1. OGEC FAQ concerning prohibited serial communications