

## OVERVIEW

Oregon's open government laws promote democracy by ensuring that all governments conduct their business in a transparent manner. Oregon residents have a right to know how their government is spending their tax dollars and exercising the powers granted by the people. The information below is provided to ensure that all members of City boards, committees, and commissions (referred to as "members") are aware of these records and meetings requirements and how they are applicable to their service to Milwaukie.

## **PUBLIC RECORDS**

### **WHAT IS A PUBLIC RECORD?**

A public record includes any writing containing information relating to the conduct of the public's business that is prepared, owned, used, or retained by a public body regardless of physical form or characteristics. Public records can be in many formats, including a document, book, paper, photograph, file, sound recording, or electronic documents. It is important for members to be aware that **any message, including emails messages that relate to City business are public records that belong to the public**, regardless of whether they were sent or received on a public or private email system.

### **PUBLIC RECORDS LAW**

Oregon's Public Records law is divided into two parts. The first part dictates how long a public record must be kept (retention) and requirements for its disposition. Retention is determined by the content of the record. For example, an email notification about a meeting date/time/location can be deleted after it is read; however, minutes from that meeting must be retained permanently. The second part of the law establishes every person's right to inspect any non-exempt public record of a public body. Very few records in Oregon are exempt from disclosure.

### **WHO IS SUBJECT TO PUBLIC RECORDS LAWS?**

The law applies to every "governing" and "public" body. In Milwaukie, this includes City staff, Council, and members of all advisory boards, commissions, and task forces.

### **USE OF PERSONAL EMAIL / PERSONAL DIGITAL DEVICES**

Members may use their privately-owned e-mail accounts or personal digital devices (PDDs) for sending and receiving messages related to City business; however, the member should forward these communications to City staff so they are retained in accordance with the law. Members must also realize that when they use private accounts and PDDs for City business, those accounts or devices may be subject to public disclosure and retention requirements. Whenever City business is done on a PDD or with personal cloud storage, there is no expectation of privacy.

### **WHAT DOES THIS MEAN FOR MEMBERS?**

Public records generated as part of business related to a City advisory board, committee, or commission are maintained by the City staff liaison assigned to that body. In other words, the City is charged with the responsibility for maintaining public records in accordance with the law. If you generate a public record or receive a public record from a third party, you must send it to the City staff liaison or appropriate City department staff so it may be included in the record file. For example, if your neighbor knows you are on the Planning Commission and he sends you an

email with information that relates to City business, simply forward a copy of that email communication to staff in the Planning Department so it may be appropriately filed and retained. Similarly, if someone provides you with a hard-copy letter addressed to the Planning Commission, please be sure to forward it to City staff.

## **PUBLIC MEETINGS**

### **WHAT IS A PUBLIC MEETING?**

A public meeting is the convening of any governing body (in person, via email, via telephone, via online chat) for which a quorum (majority) is required in order to make a decision or to deliberate toward a decision *on any matter*. Reasonable notice must be provided to inform the public and all interested parties about the time, place, and agenda of public meetings. The City of Milwaukie is committed to providing equal access to all public meetings and information per the requirements of the Americans with Disabilities Act (ADA) and Oregon Revised Statutes (ORS); accordingly, the City strives to be as accommodating as possible to ensure that all public meetings are as accessible as possible for persons with disabilities.

Governing bodies also must comply with these requirements when their members use electronic communication in lieu of face-to-face official meetings. For example, communications between a quorum of members of a governing body convening electronically are subject to the Public Meetings Law. If the communications constitute a decision or deliberation toward a decision for which a quorum is required the meeting would be subject to the Public Meetings Law. Given these requirements, the use of email and other online communication to conduct public business creates the risk of violating Oregon's open meeting laws and should be avoided.

A gathering of less than a quorum of a committee or other body is not a "meeting" under the Public Meetings Law. While a gathering of less than a quorum is not a "meeting," members should not gather (or communicate) as a group to discuss City business outside a public meeting. Such a gathering could create a "serial" quorum, may give the appearance of impropriety, and runs contrary to the policy of the Public Meetings Law which supports keeping the public informed of the deliberations of governing bodies. Discussions and decisions need to be conducted at meetings, even though it is not always convenient.

### **WHAT DOES THIS MEAN FOR MEMBERS?**

It is important to understand what constitutes a public meeting so members do not inadvertently violate the law. Meetings scheduled by City staff will be appropriately noticed; however, online discussions by a quorum of members violate public meetings law and should not occur.

### **FOR MORE INFORMATION**

For further reading on Oregon's public records and meetings laws, please see the Attorney General's Public Records and Meetings Manual (link below).

[http://www.doj.state.or.us/public\\_records/manual/pages/index.aspx](http://www.doj.state.or.us/public_records/manual/pages/index.aspx)

If you have questions about any of the above material contact the Office of the City Recorder at [ocr@milwaukieoregon.gov](mailto:ocr@milwaukieoregon.gov) or at 503-786-7502.