

Southeast Area Plan Advisory Committee Meeting 1

MEETING DATE: December 13, 2018

MEETING TIME: 5:15 pm

LOCATION: Nativity Lutheran Church, 60850 Brosterhous Road

Objectives

- Introduce Southeast Area Plan Project
- Introduce Advisory Committee (SEAPAC)
- Roundtable discussion on Project Success
- Review requirements for conducting open public meetings

Agenda

1. **Welcome, introductions** (Councilors Campbell and Livingston) – 10 minutes
 - a. Review meeting packet materials
2. **Meeting Specific Agenda Items**
 - a. Committee Introductions and roundtable – 30 minutes
 - b. Project overview – 30 minutes
 - c. What is an Area Plan – 30 minutes
 - d. Public meeting guidelines, conflicts of interest – 20 minutes
 - e. Public comment – 10 minutes
3. **Action items/next steps/close** – 10 minutes
 - a. Website review – bendoregon.gov/southeastareaplan.
 - b. Next SEAPAC meeting is January 17, 2018, 5:15 pm, Nativity Lutheran Church
 - c. Adjourn



Accessible Meeting Information

This meeting/event location is accessible. Sign language interpreter service, assistive listening devices, materials in alternate format such as Braille, large print, electronic formats and CD Formats, or any other accommodations are available upon advance request. Please contact Damian Syrnyk at 541-312-4919 or dsyrnyk@bendoregon.gov. Providing, at least, 3 days' notice prior to the event will help ensure availability.



Southeast Area Plan Advisory Committee

Roster

Property Owners:

- William Hubbert
- Anthony Oddo
- Jeff Reed
- Jacob Schumacher
- Dixon Ward
- Steve Wilson

Neighborhood Association, District, and Agency Representatives:

- Ken Atwell and Rachel Strickland - Southeast Bend Neighborhood Association
- Kip Barrett - Bend Economic Development Advisory Board
- Casey Bergh - Property owner adjacent to the Southeast Expansion Area
- Sarah Bodo - Bend Park and Recreation District
- Butch Hansen - Old Farm District Neighborhood Association
- Sharon Smith - Bend LaPine School District and Bend UGB TAC
- Rick Williams - Oregon Department of Transportation, Region 4
- Rachel Zakem - Central Oregon Intergovernmental Council, Transit



Roles, Responsibilities, and Guidelines:

SE Area Plan Advisory Committee

December 6, 2018

Bend's SE Area Plan Advisory Committee Role

As adopted in City Council Resolution #3135, the responsibilities of the SE Area Plan Advisory Committee (SEAPAC) are to:

1. Use the approved scope and schedule to provide input to the project team and recommendations to the Bend Planning Commission and Bend City Council.
2. Provide a forum for community input on the development of the area plan.
3. Advise the Project Team on the plan products as they are developed to ensure they satisfy the Project's goals, City plan policies, and responds to input from the community.
4. Respect a range of opinions, strive for consensus, and acknowledge points of mutual agreement. If consensus cannot be reached, a concurrence of a majority of the SEAPAC members present will be required to make recommendations to the Planning Commission and City Council.
5. Hold open, public meetings.

Meeting Guidelines

- a. The agenda and SEAPAC discussions will be managed by the Chair, or someone designated by the Chair, which may include the project facilitator.
- b. Meetings will begin and end on time. If agenda items cannot be completed on time, the group will decide if the meeting should be extended or if an additional meeting should be scheduled.
- c. At times, the process will move quickly, so it will be essential to make decisions as efficiently as possible to stay on schedule. SEAPAC members will review materials prior to meetings and actively participate in the discussion and decision-making process at each meeting.
- d. At the meetings, SEAPAC members will:
 - Provide direct input as required to help reach group consensus;
 - Share the available speaking time so that all SEAPAC members can be heard;
 - Be respectful of a range of opinions;
 - Focus on successfully completing the agreed upon agenda;
 - Avoid side discussions when others are speaking;

- Voice concerns regarding agenda items as needed at the meeting, rather than voice concerns to consultants and staff after the meeting; and
 - Strive for consensus and acknowledging points of mutual agreement.
- e. The Chair will gather comments and perspectives from other SEAPAC members before a member speaks multiple times on an issue.
 - f. The Chair will provide opportunities for brief public comment or announcements at the beginning or end of each meeting. Public comment will generally not exceed 20 minutes of allotted meeting time with a maximum of 3 minutes per individual, unless consent of SEAPAC allows otherwise. Time permitting, the Chair may provide opportunities for public comment at other times of the meeting with the consent of the committee, such as immediately before SEAPAC makes a decision. The agenda may indicate specific items where public comment is invited.
 - g. Meeting summaries will be prepared for each meeting and distributed to SEAPAC members for review and approval.
 - h. When SEAPAC members identify issues that are outside the scope of the committee's purpose, the ideas will be documented in an "idea bin" for future use by others, and the group will continue with the agenda.
 - i. SEAPAC meetings are "public meetings" under Oregon's public meeting statutes. They will be duly noticed and open to the public. Committee members will conduct substantive discussions about SEAPAC business only at SEAPAC meetings and not outside the public meeting setting. City staff will advise SEAPAC of public meetings requirements.
 - j. Before taking action on recommendations, SEAPAC members will declare potential conflicts of interest, in accordance with Oregon law.

Decision Making

1. SEAPAC will make every effort to make decisions by consensus. Consensus is reached when all committee members either support or can live with the proposal, even if it is not each committee member's personal favorite.
2. If consensus cannot be reached, a vote will be taken. A majority of the SEAPAC members present must agree for a group decision to be made. Absent that, the opinions of the members, and vote tally, will be recorded and be represented as not reaching consensus or a decision.
3. A quorum is required to record a consensus or voted position of SEAPAC. A quorum of SEAPAC shall be a majority of the members appointed to serve.
4. Prior decisions made by the SEAPAC by consensus or vote may be reconsidered when there is a consensus or a majority vote approving a reconsideration. The City's project manager will inform SEAPAC of potential impacts to the budget and schedule when substantive issues are proposed for reconsideration.

ATTORNEY/PROJECT MANAGER MEMORANDUM



To: Southeast Area Plan Advisory Committee

From: Mary Alice Winters, City Attorney

Subject: Open Meetings Law/Email Exchanges, Public Records and Minority Reports

Date: December 13, 2018

This memo is to give you legal and policy background for your role as a citizen advisory committee to the City Council on the Open Meetings and Records law. Some of you may know the basics already, but to be sure we are all on the same page, please review the discussion below.

Open Meetings Law and Advisory Committees:

This is the policy behind Oregon Public Meetings Law (ORS 192.610 to 192.690):

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 ORS 192.610 to 192.690 that decisions of governing bodies be arrived at openly. ORS 192.620.

The term “governing body” is important in understanding the scope of Oregon Public Meetings Law. As defined by the law, “governing body” includes not only the City Council, but every other board, committee, commission, task force or subcommittee that makes a decision for the City or a recommendation to any other “governing body”. Since the Southeast Area Plan Advisory Committee (SEAPAC) is charged with making recommendations to the City Council, it is considered a “governing body” subject to the Oregon Public Meetings Law. As long as an advisory body is itself a governing body, the fact that its members may be private citizens is irrelevant. The Oregon Public Meetings Law extends to private citizens without any decision-making authority when they serve on a group that is authorized to furnish advice to a public body.

Whenever a quorum (majority) gathers in order to make a decision or deliberate toward a decision on any matter, it is a meeting. If a subcommittee of the SEAPAC is formed to make a group recommendation to the SEAPAC (as opposed to simply fact-finding), the notice and quorum rules then apply to the subcommittee. However, purely social gatherings of the members of a governing body are not covered by the law. The *purpose* of the meeting triggers the requirements of the law.

Successive Conversations and Electronic Communications as “Meetings”.

The main point of the Oregon Public Meetings Law is to require that all decisions and deliberations toward a decision by a “governing body” be made in a public meeting. The terms “deliberate” or “deliberation” are not defined, but are broadly applied. Any discussion or communication regarding a subject that is before (or could be before) the committee constitutes deliberation. See Attorney General’s Public Meetings Manual at 139-40. Therefore, even a meeting for the purpose of gathering information to serve as the basis for a subsequent decision or recommendation of the governing body must comply with public meetings law.¹ *Oregonian Publishing Co. v. Oregon State Board of Parole*, 95 Or App 501 (1988); see also ORS 192.620 (policy that the public has the right to know the “information” that a body is basing its deliberations or actions on).

While some personal discussion between members of less than a quorum of a “governing body” is allowed, any communications between two members of a committee regarding a substantive matter before the committee creates some risk of an Oregon Public Meetings Law violation. There are two main ways this can happen. The first is a series of conversations that eventually involves a quorum of the body. If one member suggests a course of action to two other members of a seven-member committee, and then each of those has a follow-up conversation with another member, the conversation has now included a quorum of the committee and is an Oregon Public Meetings Law violation if the conversations constitute deliberation.

The other common way that the Oregon Public Meetings Law can easily be violated is by electronic communication. A substantive email sent by one member of a committee to all or a quorum of the committee may constitute deliberation or conveying of information that can only be done in a public meeting. A “reply all” message on the same substantive subject could likely be found to be a violation. A series of emails, even if none of them involve a quorum, may constitute a meeting. See *Dumdi v. Handi*, Findings of Fact and Conclusions of Law, Lane County Circuit Court No 16-02760 (Jan. 14, 2011) (series of meetings and emails among or at the direction of certain Lane County Commissioners constituted a meeting that should have been public). The Oregon Court of Appeals recently held that a series of communications, some by email and some by phone or in-person conversations, among members of a governing body could constitute a violation of the Oregon Public Meetings Law, even if no communication involved a quorum of the body. *Handy v. Lane County*, 274 Or App 644 (2015). If the communications constituted deliberation, then they violated Public Meetings Law.

In addressing the issue of whether a quorum needs to be in simultaneous contact, the court stated:

¹ This does not mean that there can be no written communications to a governing body by staff or outside sources; however, if there are, those communications need to be made available to the public and included as part of the record of the proceeding. However, any discussion or comment on those communications by members of the governing body must be in a public meeting.

The legislative objective could be easily defeated if the statute rigidly applied only to contemporaneous gatherings of a quorum. For example, officials could be polled through an intermediary. In group email messages, officials could deliberate and declare their positions on upcoming issues. The same could be done through rapid, serial, group text messages in the moments before convening for an official meeting. In those examples, a quorum would have “deliberated” or “decided” the matter in “private” just as effectively as if all of the members had gathered secretly in a room and reached agreement before the public meeting. Given the purpose of the statute, we see no reason to treat those situations differently. *Oregonian Publishing Co.*, 95 Or App at 506.

The safest approach to compliance with the Oregon Public Meetings Law by committee members is to simply avoid substantive communication about committee business with other members of the committee outside of public meetings. Communication with staff is normally not a violation of public meeting law,² so all substantive communication should be with staff.

Finally, emails are not the only potential means of violating the Oregon Public Meetings Law – texts and social media posts may also constitute deliberation if related to the recommendation to council. Discussions via social media between members of the committee about matters before the committee is also best avoided.

Decisions made in violation of the public meetings law are voidable (meaning a court can invalidate the decision, depending on findings of intent or willful misconduct) and can award attorney’s fees against the public body or even the members of the governing body for egregious violations.

Information for Advisory Committees and Public Records

Information. Documents, reports, etc., shared by committee members either directly or through staff are public records since they contain “information related to the conduct of the public’s business”. ORS 192.410(4)(a) and 192.420. All email related to the committee work should be copied to City staff. Staff will maintain copies of all communications and documents between the City and the committee, and respond in the event of a public records request.

However, if any committee members use personal email for committee business that is *not* copied to staff, it could be subject to a public records request and the committee member would be responsible for searching their email. Therefore, any such personal email exchanges between committee members or with the citizens is strongly discouraged. The same is true for texting (substantive text, not texts about meeting times, etc.) or social media.

² Committee members cannot use staff to communicate with other members of the committee – the communications should be directed solely to staff.

Minority Reports or Statements

Other advisory committees have had discussed minority reports—when they are appropriate, how they should be used, what constitutes a minority, etc. Therefore, we thought it might be appropriate to address it with this committee in case the issue arises. As you all know, the committee was formed to represent a wide variety of community views as well as individual expertise. The idea is to encourage compromise, with the understanding that individuals can always testify as to their own views separately as citizens or part of other groups. Minority reports, while at times useful, to a certain extent undermine the value of the advisory committee process as a whole IF they distract members from reaching compromise. They also should not be a substitute for elevating the position of a small number of individual views simply because they are committee members. Members will have every right to individually testify, write letters and make their views known if they choose during later public processes.

With a task force of 15 members, a minority position, if any, should be on a key substantive topic that has been debated and discussed, where it would aid the review of the City Council to be formally informed of the minority view. To meet this end, at least 5-6 people should be in the minority. As with the majority view, any minority position should be drafted or reviewed by staff (consultant and/or city staff) for accuracy and fact-checking.

Procedurally, if a minority becomes a subcommittee with the authority to make a recommendation to the governing body, it becomes a “governing body” itself, subject to the Oregon Public Meetings Law. Thus, for example, a three-member committee of a seven-member board is a “governing body” if it is authorized to make decisions for or to advise the full board or another public body. If the subcommittee is only gathering and reporting information for the full committee it is not a governing body. Therefore, if a group of advisory committee members meet to formulate a minority report/recommendation, it is likely forming a subcommittee subject to the Oregon Public Meetings Law, so the gathering should occur subject to the public meeting and notice requirements. No public participation is required, but the discussion cannot be held in a location that pre-empts the right of the public to attend and listen (i.e., by phone, email, or at a coffee shop or pub--sorry).

Our recommendation: To the extent a strong minority position exists on a key issue, and there is time for the drafting of a minority position, the discussion should occur at the time of the vote on the topic. Thus, no separate process (scheduling/notice) of a meeting is then required and the minority position can become part of any written report to Council. For the reasons discussed at the beginning of this section, this approach should be used sparingly and wisely by the advisory committee.



CITY OF BEND

M E M O R A N D U M

To: Southeast Area Plan Committee

From: Mary Alice Winters, City Attorney

Subject: Conflicts of Interest for Public Officials for City Committees, Boards and Commissions (Permanent, Temporary, Ad Hoc)

Date: December 13, 2018

Although you serve on this advisory committee, board or commission as a volunteer, you are a member of a governing body providing recommendation(s) to the City Council. You are therefore a public official, subject to the conflict of interest laws. The Bend Municipal Code states that board, commission and committee members appointed by the City are considered “public officials” subject to State Ethics Law. BMC Section 1.20.015(E). These rules are in place to protect you as an appointed member of a public body, participating in official action. The rules distinguish between **actual and potential conflicts of interest**. Because you are making recommendations only, any conflicts will be **potential** conflicts, and only need to be publicly announced prior to taking action and you can continue participating in discussions and decision-making.

Decisions of the committee cannot be invalidated for failing to disclose a conflict but if a complaint is made to the Ethics Commission and upheld, you could face sanctions, including a letter of reprimand or a personal civil fine of a maximum of \$5,000 for each violation. By disclosing the nature of the conflict and having it reflected in the public record (the minutes) of the public body, you are protected.

A potential conflict is one that could result in a financial benefit or detriment to you, a spouse, child, parent, or other relative, or client, or a business with which you or the family member or client, are associated. A non-profit is not a business, nor is a government agency, for purposes of the rules about potential conflicts.

If you believe a decision that is before the committee could have a direct financial effect on you, your business, or that of a family member or client, you should announce that conflict each time before taking part in discussion or a vote on that issue.

We are not concerned with financial benefit or detriment that is merely speculative, or very distant from the committee recommendation – it is more if the recommendation could directly impact you or the other parties mentioned.

As a general rule, if you have the same interest as all residents (for example, if a county commissioner voted to approve a road that leads to property the commissioner owns but would affect benefit many property owners to the same degree), you do not need to declare a conflict, because the official would be exempt from the conflict of interest and participation restriction. The number of persons affected to the same degree as the public official will help to determine whether this identifiable “class” exemption applies.

For more information please see the Oregon Government Ethics Law Guide for Public Officials, especially pages 21-24, which can be found on the Oregon Government Ethics website: <http://www.oregon.gov/ogec/Pages/index.aspx> Ethics commission staff are available to provide informal telephone advice, or written opinions if needed, to help with compliance. The website also has the contact information for Ethics Commission staff.

The ethics rules apply to the person or official as an individual. However, the City Attorney’s office is also here to help you, so if you have a question about a particular association of yours, or want to know if you should declare a conflict at any time throughout this process, feel free to contact any of the attorneys. We can discuss the concern with you, or call the ethics commission with or for you.

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