

Checklist for Executive Session

This checklist is intended to assist governing bodies in complying with the executive session provisions of the Public Meetings Law; however, you should consult the appropriate section(s) of this manual for a complete description of the requirements.

- Provide notice of an executive session in the same manner you give notice of a public meeting. The notice must cite to the specific statutory provision(s) authorizing the executive session.

Permissible grounds for going into executive session are:

(a) To consider the employment of an officer, employee, staff member or agent if: (i) the job has been publicly advertised, (ii) regularized procedures for hiring have been adopted, and (iii) in relation to employment of a public officer, there has been an opportunity for public comment. For hiring a chief executive officer, the standards, criteria and policy to be used must be adopted in an open meeting in which the public had an opportunity to comment. This reason for executive session may *not* be used to fill vacancies in an elective office or on any public committee, commission or other advisory group, or to consider general employment policies. ORS 192.660(2)(a) and 192.660(7).

(b) To consider dismissal or discipline of, or to hear charges or complaints against an officer, employee, staff member or agent, if the individual does not request an open meeting. ORS 192.660(2)(b).

(c) To consider matters pertaining to the function of the medical staff of a public hospital licensed pursuant to ORS 441.015 to 441.063, 441.085, 441.087 and 441.990(3). ORS 192.660(2)(c).

(d) To conduct deliberations with persons you have designated to carry on labor negotiations. ORS 192.660(2)(d).

(e) To conduct deliberations with persons you have designated to negotiate real property transactions. ORS 192.660(2)(e).

(f) To consider information or records that are exempt from disclosure by law, including written advice from your attorney. ORS 192.660(2)(f).

(g) To consider preliminary negotiations regarding trade or commerce in which you are in competition with other states or nations. ORS 192.660(2)(g).

(h) To consult with your attorney regarding your legal rights and duties in regard to current litigation or litigation that is more likely than not to be filed. ORS 192.660(2)(h).

(i) To review and evaluate the performance of an officer, employee or staff member if the person does not request an open meeting. This reason for execution session may *not* be used to do a general evaluation of an agency goal, objective or operation or any directive to personnel concerning those subjects. ORS 192.660(2)(i) and 192.660(8).

(j) To carry on negotiations under ORS chapter 293 with private persons or businesses regarding proposed acquisition, exchange or liquidation of public investments. ORS 192.660(2)(j).

(k) For a health professional regulatory board to consider information obtained as part of an investigation of licensee or applicant conduct. ORS 192.660(2)(k).

(l) For the State Landscape Architect Board or its advisory committee to consider information obtained as part of an investigation of registrant or applicant conduct. ORS 192.660(2)(L).

(m) To discuss information about review or approval of programs relating to the security of any of the following: (A) a nuclear-powered thermal power plant or nuclear installation; (B) transportation of radioactive material derived from or destined for a nuclear-fueled thermal power plant or nuclear installation; (C) generation, storage or conveyance of (i) electricity, (ii) gas in liquefied or gaseous form, (iii) hazardous substances as defined in ORS 453.005(7)(a), (b) and (d), (iv) petroleum products, (v) sewage, or (vi) water; (D) telecommunications systems, including cellular, wireless or radio systems; or (E) data transmissions by whatever means provided. ORS 192.660(2)(m).

(n) To conduct labor negotiations, if requested by negotiators for both sides. ORS 192.660(3).

- Announce that you are going into executive session pursuant to ORS 192.660 and cite the specific reason(s) and statute(s) that authorize the executive session for *each* subject to be discussed. See sample script on p. K-9. (You may hold a public session even if an executive session is authorized.)
- If you intend to come out of executive session to take final action, announce when the open session will begin again.
- Specify if any individuals other than the news media may remain.
- Tell the media what may *not* be disclosed from the executive session. If you fail to do this, the media may report everything. If you discuss matters other than what you announce you are going to discuss in the executive session, the media may report those additional matters.
- A member of the news media must be excluded from executive sessions held to discuss litigation with legal counsel if he or she is a party to the litigation or is an employee, agent or contractor of a news media organization that is a party.
- Come back into open session to take final action. If you did not specify at the time you went into executive session when you would return to open session, and the executive session has been very short, you may open the door and announce that you are back in open session. If you unexpectedly come back into open session after previously announcing you would not be doing so, you must use reasonable measures to give actual notice to interested persons that you are back in open session. This may require postponing final action until another meeting.
- Keep minutes or a sound, video or digital recording of executive sessions.

NOTE: If a governing body violates any provision applicable to the executive session provisions in the Public Meetings Law, a complaint against individual members of the governing body can be filed with the Oregon Government Ethics Commission (OGEC). The OGEC may impose a \$1,000 civil penalty, unless the governing body went into executive session on the advice of its attorney.