

From: Chad Jacobs
Sent: Friday, March 7, 2025 1:28 PM
To: 'elapinel@msn.com' <elapinel@msn.com>; 'brianhines1@gmail.com' <brianhines1@gmail.com>
Cc: 'pbgr@ogec.oregon.gov' <pbgr@ogec.oregon.gov>
Subject: City of Salem Response to Public Meeting Written Grievance

To: Brian Hines and Elliott Lapinel
CC: Oregon Government Ethics Commission
From: City of Salem
Re: Public Meeting Law Grievances

Pursuant to ORS 192.705, the City of Salem acknowledges the public meeting law grievances filed by Brian Hines on February 15, 2025 (revised on February 16, 2025) and Elliott Lapinel on February 14, 2025. Both grievances allege that the Salem City Council engaged in an illegal serial meeting on or before the Council's February 10, 2025 executive session. In addition, the Lapinel grievance alleges that the City Council violated OAR 199-050-0040(3)(d)(B) by failing to announce in open session, prior to the February 10, 2025 executive session, the specific statutory provision and appropriate subsection and paragraph authorizing the executive session, as well as a general description of the statutory authorization.

As further explained below, pursuant to ORS 192.705(2)(b)(B), the City admits that it did not announce the specific statutory provision at an open public meeting before the Council entered its executive session on February 10, 2025, because such a statement is not legally required. Accordingly, the City denies that this constituted a violation of the public meeting laws.

In addition, pursuant to ORS 192.705(2)(b)(A), the City denies the factual allegations that the Council engaged in a prohibited serial meeting, provides the facts and circumstances it believes occurred here, and explains why those facts and circumstances do not amount to a violation of the public meeting laws.

A. Failure to Announce Statutory Basis for Executive Session

The Salem City Council held a meeting on February 10, 2025. The meeting began with two executive sessions that started at 5:00 pm and 5:30 pm, respectively. As is the case with executive sessions, neither were open to the public. The portion of the Council's meeting that was open to the public began after the second executive session concluded.

Because the executive sessions were held before the business meeting, and no meeting was open to the public before the executive session, the Council was not required to make the announcement mentioned in OAR 199-050-0040(3)(d)(B). Rather, pursuant to OAR 199-040-0015(2), the Council was merely required to provide the announcement via a properly issued meeting notice. Specifically, the regulation provides, "If an executive session only will be held, **or if the executive session precedes a meeting open to the public**, the announcement must be made in a properly issued meeting notice." The City announced the executive session, and the statutory basis for the executive session, in its meeting notice and agenda for the February 10, 2025 meeting. A copy of the agenda is available online at:

<https://salem.legistar.com/View.ashx?M=A&ID=1233165&GUID=5B5B4FA0-CAC7-4338-A80A-59A6E9000090> .

Therefore, no violation of the public meetings law occurred as alleged in the grievance due to a failure to publicly announce the statutory basis for the executive session in an open meeting. To that end, while the City admits the facts alleged in this part of the grievance, it denies a violation of the public meeting laws occurred.

B. Illegal Serial Meeting

The City denies the facts and circumstances outlined in the grievances related to an alleged serial meeting. Specifically, the City denies that any decision or deliberation towards a decision was conducted by a quorum of the City Council through the use a series of communications.

The City has reached this conclusion by reviewing written information that was available during the period allowed to form a response to the grievances as well as confirming the facts outlined below with individual members of the City Council.

The City believes the following facts and circumstances occurred:

- Mayor Julie Hoy had individual communications with different members of the City Council concerning the former City Manager's performance and potential separation from the City.
- The Mayor sought and received advice from the City Attorney prior to engaging in such discussions. The City Attorney advised the Mayor that that one-on-one conversations with other members of Council did not violate the state's public meeting laws or constitute "serial meetings" as long as the Mayor did not serve as a conduit to allow a quorum of the Council to deliberate towards or make a decision.
- Except for possibly one discussion, the Mayor refrained from sharing the views of councilors with other councilors during these conversations. Rather, she explained her concerns and asked the councilors with whom she spoke about their feelings towards the former City Manager.
- At least some of the councilors who responded to Mayor Hoy explained that they did not have enough information to form an opinion and needed further discussion on the matter.
- The last councilor with whom the Mayor spoke was Council President Nishioka.
- Council President Nishioka has publicly stated that the Mayor informed her that a majority of councilors believed the former City Manager should consider resigning.
- This is the only discussion in which the Mayor appears to have possibly shared the views of other councilors, however, that discussion was just between two members of the Council, which is less than the five members necessary to form a quorum.
- Language used in the former City Manager's resignation letter related to resigning at the request of a duly authorized representative of the City Council mirrored language in his employment contract that was necessary to make him eligible to receive severance benefits. If the former City Manager resigned on his own accord, he would not have been eligible under his employment contract to receive severance benefits.
- Council President Nishioka denies that she informed the former City Manager that she represented the Council or was acting on the Council's behalf. She further denies that she asked for his resignation or that anyone asked her to ask the former City Manager to resign.
- Despite the fact that the former City Manager submitted his resignation letter with no formal request from Council for his resignation, the City Council voted to accept the resignation and

deem that it was made at the request of Council. By doing so, the Council was able to provide the former City Manager severance benefits under his employment agreement. In addition, under his employment agreement, the former City Manager had to sign a release of liability to the City in exchange for the severance payment. The Council vote to deem that the resignation was made at the request of the Council did not, nor was it intended to, suggest that the Council collectively asked for the former City Manager's resignation.

Based on these facts and circumstances, no violation of the state's public meeting laws related to serial meetings occurred. Pursuant to ORS 192.620, all "meetings" of the Salem City Council must be open to the public. ORS 192.610(7)(a) defines the term "meeting" to mean, "the **convening** of a governing body of a public body **for which a quorum** is required in order **to make a decision or to deliberate toward a decision** on any matter. A meeting may be "convened" if a **quorum** of the Council uses an intermediary to communicate among participants. See ORS 192.610(1)(d). This is commonly known as a "serial meeting."

State regulations further define this limitation. Specifically, OAR 199-050-0020(1) provides that "a **quorum** of the members of a governing body shall not, outside of a meeting conducted in compliance with the Public Meetings Law, **use a series of communications** of any kind, **directly or through intermediaries**, for the purpose of **deliberating or deciding on any matter** that is within the jurisdiction of the governing body."

Taken together, the statutory and rule language prohibit serial meetings only when a quorum of the council utilizes a series of communications through some sort of intermediary, such as a person, to deliberate towards or make a decision.

A quorum is defined by state law as "the minimum number of members of a governing body required to legally transact business. In the absence of a statute, ordinance, rule, charter, or other enactment specifically establishing the number of members constituting a quorum, a quorum is a majority of the voting members of the governing body." OAR 199-050-0005(9). Pursuant to section 14 of the Salem City Charter, a quorum of the Council is "a majority of the council." Since the Council consists of nine members, a majority, and therefore a quorum constitutes five members. (Five members remains the number needed for a quorum even though there is currently one vacancy on the Salem City Council.)

Under state law, an intermediary is "a person who is used to facilitate communications among members of a governing body about a matter subject to deliberation or decision by the governing body, by **sharing information received from a member or members of the governing body with other members of the governing body.**" OAR 199-050-0005(7). By this definition, sharing information with just one member, rather than multiple members, would not constitute a person being an intermediary.

Taken all together, in order for the Mayor to have served as an intermediary, and therefore create a serial meeting, the Mayor would have had to share information about councilor views amongst a quorum of the Council. Here, based on the facts and circumstances set forth above, at no time did five councilors utilize the Mayor as an intermediary to deliberate towards or make a decision related to the former City Manager's employment with the City. Even if it is true that the Mayor informed Council President Nishioka that a majority of the councilors believed the former City Manager should consider resigning, thereby causing deliberations to occur between the Council President and the Mayor, such

information would have been shared by the Mayor with only one member of the council, well below the quorum level of five or the multiple members required by the definition of intermediary.

As a result, based on this information, the City has concluded that no serial meeting occurred, and as such there was no violation of the state's public meeting laws.

Chad A. Jacobs ([he/him](#))

BEERY ELSNER & HAMMOND, LLP

1804 NE 45TH AVENUE

PORTLAND, OR 97213

d (503) 802-0011 | **t** (503) 226-7191 | **f** (503) 226-2348

www.behlaw.com