

2024 Proposed PML Rules

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199-040-0060	Prohibition on making decisions in executive session	<ul style="list-style-type: none"> • Informal consensus permitted
199-008-0015	Penalty Matrix	<ul style="list-style-type: none"> • Removed deduction for relying on OGEC advice • Added deduction for actions to prevent violations, including obtaining training

199-050-0005 Definitions

The following definitions are provided for words or terms as they are used in ORS 192.610 to ORS 192.705 and as they are used in these rules:

- (1) “Communicate” means the act of a person expressing or transmitting information to another person through verbal, written, or electronic means.
- (2) “Communication” means the expression or transmission of information from one person to another through verbal, written, or electronic means.
- (3) “Decision,” “deliberation,” “executive session,” “governing body,” “meeting,” and “public body” have the meaning given those terms in ORS 192.610.
- (4) “Decision-making process” means the process a governing body engages in to make a decision, such as: (a) identifying or selecting the nature of the decision to be made; (b) gathering information related to the decision to be made; (c) identifying and assessing alternatives; (d) weighing evidence; (e) choosing among alternatives; and (f) making a decision.
- (5) “Deliberate” means any discussion or communication that occurs as part of a decision-making process.
- (6) “Discussion” means the consideration or debate of a question.
- (7) “Intermediary” means 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. The term “intermediary” can include a member of the governing body.
- (8) “Public Meetings Law” means ORS 192.610 to 192.705.
- (9) “Quorum” means the minimum number of members of a governing body that shall be present for the governing body 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.

- (10) “Serial electronic written communications” means a series of successive or sequential discussions or communications between members of a governing body using writing or written electronic means, including emails, texts, social media, and other electronic applications that communicate the written word.

199-050-0010 Governing Bodies Subject to the Public Meetings Law

- (1) The Public Meetings Law applies to the following types of governing bodies:
- (a) Decision-Making Bodies. A decision-making body is a body with the authority to make decisions for the public body on policy or administration. A body meets this standard if its decision-making authority includes the power to exercise governmental power and act on behalf of the public body.
 - (b) Advisory Bodies. An advisory body is a body with authority to make recommendations to another governing body on policy or administration.
- (2) The Public Meetings Law does not apply to the following types of bodies
- (a) Fact Gathering. Bodies with authority only to gather and provide factual information to a governing body, and which do not have the authority to make decisions or recommendations. A body with authority to determine facts or to make a recommendation about competing factual information is not subject to this exception.
 - (b) Advising Individual Public Officials. Bodies with authority to make recommendations to an individual public official, provided the individual public official has the authority to act on the body’s recommendations and is not required to pass the body’s recommendations on unchanged to another governing body.
 - (c) Certain Multi-Jurisdiction Bodies. Multi-jurisdictional bodies whose Oregon members do not constitute a majority of the governing body’s voting members.

199-050-0015 Meetings Subject to the Public Meetings Law

- (1) The purpose of this rule is to clarify what meetings of a governing body are subject to the Public Meetings Law.
- (2) The Public Meetings Law applies to the following types of meetings:
- (a) Regular meetings;
 - (b) Special meetings;
 - (c) Emergency meetings;

- (d) Executive sessions, whether convened separately or as part of a regular, special, or emergency meeting; and
 - (e) Meetings held for the purpose of either presenting information to the governing body to prepare the governing body for a regular or special meeting, or to allow the governing body to engage in preliminary discussions or deliberations. (These meetings are often called “work sessions” or “workshop” meetings).
- (3) The Public Meetings Law does not apply to:
- (a) On-site inspections of projects or programs, provided the members of the governing body do not engage in deliberations or decisions on matters that could reasonably be foreseen to come before the governing body.
 - (b) The attendance of members of a governing body at any national, regional or state association to which the public body or the members belong, provided the members of the governing body do not engage in deliberations or decisions on matters that could reasonably be foreseen to come before the governing body.
 - (c) Communications between or among members of a governing body, including communications of a quorum of members, that are:
 - A. Purely factual or educational in nature and that convey no deliberation or decision on any matter that might reasonably come before the governing body;
 - B. Not related to any matter that, at any time, could reasonably be foreseen to come before the governing body for deliberation and decision; or
 - C. Nonsubstantive in nature, such as communication relating to scheduling, leaves of absence and other similar matters.
 - (d) Any matters listed in ORS 192.690.
- (4) A private meeting where a quorum of a governing body engages in discussions or communications that are part of the governing body’s decision-making process or where the governing body makes a decision within the authority of the governing body violates the Public Meetings Law.

199-050-0020 Serial Communications Prohibited

- (1) 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.

- (2) The prohibitions in section (1) apply to using any one or a combination of the following methods of communication:
- (a) In-person;
 - (b) Telephone calls;
 - (c) Videos, videoconferencing, or electronic video applications;
 - (d) Written communications, including electronic written communications, such as email, texts, and other electronic applications;
 - (e) Use of one or more intermediaries to convey information among members; and
 - (f) Any other means of conveying information.

199-050-0040 Notice Requirements

- (1) Public notice, reasonably calculated to give actual notice, is required for all meetings of a governing body. The purpose of providing public notice is to give notice of the meeting details and subjects to members of the public at large, as well as to interested persons and media representatives who have requested notice.
- (2) Methods of Notice:
- (a) Notice to the Public. A governing body satisfies the public notice requirement in subsection (1) by providing notice of its meetings to be displayed conspicuously on the public body's or governing body's website. If the governing body does not maintain a publicly accessible website, the governing body shall satisfy the public notice requirements through other means such as community postings, bulletin boards, newspaper notice, or other any means that provides actual notice to the general public.
 - (b) Notice to Interested Persons. A governing body satisfies the interested persons notice requirement in subsection (1) by providing notice through:
 - A. Interested person lists, mailing lists, or other lists of persons or groups maintained by the governing body to provide notice or communications;
 - B. Social media platforms normally utilized by the governing body for communications; or
 - C. Any other means to provide actual notice to interested persons known to the governing body.

- (c) Media Notice. A governing body satisfies the media notice requirement in subsection (1) by providing notice to those media representatives who have requested notice, either in the method requested by the media representatives or by any other means reasonably calculated by the governing body to provide actual notice to the media representatives.
- (d) State agencies shall also post meeting notices to the Oregon Transparency Website. Other public bodies may post notices to the Oregon Transparency Website.

(3) Content of Notice. The public notice shall identify:

- (a) The time, date, location of the meeting, and, to the extent reasonably possible, the electronic link or telephone access information to allow members of the public to attend the meeting by telephone or electronic means.
- (b) The agenda or list of the principal subjects anticipated to be considered at the meeting. The agenda or list of principal subjects shall be specific enough to permit members of the public to recognize the matters in which they are interested. The governing body may amend the agenda or may add or remove items from the list of principal subjects prior to or during a meeting.
- (c) The name, telephone number, and email address of a person at the public body to contact to request an interpreter or other communication aids. As an alternative, the notice may indicate that the governing body will provide a sign language interpreter or other communication aids at the meeting.

(d) Executive Session Notice.

- A. If a meeting is being held only to conduct an executive session, the notice shall comply with sections (3)(a) through (c) and the notice shall also identify the specific statutory provision authorizing the executive session.
- B. If an executive session is to be part of a regular, special, or emergency meeting, the notice shall comply with subsection (A) or, prior to entering the executive session, the presiding officer shall identify in open session the specific statutory provision authorizing the executive session.

(4) Timing of Notice. The public notice shall be issued in advance of the meeting in accordance with the following timelines:

- (a) Regular Meeting: as much advance notice as reasonably possible, but no less than 48 hours advance notice. Providing notice of less than 48 hours is allowed if the meeting is held as a special meeting.
- (b) Special Meeting: at least 24 hours advance notice.

- (c) Emergency Meeting: as much advance notice as reasonably possible given the emergency circumstances. An “actual emergency” must exist.
 - A. The governing body shall make a finding as to the reason why the meeting could not be delayed to allow at least 24 hours’ notice and the meeting minutes shall describe the actual emergency justifying less than 24 hours’ notice.
 - B. The governing body shall attempt to contact the media and other interested persons to inform them of the emergency meeting by telephone, e-mail, social media, or other method designed to provide actual notice.
 - C. If reasonably possible under the emergency circumstances, the emergency meeting notice shall be conspicuously displayed on the governing body’s or public body’s website. If the public body or governing body does not maintain a publicly accessible website, the emergency meeting notice shall be conspicuously displayed on a notice board or in such other manner as the governing body determines may provide actual notice of the emergency meeting to the public.

199-050-0050 Public Attendance; Meeting Locations

- (1) All meetings of a governing body, other than executive sessions, shall be open to the public.
 - (a) Meetings may be held at locations as specified in ORS 192.630(4);
 - (b) Meeting locations shall be accessible to persons with disabilities, as specified in ORS 192.630(5); and
 - (c) Meetings may not be held at discriminatory locations as provided in ORS 192.630(3).
- (2) To the extent reasonably possible, the governing body shall:
 - (a) Provide members of the general public an opportunity to access and attend meetings by telephone, video or other electronic or virtual means.
 - (b) For meetings held by telephone or other electronic means of communication, make available a place or an electronic means by which the public can listen to or view the meetings in real time. The place provided may be a place where no member of the governing body of the public body is present.

- (c) For executive sessions, if any person, including any member of the governing body, is attending the executive session by telephone, video, or other electronic means, provide members of the media the same attendance option.
- (3) When public testimony is permitted, the governing body shall:
 - (a) Allow oral testimony by telephone, video, or other electronic or virtual means if in-person oral testimony is allowed; and
 - (b) Allow written testimony, including that submitted by electronic mail or other electronic means, if in-person written testimony is permitted. The governing body may require the written testimony be submitted sufficiently in advance of the meeting so that the governing body is able to consider the submitted testimony in a timely manner.
 - (4) The Public Meetings Law does not provide the public the right to participate or to provide public testimony or public comment. In the absence of a statutory or other legal requirement to hear public testimony or comment on certain matters, a governing body may conduct a meeting without any public participation.
 - (5) Unless otherwise provided by statute, charter, or other organic law of the governing body or public body, the presiding officer has inherent authority to keep order and to impose any reasonable restrictions necessary for the efficient and orderly conduct of a meeting. If public participation is to be a part of the meeting, the presiding officer may regulate the order and length of appearances and limit appearances to presentations of relevant points.

199-050-0055 Public Vote Requirements

- (1) All official actions or decisions of a governing body shall be taken by public vote.
- (2) Secret ballots are prohibited.
- (3) Results of all votes shall be recorded, including the vote of each individual governing body member by name. For governing bodies with more than 25 members, the individual votes do not need to be recorded unless one member makes such a request.
- (4) If written ballots are used, the written ballot shall identify the individual governing body member by name and each governing body member's vote. The vote of each governing body member by name shall be announced during the meeting at which the vote occurred.

199-050-0060 Minutes or Recordings Required

- (1) For all of its meetings, including executive sessions, a governing body shall provide for either written minutes or audio, video or digital recordings.
- (2) The minutes do not need to be a verbatim transcript and the recordings do not need to include a full recording of the meeting, except as otherwise provided by law, but they shall give “a true reflection of the matters discussed at the meeting and the views of the participants” and shall include all of the information identified in ORS 192.650(1).
- (3) After the meeting, draft minutes or recordings of all meetings, other than executive sessions, shall be made available to the public in accordance with the requirements of the Public Records Law and the policies or procedures adopted by the public body.

199-050-0065 State Board or Commission Meetings Held Through Telephone or Electronic Means; Video and Audio Recordings

- (1) A state board or commission that meets through telephone or other electronic means shall record and promptly publish a recording of the meeting on a publicly accessible website or hosting service so that members of the public may, without charge:
 - (a) Observe a recording of the meeting if it was conducted through videoconference technology; or
 - (b) Listen to a recording of the meeting if it was conducted through teleconference technology that did not include video capabilities.
- (2) The requirements of subsection (1) do not apply to any portion of a meeting that was lawfully held in executive session.
- (3) The requirements of subsection (1) apply to any state board or commission within the executive department and whose members are subject to Senate confirmation.
- (4) The recording of the meeting shall remain accessible on the website or hosting service for no fewer than 30 days after the meeting.

199-050-0070 Grievance Process

- (1) The purpose of this rule is to clarify procedures regarding the requirements in ORS 192.705 for filing a written grievance with a public body alleging a violation by members of a governing body of provisions in Public Meetings Law.
- (2) The written grievance shall be submitted to the public body within 30 calendar days from the date of the meeting where the alleged violation occurred. The written grievance shall identify:
 - (a) The governing body that allegedly violated the Public Meetings Law;
 - (b) The date of the meeting where the alleged violation occurred;
 - (c) The specific facts and circumstances that the person asserts amount to a violation of the Public Meetings Law;
 - (d) The date of the grievance; and
 - (e) The name and contact information of the person submitting the grievance.
- (3) The public body shall accept grievances by mail, email or other electronic submissions. A public body shall post on its website the person and contact information to whom a grievance may be submitted. In the absence of a designated person, a grievance may be submitted to the public body's chief administrator or to the chair of the governing body. If the public body does not maintain a publicly accessible website, the public body shall provide notice of the person and contact information to whom a grievance may be submitted in the same manner that it provides notice of its public meetings.
- (4) The public body's written response to the grievance shall be submitted to the person who made the grievance within 21 calendar days from the date the grievance was received by the public body and shall satisfy the other requirements in ORS 192.705(2).
- (5) As required by ORS 192.705(3), at the same time the public body responds to a grievance, it shall submit a copy of the grievance and its response to the Commission. The submission of the grievance and response to the Commission can be made by mail or by e-mail at the e-mail address identified on the Commission's website.

199-050-0075 Complaints; Dismissal for Failure to Satisfy ORS 192.685

- (1) The purpose of this rule is to clarify procedures regarding the opening of one or more preliminary reviews based on a complaint of violations of the Public Meetings Law made against one or more members of a governing body.

- (2) A complaint alleging violations of Public Meetings Law that is filed with the Commission under ORS 192.685 will be construed as a complaint against all members of the governing body and cases will be opened for each member of the governing body.
- (3) When a complaint involves the members of a governing body, the Commission hearing of the governing body members' cases will be consolidated at the preliminary review phase and investigative phase, unless one or more members of the governing body object to the consolidation. At the conclusion of the preliminary review phase or investigative phase, the Commission will make individual determinations regarding the cases of each member of the governing body.
- (4) A complaint that is dismissed for failing to comply with the grievance requirements in ORS 192.685 is a procedural dismissal only. The dismissal does not prevent the Commission from taking up the matter on the Commission's own motion. The dismissal does not prohibit a new complaint from being considered based upon the same conduct alleged in the dismissed complaint, if the new complaint is based on a grievance that was timely submitted to the public body and that complied with these rules.

199-050-0080 Training Requirements

- (1) All members of governing bodies are encouraged to comply with the minimum training requirements in Section (2)(a) through (c) of this rule.
- (2) If a governing body has total expenditures of \$1 million or more in a fiscal year, as adjusted for inflation in the manner required by ORS 192.700(3), each member of the governing body shall:
 - (a) At least once during each term of office, attend or view a training on Oregon Public Meetings Law provided by the Commission or approved by the Commission in the manner described in OAR 199-005-0085;
 - (b) Maintain a record of the training viewed or attended, including the date viewed or attended and the name of the provider of the training; and
 - (c) Truthfully certify completion of the training upon request of the Commission.
- (3) A person who serves on multiple governing bodies, each of which require the mandatory training, may attend a single training to satisfy the requirements in section (2) of this rule so long as that training occurs during each applicable term of office.
- (4) Exceptions. The training requirements in section (2) of this rule do not apply to:

- (a) Members of a governing body if the governing body has total expenditures of less than \$1 million in a fiscal year, as adjusted for inflation; or
- (b) Members of governing bodies of state government.

199-050-0085 Training Delegation and Approval Process

- (1) The Commission may delegate the preparation and presentation of Public Meetings Law trainings required under ORS 192.700 to another organization. A training provided by an entity other than the Commission does not satisfy the requirements of ORS 192.700 unless the Commission has approved the content of the training prior to the presentation of the training.
- (2) An organization seeking Commission approval of its training shall submit a request, using the form available on the Commission's website, no less than 30 days prior to the presentation of the training. The organization shall provide copies of all training resources applicable to the training presentation, such as slides, handouts, narratives, and recordings, to the Commission for its review.
- (3) The Executive Director will review the training content for accuracy to ensure that the training includes all substantive requirements of the Public Meetings Law and best practices for ensuring compliance with the Public Meetings Law. The Commission will make available on its website the rubric by which the Executive Director will evaluate whether or not a training meets the requirements.
- (4) If the training content meets the requirements to the satisfaction of the Executive Director, the Executive Director shall approve the training program. A list of approved trainings programs shall be available on the Commission's website so that any person may verify that the training has been approved.
- (5) The Commission's approval of an organization's training will expire one year from the date of approval. Organizations will need to resubmit their training or submit new training for approval annually.

Division 40 – Executive Session

199-040-0027 Employment of a Public Officer, Employee, Staff Member or Individual Agent under ORS 192.660(2)(a) and Compliance with ORS 192.660(7)(d)

- (1) The purpose of this rule is to provide guidance to a governing body when the governing body holds an executive session permitted by ORS 192.660(2)(a): "To consider the employment of a public officer, employee, staff member or individual

agent.” Only consideration of an initial employment is permissible under this section. ORS 192.660(2)(a) does not authorize decisions, deliberations, or discussions of other employment actions such as performance evaluation, complaints, discipline, termination, or extension of an employment contract. **As provided in OAR 199-040-0020(3) compensation, including salaries and benefits, may not be discussed or negotiated in executive session.**

(2) Employees and Staff Members. Before a governing body convenes an executive session to consider the initial employment of an employee or staff member under ORS 192.660(2)(a), the governing body shall:

(a) Advertise the vacancy; and

(b) Adopt regular hiring procedures.

(3) Other Public Officers. Before a governing body convenes an executive session to consider initial employment of a public officer under ORS 192.660(2)(a), the governing body shall:

(a) Satisfy the requirements in subsection (2)(a) and (b) of this section; and

(b) Offer the public an opportunity to comment on the employment of the public officer.

(4) Chief Executive Officer. Before a governing body convenes an executive session to consider initial employment of a chief executive officer under ORS 192.660(2)(a), the governing body shall:

(a) Satisfy the requirements in subsections (2)(a) and (b) and (3)(b) of this section; and

(b) Adopt hiring standards, criteria and policy directives at an open meeting at which the public has an opportunity to comment on the standards, criteria and policy directives before such adoption.

(5) The prerequisite to "offer the public an opportunity to comment on the employment of the officer" means that the governing body shall provide the public with an opportunity to comment on the filling of the public officer's position. It does not require that the public be given an opportunity to comment on named candidates for the position before the executive session is held.

(6) When a governing body convenes an executive session to consider the employment of an individual agent under ORS 192.660(2)(a), the agent shall be an individual person. Some examples may include an attorney, an accountant, or another individual who would perform services on behalf of the public body in the capacity of an agent, even if the prospective individual agent works for a larger firm

or company. A firm or business entity that consists of more than one person is not an individual agent, and a governing body shall not consider the employment of a firm or entity in executive session under ORS 192.660(2)(a). It is not required that the governing body fulfill the prerequisites listed in ORS 192.660(7)(d) when considering the employment of an individual agent in executive session under ORS 192.660(2)(a).

199-040-0060 Prohibition on Making Decisions in Executive Session

Unless otherwise authorized by statute, a governing body shall not make a decision or vote in executive session. A governing body may reach an informal consensus in executive session, but any decision or vote may only be conducted in open session.

Division 8 – Compliance and Sanctions

199-008-0015 Oregon Government Ethics Commission Guidelines on Sanctions

- (1) The Commission will identify alleged violations of statutes or rules within the Commission's jurisdiction during the preliminary review phase or by preliminary finding of violations at the end of an investigative phase. This rule will standardize the method for setting sanctions to be imposed when a matter before the Commission is to be concluded by a stipulated final order, final order or a final order by default.
- (2) TABLE A lists the factors that the staff and Commission may consider as mitigating or aggravating any violation of Oregon Government Ethics Law in ORS Chapter 244, Oregon Lobbying Regulation in ORS Chapter 171 or **Oregon Public Meetings Law in ORS Chapter 192**.
 - (a) Points will be assigned from the factors listed in TABLE A. A total of the points assigned will be calculated.
 - (b) The total of the points assigned from TABLE A will be applied to TABLE B to determine the type and severity of any sanction imposed.
 - A. If the point total indicates a civil penalty, TABLE B will be used to determine the percentage of the maximum civil penalty that may be imposed.
 - B. If forfeiture is available as a sanction, TABLE B will be used to determine the percentage of the maximum forfeiture that may be imposed.
- (3) If there are aggravating or mitigating factors that are not listed in TABLE A, the director will prepare a summary of those factors for the Commission to consider. The Commission may exercise its discretion to deviate from the calculated

sanctions from TABLE B and modify the civil penalty or the forfeiture. Any deviation from the calculated sanctions from TABLE B shall be made part of the record of a case, either through an oral or written statement.

- (4) Possible aggravating or mitigating factors that may be considered in an upward or downward deviation from the calculated sanctions include:
 - (a) The responsibilities of the position held by the person at the time of the violation;
 - (b) A demonstrated acknowledgment of the violation and willingness to be educated; and
 - (c) An attempt to deny responsibility or cover up the conduct.
- (5) This rule does not apply in cases where the sanction is limited under ORS 244.280, 244.282, 244.284, 244.320 or 244.350. This rule also does not apply to sanctions imposed by the Commission for the late filing of reports required by ORS 244.050(2) to (4) or 171.752.

TABLE A

Factors	Points	244	171	192
Number of Violations	1 to 3 = 1 4 to 6 = 2 6 or more = 3	Apply	Apply	Apply
Number of Equivalent Actions ¹	5 to 10 = 1 11 to 15 = 2 16 to 20 = 3 21 to 25 = 4 26 to 30 = 5 30 to 50 = 6 50 or more = 7	Apply	Apply	Apply
Prior Violations	Each violation = 1	Apply	Apply	Apply
Aggregate Financial Benefit	\$0 = 0 \$1K or less = 1 \$1K to \$5K = 2 \$5K to \$10K = 3 \$10K to \$50K = 4 \$50k to \$100K = 5 \$100k to \$200K = 6 \$200K or more = 7	Apply	N/A	N/A
Length of Time Actions Occurred	6 months or less = 1 6 months to 1 year = 2 1 year or more = 3	Apply	Apply	Apply
Criminal Conviction	= 1	Apply	N/A	N/A
Confinement or Probation	= -1	Apply	N/A	N/A
Restitution or Reimbursement	= -1	Apply	N/A	N/A
Cooperation to Resolve Matter	= -2	Apply	Apply	Apply
Advice Sought and Followed Prior to Violation	Agency = -1 Agency Counsel = -2 OGEC = -5	Apply	Apply	Apply
Complied with Agency Policy ²	= -1	Apply	N/A	Apply
Self-Report or Action to Rectify Before Complaint	= -1	Apply	Apply	Apply
Action to Prevent Future Violations; Obtained Training	= - 1	Apply	Apply	Apply

1 Equivalent action means an action that would constitute a distinct violation, but it has occurred repeatedly under the same circumstances.
See OAR 199-008-0014.

2 If a public official commits a violation and that violation occurred while the public official was complying with the government agency's policy, the compliance with the policy may be considered a mitigating factor.

TABLE B

Total Points	Sanction
2 or Less	Letter of Reprimand or Correction
3 to 5	1 to 20% of Maximum Civil Penalty for each Violation and 1 to 20% of Maximum Forfeiture
6 to 10	20 to 40% of Maximum Civil Penalty for Each Violation and 20 to 40% of Maximum Forfeiture
11 to 15	40 to 60% of Maximum Civil Penalty for Each Violation and 40 to 60% of Maximum Forfeiture
16 to 20	60 to 80% of Maximum Civil Penalty for Each Violation and 60 to 80% of Maximum Forfeiture
21 plus	80 to 100% of Maximum Civil Penalty for Each Violation and 80 to 100% of Maximum Forfeiture