

Executive Session Law

*SWCD Training Week
February 2021*



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Housekeeping

- Please mute your microphone and/or telephone.
- The session will be recorded.
- Feel free to ask questions at any time via the chat box or verbally.
- I am not a lawyer – this is not legal advice
- Recordings and reference materials available on ODA website.



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Executive Session Violations

- Individually Liable
- Liable for just participating
- Ignorance of the law is not an excuse
- Investigated by Oregon Ethics Commission
- \$1000+ fines per occurrence



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Executive Session

Any meeting or part of a meeting of a governing body which is *closed* to certain persons for deliberation on certain matters.



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Executive Session Examples

- To discuss employment of public officers, employees or agents.
- Discuss the dismissal, discipline, or complaints of public officers or employees.
- Discuss performance evaluations.
- Discuss exempt public records.
- Consulting with legal counsel.



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Executive Session Process

Convening an Executive Session

- A governing body may hold a meeting consisting of only an executive session.
- The notice requirements are the same as those for any other meeting.
- The notice must cite to the statutory authority for the executive session.



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Executive Session Process

Convening an Executive Session

- An executive session may be called during a regular, special, or emergency meeting for which notice has already been given.
- The person presiding over the meeting must announce the statutory authority for the executive session before going into executive session.



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Executive Session Process

Convening an Executive Session

- News media must be allowed to attend, but are barred from disclosure of discussion unless the board discusses matters outside the scope of the session.



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Executive Session Process

Convening an Executive Session

- Minutes are required, but they may be kept in the form of sound tape recording.



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Executive Session Process

Convening an Executive Session

- If an employee requests a public session for performance evaluation or discipline matters, the meeting must be held in public.



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Executive Session Process

Convening an Executive Session

- Board may not reach a final decision in executive session. The board must go to public session to act formally on any matter.



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Executive Session Checklist

- In the District Guidebook
- In the AG Manual
- On the ODA District Training Week website



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Common Executive Session Violations (That have led to fines)

- Not citing (proper) statutory authority. Follow the script!
- Discussing topics not covered under Executive Session Law. Straying from topics covered under Executive Session Law.
- Not informing individual being discussed under Executive Session Law.



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Common Executive Session Violations (That have led to fines)

- Salary negotiations outside of initial employment.
- Discussing litigation or potential litigation without legal counsel present.
- Discussing records exempt from disclosure without providing copies of records to board members.
- Making a final decision in the Executive Session.



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Considering Employment under 192.660(2)(a)

- Vacancy for position has been advertised.
- Regular procedures for hiring have been adopted.
- For CEO
 - Adopted hiring standards, criteria, and policy directives at meetings open to the public in which the public has had the opportunity to comment.



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Handling Complaints

- A written complaint or report can usually be considered as an exempt record under ORS 192.660(2)(f). Oral complaints, reports, or summaries are not considered a public record.
- Discussion of the complaint with legal counsel can occur under 192.660(2)(h) only if there is current litigation of litigation is likely to be filed.

BUT

- Consideration of the complaint can only occur under 192.660(2)(b) and the subject of the complaint must be given choice for open session discussion.



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Top 5 Phone Calls I Cringe About

1. We don't want to air our dirty laundry!
2. We can't talk openly/honestly about an employee/board member with them there.
3. We need to have a "talk" with one of the board members/employees.
4. We need to discuss "Legal Matters."
5. We want to talk about our budget and how much we can afford to pay our employees.



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Questions?

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