



ACTION AGENDA/MINUTES WEST SALEM REDEVELOPMENT ADVISORY BOARD

Wednesday December 01, 2021, 7:30 a.m.
Virtual – [Zoom](#) - Online



<http://media.cityofsalem.net/meetings/audio/west-salem-redevelopment-advisory-board-audio-2021-12-01.mp3>

1. **OPENING EXERCISES** 7:34 a.m.

INTRODUCTIONS AND ROLL CALL: Jeff Miller-Chair, Mark May-Vice-Chair, Britni Davidson-Cruikshank, , Jason Staats, John Hannam, Michael Ryan

STAFF: Tory Banford, Brian Luse, Anita Sandoval, Caleb Saina-UD

Absent: Samantha Ross

2. **APPROVAL OF AGENDA**

Motion: Move to approve the agenda for December 01, 2021, as presented.

Motion by: Board Member- May

Seconded by: Board Member- Davidson-Cruikshank

Action: Agenda for December 01, 2021, approved as presented.

Vote: Aye: Unanimous **MOTION CARRIES**

3. **APPROVAL OF MINUTES**

Motion: Move to approve the minutes for November 3, 2021, as presented.

Motion by: Board Member- Staats

Seconded by: Board Member- Hannam

Action: Approved the November 3, 2021, minutes as presented.

Vote: Aye: Unanimous **MOTION CARRIES**

4. **ACTION ITEMS**

Cancel the January 5 meeting

Comments/Questions: May, Miller

Motion: Recommend the January 5, 2022, WSRAB meeting be cancelled.

Motion by: Board Member May

Seconded by: Board Member Hannam

Action: Approved cancelling the January 5 meeting.

Vote: Aye Unanimously

5. **DISCUSSION/INFORMATION ITEMS**

1. Public meetings, public records, and ethical considerations – Brian Luse
PowerPoint Presentation attached
Comments/Questions: May, Staats
2. WSRAB Bylaws -Tory Banford
Current Bylaws attached.
Comments/Questions: Ryan, May, Miller
3. Update on projects; 2nd St NW, ULI technical panel, other -Tory Banford
Comments/Questions: May, Miller, Staats
4. Edgewater Partnership, West Salem Business Association, West Salem Neighborhood Association, Salem-Keizer School District updates
 - No reports on Edgewater Partnership or West Salem Business Association

- Changes to City Council Wards were approved.
- Adoption process for Our Salem starts with a City Council meeting on Dec 6.

5. Next meeting topics

- Begin budget discussions
- 2nd Street NW discussion

ADJOURNMENT: 9:00 a.m.

NEXT MEETING: February 02, 2022



City of Salem

Public Meetings, Public Records, and Ethical Considerations

BRIAN P. LUSE, ASSISTANT CITY ATTORNEY

Public Meetings



“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 the *Oregon Public Meetings Law* that decisions of governing bodies be arrived at openly.”

- ORS 192.620

Public Meetings

Policy and Purpose of Oregon Public Meetings Laws:

- ▶ Ensure that meetings of governing bodies, *at which decisions about the public's business are made or discussed are open to the public,*
- ▶ That the public has notice of the time and place of meetings, and
- ▶ That the meeting is accessible to all.

Public Meetings

Who is subject to the law?

- ▶ Public Meetings Law applies to all meetings 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 “public body” is a city or county, or other “subdivision of the state.”

Public Meetings



Who is subject to the law?

- ▶ A “governing body” means any two or more members of a public body that have the authority to make decisions for or recommendations to a public body on policy or administration.”
- ▶ A “governing body” for the City includes not only the Council, but all boards and commissions, such as the CHSC and DAB.

Public Meetings

What meetings are subject to the law?

- ▶ A “meeting” is the convening of a governing body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter.
- ▶ Public meetings law applies to a meeting, even if the sole purpose of the meeting is to gather information, and not make a decision at that time – *Work Sessions*.
- ▶ What is NOT a Public Meeting? Less than quorum-
Social gatherings - On-site inspections.

Public Meetings

Pitfalls – Conference Calls/Emails/Serial Meetings

- ▶ Telephonic conference calls or “other electronic communications” can be public meetings.
- ▶ *Dumdi v. Handy* (2011)
 - ▶ Some Lane County Bd of Commissioners found to have violated public meetings law through “serial” meetings that occurred through email.
 - ▶ Individual Commissioner had over \$20K in personal liability, and County had \$350 K in liability.

Public Meetings

Electronic Communications/Serial Meetings

▶ Lessons from *Dumdi*:

- Use of email by a quorum of a governing body might constitute a meeting under Public Meetings Law.
- Serial meetings violate public meetings law;
 - Did at least a quorum of the governing body,
 - Make a decision or deliberate on a matter,
 - In any setting that was private and not open to the public?
 - Knowledge of the requirements of the law, and failure to comply with the requirements, may constitute willful misconduct that would subject you to personal liability

Public Meetings

- ▶ *Handy v. Lane Cty. Decision*
 - ▶ Members of Board of Commissioners found to have violated public meetings law by discussing via email the substance of matter that was come before the commission.
 - ▶ Members responded via reply all to County Administrator email that sought to schedule a meeting.

Public meetings

- ▶ *Handy v. Lane Cty. Decision*

- ▶ Members' comments via emails were not strictly limited to the scheduling question, and commented on the substance of the subject of the meeting.
- ▶ Because a quorum of members received the comments via email, the court found a public meeting violation occurred.

Public Meetings

Electronic Communications/Serial Meetings

▶ Remember:

- ▶ Use of a personal computer and a private email account to conduct public business may subject your personal computer or private e-mail account to disclosure under a public records request or in a litigation discovery request.
- ▶ Please consider possible ramifications of using personal devices to conduct official business

Oregon Public Records Law

“Public record” means any information that:

- (A) Is prepared, owned, used or retained by a state agency or political subdivision;
- (B) Relates to an activity, transaction or function of a state agency or political subdivision; and
- (C) Is necessary to satisfy the fiscal, legal, administrative or historical policies, requirements or needs of the state agency or political subdivision. – **ORS 192.005 (5)**

Each state agency or political subdivision shall maintain a public record or accurate copy of a public record in accordance with a retention schedule authorized under the law without regard to the technology or medium used to create or communicate the record. – **ORS 192.108**

Public Official Ethics



- ▶ What is a Public Official?
- ▶ ORS Chapter 244
- ▶ SRC Chapter 12
- ▶ Salem City Charter, Section 62

- ▶ Three main subject areas:
 - ▶ Conflict of Interest
 - ▶ Gifts
 - ▶ Use of Office

To whom do the ethics Laws apply?

- ▶ Public officials
- ▶ Relatives of the public official
- ▶ For gifts, members of the public official's household
- ▶ Businesses with which any of the above are associated

Public official means:

- ▶ Elected officials
 - ▶ Appointed officials
 - ▶ Employees
 - ▶ Agents
-
- ▶ A person is a public official, even if they receive no compensation for their services to the public body!

“Business” means:

- ▶ Private business entities (corporations, partnerships, franchisees)
- ▶ Self-employment
- ▶ Does not include 501 (c) corporations IF:
 - ▶ The public official is only a member of the board
 - ▶ The public official does not receive any remuneration for their services

SRC Chapter 12

- ▶ Based on State Law, but more restrictive
- ▶ Additional components:
 - ▶ Conflict of Interest (SRC 12.015)
 - ▶ Appearance Rule (SRC 12.020)
 - ▶ Special Favors (SRC 12.040)
 - ▶ Non Disclosure (SRC 12.051)

Actual Conflict of Interest


- ORS 244.020(1): “Any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person’s relative or any business with which the person or a relative of the person is associated.”
- SRC 12.015(a): “ANY benefit or detriment” creates a conflict, not only a pecuniary benefit or detriment!

Potential Conflict of Interest

- ▶ Any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which **could be to the private pecuniary benefit or detriment** of the person or the person's relative or any business with which the person or a relative of the person is associated.
- ▶ SRC 12.015(d): “**ANY** benefit or detriment” creates a conflict, not only a pecuniary benefit or detriment!

Conflict of Interest – Required Action for Public Official

- ▶ Actual: Disclose, refrain from discussion and vote. (ORS 244.120)
 - ▶ Abstention is not sufficient
 - ▶ State law provides rule of necessity exemption
 - ▶ City law removes exemption (SRC 12.050)
- ▶ Potential: Disclose nature of the conflict, but may participate.
- ▶ City's ethics code may prohibit voting, due to "Appearance of Impropriety" rule.



SRC 12.020: Appearance of Impropriety

“Public officials . . . are bound to observe in their official acts the highest standards of morality and to discharge faithfully the duties of their office regardless of personal consideration . . . Their conduct in both their official and private affairs should be above reproach.”



Fair and Impartial Fulfillment of Duties – SRC 12.040

- ▶ Contacting councilors to obtain preferential consideration in connection with city employment shall result in disqualification (except for City Manager position)
- ▶ No use of city-owned property for private use.
- ▶ No public official shall grant any special privilege to any citizen beyond what is available to every other citizen.



Disclosure of Confidential Information (SRC 12.051)

- ▶ City Public officials may not, without legal authority:
 - ▶ Disclose confidential city information
 - ▶ Use city confidential information to advance the financial or other private interest of themselves or others

Consequences for Violation

- ▶ State:
 - ▶ Civil Penalty
 - ▶ Forfeiture
 - ▶ Status of sanctions
- ▶ City
 - ▶ Removal from office
- ▶ Section 62
 - ▶ Reviewing authority to “act accordingly”



Chapter 62 of the City of Salem Charter

- ▶ Applies to elected and appointed officials at public hearings.
- ▶ Requires disclosure of certain gifts, relationships, and campaign contributions.
- ▶ Requires recusal if presence of gift, relationship, or contribution creates appearance of impropriety in mind of reasonable person.

REMEMBER:

- ▶ Compliance with ethics laws is a personal responsibility!
- ▶ You must comply with BOTH state and city ethics laws, and the more restrictive provisions always control .

Role of City Attorney's Office

- ▶ Our “client” is the City / Agency. In regard to state ethics law, we do not represent public officials in their personal, or professional capacity.
- ▶ Public Officials cannot rely on advice of legal counsel as a defense to violations.
- ▶ City Attorney serves as a guide through process – gets you pointed in the right direction

Where to Go for Ethics Advice: City Issues

- ▶ City Hearings Officer
 - ▶ Receive and initiate ethics complaints
 - ▶ Hear and investigate ethics complaints
 - ▶ Render advisory opinions or interpretations
- ▶ Through Dan Atchison, City Attorney
Telephone: (503) 588-6003

Bylaws of the West Salem Advisory Board

The West Salem Redevelopment Advisory Board was created by the City of Salem Urban Renewal Agency on October 11, 2010, to advise the Urban Renewal Agency on conservation, rehabilitation, and redevelopment matters within the West Salem Urban Renewal Area and to meet the West Salem Urban Renewal Area Plan objectives, per Resolution No. 10-04.

Rule 1. Robert's Rules Adopted. Unless otherwise provided by law or modified by these Bylaws, WSRAB procedures shall be governed by "Robert's Rules of Order," 10th edition and applicable laws of the City of Salem and the State of Oregon. The Board has an obligation to the citizens to be clear and simple in its procedures and in the consideration of the questions coming before it. Therefore, members should avoid invoking the finer points of parliamentary procedure when such points serve only to obscure the issues before the Board as a whole, and confuse the audience at public meetings and the citizens in general.

Rule 2. Officers.

(a) At the first meeting of the fiscal year, the Board shall elect a Chair and Vice Chair to serve for one year. In the event of the absence of the Chair and the Vice Chair, the staff liaison shall call the Board to order. If a quorum is present, those members present shall elect, by majority vote, a Temporary Chair for that meeting. Should the Chair or Vice Chair arrive, the meeting will be turned over to the Chair or Vice Chair.

(b) The Chair, Vice-Chair, or Temporary Chair when serving as the presiding officer may vote, move, second, and debate from the chair, subject only to such limitations of debate as are by these rules imposed on all members, and shall not be deprived of any of the rights and privileges of a member by reason of acting as the presiding officer.

Rule 3. Meeting Times. The WSRAB must meet at least quarterly. WSRAB meetings will start at 7:30 AM and end by 9:00 AM unless a majority vote of the Board designates otherwise.

Rule 4. Agendas.

- (a) Staff, along with the Board Chair, shall prepare an agenda for each meeting. Time limits will be established for each item to guide the meeting's discussion and actions. The agenda shall include notice of the place, time, and the following:
- Approval of meeting minutes
 - Appearance of interested citizens
 - Action items

- Information items
- New business
- Appearance of interested citizens

(b) The agenda for regular meetings must be provided to Members no later than five days in advance of the meeting. Notification of meeting cancellations, change of location, or last minute agenda changes to an agenda for a regular shall be provided at least 24 hours prior to the meeting.

(c) The agenda for a special meeting shall be provided no later than 24 hours in advance of the meeting.

(d) Notice for all meetings shall include written notice to all news media which requested notice. Notice of a regular or special meeting shall be noted on the Agency's list of public meetings online.

(e) The Board Chair and Vice Chair, in consultation with City staff, can cancel meetings at their discretion.

Rule 5. Meetings to be Open to Public. All meetings shall be noticed and open to the public.

Rule 6. If public participation is to be a part of a meeting, the presiding officer shall establish the order and length of time for participants.

Rule 7. Quorum. A majority of the currently serving members of the Board constitute a quorum to do business. Unless otherwise provided in these rules, the majority vote of the quorum present shall decide the question. Should a quorum not be present at a meeting, the members present may continue informally, but cannot render a decision.

Rule 8. Attendance. Members are required to attend at least seventy five percent of regular meetings within a consecutive twelve month period.

Rule 9. Committees. The Board may form committees as needed.

Rule 10. Motions. All motions, whether written or oral, require a second. The presiding officer may require that any motion be reduced to writing by the moving party before a vote is taken.

Rule 11. Decorum. The WSRAB will strive to reach consensus on matters under consideration. All members' positions will be respected and considered and wherever possible the group will work collaboratively to reach a consensus on recommendations. Majority and minority report recommendations may be issued if consensus is not achieved.

Rule 12. Communication. Members will communicate questions, issues, and

suggestions to staff. Staff will coordinate timely responses for Board consideration and further discussion. WSRAB may communicate directly with the Agency or City Council on matters pertaining to WSRAB's charge as described in Resolution 10-04.

Communication to and among WSRAB members, staff, and /or elected officials outside of the Board meetings is permitted. However, deliberations and decision making should only occur at monthly, noticed meetings, unless the public is granted access to communication via some other method.

Rule 13. Minutes.

(a) All meetings shall be audio recorded. Minutes of all regular, special, and emergency meetings shall be taken and comprised in a "final action agenda." The "final action agenda" shall contain the following information:

- (1)** The date, time, and location of the meeting or session;
- (2)** The names of the members recorded as either present or absent;
- (3)** Any motions, proposals, resolutions, and amendments thereto,
- (4)** Results of all votes taken, listing dissenting votes (Secret ballots are prohibited),
- (5)** And general description of all matters considered during the meeting.

(b) Draft minutes shall be available to the public within a reasonable time after the meeting. A copy of approved meeting minutes shall be filed with the City Recorder.

Rule 14. Board Duties.

The Board shall advise the Agency Board on these and other programs and issues affecting the West Salem Urban Renewal Area:

1. Rehabilitation of existing buildings
2. New retail and office development
3. Pedestrian amenities and beautification
4. Industrial development
5. Housing
6. Transportation and transit
7. Land acquisition and renewal plans
8. Priority, scope, and scale of public improvements to be made in the Renewal Area
9. Selection of future developers and redevelopers
10. Preliminary and final plan of developers
11. Tax allocation, budgeting, and capital improvement programming
12. Applications for federal and state funding for programs to be implemented within the West Salem Urban Renewal Area
13. Development and monitoring of low interest loan programs for funding projects consistent with the West Salem Urban Renewal Plan

14. Monitoring and recommending courses of action relating to state and federal legislation and programs affecting implementation of renewal project priorities and
15. Amendments to the West Salem Urban Renewal Plan.

Rule 15. Amendment of Rules. These rules may be amended, or new rules adopted, by a vote of two thirds of the currently serving members of the Board, provided that a proposed amendment or new rule has been introduced at a previous meeting, held not less than ten days prior to the Board action on the proposed amendment or adoption.