

Lebanon Fire District

Board Training
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Local Government Law Group



Election Restrictions

- ORS 260.432 prohibits the following:
 - Public employees, while on the job and during working hours, may not promote or oppose: 1) any political committee; 2) any initiative, referendum, or recall petition; 3) any measure; or 4) any candidate.
 - No person (including supervisors and elected officials) may coerce or require a public employee to promote or oppose: 1) any political committee; 2) any initiative, referendum, or recall petition; 3) any measure; or 4) any candidate.

*See, Restrictions on Political Advocacy by Public Employees
<https://sos.oregon.gov/elections/Documents/restrictions.pdf>

Election Restrictions Public EMPLOYEES

- Public employees cannot use their work time to support or oppose petitions, ballot measures, political committees, or candidates (.e.g “political advocacy”.)
 - No collecting funds, writing emails, disseminating written materials, or advocating for a particular viewpoint.
 - See, the Oregon Secretary of State, Elections Division manual “Restriction on Political Campaigning by Public Employees”
<https://sos.oregon.gov/elections/Documents/restrictions.pdf>
- Public employees can engage in political advocacy on their own time, as private citizens.
- High level public employees (Fire Chief, Division Chief or Captain) must be very careful, as the public has trouble differentiating the position from the person, particularly in small communities.

Election Restrictions elected officials

- Elected officials may campaign in support or opposition of any candidate or measure whenever they want.
- Caveats:
 - Clarify endorsement is in Board member's *personal*, *individual* capacity. No elected should use their position to endorse any candidate or measure as a representative of the District, unless so directed. No individual elected holds delegated authority to speak for the District and statements reflect District's official position. Board members must take off their "District" hat to clarify endorsement is personal.
 - *Note: It can be hard to distinguish between official and individual capacities, especially in small towns; everyone knows the Mayor as the Mayor. In that case, it might be better not to say anything at all.
 - Electeds cannot ask staff for any political advocacy assistance.

Election restrictions Neutral information



- The District may provide neutral information on a candidate or ballot measure, but the information must be truly neutral.
 - ✓ Neutral: Not supporting either of two opposing sides, impartial.
 - ~Oxford Dictionary
 - ✓ Impartial: Treat all alike; unprejudiced; fair.
 - ~Oxford Dictionary
- Does the information, taken as a whole, clearly favor or oppose the measure. Information promoting the measure must be balanced with information opposing it.
- Ask the Secretary of State – Elections Division to review before publishing.

Election Restrictions Apply

1. For initiative, referendum and recall petition efforts, as soon as the prospective petition is filed with the appropriate elections filing officer.
2. For a ballot measure referred by a governing body as soon as the measure is certified to the ballot. A district measure is certified to the ballot when the elections official files the referral with the county election office.

Election Restrictions - Penalties

- Who can complain? Any Oregon elector, by filing a request for investigation with the Secretary of State – Elections Division.
- Who is liable?
 - Any public employee who authors, drafts, or approves material that contains political advocacy may be in violation of ORS 260.432.
 - Any supervisor or other person, *including an elected official*, who requests a public employee to create material that contains political advocacy, or oversees that project, *even if they are not the author of the document*.

Social Media – Just Don't

Social Media Policy 1100-049

- Applies to District elected officials. 1.1
- Governs District social media and website AND personal use of social media. 3.1
- Use must conform to District policies, cannot negatively affect the public's trust in the District, or negatively affect the ability of staff to perform their jobs. 3.1
- Posting on or creation of District social media site subject to Fire Chief pre-approval and must reflect the views, policies and positions of the District. 5.1 – 5.3 and 5.7
- Requires compliance with Oregon Public Records and Meetings Laws. 5.5 and 5.6
- Personal political posts must clearly state that the views expressed are the personal views of the individual and are not supported or endorsed by the District. 5.13 and 6.2
- Do not use the District's logo on personal social media accounts or imply District endorsement. 6.2.
- Limitations on untrue, defamatory, obscene, slanderous or unlawful posts or those that unreasonably interfere with District services. 6.3
- No Photographs of District operations or response without prior permission. 7.2

Social Media – Just Don't

- Board members have a constitutional right of free speech
- The Board has chosen to limit that right for its members.
- Board policies state:
 - 9.5 Board Members, individually and collectively, act as representatives of the citizens of the District in maintaining and promoting fire and emergency medical services. Board Members move toward decisions and actions that will best serve the needs of District citizens in the light of available resources and the often conflicting needs and demands of interested individuals and groups.
 - 9.8 Board Code of Conduct--A Board Member should:
 - e. Make decisions only after all available facts bearing on a question have been presented and discussed.
 - f. Respect the opinion of others and graciously accept the principle of "majority rules" in Board decisions.
 - i. Refer all complaints or problems to the Fire Chief and discuss them only at a regular meeting after failure of an administrative solution.
 - j. Present personal criticisms of any District operations directly to the Fire Chief.

Social Media - Just Don't

Public Meeting Violations

- Do not discuss matters with other Board Members over social media. Unintentional quorums, deliberations or decisions in a private setting, including email, can constitute an unlawful “public meeting.” *Handy v. Lane County*, 360 Or. 605 (2016).
- HB 2805 codified *Handy* in ORS 192.610(1)
“Convening” now defined:
 - a) Gathering in a physical location;
 - b) Using electronic, video, or telephonic technology to be able to communicate contemporaneously among participants
 - c) Using serial electronic written communication among participants; or
 - c) Using an intermediary to communicate among participants.

Public Meetings Law

[oregon.gov/ogec/Public-Meetings-Law/Pages/default.aspx](https://www.oregon.gov/ogec/Public-Meetings-Law/Pages/default.aspx)

In the 2023 session, the Legislative Assembly passed [HB 2805](#), which gives the Oregon Government Ethics Commission (OGEC) the authority to enforce Oregon's Public Meetings Law ([ORS 192.610 to 192.690](#)).

Public Meetings Advice

At this time, OGEC can provide verbal and written advice only on the executive session provisions of Public Meetings Law.

OGEC is now accepting complaints and opening cases for alleged Public Meetings Law violations.

Public Meetings Trainings

In January 2024, OGEC'S trainers will begin providing Public Meetings Law trainings and will be coordinating with agencies, other groups, and associations to ensure the availability of Public Meetings Law trainings throughout the state. OGEC will continue to offer trainings and [webinars](#) on the Executive Session provisions.

Attorney General's Public Records and Meetings Information & Manual 2019

The Oregon Department of Justice publishes the Attorney General's Public Records and Meetings Manual. This manual is available on the Oregon Department of Justices' website in PDF and HTML format. You can also purchase a print version.

<https://www.oregon.gov/ogec/Public-Meetings-Law/Pages/>

Social Media – Just Don't

Acting Outside Scope of Delegated Board Authority

- Do not post comments that infer a Board position or determination that has not been adopted or made. (Personal liability)
- Do not discuss policy issues that are *or may* come before the Board electronically with citizens and other Board Members. (Public meeting violation.)
 - Communications between Board members that are “not related to any matter that, *at any time*, could *reasonably be foreseen* to come before the [Board] for deliberation and decision” not subject to Public Meetings Law.

Individual Social Media posts

Personal and District Liability/Wasted Resource

- Controversial issues can flood staff and meetings with concerned citizens wanting to vet non-agenda items.
- Little accountability when posting; issues get heated quickly, unlike when presented in a more formal setting (like a public meeting.)
- Conversations veer off topic and misinformation disseminated. Uninformed voices do NOT lead to good governance or decision-making, and waste public resources to correct.
- Op Eds: Unfair labor practice can result in litigation.
- Soliciting input regarding public employees may subject District to discrimination liability.
- Promotion of commercial/private interests prohibited.
- Public *employee* political commentary prohibited.
- District will defend official, not personal speech (personal liability).
- Security breaches.

Official District Uniforms

Administration Policy 1100-05

- Uniforms shall only be worn on duty, for District meetings, events, functions, or activities designated by the District, with few exceptions. 3.3
- At no time should District clothing be worn or used for personal gain or into establishments that could bring discredit to the District (i.e.: bars, parties, stores while purchasing liquor or items that are morally questionable, etc.) 3.5

*While no policy expressly limits Board Members, official clothing indicates District, not individual, representation.

District Operational Policies Applicable to Board Members?

- The Board has delegated District operational authority, including operational policy adoption, to the Chief. Board Policy 9.2, 9.8, 10.7, and 14 and Chief's Employment Contract
- Operational Policies that apply to Board members, must be adopted by the Board, not the Chief.
- Best to keep Board Policies and Operational Policies separate, to allow the Board to govern itself and the Chief to govern staff per delegated authority.

THE END!

LEADERSHIP AND LEARNING
ARE INDISPENSABLE TO
EACH OTHER.

