

MEMORANDUM

Date: February 18, 2025

To: Mayor and City Council of the City of St. Helens

Cc: City Administrator, John Walsh

From: Ashley Wigod, City Attorney

Re: Application for Media Representative to Attend Executive Sessions
Media Entity: FAFODDS
Representatives: Adam St. Pierre; Brianna Gaston; Mercedes Massey

On December 7, 2024, and supplemented on February 13, 2025, Adam St. Pierre, Brianna Gaston and Mercedes Massey, as representatives of FAFODDS, submitted an application to be considered “representative of the news media” for the purposes of attending executive sessions in accordance with ORS 192.660(4).

Per the City’s News Media Attendance Policy and the Attorney General guidance, an individual is a “representative of the news media” if they have a **formal affiliation with an institutional news media entity** through employment, by contract, or some other authorization with the institutional news media entity.

Here is a review and evaluation of the application:

- 1. The applicant has a formal affiliation with a traditional news media entity through employment, by contract, or some other authorization with the institutional news media entity.**

The applicant does not state that it has a formal affiliation with a traditional news media entity through employment, by contract, or some other authorization with the institutional news media entity.

- 2. If the applicant does not have a formal affiliation with a traditional news media entity, the following additional factors may be used to determine if an entity is institutional.**

- a. A formally organized business structure, which is organized for the purpose of gathering and disseminating news;**

FAFODDS is a registered 501(c)(3) Oregon non profit corporation. It is registered with the Oregon Secretary of State for the purposes of: NONPROFIT PUBLIC-BENEFIT CORPORATION OPERATED EXCLUSIVELY FOR CHARITABLE, SCIENTIFIC, OR EDUCATIONAL PURPOSES, INCLUDING BUT NOT LIMITED TO SUPPORTING VICTIMS OF UNSOLVED CRIMES AND REQUESTING AND

PUBLISHING PUBLIC RECORDS. CONSIDERED MEDIA

b. The existence of staff with assigned duties (rather than a single individual);

FAFODDS organizational structure and the roles of its staff are unclear. The applicant describes that the representatives are board members and the secretary of the non profit. FAFODDS does not provide information about how its organization and staff are structured and their assigned duties to gather and disseminate news or their training and experience as news gatherers, including the ethical obligations that those assigned duties entail. The information provided does not support that FAFODDS staff are organized as news gatherers and are institutional in nature.

c. Regular and continuous news publications, broadcasts, or articles via any variety of mediums including the Internet;

The applicants have not provided a recently published news article in a recognized news media organization publication or broadcast, with the person's byline, or a masthead showing the person's name as a member of the news gathering staff of the news media organization.

In its supplemental materials, FAFODDS says that actions it has taken have contributed to transparency, accountability, and justice within the community. FAFODDS does not provide specific examples of its publications that support these conclusions and therefore these conclusions cannot be evaluated.

Further, the AG Manual¹ provides:

“The news media is not limited to traditional print and broadcast media, but can include internet media. For example, while a blogger keeping an online personal journal with reflections and comments would likely not qualify as a representative of the news media, an individual who regularly posts for a website maintained a by traditional media company (e.g., cnn.com) likely would qualify.

The applicants say FAFODDS uses two publication platforms: Clackamas County Transparency and Accountability Facebook page and Justice for Sarah Zuber Facebook page.

The applicants did not provide examples of their regular and continuous publications on these two platforms.

In addition, even if they did, as described below, these two platforms are more similar to “online personal journals and reflections and comments” referenced above than the type of platform that would qualify an individual as a “representative of the news

¹ AG Public Records and Meetings Manual (2024), Section E(2)(a) and Page 152, available here: <https://www.doj.state.or.us/wp-content/uploads/2024/12/2024-PRM-Manual.pdf>

media.”

In the About Us section, Clackamas County Transparency and Accountability Facebook page says that: “This page is designed to provide a safe platform for citizens to provide the information they are concerned with or would like to educate others on.”

In the About Us section, Justice for Sarah Zuber Facebook Page says: “This website provides general information and discussion about crime victims, law enforcement investigation of unsolved crimes, and government expenditures of public funds.”

While these platforms may provide valuable information to the community, and the applicants may have contributed valuable information to these platforms, these platforms do not represent platforms similar to traditional media.

d. Separation between fact gathering publications or broadcasts and opinion publications or broadcasts;

The two Facebook pages do not separate its publications between fact gathering and opinion publications, nor do they identify those who provide fact gathering publications and those who provide opinion publications. This separate is typical and representative of institutional media. Publishing on these two Facebook platforms does not support a finding that the applicants are formally affiliated with an institutional news media entity.

e. A commitment and demonstrated structure to support the terms of ORS 192.660(4); and

The applicants have asserted that it is committed to support the terms of ORS 192.660(4), but there is no other information about how FAFODDS manages this commitment, including the training and the process the organization and its representatives undergo to implement the commitment. An assertion on its own does not meet the criteria.

f. A process in place for reporting conflicts of interest and correcting errors, including violations of executive session statutes, by a person with authority to take corrective measures.

In their supplemental materials, the applicants provide information about its process for error correction, ensuring no executive session violates occur, and a complaint process. The applicant has not provided any examples of its publications to date. In addition, it is unclear who in the organization is assigned to perform these duties prior to stories being published. Therefore it is hard to evaluate this assertion and the assertion on its own does not meet the criteria.

LEGAL RECOMMENDATION: The applicants have not demonstrated a formal affiliation with a traditional news media entity. Based on alternative factors to evaluate a non-traditional

news media entity, the applicants have not demonstrated that the entity they are formally affiliated with is institutional. Therefore, it is recommended that the application, for the purposes of being considered “representatives of the news media” to attend executive session, be **DENIED**.

In the event the applicant believes the City has acted in violation of ORS 192.610 to 192.705, the applicant may, within 30 days of the alleged violation, file a written grievance per ORS 192.705.