

BEFORE THE METRO COUNCIL

AN ORDINANCE RELATING TO PUBLIC) ORDINANCE NO. 94-559A
MEETINGS ALLOWING COUNCIL)
MEMBERS TO BE PRESENT AT) Introduced by Presiding
MEETINGS THROUGH THE USE OF) Officer Judy Wyers
ELECTRONIC MEANS)
)

THE METRO COUNCIL HEREBY ORDAINS AS FOLLOWS:

Section 1. A new Section 2.01.055 "Participation of Council Members by Electronic Means" is added to the Metro Code to read as follows:

2.01.055 PARTICIPATION OF COUNCIL MEMBERS BY ELECTRONIC MEANS:

(a) For any regular meeting or special meeting of the Council, Council members may participate in the meeting by the use of a voice or data communication device that allows communication with all other meeting participants provided the following conditions are fulfilled:

- (1) The Councilor who wishes to participate by electronic means must file a written request with the Presiding Officer stating the reasons why the Councilor cannot be physically present at the meeting, and why extraordinary circumstances exist that require that the Councilor should participate by electronic means.
- (2) The Presiding Officer files with the Council Clerk a written report explaining the circumstances and containing the Presiding Officer's determination that the physical absence of the Councilor is both

unavoidable and excusable and that the physically absent Councilor should participate in the meeting.

(3) A majority of the Council must be physically present at any special or regular meeting for a quorum to exist.

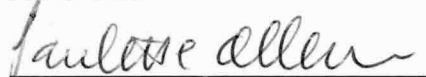
(b) Any emergency meeting may be conducted by electronic means consistent with the Oregon Public Meeting Law.

(c) Participation at any Council meeting by electronic means shall not constitute attendance at a meeting of the Council for the purpose of Section 23(1)(e) of the 1992 Metro Charter.

ADOPTED by the Metro Council this 8th day of September, 1994.


Ed Washington, Deputy Presiding Officer

ATTEST:


Clerk of the Council

gl
1169A

BEFORE THE METRO COUNCIL

AN ORDINANCE RELATING TO PUBLIC) ORDINANCE NO. 94-559A
MEETINGS ALLOWING COUNCIL)
MEMBERS TO BE PRESENT AT) Introduced by Presiding
MEETINGS THROUGH THE USE OF) Officer Judy Wyers
ELECTRONIC MEANS AND DECLARING)
AN EMERGENCY)

THE METRO COUNCIL HEREBY ORDAINS AS FOLLOWS:

Section 1. A new Section 2.01.055 "Participation of Council Members by

Electronic Means reads as follows:

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- (1) The Councilor who wishes to participate by electronic means must file a written request with the Presiding Officer stating the reasons why the Councilor cannot be physically present at the meeting, and why extraordinary circumstances exist that require that the Councilor should participate by electronic means.
- (2) The Presiding Officer files with the Council Clerk a written report explaining the circumstances and containing the Presiding Officer's determination that the physical absence of the Councilor is both

~~unavoidable and excusable and that the physically absent Councilor should participate in the meeting.~~

~~(3) A majority of the Council must be physically present at any special or regular meeting for a quorum to exist.~~

~~(b) Any emergency meeting may be conducted by electronic means consistent with the Oregon Public Meeting Law~~

~~(c) Participation at any Council meeting by electronic means shall not constitute attendance at a meeting of the Council for the purpose of Section 23(1)(e) of the 1992 Metro Charter.~~

~~Section 1. Metro Code Section 2.01.090 is amended to read as follows:~~

~~2.01.090 CONDUCT OF MEETINGS~~

~~(a) A quorum of the Council is seven (7) members. If a quorum is present, the Council may proceed with the transaction of its business. Consistent with the Oregon Public Meetings Law, Council meetings may be conducted through the use of telephone conference calls or other electronic communications. Members of the Council shall be considered present at a Council meeting if they are connected to a voice or data communication device that allows two-way communication with all other meeting participants.~~

~~(b) Minutes of each meeting shall be prepared by the Clerk of the Council, and shall include at least the following information:~~

~~(1) All members of the Council present;~~

~~(2) All motions, proposals, resolutions, orders, ordinances and rules proposed and their dispositions;~~

~~(3) — The results of all votes, and the vote of each Councilor by name; and~~

~~(4) — The substance of any discussion on any matter.~~

~~(e) — Minutes of Executive Sessions may be limited consistent with ORS 192.660.~~

~~(d) — The written minutes shall be available to the public within a reasonable time after the meeting, and shall be maintained as a permanent record of the actions of the Council by the Clerk of the Council.~~

~~(e) — The Council shall by resolution adopt rules establishing procedures governing conduct of debate on matters considered by the Council at Council meetings.~~

~~(f) — Council members present, but not voting or not specifically abstaining, shall be counted as voting with the majority. In the event that there is no such majority, such members shall be counted as abstaining.~~

~~(g) — Except for ordinances and rules, the Presiding Officer may order the unanimous approval of any matter before the Council unless there is an objection from one or more Councilors. If there is an objection, then a voice vote shall be taken, unless the objecting Councilor requests a roll call vote and at least two (2) Councilors concur in such request, in which case a roll call vote shall be taken. At each meeting, the Clerk of the Council shall rotate the order for each roll call vote so that the Councilor who voted first shall vote last on the next roll call vote.~~

~~(h) — In the event a matter is the subject of a voice vote or a roll call vote, after the vote is taken the Presiding Officer shall announce the result of the votes. Prior to proceeding to the next item on the agenda, or if the item voted upon is the last item on the agenda before adjournment, any member may request that the Clerk of the Council change~~

~~their vote in which case the change in vote shall be announced by the Presiding Officer and the result of the votes as modified shall also be announced. Upon commencement of the next agenda or adjournment, as the case may be, all votes shall become final and may not be further changed without the unanimous consent of the Council.~~

~~(i) Any matter not covered by this chapter or a rule adopted by the Council shall be determined by Robert's Rules of Order, newly revised. The Council may by a positive vote of eight (8) members authorize the suspension of any rule adopted by the Council.~~

~~(j) All meetings of the Council, its committees and advisory committees shall be held and conducted in accordance with the Oregon Public Meetings Law.~~

Section 2. This Ordinance being necessary for the health, safety, or welfare of the Metro area, for the reason that it is necessary to allow for the conduct of Council meetings by voice or other electronic communications in order to avoid unnecessary public expense in the conduct of meetings, an emergency is declared to exist and the Ordinance takes effect upon passage.

ADOPTED by the Metro Council this ____ day of _____, 1994.

Ed Washington, Deputy Presiding Officer

ATTEST:

Clerk of the Council

gl
1169A

**METRO**

DATE: August 31, 1994
TO: Metro Councilors
FROM: Casey Short, ^{CS} Council Analyst
RE: Ordinance No. 94-559

At the August 25 Council meeting the Council voted 9-1 to remove Ordinance No. 94-559 from the Governmental Affairs Committee and bring it to the full Council for consideration at the September 8 Council meeting. The purpose of this memo is to provide some background on the subject addressed in the ordinance and discuss pending amendments.

Ordinance No. 94-559 would allow Councilors to participate in Council meetings by electronic means. The ordinance as originally filed would add language to Section 2.01 of the Metro Code to permit Council meetings to be conducted "through the use of telephone conference calls or other electronic communications." The ordinance was first read at the special Council meeting of June 29, 1994 and referred to the Governmental Affairs Committee. The committee considered it at its July 13 meeting and Chair Gates asked Councilor McLain to work with legal counsel and Council staff to amend the ordinance to reduce the potential for abuse, which some committee members cited as a concern.

An amended version of the ordinance is attached as Ordinance No. 94-559A. The Governmental Affairs Committee has not reviewed the amended ordinance, but Councilor McLain is expected to move the amendments at the September 8 meeting. The amended version of the ordinance replaces the original ordinance (which added two sentences to an existing Code section) with a new Code section governing the "participation of Council members by electronic means." The new version is much tighter than the original, requiring a Councilor who wishes to participate in a meeting from a remote location to make a written request of the Presiding Officer stating what extraordinary circumstances exist that preclude the Councilor's physical attendance at the meeting. The Councilor may only participate in the meeting from the remote location if the Presiding Officer approves the request and files a written report with the Clerk of the Council explaining the extraordinary circumstances and making a determination that the Councilor's physical absence is unavoidable and excusable. The amended version of the ordinance further requires that a

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August 31, 1994
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Councilor participating in a meeting by electronic means be able to communicate with all other meeting participants, and provides that "a majority of the Council must be physically present at any special or regular meeting for a quorum to exist."

Council Administrator Don Carlson advises me that there have been four instances in which Metro funds paid for Councilors to return from out of town to attend meetings they would otherwise have missed. On two of these occasions, Councilors were away on business; once a Councilor was attending a conference related to Metro business; and once a Councilor was attending a long-scheduled family reunion. In these instances, participation by telephone would have saved the expense of transporting Councilors to attend the meetings in question.

Also attached is a copy of the Oregon Public Meetings Law (ORS 192.610 - 690). This includes some brief discussion of "meetings by means of telephonic or electronic communication" at Section 192.670.

tomer's account, the account balance on such dates, a copy of the customer's signature card and the dates the account opened or closed. [1977 c.517 §8 (2), (3)]

192.587 Charges for participation in attorney trust account overdraft notification program. Financial institutions that participate in an attorney trust account overdraft notification program established under ORS 9.132 may charge attorneys or law firms who have trust accounts with the financial institution for the reasonable costs incurred by the financial institution by reason of that participation. [1993 c.131 §6]

192.590 Civil liability for violation of ORS 192.550 to 192.595; status of evidence obtained in violation. (1) Any customer who suffers any ascertainable loss as a result of a willful violation of ORS 192.550 to 192.595 by any person, may bring an individual action in an appropriate court to recover actual damages or \$1,000, whichever is greater.

(2) Any customer who suffers any ascertainable loss as a result of a negligent violation of ORS 192.550 to 192.595 by any person, may bring an individual action in an appropriate court to recover actual damages.

(3) In any successful action to enforce civil liability for violation of the provisions of ORS 192.550 to 192.595, the customer may recover the cost of the action, together with reasonable attorney fees at trial and on appeal as determined by the court.

(4) An action to enforce any provision of ORS 192.550 to 192.595 must be commenced within two years after the date on which the violation occurred.

(5) Evidence obtained in violation of ORS 192.550 to 192.595 is inadmissible in any proceeding. [1977 c.517 §9; 1981 c.897 §41]

192.595 Severability. If any provision of ORS 192.550 to 192.595 or the application thereof to any person or circumstance is held invalid for any reason, such invalidity shall not affect any other provision or application of ORS 192.550 to 192.595 which can remain in effect without the invalid provision or application, and to this end the provisions of ORS 192.550 to 192.595 are severable. [1977 c.517 §10]

PUBLIC MEETINGS

192.610 Definitions for ORS 192.610 to 192.690. As used in ORS 192.610 to 192.690:

(1) "Decision" means any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of a governing body is required, at any meeting at which a quorum is present.

(2) "Executive session" means any meeting or part of a meeting of a governing body which is closed to certain persons for deliberation on certain matters.

(3) "Governing body" means the members of any public body which consists of two or more members, with the authority to make decisions for or recommendations to a public body on policy or administration.

(4) "Public body" means the state, any regional council, county, city or district, or any municipal or public corporation, or any board, department, commission, council, bureau, committee or subcommittee or advisory group or any other agency thereof.

(5) "Meeting" means the convening 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. "Meeting" does not include any onsite inspection of any project or program. "Meeting" also does not include the attendance of members of a governing body at any national, regional or state association to which the public body or the members belong. [1973 c.172 §2; 1979 c.644 §1]

192.620 Policy. 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 ORS 192.610 to 192.690 that decisions of governing bodies be arrived at openly. [1973 c.172 §1]

192.630 Meetings of governing body to be open to public; location of meetings; disabled access; interpreters. (1) All meetings of the governing body of a public body shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by ORS 192.610 to 192.690.

(2) No quorum of a governing body shall meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as otherwise provided by ORS 192.610 to 192.690.

(3) A governing body shall not hold a meeting at any place where discrimination on the basis of race, creed, color, sex, age, national origin or disability is practiced. However, the fact that organizations with restricted membership hold meetings at the place shall not restrict its use by a public body if use of the place by a restricted membership organization is not the primary purpose of the place or its predominate use.

(4) Meetings of the governing body of a public body shall be held within the geographic boundaries over which the public body has jurisdiction, or at the administrative headquarters of the public body or at the

other nearest practical location. Training sessions may be held outside the jurisdiction so long as no deliberations toward a decision are involved. A joint meeting of two or more governing bodies shall be held within the geographic boundaries over which one of the participating public bodies has jurisdiction or at the nearest practical location. Meetings may be held in locations other than those described in this subsection in the event of an actual emergency necessitating immediate action. This subsection does not apply to the Oregon State Bar until December 31, 1980.

(5)(a) It shall be considered discrimination on the basis of disability for a governing body of a public body to meet in a place inaccessible to the disabled, or, upon request of a hearing impaired person, to fail to make a good faith effort to have an interpreter for hearing impaired persons provided at a regularly scheduled meeting. The sole remedy for discrimination on the basis of disability shall be as provided in ORS 192.680.

(b) The person requesting the interpreter shall give the governing body at least 48 hours' notice of the request for an interpreter, shall provide the name of the requester, sign language preference and any other relevant information the governing body may request.

(c) If a meeting is held upon less than 48 hours' notice, reasonable effort shall be made to have an interpreter present, but the requirement for an interpreter does not apply to emergency meetings.

(d) If certification of interpreters occurs under state or federal law, the Oregon Disabilities Commission or other state or local agency shall try to refer only certified interpreters to governing bodies for purposes of this subsection.

(e) As used in this subsection, "good faith effort" includes, but is not limited to, contacting the Oregon Disabilities Commission or other state or local agency that maintains a list of qualified interpreters and arranging for the referral of one or more such persons to provide interpreter services. [1973 c.172 §3; 1979 c.644 §2; 1989 c.1019 §1]

192.640 Public notice required; special notice for executive sessions, special or emergency meetings. (1) The governing body of a public body shall provide for and give public notice, reasonably calculated to give actual notice to interested persons including news media which have requested notice, of the time and place for holding regular meetings. The notice shall also include a list of the principal subjects anticipated to be considered at the meeting, but this requirement shall not limit the ability

of a governing body to consider additional subjects.

(2) If an executive session only will be held, the notice shall be given to the members of the governing body, to the general public and to news media which have requested notice, stating the specific provision of law authorizing the executive session.

(3) No special meeting shall be held without at least 24 hours' notice to the members of the governing body, the news media which have requested notice and the general public. In case of an actual emergency, a meeting may be held upon such notice as is appropriate to the circumstances, but the minutes for such a meeting shall describe the emergency justifying less than 24 hours' notice. [1973 c.172 §4; 1979 c.644 §3; 1981 c.182 §1]

192.650 Written minutes required; content; content of minutes for executive sessions. (1) The governing body of a public body shall provide for the taking of written minutes of all its meetings. Neither a full transcript nor a recording of the meeting is required, except as otherwise provided by law, but the written minutes must give a true reflection of the matters discussed at the meeting and the views of the participants. All minutes shall be available to the public within a reasonable time after the meeting, and shall include at least the following information:

(a) All members of the governing body present;

(b) All motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition;

(c) The results of all votes and, except for public bodies consisting of more than 25 members unless requested by a member of that body, the vote of each member by name;

(d) The substance of any discussion on any matter; and

(e) Subject to ORS 192.410 to 192.505 relating to public records, a reference to any document discussed at the meeting but such reference shall not affect the status of the document under ORS 192.410 to 192.505.

(2) Minutes of executive sessions shall be kept in accordance with subsection (1) of this section. However, the minutes of a hearing held under ORS 332.061 shall contain only the material not excluded under ORS 332.061 (2). Instead of written minutes, a record of any executive session may be kept in the form of a sound tape recording which need not be transcribed unless otherwise provided by law. Material the disclosure of which is inconsistent with the purpose for which a meeting under ORS 192.660 is authorized to

be held may be excluded from disclosure. However, excluded materials are authorized to be examined privately by a court in any legal action and the court shall determine their admissibility. [1973 c.172 §5; 1975 c.664 §1; 1979 c.644 §4]

192.660 Executive sessions permitted on certain matters; procedures; news media representatives' attendance; limits.

(1) Nothing contained in ORS 192.610 to 192.690 shall be construed to prevent the governing body of a public body from holding executive session during a regular, special or emergency meeting, after the presiding officer has identified the authorization under ORS 192.610 to 192.690 for the holding of such executive session. Executive session may be held:

(a) To consider the employment of a public officer, employee, staff member or individual agent. The exception contained in this paragraph does not apply to:

(A) The filling of a vacancy in an elective office.

(B) The filling of a vacancy on any public committee, commission or other advisory group.

(C) The consideration of general employment policies.

(D) The employment of the chief executive officer, other public officers, employees and staff members of any public body unless the vacancy in that office has been advertised, regularized procedures for hiring have been adopted by the public body and there has been opportunity for public input into the employment of such an officer. However, the standards, criteria and policy directives to be used in hiring chief executive officers shall be adopted by the governing body in meetings open to the public in which there has been opportunity for public comment.

(b) To consider the dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent, unless such public officer, employee, staff member or individual agent requests an open hearing.

(c) To consider matters pertaining to the function of the medical staff of a public hospital licensed pursuant to ORS 441.015 to 441.063, 441.085, 441.087 and 441.990 (3) including, but not limited to, all clinical committees, executive, credentials, utilization review, peer review committees and all other matters relating to medical competency in the hospital.

(d) To conduct deliberations with persons designated by the governing body to carry on labor negotiations.

(e) To conduct deliberations with persons designated by the governing body to negotiate real property transactions.

(f) To consider records that are exempt by law from public inspection.

(g) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations.

(h) To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

(i) To review and evaluate, pursuant to standards, criteria and policy directives adopted by the governing body, the employment-related performance of the chief executive officer of any public body, a public officer, employee or staff member unless the person whose performance is being reviewed and evaluated requests an open hearing. The standards, criteria and policy directives to be used in evaluating chief executive officers shall be adopted by the governing body in meetings open to the public in which there has been opportunity for public comment. An executive session for purposes of evaluating a chief executive officer or other officer, employee or staff member shall not include a general evaluation of an agency goal, objective or operation or any directive to personnel concerning agency goals, objectives, operations or programs.

(j) To carry on negotiations under ORS chapter 293 with private persons or businesses regarding proposed acquisition, exchange or liquidation of public investments.

(2) Labor negotiations may be conducted in executive session if either side of the negotiators requests closed meetings. Notwithstanding ORS 192.640, subsequent sessions of the negotiations may continue without further public notice.

(3) Representatives of the news media shall be allowed to attend executive sessions other than those held under paragraph (d) of subsection (1) of this section relating to labor negotiations or executive session held pursuant to ORS 332.061 (2) but the governing body may require that specified information subject of the executive session be undisclosed.

(4) No executive session may be held for the purpose of taking any final action or making any final decision. [1973 c.172 §6; 1975 c.664 §2; 1979 c.644 §5; 1981 c.302 §1; 1983 c.453 §1; 1985 c.657 §2]

192.670 Meetings by means of telephonic or electronic communication. (1) Any meeting, including an executive session, of a governing body of a public body which

is held through the use of telephone or other electronic communication shall be conducted in accordance with ORS 192.610 to 192.690.

(2) When telephone or other electronic means of communication is used and the meeting is not an executive session, the governing body of the public body shall make available to the public at least one place where the public can listen to the communication at the time it occurs by means of speakers or other devices. The place provided may be a place where no member of the governing body of the public body is present. [1973 c.172 §7; 1979 c.361 §1]

192.680 Enforcement of ORS 192.610 to 192.690; effect of violation on validity of decision of governing body; liability of members. (1) A decision made by a governing body of a public body in violation of ORS 192.610 to 192.690 shall be voidable. The decision shall not be voided if the governing body of the public body reinstates the decision while in compliance with ORS 192.610 to 192.690. A decision that is reinstated is effective from the date of its initial adoption.

(2) Any person affected by a decision of a governing body of a public body may commence a suit in the circuit court for the county in which the governing body ordinarily meets, for the purpose of requiring compliance with, or the prevention of violations of ORS 192.610 to 192.690, by members of the governing body, or to determine the applicability of ORS 192.610 to 192.690 to matters or decisions of the governing body.

(3) Notwithstanding subsection (1) of this section, if the court finds that the public body made a decision while in violation of ORS 192.610 to 192.690, the court shall void the decision of the governing body if the court finds that the violation was the result of intentional disregard of the law or willful misconduct by a quorum of the members of the governing body, unless other equitable relief is available. The court may order such equitable relief as it deems appropriate in the circumstances. The court may order payment to a successful plaintiff in a suit brought under this section of reasonable attorney fees at trial and on appeal, by the governing body, or public body of which it is a part or to which it reports.

(4) If the court makes a finding that a violation of ORS 192.610 to 192.690 has occurred under subsection (2) of this section and that the violation is the result of willful misconduct by any member or members of the governing body, that member or members shall be jointly and severally liable to the governing body or the public body of which it is a part for the amount paid by the body under subsection (3) of this section.

(5) Any suit brought under subsection (2) of this section must be commenced within 60 days following the date that the decision becomes public record.

(6) The provisions of this section shall be the exclusive remedy for an alleged violation of ORS 192.610 to 192.690. [1973 c.172 §8; 1975 c.664 §3; 1979 c. 644 §6; 1981 c.897 §42; 1983 c.453 §2; 1989 c.544 §1]

192.685 Additional enforcement of alleged violations of ORS 192.660. (1) Notwithstanding ORS 192.680, complaints of violations of ORS 192.660 alleged to have been committed by public officials may be made to the Oregon Government Standards and Practices Commission for review and investigation as provided by ORS 244.260 and for possible imposition of civil penalties as provided by ORS 244.350.

(2) The commission may interview witnesses, review minutes and other records and may obtain and consider any other information pertaining to executive sessions of the governing body of a public body for purposes of determining whether a violation of ORS 192.660 occurred. Information related to an executive session conducted for a purpose authorized by ORS 192.660 shall be made available to the Oregon Government Standards and Practices Commission for its investigation but shall be excluded from public disclosure.

(3) If the commission chooses not to pursue a complaint of a violation brought under subsection (1) of this section at any time before conclusion of a contested case hearing, the public official against whom the complaint was brought may be entitled to reimbursement of reasonable costs and attorney fees by the public body to which the official's governing body has authority to make recommendations or for which the official's governing body has authority to make decisions. [1993 c.743 §28]

192.690 Exceptions to ORS 192.610 to 192.690. (1) ORS 192.610 to 192.690 shall not apply to the deliberations of the State Board of Parole and Post-Prison Supervision, the Psychiatric Security Review Board, of state agencies conducting hearings on contested cases in accordance with the provisions of ORS 183.310 to 183.550, the review by the Workers' Compensation Board of similar hearings on contested cases, meetings of the state lawyers assistance committees, the local lawyers assistance committees in accordance with the provisions of ORS 9.545, the multidisciplinary teams required to review child abuse and neglect fatalities in accordance with the provisions of ORS 418.747, the peer review committees in accordance with the provisions of ORS 441.055 and mediation conducted under sections 2 to 10,

chapter 967, Oregon Laws 1989, or to any judicial proceeding.

(2) Because of the grave risk to public health and safety that would be posed by misappropriation or misapplication of information considered during such review and approval, ORS 192.610 to 192.690 shall not apply to review and approval of security programs by the Energy Facility Siting Council pursuant to ORS 469.530. [1973 c.172 §9; 1975 c.606 §41b; 1977 c.380 §19; 1981 c.354 §3; 1983 c.617 §4; 1987 c.850 §3; 1989 c.6 §18; 1989 c.967 §12; 1991 c.451 §3; 1993 c.318 §3]

Note: The amendments to 192.690 by section 14, chapter 967, Oregon Laws 1989, and by section 33, chapter 18, and section 4, chapter 318, Oregon Laws 1993, take effect June 30, 1995. See section 17, chapter 967, Oregon Laws 1989. The text that is effective on and after June 30, 1995, is set forth for the user's convenience.

192.690. (1) ORS 192.610 to 192.690 shall not apply to the deliberations of the State Board of Parole and Post-Prison Supervision, the Psychiatric Security Review Board, of state agencies conducting hearings on contested cases in accordance with the provisions of ORS 183.310 to 183.550, the review by the Workers' Compensation Board of similar hearings on contested cases, meetings of the state lawyers assistance committees, the local lawyers assistance committees in accordance with the provisions of ORS 9.545, the multidisciplinary teams required to review child abuse and neglect fatalities in accordance with the provisions of ORS 418.747, and the peer review committees in accordance with the provisions of ORS 441.055 or to any judicial proceeding.

(2) Because of the grave risk to public health and safety that would be posed by misappropriation or misapplication of information considered during such review and approval, ORS 192.610 to 192.690 shall not apply to review and approval of security programs by the Energy Facility Siting Council pursuant to ORS 469.530.

192.695 Prima facie evidence of violation required of plaintiff. In any suit commenced under ORS 192.680 (2), the plaintiff shall be required to present prima facie evidence of a violation of ORS 192.610 to 192.690 before the governing body shall be required to prove that its acts in deliberating toward a decision complied with the law. When a plaintiff presents prima facie evidence of a violation of the open meetings law, the burden to prove that the provisions of ORS 192.610 to 192.690 were complied with shall be on the governing body. [1981 c.892 §97d; 1989 c.544 §3]

Note: 192.695 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS 192.610 to 192.990 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

192.710 Smoking in public meetings prohibited. (1) No person shall smoke or carry any lighted smoking instrument in a room where a public meeting is being held or is to continue after a recess. For purposes of this subsection, a public meeting is being held from the time the agenda or meeting

notice indicates the meeting is to commence regardless of the time it actually commences.

(2) As used in this section:

(a) "Public meeting" means any regular or special public meeting or hearing of a public body to exercise or advise in the exercise of any power of government in buildings or rooms rented, leased or owned by the State of Oregon or by any county, city or other political subdivision in the state regardless of whether a quorum is present or is required.

(b) "Public body" means the state or any department, agency, board or commission of the state or any county, city or other political subdivision in the state.

(c) "Smoking instrument" means any cigar, cigarette, pipe or other smoking equipment. [1973 c.168 §1; 1979 c.262 §1]

FINANCIAL INSTITUTION RECORD DISCLOSURES

192.800 Definitions. (1) "Customer" means any person who or which is transacting or has transacted business with a financial institution, or who or which is using or has used the services of such an institution, or for whom or which a financial institution has acted or is acting as a fiduciary.

(2) "Financial institution" means any state or national bank, state or federal savings and loan association, federal savings bank, state or federal credit union, trust company or mutual savings bank.

(3) "Financial records" means any original written document, any copy thereof, or any information contained therein, held by or in the custody of a financial institution, when the document, copy or information is identifiable as pertaining to one or more customers of the financial institution.

(4) "Subpoena" means a judicial subpoena or subpoena duces tecum. [1985 c.797 §1]

192.805 Reimbursement required prior to disclosure; charges. Before producing any documents or making any disclosures, a financial institution may require the requesting person who caused the subpoena to be issued to reimburse the financial institution for the reasonable costs incurred by the financial institution in the course of compliance. These costs shall include but are not limited to personnel costs, reproduction costs and travel expenses. The following charges shall be deemed reasonable costs:

(1) Personnel costs, \$10 per hour per person, computed on the basis of \$2.50 per quarter hour or fraction thereof, for time expended by personnel of the financial institution in searching, locating, retrieving, copying and transporting or conveying the