

STAFF REPORT

October 27, 2009

To: City Council

From: Carl M. Dutli

The advent of "non-traditional media" such as internet blogging and websites devoted to local public affairs reporting has created situations that were not contemplated in Oregon's public meeting law and its interpretation in the Attorney General's Public Records and Meetings Manual. A number of local governments in Oregon have faced non-traditional media persons asking to attend executive sessions as "media representatives" under the law.

There are no sanctions under Oregon law to enforce the non-disclosure requirement that the statutes place on news media attending executive sessions. Historically, when the public meetings laws were created in the 1970s traditional news media (newspapers, television, and radio) almost exclusively were the news reporting entity. Because these entities tended to be institutionalized and accountable, few problems arose despite the absence of enforcement mechanisms. Traditional news media were motivated to honor legitimate non-disclosure requirements because they had an ongoing stake in the opportunities afforded by the Oregon system. Now that there is the non-traditional media, some governing bodies have been reluctant to allow non-traditional media reporters into executive sessions because they have not developed a sufficient level of trust in non-traditional media reporters and writers nor the institutions they represent. Also, some non-traditional media reporters do not represent any institution, only themselves. The attached resolution is based upon a model policy that was developed by representatives of cities, counties, Oregon Association of Broadcasters, Oregon Newspaper Publishers Association, The Oregonian newspaper, and Open Oregon, an organization dedicated to promoting public access to public access and meetings.

Although the issue has not come up in Prineville, it certainly could. I believe having a policy in effect that addresses eligibility to attend executive sessions is more desirable than waiting until we have a request to attend an executive session from an internet blogger and then try to determine if they are a media representative or not.

I recommend you review and discuss the proposed Resolution, make any changes that you feel are necessary, and pass the Resolution.

RESOLUTION NO. 1114

A RESOLUTION ESTABLISHING THE CITY OF PRINEVILLE'S EXECUTIVE SESSION POLICY

WHEREAS Oregon public meetings law provides that representatives of the news media shall be allowed to attend certain executive sessions of public bodies, but may be required to not disclose specified information (ORS 192.660(4)); and

WHEREAS, because at the time state law relating to media attendance at executive session was adopted, "news media" consisted of entities that were institutionalized and structured to support compliance with the requirements of ORS 192.660(4), the law includes no express mechanism for enforcing those requirements; and

WHEREAS technological advances since the time the public meetings law was initially adopted have resulted in development of communication mechanisms allowing virtually any individual or entity to disseminate information widely; and

WHEREAS the City of Prineville finds that in that absence of a statutory definition of "news media" as that term is used in ORS 192.660(4) it is necessary to adopt a policy that implements the intent of the public meetings law relating to executive session attendance without precluding attendance by Internet-based or other "non-traditional" information disseminators that are institutionalized and committed to compliance with ORS 192.660(4); and

WHEREAS the City of Prineville recognizes that this policy is solely for the purpose of determining eligibility to attend executive sessions, which requires non-disclosure of specified information from executive sessions, and is not intended to otherwise define "news media" or to determine eligibility to report on the City's activities or to limit access to other City of Prineville meetings by any person;

Now, therefore, the City of Prineville hereby adopts the following policy:

1. Currently Recognized News Media Organizations. The following entities are hereby recognized as news media organizations eligible to attend executive sessions because they have an established history of meeting the requirements of this policy:

Central Oregonian newspaper
Bend Bulletin

No other entity shall be permitted to attend an executive session unless it is recognized through the process described in Section 2 below.

2. Recognition of Other News Media Organizations.

- a. The following entities are recognized as news media organizations eligible to attend executive sessions:

- (1) A general or associate member newspaper of the Oregon Newspaper Publishers Association, a broadcast member of the Oregon Association of Broadcasters or a member of the Associated Press; or
 - (2) A newspaper that the City of Prineville uses for publication of public notices and that meets the requirements of ORS 193.020; or
 - (3) An entity recognized by the City of Prineville as being a news source that:
 - A. is organized and operated to regularly and continuously publish, broadcast, transmit via the Internet or otherwise disseminate news to the public, and that regularly reports on activities of the City of Prineville or matters of the nature under consideration by the City of Prineville; and
 - B. is determined by the City of Prineville to be a business entity that is institutionalized¹ and that is committed to, and is structured to support, the terms of ORS 192.660(4)². In making this determination, the City of Prineville may consider and weigh any factors that it deems to be relevant, including, without limitation, the existence of any of the following factors:
 - i. the entity has multiple personnel with defined roles within its organizational structure;
 - ii. the names of news-reporting personnel, and responsible entity management personnel, together with addresses and contact telephone numbers, are readily available;
 - iii. the entity has an available process for correcting errors, including violations of executive session statutes, by a person with authority to take corrective measures.
- b. It shall be the entity's burden to persuade the City of Prineville by substantial evidence that it should be recognized as a news media organization meeting the criteria in Section 2(a) of this policy. Such evidence must be submitted 30 days in advance of the first executive session that the entity desires to attend. The City of Prineville shall make a determination within 29 days of receiving the evidence submitted by the entity. The City of Prineville may elect to forgo this procedure in cases where the City of Prineville, in its sole discretion, determines that it can immediately recognize that an entity qualifies under this policy, or in cases where

¹ For the purposes of this policy, "institutionalized" means long-established or well-established

² ORS 192.660(4). Representatives of the news media shall be allowed to attend executive sessions other than those held under subsection (2)(d) of this section relating to labor negotiations or executive session held pursuant to ORS 332.06 1 (2) but the governing body may require that specified information be undisclosed.

the public body, in its sole discretion, determines that other good cause exists for making an expedited determination. A determination that the entity is not recognized shall be based upon written findings addressing the criteria in Section 2(a).

3. Attendance at Executive Sessions. Representatives of news media organizations recognized pursuant to Sections 1 and 2 of this policy shall be allowed to attend executive sessions, except as described in ORS 192.660(4) and 192.660(5), pursuant to the following process:
 - a. The representative must provide substantial evidence persuading the City of Prineville, that he or she is a news reporter for the recognized news media organization. In making its determination whether to recognize the person as a representative of the news media organization, the City of Prineville shall require:
 - (1) A press badge or identification issued by the recognized news media organization, plus proof of identity (such as a driver's license); or
 - (2) A recently published news article in the 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, plus proof of identity; or
 - (3) A letter on letterhead from an editor of the recognized news media organization in which the editor states that the reporter is covering the meeting for the news media organization, plus proof of identity.
 - b. Representatives of the news media are not permitted to attend executive sessions involving deliberations with persons designated to carry on labor negotiations. ORS 192.660(4). If the executive session is being held for the purpose of conferring with counsel about current litigation or litigation likely to be filed, the City of Prineville shall exclude any member of the news media from attending if the member is a party to the litigation to be discussed or is an employee, agent or contractor of a news media organization that is a party to the litigation. ORS 192.660(5).
 - c. The City of Prineville may require that a request to attend an executive session be made in writing on a form provided by the City of Prineville. The form shall require disclosure of the person's name, and the entity for which he or she is a news reporter, and shall require submission of evidence described in Subsections 3(a) (1), (2) or (3) of this policy. The form shall also include a signature line whereby the person certifies that they are gathering news for a recognized news media organization, that the information given is true and that they agree to comply with ORS 192.660(4).
 - d. The City of Prineville may consider any relevant evidence provided or gathered in making its decision as to whether a person shall be recognized as a representative of a recognized news media organization.

4. Recording Devices Prohibited. Cameras, tape recorders and other recording devices shall not be used in executive sessions, except for the official executive session tapes made by City of Prineville staff.
5. Exclusion Based on a Direct Personal Interest. A representative if a news media organization that has a direct personal interest in the subject of the executive session that would frustrate the purpose of the executive session may be barred from attending.
6. Application to Boards and Commissions. These policies and procedures shall apply to the City of Prineville and all of its boards and commissions.

Passed by the City Council this ____ day of October, 2009.

Signed by the Mayor this ____ day of October, 2009.

Mike Wendel, Mayor

ATTEST:

Steve Forrester, City Manager/Recorder