

Date: April 4, 2018

From: Commissioner Huxley

To: Commissioners Gold and Boice

Subject: April 4, 2018 GM – Agenda Item 9 A. Cataloging records submitted before, during and after Board of Commissioner (BOC) Meetings. The unknown magnitude of submitted records related to BOC meetings continues.

This Memo identifies the complete lack of organization before, during and after BOC Meetings with regard to collecting, identifying and properly cataloging and archiving documents received that are related to past, current or future topics of discussion during these public meetings.

Objective: To receive consensus from commissioners to direct the Interim County Administrator to promptly draft a written policy for staff to follow in collecting/receiving, identifying (logging in) and properly cataloging and archiving documents received during Board of Commissioner meetings.

Mar 23, 2018: Following the chaotic marathon (6 ½ hour) General Meeting (GM) March 21, 2018 Interim Administrator Hitt was provided a Memo dated March 23, 2018 via email showing that about seventy-five pages of documents provided before and during the meeting were not identified or recognized and possibly not even in the custody of commissioner office staff. The Memo of March 23rd follows the above subject Memo of April 4, 2018. .

There was considerable confusion as to exactly what documents were discussed during the meeting and whether they were incorporated (all or in part) into the vote of any topic. Interim Administrator Hitt was asked to provide a complete list of all documents and presentations (submitted/presented) received before or during the meeting including the name of the individual(s) submitting the document(s) and/or the presentation. The request included that he provide a list of any of those documents/presentations which were agreed to by reference in any vote on any agenda item by the governing body March 21, 2018.

The Memo concluded with a recommendation that a high priority be assigned to creating a policy for submittal and receipt (logging in) of materials during Board of Commissioner meetings. This would include the receipt of electronic communication (email).

Included toward the end of this packet is the State of Oregon Department of Justice Attorney General's Public Records and Meetings Manual rules on Minutes and Record Keeping. The minimum information required includes *"the substance of any discussion on any matter; and a reference to any document discussed at the meeting [emphasis added]."*

Mar 24, 2018: Interim Administrator Hitt acknowledged the need to provide a much better mechanism for handling new or additional documentation provided before or during BOC meetings.

Interim Administrator Hitt then mentioned not being sure of the need for a board policy as it was purely an administrative matter falling under the purview of Ordinance 1.17.060(2) (k).

This response was and remains quite puzzling as Section 1.17.060 of Ordinance 17-01 outlines the Powers and Duties of the County Administrator.

Clearly those Powers and Duties referred to in which the County Administrator/Interim Administrator is responsible to the Board have not been satisfactorily performed.

Mar 25, 2018: Interim Administrator Hitt was requested via email to place the above subject policy before the Board at their next GM April 4, 2018 under Discussion/Board Direction/Decision. He was asked to include the March 23, 2018 Memo along with the email communication 'string' through March 25, 2018 6:41PM with the Agenda Routing Slip (AGRS).

Mar 26, 2018: Early Monday morning March 26, 2018 Interim Administrator Hitt did the unthinkable and, in total defiance of the Oregon Public Meeting Laws forwarded our email communication to the other two commissioners who on April 4, 2017 will be discussing and making a decision on this very subject.

Mar 27, 2018: Interim Administrator Hitt acknowledged that staff was working on preparing a list of any of those documents/presentations which were agreed to by reference in any vote on any agenda item by the governing body March 21, 2018 (see March 23, 2018 above). No completion date has been provided.

Mar 31, 2018: The BOC Meeting Agenda and FULL Packet for April 4, 2018 were available for download on the county website. The Agenda was a Word Document vs. pdf.

Agenda Item 8 C – "Minutes From General Meetings Of July 5, 2017 And October 18, 2017" was listed but had no Agenda Routing Slip (AGRS) or any estimated time for discussion.

Agenda Item 9 – "Discussion Only Cataloging Written Testimony..." was listed and included an Agenda Routing Slip. Under Files Attached were two listings.

(1) March 23 Memo from Commissioner Huxley: The Memo was included in the Packet.

(2) Hitt/Huxley Email Chain of March 23-25: The Email Chain was **NOT** included in the Packet.

The Email Chain is included here and follows the above subject Memo of March 23rd referred to above in paragraph three.

On a related subject; **March 26, 2018** Interim Administrator Hitt forwarded email correspondence from Catherine Wiley on Policy and Procedural Concerns related to the BOC Meeting March 21, 2018. Counsel Huttl and Commissioner Gold were Carbon Copied (Cc:) on that email. Interim Administrator Hitt as with the email string above, Cc: the email to the other two commissioners.

This email should be included in future discussion on developing policy on Cataloging Records and meeting protocol in general. It is included at the end of this packet of documents.

Date: March 23, 2018

From: Commissioner Huxley

To: Interim Administrator John Hitt

Subject: Cataloging Written Testimony, Audio/Video Presentations, Miscellaneous Public Records Submitted before, during and after the Board of Commissioner Meeting March 21, 2018.

Interim County Administrator Hitt,

The chaos in the marathon Board of Commissioner meeting March 21, 2018 was exacerbated by the number of documents anonymously left on and around the individual commissioner workstations before the general meeting began at 10:00 AM March 21, 2018. This chaos was compounded further during the public comment period(s) with citizens randomly handing numerous documents to commissioners and others during the meeting. There was well over one hour of public comment excluding those comments during the public hearing at 1:30 PM.

If this lack of accurately documenting the receipt of records received before, during and after the meeting wasn't enough, there was further confusion created with Commissioner Boice showing an array of electronic images and word documents on the meeting room video screens and expecting commissioners to agree with the wording of some of the documents which they had never seen before. This modus operandi is becoming the norm and it is unacceptable.

This situation was further complicated with two speakers designated by Commissioner Boice to present oral testimony, written and visual (images) testimony on Agenda Item 6 B (Proposed Letter To Supervisor of Rogue-Siskiyou National Forest Re: Timber Salvage). Many of the electronic documents presented were never provided by the presenters to staff for inclusion into the record.

While twenty minutes was allowed for discussion on Agenda Item 6 B, a total of one hour of discussion ensued which was broken up between (approximately) 11:30 AM and 2:30 PM.

All of these submittals become public records and we don't even know what the entire list is comprised of. There was also a summary document on Agenda Item 6 D that was read by Commissioner Gold about five hours into the meeting which Commissioner Gold said would be provided to commissioners and was not, nor was it posted online.

The documents posted on the Curry County website Agendas & Minutes pages for the 3/21/18 General Meeting under 'Materials Submitted During Meeting' totals forty (40) pages.

The forty-pages which include fourteen blank pages do not remotely resemble the list of documents actually submitted during the meeting.

After considerable time and review of documents received yesterday, the following are submitted in the hope of providing assistance to determine what documents were actually received and the order in which they were received. While extremely important, the list of documents shown on the presentation screens and discussed above is unknown.

Supplemental - BOC Meeting 3-21-2018 - 40 Pages - 14 Blank

- Page 1 of 40 Submitted Anonymously Before Meeting
- Pages 3, 4, 5 of 40 Submitted Anonymously Before Meeting
- Pages 7 to 11 Submitted Anonymously Before Meeting
- Page 13 Submitted by J. Kolen 10:49 AM
- Pages 15 to 21 Submitted by C. Hunter 11:06 AM
- Pages 23, 24 Submitted by S. Beyerlin 11:11 AM
- Pages 27, 29, 31 Submitted by L. Ismert 11:55 AM
- Pages 33, 35, 37, 39 Submitted by T. Palmer 12:24 PM
- Pages 2, 6, 12, 14, 22, 24, 26, 28, 30, 32, 34, 36, 38 40 Blank

Supplemental - BOC 3-21-2018 Rec'd & NOT Listed (Approximately 100 Pages)

- Anonymous (Left at Workstations) 3 Pages Agenda Item 8
- Anonymous (Left at Workstations) 1 Page Agenda Item 9 B
- Anonymous (Left at Workstations) 6 Pages New Item 9 H
- Gold - Sutter Coast (4 Docs & Email - 31 Pages 3-19-2018 PM)
- 10:28 AM (V. Pruden) Public Comment - Lucas Lane (11 Pages)
- 11:22 AM (T. Palmer) Public Comment - Item 6 B (7 Pages)
- 12:23 PM (V. Pruden) Submitted Doc. Lucas Lane (3 Pages)
- 12:26 PM (G. McMahan) Submitted Doc. Item 6 B (3 Pages)
- 2:40 PM (B. Morrow) Submitted Doc. Item 9 E (2 Pages)
- 3:47 PM (M. McArthur) Submitted Doc. FYI (1 Page)
- Video Screen Presentation (Images & Text) G. McMahan
- Video Screen Presentation (Many Images & Text) C. Boice
- Video Screen Presentation (Text) L. Ismert

Please provide a complete list of all documents and presentations (submitted/presented) received 3/21/2018 before or during the meeting including the name of the individual submitting, the agenda item the document(s)/presentation(s) were regarding and, a list of any of those documents/presentations which were agreed to by reference in any vote on any agenda item yesterday by the governing body.

Also, the continued distraction of still images and video randomly repeating on the meeting room screens during the meeting needs to stop. Comments from Brandt Media staff were that this resulted from use of the wireless mouse of which they have no control over. Once a presentation is complete, the mouse needs to be retrieved by staff and the screen turned off with the remote control.

In closing, there needs to be a high priority assigned to creating a policy/procedure for submittal and receipt (logging in) of materials during Board of Commissioner meetings. The receipt of electronic communication (email) also needs to be addressed. This policy/procedure needs to be strictly enforced.

From: John Hitt
Sent: Monday, March 26, 2018 7:38 AM
To: Court Boice; Sue Gold
Cc: John Hutt; Thomas Huxley
Subject: FW: Cataloging Records Submitted at BOC Meetings:

Commissioners Gold and Boice, In light of Commissioner Huxley's desire to place the matter discussed in the emails (below) on the agenda of our next General Meeting, I thought you should receive these emails.

John Hitt
Interim Curry County Administrator
541-247-3287

From: John Hitt
Sent: Sunday, March 25, 2018 11:15 PM
To: Thomas Huxley
Subject: Re: Cataloging Records Submitted at BOC Meetings:

Commissioner, I stand by my comments in my prior email.

As a standard courtesy I will place this on the agenda

John Hitt
County Administrator - Curry County Oregon
Sent by phone
541/425-1646

On Mar 25, 2018, at 6:41 PM, Thomas Huxley <huxleyt@co.curry.or.us> wrote:

Interim Administrator Hitt,

The Ordinance you refer to is Ordinance No. 17-01 approved June 7, 2017 - Creating the Office and Position of Curry County Administrator.

Section 1.17.060 Powers and Duties of County Administrator covers many areas in which the Administrator is responsible to the board.

To say the magnitude of omissions of public records submitted in the March 21, 2018 meeting and not accounted for is mind boggling would in my opinion be an understatement.

While you are not sure we need a formal policy to help insure this does not occur again, I am of the opposite opinion and request you place the subject and question before the board at their next general meeting April 4, 2018 under Discussion/Board Direction/Decision.

Please include my Memo of March 23, 2017 to you on Cataloging Records Submitted at BOC Meetings along with this email string.

Thank you,

Tom Huxley
Curry County Commissioner

From: John Hitt
Sent: Saturday, March 24, 2018 9:48 AM
To: Thomas Huxley
Cc: John Jezuit; Brenda Starbird
Subject: RE: Cataloging Records Submitted at BOC Meetings:

Commissioner Huxley, thanks for your work and recommendations concerning this matter.

I agree that we need to provide a much better mechanism for handling new or additional documentation provided at or just before BOC meetings.

I am not sure we need a formal board policy as I would view this as a purely administrative matter falling under the purview of Ordinances 1.17.060 (2) (k)

I will ask Mr. Jezuit to see if he can locate and fully identify all of the documents you reference in your memo, although that may not be possible

I will also sit down with Ms. Starbird and Mr. Jezuit to see how best to address this situation. We will attempt to have something in place by the April 4th meeting.

Thanks again for your input.

John Hitt
Interim Curry County Administrator
541-247-3287

-----Original Message-----

From: Thomas Huxley
Sent: Friday, March 23, 2018 5:03 PM
To: John Hitt
Subject: Cataloging Records Submitted at BOC Meetings:

Interim Administrator Hitt,

Please see the attached Memo regarding some critically needed policy on the cataloging of records submitted during Board of Commissioner Meetings.

Tom Huxley
Curry County Commissioner

**STATE OF OREGON
DEPARTMENT OF JUSTICE**

**ATTORNEY GENERAL'S
PUBLIC RECORDS
AND
MEETINGS MANUAL**



"Knowledge will forever govern ignorance.
And a people who mean to be their own governors, must arm
themselves with the power knowledge gives. A popular government
without popular information or the means of acquiring it, is but
a prologue to a farce or a tragedy, or perhaps both."
James Madison (1822)

**ELLEN F. ROSENBLUM
Attorney General**

November 2014

When a public meeting is held at a location that is not “rented, leased or owned” by the state or a political subdivision, such as a hotel meeting room where no separate charge is made for the room, the smoking ban of ORS 192.710 does not apply. However, other laws prohibiting smoking except in designated areas may apply.³²⁴

The person presiding will avoid embarrassment to members of the public and the governing body by reminding them of the no-smoking rule at the beginning of the meeting.

6. Voting

All official actions by governing bodies must be taken by public vote.³²⁵ The vote of each member must be recorded unless the body has 26 or more members. Even then, any member of the governing body may require that the votes of each member be recorded. ORS 192.650(1)(c). Written ballots are not prohibited, but each ballot must identify the member voting and the vote must be announced. *Secret ballots are prohibited.* The state law supersedes and nullifies any local government charter authorization or requirement for a secret ballot.³²⁶ See Appendix L for a discussion of voting and secret ballots.

A governing body’s failure to record a vote is not, in and of itself, grounds for reversing a decision. Without a showing that the failure to record a vote was related to a manipulation of the vote, a court will presume that public officials lawfully have performed their duties.³²⁷

7. Minutes and Recordkeeping

The Public Meetings Law requires that the governing body of a public body provide for sound, video or digital recording or written minutes of its meetings.³²⁸ ORS 192.650(1). The record of a meeting, whether preserved

³²⁴ ORS 433.845.

³²⁵ 37 Op Atty Gen 183 (1974) (see App O).

³²⁶ 39 Op Atty Gen 525 (1979) (see App O); 37 Op Atty Gen 183 (1974) (see App O).

³²⁷ *Gilmore v. Board of Psychologist Examiners*, 81 Or App 321, 324, 725 P2d 400, *rev den* 302 Or 460, 730 P2d 1250 (1986) (see App M).

³²⁸ Apart from the requirements imposed by the Public Meetings Law, the Oregon Investment Council must make “full sound records” of its meetings and maintain a written

in written minutes or a sound, video or digital recording, shall include at least the following information:

- members present;
- motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition;
- 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;
- the substance of any discussion on any matter; and
- subject to the Public Records Law, ORS 192.410 to 192.505, a reference to any document discussed at the meeting. (Such reference does not change the status of the document under the Public Records Law. ORS 192.650(3).)

Written minutes need not be a verbatim transcript and a sound, video or digital recording is not required to contain a full recording of the meeting, except as otherwise provided by law. Whatever means of recording used must give a "a true reflection of the matters discussed at the meeting and the views of the participants." ORS 192.650(1). See p. K-10 for sample minutes.

The Public Meetings Law requires that written minutes or a sound, video or digital recording of a meeting be made available to the public "within a reasonable time after the meeting." ORS 192.650(1). If written minutes are prepared, they cannot be withheld from the public merely because they will not be approved until the next meeting of the governing body. If minutes have not been approved, they may be so identified. In any event, any completed minutes or sound, video or digital recordings are public records subject to disclosure under the Public Records Law. Consistent with the Public Records Law fee provision, discussed in Part I of this manual, a public body may charge a person a fee for preparing a transcript from a sound, video or digital recording. ORS 192.650(4).

These recordkeeping requirements apply to executive sessions,

From: John Hitt <hittj@co.curry.or.us>
Sent: Monday, March 26, 2018 8:02 AM
To: Catherine Wiley
Cc: John Huttli; Sue Gold; Thomas Huxley; Court Boice; John Jezuit; Brenda Starbird
Subject: RE: Policy and Procedural Concerns....

Good Morning Catherine.

Thank you for taking the time to bring these matters to my attention and that of the Board of Commissioners.

Since most of your email deals with the conduct and flow of BOC meetings, I am taking the liberty to include the other two commissioners on this email as well as county staff members who directly support the BOC.

John Hitt
Interim Curry County Administrator
541-247-3287

From: Catherine Wiley [<mailto:cwileywoods@hotmail.com>]
Sent: Sunday, March 25, 2018 10:51 PM
To: John Hitt
Cc: John Huttli; Sue Gold
Subject: Policy and Procedural Concerns....
Importance: High

As you are aware, I have been involved in advocacy for accountability and equitable consideration in our local governance and decision making. The last BOC meeting, 3/21/18, was an unfortunate illustration of the failures of purported procedures and meaningless policy. This is NOT representative nor accountable governance/decision making.

- Timelines which are ignored are meaningless.
- Agendas which are not followed are discriminatory.
- Materials which are presented without time for adequate review are biasing.
- Unequal limitations on citizens' presentations are contrary to First Amendment rights and intent.
- Pressure, bullying and/or intimidation should not be allowed in public policy, governance, or decision making.

I am referring to Boice's **20 minute agenda item** regarding his letter of support for increased logging of the Chetco Bar fire area.

I have NO expertise in these issues, and do not have the time to comprehensively review the scientific evidence of either position on this issue.

However, I have had the opportunity to know & work with several of the individuals who provided testimony. Jim Rogers is one of the most respected, knowledgeable and reliable resources on forestry in our county. He has been an advocate for our county's economy as well as its ecology. He served as a volunteer on the County Planning Commission for years, as

well as on the County Natural Resource Advisory Committee. He has also been personally recognized for preserving and safeguarding environmental resources in north county. Tim Palmer is nationally recognized as an expert, particularly on the rivers of our nation. He is a published author of numerous documentary books on the rivers of America, including our own in Curry County. He has most probably traversed more of our rivers, from headwaters on down, than all of us put together.

Yet, these local experts were each "allowed" THREE minutes to present comments and documentation...*prior* to the actual agenda item.

Without regard to the "expertise" of Larry Ismert (who also served on the County Natural Resource Advisory Committee), or either of the other two individuals (selected for their support of the agenda item): they were afforded unlimited presentation time; continued speaking after lunch with NO speaker slips; were not required to provide documentation of positions; and did not indicate who would *actually* benefit from the increased logging in these denigrated areas. Perhaps Ron Fallert should have been consulted. The very concept of an individual advocating for increased logging, and touting his actions in personally arranging log shipments to a "friend" with a Montana business, should, at a minimum, raise questions.

We cannot afford to be governed by pressure, rather than responsible decision making. I believe the "decision" should be rescinded unless and until there is adequate time for consideration of FACTS and SCIENCE, rather than pressure and personal experiences/perspectives.

Please be aware that this is not only a disservice to responsible governing, but it is a disservice to those responsible citizens who take their time to speak at public meetings, and either are not heard, or are treated in a discriminatory manner.

My sincere thanks for your consideration of these issues, and hopes for remediation, including adherence to policies & agendas.

Catherine Wiley