

# Arts Education and Access Fund Citizen Oversight Committee (AOC)

## WORKING AGREEMENT

### 1. NAME OF ORGANIZATION

The name of the organization shall be the *Arts Education and Access Fund Citizen Oversight Committee (AOC)*

### 2. PURPOSE AND RESPONSIBILITIES

"The City will appoint a citizen's oversight committee that is representative of the City's diverse communities to ensure the Arts Education and Access Fund is being implemented as required, to review expenditures made and to report their findings in a public record to the City Council on an annual basis. The committee shall be comprised of a minimum of ten and maximum of twenty members, including, if possible, a member of the Tax Supervising and Conservation Committees." <sup>1</sup>

AOC will interact with the Mayor's office, Revenue Bureau, Regional Arts and Culture Council (RACC), Creative Advocacy Network (CAN), the Portland Public School Districts and others as may be necessary for the fulfillment of its work. AOC will receive information and be a checkpoint for the implementation of the Arts Access and Education tax and to provide comments to the above mentioned organizations.

AOC will meet at least twice annually. Sub Committees may be established to work on specific tasks as may be determined and will hold meetings as necessary. AOC will provide an Annual Report to City Council in November or December and provide other reports as may be deemed necessary.

### 3. MEMBERSHIP

Qualifications: AOC consists of ten (10) to twenty (20) members as appointed by City Council on December 19, 2012. Anita Yap and Stanley Penkin shall initially serve as Co-chairs as appointed by City Council with subsequent co-chairs to be determined by City Council.

Terms: The AOC members shall serve for a period of two or three years commencing December 19, 2012 according to the terms of their appointments by the Council as noted in **Addendum "A"** or until such time as the Portland City Council may otherwise determine. Citizens may be reappointed to serve an additional two year term at the conclusion of their initial term, but may serve no more than two terms. Members of the Committee who wish to resign before completion of their term shall provide a written letter of resignation to the AOC Co-chairs which will then be forwarded to the Mayor and/or City Council for action.

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<sup>1</sup> City Code 5.73.050

Adding New Members: If an AOC member is no longer able to serve on the Committee or the Mayor's office or City Council feels that adding a member is crucial to the ongoing viability of the Committee, a Membership Sub-Committee will be convened with the sole purpose of evaluating qualifications of the potential member. Each potential member will be asked to complete an application, identical to the one that all existing members were asked to complete. The Sub-Committee will interview and make recommendations to the Mayor and/or City Council regarding the potential member(s).

Removal. If City Council determines in its sole discretion that a member's continued service is no longer in the best interests of the City, Council may remove that member prior to the expiration of his or her term by a majority vote.

#### **4. MEMBER RESPONSIBILITIES**

- a. Attend and actively participate in Committee meetings, and Sub Committee meetings as appropriate.
- b. Interact with Committee members and appropriate agencies in the fulfillment of its charge.
- c. Review background materials to understand the matters and issues relevant to its work.
- d. Voice concerns directly, promptly, and constructively.

#### **5. STAFF RESPONSIBILITIES**

- a. Assist the Co-chairs in preparing and distributing agendas and background materials in advance of meetings. Post agendas and other meeting materials on the appropriate City website(s).
- b. Help to manage and facilitate the process for the good of the Committee as a whole.
- c. Attend and help to facilitate meetings. Develop summary notes from meetings and distribute them within ten (10) days of the meeting. These notes should faithfully represent areas of general agreement within the group and areas in which there are diverging viewpoints. Once accepted by the Committee, the meeting notes will be posted on the appropriate City website(s).
- d. Develop documents for the Committee's use as may be necessary in the furtherance of its work.
- e. Provide relevant information to the Committee regarding ongoing City activities relating to the Arts Tax.
- f. Provide documentation of its activities and outcomes relating to the implementation and collection of taxes.
- g. Provide verbal response to questions from AOC at meetings and otherwise in writing.

## **6. SUB COMMITTEES**

The AOC Co-chairs, in consultation with the full Committee and staff, may create Sub Committees as may be deemed necessary to perform the work of AOC. AOC Co-chairs, in consultation with the full Committee and staff, may also appoint task groups as may be required for the purpose of performing particular assignments.

## **7. FINANCIAL SUPPORT**

All members of the Committee serve without pay. The City shall provide AOC with staff assistance necessary to enable it to discharge its duties.

## **8. OFFICERS**

Co-chairs: Either or both of the Co-chairs shall preside at all Committee meetings. Either or both of the Co-chairs shall represent the Committee at City Council.

## **9. MEETINGS**

AOC will meet at least twice annually. AOC shall further meet as deemed necessary by either or both of the Co-chairs. The frequency of meeting thereafter will be determined according to necessity as deemed by either or both of the Co-chairs or the Committee as a whole. Meetings are conducted in accordance with adopted rules of procedure as described in Article 13. Special meetings of the Committee may be called by either or both of the Co-chairs or by majority vote as deemed necessary. Meetings shall begin and end as scheduled.

## **10. AGENDAS**

Either or both of the Co-chairs shall prepare a draft agenda for any meeting ten (10) days before the meeting. Upon approval of the agenda, staff shall publish the final agenda within five (5) days of the meeting or as reasonably determined to provide sufficient notice to the public.

Distribution of Agenda to Members: Staff shall e-mail the draft agenda to the Chair and members of the Executive Sub Committee for approval. Staff shall forward a final agenda and any materials necessary for the meeting to the full AOC within five (5) days of the meeting. On most occasions, delivery will be by e-mail, unless printed documents are requested by members, or staff deems e-mail inappropriate for the volume of documents.

Agenda Format: Standard agenda topics will generally include: approval of minutes, announcements, work items, and matters of interest to the Committee. The agenda may include discussion items at which no vote will be taken, or action items on which a vote may be taken. At any time the Committee may take "straw votes" for informal assessment of positions or decline to make a recommendation.

## **11. QUORUM AND DECISION MAKING**

A majority of the members of AOC shall constitute a quorum at a public meeting of the full Committee. In the spirit of harmony and goodwill that comprise the common goals of AOC and its members, formal votes will generally not be taken. Decisions will be made via consensus.

In the event there is a major issue that significantly divides the members, either Co-chair may, at his or her discretion, call for a formal vote. A simple majority of members present must vote affirmatively in order to take action. Individual members must be present or participate via teleconferencing to vote and may not have more than one vote. Proxy votes are not permissible.

## **12. PUBLIC PARTICIPATION**

Any general or special meeting is open to any person who may wish to be heard regarding any item on the agenda. It is up to the discretion of the Co-chairs of AOC when or whether public comments will be received at the meeting or may be deferred to City Bureaus having jurisdiction.

## **13. PROCEDURES**

*Rosenberg's Rules of Order* shall be followed in all areas not covered by this document

## **14. ATTENDANCE**

While AOC is composed of a group of volunteers with busy schedules, it is expected that Committee members will notify the Co-chairs or the appropriate staff member if unable to attend a full AOC or Sub Committee meeting. Members missing two (2) consecutive full AOC meetings shall be asked to meet with the Co-chairs and members of the Executive Committee to determine whether the member has sufficient time and interest to continue on the AOC. The Co-chairs, in consultation with the Executive Sub Committee, will make a determination based on the best interests of the member and the AOC.

If a member is unable to attend a meeting, he or she may provide, in advance, written comments relevant to the agenda or may participate via teleconferencing. A member participating via teleconferencing will be included in the quorum count.

An alternate may not be appointed as a representative of a member

## **15. CONFLICT OF INTEREST PROCEDURES**

A member of the Committee may not participate in any action in which the member has a direct or substantial financial interest. Any actual or potential interest must be disclosed at the meeting where the action is scheduled.

## **16. SUBMISSION OF COMMENTS**

Any person or group, inside or outside the Committee may propose items for consideration and/or recommendation to the Committee. AOC shall decide when or whether to receive oral comments during the meeting about matters on the agenda or may request written comments for continued deliberation.

## **17. PUBLIC MEETINGS/PUBLIC RECORDS REQUIREMENT**

AOC shall follow all Oregon law relative to public meetings and public records. Official action(s) taken by the Committee shall be on record or included in the minutes of each meeting. The minutes shall include a record of attendance and the results of any vote(s) taken.

## **18. COMMUNICATION**

Communication with the media and broader public by the AOC shall be primarily the responsibility of the Co-chairs or other members of AOC as may be designated by the Co-chairs or Executive Sub Committee. Members are not to represent the Committee in conversations with members of the media, both on and off the record, with regard to matters of policy or substance, to promote an individual agenda or to presume to represent the positions of the AOC or its other members. Members may share, verbatim, information provided to the AOC by the appropriate City Bureaus, unless that information is provided with the understanding that it is to be kept confidential and is exempt or conditionally exempt from disclosure under the Public Records Law (if the information is in the form of a public record).

When speaking on his or her own behalf, a member must clearly state that he or she is stating his or her own opinion and is not representing the AOC or its other members.

## **19. NONDISCRIMINATION**

AOC will not discriminate against individuals or groups on the basis of race, religion, gender, marital status, familial status, national origin, age, physical or mental disability not constituting a bona fide qualification, sexual orientation, gender identity, source of income or Vietnam era veterans' status.

## **20. ADOPTION AND AMENDMENT OF BYLAWS**

All amendments to this *Working Agreement* must be proposed in writing and submitted to members at least ten (10) days before a decision on its adoption may proceed. The process for adoption shall comply with the decision process as described in Article 11 above.

## 21. REVIEW OF WORKING AGREEMENT

In order to maintain flexibility and to promote best practices in the ongoing proceedings of the Committee, and to further determine that this *Working Agreement* is functioning as intended, the Executive Sub Committee shall review the document no later than six months after its adoption. At that time, the Executive Committee may recommend any amendments to the document to the full Committee as may be deemed appropriate.

### ADDENDUM "A" AOC Roster

	<u>Appointee</u>	<u>Term to Expire</u>
1.	Yulia Arakelyan	December 19, 2014
2.	Oscar Arana	December 19, 2014
3.	Lionel Clegg	December 19, 2014
4.	Jim Cox	December 19, 2015
5.	Susan Denning	December 19, 2014
6.	Victoria Dinu	December 19, 2014
7.	Erika Foin	December 19, 2014
8.	Alina Harway	December 19, 2014
9.	Kimberly Howard	December 19, 2014
10.	Kevin Jones	December 19, 2014
11.	Carter MacNichol	December 19, 2014
12.	Alyssa Macy	December 19, 2015
13.	Juan Martinez	December 19, 2015
14.	Cherie-Ann May	December 19, 2015
15.	Steven Nance	December 19, 2015
16.	Stanley Penkin	December 19, 2015
17.	Chip Shields	December 19, 2015
18.	Gwen Sullivan	December 19, 2015
19.	Mark Wubbold	December 19, 2015
20.	Anita Yap	December 19, 2015

**PUBLIC RECORDS AND PUBLIC MEETINGS LAW SUMMARY  
FOR  
Citizens Oversight Committee for the Arts Education and Access Income  
Tax (Arts Tax)**

**A. OREGON'S PUBLIC RECORDS LAW**

To Whom Does the Public Records Law Apply?

The Public Records Law applies to every public body, as defined by ORS 192.410(3), and includes the City and "any agency thereof" and that includes the City's boards and commissions.

Presumption for Disclosure

"Every person has a right to inspect any public record of a public body in this state, except as otherwise provided..." ORS 192.420(1).

What is a public record?

"'Public Record' includes any writing that contains information relating to the conduct of the public's business, ... used or retained by a public body regardless of physical form or characteristics." (ORS 192.410(4)(a)).

"'Writing' means handwriting, printing, photographing, and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, files, facsimiles or electronic recordings." (ORS 192.420(6)).

Note – this includes email if it discusses the City's business.

Retention of Records

Once a record is created, a public body is responsible for retaining that record according to the retention schedules adopted by the body. The public body's custodian of records is also responsible for making public records available upon request.

Use of home computers

Oregon's public records laws apply to e-mail correspondence about city business among and between the Citizens Oversight Committee for the Arts Education and Access Income Tax (Committee) members even when exchanged solely on their personal computers and to documents created by Committee members about the work of the Committee. As a result, Committee members have a responsibility to ensure retention of such e-mails and documents.

Whether an e-mail or document contains information relating to the conduct of the public's business is case specific. Generally, if an e-mail or document discusses procedural or substantive aspects of the Committee's work, it will meet this test. A purely personal e-mail does not become a public record simply because it is sent by a public official. Whether the e-mail or document is prepared, owned, used or retained by a public body is also fact dependent. A document not in the possession of the government still can be a public record by virtue of being used or prepared by a public body.

What this means in practice is that if Committee members choose to use private computers to create Committee related documents or to correspond with one another regarding Committee business, they may be responsible for retaining the correspondence in accordance with city document retention schedules.

## Exemptions

State law provides that certain public records may be withheld from disclosure if they fall within a statutory exemption. Very few of these exemptions would apply to the Committee's work. Generally, exemptions do not prohibit disclosure; they allow the public body to decide whether to release a record. The presumption is in favor of disclosure and a requestor may challenge a public body's decision not to release a record.

## Sources for More Information

City Attorney's Office  
Attorney General's Public Records and Meetings Manual (on-line)

## **B. OREGON'S PUBLIC MEETINGS LAW**

### 1. Meetings Subject to the Law

Meetings of the Committee are subject to the public meetings laws.

"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 [in the Public Meetings Law]." (ORS 192.630(1)).

- a. "Governing body"-- "the members of *any* public body which consists of two or more members, *with authority to make decisions for or recommendations to a public body or administration.*" ORS 192.610(3) (Emphasis supplied).
- b. "Public Body"-- "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 agency thereof.*" ORS 192.610(4) (Emphasis supplied).
- c. "Meeting" -- "the convening of a governing body of a public body *for which a quorum is required* in order to *make a decision or deliberate toward a decision on any matter.*" ORS 192.610(5)(Emphasis supplied).

### 2. Gatherings Exempt from the Law

'Meeting' does not include an on-site inspection of a project or program; attendance of members of a governing body at any national, regional or state association to which the public body or the members belong; or gatherings of a quorum of a board or commission where no official business is discussed.

### 3. Quorum Requirement



Under state law, a majority of members constituting the Committee constitute a quorum. If a majority of the Committee gets together and deliberates on official business, regardless of the setting, there is a violation of the public meetings law if the required notice was not provided. If there is a gathering of less than a quorum of the Committee, there is no public meeting. These rules apply to quorums of any subcommittees formed by the Committee as well.

4. Other Situations

Purely social gatherings of the Committee do not create a public meeting unless there is quorum and it decides to discuss matters relevant to its work. It is best not to discuss business at all during a social gathering.

If you have a quorum present, even if the sole purpose of the meeting is to gather information to serve as the basis of future decisions or recommendations, then it is a public meeting

In addition, electronic communication among a quorum of the Committee can constitute a public meeting, especially if the communications are sent within a short time frame.

5. What is required for a public meeting

- **Notice**

- Calculated to give actual notice to interested persons
- States time and place
- Lists principle subjects
- Special and emergency meetings have different requirements

- **Location**

Meetings of governing bodies of public bodies shall be held within the geographic boundaries of the area over which the public body has jurisdiction, at the public body's administrative offices (if any) or "at the other nearest practical location."

Must be at a place large enough to hold the anticipated attendance and must be a place that does not discriminate on the basis or race, color, creed, sex, sexual orientation, national origin, age or disability. Site must be one that people with disabilities can access.

- **Public Attendance**

As a general rule, the right to know about and attend a public meeting does not include a right to testify. The public meetings law is a public attendance law, not a public participation law

- **Control**

The presiding officer is authorized to keep order at a meeting and, where there will be public participation, may determine the length of time people may speak and in what order the testimony will be taken.

- **Voting**

- All official action must be by public vote.
- No secret ballots.

- The vote of each member must be recorded unless there are 26 or more members.
- Written ballots are allowed but each ballot must identify the member voting and the vote must be announced.
- As a general rule, no proxy voting.
- No absentee voting. That is, no voting by a member who did not participate whether in person or electronically as by telephone.

- **Minutes**

There shall be sound, video, written notes or digital recordings of all meetings. These need not be verbatim but must “give a true reflection of the matters discussed at the meeting and the views of the participants.” ORS 192.650(1). There are minimum requirements for the minutes and these include who was present, the substance of discussion and the results of the vote.

## 6. Executive Sessions

An executive session is a meeting or portion of a meeting of a governing body that is closed to the general public. An executive session is not closed to the media. However, the governing body may require that the media not disclose specified information.

There are limited purposes for an executive session which include employment, employee discipline, labor and real estate negotiations, and consultation with legal counsel regarding current or potential litigation. A governing body may also go into executive session to consider records exempt from public inspection. For example, a governing body may meet in executive session to discuss written legal advice from counsel because the written advice is exempt from public inspection as a privileged document.

A governing body may not make a final decision in executive session. To make a final decision, the chair must continue the decision to a public meeting or call the executive session into open session. Preliminary determination of whether there is a consensus may occur in executive session but the final vote must be in open session. A governing body may not remain in executive session to discuss or deliberate on matters other than the matter for which the session was convened.