

Neighborhood Associations: Conducting Elections Online

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There are two sets of rules that govern neighborhood associations (NAs) and the nonprofit coalitions: (1) ORS Chapter 65, Oregon law governing nonprofit corporations, and (2) the City-enacted Standards for Neighborhood Associations, District Coalitions, Business District Associations, and the Office of Neighborhood Involvement (“Standards”), particularly the city’s Open Meetings rules in Section VIII. A NA must comply with both sets of rules when conducting elections.

There is no inherent conflict between Ch. 65 and the Standards. Throughout much of Ch. 65, the provisions are prefaced with the proviso: “unless the articles of incorporation or bylaws provide otherwise.” So, in every instance where that is stated, the NA’s or coalition’s bylaws control.

As a condition of being recognized by the city, every NA and coalition is required to comply with the Standards. Thus, to my knowledge, every NA and coalition bylaws state that it must comply with the City’s Standards and its Open Meetings and Public Records rules.

Oregon’s Open Meetings law, ORS 192.610 - .690 does **not** apply to NAs or coalitions (except maybe the city-staffed coalition office), since neither are a “governing body of a public body,” i.e., they are not governmental or quasi-governmental entities. It is precisely for that reason that the City enacted its own Open Meetings rules by promulgating the Standards.

Under the Standards, the requirements for elections are:

- They must occur at a meeting or within 24 hours of the meeting, either “orally, by a show of hands, or by a written ballot that contains the name of the member voting and the vote of that member,” VIII.J. If ballots are used, they must be retained for 60 days.
- The meetings must be public, properly noticed meetings, with at least 7-day notice, VIII.C, D, E.
- The meetings can occur solely by electronic means, but only if the public has the opportunity to electronically attend in real-time and, if the Chair allows, participate in the meeting, VIII.G.5.¹, and
- “Proxy voting and voting by mail are prohibited.” VIII.J.2.

ORS 65.212 (“Use of electronic mail or other electronic means to discuss issues or take action”) does allow nonprofits to conduct meetings electronically or via email, but that section is expressly subordinate to an organization’s bylaws. Since all NAs and coalitions bylaws require

¹ The Standards refer only to conducting remote meetings by telephone. VIII.G.5. However, ORS 192.670 on which VIII.G.5 was based (but updated in 2011), allows remote meetings by “telephone or other electronic means of communication” but the organization must “make available to the public at least one place where, or at least one electronic means by which, the public can listen to the communication *at the time it occurs.*” Emphasis added.

adherence to the City's Open Meetings rules, no NA (or coalition) can ignore the City's rules and make a decision/vote by email. Plus, under Section VIII.C&D and VIII.G.5, to conduct a meeting or election electronically, the meeting or election must allow the public to attend in real-time. The City's Open Meetings rules override ORS 65.212.

Since Zoom and other electronic meeting platforms allow the public to attend a meeting in real-time and to participate, the City's Open Meetings rules would allow meetings and elections to occur via such platforms.

Voting via Zoom or Other Online Platform

Although the City's Open Meetings rules allow a meeting and election to occur via Zoom, Ch. 65 does place specific requirements on NAs and coalitions for (1) requiring consent, (2) the board must authorize remote participation and enact/vote-in guidelines and procedures for conducting the election electronically, and (3) proper notice must be given to the members in terms of manner and content.

A. Consent: ORS 65.131(1) requires the consent of every person to be a member of the organization. Therefore, a person must consent to be a member to be eligible to vote. In my NA, every sign-in sheet has a place for people to signify their consent to be a member and our election ballots have a consent box. (We've tossed out ballots where the consent box wasn't checked.) Consent can be expressed or implied; but for an election, it's best practice to get express consent.

So, for an election conducted via Zoom, the **person must state or show (raised hand) their vote AND consent to be a member** (which can also be by a show of hands).

B. Authorizing and Enacting Guidelines and Procedures: The Board must first authorize "participation by remote communication" and adopt guidelines and procedures to:

1. "[v]erify that a person that is participating ... by remote communication is a member," ORS 65.205(1)(b)(A), according to the criteria in the bylaws and consents to be a member,
2. ensure that members can "**participate by remote communication in an effective manner**," 65.205(1)(b)(B); and
3. **keep a "record of the vote" of the member**, ORS 65.205(1)(c), which can be accomplished with Zoom by recording the meeting.

The board should adopt these guidelines and procedures *before* the election and allow the board time to think through all the details of conducting the election via Zoom while complying with these requirements. For May elections, there may not be enough time to adopt these guidelines and procedures in order to be in compliance with Ch. 65

C. Proper Notice: This has 2 facets: the **manner** in which notice is sent, and proper **content**.

1. Manner of Notice: Under ORS 65.214, notice of meetings and elections must be done in a "fair and reasonable manner" to give notice to all "members entitled to vote" in a way that is consistent with the bylaws, but at least 7 days before the meeting. Under the

Standards VIII.E., NAs can give notice by advertising in the local newspaper, the coalition website, the NA's website and newsletter, and through actual notice (e.g., flyers on porch or direct mail). Through these means, the Zoom link can be provided to allow the public to attend the meeting.

2. Content of the Notice: The notice must state:

- "the place, date and time" of the meeting, 65.214(3)(a); the Standards require providing the "date, time, and place of the meeting, and a brief description of topics on the agenda," VIII.E.3;
- that the board authorizes participation by remote communication, 65.205(2); and
- "how a member may notify the corporation that the member intends to participate in the membership meeting by remote communication." ORS 65.205(2).

Postponing the election: In order to comply with the requirements of Ch. 65 to conduct an election via Zoom, or to hold an election in-person, it is probably best to postpone the election to June or even July. My NA's bylaws expressly allow postponing the Annual Meeting and election to June or July. But, those NAs with bylaws that require holding the annual meeting and election in May should take note of:

- ORS 65.314(4) provides that a **director's term does not expire until a successor is elected or appointed**: "Despite the expiration of a director's term, the director continues to serve until the director's successor is elected, designated or appointed and qualifies, or until there is a decrease in the number of directors." This provision does *not* have the "unless the Bylaws provide otherwise" statement, so this statute controls over the Standards and NA and coalition bylaws, and
- ORS 65.201(6): Even though a "corporation with members" is required to hold an annual membership meeting at the time set in the bylaws, the failure to do so does not invalidate any action of organization: "failure to hold an annual or regular meeting at a time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action."

There is little downside under Ch. 65 to postponing a NA election to June or July. Holding to a May election date that is set in the bylaws should not outweigh the goals of the City's Open Meetings rules to have open and transparent meetings, proper notice, and allow for participation by members. If postponing the election allows the NA to better meet these goals, and to comply with the relevant sections of Ch. 65, then I doubt NAs would be faulted for postponing their elections during this Covid-19 crisis.