



# RULE-MAKING ORDER

(RCW 34.05.360)

CR-103 (7/22/01)

Agency: Columbia River Gorge Commission

- Permanent Rule
- Emergency Rule
- Expedited Rule Making

(1) Date of adoption: October 8, 2002

(2) Purpose: The amendments bring the rule into compliance with the more restrictive statutory provisions of the states of Washington or Oregon.

(3) Citation of existing rules affected by this order:

Repealed:  
 Amended: 350-11  
 Suspended:

(4) Statutory authority for adoption: RCW 43.97.015

Other Authority: U.S.C. 544c; ORS 197.150

### PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 02-17-077 on August 19, 2002

Describe any changes other than editing from proposed to adopted version: None

### EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- (a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- (b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

(5.3) Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?:

Yes  No If Yes, explain:

(6) Effective date of rule:

#### Permanent Rules

- 31 days after filing
- Other (specify) \_\_\_\_\_\*

\*(If less than 31 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required)

#### Emergency Rules

- Immediately
- Later (specify) \_\_\_\_\_

#### CODE REVISER USE ONLY

STATE REVISOR OFFICE  
 SEAL OF WASHINGTON

17 2002

1230

WSR 02-21-075 PM

Name (Type or Print)

Robert K. McIntyre

Signature

*Robert K. McIntyre*

Title  
Rules Coordinator

Date  
October 15, 2002

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.

**The number of sections adopted in order to comply with:**

<b>Federal statute:</b>	New	_____	Amended	_____	Repealed	_____
<b>Federal rules or standards:</b>	New	_____	Amended	_____	Repealed	_____
<b>Recently enacted state statutes:</b>	New	_____	Amended	<u>5</u>	Repealed	_____

**The number of sections adopted at the request of a nongovernmental entity:**

New	_____	Amended	_____	Repealed	_____
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**The number of sections adopted in the agency's own initiative:**

New	_____	Amended	<u>5</u>	Repealed	_____
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	_____	Amended	<u>5</u>	Repealed	_____
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**The number of sections adopted using:**

<b>Negotiated rule making:</b>	New	_____	Amended	<u>5</u>	Repealed	_____
<b>Pilot rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Other alternative rule making:</b>	New	_____	Amended	_____	Repealed	_____

## AMENDATORY SECTION

### 350-11-003. Meetings of commission to be open to public; location of meetings

(1) All meetings of the commission shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by 350-011-0001 to 350-11-010. A member of the public shall not be required, as a condition of attending a meeting, to give his or her name other information, complete a questionnaire or fulfill any other condition precedent. *RCW 42.30.040*

(2) No quorum of the commission shall meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as otherwise provided by 350-11-001 to 350-11-010.

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

(4) Meetings of the commission shall be held within the geographic boundaries over which the commission has jurisdiction, or at the administrative headquarters of the commission 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 geographical 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.

(5) Notwithstanding the requirements of section (4) above, committee meetings may be held in any location where the committee deems it useful.

(6) Meetings of the commission shall be held in locations that are accessible to the disabled.

(7) Upon request of a hearing impaired person, the commission shall make a good faith effort to have an interpreter for hearing impaired persons provided at a regularly scheduled meeting. The person requesting the interpreter shall provide the commission at least 48 hours' notice of the request, shall provide the name of the requester, sign language preference and any other relevant information the commission may require. As used in this subsection, "good faith effort" includes, but is not limited to, contacting the Oregon Disabilities Commission, the Washington Aging and Adult Services Administration, or other state or local government or community service agency that maintains a list of qualified interpreters and arranging for the referral of one or more such persons to provide interpreter services. *ORS 192.630(5)(e)*

(8) It shall be considered discrimination on the basis of disability for commission 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 Commission Rule 350-11-008, ORS 192.630(5)(a)

(89) Voting by the commission shall take place in public and each member's vote shall be recorded as it is cast. Any vote taken in violation of this subsection shall be null and void, and shall be considered an "action" under this chapter. RCW 43.30.060(2)

## AMENDATORY SECTION

### 350-11-004. Public notice required; special notice for executive sessions, special or emergency meetings

(1) The commission shall provide the time for holding regular meetings by ordinance, resolution, bylaws, or by whatever other rule is required for the conduct of business by the commission. RCW 42.30.070.

(2) The Commission shall file with the Secretary of State in Oregon and the Code Reviser in Washington a schedule of the time and place of such meetings on or before January of each year for publication in the states' registers. Notice of any change from such meeting schedule shall be published in the states' registers for distribution at least twenty days prior to the rescheduled meeting date. For the purposes of this section "regular" meetings shall mean recurring meetings held in accordance with a periodic schedule declared by statute or rule. RCW 42.30.075

(34) The commission 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 the commission to consider additional subjects.

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

(53) No special meeting shall be held without at least 24 hours' notice to the members of the commission, 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. The call and notice of the meeting shall specify the time and place of the meeting and the business to be transacted. Final

disposition shall not be taken on any other matter at a special meeting of the Commission.  
*RCW 42.30.080*

(6) The commission shall not adopt any ordinance, resolution, rule, regulation, order, or directive, except in a meeting open to the public and then only at a meeting, the date of which is fixed by law or rule, or at a meeting of which notice has been given according to the provisions of this chapter. Any action taken at meetings failing to comply with the provisions of this subsection shall be null and void. *RCW 43.30.060(1)*

(74) The commission may adjourn or continue a meeting to a time and place specified in an order of adjournment or continuance. Written notice of the adjournment or continuance shall be provided in accordance with subsection (3) above. A copy of the order of adjournment or continuance shall be conspicuously posted immediately after adjournment or continuance on the door where the meeting was held.

## AMENDATORY SECTION

### **350-11-006. Executive sessions permitted on certain matters; procedures; news media representatives' attendance; limits**

(1) The commission can hold executive session during a regular, special or emergency meeting, after the presiding officer has identified the authorization 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 ~~filing~~ 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 ~~their~~ 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 commission 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 conduct deliberations with persons designated by the commission to carry on labor negotiations;
- (d) To conduct deliberations with persons designated by the commission to negotiate real property transactions;
- (e) To consider records that are exempt by law from public inspection;
- (f) To consider preliminary negotiations involving matters of trade or commerce in which the commission is in competition with governing bodies in other states or nations;
- (g) To consult with counsel concerning the legal rights and duties of the commission with regard to current litigation or litigation likely to be filed;
- (h) To review and evaluate, pursuant to standards, criteria and policy directives adopted by the commission, the employment-related performance of the chief executive officer of the commission, 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 commission in meetings open to 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 any agency goal, objective or operation of any directive to personnel concerning agency goals, objectives, operations or programs;
- (i) To carry on negotiations with private persons or business 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. 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 (c) of subsection (1) of this section relating to labor negotiations but no information that is the subject of the executive session shall be disclosed. The Commission shall bar any member of the news media from attending the executive session if the member of the news media is a party to the litigation or is an employee, agent or contractor of a news media organization that is a party to the litigation. ORS 192.670(4)

(4) No executive session may be held for the purpose of taking any final action or making any final decision.

### AMENDATORY SECTION

#### 350-11-007. Meetings by Means of Telephonic or Electronic Communication.

(1) Any meetings, including an executive session, of the commission which is held through the use of telephone or other electronic communication shall be conducted in accordance with 350-11-001 to 350-11-~~010006~~.

(2) When telephone or other electronic means of communication is used and the meeting is not an executive session, the commission 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 commission is present.

### AMENDATORY SECTION

#### 350-11-008. Enforcement of 350-011-0001 to 350-001-0007; effect of violation on validity of decision of the commission, liability of members

(1) Any person affected by a decision of the commission may commence a suit in the circuit court or superior court of the county in which the commission ordinarily meets, for the purpose of requiring compliance with, or the prevention of violations of 350-11-001 to 350-11-007, by members of the commission, or to determine the applicability of 350-11-001 to 350-11-007 to matters or decisions of the commission. The court may order such equitable relief as it deems appropriate in the circumstances. A decision made in violation of 350-11-001 to 350-11-007 is voidable. ORS 192.680(1) A decision shall not be voided if other equitable relief is available. The court may order payment to a successful plaintiff in a suit brought under this section of reasonable attorney's fees at trial and on appeal, by the commission.

(2) If the court makes a finding that a violation of 350-11-001 to 350-11-007 has occurred under subsection (1) of this section and that the violation is the result of wilful misconduct by any member or members of the commission, that member or members shall be jointly and severally liable to the commission for the amount paid by the commission under subsection (1) of this section.

(3) Each member of the commission who attends a meeting of the commission where action is taken in violation of any provision of this division, with knowledge of the fact that the meeting is in violation thereof, shall be subject to personal liability in the form of a civil penalty in the amount of one hundred dollars. The civil penalty shall be assessed by a judge of the circuit court or superior court and an action to

enforce this penalty may be brought by any person. A violation of this chapter does not constitute a crime and assessment of the civil penalty by a judge shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense. RCW 42.30.120(1)

(4) Any person who prevails against a public agency in any action in the courts for a violation of this chapter shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. If the commission prevails in an action in the courts for a violation of this chapter, it may be awarded reasonable expenses and attorney fees upon final judgment and written findings by the trial judge that the action was frivolous and advanced without reasonable cause. RCW 42.30.120(2)

(53) The provisions of this section shall be the exclusive remedy for an alleged violation of 350-11-001 to 350-11-007.