

AGENDA



BOARD OF DIRECTORS MEETING

Tuesday, December 2, 2025
3:30 p.m. – 4:00 p.m.

Join by Google Meet:
<https://meet.google.com/sxv-efnd-fss>
+1 573-559-1186 PIN: 359 217 192#

1	Call to order and roll call	3:30 p.m. 5 mins	President Erin Skaar Sara Gamaney, administrative services director
2	Agenda approval (ACTION)	3:35 p.m. 1 min	President Erin Skaar
3	<i>Becker v. City of Eugene</i> Amicus Request (ACTION)	3:36 p.m. 20 mins	Mallorie Roberts, legislative director
4	Other Business	3:56 p.m. 4 mins	President Erin Skaar
5	Adjourn	4:00 p.m.	

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AOC Affiliate Organizations Representatives:

OSACA (Assessors): **Scot Langton**, Deschutes
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OACTC (Tax Collectors): **Rick Vaughn**, Klamath
OACTFO (Treasurers): **Brian Nava**, Clackamas
OACTFO Alternate: **Tara Williams**, Yamhill
ODAA (District Attorneys): **Paige Clarkson**, Marion

MEMO

Date: December 2, 2025
To: Board of Directors
From: Mallorie Roberts, legislative director, AOC
Subject: Request to participate as Amicus Curiae in *Becker v. City of Eugene*

RECOMMENDATION

Consider the request of the Oregon County Counsel Association (OCCA) for AOC to petition as Amicus Curiae in the Oregon Court of Appeals case *Becker v. City of Eugene*, and approve AOC's participation in filing a joint brief with the League of Oregon Cities (LOC) with the support of volunteer county counsel.

SUMMARY

The Oregon County Counsel Association (OCCA) is requesting AOC participate as Amicus Curiae in the Oregon Court of Appeals case *Becker v. City of Eugene*.

The case concerns a trial court's ruling on a public records fee waiver denial that imposes a heavy burden on public bodies to justify the denial. The trial court's decision appears to contradict the statutory language which grants public bodies significant discretion to deny a fee waiver as not in the public interest. The ruling establishes a precedent that limits the discretion of public body custodians and increases the risk of significant financial penalties for counties in public records disputes.

OCCA believes AOC's participation will be meaningful by allowing the Court of Appeals to hear and understand the statewide effect of this decision on local governments, as well as the potential impact of attorney fee awards on counties.

While the original deadline for the Opening Brief was October 9, 2025, the schedule will be reset by the Court of Appeals after the City amends its Notice of Appeal. The deadline for the amicus brief is anticipated to be months from now, following the Court of Appeals issuing a new briefing schedule.

FISCAL IMPACT

OCCA has lined up a volunteer from among county counsel to assist LOC in drafting the joint brief, which LOC will file, ensuring there would be no cost to AOC should the Board decide to participate. AOC has an available budget of \$5,000 for use in Amicus Curiae Brief filings. Given the plan for volunteer counsel and a joint filing, costs are not anticipated to impact the budget.

ATTACHMENTS

- Request for AOC Participation in Litigation - City of Eugene - *Becker v. City of Eugene*

REQUEST FOR AOC PARTICIPATION IN LITIGATION

Date: October 9, 2025

Name: Lauren Sommers

Title/Position: Assistant City Attorney

Organizational Affiliation: City of Eugene

1) Please provide a summary of the facts of the case.

Aaron and Elizabeth Becker filed a public records request with the City of Eugene for records related to an open missing person case. Their stated purpose was to use the records for a true-crime podcast. In addition, they also stated that they had established a nonprofit, A Voice for the Silenced, that would analyze data related to missing persons cases and use that data to raise awareness, educate the public and lobby state legislators. There was some back and forth around the scope of the request, but the Beckers ultimately limited their request to records more than 25 years old.

The City provided a cost estimate for staff time to collect the responsive records and to review and separate exempt from non-exempt material. The Beckers requested a full fee waiver or a substantial discount. The City denied the full fee waiver, but consistent with the City's adopted public records fee order, the City provided the Beckers with a 25% fee reduction. Consistent with ORS 192.329(3)(b), the City advised the Beckers that if they did not pay the deposit within 60 days, the City would close the request. The total amount of the deposit after application of the 25% fee reduction was \$360.23. The Beckers did not pay the deposit and the City closed the request.

The Beckers separately appealed both the fee assessment and the complete fee waiver denial to the Lane County District Attorney. The District Attorney denied both appeals. The Beckers then filed a declaratory judgment action pursuant to ORS 192.324(6) (fee waiver denial review), ORS 192.431(1) (records request denial review) and ORS 28.010 (declaratory judgments) in Lane County Circuit Court. The Beckers raised three claims for relief: 1) a declaration that the City's assessment of fees was unlawful in violation of the Oregon Public Records Act and an injunction compelling the City to provide the requested records at no cost; 2) a declaration that the City unlawfully denied the Beckers' request for a complete fee waiver and an injunction compelling the City to waive any fees; and 3) a declaration that the City constructively withheld non-exempt records. The parties filed cross motions for summary judgment.

As to the Beckers' first and third claims for relief, the trial court found for the City, determining that the City could assess fees to cover the cost of staff time spent collecting

the requested records and separating exempt from non-exempt material (the court explicitly recognized that there are four categories of records that survive the 25-year-old release obligation) and determining that the fees assessed by the City were reasonably calculated to recover the City's actual cost of responding to the request. The court further determined that closing a request by operation of ORS 192.329(3)(b) after 60 days was not a constructive denial.

However, as to the Beckers' second claim for relief, the court determined that although a public body has discretion to grant or deny a request for a fee waiver, the public body's decision must be "reasonable." Therefore, a public body must provide an explanation for a refusal to grant a requested fee waiver so that a trial court can review the reasonableness of the public body's decision. The trial court determined that the City did not provide enough of an explanation in its initial decision letter granting the Beckers' request to reduce the deposit by 25% but denying the request for a full fee waiver. The court refused to consider a later declaration from the City's records custodian, which was offered to support the City's decision on the fee waiver request. The declaration included a detailed analysis of the public interest in a fee waiver or reduction, including custodian's conclusion that a waiver or reduction of fees was not in the public interest because making the records available did not primarily benefit the general public. This was in large part because the records custodian, in consultation with the detective assigned to the case, concluded that, despite the age of the requested records, their release could compromise an open investigation with a living suspect. Looking only at the City's initial response, the court determined the City "failed to carry its heavy burden to sustain its rejection of the fee waiver request." The trial court then ordered the City to provide the Beckers with the requested records at no cost.

Even though the City prevailed on two of the Beckers' three claims for relief, the trial court declared that the Beckers were the prevailing party because they ultimately got what they wanted out of the litigation – the records at no cost. The trial court then filed an Opinion and Order awarding the Beckers \$62,050.59 in attorney fees and costs.

Eugene has appealed the General Judgment. The Supplemental Judgment awarding attorney fees and costs has been filed with the trial court but has not yet been signed and entered. The Opening Brief is currently due November 6th, so the earliest an amicus brief would be due is November 13th. However, once the Supplemental Judgment is entered, Eugene plans to amend the Notice of Appeal to include the Supplemental Judgment and to file a Motion to Supplement the Record to include the parties' briefing on the attorney fee issue. Those filings should toll further deadlines in the Court of Appeals while the trial court provides the record materials related to the Supplemental Judgment. Eugene anticipates that the Court of Appeals will issue a new briefing schedule following the

court's receipt of the supplemental record. The attorneys have discussed the idea of a stipulated briefing schedule to avoid due dates over the holidays. Either way, it appears that the deadline for an amicus brief could be months from now.

2) Please provide a summary of past administrative and/or legal proceedings related to the case.

Please see above.

3) Please provide a description of the litigants or other parties and who they are being represented by.

The Beckers are a married couple and are represented by David Bahr of Bahr Law Offices, PC.

The City of Eugene is represented by the Eugene City Attorney's Office; specifically, Assistant City Attorney Ben Miller at trial and Assistant City Attorney Lauren Sommers in the appeal.

4) Please explain the legal issue to be resolved and how it relates to the following decision criteria the AOC uses to decide whether to participate in litigation:

- **Whether the legal issue is of statewide significance;**
- **Whether the case clearly presents an issue of interest to counties;**
- **Whether the interest of counties is generally similar to and not divergent in any substantial way or number;**
- **Whether participation is consistent with the AOC's principles, policies, or interests such as local control and judicial deference to local government determinations;**
- **Whether the AOC's participation will be meaningful to the court's resolution of the matter, such as whether there are identifiable gaps in the case or issues that would otherwise go unaddressed by the parties to the litigation;**
- **The timeliness of the request; and**
- **The availability of resources to prepare or assist in the preparation of the amicus brief [or other documents related to the case].**

It is Eugene's position that the trial court erred in its interpretation of ORS 192.324 and ORS 192.431. ORS 192.324(4) allows government entities to "establish fees reasonably calculated to reimburse the public body for the public body's actual cost of making public records available...." ORS 192.324(5) provides that "[t]he custodian of a public record *may* furnish copies without charge or at a substantially reduced fee if the custodian determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public." (Emphasis added).

ORS 192.324(5) gives public bodies the discretion to choose to grant a fee waiver or reduction, but only if the waiver or reduction is in the public interest because making the record available primarily benefits the general public. Where making the requested records available does not primarily benefit the general public, it is in the public interest for the public body to recoup the actual cost of responding to the public records request instead of utilizing public funds to respond to a request that primarily benefits an individual requester. In addition, even if a requester establishes that making the requested records available primarily benefits the general public, nothing in the statute *requires* a public body to grant a fee waiver. Most importantly, nothing in the Oregon Public Records Act limits the trial court's review of a public body's decision on a fee waiver request to the explanation provided at the time of the public body's initial fee waiver decision. Indeed, ORS 192.431 explicitly requires *de novo* review by the trial court. In *In Defense of Animals v. OHSU*, the Court of Appeals clearly determined that “[n]othing in [ORS 192.431] or any other provision in the Public Records Law limits the circuit court to consideration of the record developed by the parties before the ... district attorney.” 199 Or App 160, 170 (2005). The law is clear that a public body is free to provide additional evidence and/or a more detailed explanations to sustain its burden before the trial court. The trial court erred by finding otherwise.

The case is of statewide significance because the Court of Appeals' review of the trial court's decision will impact all public bodies in the state subject to the Oregon Public Records Act. The case represents an issue of interest to counties because counties are subject to the Oregon Public Records Act and will be affected by the Court of Appeals' decision in this appeal. In addition, the decision of the trial court demonstrates the potential for significant attorney fee awards related to disputes over fee waivers, which is something that could negatively affect all counties in the state. Eugene believes that all counties, regardless of size or population, have a similar interest in this appeal because all counties are subject to the statutes at issue in this appeal.

Participation in this appeal is consistent with preservation of the (already limited) local control and autonomy afforded by the public records statutory scheme.

Eugene believes that AOC's participation in this appeal will be meaningful and will allow the Court of Appeals to hear and understand more about the statewide effect of this decision. AOC could also play a meaningful role in articulating the policy reasons to allow counties to make their own fee waiver decisions, as well as the potential impact of attorney fee awards on counties if fee waiver decisions are limited as provided by the trial court in this case.

The Beckers have filed a Notice of Cross-Appeal but have not yet identified which portions of the General Judgment they intend to challenge. It is possible that an AOC amicus brief responding to the Cross-Appeal could also be helpful.

Amicus briefs are unlikely to be due for a while. Eugene has appealed the General Judgment. The Supplemental Judgment awarding attorney fees and costs has been filed with the trial court but has not yet been signed and entered. The Opening Brief is currently due November 6th, so the earliest an amicus brief would be due is November 13th. However, once the Supplemental Judgment is entered by the trial court, Eugene plans to amend the Notice of Appeal to include the Supplemental Judgment and to file a Motion to Supplement the Record to include the parties' briefing to the trial court on the attorney fee issue. Those filings should toll further deadlines in the Court of Appeals while the trial court provides the record materials related to the Supplemental Judgment. Eugene anticipates that the Court of Appeals will issue a new briefing schedule following the court's receipt of the supplemental record. The attorneys have discussed the idea of a stipulated briefing schedule to avoid due dates over the holidays. Either way, it appears that the deadline for an amicus brief could be months from now.

5) In what role would you like the AOC to participate – e.g. amicus, intervenor, etc. – and why that particular role?

Eugene is hoping that AOC will appear as an amicus.

6) Please describe what authors or other sources of support would be available to aid in the drafting of the amicus brief [or other documents related to the case].

The Eugene City Attorney's Office would be available for consultation and review of the amicus brief.

7) Please explain how the AOC's participation will increase the probability of obtaining a favorable result and the basis for that conclusion.

Eugene believes statements from associations of governments such as the LOC, AOC, etc., will help the Court of Appeals to understand the statewide significance of the trial court's erroneous interpretation of ORS 192.324 and ORS 192.431. Eugene is capable of making the necessary legal arguments but participation by the AOC will hopefully illustrate for the appellate court the sort of impact this decision could have on jurisdictions across the state (including the State itself).

8) Is there any other information you'd like the AOC to consider as it weighs whether to participate in this case?

Thank you for considering!