



November 6, 2012 General Election

Dear Candidate,

1. Thank you for your interest in serving as a public official. Enclosed is the information and documents you will need to manage your campaign. Please read them thoroughly. It is your responsibility to ensure your candidate paperwork is complete and submitted on time.
2. You should find the following items or resource information enclosed in this packet:
  - A Declaration of Candidacy Form (*submit to City Elections Official/City Recorder*)
  - State of Oregon Candidate Filing for Major Political Party or Nonpartisan ([SEL 101](#)) (*submit to City Elections Official/City Recorder*).
  - [City Charter](#)
  - [City Council Rules](#)
  - Washington County [Elections Calendar](#)
  - City [Sign Code](#) (*currently under review, continue to monitor the Municipal Code for updates*). Contact the City Planning Department for temporary sign application and information, 503.925.2308
  - Oregon Government Ethics Commission "[Guide for Public Officials](#)"

***\*Please visit the Secretary of State, [Elections Division website](#) for current Candidate's Manual, Campaign Finance Manual and other election information.***

**PLEASE RETAIN COPIES OF ALL YOUR DOCUMENTS.**

3. Please be sure to meet the deadlines as indicated. The following deadlines apply to all City of Sherwood candidates.
  - City Candidates filing forms (Declaration of Candidacy Form and [SEL 101](#) Form), deadline for filing with the City Elections Official/City Recorder. **Friday, August 24, 2012, 5 p.m.**
  - Submit the [Candidate Statement](#) for the Voter's Pamphlet to Washington County Elections Office. Reference Washington County [Elections Calendar](#) for deadline. The City Elections Official/City Recorder cannot process this for you.
  - Withdrawal of Candidacy [SEL 150](#) form must be submitted to the City Elections Official/City Recorder (See form for deadline date).

4. A candidate who exceeds \$750 in either contributions or expenditures must file the Statement of Organization for Candidate Committee Form [SEL 220](#) and the Campaign Account Information Form [SEL 223](#) to the [Oregon Secretary of State Elections Division](#). A candidate who receives or spends \$750 or more, but less than \$3,000 in a calendar year must submit Form [PC 7](#), located in the [State Campaign Finance Manual](#). Candidates are strongly encouraged to keep records of all contributions and expenses. Exceeding the \$3,000 requires more detailed campaign finance forms to be completed. Contributions and expenses can be challenged if someone believes a candidate has exceeded the limit.
5. Candidates may pay the \$10 filing fee or file by Petition (See *Sherwood Municipal Code*). Petitions must be certified by the City Elections Official/City Recorder prior to circulation. Contact the Oregon Secretary of State Elections division for [current petition forms](#).
6. The resources listed below are available to assist with your campaign:

Thank you for your willingness to serve the Sherwood Community,



Sylvia Murphy, City Recorder  
City Elections Official  
503-625-4246  
[murphys@sherwoodoregon.gov](mailto:murphys@sherwoodoregon.gov)

Washington County, Elections Office  
3700 SW Murray Blvd. Suite 101, MS 3  
Beaverton, OR 97005  
Office Hours: Monday - Friday, 8:30 am - 5:00 pm  
Phone: 503-846-5800  
Fax: 503-846-5810  
<http://www.co.washington.or.us/cgi/electhom/main.pl>

State of Oregon Elections Division  
255 Capital St., NE Suite 501  
Salem, Or 97310  
Phone: 503-986-1518  
<http://www.sos.state.or.us/elections/>

Oregon Government Ethics Commission  
3218 Pringle Rd. SE, Suite 220  
Salem, OR 97302-1544  
<http://www.gspc.state.or.us/>



Declaration of Candidacy  
City of Sherwood Elected Position

I, \_\_\_\_\_, hereby state that I am a qualified registered voter  
(PRINT YOUR NAME HERE)

in the City of Sherwood, Oregon and that I reside within the Sherwood City limits at the following address:

\_\_\_\_\_ in Washington County.  
(PRINT YOUR ADDRESS HERE)

I am declaring my candidacy for the position of:

\_\_\_\_\_ in the City of Sherwood at a General Election  
to be held November 6, 2012.

Positions available:

|            |                                   |
|------------|-----------------------------------|
| Mayor      | Currently held by Keith Mays      |
| Position 4 | Currently held by Linda Henderson |
| Position 5 | Currently held by Krisanna Clark  |
| Position 6 | Currently held by Robyn Folsom    |

Dated this \_\_\_\_\_ Day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
(SIGNATURE OF CANDIDATE)

Declaration of Candidacy and [SEL 101 Form](#) must be received by the City Elections Officials/City Recorder by 5:00 pm, Friday, August 24, 2012.

# Candidate Filing

## Major Political Party or Nonpartisan

**SEL 101**

rev. 1/12 ORS 249.031

**i** This information is a matter of public record and may be published or reproduced.  Original  Amendment

### Filing Officer:

- Secretary of State
- County Elections Official of \_\_\_\_\_ County  
Mail or Deliver to County Elections Office
- City Recorder (Auditor), City of \_\_\_\_\_

### Candidate Information

- Democratic Party  Republican Party  Nonpartisan
- Incumbent Judge

Candidate Legal Name\*

Candidate Name (As it should appear on ballot)\*

Filing for Office of\*

District and/or Position (if applicable)\*

Residence Address, Street/Route\*

City\*

State\*

Zip\*

County of Residence\*

Home Phone

Work Phone

Cell Phone

Fax

Email\*

Website

Mailing Address (All correspondence will be sent to this address)\*

City\*

State\*

Zip\*

\* Indicates a required field. At least one phone number is also required.

Filing by Declaration, with the required filing fee

| Office                          | Filing Fee | Office                             | Filing Fee                  |
|---------------------------------|------------|------------------------------------|-----------------------------|
| United States President         | n/a        | County Judge                       | \$50                        |
| United States Vice President    | n/a        | MSD Executive Officer, MSD Auditor | \$100                       |
| United States Senator           | \$150      | MSD Councilor                      | \$25                        |
| United States Representative    | \$100      | County Office                      | \$50                        |
| Statewide Offices               | \$100      | City Office                        | set by charter or ordinance |
| State Senator or Representative | \$25       | Justice of the Peace               | n/a                         |
| Circuit Court Judge             | \$50       |                                    |                             |
| District Attorney               | \$50       |                                    |                             |

Prospective Petition with proposed signature sheet **Petition circulators will be paid (Mark One)**  Yes  No

Completed Petition with certified signature sheets

### 2012 Filing Dates

| Primary Election May 15, 2012            | Candidate Filing                      | State Voters' Pamphlet Filing   | Candidate Withdrawal |
|--|---------------------------------------|---|----------------------|
|  | September 8, 2011 to<br>March 6, 2012 | September 8, 2011 to<br>March 8, 2012 (for paper filing)<br>or March 12, 2012 (for electronic filing) | March 9, 2012        |
| <b>General Election November 6, 2012</b> | May 30, 2012 to<br>August 28, 2012    | May 30, 2012 to<br>August 28, 2012 (for paper filing)<br>or August 30, 2012 (for electronic filing)   | August 31, 2012      |

(continued)

**Required Information (If no relevant information list none or n/a)**

**Occupation** (present employment – paid or unpaid) (required)

**Occupational Background** (previous employment – paid or unpaid) (required)

**Educational Background** (schools attended, if necessary use attachment) (required)

| <b>Name of School</b> (no acronyms) | <b>Last grade Level Completed</b> | <b>Diploma/Degree/Certificate</b><br>(AA, BA, BS, MA, PhD accredited)<br><b>Not honorary</b> | <b>Course of Study</b><br>(optional) |
|-------------------------------------|-----------------------------------|--|--------------------------------------|
|-------------------------------------|-----------------------------------|--|--------------------------------------|

**Other:**

**Prior Governmental Experience** (elected or appointed) (required)

*By signing this document, I hereby state that:*

- I will accept the nomination for the office indicated above
- I will qualify for said office if elected
- if not nominated, I will not accept the nomination or endorsement of any political party other than the one named
- I have been a member of said political party, subject to the exceptions stated in ORS 249.046, for at least 180 days before the deadline for filing a nominating petition or declaration of candidacy (ORS 249.031)
- all information provided by me on this form is true to the best of my knowledge **and**
- no circulators will be compensated based on the number of signatures obtained by the circulator on a prospective petition

Check the applicable box (not applicable to candidates for federal office - US Senate and US Representative):

- By marking this box, I certify I do not have an existing candidate committee and I do not expect to spend more than \$750 or receive more than \$750 during each calendar year. I understand I must still keep records of all campaign transactions and if total contributions or total expenditures exceed \$750 during a calendar year, I must follow the requirements detailed in the 2012 Campaign Finance Manual.
- By marking this box, I certify that I have already filed or will soon file a Statement of Organization for Candidate Committee (SEL 220). For detailed instructions, see the 2012 Campaign Finance Manual.



**Warning**

Supplying false information on this form may result in conviction of a felony with a fine of up to \$125,000 and/or prison for up to 5 years. (ORS 260.715). A person may only file for one lucrative office or not more than one precinct committee person at the same election. Unless the person has withdrawn from the first filing, **all** filings are invalid. (ORS 249.013 and ORS 249.170)

**Candidate's Signature**

**Date Signed**

**For Office Use Only**

Initials

Approval Code/Receipt Number

## PREAMBLE

We, the voters of Sherwood, Oregon exercise our power to the fullest extent possible under the Oregon Constitution and laws of the state, and enact this Home Rule Charter.

### Chapter I

#### NAMES AND BOUNDARIES

Section 1. Title. This charter may be referred to as the 2005 Sherwood City Charter.

Section 2. Name. The City of Sherwood, Oregon, continues as a municipal corporation with the name City of Sherwood.

Section 3. Boundaries. The city includes all territory within its boundaries as they now exist or are legally modified. Unless required by state law, annexations may only take effect with the approval of city voters. The city recorder will maintain as a public record an accurate and current description of the boundaries.

### Chapter II

#### POWERS

Section 4. Powers. The city has all powers that the constitutions, statutes and common law of the United States and Oregon expressly or impliedly grant or allow the city, as fully as though this charter specifically stated each of those powers.

Section 5. Construction. The charter will be liberally construed so that the city may exercise fully all powers possible under this charter and under United States and Oregon law.

Section 6. Distribution. The Oregon Constitution reserves initiative and referendum powers as to all municipal legislation to city voters. This charter vests all other city powers in the council except as the charter otherwise provides. The council has legislative, administrative and quasi-judicial authority. The council exercises legislative authority by ordinance, administrative authority by resolution, and quasi-judicial authority by order. The council may not delegate its authority to adopt ordinances. The council appoints members of commissions, board and committees established by ordinance or resolution.

### Chapter III

#### COUNCIL

Section 7. Council. The council consists of a mayor and six councilors nominated and elected from the city by position

Section 8. Mayor. The mayor presides over and facilitates council meetings, preserves order, enforces council rules, and determines the order of business under council rules. The mayor is a voting member of the council. The mayor must sign all records of council decisions. The mayor serves as the political head of the city government.

Section 9. Council President. At its first meeting each year, the council must elect a president from its membership. The president presides in the absence of the mayor and acts as mayor when the mayor is unable to perform duties.

Section 10. Rules. The council must by resolution adopt rules to govern its meetings.

Section 11. Meetings. The council must meet at least once a month at a time and place designated by its rules, and may meet at other times in accordance with council rules.

Section 12. Quorum. A majority of the council members is a quorum to conduct business, but a smaller number may meet and compel attendance of absent members as prescribed by council rules.

Section 13. Vote Required. The express approval of a majority of a quorum of the council is necessary for any council decision, except when this charter requires approval by a majority of the council.

Section 14. Record. A record of council meetings must be kept in a manner prescribed by the council rules.

### Chapter IV

#### LEGISLATIVE AUTHORITY

Section 15. Ordinances. The council will exercise its legislative authority by adopting ordinances. The enacting clause for all ordinances must state "The City of Sherwood ordains as follows:"

Section 16. Ordinance Adoption.

- (a) Adoption of an ordinance requires approval by a majority of the council at one meeting provided the proposed ordinance is available in writing to the public at least one week before the meeting.
- (b) Any substantive amendment to a proposed ordinance must be read aloud or made available in writing to the public before the council adopts the ordinance at that meeting.
- (c) After the adoption of an ordinance, the vote of each member must be entered into the council minutes.
- (d) After adoption of an ordinance, the city recorder must endorse it with the date of adoption and the recorder's name and title. The city recorder must submit the ordinance to the mayor for approval. If the mayor approves the ordinance, the mayor must sign and date it.
- (e) If the mayor vetoes the ordinance, the mayor must return it to the city recorder with written reasons for his veto within 10 days of receipt of the ordinance. If the ordinance is not so returned, it takes effect as if approved.
- (f) At the first council meeting after veto by the mayor, the council will consider the reasons of the mayor and again vote on the ordinance. If four councilors vote to adopt the ordinance, it will take effect.

Section 17. Effective Date of Ordinances. Ordinances normally take effect on the 30<sup>th</sup> day after adoption and approval by the mayor, or adoption after veto by the mayor, or on a later day provided in the ordinance. An ordinance adopted by all councilors may take effect as soon as adopted, or other date less than 30 days after adoption if it contains an emergency clause, and is not subject to veto by the mayor.

Chapter V

ADMINISTRATIVE AUTHORITY

Section 18. Resolutions. The council will normally exercise its administrative authority by approving resolutions. The approving clause for resolutions may state "The City of Sherwood resolves as follows:"

Section 19. Resolution Approval.

- (a) Approval of a resolution or any other council administrative decision requires approval by the council at one meeting.

(b) Any substantive amendment to a resolution must be read aloud or made available in writing to the public before the council adopts the resolution at a meeting.

(c) After approval of a resolution or other administrative decision, the vote of each member must be entered into the council minutes.

(d) After approval of a resolution, the city recorder must endorse it with the date of approval and the recorder's name and title.

Section 20. Effective Date of Resolutions. Resolutions and other administrative decisions take effect on the date of approval, or on a later day provided in the resolutions.

## Chapter VI

### QUASI-JUDICIAL AUTHORITY

Section 21. Orders. The council will normally exercise its quasi-judicial authority by approving orders. The approving clause for orders may state "The City of Sherwood orders as follows:"

Section 22. Order Approval.

(a) Approval of an order or any other council quasi-judicial decision requires approval by the council at one meeting.

(b) Any substantive amendment to an order must be read aloud or made available in writing to the public at the meeting before the council adopts the order.

(c) After approval of an order or other council quasi-judicial decision, the vote of each member must be entered in the council minutes.

(d) After approval of an order, the city recorder must endorse it with the date of approval and the recorder's name and title.

Section 23. Effective Date of Orders. Orders and other quasi-judicial decisions take effect on the date of final approval, or on a later day provided in the order.

## Chapter VII

### ELECTIONS

Section 24. Councilors. At each general election after the adoption, three councilors will be elected for four-year terms by position. The terms of councilors in office when this charter is adopted are the terms for which they were elected.

Section 25. Mayor. At every other general election after the adoption, a mayor will be elected for a two-year term. The mayor in office when this charter is adopted is the term for which the mayor was elected.

Section 26. State Law. City elections must conform to state law except as this charter or ordinances provide otherwise. All elections for city offices must be nonpartisan.

Section 27. Qualifications.

- (a) The mayor and each councilor must be a qualified elector under state law, and reside within the city for at least one year immediately before election or appointment to office.
- (b) No person may be a candidate at a single election for more than one city office.
- (c) Neither the mayor, nor a councilor may be employed by the city.
- (d) The council is the final judge of the election and qualifications of its members.

Section 28. Nominations. The council must adopt an ordinance prescribing the manner for a person to be nominated to run for mayor or a city councilor position.

Section 29. Terms. The term of an officer elected at a general election begins at the first council meeting of the year immediately after the election, and continues until the successor qualifies and assumes the office.

Section 30. Oath. The mayor and each councilor must swear or affirm to faithfully perform the duties of the office and support the constitutions and laws of the United States and Oregon.

Section 31. Vacancies. The mayor or a council office becomes vacant:

- (a) Upon the incumbent's:
  - (1) Death,
  - (2) Adjudicated incompetence, or
  - (3) Recall from the office.
- (b) Upon declaration by the council after the incumbent's:
  - (1) Failure to qualify for the office within 10 days of the time the term of office is to begin,
  - (2) Absence from the city for 45 days without council consent, or from three consecutive regular council meetings,
  - (3) Ceasing to reside in the city,
  - (4) Ceasing to be a qualified elector under state law,
  - (5) Conviction of a public offense punishable by loss of liberty,
  - (6) Resignation from the office, or
  - (7) Removal under Section 33(i).

Section 32. Filling Vacancies. A mayor or councilor vacancy will be filled by an election if 13 months or more remain in the office term. The election will be held at the next available election date to fill the vacancy for the remainder of the term. A mayor or councilor vacancy may be filled by appointment by a majority of the remaining council members. The appointee's term of office runs from appointment until the vacancy is filled by election or until expiration of the term of office if no election is required to fill the vacancy.

## Chapter VIII

### APPOINTIVE OFFICERS

Section 33. City Manager.

(a) The office of city manager is established as the administrative head of the city government. The city manager is responsible to the mayor and council for the proper administration of all city business. The city manager will assist the mayor and council in the development of city policies, and carry out policies established by ordinances and resolutions.

(b) A majority of the council must appoint and may remove the manager. The appointment must be made without regard to political considerations and solely on the basis of education and experience in competencies and practices of local government management.

(c) The manager need not reside in the city.

(d) The manager may be appointed for a definite or an indefinite term, and may be removed at any time by a majority of the council. The council must fill the office by appointment as soon as practicable after the vacancy occurs.

(e) The manager must:

- (1) Attend all council meetings unless excused by the mayor or council;
- (2) Make reports and recommendations to the mayor and council about the needs of the city;
- (3) Administer and enforce all city ordinances, resolutions, franchises, leases, contracts, permits, and other city decisions;
- (4) Appoint, supervise and remove city employees;
- (5) Organize city departments and administrative structure;
- (6) Prepare and administer the annual city budget;
- (7) Administer city utilities and property;
- (8) Encourage and support regional and intergovernmental cooperation;
- (9) Promote cooperation among the council, staff and citizens in developing city policies, and building a sense of community;
- (10) Perform other duties as directed by the council;
- (11) Delegate duties, but remain responsible for acts of all subordinates.

(f) The manager has no authority over the council or over the judicial functions of the municipal judge.

(g) The manager and other employees designated by the council may sit at council meetings but have no vote. The manager may take part in all council discussions.

(h) When the manager is temporarily disabled from acting as manager or when the office becomes vacant, the council must appoint a manager pro tem. The manager pro tem has the authority and duties of manager, except that a pro tem manager may appoint or remove employees only with council approval.

(i) No council member may directly or indirectly attempt to coerce the manager or a candidate for the office of manager in the appointment or removal of any city employee, or in administrative decisions. Violation of this prohibition is grounds for removal from office by a majority of the council after a public hearing. In council meetings, councilors may discuss or suggest anything with the manager relating to city business.

(j) The manager may not serve as city recorder or city recorder pro tem.

#### Section 34. City Recorder.

(a) The office of city recorder is established as the council clerk, city custodian of records and city elections official. The recorder must attend all council meetings unless excused by the mayor or council.

(b) A majority of the council must appoint and may remove the recorder. The appointment must be made without regard to political considerations and solely on the basis of education and experience.

(c) When the recorder is temporarily disabled from acting as recorder or when the office becomes vacant, the council must appoint a recorder pro tem. The recorder pro tem has the authority and duties of recorder.

Section 35. City Attorney. The office of city attorney is established as the chief legal officer of the city government. A majority of the council must appoint and may remove the attorney. The attorney must appoint and supervise, and may remove any office employees.

#### Section 36. Municipal Court and Judge.

(a) A majority of the council may appoint and remove a municipal judge. A municipal judge will hold court in the city at such place as the council directs. The court will be known as the Sherwood Municipal Court.

(b) All proceedings of this court will conform to state laws governing justices of the peace and justice courts.

(c) All areas within the city and areas outside the city as permitted by state law are within the territorial jurisdiction of the court.

(d) The municipal court has jurisdiction over every offense created by city ordinance. The court may enforce forfeitures and other penalties created by such ordinances. The court also has jurisdiction under state law unless limited by city ordinance.

(e) The municipal judge may:

- (1) Render judgments and impose sanctions on persons and property;
- (2) Order the arrest of anyone accused of an offense against the city;
- (3) Commit to jail or admit to bail anyone accused of a city offense;
- (4) Issue and compel obedience to subpoenas;
- (5) Compel witnesses to appear and testify and jurors to serve for trials before the court;
- (6) Penalize contempt of court;
- (7) Issue processes necessary to enforce judgments and orders of the court;
- (8) Issue search warrants; and
- (9) Perform other judicial and quasi-judicial functions assigned by ordinance.

(f) The council may appoint and may remove municipal judges pro tem.

(g) The council may transfer some or all of the functions of the municipal court to an appropriate state court.

## Chapter IX

### PERSONNEL

Section 37. Compensation. The council must authorize the compensation of city appointive officers and employees as part of its approval of the annual city budget. The mayor and councilors may be reimbursed for actual expenses.

Section 38. Merit Systems. The council by resolution will determine the rules governing recruitment, selection, promotion, transfer, demotion, suspension, layoff, and dismissal of city employees based on merit and fitness.

## Chapter X

### PUBLIC IMPROVEMENTS

Section 39 Procedure. The council may by ordinance provide for procedures governing the making, altering, vacating, or abandoning of a public improvement. A proposed public improvement may be suspended for one year upon remonstrance by owners of the real property to be specially assessed for the improvement. The number of owners necessary to suspend the action will be determined by ordinance.

Section 40. Special Assessments. The procedure for levying, collecting and enforcing special assessments for public improvements or other services charged against real property will be governed by ordinance.

## Chapter XI

### MISCELLANEOUS PROVISIONS

Section 41. Debt. City indebtedness may not exceed debt limits imposed by state law. A charter amendment is not required to authorize city indebtedness.

Section 42. Solid Waste Incinerators. The operation of solid waste incinerators for any commercial, industrial, or institutional purpose is prohibited in the city. This applies to solid waste defined by ORS 459.005(24), and includes infectious wastes defined by ORS 459.386(2). This prohibition does not apply to otherwise lawful furnaces, incinerators, or stoves burning wood or wood-based products, petroleum products, natural gas, or to other fuels or materials not defined as solid waste, to yard debris burning, or to small-scale specialized incinerators utilizing solid waste produced as a byproduct on-site and used only for energy recovery purposes. Such small-scale incinerators are only exempt from this prohibition if they are ancillary to a city permitted or conditional use, and may not utilize infectious wastes or any fuels derived from infectious wastes. This prohibition does not apply to solid waste incinerators lawfully permitted to operate before September 5, 1990, but does apply to any expansion, alteration or modification of such uses or applicable permits. (Approved by voters November 6, 1990)

Section 43. Willamette River Drinking Water. Use of Willamette River water as a residential drinking water source within the city is prohibited except when such use has been previously approved by a majority vote of the city's electors. (Approved by voters November 2001)

Section 44. Ordinance Continuation. All ordinances consistent with this charter in force when it takes effect remain in effect until amended or repealed.

Section 45. Repeal. All charter provisions adopted before this charter takes effect are repealed.

Section 46. Severability. The terms of this charter are severable. If any provision is held invalid by a court, the invalidity does not affect any other part of the charter.

Section 47. Time of Effect. This charter takes effect July 1, 2005.

## **EXHIBIT A**

### **CITY OF SHERWOOD PROPOSED CITY COUNCIL RULES**

#### **A. AUTHORITY**

City Charter Section 10 provides that the Council must by resolution adopt rules to govern its meetings. The Council will review its rules at its first meeting in January of even numbered years. Amendments will be made as necessary. The Council will have clear and simple procedures for considering agenda matters.

#### **B. DEFINITIONS** As used in these Rules, the following mean:

- **City Committees:** All City committees, commissions, task forces, and advisory bodies.
- **Council and Council members:** The Mayor, the Council President, and the Councilors.
- **Councilors:** The Council President and the Councilors.
- **Mayor:** The Mayor or in the absence of the Mayor the Council President or other Presiding Officer.

#### **C. COUNCIL MEETINGS**

1. Regular Meetings to conduct Council business will be held each month.
2. Work Sessions to develop city policy will be held each month. Work sessions may be held in conjunction with Council business meetings. Work session agendas will be developed by the City Manager in consultation with the City Council.
3. Special Meetings may be called by the Mayor, Council President in the absence of the Mayor or by a majority of the Council.
4. Executive Sessions will be held in compliance with the Oregon Public Meetings law.
5. Minutes will be taken as provided by the Oregon Public Records law.
6. Telephonic/Electronic Meetings may be held in compliance with the Oregon Public Meetings law. Council members may participate and vote in Council meetings via telephone, electronically, or by other means consistent with the Oregon Public Meetings Law.

7. Attendance at meetings is expected of Council members who should use their best efforts to attend all Council meetings.

#### **D. AGENDA**

1. The agenda headings for Council business meetings are generally as follows:

- CALL TO ORDER
- PLEDGE OF ALLEGIANCE
- ROLL CALL
- CONSENT AGENDA
- CITIZEN COMMENTS
- NEW BUSINESS
- BUSINESS CARRIED FORWARD
- PUBLIC HEARINGS
- CITY MANAGER REPORT
- COUNCIL ANNOUNCEMENTS
- ADJOURNMENT

2. Preparation and scheduling of agenda items will be approved by the Mayor. Council members may request that items be placed on an agenda. Council members may make agenda suggestions at any Council meeting or by communication with the City Manager. Council members will make best efforts to reach consensus on agenda items and should obtain staff input before requesting an agenda item. Agendas will generally be set to allow meetings to end no later than 9:30 p.m. If the Council is still in session at 9:30 p.m., then the Council will decide whether to continue with the agenda or move items to a future agenda.
3. City committees will report to the Council during Council work sessions.

#### **E. COUNCIL DISCUSSIONS AND DECORUM**

1. Council members will conduct themselves so as to bring credit upon the city government by respecting the rule of law, ensuring non-discriminatory delivery of public services, keeping informed concerning the matters coming before the Council and abiding by all Council decisions, whether or not the member voted on the prevailing side.
2. Councilors will assist the Mayor to preserve order and decorum during Council meetings and may not, by conversation or other action, delay or interrupt the proceedings or refuse to obey the orders of the Mayor or Council rules. When addressing staff or members of the public, Councilors will confine themselves to questions or issues under discussion and not engage in personal attacks, or impugn the motives of any speaker.
3. The following ground rules will be observed to maintain order and

decorum during Council discussions:

- a. Council members will gather necessary information and ask questions of city staff before meetings.
- b. Council members will have an opportunity to speak at least once on any pending motion or agenda item, and will speak for themselves and not for other Council members.
- c. Council members will not speak on behalf of the Council, unless they have been authorized by the Council to do so.
- d. During public meetings, Council members will not attempt to edit or revise prepared ordinances. Amendments to proposed ordinances may be appropriate, but input from the City Manager or the City Attorney will be sought to accomplish the Council members' objectives.
- e. Council members will be open, direct and candid in the Council forum. Members should be brief and succinct in stating their views and focus on a single issue or topic at any one time.
- f. Council members will focus on city issues and avoid becoming involved in "extra-territorial" issues.
- g. The Mayor will recognize Councilors wishing to speak in the order of their requests. The Mayor will provide a Council member with an opportunity to speak before recognizing another Council member. Council members will not interrupt another Council member who has the floor.
- h. Council members will not disguise statements as questions or use repetitions as a way to convince others.
- i. Council members will keep discussions moving and call for a "process check" if the Council becomes bogged down in discussions.
- j. Council members will set and adhere to time limits on discussions.
- k. Council members will not criticize or attack each other, city staff or other persons.
- l. If a Council member wishes to discuss a major policy issue, it will be scheduled on a future agenda and not raised during a current agenda.

4. Public Comment.

- a. Citizen and community group sign-up forms will be available at each regular business meeting. At the time on the agenda designated for public comment and during any public hearing, any member of the public desiring to

address the Council must first request to be recognized by the Mayor and then state their name and address for the record. The Council may set time limits for comments. The Council may request that groups with like comments choose a spokesperson to present joint remarks.

b. During public hearings, all public comment should be directed to the question under discussion and addressed to the Mayor representing the Council as a whole.

c. In general, Council members will not respond to comments made during the public comment agenda time, except to ask clarifying questions. Any public requests for Council action will be referred to staff for review before placing on a future agenda.

## **F. MOTIONS**

### **1. General.**

a. Council member motions will be clearly and concisely stated. The Mayor will state the name of the Councilor who made the motion and the Councilor who made the second.

b. The motion maker, Mayor, or Manager should repeat the motion prior to voting.

c. Most motions die if they do not receive a second. Motions for nominations, withdrawal of a motion, agenda order, roll call votes, and a point of order do not require a second. Any motion on which a second is not made but on which discussion begins is automatically seconded by the Council member beginning the discussion.

d. Discussion of a motion is open to all Council members who wish to address the motion. A Council member may speak more than once on each motion. A Councilor must be recognized by the Mayor before speaking.

e. The Mayor will ask for a voice vote for all final decisions. All Council members are expected to vote on each motion unless they are disqualified for some reason. A Council member who does not vote must state the basis for any conflict of interest or other disqualification. The City Recorder will maintain a record of the votes. Any Council member may request a roll call vote on any motion.

f. At the conclusion of any vote, the Mayor will announce the results. Council members who wish to explain the reasons for their votes must do so briefly and succinctly.

### **2. Withdrawal. A motion may be withdrawn by the mover at any time without the consent of the Council.**

3. Tie. A motion that receives a tie vote fails.
4. Table. A motion to table is not debatable and precludes all amendments or further debate. If the motion prevails, the item may be taken from the table only by adding it to a future agenda for continued discussion.
5. Postpone. A motion to postpone to a certain date is debatable and amendable. A motion to postpone indefinitely is a motion to reject without a direct vote and is debatable and not amendable.
6. Call for Question. A motion to call for the question ends debate on the item and is not debatable. Before a Council member calls for the question, each Council member wishing to speak on the item should have at least one opportunity to speak. A second is required for this motion. When the question is called, the Mayor will inquire whether any Council member objects. If there is an objection, the matter will be put to a vote, and it fails without a two-thirds' vote. Debate may continue if the motion fails.
7. Amendment. A motion to amend may be made to a previous motion that has been seconded but not voted on. Amendments will be voted on first, then the main motion as amended (or not amended). Motions to adjourn, agenda order, table, point of order, take from table, and reconsider may not be amended.
8. Reconsideration. When a motion has been decided, any Council member who voted with the majority may move for reconsideration. A motion for reconsideration may only be made at the meeting at which the motion on the ordinance, resolution, order or other decision was approved.

#### **G. COUNCIL MEMBER CONDUCT**

1. Representing City. If a Council member appears before another governmental agency or organization to give a statement on an issue, the Council member must state:
  - a) Whether the statement reflects personal opinion or is the official position of the City; and
  - b) Whether the statement is supported by a majority of the Council.

If the Council member is representing the city, the Council member must support and advocate for the official city position on the issue rather than a personal viewpoint.
2. Censure.

a. The Council may make and enforce its own rules and ensure compliance with city and state laws applicable to governing bodies. If a Council member substantially violates these rules or state law, the Council may take action to protect Council integrity and discipline the Council member with a public reprimand.

b. The Council may investigate the actions of any Council member and meet in executive session to discuss any finding that reasonable grounds exist that a substantial violation has occurred. Under ORS 192.660(1)(b), the Council member under investigation may request an open hearing.

## **H. CONFIDENTIALITY**

1. Council members will keep all written materials provided to them on matters of confidentiality under law in complete confidence to insure that the City's position is not compromised. No mention of the information read or heard should be made to anyone other than other Council members, the City Manager or City Attorney.
2. If the Council meets in executive session, members should attempt to provide direction or consensus to staff on proposed terms and conditions for negotiations. All contact with other parties must be left to the designated staff or representative(s) handling the negotiations or litigation. Council members may not have any contact or discussion with any other party or its representative nor communicate any executive session discussion.
3. All public statements, information or press releases relating to a confidential matter will be handled by designated staff or a designated Council member.
4. Unless required by law, no Council member may make public the discussions or information obtained in executive session. Council may censure a member who discloses a confidential matter or otherwise violates these rules.

## **I. COMMUNICATION WITH STAFF**

1. Council will respect the separation between policy making (Council function) and administration (City Manager function) by:
  - a. Working with the staff as a team with a spirit of mutual respect and support.
  - b. Except in a Council meetings, not attempting to influence a city employee or the City Manager concerning personnel matters, purchasing issues, the award of contracts or the selection of consultants, the processing of development applications or granting of city licenses and permits. However, the sharing of ideas on these matters is appropriate.

- c. Limiting individual contacts with city staff to the City Manager or the Assistant City Manager so as not to influence staff decisions or recommendations, to interfere with their work performance, to undermine the City Manager authority or to prevent the full Council from having benefit of any information received.
  - d. Respecting roles and responsibilities of staff when and if expressing criticism in a public meeting or through public electronic mail messages.
2. All written informational material requested by Council members will be submitted by staff to the entire Council with a notation stating who requested the information.
  3. The Mayor will refer any comments or questions regarding city personnel or administration to the City Manager. The Mayor may redirect other questions to a Council member or the City Manager, as appropriate. Council members may also address questions directly to the City Manager, who may either answer the inquiry or ask a staff member to do so.

## **J. MINUTES**

1. Minutes will be prepared with sufficient detail to meet their intended use. Verbatim minutes are not required. The minutes of meetings of the Council will comply with provisions of ORS 192.650 by containing the following information at a minimum:
  - The name of Council members and staff present;
  - All motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition;
  - The result of all votes, including ayes and nays and the names of the Council members who voted.

The substance of the discussion on any matter.  
Reference to any document discussed at the meeting.
2. The Council may amend the minutes to more accurately reflect what transpired at the meeting. Upon receipt of the minutes in the Council agenda packet, the Council member should read and submit any changes, additions or corrections to the City Manager so that a corrected copy may be issued prior to the meeting for approval. Under no circumstances may the minutes be changed following approval by the Council, unless the Council authorizes such change.
3. The City Recorder or designee will make an audio recording of all meetings except for executive sessions. The City Recorder will maintain custody of all tapes, but a Council member may obtain a copy of any tape. A Council member may obtain a meeting transcript or partial transcript if it can be produced with nominal staff time. If a transcript would require a significant amount of staff time, the City Recorder may only produce the transcript with

Council approval. The City Recorder is authorized to produce transcripts as required by law.

**K. ADJOURNMENT**

1. Upon motion and majority vote of the Council members present, any meeting of the Council may be continued or adjourned from day to day or for more than one day. No adjournment may be for a period longer than until the next regular meeting.
2. Upon the request of two or more Council members a short recess may be taken during a Council meeting.
3. A motion to adjourn will be in order at any time except as follows:  
When made as an interruption of a member while speaking; or  
While a vote is being taken.

**L. BIAS AND DISQUALIFICATION**

1. Any proponent, opponent or other party interested in a quasi-judicial matter to be heard by Council may challenge the qualification of any Council member to participate in such hearing and decision. Any challenge must state any fact(s) relied upon by the party relating to a Council member's bias, pre-judgment, personal interest or other factor from which the party has concluded the Council member should not participate and may not make an impartial decision. Such challenges must be made prior to the commencement of the public hearing. The Mayor will give the challenged member an opportunity to respond. A motion to accept or deny the challenge will be accepted and voted upon by the Council. Such challenges and the Council's decision will be incorporated into the record of the hearing.
2. In quasi-judicial matters, each Council member must disclose participation in a prior decision or action on the matter that is before the Council. Common examples include when a Planning Commission member is elected or appointed to the City Council or when a Council member testifies at a Planning Commission meeting. The Council member must state whether the member can participate in the hearing with no regard for the prior decision made. If the Council member is unable to be impartial, the member has a duty not to participate in proceedings and leave the Council table.
3. If the Council believes that the member is actually biased, it may disqualify the member by majority vote from participating in a decision on the matter. A Council member who has been disqualified from participating in a decision may participate in the proceeding as a private citizen.
4. Generally, conflicts of interest arise in situations where a Council member, as a public official deliberating in a quasi-judicial proceeding, has an actual or potential financial interest in the matter before the Council. Under state law, an

actual conflict of interest is defined as one that would be to the private financial benefit of the Council member, a relative or a business with which the Council member or a relative is associated. A potential conflict of interest is one that could be to the private financial benefit of the Council member, a relative or a business with which the Council member or a relative is associated. A relative means the spouse, children, siblings or parents of the public official or public official's spouse. A Council member must publicly announce potential and actual conflicts of interest and, in the case of an actual conflict of interest, must refrain from participating in debate on the issue or from voting on the issue.

#### **M. EX PARTE CONTACTS AND DISQUALIFICATION**

1. For quasi-judicial hearings, Council members should refrain from having *ex parte* contacts relating to any issue of the hearing. *Ex parte* contacts are those contacts by a party on a fact in issue under circumstances that do not involve all parties to the proceeding. *Ex parte* contacts may be either oral statements when other interested parties are not present, or written information that other interested parties do not receive.
2. If a Council member has *ex parte* contact prior to a hearing, the member must reveal the contact at the meeting and before the hearing. The Council member must describe the substance of the contact and the Mayor will announce the right of interested persons to rebut the substance of the communication. The Council member also will state whether such contact affects their impartiality or ability to vote in the matter. The Council member must state whether the member will participate or abstain.
3. For quasi-judicial hearings, a Council member who was absent during the presentation of evidence may not participate in any deliberations or decision regarding the matter, unless the Council member reviews all the evidence and testimony received.

#### **N. GOVERNMENT STANDARDS AND PRACTICES COMMISSION REQUIREMENTS AND REPORTING**

1. Council members must review and observe the requirements of the State Ethics Law (ORS 244.010 to ORS 244.390) dealing with use of public office for private financial gain.
2. Council members must give public notice of any conflict of interest or potential conflict of interest and the notice will be reported in the meeting minutes. In addition to matters of financial interest, Council members will maintain the highest standards of ethical conduct and assure fair and equal treatment of all persons, claims and transactions coming before the Council.

3. In accordance with ORS 244.195, it is each Council member's responsibility to file annual statements of economic interest with the Government Standards and Practices Commission

**O. LEGAL ADVICE**

Requests to the City Attorney for advice requiring legal research may not be made by a Council member without the concurrence of the Council. Before requesting research or other action by the City Attorney, the Council members are encouraged to consider consulting with the City Manager to determine if the request or action can be accomplished more cost-effectively. Outside a Council meeting, a Council member should make requests of the City Attorney through the City Manager. Exceptions to this are issues related to the performance of the City Manager and unique/sensitive personal, yet City business-related, requests.

**P. ROBERT'S RULES**

Robert's Rules of Order Revised will be used as the guideline for conduct of Council meetings, except where these Rules specifically apply.

**Q. COMMITTEES, ORGANIZATIONS & MEDIA**

1. Citizen Appointment and Removal.
  - a. The Mayor will appoint the City committees, with the consent of the Council. The Mayor may request assistance from Councilors in making recommendations.
  - b. Council members will encourage broad participation on City committees by generally limiting the number of terms a citizen may serve on the same City committee.
  - c. A citizen may not serve on more than two City committees simultaneously. Any citizen serving on two City committees may not be chairperson of both City committees simultaneously.
  - d. With the consent of the Council, the Mayor may remove a citizen from a City committee prior to the expiration of the term of office.
2. Council Member Participation. Council members shall encourage City committee member participation.
3. Councilor Liaison.
  - a. The Mayor will appoint Councilors to liaison positions to city commissions and committees, including ad hoc or limited term committees, as the Mayor deems necessary.

- b. The role of the liaison member is to convey information from the Council to the commission or committee and from the commission or committee to the Council. The member is not to provide direction to the commission or committee, but rather to encourage work plans and recommendations for Council approval.
  - c. Council members as liaisons will not vote on any issue before the committee.
4. Organizations, Media.
- a. If the Mayor or a Council member represents the City before another governmental agency, a community organization, or the media, the Council member should first state the Council majority position. Personal opinions and comments should be expressed only if the Council member makes clear that it does not express the Council position.
  - b. Council members should obtain the appropriate permission before representing another Council member's view or position with the media.

## **R. MANAGER EVALUATION**

1. Criteria. The standards, criteria, and policy directives used in the evaluation of the Manager will be adopted at a regular Council meeting in accordance with state law.
2. Process.
  - a. The Manager will prepare a written self-assessment identifying major accomplishments.
  - b. Council members will make written comments in response to the Manager self-assessment.
  - c. Evaluation sessions will be scheduled in accordance with the employee's decision on whether to hold the evaluation in open or executive session.
  - d. At evaluation sessions, Council summary comments and individual Council member comments will be made. The Manager will have an opportunity to respond to all comments. The effect of the evaluation on the Manager's employment contract will be discussed. Sufficient time will be allotted for the evaluation discussion with the Manager.
  - e. Council members will then complete their individual evaluations and convene to discuss overall evaluation of the Manager and reach a consensus.

- f. Council will then reconvene with the Manager to review final performance evaluation and discuss compensation.
3. Contract. The City Attorney will prepare any employment contract amendments to the Manager's contract. Contracts normally will be approved as a consent agenda item at the next regular Council meeting.

**S. COUNCIL EXPENSES**

1. Reimbursement. Council will follow the same rules and procedures for reimbursement as city employees.
2. Budget. Council will review and discuss its proposed annual budget as coordinated by the Mayor and Council President and as presented by city staff during a public meeting.



## Calendar of Events

### 2012 Election Dates

| <b>Election Dates:</b>                      | <b>Mar 13<br/>Special</b> | <b>May 15<br/>Primary</b>               | <b>Sept 18<br/>Special</b> | <b>Nov 6<br/>General</b>                |
|---|---------------------------|---|----------------------------|---|
| <b>Filing Deadlines</b>                     |                           |   |                            |   |
| <b>Candidate:</b>                           |                           |   |                            |   |
| First Day to File                           | N/A                       | 01/26                                   | N/A                        | -                                       |
| Last Day to File                            | N/A                       | 03/06                                   | N/A                        | 08/28                                   |
| -----<br>*City Candidates                   |                           | -----<br>*Contact your<br>City Recorder |                            | -----<br>*Contact your<br>City Recorder |
| <b>Measure &amp; Explanatory Statement:</b> |                           |   |                            |   |
| Last Day to File                            | 01/12                     | 03/15                                   | 07/19                      | 09/06                                   |
| <b>Voters' Pamphlet:</b>                    |                           |   |                            |   |
| <b>Candidate:</b>                           |                           |   |                            |   |
| Voters' Pamphlet Deadline                   | N/A                       | 03/08                                   | N/A                        | 08/30                                   |
| -----<br>*City Candidates                   |                           | -----<br>*03/19                         |                            | -----<br>*09/10                         |
| Voters' Pamphlet Public view                | N/A                       | 03/14                                   | N/A                        | 09/06                                   |
| -----<br>*City Candidates                   |                           | -----<br>*03/23                         |                            | -----<br>*09/14                         |
| <b>Measure:</b>                             |                           |   |                            |   |
| Voters' Pamphlet Deadline                   | 01/17                     | 03/19                                   | 07/23                      | 09/10                                   |
| Voters' Pamphlet Public view                | 01/23                     | 03/23                                   | 07/27                      | 09/14                                   |
| <b>Voters' Pamphlet Mailout</b>             | w/Ballot                  | State                                   | w/Ballot                   | State                                   |
| <b>Ballot:</b>                              |                           |   |                            |   |
| 1st Day to Issue                            | 01/30                     | 04/02                                   | 08/06                      | 09/24                                   |
| Target Mailing Date                         | 02/24                     | 04/27                                   | 08/31                      | 10/19                                   |
| Last day to Mail out Replacements           | 03/08                     | 05/10                                   | 09/13                      | 11/01                                   |
| <b>Public:</b>                              |                           |   |                            |   |
| Registration Deadline (Postmarked by)       | 02/21                     | 04/24                                   | 08/28                      | 10/16                                   |
| Certification Test (9:00 am)                | 03/02                     | 05/04                                   | 09/07                      | 10/26                                   |

\*CITY CANDIDATES - See your City Recorder for Dates and Deadlines.

Dates are believed to be correct but are subject to change as a result of circumstances.

**OREGON  
GOVERNMENT ETHICS  
LAW**

**A GUIDE FOR PUBLIC OFFICIALS**



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Adopted October 2010

## **DISCLAIMER**

This guide has been approved by the Oregon Government Ethics Commission pursuant to ORS 244.320. ORS 244.320 requires this publication to explain in understandable terms the requirements of Oregon Government Ethics law and the Oregon Government Ethics Commission's interpretation of those requirements. Toward that end, statutes and rules have been summarized and paraphrased in this guide. Therefore, the discussion in this guide should not be used as a substitute for a review of the specific statutes and rules.

Any public official, business or any person shall not be liable under ORS Chapter 244 for any action or transaction carried out in accordance with Commission opinions set forth in this guide. "In accordance with" the opinions means that the fact circumstances of any action or transaction for which any public official, business or person shall not be liable must be the same fact circumstances for an action or transaction described in this guide as the basis for an opinion in this guide.

There may be other laws or regulations not within the jurisdiction of the Commission that apply to actions or transactions described in this guide.

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## INTRODUCTION

In 1974, voters approved a statewide ballot measure to create the Oregon Government Ethics Commission (Commission). The measure established laws that are contained in Chapter 244 of the Oregon Revised Statutes (ORS).

When the Commission was established, it was given jurisdiction to implement and enforce the provisions in ORS Chapter 244 related to the conduct of public officials. In addition, the Commission has jurisdiction for ORS 171.725 through 171.992, related to lobbying regulations, and ORS 192.660, which are the executive session provisions of Oregon Public Meetings law.

The Commission publishes a guide for lobbyists and clients or employers of lobbyists regulated under provisions in ORS Chapter 171. This guide for public officials includes a discussion of some provisions that may also apply to lobbying activities, which are addressed by Lobbying Regulations. This is especially true when a lobbying activity involves paying the expenses for meals, lodging, travel, entertainment or other financial benefits of a legislative or executive official. Under specific circumstances, ORS Chapter 244 would allow the payment of such expenses, but the public official may have a reporting requirement under ORS Chapter 244 and the source of the payment may be required to register as a lobbyist or report the expenditure. If you have questions regarding registering as a lobbyist, lobbying activity or reports for lobbying expenditures, please refer to our Guide to Lobbying in Oregon.

ORS 192.660 lists the specific criteria a governing body must use when convening an executive session. The statutory authority for executive sessions is limited to specific topics or procedures. This guide does not discuss that portion of the Oregon Public Meetings law, but there is a detailed discussion of ORS 192.660 in the Attorney General's Public Records and Meetings Manual, available on-line at [www.doj.state.or.us/public\\_records/manual.shtml](http://www.doj.state.or.us/public_records/manual.shtml).

This guide will discuss how the provisions in ORS Chapter 244 apply to public officials and will summarize Commission procedures. It should be used in conjunction with applicable statutes and rules. It is intended to be a useful discussion, in understandable terms, of topics and issues that are often the focus of inquiries the Commission receives from public officials and citizens. This guide should not be used as a substitute for a review of the specific statutes and rules.

You will find links to ORS Chapter 244, ORS Chapter 171.725 through 171.992, relevant Oregon Administrative Rules (OAR), and other publications referenced in this guide on the Commission's website at [www.oregon.gov/ogec](http://www.oregon.gov/ogec). Questions or comments may be submitted to the Commission by email at [ogec.mail@state.or.us](mailto:ogec.mail@state.or.us), by fax to 503-373-1456 or by telephone to 503-378-5105.

\*\*\*\*\*

## JURISDICTION

The jurisdiction of the Oregon Government Ethics Commission is limited to provisions in ORS Chapter 244, ORS 171.725 through 171.992 and ORS 192.660. Other Oregon statutes may also regulate the activities of elected officials and public employees. Some examples are:

- The Elections Division of the Secretary of State's Office regulates campaign finance and campaign activities.
- Criminal activity of any type would fall under the jurisdiction of federal, state or local law enforcement.
- The Commission does not have jurisdiction over the laws that govern public meetings or records, except for the executive session provisions in ORS 192.660.
- The Oregon Bureau of Labor and Industries investigates cases involving employment related sexual harassment or discrimination on the basis of race, religion, disability or gender.

There are occasions when a public official engages in conduct that may be viewed as unethical, but that conduct may not be governed by Oregon Government Ethics law. Without an apparent statutory violation, the following are some examples of conduct by public officials that are not within the authority of the Commission to address:

- An elected official making promises or claims that are not acted upon.
- Public officials mismanaging or exercising poor judgment when administering public money.
- Public officials being rude or unmannerly.
- Public officials using deception or misrepresenting information or events.

While the conduct described above may not be addressed in Oregon Government Ethics law, public agency policies and procedures may prohibit or redress the behavior. Please contact the Commission staff if you need further clarification regarding how the Oregon Government Ethics law may apply to circumstances you may encounter.

\*\*\*\*\*

## **PUBLIC OFFICIAL: AN OVERVIEW**

The provisions in Oregon Government Ethics law restrict some choices, decisions or actions of a public official. The restrictions placed on public officials are different than those placed on private citizens because service in a public office is a public trust and the provisions in ORS Chapter 244 were enacted to provide one safeguard for that trust.

Public officials must know that they are held personally responsible for complying with the provisions in Oregon Government Ethics law. This means that each public official must make a personal judgment in deciding such matters as the use of official position for financial gain, what gifts are appropriate to accept, or when to disclose the nature of conflicts of interest. If a public official fails to comply with the operative statutes, a violation cannot be dismissed by placing the blame on the public official's government employer or the governing body represented by the public official.

Since compliance is the personal responsibility of each public official, public officials need to familiarize themselves with the wide variety of resources that offer information or training on the provisions in Oregon Government Ethics law. First, there are the statutes in ORS Chapter 244 and the Oregon Administrative Rules (OAR) in Chapter 199. Second, the Commission website, [www.oregon.gov/oqec](http://www.oregon.gov/oqec), offers information, training and links to this guide, ORS Chapter 244 and OAR Chapter 199. Many government agencies offer training or the agency may request it from the Commission's trainers. There are a number of membership organizations, such as The League of Oregon Cities, Association of Oregon Counties, Oregon School Boards Association and Oregon Special Districts Association that provide training to public officials from their government members. It is imperative for government agencies or organizations that employ or represent public officials to ensure their public officials receive training in Oregon Government Ethics law. Those that fail to provide this training do a disservice to the public officials who they employ or who represent them.

One provision, which is the cornerstone of Oregon Government Ethics law, prohibits public officials from using or attempting to use their official positions or offices to obtain a financial benefit for themselves, relatives or businesses they are associated with through opportunities that would not otherwise be available but for the position or office held.

Public officials are allowed to receive salary and reimbursed expenses from their own government agencies. Under specific conditions public officials may also accept gifts. This guide will discuss those provisions.

Another provision that frequently applies to public officials when engaged in official actions of their official positions or offices is the requirement to disclose the nature of conflicts of interest. This guide will discuss the definition of a conflict of interest and describe the methods a public official must follow when met with a conflict of interest.

There is a requirement for some public officials who are elected to offices or hold other select positions to file an Annual Verified Statement of Economic Interest form. This guide

will discuss that filing requirement.

It is important for both public officials and members of the general public served by public officials to know that the provisions in Oregon Government Ethics law apply to the actions and conduct of individual public officials and not the actions of state and local governing bodies or government agencies. Each individual public official is personally responsible for complying with provisions in ORS Chapter 244. The statutes and rules discussed or illustrated in this guide do not and cannot address every set of circumstances a public official may encounter. When a public official is anticipating an official action or participation in an official event they must make a personal judgment as to the propriety of the action or the participation. The Commission staff is available to discuss the issues and offer guidance in making such judgments.

Oregon Government Ethics law addresses a wide range of actions, situations or events which a public official may encounter while serving a state or local government. This guide provides a discussion of the provisions that apply to circumstances that most public officials may encounter.

\*\*\*\*\*

## A PUBLIC OFFICIAL

### **Are you a public official?**

“Public official” is defined in ORS 244.020(14) as any person who, when an alleged violation of ORS Chapter 244 occurs, is serving the State of Oregon or any of its political subdivisions or any other public body as defined in ORS 174.109 as an elected official, appointed official, employee or agent, irrespective of whether the person is compensated for the services.

There are approximately 200,000 public officials in Oregon. You are a public official if you are:

- Elected or appointed to an office or position with a state, county or city government.
- Elected or appointed to an office or position with a special district.
- An employee of a state, county or city agency or special district.
- An unpaid volunteer for a state, county or city agency or special district.
- Anyone serving the State of Oregon or any of its political subdivisions, such as the State Accident Insurance Fund or the Oregon Health & Science University.

The Commission has adopted, by rule, additional language used to clarify the use of “agent in the definition of “public official.” The following is OAR 199-005-0035(7):

“As defined in ORS 244.020(14), a public official includes anyone serving the State of Oregon or any of its political subdivisions or any other public body in any of the listed capacities, including as an “agent.” An “agent” means any individual performing governmental functions. Governmental functions are services provided on behalf of the government as distinguished from services provided to the government. This may include private contractors and volunteers, depending on the circumstances. This term shall be interpreted to be consistent with Attorney General Opinion No. 8214 (1990).”

### **If I am a volunteer, does that make me a public official?**

If the position for which you have volunteered serves the State of Oregon or any of its political subdivisions or any other public body, “irrespective of whether” you are “compensated” you are a public official. It is difficult to determine how many public officials are volunteers, but the number may approach 50,000. Volunteers may be elected, appointed or selected by the government agency or public body to hold a position or office or to provide services.

Among the public officials who volunteer, there are elected or appointed members of

governing bodies of state boards or commissions, city councils, planning commissions, fire districts, school districts and many others. There are also many who apply and are selected to perform duties for a government agency, board or commission without compensation, such as fire fighters, reserve law enforcement officers and parks or recreation staff members.

The Commission recognizes that there are many who volunteer to work without compensation for many state and local government agencies, boards, commissions and special districts. This guide provides criteria to identify volunteers who will be considered public officials when applying the provisions in ORS Chapter 244.

If any one of the following elements apply to a volunteer position, the person holding that volunteer position will be defined as a “public official”:

- Elected or appointed to a governing body of a public body
- Appointed or selected for a position with a governing body or a government agency with responsibilities that include deciding or voting on matters that could have a pecuniary impact on the governing body, agency or other persons
- The volunteer position includes all of the following:
  1. Responsible for specific duties
  2. The duties are performed at a scheduled time and designated place.
  3. Volunteer is provided with the use of the public agency’s resources and equipment.
  4. The duties performed would have a pecuniary impact on any person, business or organization served by the public agency.

For purposes of ORS Chapter 244, volunteers are not public officials if they perform such tasks as picking up litter on public lands, participating in a scheduled community cleanup of buildings or grounds, participating in locating and eradicating invasive plants from public lands and other such occasional or seasonal events.

### **How are relatives of public officials affected by Oregon Government Ethics law?**

Public officials must always comply with state law when participating in official actions that could result in personal financial benefits and also when participating in official actions that could result in financial benefits for a relative. Public officials should also know there may be limits and restrictions on gifts their relatives may accept when offered.

There are provisions in ORS Chapter 244 that restrict or prohibit a public official from using or attempting to use official actions of the position held to benefit a relative; or may limit the value of financial benefits accepted by a relative of the public official or may require the public official to disclose the nature of a conflict of interest when a relative may receive a financial benefit. These provisions are discussed more comprehensively in the use of

position or office section starting on page 9, the gifts section starting on page 26 and the conflicts of interest section starting on page 21.

### **Who is a relative?**

Public officials need to know how Oregon Government Ethics law defines who a “relative” is. In everyday conversation the use of “relative” is applied to a broader spectrum of individuals with “family ties” than those defined as relatives in ORS 244.020(15). When a provision in ORS Chapter 244 refers to “relative” it means one of the following:

- **Spouse** of a public official or candidate
- **Children** of a public official or candidate
- **Children of the spouse** of a public official or candidate
- **Siblings** of a public official or candidate
- **Siblings of the spouse** of a public official or candidate
- **Spouse of siblings** of a public official or candidate
- **Spouse of siblings of the spouse** of a public official or candidate
- **Parents** of the of public official or candidate
- **Parents of the spouse** of a public official or candidate
- **Person** for whom the public official or candidate has a **legal support obligation**
- **Person benefiting from a public official** when benefits are from the public official’s public employment
- **Person who provides benefits to a public official** or candidate when benefits are from the person’s employment

For purposes of “relatives” defined by the last two bulleted items, examples of benefits may include, but not be limited to, elements of an official compensation package including benefits such as insurance, tuition or retirement allotments.

### **How do the laws apply to a public official who either owns or is employed by a private business?**

As with the definition of relative, public officials need to know how Oregon Government Ethics law defines what a “business” is or what a “business with which the person is associated is.” The same sound judgment a public official exercises when participating in actions that could result in a financial benefit to the public official or a relative of the public official should be used when participating in actions that could result in a financial benefit to a business with which the public official or the relative is associated.

There are provisions in ORS Chapter 244 that restrict or prohibit a public official from using actions of the position held to benefit a business with which the public official or a relative is associated. The provisions may also require the public official to disclose the nature of a conflict of interest when a business may receive a financial benefit.

ORS 244.020(2) provides the definition of a “**business,**” paraphrased as follows:

A “business” is a legal entity that has been formed for the purpose of producing income.

- Excluded from this definition are income-producing organizations that are not-for-profit and tax exempt under section 501(c) of the Internal Revenue Code, if a public official or a relative of the public official holds membership or an unpaid position as a member of the board of directors.
- It is important to remember that state and local government or special district entities are not formed for the purpose of producing income, which means they are not businesses.

ORS 244.020(3) provides the definition of a “**business with which the person is associated,**” paraphrased as follows:

In brief, a public official or the relative of the public official is associated with a business in the following circumstances:

- When, during the preceding calendar year, a public official or relative has held a position as director, officer, owner, employee or agent of a private business or a closely held corporation in which the public official or relative held or currently holds stock, stock options, equity interest or debt instrument over \$1,000.
- When, during the preceding calendar year, the public official or relative has owned or currently owns stock, equity interest, stock options or debt instruments of \$100,000 or more in a publicly held corporation.
- When the public official or relative is a director or officer of a publicly held corporation.
- When a public official is required by ORS 244.050 to file an Annual Verified Statement of Economic Interest form and the business is listed as a source of household income.

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## USE OF POSITION OR OFFICE

### **What are the provisions of law that prohibit a public official from using the position or office held for financial gain?**

As defined earlier, public officials become public officials through employment, appointment, election or volunteering. **ORS 244.040(1) prohibits every public official from using or attempting to use the position held as a public official to obtain a financial benefit, if the opportunity for the financial benefit would not otherwise be available but for the position held by the public official.** The financial benefit prohibited can be either an opportunity for gain or to avoid an expense.

Not only is a public official prohibited from using the position as a public official to receive certain financial benefits, but the public official is prohibited from using or attempting to use the position as a public official to obtain financial benefits for a relative or a member of the public official's household. Also prohibited is the use or attempted use of the public official position to obtain financial benefits for a business with which the public official, a relative, or a member of the public official's household is associated.

Public officials often have access to or manage information that is confidential and not available to members of the general public. **ORS 244.040(4) specifically prohibits public officials from attempting to use confidential information** gained because of the position held or by carrying out assigned duties to further the public official's personal gain. **ORS 244.040(5) also prohibits a former public official from attempting to use confidential information for personal gain** if that confidential information was obtained while holding the position as a public official, from which access to the confidential information was obtained.

**ORS 244.040(6) also has a single provision to address circumstances created when public officials, who are members of the governing body of a public body, own or are associated with a specific type of business.** The type of business is one that may occasionally send a representative of the business who appears before the governing body on behalf of a client for a fee. Public officials who are members of governing bodies and own or are employed by businesses, such as a law, engineering or architectural firm, may encounter circumstances in which this provision may apply. For example, a member of a city council who is an architect has a developer as a client of the architect's business. If the developer has a proposed subdivision to be approved by the city council, the architect may not appear before the city council on behalf of the client developer. Another person representing the client developer on behalf of the architect's business may appear, but not the councilor/architect.

There are a variety of actions that a public official may take or participate in that could constitute the prohibited use or attempted use of the public official position. The use of a position could be voting in a public meeting, placing a signature on a government agency's document, making a recommendation, making a purchase with government agency funds, conducting personal business on a government agency's time or with a government

agency's resources [i.e. computers, vehicles, heavy equipment or office machines].

The following examples are offered to illustrate what may constitute prohibited use or attempted use:

- The mayor of a city signs a contract obligating the city to pay for janitorial services provided by a business owned by a relative of the mayor.
- A city treasurer signs a city check payable to an office supply business that is owned by a relative.
- A city billing clerk alters water use records so that the amount billed to the clerk's parents will be less than the actual amount due.
- A volunteer firefighter borrows the fire district's power washer to prepare the exterior of the volunteer's personal residence for painting.
- A county public works employee stores a motor home that is owned by the employee's parents in a county building used for storing heavy equipment.
- An employee of a state agency has a private business and uses the agency's computer to advance the business by promoting, corresponding and managing the activities of the private business.
- A school district superintendent approves and signs her own request for reimbursement of personal expenses the superintendent incurred when conducting official business.

**NOTE:** While these examples are offered to illustrate the use of a public official's position prohibited by ORS 244.040(1), the practices in the examples may also illustrate occasions where a public official may be met with a conflict of interest as defined in ORS 244.020(1) and (12). There are circumstances when a public official may comply with provisions in ORS 244.040(1) while violating conflict of interest provisions in ORS 244.120 or the reverse [ORS 244.040(7)]. Refer to the detailed discussion of conflicts of interest starting on page 21.

**Are there any circumstances in which a public official may use their position to accept financial benefits that would not otherwise be available but for holding the position as a public official?**

Yes, ORS 244.040(2) provides a list of financial benefits that would not otherwise be available to public officials but for holding the position as a public official. The following financial benefits are not prohibited and may be accepted by a public official and some may also be accepted by a public official's relative or member of the public official's household:

**Official Compensation:** Public officials may accept any financial benefit that is identified by the public body served by the public official as part of the "official compensation package" of the public official. If the public body identifies such benefits as salary, health insurance or various paid allowances in the employment agreement or contract of a public official, those financial benefits are part of the "official compensation package." [ORS 244.040(2)(a)]

OAR 199-005-0035(3) provides a definition of “official compensation package:”

An “official compensation package” means the wages and other benefits provided to the public official. To be part of the public official's “official compensation package”, the wages and benefits must have been specifically approved by the public body in a formal manner, such as through a union contract, an employment contract, or other adopted personnel policies that apply generally to employees or other public officials. “Official compensation package” also includes the direct payment of a public official's expenses by the public body, in accordance with the public body's policies.

The Commission often receives complaints that allege that a public official is using or attempting to the position held to gain financial benefits prohibited by ORS 244.040(1). Occasionally the financial benefits in these complaints are gained through the use of the public body's resources. Some examples are use of a vehicle for personal transportation, use of a computer for a personal private business enterprise or use of telecommunications equipment for personal business. Some respondents to complaints that involve the use a public body's resources will defend their use as being consistent with an informal longstanding practice. The financial benefit to a public official, from the use of a public body's resources, from what may be understood as an informal and longstanding practice does not meet the definition of part of an “official compensation package.” This is because the practice has not been specifically approved by the public body in a formal manner.

Reimbursement of Expenses: A public official may accept payments from the public official's public body as reimbursement for expenses the public official has personally paid while conducting the public body's business [ORS 244.040(2)(c)].

The Commission has provided a definition in OAR 199-005-0035(4):

The “reimbursement of expenses’ means the payment by a public body to a public official serving that public body, of expenses incurred in the conduct of official duties on behalf of the public body. Any such repayment must comply with any applicable laws and policies governing the eligibility of such repayment.”

There are occasions when someone will refer to the payment of a public official's expenses by a person or entity other than the public official's public body as a reimbursement of expenses. That is not the reimbursement of expenses as used in ORS 244.040(2)(c) and defined in OAR 199-005-0035(4). If the payment of a public official's personal expenses does not meet this definition, it may be a financial benefit prohibited or restricted by other provisions in ORS Chapter 244.

There are occasions when public officials are reimbursed for travel expenses the public official has paid while conducting official duties on behalf of the public official's public body. Sometimes the public body will prearrange for a public official's travel and pay the expenses in advance. Such advance payments are also viewed by the Commission

as the reimbursement of expenses allowed by ORS 244.040(2)(c).

Some public officials hold positions identified in ORS 244.050 as having a requirement to file the Annual Verified Statement of Economic Interest (SEI) form in April of each year. This requirement will be discussed elsewhere in this guide, but some who must submit the SEI forms believe that travel related expenses paid by the public official's public body must be listed in the SEI form. That is not true. Expenses paid by the public body to their own public officials need not be reported by the public official under ORS 244.060 [OAR 199-005-0035(4)].

Honorarium: Public officials are allowed to accept honorarium by ORS 244.040(2)(b) as it is defined in ORS 244.020(7). A public official must know how honorarium is defined because there are many occasions when someone will offer them a financial benefit and call it an honorarium, but it does not meet the definition of honorarium in ORS 244.020(7).

A payment or something of economic value given to a public official in exchange for services provided by the public official is an honorarium when the setting of the economic value has been prevented by custom or propriety. The services provided by a public official may include but not be limited to speeches or other services provided in connection with an event. A public official may not accept honorarium if the value exceeds \$50 [ORS 244.042(3)(a)].

In brief, for a payment or something of economic value to be defined as an honorarium, several conditions must be met:

- The offer of a payment or something of economic value cannot be arranged or agreed to before the public official provides services.
- The services provided by the public official must precede the offer of payment or something of economic value.
- The payment or something of economic value must be delivered in return for and following the delivery of services.

Public officials may accept honorarium for services performed in relation to the private profession of the public official, although public officials must be sure, when they are offered a payment or something of economic value and it is referred to as an honorarium, that it does meet the definition in ORS 244.020(7). If it does not meet this definition, it may be a financial benefit prohibited or restricted by other provisions in ORS Chapter 244.

Awards for Professional Achievement: Public officials may accept an award, if the public official has not solicited the award, and the award is offered to recognize a professional achievement of the public official [ORS 244.040(2)(d)].

Awards for professional achievement should not be confused with awards of appreciation, allowed by ORS 244.020(6)(b)(C), honorarium allowed by ORS 244.040(2)(b), or gifts that are allowed or restricted by other provisions in ORS Chapter 244.

Awards for professional achievement are best illustrated by awards that denote national or international recognition of a public official's achievement. These awards may also be offered by public or private organizations in the state that are meant to recognize a public official for an achievement. Professional achievements recognized may be identified as a single accomplishment or an accomplishment achieved during a period of time, such as a calendar year or a public official's career upon retirement. Public officials may be educators, lawyers, certified public accountants or may hold a doctorate in some field. These public officials may receive awards recognizing achievements in their fields and those awards would be considered by the Commission to be awards regulated by ORS 244.040(2)(d).

Contributions to Legal Expense Trust Fund: There are provisions in ORS 244.209 that allow public officials who have become a respondent to a complaint under Oregon Government Ethics law to establish a legal expense trust fund. ORS 244.040(2)(h) allows a public official who has established this trust fund to solicit, accept and be the trustee for contributions to the established fund.

Gifts: Public officials may accept gifts [ORS 244.040(2)(e),(f) and (g)]. There are circumstances in which there are no limits on the quantity or aggregate value of gifts that can be accepted by a public official. On the other hand, there are circumstances when the aggregate value of gifts accepted by a public official is restricted. There may also be reporting requirements that apply to public officials who accept gifts and to sources that provide the gifts. Refer to the detailed discussion of issues related to gifts starting on page 26.

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## NEPOTISM

### **Does Oregon Government Ethics law prevent two or more relatives from being employees of the same public body?**

No. Public officials who are relatives can be employed by the same public body employer at the same time, or serve on the same governing body of a public body at the same time.

However, ORS Chapter 244 does address the issue of “nepotism.” Nepotism, as used in ORS Chapter 244, is based on the relative relationship alone. The definition of “relative” in ORS Chapter 244 [ORS 244.175(4)] takes on a broader meaning when applying ORS 244.175 through ORS 244.179:

- **Spouse** of a public official
- **Children** of the public official or spouse
- **Parents** of the public official or spouse
- **Stepparents** of the public official or spouse
- **Stepchildren** of the public official or spouse
- **Brothers** of the public official or spouse
- **Sisters** of the public official or spouse
- **Half-brothers** of the public official or spouse
- **Half-sisters** of the public official or spouse
- **Brothers-in-law** of the public official or spouse
- **Sisters-in-law** of the public official or spouse
- **Sons-in-law** of the public official or spouse
- **Daughters-in-law** of the public official or spouse
- **Mothers-in-law** of the public official or spouse
- **Fathers-in-law** of the public official or spouse
- **Aunts** of the public official or spouse
- **Uncles** of the public official or spouse
- **Nieces** of the public official or spouse
- **Nephews** of the public official or spouse

### **What are the provisions that address nepotism?**

After complying with the conflict of interest provisions in ORS 244.120, public officials cannot participate in any personnel action taken by the public agency that would impact the employment of a relative or member of the public official’s household. A public official may not participate in the following [ORS 244.177(1)]:

- Appointing, employing or promoting
- Discharging, firing or demoting
- Interviewing
- Discussing or debating the appointment, employment, promotion, discharge, firing or demotion

**NOTE:** Public officials who are elected members of the Oregon Legislative Assembly are not prohibited from participating in employment actions taken on positions held by relatives of the member's personal staff [ORS 244.177(2)].

A public official who is assigned duties that include performing "ministerial acts" related to any stage of a relative's employment is not prohibited from performing such acts. "Ministerial acts" would include mailing or filing forms or correspondence, taking and relaying messages, scheduling appointments or preparing documents and minutes for public meetings.

A public official may serve as a reference or provide a recommendation for a relative who has applied for a position of employment, promotion or is subject to any personnel action.

If a public official has a relative or a member of the public official's household who has applied to be or serves as an unpaid volunteer, the public official may participate in any personnel action that involves the relative or member of the household. This provision only applies to unpaid volunteers who provide services to the public body and does not apply to unpaid volunteers who serve or seek appointment to a governing body of a public body. [ORS 244.177(3)(a) and (b)]

A public official may not directly **supervise** a person who is a relative or member of the public official's household [ORS 244.179], except when:

- The public official is an elected member of the Oregon Legislative Assembly
- The public official is supervising an unpaid volunteer for the public body

Volunteers who are relatives or members of the household of a public official may be supervised by the public official. However, this would not apply if the volunteer position is as a member of the governing body of the public body. [ORS 244.179(3)]

ORS 244.179(4) allows a public body to adopt policies that specify when a public official, acting in an official capacity for the public body, may directly supervise a person who is a relative or member of the public official's household.

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## PRIVATE EMPLOYMENT OF PUBLIC OFFICIAL

**Does Oregon Government Ethics law prohibit a public official from owning a private business or working for a private employer while continuing employment with or holding a position with a public body?**

No. As mentioned earlier, many public officials are volunteers, meaning there is little or no compensation for the public position. Other public officials may receive compensation, but choose to seek additional sources of income. Some work for a private business and others establish a private business of their own. **NOTE: This guide does not address other statutes or agency policies that may limit private employment for public officials.**

ORS 244.040(3) prohibits a public official from, directly or indirectly, soliciting or accepting the promise of future employment based on the understanding that the offer is influenced by the public official's vote, official action or judgment. Any employer who may directly or indirectly offer employment under these conditions may also violate this provision.

In general, public officials may obtain employment with a private employer or engage in private income producing activity of their own. They must not use the position held as a public official to create the opportunity for additional personal income. The public official must also ensure that there is a clear distinction between the use of personal resources and time for personal income producing activity and the use of the public body's time and resources. The Commission has created guidelines for public officials to follow in order to avoid violating Oregon Government Ethics law when engaged in private employment or a personally owned business.

### **GUIDELINES FOR OUTSIDE EMPLOYMENT OF PUBLIC OFFICIALS**

1. Public officials are not to engage in private business interests or other employment activities on their governmental agency's time.
2. A governmental agency's supplies, facilities, equipment, employees, records or any other public resources are not to be used to engage in private business interests.
3. The position as a public official is not to be used to take official action that could have a financial impact on a private business with which you, a relative or member of your household are associated.
4. Confidential information gained as a public official is not to be used to obtain a financial benefit for the public official, a relative or member of the public official's household or a business with which any are associated.
5. When participating in an official capacity and met with a potential or actual conflict of interest related to a business, associated with the public official, relative or household member, the public official must disclose the nature of the conflict of interest using one of the following methods:
  - o Employees of governmental agencies must give written notice to their appointing authority.
  - o Elected or appointed public officials must publicly disclose once during each meeting convened by the governing body they serve.

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## EMPLOYMENT OF FORMER PUBLIC OFFICIALS

**How would Oregon Government Ethics law apply when a former public official is employed by a business that has a contract with the public body previously represented by the former public official?**

For two years after a public official ceases holding or being employed in a position as a public official, that public official may not have a direct beneficial financial interest in a public contract when one of the parties to the contract is the public official's former public body if the contract was authorized by [ORS 244.047(2) and (3)]:

- The former public official, who authorized the contract while acting in the capacity previously held as a public official.
- The former public official, as a member of a governing body [board, commission, council, bureau, committee], participated in official action to approve the contract.

“Authorized by” is defined in OAR 199-005-0035(6) as meaning that the former public official had a significant role in the contracting process to include participating on a selection committee, recommending approval, voting, giving final authorization or signing a contract. The definition in the rule is as follows:

“As used in ORS 244.047, a public contract is “authorized by” a public official if the public official performed a significant role in the selection of a contractor or the execution of the contract. A significant role can include recommending approval or signing of the contract, including serving on a selection committee or team, or having the final authorizing authority for the contract.

**What are the restrictions on employment after I resign, retire or leave my public official position?**

- ORS 244.040(1) prohibits public officials from using their official positions or offices to create a new employment opportunity; otherwise, most former public officials may enter the private work force with few restrictions.
- ORS 244.040(5) prohibits a former public official from attempting to use confidential information for personal gain if the confidential information was obtained while holding the position as a public official.
- Oregon Government Ethics law restricts the subsequent employment of certain public officials. The restrictions apply to positions listed below:

ORS 244.045(1)  
State Agencies:

Director of Department of Consumer and Business Services

Administrator of Division of Finance and Corporate Securities  
Administrator of Insurance Division  
Administrator of Oregon Liquor Control Commission  
Director of Oregon State Lottery  
Public Utility Commissioner

1. One year restriction on gaining financial benefits from a private employer in the activity, occupation or industry that was regulated by the agency for which the public official was the Director, Administrator or Commissioner.
2. Two year restriction on lobbying or appearing as a representative before the agency on behalf of the activity, occupation or industry regulated by the agency for which the public official was the Director, Administrator or Commissioner.
3. Two year restriction on disclosing confidential information gained as the Director, Administrator or Commissioner for the agency.

ORS 244.045(2)

Oregon Department of Justice:

Deputy Attorney General  
Assistant Attorney General

1. Restricted for two years from lobbying or appearing before an agency that they represented while with the Department of Justice.

ORS 244.045(3)

Office of the Treasurer:

State Treasurer  
Chief Deputy State Treasurer

1. Restricted for one year from accepting financial benefit from a private entity with which there was negotiation or contract awarding \$25,000 in one year by the State Treasurer or Oregon Investment Council.
2. Restricted for one year from accepting financial benefit from a private entity with which there was investment of \$50,000 in one year by the State Treasurer or Oregon Investment Council.
3. Restricted for one year from being a lobbyist for an investment institution, manager or consultant or from appearing as a representative of an investment institution, manager or consultant before the office of State Treasurer or Oregon Investment Council.

ORS 244.045(4)

Public Officials who invested public funds:

1. Restricted for two years from being a lobbyist or appearing before the agency, board or commission for which public funds were invested.
2. Restricted for two years from influencing or trying to influence the agency, board or commission.
3. Restricted for two years from disclosing confidential information gained through employment.

ORS 244.047

Public Officials who authorized a public contract:

1. A public official who authorized or had a significant role in a contract while acting in an official capacity may not have a direct, beneficial, financial interest in the public contract for two years after leaving the official position.
2. A member of a board, commission, council, bureau, committee or other governing body who has participated in the authorization of a public contract may not have a direct, beneficial, financial interest in the public contract for two years after leaving the official position.

OAR 199-005-0035(6) indicates that "authorized by" means that public official performed a significant role in the selection of a contractor or the execution of the contract. A significant role can include recommending approval of a contract, serving on a selection committee or team, having the final authorizing authority or signing a contract.

ORS 244.045(5)

Department of State Police

Supervising programs related to Native American tribal gaming  
Supervising programs related to Oregon State Lottery

1. Restricted for one year from accepting employment from or gaining financial benefit related to gaming from the Lottery or a Native American Tribe.
2. Restricted for one year from gaining financial benefit from a private employer who sells gaming equipment or services.
3. Restricted for one year from trying to influence the Department of State Police or from disclosing confidential information.

Exceptions include subsequent employment with the state police,

appointment as an Oregon State Lottery Commissioner, Tribal Gaming Commissioner or lottery game retailer, or personal gaming activities.

ORS 244.045(6)  
Legislative Assembly

Representative  
Senator

After a legislator's membership in the Legislative Assembly ends, a legislator may not become a compensated lobbyist until adjournment of the next regularly scheduled session of the Legislative Assembly following the end of membership in the Legislative Assembly. *[Note: In 2008 and 2010, the first special sessions are considered to be regular sessions.]*

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## CONFLICTS OF INTEREST

**How does a public official know when they are met with a conflict of interest and, if met with one, what must they do?**

Oregon Government Ethics law identifies and defines two types of conflicts of interest. An **actual conflict of interest** is defined in ORS 244.020(1) and a **potential conflict of interest** is defined in ORS 244.020(12). In brief, a public official is met with a conflict of interest when participating in official action which could or would result in a financial benefit or detriment to the public official, a relative of the public official or a business with which either is associated.

**The difference between an actual conflict of interest and a potential conflict of interest is determined by the words “would” and “could.”** A public official is met with an **actual** conflict of interest when the public official participates in action that **would** affect the financial interest of the official, the official’s relative or a business with which the official or a relative of the official is associated. A public official is met with a **potential** conflict of interest when the public official participates in action that **could** affect the financial interest of the official, a relative of that official or a business with which the official or the relative of that official is associated. The following hypothetical circumstances are offered to illustrate the difference between actual and potential conflicts of interest:

A city councilor is employed by a building supply business from which the city public works director purchases building materials. City payments on invoices must be submitted to the city council and approved by a vote. The city councilor, who is employed by the building supply business, while participating in a meeting, would be met with an **actual conflict of interest** when the request to pay the invoice from the business that employs the councilor is presented to the city council for official action.

A member of a fire district board of directors owns a sheetrock contracting business. The fire district is planning to remodel a fire station in the district. To reduce cost, the district will manage the project and solicit bids from contractors for specified work, such as the sheetrock that needs to be installed. The member on the board of directors, who is the contractor, while participating in a meeting of the board of directors, would be met with a **potential conflict of interest** when the members discuss or act on the invitation for bids on the sheetrock installation.

### **What if I am met with a conflict of interest?**

A public official must announce or disclose the nature of a conflict of interest. The way the disclosure is made depends on the position held. The following public officials must use the methods described below:

#### **Legislative Assembly:**

Members must announce the nature of the conflict of interest in a manner pursuant

to the rules of the house in which they serve. The Oregon Attorney General has determined that only the Legislative Assembly may investigate and sanction its members for violations of conflict of interest disclosure rules in ORS 244.120(1)(a). [49 Op. Atty. Gen. 167 (1999) issued on February 24, 1999]

**Judges:**

Judges must remove themselves from cases giving rise to the conflict of interest or advise the parties of the nature of the conflict of interest. [ORS 244.120(1)(b)]

**Public Employees:**

Public officials in public bodies who are appointed, employed or volunteer must provide a written notice to the person who appointed or employed them. The notice must describe the nature of the conflict of interest with which they are met. [ORS 244.120(1)(c)]

**Elected Officials or Appointed Members of Boards and Commissions:**

Except for members of the Legislative Assembly, these public officials must publicly announce the nature of the conflict of interest before participating in any official action on the issue giving rise to the conflict of interest. [ORS 244.120(2)(a) and ORS 244.120(2)(b)]

- Potential Conflict of Interest: Following the public announcement, the public official may participate in official action on the issue that gave rise to the conflict of interest.
- Actual Conflict of Interest: Following the public announcement, the public official must refrain from further participation in official action on the issue that gave rise to the conflict of interest. [ORS 244.120(2)(b)(A)]

If a public official is met with an actual conflict of interest and the public official's vote is necessary to meet the minimum number of votes required for official action, the public official may vote. The public official must make the required announcement and refrain from any discussion, but may participate in the vote required for official action by the governing body. [ORS 244.120(2)(b)(B)] These circumstances do not often occur. This provision does not apply in situations where there are insufficient votes because of a member's absence when the governing body is convened. Rather, it applies in circumstances when all members of the governing body are present and the number of members who must refrain due to actual conflicts of interest make it impossible for the governing body to take official action.

**The following circumstances may exempt a public official from the requirement to make a public announcement or give a written notice describing the nature of a conflict of interest:**

- If the conflict of interest arises from a membership or interest held in a particular business, industry, occupation or other class and that membership is a prerequisite

for holding the public official position. [ORS 244.020(12)(a)] For example, if a member of a state board is required by law to be employed in a specific occupation, such as an accountant or a doctor, then the official actions taken by the board member that affect all accountants or doctors to the same degree would be exempt from the conflict of interest disclosure requirements and participation restrictions.

- If the financial impact of the official action would impact the public official, relative or business of the public official to the same degree as other members of an identifiable group or “class”. The Commission has the authority to identify a group or class and determine the minimum size of that “class.” [ORS 244.020(12)(b) and ORS 244.290(3)(a)] For example, if a county commissioner votes to approve a contract to improve or maintain a county road that leads to the property the commissioner owns, but the improvements would also benefit many other property owners to the same degree, the commissioner would be exempt from the conflict of interest disclosure requirements and participation restrictions. The number of persons affected to the same degree as the public official will help to determine whether this exception applies.
- If the conflict of interest arises from an unpaid position as officer or membership in a nonprofit corporation that is tax-exempt under 501(c) of the Internal Revenue Code. [ORS 244.020(12)(c)] For example, a city councilor is also an unpaid board member or member at the local YMCA. The decision, as a city councilor, to award a grant to that YMCA would be exempt from the conflict of interest disclosure requirements and participation restrictions.

#### **How is the public announcement of the nature of a conflict of interest recorded?**

- The public body that is served by the public official will record the disclosure of the nature of the conflict of interest in the official records (minutes, audio/video recording) of the public body. [ORS 244.130(1)]

#### **Is a public official required to make an announcement of the nature of a conflict of interest each time the issue giving rise to the conflict of interest is discussed or acted upon?**

- The announcement needs to be made on each occasion when the public official is met with the conflict of interest. Each time a public official is met with a conflict of interest the nature must be disclosed. For example, an elected member of the city council would have to make the public announcement one time when met with the conflict of interest, but only one time in each meeting of the city council. If the matter giving rise to the conflict of interest is raised at another meeting, the disclosure must be made again at that meeting. Another example would involve an employee in a city planning department who would have to give a separate written notice before each occasion they encounter a matter that gives rise to a conflict of interest. [ORS 244.120(3)]

**If a public official failed to announce the nature of a conflict of interest and participated in official action, is the official action voided?**

- No. Any official action that is taken may not be voided by any court solely by reason of the failure of the public official to disclose an actual or potential conflict of interest [ORS 244.130(2)]. However, the public official faces the potential of personal liability for the violation.

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## LEGAL EXPENSE TRUST FUND

### **If a public official is the respondent to a complaint, can the public official solicit funds in order to pay for the cost of a legal defense?**

The Oregon Government Ethics Commission can authorize a public official to establish a trust fund to be used to defray expenses incurred for a legal defense in any civil, criminal or other legal proceeding that relates to or arises from the course and scope of duties of the person as a public official. [ORS 244.205]

The provisions regarding the establishment of this fund are detailed in ORS 244.205 through ORS 244.221. If a public official is considering the need to establish a legal expense trust fund, these provisions should be reviewed. The Commission staff is available to provide guidance on the procedures. The following are some of the significant elements of a legal expense trust fund:

- A public official may only have one trust fund at any one time [ORS 244.205(4)].
- The application to establish the fund must be submitted to the Commission for review and authorization. ORS 244.209 details what information and documents must accompany the application.
- The public official may act as the public official's fund trustee [ORS 244.211(2)].
- Once authorized and established, any person may contribute to the fund [ORS 244.213].
- Contributions from a principal campaign committee are not allowed [ORS 244.213(3)].
- Funds must be maintained in a single exclusive account [ORS 244.215].
- Quarterly reports of contributions and expenditures from the fund are required [ORS 244.217].
- The fund must be terminated within six months after the legal proceeding for which the fund was established has been concluded [ORS 244.219].
- When terminated, funds must be used to pay legal expenses, returned to contributors or donated to an organization exempt from taxation under section 501(c)(3) of the internal Revenue Code [ORS 244.221].

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## GIFTS

When Oregon Government Ethics law uses the word “gift” it has the meaning in ORS 244.020(6)(a):

“Gift’ means something of economic value given to a public official, a candidate or a relative or member of the household of the public official or candidate:

(A) Without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to “others” who are not public officials or candidates or the relatives or members of the household of public officials or candidates on the same terms and conditions; or

(B) For valuable consideration less than that required from “others” who are not public officials or candidates.”

**The Commission interprets “others” to indicate a significant portion of the general public in Oregon who are not public officials or candidates.**

In other words, a “gift” is something of economic value that is offered to,

- A public official or candidate or to relatives or members of the household of a public official or candidate,
- Without cost or at a discount or as forgiven debt and,
- The same offer is not made or available to the general public who are not public officials or candidates.

**[NOTE:** In the following discussion, references to candidates are omitted to simplify the discussion. In most of the discussion, if you are a candidate, read the references to public official to mean “public official or candidate, if elected.”]

Oregon Government Ethics law establishes a framework of conditions for public officials to apply when they, their relatives or members of their households are offered gifts. If offered a gift, the public official must analyze the offer and decide if “something of value” can be accepted with or without restrictions.

There are restrictions on the value of gifts accepted by a public official, if the source of the gift has a legislative or administrative interest in decisions or votes the public official makes when acting in the capacity of a public official.

Legislative or administrative interest is defined in ORS 244.020(9) and is used, primarily, when applying the law to gifts accepted by public officials. Whether there is a legislative or administrative interest is pivotal to any decision a public official makes on accepting gifts. It

will mean the difference between being allowed to accept gifts without limits, accepting gifts with a limit of \$50 on the aggregate value, or accepting gifts under specific conditions and within specific parameters. As will be apparent in the following discussion, the burden of any decision on accepting a gift rests solely with the individual public official.

### **What does a public official need to know about a “Legislative or Administrative Interest”?**

Beginning in 2010, the change to the definition of what a legislative or administrative interest is represents one of the most significant changes made in Oregon Government Ethics law during the 2009 session of the Oregon Legislative Assembly.

The change is significant because knowing if the source of a gift has a legislative or administrative interest will help determine whether the gift offered can be accepted without limits or with restrictions. Before this change, a public official only had to know if a gift was offered from a source with a legislative or administrative interest in official actions of the public official’s governmental agency. Now the focus is on the votes or decisions of each individual public official. The change places greater responsibility on the individual public official to decide if a gift can be accepted without limits or with restrictions imposed by ORS Chapter 244. Not every public official makes decisions or casts votes, as those actions are used in defining a legislative or administrative interest. This means that when gifts are offered to two or more public officials, in the same setting, one public official may be allowed to accept the offer without limits and another public official may be able to accept the offer, but it would be limited as to value or restricted by conditions that must be met when accepting.

The definition of a legislative or administrative interest as set forth in ORS 244.020(9) as follows:

“‘Legislative or administrative interest’ means an economic interest, distinct from that of the general public, in:

(a) Any matter subject to the decision or vote of the public official acting in the public official’s capacity as a public official; or

(b) Any matter that would be subject to the decision or vote of the candidate who, if elected, would be acting in the capacity of a public official.”

In the context of gifts accepted by a public official, the public official must determine if the source of the offered gift has a legislative or administrative interest in the decisions or votes of the public official. When analyzing a set of circumstances and applying “legislative or administrative interest”, there are several factors to consider:

Source: The Commission adopted a rule that identifies the source of a gift as the person or entity that makes the ultimate and final payment of the gift’s expense. OAR 199-005-0030 places two burdens on a public official who accepts gifts. The

public official must know the identity of the source and, if applicable, avoid exceeding the limit on the aggregate value of gifts accepted from that source. [OAR 199-005-0030(2)]

Distinct from that of the general public: With regard to gifts, this phrase refers to a distinct economic interest held by the source of a gift. That economic interest is in the financial gain or loss that could result from any votes cast or decisions made by a public official. If the source of a gift would realize a financial gain or detriment from a vote or decision of a public official, that source has an economic interest in that public official. That economic interest is "distinct from that of the general public", if the potential financial gain or detriment is distinct from the financial impact that would be realized by members of the general public from the votes or decisions of that same public official.

There are decisions or votes that have an economic impact on single individuals or individuals from specific businesses or groups that are distinct from the economic impact on members of the general public. On the other hand, there are many votes or decisions made by public officials that have the same general economic impact on individuals, businesses, organizations and members of the general public. Some examples of decisions or votes that would have an economic impact on the general public would be those that change water usage rates, fees for licenses or permits or fines for parking violations.

To illustrate, private contractors have an economic interest in any public official who has the authority to decide or vote to award them contracts. The economic interest of these contractors is distinct from the economic interest held by members of the general public in those decisions or votes.

To further illustrate, real estate developers have an economic interest in any public official who has the authority to decide or vote to approve their land use applications or building permits. The economic interest of these developers is distinct from the economic interest held by members of the general public in those decisions or votes.

Vote: This has the common meaning of to vote as an elected member of a governing body of a public body or as an appointed member of a committee, commission or board appointed by a governing body, Oregon Legislative Assembly or the Office of the Governor.

Decision: The Commission adopted OAR 199-005-0003 and defines "decision" in OAR 199-005-0003(2). A public official makes a decision when the public official exercises the authority given to the public official to commit the public body to a particular course of action. Making a recommendation or giving advice in an advisory capacity does not constitute a decision.

The change to the definition of a legislative or administrative interest places the focus on

the decision or vote of each individual public official. That means that any decision to accept or reject the offer of a gift must be made individually by each public official. It also means that there will be some public officials who may accept unlimited gifts from a source and other public officials within the same public body that would have restrictions on gifts from that same source. This is because not all public officials in the same public body have the same authority, responsibilities or duties. Some may vote and make decisions, others may do one but not the other and many will not vote or make decisions, as “decision” is used in legislative or administrative interest.

There are public officials who, because they hold positions specified in ORS 244.050, must file the Annual Verified Statement of Economic Interest (SEI) form with the Commission on April 15 of each year. Some information listed in that form is required when certain financial interests, assets or liabilities, are related to a source with a legislative or administrative interest in the votes or decisions of the public official submitting the form. Refer to the table of contents to find the discussion of the SEI form in this guide.

Any discussion of gifts must begin with the reminder that if the source of the offer of a gift to a public official does not have a legislative or administrative interest in the decisions or votes of the public official, the public official can accept unlimited gifts from that source. [ORS 244.040(2)(f)]

If the source of the offer of a gift to a public official has a legislative or administrative interest in the decisions or votes of the public official, the public official can only accept gifts from that source when the aggregate value of gifts from that source does not exceed \$50 in a calendar year. [ORS 244.025]

While gifts from a source with a legislative or administrative interest in the decisions or votes of a public official have a \$50 limit, there are some gifts that are excluded from the definition of a “gift.” If the offer of a gift is excluded from the definition of a “gift,” the offer may be accepted by a public official. The value of gifts that are allowed as exclusions does not have to be included when calculating the aggregate value of gifts received from that source in one calendar year. [ORS 244.020(6)(b)]

Sources who offer gifts or other financial benefits to public officials must also be aware of the provisions in ORS Chapter 244. While the specific gift of paid expenses may be allowed by ORS 244.020(6)(b)(F), ORS 244.100(1) requires the source of this gift, if over \$50, to notify the public official in writing of the aggregate value of the paid expenses. There is also a notice requirement in ORS 244.100(2) for the source of an honorarium when the value exceeds \$15. Lobbyists, clients or employers of lobbyist and others who provide gifts or financial benefits to public officials should also familiarize themselves with the provisions in ORS 171.725 through ORS 171.992 and Divisions 5 and 10 of Chapter 199 in the Oregon Administrative Rules. The Commission has published a “Guide to Lobbying in Oregon” that provides a summary of these regulations and rules.

As previously mentioned, there are gifts that are allowed because they are excluded from the definition of a “gift” when offered under specific conditions or when prerequisites are

met. Although some gifts are allowed, it should be remembered that a source may have a notice requirement or there may be reporting requirements for the public official or the source. If you are a public official accepting gifts or a source offering gifts, it is important you become familiar with the requirements that may apply to you.

ORS 244.020(6)(b) provides a description of the **GIFTS THAT ARE ALLOWED** as exclusions to the definition of a "gift":

**[NOTE:** Not all of these exclusions apply to gifts offered to candidates.]

- Campaign contributions as defined in ORS 260.005. *[ORS 244.020(6)(b)(A)]*
- Contributions to a legal expense trust fund established under ORS 244.209. *[ORS 244.020(6)(b)(G)]*
- Gifts from relatives or members of the household of public officials or candidates. *[ORS 244.020(6)(b)(B)]*
- Anything of economic value received by a public official or candidate, their relatives or members of their household when; *[ORS 244.020(6)(b)(O)]*

The receiving is part of the usual and customary practice of the person's business, employment, or volunteer position with any legal non-profit or for-profit entity. *[ORS 244.020(6)(b)(O)(i)]*

The receiving bears no relationship to the person's holding the official position or public office. *[ORS 244.020(6)(b)(O)(ii)]*

- Unsolicited gifts with a resale value of less than \$25 and in the form of items similar to a token, plaque, trophy and desk or wall mementos. *[ORS 244.020(6)(b)(C) and see resale value discussed in OAR199-005-0010]*
- Publications, subscriptions or other informational material related to the public official's duties. *[ORS 244.020(6)(b)(D)]*
- Waivers or discounts for registration fees or materials related to continuing education or to satisfy a professional licensing requirement for a public official or candidate. *[ORS 244.020(6)(b)(J)]*
- Entertainment for a public official or candidate and their relatives or members of their households when the entertainment is incidental to the main purpose of the event. *[ORS 244.020(6)(b)(M) and see OAR 199-005-0001(3) and OAR 199-005-0025(1) for meaning of "incidental"]*
- Entertainment for a public official, a relative of the public official or a member of the public official's household when the public official is acting in an official capacity and

representing a governing agency for a ceremonial purpose. [ORS 244.020(6)(b)(N) and see “ceremonial” defined in OAR 199-005-0025(2)]

- Cost of admission or food and beverage consumed by the public official, a member of the public official’s household or staff when they are accompanying the public official, who is representing government, state, local or special district, at a reception, meal or meeting held by an organization. [ORS 244.020(6)(b)(E) and see this exception discussed in OAR 199-005-0015]
- Food or beverage consumed by a public official or candidate at a reception where the food and beverage is an incidental part of the reception and there was no admission charged. [ORS 244.020(6)(b)(L) and OAR 199-005-0025(1) also see OAR 199-005-0001(3) and (8)]
- When public officials travel together inside the state to an event bearing a relationship to the office held and the public official appears in an official capacity, a public official may accept the travel related expenses paid by the accompanying public official. [ORS 244.020(6)(b)(K)]
- Payment of reasonable expenses if a public official is scheduled to speak, make a presentation, participate on a panel or represent a government agency at a convention, conference, fact-finding trip or other meeting. The paid expenses for this exception can only be accepted from another government agency, Native American Tribe, an organization to which a public body pays membership dues or not-for-profit organizations that are tax exempt under 501(c)(3). [ORS 244.020(6)(b)(F) and see definition of terms for this exception in OAR 199-005-0020]
- Payment of reasonable food, lodging or travel expenses for a public official, a relative of the public official or a member of the public official’s household or staff may be accepted when the public official is representing the government agency or special district at one of the following: [ORS 244.020(6)(b)(H) and see definition of terms for this exception in OAR 199-005-0020]
  - Officially sanctioned trade promotion or fact-finding mission; [ORS 244.020(6)(b)(H)(i)]
  - Officially designated negotiation or economic development activity when receipt has been approved in advance. [ORS 244.020(6)(b)(H)(ii)]

**[NOTE:** How and who may officially sanction and officially designate these events is addressed in OAR 199-005-0020(2)(b).]

- Payment of reasonable expenses paid to a public school employee for accompanying students on an educational trip. [ORS 244.020(6)(b)(P)]

- Food and beverage when acting in an official capacity in the following circumstances: *[ORS 244.020(6)(b)(l)]*
  - In association with a financial transaction or business agreement between a government agency and another public body or a private entity, including such actions as a review, approval or execution of documents or closing a borrowing or investment transaction; *[ORS 244.020(6)(b)(l)(i)]*
  - When the office of the Treasurer is engaged in business related to proposed investment or borrowing; *[ORS 244.020(6)(b)(l)(ii)]*
  - When the office of the Treasurer is meeting with a governance, advisory or policy making body of an entity in which the Treasurer's office has invested money. *[ORS 244.020(6)(b)(l)(iii)]*

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## GIFTS AS AN EXCEPTION TO THE USE OF OFFICE PROHIBITION IN ORS 244.040

Since ORS 244.040 was amended in 2007, the acceptance of gifts that comply with ORS 244.020(6) and ORS 244.025 is excluded from the prohibition on public officials' use or attempted use of an official position to gain financial benefits. If a public official or relative accepts a lawful gift, or a lawful financial benefit that qualifies as an exception to the definition of a gift, ORS 244.040(1) does **not** prohibit the acceptance.

The discussion below is intended to assist public officials in understanding this distinction. There are more focused discussions of gifts starting on page 26 and the use of position or office starting on page 9. It should be understood this section may paraphrase information discussed more comprehensively in those areas of this guide. Also, the application of the gift provisions to candidates is not part of this discussion because, unless the candidate also qualifies as a public official on another basis, candidates are not public officials; therefore, the use of an official position prohibited by ORS 244.040(1) would not apply to a candidate who is not also a public official.

Oregon Government Ethics law does not prohibit public officials from accepting gifts [ORS 244.040(2)(e), (f) and (g)], but it does place on each individual public official the direct and personal responsibility to understand there are circumstances when the aggregate value of gifts may be restricted. Public officials are also prohibited from using or attempting to use a position held by the public official to obtain a prohibited financial benefit. These provisions of Oregon Government Ethics law often converge and require public officials to analyze and determine whether the opportunity to obtain financial benefits represents the use of an official position prohibited by ORS 244.040(1) or a gift addressed with other provisions in ORS Chapter 244 [ORS 244.020(6), ORS 244.025 or ORS 244.040(2)(e),(f) and (g)].

### Is it a gift?

Public officials must understand the operative definition of a "gift" when deciding whether a gift may be accepted by a public official or candidate. The following is a paraphrase of the definition taken from ORS 244.020(6)(a):

**Gift: "Something of economic value" given to a public official, a relative of the public official or a member of the public official's household for which the recipient either makes no payment or makes payment at a discounted price. The opportunity for the gift is one that is **not available to members of the general public**, who are not public officials, **under the same terms and conditions as** those that apply to the gift offered to **the public official**, the relative or a member of the household.**

**If something of economic value is received by a public official from the government agency employer or the public body represented by the public official, that financial benefit is not considered a gift**, it is a financial benefit addressed by ORS 244.040 and it is either allowed or prohibited.

Sources of gifts are private individuals, businesses, organizations or government agencies, but **not the agency represented by or employing the public official**. Sources may also be co-workers or representatives of the same public body who have purchased a gift with their **personal** resources.

Gifts may be accepted by a public official, if the source does not have a legislative or administrative interest in the votes or decisions of the public official. Specific gifts may be accepted, if the conditions of the offer exclude the gift from being defined as a gift [ORS 244.020(6)(b)(A) through (P)]. Gifts that are not excluded from the definition may be accepted from a source as long as the aggregate value of gifts from that source does not exceed \$50 in a calendar year. For additional assistance, see the discussion beginning on page 37 titled, "What if I am offered a gift?"

### **Is it a prohibited use of position?**

Unlike gifts, which come from outside sources, ORS 244.040(1) focuses on the public official's own actions. ORS 244.040(1) prohibits the **use or attempted use of the position** held by the public official to obtain benefits which are only available because of that position.

The prohibited financial benefits might take several forms. A public employee might have access to job related resources, business opportunities, or information, and might want to take financial advantage of this access. The financial benefit might be the avoidance of a personal expense, acquiring something of economic value, gaining extra income from private employment, or creating a new employment opportunity.

Although this "use of position" applies to situations where something of value is obtained, or there is an attempt to obtain something of value, **the Commission applies Oregon Government Ethics law to "something of economic value" offered to a public official that meets the definition of "gift," it will be addressed as a gift in the analysis and application of the law.** The following are some examples to illustrate the Commission's approach:

### **NOTE THAT IN THE FOLLOWING EXAMPLES, THE SOURCES OF THE FINANCIAL BENEFITS HAVE A LEGISLATIVE OR ADMINISTRATIVE INTEREST IN THE DECISIONS OR VOTES OF THE PUBLIC OFFICIALS.**

That is important to remember because if there were no legislative or administrative interest the public officials may be allowed to accept the offers without restrictions. [ORS 244.040(2)(f)]

- A salesperson from a software company offers to take the county's information technology manager out to lunch. Because the manager has purchasing authority, the salesperson has an administrative interest in the manager. The meal would be a gift and, if accepted, the value would be included in the aggregate value of gifts, which cannot exceed \$50 from a single source in one calendar year. [ORS 244.025(1)] If the meal cost less than \$50, the manager may accept it, but should

keep a record of the gift and should be careful in future situations not to accept additional gifts from this source if the value would exceed \$50 total for the year. Of course, if the lunch costs more than \$50, the manager may not accept it in any case.

- A city manager attends a work-related conference paid for by the city. When the city manager checks out of the hotel, she is offered a coupon for two nights of free lodging at any hotel in the nationwide chain. Because the city manager is in charge of her own travel arrangements, the hotel has an administrative interest in her future hotel-booking decisions. If accepted and used for personal lodging, it would be a gift and the value would be included in the aggregate value of gifts, which cannot exceed \$50 from a single source in one calendar year. *[ORS 244.025(1)]* Note that if the city had adopted an official compensation package (as defined in OAR 199-005-0035) that included a provision allowing the city manager to use “loyalty program” benefits for personal use, the coupon could have been accepted.
- A county finance officer attends a work-related conference paid for by the county. When arriving at the conference the finance officer, as with others in attendance, is offered a gift basket containing assorted goods from the organization hosting the conference. Because the organization sells goods or services the finance officer has the authority to purchase, the source of the gift has an administrative interest in the finance officer. Typically, such a gift basket would be a “gift” and, if accepted, the value would be included in the aggregate value of gifts, which cannot exceed \$50 from a single source in one calendar year. *[ORS 244.025(1)]* However, the law does not prohibit accepting things that are made available to a significant portion of the general public under the same terms and conditions. If the conference was open to members of the general public, and the attendees included a wide range of public and private participants, the baskets would not be considered gifts.
- A state employee is sent by his agency to attend a two-day training conference. A salesperson is near the conference registration table and offers a collection of gifts valued at over \$100 to all registrants. As in the last example, because the employee has the authority to purchase goods or services sold by the salesperson, the source of the gifts has an administrative interest in the state employee. Let’s also assume that the conference is only open to government employees. Under these circumstances the offered items would be gifts and any accepted could not exceed the \$50 limit on aggregate value from a single source in one calendar year. *[ORS 244.025(1)]*
- During the same conference, the state employee is going out to dinner after the conference adjourns for the day. While passing through the hotel lobby, he stops to speak with the salesperson who offered the gifts during the conference registration. The salesperson asks to join the state employee for dinner and offers to pay for the meal. The value of the meal would be included with the value of any gifts accepted earlier in the aggregate value of gifts, which cannot exceed \$50 in one calendar year. *[ORS 244.025(1)]*

- A city mayor goes out to lunch in a local city restaurant. During lunch a well known developer approaches the mayor and offers to pay for the mayor's meal. The developer has a legislative or administrative interest in decisions the mayor could make on his construction projects. The value of the meal, if accepted, would be included in the aggregate value of gifts from a source, which cannot exceed \$50 from a single source in one calendar year. [ORS 244.025(1)]
- A chief deputy who manages procurement for a county sheriff's office attends a conference on newly developed equipment for law enforcement agencies. Upon arrival, the deputy purchases with personal funds several "raffle tickets" each representing a chance to win a shotgun from the manufacturer valued at \$500. The opportunity to buy the tickets is only available to those attending the conference. During the final session of the conference the "raffle" ticket drawing is held and the chief deputy wins the shotgun. As explained above, if the conference was only open to public officials, or if few non-public employees were in attendance, the shotgun would be a gift and, if accepted, the value would be included in the aggregate value of gifts, which cannot exceed \$50 from a single source in one calendar year. [ORS 244.025(1)]

**When the Commission applies Oregon Government Ethics law to a financial benefit obtained by a public official by using or attempting to use an opportunity that would not otherwise be available but for the position or office held, ORS 244.040(1) will be used in the analysis and application of the law.** The following are some examples to illustrate the Commission's approach:

- A city recorder has overseen the installation and implementation of a new software program to manage the city's financial records. The distributor of this software has a training event scheduled for employees who work for other cities' governments. The city recorder has been asked to participate as a trainer at the events and the distributor has offered to provide compensation and pay any expenses for food, lodging and travel. If the city recorder accepted this offer, it could constitute the use of the official position to gain a financial benefit because the opportunity for the compensation and paid expenses would not be available but for holding the position and performing the duties as the city recorder. [ORS 244.040(1)]
- A deputy fire chief, who is in charge of procuring equipment for fire stations in the district, locates a vendor that offers the make and model of an extension ladder to replace obsolete ladders in the district's stations. To increase the fire district's discount on each ladder, the deputy fire chief adds several extra ladders to the order. The deputy fire chief and two relatives take personal possession of the extra ladders and pay the fire district the amount the district paid for the ladders. The deputy fire chief would violate ORS 244.040(1) because the discounted price to the deputy fire chief and the relatives represents the use of position to avoid a financial detriment (discount) that is prohibited.

- A city council has scheduled a public council meeting in a room at a local restaurant. Before the scheduled meeting the councilors plan to use city funds to purchase dinner for councilors, the councilor's spouses and members of the city's staff attending the scheduled meeting. The councilors, who are accompanied by a spouse, would violate ORS 244.040(1) because the cost of the meal for the spouse would represent the use of position to avoid a financial detriment that is prohibited.

The responsibility for judgments and decisions made in order to comply with the various provisions in Oregon Government Ethics law rests with the individual public official who faces the circumstances that require a judgment or decision. That is true of questions regarding gifts, use of an official position, announcing the nature of conflicts of interest and the many situations addressed in ORS Chapter 244.

### **What if I am offered a gift?**

First, insure you know the identity of the source of the gift. Remember, the source of a gift is the person or entity that made the ultimate payment for the gift's expense [See page 27].

Second, determine if the source of the gift has an economic interest in decisions or votes you make in your official capacity as a public official. If that economic interest is distinct from the interest held by members of the general public it is a legislative or administrative interest [See page 27].

- If the source does not have a legislative or administrative interest, gifts from that source are not prohibited or limited as to value or quantity.
- If the source has a legislative or administrative interest, you must answer the following questions:
  1. Is the gift offered under the conditions that would allow you to accept the gift because it is excluded from what is defined as a "gift"? These exclusions are found in ORS 244.020(6)(b) and described on pages 30 - 32 of this guide.
  2. What is the value of the gift? Remember, you can accept gifts [not excluded from the definition of "gift".] from a single source when the aggregate value of gifts from that source does not exceed \$50 in a calendar year. [ORS 244.025]

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## ANNUAL VERIFIED STATEMENT OF ECONOMIC INTEREST

There are approximately 5,500 Oregon public officials who must file an **Annual Verified Statement of Economic Interest (SEI)** form with the Oregon Government Ethics Commission by **April 15 of each calendar year**.

The **public officials who are required to file reports are specified in ORS 244.050**. Please refer to that section of the law to see if your specific position requires you to file these forms. In general, public officials who hold the following positions are required to file:

- State public officials who hold elected or appointed executive, legislative or judicial positions. This includes those who have been appointed to positions on certain boards or commissions.
- In counties, elected officials, such as commissioners, assessors, surveyors, treasurers and sheriffs must file, as do planning commission members and the county's principal administrator.
- In cities, all elected officials, the city manager or principal administrator, municipal judges and planning commission members must file.
- Administrative and financial officers in school districts, education service districts and community college districts must file.
- Some members of the board of directors for certain special districts must file.
- Candidates for some elected public offices are also required to file.

The Commission staff has identified the positions held by public officials who must file the SEI form and has them listed by jurisdiction. Each jurisdiction [city, county, executive department, board or commission, etc.] has a person who acts as the Commission's point of contact for that jurisdiction [OAR 199-020-0005(1)].

The **contact person** for each jurisdiction has an important role in the annual filing of the SEI forms. It is through the contact person that the Commission obtains the current name and address of each public official who is required to file. When there is a change, through resignation, appointment or election, in who holds a position, the contact person notifies the Commission. If there is a change in the filer's mailing address, it is the contact person who notifies the Commission.

As with other provisions in Oregon Government Ethics law, it is each public official's personal responsibility to ensure they comply with the requirement to complete and submit the SEI form by April 15. Those public officials who must file a SEI form are well served if the contact person ensures that the Commission has the correct name and address of the public official.

Beginning in January of each year the Commission prepares a list by jurisdiction of each public official required to file the SEI form. A list for each jurisdiction is sent to the contact person. The contact person is required to review the list for accuracy. After entering the necessary changes, the contact person must return the list that has been reviewed and corrected to the Commission by February 15. [OAR 199-020-0005(2)]

The contact person from each jurisdiction should ensure that each filer has been advised of the reporting requirements. Each filer should also receive information as to the procedures the jurisdiction follows to assist the filer in meeting the SEI filing requirement.

Based on the information provided by each of the jurisdictions' contacts, the Commission sends an annual SEI form directly to each individual public official required to file the form.

Again, the requirement to file the SEI is the personal responsibility of each public official. Each public official should comply and file timely, as the civil penalties for late filing are \$10 for each of the first 14 days after the filing deadline and \$50 for each day thereafter until the aggregate penalty reaches the maximum of \$5,000. [ORS 244.350(4)(c)]

### **SEI Form**

When the forms are distributed in March of each year, the instructions and definitions are also included to assist the filer in completing the forms. The information needed to complete the form pertains to the previous calendar year.

NOTE: Only public officials who hold a position that is required to file, and who holds the position on April 15 of the year the SEI is due, must complete the form.

The following is a brief description of the information requested in the SEI form:

- Name and address of each business in which a position as officer or director was held by the filer or member of the household. [ORS 244.060(1)]
- Name and address of each business through which the filer or member of the household did business. [ORS 244.060(2)]
- Name and address and brief description of the sources of income for the filer and members of the household that represent 10 percent or more of the annual household income. [ORS 244.060(3)]
- Ownership interests held by the filer or members of the household in real property, except for the principal residence, located within the geographic boundaries of the governmental agency in which the filer holds the position or seeks to hold. [ORS 244.060(4)(a) and (b)]
- Honoraria or other items allowed by ORS 244.042 that exceed \$15 in value given to the filer or members of the filer's household. Include a description of the honoraria or item

and the date and time of the event when the item was received [ORS 244.060(7)]. Remember that honorarium cannot exceed \$50. [ORS 244.042(3)(a)]

- Name of each lobbyist associated with any business the filer or a member of the household is associated, unless the association is through stock held in publicly traded corporations. [ORS 244.090]
- If the public official received over \$50 from an entity to participate in a convention, fact-finding mission, trip, or other meeting as allowed by ORS 244.020(6)(b)(F), list the name and address of the entity that paid the expenses. Include the event date, aggregate expenses paid, purpose for participation a copy of the notice of aggregate value paid. [ORS 244.060(5) and ORS 244.100(1)] [Not required for candidates]
- If the public official received over \$50 from an entity to participate in a trade promotion, fact-finding mission, negotiations or economic development activities as allowed by ORS 244.020(6)(b)(H), list the name and address of the person that paid the expenses. Include the event date, aggregate expenses paid and nature of the event. [ORS 244.060(6)] [Not required for candidates]

The following is required if the information requested relates to an individual or business that has been or could reasonably be expected to do business with the filer's governmental agency or has a legislative or administrative interest in the filer's governmental agency:

- Name, address and description of each source of income (taxable or not) that exceeds \$1,000 for the filer or a member of the filer's household. [ORS 244.060(8)]
- Name of each person the filer or member of the filer's household has owed \$1,000 or more. Include the date of the loan and the interest rate. Debts on retail contracts or with regulated financial institutions are excluded. [ORS 244.070(1)]
- Business name, address and nature of beneficial interest over \$1,000, or investment held by the filer or a member of the household in stocks or securities over \$1,000. Exemptions include mutual funds, blind trusts, deposits in financial institutions, credit union shares and the cash value of life insurance policies. [ORS 244.070(2)]
- Name of each person from whom the filer received a fee of over \$1,000 for services, unless disclosure is prohibited by a professional code of ethics. [ORS 244.070(3)]

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## OREGON GOVERNMENT ETHICS COMMISSION

The Governor appoints all seven members of the Commission and each appointee is confirmed by the Senate. The commissioners are recommended as follows [ORS 244.250]:

- 1 Recommended by the Senate Democratic leadership
- 1 Recommended by the Senate Republican leadership
- 1 Recommended by the House Democratic leadership
- 1 Recommended by the House Republican leadership
- 3 Recommended by the Governor

No more than four commissioners with the same political party affiliation may be appointed to the Commission to serve at the same time. The commissioners are limited to one four year term, but if an appointee fills an unfinished term they can be reappointed to a subsequent four year term.

The Commission members select a chairperson and vice chairperson annually. The Commission is administered by an executive director, who is selected by the Commission. Legal counsel is provided by the Oregon Department of Justice.

The Commission staff provides administration, training, guidance, issues written opinions, and conducts investigations when complaints are filed with the Commission.

### Training:

The Commission has designated training as one of its highest priorities. It has two staff positions to provide training to public officials and lobbyists on the laws and regulations under its jurisdiction. Training is provided through presentations at training events, iLearnOregon, informational links on the website, topical handouts and guidance offered when inquiries are received.

### Advice:

All members of the Commission staff are cross-trained in the laws and regulations under the Commission's jurisdictions. Questions regarding the Commission's laws, regulations and procedures are a welcome daily occurrence. Timely and accurate answers are a primary objective of the staff. Guidance and information is provided either informally or in written formal opinions. The following are available:

- Telephone inquiries are answered during the call or as soon as possible.
- E-mail inquiries are answered with return e-mail or telephone call as soon as possible.
- Letter inquiries are answered by letter as soon as possible.

- Written opinions on specific circumstances can also be requested.

Requests for written opinions must describe the specific facts and circumstances that provide the basis for questions about how the Oregon Government Ethics law may apply. The facts and circumstances may define a proposed transaction and may be hypothetical or actual. If the circumstances indicate that a violation may have occurred, the staff cannot provide an opinion because to do so could compromise the Commission's objectivity if a complaint were to be filed. The written opinions will be in one of the following formats, as requested:

### **Staff Advice**

ORS 244.284 provides for informal staff advice, which may be offered in several forms, such as in person, by telephone, e-mail or letter. In a letter of advice, the proposed, hypothetical or actual facts are restated as presented in the request and the relevant laws or regulations are applied. The answer will conclude whether a particular action by a public official comports with the law.

If the Commission determines that a respondent violated provisions of law within its jurisdictions and the respondent received staff advice offered under the authority of ORS 244.284, in sanctioning the violation, the Commission may consider whether the public official committed the violation when relying on the staff advice [ORS 244.284(2)].

For staff advice to be a factor in the sanction phase, it is important to understand that the circumstances the respondent described in the request must have been an accurate description of what occurred when the respondent committed the violation. The actions of the respondent must have been those recommended or described in the staff advice. The Commission is not prevented from finding a violation in these circumstances, but the sanction imposed could be affected.

### **Staff Advisory Opinion**

ORS 244.282 authorizes the executive director to issue a staff advisory opinion upon receipt of a written request. The opinion is issued in a letter that restates the proposed, hypothetical or actual facts presented in the written request and identifies the relevant statutes. The letter will discuss how the law applies to the questions asked or raised by the fact circumstances presented in the request. The Commission must respond to any request for a staff advisory opinion within 30 days, unless the executive director extends the deadline by an additional 30 days.

If the Commission determines that a respondent violated provisions of law within its jurisdictions and the respondent received a staff advisory opinion under the authority of ORS 244.282, in sanctioning the violation, the Commission may consider whether the public official committed the violation when relying on the staff advisory opinion [ORS 244.282(3)].

For the staff advisory opinion to be a factor in the sanction phase, it is important to understand that the circumstances the respondent described in the request must have been an accurate description of what occurred when the respondent committed the violation. The actions of the respondent must have been those recommended or described in the staff advisory opinion. The Commission is not prevented from finding a violation in these circumstances, but whether the sanction is imposed or its severity could be affected.

### **Commission Advisory Opinion**

ORS 244.280 authorizes the Commission to prepare and adopt by vote a Commission Advisory Opinion. This formal written opinion also restates the proposed, hypothetical or actual facts presented in a written request for a formal opinion by the Commission. The opinion will identify the relevant statutes and discuss how the law applies to the questions asked or raised by the fact circumstances provided in the request. These formal advisory opinions are reviewed by legal counsel before the Commission adopts them. The Commission must respond to any request for a Commission Advisory Opinion within 60 days, unless the Commission extends the deadline by an additional 60 days [ORS 244.280(1) and (2)].

The Commission may not impose a penalty on a person for any good faith action taken by the person while relying on a Commission Advisory Opinion, unless it is determined that the person who requested the opinion omitted or misstated material facts in the opinion request [ORS 244.280(3)].

For the Commission Advisory Opinion to be a factor in preventing the imposition of a penalty, it is important to understand that the circumstances described in the request must have been an accurate description of what occurred when the respondent committed the violation. The actions of the respondent must have been those recommended or described in the Commission Advisory Opinion. The Commission is not prevented from finding a violation in these circumstances, but could be prevented from imposing a sanction.

**If a person requests, receives or relies on any of the advice or opinions authorized by ORS 244.280 through ORS 244.284, does that person have what is referred to as “safe harbor” protection from becoming a respondent to a complaint filed with or initiated by the Commission?**

There is no “safe harbor,” if the term is understood to mean that any person who relies on any advice or opinions offered by the Commission or the staff is protected from being a respondent to a complaint, from being found in violation of laws within the jurisdiction of the Commission, or from receiving a penalty for a violation.

There is, however, specific and conditional protection for any person who has requested and relied upon advice or an opinion from the Commission or its staff. The conditions and protection is as follows:

- The fact circumstances described in the request must not misrepresent, misstate or omit material facts.
- Reliance on the advice or opinion means that the action or transactions of the person were those described or suggested in the advice or opinion.
- The protection applies only during the penalty phase, after the Commission has determined that a violation has occurred. If there was reliance on staff advice or a Staff Advisory Opinion, the Commission may consider the reliance during the penalty phase. If reliance was on a Commission Advisory Opinion, the Commission may not impose a penalty.

Any person who has not requested advice or an opinion must be cautious when trying to apply advice or opinions offered to others. The advice and opinions given are based on and tailored to the specific fact circumstances presented in a request. Fact circumstances vary from one situation to another and they vary from one public official to another. If a person reviews an opinion or advice issued to another for circumstances the person believes similar to those now met and relies on that advice, the person must ensure the similarity is sufficient for the application of law to be the same.

It is important to remember that the provisions of law apply to the individual actions of the person or public official. There are events or occasions when more than one public official may be present and participating in their official capacities. Depending on the circumstances and conditions for an event or transaction, the law may have a different application for one public official than for other public officials.

### Compliance:

The Commission has a program manager who oversees the management and administration of the various reports that are filed with the Commission. There are approximately 2,000 lobbyists and employers of lobbyists who file quarterly lobbying activity expense reports. Each of the nearly 1,000 lobbyists must file or renew their lobbying registrations every two years. There are approximately 5,500 public officials who must file the Annual Verified Statement of Economic Interest form each April 15.

### Complaint Review Procedures:

Investigations are initiated through a complaint procedure [ORS 244.260]. Any person may file a signed, written complaint alleging that there may have been a violation of Oregon Government Ethics law, Lobbying Regulation or the executive session provisions of Oregon Public Meetings law. The complaint must state the person's reason for believing that a violation may have occurred and must include any evidence that supports that belief. The executive director reviews the complaint and if additional information is needed, the complainant is asked to provide that information.

If there is reason to believe that there has been a violation of laws within the jurisdiction of

the Commission, an investigation will be initiated. The Commission may also initiate an investigation on its own complaint by motion and vote. Before approving such a motion, the public official against whom the action may be taken is notified and given an opportunity to appear before the Commission at the meeting when the matter is discussed or acted upon.

When a complaint is accepted, the public official against whom the allegations are made is referred to as the respondent. The respondent is notified of the complaint and provided with the information received in the complaint and the identity of the complainant. Whether based on a complaint or a motion by the Commission, the initial stage of the Commission procedure is called the Preliminary Review Phase. The time allowed for this phase is limited to 135 days and the Commission must act on the complaint within that period.

If there is a pending criminal matter related to the same circumstances or actions to be addressed in the Preliminary Review, the time period is suspended until the criminal matter is concluded.

There may be a variety of reasons for a respondent to ask for additional time before the Commission determines whether there is cause to investigate the issues raised in the complaint. With the consent of the Commission, a respondent may request a waiver of the 135 day time limit. If a complaint is made against a candidate within 61 days of an election, the candidate may request a delay.

During the Preliminary Review Phase, the Commissioners and staff can make no public comment on the matter other than acknowledge receipt of the complaint. It is maintained as a confidential matter until the Commission ends the Preliminary Review Phase. Under most circumstances, the Commission will end the Preliminary Review Phase by either dismissing the complaint or finding cause to conduct an investigation. The Commission meets in executive session to conduct deliberations and vote on the finding of cause or to dismiss. After the close of the Preliminary Review Phase, the case file is open to public inspection.

If the complaint is dismissed, the matter is concluded and both the respondent and complainant are notified. If cause is found to investigate, then an Investigatory Phase begins. The investigatory phase is limited to 180 days.

During each phase, information and documents are solicited from the complainant, respondent, and other witnesses and sources that are identified. Before the end of the 180 day investigatory period, the Commission will consider the results of the investigation. Normally, the Commission will either dismiss the complaint or make a preliminary finding that a violation of Oregon Government Ethics law was committed by the respondent. The preliminary finding of a violation is based on what the Commission considers to be a preponderance or sufficient evidence to support such a finding.

If a preliminary finding of violation is made, the respondent will be offered the opportunity to request a contested case hearing. At any time, the respondent is also encouraged to

negotiate a settlement with the executive director, who represents the Commission in such negotiations. Most cases before the Commission are resolved through a negotiated settlement, with the terms of the agreement described in a Stipulated Final Order.

The Commission has a variety of sanctions available after making a finding that a violation occurred. Sanctions range from letters of reprimand to civil penalties and forfeitures. The maximum civil penalty that can be imposed for each violation is \$5,000, except for violations of the executive session provisions in ORS 192.660 where the maximum is \$1,000. Any financial gain that a respondent realized from a violation is subject to a forfeiture of twice the gain. Any monetary sanctions imposed and paid are deposited into the State of Oregon General Fund.

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