

GUIDE FOR VOLUNTEER BOARDS & COMMISSIONS

**City of Portland, Oregon
Office of the City Attorney**

This presentation includes excerpts from:

- ← A Guide for Public Officials (Oregon Government Ethics Commission - Commission)
- ← Code of Ethics Explanations and Examples (Portland City Auditor)
- ← Restrictions on Political Activities (Oregon Secretary of State - Elections Division)
- ← Attorney General's Public Records and Public Meetings Manual (Oregon Department of Justice)

I. Who Is A Public Official?

Introduction

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

PUBLIC OFFICIAL: AN OVERVIEW

- ← The provisions in ORS 244 restrict some choices, decisions or actions of a public official. The restrictions placed on public officials are different than those placed on private citizens.
- ← Public officials must know that they are held personally responsible for complying with the provisions of ORS 244 . 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 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.
- ← One provision 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.
- ← Another provision that frequently applies to public officials when engaged in official actions of their official positions or offices is the requirement to disclose conflicts of interest.

A Public Official

Are you a public official?

- ← A “public official” is any person who is serving the State of Oregon or any of its political subdivisions or any other public body as . . . an *appointed official* . . . irrespective of whether the person is compensated for the services.

- ← 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.

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)2. 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.

Section I Review

- ← Definition of public official
- ← Who is a relative

II. OBLIGATIONS OF BEING A PUBLIC OFFICIAL

- ← Leadership
- ← Use of Position or Office
- ← Conflicts of Interest (pecuniary)
- ← Nepotism
- ← Gifts and exclusions
- ← Subsequent employment

LEADERSHIP

- ← Officials avoid discreditable personal conduct and are personally honest.

Use of Position or Office

- ← 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.

- ← 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.**

What is a conflict of interest?

- ← A public official is met with a conflict of interest when participating in official action which could (potential conflict) or would (actual conflict) 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.

What do you do when you have a conflict?

Elected officials or board and commission members

- ← When an elected or appointed public official serving on a board or commission has a potential conflict of interest, the official must announce publicly the potential conflict prior to taking any action thereon in the capacity of a public official.
- ← When an elected or appointed public official serving on a board or commission has an actual conflict of interest, the official must announce publicly the nature of the actual conflict and refrain from participating as a public official in any discussion or debate on the issue out of which the actual conflict arises or from voting on the issue. Note that there are special rules for planning commission members.

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

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 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.

ORS 244.020(3)4 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(5) to file an Annual Verified Statement of Economic Interest form and the business is listed as a source of household income.

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)]

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.

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)]

NEPOTISM

- ← Public official may not appoint, employ or promote a relative or member of household from position with public body that official serves unless official complies with conflict of interests regulations.
- ← May not participate in interviews, discussion or debate re: appointment, employment or promotion of relative from position with public body unless complies with conflict of interest regulations.
- ← May not directly supervise relative or member of household.

What is a GIFT?

- ← **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.

What items are excluded from the definition of gift?

- ← Campaign contributions.
- ← Gifts from relatives/household.
- ← Engraved plaques, trophies, desk items unless valuable material.
- ← Admission, food or beverage if representing government at a reception, meal or meeting. This exemption does not authorize private meals.
- ← Expenses for food, lodging, travel paid by government, membership organization to which City pays dues for attendance or non-profit at convention, fact finding mission, trip or other meeting if you represent City. **Requires prior written authorization from supervisor.**
- ← Expenses for food, lodging, travel paid by anyone if fact finding, trade promotion or economic development mission. **Requires prior written authorization from supervisor.**
- ← Waiver or discount of registration materials/expenses at continuing education event to satisfy professional licensing.
- ← Expenses provided by another public official for in-state travel (carpool). Not included in City administrative rule, but if travel is for work purposes, City would not consider it a gift to the public official.
- ← Food or beverage at reception where no cost is placed on food.
- ← Incidental entertainment.
- ← Entertainment received by public official or staff where public official appears for ceremonial purposes.

What is a legislative/administrative interest?

- ← An economic interest, distinct from that of the general public, in any matter subject to the decision or vote of the public official acting in public official's capacity as a public official.

State law

- ← Regardless of whether or not you are using your official position, you may not accept within one calendar year gifts of more than \$50 from a source with a legislative or administrative interest.

Portland City Auditor Guidance

- ← In general, personal gifts should be refused or returned with a friendly but firm message that City officials are not allowed to receive gifts. A personal gift, lunch, or entertainment gift under \$50 in value may be legal, but no amount is too small to be ethically questionable.

SUBSEQUENT EMPLOYMENT

Under State law:

- ← May not use confidential information gained as public official to further personal gain after leaving public position.
- ← Public officials who authorized or had significant role in a contract may not have a direct, beneficial, financial interest in the contract for two years after leaving position.

Section II Summary

- ← Leadership
- ← Use of position or office
- ← Conflicts of Interest (pecuniary)
- ← Nepotism
- ← Gifts and exclusions
- ← Subsequent employment

III. Restrictions on Political Activity

POLITICAL ACTIVITIES - ORS 260.432

Non-elected City volunteers:

- ← May express personal political views.
- ← May engage in political activities outside of work, subject to bureau rules.
- ← May not spend time on the job promoting or opposing candidates or ballot measures.
- ← May not spend time on the job promoting or opposing political committees or the gathering of signatures for proposed ballot measures.
- ← May not require or attempt to require or coerce a City employee or volunteer to engage in political activity of any kind at any time.
- ← May not use City property, City funds, or City staff to promote or oppose ballot measures, signatures on proposed measures, political committees, or election or recall of officials or candidates.
- ← May not serve on or under any committee of a political party.

APPOINTED BOARDS AND COMMISSIONS

- ← ORS 260.432 applies to appointed board and commission members *when they are acting in their official capacity*. Appointed board or commission members are acting in their official capacity when, for example, they are at a meeting of the board or commission, working on a duty assigned by the board or commission, working on official publications (including website materials) for the board or commission, or when appearing at an event in an official capacity.

Section III Summary

- ← Review restrictions of ORS 260.432

IV. Oregon Public Meetings Law

"All meetings of the governing body of a public body shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided [in the Public Meetings Law]." (ORS 192.630(1))

- ← "Governing body" - "the members of *any* public body which consists of two or members, *with authority to make decisions for or recommendations to* a public body or administration." ORS 192.610(3)
- ← "Public Body" - "the state, any regional council, county, city or district, or any municipal or public corporation, or any board, department, *commission, council, bureau, committee, or subcommittee, or advisory group or agency thereof.*" ORS 192.610(4)
- ← "Meeting" -- "the convening of a governing body of a public body *for which a quorum is required* in order to *make a decision or deliberate toward* a decision on any matter." ORS 192.610(5)

Gatherings Exempt from the Law

- ← "Meeting" does not include an on-site inspection of a project or program; attendance of members of a governing body at any national, regional or state association to which the public body or the members belong; or gatherings of a quorum of a board or commission where no official business is discussed.
- ← Purely social gatherings of a public body do not create a public meeting unless there is quorum and it decides to discuss matters relevant to its work. It is best not to discuss business at all during a social gathering. If you have a quorum present, even if the sole purpose of the meeting is to gather information to serve as the basis of future decisions or recommendations, then it is a public meeting.

Quorum Requirement

- ← If a quorum of a public body gets together and deliberates on official business, regardless of the setting, there is a violation of the public meetings law if the required notice was not provided. If gathering is less than a quorum of the body, there is no public meeting.

What is Required for a Public Meeting

Notice

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

Location

- ← Meetings of governing bodies of public bodies shall be held within the geographic boundaries of the area over which the public body has jurisdiction, at the public body's administrative offices (if any) or "at the other nearest practical location."
- ← Must be at a place largest enough to hold the anticipated attendance and must be a place that does not discriminate on the basis of race, color, creed, sex, sexual orientation, national origin, age or disability. Site must be one that people with disabilities can access.

Public Attendance

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

Control

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

Voting

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

Minutes

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

Executive Sessions

- ← An executive session is a meeting or portion of a meeting of a governing body that is closed to the general public. An executive session is not closed to the media. However, the governing body may require that the media not disclose specified information.
- ← There are limited purposes for an executive session which include employment, employee discipline, labor and real estate negotiations, and consultation with legal counsel regarding current or potential litigation. A governing body may also go into executive session to consider records exempt from public inspection. For example, a governing body may meet in executive session to discuss written legal advice from counsel because the written advice is exempt from public inspection as a privileged document.
- ← A governing body may not make a final decision in executive session. To make a final decision, the chair must continue the decision to a public meeting or call the executive session into open session. A governing body may not remain in executive session to discuss or deliberate on matters other than the matter for which the session was convened.

Section IV Summary

Definitions of:

- ← Governing body
- ← Public body
- ← Meeting
- ← Executive session
- ← Public Meeting requirements

Section V. Oregon Public Records Law

What is a public record?

For the purposes of retention a public record is defined by Oregon Revised Statutes (ORS) 192.005(5):

(5) "Public record"

(a) Means any information that:

(A) Is prepared, owned, used or retained by a state agency or political subdivision;

(B) Relates to an activity, transaction or function of a state agency or political subdivision;

and

(C) Is necessary to satisfy the fiscal, legal, administrative or historical policies, requirements or needs of the state agency or political subdivision.

Public Records Generally

- ← The Public Records Law applies to every public body, as defined by ORS 192.410(3), and includes the City and "any agency thereof" and that includes the City's boards and commissions.
- ← Presumption for Disclosure - "Every person has a right to inspect any public record of a public body in this state, except as otherwise provided...." ORS 192.420(1).
- ← "'Public Record' includes any writing that contains information relating to the conduct of the public's business, ... used or retained by a public body regardless of physical form or characteristics." (ORS 192.410(4)(a)).
- ← "'Writing' means handwriting, printing, photographing, and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, files, facsimiles or electronic recordings." (ORS 192.420(6)).
- ← Public records may include an email or text message if it discusses the City's business, whether the record is located on City network or equipment or on personal electronic devices. Drafts are also public records.

Retention of Records

- ← Once a record is created, a public body is responsible for retaining that record according to the retention schedules adopted by the body. The public body's custodian of records is also responsible for making public records available upon request.
- ← You will be advised of the retention schedule for your public body. A number of schedules may be relevant to your work.
- ← Always email a copy of all correspondence that relate to City business to the designated City staff person for your body.

Use of Home Computers (and other electronic devices)

- ← Oregon's public records laws apply to e-mail correspondence about City business even when exchanged solely on City employees' or volunteers' personal computers (or other electronic devices). As a result, employees and volunteers have a responsibility to ensure retention of such e-mails and documents.
- ← Whether an e-mail or document contains information relating to the conduct of the public's business is case specific. Generally, if an e-mail or document discusses procedural or substantive aspects of your work, it will meet this test. A purely personal e-mail does not become a public record simply because it is sent by a public official. Whether the e-mail or document is prepared, owned, used or retained by a public body is also fact dependent. A document not in the possession of the government still can be a public record by virtue of being used or prepared by a public body.

- ← What this means in practice is that if you choose to use private computers to create City related documents or to correspond with one another regarding City business, you may be responsible for retaining the correspondence in accordance with City document retention schedules. This includes records created on personal devices, such as personal laptop or PC, Blackberry or cell phone with texting capability, or I-Pad.
- ← Text messages must also be retained. It is very intrusive to retrieve text messages from your personal phone. Please be careful.

Knowingly destroying public records can constitute a criminal offense.

ORS 162.305.

Public Records Exemptions

- ← State law provides that certain public records may be withheld from disclosure if they fall within a statutory exemption. Generally, exemptions do not prohibit disclosure; they allow the public body, through its authorized representative (generally, an elected official, bureau director or designated public body's custodian of records, with guidance from legal staff) to decide whether to release a record. The presumption is in favor of disclosure and a requestor may challenge a public body's decision not to release a record.

Section V. Summary

- ← What is a public record?
- ← Retention
- ← Copy all emails to City staff member
- ← Text messages count!

General Takeaways

- ← Familiarize yourself with ethical obligations and abide by them
- ← Conduct the business of your Board during scheduled public meetings
- ← Do not deliberate outside of scheduled meetings
- ← Always copy designated staff person on any correspondence
- ← Resist communicating by email or texts outside of scheduled meetings
- ← If you have information to share, send it to the Chair for dissemination

- ← You are personally liable, whether criminally or civilly, for individual violations of Oregon ethics, public meeting or public records law.
- ← The City may neither indemnify nor represent you before the Oregon Government Ethics Commission or a criminal court.

QUESTIONS???

If you have a further question about any of this information . . .

- ← Please direct your inquiry to the Chair of your board. The Chair will in turn seek guidance from the City Attorney's Office and an opinion will be rendered to the entire board for clarification.
- ← The City Attorney's Office does not represent individual board members, but advises the board as a whole on the law. Each board member is responsible for abiding by State of Oregon and City of Portland laws.

Thank you for your service to the City of Portland.