OREGON
GOVERNMENT ETHICS
LAW

A GUIDE FOR PUBLIC OFFICIALS

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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.

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. Questions or comments may be submitted to the Commission by email at ogec.mail@state.or.us, by fax to 503-373-1456 or by telephone to 503-378-5105.

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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.

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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/ogec, 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.

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A PUBLIC OFFICIAL

Are you a public official?

"Public official" is defined in ORS 244.020(14)[1] 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.

<u>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"</u>:

- 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)[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.

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)[3] 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)[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.

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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)[6] **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)[7] **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)[8] **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)[9] **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)[10] and ORS 244.020(12).[11] 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 <u>but for</u> holding the position as a public official?

Yes, ORS 244.040(2)[12]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)[13]. 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)[14]].

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)[15], 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[16] 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[17]:

- **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[18], 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)]:[19]

- 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)[20]].

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)][21]

A public official may not directly **supervise** a person who is a relative or member of the public official's household [ORS 244.179][22], 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)[23] 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:
    - Employees of governmental agencies must give written notice to their appointing authority.
    - 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)]:[24]

- 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)[25]
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)[26]
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)[27]
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)[28]
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[29]
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)(a) [30]
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)[31]
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)[32] and a **potential conflict of interest** is defined in ORS 244.020(12)[33]. 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)[34]. [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)][35]

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)][36]

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)][37]

- 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)][38]

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)][39] 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)][40] 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)][41] and ORS 244.290(3)(a)][42] 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)][43] 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)][44]

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)][45]

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)][46]. 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][47]

The provisions regarding the establishment of this fund are detailed in ORS 244.205 through ORS 244.221[48]. 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)][49].
- The application to establish the fund must be submitted to the Commission for review and authorization. ORS 244.209[50] 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)][51].
- Once authorized and established, any person may contribute to the fund [ORS 244.213][52].
- Contributions from a principal campaign committee are not allowed [ORS 244.213(3)][53].
- Funds must be maintained in a single exclusive account [ORS 244.215][54].
- Quarterly reports of contributions and expenditures from the fund are required [ORS 244.217][55].
- The fund must be terminated within six months after the legal proceeding for which the fund was established has been concluded [ORS 244.219][56].
- 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][57].

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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)[58] 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)][59]

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][60]

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)][61]

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)[62], ORS 244.100(1) [63]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)[64] 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[65]. *[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)][66]

  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)][67]

  The receiving bears no relationship to the person's holding the official position or public office. [ORS 244.020(6)(b)(O)(ii)][68]

- 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)[69] 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)][70]*

- 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)][71]*

- 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)[72] 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)[73] 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)[74] 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)[75] 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)][76]*

- 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)[77] 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)[78] 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)]*[79]

  - Officially designated negotiation or economic development activity when receipt has been approved in advance. *[ORS 244.020(6)(b)(H)(ii)]*[80]

  [**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)][81]

- Food and beverage when acting in an official capacity in the following circumstances: [ORS 244.020(6)(b)(I)][82]

    - 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)(I)(i)]*[83]

    - When the office of the Treasurer is engaged in business related to proposed investment or borrowing; *[ORS 244.020(6)(b)(I)(ii)]*[84]

    - 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)(I)(iii)]*[85]

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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)[86] and ORS 244.025[87] 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)[88] 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)][89] 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):[90]

> **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[91] 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)][92] 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)[93] 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)][94]

- 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)]*[95] 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)[96] 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)[97] 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][98]

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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**.[99] 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)]*[100]

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)]*[101]

- Name and address of each business through which the filer or member of the household did business. *[ORS 244.060(2)]*[102]

- 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)]*[103]

- 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)*[104]

- Honoraria or other items allowed by ORS 244.042[105] 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)]*[106]. Remember that honorarium cannot exceed $50. [ORS

244.042(3)(a)][107]

- 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]*[108]

- 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)[109], 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)*[110] *and ORS 244.100(1)]*[111] [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)[112], 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)]*[113] [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)][114]

- 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)]*[115]

- 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)]*[116]

- 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)]*[117]

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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[118]]:

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[119] 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)].[120]

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)].[121]

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[122] 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)].[123]

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)].[124]

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[125], 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]*[126] 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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[1] ORS 244.020(14) "Public official" means any person who, when an alleged violation of this chapter 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.

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[2] ORS 244.020(15) "Relative" means:
(a) The spouse of the public official or candidate;
(b) Any children of the public official or of the public official's spouse;
(c) Any children of the candidate or of the candidate's spouse;
(d) Siblings, spouses of siblings or parents of the public official or of the public official's spouse;
(e) Siblings, spouses of siblings or parents of the candidate or of the candidate's spouse;
(f) Any individual for whom the public official or candidate has a legal support obligation;
(g) Any individual for whom the public official provides benefits arising from the public official's public employment or from whom the public official receives benefits arising from that individual's employment; or
(h) Any individual from whom the candidate receives benefits arising from that individual's employment.

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[3] ORS 244.020(2) "Business" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for economic gain but excluding any income-producing not-for-profit corporation that is tax exempt under section 501(c) of the Internal Revenue Code with which a public official or a relative of the public official is associated only as a member or board director or in a non-remunerative capacity.

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[4] ORS 244.020(3) "Business with which the person is associated" means:
(a) Any private business or closely held corporation of which the person or the person's relative is a director, officer, owner or employee, or agent or any private business or closely held corporation in which the person or the person's relative owns or has owned stock, another form of equity interest, stock options or debt instruments worth $1,000 or more at any point in the preceding calendar year;
(b) Any publicly held corporation in which the person or the person's relative owns or has owned $100,000 or more in stock or another form of equity interest, stock options or debt instruments at any point in the preceding calendar year;
(c) Any publicly held corporation of which the person or the person's relative is a director or officer; or
(d) For public officials required to file a statement of economic interest under ORS 244.050, any business listed as a source of income as required under ORS 244.060 (3).

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[5] ORS 244.050 Persons required to file statement of economic interest; filing deadline. (1) On or before April 15 of each year the following persons shall file with the Oregon Government Ethics Commission a verified statement of economic interest as required under this chapter:
(a) The Governor, Secretary of State, State Treasurer, Attorney General, Commissioner of the Bureau of Labor and Industries, Superintendent of Public Instruction, district attorneys and members of the Legislative Assembly.
(b) Any judicial officer, including justices of the peace and municipal judges, except any pro tem judicial officer who does not otherwise serve as a judicial officer.
(c) Any candidate for a public office designated in paragraph (a) or (b) of this subsection.
(d) The Deputy Attorney General.
(e) The Legislative Administrator, the Legislative Counsel, the Legislative Fiscal Officer, the Secretary of the Senate and the Chief Clerk of the House of Representatives.
(f) The Chancellor and Vice Chancellors of the Oregon University System and the president and vice

presidents, or their administrative equivalents, in each institution under the jurisdiction of the State Board of Higher Education.

(g) The following state officers:

(A) Adjutant General.

(B) Director of Agriculture.

(C) Manager of State Accident Insurance Fund Corporation.

(D) Water Resources Director.

(E) Director of Department of Environmental Quality.

(F) Director of Oregon Department of Administrative Services.

(G) State Fish and Wildlife Director.

(H) State Forester.

(I) State Geologist.

(J) Director of Human Services.

(K) Director of the Department of Consumer and Business Services.

(L) Director of the Department of State Lands.

(M) State Librarian.

(N) Administrator of Oregon Liquor Control Commission.

(O) Superintendent of State Police.

(P) Director of the Public Employees Retirement System.

(Q) Director of Department of Revenue.

(R) Director of Transportation.

(S) Public Utility Commissioner.

(T) Director of Veterans' Affairs.

(U) Executive director of Oregon Government Ethics Commission.

(V) Director of the State Department of Energy.

(W) Director and each assistant director of the Oregon State Lottery.

(X) Director of the Department of Corrections.

(Y) Director of the Oregon Department of Aviation.

(Z) Executive director of the Oregon Criminal Justice Commission.

(AA) Director of the Oregon Business Development Department.

(BB) Director of the Office of Emergency Management.

(CC) Director of the Employment Department.

(DD) Chief of staff for the Governor.

(EE) Administrator of the Office for Oregon Health Policy and Research.

(FF) Director of the Housing and Community Services Department.

(GG) State Court Administrator.

(HH) Director of the Department of Land Conservation and Development.

(II) Board chairperson of the Land Use Board of Appeals.

(JJ) State Marine Director.

(KK) Executive director of the Oregon Racing Commission.

(LL) State Parks and Recreation Director.

(MM) Public defense services executive director.

(NN) Chairperson of the Public Employees' Benefit Board.

(OO) Director of the Department of Public Safety Standards and Training.

(PP) Chairperson of the Oregon Student Assistance Commission.

(QQ) Executive director of the Oregon Watershed Enhancement Board.

(RR) Director of the Oregon Youth Authority.

(SS) Director of the Oregon Health Authority.

(h) Any assistant in the Governor's office other than personal secretaries and clerical personnel.

(i) Every elected city or county official.

(j) Every member of a city or county planning, zoning or development commission.

(k) The chief executive officer of a city or county who performs the duties of manager or principal administrator of the city or county.

(L) Members of local government boundary commissions formed under ORS 199.410 to 199.519.

(m) Every member of a governing body of a metropolitan service district and the executive officer thereof.

(n) Each member of the board of directors of the State Accident Insurance Fund Corporation.

(o) The chief administrative officer and the financial officer of each common and union high school

district, education service district and community college district.

(p) Every member of the following state boards and commissions:

(A) Board of Geologic and Mineral Industries.

(B) Oregon Business Development Commission.

(C) State Board of Education.

(D) Environmental Quality Commission.

(E) Fish and Wildlife Commission of the State of Oregon.

(F) State Board of Forestry.

(G) Oregon Government Ethics Commission.

(H) Oregon Health Policy Board.

(I) State Board of Higher Education.

(J) Oregon Investment Council.

(K) Land Conservation and Development Commission.

(L) Oregon Liquor Control Commission.

(M) Oregon Short Term Fund Board.

(N) State Marine Board.

(O) Mass transit district boards.

(P) Energy Facility Siting Council.

(Q) Board of Commissioners of the Port of Portland.

(R) Employment Relations Board.

(S) Public Employees Retirement Board.

(T) Oregon Racing Commission.

(U) Oregon Transportation Commission.

(V) Wage and Hour Commission.

(W) Water Resources Commission.

(X) Workers' Compensation Board.

(Y) Oregon Facilities Authority.

(Z) Oregon State Lottery Commission.

(AA) Pacific Northwest Electric Power and Conservation Planning Council.

(BB) Columbia River Gorge Commission.

(CC) Oregon Health and Science University Board of Directors.

(DD) Capitol Planning Commission.

(q) The following officers of the State Treasurer:

(A) Chief Deputy State Treasurer.

(B) Chief of staff for the office of the State Treasurer.

(C) Director of the Investment Division.

(r) Every member of the board of commissioners of a port governed by ORS 777.005 to 777.725 or 777.915 to 777.953.

(s) Every member of the board of directors of an authority created under ORS 441.525 to 441.595.

(2) By April 15 next after the date an appointment takes effect, every appointed public official on a board or commission listed in subsection (1) of this section shall file with the Oregon Government Ethics Commission a statement of economic interest as required under ORS 244.060, 244.070 and 244.090.

(3) By April 15 next after the filing deadline for the primary election, each candidate described in subsection (1) of this section shall file with the commission a statement of economic interest as required under ORS 244.060, 244.070 and 244.090.

(4) Within 30 days after the filing deadline for the general election, each candidate described in subsection (1) of this section who was not a candidate in the preceding primary election, or who was nominated for public office described in subsection (1) of this section at the preceding primary election by write-in votes, shall file with the commission a statement of economic interest as required under ORS 244.060, 244.070 and 244.090.

(5) Subsections (1) to (4) of this section apply only to persons who are incumbent, elected or appointed public officials as of April 15 and to persons who are candidates on April 15. Subsections (1) to (4) of this section also apply to persons who do not become candidates until 30 days after the filing deadline for the statewide general election.

(6) If a statement required to be filed under this section has not been received by the commission within five days after the date the statement is due, the commission shall notify the public official or candidate and give the public official or candidate not less than 15 days to comply with the requirements of this section. If the public official or candidate fails to comply by the date set by the commission, the

commission may impose a civil penalty as provided in ORS 244.350. [1974 c.72 §§4,4a; 1975 c.543 §3; 1977 c.588 §3; 1977 c.751 §16; 1979 c.374 §5; 1979 c.666 §6; 1979 c.697 §1; 1979 c.736 §1; 1979 c.829 §9b; 1987 c.373 §26; 1987 c.414 §148; 1987 c.566 §10; 1991 c.73 §2; 1991 c.160 §1; 1991 c.163 §1; 1991 c.470 §13; 1991 c.614 §2; 1993 c.500 §10; 1993 c.743 §11; 1995 c.79 §87; 1995 c.712 §94; 1997 c.652 §16; 1997 c.833 §22; 1999 c.59 §62; 1999 c.291 §28; 2001 c.104 §77; 2003 c.214 §1; 2003 c.784 §13; 2005 c.157 §6; 2005 c.217 §23; 2005 c.777 §14; 2007 c.813 §2; 2007 c.865 §17; 2007 c.877 §13; 2009 c.68 §5; 2009 c.595 §192; 2009 c.896 §10]

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[6] ORS 244.040(1) Prohibited use of official position or office; exceptions; other prohibited actions. (1) Except as provided in subsection (2) of this section, a public official may not use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment for the public official, a relative or member of the household of the public official, or any business with which the public official or a relative or member of the household of the public official is associated, if the financial gain or avoidance of financial detriment would not otherwise be available but for the public official's holding of the official position or office.

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[7] ORS 244.040(4) A public official may not attempt to further or further the personal gain of the public official through the use of confidential information gained in the course of or by reason of holding position as a public official or activities of the public official.

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[8] ORS 244.040(5) A person who has ceased to be a public official may not attempt to further or further the personal gain of any person through the use of confidential information gained in the course of or by reason of holding position as a public official or the activities of the person as a public official.

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[9] ORS 244.040(6) A person may not attempt to represent or represent a client for a fee before the governing body of a public body of which the person is a member. This subsection does not apply to the person's employer, business partner or other associate.

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[10] ORS 244.020(1) "Actual conflict of interest" means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person is associated unless the pecuniary benefit or detriment arises out of circumstances described in subsection (12) of this section.

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[11] ORS 244.020 (12) "Potential conflict of interest" means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person's relative, or a business with which the person or the person's relative is associated, unless the pecuniary benefit or detriment arises out of the following:

(a) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.

(b) Any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or the person's relative is associated, is a member or is engaged.

(c) Membership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.

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[12] ORS 244.040(2) Subsection (1) of this section does not apply to:
(a) Any part of an official compensation package as determined by the public body that the public official serves.
(b) The receipt by a public official or a relative or member of the household of the public official of an honorarium or any other item allowed under ORS 244.042.
(c) Reimbursement of expenses.
(d) An unsolicited award for professional achievement.
(e) Gifts that do not exceed the limits specified in ORS 244.025 received by a public official or a relative or member of the household of the public official from a source that could reasonably be known to have a legislative or administrative interest.
(f) Gifts received by a public official or a relative or member of the household of the public official from a source that could not reasonably be known to have a legislative or administrative interest.
(g) The receipt by a public official or a relative or member of the household of the public official of any item, regardless of value, that is expressly excluded from the definition of "gift" in ORS 244.020.
(h) Contributions made to a legal expense trust fund established under ORS 244.209 for the benefit of the public official.

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[13] ORS 244.020(7) "Honorarium" means a payment or something of economic value given to a public official in exchange for services upon which custom or propriety prevents the setting of a price. Services include, but are not limited to, speeches or other services rendered in connection with an event.

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[14] ORS 244.042(3) This section does not prohibit:
(a) The solicitation or receipt of an honorarium or a certificate, plaque, commemorative token or other item with a value of $50 or less; or

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[15] ORS 244.020(6)(b)(C) An unsolicited token or award of appreciation in the form of a plaque, trophy, desk item, wall memento or similar item, with a resale value reasonably expected to be less than $25

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[16] ORS 244.209 Application to establish fund; commission review and authorization. (1) A public official may apply to establish a legal expense trust fund by filing an application with the Oregon Government Ethics Commission. The application must contain:
(a) A copy of an executed trust agreement described in subsection (2) of this section;
(b) A sworn affidavit described in subsection (3) of this section signed by the public official; and
(c) A sworn affidavit described in subsection (4) of this section signed by the trustee.
(2) The trust agreement must contain the following:
(a) A provision incorporating by reference the provisions of ORS 244.205 to 244.221; and
(b) A designation of a trustee under ORS 244.211.
(3) The affidavit of the public official must state:
(a) The nature of the legal proceeding that requires establishment of the trust fund;
(b) That the public official will comply with the provisions of ORS 244.205 to 244.221; and
(c) That the public official is responsible for the proper administration of the trust fund.
(4) The affidavit of the trustee must state that the trustee:
(a) Has read and understands ORS 244.205 to 244.221; and
(b) Consents to administer the trust fund in compliance with ORS 244.205 to 244.221.
(5) Upon receiving an application under this section, the commission shall review the trust agreement, the affidavits and any supporting documents or instruments filed to determine whether the application meets the requirements of ORS 244.205 to 244.221. If the commission determines that the application

meets the requirements of ORS 244.205 to 244.221, the commission shall grant written authorization to the public official to establish the trust fund.

(6) The commission shall review the quarterly statements required under ORS 244.217 and shall monitor the activities of each trust fund to ensure continued compliance with ORS 244.205 to 244.221.

(7) Unless subject to the attorney-client privilege, all documents required to be filed relating to the creation and administration of a trust fund are public records subject to disclosure as provided in ORS 192.410 to 192.505.

(8) A public official may not establish a legal expense trust fund without receiving prior written authorization of the commission as described in this section.

(9) A public official may file an amendment to a trust agreement approved as part of a trust fund under this section. The commission shall approve the amendment if the commission determines the amendment meets the requirements of ORS 244.205 to 244.221. [2007 c.877 §31; 2009 c.505 §3]

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[17] ORS 244.175 Definitions for ORS 244.177 and 244.179. As used in ORS 244.177 and 244.179:

(1) "Governing body" has the meaning given that term in ORS 192.610.

(2) "Member of the household" means any person who resides with the public official.

(3) "Public body" has the meaning given that term in ORS 174.109.

(4) "Relative" means the spouse of the public official, any children of the public official or of the public official's spouse, and brothers, sisters, half brothers, half sisters, brothers-in-law, sisters-in-law, sons-in-law, daughters-in-law, mothers-in-law, fathers-in-law, aunts, uncles, nieces, nephews, stepparents, stepchildren or parents of the public official or of the public official's spouse. [2007 c.865 §26b; 2009 c.689 §3]

244.177 Employment of relative or member of household; exceptions. (1) Except as provided in subsections (2) to (4) of this section:

(a) A public official may not appoint, employ or promote a relative or member of the household to, or discharge, fire or demote a relative or member of the household from, a position with the public body that the public official serves or over which the public official exercises jurisdiction or control, unless the public official complies with the conflict of interest requirements of this chapter.

(b) A public official may not participate as a public official in any interview, discussion or debate regarding the appointment, employment or promotion of a relative or member of the household to, or the discharge, firing or demotion of a relative or member of the household from, a position with the public body that the public official serves or over which the public official exercises jurisdiction or control. As used in this paragraph, "participate" does not include serving as a reference, providing a recommendation or performing other ministerial acts that are part of the normal job functions of the public official.

(2) A member of the Legislative Assembly may appoint, employ, promote, discharge, fire or demote, or advocate for the appointment, employment, promotion, discharge, firing or demotion of, a relative or member of the household to or from a position on the personal legislative staff of the member of the Legislative Assembly.

(3)(a) A public official may appoint, employ, promote, discharge, fire or demote, or advocate for the appointment, employment, promotion, discharge, firing or demotion of, a relative or member of the household to or from a position as an unpaid volunteer with the public body that the public official serves or over which the public official exercises jurisdiction or control.

(b) Paragraph (a) of this subsection does not apply to the appointment, employment, promotion, discharge, firing or demotion of a relative or member of the household to a position as an unpaid member of a governing body of the public body that the public official serves or over which the public official exercises jurisdiction or control.

(c) A relative or member of the household described in paragraph (a) of this subsection may receive reimbursement of expenses provided in the ordinary course of business to similarly situated unpaid volunteers.

(4) This section does not prohibit a public body from appointing, employing, promoting, discharging, firing or demoting a person who is a relative or member of the household of a public official serving the public body. [2007 c.865 §26c]

244.179 Supervision of relative or member of household; exceptions. (1) Notwithstanding ORS 659A.309 and except as provided in subsections (2) to (4) of this section, a public official acting in an

official capacity may not directly supervise a person who is a relative or member of the household.

(2) A member of the Legislative Assembly may directly supervise a person who:

(a) Is a relative or member of the household; and

(b) Serves as a public official in a position on the personal legislative staff of the member of the Legislative Assembly.

(3)(a) A public official acting in an official capacity may directly supervise a person who is a relative or member of the household if the person serves as an unpaid volunteer.

(b) Paragraph (a) of this subsection does not apply to service by a person in a position as an unpaid member of a governing body that a public official of whom the person is a relative or member of the household serves or over which the public official exercises jurisdiction or control.

(c) A relative or member of the household serving as an unpaid volunteer described in paragraph (a) of this subsection may receive reimbursement of expenses provided in the ordinary course of business to similarly situated unpaid volunteers.

(4) A public body may adopt policies specifying when a public official acting in an official capacity may directly supervise a person who is a relative or member of the household. [2007 c.865 §26d]

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[18] ORS 244.120 Methods of handling conflicts; Legislative Assembly; judges; appointed officials; other elected officials or members of boards. (1) Except as provided in subsection (2) of this section, when met with an actual or potential conflict of interest, a public official shall:

(a) If the public official is a member of the Legislative Assembly, announce publicly, pursuant to rules of the house of which the public official is a member, the nature of the conflict before taking any action thereon in the capacity of a public official.

(b) If the public official is a judge, remove the judge from the case giving rise to the conflict or advise the parties of the nature of the conflict.

(c) If the public official is any other appointed official subject to this chapter, notify in writing the person who appointed the public official to office of the nature of the conflict, and request that the appointing authority dispose of the matter giving rise to the conflict. Upon receipt of the request, the appointing authority shall designate within a reasonable time an alternate to dispose of the matter, or shall direct the official to dispose of the matter in a manner specified by the appointing authority.

(2) An elected public official, other than a member of the Legislative Assembly, or an appointed public official serving on a board or commission, shall:

(a) When met with a potential conflict of interest, announce publicly the nature of the potential conflict prior to taking any action thereon in the capacity of a public official; or

(b) When met with an actual conflict of interest, announce publicly the nature of the actual conflict and:

(A) Except as provided in subparagraph (B) of this paragraph, 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.

(B) If any public official's vote is necessary to meet a requirement of a minimum number of votes to take official action, be eligible to vote, but not to participate as a public official in any discussion or debate on the issue out of which the actual conflict arises.

(3) Nothing in subsection (1) or (2) of this section requires any public official to announce a conflict of interest more than once on the occasion which the matter out of which the conflict arises is discussed or debated.

(4) Nothing in this section authorizes a public official to vote if the official is otherwise prohibited from doing so. [1974 c.72 §10; 1975 c.543 §7; 1987 c.566 §15; 1993 c.743 §15]

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[19] ORS 244.177(1)Employment of relative or member of household; exceptions. (1) Except as provided in subsections (2) to (4) of this section:

(a) A public official may not appoint, employ or promote a relative or member of the household to, or discharge, fire or demote a relative or member of the household from, a position with the public body that the public official serves or over which the public official exercises jurisdiction or control, unless the public official complies with the conflict of interest requirements of this chapter.

(b) A public official may not participate as a public official in any interview, discussion or debate regarding the appointment, employment or promotion of a relative or member of the household to, or the

discharge, firing or demotion of a relative or member of the household from, a position with the public body that the public official serves or over which the public official exercises jurisdiction or control. As used in this paragraph, "participate" does not include serving as a reference, providing a recommendation or performing other ministerial acts that are part of the normal job functions of the public official.

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[20] ORS 244.177(2) A member of the Legislative Assembly may appoint, employ, promote, discharge, fire or demote, or advocate for the appointment, employment, promotion, discharge, firing or demotion of, a relative or member of the household to or from a position on the personal legislative staff of the member of the Legislative Assembly.

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[21] ORS 244.177(3)(a) A public official may appoint, employ, promote, discharge, fire or demote, or advocate for the appointment, employment, promotion, discharge, firing or demotion of, a relative or member of the household to or from a position as an unpaid volunteer with the public body that the public official serves or over which the public official exercises jurisdiction or control.

(b) Paragraph (a) of this subsection does not apply to the appointment, employment, promotion, discharge, firing or demotion of a relative or member of the household to a position as an unpaid member of a governing body of the public body that the public official serves or over which the public official exercises jurisdiction or control.

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[22] ORS 244.179 Supervision of relative or member of household; exceptions. (1) Notwithstanding ORS 659A.309 and except as provided in subsections (2) to (4) of this section, a public official acting in an official capacity may not directly supervise a person who is a relative or member of the household.

(2) A member of the Legislative Assembly may directly supervise a person who:

(a) Is a relative or member of the household; and

(b) Serves as a public official in a position on the personal legislative staff of the member of the Legislative Assembly.

(3)(a) A public official acting in an official capacity may directly supervise a person who is a relative or member of the household if the person serves as an unpaid volunteer.

(b) Paragraph (a) of this subsection does not apply to service by a person in a position as an unpaid member of a governing body that a public official of whom the person is a relative or member of the household serves or over which the public official exercises jurisdiction or control.

(c) A relative or member of the household serving as an unpaid volunteer described in paragraph (a) of this subsection may receive reimbursement of expenses provided in the ordinary course of business to similarly situated unpaid volunteers.

(4) A public body may adopt policies specifying when a public official acting in an official capacity may directly supervise a person who is a relative or member of the household. [2007 c.865 §26d]

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[23] ORS 244.040(3) A public official may not solicit or receive, either directly or indirectly, and a person may not offer or give to any public official any pledge or promise of future employment, based on any understanding that the vote, official action or judgment of the public official would be influenced by the pledge or promise.

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[24] ORS 244.047(2) Except as provided in subsection (4) of this section, a person who ceases to hold a position as a public official may not have a direct beneficial financial interest in a public contract described in subsection (3) of this section for two years after the date the contract was authorized.

(3) Subsection (2) of this section applies to a public contract that was authorized by:

(a) The person acting in the capacity of a public official; or

(b) A board, commission, council, bureau, committee or other governing body of a public body of

which the person was a member when the contract was authorized.

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[25] ORS 244.045 Regulation of subsequent employment of public officials; lobbying by former members of Legislative Assembly. (1) A person who has been a Public Utility Commissioner, the Director of the Department of Consumer and Business Services, the Administrator of the Division of Finance and Corporate Securities, the Administrator of the Insurance Division, the Administrator of the Oregon Liquor Control Commission or the Director of the Oregon State Lottery shall not:

(a) Within one year after the public official ceases to hold the position become an employee of or receive any financial gain, other than reimbursement of expenses, from any private employer engaged in the activity, occupation or industry over which the former public official had authority; or

(b) Within two years after the public official ceases to hold the position:

(A) Be a lobbyist for or appear as a representative before the agency over which the person exercised authority as a public official;

(B) Influence or try to influence the actions of the agency; or

(C) Disclose any confidential information gained as a public official.

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[26] ORS 244.045(2) A person who has been a Deputy Attorney General or an assistant attorney general shall not, within two years after the person ceases to hold the position, lobby or appear before an agency that the person represented while employed by the Department of Justice.

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[27] ORS 244.045(3) A person who has been the State Treasurer or the Chief Deputy State Treasurer shall not, within one year after ceasing to hold office:

(a) Accept employment from or be retained by any private entity with whom the office of the State Treasurer or the Oregon Investment Council negotiated or to whom either awarded a contract providing for payment by the state of at least $25,000 in any single year during the term of office of the treasurer;

(b) Accept employment from or be retained by any private entity with whom the office of the State Treasurer or the Oregon Investment Council placed at least $50,000 of investment moneys in any single year during the term of office of the treasurer; or

(c) Be a lobbyist for an investment institution, manager or consultant, or appear before the office of the State Treasurer or Oregon Investment Council as a representative of an investment institution, manager or consultant.

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[28] 244.045(4) A public official who as part of the official's duties invested public funds shall not within two years after the public official ceases to hold the position:

(a) Be a lobbyist or appear as a representative before the agency, board or commission for which the former public official invested public funds;

(b) Influence or try to influence the agency, board or commission; or

(c) Disclose any confidential information gained as a public official.

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[29] ORS 244.047 Financial interest in public contract. (1) As used in this section:

(a) "Public body" has the meaning given that term in ORS 174.109.

(b) "Public contract" has the meaning given that term in ORS 279A.010.

(2) Except as provided in subsection (4) of this section, a person who ceases to hold a position as a public official may not have a direct beneficial financial interest in a public contract described in subsection (3) of this section for two years after the date the contract was authorized.

(3) Subsection (2) of this section applies to a public contract that was authorized by:

(a) The person acting in the capacity of a public official; or

(b) A board, commission, council, bureau, committee or other governing body of a public body of which the person was a member when the contract was authorized.

(4) Subsection (2) of this section does not apply to a person who was a member of a board, commission, council, bureau, committee or other governing body of a public body when the contract was authorized, but who did not participate in the authorization of the contract. [2007 c.877 §23a; 2009 c.689 §4a]

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[30] ORS 244.045(5)(a) A person who has been a member of the Department of State Police, who has held a position with the department with the responsibility for supervising, directing or administering programs relating to gaming by a Native American tribe or the Oregon State Lottery and who has been designated by the Superintendent of State Police by rule shall not, within one year after the member of the Department of State Police ceases to hold the position:

(A) Accept employment from or be retained by or receive any financial gain related to gaming from the Oregon State Lottery or any Native American tribe;

(B) Accept employment from or be retained by or receive any financial gain from any private employer selling or offering to sell gaming products or services;

(C) Influence or try to influence the actions of the Department of State Police; or

(D) Disclose any confidential information gained as a member of the Department of State Police.

(b) This subsection does not apply to:

(A) Appointment or employment of a person as an Oregon State Lottery Commissioner or as a Tribal Gaming Commissioner or regulatory agent thereof;

(B) Contracting with the Oregon State Lottery as a lottery game retailer;

(C) Financial gain received from personal gaming activities conducted as a private citizen; or

(D) Subsequent employment in any capacity by the Department of State Police.

(c) As used in this subsection, “Native American tribe” means any recognized Native American tribe or band of tribes authorized by the Indian Gaming Regulatory Act of October 17, 1988 (Public Law 100-497), 25 U.S.C. 2701 et seq., to conduct gambling operations on tribal land.

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[31] ORS 244.045(6) A person who has been a member of the Legislative Assembly may not receive money or any other consideration for lobbying as defined in ORS 171.725 performed during the period beginning on the date the person ceases to be a member of the Legislative Assembly and ending on the date of adjournment sine die of the next regular session of the Legislative Assembly that begins after the date the person ceases to be a member of the Legislative Assembly. [1987 c.360 §1; 1993 c.743 §10; 1995 c.79 §86; 1997 c.750 §1; 2007 c.877 §15]

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[32] ORS 244.020(1) “Actual conflict of interest” means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person’s relative or any business with which the person or a relative of the person is associated unless the pecuniary benefit or detriment arises out of circumstances described in subsection (12) of this section.

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[33] ORS 244.020(12) “Potential conflict of interest” means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person’s relative, or a business with which the person or the person’s relative is associated, unless the pecuniary benefit or detriment arises out of the following:

(a) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.

(b) Any action in the person’s official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person’s relative or business with which the

person or the person's relative is associated, is a member or is engaged.

(c) Membership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.

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[34] ORS 244.120(1)(a) If the public official is a member of the Legislative Assembly, announce publicly, pursuant to rules of the house of which the public official is a member, the nature of the conflict before taking any action thereon in the capacity of a public official.

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[35] ORS 244.120(1)(b) If the public official is a judge, remove the judge from the case giving rise to the conflict or advise the parties of the nature of the conflict.

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[36] ORS244.120(1)(c) If the public official is any other appointed official subject to this chapter, notify in writing the person who appointed the public official to office of the nature of the conflict, and request that the appointing authority dispose of the matter giving rise to the conflict. Upon receipt of the request, the appointing authority shall designate within a reasonable time an alternate to dispose of the matter, or shall direct the official to dispose of the matter in a manner specified by the appointing authority.

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[37] ORS 244.120(2) An elected public official, other than a member of the Legislative Assembly, or an appointed public official serving on a board or commission, shall:

(a) When met with a potential conflict of interest, announce publicly the nature of the potential conflict prior to taking any action thereon in the capacity of a public official; or

(b) When met with an actual conflict of interest, announce publicly the nature of the actual conflict and:

(A) Except as provided in subparagraph (B) of this paragraph, 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.

(B) If any public official's vote is necessary to meet a requirement of a minimum number of votes to take official action, be eligible to vote, but not to participate as a public official in any discussion or debate on the issue out of which the actual conflict arises.

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[38] ORS 244.120(b) When met with an actual conflict of interest, announce publicly the nature of the actual conflict and:

(A) Except as provided in subparagraph (B) of this paragraph, 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.

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[39] ORS 244.120(2)(b)(B) If any public official's vote is necessary to meet a requirement of a minimum number of votes to take official action, be eligible to vote, but not to participate as a public official in any discussion or debate on the issue out of which the actual conflict arises.

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[40] ORS 244.020(12)(a) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.

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[41] ORS 244.020(12)(b) Any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or the person's relative is associated, is a member or is engaged.

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[42] ORS 244.290(3)(a) Limit the minimum size of, or otherwise establish criteria for or identify, the smaller classes that qualify under the class exception from the definition of "potential conflict of interest" under ORS 244.020;

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[43] ORS 244.020(12)(c) Membership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.

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[44] ORS 244.130(1) When a public official gives notice of an actual or potential conflict of interest, the public body as defined in ORS 174.109 that the public official serves shall record the actual or potential conflict in the official records of the public body. In addition, a notice of the actual or potential conflict and how it was disposed of may in the discretion of the public body be provided to the Oregon Government Ethics Commission within a reasonable period of time.

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[45] ORS 244.120(3) Nothing in subsection (1) or (2) of this section requires any public official to announce a conflict of interest more than once on the occasion which the matter out of which the conflict arises is discussed or debated.

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[46] ORS 244.130(2) A decision or action of any public official or any board or commission on which the public official serves or agency by which the public official is employed 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. [1974 c.72 §11; 1975 c.543 §8; 1993 c.743 §16; 2007 c.865 §9]

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[47] ORS 244.205 Legal expense trust fund; establishment; eligible legal expenses. (1) Subject to the authorization of the Oregon Government Ethics Commission as described in ORS 244.209, a public official may establish a legal expense trust fund if the public official incurs or reasonably expects to incur legal expenses described in subsection (2) of this section.

(2) Proceeds from the trust fund may be used by the public official to defray legal expenses incurred by the public official in any civil, criminal or other legal proceeding or investigation that relates to or arises from the course and scope of duties of the person as a public official. The legal expenses must be incurred in connection with:

(a) The issuance of a court's stalking protective order under ORS 30.866 or 163.738;

(b) The issuance of a citation under ORS 163.735;

(c) A criminal prosecution under ORS 163.732;

(d) A civil action under ORS 30.866; or

(e) Defending the public official in a proceeding or investigation brought or maintained by a public body as defined in ORS 174.109.

(3) Except as provided in subsection (2) of this section, a public official may not use proceeds from the trust fund for any personal use.

(4) A public official may not establish or maintain more than one legal expense trust fund at any one time.

(5) The provisions of ORS chapter 130 do not apply to a trust fund established under ORS 244.205 to

244.221. [2007 c.877 §29; 2009 c.505 §1]

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[48] ORS 244.205 Legal expense trust fund; establishment; eligible legal expenses. (1) Subject to the authorization of the Oregon Government Ethics Commission as described in ORS 244.209, a public official may establish a legal expense trust fund if the public official incurs or reasonably expects to incur legal expenses described in subsection (2) of this section.

(2) Proceeds from the trust fund may be used by the public official to defray legal expenses incurred by the public official in any civil, criminal or other legal proceeding or investigation that relates to or arises from the course and scope of duties of the person as a public official. The legal expenses must be incurred in connection with:

(a) The issuance of a court's stalking protective order under ORS 30.866 or 163.738;

(b) The issuance of a citation under ORS 163.735;

(c) A criminal prosecution under ORS 163.732;

(d) A civil action under ORS 30.866; or

(e) Defending the public official in a proceeding or investigation brought or maintained by a public body as defined in ORS 174.109.

(3) Except as provided in subsection (2) of this section, a public official may not use proceeds from the trust fund for any personal use.

(4) A public official may not establish or maintain more than one legal expense trust fund at any one time.

(5) The provisions of ORS chapter 130 do not apply to a trust fund established under ORS 244.205 to 244.221. [2007 c.877 §29; 2009 c.505 §1]

244.207 Use of fund proceeds. (1) The proceeds of a legal expense trust fund may be used to:

(a) Defray legal expenses described in ORS 244.205;

(b) Defray costs reasonably incurred in administering the trust fund, including but not limited to costs incident to the solicitation of funds; and

(c) Discharge any tax liabilities incurred as a result of the creation, operation or administration of the trust fund.

(2) The proceeds of a trust fund may also be used to defray or discharge expenses, costs or liabilities incurred before the fund was established if the expenses, costs or liabilities are related to the legal proceeding for which the fund was established. [2007 c.877 §30]

244.209 Application to establish fund; commission review and authorization. (1) A public official may apply to establish a legal expense trust fund by filing an application with the Oregon Government Ethics Commission. The application must contain:

(a) A copy of an executed trust agreement described in subsection (2) of this section;

(b) A sworn affidavit described in subsection (3) of this section signed by the public official; and

(c) A sworn affidavit described in subsection (4) of this section signed by the trustee.

(2) The trust agreement must contain the following:

(a) A provision incorporating by reference the provisions of ORS 244.205 to 244.221; and

(b) A designation of a trustee under ORS 244.211.

(3) The affidavit of the public official must state:

(a) The nature of the legal proceeding that requires establishment of the trust fund;

(b) That the public official will comply with the provisions of ORS 244.205 to 244.221; and

(c) That the public official is responsible for the proper administration of the trust fund.

(4) The affidavit of the trustee must state that the trustee:

(a) Has read and understands ORS 244.205 to 244.221; and

(b) Consents to administer the trust fund in compliance with ORS 244.205 to 244.221.

(5) Upon receiving an application under this section, the commission shall review the trust agreement, the affidavits and any supporting documents or instruments filed to determine whether the application meets the requirements of ORS 244.205 to 244.221. If the commission determines that the application meets the requirements of ORS 244.205 to 244.221, the commission shall grant written authorization to the public official to establish the trust fund.

(6) The commission shall review the quarterly statements required under ORS 244.217 and shall monitor the activities of each trust fund to ensure continued compliance with ORS 244.205 to 244.221.

(7) Unless subject to the attorney-client privilege, all documents required to be filed relating to the creation and administration of a trust fund are public records subject to disclosure as provided in ORS 192.410 to 192.505.

(8) A public official may not establish a legal expense trust fund without receiving prior written authorization of the commission as described in this section.

(9) A public official may file an amendment to a trust agreement approved as part of a trust fund under this section. The commission shall approve the amendment if the commission determines the amendment meets the requirements of ORS 244.205 to 244.221. [2007 c.877 §31; 2009 c.505 §3]

244.210 [1975 c.216 §4; repealed by 1983 c.350 §62 (244.201 enacted in lieu of 244.200 and 244.210)]

244.211 Duties of trustee. (1) The trustee of a legal expense trust fund is responsible for:

(a) The receipt and deposit of contributions to the trust fund;

(b) The authorization of expenditures and disbursements from the trust fund;

(c) The filing of quarterly statements required under ORS 244.217; and

(d) The performance of other tasks incident to the administration of the trust fund.

(2) The public official who establishes the trust fund may either serve as the public official's own trustee or may appoint and certify to the Oregon Government Ethics Commission the name and address of a trustee. Any default or violation by the trustee shall be conclusively considered a default or violation by the public official. [2007 c.877 §32; 2009 c.505 §2]

244.213 Contributions to fund. (1) Except as provided in subsection (3) of this section, any person may contribute to a legal expense trust fund established under ORS 244.205 to 244.221.

(2) A person may make contributions of moneys to a legal expense trust fund in unlimited amounts. Pro bono legal assistance and other in-kind assistance may also be provided without limit and is considered a contribution subject to the reporting requirements of ORS 244.217.

(3) A political committee as defined in ORS 260.005 that is a principal campaign committee may not contribute to a legal expense trust fund. [2007 c.877 §33]

244.215 Fund account. (1) A trustee of a legal expense trust fund shall establish a single exclusive account in a financial institution, as defined in ORS 706.008. The financial institution must be located in this state and must ordinarily conduct business with the general public in this state.

(2) The trustee shall maintain the account in the name of the trust fund.

(3) All expenditures made by the trustee shall be drawn from the account and:

(a) Issued on a check signed by the trustee; or

(b) Paid using a debit card or other form of electronic transaction.

(4) A contribution received by a trustee shall be deposited into the account not later than seven calendar days after the date the contribution is received. This subsection does not apply to in-kind contributions received.

(5) This section does not prohibit the transfer of any amount deposited in the account into a certificate of deposit, stock fund or other investment instrument.

(6) The account may not include any public or private moneys or any moneys of any other person, other than contributions received by the trustee.

(7) A trustee shall retain a copy of each financial institution account statement from the account described in this section for not less than two years after the date the statement is issued by the financial institution. [2007 c.877 §34]

244.217 Statement of contributions received and expenditures made. (1) The trustee of a legal expense trust fund shall, according to the schedule described in subsection (3) of this section, file with the Oregon Government Ethics Commission a statement for the applicable reporting period showing contributions received by the trustee and expenditures made from the trust fund account established under ORS 244.215.

(2) Each statement shall list:

(a) The name and address of each person who contributed an aggregate amount of more than $75, and the total amount contributed by that person;

(b) The total amount of contributions not listed under paragraph (a) of this subsection as a single item, but shall specify how those contributions were obtained;

(c) The amount and purpose of each expenditure and the name and address of each payee; and

(d) The name and address of any person contributing pro bono legal assistance and the fair market value of the assistance provided by the person.

(3) Statements required to be filed with the commission under this section shall be filed according to the schedule described in ORS 244.218.

(4) If no contributions are received and no expenditures made during the reporting period, the trustee shall file a statement indicating that no contributions were deposited and no expenditures were made.

(5) The trustee may amend a statement filed under this section without penalty if the amendment is filed with the commission not later than 30 days after the deadline for filing the statement. [2007 c.877 §35]

244.218 Quarterly filing of statements. Statements required to be filed with the Oregon Government Ethics Commission under ORS 244.217 shall be filed in each calendar year:

(1) Not later than April 15, for the accounting period beginning January 1 and ending March 31;

(2) Not later than July 15, for the accounting period beginning April 1 and ending June 30;

(3) Not later than October 15, for the accounting period beginning July 1 and ending September 30; and

(4) Not later than January 15 of the following calendar year, for the accounting period beginning October 1 and ending December 31. [Formerly 244.105]

Note: 244.218 was added to and made a part of ORS chapter 244 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

244.219 Termination of fund. (1) A legal expense trust fund established under ORS 244.205 to 244.221 may be terminated by:

(a) The public official who established the trust fund;

(b) Subject to subsection (2) of this section, the terms of the trust agreement; or

(c) The Oregon Government Ethics Commission following a determination by the commission that a violation of any provision of this chapter has occurred in connection with the trust fund.

(2) A trust agreement may provide that a legal expense trust fund is terminated not later than six months following the completion of the legal proceeding for which the fund was established. Upon application of the public official who established the trust fund, the commission may extend the existence of the trust fund to a specified date if the commission determines that the public official has incurred legal expenses that exceed the balance remaining in the fund. If the commission extends the existence of the trust fund, the trust fund terminates on the date the extension expires.

(3) Following termination of a legal expense trust fund, the trustee may not accept contributions to or make expenditures from the fund.

(4) Not later than 30 days after a trust fund is terminated, the trustee of the fund shall file with the commission a final report listing the totals of all contributions made to the fund and all expenditures made from the fund. [2007 c.877 §36]

244.221 Disposition of moneys in terminated fund; distribution of award of attorney fees, costs or money judgment. (1) Not later than 30 days after a legal expense trust fund is terminated, the trustee of the fund shall return any moneys remaining in the fund to contributors to the fund on a pro rata basis.

(2) If the legal proceeding for which the trust fund was established results in an award of attorney fees, costs or any other money judgment award to or in favor of the public official, amounts awarded shall be distributed in the following order:

(a) To pay outstanding legal expenses;

(b) To contributors to the trust fund on a pro rata basis; and

(c) To the public official or, if required by the trust agreement, to an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code. [2007 c.877 §37]

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[49] ORS 244.205(4) A public official may not establish or maintain more than one legal expense trust fund at any one time.

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[50] ORS 244.209 Application to establish fund; commission review and authorization. (1) A public official may apply to establish a legal expense trust fund by filing an application with the Oregon Government Ethics Commission. The application must contain:

(a) A copy of an executed trust agreement described in subsection (2) of this section;

(b) A sworn affidavit described in subsection (3) of this section signed by the public official; and

(c) A sworn affidavit described in subsection (4) of this section signed by the trustee.

(2) The trust agreement must contain the following:

(a) A provision incorporating by reference the provisions of ORS 244.205 to 244.221; and

(b) A designation of a trustee under ORS 244.211.

(3) The affidavit of the public official must state:

(a) The nature of the legal proceeding that requires establishment of the trust fund;

(b) That the public official will comply with the provisions of ORS 244.205 to 244.221; and

(c) That the public official is responsible for the proper administration of the trust fund.

(4) The affidavit of the trustee must state that the trustee:

(a) Has read and understands ORS 244.205 to 244.221; and

(b) Consents to administer the trust fund in compliance with ORS 244.205 to 244.221.

(5) Upon receiving an application under this section, the commission shall review the trust agreement, the affidavits and any supporting documents or instruments filed to determine whether the application meets the requirements of ORS 244.205 to 244.221. If the commission determines that the application meets the requirements of ORS 244.205 to 244.221, the commission shall grant written authorization to the public official to establish the trust fund.

(6) The commission shall review the quarterly statements required under ORS 244.217 and shall monitor the activities of each trust fund to ensure continued compliance with ORS 244.205 to 244.221.

(7) Unless subject to the attorney-client privilege, all documents required to be filed relating to the creation and administration of a trust fund are public records subject to disclosure as provided in ORS 192.410 to 192.505.

(8) A public official may not establish a legal expense trust fund without receiving prior written authorization of the commission as described in this section.

(9) A public official may file an amendment to a trust agreement approved as part of a trust fund under this section. The commission shall approve the amendment if the commission determines the amendment meets the requirements of ORS 244.205 to 244.221. [2007 c.877 §31; 2009 c.505 §3]

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[51] ORS 244.211(2) The public official who establishes the trust fund may either serve as the public official's own trustee or may appoint and certify to the Oregon Government Ethics Commission the name and address of a trustee. Any default or violation by the trustee shall be conclusively considered a default or violation by the public official. [2007 c.877 §32; 2009 c.505 §2]

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[52] ORS 244.213 Contributions to fund. (1) Except as provided in subsection (3) of this section, any person may contribute to a legal expense trust fund established under ORS 244.205 to 244.221.

(2) A person may make contributions of moneys to a legal expense trust fund in unlimited amounts. Pro bono legal assistance and other in-kind assistance may also be provided without limit and is considered a contribution subject to the reporting requirements of ORS 244.217.

(3) A political committee as defined in ORS 260.005 that is a principal campaign committee may not contribute to a legal expense trust fund. [2007 c.877 §33]

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[53] ORS 244.213(3) A political committee as defined in ORS 260.005 that is a principal campaign committee may not contribute to a legal expense trust fund. [2007 c.877 §33]

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[54] ORS 244.215 Fund account. (1) A trustee of a legal expense trust fund shall establish a single exclusive

account in a financial institution, as defined in ORS 706.008. The financial institution must be located in this state and must ordinarily conduct business with the general public in this state.

(2) The trustee shall maintain the account in the name of the trust fund.

(3) All expenditures made by the trustee shall be drawn from the account and:

(a) Issued on a check signed by the trustee; or

(b) Paid using a debit card or other form of electronic transaction.

(4) A contribution received by a trustee shall be deposited into the account not later than seven calendar days after the date the contribution is received. This subsection does not apply to in-kind contributions received.

(5) This section does not prohibit the transfer of any amount deposited in the account into a certificate of deposit, stock fund or other investment instrument.

(6) The account may not include any public or private moneys or any moneys of any other person, other than contributions received by the trustee.

(7) A trustee shall retain a copy of each financial institution account statement from the account described in this section for not less than two years after the date the statement is issued by the financial institution. [2007 c.877 §34]

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[55] ORS 244.217 Statement of contributions received and expenditures made. (1) The trustee of a legal expense trust fund shall, according to the schedule described in subsection (3) of this section, file with the Oregon Government Ethics Commission a statement for the applicable reporting period showing contributions received by the trustee and expenditures made from the trust fund account established under ORS 244.215.

(2) Each statement shall list:

(a) The name and address of each person who contributed an aggregate amount of more than $75, and the total amount contributed by that person;

(b) The total amount of contributions not listed under paragraph (a) of this subsection as a single item, but shall specify how those contributions were obtained;

(c) The amount and purpose of each expenditure and the name and address of each payee; and

(d) The name and address of any person contributing pro bono legal assistance and the fair market value of the assistance provided by the person.

(3) Statements required to be filed with the commission under this section shall be filed according to the schedule described in ORS 244.218.

(4) If no contributions are received and no expenditures made during the reporting period, the trustee shall file a statement indicating that no contributions were deposited and no expenditures were made.

(5) The trustee may amend a statement filed under this section without penalty if the amendment is filed with the commission not later than 30 days after the deadline for filing the statement. [2007 c.877 §35]

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[56] ORS 244.219 Termination of fund. (1) A legal expense trust fund established under ORS 244.205 to 244.221 may be terminated by:

(a) The public official who established the trust fund;

(b) Subject to subsection (2) of this section, the terms of the trust agreement; or

(c) The Oregon Government Ethics Commission following a determination by the commission that a violation of any provision of this chapter has occurred in connection with the trust fund.

(2) A trust agreement may provide that a legal expense trust fund is terminated not later than six months following the completion of the legal proceeding for which the fund was established. Upon application of the public official who established the trust fund, the commission may extend the existence of the trust fund to a specified date if the commission determines that the public official has incurred legal expenses that exceed the balance remaining in the fund. If the commission extends the existence of the trust fund, the trust fund terminates on the date the extension expires.

(3) Following termination of a legal expense trust fund, the trustee may not accept contributions to or make expenditures from the fund.

(4) Not later than 30 days after a trust fund is terminated, the trustee of the fund shall file with the commission a final report listing the totals of all contributions made to the fund and all expenditures made

from the fund. [2007 c.877 §36]

Return to previous location

[57] ORS 244.221 Disposition of moneys in terminated fund; distribution of award of attorney fees, costs or money judgment. (1) Not later than 30 days after a legal expense trust fund is terminated, the trustee of the fund shall return any moneys remaining in the fund to contributors to the fund on a pro rata basis.

(2) If the legal proceeding for which the trust fund was established results in an award of attorney fees, costs or any other money judgment award to or in favor of the public official, amounts awarded shall be distributed in the following order:

(a) To pay outstanding legal expenses;

(b) To contributors to the trust fund on a pro rata basis; and

(c) To the public official or, if required by the trust agreement, to an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code. [2007 c.877 §37]

Return to previous location

[58] ORS 244.020(9) "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.

Return to previous location

[59] ORS 244.040(2)(f) Gifts received by a public official or a relative or member of the household of the public official from a source that could not reasonably be known to have a legislative or administrative interest.

Return to previous location

[60] ORS 244.025 Gift limit. (1) During a calendar year, a public official, a candidate or a relative or member of the household of the public official or candidate may not solicit or receive, directly or indirectly, any gift or gifts with an aggregate value in excess of $50 from any single source that could reasonably be known to have a legislative or administrative interest.

(2) During a calendar year, a person who has a legislative or administrative interest may not offer to the public official or a relative or member of the household of the public official any gift or gifts with an aggregate value in excess of $50.

(3) During a calendar year, a person who has a legislative or administrative interest may not offer to the candidate or a relative or member of the household of the candidate any gift or gifts with an aggregate value in excess of $50.

(4) This section does not apply to public officials subject to the Oregon Code of Judicial Conduct. [2007 c.877 §18; 2009 c.68 §3]

Return to previous location

[61] ORS 244.020(6)(b) "Gift" does not mean:

(A) Contributions as defined in ORS 260.005.

(B) Gifts from relatives or members of the household of the public official or candidate.

Return to previous location

[62] ORS 244.020 (6)(b)(F) Reasonable expenses paid by any unit of the federal government, a state or local government, a Native American tribe that is recognized by federal law or formally acknowledged by a state, a membership organization to which a public body as defined in ORS 174.109 pays membership dues or a not-for-profit corporation that is tax exempt under section 501(c)(3) of the Internal Revenue Code, for attendance at a convention, fact-finding mission or trip, conference or other meeting if the public

official is scheduled to deliver a speech, make a presentation, participate on a panel or represent state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117.

Return to previous location

[63] ORS 244.100(1) Statements of expenses or honoraria provided to public official. (1) Any organization, unit of government, tribe or corporation that provides a public official with expenses with an aggregate value exceeding $50 for an event described in ORS 244.020 (6)(b)(F) shall notify the public official in writing of the amount of the expense. The organization, unit, tribe or corporation shall provide the notice to the public official within 10 days after the date the expenses are incurred.

Return to previous location

[64] ORS 244.100(2) Any person that provides a public official or candidate, or a member of the household of the public official or candidate, with an honorarium or other item allowed under ORS 244.042 with a value exceeding $15 shall notify the public official or candidate in writing of the value of the honorarium or other item. The person shall provide the notice to the public official or candidate within 10 days after the date of the event for which the honorarium or other item was received. [1975 c.543 §11; 1991 c.677 §1; 2007 c.865 §6; 2007 c.877 §21a; 2009 c.68 §8]

Return to previous location

[65] ORS 244.209 Application to establish fund; commission review and authorization. (1) A public official may apply to establish a legal expense trust fund by filing an application with the Oregon Government Ethics Commission. The application must contain:

(a) A copy of an executed trust agreement described in subsection (2) of this section;
(b) A sworn affidavit described in subsection (3) of this section signed by the public official; and
(c) A sworn affidavit described in subsection (4) of this section signed by the trustee.
(2) The trust agreement must contain the following:
(a) A provision incorporating by reference the provisions of ORS 244.205 to 244.221; and
(b) A designation of a trustee under ORS 244.211.
(3) The affidavit of the public official must state:
(a) The nature of the legal proceeding that requires establishment of the trust fund;
(b) That the public official will comply with the provisions of ORS 244.205 to 244.221; and
(c) That the public official is responsible for the proper administration of the trust fund.
(4) The affidavit of the trustee must state that the trustee:
(a) Has read and understands ORS 244.205 to 244.221; and
(b) Consents to administer the trust fund in compliance with ORS 244.205 to 244.221.

(5) Upon receiving an application under this section, the commission shall review the trust agreement, the affidavits and any supporting documents or instruments filed to determine whether the application meets the requirements of ORS 244.205 to 244.221. If the commission determines that the application meets the requirements of ORS 244.205 to 244.221, the commission shall grant written authorization to the public official to establish the trust fund.

(6) The commission shall review the quarterly statements required under ORS 244.217 and shall monitor the activities of each trust fund to ensure continued compliance with ORS 244.205 to 244.221.

(7) Unless subject to the attorney-client privilege, all documents required to be filed relating to the creation and administration of a trust fund are public records subject to disclosure as provided in ORS 192.410 to 192.505.

(8) A public official may not establish a legal expense trust fund without receiving prior written authorization of the commission as described in this section.

(9) A public official may file an amendment to a trust agreement approved as part of a trust fund under this section. The commission shall approve the amendment if the commission determines the amendment meets the requirements of ORS 244.205 to 244.221. [2007 c.877 §31; 2009 c.505 §3]

Return to previous location

[66] ORS 244.020(6)(b)(O) Anything of economic value offered to or solicited or received by a public official

or candidate, or a relative or member of the household of the public official or candidate:

Return to previous location

[67] ORS 244.020(6)(b)(O)(i) As part of the usual and customary practice of the person's private business, or the person's employment or position as a volunteer with a private business, corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, not-for-profit corporation or other legal entity operated for economic value; and

Return to previous location

[68] ORS 244.020(6)(b)(O)(ii) That bears no relationship to the public official's or candidate's holding of, or candidacy for, the official position or public office.

Return to previous location

[69] ORS 244.020(6)(b)(C) An unsolicited token or award of appreciation in the form of a plaque, trophy, desk item, wall memento or similar item, with a resale value reasonably expected to be less than $25.

Return to previous location

[70] ORS 244.020(6)(b)(D) Informational or program material, publications or subscriptions related to the recipient's performance of official duties.

Return to previous location

[71] ORS 244.020(6)(b)(J) Waiver or discount of registration expenses or materials provided to a public official or candidate at a continuing education event that the public official or candidate may attend to satisfy a professional licensing requirement.

Return to previous location

[72] *ORS 244.020(6)(b)(M) Entertainment provided to a public official or candidate or a relative or member of the household of the public official or candidate that is incidental to the main purpose of another event.*

Return to previous location

[73] *ORS 244.020(6)(b)(N) Entertainment provided to a public official or a relative or member of the household of the public official where the public official is acting in an official capacity while representing state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117 for a ceremonial purpose.*

Return to previous location

[74] *ORS 244.020(6)(b)(E) Admission provided to or the cost of food or beverage consumed by a public official, or a member of the household or staff of the public official when accompanying the public official, at a reception, meal or meeting held by an organization when the public official represents state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117.*

Return to previous location

[75] *ORS 244.020(6)(b)(L) Food or beverage consumed by a public official or candidate at a reception where the food or beverage is provided as an incidental part of the reception and no cost is placed on the food or beverage.*

Return to previous location

[76] *ORS 244.020(6)(b)(K) Expenses provided by one public official to another public official for travel inside this state to or from an event that bears a relationship to the receiving public official's office and at which the official participates in an official capacity.*

Return to previous location

[77] *ORS 244.020(6)(b)(F) Reasonable expenses paid by any unit of the federal government, a state or local government, a Native American tribe that is recognized by federal law or formally acknowledged by a state, a membership organization to which a public body as defined in ORS 174.109 pays membership dues or a not-for-profit corporation that is tax exempt under section 501(c)(3) of the Internal Revenue Code, for attendance at a convention, fact-finding mission or trip, conference or other meeting if the public official is scheduled to deliver a speech, make a presentation, participate on a panel or represent state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117.*

Return to previous location

[78] *ORS 244.020(6)(b)(H) Reasonable food, travel or lodging expenses provided to a public official, a relative of the public official accompanying the public official, a member of the household of the public official accompanying the public official or a staff member of the public official accompanying the public official, when the public official is representing state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117:*

Return to previous location

[79] *ORS 244.020(6)(b)(H)(i) On an officially sanctioned trade-promotion or fact-finding mission; or*

Return to previous location

[80] *ORS 244.020(6)(b)(H)(ii) In officially designated negotiations, or economic development activities, where receipt of the expenses is approved in advance.*

Return to previous location

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

Return to previous location

[82] *ORS 244.020(6)(b)(I) Food or beverage consumed by a public official acting in an official capacity:*

Return to previous location

[83] *ORS 244.020(6)(b)(I)(i) In association with the review, approval, execution of documents or closing of a borrowing, investment or other financial transaction, including any business agreement between state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117 and a private entity or public body as defined in ORS 174.109;*

Return to previous location

[84] *ORS 244.020(6)(b)(I)(ii) While engaged in due diligence research or presentations by the office of the State Treasurer related to an existing or proposed investment or borrowing; or*

Return to previous location

[85] *ORS 244.020(6)(b)(I)(iii) While engaged in a meeting of an advisory, governance or policy-making body of a corporation, partnership or other entity in which the office of the State Treasurer has invested moneys.*

Return to previous location

[86] 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.

(b) "Gift" does not mean:

(A) Contributions as defined in ORS 260.005.

(B) Gifts from relatives or members of the household of the public official or candidate.

(C) An unsolicited token or award of appreciation in the form of a plaque, trophy, desk item, wall memento or similar item, with a resale value reasonably expected to be less than $25.

(D) Informational or program material, publications or subscriptions related to the recipient's performance of official duties.

(E) Admission provided to or the cost of food or beverage consumed by a public official, or a member of the household or staff of the public official when accompanying the public official, at a reception, meal or meeting held by an organization when the public official represents state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117.

(F) Reasonable expenses paid by any unit of the federal government, a state or local government, a Native American tribe that is recognized by federal law or formally acknowledged by a state, a membership organization to which a public body as defined in ORS 174.109 pays membership dues or a not-for-profit corporation that is tax exempt under section 501(c)(3) of the Internal Revenue Code, for attendance at a convention, fact-finding mission or trip, conference or other meeting if the public official is scheduled to deliver a speech, make a presentation, participate on a panel or represent state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117.

(G) Contributions made to a legal expense trust fund established under ORS 244.209 for the benefit of the public official.

(H) Reasonable food, travel or lodging expenses provided to a public official, a relative of the public official accompanying the public official, a member of the household of the public official accompanying the public official or a staff member of the public official accompanying the public official, when the public official is representing state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117:

(i) On an officially sanctioned trade-promotion or fact-finding mission; or

(ii) In officially designated negotiations, or economic development activities, where receipt of the expenses is approved in advance.

(I) Food or beverage consumed by a public official acting in an official capacity:

(i) In association with the review, approval, execution of documents or closing of a borrowing, investment or other financial transaction, including any business agreement between state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117 and a private entity or public body as defined in ORS 174.109;

(ii) While engaged in due diligence research or presentations by the office of the State Treasurer related to an existing or proposed investment or borrowing; or

(iii) While engaged in a meeting of an advisory, governance or policy-making body of a corporation, partnership or other entity in which the office of the State Treasurer has invested moneys.

(J) Waiver or discount of registration expenses or materials provided to a public official or candidate at a continuing education event that the public official or candidate may attend to satisfy a professional licensing requirement.

(K) Expenses provided by one public official to another public official for travel inside this state to or from an event that bears a relationship to the receiving public official's office and at which the official participates in an official capacity.

(L) Food or beverage consumed by a public official or candidate at a reception where the food or beverage is provided as an incidental part of the reception and no cost is placed on the food or beverage.

(M) Entertainment provided to a public official or candidate or a relative or member of the household of the public official or candidate that is incidental to the main purpose of another event.

(N) Entertainment provided to a public official or a relative or member of the household of the public official where the public official is acting in an official capacity while representing state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117 for a ceremonial purpose.

(O) Anything of economic value offered to or solicited or received by a public official or candidate, or a relative or member of the household of the public official or candidate:

(i) As part of the usual and customary practice of the person's private business, or the person's employment or position as a volunteer with a private business, corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, not-for-profit corporation or other legal entity operated for economic value; and

(ii) That bears no relationship to the public official's or candidate's holding of, or candidacy for, the official position or public office.

(P) Reasonable expenses paid to a public school employee for accompanying students on an educational trip.

Return to previous location

[87] ORS 244.025 **Gift limit.** (1) During a calendar year, a public official, a candidate or a relative or member of the household of the public official or candidate may not solicit or receive, directly or indirectly, any gift or gifts with an aggregate value in excess of $50 from any single source that could reasonably be known to have a legislative or administrative interest.

(2) During a calendar year, a person who has a legislative or administrative interest may not offer to the public official or a relative or member of the household of the public official any gift or gifts with an aggregate value in excess of $50.

(3) During a calendar year, a person who has a legislative or administrative interest may not offer to the candidate or a relative or member of the household of the candidate any gift or gifts with an aggregate value in excess of $50.

(4) This section does not apply to public officials subject to the Oregon Code of Judicial Conduct. [2007 c.877 §18; 2009 c.68 §3]

Return to previous location

[88] ORS 244.040(1) Except as provided in subsection (2) of this section, a public official may not use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment for the public official, a relative or member of the household of the public official, or any business with which the public official or a relative or member of the household of the public official is associated, if the financial gain or avoidance of financial detriment would not otherwise be available but for the public official's holding of the official position or office.

Return to previous location

[89] ORS 244.040(2)(e), (f) and (g)] Gifts that do not exceed the limits specified in ORS 244.025 received by a public official or a relative or member of the household of the public official from a source that could reasonably be known to have a legislative or administrative interest.

(f) Gifts received by a public official or a relative or member of the household of the public official from a source that could not reasonably be known to have a legislative or administrative interest.

(g) The receipt by a public official or a relative or member of the household of the public official of any item, regardless of value, that is expressly excluded from the definition of "gift" in ORS 244.020.

Return to previous location

[90] 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:

Return to previous location

[91] ORS 244.040 **Prohibited use of official position or office; exceptions; other prohibited actions.**

(1) Except as provided in subsection (2) of this section, a public official may not use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment for the public official, a relative or member of the household of the public official, or any business with which the public official or a relative or member of the household of the public official is associated, if the financial gain or avoidance of financial detriment would not otherwise be available but for the public official's holding of the official position or office.

(2) Subsection (1) of this section does not apply to:

(a) Any part of an official compensation package as determined by the public body that the public official serves.

(b) The receipt by a public official or a relative or member of the household of the public official of an honorarium or any other item allowed under ORS 244.042.

(c) Reimbursement of expenses.

(d) An unsolicited award for professional achievement.

(e) Gifts that do not exceed the limits specified in ORS 244.025 received by a public official or a relative or member of the household of the public official from a source that could reasonably be known to have a legislative or administrative interest.

(f) Gifts received by a public official or a relative or member of the household of the public official from a source that could not reasonably be known to have a legislative or administrative interest.

(g) The receipt by a public official or a relative or member of the household of the public official of any item, regardless of value, that is expressly excluded from the definition of "gift" in ORS 244.020.

(h) Contributions made to a legal expense trust fund established under ORS 244.209 for the benefit of the public official.

(3) A public official may not solicit or receive, either directly or indirectly, and a person may not offer or give to any public official any pledge or promise of future employment, based on any understanding that the vote, official action or judgment of the public official would be influenced by the pledge or promise.

(4) A public official may not attempt to further or further the personal gain of the public official through the use of confidential information gained in the course of or by reason of holding position as a public official or activities of the public official.

(5) A person who has ceased to be a public official may not attempt to further or further the personal gain of any person through the use of confidential information gained in the course of or by reason of holding position as a public official or the activities of the person as a public official.

(6) A person may not attempt to represent or represent a client for a fee before the governing body of a public body of which the person is a member. This subsection does not apply to the person's employer, business partner or other associate.

(7) The provisions of this section apply regardless of whether actual conflicts of interest or potential conflicts of interest are announced or disclosed under ORS 244.120. [1974 c.72 §3; 1975 c.543 §2; 1987 c.566 §9; 1989 c.340 §3; 1991 c.146 §1; 1991 c.770 §6; 1991 c.911 §4; 1993 c.743 §9; 2007 c.877 §17; 2009 c.68 §4]

Return to previous location

[92] ORS 244.020(6)(b)(A) through (P) (A) Contributions as defined in ORS 260.005.

(B) Gifts from relatives or members of the household of the public official or candidate.

(C) An unsolicited token or award of appreciation in the form of a plaque, trophy, desk item, wall memento or similar item, with a resale value reasonably expected to be less than $25.

(D) Informational or program material, publications or subscriptions related to the recipient's performance of official duties.

(E) Admission provided to or the cost of food or beverage consumed by a public official, or a member of the household or staff of the public official when accompanying the public official, at a reception, meal or meeting held by an organization when the public official represents state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117.

(F) Reasonable expenses paid by any unit of the federal government, a state or local government, a Native American tribe that is recognized by federal law or formally acknowledged by a state, a membership organization to which a public body as defined in ORS 174.109 pays membership dues or a

not-for-profit corporation that is tax exempt under section 501(c)(3) of the Internal Revenue Code, for attendance at a convention, fact-finding mission or trip, conference or other meeting if the public official is scheduled to deliver a speech, make a presentation, participate on a panel or represent state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117.

(G) Contributions made to a legal expense trust fund established under ORS 244.209 for the benefit of the public official.

(H) Reasonable food, travel or lodging expenses provided to a public official, a relative of the public official accompanying the public official, a member of the household of the public official accompanying the public official or a staff member of the public official accompanying the public official, when the public official is representing state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117:

(i) On an officially sanctioned trade-promotion or fact-finding mission; or

(ii) In officially designated negotiations, or economic development activities, where receipt of the expenses is approved in advance.

(I) Food or beverage consumed by a public official acting in an official capacity:

(i) In association with the review, approval, execution of documents or closing of a borrowing, investment or other financial transaction, including any business agreement between state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117 and a private entity or public body as defined in ORS 174.109;

(ii) While engaged in due diligence research or presentations by the office of the State Treasurer related to an existing or proposed investment or borrowing; or

(iii) While engaged in a meeting of an advisory, governance or policy-making body of a corporation, partnership or other entity in which the office of the State Treasurer has invested moneys.

(J) Waiver or discount of registration expenses or materials provided to a public official or candidate at a continuing education event that the public official or candidate may attend to satisfy a professional licensing requirement.

(K) Expenses provided by one public official to another public official for travel inside this state to or from an event that bears a relationship to the receiving public official's office and at which the official participates in an official capacity.

(L) Food or beverage consumed by a public official or candidate at a reception where the food or beverage is provided as an incidental part of the reception and no cost is placed on the food or beverage.

(M) Entertainment provided to a public official or candidate or a relative or member of the household of the public official or candidate that is incidental to the main purpose of another event.

(N) Entertainment provided to a public official or a relative or member of the household of the public official where the public official is acting in an official capacity while representing state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117 for a ceremonial purpose.

(O) Anything of economic value offered to or solicited or received by a public official or candidate, or a relative or member of the household of the public official or candidate:

(i) As part of the usual and customary practice of the person's private business, or the person's employment or position as a volunteer with a private business, corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, not-for-profit corporation or other legal entity operated for economic value; and

(ii) That bears no relationship to the public official's or candidate's holding of, or candidacy for, the official position or public office.

(P) Reasonable expenses paid to a public school employee for accompanying students on an educational trip.

Return to previous location

[93] ORS 244.040(1) Except as provided in subsection (2) of this section, a public official may not use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment for the public official, a relative or member of the household of the public official, or any business with which the public official or a relative or member of the household of the public official is associated, if the financial gain or avoidance of financial detriment would not otherwise be available but for the public official's holding of the official position or office.

Return to previous location

[94] ORS 244.040(2)(f) Gifts received by a public official or a relative or member of the household of the public official from a source that could not reasonably be known to have a legislative or administrative interest.

Return to previous location

[95] ORS 244.025(1) During a calendar year, a public official, a candidate or a relative or member of the household of the public official or candidate may not solicit or receive, directly or indirectly, any gift or gifts with an aggregate value in excess of $50 from any single source that could reasonably be known to have a legislative or administrative interest.

Return to previous location

[96] ORS 244.040(1) Except as provided in subsection (2) of this section, a public official may not use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment for the public official, a relative or member of the household of the public official, or any business with which the public official or a relative or member of the household of the public official is associated, if the financial gain or avoidance of financial detriment would not otherwise be available but for the public official's holding of the official position or office.

Return to previous location

[97] ORS 244.020(6)(b) "Gift" does not mean:

(A) Contributions as defined in ORS 260.005.

(B) Gifts from relatives or members of the household of the public official or candidate.

(C) An unsolicited token or award of appreciation in the form of a plaque, trophy, desk item, wall memento or similar item, with a resale value reasonably expected to be less than $25.

(D) Informational or program material, publications or subscriptions related to the recipient's performance of official duties.

(E) Admission provided to or the cost of food or beverage consumed by a public official, or a member of the household or staff of the public official when accompanying the public official, at a reception, meal or meeting held by an organization when the public official represents state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117.

(F) Reasonable expenses paid by any unit of the federal government, a state or local government, a Native American tribe that is recognized by federal law or formally acknowledged by a state, a membership organization to which a public body as defined in ORS 174.109 pays membership dues or a not-for-profit corporation that is tax exempt under section 501(c)(3) of the Internal Revenue Code, for attendance at a convention, fact-finding mission or trip, conference or other meeting if the public official is scheduled to deliver a speech, make a presentation, participate on a panel or represent state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117.

(G) Contributions made to a legal expense trust fund established under ORS 244.209 for the benefit of the public official.

(H) Reasonable food, travel or lodging expenses provided to a public official, a relative of the public official accompanying the public official, a member of the household of the public official accompanying the public official or a staff member of the public official accompanying the public official, when the public official is representing state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117:

(i) On an officially sanctioned trade-promotion or fact-finding mission; or

(ii) In officially designated negotiations, or economic development activities, where receipt of the expenses is approved in advance.

(I) Food or beverage consumed by a public official acting in an official capacity:

(i) In association with the review, approval, execution of documents or closing of a borrowing, investment or other financial transaction, including any business agreement between state government as

defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117 and a private entity or public body as defined in ORS 174.109;

(ii) While engaged in due diligence research or presentations by the office of the State Treasurer related to an existing or proposed investment or borrowing; or

(iii) While engaged in a meeting of an advisory, governance or policy-making body of a corporation, partnership or other entity in which the office of the State Treasurer has invested moneys.

(J) Waiver or discount of registration expenses or materials provided to a public official or candidate at a continuing education event that the public official or candidate may attend to satisfy a professional licensing requirement.

(K) Expenses provided by one public official to another public official for travel inside this state to or from an event that bears a relationship to the receiving public official's office and at which the official participates in an official capacity.

(L) Food or beverage consumed by a public official or candidate at a reception where the food or beverage is provided as an incidental part of the reception and no cost is placed on the food or beverage.

(M) Entertainment provided to a public official or candidate or a relative or member of the household of the public official or candidate that is incidental to the main purpose of another event.

(N) Entertainment provided to a public official or a relative or member of the household of the public official where the public official is acting in an official capacity while representing state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117 for a ceremonial purpose.

(O) Anything of economic value offered to or solicited or received by a public official or candidate, or a relative or member of the household of the public official or candidate:

(i) As part of the usual and customary practice of the person's private business, or the person's employment or position as a volunteer with a private business, corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, not-for-profit corporation or other legal entity operated for economic value; and

(ii) That bears no relationship to the public official's or candidate's holding of, or candidacy for, the official position or public office.

(P) Reasonable expenses paid to a public school employee for accompanying students on an educational trip.

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[98] ORS 244.025 **Gift limit.** (1) During a calendar year, a public official, a candidate or a relative or member of the household of the public official or candidate may not solicit or receive, directly or indirectly, any gift or gifts with an aggregate value in excess of $50 from any single source that could reasonably be known to have a legislative or administrative interest.

(2) During a calendar year, a person who has a legislative or administrative interest may not offer to the public official or a relative or member of the household of the public official any gift or gifts with an aggregate value in excess of $50.

(3) During a calendar year, a person who has a legislative or administrative interest may not offer to the candidate or a relative or member of the household of the candidate any gift or gifts with an aggregate value in excess of $50.

(4) This section does not apply to public officials subject to the Oregon Code of Judicial Conduct. [2007 c.877 §18; 2009 c.68 §3]

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[99] ORS 244.050 **Persons required to file statement of economic interest; filing deadline.** (1) On or before April 15 of each year the following persons shall file with the Oregon Government Ethics Commission a verified statement of economic interest as required under this chapter:

(a) The Governor, Secretary of State, State Treasurer, Attorney General, Commissioner of the Bureau of Labor and Industries, Superintendent of Public Instruction, district attorneys and members of the Legislative Assembly.

(b) Any judicial officer, including justices of the peace and municipal judges, except any pro tem judicial officer who does not otherwise serve as a judicial officer.

(c) Any candidate for a public office designated in paragraph (a) or (b) of this subsection.

(d) The Deputy Attorney General.

(e) The Legislative Administrator, the Legislative Counsel, the Legislative Fiscal Officer, the Secretary of the Senate and the Chief Clerk of the House of Representatives.

(f) The Chancellor and Vice Chancellors of the Oregon University System and the president and vice presidents, or their administrative equivalents, in each institution under the jurisdiction of the State Board of Higher Education.

(g) The following state officers:

(A) Adjutant General.

(B) Director of Agriculture.

(C) Manager of State Accident Insurance Fund Corporation.

(D) Water Resources Director.

(E) Director of Department of Environmental Quality.

(F) Director of Oregon Department of Administrative Services.

(G) State Fish and Wildlife Director.

(H) State Forester.

(I) State Geologist.

(J) Director of Human Services.

(K) Director of the Department of Consumer and Business Services.

(L) Director of the Department of State Lands.

(M) State Librarian.

(N) Administrator of Oregon Liquor Control Commission.

(O) Superintendent of State Police.

(P) Director of the Public Employees Retirement System.

(Q) Director of Department of Revenue.

(R) Director of Transportation.

(S) Public Utility Commissioner.

(T) Director of Veterans' Affairs.

(U) Executive director of Oregon Government Ethics Commission.

(V) Director of the State Department of Energy.

(W) Director and each assistant director of the Oregon State Lottery.

(X) Director of the Department of Corrections.

(Y) Director of the Oregon Department of Aviation.

(Z) Executive director of the Oregon Criminal Justice Commission.

(AA) Director of the Oregon Business Development Department.

(BB) Director of the Office of Emergency Management.

(CC) Director of the Employment Department.

(DD) Chief of staff for the Governor.

(EE) Administrator of the Office for Oregon Health Policy and Research.

(FF) Director of the Housing and Community Services Department.

(GG) State Court Administrator.

(HH) Director of the Department of Land Conservation and Development.

(II) Board chairperson of the Land Use Board of Appeals.

(JJ) State Marine Director.

(KK) Executive director of the Oregon Racing Commission.

(LL) State Parks and Recreation Director.

(MM) Public defense services executive director.

(NN) Chairperson of the Public Employees' Benefit Board.

(OO) Director of the Department of Public Safety Standards and Training.

(PP) Chairperson of the Oregon Student Assistance Commission.

(QQ) Executive director of the Oregon Watershed Enhancement Board.

(RR) Director of the Oregon Youth Authority.

(SS) Director of the Oregon Health Authority.

(h) Any assistant in the Governor's office other than personal secretaries and clerical personnel.

(i) Every elected city or county official.

(j) Every member of a city or county planning, zoning or development commission.

(k) The chief executive officer of a city or county who performs the duties of manager or principal administrator of the city or county.

(L) Members of local government boundary commissions formed under ORS 199.410 to 199.519.

(m) Every member of a governing body of a metropolitan service district and the executive officer

thereof.

(n) Each member of the board of directors of the State Accident Insurance Fund Corporation.

(o) The chief administrative officer and the financial officer of each common and union high school district, education service district and community college district.

(p) Every member of the following state boards and commissions:

(A) Board of Geologic and Mineral Industries.

(B) Oregon Business Development Commission.

(C) State Board of Education.

(D) Environmental Quality Commission.

(E) Fish and Wildlife Commission of the State of Oregon.

(F) State Board of Forestry.

(G) Oregon Government Ethics Commission.

(H) Oregon Health Policy Board.

(I) State Board of Higher Education.

(J) Oregon Investment Council.

(K) Land Conservation and Development Commission.

(L) Oregon Liquor Control Commission.

(M) Oregon Short Term Fund Board.

(N) State Marine Board.

(O) Mass transit district boards.

(P) Energy Facility Siting Council.

(Q) Board of Commissioners of the Port of Portland.

(R) Employment Relations Board.

(S) Public Employees Retirement Board.

(T) Oregon Racing Commission.

(U) Oregon Transportation Commission.

(V) Wage and Hour Commission.

(W) Water Resources Commission.

(X) Workers' Compensation Board.

(Y) Oregon Facilities Authority.

(Z) Oregon State Lottery Commission.

(AA) Pacific Northwest Electric Power and Conservation Planning Council.

(BB) Columbia River Gorge Commission.

(CC) Oregon Health and Science University Board of Directors.

(DD) Capitol Planning Commission.

(q) The following officers of the State Treasurer:

(A) Chief Deputy State Treasurer.

(B) Chief of staff for the office of the State Treasurer.

(C) Director of the Investment Division.

(r) Every member of the board of commissioners of a port governed by ORS 777.005 to 777.725 or 777.915 to 777.953.

(s) Every member of the board of directors of an authority created under ORS 441.525 to 441.595.

(2) By April 15 next after the date an appointment takes effect, every appointed public official on a board or commission listed in subsection (1) of this section shall file with the Oregon Government Ethics Commission a statement of economic interest as required under ORS 244.060, 244.070 and 244.090.

(3) By April 15 next after the filing deadline for the primary election, each candidate described in subsection (1) of this section shall file with the commission a statement of economic interest as required under ORS 244.060, 244.070 and 244.090.

(4) Within 30 days after the filing deadline for the general election, each candidate described in subsection (1) of this section who was not a candidate in the preceding primary election, or who was nominated for public office described in subsection (1) of this section at the preceding primary election by write-in votes, shall file with the commission a statement of economic interest as required under ORS 244.060, 244.070 and 244.090.

(5) Subsections (1) to (4) of this section apply only to persons who are incumbent, elected or appointed public officials as of April 15 and to persons who are candidates on April 15. Subsections (1) to (4) of this section also apply to persons who do not become candidates until 30 days after the filing deadline for the statewide general election.

(6) If a statement required to be filed under this section has not been received by the commission

within five days after the date the statement is due, the commission shall notify the public official or candidate and give the public official or candidate not less than 15 days to comply with the requirements of this section. If the public official or candidate fails to comply by the date set by the commission, the commission may impose a civil penalty as provided in ORS 244.350. [1974 c.72 §§4,4a; 1975 c.543 §3; 1977 c.588 §3; 1977 c.751 §16; 1979 c.374 §5; 1979 c.666 §6; 1979 c.697 §1; 1979 c.736 §1; 1979 c.829 §9b; 1987 c.373 §26; 1987 c.414 §148; 1987 c.566 §10; 1991 c.73 §2; 1991 c.160 §1; 1991 c.163 §1; 1991 c.470 §13; 1991 c.614 §2; 1993 c.500 §10; 1993 c.743 §11; 1995 c.79 §87; 1995 c.712 §94; 1997 c.652 §16; 1997 c.833 §22; 1999 c.59 §62; 1999 c.291 §28; 2001 c.104 §77; 2003 c.214 §1; 2003 c.784 §13; 2005 c.157 §6; 2005 c.217 §23; 2005 c.777 §14; 2007 c.813 §2; 2007 c.865 §17; 2007 c.877 §13; 2009 c.68 §5; 2009 c.595 §192; 2009 c.896 §10]

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[100] ORS 244.350(4)(c) The commission may impose a civil penalty of $10 for each of the first 14 days the statement is late beyond the date set by law, or by the commission under ORS 244.050, and $50 for each day thereafter. The maximum penalty that may be imposed under this subsection is $5,000.

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[101] ORS 244.060(1) The names of all positions as officer of a business and business directorships held by the public official or candidate or a member of the household of the public official or candidate during the preceding calendar year, and the principal address and a brief description of each business.

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[102] ORS 244.060(2) All names under which the public official or candidate and members of the household of the public official or candidate do business and the principal address and a brief description of each business.

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[103] ORS 244.060(3) The names, principal addresses and brief descriptions of the sources of income received during the preceding calendar year by the public official or candidate or a member of the household of the public official or candidate that produce 10 percent or more of the total annual household income.

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[104] ORS 244.060(4)(a) and (b) (a) A list of all real property in which the public official or candidate or a member of the household of the public official or candidate has or has had any personal, beneficial ownership interest during the preceding calendar year, any options to purchase or sell real property, including a land sales contract, and any other rights of any kind in real property located within the geographic boundaries of the governmental agency of which the public official holds, or the candidate if elected would hold, an official position or over which the public official exercises, or the candidate if elected would exercise, any authority.

(b) This subsection does not require the listing of the principal residence of the public official or candidate.

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[105] ORS 244.042 (1) Except as provided in subsection (3) of this section, a public official may not solicit or receive, whether directly or indirectly, honoraria for the public official or any member of the household of the public official if the honoraria are solicited or received in connection with the official duties of the public official.

(2) Except as provided in subsection (3) of this section, a candidate may not solicit or receive, whether directly or indirectly, honoraria for the candidate or any member of the household of the candidate if the honoraria are solicited or received in connection with the official duties of the public office for which the person is a candidate.

(3) This section does not prohibit:

(a) The solicitation or receipt of an honorarium or a certificate, plaque, commemorative token or other item with a value of $50 or less; or

(b) The solicitation or receipt of an honorarium for services performed in relation to the private profession, occupation, avocation or expertise of the public official or candidate. [2007 c.877 §24; 2009 c.68 §21]

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[106] ORS 244.060(7) All honoraria and other items allowed under ORS 244.042 with a value exceeding $15 that are received by the public official, candidate or member of the household of the public official or candidate during the preceding calendar year, the provider of each honorarium or item and the date and time of the event for which the honorarium or item was received.

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[107] ORS 244.042(3)(a) The solicitation or receipt of an honorarium or a certificate, plaque, commemorative token or other item with a value of $50 or less; or

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[108] ORS 244.090 **Report on association with compensated lobbyist.** (1) Each public official or candidate required to file a statement of economic interest under this chapter shall include on the statement the name of any compensated lobbyist who, during the preceding calendar year, was associated with a business with which the public official or candidate or a member of the household of the public official or candidate was also associated.

(2) Subsection (1) of this section does not apply if the only relationship between the public official or candidate and the lobbyist is that the public official or candidate and lobbyist hold stock in the same publicly traded corporation.

(3) As used in this section, “lobbyist” has the meaning given that term in ORS 171.725. [1974 c.72 §7; 1975 c.543 §6; 1987 c.566 §14; 2007 c.865 §32

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[109] ORS 244.020(6)(b)(F) Reasonable expenses paid by any unit of the federal government, a state or local government, a Native American tribe that is recognized by federal law or formally acknowledged by a state, a membership organization to which a public body as defined in ORS 174.109 pays membership dues or a not-for-profit corporation that is tax exempt under section 501(c)(3) of the Internal Revenue Code, for attendance at a convention, fact-finding mission or trip, conference or other meeting if the public official is scheduled to deliver a speech, make a presentation, participate on a panel or represent state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117

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[110] ORS 244.060(5) All expenses with an aggregate value exceeding $50 received by the public official during the preceding calendar year when participating in a convention, mission, trip or other meeting described in ORS 244.020 (6)(b)(F), including the name and address of the organization, unit of government, tribe or corporation paying the expenses, the nature of the event and the date and amount of the expense.

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[111] ORS 244.100(1) Each statement of economic interest required to be filed under ORS 244.050, 244.060, 244.070 or 244.090, or by rule under ORS 244.290, and each trading statement required to be filed under ORS 244.055 shall be signed and certified as true by the person required to file it and shall contain a written declaration that the statement is made under the penalties of false swearing.

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[112] ORS 244.020(6)(b)(H) Reasonable food, travel or lodging expenses provided to a public official, a relative of the public official accompanying the public official, a member of the household of the public official accompanying the public official or a staff member of the public official accompanying the public official, when the public official is representing state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117:

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[113] ORS 244.060(6) All expenses with an aggregate value exceeding $50 received by the public official during the preceding calendar year when participating in a mission, negotiations or economic development activities described in ORS 244.020 (6)(b)(H), including the name and address of the person paying the expenses, the nature of the event and the date and amount of the expenditure.

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[114] ORS 244.060(8) The name, principal address and brief description of each source of income exceeding an aggregate amount of $1,000, whether or not taxable, received by the public official or candidate, or a member of the household of the public official or candidate, during the preceding calendar year, if the source of that income is derived from an individual or business that has a legislative or administrative interest or that has been doing business, does business or could reasonably be expected to do business with the governmental agency of which the public official holds, or the candidate if elected would hold, an official position or over which the public official exercises, or the candidate if elected would exercise, any authority. [1974 c.72 §5; 1975 c.543 §4; 1987 c.566 §11; 1991 c.770 §7; 1993 c.743 §12; 2003 c.14 §116; 2007 c.877 §19; 2009 c.68 §6]

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[115] ORS 244.070(1) Each person to whom the public official or candidate or a member of the household of the public official or candidate owes or has owed money in excess of $1,000, the interest rate on money owed and the date of the loan, except for debts owed to any federal or state regulated financial institution or retail contracts.

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[116] ORS 244.070(2) The name, principal address and brief description of the nature of each business in which the public official or candidate or a member of the household of the public official or candidate has or has had a personal, beneficial interest or investment, including stocks or other securities, in excess of $1,000, except for individual items involved in a mutual fund or a blind trust, or a time or demand deposit in a financial institution, shares in a credit union, or the cash surrender value of life insurance.

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[117] ORS 244.070(3) Each person for whom the public official or candidate has performed services for a fee in excess of $1,000, except for any disclosure otherwise prohibited by law or by a professional code of ethics. [1974 c.72 §6; 1975 c.543 §5; 1987 c.566 §12; 2007 c.877 §20; 2009 c.68 §7]

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[118] ORS 244.250 **Oregon Government Ethics Commission; appointment; term; quorum; compensation; legal counsel.** (1) The Oregon Government Ethics Commission is established, consisting of seven members. The appointment of a member of the commission is subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. Members shall be appointed in the following manner:

(a) The Governor shall appoint four members from among persons recommended, one each by the leadership of the Democratic and Republican parties in each house of the Legislative Assembly. If a person recommended by the leadership of the Democratic or Republican party is not approved by the

Governor, the leadership shall recommend another person.

(b) The Governor shall appoint three members without leadership recommendation. No more than two members appointed under this paragraph may be members of the same major political party.

(2) A person who holds any public office listed in ORS 244.050 (1) except as a member of the commission may not be appointed to the commission. No more than four members may be members of the same political party.

(3) The term of office of a member is four years. A member is not eligible to be appointed to more than one full term but may serve out an unexpired term. Vacancies shall be filled by the appointing authority for the unexpired term.

(4) The commission shall elect a chairperson and vice chairperson for such terms and duties as the commission may require.

(5) A quorum consists of four members but a final decision may not be made without an affirmative vote of a majority of the members appointed to the commission.

(6) Members shall be entitled to compensation and expenses as provided in ORS 292.495.

(7) The commission may retain or appoint qualified legal counsel who must be a member of the Oregon State Bar and who is responsible to the commission. The appointment of legal counsel under this subsection may be made only when the commission finds it is inappropriate and contrary to the public interest for the office of the Attorney General to represent concurrently more than one public official or agency in any matter before the commission because the representation:

(a) Would create or tend to create a conflict of interest; and

(b) Is not subject to ORS 180.230 or 180.235.

(8) The Attorney General may not represent before the commission any state public official who is the subject of any complaint or action of the commission at the commission's own instigation. [1974 c.72 §12; 1977 c.588 §6; 1987 c.566 §18; 1991 c.770 §3; 1993 c.743 §17; 2007 c.865 §1]

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[119] ORS 244.284 **Staff advice; effect of reliance on advice.** (1) Upon the written or oral request of any person, the executive director or other staff of the Oregon Government Ethics Commission may issue written or oral staff advice on the application of any provision of this chapter to any proposed transaction or action or any actual or hypothetical circumstance. Any written advice not designated as a staff advisory opinion under ORS 244.282 is considered staff advice issued under this section.

(2) Before imposing any penalty under ORS 244.350 or 244.360, the commission may consider whether the action that may be subject to penalty was taken in reliance on staff advice issued under this section. [2007 c.865 §15; 2007 c.877 §39d]

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[120] ORS 244.284(2) Before imposing any penalty under ORS 244.350 or 244.360, the commission may consider whether the action that may be subject to penalty was taken in reliance on staff advice issued under this section. [2007 c.865 §15; 2007 c.877 §39d]

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[121] ORS 244.282(3)(a) Except as provided in paragraph (b) of this subsection, unless the staff advisory opinion is revised or revoked, the commission may only issue a written letter of reprimand, explanation or education for any good faith action a person takes in reliance on a staff advisory opinion issued under this section.

(b) The commission may impose, for an action that is subject to a penalty and that is taken in reliance on a staff advisory opinion issued under this section, a penalty under ORS 244.350 or 244.360 on the person who requested the opinion if the commission determines that the person omitted or misstated material facts in making the request.

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[122] ORS 244.280 **Commission advisory opinions; effect of reliance on opinion.** (1) Upon the written request of any person, or upon its own motion, the Oregon Government Ethics Commission, under signature of the chairperson, may issue and publish written commission advisory opinions on the

application of any provision of this chapter to any proposed transaction or action or any actual or hypothetical circumstance. A commission advisory opinion, and a decision by the commission to issue an advisory opinion on its own motion, must be approved by a majority of the members of the commission. Legal counsel to the commission shall review a proposed commission advisory opinion before the opinion is considered by the commission.

(2) Not later than 60 days after the date the commission receives the written request for a commission advisory opinion, the commission shall issue either the opinion or a written denial of the request. The written denial shall explain the reasons for the denial. The commission may ask the person requesting the advisory opinion to supply additional information the commission considers necessary to render the opinion. The commission, by vote of a majority of the members of the commission, may extend the 60-day deadline by one period not to exceed 60 days.

(3) Except as provided in this subsection, unless the commission advisory opinion is revised or revoked, the commission may not impose a penalty under ORS 244.350 or 244.360 on a person for any good faith action the person takes in reliance on an advisory opinion issued under this section. The commission may impose a penalty under ORS 244.350 or 244.360 on the person who requested the advisory opinion if the commission determines that the person omitted or misstated material facts in making the request. [1974 c.72 §15; 1975 c.543 §9; 1977 c.588 §8; 1987 c.566 §19; 1991 c.272 §2; 1993 c.743 §13; 2007 c.865 §12; 2007 c.877 §25a]

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[123] ORS 244.280(1) and (2) - (1) Upon the written request of any person, or upon its own motion, the Oregon Government Ethics Commission, under signature of the chairperson, may issue and publish written commission advisory opinions on the application of any provision of this chapter to any proposed transaction or action or any actual or hypothetical circumstance. A commission advisory opinion, and a decision by the commission to issue an advisory opinion on its own motion, must be approved by a majority of the members of the commission. Legal counsel to the commission shall review a proposed commission advisory opinion before the opinion is considered by the commission.

(2) Not later than 60 days after the date the commission receives the written request for a commission advisory opinion, the commission shall issue either the opinion or a written denial of the request. The written denial shall explain the reasons for the denial. The commission may ask the person requesting the advisory opinion to supply additional information the commission considers necessary to render the opinion. The commission, by vote of a majority of the members of the commission, may extend the 60-day deadline by one period not to exceed 60 days.

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[124] ORS 244.280(3) Except as provided in this subsection, unless the commission advisory opinion is revised or revoked, the commission may not impose a penalty under ORS 244.350 or 244.360 on a person for any good faith action the person takes in reliance on an advisory opinion issued under this section. The commission may impose a penalty under ORS 244.350 or 244.360 on the person who requested the advisory opinion if the commission determines that the person omitted or misstated material facts in making the request. [1974 c.72 §15; 1975 c.543 §9; 1977 c.588 §8; 1987 c.566 §19; 1991 c.272 §2; 1993 c.743 §13; 2007 c.865 §12; 2007 c.877 §25a]

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[125] ORS 244.280 through ORS 244.284 - **244.280 Commission advisory opinions; effect of reliance on opinion.** (1) Upon the written request of any person, or upon its own motion, the Oregon Government Ethics Commission, under signature of the chairperson, may issue and publish written commission advisory opinions on the application of any provision of this chapter to any proposed transaction or action or any actual or hypothetical circumstance. A commission advisory opinion, and a decision by the commission to issue an advisory opinion on its own motion, must be approved by a majority of the members of the commission. Legal counsel to the commission shall review a proposed commission advisory opinion before the opinion is considered by the commission.

(2) Not later than 60 days after the date the commission receives the written request for a commission advisory opinion, the commission shall issue either the opinion or a written denial of the request. The written denial shall explain the reasons for the denial. The commission may ask the person requesting the

advisory opinion to supply additional information the commission considers necessary to render the opinion. The commission, by vote of a majority of the members of the commission, may extend the 60-day deadline by one period not to exceed 60 days.

(3) Except as provided in this subsection, unless the commission advisory opinion is revised or revoked, the commission may not impose a penalty under ORS 244.350 or 244.360 on a person for any good faith action the person takes in reliance on an advisory opinion issued under this section. The commission may impose a penalty under ORS 244.350 or 244.360 on the person who requested the advisory opinion if the commission determines that the person omitted or misstated material facts in making the request. [1974 c.72 §15; 1975 c.543 §9; 1977 c.588 §8; 1987 c.566 §19; 1991 c.272 §2; 1993 c.743 §13; 2007 c.865 §12; 2007 c.877 §25a]

244.282 Executive director and staff advisory opinions; effect of reliance on opinion. (1) Upon the written request of any person, the executive director of the Oregon Government Ethics Commission may issue and publish written staff advisory opinions on the application of any provision of this chapter to any proposed transaction or action or any actual or hypothetical circumstance.

(2) Not later than 30 days after the date the executive director receives the written request for a staff advisory opinion, the executive director shall issue either the opinion or a written denial of the request. The written denial shall explain the reasons for the denial. The executive director may ask the person requesting the advisory opinion to supply additional information the executive director considers necessary to render the opinion. The executive director may extend the 30-day deadline by one period not to exceed 30 days. The executive director shall clearly designate an opinion issued under this section as a staff advisory opinion.

(3)(a) Except as provided in paragraph (b) of this subsection, unless the staff advisory opinion is revised or revoked, the commission may only issue a written letter of reprimand, explanation or education for any good faith action a person takes in reliance on a staff advisory opinion issued under this section.

(b) The commission may impose, for an action that is subject to a penalty and that is taken in reliance on a staff advisory opinion issued under this section, a penalty under ORS 244.350 or 244.360 on the person who requested the opinion if the commission determines that the person omitted or misstated material facts in making the request.

(4) At each regular meeting of the commission, the executive director shall report to the commission on all staff advisory opinions issued since the last regular meeting of the commission. The commission on its own motion may issue a commission advisory opinion under ORS 244.280 on the same facts or circumstances that form the basis for any staff advisory opinion. [2007 c.865 §14; 2007 c.877 §39c; 2009 c.68 §12]

244.284 Staff advice; effect of reliance on advice. (1) Upon the written or oral request of any person, the executive director or other staff of the Oregon Government Ethics Commission may issue written or oral staff advice on the application of any provision of this chapter to any proposed transaction or action or any actual or hypothetical circumstance. Any written advice not designated as a staff advisory opinion under ORS 244.282 is considered staff advice issued under this section.

(2) Before imposing any penalty under ORS 244.350 or 244.360, the commission may consider whether the action that may be subject to penalty was taken in reliance on staff advice issued under this section. [2007 c.865 §15; 2007 c.877 §39d]

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[126] ORS 244.260 **Complaint and adjudicatory process; confidentiality; Preliminary Review Phase; Investigatory Phase; possible actions by order; report of findings; contested case procedure; limitation on commission action.** (1)(a) Any person may file with the Oregon Government Ethics Commission a signed written complaint alleging that there has been a violation of any provision of this chapter or of any rule adopted by the commission under this chapter. The complaint shall state the person's reason for believing that a violation occurred and include any evidence relating to the alleged violation.

(b) If at any time the commission has reason to believe that there has been a violation of a provision of this chapter or of a rule adopted by the commission under this chapter, the commission may proceed under this section on its own motion as if the commission had received a complaint.

(2)(a) Not later than two business days after receiving a complaint under this section, the commission shall notify the person who is the subject of the complaint.

(b) Before approving a motion to proceed under this section without a complaint, the commission shall provide notice to the person believed to have committed the violation of the time and place of the meeting at which the motion will be discussed. If the commission decides to proceed on its own motion, the commission shall give notice to the person not later than two business days after the motion is approved.

(c) The commission shall give notice of the complaint or motion under paragraph (a) or (b) of this subsection by mail and by telephone if the person can be reached by telephone. The notice must describe the nature of the alleged violation. The mailed notice must include copies of all materials submitted with a complaint. If the commission will consider a motion to proceed without a complaint, the notice must provide copies of all materials that the commission will consider at the hearing on the motion.

(d) Information that the commission considers before approving a motion to proceed on its own motion under this section and any correspondence regarding the motion or potential violation is confidential. Commission members and staff may not make any public comment or publicly disclose any materials relating to the motion pending the commission's approval to proceed. A person who intentionally violates this paragraph is subject to a civil penalty in an amount not to exceed $1,000. Any person aggrieved as a result of a violation of this paragraph by a member of the commission or its staff may file a petition in a court of competent jurisdiction in the county in which the petitioner resides in order to enforce the civil penalty provided in this paragraph.

(3) After receiving a complaint or deciding to proceed on its own motion, the commission shall undertake action in the Preliminary Review Phase to determine whether there is cause to undertake an investigation. If the person who is the subject of the action is a member of the Legislative Assembly, the commission shall determine whether the alleged violation involves conduct protected by section 9, Article IV of the Oregon Constitution.

(4)(a) The Preliminary Review Phase begins on the date the complaint is filed or the date the commission decides to proceed on its own motion and ends on the date the commission determines there is cause to undertake an investigation, dismisses the complaint or rescinds its own motion. The Preliminary Review Phase may not exceed 135 days unless:

(A) A delay is stipulated to by both the person who is the subject of action under this section and the commission with the commission reserving a portion of the delay period to complete its actions; or

(B) A complaint is filed under this section with respect to a person who is a candidate for elective public office, the complaint is filed within 61 days before the date of an election at which the person is a candidate for nomination or election and a delay is requested in writing by the candidate. If the candidate makes a request under this subparagraph, the Preliminary Review Phase must be completed not later than 135 days after the date of the first meeting of the commission that is held after the date of the election.

(b) During the Preliminary Review Phase, the commission may seek, solicit or otherwise obtain any books, papers, records, memoranda or other additional information, administer oaths and take depositions necessary to determine whether there is cause to undertake an investigation or whether the alleged violation involves conduct protected by section 9, Article IV of the Oregon Constitution.

(c) The Preliminary Review Phase is confidential. Commission members and staff may acknowledge receipt of a complaint but may not make any public comment or publicly disclose any materials relating to a case during the Preliminary Review Phase. A person who intentionally violates this paragraph is subject to a civil penalty in an amount not to exceed $1,000. Any person aggrieved as a result of a violation of this paragraph by a member of the commission or its staff may file a petition in a court of competent jurisdiction in the county in which the petitioner resides in order to enforce the civil penalty provided in this paragraph.

(d) At the conclusion of the Preliminary Review Phase, the commission shall conduct its deliberations in executive session. All case related materials and proceedings shall be open to the public after the commission makes a finding of cause to undertake an investigation, dismisses a complaint or rescinds a motion. Prior to the end of the Preliminary Review Phase, the executive director of the commission shall prepare a statement of the facts determined during the phase, including appropriate legal citations and relevant authorities. Before presentation to the commission, the executive director's statement shall be reviewed by legal counsel to the commission.

(e) The time limit imposed in this subsection and the commission's inquiry are suspended if:

(A) There is a pending criminal investigation that relates to the issues arising out of the underlying facts or conduct at issue in the matter before the commission unless the parties stipulate otherwise; or

(B) A court has enjoined the commission from continuing its inquiry.

(5)(a) If the commission determines that there is not cause to undertake an investigation or that the alleged violation of this chapter involves conduct protected by section 9, Article IV of the Oregon

Constitution, the commission shall dismiss the complaint or rescind its motion and formally enter the dismissal or rescission in its records. The commission shall notify the person who is the subject of action under this section of the dismissal or rescission. After dismissal or rescission, the commission may not take further action involving the person unless a new and different complaint is filed or action on the commission's own motion is undertaken based on different conduct.

(b) If the commission makes a finding of cause to undertake an investigation, the commission shall undertake action in the Investigatory Phase. The commission shall notify the person who is the subject of the investigation, identify the issues to be examined and confine the investigation to those issues. If the commission finds reason to expand the investigation, the commission shall move to do so, record in its minutes the issues to be examined before expanding the scope of its investigation and formally notify the complainant, if any, and the person who is the subject of the investigation of the expansion and the scope of the investigation.

(6)(a) The Investigatory Phase begins on the date the commission makes a finding of cause to undertake an investigation and ends on the date the commission dismisses the complaint, rescinds its own motion, issues a settlement order, moves to commence a contested case proceeding or takes other action justified by the findings. The Investigatory Phase may not exceed 180 days unless a delay is stipulated to by both the person who is the subject of action under this section and the commission with the commission reserving a portion of the delay period to complete its actions.

(b) During the Investigatory Phase, the commission may seek any additional information, administer oaths, take depositions and issue subpoenas to compel attendance of witnesses and the production of books, papers, records, memoranda or other information necessary to complete the investigation. If any person fails to comply with any subpoena issued under this paragraph or refuses to testify on any matters on which the person may be lawfully interrogated, the commission shall follow the procedure described in ORS 183.440 to compel compliance.

(c) The time limit imposed in this subsection and the commission's investigation are suspended if:

(A) There is a pending criminal investigation that relates to the issues arising out of the underlying facts or conduct at issue in the matter before the commission unless the parties stipulate otherwise; or

(B) A court has enjoined the commission from continuing its investigation.

(d) At the end of the Investigatory Phase, the commission shall take action by order. The action may include:

(A) Dismissal, with or without comment;

(B) Continuation of the investigation for a period not to exceed 30 days for the purpose of additional fact-finding;

(C) Moving to a contested case proceeding;

(D) Entering into a negotiated settlement; or

(E) Taking other appropriate action if justified by the findings.

(e) The commission may move to a contested case proceeding if the commission determines that the information presented to the commission is sufficient to make a preliminary finding of a violation of any provision of this chapter or of any rule adopted by the commission under this chapter.

(7) A person conducting any inquiry or investigation under this section shall:

(a) Conduct the inquiry or investigation in an impartial and objective manner; and

(b) Provide to the commission all favorable and unfavorable information the person collects.

(8) The commission shall report the findings of any inquiry or investigation in an impartial manner. The commission shall report both favorable and unfavorable findings and shall make the findings available to:

(a) The person who is the subject of the inquiry or investigation;

(b) The appointing authority, if any;

(c) The Attorney General, if the findings relate to a state public official;

(d) The appropriate district attorney, if the findings relate to a local public official; and

(e) The Commission on Judicial Fitness and Disability, if the findings relate to a judge.

(9) Hearings conducted under this chapter must be held before an administrative law judge assigned from the Office of Administrative Hearings established under ORS 183.605. The procedure shall be that for a contested case under ORS chapter 183.

(10) The Oregon Government Ethics Commission may not inquire into or investigate any conduct that occurred more than four years before a complaint is filed or a motion is approved under subsection (1) of this section.

(11) This section does not prevent the commission and the person alleged to have violated any provision of this chapter or any rule adopted by the commission under this chapter from stipulating to a finding of fact concerning the violation and consenting to an appropriate penalty. The commission shall

enter an order based on the stipulation and consent.

(12) At any time during proceedings conducted under this section, the commission may enter into a negotiated settlement with the person who is the subject of action under this section.

(13) As used in this section:

(a) “Cause” means that there is a substantial, objective basis for believing that an offense or violation may have been committed and the person who is the subject of an inquiry may have committed the offense or violation.

(b) “Pending” means that a prosecuting attorney is either actively investigating the factual basis of the alleged criminal conduct, is preparing to seek or is seeking an accusatory instrument, has obtained an accusatory instrument and is proceeding to trial or is in trial or in the process of negotiating a plea. [1974 c.72 §13; 1989 c.807 §1; 1991 c.272 §1; 1991 c.770 §1a; 1993 c.743 §18; 1999 c.849 §§51,52; 1999 c.850 §1; 2003 c.75 §30; 2007 c.865 §23; 2009 c.163 §2]

Return to previous location

Restrictions on Political Campaigning by Public Employees - ORS 260.432

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Using this Manual

This manual details allowable and restricted activities, consistent with ORS 260.432 and advice from the Attorney General. It is adopted by Oregon administrative rule. Violations of this rule are to be enforced as violations of ORS 260.432. This manual details for public agencies and individuals allowable and restricted activities, consistent with ORS 260.432 and the Attorney General's advice and provides information on the Elections Division prior review process.

Icons

The following icons are used in this manual to emphasize information:

alert icon
indicates alert; warning; attention needed

info icon
indicates additional information

deadline icon
indicates a deadline

example icon
indicates an example

form icon
indicates a reference to a form

search icon
indicates information located elsewhere

Assistance

If you have any questions about the material covered in this manual or need further assistance, please contact:

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Getting Started

An Attorney General letter dated October 5, 1993 states:

> "Public bodies may use public funds to inform voters of facts pertinent to a measure, if the information is not used to lead voters to support or oppose a particular position in the election. However, we also have pointed out that 'informational' material may be found to 'promote or oppose' a measure even if it does not do so in so many words if the information presented to the public clearly favors or opposes the measure and, taken as a whole, clearly is intended to generate votes for or against a measure."

ORS 260.432 Statutory Provisions

Essentially, public employees may not engage in political activity while on the job. This manual will go into detail about what it means to promote or oppose, and when a public employee is "on the job during work hours." The statute has three specific paragraphs:

ORS 260.432(1) states that a person - including public employers and elected officials - may not require a public employee to promote or oppose any political committee or any initiative, referendum or recall petition, ballot measure or candidate.

ORS 260.432(2) states that public employees (including school administrators, city managers, police chiefs, etc.) may not be involved in **promoting or opposing** any political committee or any initiative, referendum or recall petition, measure or candidate **"while on the job during working hours."**

ORS 260.432(3) states that each public employer must have posted - in all appropriate places where public employees work - a notice about the prohibitions of ORS 260.432. See the final page of this manual for a sample notice.

When Does 260.432 Apply?

- → for initiative, referendum and recall petition efforts, as soon as a prospective petition is filed with the appropriate elections filing officer (for a statewide initiative, this is the date the sponsorship prospective petition is filed);
- → for a ballot measure referred to the ballot by a governing body (district, city, county, state) as soon as the measure is certified to the ballot. A county, city or district measure is certified to the ballot when the elections official files the referral with the county election office;
- → for a candidate, as soon as the person becomes a candidate under the definition in ORS 260.005(1)(a); and
- → for political committees, whenever the political committee is active.

The prohibition ceases to apply at 8:00 pm on the date of the election at which the candidate, measure, recall or referendum is being voted on. The prohibition ceases to apply to a petition (initiative, referendum or recall) on the date the petition is withdrawn or becomes void.

Overview of Restrictions and Allowable Activities

Public employees may not use their work time to support or oppose measures, candidates, recalls, political committees or petitions. When this manual refers to engaging in "political activity" or "advocacy", it means only that political activity or advocacy which is restricted by the statute- supporting or opposing measures, candidates, recalls, political committees or petitions. Supporting or opposing political issues which do not fall into any of those categories is not restricted by the statute.

Oregon election law does not specify any amount of work time that may be used before a violation occurs, so a public employee may be found in violation even though they used a minimal amount of work time.

An elected official or any other employer of a public employee may not require or direct public employees to prepare or distribute advocacy materials.

Who must follow ORS 260.432?

All non-elected public employees are covered by 260.432. Elected officials are covered insofar as they direct other public employees to engage in political activities.

See Candidates and Elected Officials, page 10.

Federal employees, including persons principally employed by state or local executive agencies in connection with programs financed in whole or in part by federal loans or grants, are covered by the federal Hatch Act, which is administered by the U.S. Office of Special Counsel.

Appointed Board Members and Commissioners

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 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.

Appointed board or commission members may use their titles to engage in political advocacy (including endorsing candidates, measures, etc.) as long as they are not acting in an official capacity when authorizing use of their title.

ex On personal time, a candidate approaches a planning commission board member and asks for their endorsement. The candidate asks if they can use the board member's title, and the board member agrees. This is allowable.

ex Example: A candidate, attending a planning commission meeting, asks the board members for an endorsement and some board members agree. This is not allowable, because the board members are at a meeting and therefore acting in an official capacity.

See Use of Public Employee Title on page 11 for more information.

Salaried and Hourly Employees: What is “On the Job”?

Salaried employees’ work time is not as easily measured as hourly workers. If the work performed falls generally within the job duties of the public employee, the work is performed in an official capacity regardless of the time of day or location.

If a salaried employee applies for expense reimbursement for a function, they are considered on the job.

A regular workday may not be definable for a position, or may not have a specific time period. It is based on the activities and whether the person is acting, or appears to be acting, in an official capacity.

Personal note-keeping by salaried employees to record when the employee is on or off duty is suggested. During public appearances, the employee is encouraged to specifically announce to the audience that the employee is not acting in his or her official capacity if they are engaging in political advocacy. Such an announcement would not negate a subsequent statement or action that indicates the public employee is acting in his or her official capacity (such as handing out official publications, or speaking on behalf of the jurisdiction).

ex If a salaried police officer attends a meeting about a bond measure on his own time (i.e. while not “on duty”) and advocates for the measure, he should announce to the audience that he is there in his capacity as a citizen, and is not representing the police department.

However, if the police officer went on to hand out official publications from the jurisdiction, the police officer would be acting in his or her official capacity (despite their previous announcement) and would be subject to the requirements of ORS 260.432.

ex A school superintendent is acting in his or her official capacity at all school board meetings and school functions.

→ A salaried public employee may be acting in his or her official capacity even when using personal equipment and personal time, if the activity is related to work duties.

ex A public employee who, on their own computer on the weekend, drafts a press release about how a measure might affect their agency, and signs the document with their title, is acting in their official capacity.

→ Salaried employees have the right to participate in political activity on their own time. An employee would not be on the job solely because they may be subject to a call back to duty at any time.

Common activities that are always undertaken in an official capacity (regardless of time of day or location) and are therefore subject to the requirements or ORS 260.432 include:

→ posting material to an official website (and approving material to be posted to an official website)

→ drafting or distributing an official publication from the jurisdiction

→ Appearing at an event as a representative of a jurisdiction

See Use of Public Employee Title on page 11 for more information.

Volunteer personnel at a public agency

Volunteers (other than members of appointed boards or commissions) receiving no compensation are not considered public employees and therefore are not restricted by ORS 260.432. Workers compensation coverage is not considered compensation.

These volunteers may be bound by the policies of the jurisdiction. The policies may include limits on political advocacy during their volunteer activities as well as limits on access to agency resources for advocacy purposes. While a volunteer will not be liable under ORS 260.432, a public employee may have exposure if the public employee directs a volunteer to engage in political advocacy.

Government Contractors

Public employees may not direct government contractors to engage in political activity as part of the contracting service.

Contractors are bound by the policies of the jurisdiction and the terms of the contract. While a contractor will generally not be liable under ORS 260.432, a public employee may have exposure if the public employee directs a contractor to engage in political advocacy.

ex A school district may hire a public relations firm to help communicate with the public about an upcoming measure. If the public relations firm drafts material to be approved and disseminated by public employees, the material must be impartial. If the material is not impartial, the public employee who approved it would be liable for a violation of ORS 260.432.

National Voter Registration Act (NVRA) and ORS 247.208(3)

While the restrictions imposed under ORS 260.432 apply generally to all public employees, ORS 247.208(3) imposes a separate, rigorous set of restrictions that apply only to persons who provide voter registration services required under the National Voter Registration Act (NVRA). NVRA is a federal Act enacted by Congress in 1993.

Public employees or other persons providing NVRA-required voter registration services on behalf of a designated public agency may not:

→ seek to influence the political preference or party registration of a person registering to vote;

→ attempt to discourage a customer from registering to vote;

→ display any indications of political preference or party allegiance (including the choice of candidates for partisan political office);

- → make any statement or take any action towards a person registering to vote that would lead the person to believe the voter registration has any bearing on the availability of services or benefits;
- → seek to induce any person to register to vote or to vote in any particular manner.

These restrictions prohibit public employees from wearing political buttons while performing NVRA services, which is more restrictive than the general rule that is explained on page 8.

See OAR 165-005-0070 for detailed guidelines.

Personal Expression by Public Employees

Signs and Posted Information

Campaign Signs

Oregon election law does not address the size, location or timing of political campaign signs. Many local jurisdictions (cities and counties) have ordinances or policies that address campaign signs.

Public employees may generally have political stickers on their cars or post political signs in their work area, as long as they do so on personal time and such action does not violate any employer policy. Public employers are encouraged to have written policies about posting political material at work.

See National Voter Registration Act (NVRA) on page 6 for signage rules specific to NVRA employees.

Union Bulletin Boards

Public employee unions may have a designated bulletin board to post information. The location and contents of those bulletin boards are regulated by collective bargaining agreements and are not subject to the requirements of ORS 260.432.

Distribution of Political Material within a Government Agency

Public employees may not distribute material that contains political advocacy while on the job during work hours, except public employees may, as part of their job duties, process and distribute incoming mail addressed to specific employees that contains political advocacy.

Political material may be distributed in public jurisdictions if the person doing the distribution is not on the job, if other people would be granted equal access, and if it does not violate the jurisdiction's policies.

ex A teacher, while not on the job (before or after work or during lunch), may place information about his candidacy for a local office in the boxes of the other teachers at the school so long as any other candidate who asked would be allowed to distribute materials into the boxes.

Unions may distribute political materials to their members pursuant to their contract.

See Email on page 14 regarding responding to or forwarding political emails.

Verbal Communication

ORS 260.432 does not restrict the right of a public employee to express personal political views during their personal time. However, it does restrict some verbal communication while on the job during working hours (or while acting in an "official capacity").

A public employee cannot promote or oppose a political position while they are on the job during work hours.

ex A City Manager gives a presentation to staff about a pending measure. During the presentation, he says "I hope we all agree that it is important that this measure passes". That verbal communication would constitute a violation.

Public employers may add additional policies.

Public Presentations and Speeches

A public employee cannot give a speech or presentation advocating a political position if they are on the job or acting in their official capacity. An elected official may give political presentations and speeches, so long as no public employee work time is utilized.

When making a presentation that contains political advocacy during non-work time, the public employee should announce that they are acting in their capacity as a private citizen. The employee should also document that they were not on the job.

ex Employees may document that they are not on the job by keeping: a log, payroll records that indicate when they were on the job, time off slips, etc.

Meetings

Public employees may attend meetings at which political issues are discussed, so long as they do not engage in political advocacy themselves while on the job or acting in their official capacity.

Public employees cannot be compelled to attend political presentations. If a public agency has a mandatory staff meeting and a political group is making a presentation, the agency must make it clear that attendance at the political presentation is optional. Public employees who do attend the political presentation must do so during non-work time. Political advocacy presentations should not occur in close proximity to events requiring public employee attendance.

Buttons, T-Shirts, and Uniforms

Political Buttons and Clothing

Public employees may wear political buttons or clothing at work so long as it does not violate their employer's policy.

A public employer may not request or require that public employees wear political clothing, buttons, etc.

ex It would not be a violation for a teacher, on their own, to choose to wear a "Vote Yes on Measure 1234" button to school (so long as that did not violate school policy). It would be a violation for school administration to give out "Vote Yes on Measure 1234" buttons and email to encourage teachers to wear them to school on Election Day.

Uniforms

Generally, wearing a uniform while engaging in political activity is governed by the uniform policy of the jurisdiction that issues the uniform. Wearing a uniform to a political event, or while giving a political presentation, is not a violation of ORS 260.432, unless other elements of the presentation violate requirements of this rule. Public employees who wear uniforms and engage in advocacy should notify the audience that they are not acting in their official capacity.

Lobbying and Legal Challenges

Legal Challenges by Public Jurisdictions

Public employee's work involvement in legal court challenges as part of their regular job duties is not a violation of ORS 260.432.

ex Examples of legal challenges include whether an initiative petition meets constitutional requirements, whether a ballot title complies with statutory standards, etc.

Legislation and Lobbying

Legislative bills are not covered by ORS 260.432. Therefore it is allowable, under election law, for public employees to lobby governing bodies. Once a referral has been certified to the ballot, political advocacy is restricted by ORS 260.432.

For more information about lobbying, contact the Oregon Government Ethics Commission.

Public Property

If a governing body makes their property available for advocacy activities, they must grant equal access for all political groups to use public property. This includes charging the same fee or requiring the same permit.

If a candidate (or group supporting or opposing a recall, measure, initiative, etc.) requests to use public property for political purposes, then the government agency must allow the same access at the same price (if any) to any other candidate.

Public agencies may have policies that regulate the use of public property. The policy may be more restrictive than the requirements of ORS 260.432.

ORS 294.100 provides a limited remedy for possible inappropriate use of public resources. That statute is not within the jurisdiction of the Elections Division, and therefore we cannot give advice about compliance with that statute.

An elected official is not required to grant equal access to their office or equipment, even if it is in a public building.

Contact Lists

If lists are available to the public, a public employee must grant equal access to anyone who requests the list. This includes any list that the public body administers. The public body must charge the same fee, if any.

A candidate may not use any list administered by a public body that is not available to all other candidates. Candidates may use contact lists that they created (including constituent contacts collected as an elected official) without granting equal access to other candidates.

ex This issue commonly arises with the use of personnel lists, public utility lists, email lists, voter lists, etc. Public bodies must allow equal access to these lists.

Government Logos

A governing body must allow equal access to logos for political purposes, meaning that if any candidate is allowed to use the logo, all candidates must be allowed. It is not allowable to allow certain candidates (or other political groups), such as incumbents, to use logos but prohibit another candidate from doing the same.

Government agencies are encouraged to have written policies about use of their logos.

Public Records

Governing bodies must grant equal access to public records. All requestors of records should be charged the same fee, if any.

Advertising

Public jurisdictions which raise funds through advertisement must grant equal access to any political group or person. The public body must charge the same fee, if any, to any candidate or other political group for the same level of advertising space or time.

Public employees should not design an advertisement or verbally promote a sponsor candidate or political group at an event. A public employee may edit the advertisement for size, clarity, etc. but should not edit the substance of the advertisement.

ex A school district produces game programs for football games. A candidate asks to have a half page ad placed in the program. A public employee charges the candidate the same fee any other person or group would have been charged for the space, and places the candidate's pre-designed ad into the program.

Public jurisdictions are encouraged to have written policies on advertising which incorporate the requirements of ORS 260.432.

Candidates and Elected Officials

An elected official may engage in political activity during work time. Elected officials are not considered public employees for the purposes of ORS 260.432.

A person appointed to fill a vacancy in an elective public office is considered an elected official for purposes of this statute.

Elected officials cannot request public employees who are on the job or acting in an official capacity to engage in political advocacy. A request made by an elected official is considered a command.

An elected official's quote, opinion piece, letter or speech advocating a political position may not be published in a jurisdiction's newsletter or other publication produced or distributed by public employees.

See Material Produced by Governing Bodies, page 12. See Voters' Pamphlet, page 13, for an exception to this standard.

ex Public employees may not prepare the text for a speech, a press release, constituent mail that advocates a vote, candidate filing forms, voters' pamphlet filing forms, file contribution and expenditure (C&E) transactions online, etc. during their work time.

An elected official, as part of a governing body, may vote to support or oppose a measure put before the body. The elected official may publicly discuss the vote. Elected officials may not use public employee staff time, except for ministerial functions.

See Material Produced by Governing Body, page 12.

An elected official may only solicit volunteer help from public employees during employee breaks or other personal time.

Candidate Forums

A governing body may sponsor a candidate forum if it is open to all candidates, though not all candidates must attend.

Public employees may use work time to arrange the forum. The public employee may perform administrative support functions in conjunction with the forum and may attend on work time.

All public employee involvement in the forum must be impartial. Public employees may not draft or select questions for the candidates.

Scheduling Political Appearances

Public employees may maintain the schedule of elected official candidates. Public employees may not solicit political scheduling opportunities for an elected official, but may respond to scheduling requests. Prohibited activities include organizing campaign events, communicating on political matters with the press or constituents, or initiating any other political activity on behalf of the official.

As discussed in the measure section, incoming calls about measures must be answered in a strictly factual manner.

Visits by Candidate or Candidate Representative

A candidate may request to visit a government agency work site. The public agency must grant equal access to all candidates. The government agency should not initiate candidate visits, except for candidate forums.

Public employees involved in the arrangements for the visit may perform administrative duties necessary to arrange the event.

No public employee may take any actions to promote or oppose the candidate before or during the visit. This includes taking a political position when announcing the event, holding a campaign sign during the event or assisting the candidate in distributing campaign materials.

Sharing Information with the Media

Use of Public Employee Title

Public employees may use their work title in political activity so long as the title is the only indication that the public employee is acting in an official capacity. Use of a title may give people the impression that a public employee is acting in an official capacity, so it is suggested that public employees use caution. However, a violation of ORS 260.432 will only be found where a public employee is on the job or acting in an official capacity. Public employees may not always have control over whether people or political groups add a title to a publication.

ex A public employee, after work on personal time, is asked whether they are willing to endorse a candidate with the purpose of including the endorsement on the candidate's website. The public employee agrees. Regardless of whether the candidate adds the title of the public employee on their own or whether the public employee specifically agrees for his or her title to be included, the public employee would not be in violation of ORS 260.432 because the endorsement occurred after hours and the title is the only indication that the public employee is acting in an official capacity.

→ It would be a violation for a public employee to receive a call at work from a candidate and agree to endorse the candidate, regardless of whether the candidate includes the title in the endorsement, because the public employee is on the job during work hours.

See Salaried v. Hourly: “On the Job” on page 5.

Guest Opinions or Letters to the Editor by Public Employees

If a public employee is asked in their official capacity to produce a guest opinion related to a ballot measure or candidate, the content must be impartial.

A public employee may write a letter to the editor that contains political advocacy so long as they do so on their own time and not in their official capacity.

Agency Interaction with Media

A spokesperson for an agency may respond to media inquiries about the possible effects of a measure or initiative so long as the information they provide is impartial. The public employee must not state or imply support or opposition.

A public employee may draft and distribute an impartial news release, except for a news release regarding a resolution advocating a political position on a measure.

See Resolutions (Vote Taken) by an Elected Governing Body, page 15.

Information that is entirely factual may nonetheless be considered advocacy (for example, by omitting required cost information).

See Determining Impartiality for Documents, page 17.

Material Produced by Governing Bodies

Any covered political materials produced by public employees while on the job during work hours must be impartial. The Elections Division is available to review documents prior to publication to ensure compliance with ORS 260.432. If the document is submitted to the Elections Division and approved in writing, there will be no violation of ORS 260.432 as long as what is printed does not deviate from the approved version. This review process will be completed within five business days of the submission of the document.

Contact

Oregon Secretary of State, Elections Division

503 986 1518
Fax 503 373 7414
elections.sos@state.or.us

When the Elections Division receives a document for prior review (usually submitted by fax or email), it will review it utilizing the impartiality requirements on page 18 of this manual. It will then reply to the jurisdiction, usually by email, with a statement that the document as submitted is acceptable, or with notes about how to make the document more impartial. The jurisdiction may re-submit the material incorporating the suggested changes as many times as necessary.

Who is Liable for Advocacy Material

Any public employee who authors or drafts material that contains advocacy may be in violation of ORS 260.432. This includes any public employee who creates material for inclusion in an advocacy document.

A supervisor who requests that an advocacy document be created, or oversees the project, may also be in violation of ORS 260.432, even if they are not the author of the document.

A public employee may edit material that is subsequently found to contain advocacy if the public employee only edits for grammar, spelling and other non-substantive issues. A public employee may not edit advocacy materials if they make or suggest substantive changes. It is not a violation for a public employee to design materials that are subsequently found to contain advocacy so long as they are not involved in the substantive content of the document.

It is not a violation of ORS 260.432 for a public employee, at the direction of a supervisor, to post advocacy materials to a website or otherwise distribute them. The supervisor who directed the distribution of materials may be in violation of ORS 260.432.

See Determining Impartiality of Documents, page 17.

Letterhead and State Seal

Government Letterhead

Election law does not regulate the use of government letterhead.

We recommend agencies have policies in place governing letterhead that incorporate the requirements of ORS 260.432.

State Seal

ORS 186.023 governs the use of the Oregon State Seal. Elected officials may use the state seal in an official capacity, but not as a candidate for public office.

For questions about the use of the Oregon State Seal, contact the Secretary of State, Executive Office at 503-986-1523.

Specific Kinds of Materials

Voters' Pamphlet

A public employee's duties may include producing an official voters' pamphlet. Public employees may not prepare measure arguments or candidate statements for inclusion in the voters' pamphlet while on the job during work hours.

See page 16 for information about ballot titles and explanatory statements.

Postcards

Postcards produced or distributed by public employees must be impartial. The postcards must meet the impartiality requirements, described on page 18.

When a public employee is involved in the production of a series of small mailers, each piece must be individually impartial. Read together, the series of mailers must also be impartial. For ballot measure material, any discussion of the measure's effects must be balanced with the amount of taxes or fees.

"Don't Forget to Vote" Materials

Public employees may produce "don't forget to vote" materials as long as they are impartial. These materials can contain information about the date of the election, how to return ballots, etc. and can also include information about a measure, as long as that information is impartial.

Previously Published Materials

Public employees may respond to public records requests with information that contains advocacy, but may not proactively distribute advocacy material.

See Websites, page 14, for information about links to previously published materials.

Video and Audio Productions

Video and Audio productions created or distributed by public employees must be impartial.

Public employees who record video of public meetings may do so even if non-public employees (or public employees who are not on the job or acting in their official capacity) engage in advocacy on the video. Public employees may not make recordings where the purpose of the video or audio production is advocacy. Public employees may not edit a video so that the resulting product is advocacy.

Public employees may broadcast videos of meetings for public access channels and post the videos on government websites, even if the videos contain advocacy. Posting only excerpts of the meeting where there is advocacy with an intent to advocate would be a violation.

Websites

No advocacy material may be posted on any government website or blog unless it is part of an official function of the agency.

ex An elections website may contain voters' pamphlet information.

→ Any public body may post information that is a record of a public meeting, even if it contains advocacy.

Candidates and other political groups may link to government websites, but government websites may not contain links to advocacy material. Even if a public employee posts advocacy material on the government website during their personal time or on their personal equipment, the public employee would be acting in their official capacity and therefore would violate ORS 260.432.

Government websites may contain public records about measures or candidates. Those public records must be treated the same as other public records, which do not contain advocacy. Public records which contain advocacy cannot be proactively distributed or placed in a prominent location on a website when a measure or other restricted issue is pending.

ex A city manager may produce a memorandum to the city council about the need for a possible future bond measure referral. If the city council refers the bond measure, then that memorandum cannot be proactively distributed after the measure is certified. The city could respond to a public records request for the memorandum or maintain it with, for example, the minutes for the meeting in an archival section of the website.

Government agencies should have a policy in place for their website that incorporates the requirements of ORS 260.432.

E-mail

Public employees may open and read emails that contain political advocacy. They may not, while on the job during work hours, send or forward emails that contain advocacy, except as outlined below.

A public employee may forward an email containing advocacy to their personal email, so long as this does not violate the employer's policies. Public employees may unsubscribe or otherwise ask to be removed for an email list while they are on the job.

A public employee may forward an email containing links to advocacy material only when that material is germane to the government agency and the public employee does not provide commentary.

ex A wildlife official may forward emails to other public employees that contain a link to an article about an upcoming measure that would change the way the state regulates the wolf population. They may not include commentary that endorses or opposes the article or issue. They may include commentary germane to how the measure would affect the agency, so long as the commentary is impartial. The wildlife official may not forward an advocacy article about a measure that would impose a public school bond (or any other issue not related to the agency).

Agencies are advised to have a policy on use of government email that incorporates the requirements of ORS 260.432.

New Media (Twitter, Facebook, etc.)

Public employees may not post to government Twitter, Facebook, etc. material that contains political advocacy.

If a government agency interacts with candidates or covered political groups in new media (i.e., if a candidate left a comment on an agency Facebook post), the agency must ensure that they treat all candidates or political groups equally and that any agency interaction remains impartial.

If a government agency allows comments on social media posts, it must ensure that comments that support or opposite restricted political issues are treated equally.

ex An official school district facebook page posts a "don't forget to vote" message. Several people comment supporting and opposing a school district bond measure that is on the ballot. It would be a violation if the school district deleted the negative comments and maintained the positive comments. It would not be a violation to delete a comment opposing the measure if the comment also violates school district comment policy (e.g. the comment contained profanity).

Agencies are advised to have policies on use of government new media accounts that incorporate the requirements of ORS 260.432.

Initiatives, Measures, and Ballot Titles

When Does ORS 260.432 Apply?

- → for initiative, referendum and recall petition efforts as soon as a prospective petition is filed with the appropriate elections filing officer;
- → for a ballot measure referred to the ballot by a governing body (district, city, county, state) as soon as the measure is certified to the ballot. A district or city measure is certified to the ballot when the elections official files the referral with the county election office.

The actions taken by a governing body and its public employees in the planning stages of a possible measure are not subject to ORS 260.432.

Public employees may produce and distribute advocacy material about referrals prior to the measure being certified to the ballot. Any public employee work time used to change, amend, edit, distribute, etc. a document found to be supporting or opposing a referral between the date it is certified to the ballot until the date of the pertinent election could be a violation of ORS 260.432.

Public employees may respond to public records requests for documents that contain advocacy, even if the measure has been certified. They may not proactively distribute those materials after the measure is certified.

A public employee may not distribute prior measure materials that contain advocacy where the same or similar issue is currently on the ballot.

ex If a school district has a recurring bond levy, district employees may not proactively distribute any materials from the previous levies (even though those elections have passed) during the period between certification and the current election.

Resolutions (Vote taken) by an Elected Governing Body

Elected boards of governing bodies may take a position on a ballot measure (or initiative, referendum or recall petition) provided there is no use of public employee work time to advocate that position.

With regard to a governing body's resolution that advocates a political position on a ballot measure, initiative, referendum or recall, a public employee:

May	May Not
Edit the jurisdiction's name and board member names to conform it to the requirements for the resolution	Draft, type, or edit the resolution
Prepare neutral, factual information for the board to use in taking a position on the measure, including impartial information on how the measure could affect the jurisdiction.	Recommend how to vote on the resolution
Be available at the board meeting to offer impartial information upon request.	Sign a resolution, unless the public employee's signature is ministerial and included only to attest that the board took the vote
Respond to direct questions from the media about the resolution, if their response is impartial.	Prepare a news release or other announcement of the resolution.
If the jurisdiction lists all votes on resolutions in a regularly published publication, they may include the vote in an impartial manner.	Include the vote or position of the governing body in a jurisdiction newsletter or other publication.
Use work time to record the vote if that is part of the employee's work duties.	
Use work time for regular job duties, such as responding to public records requests, taking minutes, retyping the resolution to conform to the required format, etc.	

Ballot titles

Public employees may use work time to draft ballot titles. A public employee may also defend a challenged ballot title.

Because the impartiality requirements and ballot title challenge process in ORS chapter 250 are distinct from the requirements of ORS 260.432, this office will not review ballot titles for impartiality. Public employees who draft ballot titles as part of their job duties do not violate ORS 260.432 by drafting a ballot title.

See Legal Challenges by Public Jurisdictions, page 9.

Explanatory statements

Public employees may use work time to draft explanatory statements.

Because the impartiality requirements and explanatory statement process in ORS chapters 251 are distinct from the requirements of ORS 260.432, this office will not review explanatory statements for impartiality. Public employees who draft explanatory statements as part of their job duties will not be found in violation of ORS 260.432 for drafting an explanatory statement.

See Legal Challenges by Public Jurisdictions, page 9.

Public Employers Discussing Possible Effects of a Measure with Public Employees

A public employer may tell employees about the possible effects of a measure so long as the information presented is impartial and balanced. They may not encourage (implicitly or explicitly) public employees to support or oppose the measure.

Pursuant to ORS 260.665, it is a crime to threaten loss of employment (or other loss) or offer a thing of value to induce someone to vote in a particular manner.

Measure Forums

A forum to allow political proponents and opponents to debate ballot measures may be held using public employee work time as long as equal access is granted.

Measure forums are governed by the same principles as candidate forums.

See Candidate Forums, page 10.

Determining Impartiality of Documents

Elections Division Review of Documents

The Elections Division offers a review service to give advice on whether a document complies with the requirements of ORS 260.432.

To submit a document for review, you may:

elections.sos@state.or.us
Fax 503 373 7414
255 Capitol Street NE, Suite 501, Salem, OR 97310

Any Elections Division review of a document must occur before publication or distribution of the document. The Elections Division does not review documents for accuracy, only for impartiality.

ORS 260.532 governs false statements in elections material. It prohibits false statements of material fact about candidates, political committees, or measures. That statute is not enforced through the Elections Division, but instead requires an aggrieved party to pursue their claim in court.

Approval by the Elections Division provides a safe harbor for compliance with ORS 260.432. Should the Elections Division receive a complaint, it will be rejected as long as what was published is exactly what was submitted for review and all recommended changes were made.

When governing bodies receive Elections Division advice, they may choose to make some or all of the changes. If a complaint is received, the governing body will only be provided a safe harbor if they:

1. Accepted and made all of the changes recommended by the Elections Division
2. Did not otherwise alter the document

Once a document has been reviewed and all of the changes are made, a governing body may include a disclaimer that reads: “This information was reviewed by the Oregon Secretary of State’s Office for compliance with ORS 260.432.” This is the only acceptable disclaimer.

Impartiality Requirements

The overall inquiry for determining impartiality is whether the material "promotes or opposes" a candidate, initiative, measure, political committee or recall. In order to be impartial for the purposes of ORS 260.432, a document must meet three requirements:

- → Documents must not explicitly urge a yes or no vote;
- → Documents must be factually balanced;
- → Any document that talks about what a measure would pay for must also fully describe how much it would cost.

The requirements are discussed in further detail below.

1 Vote Yes/No

The contents of the document must not urge a yes or no vote for the measure. There should be no "vote yes" or "vote no" language. The document must not include phrases such as:

- → "Vote Yes on Measure 99,"
- → "Support for Measure 99 is encouraged,"
- → "The County is asking voters to approve,"
- → "Why Should I Vote for Measure 99?"
- → "Voters are asked to support Measure 99,"
- → "At election time, please support the Home Rule Charter,"
- → "On May 15, 2012, Anytown voters are being asked to continue their support of the community youth by renewing the Youth Action Levy, Measure 57," and
- → "Please support our incumbent mayor."

Even if the remainder of the document is impartial, explicitly urging someone to vote in a particular manner would be a violation of ORS 260.432.

2 Balance of Factual Information

Documents produced by governing bodies must not be one-sided. They must include a balance of factual information.

3 Description of Cost

If a measure proposes to affect taxes or fees, the cost of the measure to an individual taxpayer or consumer must be included. In the context of a bond levy, this is generally the cost per $1,000 of assessed value. The cost must not be worded in a way to minimize it. It is allowable to include an estimate if the exact cost is not known.

ex It would be advocacy to describe the cost as "less than", "merely", or "only" $X.

It is allowable to indicate that a bond renewal would not "raise taxes" where the jurisdiction states that the bond, if renewed, would continue to cost $X per $1000 assessed value. It is also allowable to state how much the bond would raise taxes compared to the previous bond, as long as the full cost information (generally cost per $1000) is also included.

ex "The ABC Library bond will not raise taxes. If the bond is renewed the rate will remain at $1.23 per $1000 assessed value."

"The ABC School bond is an increase of $.25 per $1000 assessed value over the previous bond. The total rate if the bond is passed would be $1.45 per $1000 assessed value."

For measures that use funding mechanisms other than cost per $1000 assessed value, the cost must be described in a way that clearly informs the public of how the measure would affect taxes.

Enforcement

Complaints (ORS 260.345)

Any Oregon elector may file a signed, written complaint with the Secretary of State, Elections Division alleging that a violation of ORS 260.432 (or any other election law) has occurred. The Elections Division also has its own authority to initiate an investigation when it has reason to believe a violation has occurred.

When a complaint is received, the Secretary of State will acknowledge receipt of the complaint to the complainant and the subject of the complaint within 48 hours of receiving the complaint. When the complaint is against a jurisdiction and not any specific individuals, it will be acknowledged to someone the Elections Division believes has responsibility for the area where the public employees are alleged to have violated the statute. The acknowledgment will be in writing.

ex If a complaint is against a City and it is not clear who is responsible, it will be acknowledged to the City Manager.

Because ORS 260.432 is a civil statute, the complaint and all investigative documents are public information. The complaint and all correspondence are available for any person who makes a public records request.

Investigation

Once a complaint is received, an investigation is conducted. The Elections Division will collect information and make inquiries. The subject of the complaint will be invited to respond to the allegations and provide any relevant information. As part of the investigation, the Elections Division may review materials not submitted with or mentioned in the complaint, and those materials may be the basis for a violation. The Elections Division may consider any information it considers relevant to the question of whether individuals in the jurisdiction violated ORS 260.432.

The investigation is independent of any election. The election will not dictate when a determination is made, and any determination will not change the outcome of the election.

Determination

If the Elections Division determines there is insufficient evidence of a violation of ORS 260.432, it will issue a letter to the complainant and subject of the complaint closing the case.

If the Elections Division determines there is sufficient evidence to indicate individual(s) violated ORS 260.432, it will issue a Notice of Proposed Civil Penalty (PPN). The PPN will lay out the basis for the violation. When the person subject to the penalty receives the notice, they may:

- → Choose to pay the penalty, or
- → Contest the charges by requesting a hearing

If the person does not contest the penalty, the Elections Division will issue a default final order imposing the civil penalty. If the person chooses to pay the penalty, payment may be submitted by check made payable to the Secretary of State or paid by credit card over the phone. Payment may be mailed to the Elections Division at any time after the PPN is issued, but must be received not later than 60 calendar days after the default final order is issued.

If the person chooses to contest the charges, they must submit a hearing request form (which will be included with the PPN) and an answer, explaining their reasons for contesting the charges and including any relevant mitigating circumstances.

Mitigating Circumstances

The Elections Division will consider reducing, in whole or in part, the civil penalty where the violation is the direct result of an error by an elections officer. The burden is on the person alleged to have committed the violation to show that this mitigating circumstance exists and caused the violation.

Hearing Process

Hearings are conducted by an administrative law judge with the Office of Administrative Hearings (OAH) in Salem. On the hearing request form, the person subject to the civil penalty may select either a hearing in-person or by telephone.

When the Elections Division receives the hearing request and answer, they will forward this information, as well as the PPN and exhibits, to OAH. OAH will schedule a hearing not later than 45 calendar days after the deadline for requesting a hearing and notify the parties of the hearing date. A 15 calendar day extension may be granted if requested in writing by the person subject to the civil penalty.

Submitting Exhibits

Not less than five business days prior to the commencement of the hearing, each party, including the Elections Division, must deliver copies of the exhibits it intends to offer into evidence at the hearing. Exhibits must be delivered to the administrative law judge, all parties, and the Elections Division.

Any documentary evidence submitted after the deadline may be admitted only if the administrative law judge finds that inclusion of the evidence in the record is necessary to conduct a full and fair hearing.

Conduct of In-Person or Telephone Hearing

If the hearing is in-person, it will be held in a hearing room at the Office of Administrative Hearings in Salem. If the hearing is by telephone, the parties will call the phone number provided in the Notice of Hearing sent by the Office of Administrative Hearings. The hearing will be presided over by an administrative law judge who will describe the hearing process at the beginning of each hearing. The parties will then be given the opportunity to give opening statements, present and examine witnesses, and give closing statements.

If the party that requested the hearing does not appear within 15 minutes of the time set for a hearing, the administrative law judge will declare the party in default unless the party gives notice of a reason for the inability to appear at the designated time and requests and receives a continuance.

Opportunity to Opt Out of In-Person or Telephone Hearing

A person that requests a hearing may decide that he or she does not want to appear at the hearing, but still wants to contest the penalty. The person may submit notarized testimony and other evidence for entry into the hearing record before the administrative law judge in lieu of attending the hearing. The Elections Division must receive the testimony no later than three business days before the day of the scheduled hearing.

The Elections Division may also submit notarized testimony. The Elections Division testimony must be received by OAH not later than 5:00 pm on the scheduled date of the hearing. If the Elections Division fails to submit notarized testimony, the Elections Division exhibits become part of the case file and may establish the basis for liability.

Proposed Order

Not later than 30 calendar days after the hearing is closed, OAH sends the administrative law judge's proposed order to the parties. The proposed order will provide a deadline to file written exceptions to the proposed order. If the Elections Division chooses to amend the proposed order issued by the administrative law judge, the Elections Division will send an amended proposed order to the parties, which will provide a deadline to file written exceptions to the amended proposed order.

Final Order

After reviewing and considering the written exceptions, if any, the Elections Division will issue a final order no later than 90 calendar days after the hearing is closed. If the final order imposes a civil penalty, the party has 60 calendar days to pay the penalty or file an appeal.

Judicial Review

After the issuance of a final order or default final order, the person subject to the civil penalty is entitled to judicial review of the order. Judicial review may be obtained by filing a petition for review with the Oregon Court of Appeals within 60 calendar days of the service date of the order.

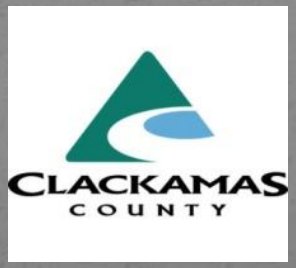
ATTENTION ALL PUBLIC EMPLOYEES:

The restrictions imposed by the law of the State of Oregon on your political activities are that "No public employee shall solicit any money, influence, service or other thing of value or otherwise promote or oppose any political committee or promote or oppose the nomination or election of a candidate, the gathering of signatures on an initiative, referendum or recall petition, the adoption of a measure or the recall of a public office holder while on the job during working hours. However, this section does not restrict the right of a public employee to express personal political views."

It is therefore the policy of the state and of your public employer that you may engage in political activity except to the extent prohibited by state law when on the job during working hours. (ORS 260.432)

Mandatory Child Abuse Reporting for Clackamas County Employees

Office of Clackamas County Counsel



What is covered in this Training?

- General information regarding child abuse.
- Mandatory child abuse reporting in Oregon:
  - Who is a mandatory reporter?
  - What is a mandatory reporter's duty?
  - What is child abuse under Oregon law?
  - When is a report required?
  - How is a report made?
  - What are the consequences of not making a report when a report is required?

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The Big Picture

- A "Child" is any unmarried person under the age of 18.
- All fifty states have mandatory child abuse reporting laws.
- In 18 states all people are mandatory reporters.
- In Oregon, a change in the law means all employees of public organizations are now mandatory child abuse reporters if the public organization provides child-related services or activities.

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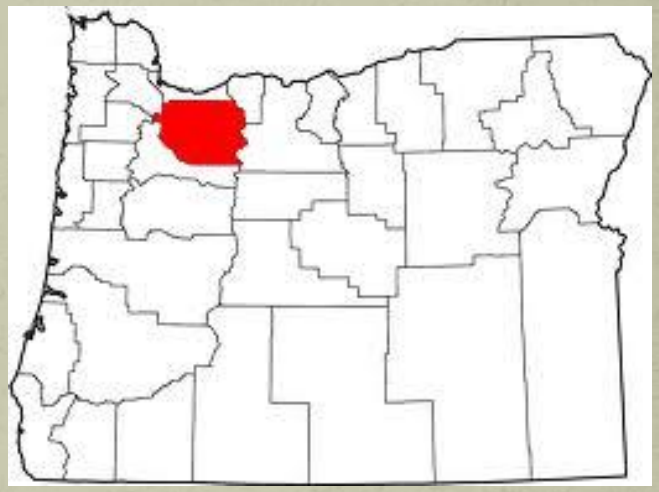
Clackamas County

- **Clackamas County provides child-related services.**
- **Because Clackamas County provides child-related services and activities, <u>all</u> County employees are now mandatory reporters of child abuse. This means you!**



Why Report?

- Goal of reporting is to identify at risk situations.
- In 2010, there were 11,188 reported cases of abuse in Oregon.
- 22 children died.
- 48.3% of victims were under 6 years old.

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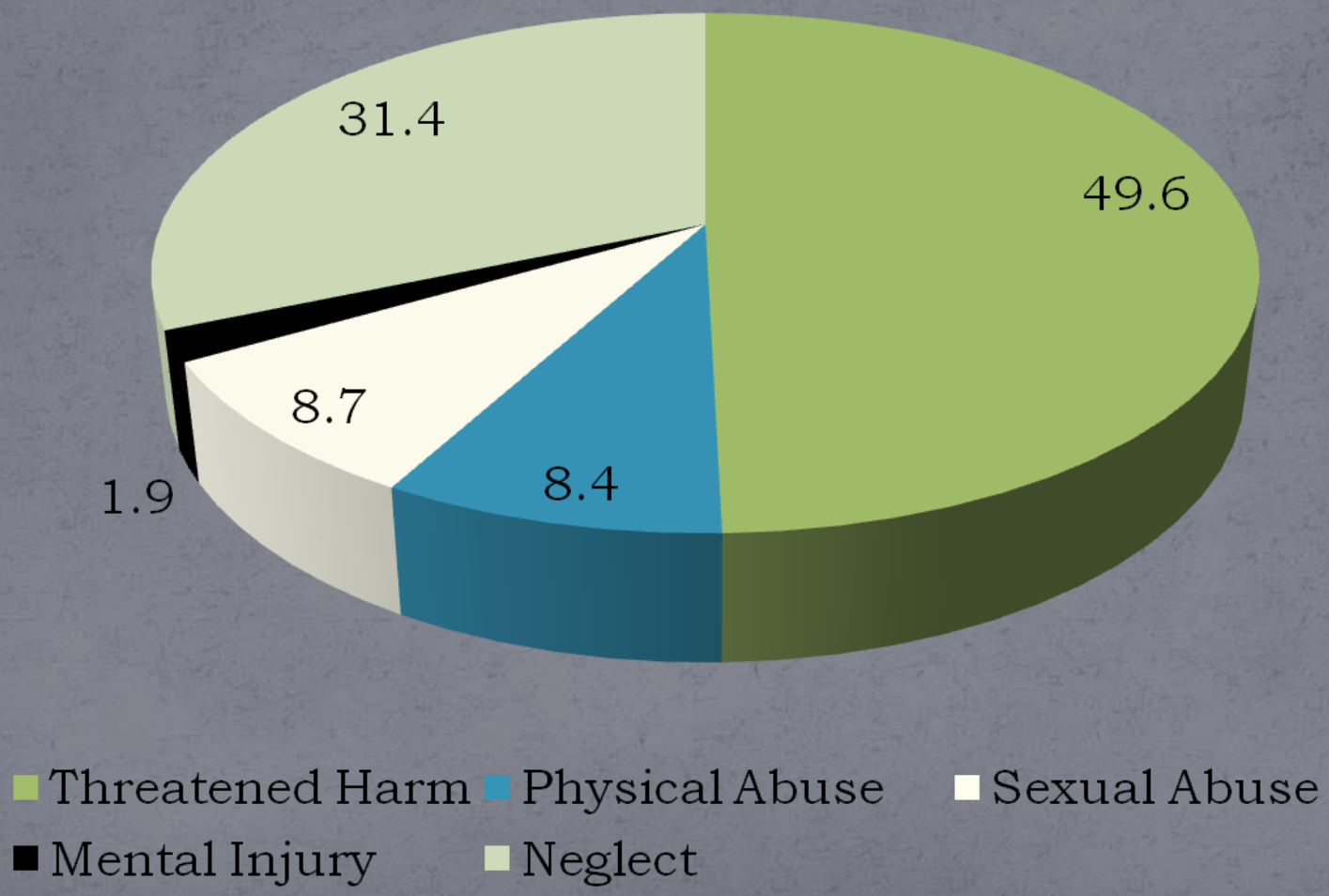
Types of Abuse Reported



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Your Reporting Duty

- ORS 419B.010 provides you must report if you have:
  - reasonable cause to believe;
  - child abuse has occurred; and
  - you have had contact with the child <u>or</u> the abuser.

- The requirement to report information obtained "in course of official duties" was changed and now it's a <u>24/7 obligation</u>.

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What is child abuse?

- Threatened Harm
- Physical Abuse
- Sexual Abuse
- Mental Abuse
- Neglect

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Types of Abuse – Threatened Harm

- Activities, conditions or persons that result in a *substantial* risk of harm to child's health or welfare.

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Examples of Threatened Harm

- Domestic violence, presence of sex offender barred from being in vicinity of children, drug use, DUII with child in car.
- Permitting child to enter or remain in a place where methamphetamines are manufactures.
- Exposure to controlled substance that subjects child to substantial risk of harm.

Types of Abuse – Physical Abuse

- Intentionally or knowingly causing physical injury or substantial pain to child.
- Non-accidental physical injury, including any injury at variance with the explanation given.

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Examples of Physical Abuse

- "Unreasonable" discipline.
- Delayed or inappropriate treatment.
  - "Reasonable discipline" is reasonable physical force, but does not give license to inflict injury. Consider age of child, severity, location of injury.
  - Ask: is the injury at variance with the explanation given?
- Physical indicators:
  - Bruises reflecting the shape of the article used (belt buckle)
  - Cigar/cigarette burns
  - Immersion burns (sock-like; glove-like)
  - Burn pattern (iron or utensil)
  - Rope burns on arms, neck, torso
  - Lacerations to mouth, lips, gums

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Types of Abuse – Neglect or Maltreatment

- Failure to provide food, clothing, shelter or medical care that is likely to endanger a child.
- Lack of supervision and protection.
- Unsafe or unsanitary home.
- Typically long-term issue, but can be single serious incident.

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Examples of Neglect or Maltreatment

- Neglect is typically long-term issue, but can be single serious incident.
- Signs: consistent hunger; poor hygiene; inappropriate dress; begging/stealing food.
- Leaving child alone in car? Consider temperature, whether child crying/sleeping, how long, where, how old the child.
- Under 10 – criminal neglect to be left alone. ORS 163.545(1).
- DHS says 12-year-old can be left home alone and can care for other kids.
- If drug use is a concern, must be a connection between use of drugs and impairment in parenting skills.

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Types of Abuse – Sexual Abuse

- Sexual Abuse
  - Sex crimes defined in ORS Chapter 163
  - Includes rape, sexual assault, and sexual contact (touching the sexual or intimate parts of a child)
- Sexual abuse includes:
  - Sexual exploitation of a minor.
  - Buying or selling a minor.

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Types of Abuse – Mental Injury

- Mental Injury
  - Cruelty that results in observable and substantial impairment of child's mental or psychological ability to function.

  - Mental injury is typically permanent or long standing psychological harm – repeated screaming, disparaging of child.

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What is Reasonable Cause?

- Reasonable cause = a reasonable person considering all of the circumstances would have cause to believe abuse has occurred.

- Reasonable suspicion is more than mere speculation or "gut feeling", or a hunch. You do not need to be sure that abuse has occurred in order to have reasonable cause and trigger duty to report.

- If you can point to specific facts that cause you to believe abuse may have occurred, you should report.

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Am I required to investigate?

- No. You may comment, observe or inquire further, but there is no requirement that you need to confirm that abuse has occurred.
- The Department of Human Services and law enforcement will conduct the investigation.

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What is "contact"?

- Contact does not need to be concurrent with occurrence of abuse.
  - If you have contact with a child or an abuser at any time before or after forming reasonable cause to believe abuse has occurred, duty to report is triggered.

- Contact not limited to employment capacity.
  - If contact occurs outside of work or in personal life it still must be reported.

- Direct vs. Indirect Contact – the Oregon Attorney General has opined that most likely only actual or direct contact with abused child or abuser will trigger duty to report. For example, if you observe abuse occurring or signs of abuse; talk to or communicate with abused child or abuser.

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Duty to report

- The duty to report is personal to the public official alone, regardless of whether the official is employed by, a volunteer of, or a representative or agent for any type of entity or organization that employs persons or uses persons as volunteers, who are public or private officials in its operations.
- The duty to report exists regardless of whether the entity or organization that employs the public or private official or uses the official as a volunteer has its own procedures or policies for reporting abuse internally within the entity or organization.

CLACKAMAS COUNTY

Exception to Duty

- A report does not need to be made if:
  - You learn of abuse through report already made to law enforcement or state DHS about child abuse; OR
  - You reasonably believe the information is already known by DHS and/or law enforcement.

CLACKAMAS COUNTY

How to Report

- Report must be made:
  - Immediately
  - Orally by phone or "otherwise" to a Department of Human Services office or to a law enforcement agency.

  - "Law enforcement agency" means:
    - (a) A city of municipal police department.
    - (b) A county sheriff's office
    - (c) The Oregon State Police
    - (d) A police dept. established by a university under ORS 352.383
    - (e) A county juvenile dept.

CLACKAMAS COUNTY

Who to Contact

- In Clackamas County
  - In Clackamas County call the Child Welfare/Child Abuse Hotline at (971) 673-7112
- List of local Child Welfare Offices:
  - http://www.oregon.gov/dhs/children/pages/abuse/cps/cw_branches.aspx
- Give as much as information as possible:
  - Names, ages, location, description of abuse

CLACKAMAS COUNTY

Protections if you Report

- Civil and criminal immunity if:
  - You make the report in good faith; and
  - You had reasonable grounds for the report.

What if you fail to report?

- Class A violation punishable by fine of up to $2,000 and no less than $220.
- Failure to perform duties of office.
- Potential civil liability:
  - Failure to protect from foreseeable harm;
  - Negligence per se

CLACKAMAS COUNTY

Reporting Clarification

- In 2011, the Oregon legislature amended the mandatory reporting law to clarify that the duty to report is <u>personal</u> to the public official.
- The duty to report exists even if the employer or organization has its own internal policies for reporting abuse.
- Employees cannot rely on internal policies to vindicate them of their statutory duty to report.

CLACKAMAS COUNTY

Hypothetical No. 1

You go to Lowes on a beautiful and unusually sunny, warm Saturday in June. It is 85° outside. As you are walking through the parking lot to the store, you notice a parked car with a child sitting in a car seat in the back. You step closer and sees that the windows are cracked; the child looks to be about a year old and is asleep. You look around and don't see any adult in the vicinity who appears to be heading for the vehicle. Are you required to report?

CLACKAMAS COUNTY

Analysis of Hypothetical No. 1

- Evaluate criteria for a report:
  - Public official? Yes.
  - Contact with child? Yes.
  - Reasonable cause to believe abuse has occurred? Yes.
    - On an 85° day, the temperature in the car will reach 102° in 10 minutes and 120° in 30 minutes.
  - Does it matter that it is on a weekend?
    - No, the duty to report is 24/7 for mandatory reporters.

CLACKAMAS COUNTY

Hypothetical No. 2

You are at an outdoor summer concert with your best friends Matt and Debbie and their two kids, ages 7 and 9. You are enjoying the sun, the music and a glass of wine. Two hours later, the music has ended and you gather your stuff to leave. Your friends are laughing and talking loudly and nearly fall over when they try to stand. As they get up, you notice the four empty bottles of wine next to them and you are concerned that they are seriously intoxicated. You offer to drive them home, but they refuse. You use your best persuasive techniques to convince them that they really shouldn't drive and even try taking their keys from them, but they become hostile, lock themselves and their kids in the car, and take off. Later, you learn that the family arrived home safely. Are you required to report?

CLACKAMAS COUNTY

Analysis of Hypothetical No. 2

- Evaluate criteria for a report:
  - Public official? Yes.
  - Contact with child or the abuser? Yes.
  - Reasonable cause to believe abuse has occurred? Yes. Driving while significantly impaired is an "activity that results in a *substantial* risk of harm to child's health or welfare."
- Do you have to <u>know</u> that the friends are intoxicated? No, just need information leading to a reasonable suspicion that they are intoxicated.
- Does it matter that the children arrived home safely? No.

CLACKAMAS COUNTY

Hypothetical No. 3

Your teen daughter has a friend over to spend the night. The friend says how much she likes visiting your house because it is “safe” and she doesn’t have to worry about her stepfather “coming on” to her and trying to touch her when her mom isn’t home. Are you required to report?

CLACKAMAS COUNTY

Analysis of Hypothetical No. 3

- Evaluate criteria for a report:
  - Public official? Yes.
  - Contact with child or the abuser? Yes.
  - Reasonable cause to believe abuse has occurred? Most likely. Just need to have information that leads to a reasonable suspicion that sexual abuse has occurred.
- There is no requirement that the employee conduct her own investigation.
- Remember that the duty to report is immediate after there is contact with the victim or the abuser.

CLACKAMAS COUNTY

Hypothetical No. 4

Your neighbor Joan, tells you that she is concerned about the 4-year-old who lives in the house next door to her. She frequently sees him playing outside alone, dirty and dressed inappropriately. If the boy sees Joan, he will come over and ask for something to eat. Based on frequent late night visitors, Joan believes the boy's parents are involved in illegal drug activity. Are you required to report?

CLACKAMAS COUNTY

Analysis of Hypothetical No. 4

- Evaluate criteria for a report:
  - Public official? Yes.
  - Contact with child or the abuser? No.
  - Reasonable cause to believe abuse has occurred? Yes. Signs of neglect: poor hygiene; inappropriate dress; begging food. Also possible drug activity.
- Because there has been no contact with the child or the abuser, the employee is not required to make a report. However, the employee is certainly permitted to do so.

CLACKAMAS COUNTY

Hypothetical No. 5

You are in a store at the mall. You see a mother with a small child who appears to be about 3-years-old. The child is wandering around the store in and out of the clothes racks. The mother is having a hard time keeping track of him. She catches up with him and grabs him by the wrist. He collapses on the ground and starts screaming and kicking. Mother drags him up by the arm and over to the stroller. She tries to get him into the stroller, but he resists. Finally, losing patience, she slaps the boy in the face hard enough that the employee can see a hand print. The mother walks quickly out of the store and into the mall. Are you required to report?

CLACKAMAS COUNTY

Analysis of Hypothetical No. 5

- Evaluate criteria for a report:
  - Public official? Yes.
  - Contact with child or the abuser? Yes.
  - Reasonable cause to believe abuse has occurred? Yes. "Reasonable discipline" does not give license to inflict injury.
- Keep in mind that you do not need to have all relevant information, such as the name and address of the abuser, before you make a report. You report what you know. In this case, you would report the date, time, place, and details of the abuse.

CLACKAMAS COUNTY

Questions?
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CLACKAMAS COUNTY

2020

Economic Development Commission

January

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
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February

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December

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