

PUBLIC MEETING LAW

PUBLIC RECORDS LAW

OREGON ETHICS LAW

Public Meetings Law



▶ Regulated by State of Oregon - Department of Justice

- ▶ From ORS 192
- ▶ Attorney General's Public Meetings and Open Records Manual



Who must follow?

- ▶ The City governing body (City Council) and
- ▶ Any elected or publicly-appointed committee or sub-group tasked with making recommendations or decisions or deliberating toward a decision on any matter

What is the law?

- ▶ ORS 192.620: “The Oregon form of government requires an informed public aware of the deliberations and decisions of governing bodies and the information upon which such decisions were made. It is the intent of ORS 192.610 to 192.690 that decisions of governing bodies be arrived at openly.”
- ▶ ‘A quorum of a governing body may not meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as otherwise provided by ORS 192.610 to 192.690”
- ▶ Note: Public Participation does not always mean public conversation

What is a meeting?

- ▶ Any instance where a quorum (4 or more) members are discussing / deliberating toward a decision
- ▶ This includes:
 - ▶ Standard meetings where a quorum is present (4 or more)
 - ▶ Electronic meetings (Emails, IMs, Texts, Social Media)
 - ▶ Serial discussions
 - ▶ Hub discussions
- ▶ Does NOT include Social Gatherings

Procedural requirements for meetings

- ▶ Public notice at least 72 hours in advance
(Agenda)
- ▶ Space, location, accessibility and attendance
(Meeting location must be accessible to all public)
- ▶ Voting *(Decisions must be made and recorded)*
- ▶ Records *(Minutes, audio or video recording)*

Executive Sessions

- ▶ No final decisions; tentative decisions OK
- ▶ Examples:
 - ▶ Consultation on labor negotiations
 - ▶ Consultation on litigation
 - ▶ Real property transactions
 - ▶ Performance evaluations

Practical Tips for Meetings

- ▶ Avoid exchanges of opinions with more than two other Councilmembers on items the Council may vote on
- ▶ Avoid conversations (in person or via email) between Councilors where the views of fellow Councilors are shared
- ▶ Think before replying to emails when City business information is shared
 - ▶ Use BCC
 - ▶ To request more information on item, ask Staff who will prepare for all agency members

Preparing for the Meeting

- ▶ Agenda & Meeting materials distributed to Council:
 - ▶ Wednesday before the meeting
- ▶ If Possible:
 - ▶ If you have questions about information provided, ask Staff prior to the meeting.
 - ▶ This allows Staff to address thoughts in advance, and relay information to all Councilors at the meeting.

Public Records Law

A graphic featuring the words "Public Records" in a bold, white, sans-serif font. The text is overlaid on a 3D-rendered image of a wooden filing cabinet with a silver handle. The background of the graphic is a dark blue gradient.

- ▶ Regulated by State of Oregon - Department of Justice
- ▶ Crime of tampering with public records:
Knowingly and without authority destroying, mutilating, concealing, removing, or making a false entry in or falsely altering any public record. ORS 162.305.

What Is A Public Record?

- ▶ Any document that contains public business information that is prepared, owned, used or retained by a public body regardless of physical form or characteristics
- ▶ Emails, formal letters, photos, handwritten notes taken during meetings, napkin drawings, etc.
 - ▶ Generally, all emails you send or receive, all documents you create or receive in the course of your official position, and all calendar entries and notes.
 - ▶ Emails relating to City business sent from or to a personal/home email are considered public records.



What Do I Need To Keep?

- ▶ Generally, all records, electronic or hard copy, relating to public business.
- ▶ You do not need to keep:
 - ▶ Multiple copies of records
 - ▶ Copies of records which are unquestionably retained in City storage systems
 - ▶ Messages on voicemail or in other telephone message storage and retrieval systems.



Practical Tips on Public Records



- ▶ Avoid using personal email or personal computer for City-related electronic communications
- ▶ If using personal email or personal computer for City-related communications, always CC or BCC pertinent City staff person, so that the City electronic file system retains the communication.

Oregon Government Ethics Law

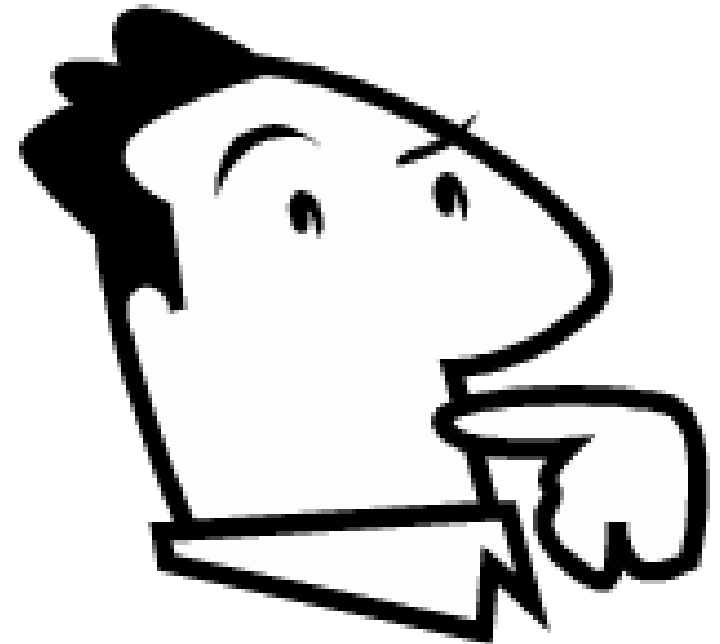
- ▶ ORS Chapter 244
- ▶ Administered by Oregon Government Ethics Commission

Underlying Principles

- ▶ Public officials should not be receiving any significant economic benefit by virtue of their position beyond what is available to the general public.
- ▶ Individuals, corporations or others cannot entice public officials with free goods or services

Simple Question

- ▶ Would I have this opportunity if I were NOT a public official?
- ▶ If NO - Then Don't Do It



Who Is Considered A Public Official?

- ▶ ORS 244.020(14): “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 their services.””
- ▶ Includes elected & appointed officials, employees, members of boards and committees and volunteers

Prohibited Use of Office (ORS 244.040(1))

- ▶ A public official may not use or attempt to use official position or office for:
 - ▶ Personal gain, financial gain or avoidance of financial detriment
- ▶ Applies to?:
 - ▶ You, a relative, or a member of your household (“MOH”) and any business with which you a relative or a MOH is associated
- ▶ Exclusion:
 - ▶ When the financial gain or avoidance of financial detriment would be available even if you were not a Councilmember

Relative (ORS 244.020(16))

- ▶ Spouse
- ▶ Your children or those of your spouse
- ▶ The following relatives of you or your spouse
 - ▶ Sibling/stepsibling/parent/stepparent/spouse of child
 - ▶ City(AMC3.08.020H(6): Also spouses of siblings or parents
- ▶ Any MOH (*i.e.*, anyone living with you, irrespective of relationship)
- ▶ Anyone for whom you have a legal support obligation or from who you receive benefits arising from his/her employment



Financial Gain: General Rule

ORS 244.040(1)

- ▶ Prohibits use or attempted use of position or office to obtain financial gain that would not otherwise be available, but for the position or office
- ▶ Avoidance of financial detriment is also “financial gain”
- ▶ Use of equipment/resources owned by government for personal purposes is prohibited by this provision
 - ▶ Examples: computers, vehicles, tools, equipment, discounts

Specific Prohibitions on Use of Position

- ▶ Use of City equipment for non-City business: e.g., phones, computers, copiers.
- ▶ Business opportunities: e.g., use of state funded trip to promote personal business opportunities.
- ▶ Avoidance of personal expense: e.g., waiver of expenses or membership fee that would be incurred but for position.
- ▶ Gaining something of economic value: e.g., financial stipend offered with opportunity only due to position as public official.
- ▶ Use of information obtained in the course of official duties to gain financial advantage or avoid expense not otherwise available to the general public.

Financial Gain Allowed

- ▶ Official Compensation Package
- ▶ Honoraria awards for professional achievement if less than \$50
- ▶ Gifts [in circumstances discussed hereafter]
- ▶ Reimbursement of Expenses [in circumstances discussed hereafter]

Gift Definition and Rule

▶ Definition

- ▶ Something of economic value;
- ▶ Offered to you, your relative or your MOH;
- ▶ Without cost or at discount or as forgiven debt;
- ▶ The same offer is not made or available to the general public.

▶ Rule

- ▶ You (as well as your relative or household member) cannot ask for or receive gifts over \$50 in value from any single source in a calendar year...
- ▶ When the source has a “legislative or administrative interest,” distinct from that of the general public, in any matter subject to your decision or vote.

“Legislative or Administrative Interest” Defined

- ▶ The source of the offer has an economic interest (administrative or legislative interest), distinct from that of the general public, in any matter subject to your decision or vote when acting in an official capacity.
 - ▶ If the source of the offer does not have an economic interest in the matter that is distinct from that of the general public, the gift limitation does not apply.
- ▶ A “matter subject to decision or vote” is a matter with respect to which you, perhaps along with fellow Council members, may vote or otherwise commit the City to a particular course of action.

A Gift Is Not Limited If It Is:

- ▶ From a source that has no economic interest in your position on a particular matter, except for the economic interest any citizens might have
- ▶ A present from relatives or household members
- ▶ An unsolicited award / token of appreciation with a resale value <\$25
- ▶ Discounted registration at a professional education event
- ▶ Informational material related to your official duties
- ▶ Part of a customary private **business practice and not related to your public office**

Travel Expenses Not Counted As A Gift If:

- ▶ Reasonable travel expenses are paid so you can serve as a representative of the City (ORS 244.020(6)(b)(F)) and:
 - ▶ Payment is from a federal, state or local government, a tribe, a membership organization to which the City pays dues, or a tax exempt not-for-profit 501(c)(3); and
 - ▶ The event is a meeting at which you are scheduled to deliver a speech, make a presentation, participate on a panel, or represent the City.

OR

- ▶ Travel expenses are paid by another public official or agency, travel is inside Oregon, the event bears a relationship to your public office, and you participate in an official capacity. ORS 244.020(6)(b)(K)

Admission Fees and Food Expenses Not Counted As A Gift If:

- ▶ If the event is a reception, meal or meeting held by an organization at which you are representing the City.
 - ▶ This exception also applies to your spouse, relative or MOH.

OR

- ▶ The event is a reception and food/beverage is incidental (secondary or minor) to main purpose of reception and no cost is placed on food or beverage. ORS 244.020(6)(b)(L)
 - ▶ This exception does not apply to your spouse, relative, or MOH.

Entertainment Expenses Not Counted As A Gift Only If:

- ▶ Entertainment is incidental (secondary or minor) to main purpose of another event (e.g., band performance as part of convention)

OR

- ▶ You are viewing and/or participating in the entertainment for ceremonial purpose, with an official role in the entertainment event (e.g., throwing the first pitch)
- ▶ These exceptions also apply to your relatives and MOHs

Gift Scenario Example I

- ▶ A business offers to pay your travel expenses and a stipend to attend a conference.
 - ▶ Not allowable because of nature of paying organization
 - ▶ Payment of travel expenses may be allowable when paying organization is a government agency or not-for-profit
 - ▶ In any event, stipend above and beyond travel expenses is not allowable

Gift Scenario Example II

- ▶ You attend a work-related conference paid for by the City. When you check into the hotel, you are offered a coupon for two free nights lodging in any hotel in the chain.
 - ▶ The hotel has an economic interest in your future arrangements for travel on behalf of the City.
 - ▶ This would be a gift subject to the \$50 annual limitation.

Gift Scenario Example III

- ▶ A legislator invites you to be his/her guest at a political fundraiser dinner. The cost of the dinner is \$125 per person and has already been paid by the legislator.
 - ▶ If the legislator has an administrative or legislative interest in a decision you may make as a Councilmember, you cannot accept the gift because it is over \$50.
 - ▶ Some options to consider:
 - ▶ Pay for your own cost the dinner.
 - ▶ If the organization hosting the dinner made the offer to provide you with a ticket, there may be an allowable gift exception that would allow you to attend.

Gift Scenario Example IV

- ▶ You are offered complimentary membership in a club which ordinarily requires members to pay dues.
 - ▶ Even if the club does not have a legislative or administrative interest in your work, this probably is a benefit that is being offered only because you are a public official.
 - ▶ If so, it may qualify as an allowable gift, but nevertheless may be an improper use of your position.

Conflicts of Interest

- ▶ Situations that affect your ability to make a decision in an ethical manner

Conflict of interest

ORS 244.020(1) Definition:

- ▶ 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 financial benefit or detriment of the person or the person's relative or any business with which the person or relative of the person is associated.

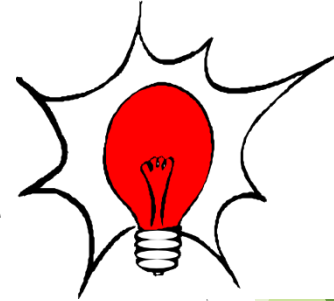
Conflict of Interest: General Rule

- Elected public officials and members of boards or commissions
 - Must publicly announce potential conflicts of interest before taking action
 - Must publicly announce actual conflicts of interest and refrain from discussion, debate, or voting on the issue out of which the actual conflict arises and refrain from participation
 - In either case, you must provide a brief explanation of the source of the conflict. (Just stating that you have a potential or actual conflict is not sufficient.)

Two Types Of Conflicts - State

- ▶ Actual Conflicts

- ▶ Would result in financial benefit or detriment



- ▶ Potential Conflicts

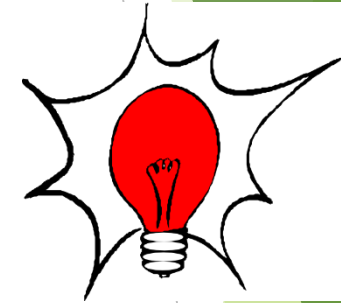
- ▶ Could results in financial benefit or detriment



Two Types Of Conflicts - City

▶ Actual Conflicts

- ▶ Would impair your independence of judgment due to personal interests, whether they are financial in nature or not.



▶ Potential Conflicts

- ▶ Could impair your independence of judgment due to personal interests, whether they are financial in nature or not.



How to deal with an actual & potential conflict

When in doubt: Shout it Out!

- ▶ State the nature of your conflict
- ▶ Do it before voting or discussing the manner
- ▶ Do it on the record
- ▶ Do it each meeting the issue is discussed



If Actual Conflict of Interest

In addition to declaring and explaining the conflict:

- ▶ No participating in discussion and No voting
- ▶ It is recommended you leave the room during agenda item

Sanctions

- ▶ The Oregon Government Ethics Commission has jurisdiction to receive, investigate and sanction violations of the state Ethics Laws.
- ▶ The liability is personal
- ▶ Civil penalty = Up to \$5,000 per violation
- ▶ Forfeiture = twice the amount of financial benefit realized
- ▶ Letter of reprimand

Complaint Review Process

- Preliminary Review Phase (135 days)
- Investigation Phase (180 days)
- Contested Case Hearing

Resources and Information

- Advisory Opinion
- Staff Opinion
- Staff Advice
 - Telephone: 503-378-5105
 - FAX 503-373-1456
 - E-mail: ogec.mail@state.or.us
- Website: ogec.state.or.us

