

PORT OF HOOD RIVER COMMISSION
Tuesday, October 4, 2016
Marina Center Boardroom

Regular Session Agenda

5:00 P.M.

1. Call to Order
 - a. Modifications, Additions to Agenda
 2. Public Comment (5 minutes per person per subject; 30 minute limit)
 3. Consent Agenda
 - a. Approve Minutes of September 20, 2016 Regular Session (*Laurie – Page 3*)
 - b. Approve Amendment No. 1 to Contract with Steven Siegel Consulting Not to Exceed \$25,000 (*Michael – Page 7*)
 4. Reports, Presentations and Discussion Items
 - a. Hood River County Energy Plan & Steering Committee (*Marla Harvey – Page 11*)
 - b. Ken Jernstedt Airfield FBO/Fly-In Update (*Jeremy Young, TacAero – Page 13*)
 - c. Bridge Replacement Legislative Strategy (*Michael – Page 15*)
 5. Director’s Report (*Michael – Page 17*)
 6. Commissioner, Committee Reports
 - Waterfront Recreation – Commissioner McBride (Sep. 28)
 7. Action Items
 - a. Approve Oregon Ethics Law Best Practices Checklist (*Genevieve – Page 119*)
 8. Commission Call
-
9. Executive Session under ORS 192.660(2)(e) Litigation Likely To Be Filed
 11. Adjourn

If you have a disability that requires any special materials, services, or assistance, please contact us at 541-386-1645 so we may arrange for appropriate accommodations.

*The chair reserves the opportunity to change the order of the items if unforeseen circumstances arise. The Commission welcomes public comment on issues not on the agenda during the public comment period. With the exception of factual questions, the Commission does not immediately discuss issues raised during public comment. The Commission will either refer concerns raised during public comment to the Executive Director for a response or will request that the issue be placed on a future meeting agenda. People distributing copies of materials as part of their testimony should bring **10 copies**. Written comment on issues of concern may be submitted to the Port Office at any time.*

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*Port of Hood River Commission
 Meeting Minutes of September 20, 2016 Regular Session
 Marina Center Boardroom
 5:00 P.M.*

THESE MINUTES ARE NOT OFFICIAL until approved by the Port Commission at the next regular meeting.

Present: Commissioners Jon Davies (arriving at 5:25 p.m.), Fred Duckwall, Rich McBride, and Brian Shortt; Legal Counsel Jerry Jaques; from staff, Michael McElwee, Fred Kowell, Anne Medenbach, John Mann, and Laurie Borton

Absent: Commissioner Hoby Streich; and from staff, Genevieve Scholl

Media: None

1. CALL TO ORDER: President Brian Shortt called the Regular Session meeting to order at 5:00 p.m.
 a. **Modifications, Additions to Agenda:** Strategic Land Use Planning was added as a discussion item by President Shortt, and at staff request Action Item 7c regarding a Through-the-Fence Agreement was pulled from the agenda and a new item regarding a Concrete Warranty and Agreement was added as an Action Item.

2. PUBLIC COMMENT: Misti Nelmes, who deals with new construction and major renovation projects for the Energy Trust of Oregon, provided information on programs, incentives and support. Nelmes encourages businesses to reach out early, even if a project is a couple years away, as they help you through the process. Nelmes also clarified the Energy Trust program offers cash incentives rather than tax credits.

- 3. CONSENT AGENDA:**
- a. Approve minutes of September 6, 2016 Regular Session
 - b. Approve Accounts Payable to Jaques Sharp Attorneys at Law in the Amount of \$8,396
 - c. Ratify Contract Amendment No. 3 with VISTA GeoEnvironmental for Lower Mill Site Engineering Services in the Amount of \$14,875
 - d. Approve Equipment List Write-off of Assets that are Fully Depreciated Totaling \$64,753.78

Motion: Move to approve Consent Agenda
Move: McBride
Second: Duckwall
Vote: **Aye:** Duckwall, McBride, and Shortt
Absent: Davies and Streich

MOTION CARRIED

4. REPORTS, PRESENTATIONS AND DISCUSSION ITEMS:

a. **Marina C Dock North Electrical Update:** John Mann, Facilities Manager, reported power on C Dock North had held since Sunday. Outlets are being replaced and small quantities of Hubbell receptacles, which will require a different end plug, have been ordered as a trial to ensure compatibility before all receptacles are replaced before the end of November. Facilities will then look for loose fitting receptacles on A and B docks as well as pricing out a component that will isolate breaker trips at each pedestal. Shortt asked staff to keep upcoming winterization needs in mind and work to expedite a resolution.

b. **Live Demonstration of Toll Plaza Cameras:** Fred Kowell, Chief Financial Officer, demonstrated a live video feed of new cameras just installed at the toll plaza and office parking lot. Kowell noted there are plans to install two additional wired cameras (versus wireless) for barge traffic observation. Video footage will be stored on the server for a 30-day period.

c. **FAA North Ramp Project Update:** Anne Medenbach, Development & Property Manager, reported staff is responding to ConnectOregon’s request for documentation on reimbursement items; she and Century West are also responding to questions from the FAA. Medenbach noted the FAA has new requirements for a full environmental assessment. Medenbach has talked with Hal Hiemstra, Summit Strategies, who has communicated with the FAA that development of the North Ramp area is an important project for the Port.

d. **Strategic Land Use Planning:** With the limited land inventory in the County, Shortt initiated a discussion on the need to continue looking at and having conversations with people in the community on how the Port might be involved in promoting STEM and technology incubators to help someone through the risk period with an eventual move onto other (Port) properties. Some properties Shortt cited (Barrett Park, for example) will have zoning issues to overcome but he requested that the Commission consider this topic for further discussion at Fall Planning.

5. **DIRECTOR’S REPORT:** Fall Planning has been tentatively set for November 15; Commissioners were asked to contact staff if they had a conflict with the date and/or the noon start time. The live power cabinet on the Marina Green has been removed; the next step is the underground placement of the phone cabinet by Century Link which will then complete a 3-year effort. There was **Commission consensus** to finalize the draft letter supporting Crystal Spring Water District’s efforts to secure Infrastructure Finance Authority financing to construct a new reservoir in Odell. McElwee reported the Hood River Yacht Club (“HRYC”) is current on payments associated with the South Basin Dock Lease. HRYC, however, has requested forgiveness on slip space rental they have been unable to lease upon conclusion of the GORGE Junior Sailing program. There was **Commission consensus** to refund \$750 to HRYC; attorney Jerry Jaques recommended formally documenting the forgiveness as this was a change to the lease terms. An informational draft memo was shared with the Commission regarding potential funding from the Windmaster Urban Renewal Area for airport development. Medenbach and Kowell were thanked for their participation during the September 10-11 Hood River Fly-In; attendance was up by 25% this year. Staff is working with Century West to compile potential projects for the upcoming aviation gas tax grant funding cycle of the Critical Oregon Airport Relief fund (“COAR”); an application is anticipated to be brought to the Commission on October 4. McElwee reported the auxiliary truss project will be bid this winter; however, the work will not begin until summer/fall of 2017 and explained the delay resulted from the need to fund replacement of the deteriorating loops and installation of new readers at the toll plaza as well as recommended bridge signage. Bridge replacement strategy efforts continue and a detailed approach for Commission consideration will be discussed in early October and during Fall Planning. Another discussion topic for early October and during Fall Planning will be alternative strategies for a 2017 toll increase. McElwee reported a small caravan of disabled Veterans, escorted by Patriot Guard Riders, will be crossing the bridge on September 30. Tolls for this “Hunting with Heroes” program will be waived.

6. **COMMISSIONER, COMMITTEE REPORTS:** No reports.

7. **ACTION ITEMS:**

a. **Approve Contract with Twice the Light, Inc. for Bridge Light Replacements Not to Exceed \$28,400:** Mann reported costs to operate the current lights, which are very old and in a state of disrepairs, are high and there have been ongoing maintenance issues due to bridge vibration causing the lights not to be functional. Twice the Light is a supplier specializing in retrofitting existing lights with LED bulbs and they worked with Gorge Electric to estimate labor costs for installation and Twice the Light also worked with our electrical providers and their incentive programs for reimbursement through the utility company’s

incentive programs. When the LED bulb replacements are complete, Mann reported the out-lighting will be nearly non-existent as the beam will be focused downward onto the deck.

- Motion:** Move to approve contract with Twice the Light, Inc. for Bridge light replacements not to exceed \$28,400.00.
- Move:** Duckwall
- Second:** Davies
- Discussion:** Mann responded to Davies inquiry about Gorge Commission approval by saying the light replacement was not an issue. Shortt recommended a courtesy notice to the newspaper as the iconic look of the bridge will be forever changed.
- Vote:** **Aye:** Davies, Duckwall, McBride, and Shortt
Absent:Streich

MOTION CARRIED

b. Approve Resolution 2016-17-1 Adopting Airport Access Policy: In 2015 the Port rescinded its earlier Airport Access Policy (Resolution 2015-16-1) and approved two Through-the-Fence (“TTF”) agreements. Kowell noted this new policy will align with current FAA guidelines that are in place with existing Residential TTF agreements and any future agreements. Jaques noted a minor language change related to airport access points would need to be made but that action could still be taken on the Policy.

- Motion:** Move to approve Resolution 2016-17-1 Adopting Airport Access Policy subject to legal counsel review.
- Move:** Davies
- Second:** Duckwall
- Vote:** **Aye:** Davies, Duckwall, McBride, and Shortt
Absent:Streich

MOTION CARRIED

c. Approve Residential Through-the-Fence Agreement with Tim O’Donnell: At staff request, this item was pulled from the Agenda.

d. Approve Resolution 2016-17-2 Adopting Oregon Ethics Law Policy: The Port participates in the Special Districts Insurance Services (SDIS) through the Special Districts Association of Oregon (SDAO). This year’s recommended Best Practices to all members is formal adoption of an Ethics Policy, based on Oregon Ethics Law ORS Chapter 244, which aligns with the Port’s commitment to practice and uphold the highest ethical standards at both the board and staff level. Adoption of the policy enables the Port to receive a 2% discount on insurance premiums.

- Motion:** Move to approve Resolution 2016-17-2 Adopting Oregon Ethics Law Policy.
- Move:** Duckwall
- Second:** Davies
- Vote:** **Aye:** Davies, Duckwall, McBride, and Shortt
Absent:Streich

MOTION CARRIED

e. Approve Concrete Warranty and Agreement [agenda addition]: A warranty agreement between Mission Construction, NBW Hood River, LLC, and the Port was developed by Port legal counsel regarding

the concrete sidewalk east of the Nichols Basin hotel. The agreement states the Port will pay the \$7,627.97 change order amount in exchange for a 5-year warranty commencing July 1, 2016. If the sidewalk deteriorates during the warranty period beyond normal wear and tear caused by pedestrian or bicycle use, or if there is damage resulting from intended use of the sidewalk that includes heavy vehicles and fire trucks, Mission agrees to replace, at their sole cost, the existing sidewalk with a uniformly six-inch concrete sidewalk according to bid specifications.

Motion: Move to approve execution of Concrete Warranty and Agreement between Mission Construction, Inc., NBW Hood River, LLC, and the Port of Hood River.

Move: Davies

Second: McBride

Vote: **Aye:** Davies, Duckwall, McBride, and Shortt

Absent:Streich

MOTION CARRIED

8. COMMISSION CALL: Davies thanked the Commission for allowing his late arrival in order to attend his daughter’s sporting event. He also commented on a recent conversation with Brian Prigle, former tenant at the John Weber Business Park. Davies said Prigel Machine & Fabrication was a good example of Port assistance in providing incubator space for a company that eventually moved on when the space was outgrown.

9. EXECUTIVE SESSION: None.

10. POSSIBLE ACTION: None.

11. ADJOURN: At 6:10 p.m. there was unanimous approval to adjourn the meeting.

Respectfully submitted,

 Laurie Borton

ATTEST:

 Brian Shortt, President, Port Commission

 Jon Davies, Secretary, Port Commission

Commission Memo

Prepared by: Michael McElwee
Date: October 4, 2016
Re: Siegel Consulting Contract Amendment



On July 12, 2016 the Port executed a contract with Siegel Consulting (“Siegel”) to perform financial analysis and strategic assessment services for replacement the Hood River Bridge. The contract maximum was \$9,000 and work was carried out at the direction of Port staff. Siegel is a key part of the Port’s Bridge Replacement Strategy Team and has provided crucial support for our efforts thus far. This contract amendment would allow Siegel to continue to assist the Port through Q2 of 2017.

RECOMMENDATION: Authorize Amendment No. 1 to contract with Siegel Consulting for Bridge Replacement Feasibility Analyses not to exceed \$25,000.

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**AMENDMENT NO. 1
TO PERSONAL SERVICES CONTRACT**

This Amendment No. 1 to the Personal Services Contract ("Contract") by and between Steven Siegel Consulting ("Contractor") and the Port of Hood River ("Port"), an Oregon Special District is entered into this **5th day of October, 2016**.

RECITALS:

WHEREAS, Contractor and Port entered into a Contract dated July 12, 2016 for financial analysis and strategic assessment services associated with replacement the Hood River Bridge ("Project"); and

WHEREAS, the Port seeks additional Project services by Contractor; and

WHEREAS, all terms used in this Amendment No. 1 have the meaning given to them in the Contract, as amended hereby, unless otherwise defined herein.

NOW THEREFORE, Port and Contractor agree to carry out the additional services for an amount not to exceed **\$25,000** for a total contract amount not to exceed **\$38,000** not including reasonable reimbursable expenses.

IN WITNESS WHEREOF, the parties hereto have caused Amendment No. 1 to be duly executed the day and year first above written.

Steven Siegel Consulting

Port of Hood River

Steven Siegel
3787 Lyle Ct.
Portland, OR 972211
(503) 274-0013

Michael S. McElwee
Executive Director
1000 E. Port Marina Drive
Hood River OR 97031
(541) 386-1645

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Commission Memo

Prepared by: Genevieve Scholl
Date: October 4, 2016
Re: Marla Harvey - Community Energy Plan



During the September 6 meeting, the Commission approved an Intergovernmental Agreement with the City and the County to cooperatively fund the preparation of a Community Energy Plan (“Plan”) that will lower energy consumption and increase the use of renewable energy sources. The Port will contribute \$5,500 to this effort; already included in the budget for this fiscal year.

Marla Harvey has been selected at the RARE participant that will lead the effort as Clean Energy Coordinator/Planner. Ms. Harvey is supervised by the County Planning Director with the City acting as fiscal agent. Ms. Harvey will attend the October 4 meeting and provide a report on her efforts to convene and organize local stakeholders.

RECOMMENDATION: Informational.

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Commission Memo

Prepared by: Genevieve Scholl
Date: October 4, 2016
Re: Hood River Fly-In, FBO Update



Jeremy Young of TacAero, current FBO at the Ken Jernstedt Airfield, will provide a report on the 2016 Hood River Fly-In event.

RECOMMENDATION: Informational.

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Commission Memo

Prepared by: Michael McElwee
Date: October 4, 2016
Re: Bridge Replacement Discussion



Staff will provide an overview of current efforts and describe potential future steps to advance long term replacement of the Hood River Bridge. Discussion materials will be provided at the meeting.

RECOMMENDATION: Informational.

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Executive Director's Report

October 4, 2016

Staff & Administrative

- The Fall Planning meeting is now scheduled for November 15. All Commissioners should consider topics for discussion and alert staff. Staff will provide a draft agenda for review at the October 18 meeting. Lunch will be provided for the November 15 meeting that will begin at noon.
- I will be out of the office at the OPPA annual meeting in Astoria on September 29 and 30. A significant topic of discussion will be possible revisions to ORS 777.
- SDIS has issued their 2016 Best Practices Checklist to all members to complete and return, with Board of Directors review and approval, an action item for the meeting. As per SDIS recommendation, attached is the OGEC Guide for Public Officials and the 2015 Supplement for your review.
- David C. Smith and Associates aerial photographers flew over the waterfront, airport, and Lower Mill sites on September 28 to provide updated high resolution photos to scale. We expect delivery of the new photos next week.

Recreation/Marina

- Final completion of Marina Green utility work is dependent upon the relocation of the telephone box. Century Link is attempting to schedule this work.
- A limited number of ground faults are still occurring on C Dock North. Like-to-like replacement outlets have arrived and our intent is to have all outlets replaced by September 30. Gorge Electric will also be conducting a line test and is seeking instruments that can be installed to isolate future faults if they occur after outlet replacement. Further, we will be testing the feasibility of locking outlets.
- The 5-Year Warranty for the concrete path work east of the Hampton Inn & Suites has been signed by all parties.
- A Waterfront Recreation Committee meeting was held September 28. This was the last meeting for Lori Stirn (HRVPRD Executive Director) and Greg Stiegel (CGWA Executive Director), who are each leaving their positions.
- We received some complaints from local boaters about over-crowding at the Marina Launch Ramp over the September 24/25 weekend. The M/Y Pastime had moved over to the OSMB Dock to accommodate a cruise ship, and the guest moorage dock was full due to an upriver flotilla. We will work to ensure this scenario is not repeated.
- The Pastime will be moving temporarily to Portland for servicing on October 2 and return to the Marina Basin November 10. Upon her return she will remain at the

commercial dock until departure for Alaska next spring. The cruise ship schedule for this season ends on November 4.

- A bicyclist incurred injuries over the Labor Day weekend on the bike path east of the bridge. We have referred the matter to SDIS as a possible claim.

Development/Property

- Key Development is sharing weekly construction reports on the Expo project with the Port. Foundation and utility work is currently well underway.
- The Lease Agreement with Columbia Room, Inc. (Shell Station) still has not yet been executed pending final resolution of insurance requirements. I do believe we are on the path to resolve this issue soon.
- A Naito Development contractor completed the final concrete work on the Nichols Basin Seawall Dock on September 27. Installation of removable bollards on the path east of the hotel is yet to be completed.
- Anne conducted T-Hangar inspections on September 21 with Chief Trammell from Westside Fire District. The hangars were mostly in neat and compliant condition.
- Anne and John conducted most of the property inspections on September 30 and will base next year's CIP and maintenance tasks from this inspection. They will complete inspections of the remaining properties within the next two weeks.
- Winter preparations are underway for building maintenance including gutters and drain cleaning, window caulking and roof repairs as needed.
- The DMV Building HVAC replacement should be complete by October 7th. The Halyard Building HVAC hook up for Suite 104 is complete.

Airport

- Anne continues to work with Tac-Aero and Port legal counsel on a draft MOU regarding the North Ramp development project.
- Fred and Anne will be travelling to Seattle to meet with the FAA on October 7th. FAA staff have stated that they will not be able to review the Environmental Assessment for the North Ramp development project for an extended period. Anne has been working closely with Hal Hiemstra to address this challenge which could affect the private investment in the project.
- Anne attended the Western Airport Managers Association conference in Bend on October 2-4. She will have a report at the October 18th meeting.

- Anne will be submitting a COAR grant to cover the FAA AIP match of \$115,000 before October 14th. This grant is funded through the new aviation fuel tax administered by the Oregon Department of Aviation and is in its first cycle.

Bridge/Transportation

- DKS Associates have completed the final bridge signage plan. Please review the attached plan and submit comments or questions to Genevieve.
- Stafford Bandlow Engineers report regarding the results of strain gauge testing and additional skew fail/stop instrumentation carried out on September 7 and 8 will be complete and available for discussion at the October 18 meeting.
- We were contacted by the Coast Guard on Sunday, September 25 in the morning for a bridge lift at midnight that evening. Facilities staff was on site from 11:00 pm until 1:30 am for the lift. A towboat operator was moving a big crane for the USCG and a full height lift was necessary. The lift went well with the exception of a small seating issue which was corrected by simply picking it back up a little and setting it back down to trip the “seated” switch.
- Bridge deck welding is complete. Bulldog Welding was a tremendous help to staff and their work was complete in four days.

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OCTOBER 2016

Commission Calendar

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday																																																																																											
						1 Queen of the West Last stop for 2016																																																																																											
2	3 Sea Bird	4 Commission Mtg 5pm Sea Lion	5	6	7	8																																																																																											
9	10 Columbus Day Federal holiday: OFFICE IS OPEN Harvest Fest set-up begins URA Board Sea Bird	11 Sea Lion	12 PNWA Conf, Vancouver McElwee & (?)	13 PNWA Conf, Vancouver McElwee & (?)	14 PNWA Conf, Vancouver McElwee & (?) ES/Lot 1: Harvest Fest	15 ES/Lot 1: Harvest Fest Sea Bird																																																																																											
16 ES/Lot 1: Harvest Fest	17 KJHR Radio, 8am Harvest Fest move-out Auditors here	18 Commission Mtg 5pm Auditors here	19 Auditors here	20 Auditors here	21 Auditors here	22 Sea Bird Marina Green-exclusive use Columbia Gorge Marathon move-in																																																																																											
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MEMORANDUM

DATE: September 23, 2016

TO: Michael McElwee, Port of Hood River

FROM: Nate Schroeder, P.E., PTOE
Kate Petak, E.I.T.

SUBJECT: Hood River Bridge – Master Signing Plan

P#16105-000

Introduction

The purpose of this memorandum is to provide recommendations for updated signage on the Hood River – White Salmon Interstate Bridge and its approaches. The strategies and concepts address the issues identified in the needs assessment report.¹ The following sections will discuss these strategies, design standards, agency coordination & next steps, a preliminary cost estimate, and the proposed concept diagrams.

Strategies

The main strategies used to develop the master signing plan were:

- Eliminate signs that are redundant or not applicable
- Replace signs that do not meet current Manual on Uniform Traffic Control Devices (MUTCD)² standards
- Evaluate appropriate sign locations based on their message (advance warning signs, reminder signs)

Each of the key issues identified in the needs assessment are summarized in the following sections, along with the proposed strategies to address the issue.

Narrow Lane Widths

Communicating narrow lane widths in advance of the bridge is one of the highest priorities for the Port. Currently, there are two “narrow bridge” warning signs located on the bridge, but there are no advance warning signs. The MUTCD states that narrow bridge signs (W5-2, 36x36) should be used in advance of a bridge with a width less than the approaching lanes.

¹ *Hood River Bridge Signing Plan – Needs Assessment Report*. DKS Associates, September 2016. See Appendix for full report.

² The MUTCD is a document issued by the Federal Highway Administration (FHWA) to specify the standards by which traffic signs, pavement markings, and traffic signals must legally conform.



It is recommended that the existing signs remain in place, as they provide a reminder to road users that the upcoming bridge is narrower than the approaching roadway. Additionally, advance warning signs should be installed on the roadways approaching the bridge, so drivers have the opportunity to re-route if necessary. As such, “narrow bridge” secondary signs should be installed on the existing Hood River Toll Bridge guide signs along SR-14, and on new guide signs installed along the I-84 and US30 ramps. A total of eight new signs will be installed in order to address this issue.

Weight Limit Restrictions

Another priority for the Port is communicating weight limit restrictions to truck drivers, so overweight vehicle use is limited, and long-term degradation of the structure is reduced. Currently, the only weight limit restriction signs are posted at the bridge entrances, beyond the point where vehicles can turn around. These signs are also located on the same supports as the tolling rates signs, which may take the focus away from their intended message.

According to Section 2B.59 of the MUTCD, a weight limit sign (R12-1 through R12-5), if used, shall be located in advance of the applicable structure. In addition, weight limit signs with advisory distances, if used, should be placed at approach road intersections, or points where vehicles can detour.

It is recommended that weight limit signs be installed on advance guide signs, so that vehicles can detour as necessary. The existing “weight limit reduction” signs posted at the bridge approaches can remain in place until the next load rating evaluation, and can either remain posted alongside the toll rate signs or can be installed on separate posts. All of these weight limit signs, except the signs being proposed on SR-14, will need to be updated if the weight restrictions and vehicle types change after ODOT’s load rating evaluation.

The bridge will have a new load rating evaluation in the near future. This evaluation will use a new load rating method, and additional vehicle types will be used in the load rating and posting. The advance weight limit signs that will be installed after the load rating evaluation will be OR12-5f³, an example of which is included in the Shop Drawings section of the Appendix. If the weight restrictions change, the “weight limit reduction” signs will need to be updated as well.

In addition to static signing, the Port is interested in implementing a weigh-in-motion system that would automatically track overweight vehicles, and potentially notify and/or fine drivers for the infraction. There are two types of weigh in motion systems: slow and quick. Based on previous studies, the slow weigh in motion system was recommended for this bridge. Signage for such a system would be heavily dependent on the design and type of system involved. Due to this uncertainty, the addition of a weigh in motion system is not included as part of the Master Signing Plan. Additional planning and system details will be needed to provide recommendations for communicating the use of the system to road users.

³ *Sign Policy and Guidelines*. Oregon Department of Transportation. Revised July 2014.



A total of seven new signs will be installed in order to address this issue. An additional two “weight limit reduced” signs and three new advance weight limit signs will be needed after the load rating evaluation.

Appropriate Speeds

There are currently two speed limit 25 miles per hour (mph) signs in each direction on the bridge, and two speed limit 10 mph signs on the northbound approach near the toll plaza. Additionally, there is a driver speed feedback sign on the southbound approach to the toll plaza.

Based on conversations with Port and ODOT staff, it is recommended that the existing 10 mph regulatory sign in advance of the toll booth remain in place, in order to encourage slower speeds and help keep tollbooth operators safe. However, the existing 10 mph regulatory sign beyond the toll booth could be removed, because the message is seen too late to influence drivers’ behavior through the toll plaza. The existing 25 mph signs on the bridge should be maintained.

Since maintaining appropriate speeds is a top priority for the Port, additional speed feedback signs should be placed on the bridge if possible, with the priority being the northbound direction. For the northbound direction, a speed feedback sign could be installed on an existing light pole or possibly the existing sign support for the electronic tolling signs. Adding an additional speed feedback sign for the southbound direction could be accomplished by mounting on an existing sign support. A structural evaluation is likely required to verify whether or not the existing sign support is adequate for the proposed loading, including wind and ice events. Speed feedback signs can be solar powered or hard-wired.

Two new speed feedback signs are proposed as part of this plan.

Tolling Information

There are currently two tolling signs, one on each approach to the bridge, for road users paying cash tolls. The tolling signs have nine lines of information provided, using sub-standard legend height. As mentioned previously, there are also weight limit reduced signs installed on the same posts.

According to Section 2F.05 of the MUTCD, the toll rate sign should be located between the toll plaza and the first advance sign informing road users of the toll plaza, and should not contain more than three lines of legend. An additional toll rate sign with more than three lines of legend can be located adjacent to the payment window, but shouldn’t be visible to approaching road users who have not yet entered the toll lane.

It is recommended that the existing toll rate signs be removed and replaced with signs that meet current MUTCD standards, and the tolling categories be reduced to three: 2 axles, each additional axle, and motorcycles. The weight limit signs can remain on the toll sign support, or can be installed on separate sign supports as discussed previously.

A total of two new signs will be installed for tolling information.

Lift Span

In order to warn road users in advance of the lift span, there are two “draw bridge” warning signs and two “signal ahead” warning signs, one on each approach.



According to Section 2C.39 of the MUTCD, the “drawbridge ahead” warning sign is required in advance of movable bridge signals and gates, in order to provide warning to road users. Section 2C.36 of the MUTCD states that the “signal ahead” signs are only required when at least two traffic signal faces are not visible from a distance of 215 feet for a 25 mph speed zone. These signs can also be used for additional emphasis even when the visibility distance to the traffic signal is good.

The two existing “draw bridge” warning signs do not meet current MUTCD standards, and should be removed and replaced with “draw bridge” warning signs that meet MUTCD standards. Both “signal ahead” warning signs can be removed, since there are two signal faces for each bridge approach that are clearly visible from more than 215 feet away, and there are multiple flashing lights and gate to gain the attention of drivers. Furthermore, there is negligible benefit to the “signal ahead” warning signs given the infrequent nature of bridge lift events.

A total of two new signs are needed to address the lift span.

Episodic Events

The Port would like to have standard signing plans for recurring events, which include: single lane closure on the bridge, weather events, and detoured traffic from the state highways. For these episodic events, the Port has expressed interest in obtaining two Portable Changeable Message Signs (PCMS) in order to provide advance notice of these events to motorists, and provide flexibility for varying conditions. Additional temporary signage as outlined in the Oregon Department of Transportation (ODOT) standard drawings will also be required.

Descriptions for each episodic event concept are outlined below, and figures are provided in the appendix:

- **Single lane closure on the bridge.** Due to ODOT’s jurisdiction of the bridge, ODOT standard signing for bridge construction should conform to ODOT Standard Drawing TM870. Additionally, providing advance warning using a PCMS trailer before and during the construction periods would be beneficial
- **Full closure on the bridge.** In the event of a full closure on the bridge, providing advance warning using a PCMS trailer before the closure period would be advisable, similar to what would be provided in advance of a single lane closure. During the full closure, a detour route would need to be provided, along with appropriate signing directing motorists through the detour.
- **Weather events.** For weather events, providing warning on a PCMS trailer located in advance of the bridge may be beneficial in reminding motorists to drive carefully while crossing the bridge. Typical weather events could include ice, snow, or sustained high winds.
- **Detoured traffic from state highways.** In the event of a highway closure on either side of the bridge, PCMS trailers could be used to provide road users with updated information about tolling on the bridge. Additionally, there is a variable message sign (VMS) located on I-84 westbound before exit 64; through coordination with ODOT, messages could be provided on this sign in the event of a westbound detour.



ODOT's Columbia Gorge Closure Plan, included in the Appendix, lists procedures and contacts for providing VMS messages throughout the gorge in the event of a closure.⁴

Miscellaneous Signs

Low Clearance Signs

There are currently low clearance signs: two located in advance of the reduced clearance with an “ahead” rider (one in each direction), and two are located on the structure itself at the location of the reduced clearance (one in each direction).

According to Section 2C.27 of the MUTCD, low clearance signs are required when the clearance is less than 12” above the statutory maximum vehicle height, which is 14’-0” in both Oregon and Washington. The available clearance is 14’-7”, so the low clearance signs are required either on or in advance of the structure.

Since the clearance is greater than the statutory maximum vehicle height, it is recommended that the existing low clearance signs currently installed on the structure itself at the location of the reduced clearance remain in place. However, the two advance low clearance signs are not required because the clearance is greater than the statutory maximum vehicle height of 14’-0”; these should be removed to reduce sign clutter on the bridge.

Bicycle/Pedestrian Signs

There are two existing signs on each bridge approach prohibiting cyclists and pedestrians from using the bridge. Each of the signs are different, and are not placed in ideal locations for cyclists and pedestrians to see them.

There are several standard bicycle and pedestrian exclusion signs in the MUTCD, and it is recommended that the “No Pedestrians or Bicycles” sign (R5-10b) be used for this application, because it combines messages to both road users on the same sign. According to Section 2B.39 of the MUTCD, the “No Pedestrians or Bicycles” sign should be installed “in a location where it is clearly visible to any pedestrian or bicyclist attempting to enter the facility.”

All existing bicycle and pedestrian signs should be removed, and replaced with standard “No Pedestrians or Bicycles” (R5-10b) signs. These signs should be installed on both ends of the bridge, and on both sides of the roadway where the sidewalks and/or bike lanes end.

Four new signs are proposed related to bikes and pedestrians.

Grated Steel Deck Signs

Currently, there are two “grated bridge deck” signs located on each approach to the bridge, which according to Port staff, are intended to warn motorcyclists to use caution while crossing the bridge.

⁴ *Columbia Gorge Closure Plan, ODOT Winter Operations Plan 2011-12.* Oregon Department of Transportation. Updated November 2011.



The MUTCD states that a metal bridge deck sign (W8-16) may be used to provide advance warning, and a motorcycle plaque (W8-15P) can be mounted below or above if the warning is intended primarily for motorcyclists. Therefore, it is recommended that the existing signs be removed because they are non-standard, and the intended message may not be clear to road users. New “metal bridge deck” signs with motorcycle plaques should be installed in similar locations.

This section requires installation of two new signs.

Interstate Guide Signs to the Port of Hood River

At the request of Port staff, the opportunity to install signs along I-84 identifying the Port of Hood River as a destination was explored with ODOT. Based on a conversation with an ODOT Region 1 Sign Designer, ODOT only allows one supplemental destination sign per interchange, and those signs are limited to two destinations. Currently, there is a supplemental destination sign for the interchange that accesses the Port, which includes two destinations: DMV and Hood River Museum. In order to get the Port of Hood River listed on the signs, one of the other destinations would have to be removed. It could be an option to remove the DMV from the destination sign and replace it with a rider, providing space to add in the Port of Hood River as a destination.

Design Standards

All proposed signs should meet current MUTCD and applicable ODOT and Washington Department of Transportation (WSDOT) standards. A list of the ODOT and WSDOT standard drawings pertaining to sign materials, sign supports, and sign guidance is provided in the Appendix. Also included is a summary of the suggested sign dimensions, colors, materials, etc.

Agency Coordination & Next Steps

The Hood River Bridge is owned and operated by the Port of Hood River, but ODOT has jurisdiction regarding the traffic control and signing on the bridge. The approaching roadways are under the jurisdiction of ODOT and WSDOT, for their respective sides of the river. ODOT is also responsible for evaluating the structural integrity of the bridge, and performs inspections every two years. Therefore, proposed changes to the signing on or approaching the bridge will need to be coordinated with each agency.

The following outlines a few of the key next steps in the process for getting the signs upgraded and changed:

- Finalize proposed sign modification concepts
- Determine who’s installing the signs (DOT, Port, or Contractor)
- Have signs removed, relocated, and installed

Simple sign removal and installation within Port right-of-way can be completed by Port of Hood River maintenance staff, and would not require coordination with WSDOT or ODOT. This work would could also be completed without bid documents or specifications. Sign removals/installations that fall into this category include:



- Sign 1
- Sign 2
- Sign 3
- Sign 4
- Sign 5
- Sign 6
- Sign 8
- Sign 9
- Sign 15
- Sign 19
- Sign 20
- Sign 21
- Sign 24
- Sign 26
- Sign 28
- Sign 29
- Sign 61
- Sign 65

Based on conversations with ODOT Region 1 Staff, the preferred approach for installing signs within ODOT right-of-way is to use a contractor to complete the work. This would require the development of bid documents and specifications meeting ODOT standards, and permits to work within their right-of-way. This process would include formal review by ODOT staff, and potentially a bidding process to get a contractor onboard depending on the Port's procurement process. Typically, it takes a few months to work through this entire process, including time to develop the bid documents, review by ODOT, issuing the permit, and hiring a contractor. Sign installations that would be completed by the Contractor include:

- Sign 17
- Sign 62
- Sign 63
- Sign 64

According to WSDOT staff, they would be willing to design and install the proposed signs within WSDOT right-of-way. Depending on the amount of work being requested, WSDOT may require that the Port enter into a formal agreement outlining responsibilities for installation and maintenance, and establishing financial obligations. There were several questions raised by WSDOT regarding specific design details that would need to be addressed during the design development process. Sign removals/installations that would be completed by WSDOT include:

- Sign 35
- Sign 37
- Sign 42
- Sign 44

Preliminary Cost Estimate

Using the proposed concepts as the basis, a preliminary cost estimate was developed for the improvements and changes identified. Assuming that a contractor is completing the work, the estimate for the permanent signing work is between \$160,000 and \$175,000. That cost includes removal of existing signs, fabrication of new signs, and installation of new permanent signs. The cost of a PCMS trailer is approximately \$16,500 per trailer. The total cost of the PCMS trailers would depend on the number of trailers purchased.



The cost associated with developing bid documents is not included in the costs presented above.

Proposed Concept Diagrams

The following two figures present the recommendations discussed in previous sections in graphical format. The first shows which signs should be removed, and the second diagram shows the new signs that would be installed. In order to construct these improvements, formalizing these proposed concepts into construction documents would be required.



Appendix

Standard Drawings

Sign Details

Shop Drawings

PCMS Episodic Events Plan

Needs Assessment

Columbia Gorge Closure Plan

Previous Studies



Standard Drawings

Anticipated Agency Standard Drawings for Sign Design and Installation

WSDOT Standard Drawings for Sign Design and Installation:

G-20.10-02 – Ground Mounted Sign Placement

G-22.10-03 – Timber Sign Support (3 sheets)

G-50.10-02 – Sign Bracing (2 sheets)

WSDOT Standard Drawings can be downloaded here:

<http://www.wsdot.wa.gov/Design/Standards#SectionG>

ODOT Standard Drawings for Sign Design and Installation:

TM200 – Sign Installation Details

TM201 – Miscellaneous Sign Placement Details

TM206 – Sign Bracing Details

TM220 – Multi-Post Installations with Auxiliary Signs

TM224 – Freeway/Expressway Directional Sign Layout

TM600 – Multi-Post Breakaway Sign Supports Notes

TM601 – Multi-Post Breakaway Sign Supports Details

TM635 – Breakaway Sign and Luminaire Supports – Support Location Guidelines

TM670 – Wood Post Sign Supports

TM675 – Extruded Aluminum Panels

TM676 – Sign Attachments

TM677 – Sign Mounts

TM678 – Secondary Sign Mounting Details

ODOT Standard Drawings for Temporary Traffic Control:

TM800 – Tables, Abrupt Edge and PCMS Details

TM870 – Bridge Construction

ODOT Standard Drawings can be downloaded here:

http://www.oregon.gov/ODOT/HWY/ENGSERVICES/pages/traffic_drawings.aspx



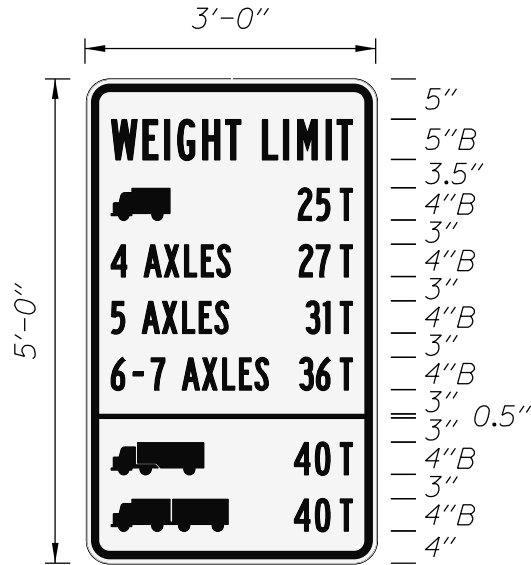
Sign Details

SIGN NO.	DESCRIPTION	SIGN DIMENSION		OREGON SIGN CODE	WASHINGTON SIGN CODE	MUTCD SIGN CODE	TEXT SIZE	SUB-STRATE			COLOR			Post	REFER TO STD. DWG.						REMARKS
		WIDTH (IN INCHES)	HEIGHT (IN INCHES)					PLYWOOD	SHEET ALUM.	EXTRUDED ALUM.	LEGEND	BACKGROUND	ODOT Sign Type		TM220 (ODOT)	TM600 (ODOT)	TM670 (ODOT)	TM675 (ODOT)	G-20.10-02 (WSDOT)	G-22.10-03 (WSDOT)	
1	No Pedestrians or Bicycles	30	18			R5-10b		X		Black	White	W1	Wood Post					X	X	X	
2	Hood River Toll Rates	84	42				6 EM, 4 C		X	Black	White	W1	Ex					X		X	
3a	Metal Bridge Deck	30	30			W8-16		X		Black	Yellow	Y1	Ex					X		X	
3b	Motorcycle Plaque	24	18			W8-15p		X		Black	Yellow	Y1	Ex					X		X	
4	Narrow Bridge	36	36			W5-2		X		Black	Yellow	Y1	Ex					X		X	
8	Draw Bridge	36	36			W3-6		X		Black	Yellow	Y1	Ex								
17	No Pedestrians or Bicycles	30	18			R5-10b		X		Black	White	W1	Ex								Install on back of existing sign
19	No Pedestrians or Bicycles	30	18			R5-10b		X		Black	White	W1	Ex								
20	Hood River Toll Rates	84	42				6 EM, 4 C		X	Black	White	W1	Ex				X				
21	Speed Limit	36	48			R2-1		X		Black	White	W1	Ex								
26a	Metal Bridge Deck	30	30			W8-16		X		Black	Yellow	Y1	Ex								
26b	Motorcycle Plaque	24	18			W8-15p		X		Black	Yellow	Y1	Ex								
28	Draw Bridge	36	36			W3-6		X		Black	Yellow	Y1	Ex								
35a	Narrow Bridge Plaque	96	24				8 D		X	Black	Yellow	Y1	Ex					X		X	
35b	Weight Limit	36	48		R12-1			X		Black	White	W1	Ex					X		X	
37a	Narrow Bridge Plaque	96	24				8 D		X	Black	Yellow	Y1	Ex					X		X	
37b	Weight Limit	36	48		R12-1			X		Black	White	W1	Ex					X		X	
42a	Narrow Bridge Plaque	96	24				8 D		X	Black	Yellow	Y1	Ex					X		X	
42b	Weight Limit	36	48		R12-1			X		Black	White	W1	Ex					X		X	
44a	Narrow Bridge Plaque	96	24				8 D		X	Black	Yellow	Y1	Ex					X		X	
44b	Weight Limit	36	48		R12-1			X		Black	White	W1	Ex					X		X	
61	No Pedestrians or Bicycles	30	18			R5-10b		X		Black	Yellow	W1	Wood Post					X	X	X	
62a	Hood River Toll Bridge Next Left	96	54				8 EM		X	White	Green	G	Multipost		X		X				
62b	Narrow Bridge Plaque	96	24				8 D		X	Black	Yellow	Y1	-	X							Install under sign 62a
62c	Weight Limit	36	48	OR12-6				X		Black	White	W1	-	X							Install under sign 62b
63a	Hood River Toll Bridge 1/4 Mile	96	54				8 EM		X	White	Green	G	Multipost		X		X				
63b	Narrow Bridge Plaque	96	24				8 D		X	Black	Yellow	Y1	-	X			X				Install under sign 63a
63c	Weight Limit	36	48	OR12-6				X		Black	White	W1	-	X							Install under sign 63b
64a	Hood River Toll Bridge Next Right	96	54				8 EM		X	White	Green	G	Multipost		X		X				
64b	Narrow Bridge Plaque	96	24				8 D		X	Black	Yellow	Y1	-	X			X				Install under sign 64a
64c	Weight Limit	36	48	OR12-6				X		Black	White	W1	-	X							Install under sign 64b



Shop Drawings

Sign No. OR12-5f



7/8" border, 5/8" inset, 2 1/4" radius

Sign Background: White, Retroreflective sheeting

Sign Legend: Black, Non reflective

SIGNSTDP.F11

The WEIGHT LIMIT REDUCED FOR LEGAL LOADS sign (OR12-5f) is used when there is a need to limit the traditional legal loads and also the single unit vehicles (solo vehicles or any vehicle in combination). Due to the concentrated axle groups that the single unit vehicles have, the sign will typically show the three text lines for the 4, 5, and 6-7 axle configurations. However, only those single unit vehicles that have weight limits should be shown. Local agencies do have flexibility to combine other axle groups when the difference in weight limit is small, or there are specific site concerns that limit the size of the sign.

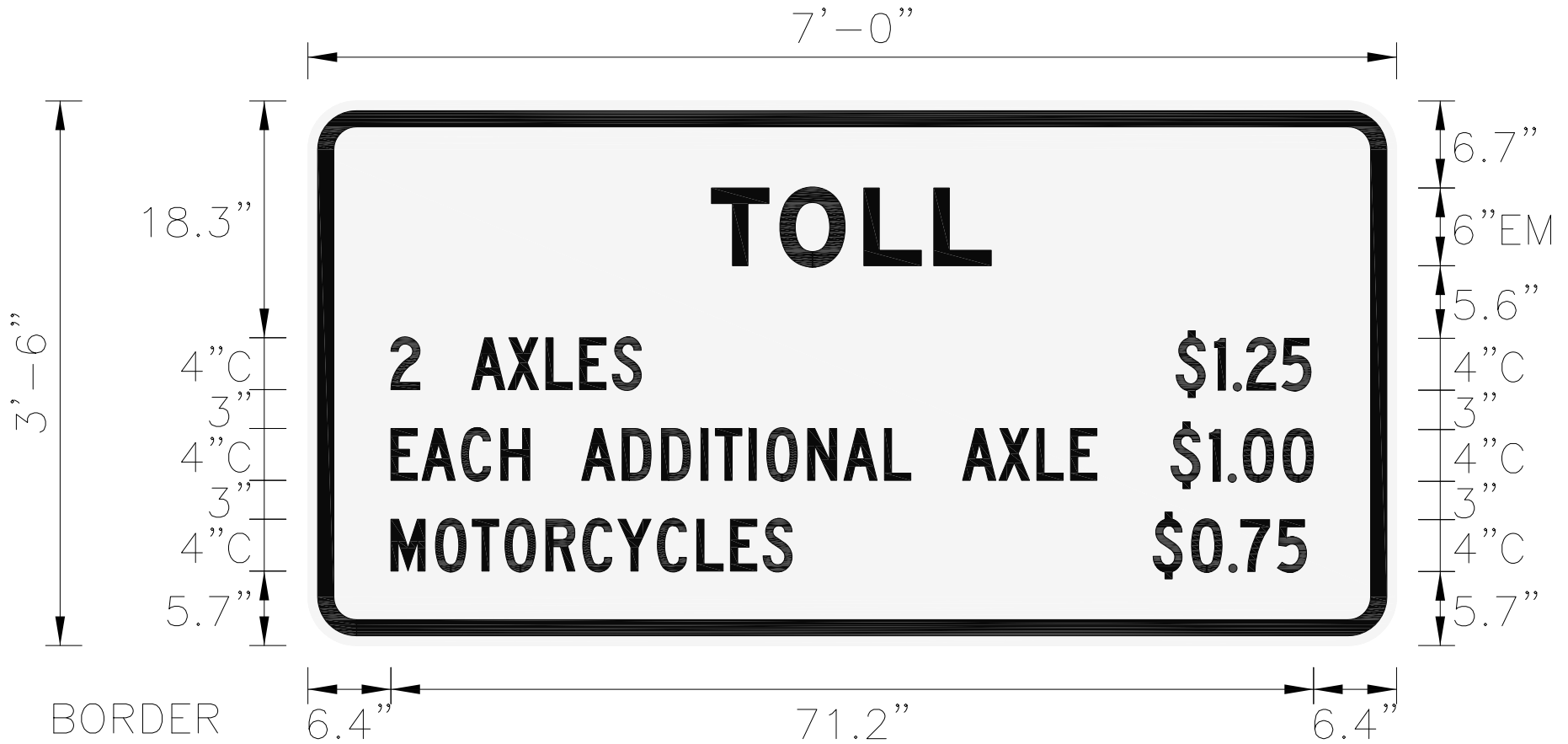
OREGON DEPARTMENT OF TRANSPORTATION

Approved By: S.T.E.

Date: 1/14

Publication Date: 9/15

Signs 2 and 20



BORDER
R=3"
TH=1.25"
IN=0.75"

6.4" 71.2" 6.4"

Panel Style: regulatory_mod.ssi
M.U.T.C.D.: 2009 Edition

Sign 62



Panel Style: Guide_exp_advance_mod.ssi
M.U.T.C.D.: 2009 Edition

Sign 63



Panel Style: Guide_exp_advance_mod.ssi
M.U.T.C.D.: 2009 (40) Edition

Sign 64



Panel Style: Guide_exp_advance_mod.ssi
M.U.T.C.D.: 2009 Edition

Plaque for Signs 35, 37, 42, 44, 62, 63, 64



BORDER
 $R = 1.88''$
 $TH = 0.75''$
 $IN = 0.5''$

Panel Style: warning_rect_mod.ssi
 M.U.T.C.D.: 2009⁽⁴²⁾ Edition



PCMS Episodic Events Plan

▪ PCMS Conceptual Sign Details

Bridge Work

Lane Closure Advance:



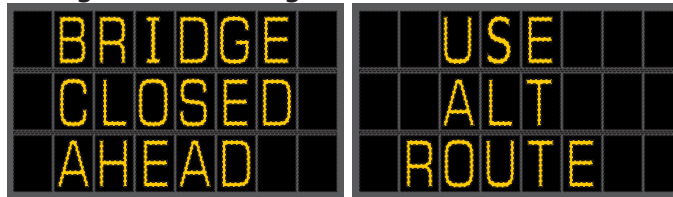
Lane Closure During:



Bridge Closure Advance:



Bridge Closure During:



* Additional detour signing required during full bridge lift

Weather Events



Detour Traffic

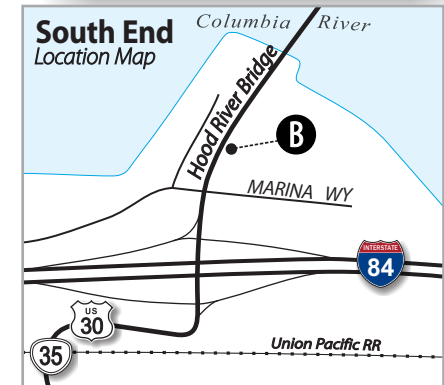
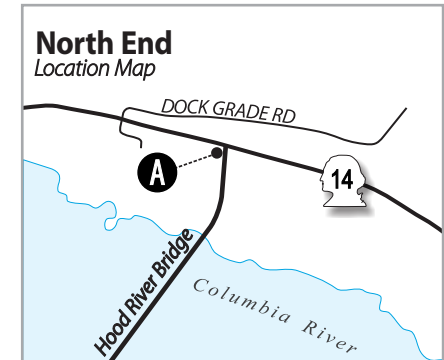
I-84 Detour:



SR-14 Detour:



▪ PCMS Locations Maps



OREGON GOVERNMENT ETHICS LAW

A GUIDE FOR PUBLIC OFFICIALS



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Adopted October 2010

DISCLAIMER

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

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

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

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INTRODUCTION

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

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

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

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

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.

JURISDICTION

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

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

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

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

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

PUBLIC OFFICIAL: AN OVERVIEW

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

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

Since compliance is the personal responsibility of each public official, public officials need to familiarize themselves with the wide variety of resources that offer information or training on the provisions in Oregon Government Ethics law. First, there are the statutes in ORS Chapter 244 and the Oregon Administrative Rules (OAR) in Chapter 199. Second, the Commission website, www.oregon.gov/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.

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.

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

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

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

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

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

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

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

Who is a relative?

Public officials need to know how Oregon Government Ethics law defines who a “relative” is. In everyday conversation the use of “relative” is applied to a broader spectrum of individuals with “family ties” than those defined as relatives in [ORS 244.020\(15\)](#)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.

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 but for 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 use 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 of 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.

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.

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:
 - o Employees of governmental agencies must give written notice to their appointing authority.
 - o Elected or appointed public officials must publicly disclose once during each meeting convened by the governing body they serve.

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.]*

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.

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.

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

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

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

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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Oregon Government Ethics Law



Oregon Government Ethics Commission
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Telephone: 503-378-5105
Fax: 503-373-1456
Web address: www.oregon.gov/ogec

The Oregon Government Ethics Commission (OGEC), established by vote of the people in 1974, is a seven-member citizen commission (though HB 2019 (2015) will increase the number of commission members to 9) charged with enforcing government ethic laws. Oregon government ethics laws prohibit public officials from using office for financial gain, and require public disclosure of economic conflict of interest. The OGEC also enforces state laws that require lobbyists and the entities they represent to register and periodically report their expenditures. The third area of OGEC jurisdiction is the executive session provisions of public meetings law.

Am I a “public official”?

The answer is yes if you are serving the State of Oregon or any of its political subdivisions or any other public body, as an elected official, appointed official, employee, agent or otherwise, irrespective of whether you are compensated for services [ORS 244.020(14)].

What you need to know if you are a public official:

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

Public officials are prohibited from using or attempting to use their positions to gain a financial benefit or to avoid a financial cost for themselves, a relative, or their businesses if the opportunity is available only because of the position held by the public official [ORS 244.040(1)].

There are conditions that must be met before a public official may accept a gift and in some cases, there are limits on the value of gifts that can be accepted. Certain public officials are required to file reports that disclose some of the gifts accepted and the specific economic interests.

When met with a conflict of interest, a public official must follow specific procedures to disclose the nature of the conflict. There are also restrictions on certain types of employment subsequent to public employment and on nepotism.

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. 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, and 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.

Are you a public official?

"Public official" is defined in ORS 244.020(14) as 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.

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 Sciences University.

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

My position as a _____ defines me as a public official.



What does a public official need to know about relatives?

Public officials need to know how Oregon Government Ethics law defines who is a “relative”. While a public official should exercise sound judgment when participating in actions that could result in personal financial benefits, a public official should also exercise sound judgment when participating in actions could result in financial benefits for a relative.

There are provisions in ORS Chapter 244 that restrict or prohibit a public official from using 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.

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). In general, when a provision in ORS Chapter 244 refers to “relative” it means one of the following:

- The spouse, parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law of the public official or candidate
- The parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law of the spouse of the public official or candidate
- Person for whom the public official or candidate have a legal support obligation
- Person benefiting from a public official when benefits are from the public official's public employment
- Person who benefits a public official or candidate when benefits are from the person's employment

I have approximately _____ relatives as defined by statute.



ORS Chapter 244 does address the issue of nepotism. Nepotism, as used in ORS Chapter 244, is based on the relative relationship alone. Changes to Oregon Government Ethics law passed by the 2013 Legislative Assembly mean that the definition of “relative” in ORS 244.020(15) now applies to these nepotism regulations as well.

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.

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 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.

I am a _____ volunteer.



Financial Gain

What are the provisions in the law that prohibits a public official from using the position or office held for financial gain?

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

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

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

ORS 244.040(6) also has a single provision to address circumstances created when public officials who are members of the governing body of a public body own or are associated with a specific type of business. The type of business is one that may occasionally send a representative of the business who appears before the governing body on behalf of a client for a fee. Public officials who are members of governing bodies and own or are employed by businesses, such as a law, engineering or architectural firms, may encounter circumstances in which this provision may apply.

There 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].

NOTES:

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

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

Official Compensation: Public officials may accept any financial benefit that is identified by the public body served by the public official as part of the “official compensation package” of the public official. If the public body identifies such 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.

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): “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.”

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

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.

The limitation for honorarium is \$50.

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 an achievement of the public official [ORS 244.040(2)(d)].

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

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

Gifts

There are occasions when public officials can accept gifts and Oregon Government Ethics law does not limit the quantity or value of gifts, but there are other occasions when the acceptance of gifts is limited to an aggregate value of \$50 from a single source in each calendar year [ORS 244.025].

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.” 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, 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.

To know whether gifts from a single source are limited or unlimited you must determine if the decisions or votes of the public official, who is offered a gift, would have a distinct economic impact on the source making the offer. If the source of the offer would receive a financial gain or avoid a financial cost from the decisions or votes of a public official, gifts from that source to that public official would be limited as to the aggregate value of gifts accepted from that source in a calendar year. This economic interest is a pivotal factor in determining the propriety of gifts and is found in the expression “legislative or administrative interest” which is defined in ORS 244.020(9) and is used in ORS Chapter 244, primarily, when applying the provisions regarding gifts accepted by public officials.

While a “gift” is defined in ORS 244.020(6)(a), ORS 244.020(6)(b), identifies specific gifts that are exempt from gift restrictions if the offers are made or accepted in the specific circumstances and conditions described.

What does a public official need to know about a “Legislative or Administrative Interest” [ORS 244.020(9)]?

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

The change is significant because knowing if the source of a gift offered to a public official has a legislative or administrative interest determines whether or not the gift offered is allowed or restricted. 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 the public official’s governmental agency, but now the focus is on the vote or decision of each individual public official. The change places greater responsibility on the individual public official to decide if a gift offered is restricted by ORS Chapter 244. The definition of a legislative or administrative interest is provided 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 offered to or accepted by a public official or candidate, the public official or candidate must determine if the source of the offered gift has a legislative or administrative interest in the decision or vote of the public official or candidate, if elected. In applying the phrase “legislative or administrative interest,” there are several factors to consider:

Source: The Commission adopted a rule [OAR 199-005-0030(2)] that identifies the source of a gift is the person or entity that makes the ultimate and final payment of the gift’s expense. OAR 199-005-0030 also places on the public official the burden of knowing the identity of the source and insuring that the aggregate value in ORS 244.025 is not exceeded.

Distinct from that of the general public: This phrase refers to an economic interest and in the context of gifts the economic interest of the source of a gift. The economic interest is whether a vote or decision by a public official would result in a financial gain or a financial detriment to the party who holds the interest. There are many votes or decisions made by public officials that have the same general economic impact on all members of the general public. Income or property tax rates would be examples.

There are other decisions or votes that have an economic impact on specific persons, businesses or groups that are not experienced by members of the general public alike. To illustrate, private contractors have an economic interest in a public body’s authority to award contracts and that economic interest is distinct from the economic interest held by members of the general public in the contracting authority of a public body. Also, real estate developers would have an economic interest in a public body’s authority to approve subdivision applications and that economic interest is distinct from the economic interest held by members of the general public in the approval authority of a public body.

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

Decision: The Commission defines the term “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 because not all public officials in the same public body have similar responsibilities that would require any or similar decisions or votes.

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

While gifts from a source with a legislative or administrative interest in the decisions or votes of a public official are limited, there are some gifts that are exempt from the definition of what is a “gift.” If the offer of a gift is exempt from the definition of a “gift,” the offer may be accepted by a public official. The value of gifts that are allowed as exemptions does not have to be included when calculating the aggregate value of gifts received from that source in one calendar year.

There are gifts that are allowed because when offered under specific conditions and within certain circumstances the gifts are exempt from the definition of a “gift.” ORS 244.020(6)(b) provides a description of gifts that are allowed. 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.

The following **GIFTS ARE ALLOWED** as exemptions to the definition of what is a “gift”:

- Campaign contributions as defined in ORS 260.005 [ORS 244.020(6)(b)(A)].
- Contributions to a legal expense trust fund established under ORS 244.209 [ORS 244.020(6)(b)(G)].
- Gifts from relatives or members of the household of public officials or candidates [ORS 244.020(6)(b)(B)].
- Anything of economic value received by a public official or candidate, their relatives or members of their household when:
 - The receiving is part of the usual and customary practice of the person’s business, employment, or volunteer position with any legal non-profit or for-profit entity [ORS 244.020(6)(b)(O)(i)].
 - The receiving bears no relationship to the person’s holding the official position or public office [ORS 244.020(6)(b)(O)(ii)].
- Unsolicited gifts with a resale value of less than \$25 and in the form of items similar to a token, plaque, trophy and desk or wall mementos [ORS 244.020(6)(b)(C) *and see resale value discussed in OAR199-005-0010*].

- Publications, subscriptions or other informational material related to the public official's duties [ORS 244.020(6)(b)(D)].
- Waivers or discounts for registration fees or materials related to continuing education or to satisfy a professional licensing requirement for a public official or candidate [ORS 244.020(6)(b)(J)].
- Entertainment for a public official or candidate and their relatives or members of their households when the entertainment is incidental to the main purpose of the event [ORS 244.020(6)(b)(M) *and see "incidental" defined in OAR199-005-0025(1)*].
- Entertainment for a public official, a relative of the public official or a member of the public official's household when the public official is acting in an official capacity and representing a governing agency for a ceremonial purpose [ORS 244.020(6)(b)(N) *and see "ceremonial" defined in OAR199-005-0025(2)*].
- Cost of admission or food and beverage consumed by the public official, a relative, household member, or staff member when accompanying the public official, who is representing government (state, local or special district), at a reception, meal or meeting held by an organization [ORS 244.020(6)(b)(E) *and the accompanying discussion in OAR199-005-0015*].
- Food or beverage consumed by a public official or candidate at a reception where the food and beverage is an incidental part of the reception and there was no admission charged [ORS 244.020(6)(b)(L) *and the accompanying discussion in OAR199-005-0025(1)*].
- When public officials travel together inside the state to an event bearing a relationship to the office held and the public official appears in an official capacity, a public official may accept the travel related expenses paid by the accompanying public official [ORS 244.020(6)(b)(K)].
- Payment of reasonable expenses if a public official is scheduled to speak, make a presentation, participate on a panel or represent a government agency at a convention, conference, fact-finding trip or other meeting. The paid expenses for this exception can only be accepted from another government agency, Native American Tribe, an organization to which a public body pays membership dues or not-for-profit organizations that are tax exempt under 501(c)(3) [ORS 244.020(6)(b)(F) *and see definition of terms for this exception in OAR 199-005-0020*].
- Payment of reasonable food, lodging or travel expenses for a public official, a relative of the public official or a member of the public official's household or staff may be accepted when the public official is representing the government agency or special district at one of the following:

- Officially sanctioned trade promotion or fact-finding mission; [ORS 244.020(6)(b)(H)(i)]
- Officially designated negotiation or economic development activity when receipt has been approved in advance [ORS 244.020(6)(b)(H)(ii). *Defined terms and an explanation of how and who may officially sanction or designate these events are addressed in OAR 199-005-0020(1)(b)(B).*]
- Payment of reasonable expenses paid to a public school employee for accompanying students on an educational trip [ORS 244.020(6)(b)(P)].
- Food and beverage when acting in an official capacity in the following circumstances:
 - 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)];
 - While engaged in due diligence research or presentations by the office of the State Treasurer related to an existing or proposed investment or borrowing [ORS 244.020(6)(b)(I)(ii)]; or
 - 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 [ORS 244.020(6)(b)(I)(iii)].

The last gift I received was from _____. The source of this offer is / is not economically affected by my decisions or votes as a public official.

Gifts vs. Prohibited Use of Position

In understanding issues related to gifts, the operative definition of a “gift” is used in deciding how Oregon Government Ethics law would apply to a gift offered to or accepted by a public official or candidate. The application of the gift provisions regarding candidates is not included in this discussion. The following is a paraphrase of the definition taken from ORS 244.020(6)(a):

Gift: “Something of economic value” given to a public official, a relative of the public official or a member of the public official’s household and 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.

The definition of a “gift” has remained much the same since Oregon Government Ethics law was enacted. Originally, the law prohibited the offer or acceptance of any gifts; it allowed some gifts and for others it imposed limits on the aggregate value on gifts that could be accepted. With the recent revisions, Oregon Government Ethics law does not prohibit gifts but does place conditions on when some gifts may be accepted and for other gifts there is a limit on the aggregate value that can be accepted.

The primary focus of ORS 244.040(1) is on the use or attempted use of the position held by the public official and not on whether a gift is accepted by a public official. However, accepting gifts that would not be available “but for” holding a position as a public official could represent a prohibited financial benefit.

The financial benefit prohibited by ORS 244.040(1) is one obtained by a public official through the use or attempted use of a position or office held. The prohibited benefit may be gained through the public official’s access to and use of the public body’s resources.

The financial benefit may take several forms. It may be the avoidance of a personal expense, money, extra income from private employment, creation of a new employment opportunity or the use of confidential information for financial gain.

Gifts, on the other hand, are not received by a public official, primarily, because of the public official’s use of a public body’s resources, but because gifts are offered by sources other than the public official’s government employer or the public body represented by the public official. Sources of gifts are private individuals, businesses or organizations; they are public bodies that are not the employer of or represented by the public official. Sources of gifts may also be employees of the same public body of the public official and they offer gifts acquired with their personal resources, not the public body’s resources. If something of economic value is received from the employer of or the public body represented by a public official, that “something” is not a gift, it is a financial benefit either allowed or prohibited by ORS 244.040.

Conflict of Interest

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

I own a business that my public body does business with. Yes / No

I have a relative that owns a business that my public body does business with. Yes / No

**A member of my household owns a business that my public body does business with.
Yes / No**

I have identified _____ a business or businesses with which I, my relatives and members of my household are associated.

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:

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

- (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 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.

Any other appointed official, including 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)].

My appointing authority is _____.

***NOTE:** If a public official is met with an actual conflict of interest and the public official's vote is necessary to meet the minimum number of votes required for official action, the public official may vote. The public official must make the required announcement and refrain from any discussion, but may participate in the vote required for official action by the governing body. [ORS 244.120(2)(b)(B)] These circumstances do not often occur. This provision does not apply in situations where there are insufficient votes because of a member's absence when the governing body is convened. Rather, it applies in circumstances when all members of the governing body are present and the numbers 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)].
- If the financial impact of the official action would impact the public official, relative or business of the public official *to the same degree* (meaning equally or proportionately) as other members of an identifiable group or “class.” The Commission has the authority to determine the minimum size of a “class” [ORS 244.020(12)(b) and ORS 244.290(3)(a)].
- 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)(3) of the Internal Revenue Code [ORS 244.020(12)(c)].

How is the 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 of the public body [ORS 244.130(1)].

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

The announcement needs to be made on each occasion the conflict of interest is met. For example, an elected member of the city council would have to make the public announcement one time during a 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. An employee in a city planning department would have to give a separate written notice on each occasion they participate in official action on a matter that gives rise to a conflict of interest [ORS 244.120(3)].

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

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

**My positions as a _____ requires me to _____
announce the nature of conflicts of interest on _____ occasion.**

NOTES:

Employment

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. Many public officials hold or perform services as volunteers, meaning there is little or no compensation and they have a private source of income to maintain a household. There are also public officials who do receive compensation, but for personal reasons find it necessary to seek additional sources of income. Some obtain employment with a private business and others establish a private business of their own.

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

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

GUIDELINES FOR OUTSIDE EMPLOYMENT OF PUBLIC OFFICIALS

1. Public officials are not to engage in private business interests or other employment activities on their governmental agency’s time.
2. A governmental agency’s supplies, facilities, equipment, employees, records or any other public resources are not to be used to engage in private business interests.
3. The position as a public official is not to be used to take official action that could have a financial impact on a private business with which you, a relative or member of your household are associated.

4. Confidential information gained as a public official is not to be used to obtain a financial benefit for the public official, a relative or member of the public official's household or a business with which any are associated.
5. When participating in an official capacity and met with a potential or actual conflict of interest related to a business, associated with the public official, relative or household member, the public official must disclose the nature of the conflict of interest using one of the following methods:
 - o Employees of governmental agencies must give written notice to their appointing authority.
 - o Elected or appointed public officials must publicly disclose once during each meeting convened by the governing body they serve.

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; however, most former public officials may enter the private work force with few restrictions.

Resources

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.

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

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

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.

Sanctions for Violations

- Civil Penalty [ORS 244.350]
- Forfeiture [ORS 244.306]
- Letters of Reprimand, Correction or Education [ORS 244.350(5)]

Resources and Information

- Telephone 503-378-5105
- Fax 503-373-1456
- e-mail: OGEC.mail@state.or.us
- Website: <http://www.oregon.gov/OGEC>
- Training
 - In person
 - iLinc Webinars – Presented live using the internet
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Commission Memo

Prepared by: Genevieve Scholl
Date: September 20, 2016
Re: SDIS Oregon Ethics Law Checklist



The Port participates in the Special Districts Insurance Services (SDIS) through the Special Districts Association of Oregon (SDAO). As discussed in the September 20 meeting, SDIS issues recommended Best Practices to all member districts each year, with an opportunity to receive a discount on insurance premiums. This year's focus is Oregon Ethics Law.

The attached Oregon Ethics Law Best Practices Checklist is a self-assessment. The answers are not scored, but are meant to prompt member districts to assess their own knowledge of Oregon Ethics Law on a staff and board level. The checklist is to be completed by the Board of Directors, signed by a Board member and returned to SDIS. This will qualify the Port for a 2% discount on our 2017 general liability, auto liability, and property insurance.

RECOMMENDATION: Approve Oregon Ethics Law Best Practices Checklist.

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Oregon Ethics Law Best Practices Checklist

**** To be completed by the Board of Directors ****

District Name: Port of Hood River

****Our insurance services website is changing!** The site will be launched **October 3, 2016**. At that time, the Best Practices checklist will be available to complete online. **

Below is the Best Practices Checklist for you to complete and return. Your answers will not be scored but are to be used for self-assessment. Submission of your complete and signed checklist verifying review from your board of directors (signature line on page 2) will result in a 2% credit to your 2017 property/casualty insurance contributions.

Steps to receive this credit to your 2017 general liability, auto liability, and property insurance contributions:

- Board of Directors and District Manager (if applicable) complete all questions on checklist.
- Board of Directors review and approve answers.
- Representative of the Board fill out and sign page 2 of the checklist.
- After filling out and signing page 2, return **entire checklist** by mail, email, or fax (OR complete online) to SDIS by **November 15, 2016**.

Completing the checklist online saves time and gives you immediate access to valuable resources. After the new insurance site has been launched, you will be able to complete the checklist online using the following steps:

- Go to **www.sdao.com**
- Click the Sign In button and enter your user credentials.
- After signing in, click on the Insurance Site tab.
- Once on the SDIS Insurance Site homepage, click Insurance on the left.
- Click Best Practices on the left, under Forms.
- Click Take Survey.
- Complete survey and click Save.

Read the statement and check Yes if the statement is true of your board and No if it is not.

		Yes	No
1.	Familiar with the permissible statutory provisions regarding Oregon Ethics Law (ORS 244), i.e., conflicts of interest, gifts, and financial gain.	✓	
2.	Aware that Oregon Government Ethics Commission, or OGEC, enforces government ethics laws.	✓	
3.	Recognize that ethics laws apply to all district elected or appointed officials, employees, and agents, irrespective of whether the person is compensated for services.	✓	
4.	Distribute a copy of OGEC's Guide for Public Officials and 2015 Supplement to each board and staff member.	✓	
5.	Adopt an Oregon Ethics Law policy (sample available through SDAO).	✓	
6.	Provide annual ethics trainings to all board members and staff.		✓
7.	Understand the difference between an actual and potential conflict of interest.	✓	

8.	Aware of the requirements for declaring an actual or potential conflict of interest under Oregon Ethics Law.	✓	
9.	Informed of who is considered a relative for the purpose of the ethics laws.	✓	
10.	Understand the “but for” test and how it relates to financial gain or avoiding financial detriment.	✓	
11.	Recognize that anything acquired through an official compensation package is not financial gain.	✓	
12.	Aware that a “gift” is something of economic value received by a public official, his relatives, or household members.	✓	
13.	Realize that food and beverages at a reception, when they are an incidental part of the reception or consumed at an event when a public official represents the district, are not a gift.	✓	
14.	Familiar with the definition of “legislative or administrative” interest.	✓	
15.	Aware that there is a \$50 gift limit from a source that has an administrative or legislative interest in the district. This includes invitations to events or activities such as concerts, plays, sporting events, and hunting.	✓	
16.	Realize that the maximum penalty for an ethics violation is \$5,000. In addition to this penalty, if a public official financially benefits by violating Oregon Ethics Law, the OGEC can impose a civil penalty in an amount equal to twice the amount the public official realized as a result of the violation.	✓	

Filling out the form below certifies that your Board of Directors has reviewed and approved all answers:

District Name: Port of Hood River

Your Name: _____ **Your Title:** _____

Signature: _____ **Date:** _____

Return the signed checklist (OR complete online) by **November 15, 2016** to receive a 2% credit to your 2017 general liability, auto liability, and property insurance contributions.

How to Submit Your Best Practices Checklist

Mail
SDIS
PO Box 12613
Salem, OR 97309-0613

Email
memberservices@sdao.com

Fax
(503) 371-4781

Online
www.sdao.com

If you have any questions, please contact SDAO Member Services at 800-285-5461 or by email at memberservices@sdao.com.