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**INTRODUCTION**

Oregon Government Ethics Commission  
Enacted by voters in 1974

Seven-member citizen commission

Agency jurisdiction:

- o Oregon Government Ethics law ORS Chapter 244
- o Lobby Regulation law ORS Chapter 171
- o Executive Session provisions of Public Meetings law ORS Chapter 192

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**OVERVIEW**

- o Understand that ORS 244.040 prohibits obtaining financial gains or avoiding costs.
- o Understand that ORS 244.040(2) does allow certain specified financial gains.
- o Understand how ORS 244.040 applies to private income-producing activities.
- o Understand how ORS Chapter 244 addresses conflicts of interest.
- o Understand how ORS 192.660 applies to the permissible purposes to convene Executive Sessions.

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## **SAFEGUARD OF THE PUBLIC TRUST**

“The Legislative Assembly declares that service as a public official is a public trust, and that as one safeguard for that trust, the people require all public officials to comply with the applicable provisions of this chapter.” ORS 244.010 (1)



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## **DEFINITIONS**



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## **PUBLIC OFFICIAL ORS 244.020(14)**

A “public official” is any person who is serving the State of Oregon or any of its political subdivisions or any other public body, as an elected official, appointed official, employee, agent or otherwise, irrespective of whether the person is compensated for the services.



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### RELATIVES ORS 244.020(15)

- Spouse
- Children
- Siblings
- Spouse of Siblings
- Parents
- Person for whom the public official 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



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### MEMBER OF HOUSEHOLD ORS 244.020(10)

"Member of the household" means any person who resides with the public official or candidate.

If household members are economically impacted, it could create either an economic benefit or loss to the public official or one of their specified relatives, that action might cause the public official to violate the law.



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### BUSINESS ORS 244.020(2)

A "business" is: any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for economic gain.

*Note: public bodies not included*

A "business" is not: any tax-exempt 501-C non-profit organization, if the public official or a relative of the public official is associated only as a member or board director or holds an unpaid position.

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### ASSOCIATED WITH ORS 244.020(3)

A person is "associated with" a private business if: the person is a director, officer, owner or employee, or agent of the business; or if a person owns or has owned more than \$1000 worth of stock, equity interest, stock options, or debt interest of a private business in the preceding calendar year.

A person is "associated with" a publicly held corporation if: the person is an officer or director of the publically traded company, or if the person owns or has owned more than \$100,000 worth of stock in the preceding calendar year.



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### USE OF POSITION OR OFFICE



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ORS 244.040(1) Prohibits use or attempted use of position or office to obtain financial gain that would not otherwise be available, but for the position or office.

The financial benefit prohibited can be either an opportunity for gain...



...or to avoid an expense.



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ORS 244.040(2) – EXCEPTIONS

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



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



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ORS 244.040(2) – EXCEPTIONS CONTINUED

(c) Reimbursement of expenses.



(d) An unsolicited award for professional achievement.



(e) Gifts of not more than \$50 in a calendar year from a source that has a legislative or administrative interest. [see ORS 244.024]



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ORS 244.040(2) – EXCEPTIONS CONTINUED

(f) Gifts of any value from a source that could not reasonably be known to have a legislative or administrative interest.

(g) The receipt of any item, which is excluded from the definition of "gift" in ORS 244.020.



(h) Contributions into a legal expense trust fund established for a public official who is the subject of an ethics complaint.



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## USE OF OFFICE AND PRIVATE EMPLOYMENT



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## PRIVATE EMPLOYMENT OF PUBLIC OFFICIALS

In general, public officials may obtain employment with a private employer or engage in private income producing activity of their own.

- Must not use the position held as a public official to create the opportunity for additional personal income.
- 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.



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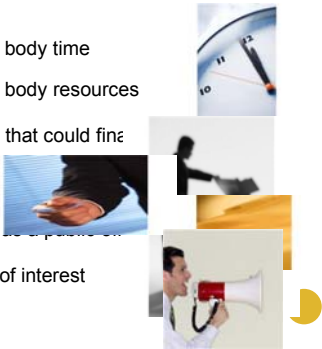
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## GUIDELINES FOR PRIVATE EMPLOYMENT

- Use no governmental body time
- Use no governmental body resources
- Take no official action that could fine private enterprise
- Use no confidential information through your position
- Disclose all conflicts of interest



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**RESTRICTIONS RELATED TO PUBLIC CONTRACTS**



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**EMPLOYMENT AND CONTRACTS**  
ORS 244.047

For two years after a public official ceases holding the position as a public official may not have a direct beneficial financial interest in a public contract when one of the parties to the contract is the official's former public body if the contract:

- Was authorized by the public official, in their former capacity as a public official.
- Was authorized by a governing body (board, committee, or council) that the former public official was a member of when the contract was authorized.



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**CONFLICT OF INTEREST**



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### ACTUAL CONFLICT OF INTEREST

Any action, decision, or recommendation by a public official in their official capacity, the effect of which **WOULD** be to the private pecuniary gain or detriment of the public official, a relative or household member of the public official, or a business with which any of the above are associated.

ORS 244.020(1)

If the financial effect of an action is **certain**, then that action presents an actual conflict of interest.



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### POTENTIAL CONFLICT OF INTEREST

Any action, decision, or recommendation by a public official in official capacity, the effect of which **COULD** be to the private pecuniary gain or detriment of the official, relative, or business of official or relative.

ORS 244.020(12)

If the financial effect might happen but might not, then that situation would present only a potential conflict of interest to a public official.



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### CONFLICTS OF INTEREST

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.

- Pecuniary benefit- Benefit measurable in terms of money.
- Pecuniary detriment- Loss measurable in terms of money.



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QUESTION TO ASK?

Will the action, decision or recommendation have a financial effect on the public official, their relative or business with which either are associated?



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QUESTION TO ASK?

Is the economic interest directly or indirectly involved in the action, decision or recommendation?



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QUESTION TO ASK?

Is the effect of the official action, decision or recommendation on the public official's economic interest be effected to the same degree as others?



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**WHAT IF I AM MET WITH A CONFLICT OF INTEREST?**



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**PUBLIC EMPLOYEES:  
APPOINTED, EMPLOYED OR VOLUNTEER**

Must provide **written** notice to the person who appointed or employed them.

The notice must describe the nature of the conflict of interest.

An announcement needs to be made on each occasion the conflict of interest is met.

Maintain a copy of the notice in their own records.

ORS 244.120(1)(c)



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**THE PUBLIC BODY'S RESPONSE**

The appointing authority must respond to the written conflict of interest notice by either assigning someone else to that task or by instructing the employee how to take care of the matter. This response should be in writing.

ORS 244.120(1)(c)

When a public official gives notice of a conflict, the notice **must** be recorded in the official records of the public body.

ORS 244.130



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OFFICIALS ON BOARDS OR COMMISSIONS  
& ELECTED OFFICIALS ORS 244.120(2)

- Must publicly announce **potential** conflicts of interest, on each occasion **before taking action**.
- Must publicly announce **actual** conflicts of interest, on each occasion, and **refrain** from participating in **discussion, debate, or voting** on the issue out of which the actual conflict arises.



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OFFICIALS ON BOARDS OR COMMISSIONS  
& ELECTED OFFICIALS

If a public official's vote is necessary to meet a quorum needed to take official action, an official with an actual conflict of interest may vote, but may not participate as a public official in any discussion or debate on the issue. ORS 244.120(2)(b)(B)

- The provision applies only when all members of the public body are present, not when a quorum is unmet because members are absent.
- A public announcement must still be made first.



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SUMMARY

Statutory conflicts of interest have three components:

1. An action, decision, or recommendation made in the official capacity  
*which causes*
2. A private pecuniary benefit or detriment  
*for*
3. The public official, the public official's relatives, or a business associated with the public official or the public official's relative.



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### THINGS TO CONSIDER

If a public official or their relative has an economic interest in a business, the official must constantly be aware of whether that business entity is involved in or affected by their official actions, decisions or recommendations. If such a business is directly or indirectly involved, a conflict of interest is possible.



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### GIFTS



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### 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 without payment or other consideration [ORS 244.020(6)(a)].

Under specified conditions public officials may accept gifts.



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### GIFT LIMIT FOUND IN ORS 244.025

During a calendar year, a public official or a relative or member of the household of the public official may not:

- Solicit or Receive
- Directly or Indirectly

Any gift or gifts with an aggregate value in excess of \$50 from any single source that could reasonably be known to have a legislative or administrative interest.



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### GIFT EXCEPTIONS

ORS 244.020(6)(b)

Items which are expressly excluded from the definition of a gift in ORS 244.020(6)(b) may be accepted without limit.



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### FOOD & BEVERAGE EXCEPTION

ORS 244.020(6)(b)(E)

Admission provided to or the cost of food or beverage consumed by a public official, member of the household or staff of the public official when accompanying the public official at a **reception, meal** or **meeting** held by an **organization** when the public official is **representing** a government agency.



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### FOOD, LODGING & TRAVEL EXCEPTION

#### ORS 244.020(5)(b)(F)

- Reasonable food, lodging and travel expenses when paid by...
  - Government entity, Native American Tribe, membership organization or non-profit organizations to participate in -
    - Convention;
    - Fact-finding mission/trip; or
    - Meeting where scheduled to participate - speak, panel discussion or represent government



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### FOOD, LODGING & TRAVEL EXCEPTION

#### ORS 244.020(6)(b)(H)

- Reasonable food, lodging and travel expenses to public official and a relative when...
  - Representing the government agency on...
    - Trade-promotion
    - Fact-finding mission
    - Negotiations
    - Economic development



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### NEPOTISM



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## NEPOTISM

- Nepotism is based on the relative relationship alone.
- Definition of "relative" takes on a broader meaning...
  - Spouse
  - Children
  - Parents



- Stepparents
- Stepchildren
- Siblings
- Half-Brothers/Sisters
- Brothers/Sisters-in-law
- Sons/Daughters-in-law
- Father/Mothers-in-law
- Aunts/Uncles
- Nephews/Nieces



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## NEPOTISM

A public official may not **participate** in the following:

- Appointing
- Employing
- Promoting
- Discharging
- Firing
- Demoting
- Interviewing



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## NEPOTISM

A public official may not **discuss** or **debate** the:

- Appointment
- Employment
- Promotion
- Discharge
- Firing
- Demotion



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## NEPOTISM

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.



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## SANCTIONS FOR ETHICS VIOLATIONS

- Civil Penalty: \$5000 maximum [ORS 244.350]
- Forfeiture: Twice the amount of any financial benefit realized from ethics violation [ORS 244.360]
- Letters of Reprimand, Explanation or Education [ORS 244.350(5)]



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## ANNUAL VERIFIED STATEMENT OF ECONOMIC INTEREST (SEI)



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**ANNUAL VERIFIED STATEMENT OF ECONOMIC INTEREST (SEI)**

- State statute requires the Oregon Government Ethics Commission to provide an SEI to certain public officials identified in ORS 244.050.
- ORS 244.060 through ORS 244.100 prescribes what information must be included in the SEI.
- The form has 11 questions that solicit the required information.



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**WHO MUST FILE AN SEI?**

Approximately 5,500 Oregon public officials are required to file an SEI. They are identified in ORS 244.050.

- State
- County
- City
- School Districts
- Elected Officials



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**SEI FILING SANCTIONS**  
ORS 244.350(4)(c)

Failure to complete and file this form by the final filing date may subject you to an automatic civil penalty of:

- \$10 for each of the first 14 days the SEI is late
- \$50 for each day thereafter
- With a maximum of \$5,000



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PUBLIC MEETINGS LAW:  
EXECUTIVE SESSION PROVISIONS



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PUBLIC MEETINGS LAW:  
EXECUTIVE SESSION PROVISIONS

The Oregon form of government requires an informed public aware of the deliberations and decisions of governing bodies and the information upon which such decisions were made. [ORS 192.620]

Provisions in ORS Chapter 192 allow specific, limited reasons for which a public body may meet in a closed session.



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WHAT IS AN EXECUTIVE SESSION?

Executive session is any meeting or part of a meeting of a governing body which is **closed** to certain persons for deliberation on certain matters. ORS 192.610(2)

A governing body may hold a meeting consisting of only an executive session. The notice requirements are the same as those for any other meeting.



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### CONVENE IN EXECUTIVE SESSION TO...

ORS 192.660(2)(a)

Consider the employment of public officers, employees and agents **IF**:

- The vacancy has been advertised
- Regular procedures for hiring have been previously adopted
- The public has had a chance to comment (if a public officer)

See also ORS 192.660(7)

Note: Cannot discuss salary [OAG-PMM Pg 145]



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### CANNOT CONVENE IN EXECUTIVE SESSION TO:

- Evaluate agency goals, objectives, operations, or directives ORS 192.660(8)
- Evaluate any directive given to personnel concerning an agency goal, objective, operation, or program. ORS 192.660(8)
- Conduct or discuss employee performance reviews or discipline without notifying the person being discussed and giving them the option of holding the discussion in open session. ORS 192.660(7) & ORS 192.660(8)



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### FINAL DECISIONS - ORS 192.660(6)

- No final action or final decision can be made in executive session.
- Consensus can be reached, but **no** final vote.

The purpose of the "final decision" requirement is to allow the public to know the *result* of the discussions. [AG Public Meetings Manual, pg 149]

- Must take final vote in open session.



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## HOW TO CONVENE AN EXECUTIVE SESSION

- Presiding officer **must** identify the statutory authorization for the executive session
- Must announce the authorization for every topic that you will discuss during that meeting
- Instruct members of the Media and others



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## SANCTIONS FOR EXECUTIVE SESSION VIOLATIONS

Any person may file a complaint with OGEC. OGEC may investigate and find a violation, and impose any of these penalties:

- Civil Penalty = up to \$1000 per violation\*  
\* may not be imposed if public body acted on advice of public body's council - ORS 244.350(2)(b)
- Letters of reprimand, explanation or education

ORS 244.350(2)(a) and (5)



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## RESOURCES AND INFORMATION

- Staff Advice
- Staff Opinion
- Advisory Opinion
  - Telephone  
503-378-5105  
FAX 503-373-1456
  - e-mail: [ogec.mail@state.or.us](mailto:ogec.mail@state.or.us)
- Website: [ogec.state.or.us](http://ogec.state.or.us)



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# Oregon Government Ethics Law

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