

Regular Board Meeting  
Wednesday, February 7, 2024 7:00 PM

Triangle Lake Charter School--Pioneer  
Building  
20264 Blachly Grange Rd.  
Blachly, OR 97412

## **Agenda**

1. **CALL TO ORDER**
2. **WELCOME GUESTS AND VISITORS**
3. **CHANGES OR ADDITIONS TO THE AGENDA**
4. **PUBLIC FORUM/COMMUNICATIONS**
5. **CONSENT AGENDA**
  - 5.1. **BOARD MINUTES**
  - 5.2. **FINANCIAL REPORT**
  - 5.3. **POLICY FIRST READ**
  - 5.4. **FIRST READ OF THE 2024-25 BUDGET CALENDAR**
  - 5.5. **FIRST READ OF 2024/2025 DISTRICT CALENDAR**
  - 5.6. **RESIGNATION**
  - 5.7. **NEW HIRE**
  - 5.8. **MOTION**
6. **REPORTS**
  - 6.1. **STUDENT BODY REPORT**
  - 6.2. **LESD LOCAL SERVICE PLAN**
  - 6.3. **FACILITIES REPORT**
  - 6.4. **TRANSPORTATION/TECHNOLOGY REPORT**
  - 6.5. **STUDENT SERVICES REPORT**
  - 6.6. **PRINCIPAL'S REPORT**
  - 6.7. **SUPERINTENDENT'S REPORT**
  - 6.8. **DIRECTORS REPORT**
7. **UNFINISHED BUSINESS**
8. **NEW BUSINESS**
  - 8.1. **RESOLUTION #2023-24-005**
  - 8.2. **CHARTER APPLICATION 2024/2025**
  - 8.3. **2022/23 FINANCIAL AUDIT REPORT**
9. **THE BOARD MAY RECESS THE REGULAR MEETING AND CONVENE EXECUTIVE SESSION**
10. **RECONVENE REGULAR SESSION**
11. **ANNOUNCEMENTS**
  - 11.1. **UPCOMING BOARD MEETING**
12. **ADJOURN THE REGULAR MEETING**
13. **ADDITIONAL DOCUMENTS/INFORMATION TO VIEW**
  - 13.1. **OREGON ETHICS REPORTING**

# Blachly School District #90

Code: BDDH  
Adopted: 12/13/93  
Revised/Readopted: 1/16/08; 11/19/08; 2/21/18;  
1/19/22

## Public Comment at Board Meetings

All Board meetings, with the exception of executive sessions, will be open to the public. The Board invites the district's community members to attend Board meetings to become acquainted with the program and operation of the district. The public has a right to attend public meetings held in open session, and may be invited to share comments, ideas and opinions with the Board during designated times on the agenda. The Board may conduct a meeting without public comment.

Individuals with hearing, vision or speech impairments will be given an equal opportunity to participate in Board meetings and submit written comments to the Board. Individuals requesting assistance, aids or accommodations are encouraged to notify the district at least 48 hours prior to the Board meeting with the request, consistent with Board policy BD/BDA – Board Meetings.

### Procedures for Oral Public Comment

The Board establishes the following procedures for public comment at Board meetings held in open session. The information will be accessible and available to all patrons accessing or attending such a Board meeting.

1. Public comment is limited to its designated place on the agenda and while time allows.
2. A person wishing to provide public comment, if an opportunity is provided by the Board during a meeting open to the public, will submit their request and name electronically prior to the Board meeting.<sup>1</sup> A request to give public comment in-person or electronically does not guarantee time will be available.
3. A person speaking during the public comment portion of the meeting may comment on a topic not on the published agenda.
4. A person speaking during the public comment portion of the meeting should state their name, whether they are a resident of the district, and, if speaking for an organization, the name of the organization. A spokesperson should be designated to represent a group with a common purpose.
5. A person giving public comment is limited to an established time limit of three minutes. Statements should be brief and concise. The Board chair has discretion to waive time limits or extend the overall time allotted for public comment. Additional time will be allocated in a fair and equitable manner. If a person has more comments than time allows or is unable to comment due to time constraints, the

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<sup>1</sup> When in-person attendees are allowed to provide oral comment, virtual attendees will be afforded the same opportunity.

person is encouraged to submit additional written comments to the Board through the district office as directed.

6. Inquiries from the public during the designated portion of the agenda will not generally be responded to immediately by the Board chair, and may be referred to the superintendent for reply at a later date. The Board will not respond to inquiries that are expected to be addressed during another designated portion of the agenda.

The Board will not hear public comment at Board work sessions.

Topics raised during the public comment portion may be considered for inclusion as agenda items at future Board meetings.

### **Procedures for Written Comment**

Members of the public may submit written comments or materials to the Board at any time at the district office, by mail or by email to [comments@blachly.k12.or.us](mailto:comments@blachly.k12.or.us) . Materials or comments submitted at least 72 hours in advance of a Board meeting will be provided to the Board before the Board meeting. Written materials or comments submitted may not warrant action by the Board.

### **Comments Regarding Staff Members**

A person speaking during the designated portion of the agenda for public comment may offer objective criticism of district operations and programs. The Board will not hear comments regarding any individual district staff member. The Board chair will direct the visitor to the procedures in Board policy KL - Public Complaints for consideration of a legitimate complaint involving a staff member. Any association contract governing the employee's rights will be followed. A commendation involving a staff member should be sent to the superintendent, who will forward it to the employee, a supervisor and the Board.

END OF POLICY

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### **Legal Reference(s):**

[ORS 165.535](#)  
[ORS 165.540](#)

[ORS 192.610 - 192.690](#)  
[ORS 332.057](#)

[ORS 332.107](#)

Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101-12213 (2018); 29 C.F.R. Part 1630 (2020); 28 C.F.R. Part 35 (2020).

Americans with Disabilities Act Amendments Act of 2008, 42 U.S.C. §§ 12101-12133 (2018).

*Baca v. Moreno Valley Unified Sch. Dist.*, 936 F. Supp. 719 (C.D. Cal. 1996).

*Leventhal v. Vista Unified Sch. Dist.*, 973 F. Supp. 951 (S.D. Cal. 1997).

Oregon House Bill 2560 (2021).

### **Cross Reference(s):**

BDDC - Board Meeting Agenda

KC - Community Involvement in Decision Making

# Blachly School District #90

Code: BDDH-AR  
Revised/Reviewed: 2/21/18; 11/17/21

## Public Comment at Board Meetings

The Board requests that a public comment add information or a perspective that has not already been mentioned previously, and that the patron refrains from repeating a similar point.

To provide public comment in person, if the opportunity is available on the Board agenda, please submit the Intent to Speak request to the Superintendent, Monday of the week of the Board meeting to [comments@blachly.k12.or.us](mailto:comments@blachly.k12.or.us). Those attending virtually and want to provide public comment should submit the Intent to Speak request to the Superintendent, Monday of the week of the Board meeting to [comments@blachly.k12.or.us](mailto:comments@blachly.k12.or.us).

A person speaking during the public comment portion of the meeting may comment on a topic not on the published agenda. A person providing public comment will be allowed three minutes. Signing up to provide public comment does not guarantee time will be available.

Any person, who is allowed to speak to the Board during a meeting, should state their name, whether they are a resident of the district and, if speaking for an organization, the name of the organization. A spokesperson should be designated to represent a group with a common purpose.

Comments about a specific employee or group of employees should comply with Board policy BDDH - Public Comment at Board Meetings:

“A person speaking during the designated portion of the agenda for public comment may offer objective criticism of district operations and programs. The Board will not hear comments regarding any individual district staff member. The Board chair will direct the visitor to the procedures in Board policy KL - Public Complaints for consideration of a legitimate complaint involving a staff member. Any association contract governing the employee’s rights will be followed. A commendation involving a staff member should be sent to the superintendent, who will forward it to the employee, a supervisor and the Board.”

***SEE FORM ON REVERSE***

**INTENT TO SPEAK**

The Board welcomes input. To provide in-person public comment please complete the request at [comments@blachly.k12.or.us](mailto:comments@blachly.k12.or.us) that can be found on the District and School websites Monday the week of the Board meeting.

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Name of organization (if applicable): \_\_\_\_\_

Address: \_\_\_\_\_

Email (optional): \_\_\_\_\_

Topic or comment to be presented (brief description): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

A complaint brought before the Board shall be referred to the proper school authorities. A complaint shall be processed in accordance with Board policy KL - Public Complaints and KL-AR - Public Complaints Procedure. A hearing conducted by the Board regarding personnel may take place in an executive session.

**The Board requests that a topic or comment is limited to three minutes or less.**

Regular Board Meeting  
Wednesday, January 10, 2024 6:00 PM Pacific

Triangle Lake Charter School--Pioneer  
Building  
20264 Blachly Grange Rd.  
Blachly, OR 97412

Ciara Clark: Present  
Dwight Coon: Absent  
Meleah Drago: Present  
Jeff Eastburn: Absent  
Derek Pennel: Present  
Bev Schiesser: Present  
Lena Sjoström: Present

Present: 5, Absent: 2.

Staff: Brittany Bottensek, Katherine Tripp, Shane Bencoter, Dennis Boyd, Kelly Goodwin, Pat Rufo, Molly Rust

Community & Students: Ella Smith

Dwight Coon: Present

Present: 6, Absent: 1.

Staff: Brittany Bottensek, Katherine Tripp, Dennis Boyd, Kelly Goodwin, Pat Rufo, Molly Rust

Community & Students:

### **1. CALL TO ORDER**

Board Chair Pennel called the meeting to order at 6pm.

### **2. WELCOME GUESTS AND VISITORS**

### **3. CHANGES OR ADDITIONS TO THE AGENDA**

There are no changes to the agenda.

### **4. PUBLIC FORUM/COMMUNICATIONS**

There was no public communications.

### **5. CONSENT AGENDA**

#### **5.1. BOARD MINUTES**

There were no questions or changes to the November minutes.

#### **5.2. FINANCIAL REPORT**

Ms. Pat Rufo, business manager, presented the November and December check registers to the board. Ms. Rufo answers a question about the ReadLive purchase.

Ms. Rufo goes over the quarterly report with the board. She also informs the board that they are in the process of our yearly audit, she hopes this will be wrapped up by the end of February. She asked the board members to respond to the audit survey. She goes over the revenues and the expenditures for the board.

### **5.3. THIRD READ BOARD POLICIES**

There were no questions in regards to the policies presented.

### **5.4. BASEBALL CO-OP**

Superintendent Watkins reminds the board of the reasoning for the co-op. Junction City has agreed to co-op with us this year to include our baseball players.

### **5.5. NEW HIRE**

Superintendent Watkins presents the new hires listed. We are excited to welcome these new staff members and thank Mr. Shepherd for filling the long term math sub for us until we could get that position filled. He also shares the changes in positions of some of our staff into new positions.

Superintendent Watkins shares that we still have 3 positions open; Playground Monitor, Van Driver and Instructional Assistant.

### **5.6. RESIGNATION**

Superintendent Watkins presents the resignation of Ms. Mackaeley. He also shares the retirement of Ms. Pat Rufo at the end of the school year. He thanked both Mackaeley and Pat for their services to our district.

### **5.7. MOTION**

Director Schiesser moved to approve the consent agenda as presented. This motion, made by Bev Schiesser and seconded by Lenae Sjostrom, Carried.

Dwight Coon: Absent, Jeff Eastburn: Absent, Ciara Clark: Yea, Meleah Drago: Yea, Derek Pennel: Yea, Bev Schiesser: Yea, Lenae Sjostrom: Yea  
Yea: 5, Nay: 0, Absent: 2

## **6. REPORTS**

### **6.1. ENROLLMENT**

Superintendent Watkins shares the enrollment report. We have been able to stay fairly consistent in our overall enrollment.

### **6.2. STUDENT BODY REPORT**

Student Body President Ella Smith shares her board report. There were no questions.

### **6.3. FACILITIES REPORT**

Maintenance Director, Shane Benscoter, shared a report with the board. He answered questions from the board.

### **6.4. TRANSPORTATION/TECHNOLOGY REPORT**

Transportation & Technology Manager, Dennis Boyd, shares his report with the board. He answers questions about the bus awaiting a part.

### **6.5. STUDENT SERVICES REPORT**

Assistant Principal, Katherine Tripp, shares her report with the board. She answers questions about the state report she completed.

### **6.6. PRINCIPAL'S REPORT**

Principal, Brittany Bottensek, shares her report. She does let the board know that the vision screen has been rescheduled. She shares some information about the upcoming science fair. Principal Bottensek also shares she will be reaching out looking for judges for the panel for the science projects. If any board members are interested they can contact Ms. Bottensek. This ties in with AVID goals to have students comfortable with public speaking and presenting. As well as offers another opportunity for families to come to campus to see their students work.

#### **6.7. SUPERINTENDENT'S REPORT**

Superintendent Watkins shares a report with the board. He shares the short session for legislation that is coming up in February. He shares some information about what might be coming with that. Superintendent Watkins gives an update on OSAA Football, the committee is in charge of the 6-man football and if this classification is still needed for districts. They have set a different threshold for ADM to determine the status between 6-man or 8-man. He explained what schools are asking of OSAA and how they would like the collective schools to be able to help determine these parameters. We are waiting to hear back from them after they deliberate, and then it will still need to go to the executive board of OSAA.

#### **6.8. DIRECTORS REPORT**

Board Chair Pennel shares that OSBA had to cancel our December training, we are rescheduling it to March 13th. He shares that since our last meeting, the Charter board and District board have had two work sessions that stemmed from the formal complaint resolution put in several months ago. The Charter has a meeting this upcoming Tuesday, and they will be coming back to the District board with some answers after that meeting. At that point, the District board will have some decisions to make. Both boards did agree on postponing the vote of the new charter member. At this time, the current member will continue to hold her position until the other decisions have been made.

### **7. UNFINISHED BUSINESS**

#### **7.1. SIA ANNUAL REPORT 2022-23**

Board Chair Pennel moved to approve the SIA Annual Report for 2022-23. This motion, made by Derek Pennel and seconded by Dwight Coon, Carried.

Jeff Eastburn: Absent, Ciara Clark: Yea, Dwight Coon: Yea, Meleah Drago: Yea, Derek Pennel: Yea, Bev Schiesser: Yea, Lenae Sjostrom: Yea

Yea: 6, Nay: 0, Absent: 1

Superintendent Watkins goes over the presentation of the SIA Annual report for the 2022-2023 report. This report will be posted to our district website after the board votes to approve it. He reviewed the narratives and gave details in regard to these items and answered board questions.

Board Chair Pennel opened the floor to the audience for comment. There were no comments.

### **8. NEW BUSINESS**

#### **8.1. INTEGRATED GUIDANCE 2023-24**

Director Schiesser moved to approve the Integrated Guidance plan for 2023-2024 as presented. This motion, made by Bev Schiesser and seconded by Dwight Coon, Carried.

Jeff Eastburn: Absent, Ciara Clark: Yea, Dwight Coon: Yea, Meleah Drago: Yea, Derek Pennel: Yea, Bev Schiesser: Yea, Lenae Sjostrom: Yea

Yea: 6, Nay: 0, Absent: 1

Superintendent Watkins opens the floor to public comment prior to giving his presentation. There were no questions or comments.

Superintendent Watkins proceeds with presenting the Integrated Guidance plan for 2023-2024. He goes through the performance growth goals and explains the purpose of them. He shares our data for regular attendees. He answers a question with regard to the two categories on this slide. He answers board questions at the end of the presentation.

## **8.2. EARLY LITERACY GRANT**

Board Chair Pennel moved to approve the Early Literacy Grant application and plan as presented. This motion, made by Derek Pennel and seconded by Ciara Clark, Carried.

Jeff Eastburn: Absent, Ciara Clark: Yea, Dwight Coon: Yea, Meleah Drago: Yea, Derek Pennel: Yea, Bev Schiesser: Yea, Lenae Sjostrom: Yea

Yea: 6, Nay: 0, Absent: 1

Superintendent Watkins shares the legislation plan for K-8 funding towards Early Literacy.

This does have a 25% match requirement from the district. He shares what our schools plan is for this grant and answers questions from the board.

## **9. THE BOARD MAY RECESS THE REGULAR MEETING AND CONVENE EXECUTIVE SESSION**

There was no executive session tonight.

## **10. RECONVENE REGULAR SESSION**

## **11. ANNOUNCEMENTS**

### **11.1. UPCOMING BOARD MEETING**

Superintendent Watkins asks the board to move the upcoming meeting due to a meeting conflict. We are asking to move the meeting to Monday, February 12th. The board agrees to move the meeting to February 12th 2024.

## **12. ADJOURN THE REGULAR MEETING**

Board Chair Pennel adjourns the meeting at 8:21pm.

## **13. ADDITIONAL DOCUMENTS/INFORMATION TO VIEW**

# OSBA Model Sample Policy

Code: BCBA  
Adopted:

## Student Representative to the Board

The Board has provided for a formalized ongoing method of communication with district students by establishing a position of student representative to the Board.

The student representative shall receive notice of meetings, the agenda and the appropriate agenda materials; be provided a place at the Board table; and shall have the same privileges of discussion as apply to Board members. The student representative shall not be a voting member of the Board.

The student representative shall be installed on the Board through the following Oath of Office:

“I \_\_\_\_\_, will support the Constitution and the laws of the United States, the state of Oregon and the laws thereof, and the policies of the [ ] District, and will discharge the duties of Student Representative to the [ ] Board to the best of my ability.”

END OF POLICY

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### Legal Reference(s):

[ORS 332.107](#)

## Notice

**Budget Committee meetings are open and the public is invited to attend.**  
Please keep this notice posted until June 30, 2024

# **BLACHLY SCHOOL DISTRICT #90**

## **2024-25 Budget Calendar**

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### 2024

April 10 Regular School Board meeting

April 15 Publish Budget Committee meetings in Register-Guard & on district website

**April 29 First Budget Committee meeting (Budget Message/public comment)**

May 8 Regular Board meeting

**May 13 Second Budget Meeting - target date for approval**

June 5 Publish notice of budget hearing/summary in Register-Guard

**June 12 Regular School Board meeting**

- Budget Hearing
- Adopt the budget
- Make appropriations
- Declare the Levy by fund

**July 15 Deadline to certify the tax levy to the County Assessor**

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### **Budget Committee Meeting**

**Times:** 6:00 - 8:00 PM. or two hours length when starting time is delayed

**Place:** Triangle Lake Charter School, Blachly School District

**Additional meetings will be posted as necessary.**



# Triangle Lake Charter School 2024-2025 Year at a Glance

2024-25 will be a 4 day school week. Classes will be Monday-Thursday \*unless otherwise noted

## Semester 1

## Semester 2

- 26 All staff report
- 27 PD/No School
- 28/29 Teacher Planning Day
- 2 Holiday/No School
- 3 **First Day of School 1<sup>st</sup>-12<sup>th</sup>**  
**Kindergarten ½ start**
- 4 **Kindergarten ½ start**
- 6 **MS/HS Only on Friday**

AUGUST/ SEPTEMBER 2024						
S	M	T	W	Th	F	S
25	26	27	28	29	30	31
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

JANUARY/FEBRUARY 2025						
S	M	T	W	Th	F	S
26	27	28	29	30	31	1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	

- 27 Start of Semester 2
- 7 PD/No School
- 17 Holiday/No School
- 21 **School on Friday**

- 18 PD/No School

OCTOBER 2024						
S	M	T	W	Th	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

MARCH 2025						
S	M	T	W	Th	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

- 7 PD/ No School
- 24-28 Spring Break/No School

- 1 PD/ Grading
- 14 4pm-8pm Parent Conferences
- 15 8am-12pm Parent Conferences & Teacher Planning
- 25-29 Holiday/No School

NOVEMBER 2024						
S	M	T	W	Th	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

APRIL 2025						
S	M	T	W	Th	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

- 4 PD / Grading
- 10 4pm-8pm Parent conferences
- 11 8am-12pm parent conferences & Teacher Planning
- 25 Make up day if needed

- 13 PD/No School
- 23-31 Winter Break/No School

DECEMBER 2024						
S	M	T	W	Th	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

MAY 2025						
S	M	T	W	Th	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

- 2 Make up day if needed
- 16 PD/ No School
- 26 Holiday/No School
- 30 **School on Friday**

- 1-3 Holiday/No School
- 13 Holiday/No School
- 17 **School on Friday**
- 23 End of Semester 1
- 24 Teacher Grading Day

JANUARY 2025						
S	M	T	W	Th	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25

JUNE 2025						
S	M	T	W	Th	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
23	24	25	26	27	28	29
30						

- 5 **Last Day for Seniors**
- 7 Graduation @ 1pm
- 12 **Last Day for all Students**
- End of Semester 2
- 13 Grading Day

1	All Staff Report	2	Make up days if needed
7	Teacher Professional Development	18	School Breaks- Non Holiday
	School Start/Stop	1	MS/HS Only
**	Kinder half starts 9/3-9/4	7	Holiday
2	Parent Conferences	5.5	Teacher Grading/ Planning Days
	No School		
148 Total Student Days - 170.5 Total Contract Days			

## February 2024 Technology and Transportation Board Report

1. Silver Van in for repairs. To be completed 2/1/24
2. Bus 4 and Mini 3 in for repairs. Bus 4- stop arm not working and Mini 3 Fuel Pump replacement
3. Sixth Grade class fully 1:1 for Chromebook use now.
4. Researching solutions for maintaining power for wifi and phones when school loses power. Will possibly involve powering Freezers/Coolers as well.

## **District Board Meeting: Triangle Lake Charter School Report**

### **February 2024 Meeting**

- **Science Fair:** We are excited to be hosting a K-12 science fair next week. Mark your calendar for February 15th at 6pm-7:30pm, this is a drop-in event for families and community members. All projects will be displayed in the gym and in the cafeteria.
- **Synergy (Student Information System):** Admin and Office Staff have begun the onboarding training process. Teachers will have an introduction training late spring which will allow them to see the new platform prior to our go live date in August.
- **State Test Testing:** Our students will begin their state tests just before spring break. Our required 30-day state testing notices will be sent out to families of testing age students the week of February 12<sup>th</sup>.
  - **Subjects & Testing Grades:**
    - **Language Arts: 3-8 & 11**
    - **Math: 3-8 & 11**
    - **Science: 5, 8 & 11**
- **Professional Development:**
  - **March 8<sup>th</sup> Teacher PD**
    - **Social & Emotional Learning**
    - **State Testing Training**
- **Athletic Update:**
  - **Winter Sports season is winding down.**
    - **MS B tournament at Mapleton Friday, February 9<sup>th</sup>**
    - **MS A tournament at McKenzie Friday, February 24<sup>th</sup>**
    - **Mountain West League Tournament at Junction City HS on Saturday, February 17<sup>th</sup>.**
  - **Spring sports season is quickly approaching:**
    - **HS Track & Field practices begin the last week of February**
    - **MS Track & Field practices begin the Monday after Spring Break**
- **Upcoming Dates:**
  - **Thursday, 2/8/24: Middle School Dance 5pm-7pm**
  - **Thursday, 2/15: K-12 Science Fair 6:00-7:30pm**
  - **Friday, 2/16: High School Dance 7pm-10pm**

- **Monday, 2/19: No School - President's Day**
- **Friday, 2/23: SCHOOL DAY**
- **Wednesday, 2/28: Dental Screening**
- **Thursday, 2/29: K-12 Student of the Month Assembly @ 8am**

**Blachly School District #90  
Triangle Lake Charter School  
20264 Blachly Grange Road  
Blachly, OR 97412  
(541) 925-3262  
[www.blachly90.com](http://www.blachly90.com)**

**RESOLUTION  
Blachly S.D #2023-24-005**

**BE IT RESOLVED**, that with the approval by both parties of this agreement, the existing Charter between Blachly School District and Triangle Lake Charter School will terminate effective June 30, 2024. Blachly School District intends to pursue Charter Status for the district under a single governing board.

Adopted by the Blachly School Board of Directors at a regular school board meeting held on February 7, 2024.

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Derek Pennel  
Board Chair

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Adam Watkins  
Superintendent

APPLICATION  
TRIANGLE LAKE CHARTER SCHOOL  
20264 Blachly Grange Rd  
Blachly, OR 97412

**SECTION 1 - Purpose of the Triangle Lake Charter School**

**Philosophy and Mission.** The mission of the Triangle Lake Charter School (TLCS) is to provide the success of all students by focusing on the student holistically. TLCS's goals encompass the various aspects necessary to accomplish this, including critical thinking skills, arts education, and Science, Technology, Engineering and Math (STEAM) concepts. TLCS believes that if a student is educated across these areas in addition to the core curriculum, they will be well rounded, life- long learners. In this endeavor TLCS will seek to maintain the tradition of small class sizes and staff/student rapport that provides for an optimal educational experience. The staff, parents, community and various organizations will provide educational partnerships aiming toward student success. TLCS will be guided by the Blachly School District's Integrated Plan.

**Non-religious and Non-discrimination Policy.** The education program of TLCS shall be nonreligious and nonsectarian. TLCS shall not discriminate against any student or staff on the basis of race, creed, color, sex, national origin, religion, ancestry, disability, marital status, sexual orientation, English language ability, athletic ability, income level or political beliefs and/or affiliations. All student enrollment and admission policies and procedures shall strictly adhere to TLCS's nondiscrimination policy. TLCS will comply with all applicable federal and state laws, rules and regulations regarding nondiscrimination.

**SECTION 2 - Interpretation: Integration**

**Definitions.** Capitalized terms used in this Charter and not otherwise defined shall have the meanings set forth below:

**"Admission"** means that a student has been formally accepted as a student as TLCS and has enrolled with TLCS in accordance with the TLCS admission policies and procedures.

**"Blachly Board of Directors"** means the elected Blachly School District Blachly Board of Directors.

**"Charter Board or Charter Blachly Board of Directors"** means the elected Blachly School District Blachly Board of Directors.

**"Charter Board Council"** means the elected Blachly School District Board that represents the Triangle Lake Charter School

**"Charter School Act"** means ORS Chapter 338 and the rules and regulations promulgated by the Department there under, as the same may be, from time to time, amended or modified.

**"Core"** means those teachers delivering language arts, math, science or social studies instruction, including elementary teaching staff.

**"Department"** means the Oregon Department of Education.

**"District"** means the Blachly School District.

**"Fiscal Year"** means, with respect to the District of TLCS, any twelve-month period beginning on July 1 and ending on the ensuing June 30.

**"Full-time Enrolled Student (FTE)"** means a student attending TLCS grades K-12 shall count as a 1.0 FTE.

**"IDEA"** means the Federal Individuals with Disabilities Education Act, commonly referred to as public Law 94-142 (as amended).

**"IEP"** means an individualized education program created for a student with disabilities to whom the IDEA applies.

**"IEP Team"** means a committee of qualified educators charged with the task of evaluating the special needs of a Special Education Student to create an IEP for the student and determine the most appropriate educational setting for the student.

**"TLCS"** means, as the context requires, the Triangle Lake Charter School, a non-profit organization formed for the purpose of converting and operating a kindergarten through grade twelve (12) school district, as a public charter school district.

**"Special Education Student"** means a child with disabilities for whom the IDEA requires the development of an IEP.

**"State"** Means the State of Oregon and, as the context requires, Oregon's executive, judicial or legislative bodies and their agents and agencies.

**Incorporation of Attachments and Interpretation of Conflicts.** This Charter application if approved as a charter, will include the following attachment which will be incorporated as if fully set forth herein, provided that, if any conflict exists between the provisions of the body of this Charter, applicable state law and the provisions of the attachment, priority in interpretation shall be first given to federal and state law and administrative rules, then to the body of this Charter, and lastly, to the provisions of the hereto to be included: The Blachly School District Integrated Plan.

### **SECTION 3 - Term**

**Initial Term.** This Charter application will be effective upon approval and, unless otherwise terminated as provided herein, shall expire at midnight on June 30, 2029.

### **SECTION 4 - Educational Program and Curriculum**

**Age and Grade Range.** Unless modified as provided herein, TLCS shall provide instruction to students in grades K-12.

#### **Curriculum.**

**General Requirements.** TLCS shall implement its instructional programs to include, at a minimum, mathematics, science, social science, language arts, physical education, health, vocational agriculture, second language, and the arts. TLCS shall have the authority and responsibility of designing and implementing its educational program, subject to the conditions of this Charter, in a manner consistent with state law.

**State Standards.** TLCS agrees to develop and maintain curricular content that is articulated K-12 and aligned to the state standards in English, mathematics, science, and social science. Assessment tools for essential skills will be implemented and utilized. The program for the Arts will be developed as music, foreign language and vocational technology. Physical education will include

elementary and secondary grades. TLCS will provide adequate course offerings to ensure all students the opportunity to accomplish essential skills and expanded options and receive a diploma upon successful completion of that course work and the required assessments. The educational program, pupil performance standards and curriculum designed and implemented by TLCS shall meet or exceed applicable content standards adopted by the State and shall be designed to enable each pupil to achieve such standards.

**English as a Second Language.** TLCS shall assess the English language proficiency of any students identified as coming from a non-English-speaking background, or whose first language is other than English. TLCS shall provide English as a Second Language Program for such students as they qualify.

**Participation in Extracurricular Activities of TLCS.** TLCS students are eligible to participate in extracurricular activities provided by the Charter according to the eligibility requirements of OSAA (Oregon Schools Athletic Association) and District Student Activities Policy. TLCS transfer students must comply with applicable OSAA rules before being eligible to participate in OSAA extracurricular activities.

**Aligned Education Model.** TLCS will achieve its mission and educational goals through the development of an aligned K-12 curriculum that focuses TLCS resources, optimizes student learning, increases efficiency, and eliminates curricular gaps by aligning to the State Benchmarks. The staff will receive training in their specific content area(s); innovative teaching techniques; classroom management; curriculum development; methodology related to effective practices within a small, remote, rural educational environment; and other areas of professional development.

**Innovative Programs may include but are not limited to:**

- Personal education plan for each student
- Involvement of parents and experts from within the community
- TLCS developed courses related to local resources
- Expanded options/Extended applications projects that allow students to demonstrate skills
- Distance learning opportunities for coursework not available on site

TLCS will grant credits to its students under the applicable criteria set forth in OAR 581-22-102 and/or 581-22-1350.

**SECTION 5 - Opening date and School Calendar; Tuition; Admission and Enrollment**

**School Calendar.** The TLCS school year and attendance schedule will be based on and developed with the goal of accommodating curricular needs and employee contracts of TLCS and will adhere to the District Adopted Calendar.

**Tuition.** TLCS will not charge tuition for programs, classes or courses of study as part of the regular school program. TLCS may charge reasonable fees for tuition, application processing, instructional materials, related to optional coursework available online or through other distance or independent learning providers.

**Indigent Students.** TLCS shall provide waivers from all fees for those indigent students unable to

pay in accordance with applicable federal and state law and TLCS policy. TLCS shall survey its student population for those eligible for free and reduced breakfast and lunches under federal and state law, if TLCS elects to provide breakfasts, lunches or other meal related programs for students.

### **Policies and Procedures for Admission and Enrollment**

**Eligibility; Voluntary Enrollment.** Student enrollment shall be voluntary. All students who reside in the District are eligible for enrollment, and, under the conditions set forth herein, and as permitted by State law and District Policies, students who reside outside of the District ("non-resident students") may also be admitted. Enrollment of Special Education Students shall be the same as for the students in general, except as modified by the special placement procedures set forth in Section 6. The TLCS enrollment application form will ask if the student applicant has an IEP or a 504 plan. Students who choose not to attend TLCS may transfer to other district regional schools, charter schools, or home school by requesting a transfer.

### **Enrollment Numbers**

**Enrollment Target.** Student in-person enrollment shall be generally limited based on grade level as follows: K-12 range (13 to 21 students per grade) with a total school enrollment cap of 312 students. For on-line enrollment shall generally limited based on grade level as follows: K-12 range (15 to 21 per grade) with a total school enrollment cap of 300 students. The online enrollment will not exceed the in-person enrollment at any point.

**Minimum Enrollment.** The minimum enrollment shall be 150 full-time enrolled students. This estimated number shall be established annually, as part of the budget preparation process, by the Budget committee, The Blachly Board of Directors, and District administrative staff. Should student enrollment fall below this estimate of full-time enrolled students at any time during the year, the Blachly Board of Directors shall be notified. Subject to the limitations of the State requirements, and based on the circumstances of the reduced enrollment, the Blachly Board of Directors may consider what action, if any, will be taken.

**Lottery.** To the extent permitted by this Charter and State law, if more non-resident students apply for any grade than can be accommodated, admission will be based on an equitable lottery conducted by TLCS under the following principles:

**Resident Preference.** Preference will be given to students who reside within the boundaries of the District. Students residing within the boundaries of the District shall be admitted subject to applicable District policies.

**Non-resident Students.** To the extent permitted by this Charter and State law, a non-resident student admitted to the Blachly School District or TLCS will have the same enrollment preferences (including sibling enrollment preferences) as a student who resides within the boundaries of the District, and shall not be dropped from the TLCS enrollment for any reason related solely to his or her place of residence or to a change in his/her place of residence.

**Equitable Principles.** Lottery selection shall be guided by recognizing the following order of priority for admission:

1. siblings of students who were enrolled at TLCS during the previous year/years;
2. students who were on a waiting list, and have re-applied for admission;

3. non-resident students who are not eligible under categories 1 or 2.

The foregoing priority levels shall be applied in each year of enrollment with students within each level being selected, if necessary, by random lottery no later than June 1. Lottery date shall be posted on the district website.

**Waiting lists; Filling Vacancies.** At any phase of enrollment, applicants who cannot be accommodated for admission may be placed on a waiting list. Exceptions to this will be Triangle Lake resident students. During the ensuing school year prior to October 1, any vacancy which occurs shall be filled first from the waiting list, according to the same preferences as applied to the original lottery, and, after exhaustion of the waiting list, new applicants may be considered, on a first-come, first-served basis. No new non-resident students may be admitted for the current school year after October 1<sup>st</sup>.

## **SECTION 6 - Education of Students with Disabilities**

### **Application and Enrollment:**

**Non-discrimination in Enrollment.** TLCS will not intentionally discriminate against enrolling Special Education Students or otherwise violate laws applicable to Special Education Students. TLCS will admit students without regard to their status as Special Education Students, if the student's IEP Team determines that TLCS is the appropriate placement.

**Identification of Students Eligible for IEPs.** TLCS will ensure that at least one of its staff or appropriate ESD personnel work with the school district of any non-resident student to ensure that the federal laws for identifying and evaluating children with special needs are carried out in good faith.

**Administration of Special Education Student IEPs.** TLCS will provide Special Education Services in accordance with state and Federal law.

## **SECTION 7 - Student Performance**

**Academically Low Achieving Students.** TLCS shall identify academically low achieving students and shall provide opportunities within its educational program for remediation of the specific areas of deficiency.

### **Student Performance:**

**Assessment.** In addition to its grading system TLCS shall conduct periodic testing of students according to any educational testing system generally accepted by Oregon school districts. TLCS shall participate in the statewide assessment system developed by the Department of Education under ORS 329.485(1). TLCS may choose to test more frequently as funding and testing instruments become available.

**Corrective Action.** If periodic testing at any grade level establishes that students are performing at levels lower than the State average (as applicable to the tests used by TLCS), TLCS shall create a plan for the remediation of the specific areas of deficiency for the student and assess the need for improvement of its teaching effectiveness in the relevant grade levels. TLCS may request program

evaluation and review from outside organizations or agencies if it is deemed necessary, as funds are available.

**Student Attendance, Conduct and Discipline:**

**Attendance.** TLCS shall maintain accurate enrollment data and daily records of student attendance and shall provide these data to the Department of Education and other agencies as mandated by law. Student attendance at TLCS shall be in compliance with Oregon's compulsory attendance law ORS 339.001-090.

**Discipline Policies.** TLCS shall continue to implement the discipline policies established for the Blachly School District, which provides an age-specific code of conduct, rules, student rights and appeal procedures. Complying with all state and federal laws, TLCS shall notify its students and parents of the student rights and responsibilities by the issuance of a handbook, and shall keep its discipline, conduct and student rights policies in a location that is accessible to students and the public.

**Suspension and Expulsion.** Discipline involving suspension and expulsion shall be achieved according to Oregon law and Blachly School District Policies. All TLCS expulsion proceedings shall be administered according to Blachly District policies appropriate to student age and/or grade level. Grounds for expulsion from TLCS shall be consistent with state and federal law.

**SECTION 8 - Administrative Services**

**Complaint Procedures.** TLCS shall operate under the current administrative process as followed by the Blachly School District for resolving public complaints against TLCS, including complaints regarding curriculum.

**Student Welfare and Safety.** TLCS shall comply with all regulations, and applicable federal and state laws, concerning student welfare, safety and health, including, without limitation, the reporting of child abuse, accident prevention, disaster response and any applicable local, state or federal health, sanitation or environmental regulation.

**Health and Social Services.** TLCS may contact and contract with outside agencies to include but not limited to the offices of Lane County and the Center for Human Development, for the delivery of health and social services for students. TLCS shall inform the required authorities of any incident regarding child abuse and neglect, concurrent with state required reporting. TLCS shall comply with state and federal law relating to medication administration to students.

**Insurance Coverage Required.** Blachly School District shall secure, retain and provide proof of the following insurance on behalf of the TLCS: commercial and general liability insurance; errors and omissions insurance; directors' and officers' liability insurance; automobile liability insurance; workers' compensation insurance; and employee dishonesty insurance.

**Coordination of Risk Management Activities.** TLCS agrees that it will report its risk with the Blachly Board of Directors. This will include the prompt reporting of any and all pending or threatening claims, filing of timely notices of claims, and cooperating fully with the District in the defense of any claims in which TLCS is named. TLCS will report and keep records of all accidents and injuries occurring on District- owned property, a summary of these reports will be given to the Blachly Board of Directors.

**Third-Party Contracts.** TLCS shall not enter into any contract for comprehensive school management or operation services to be performed in substantial part by an entity not a party to this Charter. All such contracts shall be entered into exclusively by the Blachly School District Blachly Board of Directors.

**ADA/504 Obligations.** TLCS acknowledges that it is legally responsible to comply with Section 504 of the Rehabilitation act of 1973, the Americans with Disabilities Act of 1990 and ORS 659 with respect to its students, staff and patrons. TLCS may contract with the appropriate outside agency or organization for services or accommodations to meet TLCS's legal obligations under these statutes.

**Transportation.** TLCS students may obtain transportation through the student's parent/guardian or existing/new public-school bus lines. Provisions of District home-to-school transportation will be available as required by state law and Department of Education rule, on the days when the TLCS has students in attendance.

**TLCS School Building.** TLCS shall be operated at the site and use all the facilities of the Blachly School District. All premises, furnishings and equipment shall be transferred as a component of this conversion. In the event of termination of this charter only those premises, furnishings and equipment purchased with charter implementation grant monies shall be held liable for redistribution under ORS 338.105(6). All other premises, furnishings and equipment shall return to Blachly School District or other such entity as shall be designated by the Blachly Board of Directors in accordance with District policy and applicable state and federal law.

**Use of District Contracts.** TLCS shall purchase textbooks, equipment, materials and supplies as currently provided in Blachly School District policy. These procedures may be modified by the Superintendent of the Blachly Board of Directors to ensure efficient operation of TLCS.

**District's Contract Services.** In as much as TLCS will be the sole existing entity it is understood that the entire amount of funding provided from all sources will be converted to use by TLCS.

## **SECTION 9 - Reports**

**General.** TLCS shall comply with all applicable record-keeping requirements of federal and state law and, shall provide any additional reports necessary to enable TLCS to meet District's reporting obligations to the Oregon Department of Education. Student records maintained by TLCS shall include, without limitation, immunization records, class schedules, records of academic performance, disciplinary actions, attendance, and documents required pursuant to the statewide assessment system under ORS 329.485 (1), and any documentation required under federal and state laws regarding the education of students with disabilities.

**Annual Charter School Act Report.** TLCS shall comply with all reporting requirements of the Charter School Act, including provision of any annual report of TLCS and student performance to the Blachly Board of Directors and the State Board of Education. The annual reports shall be delivered to the Blachly Board of Directors at a scheduled public meetings and will contain, without limitation, the following: summary data on the progress toward meeting its academic goals and objectives; the audited financial statements of TLCS, including proofs of insurance; policy

development issues; student attendance and student discipline information; and all information necessary to make a determination of whether TLCS is in compliance with the Charter School Act. The annual reports shall also include the results of grade level performance testing and a summary of all corrective action plans and their effectiveness.

**List of Teachers and Students.** As determined by need, TLCS shall identify for the District any personnel needs required for the operation of the school in accordance with federal, state or district laws or policies. TLCS shall maintain personnel files with all licensure information for all employees. TLCS will submit a count of all TLCS students currently enrolled at the District's September school board meeting and a student list if requested by the Blachly Board of Directors. The list of all students will remain confidential, within the limits of State Law and District public records policy.

**Accountability.** TLCS shall be accountable to the Blachly Board of Directors. All records established and maintained in accordance with the provisions of this Charter, TLCS policy and federal and state law shall be open to inspection by the Blachly Board of Directors. TLCS is obligated to collect and provide such data regarding staffing, student enrollment, student records, and school operations, with reasonable notice/request by the Blachly Board of Directors.

**Policies.** Designees of the TLCS shall work with the Blachly Board of Directors to revise, as needed, the existing policies and procedures previously adopted by the Blachly Board of Directors or by its administrative manager with respect to any matter relating to its operations and educational programs. The Blachly Board of Directors may approve the use of assistance from outside agencies or organizations for this purpose.

## **SECTION 10 - Financial Management, Funding, Reporting and Accountability**

**Operational Powers.** In as much as TLCS will be the sole entity and subject to the conditions and provisions of this Charter, TLCS, through the Blachly Board of Directors and the Superintendent as Chief Operating Officer, shall be fiscally responsible for its operations.

### **District Funding.**

**Base Level Funding.** In as much as TLCS will be the sole existing entity it is understood that the entire amount of funding provided from all sources will be converted to use by TLCS.

**Gifts, Donations and Grants.** In addition, TLCS may accept gifts, donations or grants, provided that no such gifts, donations or grants may be accepted if contrary to applicable law. In the event that TLCS solicits funding from any source it shall comply with all applicable state and federal laws regarding reporting of such charitable solicitations. TLCS shall include all gifts, donations, and grants in its financial reports.

**Budget.** TLCS shall prepare a budget within the guidelines of state law.

### **Financial Records, Audits and Accounting Reports.**

**Standards.** TLCS shall establish, maintain and retain appropriate financial records in accordance with all applicable federal, state and local laws, rules and regulations and generally accepted accounting principles ("GAAP"),

**Periodic Reports.** TLCS will provide the Blachly Board of Directors with copies of its monthly, quarterly and fiscal year annual accounting reports. TLCS shall provide to the Blachly Board of Directors a copy of its cash- flow projections for each Fiscal Year and notify the Blachly Board of

Directors of any unexpected event or circumstance that will impact the cash flow of the District.  
**Annual Audit.** TLCS will arrange an annual audit of TLCS's accounts in accordance with the Municipal Audit Law, ORS 297.405 to 297.555 and 297.998. TLCS will provide the Blachly Board of Directors with a copy of the audit during the financial review.

**Annual Financial Review.** Designated TLCS staff and the Blachly Board of Directors shall review the operations, financial and otherwise, of TLCS at least annually.

#### **SECTION 11 - TLCS Personnel Procedures**

- A. TLCS Authority; Status of TLCS Employees.** All TLCS employees shall be hired by BSD and assigned to TLCS. All personnel decisions shall be subject to the established policies and practices of the Blachly School District regarding the selection and hiring, training, discipline and firing of its teaching, administrative and operations staff with the exception of those changed by waiver or mutual consent of parties in a Collective Bargaining Agreement (CBA). The current BSD CBAs will be honored and maintained by TLCS. All employee groups will be notified of the change and given an opportunity to provide input to the BSD Superintendent and Blachly Board of Directors.
- B. Policies.** TLCS will be subject to BSD policies in compliance with all applicable federal and state laws and Collective Bargaining Agreements in effect at during the life of this charter regarding recruitment, promotion, discipline and termination of personnel; methods for evaluating performance; and a plan for resolving employee-related problems, including complaint and grievance procedures. ORS 338.135
- C. Payroll.** Employees shall be paid through the payroll department of BSD according to existing Blachly School District payroll procedures unless changed during the life of this charter.
- D. Benefits.** The licensed and classified staff at TLCS will receive benefits in compliance with any applicable collective bargaining agreements or as otherwise provided by TLCS. TLCS supervisory staff will receive benefits in accordance with their employment contracts.
- E. PERS.** As required by the Charter School Act, TLCS shall participate in the Public Employees Retirement System (PERS) for its employees or its successor system(s).
- F. Employee Welfare and Safety.** TLCS shall comply with applicable federal and state laws concerning employee welfare, safety and health issues.
- G. Employee Records.** TLCS shall be responsible for establishing and maintaining personnel records for its employees in compliance with all applicable federal and state laws concerning the maintenance, retention and disclosure of employee records.
- H. Placement upon Revocation of Charter.** In the event of termination or non-renewal of this Charter, TLCS shall follow the reduction-in-force provisions in any applicable, collective bargaining agreements for licensed and classified employees. If as a result of termination or non-renewal of this Charter, a determination is made to reconstitute the District as a regular public school district under the authority of the Blachly Board of Directors, the Blachly Board of Directors will, as staffing requirements permit and funding allows, and on the recommendation of the Superintendent, make every effort to rehire all staff employed by TLCS at time of its reconstitution as a regular public school district.

- I. Substitutes.** TLCS will be responsible for providing coverage for all TLCS teachers requiring substitutes in accordance with existing practices, policies and state rule and law.
- J. Licensure.** One hundred (100) percent of full-time equivalency of TLCS core teachers shall hold a valid teacher's license from TSPC (Teacher Standards and Practices Commission).
- K. Professional Development.** TLCS shall provide professional development opportunities to TLCS staff as provided for in District policy, state law, and any applicable collective bargaining agreements. TLCS may collaborate with the other agencies or organizations for joint professional development opportunities.
- L. Teacher Standards & Practices Commission (TSPC) Obligation.** TLCS shall meet any and all qualification and reporting obligations to TSPC regarding its employees.
- M. Criminal Background Checks.** TLCS shall not knowingly employ any individual for whom a criminal background investigation has not been initiated or who has been convicted of one or more offenses in District Policy and Rule. The District will provide all criminal background checks, as required by ORS 342.223.

## **SECTION 12 - Termination**

With the exception of termination by mutual agreement or the election of non-renewal by a party upon the expiration of any Charter term, this Charter may be terminated as provided in this Section 12.

- A. Termination by Blachly Board of Directors Subject to 60-Day Notice.** The Blachly Board of Directors may terminate this Charter upon not less than sixty (60) days prior written notice to TLCS upon the occurrence of one of the following events:
  - 1. Breach of Contract.** Breach by TLCS of any material term or condition of this Charter, other than a breach or condition described in subsection 12(c), which continues for more than thirty (30) days after TLCS receives written notice from District specifying the nature of the breach and demanding its cure, provided that, if the nature of the breach prevents it cure within thirty day, then this Charter may not be terminated if within the thirty-day period, TLCS submits a plan for the curing of such breach that is satisfactory to the District and diligently prosecutes the plan to its satisfactory conclusion. Material terms and conditions include, but shall not be limited to:
    - Breach of any condition or requirement set forth in the Charter School Act or any state or federal law applicable to TLCS under ORS 338.115 of the Charter School Act; or
    - Failure to maintain any insurance required by this Charter.
  - 2. Financial Instability.** TLCS shall be deemed financially unstable only upon its failure to pay its debts when due and payable, or upon the filing in any state or federal bankruptcy court of any claim for relief from its creditors, or if litigation shall be commenced by its creditors. Failure to maintain budget in relation to enrollment shall require reconciliation between revenue and expenses with expenses not to exceed revenue. Said failure shall be deemed sufficient cause for termination of the charter only in such circumstances as no viable plan to

remedy the failure, is put forward within thirty days of notification to the Blachly Board of Directors. The Board shall have thirty (30) days to consider and approve or disapprove the plan. Should the Blachly Board of Directors disapprove the plan the process for Charter termination will be followed as prescribed in Section 12.

- 3. Failure to Maintain Minimum Enrollment.** This Charter may be terminated if TLCS fails to maintain an enrollment sufficient to provide adequate funding to continue operations. At no time shall total enrollment drop below 25 students as required under ORS 338.115(5)
- B. Notice and Right of Appeal.** The Blachly Board of Directors shall notify TLCS at least 60 days prior to the proposed effective date of any termination under subsection 12(1)(a). The notice shall state the grounds for the termination. TLCS may request a hearing by the Blachly Board of Directors by written request within ten (10) days of the notice of termination. TLCS may appeal the decision of the District's board to the State Board of Education. The decision of the State Board of Education may be appealed pursuant to applicable State law.
- C. Termination by District without Notice.** The Blachly Board of Directors may terminate this charter immediately and close TLCS if TLCS is endangering the health or safety of its students.
- 1. Hearing on Termination.** The TLCS Council may, in writing, request a hearing from the Blachly Board of Directors on the termination of this Charter under this subsection 12(c). The District shall hold a hearing within 10 days after receiving the request.
  - 2. Appeal to Board of Education.** The TLCS Board may appeal a decision of the District under this subsection to the State Board of Education. Throughout the appeals process, TLCS shall remain closed at the discretion of the Blachly Board of Directors unless the State Board of Education orders the Blachly Board of Directors to open TLCS and not terminate this Charter.
- D. Termination by the Blachly Board of Directors for Lacking of Funding.** The Blachly Board of Directors may terminate this Charter at the end of a semester, and upon such notice as may reasonably be given, if TLCS should become unable to receive State funding provided herein for reasons beyond the Blachly Board of Directors control.
- E. Termination by TLCS.** TLCS may only terminate this Charter, dissolve or close the TLCS at the end of a semester with not less than 90 day's written notice prior to the proposed effective date of the termination, closure or dissolution. Subject to the foregoing limitation, the decision to dissolve this Charter shall be at the will of TLCS
- F. Effect of Termination.** Termination of this Charter shall not abridge TLCS's legal authority to operate as a private or non-chartered public school. However, if this Charter is terminated, all TLCS assets that were purchased with public charter school funds may be required to be given to the State Board of Education. Notwithstanding the foregoing, and to the extent permitted by law, in the event of a termination of this Charter, all assets, equipment, supplies and other items provided to TLCS which were the sole property of the Blachly School District prior to this Charter or were added after the fact with funds not a part of public charter school funds or are of a nature that their loss or absence would prevent the operation of the District or its programs after termination of this charter, shall be returned or retained by the Blachly School District.

## **SECTION 14 - Indemnification**

In as much as TLCS will be the sole existing entity and as such has no other party to indemnify this section is null and void.

# OREGON GOVERNMENT ETHICS LAW

## A GUIDE FOR PUBLIC OFFICIALS



Oregon Government Ethics Commission  
3218 Pringle Rd. SE, Suite 220  
Salem, OR 97302-1544  
Telephone: 503-378-5105  
Fax: 503-373-1456  
Web address: [www.oregon.gov/ogec](http://www.oregon.gov/ogec)



## **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. The discussion in this guide should not be used as a substitute for a review of the specific statutes and rules.

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

A penalty may not be imposed under ORS Chapter 244 for any good faith action taken in reliance on the advice in this guide. "In reliance on" the advice in this guide means that the fact circumstances of the action taken are the same fact circumstances that serve as the basis for advice in this guide.

# TABLE OF CONTENTS

	<u>Page</u>
Introduction .....	2
Jurisdiction .....	3
Public Official: An Overview .....	4
Are You a Public Official? .....	6
Volunteers as Public Officials .....	7
Relatives and Household members of Public Officials .....	7
A Business Associated With a Public Official .....	8
Conflicts Of Interest .....	11
Prohibited Use of Official Position .....	17
Private Employment by Public Officials .....	22
Private Employment of Former Public Officials .....	23
Gifts .....	26
Gifts as an Exception to Prohibited Use of Official Position .....	33
Nepotism .....	35
Annual Verified Statement of Economic Interest .....	37
SEI Form .....	38
Legal Expense Trust Fund .....	41
Commission .....	42
Written Advice/Opinions .....	42
No "Safe Harbor" .....	44
Procedures .....	45
Index .....	48

## 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 to 171.785 and 171.992, related to lobbying regulations, and ORS 192.660 and 192.685, the executive session provisions of Oregon Public Meetings law.

This Guide for Public Officials includes a discussion of some provisions that may also apply to lobbying activities. 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 allows 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. The Commission publishes a guide for lobbyists and clients or employers of lobbyists regulated under provisions in ORS Chapter 171. 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, which is available on our website.

ORS 192.660 lists the specific criteria a governing body must use when convening an executive session. Under this statutory authority, executive sessions are limited to discussion of specific matters. This guide does not discuss that portion of the Oregon Public Meetings law, but there is a detailed discussion of executive sessions, as set out in ORS 192.660, in the Attorney General's Public Records and Meetings Manual, available on-line at <https://www.doj.state.or.us/oregon-department-of-justice/public-records/attorney-generals-public-records-and-meetings-manual/>

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, but should not be used as a substitute for a review of the 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.

You will find links to ORS Chapter 244, ORS Chapter 171.725 to 171.785 and 171.992, ORS 192.660 and ORS 192.685, relevant Oregon Administrative Rules (OAR), and other publications referenced in this guide on the Commission's website at <https://www.oregon.gov/ogec/Pages/default.aspx>. Questions or comments may be submitted to the Commission by email at [ogec.mail@oregon.gov](mailto:ogec.mail@oregon.gov), by telephone to 503-378-5105, or by fax to 503-373-1456.

\*\*\*\*\*

## JURISDICTION

The jurisdiction of the Oregon Government Ethics Commission is limited to provisions in ORS Chapter 244, ORS 171.725 to 171.785 and 171.992, and ORS 192.660 and 192.685. 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.
- Federal, state, or local law enforcement has jurisdiction over alleged criminal activity.
- 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.
- The initial enforcement of the Public Records law lies with County District Attorneys and the Department of Justice.
- Enforcement of the Oregon Public Meetings law lies with the Oregon Circuit Courts, except that the Commission also has jurisdiction over the execution session provisions in ORS 192.660 and 192.685.

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. The following are some examples of conduct by public officials that may not be 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.

A person's private behavior unrelated to their actions as a public official.

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

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## **PUBLIC OFFICIAL: AN OVERVIEW**

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

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

One provision, 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 with which they are associated if that financial benefit or opportunity for financial gain would not otherwise be available but for the position or office held.

Oregon Government Ethics law limits and restricts public officials and their relatives as to gifts they may solicit or accept. Under specific circumstances, public officials may accept certain gifts. This guide will discuss those provisions. Public officials are allowed to receive salary and reimbursed expenses from their own government agencies.

Another provision that frequently applies to public officials when engaged in official actions is the requirement to disclose the nature of conflicts of interest. This guide will discuss the definition of a conflict of interest, the distinction between actual and potential conflicts of interest, and describe how a public official must disclose and dispose of a conflict of interest.

For some public officials who are elected to offices or hold other select positions, there is a requirement to file an Annual Verified Statement of Economic Interest. 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 to 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. Before taking official action, making a decision, participating in an event, or accepting a gift that may raise potential ethics law violations, each public official must make a personal judgment. The Commission staff is available to discuss the issues and offer guidance in making such judgments.

The statutes and rules discussed or illustrated in this guide do not and cannot address every set of circumstances a public official may encounter. 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.

In addition to the statutes in ORS Chapter 244 and the Oregon Administrative Rules (OAR) in Chapter 199, see <https://www.oregon.gov/ogec/Pages/default.aspx>, the Commission's website, which offers information, training and links to this guide, ORS Chapter 244 and OAR Chapter 199. The Commission offers a variety of free training resources and many government agencies also offer internal training to their employees or the agencies may request training 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 the Special Districts Association of Oregon, that provide training to public officials. 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.

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## A PUBLIC OFFICIAL

### Are you a public official?

“Public official” is defined in ORS 244.020 as the First Partner and 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:

- The First Partner, defined as the spouse, domestic partner or an individual who primarily has a personal relationship with the Governor.
- Elected or appointed to an office or position with a state, county, regional, or city government.
- Elected or appointed to an office or position with a special district.
- An employee of a state, county, city, intergovernmental agency or special district.
- An unpaid volunteer for a state, county, regional, city, intergovernmental agency, or special district.
- An agent of the State of Oregon or any of its political subdivisions.

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

As defined in ORS 244.020(15), a public official includes the First Person and 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?**

The Commission recognizes that there are those who volunteer to work without compensation for many state and local government agencies, boards, commissions and special districts. 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 state boards or commissions, city councils, planning commissions, fire district boards, school district boards, 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 firefighters, reserve law enforcement officers, and parks or recreation staff members.

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.

## **How are relatives and household members 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 or household member. Public officials should also know there may be limits and restrictions on gifts their relatives or household members 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 household member, limit the value of financial benefits accepted by a relative or household member of the public official, or require the public official to disclose the nature of a conflict of interest when a relative may receive a financial benefit. There are provisions that place restrictions on a public official regarding the employment or supervision of a relative or household member. These provisions are discussed more comprehensively in the use of position or office section starting on page 17, the gifts section starting on page 26, the conflicts of interest section starting on page 11, and the nepotism section starting on page 35.

## **Who is a relative?**

Public officials need to know how Oregon Government Ethics law defines a “relative.” In everyday conversation the term “relative” is applied to a spectrum of individuals with “family ties” broader than those defined as relatives in ORS 244.020(16). 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;
- Any Individual for whom the public official or candidate has a legal support obligation
- Any Individual for whom the public official provides benefits arising from the public official's public employment
- Any Individual from whom the public official or candidate receives benefits arising from the individual's employment.

For purposes of the last two bulleted items, examples of benefits may include, but is not limited to, elements of an official compensation package such as insurance, tuition or retirement benefits.

### **Who is a “member of the household”?**

Public officials need to know how Oregon Government Ethics law defines “member of the household” because there are provisions in ORS Chapter 244 that prohibit a public official from using or attempting to use their official position to financially benefit a member of their household.

A “member of the household” is any person who resides with the public official or candidate. [ORS 244.020] This definition includes any individual who resides in the same dwelling as the public official, regardless of whether that individual pays rent or not, and regardless of whether that individual is a relative or not.

### **What is a business with which a person is associated?**

There are provisions in ORS Chapter 244 that restrict or prohibit a public official from using their position to benefit a business with which the public official or the public official's relative or household member is associated. Other provisions also require the public official to disclose the nature of a conflict of interest when their official actions would or could financially impact a business with which the official or their relative is associated.

As with the definition of relative, public officials need to know how Oregon Government Ethics law defines what a “business” is and how it defines a “business with which the person is associated.” 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 impact to a business with which the public official or the official's relative is associated.

ORS 244.020(2) provides the definition of a “**business**” for the purposes of the application of Oregon Government Ethics law. A “business” is a self-employed individual and any legal entity that has been formed for the purpose of producing economic gain.

- Excluded from this definition are income-producing corporations that are not-for-profit and tax exempt under section 501(c) of the Internal Revenue Code, if a public

official or a relative is associated only as a member, as a member of the board of directors, or in another unpaid position.

Example: An elected County Commissioner is a member of a credit union that operates without profit and is tax exempt under section 501(c) of the Internal Revenue Code. Because the public official is associated with the credit union only as a member, the credit union is not considered a “business” under the definition in Oregon Government Ethics law.

Example: The son of an elected city councilor is a teller employed by a credit union that operates without profit and is tax exempt under section 501(c) of the Internal Revenue Code. Because the public official’s relative is a paid employee of the credit union, the city councilor’s association with the credit union does not meet the exclusion above, and the credit union would be considered a “business” under the definition in Oregon Government Ethics law.

- Also excluded from the definition of business are entities, such as state and local governments or special districts, which are not formed for the purpose of producing income.

Example: An advisory board for the Department of Education awards grants to county, city or other local government entities. The advisory board’s members include public officials who are employed by a city police department and by a local fire district. These public officials would not have conflicts of interest when awarding grants to the city or to the fire district, because these government entities do not meet the statutory definition of a “business.”

Once a public official determines that an entity qualifies as a “business,” the public official must also determine if it is a “business with which the person is associated.” In accordance with ORS 244.020(3), a business is a “**business with which the person is associated**” for a public official or the relative or household member of the public official in any of the following circumstances:

- When a person, or their relative is a director, officer, owner, employee or agent of a private business or a closely held corporation.

Example: The Eugene City Recorder is a public official and her daughter is the president and owner of a private landscaping business. That business would be “a business with which the City Recorder’s relative is associated.”

- When a person or their relative currently holds, or held during the preceding calendar year, stock, stock options, an equity interest or debt instrument worth \$1,000 or more in a **private business or closely held corporation**.

Example: The Mayor of Seaside’s brother currently holds an equity interest of more than \$1,000 in a private business owned by a college friend. This would be a “business with which the Mayor’s relative is associated.”

- When a person or their relative currently owns, or has owned during the preceding calendar year, stock, stock options, an equity interest, or debt instruments of \$100,000 or more in a **publicly held corporation**.

Example: The procurement officer for the City of Portland recently inherited stock worth \$110,000 in Nike, which is a publicly held corporation. Nike is a “business with which the procurement officer is associated.”

- When a person or their relative is a director or officer of a **publicly held corporation**.

Example: A Planning Commissioner for Washington County is the son of a member of the Board of Directors for Intel, a publicly held corporation. Intel is a “business with which the Planning Commissioner’s relative is associated.”

- When a public official is required by ORS 244.050 to file an Annual Verified Statement of Economic Interest and the business is required to be listed as a source of household income, per ORS 244.060.

Example: A Bend city councilor is required to file an Annual Verified Statement of Economic Interest (SEI). A member of the city councilor’s household, not a relative, is a paid employee of a private business. The private business which employs the household member would be a “business with which the city councilor is associated” if it provides 10% or more of the councilor’s annual household income.

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## CONFLICTS OF INTEREST

**How does a public official know when they are met with a conflict of interest and, if met with one, what must they do?**

Oregon Government Ethics law identifies and defines two types of conflicts of interest. An **actual conflict of interest** is defined in ORS 244.020(1) and a **potential conflict of interest** is defined in ORS 244.020(13). In brief, a public official is met with a conflict of interest when participating in official action which would or could 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 an official action, decision, or recommendation that **would** affect the financial interest of the official, their relative, or a business with which they or their relative is associated. A public official is met with a **potential** conflict of interest when the public official participates in an official action, decision, or recommendation that **could** affect the financial interest of the official, their relative, or a business with which they or their relative is associated. The following hypothetical circumstances are offered to illustrate the difference between actual and potential conflicts of interest and what is not a conflict of interest:

- **POTENTIAL CONFLICT OF INTEREST:** A school district has decided to construct a new elementary school and the school board is at the stage of developing criteria for the construction bid process. A recently elected school board member’s son owns a construction company in town. The school board member would be met with a potential conflict of interest when participating in official actions to develop the bid criteria, because the official actions she takes **could** financially impact her son’s construction company, a business with which her relative is associated.
- **ACTUAL CONFLICT OF INTEREST:** A school district is soliciting bids for the construction of a new elementary school. The bid deadline was last week and the district Superintendent has notified the school board that there are four qualified bids and the school board will be awarding the bid to one of the four bidders at their upcoming meeting. One of the qualified bids was submitted by the construction company owned by a school board member’s son. The school board member would be met with an actual conflict of interest when awarding this bid because the effect of her decision **would** have a financial impact (either positive or negative) on her son’s construction company, a business with which her relative is associated.

- **NO CONFLICT OF INTEREST:** A school district is soliciting bids for the construction of a new elementary school. One of the qualified bids was submitted by a construction company owned by a board member's best friend but neither the board member nor any relative are associated with the construction company. The school board member would **not** be met with a conflict of interest when awarding this bid because the effect of her official decision **would not or could not** have a financial impact on herself, a relative, or a business with which she or her relative is 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:

#### **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. [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)]

#### **Public Employees:**

Public officials who are hired as public employees, agents, or who volunteer with their public bodies must provide **written notice** to the person who appointed or employed them (their "appointing authority"). The notice must describe the nature of the conflict of interest with which they are met and request that their appointing authority dispose of the conflict. This written disclosure to the appointing authority satisfies the requirements of ORS 244.120 for the employee. The appointing authority must then designate an alternate person to handle the matter or direct the public official in how to dispose of the matter. [ORS 244.120(1)(c)]

**Example of Disclosure and Disposal:** A County employee's job includes issuing building permits. An application concerns property owned by the employee's stepfather. The employee would be met with a conflict of interest and would need to make a written disclosure of his conflict to his appointing authority, in this case his department supervisor, and ask that the supervisor dispose of the conflict. Once the employee makes the written disclosure, he has complied with the conflict of interest statute. Upon receipt of a written disclosure from an employee, the supervisor must respond by either delegating an alternative person to handle the matter or directing the public official in how to dispose of the matter. **Note:** If the supervisor directs the public official to dispose of the conflict by handling his

relative's permit the same as any other permit, the supervisor could be asking an employee to take official actions that may violate the prohibited use of position statute, ORS 244.040(1). See page 17.

### **Elected Officials or Appointed Members of Boards and Commissions:**

Elected officials (other than legislators) and those appointed to Boards and Commissions must publicly announce the nature of the conflict of interest before participating in any allowable official action on the issue giving rise to the conflict of interest. [ORS 244.120(2)(a) and ORS 244.120(2)(b)] The announcement must be made in a public meeting, or if no public meeting is available, by other means reasonably determined to notify members of the public of the public official's disclosure. For elected officials who do not hold regular public meetings, such as a Sheriff, District Attorney, or the Secretary of State, other means of compliance could be through a press release or by posting the disclosure on the public body's website.

- **Potential Conflict of Interest:** Following the public announcement of the nature of a potential conflict of interest, elected officials (other than legislators) and those appointed to Boards and Commissions, may participate in official action on the issue that gave rise to the conflict of interest.

**Example:** A city has decided to solicit bids to develop a new computer system and the city councilors are developing criteria for the bid process. A city councilor's brother works for an IT firm in town. The councilor would be met with a **potential** conflict of interest when participating in official actions to develop the bid criteria, because the official actions she takes **could** financially impact her brother's employer, a business with which her relative is associated. The councilor should publicly disclose the nature of her conflict of interest at the council meeting when the development of bid criteria comes up for consideration. Following the public disclosure, she may continue to participate in discussions and votes on the issue.

- **Actual Conflict of Interest:** Following the public announcement of the nature of an actual conflict of interest, the public official must ordinarily refrain from further participation in official action on the issue that gives rise to the conflict of interest. [ORS 244.120(2)(b)(A)]

**Example:** The city council is meeting to award a bid for a new IT project. Qualified bidders include a company that employs a city councilor's brother. The city councilor has an **actual** conflict of interest because the effect of her decision **would** have a financial affect, whether positive or negative, on a business with which her brother is associated. The city councilor must publicly announce the nature of her conflict of interest at the meeting and then refrain from any discussion or vote on the matter.

**Exception:** 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 of their conflict of interest and refrain from any discussion or debate, but may participate in the vote required for official action by the governing body. [ORS 244.120(2)(b)(B)]

**Example:** In the scenario above, the city councilor would be met with an actual conflict of interest. The city council has 5 members and it takes 3 votes for board action. At the time of this meeting, one seat is vacant, another member is absent, and the member with the actual conflict is present, but conflicted, leaving the city council without the requisite 3 votes to take action. In this instance, following her public disclosure, the conflicted city councilor must refrain from any discussion or debate on the issue, but she may vote in order for the council to take action. Alternatively, the council may choose to delay the vote until a later meeting when more city councilors are present.

**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(13)(a)]

**Example:** The Oregon Medical Board requires that one Board member must be a practicing physician, any official action taken by the physician board member that affects all physicians to the same degree would be exempt from the conflict of interest requirements. The physician Board member need not disclose a conflict of interest and may participate in taking official action on the issue.

- If the financial impact of the official action would impact the public official, their relative, or a business with which they or their relative is associated, 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(13)(b) and ORS 244.290(3)(a)] The number of persons affected **to the same degree** as the public official will help to determine whether this exception applies.

Only the Commission may determine whether a "class" exemption exists. A written request must be made to the Commission to make that determination in advance. If a public official determines that a "class" exception applies in their situation, without benefit of Commission advice, the Commission may later determine that a "class" exception does not apply to the situation, and could find a violation.

Example: A city council is considering a change to the local transient lodging tax collected and remitted to the city by hotels and motels. One of the city councilors owns a motel. The effect of official actions taken by the city councilor concerning this tax would impact all motel owners within the city. The Commission may determine that the city councilor is part of an identifiable group or “class” of 200 city motel/hotel owners, who would be affected to the same degree and thus exempt from the conflict of interest disclosure and participation restrictions.

Example: A city council is considering a change to the local transient lodging tax collected and remitted to the city by motels. One of the city councilors is a motel owner. The effect of official actions taken by the city councilor concerning this tax would impact all motel owners within the city. The Commission declined to find that the class exemption applies due to the size of the “class” because there are only 3 motels in the city, 2 of which are owned by the councilor. The class exemption would not apply in these circumstances and the councilor must comply with the conflict of interest disclosure and participation restrictions.

Example: A city council is considering a proposal to construct a by-pass route around the city’s business district. The city’s business district includes many businesses and restaurants, including a coffee shop owned by one of the city councilors and a drive-thru espresso stand owned by another resident. The effect of the by-pass would not affect all business owners in the city to the same degree. The class exemption would not apply in these circumstances and the councilor who owns the coffee shop must comply with the conflict of interest disclosure and participation restrictions.

- If the conflict of interest arises from a directorship on the board of, or membership in, a nonprofit corporation that is tax-exempt under 501(c) of the Internal Revenue Code. [ORS 244.020(13)(c)]

Example: A city councilor is also a board member of the local YMCA, a tax-exempt 501(c) organization. The decision, as a city councilor, to award a grant to that YMCA would be exempt from the conflict of interest disclosure and participation restrictions. [ORS 244.020(13)(c)]

### **How is the public announcement or written disclosure of the nature of a conflict of interest recorded?**

- The public body served by the public official is required to record the disclosure of the nature of the conflict of interest in the public body’s official records (e.g. personnel file, meeting minutes, audio/video recording). It is to the public official’s benefit to ensure their conflict disclosure is recorded in their public body’s records. [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?**

Each time a public official is met with a conflict of interest, the nature of the conflict must be disclosed.

- For example, an elected member of the city council when met with a conflict of interest would have to make the public announcement one time, but only one time, **in each meeting** of the city council when the matter was raised. If the matter giving rise to the conflict of interest is raised at another meeting, the disclosure must be made again at that meeting.
- Public officials who are employees would need to submit separate written notices on each occasion when a conflict of interest arises. As an example, an employee in a city planning department would have to give a separate written notice before each occasion when they needed to take an official action involving property owned by a relative. [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)] Even though the action may not be voided, the public official could face potential personal liability for the violation.



## 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 or avoidance of financial detriment?**

**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 prohibited financial benefit can be either an opportunity for personal financial gain or an opportunity to avoid incurring a personal expense.**



Not only is a public official prohibited from using the position as a public official to receive personal financial benefits, but the public official is prohibited from using or attempting to use their position as a public official to obtain financial benefits for a relative or a member of the public official's household. Also prohibited is using or attempting to use the public official's 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.

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's 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, or using a government agency's time or resources (computers, vehicles, machinery) to obtain a personal financial benefit or avoid a personal cost.

The following examples are offered to illustrate what may constitute prohibited use or attempted use of office or position. Please note that this is not an exhaustive list:

- The mayor of a city signs a contract obligating the city to pay for janitorial services provided by a business owned by the mayor's relative.
- An executive director of an agency is ordering 10 new laptops for the agency, which qualifies for a bulk purchase discount of \$150 per laptop. He adds 2 laptops for his family to the agency's order to personally take advantage of the discount, and then reimburses the agency for the discounted cost of his personal laptops.
- 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 conduct the activities of the private business.

- A county commissioner uses the county's pickup truck to haul his own personal boat to and from his vacation home.
- A school district superintendent hires her sister's consulting business to provide an in-service training to teachers in her district.
- A teacher solicits her students' parents to hire her for paid tutoring services.

**NOTE:** While these examples are offered to illustrate the use of a public official's position prohibited by ORS 244.040(1), the examples illustrate occasions where a public official may also be met with a conflict of interest as defined in ORS 244.020(1) and (13). The provisions in ORS 244.040 apply regardless of whether a public official has properly disclosed a conflict of interest. [ORS 244.040(7)]. For further information, refer to the detailed discussion of conflicts of interest starting on page 11.

There are some additional prohibitions on how current and even former public officials use their offices or positions.

- 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.
- 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 using or attempting to use confidential information gained because of the position held to further their own personal gain.
- ORS 244.040(5) prohibits a **former** public official from attempting to use confidential information for **any** person's financial 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 to appear before the governing body on behalf of a client for a fee. Public officials who are members of governing bodies and who own or are employed by businesses, such as a law, engineering, or architectural firm, may encounter circumstances in which this provision may apply.

Example: A member of a city council is an architect. A client developer of the architect's firm has a proposed subdivision to be approved by the city council. The architect/councilor may not appear before the city council on behalf of the client developer. Another person from the architect's firm may represent the client developer before the city council, but not the architect/councilor.

**Aside from ORS 244.040, are there other prohibitions on public officials using their positions to avoid a personal financial detriment?**

**Yes.** ORS 244.049 prohibits a holder of public office or candidates for public office from using public moneys or moneys received from a third party to make payments in connection with a non-disclosure agreement relating to workplace harassment if the alleged harassment occurred when the holder of public office or candidate was acting in that capacity. This prohibition applies to a person holding, or a candidate for, any elected state, county, district, city office or position.

**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:

**Not Prohibited:**

- **Official Compensation:** Public officials may accept any financial benefit that is identified by the public body they serve 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.

- **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 “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. [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 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).

- **Honoraria:** Most public officials are allowed to accept honoraria by ORS 244.040(2)(b) as defined in ORS 244.020(8). A public official must know how an 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(8).



For a payment to be defined as an honorarium, it must be made for a service, like a speech or other service rendered in connection with an event, for which no price is set and for which the public official required no fixed amount to be paid in return for providing the service. 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 price has been prevented by custom or propriety.

A public official may not receive an honorarium when performing a service in the course of their duties as a public official. A public official may not accept honoraria if the value exceeds \$50, unless the honoraria is received for services performed in relation to the private profession, occupation, avocation, or expertise of the public official or candidate. [ORS 244.042(3)(a) and (b)].

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(8). If it does not meet this definition, it may be a financial benefit prohibited or restricted by other provisions in ORS Chapter 244.

**NOTE:** The Governor, First Partner, Secretary of State, State Treasurer, Attorney General, and Commissioner of the Bureau of Labor and Industries are explicitly prohibited by ORS 244.042(4) from soliciting or receiving an honorarium, money or any other consideration for **any** speaking engagement or presentation.

- 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(7)(b)(C), an 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, such as receipt of the Nobel Prize. These awards may also be offered by public or private organizations in the state that are meant to recognize a public official for a distinguished career, such as Oregon's Teacher of the Year award made by the Oregon Department of Education which includes a monetary prize and travel funds. 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.

- Contributions to Legal Expense Trust Fund: There are provisions in ORS 244.209 that allow public officials to establish legal expense trust funds that are approved by the Commission. 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. This is discussed in a separate section of the Guide p.41.



- Certain Gifts: Public officials may accept some gifts without limitation on the quantity or aggregate value of gifts. Acceptance of these gifts does not constitute a prohibited use of office. See allowable gifts, page 33. [ORS 244.040(2)(e) to (g)]



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## PRIVATE EMPLOYMENT OF PUBLIC OFFICIAL

**Does Oregon Government Ethics law prohibit a public official from owning a private business or working for a private employer while continuing employment with or holding a position with a public body?**

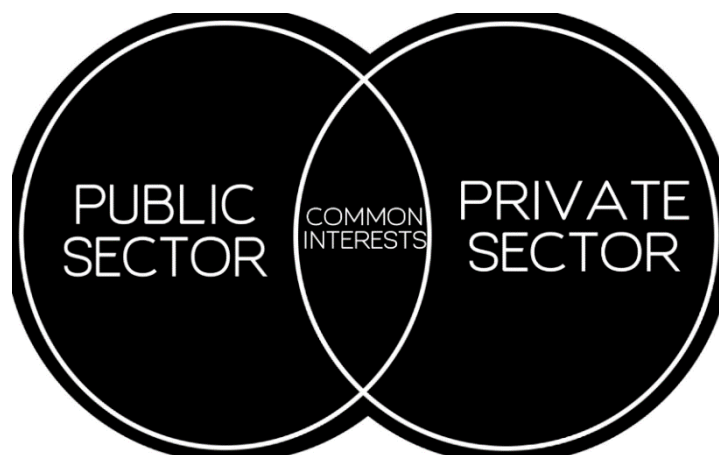
**No.** As mentioned earlier, many public officials are volunteers, meaning there is little or no compensation for the public position. Other public officials may receive compensation from their public bodies, but still choose to seek additional sources of income. Some work for a private business and 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.**

In general, public officials may obtain employment with a private employer or engage in private income producing activity of their own, but they must keep a separation between their public positions and their outside employment or private business interests. The Commission has created the following 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 must not use their public position to create the opportunity for additional personal income.
2. Public officials may not use a government agency's supplies, facilities, equipment, employees, records or any other public resources to engage in their private employment or business interests.
3. Public officials are not to engage in private business interests or other employment activities on their government agency's time.
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.

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## EMPLOYMENT OF FORMER PUBLIC OFFICIALS

### 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 using or attempting to use confidential information for the personal gain of any person 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) State Agencies:

Director of the Department of Consumer and Business Services  
Administrator of the Division of Financial Regulation  
Administrator of the Oregon Liquor Control Commission  
Director of the Oregon State Lottery  
Public Utility Commissioner

1. One year restriction on accepting employment from or 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, appearing as a representative before the agency, or otherwise attempting to influence 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) Department of Justice:

Deputy Attorney Generals  
Assistant Attorney Generals

Two year restriction from lobbying or appearing before an agency that they represented while employed by the Department of Justice.

#### ORS 244.045(3) Office of the Treasurer:

State Treasurer  
Deputy State Treasurer

1. One year restriction from accepting employment from or being retained by a private entity with which there was negotiation or contract awarding \$25,000 in a single year by the office of the State Treasurer or Oregon Investment Council.
2. One year restriction from accepting employment from or being retained by a private entity with which there was investment of \$50,000 in one year by the office of the State Treasurer or Oregon Investment Council.
3. One year restriction from being a lobbyist for an investment institution, manager or consultant, or from representing an investment institution, manager, or consultant, before the office of State Treasurer or Oregon Investment Council.

ORS 244.045(4) Public Officials who invested public funds:

1. Two year restriction from being a lobbyist or appearing before the agency, board or commission for which public funds were invested.
2. Two year restriction from influencing or trying to influence the agency, board or commission.
3. Two year restriction from disclosing confidential information gained through employment.

ORS 244.045(5) Department of State Police:

Member of State Police who has been designated by law and was responsible for supervising, directing or administering programs related to Native American tribal gaming or the Oregon State Lottery

1. One year restriction from accepting employment from or gaining financial benefit related to gaming from the Lottery or a Native American Tribe.
2. One year restriction from gaining financial benefit from a private employer who sells gaming equipment or services.
3. One year restriction 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) Legislative Assembly  
Representative  
Senator

A person who has been a member of the Legislative Assembly, may not, within one year after ceasing to be a member of the Legislative Assembly, receive money or other consideration for lobbying as defined in ORS 171.725.

**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?**



In addition to the restrictions on specific positions identified above, the restriction in ORS 244.047 applies to all former public officials. After a public official ceases serving a public body 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 for two years after the date the contract was authorized by the person acting in their capacity as a public official.

Whether a public official authorizes a contract individually as an employee of a public body, or participated in the authorization of a contract in their official capacity as a member of a board, commission, council, bureau, committee or other governing body, the person is restricted from financially benefiting from that public contract for two years after the date of authorization. [ORS 244.047]

“Authorized by” is defined in OAR 199-005-0035(6) 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.

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## GIFTS

Oregon Government Ethics law establishes restrictions on the value of gifts that can be accepted by a public official. If the source 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].



The following framework of conditions applies when public officials, their relatives, or members of their households are offered gifts. To decide if a gift, or “something of value,” can be accepted with or without restrictions, the public official must analyze the offer and the source of the offer. 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 counts as a “gift”?

When Oregon Government Ethics law uses the word “gift” it has the meaning in ORS 244.020(7)(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 or at a discount or as a forgiven debt, and,
- The offer is not made or available to members of the general public who are not public officials, candidates, or their relatives or household members on the same terms and conditions.

Example: At a conference exclusively for city and county officials, a public official buys a raffle ticket and wins a big screen television. The television is a gift because the value of the television exceeds the cost of the raffle ticket and the opportunity to enter the raffle and win the television was not available to members of the general public on the same terms and conditions.

Example: Outside of a grocery store, a public official buys a raffle ticket from a local scout troop and wins a big screen television. The television is not a gift because, although the value of the television exceeds the cost of the raffle ticket, the opportunity to enter the raffle and win the television was available to members of the general public on the same terms and conditions.

Once a public official or candidate has determined that an offer is a gift, because it is something of economic value that is not offered to members of the general public who are not public officials or candidates on the same terms and conditions, the public official or candidate must then determine if the value of the gift, combined with any other gifts from the same source during the calendar year, exceeds \$50. If so, the public official must then determine if the source of the gift has a legislative or administrative interest.

Any discussion of gifts must begin with the reminder that if the source of a gift to a public official or candidate **does not** have a legislative or administrative interest in the decisions or votes of the public official or candidate if elected, the public official or candidate can accept unlimited gifts from that source. [ORS 244.040(2)(f)]

### What is a “Legislative or Administrative Interest”?



Whether there is a legislative or administrative interest is pivotal to any decision a public official or a candidate, if elected, makes on accepting gifts. It will mean the difference between being allowed to accept gifts without limits, accepting gifts with an annual limit of \$50 on the aggregate value, or accepting gifts which are specified exceptions under ORS 244.020(7).

The definition of a legislative or administrative interest is set forth in ORS 244.020(10):

“‘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.”

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 matters subject to the 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 matters subject to 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 likely have an economic impact on members of the general public would be those that change water usage rates for residential users, fees for pet licenses, 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: 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. [OAR 199-005-0003(2)].



Whether to accept or reject the offer of a gift must be made individually by each public official. 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 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. This means that when gifts are offered to two or more public officials, one public official may be allowed to accept the gift without limits, and another public official may not be able to accept the gift at all, or may only be able to accept it with limits as to value or with other restrictions.

Example: A cellular service provider offers a discounted cell-phone plan for first responders. The discounted plan is available only to first responders who work for state or local governments. Because the discounted cell-phone plan is not available to members of the general public on the same terms and conditions, it is a gift subject to the restrictions and limitations in ORS 244.025. First responders who are in positions to make official decisions for their agencies that could financially affect the cellular service provider, such as Fire Chiefs or board members, could not accept the discounted cell-phone plan since the discount totals more than \$50 in a calendar year; however, first responders who are not in positions to make official decisions for their agencies that could financially affect the cellular service provider could accept the discounted cell-phone plan.

### **What obligations are placed on the giver of a gift?**

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(7)(b)(F), ORS 244.100(1) 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) for the source of an honorarium when the value exceeds \$15. Lobbyists, clients or employers of lobbyists, 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.

### **What gifts may a public official accept regardless of value?**

While gifts from a source with a legislative or administrative interest in the decisions or

votes of a public official may only be accepted up to the \$50 limit, there are some gifts that are excluded from the definition of a “gift,” when offered under specific conditions or when prerequisites are met. If the offer of a gift is excluded from the definition of a “gift,” the offer may be accepted by a public official, regardless of value.

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(7)(b)] Although some gifts are allowed by these exclusions, 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 that you become familiar with the requirements that may apply to you.

ORS 244.020(7)(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. These exclusions include:

- Campaign contributions as defined in ORS 260.005. [ORS 244.020(7)(b)(A)]
- Contributions to a legal expense trust fund established under ORS 244.209. [ORS 244.020(7)(b)(G)]
- Gifts from relatives or members of the household of public officials or candidates. [ORS 244.020(7)(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 non-profit or for-profit entity; [ORS 244.020(7)(b)(O)(i)] **and**

The receiving bears no relationship to the person’s holding the official position or public office. [ORS 244.020(7)(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(7)(b)(C); OAR199-005-0010]
- Publications, subscriptions or other informational material related to the public official’s duties. [ORS 244.020(7)(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(7)(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(7)(b)(M); OAR 199-005-0001; OAR 199-005-0025]
- 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 government agency for a ceremonial purpose. [ORS 244.020(7)(b)(N); OAR 199-005-0025(2)]
- Cost of admission or food and beverage consumed by the public official, a relative of the public official, a member of the public official's household or staff when they are accompanying the public official, who is representing a government agency, at a reception, meal or meeting held by an organization. [ORS 244.020(7)(b)(E); OAR 199-005-0015; OAR 199-005-0001]
- 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(7)(b)(L); OAR 199-005-0001(3)]
- 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(7)(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(7)(b)(F); OAR 199-005-0020; OAR 199-005-0001]
- Payment of reasonable food, lodging or travel expenses for a public official, an accompanying relative, member of household, or staff, may be accepted when the public official is representing their government agency at one of the following: [ORS 244.020(7)(b)(H); OAR 199-005-0020; OAR 199-005-0001]
  - Officially sanctioned trade promotion or fact-finding mission; [ORS 244.020(7)(b)(H)(i)] **or**
  - Officially designated negotiation or economic development activity when receipt has been approved in advance. [ORS 244.020(7)(b)(H)(ii)]

**[NOTE:** Who may officially sanction and officially designate these events, and how to do so, is addressed in OAR 199-005-0020(3)(b).]

- Payment to a public school employee of reasonable expenses for accompanying students on an educational trip. [ORS 244.020(7)(b)(P)]
- Food and beverage when acting in an official capacity in the following circumstances: [ORS 244.020(7)(b)(I)]
  - 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(7)(b)(I)(i)]
  - When the office of the Treasurer is engaged in business related to proposed investment or borrowing; [ORS 244.020(7)(b)(I)(ii)]
  - 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(7)(b)(I)(iii)]

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## GIFTS AS AN EXCEPTION TO THE USE OF OFFICE PROHIBITION IN ORS 244.040

As covered in more detail in the discussion beginning on page 17, public officials are prohibited from using or attempting to use the position they hold to obtain a prohibited financial benefit. [ORS 244.040(1)] As covered in more detail in the discussion beginning on page 26, Oregon Government Ethics law does not prohibit public officials from accepting gifts, but it does place on each individual public official the personal responsibility to understand there are circumstances when the aggregate value of gifts may be restricted. [ORS 244.025] These provisions of Oregon Government Ethics law often converge and require analysis by public officials to 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(7), ORS 244.025 or ORS 244.040(2)(e),(f) and (g)].



ORS 244.040 was amended in 2007 to make the acceptance of gifts that comply with ORS 244.020(7) and ORS 244.025 exceptions to the prohibition on public officials' use or attempted use of an official position to gain financial benefits. [ORS 244.040(2)(e), (f) and (g)] If a public official, relative, or household member accepts a permissible gift or a financial benefit that qualifies as an exception to the definition of a gift, ORS 244.040(1) does **not** prohibit its acceptance. If a public official, relative, or household member accepts a gift that exceeds the restrictions or limitations set forth in ORS 244.025, then that gift would not qualify under the exceptions set forth in ORS 244.040(e), (f) and (g). Acceptance of that gift could constitute a violation of both ORS 244.025 and ORS 244.040(1).

When 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 first be analyzed to determine whether it is a violation of ORS 244.025. If the Commission determines that acceptance of the gift constitutes a violation of ORS 244.025 (unlawful acceptance of a gift), it will then determine if it also constitutes a violation of ORS 244.040(1) (prohibited use of office).

The following are examples to illustrate the Commission’s approach:

- The mayor of a town on the Oregon coast was a college roommate with Bob Smith, who now manages a company that owns many golf courses in Oregon and other states. One of the company’s golf courses is in the mayor’s town. The mayor and

Bob have remained friends ever since college. Recently, Bob invited the mayor to join him at the Masters' Tournament in Augusta, offering to fly him there on Bob's private jet, stay in Bob's condo, and host him at a private booth at the Tournament. The value of this trip exceeds \$50, and Bob has a legislative or administrative interest in the mayor's decisions as a public official, as one of Bob's golf courses is in the mayor's town. Since the value of the trip exceeds \$50, is not extended to others who are not public officials on the same terms and conditions, and is from a source with a legislative or administrative interest, it is a gift that the mayor cannot accept without violating ORS 244.025(1). It also does not qualify as an exception to ORS 244.040(1). [ORS 244.040(2)(e)]. Bob has been inviting his old college friend on this trip for at least 10 years, long before the friend was elected mayor recently. This and other evidence indicates that the mayor received this offer because he and Bob are friends, not because he is the town's mayor; therefore, the offer of this trip does not represent a financial gain that would not be available to the mayor but for his holding his public office. Thus, if the mayor accepted the gift of this trip, the mayor would violate ORS 244.025(1) (acceptance of an unlawful gift), but would not violate ORS 244.040(1) (prohibited use of office).

- A public works director for B City holds weekly breakfast meetings at a local diner. The public works director invites five main contractors in B City, all of whom do business with the city, to attend these meetings. The contractors take turns picking up the tab for the public works director's breakfast. Because the public works director has the authority to recommend the contractors for projects with the city, the contractors have economic interests distinct from that of the general public in the public works directors' decisions or recommendations. Over the course of a calendar year, each contractor pays for at least ten meals for the public works director, at a total aggregate cost exceeding \$50. These meals constitute unlawful gifts to the public works director, as their value exceeds \$50, they are not extended to others who are not public officials on the same terms and conditions, and they are from sources with distinct economic interests in the public works director's decisions or recommendations. The contractors would not pay for these meals if he were not the public works director. Thus, in addition to violating ORS 244.025(1), by accepting these meals the public works director also violates ORS 244.040(1).

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.

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## NEPOTISM



**Does Oregon Government Ethics law prevent two or more relatives from being employees of the same public body?**

**No.** Public officials who are relatives can be employed by the same public body employer at the same time, or serve at the same time on the same governing body of a public body.

ORS Chapter 244 does, however, does address the issue of “nepotism.” The definitions of “member of household” and “relative” found in ORS Chapters 244.020(11) and 244.020(16) apply here: See page 7.

### **What are the provisions that address nepotism?**

Public officials are restricted from participating in personnel actions taken by the public agency that would impact the *paid employment* of a relative or member of the public official’s household. If a public official has a relative or household member 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.

Personnel actions addressed by this statute include:

- Appointing, employing or promoting a relative or member of the public official’s household; or
- Discharging, firing or demoting a relative or member of the public official’s household.

ORS 244.177(1)(a) provides that a public official may not appoint, employ or promote (or discharge, fire or demote) a relative or member of their household from a position with the public body that the public official serves or over which the public official exercises jurisdiction or control, unless the public official complies with the conflict of interest requirements of ORS Chapter 244. Even if the public official discloses a conflict of interest, a public official who takes such a personnel action for a relative or member of their household could still be found in violation of the use of office provisions of ORS 244.040(1).

Separately, ORS 244.177(1)(b) directs that a public official may not participate in any interview, discussion or debate regarding such personnel actions involving a relative or member of the public official’s household.

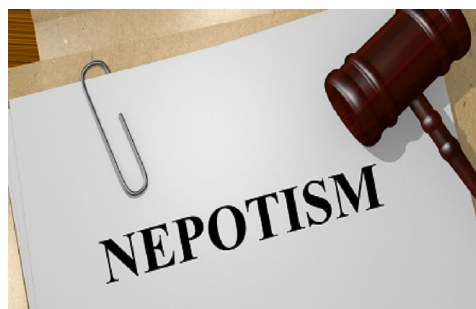
A public official who is assigned duties that include performing “ministerial acts” related

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.

**Exception:** Public officials may not, however, participate in appointing a relative or member of the household to an unpaid position on the governing body of the public body that the public official serves or over which the public official exercises jurisdiction or control. [ORS 244.177(3)(a) and (b)]

### **Can public officials supervise their relatives or members of their households?**

Nepotism also applies to supervision of relatives or members of the public official's household. ORS 244.179(1) prohibits public officials from directly supervising relatives or members of their household in paid positions. The public official may supervise an unpaid volunteer serving the public body, unless the volunteer position is as a member of a governing body of the public body. [ORS 244.179(3)]



Policy Exception: ORS 244.179(4) permits 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 relative or member of the public official's household in a paid position. OAR 199-005-0080 provides guidance to public bodies in developing such policies. Absent such a policy, a public official may not directly supervise a remunerated person who is a relative or member of the public official's household. [ORS 244.179(1)]

Direct supervision of a paid relative or household member includes official actions that would financially impact their relative or household member, such as:

- Conducting performance reviews
- Approving leave or vacation time
- Recommending or approving pay changes
- Assigning shifts
- Approving overtime
- Authorizing or approving reimbursements or travel expenses
- Authorizing worksite assignments or teleworking

**Exception:** Public officials who are elected members of the Oregon Legislative Assembly are not prohibited from participating in employment actions, including supervision of their relatives or household members on their personal staff [ORS 244.177(2)].

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## ANNUAL VERIFIED STATEMENT OF ECONOMIC INTEREST



There are approximately 5,500 Oregon public officials who must file an **Annual Verified Statement of Economic Interest (SEI)** with the Oregon Government Ethics Commission **by April 15** of each calendar year. The SEIs are now filed electronically through the Commission's Electronic Filing System (EFS).

**ORS 244.050 identifies the public officials who are required to file SEIs.** Please refer to that statute to see if your specific office or position requires you to file an SEI. 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, all elected officials, such as commissioners, assessors, surveyors, treasurers and sheriffs must file. Planning commission members and the county's principal administrator must also file.
- 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 by jurisdiction the public officials whose position requires them to file the SEI. Each jurisdiction (city, county, executive department, board or commission, etc.) has a person (jurisdictional contact) who acts as the Commission's point of contact for that jurisdiction. [OAR 199-020-0005(1)]

The **jurisdictional contact (JC)** for each jurisdiction has an important role as a liaison between the Commission and the SEI filers in their jurisdiction. It is through the JC that the Commission obtains the current name, address and email address of each public official who is required to file. When there is a change in who holds a position through resignation, appointment or election, the JC periodically updates their jurisdictional records and beginning in January of each year the JC is asked to update and verify the required filers in the EFS system. Any necessary changes or updates in EFS are due by February 15. [OAR 199-020-0005(2)]

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 by April 15. Those public officials who must file an SEI are well served if the JC for their jurisdiction ensures that the Commission has the correct name and email address of the public official. The JC should ensure that each SEI 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.

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)]

### SEI Filing

**NOTE: Only public officials who hold a position that is required to file, and who hold that position on April 15 of the year the SEI is due, must file an SEI.**

SEIs are filed online through the Commission's Electronic Filing System (EFS). Notifications and instructions for e-filing will be sent to SEI filers electronically via email addresses initially supplied in EFS by the JC and updated when necessary.

The following is a brief description of the information requested in the SEI electronic filing. The information needed to complete the filing pertains to the previous calendar year.

- Name, address and a brief description of each business in which a position as officer or director was held by the filer or household member. [ORS 244.060(1)]

Name, address and a brief description of each business through which the filer or household member did business. [ORS 244.060(2)]

Name, address, and brief **description** of the **sources** (*not amounts*) of income for the filer and household members that represent 10 percent or more of the annual household income. [ORS 244.060(3)]

**Example:** An SEI filer resides only with a spouse and their annual household income from the prior year is derived from the spouse's job at Walmart, the spouse's retirement, and the public official's salary as an employee at a public university. The respective "sources" would be: "Walmart", "Social Security" and "XX University"; respective "descriptions" would be "spouse's wages", "spouse's retirement" and "filer's salary".

- Ownership interests held by the filer or household members in real property, **except for their principal residence**, located within the geographic boundaries of the jurisdiction in which the filer holds the position or seeks to hold. [ORS 244.060(4)(a) and (b)] **NOTE: SEI filers who serve statewide and members of the Legislative**

**Assembly must report real property held within the entire state of Oregon. This applies to candidates for statewide office and the Legislative Assembly.**

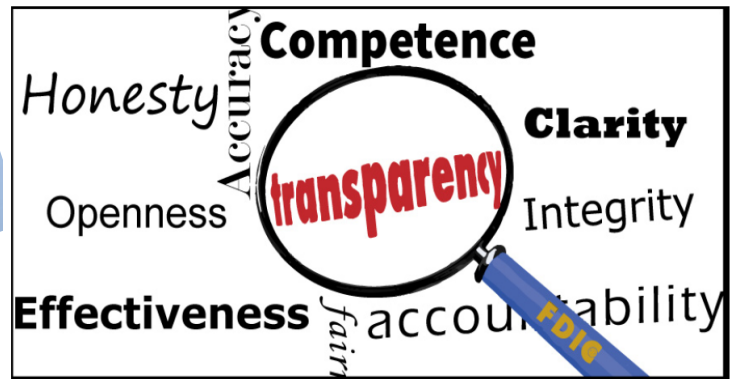
- Honoraria or other items allowed by ORS 244.042 that exceed \$15 in value given to the filer or household members. Include a description of the honoraria or item and the date and time of the event when the item was received. [ORS 244.060(7)] Remember that honorarium cannot exceed \$50. [ORS 244.042(3)(a)]
- Name of each lobbyist associated with any business with which the filer or household member is associated, unless the association is through stock held in publicly traded corporations. [ORS 244.090]
- If the public official received over \$50 from an entity when participating in a convention, fact-finding mission, trip, or other meeting as allowed by ORS 244.020(7)(b)(F), list the name and address of the entity that paid the expenses. Include the event date, aggregate expenses paid and the purpose for participation. [ORS 244.060(5) and ORS 244.100(1)] [Not required for candidates]
- If the public official received over \$50 from an entity when participating in a trade promotion, fact-finding mission, negotiations or economic development activities as allowed by ORS 244.020(7)(b)(H), 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)] [Not required for candidates]
  - **EXCEPTION:** 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)].

The following is required if the information requested relates to an individual or business that has been doing, is doing or could reasonably be expected to do business with the filer's governmental jurisdiction, has a legislative or administrative interest in the filer's governmental jurisdiction, or over which the filer exercises any authority:

- Name, address and description of each source of income (taxable or not) that exceeds \$1,000 for the filer or a household member. [ORS 244.060(8)]
- Name of each person the filer or a household member owes or has owed \$1,000 or more in the previous calendar year. 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)]
- Name, address and description of nature of each business in which filer or household member has beneficial interest over \$1,000 or investment held 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)]

- Name of each person from whom the filer received a fee of over \$1,000 for services, unless disclosure is prohibited by law or a professional code of ethics. [ORS 244.070(3)]

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## LEGAL EXPENSE TRUST FUND

The Oregon Government Ethics Commission can authorize a public official to establish a legal expense trust fund to be used to defray expenses incurred for a legal defense in any civil, criminal or other legal proceeding or investigation that relates to or arises from the course and scope of duties of the person as a public official. [ORS 244.205]

The provisions regarding the establishment of this fund are detailed in ORS 244.205 through ORS 244.221. 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)]
- The application to establish the fund must be submitted to the Commission for review and authorization. ORS 244.209 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)]
- Once authorized and established, any person may contribute to the fund. [ORS 244.213(1)]
- Contributions from a principal campaign committee are not allowed. [ORS 244.213(3)]
- Funds must be maintained in a single exclusive account [ORS 244.215].
- Quarterly reports of contributions and expenditures from the fund are required. [ORS 244.217]
- The fund may be terminated within six months after the legal proceeding for which the fund was established has been concluded. [ORS 244.219]
- When terminated, remaining funds must be returned to contributors on a pro rata basis. [ORS 244.221(1)]
- If the legal proceeding for which the fund was initiated resulted in any financial award or money judgment in favor of the public official, such moneys shall be distributed in the following order: outstanding legal expenses, to trust fund contributors on a pro rata basis, and to the public official or, if required by the trust agreement, to an organization exempt from taxation under section 501(c)(3) of the IRS Code. [ORS 244.221(2)]

**Once established, can the public official solicit funds in order to pay for the cost of a legal defense?**

**Yes.** An exception to the prohibited use of office provision explicitly allows a public official to solicit and accept funds for the official's legal expense trust fund. [ORS 244.040(2)(h)] Also, contributions to a legal expense trust fund are excluded from the definition of a "gift." [ORS 244.020(7)(b)(G)]

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# OREGON GOVERNMENT ETHICS COMMISSION

The Governor appoints all nine members of the Commission and each appointee is confirmed by the Senate. The commissioners are recommended as follows: [ORS 244.250]

- 2 Recommended by the Senate Democratic leadership
- 2 Recommended by the Senate Republican leadership
- 2 Recommended by the House Democratic leadership
- 2 Recommended by the House Republican leadership
- 1 Recommended by the Governor

The Commission members select a chairperson and vice chairperson annually. No more than three 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 is administered by an executive director, who is selected by the Commission. Legal counsel is provided by the Oregon Department of Justice. Commission staff provide administration, training, guidance, issue written opinions and advice, and conduct 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 free training to public officials and lobbyists on the laws and regulations under its jurisdiction. Training is provided through presentations at training events, web-based training, informational links on the website, topical handouts and guidance offered when inquiries are received. Contact the Commission to obtain free training through our website at <https://www.oregon.gov/ogec/training/Pages/default.aspx>



Advice:



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. All members of the Commission staff are cross-trained in the laws and regulations under the Commission’s jurisdictions. Guidance and information is

provided either informally, over the telephone at 503-378-5105, by e-mail at [ogec.mail@oregon.gov](mailto:ogec.mail@oregon.gov), or in the following written formal advice and opinions:

- **Staff Advice:** ORS 244.284 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

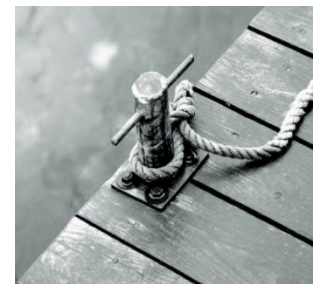
the request, along with the relevant statutes and administrative rules. The advice will discuss how the law applies to the questions asked or raised by the fact circumstances presented in the request.

- **Staff Advisory Opinion:** ORS 244.282 authorizes the executive director to issue a staff advisory opinion upon receipt of a written 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. The staff advisory opinion is issued in a letter that restates the proposed, hypothetical or actual facts presented in the written request and identifies the relevant statutes and administrative rules. The opinion will discuss how the law applies to the questions asked or raised by the fact circumstances presented in the request.
- **Commission Advisory Opinion:** ORS 244.280 authorizes the Commission to prepare and adopt by vote a Commission Advisory Opinion. Commission advisory opinions are reviewed by legal counsel before being adopted by the Commissioners. The opinion will identify the relevant statutes and administrative rules and will discuss how the law applies to the questions asked or raised by the fact circumstances provided in the request. 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.

Public officials who request advice or formal 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 be hypothetical or actual, but must be prospective, describing a proposed transaction or action, not one that has already occurred. If actual circumstances indicate that a violation may have already occurred, the staff cannot provide advice or an opinion because to do so could compromise the Commission’s objectivity if a complaint were to be filed. As described below, whether a public official relied on Commission advice or opinions is relevant to sanctions, in the event a complaint is filed against the public official.

**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”?**

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 or from being found in violation of laws within the jurisdiction of the Commission.



There is, however, specific and conditional protection for any person who has requested and relied in good faith 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.

The specific protections for the different forms of advice are as follows:

**Staff Advice:** If the Commission makes a finding that a public official violated provisions of law within its jurisdiction, and that public official acted in accordance with staff advice offered under the authority of ORS 244.284, the Commission may consider that information when sanctioning the violation. [ORS 244.284(2)] The Commission is not prevented from finding a violation, but the sanction imposed could be affected.

**Staff Advisory Opinion:** If the Commission determines that a public official violated provisions of law within its jurisdiction, and the public official acted in accordance with 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 acting in reliance on the staff advisory opinion. [ORS 244.282(3)] The Commission is not prevented from finding a violation in these circumstances, but any sanction is limited to issuing a written letter of reprimand, explanation, or education, unless it finds that the person omitted or misstated material facts in the request for a staff advisory opinion.

**Commission Advisory Opinion:** 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)] 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, and 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.

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.

Published advice that the Commission has issued may be found at <https://www.oregon.gov/oqec/public-records/Pages/Advice-and-Opinions.aspx>



#### 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 1,000 lobbyists who must file or renew their lobbying registrations every two years. These lobbyists, and their clients or employers, must also file lobbying activity expense reports every quarter. Additionally, there are approximately 5,500 public officials who must file the Annual Verified Statement of Economic Interest each April 15. The program manager and Commission staff are available by telephone or e-mail to provide assistance and answer questions about registration and filing requirements and procedures.

#### Complaint Review Procedures:

Investigations are initiated through a complaint procedure. [ORS 244.260 and ORS 171.778] 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 identify the public official believed to have violated the law, and must state the person's reason for believing that a violation may have occurred and include any evidence that supports that belief. The complaint must identify and be signed by the person filing it. Anonymous complaints are not accepted. The executive director reviews the complaint for jurisdiction and sufficiency. If additional information is needed, the complainant is asked to provide that information.

Complaints are filed online via the “Complaint Form” found on the Commission’s website homepage at <https://www.oregon.gov/ogec/public-records/Pages/Complaints.aspx>. All complaints must be signed, either through an e-signature if submitted through the online complaint system, or an inked signature if filed by paper. NOTE: The name of the complainant is furnished to the subject of a complaint.

If there is reason to believe that a violation of laws within the jurisdiction of the Commission may have been committed, a case will be initiated upon receipt of a complaint. The Commission may also initiate a case 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 case is initiated, 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 case is called the preliminary review phase. The time allowed for this phase is limited to 30 days (135 days for lobby cases) and ends when the executive director finalizes the preliminary review report.

A court may enjoin the Commission from continuing its inquiry during the preliminary review phase. Also, if a complaint is made against a candidate within 61 days of an election, the candidate may make a written request for a delay. [ORS 244.260(4)(a)]

During the preliminary review phase, the Commissioners and staff can make no public comment on the matter other than to acknowledge receipt of the complaint. It is maintained as a confidential matter until the Commission meets in executive session to consider whether to dismiss the complaint or find cause to conduct an investigation. Following the Commission’s consideration of the preliminary review report in executive session, the case file is subject to public disclosure.

If the Commission votes to dismiss the complaint, 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. The investigatory phase may be suspended during a pending criminal investigation if the Commission determines that its own investigation cannot be adequately completed until the criminal investigation is complete, or if a court enjoins the Commission from investigation.

During the investigatory phase, Commission investigators will solicit information and documents from the complainant, respondent, and other witnesses and sources that are identified. Before the end of the 180 day investigatory period, an investigation report will be prepared. The investigation report is reviewed by the Commission’s legal counsel before being finalized by the executive director. The investigation report is presented to the Commission in the public session portion of its meeting. The Commission will then

consider the results of the investigation and generally will vote to either dismiss the complaint or make a preliminary finding that a violation of law was committed by the respondent. The preliminary finding of a violation is based on what the Commission considers to be a preponderance of evidence sufficient 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, either during the investigative phase or after a preliminary finding of violation is made, the respondent is 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 set forth 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 education, reprimand, or explanation, to civil penalties and forfeitures. The maximum civil penalty that can be imposed for each violation of Oregon Government Ethics law is \$5,000, except for violations of ORS 244.045 (regulation of subsequent employment) where the maximum penalty is \$25,000 and for “willful” violations of ORS 244.040 (the “prohibited use of position or office” provision) where the maximum penalty is \$10,000. An additional civil penalty may be assessed equal to twice the financial gain that a respondent realized from a violation. Each violation of the executive session provisions in ORS 192.660 is subject to a maximum fine of \$1,000. Any monetary sanctions paid are deposited into the State of Oregon General Fund.

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# INDEX

## A

Actual conflict of interest .....	11, 13, 14
Administrative interest .....	26, 27, 28, 29, 34, 39
Advisory Opinion, Commission .....	43, 44
Advisory Opinion, Staff.....	43, 44
Annual Verified Statement of Economic Interest (SEI).....	10, 37, 45
Attorney General .....	2, 6, 12, 20, 23
Awards for professional achievement.....	21

## B

Beverage.....	31, 32
Boards, members of .....	5, 7, 13, 37
Business.....	8, 9, 14, 15, 17, 18, 22, 25, 28, 30, 38, 39
Business agreement.....	32
Business, associated.....	4, 8, 9, 10, 11, 12, 13, 14, 17, 22, 40

## C

Candidates .....	7, 8, 19, 20, 26, 27, 30, 31, 37, 39, 46
Campaign contributions.....	3, 30
Ceremonial.....	31
Class exception .....	14
Client, Representation of.....	18
Commission Advisory Opinion .....	43, 44
Commissions, members of.....	7, 13, 37, 42
Compensation package.....	8, 19
Complaint process.....	42, 43, 45, 46, 47
Confidential information.....	18, 22,23,24,46
Conflict of interest.....	4, 7, 8, 11, 12, 13, 14, 15, 16, 18, 35
Conflict of interest, exceptions .....	13, 14, 15
Contested case hearing .....	47
Continuing education.....	30

## D

Decision .....	4, 11, 12, 13, 15, 26, 27, 28, 29, 34
Department of Consumer and Business Services .....	23
Department of Justice.....	23
Department of State Police .....	24
Division of Financial Regulation .....	23

## E

Economic development.....	31, 39
Economic interest.....	3, 4, 10, 27, 28, 34, 37, 45, 48
Education, continuing .....	30
Educational trip .....	32

Employment, subsequent.....	23, 24, 47
Employment, of a relative.....	4, 7, 8, 9, 10, 11, 13, 17, 35, 36
Employers of lobbyists.....	2, 29
Entertainment.....	2, 31
Entertainment, ceremonial purposes.....	31
Entertainment, incidental.....	31
Exceptions, conflict of interest.....	13, 14, 15
Executive session.....	2, 45, 46, 47

**F**

Fact-finding mission.....	31, 39
Fee, appearance for.....	18
Financial detriment, personal.....	17, 19
Financial gain, use of office.....	4, 17, 18, 28, 34, 47
Financial transaction.....	32
First Partner.....	6, 20
Food and beverage.....	31, 32
Forfeiture.....	47

**G**

Gift.....	3, 4, 7, 21, 26, 27, 28, 29, 30, 33, 34, 41
Gifts allowed as exclusions.....	29, 30, 31, 32, 33, 34
Governor.....	6, 20, 29, 42

**H**

Honoraria or honorarium.....	20, 21, 29, 39
Household.....	3, 4, 7, 8, 9, 10, 17, 19, 22, 26, 30, 31, 33, 35, 36, 38, 39

**I**

Incidental.....	31
Investigation, Investigative Phase.....	41, 42, 45, 46, 47

**J**

Judges.....	12, 37
Jurisdictional Contact.....	37
Jurisdiction.....	2, 3, 35, 36, 37, 38, 39, 42, 43, 44, 45, 46

**L**

Legal Expense Trust Fund.....	21, 30, 41
Legislative or administrative interest.....	26, 27, 28, 29, 34, 39
Legislative Assembly.....	12, 25, 29, 36, 38, 39
Letter of advice.....	42
Letter of reprimand, education, or explanation.....	44, 47
Lobbyist.....	2, 24, 29, 39, 42, 45
Lodging.....	2, 15, 31

<b><u>M</u></b>	
Member of household.....	31, 35
Ministerial acts .....	35, 36

<b><u>N</u></b>	
Native American tribal gaming .....	24
Native American Tribe.....	24, 31
Negotiation .....	24, 31, 39, 47
Nepotism .....	7, 35, 36
Non-Disclosure Agreement .....	19
Non-profit .....	15, 30

<b><u>O</u></b>	
Official capacity .....	25, 31, 32, 36
Official duties.....	20
Officially designated .....	31
Officially sanctioned .....	31
Oregon Investment Council.....	24
Oregon Liquor Control Commission .....	23
Oregon State Lottery .....	24

<b><u>P</u></b>	
Penalty .....	38, 44, 47
Plaque .....	30
Potential conflict of interest .....	4, 11, 13, 16
Preliminary Review Phase .....	46
Private employment.....	22
Professional achievement, awards for.....	21
Public office.....	4, 19, 30, 34, 37
Public Official who invested public funds.....	24
Public Utility Commission .....	23
Publications .....	2, 30

<b><u>R</u></b>	
Reception .....	31
Reimbursement of expenses.....	19, 20, 36
Relative .....	3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 19, 22, 26, 30, 31, 33, 35, 36
Representative .....	18, 23, 25
Representing government agency .....	24, 31

<b><u>S</u></b>	
Safe Harbor .....	43
SEI, Annual Verified Statement of Economic Interest .....	10, 37, 38
Senator.....	25
Source.....	2, 10, 22, 26, 27, 28, 29, 30, 34, 38, 39, 46

Speak, Speaking .....	20, 31
Staff advice .....	42, 44
Staff Advisory Opinion .....	43, 44
State Police, Department of .....	24
Stipulated Final Order .....	47
Subscriptions.....	30
Subsequent employment.....	23, 24, 47

**I**

Trade promotion .....	31, 39
Training .....	5, 18, 42
Travel expenses, paid .....	31, 36
Treasurer, State .....	20, 23, 24, 32, 37
Treasurer, Chief Deputy .....	23
Trophy, unsolicited .....	30

**U**

Use of office or position.....	7, 13, 17, 21, 33, 34, 35, 41, 47
--------------------------------	-----------------------------------

**V**

Volunteers .....	3, 6, 7, 12, 17, 22, 30, 35, 36
Vote.....	2, 13, 14, 18, 26, 27, 28, 29, 30, 43, 46, 47

**W**

Website, Oregon Government Ethics Commission .....	2, 5, 13, 42, 46
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