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# **MERC Commission Meeting**

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October 6, 2010  
11:30 am

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Oregon Convention Center  
Room A107-08  
777 NE Martin Luther King Jr.  
Blvd.

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**MEETING:** Metropolitan Exposition Recreation Commission  
**DATE:** October 6, 2010  
**TIME:** 11:30 am - 12:30 pm  
**LOCATION:** Oregon Convention Center  
Room A 107-08

**AGENDA**

<b>CALL TO ORDER</b>	11:30 AM	
<b>1.0 QUORUM CONFIRMED</b>	11:30 AM	
<b>2.0 COMMISSIONER / EX OFFICIO COMMUNICATIONS</b>	11:35 AM	
<b>3.0 GENERAL MANAGER COMMUNICATIONS</b>	11:40 AM	Teri Dresler
<b>4.0 MERC VENUE BUSINESS REPORTS</b>	11:45 AM	Williams, Blosser, Bailey
<b>5.0 OPPORTUNITY FOR PUBLIC COMMENT ON NON-AGENDA ITEMS</b>		
<b>6.0 ETHICS LAW OVERVIEW</b>	11:55 AM	Alison Kean Campbell
<b>7.0 ACTION AGENDA</b>		
<b>7.1 Resolution 10-21</b> for the purpose of approving the selection of Emerick Construction Company as the lowest responsive and responsible bidder for the Portland Expo Center, "Hall D Lounge" project, approving the contract award and authorizing the General Manager to execute a contract with Emerick Construction Company	12:15 PM	Chris Bailey
<b>8.0 FIRST OPPORTUNITY TARGET AREA PROGRAM (FOTA) UPDATE</b>	12:20 PM	T. Dresler/S. Soden
<b>ADJOURNMENT</b>	12:30 PM	

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# **MERC Commission Meeting**

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October 6, 2010  
11:30 am

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4.0 – MERC Venues -  
Business Reports

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## PCPA MONTHLY ANALYSIS

August 2010

FACILITY NAME	DATE	PRESENTER	EVENT	LOAD-IN/ LOAD-OUT DARK DAYS	NO. OF PERF.	TOTAL ATTEND.	PAID ATTEND.	% SOLD	GROSS TICKET SALES	RENT	CHARGES & REIMBURSE.	USER'S FEE	SOUVEN.	GROSS FOOD & BEV.	GROSS REVENUE EARNED
KELLER	8/2	Broadway Across America	South Pacific	1	8	16,379	16,790	70%	\$811,415	\$31,111	\$38,868	\$58,765	\$3,253	\$32,626	\$164,623
ASCH	8/9	Leverage 3	Leverage Film Shoot	4	1	0	0		\$0	\$12,393	\$8,062	\$0	\$0	\$0	\$20,455
	8/21	Concert for Kids	Shriners Hospital	0	1	1,046	777	28%	\$60,068	\$3,340	\$15,915	\$3,437	\$1,525	\$2,920	\$27,137
	8/26	Live Nation	Margaret Cho	0	1	1,359	1,330	48%	\$55,293	\$4,159	\$4,652	\$2,170	\$308	\$5,332	\$16,621
A. HATFIELD HALL	8/4	PCPA Volunteers	Bridgetown Morris Men	0	1	203	0		\$0	\$0	\$0	\$0	\$0	\$0	\$0
	8/4	PCPA Music on Main Street	Shanghai Woolies	0	1	603	0		\$0	\$0	\$0	\$0	\$0	\$3,402	\$3,402
	8/7	Int'l Designers Society	Reception	0	1	1,046	0		\$0	\$1,695	\$2,835	\$0	\$0	\$60,663	\$65,193
	8/11	PCPA Volunteers	Brooklyn Street Jazz	0	1	224	0		\$0	\$0	\$0	\$0	\$0	\$0	\$0
	8/11	PCPA Music on Main Street	Freak Mountain Ramblers	0	1	511	0		\$0	\$0	\$0	\$0	\$0	\$4,646	\$4,646
	8/18	PCPA Volunteers	Mistral	0	1	103	0		\$0	\$0	\$0	\$0	\$0	\$0	\$0
	8/18	PCPA Music on Main Street	Dr. Theopolis	0	1	605	0		\$0	\$0	\$0	\$0	\$0	\$5,524	\$5,524
	8/25	PCPA Volunteers	Northwest Professional Dance	0	1	306	0		\$0	\$0	\$0	\$0	\$0	\$0	\$0
	8/25	PCPA Music on Main Street	Derby, with the Angry Orts	0	1	464	0		\$0	\$0	\$0	\$0	\$0	\$4,362	\$4,362
KELLER CAFÉ														\$10,941	\$10,941
ARTBAR														\$14,183	\$14,183
PCPA CATERING														\$3,838	\$3,838
		<b>TOTALS</b>		<b>5</b>	<b>20</b>	<b>22,849</b>	<b>18,897</b>	<b>49%</b>	<b>\$926,776</b>	<b>\$52,698</b>	<b>\$70,332</b>	<b>\$64,372</b>	<b>\$5,086</b>	<b>\$148,437</b>	<b>\$340,925</b>

## PCPA MONTHLY ANALYSIS

AUGUST 2009

FACILITY NAME	DATE	PRESENTER	EVENT	LOAD-IN/ LOAD-OUT DARK DAYS	NO. OF PERF.	TOTAL ATTEND.	PAID ATTEND.	% SOLD	GROSS TICKET SALES	RENT	CHARGES & REIMBURSE.	USER'S FEE	SOUVEN.	GROSS FOOD & BEV.	GROSS REVENUE EARNED
KELLER	8/25 to 30	Broadway Across America	Fiddler on the Roof	1	8	23,049	23,332	100%	\$1,106,171	\$37,500	\$32,314	\$75,829	\$7,973	\$43,070	\$196,686
ASCH	8/21	Mills Entertainment	Lisa Williams	0	1	706	695	25%	\$48,538	\$3,663	\$3,764	\$2,747	\$92	\$1,214	\$11,480
	8/28	PMC Entertainment	Diana Krall	0	1	2,158	2,151	77%	\$182,165	\$11,000	\$11,709	\$10,311	\$613	\$3,545	\$37,178
NEWMARK	8/14 to 15	NW Dance Project	NW Dance Project	0	2	818	781	44%	\$24,680	\$1,820	\$5,971	\$1,598	\$0	\$678	\$10,067
	8/20 to 21	Gertescca Touring Inc.	John Tesh	0	2	1,268	1,008	57%	\$32,238	\$2,620	\$6,050	\$2,262	\$731	\$2,940	\$14,603
	8/23	Outback Concerts	Demetri Martin	0	2	1,676	1,761	100%	\$61,635	\$2,350	\$3,424	\$3,522	\$0	\$1,265	\$10,561
WINNINGSTAD BRUNISH HALL														\$0	\$0
A. HATFIELD HALL														\$0	\$0
MISCELLANEOUS	8/5	PCPA	Stolen Sweets	0	1	703	0		\$0	\$0	\$0	\$0	\$0	\$3,132	\$3,132
	8/12	PCPA	Auto Pilot/Lovers & Old Believers	0	1	409	0		\$0	\$0	\$0	\$0	\$0	\$2,094	\$2,094
	8/19	PCPA	Bobby Torres	0	1	348	0		\$0	\$0	\$0	\$0	\$0	\$2,712	\$2,712
	8/26	PCPA	Minus Five	0	1	536	0		\$0	\$0	\$0	\$0	\$0	\$3,826	\$3,826
Keller Café ArtBar PCPA Catering														\$11,759	\$11,759
														\$8,345	\$8,345
														\$40	\$40
		<b>TOTALS</b>		<b>1</b>	<b>20</b>	<b>31,671</b>	<b>29,728</b>	<b>67%</b>	<b>\$1,455,427</b>	<b>\$58,953</b>	<b>\$63,232</b>	<b>\$96,269</b>	<b>\$9,409</b>	<b>\$84,620</b>	<b>\$312,483</b>

Monthly Event and Attendance Summary  
July 1, 2009 - June 30, 2010

MONTH	KELLER		ASCH		NEWMARK		WINNINGSTAD		BRUNISH		LOBBY/OTHER		TOTALS	
	Events	Attendance	Events	Attendance	Events	Attendance	Events	Attendance	Events	Attendance	Events	Attendance	Events	Attendance
July	0	0	2	4,169	13	1,806	4	547	0	0	11	2,282	30	8,804
August	8	23,049	2	2,864	8	3,897	2	102	2	101	11	2,697	33	32,710
September													0	0
October													0	0
November													0	0
December													0	0
January													0	0
February													0	0
March													0	0
April													0	0
May													0	0
June													0	0
Total to Date	8	23,049	4	7,033	21	5,703	6	649	2	101	22	4,979	63	41,514

Other includes Main Street

Monthly Event and Attendance Summary  
July 1, 2010 - June 30, 2011

Month	KELLER		ASCH		NEWMARK		WINNINGSTAD		BRUNISH		LOBBY/OTHER		TOTALS	
	Events	Attendance	Events	Attendance	Events	Attendance	Events	Attendance	Events	Attendance	Events	Attendance	Events	Attendance
July	15	37,362	5	7,079	2	970	7	896	0	0	21	3,732	50	50,039
August	8	16,379	3	2,570	22	10,042	0	0	2	79	8	3,019	43	32,089
September													0	0
October													0	0
November													0	0
December													0	0
January													0	0
February													0	0
March													0	0
April													0	0
May													0	0
June													0	0
Total to Date	23	53,741	8	9,649	24	11,012	7	896	2	79	29	6,751	93	82,128

Other includes Main Street

<b>Total to Date Change</b>														
Events	15	30,692	4	2,616	3	5,309	1	247	0	-22	7	1,772	30	40,614
Percentage	188%	133%	100%	37%	14%	93%	17%	38%	0%	-22%	32%	36%	48%	97.8%

OCC Event Analysis Monthly Revenue Report August 2010

Event Name	Start Date	Actual Attend	Event Rank	Event Type	Event Class	Event Indicator	Occupied Sq Feet	Event Days	In/Out Days	Travel Portland	OCC Actual Adver	OCC Actual Catering	OCC Actual Concess	OCC Actual Parking	OCC Actual Eq Rental	OCC Actual AV Equip	OCC Actual Utilities	OCC Actual Phone	OCC Actual Booth Carpet Cln	OCC Actual Box Office	OCC Actual Misc	OCC Actual Rent	OCC Actual Labor	OCC Actual Total
OCC AUG 2010 MISC NON-EVENT ACTIVITIES/BILLINGS	08/01/10	0	Accounting/Non-Event	Accounting/Non-event	Accounting/Non-Event		0	31	0		\$0	\$985	\$5,746	\$32,649	\$0	\$0	\$0	\$0	\$0	\$466	\$2,118	\$0	\$0	\$41,964
JEOL USA Inc.	08/02/10	12	New	Meeting/Seminar	Meeting	National	4,912	4	0		\$0	\$2,790	\$0	\$0	\$0	\$83	\$83	\$0	\$0	\$0	\$720	\$1,560	\$100	\$5,335
Gatan Meeting	08/02/10	12	New	Meeting/Seminar	Meeting	Local	1,622	2	0		\$0	\$0	\$0	\$0	\$15	\$463	\$92	\$0	\$0	\$0	\$0	\$520	\$0	\$1,090
FEI Company Meeting	08/02/10	9	New	Meeting/Seminar	Meeting		1,294	3	0		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$400	\$0	\$400
Carl Zeiss Meeting	08/02/10	0	New	Meeting/Seminar	Meeting	National	647	1	0		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$200	\$0	\$200
SEPG - Software Engineering Institute planning meeting/tasting (17037)	08/03/10	16	In-house	Meeting/Seminar	In-house		0	1	0		\$0	\$243	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$243
Oregon's 3 Shows in 1!	08/05/10	148	New	Trade Show	Tradeshow	State	62,424	1	1		\$0	\$162	\$0	\$0	\$0	\$468	\$1,776	\$0	\$0	\$0	\$275	\$3,250	\$437	\$6,368
Wiley-Blackwell Publishing: Scanning Editorial Board Meeting	08/05/10	15	New	Breakfast	Meeting	Local	811	1	0		\$0	\$373	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$260	\$0	\$633
Happy Retirement Bill Hayes!	08/05/10	20	In-house	Reception	In-house	Local	1,772	1	0		\$0	\$228	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$228
OCC Summer Tasting & Open House - "Mad Hatter's Tea Party"	08/06/10	123	Repeat	Lunch	In-house	Local	16,400	1	1		\$0	\$6,173	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$6,173
OfficeMax Hood To Coast, Integra Telecom Portland To Coast Walk, OHSU Sports Medicine High School Challenge Relay Packet Pickup	08/07/10	5,200	New	Sporting Event/Athletics	Miscellaneous/Other	National	271,766	12	1		\$0	\$0	\$0	\$0	\$0	\$925	\$608	\$99	\$0	\$0	\$550	\$11,038	\$336	\$13,556
SSQF Level 1 Instructor Training	08/07/10	0	New	Meeting/Seminar	Meeting		12,005	1	5		\$0	\$0	\$0	\$0	\$0	\$6	\$0	\$0	\$0	\$0	\$0	\$1,825	\$0	\$1,831
American Association of Naturopathic Physicians (AANP) 25th Annual Convention	08/11/10	580	Repeat	Annual Convention/Conference	Convention w/ Tradeshow	National	543,551	3	5	TRUE	\$0	\$188,074	\$3,168	\$36	\$930	\$19,513	\$15,073	\$3,491	\$1,293	\$0	\$2,794	\$26,950	\$3,864	\$265,186
AANP Pre-Con	08/09/10	0	In-house	Meeting/Seminar	In-house		0	1	0		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Cognitive Science Society Pre-Con -- In-House	08/10/10	0	In-house	Accounting/Non-event	In-house		0	1	0		\$0	\$20	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$67	\$0	\$0	\$87
OCC CPR Training	08/10/10	0	In-house	Training	In-house	Local	1,228	1	0		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Medicaid Management Information Systems: MMIS Conference 2010	08/15/10	963	New	Annual Convention/Conference	Convention w/ Tradeshow	National	338,431	5	1	TRUE	\$0	\$224,917	\$4,033	\$0	\$48	\$23,979	\$9,215	\$19,455	\$3,135	\$0	\$10,628	\$34,620	\$5,077	\$335,107
Noridian Administrative Services	08/16/10	0	New	Meeting/Seminar	Meeting	National	3,132	3	1		\$0	\$383	\$0	\$0	\$60	\$1,100	\$48	\$1,170	\$0	\$0	\$270	\$720	\$0	\$3,751
Molina HealthCare	08/16/10	100	New	Reception	Food & Beverage/Catering	National	5,182	4	1		\$0	\$14,671	\$0	\$0	\$0	\$1,085	\$389	\$445	\$0	\$0	\$1,101	\$1,350	\$1,410	\$20,451
ACS, A Xerox Company - Private Reception	08/16/10	100	New	Reception	Food & Beverage/Catering	National	0	1	0		\$0	\$5,657	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$222	\$0	\$100	\$5,979
FOX Systems	08/16/10	10	New	Meeting/Seminar	Meeting	National	6,693	3	0		\$0	\$35	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$15	\$1,710	\$0	\$1,760
Microsoft Staff Meeting	08/16/10	12	New	Meeting/Seminar	Meeting	National	2,211	3	0		\$0	\$131	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$315	\$570	\$0	\$1,016

OCC Event Analysis Monthly Revenue Report August 2010

Event Name	Start Date	Actual Attend	Event Rank	Event Type	Event Class	Event Indicator	Occupied Sq Feet	Event Days	In/Out Days	Travel Portland	OCC Actual Adver	OCC Actual Catering	OCC Actual Concess	OCC Actual Parking	OCC Actual Eq Rental	OCC Actual AV Equip	OCC Actual Utilities	OCC Actual Phone	OCC Actual Booth Carpet Cln	OCC Actual Box Office	OCC Actual Misc	OCC Actual Rent	OCC Actual Labor	OCC Actual Total	
CA Technologies	08/16/10	40	New	Meeting/Seminar	Meeting	National	3,030	3	0		\$0	\$153	\$0	\$0	\$0	\$1,545	\$0	\$0	\$0	\$0	\$207	\$720	\$90	\$2,715	
MMIS 2010 CNSI Demonstration Room	08/16/10	15	New	Exhibits	Meeting	National	4,131	3	0		\$0	\$257	\$0	\$0	\$0	\$250	\$184	\$0	\$0	\$0	\$1,278	\$1,140	\$0	\$3,109	
OCC CPR Training	08/16/10	0	In-house	Training	In-house	Local	811	1	0		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Infocrossing Healthcare Services	08/16/10	15	New	Meeting/Seminar	Meeting	National	5,622	3	0		\$0	\$1,757	\$0	\$0	\$0	\$38	\$79	\$0	\$0	\$0	\$705	\$1,410	\$200	\$4,189	
Ingenix/i3	08/16/10	4	New	Meeting/Seminar	Meeting	National	660	4	0		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$300	\$0	\$300	
Edifecs	08/16/10	10	New	Meeting/Seminar	Meeting	National	2,850	3	0		\$0	\$268	\$0	\$0	\$70	\$75	\$83	\$640	\$0	\$0	\$270	\$825	\$0	\$2,231	
SourcePulse: MITA Enthusiasts Reception	08/16/10	0	New	Reception	Food & Beverage/Catering		1,228	1	0		\$0	\$577	\$0	\$0	\$0	\$205	\$0	\$0	\$0	\$0	\$0	\$0	\$100	\$882	
Union Negotiations	08/16/10	15	In-house	Meeting/Seminar	In-house		2,033	1	0		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Farwest Show Pre Con -- In House	08/17/10	0	In-house	Accounting/Non-event	In-house		0	1	0		\$0	\$19	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$19	
Kaiser Permanente Dental Program All Staff Meeting	08/17/10	624	Repeat	Meeting/Seminar	Meeting	Local	25,500	1	0		\$0	\$39,589	\$0	\$1,872	\$0	\$6,997	\$92	\$0	\$0	\$0	\$3,855	\$0	\$1,815	\$54,220	
OCC CPR Training	08/18/10	9	In-house	Training	In-house	Local	1,228	1	0		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
OCC CPR Training	08/19/10	10	In-house	Training	In-house	Local	1,228	1	0		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Metro Service Awards Luncheon	08/19/10	25	In-house	Lunch	In-house	Local	1,772	1	0		\$0	\$281	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$281	
Best Practices Construction Management Team Meeting -- In House	08/20/10	0	In-house	Accounting/Non-event	In-house		0	1	0		\$0	\$86	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$10	\$0	\$0	\$96	
Farwest Show 2010	08/26/10	8,500	Repeat	Annual Convention/Conference	Convention w/ Tradeshow	National	1,905,837	3	5	TRUE	\$0	\$11,792	\$48,196	\$0	\$770	\$9,175	\$37,065	\$6,132	\$6,240	\$0	\$3,881	\$108,334	\$6,857	\$238,441	
OCC CPR Training	08/22/10	15	In-house	Training	In-house	Local	1,228	1	0		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
In-House: OCC to sell daily exhibitor passes for Farwest	08/23/10	0	Accounting/Non-Event	Accounting/Non-event	In-house	Local	0	3	0		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
World Wide Group - Second Look Meeting	08/25/10	600	Repeat	Meeting/Seminar	Meeting	Regional	8,900	1	0		\$0	\$160	\$0	\$0	\$0	\$390	\$83	\$0	\$0	\$0	\$165	\$2,500	\$0	\$3,298	
OCC CPR Training	08/25/10	5	In-house	Training	In-house	Local	1,228	1	0		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Decorators Meeting	08/27/10	26	In-house	Meeting/Seminar	In-house	Local	1,875	1	0		\$0	\$231	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$231	
Comcast SportsNet - Wanted Adventure Women Casting Call	08/29/10	0	New	Entertainment	Meeting	Local	5,719	1	1		\$0	\$911	\$0	\$0	\$150	\$26	\$798	\$0	\$0	\$0	\$0	\$1,350	\$125	\$3,360	
Travel Portland TAP Training Session	08/31/10	34	In-house	Meeting/Seminar	Meeting	Local	1,875	1	0		\$0	\$56	\$0	\$0	\$0	\$538	\$0	\$0	\$0	\$0	\$225	\$0	\$0	\$819	
<b>Total</b>		<b>17,267</b>					<b>3,250,836</b>																	<b>\$201,552</b>	<b>\$1,025,548</b>



OCC Event Analysis Monthly Revenue Report August 09 Historical Comparison

Event Name	Start Date	Actual Attend	Event Rank	Event Type	Event Class	Event Indicator	Occupied Sq Feet	Event Days	In/Out Days	Travel Portland	Actual Adver	Actual Catering	OCC Actual Concess	Actual Parking	OCC Actual Eq Rental	Actual AV Equip	OCC Actual Utilities	Actual Phone	Booth Carpet Cln	OCC Actual Box Office	OCC Actual Misc	Actual Rent	Actual Labor	Actual Total
OCC AUG 2009 MISC NON-EVENT	08/01/09	1	Accounting/Non-Event	Accounting/Non-event	Accounting/Non-Event		0	31	0		\$0	\$1,483	\$331	\$40,053	\$0	\$0	\$0	\$0	\$0	\$0	\$3,528	\$0	\$0	\$45,394
MERC/Aramark - Aramark Regional	08/02/09	17	In-house	Meeting/Seminar	In-house	Local	25,200	3	0		\$0	\$3,137	\$0	\$0	\$0	\$1,385	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$4,522
Shark Vacuum Obstacle Course (TV Shoot)	08/04/09	25	New	Film/Photostudio	Miscellaneous/Other	Local	60,000	1	1		\$0	\$849	\$0	\$0	\$0	\$0	\$427	\$0	\$0	\$0	\$275	\$3,000	\$0	\$4,551
Sock Summit	08/06/09	4,301	New	Trade Show	Tradeshow	Regional	733,784	4	1		\$0	\$20,258	\$45,489	\$50	\$0	\$120	\$10,313	\$4,710	\$0	\$0	\$1,325	\$36,908	\$5,463	\$124,636
Millie Lewis AMTC Auditions	08/08/09	230	Repeat	Meeting/Seminar	Meeting	Local	4,662	2	0		\$0	\$0	\$0	\$0	\$0	\$385	\$79	\$0	\$0	\$0	\$25	\$1,225	\$0	\$1,714
Farwest Precon	08/10/09	12	In-house	Miscellaneous	In-house	Local	0	1	0		\$0	\$61	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$61
OCC All Staff Retreat	08/12/09	116	In-house	Meeting/Seminar	In-house	Local	6,300	1	0		\$0	\$3,786	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$3,786
World Wide Dream Builders "Second Look	08/13/09	500	Repeat	Meeting/Seminar	Meeting	Regional	12,600	1	0		\$0	\$130	\$0	\$0	\$0	\$390	\$79	\$0	\$0	\$0	\$165	\$3,200	\$0	\$3,964
Intel Mobility Wireless Group Celebration	08/14/09	186	New	Dinner	Food & Beverage/Cafe	Local	13,100	1	0		\$0	\$13,280	\$88	\$558	\$0	\$31	\$129	\$0	\$0	\$0	\$0	\$0	\$200	\$14,286
INHOUSE ACHIEVE GREEN PLNG MTG	08/14/09	20	In-house	Meeting/Seminar	In-house	Local	0	1	0		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Farwest Show 2009	08/20/09	8,120	Repeat	Annual Convention/Congress	Convention w/	National	2,186,820	3	5	TRUE	\$0	\$40,798	\$63,732	\$0	\$0	\$9,318	\$38,690	\$5,691	\$7,208	\$0	\$2,730	\$128,133	\$7,435	\$303,735
HOLD for OCC to sell daily exhibitor passes	08/17/09	1	In-house	Accounting/Non-event	In-house	Local	0	3	0		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Fidelity National Financial	08/18/09	325	Repeat	Meeting/Seminar	Meeting	Local	23,374	2	1		\$0	\$20,293	\$0	\$1,480	\$0	\$4,100	\$0	\$0	\$0	\$0	\$0	\$3,993	\$0	\$29,865
INHOUSE MERC PR MTG	08/20/09	15	In-house	Meeting/Seminar	In-house	Local	0	1	0		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
INHSE JOB SHARE INTERVIEWS	08/20/09	3	In-house	Meeting/Seminar	In-house	Local	0	1	0		\$0	\$33	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$33
Amway National Spotlight Tour	08/21/09	1,000	Repeat	Meeting/Seminar	Meeting	National	130,338	2	1		\$0	\$3,420	\$0	\$0	\$605	\$21,714	\$1,591	\$8,170	\$0	\$0	\$689	\$18,735	\$6,562	\$61,485
Kellogg Garden Products	08/21/09	45	New	Breakfast	Food & Beverage/Cafe	Local	1,818	1	0		\$0	\$1,320	\$0	\$0	\$0	\$298	\$0	\$365	\$0	\$0	\$0	\$0	\$0	\$1,983
Millie Lewis AMTC Orientation & Workshop	08/22/09	20	Repeat	Meeting/Seminar	Meeting	Local	3,750	2	0		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$810	\$0	\$810
Oregon Convention Center Volunteers -	08/25/09	10	In-house	Meeting/Seminar	Meeting	Local	2,238	1	0		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Outside AV Suppliers Meeting with OCC	08/26/09	43	In-house	Meeting/Seminar	In-house	Local	1,772	1	0		\$0	\$558	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$558
Total		14,990					3,205,756														\$196,004		\$601,384	

**Expo Center Event Analysis**

**August 2010**

	Consumer	Trade	Misc.	Conv.	# of Events	Event Days	I/O Days	Use %	Attendance	Rental	Equipment	Concessions	Catering	Utilities	Parking	Total
Commission Meeting	4		1		1	1			20				500			500
Los Tigres Del Norte	20		1		1	1	1		2,825	7,350		15,340		161	7,801	30,652
Collectors West Gun and Knife Show	20-22	1			1	3	2		4,295	10,635	500	7,266		781	20,377	39,559
VW Product Launch	23-24		1		1	2	1		74	10,020			3,613		456	14,089
	<b>1</b>		<b>3</b>		<b>4</b>	<b>7</b>	<b>4</b>	<b>6%</b>	<b>7,214</b>	<b>28,005</b>	<b>500</b>	<b>22,606</b>	<b>4,113</b>	<b>942</b>	<b>28,634</b>	<b>84,800</b>

<b>FY 2010-11</b>																	
July		3		5		7	17	8	28%	16,513	118,034	1,737	91,719	9,347	7,473	85,089	313,399
<b>August</b>		<b>1</b>		<b>3</b>		<b>4</b>	<b>7</b>	<b>4</b>	<b>6%</b>	<b>7,214</b>	<b>28,005</b>	<b>500</b>	<b>22,606</b>	<b>4,113</b>	<b>942</b>	<b>28,634</b>	<b>84,800</b>
September																	0
October																	0
November																	0
December																	0
January																	0
February																	0
March																	0
April																	0
May																	0
June																	0
Total to Date		4		8		11	24	12	17%	23,727	146,039	2,237	114,325	13,460	8,415	113,723	398,199

<b>Month to Month Comparison</b>		<b>-3</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>-1</b>	<b>-3</b>	<b>-4</b>	<b>-6%</b>	<b>-2,965</b>	<b>405</b>	<b>-983</b>	<b>-10,255</b>	<b>4,113</b>	<b>-1,138</b>	<b>-5,033</b>	<b>-12,891</b>
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<b>Year to Date Comparison</b>		<b>-3</b>	<b>0</b>	<b>7</b>	<b>0</b>	<b>3</b>	<b>4</b>	<b>-3</b>	<b>-3%</b>	<b>-4,114</b>	<b>29,481</b>	<b>-621</b>	<b>-19,431</b>	<b>8,460</b>	<b>-3,354</b>	<b>-7,850</b>	<b>6,685</b>
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<b>FY 2009-10</b>																
July		3			3	10	7	27%	17,662	88,958	1,375	100,895	5,000	9,689	87,906	293,823
<b>August</b>		<b>4</b>		<b>1</b>	<b>5</b>	<b>10</b>	<b>8</b>	<b>12%</b>	<b>10,179</b>	<b>27,600</b>	<b>1,483</b>	<b>32,861</b>		<b>2,080</b>	<b>33,667</b>	<b>97,691</b>
September		10		4	14	31	27	41%	30,039	136,994	3,106	81,530	5,349	29,648	134,313	390,940
October		5		5	11	24	18	32%	26,720	92,242	2,836	110,235	11,489	28,257	110,805	355,864
November		8			8	26	22	58%	69,085	142,143	1,903	65,784	1,058	18,552	184,705	414,145
December		2			2	6	5	16%	33,814	77,410	1,625	127,317		10,655	137,326	354,333
January		5	1	6	12	24	18	55%	32,102	240,275	11,015	171,711	79,833	22,365	161,829	687,028
February		6		3	9	22	22	62%	81,063	203,208	2,730	408,157	17,190	37,639	305,241	974,165
March		9		1	10	25	18	53%	47,929	161,608	2,261	121,293	14,978	26,209	167,759	494,108
April		9	1	1	10	20	22	50%	48,991	164,798	1,306	239,180	23,188	10,345	72,402	511,219
May		5	1	3	9	17	14	18%	12,069	68,031	3,153	27,891	61,840	7,422	49,446	217,783
June		1		4	5	7	6	11%	10,963	26,126	4,300	30,157	3,436	2,020	34,509	100,548
Total to Date		67		28	98	222	187	36%	420,616	1,429,393	37,093	1,517,011	223,361	204,881	1,479,908	4,891,647

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# **MERC Commission Meeting**

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October 6, 2010  
11:30 am

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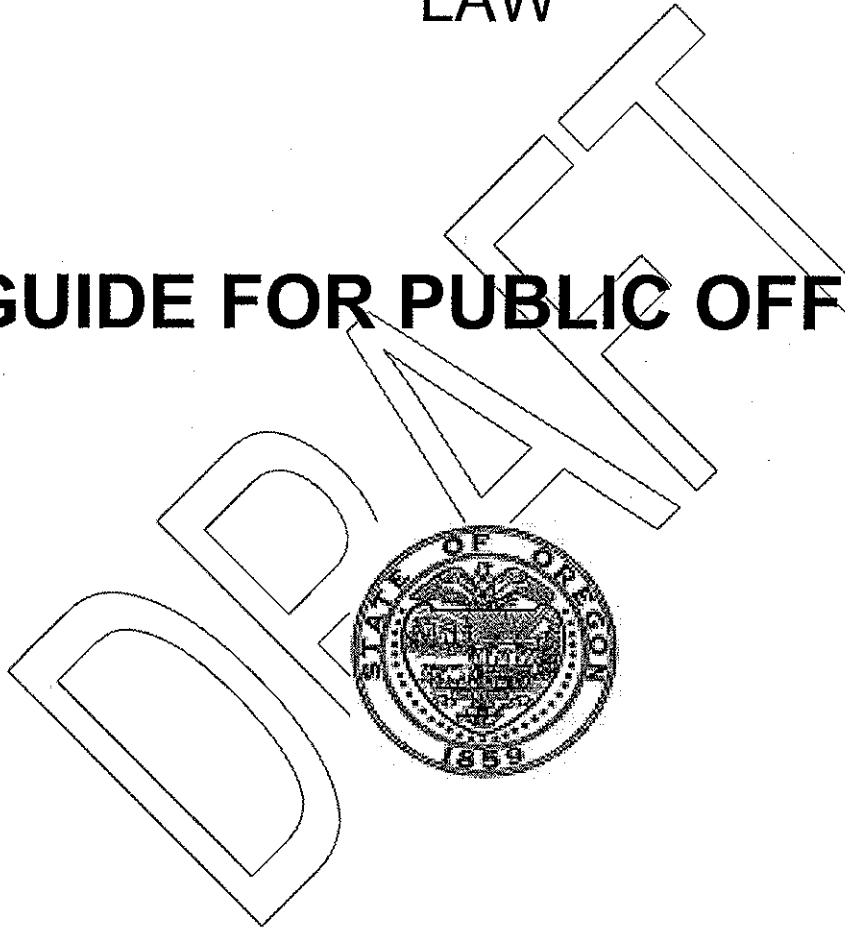
6.0 - Ethics Law Overview

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DRAFT  
presented to  
Ethics Comm'n  
9/8/10

# OREGON GOVERNMENT ETHICS LAW

## A GUIDE FOR PUBLIC OFFICIALS



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Rev. June 2010

## **DISCLAIMER**

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

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

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

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## INTRODUCTION

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

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

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

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

This guide will discuss how the provisions in ORS Chapter 244 apply to public officials and will summarize Commission procedures. It should be used in conjunction with applicable statutes and rules. It is intended to be a useful discussion, in understandable terms, of topics and issues that are often the focus of inquiries the Commission receives from public officials and citizens. This guide should not be used as a substitute for a review of the specific statutes and rules.

You will find links to ORS Chapter 244, ORS Chapter 171.725 through 171.992, relevant Oregon Administrative Rules (OAR), and other publications referenced in this guide on the Commission's website at [www.oregon.gov/ogec](http://www.oregon.gov/ogec). Questions or comments may be submitted to the Commission by email at [ogec.mail@state.or.us](mailto:ogec.mail@state.or.us), by Fax to 503-373-1456 or by telephone to 503-378-5105.

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## JURISDICTION

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

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

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

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

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

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## PUBLIC OFFICIAL: AN OVERVIEW

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

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

Since compliance is the personal responsibility of each public official, public officials need to familiarize themselves with the wide variety of resources that offer information or training on the provisions in Oregon Government Ethics law. First, there are the statutes in ORS Chapter 244 and the Oregon Administrative Rules (OAR) in Chapter 199. Second, the Commission website, [www.oregon.gov/ogec](http://www.oregon.gov/ogec), offers information, training and links to this guide, ORS Chapter 244 and OAR Chapter 199. Many government agencies offer training or the agency may request it from the Commission's trainers. There are a number of membership organizations, such as The League of Oregon Cities, Association of Oregon Counties, Oregon School Boards Association and Oregon Special Districts Association that provide training to public officials from their government members. It is imperative for government agencies or organizations that employ or represent public officials to ensure their public officials receive training in Oregon Government Ethics law. Those that fail to provide this training do a disservice to the public officials who they employ or who represent them.

One provision, which is the cornerstone of Oregon Government Ethics law, prohibits public officials from using or attempting to use their official positions or offices to obtain a financial benefit for themselves, relatives or businesses they are associated with through opportunities that would not otherwise be available but for the position or office held.

Public officials are allowed to receive salary and reimbursed expenses from their own government agencies. Under specific conditions public officials may also accept gifts. This guide will discuss those provisions.

Another provision that frequently applies to public officials when engaged in official actions of their official positions or offices is the requirement to disclose the nature of conflicts of interest. This guide will discuss the definition of a conflict of interest and describe the methods a public official must follow when met with a conflict of interest.

There is a requirement for some public officials who are elected to offices or hold other select positions to file an Annual Verified Statement of Economic Interest form. This guide

will discuss that filing requirement.

It is important for both public officials and members of the general public served by public officials to know that the provisions in Oregon Government Ethics law apply to the actions and conduct of individual public officials and not the actions of state and local governing bodies or government agencies. Each individual public official is personally responsible for complying with provisions in ORS Chapter 244. The statutes and rules discussed or illustrated in this guide do not and cannot address every set of circumstances a public official may encounter. When a public official is anticipating an official action or participation in an official event they must make a personal judgment as to the propriety of the action or the participation. The Commission staff is available to discuss the issues and offer guidance in making such judgments.

Oregon Government Ethics law addresses a wide range of actions, situations or events which a public official may encounter while serving a state or local government. This guide provides a discussion of the provisions that apply to circumstances that most public officials may encounter.

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## A PUBLIC OFFICIAL

### Are you a public official?

"Public official" is defined in ORS 244.020(14) as any person who, when an alleged violation of ORS Chapter 244 occurs, is serving the State of Oregon or any of its political subdivisions or any other public body as defined in ORS 174.109 as an elected official, appointed official, employee or agent, irrespective of whether the person is compensated for the services.

There are approximately 200,000 public officials in Oregon. You are a public official if you are:

- Elected or appointed to an office or position with a state, county or city government.
- Elected or appointed to an office or position with a special district.
- An employee of a state, county or city agency or special district.
- An unpaid volunteer for a state, county or city agency or special district.
- Anyone serving the State of Oregon or any of its political subdivisions, such as the State Accident Insurance Fund or the Oregon Health & Sciences University.

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

"As defined in ORS 244.020(14), a public official includes anyone serving the State of Oregon or any of its political subdivisions or any other public body in any of the listed capacities, including as an "agent." An "agent" means any individual performing governmental functions. Governmental functions are services provided on behalf of the government as distinguished from services provided to the government. This may include private contractors and volunteers, depending on the circumstances. This term shall be interpreted to be consistent with Attorney General Opinion No. 8214 (1990)."

### If I am a volunteer, does that make me a public official?

Look back at the definition of a public official. If the position for which you have volunteered serves the State of Oregon or any of its political subdivisions or any other public body, "irrespective of whether" you are "compensated" you are a public official. It is difficult to determine how many public officials are volunteers, but the number may approach 50,000. Volunteers may be elected, appointed or selected by the government agency or public body to hold a position or office or to provide services.

Among the public officials who volunteer, there are elected or appointed members of

governing bodies of state boards or commissions, city councils, planning commissions, fire districts, school districts and many others. There are also many who apply and are selected to perform duties for a government agency, board or commission without compensation, such as fire fighters, reserve law enforcement officers and parks or recreation staff members.

The Commission recognizes that there are many who volunteer to work without compensation for many state and local government agencies, boards, commissions and special districts. This guide provides criteria to identify volunteers who will be considered public officials when applying the provisions in ORS Chapter 244.

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

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

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

### **What does a public official need to know about relatives?**

Public officials need to know how Oregon Government Ethics law defines who a "relative" is. 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.

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

In everyday conversation the use of "relative" is applied to a broader spectrum of individuals with "family ties" than those defined as relatives in ORS 244.020(15). When a provision in ORS Chapter 244 refers to "relative" it means one of the following:

- **Spouse** of a public official or candidate
- **Children** of a public official or candidate
- **Children of the spouse** of a public official or candidate
- **Siblings** of a public official or candidate
- **Siblings of the spouse** of a public official or candidate
- **Spouse of siblings** of a public official or candidate
- **Spouse of siblings of the spouse** of a public official or candidate
- **Parents** of the of public official or candidate
- **Parents of the spouse** of a public official or candidate
- Person for whom the public official or candidate has a **legal support obligation**
- **Person benefiting from a public official** when benefits are from the public official's public employment
- **Person who provides benefits to a public official** or candidate when benefits are from the person's employment

#### **How do the laws apply to a public official who either owns or is employed by a private business?**

As with the definition of relative, public officials need to know how Oregon Government Ethics law defines what a "business" is or what a "business with which the person is associated is." The same sound judgment a public official exercises when participating in actions that could result in a financial benefit to the public official or a relative of the public official should be used when participating in actions that could result in a financial benefit to a business with which the public official or the relative is associated.

There are provisions in ORS Chapter 244 that restrict or prohibit a public official from using actions of the position held to benefit a business with which the public official or a relative is associated. The provisions may also require the public official to disclose the nature of a conflict of interest when a business may receive a financial benefit.

ORS 244.020(2) provides the definition of a "**business,**" paraphrased as follows:

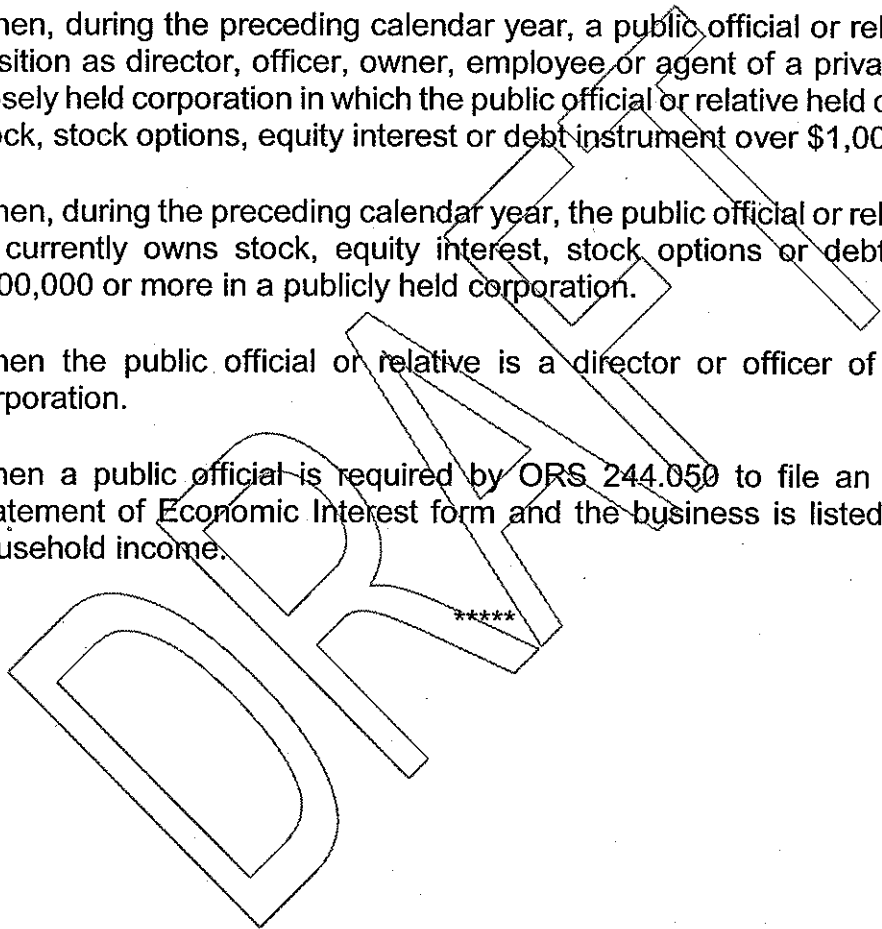
- A "business" is a legal entity that has been formed for the purpose of producing income.
- Excluded from this definition are income-producing organizations that are not-for-profit and tax exempt under section 501(c) of the Internal Revenue Code, if a public official or a relative of the public official holds membership or an unpaid position as a member of the board of directors.

- It is important to remember that state and local government or special district entities are not formed for the purpose of producing income, which means they are not businesses.

ORS 244.020(3) provides the definition of a **“business with which the person is associated,”** paraphrased as follows:

In brief, a public official or the relative of the public official is associated with a business in the following circumstances:

- When, during the preceding calendar year, a public official or relative has held a position as director, officer, owner, employee or agent of a private business or a closely held corporation in which the public official or relative held or currently holds stock, stock options, equity interest or debt instrument over \$1,000.
- When, during the preceding calendar year, the public official or relative has owned or currently owns stock, equity interest, stock options or debt instruments of \$100,000 or more in a publicly held corporation.
- When the public official or relative is a director or officer of a publicly held corporation.
- When a public official is required by ORS 244.050 to file an Annual Verified Statement of Economic Interest form and the business is listed as a source of household income.



## USE OF POSITION OR OFFICE

### **What are the provisions of law that prohibit a public official from using the position or office held for financial gain?**

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

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

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

ORS 244.040(6) also has a single provision to address circumstances created when public officials, who are members of the governing body of a public body, own or are associated with a specific type of business. The type of business is one that may occasionally send a representative of the business who appears before the governing body on behalf of a client for a fee. Public officials who are members of governing bodies and own or are employed by businesses, such as a law, engineering or architectural firm, may encounter circumstances in which this provision may apply. For example, a member of a city council who is an architect has a developer as a client of the architect's business. If the developer has a proposed subdivision to be approved by the city council, the architect may not appear before the city council on behalf of the client developer. Another person representing the client developer on behalf of the architect's business may appear, but not the councilor/architect.

There are a variety of actions that a public official may take or participate in that could constitute the prohibited use or attempted use of the public official position. The use of a position could be voting in a public meeting, placing a signature on a government agency's document, making a recommendation, making a purchase with government agency funds, conducting personal business on a government agency's time or with a government agency's resources [i.e. computers, vehicles, heavy equipment or office machines].

The following examples are offered to illustrate what may constitute prohibited use or attempted use:

- The mayor of a city signs a contract obligating the city to pay for janitorial services provided by a business owned by a relative of the mayor.
- A city treasurer signs a city check payable to an office supply business that is owned by a relative.
- A city billing clerk falsifies water use records so that the amount billed to the clerk's parents will be less than the actual amount due.
- A volunteer firefighter borrows the fire district's power washer to prepare the exterior of the volunteer's personal residence for painting.
- A county public works employee stores a motor home that is owned by the employee's parents in a county building used for storing heavy equipment.
- An employee of a state agency has a private business and uses the agency's computer to advance the business by promoting, corresponding and managing the activities of the private business.
- A school district superintendent approves and signs her own request for reimbursement of personal expenses the superintendent incurred when conducting official business.

**NOTE:** While these examples are offered to illustrate the use of a public official's position prohibited by ORS 244.040(1), the practices in the examples may also illustrate occasions where a public official may be met with a conflict of interest as defined in ORS 244.020(1) and (12). There are circumstances when a public official may comply with provisions in ORS 244.040(1) while violating conflict of interest provisions in ORS 244.120 or the reverse [ORS 244.040(7)]. Refer to the table of contents of this guide to locate a detailed discussion of conflicts of interest.

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

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

**Official Compensation:** Public officials may accept any financial benefit that is identified by the public body served by the public official as part of the "official compensation package" of the public official. If the public body identifies such benefits as salary, health insurance or various paid allowances in the employment agreement or contract of a public official, those financial benefits are part of the "official compensation package." [ORS 244.040(2)(a)]



OAR 199-005-0035(3) provides a definition of "official compensation package:"

An "official compensation package" means the wages and other benefits provided to the public official. To be part of the public official's "official compensation package", the wages and benefits must have been specifically approved by the public body in a formal manner, such as through a union contract, an employment contract, or other adopted personnel policies that apply generally to employees or other public officials. "Official compensation package" also includes the direct payment of a public official's expenses by the public body, in accordance with the public body's policies.

The Commission often receives complaints that allege that a public official is using or attempting to use the position held to gain financial benefits prohibited by ORS 244.040(1). Occasionally the financial benefits in these complaints are gained through the use of the public body's resources. Some examples are use of a vehicle for personal transportation, use of a computer for a personal private business enterprise or use of telecommunications equipment for personal business. Some respondents to complaints that involve the use of a public body's resources will defend their use as being consistent with an informal longstanding practice. The financial benefit to a public official, from the use of a public body's resources, from what may be understood as an informal and longstanding practice does not meet the definition of part of an "official compensation package." This is because the practice has not been specifically approved by the public body in a formal manner.

Reimbursement of Expenses: A public official may accept payments from the public official's public body as reimbursement for expenses the public official has personally paid while conducting the public body's business [ORS 244.040(2)(c)].

The Commission has provided a definition in OAR 199-005-0035(4):

"reimbursement of expenses" means the payment by a public body to a public official serving that public body, of expenses incurred in the conduct of official duties on behalf of the public body. Any such repayment must comply with any applicable laws and policies governing the eligibility of such repayment."

There are occasions when someone will refer to the payment of a public official's expenses by a person or entity other than the public official's public body as a reimbursement of expenses. That is not the reimbursement of expenses as used in ORS 244.040(2)(c) and defined in OAR 199-005-0035(4). If the payment of a public official's personal expenses does not meet this definition, it may be a financial benefit prohibited or restricted by other provisions in ORS Chapter 244.

There are occasions when public officials are reimbursed for travel expenses the public official has paid while conducting official duties on behalf of the public official's public body. Sometimes the public body will prearrange for a public official's travel and pay the expenses in advance. Such advance payments are also viewed by the Commission as the reimbursement of expenses allowed by ORS 244.040(2)(c).

Some public officials hold positions identified in ORS 244.050 as having a requirement to file the Annual Verified Statement of Economic Interest (SEI) form in April of each year. This requirement will be discussed elsewhere in this guide, but some who must submit the SEI forms believe that travel related expenses paid by the public official's public body must be listed in the SEI form. That is not true. Expenses paid by the public body to their own public officials need not be reported by the public official under ORS 244.060 [OAR 199-005-0035(4)].

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

A payment or something of economic value given to a public official in exchange for services provided by the public official is an honorarium when the setting of the economic value has been prevented by custom or propriety. The services provided by a public official may include but not be limited to speeches or other services provided in connection with an event. A public official may not accept honorarium if the value exceeds \$50 [ORS 244.042(3)(a)].

In brief, for a payment or something of economic value to be defined as an honorarium, several conditions must be met:

- The offer of a payment or something of economic value cannot be arranged or agreed to before the public official provides services.
- The services provided by the public official must precede the offer of payment or something of economic value.
- The payment or something of economic value must be delivered in return for and following the delivery of services.

Again, public officials must be sure, when they are offered a payment or something of economic value and it is referred to as an honorarium, that it does meet the definition in ORS 244.020(7). If it does not meet this definition, it may be a financial benefit prohibited or restricted by other provisions in ORS Chapter 244.

**Awards for Professional Achievement:** Public officials may accept an award, if the public official has not solicited the award, and the award is offered to recognize a professional achievement of the public official [ORS 244.040(2)(d)].

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

Awards for professional achievement are best illustrated by awards that denote national or international recognition of a public official's achievement. These awards may also be

offered by public or private organizations in the state that are meant to recognize a public official for an achievement. Professional achievements recognized may be identified as a single accomplishment or an accomplishment achieved during a period of time, such as a calendar year or a public official's career upon retirement. Public officials may be educators, lawyers, certified public accountants or may hold a doctorate in some field. These public officials may receive awards recognizing achievements in their fields and those awards would be considered by the Commission to be awards regulated by ORS 244.040(2)(d).

Contributions to Legal Expense Trust Fund: There are provisions in ORS 244.209 that allow public officials who have become a respondent to a complaint under Oregon Government Ethics law to establish a legal expense trust fund. ORS 244.040(2)(h) allows a public official who has established this trust fund to solicit, accept and be the trustee for contributions to the established fund.

Gifts: Public officials may accept gifts [ORS 244.040(2)(e),(f) and (g)]. There are circumstances in which there are no limits on the quantity or aggregate value of gifts that can be accepted by a public official. On the other hand, there are circumstances when the aggregate value of gifts accepted by a public official is restricted. There may also be reporting requirements that apply to public officials who accept gifts and to sources that provide the gifts. Refer to the table of contents of this guide to locate a detailed discussion of issues related to gifts.

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## NEPOTISM

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

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

However, ORS Chapter 244 does address the issue of "nepotism." Nepotism, as used in ORS Chapter 244, is based on the relative relationship alone. The definition of "relative" in ORS Chapter 244 [ORS 244.175(4)] takes on a broader meaning when applying ORS 244.175 through ORS 244.179:

- **Spouse** of a public official
- **Children** of the public official or spouse
- **Parents** of the public official or spouse
- **Stepparents** of the public official or spouse
- **Stepchildren** of the public official or spouse
- **Brothers** of the public official or spouse
- **Sisters** of the public official or spouse
- **Half-brothers** of the public official or spouse
- **Half-sisters** of the public official or spouse
- **Brothers-in-law** of the public official or spouse
- **Sisters-in-law** of the public official or spouse
- **Sons-in-law** of the public official or spouse
- **Daughters-in-law** of the public official or spouse
- **Mothers-in-law** of the public official or spouse
- **Fathers-in-law** of the public official or spouse
- **Aunts** of the public official or spouse
- **Uncles** of the public official or spouse
- **Nieces** of the public official or spouse
- **Nephews** of the public official or spouse

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

After complying with the conflict of interest provisions in ORS 244.120, public officials cannot participate in any personnel action taken by the public agency that would impact the employment of a relative or member of the public official's household. A public official may not participate in the following [ORS 244.177(1)]:

- Appointing, employing or promoting
- Discharging, firing or demoting
- Interviewing
- Discussing or debating the appointment, employment, promotion, discharge, firing or demotion

**NOTE:** Public officials who are elected members of the Oregon Legislative Assembly are not prohibited from participating in employment actions taken on positions held by relatives of the member's personal staff [ORS 244.177(2)].

A public official who is assigned duties that include performing "ministerial acts" related to any stage of a relative's employment is not prohibited from performing such acts. "Ministerial acts" would include mailing or filing forms or correspondence, taking and relaying messages, scheduling appointments or preparing documents and minutes for public meetings.

A public official may serve as a reference or provide a recommendation for a relative who has applied for a position of employment, promotion or is subject to any personnel action.

If a public official has a relative or a member of the public official's household who has applied to be or serves as an unpaid volunteer, the public official may participate in any personnel action that involves the relative or member of the household. This provision only applies to unpaid volunteers who provide services to the public body and does not apply to unpaid volunteers who serve or seek appointment to a governing body of a public body. [ORS 244.177(3)(a) and (b)]

Except for the following, a public official may not directly **supervise** a person who is a relative or member of the public official's household [ORS 244.179]:

- The public official is an elected member of the Oregon Legislative Assembly
- The public official is supervising an unpaid volunteer for the public body

Volunteers who are relatives or members of the household of a public official may be supervised by the public official. However, this would not apply if the volunteer position is as a member of the governing body of the public body. [ORS 244.179(3)]

ORS 244.179(4) allows a public body to adopt policies that specify when a public official, acting in an official capacity for the public body, may directly supervise a person who is a relative or member of the public official's household.

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## PRIVATE EMPLOYMENT OF PUBLIC OFFICIAL

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

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

NOTE: This guide does not address other statutes or agency policies that may limit private employment for public officials.

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

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

### GUIDELINES FOR OUTSIDE EMPLOYMENT OF PUBLIC OFFICIALS

1. Public officials are not to engage in private business interests or other employment activities on their governmental agency's time.
2. A governmental agency's supplies, facilities, equipment, employees, records or any other public resources are not to be used to engage in private business interests.
3. The position as a public official is not to be used to take official action that could have a financial impact on a private business with which you, a relative or member of your household are associated.
4. Confidential information gained as a public official is not to be used to obtain a financial benefit for the public official, a relative or member of the public official's household or a business with which any are associated.
5. When participating in an official capacity and met with a potential or actual conflict of interest related to a business, associated with the public official, relative or household member, the public official must disclose the nature of the conflict of interest using one of the following methods:
  - o Employees of governmental agencies must give written notice to their

- appointing authority.
- Elected or appointed public officials must publicly disclose once during each meeting convened by the governing body they serve.

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## EMPLOYMENT OF FORMER PUBLIC OFFICIALS

**How would Oregon Government Ethics law apply when a former public official is employed by a business that has a contract with the public body previously represented by the former public official?**

For two years after a public official ceases holding or being employed in a position as a public official, that public official may not have a direct beneficial financial interest in a public contract when one of the parties to the contract is the public official's former public body if the contract was authorized by [ORS 244.047(2) and (3)]:

- The former public official, who authorized the contract while acting in the capacity previously held as a public official.
- The former public official, as a member of a governing body [board, commission, council, bureau, committee], participated in official action to approve the contract.

"Authorized by" is defined in OAR 199-005-0035(6) as meaning that the former public official had a significant role in the contracting process to include participating on a selection committee, recommending approval, voting, giving final authorization or signing a contract. The definition in the rule is as follows:

"As used in ORS 244.047, a public contract is "authorized by" a public official if the public official performed a significant role in the selection of a contractor or the execution of the contract. A significant role can include recommending approval or signing of the contract, including serving on a selection committee or team, or having the final authorizing authority for the contract.

**What are the restrictions on employment after I resign, retire or leave my public official position?**

- ORS 244.040(1) prohibits public officials from using their official positions or offices to create a new employment opportunity; otherwise, most former public officials may enter the private work force with few restrictions.
- 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 Department of Consumer and Business Services  
Administrator of Division of Finance and Corporate Securities  
Administrator of Insurance Division  
Administrator of Oregon Liquor Control Commission  
Director of Oregon State Lottery



Public Utility Commissioner

1. One year restriction on gaining financial benefits from a private employer in the activity, occupation or industry that was regulated by the agency for which the public official was the Director, Administrator or Commissioner.
2. Two year restriction on lobbying or appearing as a representative before the agency on behalf of the activity, occupation or industry regulated by the agency for which the public official was the Director, Administrator or Commissioner.
3. Two year restriction on disclosing confidential information gained as the Director, Administrator or Commissioner for the agency.

ORS 244.045(2)

Oregon Department of Justice:

Deputy Attorney General  
Assistant Attorney General

1. Restricted for two years from lobbying or appearing before an agency that they represented while with the Department of Justice.

ORS 244.045(3)

Office of the Treasurer:

State Treasurer  
Chief Deputy State Treasurer

1. Restricted for one year from accepting financial benefit from a private entity with which there was negotiation or contract awarding \$25,000 in one year by the State Treasurer or Oregon Investment Council.
2. Restricted for one year from accepting financial benefit from a private entity with which there was investment of \$50,000 in one year by the State Treasurer or Oregon Investment Council.
3. Restricted for one year from being a lobbyist for an investment institution, manager or consultant or from appearing as a representative of an investment institution, manager or consultant before the office of State Treasurer or Oregon Investment Council.

ORS 244.045(4)

Public Officials who invested public funds:

1. Restricted for two years from being a lobbyist or appearing before the

agency, board or commission for which public funds were invested.

2. Restricted for two years from influencing or trying to influence the agency, board or commission.
3. Restricted for two years from disclosing confidential information gained through employment.

ORS 244.047

Public Officials who authorized a public contract:

1. A public official who authorized or had a significant role in a contract while acting in an official capacity may not have a direct, beneficial, financial interest in the public contract for two years after leaving the official position.
2. A member of a board, commission, council, bureau, committee or other governing body who has participated in the authorization of a public contract may not have a direct, beneficial, financial interest in the public contract for two years after leaving the official position.

OAR 199-005-0035(6) indicates that "authorized by" means that public official performed a significant role in the selection of a contractor or the execution of the contract. A significant role can include recommending approval of a contract, serving on a selection committee or team, having the final authorizing authority or signing a contract.

ORS 244.045(5)

Department of State Police

Supervising programs related to Native American tribal gaming  
Supervising programs related to Oregon State Lottery

1. Restricted for one year from accepting employment from or gaining financial benefit related to gaming from the Lottery or a Native American Tribe.
2. Restricted for one year from gaining financial benefit from a private employer who sells gaming equipment or services.
3. Restricted for one year from trying to influence the Department of State Police or from disclosing confidential information.

Exceptions include subsequent employment with the state police, appointment as an Oregon State Lottery Commissioner, Tribal Gaming Commissioner or lottery game retailer, or personal gaming activities.

ORS 244.045(6)  
Legislative Assembly

Representative  
Senator

After a legislator's membership in the Legislative Assembly ends, a legislator may not become a compensated lobbyist until adjournment of the next regularly scheduled session of the Legislative Assembly following the end of membership in the Legislative Assembly. *[Note: In 2008 and 2010, the first special sessions are considered to be regular sessions.]*

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## CONFLICTS OF INTEREST

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

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

**The difference between an actual conflict of interest and a potential conflict of interest is determined by the words "would" and "could."** A public official is met with an **actual** conflict of interest when the public official participates in action that **would** affect the financial interest of the official, the official's relative or a business with which the official or a relative of the official is associated. A public official is met with a **potential** conflict of interest when the public official participates in action that **could** affect the financial interest of the official, a relative of that official or a business with which the official or the relative of that official is associated. The following hypothetical circumstances are offered to illustrate the difference between actual and potential conflicts of interest:

A city councilor owns a building supply business from which the city public works director purchases building materials. City payments on invoices must be submitted to the city council and approved by a vote. The city councilor, who owns the building supply business, while participating in a meeting, would be met with an **actual conflict of interest** when the request to pay the invoice from the councilor's business is presented to the city council for official action.

A member of a fire district board of directors owns a sheetrock contracting business. The fire district is planning to remodel a fire station in the district. To reduce cost, the district will manage the project and solicit bids from contractors for specified work, such as the sheetrock that needs to be installed. The member on the board of directors, who is the contractor, while participating in a meeting of the board of directors, would be met with a **potential conflict of interest** when the members discuss or act on the invitation for bids on the sheetrock installation.

### **What if I am met with a conflict of interest?**

A public official must announce or disclose the nature of a conflict of interest. The way the disclosure is made depends on the position held. The following public officials must use the methods described below:

#### **Legislative Assembly:**

Members must announce the nature of the conflict of interest in a manner pursuant to the rules of the house in which they serve. The Oregon Attorney General has

determined that only the Legislative Assembly may investigate and sanction its members for violations of conflict of interest disclosure rules in ORS 244.120(1)(a). [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 in public bodies who are appointed, employed or volunteer must provide a written notice to the person who appointed or employed them. The notice must describe the nature of the conflict of interest with which they are met. [ORS 244.120(1)(c)]

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

Except for members of the Legislative Assembly, these public officials must publicly announce the nature of the conflict of interest before participating in any official action on the issue giving rise to the conflict of interest. [ORS 244.120(2)(a) and ORS 244.120(2)(b)]

- Potential Conflict of Interest: Following the public announcement, the public official may participate in official action on the issue that gave rise to the conflict of interest.
- Actual Conflict of Interest: Following the public announcement, the public official must refrain from further participation in official action on the issue that gave rise to the conflict of interest. [ORS 244.120(2)(b)(A)]

If a public official is met with an actual conflict of interest and the public official's vote is necessary to meet the minimum number of votes required for official action, the public official may vote. The public official must make the required announcement and refrain from any discussion, but may participate in the vote required for official action by the governing body. [ORS 244.120(2)(b)(B)] These circumstances do not often occur. This provision does not apply in situations where there are insufficient votes because of a member's absence when the governing body is convened. Rather, it applies in circumstances when all members of the governing body are present and the number of members who must refrain due to actual conflicts of interest make it impossible for the governing body to take official action.

**The following circumstances may exempt a public official from the requirement to make a public announcement or give a written notice describing the nature of a conflict of interest:**

- If the conflict of interest arises from a membership or interest held in a particular business, industry, occupation or other class and that membership is a prerequisite for holding the public official position. [ORS 244.020(12)(a)]

- If the financial impact of the official action would impact the public official, relative or business of the public official to the same degree as other members of an identifiable group or "class". The Commission has the authority to identify a group or class and determine the minimum size of that "class." [ORS 244.020(12)(b) and ORS 244.290(3)(a)]
- If the conflict of interest arises from an unpaid position as officer or membership in a nonprofit corporation that is tax-exempt under 501(c) of the Internal Revenue Code. [ORS 244.020(12)(c)]

**How is the public announcement of the nature of a conflict of interest recorded?**

- The public body that is served by the public official will record the disclosure of the nature of the conflict of interest in the official records (minutes, audio/video recording) of the public body. [ORS 244.130(1)]

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

- The announcement needs to be made on each occasion when the public official is met with the conflict of interest. Each time a public official is met with a conflict of interest the nature must be disclosed. For example, an elected member of the city council would have to make the public announcement one time when met with the conflict of interest, but only one time in each meeting of the city council. If the matter giving rise to the conflict of interest is raised at another meeting, the disclosure must be made again at that meeting. Another example would involve an employee in a city planning department who would have to give a separate written notice before each occasion they encounter a matter that gives rise to a conflict of interest. [ORS 244.120(3)]

**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)]. However, the public official faces the potential of personal liability for the violation.

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## LEGAL EXPENSE TRUST FUND

**If a public official is the respondent to a complaint, can the public official solicit funds in order to pay for the cost of mounting a legal defense?**

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

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].
- 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 must be terminated within six months after the legal proceeding for which the fund was established has been concluded [ORS 244.219].
- When terminated, funds must be used to pay legal expenses, returned to contributors or donated to an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code [ORS 244.221].

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## GIFTS

When Oregon Government Ethics law uses the word "gift" it has the meaning in ORS 244.020(6)(a):

"Gift" means something of economic value given to a public official, a candidate or a relative or member of the household of the public official or candidate:

(A) Without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others who are not public officials or candidates or the relatives or members of the household of public officials or candidates on the same terms and conditions; or

(B) For valuable consideration less than that required from others who are not public officials or candidates."

In other words, a "gift" is something of economic value that is offered to,

- A public official or candidate or to relatives or members of the household of a public official or candidate,
- Without cost or at a discount or as forgiven debt and,
- The same offer is not made or available to the general public who are not public officials or candidates.

**[NOTE:** In the following discussion, references to candidates are omitted to simplify the discussion. In most of the discussion, if you are a candidate, read the references to public official to mean "public official or candidate, if elected."]

Oregon Government Ethics law establishes a framework of conditions for public officials to use when they, their relatives or members of their households are offered gifts. If offered a gift, the public official must analyze the offer and decide if "something of value" can be accepted with or without restrictions.

If there are restrictions on the value of gifts accepted by a public official, it is because the source of the gift has a legislative or administrative interest in decisions or votes the public official makes when acting in the capacity of a public official.

Legislative or administrative interest is defined in ORS 244.020(9) and is used, primarily, when applying the law to gifts accepted by public officials. Whether there is a legislative or administrative interest is pivotal to any decision a public official makes on accepting gifts. It will mean the difference between being allowed to accept gifts without limits, accepting gifts with a limit of \$50 on the aggregate value, or accepting gifts under specific conditions and within specific parameters. As will be apparent in the following discussion, the burden of



any decision on accepting a gift rests solely with the individual public official.

### **What does a public official need to know about a “Legislative or Administrative Interest”?**

Beginning in 2010, the change to the definition of what a legislative or administrative interest is represents one of the most significant changes made in Oregon Government Ethics law during the 2009 session of the Oregon Legislative Assembly.

The change is significant because knowing if the source of a gift has a legislative or administrative interest will help determine whether the gift offered can be accepted without limits or with restrictions. Before this change, a public official only had to know if a gift was offered from a source with a legislative or administrative interest in official actions of the public official's governmental agency. Now the focus is on the votes or decisions of each individual public official. The change places greater responsibility on the individual public official to decide if a gift can be accepted without limits or with restrictions imposed by ORS Chapter 244. Not every public official makes decisions or casts votes, as those actions are used in defining a legislative or administrative interest. This means that when gifts are offered to two or more public officials, in the same setting, one public official may be allowed to accept the offer without limits and another public official may be able to accept the offer, but it would be limited as to value or restricted by conditions that must be met when accepting.

The definition of a legislative or administrative interest as set forth in ORS 244.020(9) as follows:

“Legislative or administrative interest’ means an economic interest, distinct from that of the general public, in:

- (a) Any matter subject to the decision or vote of the public official acting in the public official's capacity as a public official; or
- (b) Any matter that would be subject to the decision or vote of the candidate who, if elected, would be acting in the capacity of a public official.”

In the context of gifts accepted by a public official, the public official must determine if the source of the offered gift has a legislative or administrative interest in the decisions or votes of the public official. When analyzing a set of circumstances and applying “legislative or administrative interest”, there are several factors to consider:

Source: The Commission adopted a rule that identifies the source of a gift as the person or entity that makes the ultimate and final payment of the gift's expense. OAR 199-005-0030 places two burdens on a public official who accepts gifts. The public official must know the identity of the source and, if applicable, avoid exceeding the limit on the aggregate value of gifts accepted from that source. [OAR 199-005-0030(2)]

Distinct from that of the general public: With regard to gifts, this phrase refers to a distinct economic interest held by the source of a gift. That economic interest is in the financial gain or loss that could result from any votes cast or decisions made by a public official. If the source of a gift would realize a financial gain or detriment from a vote or decision of a public official, that source has an economic interest in that public official. That economic interest is "distinct from that of the general public", if the potential financial gain or detriment is distinct from the financial impact that would be realized by members of the general public from the votes or decisions of that same public official.

There are decisions or votes that have an economic impact on single individuals or individuals from specific businesses or groups that are distinct from the economic impact on members of the general public. On the other hand, there are many votes or decisions made by public officials that have the same general economic impact on individuals, businesses, organizations and members of the general public. Some examples of decisions or votes that would have an economic impact on the general public would be those that change water usage rates, fees for licenses or permits or fines for parking violations.

To illustrate, private contractors have an economic interest in any public official who has the authority to decide or vote to award them contracts. The economic interest of these contractors is distinct from the economic interest held by members of the general public in those decisions or votes.

To further illustrate, real estate developers have an economic interest in any public official who has the authority to decide or vote to approve their land use applications or building permits. The economic interest of these developers is distinct from the economic interest held by members of the general public in those decisions or votes.

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

Decision: The Commission adopted OAR 199-005-0003 and defines "decision" in OAR 199-005-0003(2). A public official makes a decision when the public official exercises the authority given to the public official to commit the public body to a particular course of action. Making a recommendation or giving advice in an advisory capacity does not constitute a decision.

Again, the change to the definition of a legislative or administrative interest places the focus on the decision or vote of each individual public official. That means that any decision to accept or reject the offer of a gift must be made individually by each public official. It also means that there will be some public officials who may accept unlimited gifts

from a source and other public officials within the same public body that would have restrictions on gifts from that same source. This is because not all public officials in the same public body have the same authority, responsibilities or duties. Some may vote and make decisions, others may do one but not the other and many will not vote or make decisions, as "decision" is used in legislative or administrative interest.

There are public officials who, because they hold positions specified in ORS 244.050, must file the Annual Verified Statement of Economic Interest (SEI) form with the Commission on April 15 of each year. Some information listed in that form is required when certain financial interests, assets or liabilities, are related to a source with a legislative or administrative interest in the votes or decisions of the public official submitting the form. Refer to the table of contents to find the discussion of the SEI form in this guide.

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

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

While gifts from a source with a legislative or administrative interest in the decisions or votes of a public official have a \$50 limit, there are some gifts that are excluded from the definition of a "gift." If the offer of a gift is excluded from the definition of a "gift," the offer may be accepted by a public official. The value of gifts that are allowed as exclusions does not have to be included when calculating the aggregate value of gifts received from that source in one calendar year. [ORS 244.020(6)(b)]

Sources who offer gifts or other financial benefits to public officials must also be aware of the provisions in ORS Chapter 244. While the specific gift of paid expenses may be allowed by ORS 244.020(6)(b)(F), 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 lobbyist and others who provide gifts or financial benefits to public officials should also familiarize themselves with the provisions in ORS 171.725 through ORS 171.992 and Divisions 5 and 10 of Chapter 199 in the Oregon Administrative Rules. The Commission has published a "Guide to Lobbying in Oregon" that provides a summary of these regulations and rules.

As previously mentioned, there are gifts that are allowed because they are excluded from the definition of a "gift" when offered under specific conditions or when prerequisites are met. Although some gifts are allowed, it should be remembered that a source may have a notice requirement or there may be reporting requirements for the public official or the source. If you are a public official accepting gifts or a source offering gifts, it is important

you become familiar with the requirements that may apply to you.

ORS 244.020(6)(b) provides a description of the **GIFTS THAT ARE ALLOWED** as exclusions to the definition of a "gift":

**[NOTE:** Not all of these exclusions apply to gifts offered to candidates.]

- Campaign contributions as defined in ORS 260.005. [ORS 244.020(6)(b)(A)]
- Contributions to a legal expense trust fund established under ORS 244.209. [ORS 244.020(6)(b)(G)]
- Gifts from relatives or members of the household of public officials or candidates. [ORS 244.020(6)(b)(B)]
- Anything of economic value received by a public official or candidate, their relatives or members of their household when: [ORS 244.020(6)(b)(O)]

The receiving is part of the usual and customary practice of the person's business, employment, or volunteer position with any legal non-profit or for-profit entity. [ORS 244.020(6)(b)(O)(i)]

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

- Unsolicited gifts with a resale value of less than \$25 and in the form of items similar to a token, plaque, trophy and desk or wall mementos. [ORS 244.020(6)(b)(C) and see resale value discussed in OAR199-005-0010]
- Publications, subscriptions or other informational material related to the public official's duties. [ORS 244.020(6)(b)(D)]
- Waivers or discounts for registration fees or materials related to continuing education or to satisfy a professional licensing requirement for a public official or candidate. [ORS 244.020(6)(b)(J)]
- Entertainment for a public official or candidate and their relatives or members of their households when the entertainment is incidental to the main purpose of the event. [ORS 244.020(6)(b)(M) and see OAR 199-005-0001(3) and OAR199-005-0025(1) for meaning of "incidental"]
- Entertainment for a public official, a relative of the public official or a member of the public official's household when the public official is acting in an official capacity and representing a governing agency for a ceremonial purpose. [ORS 244.020(6)(b)(N) and see "ceremonial" defined in OAR199-005-0025(2)]

- Cost of admission or food and beverage consumed by the public official, a member of the public official's household or staff when they are accompanying the public official, who is representing government, state, local or special district, at a reception, meal or meeting held by an organization. *[ORS 244.020(6)(b)(E) and see this exception discussed in OAR199-005-0015]*
- Food or beverage consumed by a public official or candidate at a reception where the food and beverage is an incidental part of the reception and there was no admission charged. *[ORS 244.020(6)(b)(L) and OAR199-005-0025(1) also see OAR 199-005-0001(3) and (8)]*
- When public officials travel together inside the state to an event bearing a relationship to the office held and the public official appears in an official capacity, a public official may accept the travel related expenses paid by the accompanying public official. *[ORS 244.020(6)(b)(K)]*
- Payment of reasonable expenses if a public official is scheduled to speak, make a presentation, participate on a panel or represent a government agency at a convention, conference, fact-finding trip or other meeting. The paid expenses for this exception can only be accepted from another government agency, Native American Tribe, an organization to which a public body pays membership dues or not-for-profit organizations that are tax exempt under 501(c)(3). *[ORS 244.020(6)(b)(F) and see definition of terms for this exception in OAR 199-005-0020]*
- Payment of reasonable food, lodging or travel expenses for a public official, a relative of the public official or a member of the public official's household or staff may be accepted when the public official is representing the government agency or special district at one of the following: *[ORS 244.020(6)(b)(H) and see definition of terms for this exception in OAR 199-005-0020]*
  - Officially sanctioned trade promotion or fact-finding mission; *[ORS 244.020(6)(b)(H)(i)]*
  - Officially designated negotiation or economic development activity when receipt has been approved in advance. *[ORS 244.020(6)(b)(H)(ii)]*

**[NOTE:** How and who may officially sanction and officially designate these events is addressed in OAR 199-005-0020(2)(b).]

- Payment of reasonable expenses paid to a public school employee for accompanying students on an educational trip. *[ORS 244.020(6)(b)(P)]*
- Food and beverage when acting in an official capacity in the following circumstances: *[ORS 244.020(6)(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(6)(b)(l)(i)]
- When the office of the Treasurer is engaged in business related to proposed investment or borrowing; [ORS 244.020(6)(b)(l)(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(6)(b)(l)(iii)]

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

Since ORS 244.040 was amended in 2007, the acceptance of gifts that comply with ORS 244.020(6) and ORS 244.025 is excluded from the prohibition on public officials' use or attempted use of an official position to gain financial benefits. If a public official or relative accepts a lawful gift, or a lawful financial benefit that qualifies as an exception to the definition of a gift, ORS 244.040(1) does **not** prohibit the acceptance.

The discussion below is intended to assist public officials in understanding this distinction. There are more focused discussions of gifts starting on page 26 and the use of position or office starting on page 9. It should be understood this section may paraphrase information discussed more comprehensively in those areas of this guide. Also, the application of the gift provisions to candidates is not part of this discussion because, unless the candidate also qualifies as a public official on another basis, candidates are not public officials; therefore, the use of an official position prohibited by ORS 244.040(1) would not apply to a candidate who is not also a public official.

Oregon Government Ethics law does not prohibit public officials from accepting gifts [ORS 244.040(2)(e), (f) and (g)], but it does place on each individual public official the direct and personal responsibility to understand there are circumstances when the aggregate value of gifts may be restricted. Public officials are also prohibited from using or attempting to use a position held by the public official to obtain a prohibited financial benefit. These provisions of Oregon Government Ethics law often converge and require public officials to analyze and determine whether the opportunity to obtain financial benefits represents the use of an official position prohibited by ORS 244.040(1) or a gift addressed with other provisions in ORS Chapter 244 [ORS 244.020(6), ORS 244.025 or ORS 244.040(2)(e),(f) and (g)].

### Is it a gift?

Public officials must understand the operative definition of a "gift" when deciding whether a gift may be accepted by a public official or candidate. The following is a paraphrase of the definition taken from ORS 244.020(6)(a):

**Gift: "Something of economic value" given to a public official, a relative of the public official or a member of the public official's household for which the recipient either makes no payment or makes payment at a discounted price. The opportunity for the gift is one that is **not available to members of the general public**, who are not public officials, **under the same terms and conditions** as those that apply to the gift offered to the public official, the relative or a member of the household.**

**If something of economic value is received by a public official from the government agency employer or the public body represented by the public official, that financial**

**benefit is not considered a gift**, it is a financial benefit addressed by ORS 244.040 and it is either allowed or prohibited.

Sources of gifts are private individuals, businesses, organizations or government agencies, but not the agency represented by or employing the public official. Sources may also be co-workers or representatives of the same public body who have purchased a gift with their **personal** resources.

Gifts may be accepted by a public official, if the source does not have a legislative or administrative interest in the votes or decisions of the public official. Specific gifts may be accepted, if the conditions of the offer exclude the gift from being defined as a gift [ORS 244.020(6)(b)(A) through (P)]. Gifts that are not excluded from the definition may be accepted from a source as long as the aggregate value of gifts from that source does not exceed \$50 in a calendar year.

### **Is it a prohibited use of position?**

Public officials also must understand the primary focus of ORS 244.040(1) is on the **use or attempted use of the position** held by the public official rather than on the acceptance of a gift offered to a public official. Gifts are not acquired by a public official through the public official's **use** of a public body's resources or the position held.

Financial benefits prohibited by ORS 244.040(1) may be obtained through an opportunity only available to a public official through the **use or attempted use of the position** or office held. The prohibited financial gain may be realized through the public official's access to and use of the public body's resources or opportunities available because of the position held. The financial benefit may take several forms. It may be the avoidance of a personal expense; acquiring something of economic value or extra income from private employment or creating a new employment opportunity.

**In general, 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 be addressed as a gift in the analysis and application of the law. The following are some examples to illustrate the Commission's approach:**

**[NOTE: In the following examples, assume the sources of the financial benefits have a legislative or administrative interest in the decisions or votes of the public officials. That is important to remember because if there were no legislative or administrative interest the public officials may be allowed to accept the offers without restrictions [ORS 244.040(2)(f)].]**

- A salesperson from a software company offers to take the county's information technology manager out to lunch. The meal would be a gift and, if accepted, the value would be included in the aggregate value of gifts, which cannot exceed \$50



from a single source in one calendar year. [ORS 244.025(1)]

- A city manager attends a conference on salaried time and is reimbursed for the conference expenses by the city. When the city manager checks out of the hotel, she is offered a coupon for two nights of free lodging at any hotel in the nationwide chain. If accepted and used for personal lodging, it would be a gift and the value would be included in the aggregate value of gifts, which cannot exceed \$50 from a single source in one calendar year. [ORS 244.025(1)]
- A county finance officer attends a conference on salaried time and is reimbursed for the conference expenses by the county. When arriving at the conference the finance officer, as with others in attendance, is offered a gift basket containing assorted goods from the organization hosting the conference. The gift basket would be a "gift" and, if accepted, the value would be included in the aggregate value of gifts, which cannot exceed \$50 from a single source in one calendar year. [ORS 244.025(1)]
- A state employee is sent by his agency to attend a two-day training conference and is reimbursed for his expenses. The salaried employee attends during his regular working hours. A salesperson is near the conference registration table and offers a collection of gifts valued at over \$100 to all registrants. These would be gifts and any accepted could not exceed the \$50 limit on aggregate value from a single source in one calendar year. [ORS 244.025(1)]
- During the same conference, the state employee is going out to dinner after the conference adjourns for the day. While passing through the hotel lobby, he stops to speak with the salesperson who offered the gifts during the conference registration. The salesperson asks to join the state employee for dinner and offers to pay for the meal. The value of the meal would be included with the value of any gifts accepted earlier in the aggregate value of gifts, which cannot exceed \$50 in one calendar year. [ORS 244.025(1)]
- A city mayor goes out to lunch in a local city restaurant. During lunch a well known developer approaches the mayor and offers to pay for the mayor's meal. The value of the meal, if accepted, would be included in the aggregate value of gifts from a source, which cannot exceed \$50 from a single source in one calendar year. [ORS 244.025(1)]
- A chief deputy who manages procurement for a county sheriff's office attends a conference on newly developed equipment for law enforcement agencies on salaried time and is reimbursed for the conference expenses by the sheriff's office. Upon arrival, the deputy purchases with personal funds several "raffle tickets" each representing a chance to win a shotgun from the manufacturer valued at \$500. The opportunity to buy the tickets is only available to those attending the conference. During the final session of the conference the "raffle" ticket drawing is held and the chief deputy wins the shotgun. The shotgun would be a gift and, if accepted, the

value would be included in the aggregate value of gifts, which cannot exceed \$50 from a single source in one calendar year. [ORS 244.025(1)]

**When the Commission applies Oregon Government Ethics law to a financial benefit obtained by a public official by using or attempting to use an opportunity that would not otherwise be available but for the position or office held, ORS 244.040(1) will be used in the analysis and application of the law.** The following are some examples to illustrate the Commission's approach:

- A city recorder has overseen the installation and implementation of a new software program to manage the city's financial records. The distributor of this software has a training event scheduled for employees who work for other cities' governments. The city recorder has been asked to participate as a trainer at the events and the distributor has offered to provide compensation and pay any expenses for food, lodging and travel. If the city recorder accepted this offer, it could constitute the use of the official position to gain a financial benefit because the opportunity for the compensation and paid expenses would not be available but for holding the position and performing the duties as the city recorder. [ORS 244.040(1)]
- A deputy fire chief, who is in charge of procuring equipment for fire stations in the district, locates a vendor that offers the make and model of an extension ladder to replace obsolete ladders in the district's stations. To increase the fire district's discount on each ladder, the deputy fire chief adds several extra ladders to the order. The deputy fire chief and two relatives take personal possession of the extra ladders and pay the fire district the amount the district paid for the ladders. The deputy fire chief would violate ORS 244.040(1) because the discounted price to the deputy fire chief and the relatives represents the use of position to avoid a financial detriment (discount) that is prohibited.
- A city council has scheduled a public council meeting in a room at a local restaurant. Before the scheduled meeting the councilors plan to use city funds to purchase dinner for councilors, the councilor's spouses and members of the city's staff attending the scheduled meeting. The councilors, who are accompanied by a spouse, would violate ORS 244.040(1) because the cost of the meal for the spouse would represent the use of position to avoid a financial detriment that is prohibited.

The responsibility for judgments and decisions made in order to comply with the various provisions in Oregon Government Ethics law rests with the individual public official who faces the circumstances that require a judgment or decision. That is true of questions regarding gifts, use of an official position, announcing the nature of conflicts of interest and the many situations addressed in ORS Chapter 244.

### **What if I am offered a gift?**

First, insure you know the identity of the source of the gift. Remember, the source of a gift is the person or entity that made the ultimate payment for the gift's expense [See page 27].

Second, determine if the source of the gift has an economic interest in decisions or votes you make in your official capacity as a public official. If that economic interest is distinct from the interest held by members of the general public it is a legislative or administrative interest [See page 27].

- If the source does not have a legislative or administrative interest, gifts from that source are not prohibited or limited as to value or quantity.
- If the source has a legislative or administrative interest, you must answer the following questions:
  1. Is the gift offered under the conditions that would allow you to accept the gift because it is excluded from what is defined as a "gift"? These exclusions are found in ORS 244.020(6)(b) and described on page 29 of this guide.
  2. What is the value of the gift? Remember, you can accept gifts [not excluded from the definition of "gift".] from a single source when the aggregate value of gifts from that source does not exceed \$50 in a calendar year. [ORS 244.025]

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## ANNUAL VERIFIED STATEMENT OF ECONOMIC INTEREST

There are approximately 5,500 Oregon public officials who must file an **Annual Verified Statement of Economic Interest (SEI)** form with the Oregon Government Ethics Commission by **April 15** of each calendar year.

The **public officials who are required to file reports are specified in ORS 244.050**. Please refer to that section of the law to see if your specific position requires you to file these forms. In general, public officials who hold the following positions are required to file:

- State public officials who hold elected or appointed executive, legislative or judicial positions. This includes those who have been appointed to positions on certain boards or commissions.
- In counties, elected officials, such as commissioners, assessors, surveyors, treasurers and sheriffs must file, as do planning commission members and the county's principal administrator.
- In cities, all elected officials, the city manager or principal administrator, municipal judges and planning commission members must file.
- Administrative and financial officers in school districts, education service districts and community college districts must file.
- Some members of the board of directors for certain special districts must file.
- Candidates for some elected public offices are also required to file.

The Commission staff has identified the positions held by public officials who must file the SEI form and has them listed by jurisdiction. Each jurisdiction [city, county, executive department, board or commission, etc.] has a person who acts as the Commission's point of contact for that jurisdiction [OAR 199-020-0005(1)].

The **contact person** for each jurisdiction has an important role in the annual filing of the SEI forms. It is through the contact person that the Commission obtains the current name and address of each public official who is required to file. When there is a change, through resignation, appointment or election, in who holds a position, the contact person notifies the Commission. If there is a change in the filer's mailing address, it is the contact person who notifies the Commission.

As with other provisions in Oregon Government Ethics law, it is each public official's personal responsibility to ensure they comply with the requirement to complete and submit the SEI form by April 15. Those public officials who must file a SEI form are well served if the contact person ensures that the Commission has the correct name and address of the public official.

Beginning in January of each year the Commission prepares a list by jurisdiction of each public official required to file the SEI form. A list for each jurisdiction is sent to the contact person. The contact person is required to review the list for accuracy. After entering the necessary changes, the contact person must return the list that has been reviewed and corrected to the Commission by February 15. [OAR 199-020-0005(2)]

The contact person from each jurisdiction should ensure that each filer has been advised of the reporting requirements. Each filer should also receive information as to the procedures the jurisdiction follows to assist the filer in meeting the SEI filing requirement.

Based on the information provided by each of the jurisdictions' contacts, the Commission sends an annual SEI form directly to each individual public official required to file the form.

Again, the requirement to file the SEI is the personal responsibility of each public official. Each public official should comply and file timely, as the civil penalties for late filing are \$10 for each of the first 14 days after the filing deadline and \$50 for each day thereafter until the aggregate penalty reaches the maximum of \$5,000. [ORS 244.350(4)(c)]

### SEI Form

When the forms are distributed in March of each year, the instructions and definitions are also included to assist the filer in completing the forms. The information needed to complete the form pertains to the previous calendar year.

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

The following is a brief description of the information requested in the SEI form:

- Name and address of each business in which a position as officer or director was held by the filer or member of the household. [ORS 244.060(1)]
- Name and address of each business through which the filer or member of the household did business. [ORS 244.060(2)]
- Name and address and brief description of the sources of income for the filer and members of the household that represent 10 percent or more of the annual household income. [ORS 244.060(3)]
- Ownership interests held by the filer or members of the household in real property, except for the principal residence, located within the geographic boundaries of the governmental agency in which the filer holds the position or seeks to hold. [ORS 244.060(4)(a) and (b)]
- Honoraria or other items allowed by ORS 244.042 that exceed \$15 in value given to the filer or members of the filer's household. Include a description of the honoraria or item

and the date and time of the event when the item was received [ORS 244.060(7)]. Remember that honorarium cannot exceed \$50. [ORS 244.042(3)(a)]

- Name of each lobbyist associated with any business the filer or a member of the household is associated, unless the association is through stock held in publicly traded corporations. [ORS 244.090]
- If the public official received over \$50 from an entity to participate in a convention, fact-finding mission, trip, or other meeting as allowed by ORS 244.020(6)(b)(F), list the name and address of the entity that paid the expenses. Include the event date, aggregate expenses paid, purpose for participation and a copy of the notice of aggregate value paid. [ORS 244.060(5) and ORS 244.100(1)] [Not required for candidates]
- If the public official received over \$50 from an entity to participate in a trade promotion, fact-finding mission, negotiations or economic development activities as allowed by ORS 244.020(6)(b)(H), 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]

The following is required if the information requested relates to an individual or business that has been or could reasonably be expected to do business with the filer's governmental agency or has a legislative or administrative interest in the filer's governmental agency:

- Name, address and description of each source of income (taxable or not) that exceeds \$1,000 for the filer or a member of the filer's household. [ORS 244.060(8)]
- Name of each person the filer or member of the filer's household has owed \$1,000 or more. Include the date of the loan and the interest rate. Debts on retail contracts or with regulated financial institutions are excluded. [ORS 244.070(1)]
- Business name, address and nature of beneficial interest over \$1,000, or investment held by the filer or a member of the household in stocks or securities over \$1,000. Exemptions include mutual funds, blind trusts, deposits in financial institutions, credit union shares and the cash value of life insurance policies. [ORS 244.070(2)]
- Name of each person from whom the filer received a fee of over \$1,000 for services, unless disclosure is prohibited by a professional code of ethics. [ORS 244.070(3)]

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## OREGON GOVERNMENT ETHICS COMMISSION

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

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

No more than four commissioners with the same political party affiliation may be appointed to the Commission to serve at the same time. The commissioners are limited to one four year term, but if an appointee fills an unfinished term they can be reappointed to a subsequent four year term.

The Commission members select a chairperson and vice chairperson annually. The Commission is administered by an executive director, who is selected by the Commission. Legal counsel is provided by the Oregon Department of Justice.

The Commission staff provides administration, training, guidance, issues written opinions, and conducts investigations when complaints are filed with the Commission.

### Training:

The Commission has designated training as one of its highest priorities. It has two staff positions to provide training to public officials and lobbyists on the laws and regulations under its jurisdiction. Training is provided through presentations at training events, iLearnOregon, informational links on the website, topical handouts and guidance offered when inquiries are received.

### Advice:

All members of the Commission staff are cross-trained in the laws and regulations under the Commission's jurisdictions. Questions regarding the Commission's laws, regulations and procedures are a welcome daily occurrence. Timely and accurate answers are a primary objective of the staff. Guidance and information is provided either informally or in written formal opinions. The following are available:

- Telephone inquiries are answered during the call or as soon as possible.
- E-mail inquiries are answered with return e-mail or telephone call as soon as possible.
- Letter inquiries are answered by letter as soon as possible.

- Written opinions on specific circumstances can also be requested.

Requests for written opinions must describe the specific facts and circumstances that provide the basis for questions about how the Oregon Government Ethics law may apply. The facts and circumstances may define a proposed transaction and may be hypothetical or actual. If the circumstances indicate that a violation may have occurred, the staff cannot provide an opinion because to do so could compromise the Commission's objectivity if a complaint were to be filed. The written opinions will be in one of the following formats, as requested:

### **Staff Advice**

ORS 244.284 provides for informal staff advice, which may be offered in several forms, such as in person, by telephone, e-mail or letter. In a letter of advice, the proposed, hypothetical or actual facts are restated as presented in the request and the relevant laws or regulations are applied. The answer will conclude whether a particular action by a public official comports with the law.

If the Commission determines that a respondent violated provisions of law within its jurisdictions and the respondent received staff advice offered under the authority of ORS 244.284, in sanctioning the violation, the Commission may consider whether the public official committed the violation when relying on the staff advice [ORS 244.284(2)].

For staff advice to be a factor in the sanction phase, it is important to understand that the circumstances the respondent described in the request must have been an accurate description of what occurred when the respondent committed the violation. The actions of the respondent must have been those recommended or described in the staff advice. The Commission is not prevented from finding a violation in these circumstances, but the sanction imposed could be affected.

### **Staff Advisory Opinion**

ORS 244.282 authorizes the executive director to issue a staff advisory opinion upon receipt of a written request. The opinion is issued in a letter that restates the proposed, hypothetical or actual facts presented in the written request and identifies the relevant statutes. The letter will discuss how the law applies to the questions asked or raised by the fact circumstances presented in the request. The Commission must respond to any request for a staff advisory opinion within 30 days, unless the executive director extends the deadline by an additional 30 days.

If the Commission determines that a respondent violated provisions of law within its jurisdictions and the respondent received a staff advisory opinion under the authority of ORS 244.282, in sanctioning the violation, the Commission may consider whether the public official committed the violation when relying on the staff advisory opinion [ORS 244.282(3)].



For the staff advisory opinion to be a factor in the sanction phase, it is important to understand that the circumstances the respondent described in the request must have been an accurate description of what occurred when the respondent committed the violation. The actions of the respondent must have been those recommended or described in the staff advisory opinion. The Commission is not prevented from finding a violation in these circumstances, but whether the sanction is imposed or its severity could be affected.

### Commission Advisory Opinion

ORS 244.280 authorizes the Commission to prepare and adopt by vote a Commission Advisory Opinion. This formal written opinion also restates the proposed, hypothetical or actual facts presented in a written request for a formal opinion by the Commission. The opinion will identify the relevant statutes and discuss how the law applies to the questions asked or raised by the fact circumstances provided in the request. These formal advisory opinions are reviewed by legal counsel before the Commission adopts them. The Commission must respond to any request for a Commission Advisory Opinion within 60 days, unless the Commission extends the deadline by an additional 60 days [ORS 244.280(1) and (2)].

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. The actions of the respondent must have been those recommended or described in the Commission Advisory Opinion. The Commission is not prevented from finding a violation in these circumstances, but could be prevented from imposing a sanction.

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

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

There is, however, specific and conditional protection for any person who has requested and relied upon advice or an opinion from the Commission or its staff. The conditions and protection is as follows:

- The fact circumstances described in the request must not misrepresent, misstate or omit material facts.
- Reliance on the advice or opinion means that the action or transactions of the person were those described or suggested in the advice or opinion.
- The protection applies only during the penalty phase, after the Commission has determined that a violation has occurred. If there was reliance on staff advice or a Staff Advisory Opinion, the Commission may consider the reliance during the penalty phase. If reliance was on a Commission Advisory Opinion, the Commission may not impose a penalty.

Any person who has not requested advice or an opinion must be cautious when trying to apply advice or opinions offered to others. The advice and opinions given are based on and tailored to the specific fact circumstances presented in a request. Fact circumstances vary from one situation to another and they vary from one public official to another. If a person reviews an opinion or advice issued to another for circumstances the person believes similar to those now met and relies on that advice, the person must ensure the similarity is sufficient for the application of law to be the same.

It is important to remember that the provisions of law apply to the individual actions of the person or public official. There are events or occasions when more than one public official may be present and participating in their official capacities. Depending on the circumstances and conditions for an event or transaction, the law may have a different application for one public official than for other public officials.

### Compliance:

The Commission has a program manager who oversees the management and administration of the various reports that are filed with the Commission. There are approximately 2,000 lobbyists and employers of lobbyists who file quarterly lobbying activity expense reports. Each of the nearly 1,000 lobbyists must file or renew their lobbying registrations every two years. There are approximately 5,500 public officials who must file the Annual Verified Statement of Economic Interest form each April 15.

### Complaint Review Procedures:

Investigations are initiated through a complaint procedure [ORS 244.260]. Any person may file a signed, written complaint alleging that there may have been a violation of Oregon Government Ethics law, Lobbying Regulation or the executive session provisions of Oregon Public Meetings law. The complaint must state the person's reason for believing that a violation may have occurred and must include any evidence that supports that belief. The executive director reviews the complaint and if additional information is needed, the complainant is asked to provide that information.

If there is reason to believe that there has been a violation of laws within the jurisdiction of

the Commission, an investigation will be initiated. The Commission may also initiate an investigation on its own complaint by motion and vote. Before approving such a motion, the public official against whom the action may be taken is notified and given an opportunity to appear before the Commission at the meeting when the matter is discussed or acted upon.

When a complaint is accepted, the public official against whom the allegations are made is referred to as the respondent. The respondent is notified of the complaint and provided with the information received in the complaint and the identity of the complainant. Whether based on a complaint or a motion by the Commission, the initial stage of the Commission procedure is called the Preliminary Review Phase. The time allowed for this phase is limited to 135 days and the Commission must act on the complaint within that period.

If there is a pending criminal matter related to the same circumstances or actions to be addressed in the Preliminary Review, the time period is suspended until the criminal matter is concluded.

There may be a variety of reasons for a respondent to ask for additional time before the Commission determines whether there is cause to investigate the issues raised in the complaint. With the consent of the Commission, a respondent may request a waiver of the 135 day time limit. If a complaint is made against a candidate within 61 days of an election, the candidate may request a delay.

During the Preliminary Review Phase, the Commissioners and staff can make no public comment on the matter other than acknowledge receipt of the complaint. It is maintained as a confidential matter until the Commission ends the Preliminary Review Phase. Under most circumstances, the Commission will end the Preliminary Review Phase by either dismissing the complaint or finding cause to conduct an investigation. The Commission meets in executive session to conduct deliberations and vote on the finding of cause or to dismiss. After the close of the Preliminary Review Phase, the case file is open to public inspection.

If the complaint is dismissed, the matter is concluded and both the respondent and complainant are notified. If cause is found to investigate, then an Investigatory Phase begins. The investigatory phase is limited to 180 days.

During each phase, information and documents are solicited from the complainant, respondent, and other witnesses and sources that are identified. Before the end of the 180 day investigatory period, the Commission will consider the results of the investigation. Normally, the Commission will either dismiss the complaint or make a preliminary finding that a violation of Oregon Government Ethics law was committed by the respondent. The preliminary finding of a violation is based on what the Commission considers to be a preponderance or sufficient evidence to support such a finding.

If a preliminary finding of violation is made, the respondent will be offered the opportunity to request a contested case hearing. At any time, the respondent is also encouraged to

negotiate a settlement with the executive director, who represents the Commission in such negotiations. Most cases before the Commission are resolved through a negotiated settlement, with the terms of the agreement described in a Stipulated Final Order.

The Commission has a variety of sanctions available after making a finding that a violation occurred. Sanctions range from letters of reprimand to civil penalties and forfeitures. The maximum civil penalty that can be imposed for each violation is \$5,000, except for violations of the executive session provisions in ORS 192.660 where the maximum is \$1,000. Any financial gain that a respondent realized from a violation is subject to a forfeiture of twice the gain. Any monetary sanctions imposed and paid are deposited into the State of Oregon General Fund.

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# MERC Commission Meeting

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October 6, 2010  
11:30 am

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7.0 - Action Agenda

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**METROPOLITAN EXPOSITION RECREATION COMMISSION**

RESOLUTION NO. 10-21

**For the purpose of approving the selection of Emerick Construction Company as the lowest responsive and responsible bidder for the Portland Expo Center, "Hall D Lounge" project, approving the contract award and authorizing the General Manager to execute a contract with Emerick Construction Company.**

**WHEREAS**, the Portland Expo Center intends to upgrade current Food and Beverage resources through capital improvements by remodeling and altering a current concession stand in Hall D and modifying an existing meeting room to accommodate for the expansion of patron amenities for a new bar/café with additional amenities and seating ; and

**WHEREAS**, Section 4(D)(1)(a) of the Metropolitan Exposition Recreation Commission's ("the Commission") Contracting and Purchasing Rules, delegates authority to the General Manager to prepare and approve Request for Bids (RFB) documents and to solicit bids; and

**WHEREAS**, Section 4(D)(1)(c) of the Commission's Contracting and Purchasing Rules, requires the Commission to select the lowest responsive and responsible bidder, approve the contract award, and approve the written contract by resolution; and

**WHEREAS**, Staff has evaluated the bids, and Emerick Construction Company is the lowest responsive and responsible bidder.

**BE IT THEREFORE RESOLVED** as follows:

1. The Commission selects Emerick Construction Company as the lowest responsive and responsible bidder in response to the Request for Bids for the Portland Expo Center "Hall D Lounge" Project.
2. The Commission approves the award of the contract to Emerick Construction, in a form substantially similar to the attached Exhibit A.
3. The Commission delegates authority to the General Manager to execute the contract on behalf of the Commission.

Passed by the Commission on October 6, 2010

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Chair

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Secretary/Treasurer

Approved As to Form:  
Daniel B. Cooper, Metro Attorney

By: \_\_\_\_\_  
Nathan A. Schwartz Sykes  
Senior Attorney

MERC STAFF REPORT

**Agenda Item/Issue:** Approving the selection of Emerick Construction Company as the lowest responsive and responsible bidder in response to a Request for Bids, relating to the Portland Expo Center, "Hall D Lounge" project, approving the contract award and authorizing the General Manager to execute a contract with Emerick Construction Company.

**Resolution No:** 10-21

**Date:** October 6, 2010

**Presented by:** Chris Bailey

**BACKGROUND:** In order to keep the food and beverage service program at the Portland Expo Center effective, efficient and competitive while keeping up with the ongoing demands of the public, it was determined that adding new and additional retail concession space to meet current and upcoming demands would be in the best interest of MERC and the Public. The addition of a new concession space will be accomplished by a construction improvement that will modify an existing meeting room in Hall D to accommodate a new bar/café space design. This improvement will consist of remodeling and the purchase/installation of equipment and furniture. The meeting room that is being remodeled is currently located in front of an existing full service concession stand which will allow the newly remodeled space to benefit from all existing equipment, resources and utilities. This project is included in the 2010–2011 adopted budget as approved at the September 1, 2010 Commission meeting. Funding for the project is provided by the Capital Investment portion of the Aramark Food and Beverage Operations Agreement dated November 2009.

MERC Staff prepared and issued Bid Documents and a Request for Bids in accordance with MERC's Purchasing and Contracting Rules as well as Metro Policy and any and all state (ORS) requirements. MERC staff included in the bid documents an aspirational M/W/ESB goal for participation in this project of 15% as well as an additional 10% aspirational FOTA contractor participation goal. MERC staff conducted a broad M/W/ESB outreach and made plans and specifications available at no cost to the contractors and sub-contractors for this project. On August 17, 2010, MERC Staff conducted a site walk for potential bidders in which seventeen contractors attended. Five firms that attended the site walk were certified M/W/ESB contractors. On August 25, 2010, six bids were received and ranged from \$197,000 to \$222,667.79. While none of the bidders were certified M/W/ESB General Contractors, the lowest responsive and responsible bidder, Emerick Construction Company, did include 15% dedicated M/W/ESB sub-contractor participation as a part of their bid and stated that any additional sub-contracting for work they could not complete "in-house" would be subcontracted out to a certified M/W/ESB contractor. The lowest responsive and responsible bid as provided by Emerick Construction Company was submitted in the amount of One hundred, ninety-seven thousand & 00/100 dollars (\$197,000).

**FISCAL IMPACT:** The FY2010-11 adopted budget includes a total of \$325,000 for the "Hall D Lounge" Project. Major elements of the project and anticipated expenditures include:

General Contractor	\$197,000
Kitchen Equipment	\$ 43,966
Tables & Chairs	\$ 29,265
Owner Provided	\$ 43,700
Contingency	<u>\$ 21,975</u>
Total	\$335,906

Although unlikely, should contingency expenditures exceed the adopted budget of \$325,000, additional funding can be accessed from the Capital Reserve portion of the Food & Beverage Operating Budget. Additionally, it is conservatively anticipated that annual net revenue will approximate \$20,000 as well as provide a new and intangible customer service value to Expo Center patrons. The potential to license the lounge as a "private" event space remains under consideration.

**RECOMMENDATION:** Staff recommends that the Metropolitan Exposition-Recreation Commission adopt Resolution No. 10-21, approving the selection of Emerick Construction Company as the lowest responsive and responsible bidder in response to a Request for Bids, relating to the Portland Expo Center, "Hall D Lounge" project, approving the contract award and authorizing the General Manager to execute a contract with Emerick Construction Company.



METROPOLITAN EXPOSITION  
RECREATION COMMISSION



# Standard Public Contract

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For Public Contracts Greater than \$50,000

CONTRACT NO. \_\_\_\_\_

## PUBLIC CONTRACT

THIS Contract is entered into between Metropolitan Exposition-Recreation Commission ("MERC"), whose address is 777 NE Martin Luther King, Jr., Blvd., Portland, Oregon 97232-2742, and **Emerick Construction Company – CCB #10723**, whose address is **8850 SE Otty Rd, Happy Valley, OR 97086** hereinafter referred to as the "CONTRACTOR." Work is to be take place at the Portland Exposition Center (Expo), located at 2060 N Marine Dr, Portland, OR 97217.

THE PARTIES AGREE AS FOLLOWS:

### ARTICLE I TERM OF CONTRACT

The term of this Contract shall be for the period commencing **September 7, 2010** through and including **February 28, 2011**, with **substantial completion by December 31, 2010**, unless terminated or extended as provided in this Contract.

### ARTICLE II CONTRACT SUM AND TERMS OF PAYMENT

MERC shall compensate the CONTRACTOR for work performed and/or goods supplied as described in the Scope of Work. MERC shall not be responsible for payment of any materials, expenses or costs other than those which are specifically included in the Scope of Work, in an amount not to exceed (written amount) **One Hundred Ninety-Seven Thousand Dollars and NO/100 (\$197,000.00)**. Payment shall be on a unit price only for those goods or services received in a condition or manner acceptable to MERC. CONTRACTOR'S Invoice shall include an itemized statement of items purchased or services provided, and shall be sent to MERC, Attention: Accounts Payable, 777 NE Martin Luther King, Jr. Blvd., Portland, Oregon 97232-2742. As per Article VII of this document, Contractor's invoice must breakout and withhold retainage as obligated by Public Contracting Code, and submit certified payroll with their invoice as per Prevailing Wage Requirement Law. MERC will pay Contractor within 30 days of receipt of an approved invoice.

### ARTICLE III SCOPE OF WORK

CONTRACTOR shall perform the work and/or deliver to MERC the goods described in the RFB and Scope of Work herein and as attached. All services and goods shall be of good quality and, otherwise, in accordance with the Scope of Work.

**CONTRACTOR is to provide General Contracting Services for a Food and Beverage Tenant Improvement project to take place in Room D103 at the Expo Center. Scope of Work consists of remodeling a Meeting Room space into a Restaurant/Bar, including but not limited to: construction services/work from the following trades: electrical, plumbing, drywall, painting, demolition, carpentry, flooring, millwork, construction clean-up, etc; as specified in the "Portland Exposition Center Hall D – F&B Tenant Improvement Project - General Contractor Services Request for Bids" documents dated August 10, 2010, hereto attached as "Attachment "A".**

Contractor agrees to comply with each and every term, condition and provision of the contract documents. Contractor agrees to provide all labor, tools, equipment, machinery, supervision, transportation, and every other item and service necessary to perform the work described in the contract documents. Contractor may be subject to liquidated damages if work not in compliance with Request for Bids Documents as referenced above, and Contract Agreement. **All work on this contract is subject to Prevailing Wage Rates.**

**Additional Requirements:**

**CONTRACTOR must provide to MERC:**

- **A Current W-9**
- **A copy of Contractor's Certificate of Insurance as specified in Article VI below**
- **A written Workplace Safety Program and Drug Policy prior to start of work**
- **A written Work Schedule to be approved by Owner 48 hours prior to start of work.**  
**Work must be performed without causing any disruptions to scheduled events.**  
**Owner will make every effort to keep construction areas off limits to the public to accommodate the Contractor's Work Plan.**

Contractor must coordinate all work with MERC Project Manager.

The Contract Time shall commence upon issuance of the Notice to Proceed which is anticipated to be issued following execution of the contract. Contractor shall commence work under this Contract within no more than ten (10) calendar days after issuance of written Notice to Proceed. Contractor shall bring the Work to **substantial completion no later than December 31, 2010, or at such date as may be extended by Change Order approved by Contractor and Owner.** By executing this Contract, Contractor confirms and accepts that the Contract Time so stated is a reasonable period for performance of all of the Work.

The end date of the Contract Term is intended to allow for finalization of all closeout requirements, receipt of warranties, manuals and final payment, but does not alter requirements for substantial completion of the work by the date specified.

Owner will coordinate with Contractor regarding the dates and approximate shifts that are available and unavailable to the Contractor to perform the required work, depending on the location in the building of the scheduled event, the type of event and the Work being conducted simultaneously with the event. **Due to the likely possibility of additional "bookings" or cancellations of events in the building, this schedule may be modified, which may positively or negatively impact the work schedule. It is not anticipated however, that the net number of days available to the Contractor as indicated on the schedule included as part of these documents will be lessened. In the event of a schedule change, the Owner will notify the Contractor directly following the implementation of the change so that work plans may be modified accordingly.** Due to the nature of the Public Events Facility industry, it will be necessary for the Contractor to work closely with the Project Manager and applicable building staff to coordinate day-to-day logistical requirements for the benefit of the Contractor and to afford Owner Staff the necessary time to perform event or non-event related functions. Contractor shall be liable to incur liquidated damages if not substantially complete by December 31, 2010 unless extended by a Change Order approved by Contractor and Owner. Liquidated damages shall be assessed at no less than One hundred dollars (\$100.00) per day.

ARTICLE IV  
LIABILITY AND INDEMNITY

CONTRACTOR is an independent contractor and assumes full responsibility for the content of its work and performance of CONTRACTOR'S labor, and assumes full responsibility for all liability for bodily injury or physical damage to person or property arising out of or related to this Contract, and shall indemnify, defend and hold harmless MERC, its agents and employees, from any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Contract. CONTRACTOR is solely responsible for paying CONTRACTOR'S subcontractors and nothing contained herein shall create or be construed to create any contractual relationship between any subcontractor(s) and MERC.

ARTICLE V

## TERMINATION

MERC may terminate this Contract upon giving CONTRACTOR seven (7) days written notice. In the event of termination, CONTRACTOR shall be entitled to payment for work performed to the date of termination. MERC shall not be liable for indirect, consequential damages or any other damages. Termination by MERC will not waive any claim or remedies it may have against CONTRACTOR. Contractor may be liable for liquidated damages.

## ARTICLE VI INSURANCE

CONTRACTOR shall purchase and maintain at CONTRACTOR'S expense, the following types of insurance covering the CONTRACTOR, its employees and agents.

- A. Broad form comprehensive general liability insurance covering personal injury, property damage, and bodily injury with automatic coverage for premises and operation and product liability shall be a minimum of \$1,000,000 per occurrence. The policy must be endorsed with contractual liability coverage. **MERC, Metro, and their elected and appointed officials, departments, employees and agents shall be named as an ADDITIONAL INSURED.**
- B. Automobile bodily injury and property damage liability insurance. Insurance coverage shall be a minimum of \$1,000,000 per occurrence. **MERC, Metro and their elected and appointed officials, departments, employees, and agents shall be named as an ADDITIONAL INSURED.** Notice of any material change or policy cancellation shall be provided to MERC thirty (30) days prior to the change.

This insurance as well as all workers' compensation coverage for compliance with ORS 656.017 must cover CONTRACTOR'S operations under this Contract, whether such operations be by CONTRACTOR or by any subcontractor or anyone directly or indirectly employed by either of them.

CONTRACTOR shall provide MERC with a certificate of insurance complying with this article and naming MERC and Metro as additional insureds within fifteen (15) days of execution of this Contract or twenty-four (24) hours before services under this Contract commence, whichever date is earlier.

CONTRACTOR shall not be required to provide the liability insurance described in this Article only if an express exclusion relieving CONTRACTOR of this requirement is contained in the Scope of Work.

## ARTICLE VII PUBLIC CONTRACTS

All applicable provisions of ORS chapters 187 and 279A & B, and all other terms and conditions necessary to be inserted into public contracts in the State of Oregon, are hereby incorporated as if such provision were a part of this Agreement. Specifically, it is a condition of this contract that Contractor and all employers working under this Agreement are subject employers that will comply with ORS 656.017 as required by 1989 Oregon Laws, Chapter 684.

All applicable provisions of ORS Chapters 187 and 279A & B, and all other terms and conditions necessary to be inserted into public contracts in the State of Oregon, are hereby incorporated as if such provision were a part of this Agreement including, but not limited to, ORS 279B.220 to 279B.235.

**For this Public Works project subject to ORS 279C.800 to 279C.870, the contractor shall pay Prevailing Wage Rates** as per the *Oregon Bureau of Labor and Industries (BOLI) "Prevailing Wage Rates for Public Contract Works Contracts in Oregon - Effective July 1, 2010"*, pursuant to the administrative rules established by the Commissioner of Labor and Industries. Contractor must provide a written schedule to employees showing the number of hours per day and days per week the employee may be required to work; and must pay daily, weekly, weekend and holiday overtime in accordance with, and as required by ORS 279C.520.

Contractors must promptly pay, as due, all persons supplying to such contractor labor or material used in this contract. If the contractor fails to pay for labor or services, the contracting agency can pay and withhold these amounts due the contractor. Additionally, if the contractor or first-tier subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with the public contract for a public improvement within 30 days after receipt of payment from the public contracting agency or a contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus shall pay interest in accordance with ORS 279C.515. If the contractor or first-tier subcontractor fails, neglects, or refuses to make payment, to a person furnishing labor or materials in connection with the public contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. Contractor must promptly pay for any medical services they have agreed to pay in accordance with ORS 279C.530. Contractor must pay any and all contributions and amounts due to the Industrial Accident Fund from contractor or subcontractor and incurred in the performance of the contract.

**Contractor is required to Submit Certified Payroll Reports each month to MERC as Contracting Public Agency to: MERC–Construction/Capital Projects Dept–Att: Renee, 777 NE MLK Jr Blvd Portland, OR 97232;** as well as to BOLI. In addition to any other retainage obligated by the Public Contracting Code, the Prevailing Wage Requirement Law requires public agencies to withhold 25 percent of any amount earned by the prime contractor if the prime contractor does not submit certified payroll reports. Once the certified payroll reports have been submitted, the public agency must pay the 25 percent withheld within 14 days. ORS 279C.845(7)

Contractor and every subcontractor must have a Public Works Bond filed with the Construction Contractors Board prior to starting work on the Contract, unless exempt, in accordance with ORS 279C.830(3). Contractors are required to pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

CONTRACTOR shall meet MERC Bonds and Bid Security requirements as follows:

1. Bid Security not exceeding 10 percent of the amount bid for the contract is required unless the contract is for \$50,000 or less.
2. For public improvements, a labor and material bond and a performance bond, both in the amount equal to 100 percent of the contract price are required for contracts over \$50,000.
3. Bid security, labor and material bond and performance bond may be required even though a contract is of a class not identified above, if the General Manager determines it is in the public interest.

CONTRACTOR shall meet the Metro “Good Faith Efforts” Requirement for Construction Projects as below:

For construction contracts of \$100,000 or more, the Commission adopts in principle, policy, and content, the “Good Faith Effort” program established by Metro Code§ 2.04.100 through 2.04.190 (Metro Minority Business Enterprise, Women Owned Business, and Emerging Small Business Program) as they apply to contracts of the Commission. This adoption includes any and all ordinances subsequently adopted by the Metro Council relating to Metro’s Minority Business Enterprise, Women Owned Business and Emerging Small Business Program. The General Manager shall designate MERC staff to perform the functions of the Liaison Officer to carry out the MBE/WBE/ESB program as it relates to MERC contracting activities. Metro and MERC have a compelling government interest to ensure that their contracts provide fair and equal employment opportunities for minority, women, and emerging small businesses reflecting the diversity found in the Portland Metropolitan area. **Therefore, MERC aspires to utilize 25% (by dollar value) MBE/WBE/ESB subcontractor participation on this project.** Accordingly, the prime contractor is required to submit proof showing that Good Faith Effort has been made to contract with MBE/WBE/ESB subcontractors. **Additionally, MERC aspires to utilize 10% (by dollar value) of subcontractors within the First Opportunity Target Area (FOTA).** Contactor shall submit an MWESB/FOTA report along with certified payroll for compliance.

For public improvement work all contractors must demonstrate that an employee drug-testing program is in place.

ARTICLE VIII  
QUALITY OF GOODS AND SERVICES

Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of the highest quality. All workers and subcontractors shall be skilled in their trades. CONTRACTOR guarantees all work against defects in material or workmanship for a period of one (1) year from the date of acceptance or final payment by MERC, whichever is later. All guarantees and warranties of goods furnished to CONTRACTOR or subcontractors by any manufacturer or supplier shall be deemed to run to the benefit of MERC.

ARTICLE IX  
OWNERSHIP OF DOCUMENTS

Unless otherwise provided herein, all documents, instruments and media of any nature produced by Contractor pursuant to this agreement are Work Products and are the property of MERC, including but not limited to: drawings, specifications, reports, scientific or theoretical modeling, electronic media, computer software created or altered specifically for the purpose of completing the Scope of Work, works of art and photographs. Unless otherwise provided herein, upon MERC request, Contractor shall promptly provide MERC with an electronic version of all Work Products that have been produced or recorded in electronic media. MERC and Contractor agree that all work Products are works made for hire and Contractor hereby conveys, transfers, and grants to MERC all rights of reproduction and the copyright to all such Work Products.

ARTICLE X  
SUBCONTRACTORS

CONTRACTOR shall contact MERC prior to negotiating any subcontracts and CONTRACTOR shall obtain approval from MERC before entering into any subcontracts for the performance of any of the services and/or supply of any of the goods covered by this Contract.

MERC reserves the right to reasonably reject any subcontractor or supplier and no increase in the CONTRACTOR'S compensation shall result thereby. All subcontracts related to this Contract shall include the terms and conditions of this Contract. CONTRACTOR shall be fully responsible for all of its subcontractors as provided in Article IV.

ARTICLE XI  
RIGHT TO WITHHOLD PAYMENTS

MERC shall have the right to withhold from payments due CONTRACTOR such sums as necessary, in MERC's sole opinion, to protect MERC against any loss, damage or claim which may result from CONTRACTOR'S performance or failure to perform under this Contract or the failure of CONTRACTOR to make proper payment to any suppliers or subcontractors.

If a liquidated damages provision is contained in the Scope of Work and if CONTRACTOR has, in MERC's opinion, violated that provision, MERC shall have the right to withhold from payments due CONTRACTOR such sums as shall satisfy that provision. All sums withheld by MERC under this Article shall become the property of MERC and CONTRACTOR shall have no right to such sums to the extent that CONTRACTOR has breached this Contract.

ARTICLE XII  
SAFETY

If services of any nature are to be performed pursuant to this Contract, CONTRACTOR shall take all necessary precautions for the safety of employees and others in the vicinity of the services being performed and shall comply with all applicable provisions of federal, state and local safety laws and building codes, including the acquisition of any required permits. Contractor shall supply a written safety program/policy that all employees must follow. Workplace safety MUST be in compliance with OSHA regulations at all times

ARTICLE XIII  
INTEGRATION OF CONTRACT DOCUMENTS



All of the provisions of any procurement documents including, but not limited to, the Advertisement for Bids, Proposals or responses, General and Special Instructions to Bidders, Proposal, Scope of Work, and Specifications which were utilized in conjunction with the bidding of this Contract are hereby expressly incorporated by reference. Otherwise, this Contract represents the entire and integrated Contract between MERC and CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instrument signed by both MERC and CONTRACTOR.

#### ARTICLE XIV JURISDICTION

This Contract was entered into in the State of Oregon. This Contract will be interpreted, construed, and enforced in accordance with the laws of the State of Oregon. Both parties agree that exclusive jurisdiction for any claim under this Contract will be in Multnomah County, Oregon.

#### ARTICLE XV SEVERABILITY

The parties agree that any provision of this Contract that is held to be illegal, invalid, or unenforceable under present or future laws shall be fully severable. The parties further agree that this Contract shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never been a part of them and the remaining provisions of the Contract shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Contract. Furthermore, a provision as similar to the illegal, invalid, or unenforceable provision as is possible and legal, valid and enforceable shall be automatically added to this Contract in lieu of the illegal, invalid, or unenforceable provision. Any failure by MERC to enforce a provision of the Contract is not to be construed as a waiver by MERC of this right to do so.

#### ARTICLE XVI BINDING ON ASSIGNS AND SUCCESSORS

This Contract is binding upon the parties hereto and upon their heirs, administrators, representatives, executors, successors, and assigns, and will inure to the benefit of said parties and each of them and to their heirs, administrators, representatives, executors, successors and assigns.

#### ARTICLE XVII COMPLIANCE

CONTRACTOR shall comply with federal, state, and local laws, statutes, and ordinances related to the execution of the work.

#### ARTICLE XVIII COUNTERPARTS

This Contract may be executed in counterparts or multiples, any one of which will have the full force of an original

#### ARTICLE XIX DELIVERY OF NOTICES

Any notice, request, demand, instruction, or any other communications to be given to any party hereunder shall be in writing, sent by registered or certified mail or fax as follows:

To: Commission                      Chris Bailey, Executive Director, Portland Expo Center  
   Heather Peck, Division Manager  
   Construction/Capital Projects  
   MERC

777 NE Martin Luther King Jr. Blvd.  
Portland, Oregon 97232

To: Contractor      Emerick Construction Company  
8850 SE Otty Rd.  
Happy Valley, Or. 97086

ARTICLE XX  
ASSIGNMENT

CONTRACTOR shall not assign any rights or obligations under or arising from this Contract without prior written consent from MERC.

**CONTRACTOR**

Signature: \_\_\_\_\_  
Printed Name \_\_\_\_\_  
Date: \_\_\_\_\_  
Title: \_\_\_\_\_  
Company: Emerick Construction Co.  
Address 8850 SE Otty Road  
Happy Valley, OR 97086  
Telephone: 503-777-5531  
Tax I.D. or SS#: 93-0451960  
CCB 10723

**METROPOLITAN EXPOSITION-RECREATION  
COMMISSION**

Signature: \_\_\_\_\_  
Printed Name Teri Dresler  
Date: \_\_\_\_\_  
Title: General Manager  
Signature: \_\_\_\_\_  
Printed Name Chris Bailey  
Date: \_\_\_\_\_  
Title: Director - EXPO  
Signature: \_\_\_\_\_  
Printed Name Heather Peck  
Date: \_\_\_\_\_  
Title Division Manager  
Division: Construction/Capital Projects  
Telephone: 503-731-7846

*Copy 1 – MERC Contracts*

*Copy 2 – Facility*

*Copy 3 – Contractor*