

CITY OF DUNDEE  
PLANNING COMMISSION AGENDA  
City Council Meeting Chambers  
620 SW 5<sup>th</sup> Street  
Dundee, OR 97115  
P.O. Box 220

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**MEETING DATE: January 21, 2014**  
**Meeting Time: 7:00pm**

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- I. Call Meeting to Order.**
- II. Election of 2015 Chairman and Vice-Chairman**
- III. Approval of Minutes from Previous Meetings**
  - 1) November 19, 2014
- IV. Public Comment**
- V. Training**
  - 1) Land Use Process
  - 2) Ethics
  - 3) Pop Quiz
- VI. Planning Issues from Commission Members**
- VII. Adjournment**

The City Council chambers are accessible to persons with disabilities. A request for an interpreter for the hearing impaired, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting to Melody Osborne, Planning Secretary at 503-538-3922.

# CITY OF DUNDEE

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**Meeting:** Planning Commission Meeting  
**Location:** City Council Meeting Chambers  
620 S.W. 5<sup>th</sup> Street  
Dundee, Oregon 97115  
**Date:** November 19, 2014  
**Time:** 7:00 p.m.

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## **I. Meeting called to order.**

Chairman Fiedler called the meeting to order. Commissioners present included Gary Rodney, Kristen Svicarovich, David Hinson, Francisco Stoller, Gerald Fiedler, and Isaiah Cox; Michelle Kropf had an excused absence.

Also in attendance were City Planner Jessica Pelz and City Administrator Rob Daykin. Megan Carda, of Lifestyle Properties, was in the audience.

## **II. Approval of Minutes from Previous Meeting(s)**

It was moved and seconded to approve the minutes from the September 17, 2014 meeting. Motion passed, unanimously.

## **III. Public Comment**

There was no public comment.

## **VI. Public Hearings - City of Dundee, LURA 14-07- Short-Term Vacation Rentals**

### **1. Objections to Notice**

Chairman Fiedler began by reading the statement of interest into record. He then questioned whether there were objections to notice. No objections were heard.

### **2. Objections to Jurisdiction**

There were no objections to jurisdiction.

### **3. Declarations of Bias or Abstentions**

There were no declarations.

### **4. Staff Report**

Planner Pelz read the staff report record. There was a small discussion concerning background checks for homeowners. CA Daykin explained that the City would be unable to

use LEDS to conduct the checks because the state would not allow access to the system for that purpose.

Planner Pelz concluded with the staff recommendation.

Questions of staff:

- 1) Does the City have a list of businesses or the ability to require that the owner keep promotional literature on site? CA Daykin responded that the Chamber and Tourism Committee provided those items. There was discussion about whether it could be made a regulation in the code. Planner Pelz responded that it would be difficult to enforce.
- 2) There was a question about why the 120-day limit on rental days was not included in the proposed regulations. Planner Pelz stated that it was left out because the parameter would be very difficult for staff to monitor and enforce. Further discussion centered on the basis for the regulation and what the concern was for having a limited number of days (that the property would become a quasi-hotel and that there would be no one handling complaints); also, the transient tax payment process and how tracking could potentially work. CA Daykin also explained that the system operates on an honor system. There was also an explanation of the complaint process.
- 3) It was questioned why the regulation governing the number of homes owned by one owner was not included in the proposed regulations. It was explained that it would also be difficult to regulate and enforce because the City does not track buying and selling, but that there were a number of different ways that something could be owned (LLC, Corporation, Husband and Wife with differing last name). Business license requirements and Type 1 Checklist review procedures and requirements were also explained. It was questioned what the concern was between having one person own 50 vacation rentals vs. 50 persons owning one vacation rental each.
- 4) Clarification was offered on when and what qualifies as a conditional use.

## 5. Proponents

Megan Carda, of Lifestyle Properties introduced herself. She read a prepared statement into record (which was entered into the record and has been attached as Exhibit A).

Chairman Fiedler asked if the task force she mentioned in her presentation would be ongoing. Ms. Carda responded no, it was a body put together to talk with homeowners, stakeholders, and business owners to find the best regulations.

Discussion and questions of Ms. Carda centered on the following items:

- 1) An explanation of what her business did was requested. Ms. Carda answered that there was a lot of work that went into caring for vacation rentals and that she pairs with home owners and renovates, does all the TLC necessary to prepare the home for being a vacation rental, and after the home is ready takes over management. At that point, she works with the renters to make sure the home is the best for them; letting them know what the area is about; meeting them at the home to give them the keys and a tour; and then telling them about the different businesses and locations they can visit. Finally, once they leave, she goes in and checks on the home and gets the cleaning process done. Commissioner Rodney asked if the home owner utilized their business if she was responsible for making sure the regulations were met and the home kept up. Ms. Carda responded affirmatively.

- 2) There was a question about what demographics were being seen. Planner Pelz gave an example of the City of Bend, stating that their city had a lot of noise complaints because their demographic tended toward the party crowd (sororities and frats coming for ski vacations). Ms. Carda answered that the people renting were generally families visiting family or looking at George Fox University, and older people coming for wine tours. She stated that there weren't many who came to party since the area is not prone to that type of scene.
- 3) There was a question about whether the business of renting vacation rentals could suffer as a whole if there were homes in the area that were managed badly. The response was that since no one typically rents from a home with bad reviews she believed the rental of that home would cease because of lack of revenue, but that would not hurt the industry.
- 4) There was a question about whether any of the homes being managed had owners that also came and lived in the home part time. Ms. Carda responded that she did have a couple homes that were split residences. Also, she has a home where the owners live out of the country and come back to visit family for weeks at a time, using the house when they are here but having it as a vacation rental when they are not.

## 6. Deliberation

There was a question about how easy it would be to revise the regulations if problems arise in the future. CA Daykin responded that the process would be the same. Discussion took place about what happens if the regulations did change after home owners had already purchased and set up business. CA Daykin stated that there could be timelines set. Planner Pelz also added that it would depend on the regulation and applicability.

There was a statement made in favor of keeping things simple.

There was a statement made regarding fear that limiting days would hurt the profitability of a vacation rental owned, and that this would discourage vacation rentals when Dundee already lacks lodging. Commissioner Hinson responded that he believed a bigger fear would be turning neighborhoods into hotels. Planner Pelz stated that the model she looked at centered on people owning properties that they used a few times a year, but when they were not residing in the home they offered them as a vacation rental.

There was a statement made regarding the concern for the safety of residents when multiple people moved in and out of it without the thread of ownership giving a reason to take care of the neighborhood.

There was additional discussion regarding a potential regulation limiting the number of days a home could be rented up to 120. Planner Pelz asked about process and if it was feasible to have an owner identify that up front.

There was discussion about the complaint process and the number of complaints needed before revocation; and about the police department being responsible for governing noise and parking. It was questioned how tracking municipal code violations would occur, and how many it would take to revoke the use. CA Daykin noted that there is a chronic nuisance provision in the municipal code.

There was a question about whether a fire extinguisher in the kitchen could be required, and whether it was required by building code. Planner Pelz answered that it was not a building code requirement. CA Daykin questioned what the public policy was that was trying to be achieved. A suggestion was made to hand out a recommended safety checklist.

There was discussion about making rentals over 120-days a conditional use and cost for that process. Planner Pelz explained that a conditional use typically required special conditions and questioned what those would be. She further explained that because someone didn't like it or want it next to them, this would not be a reason to deny the application; the use needs to be measured against clear and objective standards. The question would be whether or not it met the code.

Commissioner Svicarovich stated that she liked the City of Newberg's vacation rental purpose statement, in particular the sentence "The purpose is to maintain the peace, quiet, traffic patterns, and property maintenance typical for the residential neighborhood." She stated that it gave intent to what the Commission was trying to accomplish. She wondered if there was a way to mitigate impacts to the neighborhood by requiring traffic counts or speed surveys. Planner Pelz asked what kind of land use condition would be created to accomplish this goal. There was argument about whether speed and traffic count would be increased by having a vacation rental in a neighborhood.

Chairman Fiedler asked a question about the requirement for a home with more than four bedrooms needing a conditional use, and what the basis of denial would be; what was going to be judged. There was comment from CA Daykin and Planner Pelz that they did not like this regulation; CA Daykin stated that he didn't believe it should be a regulation for bed and breakfasts either. He thought there should simply be a clear standard - you can have this many bedrooms or not.

Planner Pelz reviewed code language and noted that she had found some conditions imposed by other jurisdictions that could be added during the conditional use process; additionally, she now believed that the number of bedrooms would be appropriate as a conditional use. Suggested additional conditions included - ask the owner to build a fence for screening the backyard, requiring a local property manager, and extra landscaping. Commissioner Hinson questioned whether the 120 days limit could be added as a conditional use trigger as well. Planner Pelz stated that was not staff's recommendation, but the Planning Commission could make this a requirement if they chose.

Commissioner Cox stated that he believed his mind was made up and stated that he didn't believe further deliberation was going to change things. He questioned how to move forward out of deliberation. Planner Pelz and Commissioner Hinson responded that a motion could be made to recommend adoption to the City Council of the standards as written, or recommend adoption with amendments, but that the next step would be to take action.

It was moved to recommend City Council adopt the development code regulations as written by staff. The motion was seconded. Called for question: Aye: 4; Nay: 2 (Hinson, Svicarovich)

Public Hearing closed.

CA Daykin explained the next steps toward adoption.

**V. Planning Issues from Commission Members.**

There was discussion regarding the Highway 99W improvements in 2015.

CA Daykin informed the Commission of the TSP Workshop on December 9 at the Dundee Fire Station. Then, in January, a joint Planning Commission/City Council workshop would take place.

**VI. Adjournment**

It was moved and seconded to adjourn the meeting. Motion carries, unanimously.

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Gerald Fiedler, Chairman

ATTEST:

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Melody Osborne, Planning Secretary

Good evening, my name is Megan Carda. I am a local Newberg resident, born and raised here in Dundee. I recently opened my business, Lifestyle Properties, this past spring. Lifestyle Properties is based in Newberg, and coordinates with homeowners throughout the Willamette Valley, to best prepare their homes for short-term vacation rentals. Our business goal is to take the worry and hassle of vacation rental management from homeowners, and provide them with peace of mind and revenue in return. All while being committed to creating the best experiences for guests traveling to the area, and building positive relationships with local businesses and neighbors. It is our goal to stay true to the area's genuine harmony and rural charm, and to pass those experience on to our visitors.

→ I am here today because I am confident that the community of Dundee is currently at the best place where we can build an impactful solution for short-term rentals. At this juncture, I believe the commissioners have three major concerns to be mindful of:

1. Will this cost the city money?
2. Will this make the city money?
3. What is the public's opinion of short-term rentals in our community?

→ My solution to offer to the commissioners is to allow the creation of a local alliance, where stakeholders and citizens can come together to help shape decisions about regulations for this relatively young industry. Where they create fair and reasonable, easy to follow guidelines, which short-term rental owners and managers can easily understand and adhere to. Currently Bend Oregon, Monterey California, and Austin Texas have some great examples to follow of where local task forces are coming together to find the best practices and common sense solutions for their communities, just to name a few.

→ Additionally, in June of 2012 at the US Conference of Mayor's 80<sup>th</sup> Annual Meeting, the policy of: Promotion of Economic Development through the Visitors Industry was unanimously passed. Three of their major findings were:

1. Positive economic benefits to local communities.
2. The level of tourism and business travel that comes through short-term rentals will not come through hotels the same way. And...
3. The value of having a transparent industry instead of pretending it doesn't exist.

→By ignoring regulation opportunity the city would be missing out on the opportunity for the short-term rental industry to be above the radar and transparent activity. They would also miss out on the opportunity for properties to be registered and for taxes to be paid. It is a fact that a city can make more money in taxes. Rather than from fines and the time spent in the compliance aspect when trying to restrict short-term rental activities. Positive effects of having a transparent industry vastly outweigh the negative effect of having an industry where people would probably still operate, just underground where in turn they do not contribute to the local community and pay taxes.

→One example of a positive result of short-term rentals comes to us from Lake Worth, Florida, where it has locally accounted for 50 known vacation rentals. According to the Palm Beach County Convention and Visitors Bureau, visitors stay an average of 3.5 nights and spend 1,384 dollars per visit. That's 395 dollars per day!... Assuming those 50 vacation rentals are rented for 180 days a year, that's roughly \$3.5 million being spent in their community every year! With the right regulations this too could be the positive effect short-term rentals have on the city of Dundee and Yamhill County.

→In conclusion, I believe that by allowing a local creation of a stakeholder task force, we can address the commissioners' major concerns. A task force will not cost the city more money. Also, by developing positive regulations for short-term rentals that satisfy stakeholders, the city, local business, and travelers; the city will greatly see and feel the economic benefits. And lastly, the public's major opinion of local short-term rentals will be positive once the task force establishes best practice, common sense solutions.

Thank you for your time and consideration.

## Chapter 4: Making Land Use Decisions

Welcome to Chapter 4 – Making Land Use Decisions. In this section, we discuss the different types of land use decisions made by city and county government, time requirements for these decisions and the public hearing and appeals processes. We have divided them into specific sections for easy reference.

*It is important to note that this chapter is only a general summary of planning procedures and requirements. For information about a specific statute, legal precedent, goal or rule, cities and counties should contact the appropriate governmental agency. If you have legal issues or concerns, consult an attorney who specializes in land use law.*

### Local Land Use Decisions

According to state law, there are three main types of land use decisions: legislative, quasi-judicial and ministerial. In most cases, public notice is required. Public hearings are required for certain types of decisions. Although local governments must establish procedures and requirements consistent with state statutes, they have considerable flexibility in assigning responsibility for decisions. For example, in many cases, staff makes the initial decision, subject to appeal to the planning commission. Some planning commission decisions may be appealed to the governing body. Some jurisdictions employ hearings officers to make certain types of land use decisions which are then subject to appeal to the planning commission or governing body. In all cases, local government land use decisions may be appealed to the Land Use Board of Appeals, or LUBA. All decisions must be consistent with state statutes, the statewide planning goals, case law and other applicable legal requirements.

Limited land use decisions and expedited land divisions are special categories of local decisions that are subject to specific procedures and standards outlined in state statutes.

#### Legislative Land Use Decisions

Legislative decisions establish local land use policies. They typically become part of the comprehensive plan or zoning code. In the case of map designations, legislative decisions are applicable to broad geographical areas rather than single properties or sites. In most communities, proposed legislative amendments to the comprehensive plan or zoning code are considered first by the planning commission, which holds one or more public hearings. The commission's recommendation is then considered by the governing body which holds at least one public hearing before taking final action.

#### Quasi-Judicial Land Use Decisions

Local governmental bodies make quasi-judicial decisions when they apply existing policies or regulations to specific situations or development proposals. Other quasi-judicial decisions amend the zoning or comprehensive plan map, policies or regulations in relation to a specific development proposal. Additional examples of quasi-judicial decisions are conditional use permits, variances, partitions, subdivisions, annexations and road and street vacations.

#### Ministerial Land Use Decisions

Ministerial land use decisions are made by local planning staff based on clear and objective standards and requirements applicable to a specific development proposal or factual situation. Examples include building permits for a use permitted by code or a determination that a proposed structure meets setback or height requirements. Ministerial decisions do not require a public notice or hearing.

#### Limited Land Use Decisions and Expedited Land Divisions

To streamline approval of relatively minor actions within an urban growth boundary, or UGB, the legislature has approved two other kinds of decisions. The first, limited land use decisions, are made by the locally designated decision-maker and are subject to procedures and notice requirements outlined in state statutes. Examples include tentative partitions, tentative subdivisions, site review and design review.

The second, expedited land divisions for residential uses within a UGB, are made by planning staff after public notice. They are subject to procedures and requirements outlined in state statutes. The local government may not hold a hearing on such an application and must make its decision within 63 days of the application. Decisions may be appealed to a referee hired by the local government and finally to the State Court of Appeals according to state law.

## Process

Procedures for legislative and quasi-judicial land use decisions are outlined in statutes and interpreted through case law. These procedures are ultimately incorporated into local plans and ordinances. Legislative procedures are generally more flexible than quasi-judicial procedures because they deal with relatively broad public policy issues. Quasi-judicial procedures are often more complex and specific, and require "due process." This is a legal term that entitles all affected parties prior notification of a proposed action and the opportunity to present and rebut evidence before an impartial tribunal. For quasi-judicial decisions, governing body members, hearings officers and planning commission members should avoid or limit communications outside of the formal public hearing process. They are required to disclose any contact outside the public hearing regarding a specific case in order to provide an opportunity for rebuttal or other corrective action. The local government must maintain a record of the proceedings and adopt findings of fact regarding the reasons for their decision. Within UGBs, this process must be completed within 120 days. Outside UGBs, the process must be completed within 150 days. In both cases, there are specific provisions to extend the time limit.

### Land Use Application

Legislative land use decisions are subject to post acknowledgment plan amendment (PAPA) requirements contained in state statutes. For quasi-judicial land use decisions, the 120- or 150-day review process begins after the planning staff receives required application forms and supporting information that advocate for a certain land use or proposed development. Many local governments will schedule pre-application conferences with the prospective applicant.

### Public Notice

Notice for legislative land use decisions must be provided to the public as outlined in local procedures and must be forwarded to the Director of DLCD as required by the state statute. DLCD provides notice to those who have requested to be included on the agency's notice list.

For quasi-judicial decisions, specific parties must be notified at least 20 days prior to the public hearing: the applicant; property owners within 100 feet of the property if within a UGB, within 250 feet if located outside a UGB and within 500 feet if located within a farm or forest zone; and any neighborhood or community organizations whose boundaries include the site. Some local governments also require that notice be posted on the property.

### Public Hearing

For legislative decisions, the planning commission usually holds initial hearings on a proposal before forwarding its recommendation to the governing body. Legislative decisions require final action by the governing body. Hearing procedures are relatively flexible and there are no limitations on outside contact between decision makers and the public.

For quasi-judicial decisions, most cities and counties hold at least one hearing before the planning commission or hearings officer prior to forwarding a recommendation or allowing an appeal to the governing body. At the hearing, the presiding officer summarizes the procedures and planning staff describes the case, including the applicable criteria in the comprehensive plan or zoning code, and its recommendation.

Applicants then present their case for approval and others may support them. Opponents then have the opportunity to challenge the applicant's case. All parties have the right to present and rebut evidence directed toward the applicable criteria. Failure to raise an issue orally or in writing in advance of or during the hearing precludes appeal to LUBA on that issue. This is commonly referred to as the "raise it or waive it" requirement. Under state law, some types of land use decisions may be made without a hearing if notice is provided and no party requests it.

### Decision and Findings

Legislative decisions require a record and findings, but the requirements are less rigorous than for quasi-judicial decisions. The record must be adequate to show that the legislative action is within the legal authority of the city or county. The record must show that the jurisdiction followed applicable procedures. Legislative decisions must be consistent with substantive requirements in state statutes and the statewide planning goals. For example, an updated housing element must be consistent with ORS 197.303-314 and Statewide Planning Goal 10 (Housing).

After hearing the staff report and public testimony on an application for a quasi-judicial decision, the hearings body makes its decision. As noted before, this must be based only on applicable criteria in the local code and relevant

evidence and testimony. There are four choices of action: approve the application; approve the application subject to specific conditions; deny the application; or continue the review process to obtain additional information. In this case, the applicant may need to agree to a time extension.

The final decision must include findings of fact and conclusions of law that are adequate to explain the basis for the action. Draft findings are often prepared by staff and may be available in advance of the hearing. Adoption of findings may occur immediately following the hearing and include any modifications to the draft, based on additional evidence and testimony. In some cases, the prevailing party, legal counsel or staff are asked to prepare the final version of the findings which are then adopted at a separate meeting before the time limit expires. The final decision must be based on what is known as "substantial evidence" that a reasonable person would rely on in reaching the decision.

## Appeals

Local ordinances specify how initial decisions by local staff, a hearings officer, or the planning commission can be appealed to the local governing body. Certain appeals are limited to evidence submitted to the initial decision-maker and may include an opportunity for additional oral or written argument.

As we have noted before, only parties that have stated their case before the local government have 21 days to file a Notice of Intent to Appeal with LUBA. Following this filing, and during a timeframe prescribed by law the local government must provide the complete record of the proceedings with the board. Once the record is filed and accepted, the petitioner and respondent(s) file their briefs with the board. LUBA will hear oral arguments from the parties and issue a written opinion that either affirms, reverses, or remands the decision for additional consideration. The board's decision may be appealed to the Court of Appeals, or finally, to the Oregon Supreme Court. Specific timelines in state law provide for a speedy review of land use decisions and increase certainty for both the community and applicant.

Alternatives to formal appeals include mediation, which can save all parties time and money. For more information on mediation assistance, contact DLCD.

## Staff Role

Planning staff are usually the first individuals an applicant meets. They are responsible for explaining all procedures and requirements, reviewing the application for completeness and preparing the staff report. Staff presents its report and recommendation to the decision maker. Often, the staff recommendation is accepted with or without conditions. Staff generally prepares the final decision documents and findings of fact documenting the reasoning to support the decision.

A pre-application conference with prospective applicants may help them understand the procedures and requirements for the land use proposal, including any additional research or information that may be needed. In some cases, applicants may be encouraged to meet with neighborhood groups or other affected parties to review their proposal.

Staff prepares a public notice for proposed land use decisions that describes the location of the subject property, the nature of the application and the proposed use. The notice also explains: criteria from the comprehensive plan and land use regulations that pertain to the application; the date, time, and location of the public hearing; the name of a local government representative to contact; and requirements for public testimony and how the hearing is conducted. When a staff report is prepared, it must be made available to all interested parties seven days prior to the public hearing. In some cases, the staff report includes draft findings explaining the reasoning for the recommended decision.

As noted earlier, LUBA may remand or return a case to the local government for additional review. If a decision is remanded, the local government must decide whether to proceed, based on the existing record or to allow additional evidence and testimony. Legal requirements related to remand may be complicated. Staff should work with their legal counsel to define procedures and requirements before the remand is formally considered.

## Ex Parte Contact, Bias and Conflicts of Interest

### Ex Parte Contact

An ex parte contact occurs when a decision-maker receives information, discusses the land use application or visits the site in question outside the formal public hearing. This does not include discussions with and information

received from staff. Failure to disclose such contact may result in reversal or remand of the decision. If ex parte contact does occur, the decision-maker must disclose it on the record at the hearing, describe the circumstances under which it occurred and present any new evidence introduced through that contact. The presiding officer must give parties the opportunity to rebut the substance of the ex parte contact. State statutes clearly delineate requirements for ex parte contacts.

## **Bias**

Bias occurs when decision-makers have a prior judgment of the case that prevents them from making an objective decision based on the facts. Such decision-makers should excuse themselves from the proceedings. Even though bias is often subjective, not all personal views or positions are actual bias in the eyes of the law. While it is not unusual for decision-makers to have a perspective or background, the threshold test is if this will influence their decision. Decision-makers should carefully consider any issues related to their personal bias and be prepared to step aside if necessary.

## **Conflict of Interest**

A conflict of interest occurs if any action by public officials results in financial gain or loss to themselves or a relative or business associate. According to state law, it must be disclosed. There are two types of conflicts of interest, actual and potential. An actual conflict of interest is one that would occur as a result of the decision. If that is likely, the decision-maker must disclose it and not participate in the decision. A potential conflict is one that could occur as a result of the decision. In that case, disclosure is still required, but the decision-maker may participate in the decision.

## **Legal Issues Related to Ex Parte Contacts, Bias or Conflicts of Interest**

Decision makers should consult with the local government's legal counsel if they have any questions or concerns regarding Ex parte contacts, Bias or Conflicts of Interest.

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## **Oregon Government Ethics**

Excerpt from the Web Page of  
The Oregon Ethics Commission

### **History:**

During the Watergate scandal of the early seventies, Americans were confronted with deceit and misuse of power by elected officials. Citizens across the nation began calling for accountability from their governments. In response, Oregon was one of the first states to create laws designed to open government to greater public scrutiny.

In 1974, more than 70 percent of the voters approved a statewide ballot measure to create the Oregon Government Ethics Commission. The ballot measure also established a set of laws (ORS Chapter 244) requiring financial disclosure by certain officials and creating a process to deal with the inevitable question of conflict of interest. The drafters of the original laws recognized that "conflict of interest" is, indeed, inevitable in any government that relies on citizen lawmakers.

The Oregon Legislature changed the agency's name to Government Standards and Practices Commission (GSPC) in 1993. The Oregon Legislature during the legislative session of 2007 changed the agency's name back to Oregon Government Ethics Commission. The OGEC has seven volunteer members. Four members are appointed by the Governor upon recommendation by the Democratic and Republican leaders of the Oregon House and Senate. The Governor selects three members directly. All members must be confirmed by the Senate. No more than four of the members may be from the same political party. The law allows members to serve only one four-year term.

The OGEC is administered by an executive director selected by the commissioners. The commission also employs two full-time investigators, a trainer and an executive assistant who are appointed by the executive director.

The manner in which the OGEC reviews alleged violations of law is prescribed in detail in ORS 244.260. While it is subject to strict statutory requirements, the OGEC process is not intended to be rigid or intimidating.

OGEC staffers are available for informal questions and discussions about statutes, administrative rules and the commission's process. Public officials are encouraged to meet with OGEC staff at any time.

The OGEC members and staff consider that they are doing their job most successfully if they can help public officials avoid conduct that violates the relevant statutes. They encourage people to inquire into any point of the statutes prior to taking any action that may violate Oregon Government Ethic law, Lobbying Regulation law or the Executive Session provisions of Public Meetings law.

### **Oregon Government Ethics law** ([ORS Chapter 244](#)):

- Prohibits use of public office for financial gain

- Requires public disclosure of financial conflicts of interest

Requires designated elected and appointed officials to file annual disclosures of sources of economic interest

Limits gifts that an official may receive per calendar year

Applies to all elected and appointed officials, employees and volunteers at all levels of state and local government in all three branches

**Excerpts from:**

**A GUIDE FOR PUBLIC OFFICIALS** Adopted October 2010

[http://www.oregon.gov/OGEC/docs/Public\\_Official\\_Guide/2010-10\\_PO\\_Guide\\_October\\_Final\\_Adopted.pdf](http://www.oregon.gov/OGEC/docs/Public_Official_Guide/2010-10_PO_Guide_October_Final_Adopted.pdf)

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

## **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.

## **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 & Science University.

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

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

Among the public officials who volunteer, there are elected or appointed members of governing bodies of state boards or commissions, city councils, planning commissions, fire districts, school districts and many others. There are also many who apply and are selected to perform duties for a government agency, board

or commission without compensation, such as fire fighters, reserve law enforcement officers and parks or recreation staff members.

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

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

There are provisions in ORS Chapter 244 that restrict or prohibit a public official from using or attempting to use official actions of the position held to benefit a relative; or may limit the value of financial benefits accepted by a relative of the public official or may require the public official to disclose the nature of a conflict of interest when a relative may receive a financial benefit. These provisions are discussed more comprehensively in the use of position or office section starting on page 9, the gifts section starting on page 26 and the conflicts of interest section starting on page 21.

### **Who is a relative?**

Public officials need to know how Oregon Government Ethics law defines who a “relative” is. In everyday conversation the use of “relative” is applied to a broader spectrum of individuals with “family ties” than those defined as relatives in ORS 244.020(15). When a provision in ORS Chapter 244 refers to “relative” it means one of the following:

**Spouse** of a public official or candidate

**Children** of a public official or candidate

**Children of the spouse** of a public official or candidate

**Siblings** of a public official or candidate

**Siblings of the spouse** of a public official or candidate

**Spouse of siblings** of a public official or candidate

**Spouse of siblings of the spouse** of a public official or candidate

**Parents** of the of public official or candidate

**Parents of the spouse** of a public official or candidate

**Person** for whom the public official or candidate has a **legal support obligation**

**Person benefiting from a public official** when benefits are from the public official’s public employment

**Person who provides benefits to a public official** or candidate when benefits are from the person’s employment

For purposes of “relatives” defined by the last two bulleted items, examples of benefits may include, but not be limited to, elements of an official compensation package including benefits such as insurance, tuition or retirement allotments.

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

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

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

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

#### **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)] For example, if a member of a state board is required by law to be employed in a specific occupation, such as an accountant or a doctor, then the official actions taken by the board member that affect all accountants or doctors to the same degree would be exempt from the conflict of interest disclosure requirements and participation restrictions.

If the financial impact of the official action would impact the public official, relative or business of the public official to the same degree as other members of an identifiable group or "class". The Commission has the authority to identify a group or class and determine the minimum size of that "class." [ORS 244.020(12)(b) and ORS 244.290(3)(a)] For example, if a county commissioner votes to approve a contract to improve or maintain a county road that leads to the property the commissioner owns, but the improvements would also benefit many other property owners to the same degree, the commissioner would be exempt from the conflict of interest disclosure requirements and participation restrictions. The number of persons affected to the same degree as the public official will help to determine whether this exception applies.

If the conflict of interest arises from an unpaid position as officer or membership in a nonprofit corporation that is tax-exempt under 501(c) of the Internal Revenue Code. [ORS 244.020(12)(c)] For example, a city councilor is also an unpaid board member or member at the local YMCA. The decision, as a city councilor, to award a grant to that YMCA would be exempt from the conflict of interest disclosure requirements and participation restrictions.

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

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

**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.