

# Councilor Duties and Responsibilities

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## Oregon Government 101

Who has the power?

Sources of overlapping jurisdictions:

- Federal Law
- State Law
- County Partners
- City Partners
- Special District Partners
- Tribal Law

## Councilor Liability

### City vs. Individual Liability

- Action against public body, not individual.  
ORS 30.255; *but also* 42 USC §1983
- City duty to defend and indemnify. ORS 30.285

## Councilor Liability

- ORS 294.100: Misexpenditure of Funds
- Ethics
- Elections
- Public Meetings
- Criminal Actions
- Civil Actions – Acting Outside Scope of Duties/Authority

## Council Authority

Council authority requires two things:

- **Legal authority** (statutes, ordinances and policies)
- **Numbers** (majority vote from a quorum)

## Councilor Authority

No individual authority to act on behalf of the City without prior authorization via Charter or Council action (specific action, ordinance, policy)

## Councilor Authority

- City Charter § 6 vests most power “in the council.”
- City Charter § 7: “The council consists of a mayor and six councilors...”

## Councilor Roles

- Speaking for City
- Speaking individually
- Campaigning
- Providing constituent services
- Speaking to the media
- Speaking about union matters

## Councilor Roles

- City Charter “Council” vs. “Councilor”
  - Electioneering vs. Governing
  - Entity vs. Individual
- Council Rules, Rules of Decorum and Order
  - Golden Rule
  - Confidentiality

## Council as Employer

- Code and Charter delegations of operational powers to City Manager
- City Manager operates the City and hires/supervises City staff
- Council is only the direct supervisor for City Manager, Municipal Judge and City Attorney
- Mayor acts as point-person for Council in its role as supervisor

## Council as Employer

- Charter § 33 creates the City Manager as officer of the City appointed by the Council.
- Code § 31.01 sets out specific City Manager duties.
- Council Rules: "The Council sets city policies and goals. The staff implements and administers the policies and goals. Council members shall respect the separation between policy-making and administration..."

## Ethics

### Statement of Economic Interest

At the city, only city councilors, planning commission members, the municipal judge and the city manager are required to file. Statements are due on or before April 15<sup>th</sup> every year.

## Ethics

### 3 Ethics Rules for Public Officials

A "public official" is:

- An elected official
- An appointed official
- An employee
- A volunteer

## Ethics

### Rule 1:

Don't use your position for personal gain.

## Ethics

The "BUT-FOR" Test - 244.040(1)

**A public official cannot use position**

- To get \$ or to avoid losing \$
- For the PO OR for a relative or a member of the household
- If that opportunity would not be available BUT FOR your position

## Ethics

### DOES NOT INCLUDE

- Compensation or Reimbursement
- Unsolicited awards, or legal expense donations
- Or GIFTS and honoraria (within limits)

## Ethics

### "Relative" 244.020(15)

- Spouse
- Children of the PO or of the PO's spouse
- Brother or stepbrother of the PO or of the PO's spouse
- Sister or stepsister of the PO or of the PO's spouse

## Ethics

### “Relative” (cont.)

- Parents or stepparents of the PO or of the PO's spouse
- Son-in-law or daughter-in-law of the PO or of the PO's spouse
- Anyone for whom the public official has a legal support obligation or is a beneficiary of the PO's employment benefits

## Ethics

### Rule 2:

Gifts are limited to \$50 per year, per giver.

## Ethics

### "Gift" 244.020(5)

- Something of economic value
- Given to public official, the PO's relative or member of the PO's household
- Without receiving value back and
- NOT given to the general public on the same terms

## Ethics

### The GIFT RULE:

1. You (your relative or a member of household)
2. Cannot ask for, receive, or give
3. Or even hint at getting/giving
4. Gifts over \$50 from any single source in one year
5. IF your source has an interest in your official actions: i.e., a decision or vote

## Ethics

### **A Gift is Not Limited if it is a:**

- Campaign Contribution
- Present from relatives or household members
- Unsolicited award/token of appreciation with resale value <\$25
- Discounted registration at professional education event

## Ethics

### **A Gift is Not Limited if it is a (cont.):**

- Informational material related to your official duties
- Part of a customary private business practice and not related to your public office
- Incidental food, beverage, and entertainment
- Food, beverage, and entertainment when acting in official capacity, representing the city

## Ethics

### Rule 3:

Confront conflicts of interest.

## Ethics

“Actual Conflicts” (Would/Will Happen)

- An action, decision, or recommendation
- By a *public official*
- Resulting in a financial benefit or detriment for PO or a relative or business associated with PO or relative

## Ethics

### "Actual Conflicts" (Would/Will Happen) (Cont.)

- Would result in financial benefit or detriment to public official
- Or *relative*
- Or any *business associated* with PO or relative

## Ethics

### "Potential Conflict" (Could Happen)

- Could result in financial benefit or detriment to public official
- Or *relative*
- Or any *business associated* with PO or relative

## Ethics

### “Business with which Person is Associated”

- Any private business in which you or a relative are an owner, director, officer, or employee or in which you or a relative has \$1,000+ worth of interest
- Any publicly held corporation in which you or a relative has \$100,000 of interest or you or a relative is an officer/director

## Ethics

### “Business with which Person is Associated”

- OR if you file a Statement of Economic Interest, if more than 10% of your total annual household income comes from the business

## Ethics

### Conflicts of Interest Rules (Both Actual and Potential)

#### When in Doubt: Shout it Out!

- State the nature of your conflict
- Do it before voting or discussing the matter
- Do it on the record
- Do it each meeting issue is discussed

## Ethics

### Actual Conflict Only

- When in Doubt, Shout It Out...and then Shut It Up.
- Same rules as Potential Conflict, but no talking and no voting...
- Unless Council cannot act without you (but still no talking)

## Ethics

It is not a conflict if the financial benefit happens because of:

- Membership in a class (any large, distinguishable group of citizens that the Commission determines is a class)
- Membership in a non-profit (501(c) status)

## Ethics

Conflict of Interest Example

- Springfield Land Use Code Update
  - Technical Advisory Committee (citizens)
  - Governance Committee (Council and PC)
  - Planning Commission
  - City Council

## Ethics

### Nepotism

- Relatives can be employed by the same public agency and serve on the same governing body
- Public officials cannot participate in any personnel action that would impact a relative or household member
- Exception if relative is an unpaid volunteer

## Ethics

### Nepotism

- Volunteer exception does not apply if the volunteer is a member of a governing body (e.g., council, budget committee)
- Public official may not supervise relative, unless City adopts policies setting out measures for when/how supervision can take place

## Public Meetings

### Resources to Know and Use

- ORS 192
- Attorney General's Public Meetings and Open Records Manual (2019)
- City Staff

## Public Meetings

### Purpose of Public Meetings Law

ORS 192.620:

- "The Oregon form of government requires an informed public aware of the deliberations and decisions of governing bodies and the information upon which such decisions were made. It is the intent of ORS 192.610 to 192.690 that decisions of governing bodies be arrived at openly." (Emphasis added.)

## Public Meetings

- Meeting means: “the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward decision on any matter.”
- “A quorum of a governing body may not meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as otherwise provided by ORS 192.610 to 192.690.” (Emphasis added.)

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## Public Meetings

### What meetings are subject to the law?

- Serial discussions:
  - Contemporaneous gathering of a quorum not required to “meet”
  - Series of communications between members may be a violation (e-mails, texts, or even communications through an intermediary)
- Administrative matters:
  - Meeting requirements do not apply to a discussion on a purely administrative matter

## Public Meetings

What are the requirements of a public meeting?

- Notice
- Space, Location, Accessibility and Attendance
- Voting
- Records

## Public Meetings

*Dumdi v. Handy* (2011)

The court found the commissioners' actions to violate the public meetings law because:

- at least a quorum of the governing body;
- made a decision or deliberated toward deciding a matter;
- in a setting that was private and not open to the public (including via e-mail)

## Public Meetings

### *Dumdi v. Handy (2011)*

- Under settlement agreement:
  - two Commissioners agreed to pay a fine of \$20,000 each;
  - County agreed to pay the plaintiffs \$350,000.

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## Public Meetings

### *Handy v. Lane County (Nov. 2015)*

- Serial Meetings.
  - Contemporaneous gathering of a quorum not required to “meet.”
  - Series of communications between members may be a meeting – with communications including e-mails, texts, or even communications through an intermediary.

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## Public Meetings

*Handy v. Lane County* (Nov. 2015)

- Administrative matters.
  - Meeting requirements do not apply to a discussion on a purely administrative matter.

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## Public Meetings

*Handy v. Lane County* (Nov. 2015)

- Court looks to the “purpose” of the communications.
- A meeting, or series of meetings, between a quorum (whether in person or via electronic means) is subject to the public meetings law if the purpose of the discussion is deliberation on a matter for which a vote of the public body is required.

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## Public Meetings

### Practical Tips

- Avoid replying to e-mails when City business information is shared
- Avoid conversations (in person or via e-mail) between Councilors where the views of a fellow Councilors are shared
- Avoid sharing firm opinions or views on items the Council would need to vote on

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## Public Meetings

### Practical Tips

- Mayor must set realistic agenda
- Circulate materials/minutes in advance
- Keep it formal
- Have simple rules
- Public participation does not mean public conversation
- Use work sessions
- Restate vote, note if staff must follow up
- Get comfortable having discussions in public – no need to shy away from public discourse or dissent

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