

## Conflicts of Interest

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## Definitions

244.020(15): "Public official" means the First Partner and any person, who, when an alleged violation of this chapter 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.

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244.020(16): "Relative means:

- (a) The spouse, parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law of the public official or candidate;
- (b) The parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law of the spouse of the public official or candidate;
- (c) Any individual for whom the public official or candidate has a legal support obligation;
- (d) Any individual for whom the public official provides benefits arising from the public official's public employment or from whom the public official receives benefits arising from that individual's employment; or
- (e) Any individual from whom the candidate receives benefits arising from that individual's employment.

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244.020(2): "Business" means any corporation, partnership, proprietorship, firm, enterprise, franchise, associations, organization, self-employed individual and any other legal entity operated for economic gain but excluding any income-producing not-for-profit corporation that is tax exempt under section 501(c) of the Internal Revenue Code with which a public official or a relative of the public official is associated only as a member or board director or in a nonremunerative capacity.

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244.020(3): "Business with which the person is associated" means:

- (a) Any private business or closely held corporation of which the person or the person's relative is a director, officer, owner or employee, or agent or any private business or closely held corporation in which the person or the person's relative owns or has owned stock, another form of equity interest, stock options or debt instruments worth \$1,000 or more at any point in the preceding calendar year;
- (b) Any publicly held corporation in which the person or the person's relative owns or has owned \$100,000 or more in stock or another form of equity interest, stock options or debt instruments at any point in the preceding calendar year;
- (c) Any publicly held corporation of which the person or the person's relative is a director or officer; or
- (d) For public officials required to file a statement of economic interest under ORS 244.050, any business listed as a source of income as required under ORS 244.060(3).

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244.020(1): "Actual conflict of interest" means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person is associated unless the pecuniary benefit or detriment arises out of circumstances described in subsection (13) of this section.

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244.020(13): "Potential conflict of interest" means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person's relative, or a business with which the person or the person's relative is associated, unless the pecuniary benefit or detriment arises out of the following:

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244.020(1) and (13) exceptions:

(a) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.

(b) Any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or the person's relative is associated, is a member or is engaged.

(c) Membership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.

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**Actual vs. Potential Conflicts of Interest**

An actual conflict of interest occurs when the effect of the official action, decision, or recommendation would have a certain private financial impact. A potential conflict of interest occurs when the effect of the official action, decision or recommendation could have a private financial impact.

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## Actual vs. Potential Conflicts of Interest - Continued

- When a conflict is only potential:
  - When financial impact is speculative (i.e. whether there will be an impact, not size of impact)
  - When official serves in advisory role only
    - Advisory capacity could be due to type of position, or timing in the decision-making process

*See Staff Advisory Opinion 19-0551 – Kraaz Letter*

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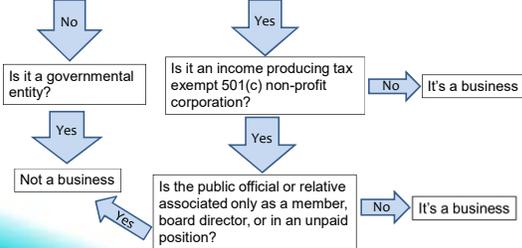
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### Is it a business?

Is it one of the listed entity types (corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual) or any other legal entity operated for economic gain?



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### Is it a business with which a public official or relative is associated?

#### Is it a private business or closely held corporation?

- Is the public official or relative a director, officer, owner, employee or agent? Yes? It's a business with which associated.
- Does the public official or relative currently own OR has the official or relative owned at any point in the preceding calendar year stock, equity interest, stock options or debt instruments worth \$1,000 or more? Yes? It's a business with which associated.

#### Is it a publicly held corporation?

- Is the public official or relative a director or officer? Yes? It's a business with which associated.
- Does the public official or relative currently own OR has the official or relative owned at any point in the preceding calendar year stock, equity interest, stock options or debt instruments worth \$100,000 or more? Yes? It's a business with which associated.

#### Is the public official an SEI filer?

- Is it a business AND is it listed as a source of income on the official's SEI? Yes? It's a business with which associated.

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### Example

The YMCA is a public benefit corporation and is a 501(c) tax-exempt non-profit. The City Council is considering making a grant to the YMCA.

Councilor Abbott is on the Board of Directors of the local YMCA and is not paid. Councilor Berry is a member of the YMCA and swims there every day. Councilor Costello has a son who works as a lifeguard at the YMCA during the summer.

Do any of these Councilors have a conflict of interest?

*See Advice 19-1801 – Braden letter*

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### Is the YMCA a business?

Is it one of the listed entity types? Yes – it's a corporation.

Yes

It is an income producing tax exempt 501(c) non-profit corporation? Yes.

Yes

Is the public official or relative associated only as a member, board director, or in an unpaid position?

- Councilor Abbott – unpaid Board Director → Not a business
- Councilor Berry - member → Not a business
- Councilor Costello – son is employee → It's a business

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### Another example:

In June, Tammy was hired by the City as a transportation director. In that role, Tammy will oversee procurement and contract administration. Prior to joining the City, Tammy was employed at Acme. Acme is an employee owned company. When Tammy left, her shares in the company were worth \$5,000. These shares will be liquidated before the end of the year. Acme has a current contract with the City and may bid on future contracts.

Since Tammy is no longer employed there, is Acme still a business with which she is associated? If so, for how long?

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**ORS 244.120(1)(c): Disclosure requirements for employees and other appointed officials**

When met with an actual or potential conflict of interest, a public official shall:  
(1)(c) If the public official is any other appointed official subject to this chapter, notify in writing the person who appointed the public official to office of the nature of the conflict, and request that the appointing authority dispose of the matter giving rise to the conflict. Upon receipt of the request, the appointing authority shall designate within a reasonable time an alternate to dispose of the matter, or shall direct the official to dispose of the matter in a manner specified by the appointing authority.

Employees, volunteers and other appointed officials:

- Provide written notice to the person who appointed/employed you
- Describing the nature of the conflict of interest
- Requesting that they dispose of the matter
- On each occasion that the conflict of interest arises

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**ORS 244.120(2): Disclosure requirements for elected officials and officials appointed to serve on boards or commissions**

An elected public official, other than a member of the Legislative Assembly, or an appointed public official serving on a board or commission, shall:

- (a) When met with a potential conflict of interest, announce publicly the nature of the potential conflict prior to taking any action thereon in the capacity of a public official; or
- (b) When met with an actual conflict of interest, announce publicly the nature of the actual conflict and refrain from participating as a public official in any discussion or debate on the issue out of which the actual conflict arises or from voting on the issue.

If a public official's vote is necessary to meet a quorum, an official with an actual conflict of interest is eligible to vote but may not participate in any discussion or debate on the issue out of which the actual conflict of interest arises. [ORS 244.120(2)(b)(B)].

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**Disclosure Requirements continued:**

ORS 244.120(3): Nothing in subsection (1) or (2) of this section requires any public official to announce a conflict of interest more than once on the occasion which the matter out of which the conflict arises is discussed or debated.

Public Body's response:

- For **ALL public officials** providing notice of conflict: The **notice must be recorded** in the official records of the public body. [ORS 244.130]
- For public officials providing **written notice**:
  - **Supervisor or appointing authority must** respond and must:
    - **Assign someone else** to the task; or
    - **Instruct the employee on how to proceed** with the matter. [ORS 244.120(1)(c)]

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**Disclosure Timing:**

- “Each occasion” = Each meeting during which a conflict is encountered, once per topic. [ORS 244.0120(3)]
- Flexibility to disclose all at the beginning of meeting, or one-by-one as topics arise
- **Potential Conflict:** Must announce **before taking any action** [ORS 244.120(2)(a)]
  - Note: May still need to consider use of position, or bias in quasi-judicial land use matters
- **Actual Conflict:** Must announce and **refrain from deliberations and voting** [ORS 244.120(2)(b)(A)]
  - Exception: Official may vote only if needed for quorum, may not deliberate [ORS 244.120(2)(b)(B)]

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**Example:**

Ann serves on Anytown’s Citizen Advisory Committee (CAC). The CAC gives recommendations to the City Council on proposed land use regulations in Anytown. Ann owns a business in downtown Anytown and a home in suburban Anytown. The CAC will be discussing downtown development standards at their Oct. 1 meeting, and both downtown development standards and residential development standards at their Nov. 1 meeting. Both sets of standards could affect Ann’s financial interest in the property she owns.

At what points in the meeting(s), and at which meeting(s), will Ann need to disclose the potential conflicts of interest?

*See Staff Advice Letter to Towery 4-5-11*

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**244.020(1) and (13) exceptions:**

(a) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.

“If a member of a state board is required by law to be employed in a specific occupation, such as an accountant or 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.” Guide for Public Officials.

*See Staff Advisory Opinion 19-1365 – McGrane letter*

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**244.020(1) and (13) exceptions:**

(b) Any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or the person's relative is associated, is a member or is engaged.

Only the Oregon Government Ethics Commission has the authority to determine the existence or size of a class. The number of persons affected to the same degree as the public official will help to determine whether this exception applies.

A public official's membership in a class is distinct from their official position. The Commission has never identified a public body's governing body to constitute a class.

*See Staff Advisory Opinion 14S-001 – Stokes letter*

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**Representation**

Conflict of interest and other ethics cases brought by the Oregon Government Ethics Commission are personal to the individual public official.

Commission Staff Advisory Opinion 14S-001 (*Stokes*) addresses conflicts of interest and prohibited use of office in the context of board members seeking payment for legal expenses incurred in defending claims brought against them relating to actions taken in the performance of their official duties.

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**Prohibited Use of Office**

ORS 244.040(1) prohibits a public official from using or attempting to use the official position or office to obtain financial gain or avoid financial detriment for the public official, a relative or household member, or any business with which the public official, relative or household member is associated, if the financial gain or avoidance of financial detriment would not otherwise be available but for the public official's holding of the position or office.

ORS 244.040(2) provides a list of exceptions, including (a) official compensation packages and (c) reimbursement of expenses.

Per ORS 244.040(7), this prohibition applies regardless of whether actual or potential conflicts of interest are announced or disclosed.

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- Can a public official facing an ethics complaint seek representation from the public body's attorney?
  - could run afoul of Rules of Professional Conduct
- Can a public official facing an ethics complaint seek to have the public body pay for private representation?
  - if payment of attorneys' fees is included in an existing formally adopted official compensation package or insurance policy

The Stokes staff opinion advises that current board members cannot adopt a compensation package or enact a policy to cover their own personal legal expenses, but could authorize such coverage for future board members.

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