


Oregon Department of Transportation  POLICY	NUMBER PER 01-02	SUPERSEDES 06/15/2018
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	VALIDATION DATE	
	REFERENCE ORS 244; ORS 823.007; OAR 740-020-0010 to 740-020-0020, and OAR 199; Oregon Government Ethics Law: A Guide for Public Officials	
SUBJECT ETHICS	APPROVED SIGNATURE Signature on file with Business & Performance Services Branch Robert Gebhardt, Chief Administrative Officer	

PURPOSE

This policy informs Oregon Department of Transportation (Department) employees of their obligation to comply with Oregon Government Ethics Law requirements outlined in Oregon Revised Statutes (ORS) Chapter 244 and communicates the Department's policy for ethical conduct.

POLICY

Department employees are public officials and are subject to Oregon's government ethics law requirements under ORS Chapter 244 and Oregon Administrative Rules (OAR) Chapter 199. As public officials, all employees hold a public trust. The citizens of Oregon must have confidence that Department employees exercise their official powers and use the Department's resources only to advance the public interest. Employees are expected to carry out their duties fairly, without bias or favoritism and must avoid actions that create the appearance of impropriety or undue influence.

This policy is not intended to be a complete statement of provisions of ethics laws and the Department may have expectations beyond the minimum legal requirements set by the Oregon laws on government ethics. Additional information about the ethics laws may be obtained from the Oregon Government Ethics Commission
<https://www.oregon.gov/ohec/Pages/Government-Ethics-Laws-and-Rules.aspx>

As public officials, employees are responsible for knowing and complying with the provisions in Oregon's ethics laws (ORS 244.010 – 244.280) as well as this policy. If an employee fails to comply with ethics law, the employee may be held personally responsible for the violation of the law. Neither Department permission nor management supervision will relieve the employee from liability.

Violation of this policy may result in disciplinary action, up to and including dismissal, as well as possible civil or legal actions.

General Employee Responsibilities:

It is important for employees to understand and follow both the Oregon ethics laws and this policy. In cases where the Department policy is stricter than the law, employees must comply with the stricter policy.

Upon becoming aware of any actual or potential conflict of interest or other situations discussed in this policy, employees must immediately report the situation in writing to their appointing authority, stating the nature of the potential or actual conflict of interest with the situation or other issue. Employees must disclose the potential or actual conflict in writing to the appointing authority each and every time a conflict arises and refrain from further participation in action or influence on the situation in conflict until guidance is received.

Review of Issues and Recordkeeping

Appointing authorities and “*Ask ODOT for Employees*” will forward all reports of issues covered in this policy to the Human Resources (HR) Director with any recommendations. The HR Director will review the reports of issues and seek counsel when necessary.

Ethical Conduct:

Employees shall not:

- Use or attempt to use their position to obtain financial gain for themselves (other than for their own official compensation package), their relatives, members of their households, or for any business with which they, their relatives or members of their household are associated.
- Be employed by or receive compensation in any form from any public or private entity if the entity has an administrative interest in matters over which the employee exercises any influence or control as part of their position with the Department. An administrative interest means an economic interest, distinct from that of the general public, in any matter subject to the decision of the employee while acting in their employment role. Decision, as used in this section, means an act that commits the Department to a particular course of action within the employee’s scope of authority and that is connected to the source’s economic interest. A decision is not a recommendation or work performed in an advisory capacity.

- Receive compensation from a source other than the Department for work that constitutes a part of their responsibility as a state employee.
- Perform paid or unpaid work outside the Department, if such work interferes with the performance of duties assigned by the Department or creates a conflict of interest.
- Obtain personal or financial gain for themselves, their relatives or members of their households or for any business with which they or a relative or household member are associated, by using confidential or non-public information obtained in the course of or by reason of their official position or activities.
- Use state time, information, materials, services, facilities, equipment, vehicles, or supplies for his/her private gain or advantage or the private gain or advantage of another, unless allowed by other policies or a department-approved program, or event.
- Inappropriately collect compensation for hours not worked or falsify time records.
- Commit state resources, except with prior written permission of his/her manager or supervisor, to contract with or purchase from another Department employee or that employee's relatives or a member of household.
- Have oversight authority or input in the hiring of, or purchasing from, contractors who are relatives or members of their household or employ their relatives of household members.
- Be in a position to exercise authority over, take part in, or influence the decision-making process on selection, work assignment, work evaluation, or any other decisions involving contractors or contractors' employees to whom the employee is related or is a member of the employee's household.

Nepotism:

Employees shall not exert influence in any employment related action concerning a relative or member of their household and should avoid even the appearance of influence regarding a relative or member of the household.

Employees shall not be in a position of direct hierarchical decision-making authority related to the selection, promotion, transfer, grievance resolution, work assignment, work evaluation, or other activities that relate to the terms and conditions of employment of a relative or a member of the household.

The Department's expectation is that all employees receive fair and impartial treatment. Department managers, supervisors, and employees who have oversight authority shall avoid situations that have the potential for nepotism and take steps to resolve situations that may occur.

Relatives of Department employees shall be considered for employment opportunities on the basis of their qualifications. Nothing in this policy is intended to prevent relatives from being employed by the Department, provided there is no conflict with law or policy. Potential nepotism issues shall be resolved before a relative or member of the household is selected, promoted, transferred, or takes part in a grievance resolution or in any other activity that relates to the terms and conditions of their employment.

Employees who become related to other Department employees or become members of the household may continue employment with the Department as long as it does not result in an issue as described above. When potential nepotism issues arise as a result of organizational restructure, marriage, or any other cause, the affected employee has an obligation to inform their manager and appointing authority as soon as the issue is known. The manager shall, within a reasonable period of time, resolve the issue through one of the following means:

- Changes in a reporting structure, if reasonably workable.
- Transfers one of the employees to another position to alleviate the situation, if possible.
- Resignation or termination of employment of one of the employees.

The appropriate length of time to resolve a nepotism concern shall be decided by Department management, in consultation with others as appropriate. The report of potential nepotism and how the issue was resolved will be reported in writing to the HR Director.

Gifts and Honoraria:

During a calendar year, an employee or a relative or member of the household of the employee may not solicit or receive, directly or indirectly, any gift or gifts with a combined total value in excess of \$50 from any single source that could reasonably be known to have an administrative interest.

An administrative interest means an economic interest, distinct from that of the general public, in any matter subject to the decision of the employee while acting in their employment role. Decision, as used in this section, means an act that commits the Department to a particular course of action within the employee's scope of authority and that is connected to the source's economic interest. A decision is not a recommendation or work performed in an advisory capacity.

Examples of the types of acts that are considered to be “decisions” include, but are not limited to, the following:

- An employee issues or denies a permit.
- An enforcement employee issues a citation or warning.
- An employee who approves contracts makes a decision on a contract.
- An employee commits the Department’s funds for goods and services, such as office supplies.
- When an appointing authority or manager with authority to make a final decision on a matter delegates the decision to a subordinate, the appointing authority or manager retains responsibility as the final decision maker, but the subordinate also makes a decision.

Employees may accept honorarium received in exchange for services provided in connection with an event in the employee’s official capacity; however the value of the honorarium must not exceed \$50.

Any employee with questions about the appropriateness of soliciting or receiving any gift(s) or honorarium under this policy should contact the Oregon Ethics Commission for guidance at 503-378-5105 or e-mailing ogec.mail@oregon.gov.

Procurement Related Conflicts of Interest:

Employees are responsible for conducting purchasing or contracting transactions legally and ethically; complying with applicable laws, rules, policies, and guidelines; avoiding actions which may result in or create the appearance of a conflict of interest; and exercising good judgment consistent with Department values.

Evaluation Committee Members and Department Employees:

No official or employee of the Department who is authorized in their official capacity to negotiate, make, accept or approve, or to take part in negotiating, making, accepting or approving any contract or subcontract in connection with a project may have, directly or indirectly, any financial interest in any such contract or subcontract.

An employee with an actual conflict of interest will be precluded from participating in the procurement process for that contract. When met with an actual conflict of interest, employees must provide a written notice to the employee’s Appointing Authority and the Chief Procurement Officer. The notice must describe the nature of the conflict of interest with which they are met. The announcement must be made for each occasion when the employee is met with an actual conflict of interest. An employee with a potential conflict of interest must provide a written notice to the employee’s Appointing Authority and the Chief Procurement Officer. The notice must describe the nature of the conflict of interest with which they are met. The announcement must be made on each occasion when the employee is met with the potential conflict of interest. The employee will be precluded from participating in the

procurement process for that contract if the potential conflict of interest cannot be mitigated to the satisfaction of the employee's Appointing Authority and the Chief Procurement Officer.

Additionally, to protect the integrity of the procurement process, every member of an evaluation committee, regardless of whether or not the evaluation committee member is a Department employee, shall certify:

- Neither the evaluation committee member, nor any of their relatives or business with which a committee member or a relative is associated, has an actual or potential conflict of interest with any contractor or consultant evaluated as part of the procurement process.
- The evaluation committee member, nor any of their relatives or any business with which a committee member or a relative is associated were not employed in the last 12 months by any contractor or consultant, including subcontractors and sub consultants, included in the proposal or anticipated to be used in the contract.

Federally Funded Procurements:

If federal funding is involved in the procurement, the Department must disclose, in writing, any potential conflict of interest to the federal awarding agency in accordance with the applicable federal awarding agency policy.

The Department shall disclose any potential conflict of interest on a Federal Highway Administration (FHWA)-funded procurement to FHWA.

Supplemental Employment:

Employees shall not engage in any outside activity or employment knowing that this activity or employment is or may later be directly or indirectly subject to a control, inspection, review, audit or enforcement by the employee in their official capacity.

The Revolving Door:

When employees of private sector firms which have or compete for contracts with the Department are hired by the Department or when Department employees go to work for firms which have or compete for contracts with the Department, questions may arise about where information is obtained, what actions are taken, what decisions are made, and whether the employer or employee gains any unfair competitive benefit or advantage in either the prior or the new employment environment.

The Department's objective is to limit and, when possible, eliminate any perception that a contractor or employee gains an advantage because of job transitions. The following policy is adopted and applied based on two categories of employees; outgoing and incoming employees.

Outgoing (Former) Department Employees

A person who has separated from the Department may not have a direct beneficial financial interest in a public contract that person took part in drafting, negotiating, making, accepting or approving in the capacity of a public official for two years after the date the contract was authorized. This includes any subcontract or contract arising out of a price agreement that the person took part in negotiating, making, accepting or approving in their capacity of a public official. This prohibition does not apply if the contract was authorized by a committee or other governing body of which the person was a member if the person did not participate in authorizing the contract.

Incoming Department Employees

Employees entering employment with the Department may not, for one year following employment with a Department contractor, prepare plans or specifications, review or score a bid or proposal, or award a contract for a procurement where their former employer may submit, or has submitted, a bid or proposal, without disclosing in writing the nature of the matter giving rise to the potential issue and receiving a statement of approval by the appointing authority with a copy sent to the chief procurement officer. In addition, employees would need to consider if the matter gave rise to a statutory conflict of interest.

Should a Department employee learn that a contractor/former employer submitted a bid, proposal, or contract the employee has worked on or may be asked to perform work on by the Department, the employee shall inform in writing to the appointing authority and chief procurement officer at once and take no further action on the procurement or any other decision making related to the procurement or contract without approval from the appointing authority with a copy sent to the chief procurement officer.

Employees Regulating Motor Carriers:

Employee statements of pecuniary interests in motor carriers;

(1) As required by ORS 823.007, agency employees engaged in regulating motor carriers are required to file a pecuniary interest form in accordance with the procedures set forth by the agency. These requirements are in addition to the requirements set forth in ORS 244. Supplementary statements shall be filed as such pecuniary interests are acquired or divested. Statements shall be made in accordance with administrative rule and department procedures.

(2) The Department shall determine by rule what constitutes a function concerning the regulation of motor carriers. For reference, see OAR 740-020-0010 and OAR 740-020-0020.

DEFINITIONS

Actual Conflict of Interest: Any action, 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 ORS 244.020(1).

Business: means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, 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.

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.

Administrative Interest: 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. (ORS 244.020(10))

Appointing Authority: An officer or agency having power to make appointments to positions in state service or to take other personnel actions. (ORS 240.015(2))
A listing of the Department appointing authorities is located on the Department Human Resources intranet site and on the Financial Services Branch intranet site.

Gift: Except for the items specified in ORS 244.020(7) (b), something of economic value given to a public official, candidate or a relative or member of the household of the public official or candidate:

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

For valuable consideration less than that required from others who are not public officials or candidates. (ORS 244.020(7) (a))

Honorarium: A payment or something of economic value given to a public official in exchange for services upon which custom or propriety prevents the setting of a price. Services include, but are not limited to, speeches or other services rendered in connection with an event. (ORS 244.020(8))

Member of the Household: Any person who resides with the public official or candidate. (ORS 244.020(11))

Potential Conflict of Interest: Any action, 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:

(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. (ORS 244.020(13))

Pecuniary: Relating to money; financial or that which can be valued in money.

Public Official: 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 by ORS 174.109 as an elected official, appointed official, employee or agent irrespective of whether the person is compensated or not. (ORS 244.020(15))

Relative:

- The spouse, parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law of the public official.
- The parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law of the spouse of the public official.
- Any individual for whom the public official has a legal support obligation.
- 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. (ORS 244.020(16)).

PROCEDURES:
PERSON

ACTION

Employee	<p>Report to the appointing authority, in writing, with a copy to the employee's manager, each and every situation discussed in the above General Employee Responsibilities, Revolving Door, or Supplemental Employment sections and any statutory conflict of interest with the Oregon Government Ethics law as soon as the issue becomes known. The report shall include:</p> <ul style="list-style-type: none">• Description of the actual or potential issue• Persons affected by the actual or potential issue• Date of the actual or potential issue• Efforts to eliminate the actual or potential issue
Appointing Authority	<p>Reviews report, gathers information as necessary to supplement the report from the employee. The appointing authority requests advice from the HR Director or chief administrative officer and may propose actions to mitigate the issue.</p> <p>Forwards request for advice or information and outcomes to the HR Director for review or discussion as needed, and/or for records retention after taking an action.</p>
ODOT Human Resources	<p>HR receives reports and proposed actions and consults with the Department of Justice and the Government Ethics Commission as necessary.</p> <p>When applicable, provides written advice to the appointing authority.</p> <p>Provides advice to employees, managers, "Ask ODOT for Employees" and "Ask ODOT HR" in consultation with the Department of Justice and the Government Ethics Commission.</p> <p>Maintains a record of required documentation based on applicable retention schedules.</p> <p>Advice given by agency representatives is not binding on the Oregon Government Ethics Commission as to potential violations of the ethics laws and may not prevent the Ethics Commission from proceeding with a case or finding a violation.</p>
Appointing Authority	<p>Provides outcome to employee and employee's supervisor in consultation with Human Resources. Takes appropriate action.</p>

Employee	If an employee believes this policy has been violated or does not agree with the appointing authority's determination, the employee may provide a summary of the situation and information as to why the employee does not agree to the chief administrative officer.
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ODOT Chief Administrative Officer	Reviews the determination or situation and, in consultation with the Agency Leadership Board and/or Human Resources, responds in a timely manner to the employee.
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GENERAL GUIDELINES:

<u>RESPONSIBILITY</u>	<u>ACTION</u>
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ODOT Human Resources	Arrange training on ORS 244 by the Department of Justice and/or the Oregon Government Ethics Commission.
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Appointing Authorities	Attend initial training by the Department of Justice and/or the Oregon Government Ethics Commission. Attend biennial refresher training.
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Managers and Supervisors	<p>Make sure each employee understands the expectations contained in this policy. Annually review the policy and guidelines with employees.</p> <p>Notify appointing authority in writing when/if a known situation would violate this policy or the Oregon Ethics law.</p>
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All Employees	<p>Understand and follow this policy.</p> <p>Attend training on the Department's Ethics Policy.</p> <p>Employees are encouraged to contact the Ethics Commission for guidance as to how they may remain in compliance with Oregon Government Ethics laws by contacting 503-378-5105 or e-mailing ogec.mail@oregon.gov.</p> <p>Notify appointing authority in writing when/if a known situation would violate this policy or the Oregon Government Ethics law.</p>
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OTHER RESOURCES:

Ask ODOT for Employees:

<https://ordot.sharepoint.com/sites/AskODOTEmployees>

Oregon Government Ethics Commission

Guide for Public Officials and Guide for Public Officials 2015 Supplement

<https://www.oregon.gov/ogec/Pages/Guide-for-Public-Officials.aspx>