Oregon Government Ethics Commission

Commission Meeting Materials

May 9, 2025

Public Session

OREGON GOVERNMENT ETHICS COMMISSION
Meeting Minutes
April 25, 2025
9:00 a.m.

Chair Dave Fiskum and Commissioners Ann Metler and Jonathan Thompson were present in person. Commissioners Shenoa Payne, Alicia McAuley, and Dan Mason were present via Teams.

Executive Director Susan Myers, Compliance & Enforcement Coordinator Casey Fenstermaker, Curriculum & Education Coordinator Stephanie Heffner, Agency Programs Administrator Becky Maison, Accountability Coordinator Molly Putnam, Investigators Andrew McIntyre, Daniel Pacheco, Josh Sullivan and Lian Gallaver, and Trainer Lex Tingey were present in person. Trainers Charlie Esparza, Chris Brubaker, and Ruth Sylvester, and Admin Staff David Hunter were present via Teams.

Department of Justice (DOJ) Counsel Sean Brady was present in person.

Members of the Press: Anastasia Mason and Dianne Lugo (Statesman Journal) were present via Teams.

(File 1)
Chair Dave Fiskum called the meeting to order at 9:00 a.m.

AGENDA ITEM 1, Comments from the Chair, Chair Fiskum shared the attendance and location of the Commissioners and noted the absence of Richard Burke and Iván Resendiz-Gutierrez.

AGENDA ITEM 2, Comments from Commissioners: Ann Metler introduced herself and provided some background about herself. Chair Fiskum asked that Commissioners provide any suggestions they may have to improve operations as there are always ways to improve. Fiskum advised that the Legislative Session is about halfway through the session and that the budget bill is still pending, he mentioned the uncertainty pertaining to Federal funding, though OGEC is not funded by Federal Funds, other agencies are, and those agencies help fund OGEC.

AGENDA ITEM 3, Commissioner Payne moved that the Commission approve the Meeting Minutes for March 1 & March 7, 2025. Roll call was taken as follows: Mason, aye; McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 6-0.

Chair Fiskum read the executive session script providing the statutory provisions for the executive session to discuss preliminary review reports and the announcement to the media.

The Commission convened into Executive Session at 9:10a.m.
(File 2)

EXECUTIVE SESSIONS

To consider Preliminary Reviews pursuant to ORS 192.660(2)(f), ORS 244.260(4)(d), ORS 171.778(4)(d), and ORS 192.685(1), and to consider information or records exempt by law from public inspection pursuant to ORS 192.660(2)(f) and to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed pursuant to ORS 192.660(2)(h).

EXECUTIVE SESSION CONSENT CALENDAR [12]

Reports of Preliminary Review
The following Public Meetings Law cases have been placed on the executive session consent calendar for dismissal, per ORS 192.685(3), because the complaints did not include documentation that the mandatory grievance process had been satisfied.

AGENDA ITEM 43, 25-205PCF, Greg Dunn
Councilor, City of Waldport

Commissioner Payne moved that the Commission approve the Executive Session Consent Calendar as presented to the Commission. Roll call was taken as follows: Mason, aye; McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 6-0.

End of Executive Session Consent Calendar (*all other items removed from the consent calendar for discussion*)

OTHER ITEMS

Reports of Preliminary Review *(removed from consent calendar*)

City of Umatilla
AGENDA ITEM 44, 24-618XDP, Ashley Wheeler

Councilor, City of Umatilla
AGENDA ITEM 45, 24-620XDP, Corinne Funderburk
Councilor, City of Umatilla
AGENDA ITEM 46, 24-621XDP, Daren Dufloth
Councilor, City of Umatilla
AGENDA ITEM 47, 24-622XDP, Katie McMillan
Councilor, City of Umatilla
AGENDA ITEM 48, 24-623XDP, Dennis McMillan
Councilor, City of Umatilla
AGENDA ITEM 49, 24-624XDP, Roak Teneyck
Councilor, City of Umatilla

Confidentiality was waived and the cases were heard together. Respondents Wheeler, Funderburk, Teneyck, and Dufloth were present via Teams. Attorney Sarah Henderson was present via Teams. Respondents K. McMillan and D. McMillan were not present.

Investigator Pacheco summarized the cases and advised that it appears that the City Council may have violated minutes or recording requirements in Public Meetings Law and recommended moving forward with the investigation regarding whether the Council cited the correct provisions in ORS 192.660 for holding the executive session and regarding the recording of the Council's meeting being incomplete.

Attorney Henderson addressed the Commission, after some technical difficulties. Henderson advised that the City Attorney does not represent the City Councilors, due to ongoing litigation. She had questions about the privacy of the executive session. Director Myers advised that confidential information from the Council's executive session records would still remain confidential.

Anastasia Mason (Statesman Journal) joined the meeting at 9:30 a.m.

Commissioner Fiskum asked Pacheco what he would look into should the cases move forward. Pacheco advised he would look into the discussions that the City Council had and if they fell into the cited executive session provision cited. Myers provided additional context and clarified the differences between provision 2(f) and 2(h). Myers and Pacheco also stated they would also need to review the minutes or recordings to ensure they were complete.

AGENDA ITEM 44, 24-618XDP, Ashley Wheeler
Councilor, City of Umatilla

Commissioner Payne moved that the Commission find there is a substantial, objective basis for believing that Ashley Wheeler may have violated ORS 192.650(1), ORS 192.650(2), and ORS 192.660(2), and that the Commission should investigate accordingly. Roll call was taken as follows: Mason, aye; McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 6-0.

AGENDA ITEM 45, 24-620XDP, Corinne Funderburk
Councilor, City of Umatilla
Commissioner Payne moved that the Commission find there is a substantial, objective basis for believing that Corinne Funderburk may have violated ORS 192.650(1), ORS 192.650(2), and ORS 192.660(2), and that the Commission should investigate accordingly. Roll call was taken as follows: Mason, aye; McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 6-0.

AGENDA ITEM 46, 24-621XDP, Daren Dufloth
Councilor, City of Umatilla
Commissioner Payne moved that the Commission find there is a substantial, objective basis for believing that Daren Dufloth may have violated ORS 192.650(1), ORS 192.650(2), and ORS 192.660(2), and that the Commission should investigate accordingly. Roll call was taken as follows: Mason, aye; McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 6-0.

AGENDA ITEM 47, 24-622XDP, Katie McMillan
Councilor, City of Umatilla
Commissioner Payne moved that the Commission find there is a substantial, objective basis for believing that Katie McMillan may have violated ORS 192.650(1), ORS 192.650(2), and ORS 192.660(2), and that the Commission should investigate accordingly. Roll call was taken as follows: Mason, aye; McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 6-0.

AGENDA ITEM 48, 24-623XDP, Dennis McMillan
Councilor, City of Umatilla
Commissioner Payne moved that the Commission find there is a substantial, objective basis for believing that Dennis McMillan may have violated ORS 192.650(1), ORS 192.650(2), and ORS 192.660(2), and that the Commission should investigate accordingly. Roll call was taken as follows: Mason, aye;

McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 6-0.

AGENDA ITEM 49, 24-624XDP, Roak Teneyck
Councilor, City of Umatilla
Commissioner Payne moved that the Commission find there is a substantial, objective basis for believing that Roak Teneyck may have violated ORS 192.650(1), ORS 192.650(2), and ORS 192.660(2), and that the Commission should investigate accordingly. Roll call was taken as follows: Mason, aye; McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 6-0.

AGENDA ITEM 50, 24-625XDP, Caden Sipe
Councilor, City of Umatilla
Respondent Sipe and Attorney Nathan Reitman were present via Teams. Investigator Pacheco summarized the case and advised that it appears that the City Council may have violated minutes or recording requirements in Public Meetings Law and recommended moving forward with the investigation regarding whether the Council cited the correct provisions in ORS 192.660 for holding the executive session and regarding the recording of the Council's meeting being incomplete.

Attorney Reitman stated that Sipe was the one who reported the possible violation and that as the mayor, he does not have the ability to set the agenda or draft the minutes. Reitman stated that Sipe has tried to request a roll call vote multiple times, but it has not been recorded appropriately. Sipe addressed the Commission and reiterated Reitman's statements.

Commissioner Fiskum asked Investigator Pacheco what the result would be of moving forward with the investigation. Pacheco stated the likely result would be a Letter of Education.
Commissioner Payne asked about clarification for Sipe's attendance of the executive session and the meeting minutes. Investigator Pacheco explained that as a member of the governing body that Sipe is responsible for the meeting minutes being properly recorded. Director Myers advised that the ORS 192.660(2) citation is not applicable for Sipe because he left the executive session. Commissioner Thompson commented that there is a need to flesh a couple of things and that Sipe has flagged these issues, and the Commission should take that into consideration.

Commissioner Payne moved that the Commission find there is a substantial, objective basis for believing that Caden Sipe may have violated ORS 192.650(1) and ORS 192.650(2) and that the Commission should investigate accordingly. Roll call was taken as follows: Mason, aye; McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 6-0.

Klamath Falls Fire District 3

AGENDA ITEM 51, 25-023PCF, Dan Hudson
Board Member, Klamath Falls Fire District 3
AGENDA ITEM 52, 25-024PCF, Dennis Worden
Board Member, Klamath Falls Fire District 3
AGENDA ITEM 53, 25-025PCF, Cameron Duncan
Board Member, Klamath Falls Fire District 3
AGENDA ITEM 54, 25-026PCF, Dave Matthews
Board Member, Klamath Falls Fire District 3
AGENDA ITEM 55, 25-027PCF, Carrie Giroux
Board Member, Klamath Falls Fire District 3

Respondent Worden was present via Teams. Respondents Hudson, Duncan, Matthews, and Giroux were not present. Confidentiality was waived and cases were heard together. Compliance & Enforcement Coordinator Fenstermaker summarized the cases and advised that their meetings were previously not made available remotely/virtual as required by ORS 192.670. Worden addressed the Commission and advised the summary presented by Fenstermaker is correct. He had found a telephone service for a few meetings and they have now switched to virtual meetings using OWL technology due to changes in finances.

Commissioner Payne stated that in the materials that the board members were using their personal funds. Worden confirmed that yes, he donated a microphone and found a conference number to allow electronic meetings. Worden stated the Fire District was bouncing checks and unable to afford equipment to provide electronic/remote meetings prior. Commissioner Payne stated that the Commission should keep that in consideration, especially for smaller governing bodies and districts. Commissioner Thompson stated that he does not know what the Commission would gain from moving forward with the investigation. Commissioner Mason stated he would support a motion to dismiss.

AGENDA ITEM 51, 25-023PCF, Dan Hudson
Board Member, Klamath Falls Fire District 3
Commissioner Payne moved that the Commission find that the complaint and information available during Preliminary Review appears to be insufficient to

constitute a substantial, objective basis for believing that Dan Hudson has violated provisions in ORS 192.670(3)(a) or warrant further review and that this complaint be dismissed. Roll call was taken as follows: Mason, aye; McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 6-0.

AGENDA ITEM 52, 25-024PCF, Dennis Worden
Board Member, Klamath Falls Fire District 3
Commissioner Payne moved that the Commission find that the complaint and information available during Preliminary Review appears to be insufficient to constitute a substantial, objective basis for believing that Dennis Worden has violated provisions in ORS 192.670(3)(a) or warrant further review and that this complaint be dismissed. Roll call was taken as follows: Mason, aye; McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 6-0.

AGENDA ITEM 53, 25-025PCF, Cameron Duncan
Board Member, Klamath Falls Fire District 3
Commissioner Payne moved that the Commission find that the complaint and information available during Preliminary Review appears to be insufficient to constitute a substantial, objective basis for believing that Cameron Duncan has violated provisions in ORS 192.670(3)(a) or warrant further review and that this complaint be dismissed. Roll call was taken as follows: Mason, aye; McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 6-0.

AGENDA ITEM 54, 25-026PCF, Dave Matthews
Board Member, Klamath Falls Fire District 3
Commissioner Payne moved that the Commission find that the complaint and information available during Preliminary Review appears to be insufficient to constitute a substantial, objective basis for believing that Dave Matthews has violated provisions in ORS 192.670(3)(a) or warrant further review and that this complaint be dismissed. Roll call was taken as follows: Mason, aye; McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 6-0.

AGENDA ITEM 55, 25-027PCF, Carrie Giroux
Board Member, Klamath Falls Fire District 3
Commissioner Payne moved that the Commission find that the complaint and information available during Preliminary Review appears to be insufficient to constitute a substantial, objective basis for believing that Carrie Giroux has violated provisions ORS 192.670(3)(a) or warrant further review and that this complaint be dismissed. Roll call was taken as follows: Mason, aye; McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 6-0.

These minutes contain materials which paraphrase and/or summarize statements made during this meeting. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the recordings at https://www.oregon.gov/ogec/about-us/Pages/Meetings.aspx

Multnomah County School District 51J
AGENDA ITEM 56, 25-060XCF, Michele Rosenbaum
Board Member, Multnomah County School District 51J
AGENDA ITEM 57, 25-061XCF, Ali Lanenga
Board Member, Multnomah County School District 51J
AGENDA ITEM 59, 25-063XCF, Mina Stricklin
Board Member, Multnomah County School District 51J
AGENDA ITEM 60, 25-064XCF, Jeff Dominitz
Board Member, Multnomah County School District 51J

Confidentiality was waived and the cases were heard together. Respondents Stricklen and Rosenbaum were present via Teams. Respondents Lanenga and Dominitz were not present. There were initially some technical difficulties for Rosenbaum but she was able to join by telephone.

Compliance & Enforcement Coordinator Fenstermaker summarized the cases and stated the meeting minutes were not a true reflection of the meeting, which appeared to be a violation of Public Meetings Law and recommended to move forward with the investigation. Commissioner Payne asked for clarification about the purpose of keeping minutes when the purpose of an executive session is confidential, such as consultation with legal counsel. Director Myers explained that ORS 192.650 requires that governing bodies keep minutes or recordings of all meetings, including executive sessions, and that executive session minutes must meet all the same requirements. Meeting minutes are still required to be a true reflection of the matters discussed and reflect the views of the participants. Also, executive session meeting minutes are still confidential unless disclosure is required by court order or by OGEC.

Rosenbaum addressed the Commission and stated the Complainant is targeting her and is harassing others that do not conform to his views. Rosenbaum stated that Investigator Josh Sullivan and OSBA (Oregon School Board Association) did not state that executive session meeting minutes need to record everything. Rosenbaum stated that school boards have a fiduciary requirement to keep financial records and decisions confidential.

Stricklin addressed the Commission and advised that she is a patent lawyer and that the meeting minute requirements that OGEC is trying to enforce is not required by law and is an overreach. Stricklin requested that the email exchange with Sullivan be shared. Sullivan read the email exchange out loud for the Commission.

Director Myers stated she would like to clarify that when they received the email exchange from Stricklin and Rosenbaum, Director Myers reviewed the training from OSBA which states the meeting minute requirements for both executive session and public session are required be a true reflection of the meeting and that Investigator Fenstermaker provided examples what would satisfy that requirement. Brady (DOJ Counsel) advised that taking meeting minutes does not waive attorney-client confidentiality privilege. Fenstermaker stated she agrees with DOJ Counsel and Director Myers' statements. Commissioner Thompson stated that he does not enjoy being drug into political issues but does support an investigation.

AGENDA ITEM 56, 25-060XCF, Michele Rosenbaum
Board Member, Multnomah County School District 51J
Commissioner Payne moved that the Commission find there is a substantial, objective basis for believing that Michele Rosenbaum may have violated ORS 192.650(1) and that the Commission should investigate accordingly. Roll call was taken as follows: Mason, aye; McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 6-0.

AGENDA ITEM 57, 25-061XCF, Ali Lanenga
Board Member, Multnomah County School District 51J
Commissioner Payne moved that the Commission find there is a substantial, objective basis for believing that Ali Lanenga may have violated ORS 192.650(1) and that the Commission should investigate accordingly. Roll call was taken as follows: Mason, aye; McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 6-0

AGENDA ITEM 59, 25-063XCF, Mina Stricklin
Board Member, Multnomah County School District 51J
Commissioner Payne moved that the Commission find there is a substantial, objective basis for believing that Mina Stricklin may have violated ORS 192.650(1) and that the Commission should investigate accordingly. Roll call was taken as follows: Mason, aye; McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 6-0

AGENDA ITEM 60, 25-064XCF, Jeff Dominitz
Board Member, Multnomah County School District 51J
Commissioner Payne moved that the Commission find there is a substantial, objective basis for believing that Jeff Dominitz may have violated ORS 192.650(1) and that the Commission should investigate accordingly. Roll call was taken as follows: Mason, aye; McAuley, aye; Payne, aye; Metler, aye;

Thompson, aye; Fiskum, aye. Motion passed 6-0

AGENDA ITEM 58, 25-062XCF, Kevin McPherson
Board Member, Multnomah County School District 51J
Respondent McPherson was present via Teams.
Compliance & Enforcement Coordinator Fenstermaker summarized the case and advised the recommendation was to move to investigation as the meeting minutes for the executive session in question appeared to not satisfy the requirements of ORS 192.650. McPherson stated that he agrees with the assessment and that the meeting minutes are not a true reflection of the meeting and that it is a habit of the board.
Commissioner Payne moved that the Commission find there is a substantial, objective basis for believing that Kevin McPherson may have violated ORS 192.650(1) and that the Commission should investigate accordingly. Roll call was taken as follows: Mason, aye; McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 6-0

The Commission took a break from 10:57 a.m. – 11:03 a.m.

(File 3)
Reports of Preliminary Review (Other)
AGENDA ITEM 61, 24-591ELG, Kay Michelle Zink
Records Supervisor, Linn County
Respondent Zink was not present. Investigator Gallaver summarized the case and the recommendation to move to investigation. It appears that Zink may have used her position for financial benefit and failed to disclose conflicts of interest when making bank deposits. Due to technical issues, Gallaver re-summarized the case.
Commissioner Payne moved that the Commission find there is a substantial, objective basis for believing that Kay Michelle Zink may have violated ORS 244.120(1)(c), ORS 244.040(1), and ORS 244.040(4), and that the Commission should investigate accordingly. Roll call was taken as follows: Mason, aye; McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 6-0.

AGENDA ITEM 62, 25-021EJS, Herman Baertschiger
Former Commissioner, Josephine County
Respondent Baertschiger was not present. Investigator Sullivan summarized the case and recommended that the case be moved that investigation. Sullivan advised that Baertschiger failed to disclose a conflict of interest when he voted on a fee schedule that would affect him. Sullivan also advised that Baertschiger

also failed to report a source of income on his Statement of Economic of Interest (SEI). Sullivan noted that the respondent has updated his SEI at this time but based on previous cases, the Commission still moved them to investigation and issued a Letter of Education. Commissioner Fiskum asked Sullivan if he would look into the class exception for Baertschiger. Director Myers explained that only the Commission could make a class determination or determine that the class exception applied, and that they can do so in the context of a case or through a Commission Advisory Opinion.
Commissioner Payne moved that the Commission find there is a substantial, objective basis for believing that Herman Baertschiger may have violated ORS 244.060(4), ORS 244.060(8), and ORS 244.120(2)(a), and that the Commission should investigate accordingly. Roll call was taken as follows: Mason, aye; McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 6-0.

AGENDA ITEM 64, 25-086ELG, Trampas Bergstrom
Fire Chief, Yamhill Rural Fire Protection District
Respondent was not present. Investigator Gallaver summarized the case and the recommendation to move forward with the investigation. Gallaver stated that it appears that Bergstrom may have used his District credit card for personal use and failed to disclose conflicts of interest when using the credit card.
Commissioner Payne moved that the Commission find there is a substantial, objective basis for believing that Trampas Bergstrom may have violated ORS 244.120(1)(c) and ORS 244.040(1), and that the Commission should investigate accordingly. Roll call was taken as follows: Mason, aye; McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 6-0.

AGENDA ITEM 63, 25-028EAM, Anthony Huacuja
Commissioner, Clatsop County
Respondent Huacuja was present via Teams. Investigator McIntyre summarized the case and the recommendation to move to investigation. The County Commission was considering matters involving short term rentals and Commissioner Huacuja owns a short term rental. Huacuja had brought up recommendations and was involved in discussions that could affect his rental. McIntyre recommended moving to investigation to determine if Huacuja used his position for financial gain and violated the conflict of interest provisions. McIntyre noted that Commissioner Huacuja has raised the class exception and stated he did not have a conflict of interest because he is part of a class. McIntyre also noted that only the Commission can determine a class exception.
Huacuja addressed the Commission and stated that he was new to the role and he referred to county counsel. He stated that he was told he was part of a class

exception and was only a potential conflict so he could vote and discuss the matter. Huacuja stated that his LLC is under his father's business, not him and it is an error in McIntyre's report.

Commissioner Fiskum asked that Director Myers explain the class exception process. She did so. Commissioner Fiskum advised that a class doesn't technically exist until the Commission declares it exists. Brady (DOJ) stated that it is challenging for individuals who are making decisions the night before that they do not have the time to ask the Commission to determine a class exception so it would benefit the public for the Commission to make administrative rules to provide a structure to define a class. Commissioner Fiskum stated that it can be hard and thanked counsel for the advice.
Commissioner Payne moved that the Commission find there is a substantial, objective basis for believing that Anthony Huacuja may have violated ORS 244.040(1) and ORS 244.120(2), and that the Commission should investigate accordingly. Roll call was taken as follows: Mason, aye; McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 6-0.

AGENDA ITEM 65, 25-095EDP, Dax Messett
Member, Oregon State Marine Board
Respondent was not present. Investigator Pacheco presented the case and summarized the recommendation to move to investigate. Pacheco advised that Messett may have been presented with a conflict of interest when voting on items that may affect his private river guide business. He also may have used his position for personal financial gain. One of the issues to be explored in investigation is whether Respondent is part of a class such that the class exception would apply. Commissioner Payne asked for clarification concerning the class exception and investigation process.
Commissioner Payne moved that the Commission find there is a substantial, objective basis for believing that Dax Messett may have violated ORS 244.040(1) and ORS 244.120(2), and that the Commission should investigate accordingly. Roll call was taken as follows: Mason, aye; McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 6-0.

Reports of Preliminary Review (Move to Dismiss)
Josephine County
AGENDA ITEM 66, 4-584PJS, Andreas Blech
Commissioner, Josephine County
AGENDA ITEM 67, 24-585PJS, Herman Baertschiger
Commissioner, Josephine County
Confidentiality was waived and cases were heard together. Respondent Blech

was not present. Respondent Baertschiger was present via telephone. Investigator Sullivan summarized the cases and the recommendation to dismiss. Sullivan stated that the complaint alleges that the Commissioners reached a consensus and deliberated outside of a meeting. OGEC staff reviewed records and did not find documentation that supported the claims and recommended dismissal. Baertschiger stated he agreed with Sullivan's summary.

AGENDA ITEM 66, 4-584PJS, Andreas Blech
Commissioner, Josephine County
Commissioner Payne moved that the Commission find that the complaint and information available during Preliminary Review appears to be insufficient to constitute a substantial, objective basis for believing that Andreas Blech has violated provisions in ORS 192.640(1) or warrant further review and that this complaint be dismissed. Roll call was taken as follows: Mason, aye; McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 6-0.

AGENDA ITEM 67, 24-585PJS, Herman Baertschiger
Commissioner, Josephine Count
Commissioner Payne moved that the Commission find that the complaint and information available during Preliminary Review appears to be insufficient to constitute a substantial, objective basis for believing that Herman Baertschiger has violated provisions in ORS 192.640(1) or warrant further review and that this complaint be dismissed. Roll call was taken as follows: Mason, aye; McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 6-0.

Reports of Preliminary Review (Move to Dismiss)(Other)
AGENDA ITEM 68, 24-465LCF, Thomas J VanderZanden
Lobbyist
Respondent VanderZanden was not present. Compliance & Enforcement Coordinator Fenstermaker summarized the case and the recommendation to dismiss. Fenstermaker advised that there was no evidence to indicate that there was a contract for lobbying or that he met the lobbying threshold which would require registration with the Commission.
Commissioner Payne moved that the Commission find that the complaint and information available during Preliminary Review appears to be insufficient to constitute a substantial, objective basis for believing that Thomas J VanderZanden has violated provisions in ORS 171.740(1) and 171.756(3) or warrant further review and that this complaint be dismissed. Roll call was taken as follows: Mason, aye; McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 6-0.

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Commissioner Dan Mason left the meeting at 11:50 a.m.

AGENDA ITEM 69, 25-066EJS, 25-079LJS, Chris Ellison
Director of Transportation & Fleet Services, Multnomah County School District 7
Respondent was not present. Investigator Sullivan summarized the two cases and the recommendations to dismiss. Sullivan stated the first complaint alleged that Ellison used his position for financial gain and was faced with a conflict of interest. Sullivan determined the business that was in question was not a business per ORS 244.020(2). The second complaint alleged that Ellison lobbied without registering with the Commission. Sullivan stated there was no evidence of a contract or meeting the threshold for registration of lobbying.
Commissioner Payne moved that the Commission find that the complaint and information available during Preliminary Review appears to be insufficient to constitute a substantial, objective basis for believing that Chris Ellison has violated provisions in ORS 171.740(1) and 171.756(3) or warrant further review and that this complaint be dismissed. Roll call was taken as follows: McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 5-0.

AGENDA ITEM 70, 25-067EAM, Jim Phillips
Board President, Yamhill Fire Protection District
Respondent Phillips was present in person. Investigator McIntyre summarized the case and the recommendation to dismiss. McIntyre stated the complaint alleged Phillips used his position for financial gain by removing money from a pancake feed for the fire district, violated public meetings law, and consulted with the district's attorney for personal use. McIntyre stated that the money from the pancake feed was deposited in the bank, the grievance process was not followed for the alleged Public Meetings Law violation and the consultation with the district attorney was concerning the fire district, not for personal use. Phillips addressed the Commission and stated that the fire district is under fire and facing challenges.
Commissioner Payne moved that the Commission find that the complaint and information available during Preliminary Review appears to be insufficient to constitute a substantial, objective basis for believing that Jim Phillips has violated provisions in ORS 244.040(1) and ORS 244.120(2) or warrant further review and that this complaint be dismissed. Roll call was taken as follows: McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 5-0.

AGENDA ITEM 71, 25-068EDP, Shawna Thompson
Former Mayor and Council Member, City of King City
Respondent Thompson was present via telephone. Investigator Pacheco

summarized the case and the recommendation for dismissal. Pacheco advised that it does not appear that Thompson was faced with a conflict of interest when she voted at the Council meeting.
Commissioner Payne moved that the Commission find that the complaint and information available during Preliminary Review appears to be insufficient to constitute a substantial, objective basis for believing that Shawna Thompson has violated provisions in ORS 244.120(2) or warrant further review and that this complaint be dismissed. Roll call was taken as follows: McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 5-0.

AGENDA ITEM 72, 25-069EDP, Marc Manelis
Former Mayor and Council Member, City of King City
Respondent Manelis joined the meeting as the Commission was voting on his case via telephone. Investigator Pacheco summarized the case and the recommendation for dismissal. Pacheco advised that it does not appear that Manelis was faced with a conflict of interest when he voted at the Council meeting.
Commissioner Payne moved that the Commission find that the complaint and information available during Preliminary Review appears to be insufficient to constitute a substantial, objective basis for believing that Marc Manelis has violated provisions in ORS 244.120(2) or warrant further review and that this complaint be dismissed. Roll call was taken as follows: McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 5-0.

AGENDA ITEM 73, 25-088EAM, Maya Rabasa
Board Member, Lane County School District 4J
Respondent Rabasa was present via telephone. Investigator McIntyre summarized the case and recommendation to dismiss. McIntyre advised that the respondent’s husband painted the house, not the person that was claimed to have painted the house. Rabasa addressed the Commission and stated that the school district is Eugene School District. Rabasa also stated that she appreciated Investigator McIntyre.

Commissioner Payne moved that the Commission find that the complaint and information available during Preliminary Review appears to be insufficient to constitute a substantial, objective basis for believing that Maya Rabasa has violated provisions in ORS 244.040(1), ORS 244.120(2), and ORS 244.025(1) or warrant further review and that this complaint be dismissed. Roll call was taken as follows: McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 5-0.

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AGENDA ITEM 74, 25-099EAM, Traci Corwin
Child Welfare Manager, Oregon Department of Human Services
Respondent Corwin was present via Teams. Investigator McIntyre summarized the case and the recommendation to dismiss. McIntyre described how Corwin was not involved in the hiring or in any acts that would be under the nepotism statutes. Corwin addressed the Commission and said she had nothing to add beyond what McIntyre stated.
Commissioner Payne moved that the Commission find that the complaint and information available during Preliminary Review appears to be insufficient to constitute a substantial, objective basis for believing that Traci Corwin has violated provisions in ORS 244.040, ORS 244.120, ORS 244.177, and ORS 244.179 or warrant further review and that this complaint be dismissed. Roll call was taken as follows: McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 5-0.

AGENDA ITEM 75, 25-104EJS, Katie Reding
City Councilor, City of North Plains
Respondent Reding was not present. Investigator Sullivan summarized the case and recommendation to dismiss. Sullivan described how Reding asked for advice on how to handle the litigation and how there is no financial gain and how she followed the advice provided by the Commission.
Commissioner Payne moved that the Commission find that the complaint and information available during Preliminary Review appears to be insufficient to constitute a substantial, objective basis for believing that Katie Reding has violated provisions in ORS 244.040(1) and ORS 244.120(2) or warrant further review and that this complaint be dismissed. Roll call was taken as follows: McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 5-0.

Own Motion Preliminary Reviews
None.

(File 4)
Commission took a break from 12:20p.m.-12:30p.m.

Other Items
A**GENDA ITEM 76,** Consult with legal counsel per ORS 192.660(2)(f) and (h). Commissioner Fiskum reminded media of the confidentiality of this agenda item. DOJ Counsel Brady reviewed the information presented in his confidential legal memorandum and provided attorney-client privileged legal advice to the Commission.

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(File 5)
Commission reconvened into Public Session at 12:40p.m.

CONSENT CALENDAR [12]

Lobbyist Penalty Correspondence
AGENDA ITEM 4, Carmen Merlo, 2024 Q4, Letter of Education

AGENDA ITEM 5, Nicholas Vaughn Royal, 2024 Q4, Letter of Education

AGENDA ITEM 6, Sean Stevens, 2024 Q4, Letter of Education

AGENDA ITEM 7, Josephine Tecum, 2024 Q4, Letter of Education

AGENDA ITEM 8, Khanh Tran, 2024 Q4, Letter of Education

Lobbyist Client Penalty Correspondence
None.

SEI Correspondence
AGENDA ITEM 9, Brenda Coleman, 2022, 2023 SEI, Letter of Education

AGENDA ITEM 10, Jon Patterson, 2024 SEI, Letter of Education
End of Consent Calendar

Commissioner Payne moved that the Commission approve the Consent Calendar as presented to the Commission. Roll call was taken as follows: McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 5-0.

Director Myers explained how penalty correspondence process and recommendations works for the benefit of the Commissioner Metler.

Lobbyist Penalty Correspondence
AGENDA ITEM 11, William Anderson, 2024 Q4, $1,250
Recommendation: 2024 Q4, $125
Director Myers explained the recommendation.
Commissioner Payne moved that the Commission approve the recommendation as presented to the Commission. Roll call was taken as follows: McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 5-0.

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AGENDA ITEM 12, Benjamin Gurewitz, 2023 Q4, $80; 2024 Q2, $10; 2024 Q4, $1,250
Recommendation: 2023 Q4 and 2024 Q2, $20; 2024 Q4, $250
Director Myers explained the recommendation.
Commissioner Payne moved that the Commission approve the recommendation as presented to the Commission. Roll call was taken as follows: McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 5-0.

AGENDA ITEM 13, Dana Richardson, 2024 Q4, $20
Recommendation: 2024 Q4, no reduction, $20
Director Myers explained the recommendation.
Commissioner Payne moved that the Commission approve the recommendation as presented to the Commission. Roll call was taken as follows: McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 5-0.

AGENDA ITEM 14, Anya Sekino, 2024 Q2, $10; 2024 Q4, $1,450
Recommendation: 2024 Q2, LOE; 2024 Q4, $145
Director Myers explained the recommendation.
Commissioner Payne moved that the Commission approve the recommendation as presented to the Commission. Roll call was taken as follows: McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 5-0.

AGENDA ITEM 15, Lisa Taylor, 2023 Q2 $10; 2024 Q4 $50
Recommendation: 2023 Q2, no reduction, $10; 2024 Q4 $25
Director Myers explained the recommendation.
Commissioner Payne moved that the Commission approve the recommendation as presented to the Commission. Roll call was taken as follows: McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 5-0.

Lobbyist Client Penalty Correspondence

AGENDA ITEM 16, 350PDX, 2024 Q4 $140
Recommendation: 2024 Q4, $20
Director Myers explained the recommendation.
Commissioner Payne moved that the Commission approve the recommendation as presented to the Commission. Roll call was taken as follows: McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 5-0.

AGENDA ITEM 17, City of North Plains, 2024 Q4 $1,150
Recommendation**:** 2024 Q4, $115

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Director Myers explained the recommendation.
Commissioner Payne moved that the Commission approve the recommendation as presented to the Commission. Roll call was taken as follows: McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 5-0.

Dianne Lugo (Statesman Journal) joined the meeting at 12:50 p.m.

AGENDA ITEM 18, Oregon Council of Presidents (OCOP), 2024 Q4 $70
Recommendation: 2024 Q4, $35
Director Myers explained the recommendation. Commissioner Fiskum inquired about frequent penalties. Commissioner Thompson commented that he believed that they were no longer in business.
Commissioner Payne moved that the Commission approve the recommendation as presented to the Commission. Roll call was taken as follows: McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 5-0.

AGENDA ITEM 19, City of Stanfield, 2021 Q3 $30 LOE; 2024 Q4 $10
Recommendation**:** 2024 Q4, no reduction, $10
Director Myers explained the recommendation.
Commissioner Payne moved that the Commission approve the recommendation as presented to the Commission. Roll call was taken as follows: McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 5-0.

AGENDA ITEM 20, Willamette Riverkeeper, 2021 Q4 $20; 2022 Q2 $30; 2022 Q4 $20; 2023 Q2 $20; 2023 Q3 $20; 2024 Q1 $30; 2024 Q4 $120 = $260
Recommendation: Current penalties, reduction to $190
Director Myers explained the recommendation.
Commissioner Payne moved that the Commission approve the recommendation as presented to the Commission. Roll call was taken as follows: McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 5-0.

SEI Penalty Correspondence
None.

STIPULATED FINAL ORDERS [12]

Consent Calendar

AGENDA ITEM 21, 24-284XCF, Larry Johnson
Director, Sweet Home Fire & Ambulance District
Recommendation: Letter of Education

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AGENDA ITEM 22, 24-287XCF, Charlene Adams
Director, Sweet Home Fire & Ambulance District
Recommendation: Letter of Education

AGENDA ITEM 23, 24-318EDP, Michelle Humble
Airport Manager, City of Creswell
Recommendation: Letter of Education
Respondent Humble was present via telephone.

AGENDA ITEM 24, 24-345PJS, Michaela Hammerson
Board Member, Umpqua Public Transportation District
Recommendation: Letter of Education

Commissioner Payne moved that the Commission approve the Stipulated Final Order Consent Calendar as presented to the Commission. Roll call was taken as follows: McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 5-0.

End of Consent Calendar

STIPULATED FINAL ORDERS
Civil Penalties

Director Myers gave a brief background for the two Oregon Liquor and Cannabis Commission cases and prior criminal investigations, explaining the reason for suspension.

AGENDA ITEM 25, 23-069EMW, Bill Schuette
Former Budget Director, Oregon Liquor and Cannabis Commission
Penalty/Sanction: $500. Compliance & Enforcement Coordinator Fenstermaker summarized the case and explained that Schuette does not feel that the situation is a violation of ethics law but did agree to the Stipulated Final Order and a penalty of $500.

Commissioner Fiskum asked if there were any ethics violations. Director Myers stated that she believes there was a clear ethics violation. The crux of the violation was that the availability of the bottles was confidential and not available to the public. The use of that confidential information to obtain the bottles violates ORS 244.040(4) and 244.040(1). Commissioner Fiskum asked if the Stipulated Final Order determines that there was a violation, and they agreed to the violation. Director Myers stated that the Commission’s law for stipulated final

orders requires that they agreed to the asserted facts, but they can disagree about whether those facts amount to a violation. Commissioner Payne asked about the penalty amount. Director Myers explained that the penalty was within the range set forth on the penalty matrix, and that the amount of the penalty was roughly equivalent to what Respondent Schuette had paid for the bottles he obtained.
Commissioner Payne moved that the Commission approve the Stipulated Final Order as presented to the Commission. Roll call was taken as follows: McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 5-0.

AGENDA ITEM 26, 23-072EMW, Jon-Kai Nakashima
Former Information Services Director, Oregon Liquor and Cannabis Commission
Penalty/Sanction: $500. Investigator Sullivan summarized the Stipulated Final Order. Director Myers explained that the explanation she had just shared applied to this case as well.
Commissioner Payne moved that the Commission approve the Stipulated Final Order as presented to the Commission. Roll call was taken as follows: McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 5-0.

AGENDA ITEM 27, 4-267EDP, Deborah Clark
Board Member, South County Health District
Penalty/Sanction: $2,000. Investigator Pacheco summarized the Stipulated Final Order.
Commissioner Payne moved that the Commission approve the Stipulated Final Order as presented to the Commission. Roll call was taken as follows: McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 5-0.

AGENDA ITEM 28, 24-412EJS, Daren Dufloth
City Councilor, City of Umatilla
Penalty/Sanction: $500. Investigator Sullivan summarized the Stipulated Final Order. Respondent Dufloth was present via the telephone and stated that he appreciated the negotiations and the education he received about declaring conflicts. Commissioner Payne moved that the Commission approve the Stipulated Final Order as presented to the Commission. Roll call was taken as follows: McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 5-0.

DEFAULT FINAL ORDERS

None.

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REPORTS OF INVESTIGATIONS

None.

ADVISORY OPINIONS

None.

CORRESPONDENCE RECEIVED/RESPONSES

Staff Opinions (non-action, informational only items)

None.

Staff Advice (non-action, informational only items)

AGENDA ITEM 29, 25-128I, Sara Kim, Chief of Staff for Rep. Hai Pham, Oregon Legislative Assembly, re: Oregon Ethics Law and gift exception provisions.

AGENDA ITEM 30, 25-144I, Rep. Alek Skarlatos, Oregon Legislative Assembly, re: Oregon Ethics Law and use of office provisions.

AGENDA ITEM 31, 25-175I, Leah Silber, City of Rivergrove, re: Public Meetings Law notice requirements.

AGENDA ITEM 32, 25-183I, Sen. Jeff Golden, Oregon Legislative Assembly, re: Oregon Ethics Laws and gift exception provisions.

AGENDA ITEM 33, 25-196I, Jerome Dalnes, Oregon Health Authority, re: Oregon Ethics Law and conflicts of interest provisions.

AGENDA ITEM 34, 25-199I, Joanna Mott, Oregon Health Authority, re: Oregon Ethics Law and conflicts of interest provisions.

Public Meetings Law Training Approval Letters

AGENDA ITEM 35, 25-114T, League of Oregon Cities, Public Meetings Law Training Approval Letter and completed training assessment.

Other Correspondence (non-action, informational only items)

AGENDA ITEM 36, Correspondence with Jeff Myers re: case and complaint procedures. Commissioner Fiskum stated that he would like to hear a report from

staff as Jeff Myers has contacted both him and Commissioner Mason directly. Compliance & Enforcement Coordinator Fenstermaker summarized the complaints that Jeff Myers had submitted to the Commission and the reasons for not opening the cases; outside OGEC's jurisdiction or already settled with a Stipulated Final Order. Fenstermaker stated that the staff is prepared to act upon the Commission's guidance if so requested. No action requested by the Commission.

MISCELLANEOUS ITEMS

AGENDA ITEM 37, 24-591ELG, Motion to Suspend Investigation
Investigator Gallaver summarized the motion to suspend the investigation concerning Kay Michelle Zink, pending completion of the criminal matter. Commissioner Payne moved that the Commission approve the motion to suspend the investigation on Case No. 24-591ELG. Roll call was taken as follows: McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 5-0.

AGENDA ITEM 38, 25-086ELG, Motion to Suspend Investigation.
Investigator Gallaver summarized the motion to suspend the investigation concerning Trampas Bergstrom, pending completion of criminal matter. Commissioner Payne moved that the Commission approve the motion to suspend the investigation on Case No. 25-086ELG. Roll call was taken as follows: McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 5-0.

AGENDA ITEM 39, 25-137A, Request for Extension of Time for Commission Advisory Opinion. Compliance & Enforcement Coordinator Fenstermaker explained the need for an extension of time. Commissioner Payne moved that the Commission approve the motion to extend the time on CAO No. 25-137A. Roll call was taken as follows: McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 5-0.

AGENDA ITEM 40, Revised 2025 Commission Meeting Schedule
Director Myers presented the proposed revised 2025 meeting schedule.
May 9, 2025
June 13, 2025
July 11, 2025
August 8, 2025
September 12, 2025
October 10, 2025

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November 14, 2025
December 12, 2025
Commissioner Payne moved that the Commission adopt the proposed revised 2025 meeting schedule. Roll call was taken as follows: McAuley, aye; Payne, aye; Metler, aye; Thompson, aye; Fiskum, aye. Motion passed 5-0.

AGENDA ITEM 41, Trainers' Report – Ruth Sylvester summarized the training activities to the Commission for the last quarter, including updated materials that the trainers, particularly Lex Tingey, produced and shared with public officials.

AGENDA ITEM 42, Executive Director's Report – Director Myers summarized the agency's activities since the last Commission meeting. 2 out of the 5 agency bills are still alive and have hearings.

Director Myers provided information relating to the Secretary of State's audit of the Governor's Office. Director Myers reviewed DAS's policies and spoke with a DAS manager, who confirmed that the space was designated for the Governor and that the office should not have been paying for the space. DAS is no longer charging the Governor's Office for that space. The Washington DC parking space was leased at the recommendation of the Dignity Protection Unit for the Governor to use in DC. The former Chief of Staff authorized the lobbyist to use the space when the Governor was not using it. The tickets purchased for two events were for the Dignity Protection Unit to accompany the Governor and First Lady who had purchased their own tickets. The other events were ones the Governor's Office was supporting. Director Myers noted that the Governor's Office budget includes a specific appropriation for the Governor to use at her discretion. This appropriation could apply to both the event tickets and the Mahonia Hall event. Director Myers explained that the Commission has no authority over other public bodies, only over individual public officials. The Commission could open cases on all the public officials who attended the Mahonia Hall event, but it would be difficult to determine whether any of them actually violated the laws in ORS Chapter 244. Commissioners stated we should write a letter to the Governor's Office to provide some advice and create a record of action.

Director Myers provided information on the number of SEI filers who have not yet filed, as well as the number of lobbyists and client/employers who have not yet filed their quarterly expenditure reports.

Commissioner Fiskum stated he wanted to compliment staff on the creation of OGEC's Customer Service Policy.

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Chair Fiskum adjourned the meeting at 1:55p.m.

Note: The next Regular Meeting date of the Oregon Government Ethics Commission is scheduled for Friday, May 9, 2025, at 9:00 a.m. in the second-floor conference room of the Morrow Crane Building at 3218 Pringle Rd. SE, Ste 220, Salem Oregon.

These minutes contain materials which paraphrase and/or summarize statements made during this meeting. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the recordings at https://www.oregon.gov/ogec/about-us/Pages/Meetings.aspx

BEFORE THE OREGON GOVERNMENT ETHICS COMMISSION

In the Matter of Steve Marks	)	**STIPULATED FINAL ORDER** **CASE NO. 23-067ESM**

1. PURPOSE: The purpose of this stipulated final order is to release, settle and compromise any and all claims, allegations and charges that have been asserted by the Oregon Government Ethics Commission (Commission) in the above-referenced case against Steve Marks.

2. JURISDICTION: The period of the Commission's jurisdiction in this case extends from March 10, 2019 through March 10, 2023 (relevant period). At all material times during the relevant period, through February 15, 2023, Steve Marks was the Executive Director for the Oregon Liquor and Cannabis Commission. In that position, Steve Marks was a public official subject to the jurisdiction of the Commission pursuant to ORS Chapter 244.

3. FACTUAL ASSERTIONS:

   A. The Oregon Liquor and Cannabis Commission (OLCC) regulates the distribution and sale of distilled spirits in the state. Oregon is a "control" state, meaning that distilled spirits may only be purchased through retail liquor stores operated by agents contracted with OLCC. There is no option in Oregon to purchase distilled spirits from an individual or business other than a licensed liquor store, nor can distilled spirits be shipped or mailed directly to Oregon residents.

B. In Oregon, distilled spirits are owned by the suppliers when shipped to and inventoried in the OLCC warehouses. The State pays the suppliers when the inventory is transported from the OLCC warehouses to retail stores, at which point the inventory becomes the property of the State. The distilled spirits remain State property at the retail stores until they are sold to a customer, at the price set by OLCC.

C. Buffalo Trace Distillery (Buffalo Trace) in Kentucky produces several brands of bourbon, including Pappy Van Winkle and Elmer T. Lee bourbons. The Pappy Van Winkle bourbons come in 10 year, 12 year, 13 year, 15 year, 20 year, and 23 year. Buffalo Trace distributes a limited amount of Pappy Van Winkle to OLCC, most of which is vendor-allocated to specific bars, restaurants, and liquor stores.

D. Beginning in 2018, OLCC began holding a public drawing or lottery, called the Chance to Purchase Program, where Oregon residents could win the opportunity to purchase rare and limited edition bottles of liquor, including Buffalo Trace bourbons. OLCC employees and their relatives are not eligible to participate in the Chance to Purchase drawings.

E. During the relevant period, OLCC held some bottles of the rare bourbons, including bottles of Pappy Van Winkle, in its reserve stock. After distribution of the bottles allocated in the Chance to Purchase drawings, certain OLCC employees were able to request and did obtain bottles from the reserve stock before those bottles were added to the regular list of stock available for distribution to liquor stores.

F. The practice at OLCC of maintaining a reserve stock and of OLCC employees requesting and purchasing bottles from the reserve stock predated the establishment of the Chance to Purchase Program and Steve Marks' employment.

G. During the relevant period, OLCC had no written policy for how to handle or distribute the bottles in the reserve stock. Nor was there a written policy authorizing OLCC employees to purchase bottles from the reserve stock.

H. Steve Marks participated in a recorded interview with OLCC Investigator Travis Hampton on August 30, 2022. In that interview, Steve Marks acknowledged acquiring a bottle of Pappy VanWinkle 23 year from the reserve stock within the last three years, or sometime between August 30, 2019 and August 30, 2022. Mr. Marks paid the OLCC listed price, $329.99 for this bottle.

4. LEGAL ASSERTIONS:

A. ORS 244.040(1) prohibits a public official from using or attempting to use their official position or office to obtain a financial gain or avoid a financial detriment for the public official, their relatives or household members, or any businesses with which they, their relatives or household members are associated if that financial gain or avoidance of detriment would not otherwise be available to them but for them holding their office or position.

B. ORS 244.040(2)(a) provides that ORS 244.040(1) does not apply to "[a]ny part of an official compensation package as determined by the public body that the public official serves." OAR 199-008-0005(3) defines an "official compensation package" to include the wages and other benefits provided to the public official. "To be part of the public official's 'official compensation package,' the wages and benefits must have been specifically approved by the public body in a formal manner, such as through a union contract, an employment contract, or other adopted personnel policies that apply generally to employees or other public officials."

C. Because there was no written policy at OLCC authorizing employees to purchase the rare bottles held in the reserve stock before they were made available to the public, the opportunity to purchase reserve stock bottles was not part of the OLCC employees' official compensation packages.

D. ORS 244.040(4) provides that a public official "may not attempt to further or further the personal gain of the public official through the use of confidential information gained in the course of or by reason of holding position as a public official or activities of the public official."

E. "Confidential information" is defined in OAR 199-008-0005(5) to include any record that is exempt from public disclosure or inspection under state law, or any information obtained in the course of or by reason of holding position as a public official that is not publicly disclosed.

F. The Commission contends that information on the availability of the bottles in the reserve stock was not publicly disclosed, that this information was only available to Steve Marks because of his position at OLCC, and that Steve Marks was able to obtain a bottle of Pappy Van Winkle 23 year, from the OLCC reserve stock, because he held his position at OLCC.

G. The Commission further contends that by obtaining the bottle of Pappy Van Winkle 23 Year from the OLCC's reserve stock, Steve Marks avoided the financial detriment of paying the costs that would otherwise be necessary to obtain a bottle of Pappy Van Winkle 23 Year at the time he obtained his bottle.

H. A conflict of interest occurs when a public official makes a decision or recommendation, or takes action, that would (actual conflict of interest) or could (potential conflict of interest) result in a financial benefit or detriment for the public official, their relatives, or any business with which they or their relatives are associated. [ORS 244.020(1) and (13)].

J. ORS 244.120(1)(c) requires appointed public officials to disclose their conflicts of interest prior to making a decision or recommendation or taking official action. Appointed officials must submit a written disclosure of their conflict of interest to their appointing authority and request that authority dispose of the conflict of interest. The appointing authority may do so by appointing another employee to handle the matter or by directing the conflicted employee to handle the matter in the manner designated by the appointing authority.

K. The Commission contends that when Steve Marks requested and obtained his bottle of Pappy Van Winkle 23 Year from the OLCC reserve stock, he took an action, in his official capacity, that resulted in a personal financial benefit. Steve Marks did not submit a written conflict of interest disclosure to his appointing authority prior to taking this action.

L. The Commission contends that the results of the Commission investigation, if submitted through exhibits and testimony at a contested case hearing, would establish a preponderance of evidence in support of a post-hearing order to find one violation each of ORS 244.040(1), ORS 244.040(4), and ORS 244.120(1)(c).

M. Steve Marks contends that the facts asserted in Section (3) of this Order are insufficient to establish a violation of ORS 244.040(1), ORS 244.040(4) and ORS 244.120(1)(c), and contends that the results of the Commission investigation, if submitted through exhibits and testimony at a contested case hearing, would not establish a preponderance of evidence in support of finding such violations. He further asserts that he did not knowingly or intentionally violate these statutes and that he has legal and factual bases to argue against any and all of the facts asserted and the alleged violations, but he agrees to entry of this stipulated final order in order to resolve this matter.

5. TERMS OF SETTLEMENT:

The parties agree as follows:

A. On June 2, 2023, the Commission considered information in the preliminary review phase of Case No. 23-067ESM and acted to find cause to initiate an investigation of this matter. On July 14, 2023, the Commission moved to suspend the investigation pending completion of a pending criminal investigation by the Oregon Department of Justice. The suspension was lifted and the investigation was reactivated on May 14, 2024. Mr. Marks, through his counsel, requested and received a time waiver so that the parties could negotiate a potential resolution of this matter through a stipulated final order.

B. Steve Marks has indicated that he wishes to conclude this matter by agreeing to the terms and conditions in this order without completing the investigative phase.

C. ORS 244.350 authorizes the Commission to impose civil penalties of up to $5,000 for each violation of the laws in ORS Chapter 244.

D. Steve Marks will pay a civil penalty, as authorized by ORS 244.350, in the amount of $500 in order to settle and compromise this matter.

E. The Commission releases, settles and compromises any and all claims, allegations and charges that have been asserted by the Commission in the above-referenced case against Steve Marks.

F. Steve Marks will initiate no claims, litigation or other action against the Commission as a result of these proceedings.

6. REVIEW BY COUNSEL:

All of the parties hereto acknowledge that this agreement has been entered into by their own free will and with full understanding of the contents herein. Each of the parties further acknowledges that each has had the opportunity to seek the advice of counsel in reviewing and entering into this agreement.

7. EFFECT:

This agreement is subject to the final approval of the Commission. Once approved, this agreement shall be the final disposition of the matter and shall be binding upon all parties.

By signing this agreement, Steve Marks agrees to waive his right to a contested case hearing as provided in ORS Chapter 183 and ORS 244.370. This order shall be the final order and all information in the Commission files on this matter shall become part of the record.

By signing this agreement, Steve Marks agrees to waive his right to obtain judicial review of this order as provided in ORS 183.482.

IN WITNESS WHEREOF, the parties have entered into and signed this stipulated final order on the dates set forth below.

Steve Marks

Date

David Fiskum, Chairperson
Oregon Government Ethics Commission

Date

Docusign Envelope ID: 4BA1715A-99BC-47BD-BDD2-819C88218715

BEFORE THE OREGON GOVERNMENT ETHICS COMMISSION

In the Matter of Shemia Fagan	)	**STIPULATED FINAL ORDER** **CASE NO. 23-128ESM** **23-145ESM** **23-222ESM**

1. PURPOSE: The purpose of this stipulated final order is to release, settle and compromise any and all claims, allegations, and charges that have been asserted by the Oregon Government Ethics Commission (Commission) in the above-referenced cases against Shemia Fagan.

2. JURISDICTION: At all material times, Shemia Fagan was the Oregon Secretary of State. As such, Shemia Fagan was a public official subject to the jurisdiction of the Commission pursuant to ORS Chapter 244.

3. FACTUAL AND LEGAL ASSERTIONS:

A. ***Case No. 23-128ESM***

a. In January 2022, the Secretary of State's Office Audit Division began conducting a performance audit of the Oregon Liquor and Cannabis Commission (OLCC) relating to its oversight of the Oregon cannabis industry. The final audit report was released on April 28, 2023.

b. On January 12, 2023 during a personal social outing, Shemia Fagan was offered an opportunity from Rosa Cazares, one of Veriede Holding, LLC's (Veriede) owners, to serve temporarily as a consultant for Veriede while she became familiar with their business operations and eventually to serve as a board member when Veriede transitioned to a corporation.

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c. Shemia Fagan disclosed the opportunity to her staff and acted on their feedback. As part of her due diligence, Shemia Fagan called the Commission three separate times, consulted with the Secretary of State's in-house attorney and the Oregon Department of Justice.

d. On February 15, 2023, Shemia Fagan recused herself from the OLCC audit and delegated full authority for the audit to Deputy Secretary of State Cheryl Myers.

e. On or about February 15, 2023, Shemia Fagan wrote a draft Consulting Agreement and incorporated the OGEC guidelines as express limitations on her work. Shemia Fagan sent the draft by email to Rosa Cazares and invited Rosa Cazares to have her lawyer review the agreement and send back any changes. They did not propose any changes.

f. On February 24, 2023, while serving as the Secretary of State, Shemia Fagan entered the Consulting Agreement with Veriede to perform the work directed by Veriede's owners, including but not limited to conducting research and providing advice on corporation board governance and to conduct research on cannabis licensing opportunities for Veriede in 48 states, expressly excluding Oregon. At the time, Veriede was a limited liability company registered with the Secretary of State's Business Registry. Its members were Rosa Cazares and Aaron Mitchell. Prior to entering the contract with Veriede, Shemia Fagan recused herself from any further participation in the OLCC audit, assigning her duties to her Deputy Director.

g. Per ORS 244.020(1) and (13), a public official is met with a conflict of interest, actual or potential, when they make a decision or

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recommendation, or take action, which would or could have a financial impact, positive or negative, on themselves, their relatives, or on a business with which they are associated.

h. When met with a conflict of interest, an elected official, such as Shemia Fagan, is required to make a public announcement of the nature of the conflict of interest. If it is a potential conflict of interest, they may then continue to participate in the matter. If it is an actual conflict of interest, they must refrain from any participation. [ORS 244.120(2)].

i. A business with which a person is associated includes a private business or closely-held corporation of which the person is an officer, director, owner, employee or agent. [ORS 244.020(3)(a)]. When she entered the consulting contract on February 24, 2023, Veriede became a business with which Shemia Fagan was associated.

j. Although Veriede was a business with which Shemia Fagan was associated, she did not make any decisions or recommendations, or take any actions, as Secretary of State, with respect to the OLCC audit between February 24, 2023 and April 28, 2023. Therefore, she was not met with a conflict of interest and she did not violate ORS 244.120(2).

k. ORS 244.040(1) prohibits a public official from using or attempting to use their official position to obtain a financial gain or avoid a financial detriment, for themselves, their relatives or household members, or for any business with which they are associated, if the financial gain or avoidance of financial detriment would not otherwise be available but for the public official's holding their official position. This prohibition includes using or attempting to use one's official position to create or obtain private employment or a private income-producing opportunity.

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l. As part of her work for Veriede, Shemia Fagan contacted the Connecticut Lieutenant Governor, Susan Bysiewicz, who provided her with contact information for someone in Connecticut state government who worked on cannabis regulation. At that point, Shemia Fagan and the Connecticut Lieutenant Governor had developed a friendship. In her text, Shemia Fagan made clear that her communication was unrelated to her role as Secretary of State, and the Connecticut Lieutenant Governor has confirmed in a public statement that she considered the call with Shemia Fagan personal and that the information shared was publicly available information. Thus, with respect to this contact, it does not appear that Shemia Fagan violated ORS 244.040(1).

m. Public officials may pursue opportunities for private employment or to obtain additional personal income without violating ORS 244.040(1) so long as they (i) do not use their public positions to create or gain the opportunities, and (ii) the opportunities are not made available to them because they hold their public positions.

n. There are a number of factors relevant to determining whether a public official obtained private employment because they hold their public position. On one hand, having a Secretary of State as a consultant could present as an endorsement. There was no evidence presented that Veriede conducted a competitive process for filling the position or had a history of offering similar consulting positions to others. While she was an attorney, Shemia Fagan did not have any significant experience in cannabis regulations. On the other hand, Shemia Fagan was personal friends with Rosa Cazares, one of Veriede's owners and their families spent time together socially. The opportunity to serve as a temporary consultant and an eventual board member arose during a personal social

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outing with Shemia Fagan and Rosa Cazares. As an attorney and former legislator, Shemia Fagan had regulatory experience and board and oversight committee experience. She spent her first five years as an attorney for corporate entities. She was not otherwise invested in the cannabis industry (so as not to be a potential competitor with access to Veriede's business operations). Shemia Fagan also was actively pursuing outside employment during this period, both with Willamette Law School and by seeking positions she found on Indeed.com. In addition, Shemia Fagan asserts she did not hold herself out as the "Secretary of State" when providing consulting services for Veriede, and she expressly cautioned Veriede about her limitations under the Oregon Ethics guidelines. Finally, on or about May 12, 2023, after Shemia Fagan resigned as Secretary of State, Rosa Cazares again offered Shemia Fagan the same consulting and eventual board member opportunity, which Shemia Fagan declined. Based on the weighing of these factors, the Commission contends that Shemia Fagan violated ORS 244.040(1) by using her position to obtain private employment.

o. For Case No. 23-128ESM, the Commission contends that the results of its investigation, if submitted through exhibits and testimony at a contested case hearing, would establish a preponderance of evidence in support of a post-hearing order to find one violation of ORS 244.040(1).

p. For Case No. 23-128ESM, Shemia Fagan disputes that she used her position as Secretary of State to obtain private employment and contends that the facts asserted in Section (3)(A) of this Order are insufficient to establish a violation of ORS 244.040(1). She further contends that the results of the Commission investigation failed to produce evidence that Shemia Fagan intended to use or attempt to use her public office to obtain the consulting and eventual board membership opportunity. On the

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contrary, Shemia Fagan contends that there is substantial evidence that she was offered her position with Veriede for reasons other than being Secretary of State and further, that she expressly guarded against her or Veriede using her public position for any private gain. Consequently, Shemia Fagan contends that the evidence, if submitted through exhibits and testimony at a contested case hearing, would not establish a preponderance of evidence in support of finding such a violation.

B. ***Case No. 23-145ESM***

a. As the Secretary of State, Shemia Fagan was required by ORS 244.050(1)(a) to file an Annual Verified Statement of Economic Interest (SEI) on or before April 15 of each year she held that office. Shemia Fagan timely filed SEIs in 2021, 2022, and 2023.

b. ORS 244.060 requires filers to list certain information on their SEIs related to their financial interests in the prior calendar year. Question 2 asks filers to list all sources of income that total 10% or more of the total household income. Shemia Fagan listed HKM Employment Attorneys, LLP (HKM) under Question 2 on her 2022 and 2023 SEIs.

c. Per ORS 244.060(8), Question 7 on the SEI requires reporting the source of any income in excess of $1,000 received in the preceding calendar year from a source that has a legislative or administrative interest or has been doing business, does business, or could reasonably be expected to do business with the governmental agency that the filer serves.

d. As a foreign limited liability partnership registered in the Secretary of State's Business Registry, HKM has a legislative or administrative interest and could reasonably be expected to do business with the Secretary of State's Office, over which Shemia Fagan exercised authority. The income

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Shemia Fagan received from HKM in 2021 and 2022 exceeded $1,000 annually.

e. On her 2022 and 2023 SEIs, Shemia Fagan failed to list HKM under Question 7, thus violating ORS 244.060(8).

f. Per ORS 244.060(5) and (6), Question 4 of the SEI requires filers to report all paid expenses received in the preceding calendar year when participating in office related events, referencing travel-related expenses paid under the gift exceptions in ORS 244.020(7)(b)(F) and ORS 244.020(7)(b)(H).

g. Shemia Fagan's 2021 SEI was amended twice, first to add four office related trips or events to Question 4 and then to remove these events from Question 4. As the events themselves occurred in 2021, they did not need to be reported until her 2022 SEI. When Shemia Fagan's 2022 SEI was filed, only one of these four events was reported in Question 4; the remaining events were not reported as the expenses were not paid under the gift exceptions in ORS 244.020(7)(b)(F) or ORS 244.020(7)(b)(H). Thus, Shemia Fagan's failure to report these events on her 2022 SEI does not constitute a violation of ORS 244.060(5) or (6).

h. For Case No. 23-145ESM, the Commission contends that the results of its investigation, if submitted through exhibits and testimony at a contested case hearing, would establish a preponderance of evidence in support of a post-hearing order to find two violations of ORS 244.060(8).

i. For Case No. 23-145ESM, Shemia Fagan asserts that she delegated the task of submitting her SEI to agency staff and did not knowingly or intentionally fail to list HKM under Question 7.

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C. ***Case No. 23-222ESM***

a. In her official capacity as Secretary of State, Shemia Fagan went on a driving tour to visit county clerks' offices in Eastern Oregon in May 2022. She was accompanied on this trip by a staff member from the Secretary of State's Office. Ms. Fagan was also accompanied by her sister, her two children and her family dog.

b. In August 2022, Shemia Fagan went on another driving tour to visit county clerks' offices, this time along the Oregon coast and then up through central Oregon. She was again accompanied on this trip by a staff member. Ms. Fagan was also accompanied by her aunt, her two children, and her family's new puppy.

c. For both trips, as her family and puppy were traveling with her, agency staff rented a full size SUV for Shemia Fagan, rather than an economy vehicle. At each stop, Shemia Fagan, with her family and puppy, stayed in the rooms that had been booked for her, double-queen, pet-friendly rooms. Shemia Fagan did not seek reimbursement for any pet fees that were incurred. The staff member rented a separate economy-sized vehicle and stayed in a standard-sized hotel room.

d. Both Shemia Fagan and the staff member submitted expense reimbursement forms seeking reimbursement of the transportation and lodging expenses incurred on these two trips. Shemia Fagan was reimbursed for the amount of the larger double-queen rooms and the gas and rental expenses for the full-sized SUV.

e. The differences in the reimbursements submitted by Shemia Fagan and the staff member indicate that the additional expenses incurred by Shemia Fagan resulted from the need to accommodate the fact that her family and

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dog were traveling with her, i.e., the larger vehicle, gas and hotel rooms. These additional expenses totaled $1,089.27.

f. ORS 244.040(1) prohibits a public official from using or attempting to use their official position to obtain a financial gain or avoid a financial detriment that would not otherwise be available but for their holding their official position.

g. ORS 244.040(2)(c) permits a public official to accept reimbursement of expenses without violating ORS 244.040(1). OAR 199-008-0005(4) defines “reimbursement of expenses” as “the payment by a public body to a public official serving that public body, of expenses incurred in the conduct of official duties on behalf of the public body. Any such repayment must comply with any applicable laws and policies governing the eligibility of such repayment.”

h. The additional expenses identified in paragraph 3(C)(e) were not expenses incurred in the conduct of Shemia Fagan’s official duties. Therefore, the reimbursements paid for those additional expenses do not qualify under the exception in ORS 244.040(2)(c). As a result, Shemia Fagan’s request for and receipt of reimbursement of these additional expenses violated ORS 244.040(1).

i. By seeking reimbursements for which she was not entitled, Shemia Fagan took actions in her official capacity that provided a financial benefit to herself. Thus, she was met with conflicts of interest and she did not make any conflict of interest disclosures, thus violating ORS 244.120(2).

j. For Case No. 23-222ESM, the Commission contends that the results of its investigation, if submitted through exhibits and testimony at a contested case hearing, would establish a preponderance of evidence in support of a

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post-hearing order to find two violations of ORS 244.040(1) and two violations of ORS 244.120(2).

k. For Case No. 23-222ESM, Shemia Fagan asserts that the reimbursements identified above were submitted and approved by agency staff and the Deputy Secretary of State. Shemia Fagan did not knowingly or intentionally seek any reimbursements to which she was not entitled or violate ORS 244.040(1) or ORS 244.120(2).

4. TERMS OF SETTLEMENT:

The parties agree as follows:

A. On July 14, 2023, the Commission considered information in the preliminary review phase of Case No. 23-128ESM and Case No. 23-145ESM and acted to find cause to initiate investigations of those matters. On August 25, 2023, the Commission considered information in the preliminary review phase of Case No. 23-222ESM and acted to find cause to initiate an investigation of that matter.

B. Shemia Fagan has indicated that due to the burden of these matters pending, as well as the expense of continuing to obtain legal counsel to contest these matters, she wishes to conclude these matters by agreeing to the terms and conditions in this order without completing the investigative phase in the cases.

C. For Case No. 23-145ESM, Shemia Fagan will amend her 2022 and 2023 SEIs and will receive a Letter of Education. Shemia Fagan will pay a civil penalty, as authorized by ORS 244.350(1)(a), in the amount $1,600.00 in order to settle and compromise Case No. 23-128ESM and Case No. 23-222ESM. Payment in full will be made payable to the Commission no later

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than June 30, 2025.

D. The Commission releases, settles and compromises any and all claims, allegations and charges that have been asserted by the Commission in the above-referenced cases against Shemia Fagan.

E. Shemia Fagan will initiate no claims, litigation or other action against the Commission as a result of these proceedings.

5. REVIEW BY COUNSEL:

All of the parties hereto acknowledge that this agreement has been entered into by their own free will and with full understanding of the contents herein. Each of the parties further acknowledges that each has had the opportunity to seek the advice of counsel in reviewing and entering into this agreement.

6. EFFECT:

This agreement is subject to the final approval of the Commission. Once approved, this agreement shall be the final disposition of the matters in these cases and shall be binding upon all parties.

By signing this agreement, Shemia Fagan agrees to waive her right to a contested case hearing as provided in ORS Chapter 183 and ORS 244.370. This order shall be the final order and all information in the Commission files on these matters shall become part of the record.

By signing this agreement, Shemia Fagan agrees to waive her right to obtain judicial review of this order as provided in ORS 183.482.

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IN WITNESS WHEREOF, the parties have entered into and signed this stipulated final order on the dates set forth below.

DocuSigned by:
Shemia Fagan
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Shemia Fagan

5/1/2025
Date

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David Fiskum, Chairperson
Oregon Government Ethics Commission

Date

OREGON GOVERNMENT ETHICS COMMISSION

INVESTIGATION

CASE NO:	23-071EHM
DATE:	May 5, 2025
RESPONDENT:	SUBASIC, Boba, former Chief Information Officer, Oregon Liquor and Cannabis Commission
COMPLAINANT:	Oregon Government Ethics Commission
RECOMMENDED ACTION:	Move to Make Preliminary Findings of Violations of ORS 244.040(1), ORS 244.040(4), and ORS 244.120(1)(c)

SYNOPSIS: On March 10, 2023, the Commission opened a preliminary review on its own motion for a case involving Boba Subasic, the now former Chief Information Officer for the Oregon Liquor and Cannabis Commission (OLCC). The own motion was based on news articles, as well as an OLCC internal investigation report, which described a practice of OLCC employees, including Boba Subasic, obtaining bottles of rare bourbon, such as Pappy Van Winkle and Elmer T. Lee, from the OLCC reserve stock. (#PR1).

At its June 2, 2023 meeting, the Commission considered the information presented in the preliminary review and found cause to open an investigation. The focus of the investigation was to determine whether there is sufficient evidence to indicate that Boba Subasic violated Government Ethics Laws. The Commission suspended the investigation shortly after it was opened pending completion of a criminal investigation being conducted by the Oregon Department of Justice (DOJ). That criminal investigation concluded without criminal charges and DOJ issued its report on May 13, 2024. (#INV1).

The Commission reactivated its investigation. The information gathered indicates that Boba Subasic used his position and his access to confidential OLCC information to obtain several bottles of Pappy Van Winkle and Elmer T. Lee bourbon from the OLCC reserve stock, thus violating ORS 244.040(1), 244.040(4) and 244.120(1)(c).

RELEVANT STATUTES AND ADMINISTRATIVE RULES: The following Oregon Revised Statutes and Administrative Rules are applicable to the issues addressed herein:

ORS 244.020 Definitions. As used in this chapter, unless the context requires otherwise:

(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.

(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 * * *.

(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.

ORS 244.040 Prohibited use of official position or office; exceptions; other prohibited actions. (1) Except as provided in subsection (2) of this section, a public official may not use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment for the public official, a relative or member of the household of the public official, or any business with which the

public official or a relative or member of the household of the public official 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 official position or office.

(2) Subsection (1) of this section does not apply to:

(a) Any part of an official compensation package as determined by the public body that the public official serves.

* * * * *

(4) A public official may not attempt to further or further the personal gain of the public official through the use of confidential information gained in the course of or by reason of holding position as a public official or activities of the public official.

* * * * *

244.120 Methods of handling conflicts; Legislative Assembly; judges; appointed officials; other elected officials or members of boards.

(1) Except as provided in subsection (2) of this section, when met with an actual or potential conflict of interest, a public official shall:

* * * * *

(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.

OAR 199-008-0005 Definitions of terms in ORS Chapter 244.

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(3) The term "official compensation package" means the wages and other benefits provided to the public official. To be part of the public official's "official

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

* * * * *

(5) "Confidential information" means any record that is exempt from public disclosure or inspection under state law, or any information obtained in the course of or by reason of holding position as a public official that is not publicly disclosed. The record or information is no longer confidential if it has been voluntarily disclosed by the public body, or been disclosed through a public records disclosure order or court order.

* * * * *

(7) As defined in ORS 244.020(15), a public official includes anyone serving the State of Oregon or any of its political subdivisions or any other public body in any of the listed capacities, including as an "agent." An "agent" means any individual performing governmental functions. Governmental functions are services provided on behalf of the government as distinguished from services provided to the government. This may include private contractors and volunteers, depending on the circumstances. This term shall be interpreted to be consistent with Attorney General Opinion No. 8214 (1990).

INVESTIGATION: The focus of the investigation in this case was to determine whether Boba Subasic used his position at OLCC and confidential information he had access to because of that position to divert bottles of Pappy Van Winkle and Elmer T. Lee bourbons from the OLCC reserve stock for his personal purchase.

Background Information

Oregon is a "control" state, meaning the State has "the exclusive right to sell packaged, distilled spirits through retail liquor stores operated by contracted agents." (#PR2).

Distilled spirits may only be purchased from a retail liquor store or from a distillery retail outlet. “There is no legal option for a person who is outside of Oregon to ship distilled liquor directly to an Oregon resident (including to themselves), nor is there a way for an out of state distillery or other business engaged in the sale of alcohol to ship distilled liquor directly to a resident of Oregon.” (#PR3).

Suppliers provide products to OLCC which “centrally warehouses and distributes distilled spirits to Oregon’s 282 liquor stores. With few exceptions, all distilled liquor sold in Oregon moves through the Milwaukie distribution center.” While the products are stored in the distribution center, they remain owned by the suppliers. When orders are placed by liquor stores, OLCC pays the suppliers, takes ownership of the products, and delivers them to the liquor stores. Once shipped to a retail store, OLCC maintains its ownership of the products until OLCC’s agents, the liquor store owners, sell the products to customers, at the list price set by OLCC. (#PR2; #INV2).

Located in Frankfort, Kentucky, Buffalo Trace Distillery (Buffalo Trace) claims to be the “oldest continuously operating Distillery in America” and “the most award-winning Distillery in the world.” Buffalo Trace produces 20 different brands of liquor, including Pappy Van Winkle and Elmer T. Lee bourbons. Elmer T. Lee is only shipped once, maybe twice, a year. Pappy Van Winkle is shipped just once a year and only in limited quantities. Pappy Van Winkle is vendor-allocated, meaning that Buffalo Trace specifies to which liquor stores the bottles will go. (#PR8; #PR13; #INV3).

The Pappy Van Winkle bourbons come in 10 Year, 12 Year, 13 Year, 15 Year, 20 Year, and 23 Year. (#PR8). During the relevant period (from March 10, 2019 to March 10, 2023), the OLCC list price for these bottles of Pappy Van Winkle was: 10 year - $69.95; 12 year - $79.95; 15 year - $119.95; 20 year - $199.95; 23 year - $299.95. (#INV3).

Chance to Purchase Program

In 2018, OLCC was given authority to hold public drawings for Oregon consumers to win a chance to purchase rare and limited edition bottles of liquor. The Chance to Purchase

drawings were intended to “help level the playing field” and maximize the opportunity for Oregon consumers “to purchase these very highly sought after products.” (#PR4). OLCC employees and their relatives are not eligible to participate in the Chance to Purchase drawings. (#PR7).

In the Chance to Purchase program, the first two drawings occurred in September and December 2018. (#PR4; #PR5; #PR6). After that there were between one and four drawings each year. During the period of the Commission’s jurisdiction in this case, it appears there were at least 14 drawings. (#INV4).

Implementation of the Chance to Purchase program increased the need for OLCC to maintain what it called its safety stock or reserve stock. OLCC requested extra bottles of rare or hard-to-find bourbons from suppliers in order to distribute them in the drawings but it also needed to keep some of those bottles as reserve stock in case the bottles intended for the Chance to Purchase winners were broken during delivery or in case the liquor stores sold the bottles to the wrong people. (#PR14; #INV2). To accommodate, Buffalo Trace sent extra bottles of Pappy Van Winkle, some for the drawings and some for OLCC to keep in its reserve stock. In 2020, OLCC kept 25 bottles of Pappy Van Winkle in its reserve stock; in 2021 it kept 14 bottles; in 2022 it kept 21 bottles; in 2023 it kept 9. (#INV3).

<u>OLCC Internal Investigation</u>

A news article published in The Oregonian on February 8, 2023, reported that several management-level OLCC employees, including Boba Subasic, have “for years set aside for their own use some of the most sought-after bourbons, diverting them from the public…” The article highlights that an internal investigation by OLCC was initiated when a former OLCC warehouse employee reported that higher-ups were diverting the bottles of bourbon for their personal use. (#PR12). The OLCC internal investigation began in 2022.

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Nikki Leslie Interviews

As part of OLCC's internal investigation, Travis Hampton, a former Oregon State Police superintendent who at the time was directing OLCC's licensing and compliance division, conducted interviews, including two interviews with Nikki Leslie, the OLCC Distribution and Purchasing Director. Ms. Leslie confirmed that some OLCC employees would request certain bottles of liquor and she would send those bottles to specified liquor stores for the OLCC employees to purchase. Ms. Leslie identified Boba Subasic as one of the OLCC managers who did this. (#PR13; #PR14).

Ms. Leslie explained that OLCC holds back certain bottles as "safety stock" in case a bottle gets broken before the customer or Chance to Purchase winner can claim it. These bottles are held until OLCC is certain there is no problem with the shipment, at which point they are released and can be allocated or shipped to stores. Ms. Leslie indicated that whoever at OLCC asked for a bottle, she would send it to the store, where they could purchase it. Ms. Leslie explained that the employees know when the bottles are being shipped out and they go buy the bottle at the liquor store. (#PR14). Ms. Leslie explained that this practice had been going on since before she started working as the Purchasing Coordinator eight years ago. (#PR14; #PR15).

Ms. Leslie identified the reserve stock bottles most often requested to be allocated for OLCC staff. They include Elmer T. Lee Single Barrel and Pappy Van Winkle, 10 year, 12 year, 15 year, 20 year, and 23 year. (#PR15). Mr. Hampton inquired about what Mr. Subasic has requested. Ms. Leslie replied that she believes she got him a bottle of Pappy Van Winkle the year before. Ms. Leslie did not recall the barrel year. (#PR14).

Chris Mayton Interview

In his interview, Chris Mayton clarified the process for OLCC employees to pick up the bourbon bottles from the liquor stores. He explained:

> And I'll ask Nikki, "Hey, do we have any Elmer left?" and she'll say, "Yeah, we have, uh, three cases." I'll say, "alright." So somebody will say, "well, I

> want to buy 6 bottles." Well, these come in full cases, right? So I, I'll say, "Great. Well, then, what store do you want it to go to? And I'll make sure it gets over there." And so lets say they pick Milwaukie Marketplace, by our agency. Alright, I'll send it over there. And then I'll call the agent and I'll say, "Hey, I've got, uh, some product coming and there's a customer that wants it, and they'll, they'll be coming in. and their name's, I'll just say, Chris." And then, that's it. And then Chris should go to the liquor store and say, "hey, my name's Chris. Uh, do you have something for me?" The agent would say, "What do you want?" He'd say, "I'm here to pick up a bottle of Elmer." And then they'll sell him the bottle of Elmer. And then they'll move on. That's, I mean, that's how it went. And it went that way for my own product purchase, which is what you're asking about. (#PR21).

In his interview, Mr. Mayton specifically indicated that he would pick up product for Boba Subasic. (#PR21).

Boba Subasic Interview

On August 22, 2022, Travis Hampton interviewed Boba Subasic. With the interview, Mr. Hampton submitted a report for the personnel investigation. (#PR17; #PR18).

Mr. Subasic stated that he started as an OLCC employee in May of 2018. Mr. Hampton asked Mr. Subasic whether he ever requested or directed that Nikki Leslie divert warehouse liquor for his personal gain. Mr. Subasic responded: "I don't know if I requested it, but I was part of that, yes." When Mr. Hampton asked Mr. Subasic to clarify his response, Mr. Subasic replied: "Well usually it was not just me, it was kind of the group of people, as I was part of the list, yeah." (#PR17).

Mr. Hampton inquired how many times Mr. Subasic engaged in this practice. Mr. Subasic responded: "Two times, maybe. Two or three times." Mr. Subasic said the two brands of bourbon he requested were "Pappy" and "Elmer." Mr. Subasic explained that one of his colleagues would go and pick up the bourbon for him at the liquor store, and another

time he went with his colleague to pick up the bottle. Mr. Subasic acknowledged understanding that these were hard to get bottles. (#PR17).

Mr. Subasic stated that in total he received maybe four or five bottles. Mr. Hampton asked how many years this was spread over. Mr. Subasic replied:

> Pretty much when I started, so four years ago or so; so maybe every other year or something like that. There was no specific timing on that, it was whenever I would hear about it. (#PR17).

Mr. Hampton concluded the interview by asking Mr. Subasic whether his actions violated the "spirit" of Oregon's ethics laws and state policy by using his official position at OLCC for personal gain of the liquor products. Mr. Subasic responded:

> That's an interesting question; I don't know. In my mind I was paying for it; I did not get it for free and picked it up in the liquor store, until I was told about this ethics specific wording last week by Mayton I did not realize it was violating a specific law. (#PR17).

Steve Marks Memorandum

In an August 9, 2022 memorandum, Steve Marks, former OLCC Executive Director, explains that the OLCC has a long-standing internal distribution practice for vendor-allocated products and the other bottles that are part of the Chance to Purchase program. Mr. Marks writes that the rarer vendor-allocated liquor products are only delivered to the OLCC once a year and in limited quantities, and the products are in high demand by the public. Mr. Marks then explains the allocation process:

> Currently, the vendor separates OLCC's allocations into three separate categories. The first and largest category is the allocation to Oregon's liquor stores. [The] vendor sets this allocation and notifies OLCC of the quantity and location where their product will be sent and sold. The second and significantly smaller category are products set aside for OLCC's "Chance to

> Purchase" program, which the vendor again sets in collaboration with the OLCC. The third category is equal to the second category of products and is placed in reserve for breakage or additional vendor allocations throughout the year. In the past, Chance to Purchase reserve products has gone to members of the general public and OLCC employees upon request. (#PR16).

In this memorandum, Mr. Marks directs Chris Mayton, Director of the Distilled Spirits program, to "discontinue the practice of allocating the remaining reserve bottles to members of the public and OLCC employees. All requests for reserve allocation remaining in stock will be sent to the Executive Director for disposition approval until a policy for future distribution is established." He then asks Mr. Mayton to begin drafting such a policy. (#PR17).

Rich Evans Interview

On July 8, 2024, Commission staff interviewed Rich Evans, OLCC's Senior Director of Licensing and Compliance. He explained the vendor-allocation process. The supplier would send a spreadsheet showing what bottles that year would be allocated and where. The spreadsheet would indicate how many bottles would be kept for the Chance to Purchase program and how many would be kept in the reserve stock. At the end of the year, any bottles left over would be reallocated in OLAS. (#INV2). Mr. Evans subsequently provided copies of the Pappy Van Winkle vendor-allocation spreadsheets for the relevant period. (#INV3).

When cases or bottles come into OLCC, they are entered into the inventory database (OLAS), through which liquor stores can see what bottles are available. Vendor-allocated, special orders, and other items were blocked from view, so that they couldn't be seen or ordered. The bottles in the reserve stock were kept separate in a "protect from sale" status. The availability of these reserve stock bottles, after the Chance to Purchase drawings were completed, was not widely known. They could not be seen in OLAS, and even within OLCC it was limited as to who was told the bottles were

available. Rich Evans and other managers did not know the bottles were available. (#INV2).

For those OLCC employees who were in the know, they would request a specific bottle and it would be put on “will call.” This meant that the bottle would be taken out of the system and would not be available to anyone else. The bottles would then be sent to the selected liquor store for the employees to purchase. In some cases, the “will call” bottles were never actually sent to the liquor store. The Milwaukie store would know to charge the employee, and would still get its 7% for the sale, but the employee would just pick up the bottle at the warehouse. (#INV2).

DOJ Report and Investigation

During its criminal investigation, DOJ’s special agents interviewed over forty individuals and obtained and analyzed thousands of records. As noted above, DOJ determined that based on the sufficiency of the evidence in terms of the standards applicable for proving criminal offenses, criminal charges were not warranted. (#INV1). DOJ provided Commission staff with access to these interviews and records.

The DOJ report summarized how OLCC’s databases and inventory tracking systems and the liquor stores’ point of sale systems worked. It explained that OLCC uses one internal database to track vendor-owned products that are stored in OLCC’s warehouse. There is a public-facing liquor search database that allows the public to search and locate available bottles in the system. There is a separate database, OLAS, that tracks the product when it is shipped from the OLCC warehouse to a liquor store, where a separate point-of-sale system keeps track of sales. The report noted that these systems do not make it possible to identify “a specific individual who purchased a specific product on a specific date.” (#INV1).

The DOJ report noted that OLCC had a long-standing agency practice where OLCC employees could request that a specific product be transferred to a liquor store for their purchase. The report notes that this practice predated the Chance to Purchase program

and was not limited to bottles in the reserve stock. Multiple OLCC employees confirmed the practice had been in place for decades. The DOJ report also noted that during the relevant period, “there were no documented internal policies regarding the distribution of Chance to Purchase products or the subsequent release or allocation of safety stock related to the program.” (#INV1).

As noted, the DOJ investigators conducted over 40 interviews. The DOJ investigators’ reports and related materials are too numerous and lengthy to completely summarize here, part of the investigative file. (#INV5). Information from some of their interview reports is included below:

- Rick McDonald, the former OLCC employee whose complaint initiated the internal investigation, stated that management had directed them not to put Pappy Van Winkle into the inventory system because it would generate too many public inquiries. He said it was not a means to hide those bottles for management. It was just so that they would not get a flood of inquiries regarding the availability of that brand. (#INV6).

- Ara Huddleston is a Transportation and Inventory Controller at OLCC. She explained that when she was notified a product was going to be part of the Chance to Purchase program, she had to “hide” it in the system because those items were highly sought after. They don’t want the stores to see that these bottles are available because they want to allocate stuff when they want to allocate it. She said they would put items on a “bailment” hold and those items could not be released until Nikki Leslie notified her. (#INV7).

- Nikki Leslie confirmed that it was bottles from the safety stock that employees were asking her to send to a liquor store for them to purchase. This involved mainly Pappy Van Winkle and it was only maybe twice a year. She said OLCC employees would call her and ask about bottles that were being held in the safety stock. If the desired bottle was there and the safety stock had been released, the

employee would ask her to send it to a specific store to be held for them. Ms. Leslie specifically identified Boba Subasic as one of four employees who requested that bottles be sent to liquor stores on their behalf and that she helped divert bottles for him. Ms. Leslie also confirmed that the warehouse would not share information about the inventory with the public. In a follow-up interview, Ms. Leslie explained that at the end of a Chance to Purchase drawing, she would email Brian Flemming for confirmation that all of the winning customers had made their purchases. It was at that point that she would release the safety stock. She also confirmed that there were times when a requested bottle missed the shipment to the liquor store. An employee could pick up the bottle at "will call" and then go to the store to pay for it. (#INV8).

- Patty Jo Bumbarger, the former owner of the Milwaukie Liquor Store confirmed that OLCC would call the store to give them a heads up that a certain bottle was being shipped to the store and that it was meant for a certain person. She said that Nikki's request was more a direction than a request. Ms. Bumbarger said they were never given a list of names of who would pick up the bottles, just that someone was coming to get them. She estimated this happened three or four times a year, mainly in November involving the bottles of Pappy Van Winkle and other rare or expensive bottles. (#INV9).

- Terri Collins was a manager of the Milwaukie Liquor Store during the relevant period. She confirmed that Nikki Leslie would call the store and notify them that she was transferring over bottles for someone to pick up. Ms. Collins stated that she did not recall the individuals who came to pick up the bottles but that those individuals would mention they worked in the warehouse. (#INV10).

- Kevin Johnston, a manager at the Milwaukie Liquor Store, explained that with higher end bottles, they would usually get an allocation that went to the bars first and any that was left over was for the public. Usually a month or two later, OLCC

would call to notify them that they would be receiving something in addition to their normal order and to hold on to it because someone would be picking it up. Then someone would come in and say the bottle sent from OLCC was meant for them. He also said occasionally the call from OLCC would say the bottles were meant for a friend of Brian's or a friend of so and so. (#INV11).

- Saleem Noorani is a liquor agent with a store in Albany, another in Corvallis, and a third in Springfield. He also served as the president of the Associated Liquor Stores of Oregon. In December 2021, Mr. Noorani emailed OLCC's Chris Mayton saying he had promised several legislators access to Pappy Van Winkle and asking if he could get an allocation for his Albany store. His request was denied. Mr. Noorani stated that no legislator received anything from him. (#INV12).

Among the documents in the DOJ investigation files (#INV5) are numerous emails, some of which are summarized by the investigators. These include emails between Nikki Leslie and Brian Flemming where she is seeking confirmation that all the Chance to Purchase winners have collected their bottles and that she can now release the bottles in the reserve stock. (#INV13). There is a 9/3/20 email from Boba Subasic to Laura Gomez (Director of Human Resources) where he writes, "[J]ust ordered both." There is also a 12/18/20 email from Jon-Kai Nakashima to Chris Mayton where he writes, "Ordered. Boba had to sign for it since I purchased it. Just a heads up." (#INV14).

<u>Patty Bumbarger</u>

Commission staff contacted Patty Bumbarger, the former owner of the Milwaukie Marketplace liquor store. We asked if OLCC had ever sent her liquor store a bottle of Pappy Van Winkle either to put on the shelf or because a member of the public had requested it. In response, Ms. Bumbarger sent the following email:

> Yes, the OLCC would send over bottles of Pappy for us to sell outside of the Chance to Purchase Program. This only happened when the OLCC called to let us know they were shipping bottles to our store to be picked up and purchased by

one of their employees. They would usually ship an extra couple of Pappy bottles at the same time and then we would sell them to our customers. We never made a request for those bottles, the OLCC just offered them to us. We felt this was a "reward" for handling the OLCC employee marked bottles, as we always had a waiting list of customers who had made repeated requests for us to reserve one for them. (#INV15).

Direct Shipment to Customer

Commission staff researched whether any states permit direct shipment of distilled spirits to customers. There are six states that permit it, the nearest being Nebraska. (#INV16). Commission staff also researched the online marketplace prices for bottles of Pappy Van Winkle and Elmer T. Lee. The online marketplace price ranges, as of July 2024, were:

Pappy Van Winkle 10 year	$999.99 - $1,024.99
Pappy Van Winkle 12 year	$1,039.99 - $1,064.99
Pappy Van Winkle 15 year	$2,099.99 - $2,119.99
Pappy Van Winkle 20 year	$2,999.99
Pappy Van Winkle 23 year	$4,799.99 - $6,499.99
Elmer T. Lee	$299.99 - $3,499.99 (#INV17).

Letter from Attorneys Janet Hoffman and Rachael Burch

Commission staff did request, through Boba Subasic's attorneys, that he sit for an interview or answer written questions. These requests were denied. During unsuccessful negotiations for a potential stipulated final order, however, the attorneys did submit a letter outlining their positions. (#INV18).

In the letter, the attorneys first assert that the Commission does not have jurisdiction over this matter because the Commission's jurisdiction only extends four years, which in this case would be between March 10, 2019 and March 10, 2023. They point out that Boba Subasic was hired by OLCC in May 2018 and then suggest that he may not have obtain any of his bottles during the Commission's jurisdictional period. They write that

"Mr. Subasic has no independent recollection of when he made the purchase at issue and cannot place them within the timeframe of March 2019 to March 2023." (#INV18).

The letter goes on to state that even assuming the Commission has adequate jurisdiction, "Mr. Subasic's choice to participate in a frequent and widely accepted practice while an employee at the OLCC was not an ethics violation. At no time during his tenure at the OLCC did he use confidential information to his benefit, use his position as a government employee to avoid financial detriment, or maintain and fail to disclose a conflict of interest. "(#INV18).

In terms of confidential information, the letter asserts that information concerning the availability of specific bottles of bourbon was not confidential because it was information voluntarily disclosed by OLCC, either through its online databases or on request by members of the public. The letter notes that "the location of any bottle of liquor in Oregon once released for sale was, and still is, publicly available information" through OLAS. The letter also points out that information on the location of bottles is shared with liquor store agents who have access to OLCC's warehouse inventory system. It then appears to conclude that liquor store agents are not public officials because they are not state employees. Additionally, the letter points out that OLCC has a documented practice of helping members of the public locate bottles and allocating or re-allocating those bottles to a specific liquor store upon request. (#INV18).

The letter claims it is an unsubstantiated premise that the bottles purchased by Mr. Subasic were from the reserve stock. The attorneys write:

> Mr. Subasic has no awareness of whether the bottles he purchased were part of the Chance to Purchase reserve stock or part of the OLCC's general stock. When he made the requests of Ms. Leslie, he was given no information as to their origin and he did not take it upon himself to investigate where they came from. The assumption that the bottles he purchased originated from the reserve stock does not appear to be based upon anything beyond speculation. (#INV18).

The attorneys then assert that “Whether the bottles started in the reserve stock or not, they were ultimately released from their “reserve status” and reintegrated according to the ordinary course of business before OLCC employees could purchase them. Therefore, the whereabouts of the bottles in the once-reserve stock would have been reflected on OLAS or the warehouse database just like every other bottle owned and distributed by the state." (#INV18).

The letter next asserts that Mr. Subasic did not use his position to avoid a financial detriment. The attorneys point out that Mr. Subasic paid the full retail price for the bottles he purchased. They assert that any financial benefit or avoidance of detriment should be calculated as the difference between what he paid and what he would have had to pay if he had not obtained the bottles in the manner he did. They assert that there would be no difference. (#INV18)

The attorneys also conclude that the “but for” test for an ORS 244.040(1) violation is not met. They assert that while it might be difficult, it was still possible to purchase bottles of these bourbons at Oregon liquor stores. They claim that while the “bottles were usually gone quickly, they were available to the public for the price Mr. Subasic paid,” and therefore the “but for” test fails. (#INV18).

Finally, with respect to conflicts of interest, the letter asserts that Mr. Subasic was not acting in his official capacity when he purchased the liquor and there was no pecuniary impact; therefore, there was no conflict of interest. The letter claims that Mr. Subasic’s requests to Nikki Leslie were the same as the requests members of the public made to allocate or re-allocate bottles to their selected stores. Because of this, and because Mr. Subasic paid the retail price for the bottles he purchased, the attorneys claim there was no conflict of interest requiring disclosure. The letter also states that the person to whom such a disclosure would be submitted, executive director Steve Marks, participated in this same practice and therefore “implicitly approved” of it. (#INV18).

The letter concludes by asserting that while there was no written policy authorizing OLCC employees to purchase bottles from the reserve stock, because employees can purchase bottles in the same manner as members of the public, Mr. Subasic's actions were statutorily authorized. (#INV18).

CONCLUSIONS: Boba Subasic held the position of Chief Information Officer for OLCC during the period relevant to this investigation. As such, he was a public official, as defined in ORS 244.020(15), subject to Oregon Government Ethics Law.

The question in this case is whether Boba Subasic used his position at OLCC and confidential information he had access to because of that position to divert bottles of Pappy Van Winkle and Elmer T. Lee bourbons from the OLCC reserve stock for his personal purchase. Based on the information gathered, it appears that he did so.

The bottles of bourbon at issue in this case were bottles from OLCC's reserve stock. Nikki Leslie confirmed this in her DOJ interviews. These were bottles kept in reserve in case anything happened to the bottles being sent to the Chance to Purchase winners. The bottles in the reserve stock were in a "protect from sale" status in OLCC's inventory system. They could not be seen in OLAS and could not be seen or ordered by liquor store owners (who are agents of OLCC as defined in OAR 199-008-0005(7)) or by members of the public. Multiple OLCC employees confirmed that the Chance to Purchase bottles and the reserve stock were hidden in the system, so that the bottles could not be seen or requested. Employees were told not to put Pappy Van Winkle into the inventory system as that would generate too many public inquiries.

Pappy Van Winkle is vendor-allocated. That means all of the bottles supplied by Buffalo Trace, other than bottles destined for the Chance to Purchase program and the reserve stock, were allocated by Buffalo Trace to be sent to specified liquor stores. The vendor-allocated bottles could not be reserved by OLCC for specific requestors or re-allocated to different liquor stores by OLCC. The vendor-allocated shipments were completed long before the Chance to Purchase drawings took place and long before the bottles in the reserve stock became available.

ORS 244.040(4) prohibits a public official from furthering or attempting to further their personal gain through the use of confidential information gained in the course of or by reason of holding their position as a public official. “Confidential information” is defined in the Administrative Rules as including any information made exempt by law or any “information obtained in the course of or by reason of holding position as a public official that is not publicly disclosed. The record or information is no longer confidential if it has been voluntarily disclosed by the public body, or been disclosed through a public records disclosure order or court order.” [OAR 199-008-0005(5)].

In this case, the existence and availability of the OLCC reserve stock qualifies as confidential information. These particular bottles were not included in OLAS or the warehouse inventory system and so could not be seen or ordered by the public or liquor store owners. Not only were these bottles not visible in OLAS, even within OLCC it was limited as to which employees were informed the bottles were available. Because OLCC did not include these bottles in its publicly available inventory system or otherwise publicly disclose their availability in OLAS, the existence and availability of these bottles was confidential information. Thus, when Mr. Subasic called Nikki Leslie to request these bottles, he was using confidential information, that had not been voluntarily disclosed by OLCC, in order to gain the opportunity to purchase these bottles of bourbon.

The available information indicates that Boba Subasic obtained multiple bottles of Pappy Van Winkle and Elmer T. Lee bourbons, and that at least some, if not all, of these bottles were obtained during the period of the Commission’s jurisdiction. In his interview with Travis Hampton, Boba Subasic acknowledged being part of a group at OLCC who would ask Nikki Leslie to send bottles of these bourbons to the liquor store for them to purchase. In his interview, Boba Subasic admitted that he had done this from when he started at OLCC in 2018, that he had done this maybe two or three times, and that he had received four or five bottles. Mr. Subasic stated that this occurred “maybe every other year or something like that. There was no specific timing on that, it was whenever I would hear about it.”

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The letter from Mr. Subasic's attorneys suggests that the Commission may lack jurisdiction because Mr. Subasic may have obtained all four or five of his bottles prior to March 10, 2019, the start date for the period of the Commission's jurisdiction. While it is possible that Mr. Subasic may have started obtaining his bottles in 2018, the available information indicates that at least some of those bottles were obtained by Mr. Subasic within the period of the Commission's jurisdiction. In his interview, he indicated that he engaged in this activity "two or three times." The bottles from the reserve stock were only made available after the Chance to Purchase drawings, and the third drawing was in April 2019, within the period of the Commission's jurisdiction. In his interview, Mr. Subasic also indicated that he obtained the bottles "whenever [he] would hear about it" and that it happened every other year. Furthermore, there is an email dated September 3, 2020, from Boba Subasic to Laura Gomez (Director of Human Resources) where Mr. Subasic writes, "[J]ust ordered both." There is also a December 18, 2020 email from Jon-Kai Nakashima to Chris Mayton where he writes, "Ordered. Boba had to sign for it since I purchased it. Just a heads up." Finally, in her 2022 interview, Nikki Leslie recalled getting a bottle of Pappy Van Winkle for Boba Subasic the prior year, or in 2021.

There is a preponderance of evidence, based on the information provided by Boba Subasic in his interview and the corroborating information provided by others at OLCC, in support of finding that Boba Subasic obtained some, if not all, of the four or five bottles of these rare bourbons after March 10, 2019, and within the period of the Commission's jurisdiction. And as the existence and availability of these bottles was confidential information, there is a preponderance of evidence in this case that Boba Subasic furthered his personal gain through the use of confidential information gained by reason of holding his position at OLCC.

Mr. Subasic's attorneys point out that he paid the list price for the bottles he purchased; they assert this means there was no financial benefit or avoidance of financial detriment and therefore that the "but for" test in ORS 244.040(1) is not satisfied. That Mr. Subasic paid the list price for the bottles he obtained is not in dispute. The "but for" test is satisfied because but for his participation in this practice among certain OLCC

employees, he would have had to spend much more in order to obtain these bottles at the time he did so. Bottles of these bourbons are rare and have limited distribution. The available information does not indicate that Oregon liquor stores had spare bottles of these bourbons sitting on their shelves available for Mr. Subasic or members of the public to purchase. There is such high demand for these bourbons that even OLCC did not want to include them in the inventory system because that would generate too many public inquiries.

Additionally, Patty Bumbarger, the former owner of the Milwaukie Marketplace liquor store, stated that “OLCC would send over bottles of Pappy for us to sell outside of the Chance to Purchase Program. This only happened when the OLCC called to let us know they were shipping bottles to our store to be picked up and purchased by one of their employees. They would usually ship an extra couple of Pappy bottles at the same time and then we would sell them to our customers. We never made a request for those bottles, the OLCC just offered them to us. We felt this was a “reward” for handling the OLCC employee marked bottles, as we always had a waiting list of customers who had made repeated requests for us to reserve one for them.” Rewarding the store owner for allowing Mr. Subasic and other OLCC employees to purchase the rare bourbons is additional evidence of use of office by employees of OLCC, including Mr. Subasic.

But for holding his position and using the confidential information on the availability of these bottles, Boba Subasic would have been in the same situation as a member of the public. That is to say, in order to purchase these bottles at the time he did so (months after the regular allocation of these bourbons to liquor stores), he would have needed to travel to a state where the bottles were available. As Pappy Van Winkle is in as much demand in other states as it is in Oregon, the only way to ensure one can purchase a bottle of Pappy Van Winkle on demand would be to purchase it from one of the online marketplaces. Doing so would require travel to one of the six states where that is permitted and require paying a significant amount more than Oregon’s list price. While the specific amount of the financial detriment in this case may be difficult to calculate, that difficulty does not mean that there was not an avoidance of financial detriment.

It does appear that the practice of OLCC employees requesting to purchase select bottles of distilled spirits was long-standing. In fact, at least one OLCC employee said it had been going on for over 30 years. Per ORS 244.040(2)(a), if OLCC had a written policy saying that employees could access the bottles in the reserve stock before those bottles were made available to the public, that policy would become part of the employees' official compensation packages, meaning that there would be no violation of ORS 244.040(1). In this case, there was no such policy. As OLCC employees were not authorized to engage in these activities by policy, Boba Subasic's actions in this case violated ORS 244.040(1).

Finally, with respect to conflicts of interest, at the time that Mr. Subasic requested his bottles from Nikki Leslie, he was acting in his official capacity as an OLCC employee. Only OLCC employees, and in fact, only a select few OLCC employees, were provided with information on the availability of the reserve stock bottles and were given the opportunity, because of holding their positions, to request the bottles. These were not the same re-allocation requests that members of the public could make. Boba Subasic's actions in making the request were actions taken in his official capacity. Before asking Nikki Leslie to divert these bottles for him to purchase, Boba Subasic did not submit a written disclosure of a conflict of interest to Steve Marks, his appointing authority, as required by ORS 244.120(1)(c).

RECOMMENDATIONS: The Oregon Government Ethics Commission should find that there is a preponderance of evidence in this case to establish that Boba Subasic violated ORS 244.040(1), ORS 244.040(4), and ORS 244.120(1)(c), and order that the case be moved to a contested case hearing and that a negotiated settlement be offered. (Motion 10).

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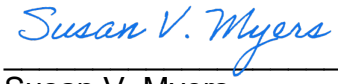
ASSOCIATED DOCUMENTS:

#PR1	OLCC own motion exhibits
#PR2	LRPO Alcohol Regulation Background Brief, 1/4/2021
#PR3	OLCC Guide to Delivering Alcoholic Beverages, 5/2022
#PR4	Spirited Oregon article, 2019
#PR5	OLCC news release, 9/21/2018
#PR6	OLCC news release, 12/6/2018
#PR7	OLCC "Chance to Purchase" drawing summary, 12/2022
#PR8	Buffalo Trace Distillery website, https://www.buffalotracedistillery.com/our-brands.html
#PR9	LA Times article "Few get a shot at this spirit," undated
#PR10	LA Times article "Rare bourbon that can cost $200 a shot ensnares Oregon officials in scandal," 3/8/2023
#PR11	Pappy Van Winkle online prices on Wooden Cork, 2023
#PR12	The Oregonian article "Top OLCC officials kept popular booze…" 2/8/2023
#PR13	Nikki Leslie recorded interview, 6/6/2022
#PR14	Nikki Leslie recorded interview, 6/13/2022
#PR15	Nikki Leslie email to Travis Hampton, 6/12/2022
#PR16	Memorandum from Steve Marks to Chris Mayton, 8/9/2022
#PR17	Boba Subasic recorded interview, 8/22/2022
#PR18	OLCC Personnel Investigation, 12/22/2022
#PR19	Attorney General press release, https://www.doj.state.or.us/media-home/news-media-releases/oregon-attorney-general-announces-criminal-investigation-involving-olcc/, 2/10/2023
#PR20	Memorandum conversation with Rich Evans, 5/1/2023
#PR21	Memorandum on interview recording of Chris Mayton, 5/2/2023
#INV1	Oregon Department of Justice report on OLCC investigation, 5/13/2024
#INV2	Memorandum re interview with Rich Evans, 7/8/2024
#INV3	Memorandum re Pappy Van Winkle bottle allocations 2019-2023
#INV4	Memorandum re Chance to Purchase drawings

#INV5	Oregon Department of Justice OLCC Investigation File
#INV6	DOJ investigator summary – interview with Rick McDonald
#INV7	DOJ investigator summary – interview with Ara Huddleston
#INV8	DOJ investigator summaries – interviews with Nikki Leslie
#INV9	DOJ investigator summary – interview with Patty Jo Bumbarger
#INV10	DOJ investigator summary – interview with Terri Collins
#INV11	DOJ investigator summary – interview with Kevin Johnston
#INV12	DOJ investigator summary – interview with Saleem Noorani
#INV13	DOJ investigator summary – emails in 2nd OLCC thumb drive production.
#INV14	DOJ investigator summary – emails in 3rd OLCC thumb drive production.
#INV15	Email from Patty Jo Bumbarger, dated 2/23/2025.
#INV16	"Direct Shipment of Alcohol State Statutes," Heather Morton, 10/15/2021.
#INV17	Memorandum re online marketplace prices.
#INV18	Letter from Attorneys Janet Hoffman and Rachael Burch, 2/13/2025.

PREPARED BY 5/6/2025
Andrew McIntyre / Susan Myers — Date
Investigator

APPROVED BY  5/6/2025
Susan V. Myers — Date
Executive Director

REVIEWED BY */s/ Sean T. Brady* 5/6/2025
Sean T. Brady — Date
Senior Assistant Attorney General

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May 9, 2025

Sent via email

Jayme Pierce, General Counsel
League of Oregon Cities
1201 Court St. NE, Ste. 200
Salem, Oregon 97302-4194

Dear Jayme Pierce:

At its May 9, 2025 meeting, the Oregon Government Ethics Commission (Commission) adopted the following advisory opinion in response to your request to the Commission, dated January 16, 2025. The Commission extended the period for this advisory opinion by an additional 60 days, as authorized by ORS 244.280(2).

OREGON GOVERNMENT ETHICS COMMISSION ADVISORY OPINION NO. 25-126A

SYNOPSIS OF FACTS AS PRESENTED TO THE COMMISSION:

On September 2, 2024, the Commission, through its Executive Director, issued a letter of advice to Lacy Beaty, Mayor of Beaverton (Advice No. 24-406I). This letter of advice addressed how the Oregon Government Ethics Laws in ORS Chapter 244 applied to a "team at a team-building event" where individual public officials, and their relatives or household members, consumed food and beverages provided by the city, and the alcoholic beverages provided by the Mayor personally.

Following issuance of Advice No. 24-406I, you submitted a request for a Commission Advisory Opinion, on behalf of the League of Oregon Cities, addressing a number of hypothetical situations involving city staff and the provision of food and beverages. In your request, you note that city officials and employees may attend various city-sponsored meetings and events where food and beverages are provided. Examples of such meetings and events could include:

- City staff attend a lunch hour staff meeting and the city provides attendees with lunch.

- City staff are celebrating an employee's personal milestone, such as a baby shower that occurs during working hours. City funds are utilized to provide light snacks and refreshments for those in attendance.

DRAFT

- The city hosts a holiday party to celebrate city staff and volunteers. Food and beverages are provided by the city for those in attendance.

- A department hosts a teambuilding event for department staff. Food and beverages are provided by the city for those in attendance.

QUESTIONS:

Your request for a Commission Advisory Opinion seeks to clarify how the Commission would apply the provisions in and ORS 244.040 and ORS 244.025 to a public official's receipt of food and beverages, under the following circumstances:

(1) If a city staff member attends any of the above situations and consumes the food and beverages provided by the city, do they violate ORS 244.040 or any other provisions of ORS Chapter 244?

(2) If the city's personnel manual contains the following as part of staff compensation, does ORS 244.040(2)(a) and related OAR 199-005-0005(3) apply?

"Food, beverage, and other related items provided by the city to employees including any of their relatives or household members who are accompanying them during work-related events such as, but not limited to meetings, team building activities, and conferences, are provided as part of the employee's official compensation package."

(3) If an individual or multiple staff members provide the food and beverages at any of the above-described situations (i.e., potluck), and no city funds are utilized to purchase said food and beverage, if a city staff member consumes the food and beverages provided by other staff, do they violate ORS 244.025, or any other provisions of ORS Chapter 244?

(4) The city wants to provide a meal for their elected officials for a gathering prior to a public meeting, for purposes not related to city business, but rather team building. Does an elected official who consumes the food or beverages provided by the city violate ORS 244.040, or any other provisions of ORS Chapter 244?

(5) If individual city elected officials provide the food and beverage (i.e., potluck) during a gathering prior to a public meeting for purposes not related to city business but rather team building, does an elected official who consumes the food or beverages provided violate ORS 244.025, or any other provisions of ORS Chapter 244?

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ANALYSIS:

We first clarify that the Commission cannot provide guidance or opine on how a city chooses to allocate its resources, whether a city may lawfully provide food and beverages to its officials and employees in the scenarios described above, or whether any provision of such food and beverage is taxable. Rather, the Commission's guidance in this Opinion is limited to how the laws in ORS Chapter 244 would apply to a public official's acceptance of food and beverages in the circumstances described.

There are three separate laws that relate to whether a public official may accept food and beverage. The first is the use of office provisions set forth in ORS 244.040. The second and third relate are the gift laws and include ORS 244.020(7), defining "gift," and ORS 244.025, which establishes the gift limits. However, because ORS 244.040 incorporates the gift laws and its exceptions, your questions can be fully answered by analyzing ORS 244.040. See ORS 244.040(2)(e)-(g).

Use of Office Prohibitions

ORS 244.040(1) provides that a public official may not use or attempt to use their office or position to obtain a financial gain or avoid a financial detriment, for themselves or for their relatives, household members, or any businesses with which they are associated, if that financial gain or avoidance of detriment would not otherwise be available but for the fact they hold their office or position. Importantly, the statute prohibits a public official from either using or attempting to use their office for personal gain. In other words, an attempt is sufficient to violate the statute.

When a public body offers its elected officials and employees something of value, the financial gain or avoidance of detriment is being made available to the officials and employees because they hold their positions as public officials with that public body. Under ORS 244.040, the default is that any acceptance of free food or beverage by virtue of one's position as a public official is a violation of ORS 244.040(1). However, ORS 244.040(2)(a) through (h) provides several exceptions to the general prohibition in ORS 244.040(1). The relevant exceptions in ORS 244.040(2) applicable to food and beverage consumed by a public official are subsections (a), (e), (f), and (g). These subsections establish that the use of office prohibitions do not apply to:

> (a) Any part of an official compensation package as determined by the public body that the public official serves.
>
> * * *
>
> (e) Gifts that do not exceed the limits specified in ORS 244.025 received by a public official or a relative or member of the

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> household of the public official from a source that could reasonably be known to have a legislative or administrative interest.
>
> (f) Gifts received by a public official or a relative or member of the household of the public official from a source that could not reasonably be known to have a legislative or administrative interest.
>
> (g) The receipt by a public official or a relative or member of the household of the public official of any item, regardless of value, that is expressly excluded from the definition of "gift" in ORS 244.020.

Therefore, we analyze the relevant provisions in ORS 244.040(2) to determine if a public official may accept food and beverage.

A. Official Compensation – ORS 244.040(2)(a)

ORS 244.040(2)(a) allows a public official to accept "[a]ny part of an official compensation package as determined by the public body that the public official serves." The Commission adopted a definition of "official compensation package" in OAR 199-008-0005(3), which provides:

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

This administrative rule is consistent with Oregon's employment laws and tax laws. See, e.g., ORS 652.210(1)(a)(" 'Compensation' includes wages, salary, bonuses, benefits, fringe benefits and equity-based compensation."); ORS 652.210(14)(" 'Wages' means all compensation for performance of service by an employee for an employer, whether paid by the employer or another person, or paid in cash or any medium other than cash."); ORS 653.010(10) (" 'Wages' means compensation due to an employee by reason of employment, payable in legal tender of the United States or check on banks convertible into cash on demand at full face value, subject to such deductions, charges or allowances as are permitted in ORS 653.035."); ORS 653.010(11)(" 'Work time' includes both time worked and time of authorized attendance."); ORS 657.105 (1) ("* * * 'wages' means all remuneration for employment, including the cash value, as determined by the Director of the Employment Department under the regulations of the director, of all remuneration paid

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in any medium other than cash.”); ORS 653.035 (1) (“Employers may deduct from the minimum wage to be paid employees under ORS 653.025, 653.030 or 653.261, the fair market value of lodging, meals or other facilities or services furnished by the employer for the private benefit of the employee.”); IRC § section 3401(c) (an officer, employee, or elected official of government is an employee for income tax withholding purposes.)

As set forth in rule, “official compensation package” includes the “direct payment of a public official's expenses by the public body, in accordance with the public body's policies.” When a public body is paying for a meal for its officials or employees, the public body, acting as an employer, is paying the direct meal or beverage expenses for its officials or employees. Therefore, for the public official to be allowed to accept the food and beverage, the public body must have formally adopted a union contract, employment contract, policy, or other compensation authorization provision that authorizes the public official to accept the food and beverage provided by the public body.

Both ORS 244.040(2)(a) and OAR 199-008-0005(3) require the compensation to be determined by the “public body” that the public official serves. Requiring that a public official accept food and beverage only as provided by a policy or contract formally adopted by a public body is wholly consistent with the requirements of ORS Chapter 244 and the public trust ORS Chapter 244 is intended to protect. The broad policy of the ethics laws is to ensure that government employes do not gain personal financial advantage through their access to the assets and other attributes of government. See *Davidson v. Oregon Gov't Ethics Comm'n*, 300 Or 415, 422 (1985). We find no countervailing policy in ORS Chapter 244 that argues against a requirement that a public official accept food and beverage from its public body *only* when such compensation has been formally adopted by the public body. The concept of public trust extends to all matters within the duties of public office.

Therefore, if the public body adopted an ordinance, resolution, collective bargaining agreement, human resource policy, or applicable contract provision (Policies), authorizing the provision of food and beverage to its employees and elected officials, the employee or elected official is authorized to accept the food and beverage consistent with the Policies the public body adopted. The public official will need to review the applicable Policies authorizing their acceptance to determine if they can accept the food and beverage. If the public official accepts food and beverage that is not authorized by the Policies adopted by the public body, the public official violates ORS 244.040(1).

City elected officials would also need to be mindful of, and comply with, the conflicts of interest provisions in ORS 244.120(2) and ORS 244.020(1) and (13) when adopting any food and beverage policy that would or could apply to themselves as elected officials.

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B. Gifts and Gift Exceptions – ORS 244.040(2)(e), (f), and (g); ORS 244.020(7); and ORS 244.025.

1. Gift Laws Inapplicable to Employer Provided Food and Beverage.

The gift laws and relevant gift exceptions in ORS 244.040(2)(e), (f), and (g), ORS 244.020(7), and ORS 244.025 are not applicable to the situation where a public official accepts food and beverage from their own public body. An analysis of Oregon Government Ethics law governing gifts and the relevant gift exceptions applies only when someone other than the public official's own public body provides the food and beverage. This is because, under ORS 244.020(7)(a), something qualifies as a "gift" if the thing provided is either "[w]ithout valuable consideration of equivalent value" or for "valuable consideration less than that required from others who are not public officials." ORS 244.020(7); See also, Honorable Fred W. Heard Honorable Grattan Kerans, 40 Or. Op. Atty. Gen. 371, p. 5-6 (1980) (whether something is a gift "requires that a determination be made whether the official provided something of substantially equivalent economic value in exchange, or whether the item received was available to non-public officials on the same terms.").

When a public body provides food and beverage to an employee or elected official, it is doing so in exchange for the valuable consideration of public service that the employee or elected official provides to the public body itself, which value far exceeds the value of the food and beverage provided. Additionally, when food and beverage is provided by a public body only to its public officials, the food and beverage is not available to non-public officials at all and not on the same terms. Therefore, the food and beverage provided by a public body to its own public officials is not a "gift" that should be analyzed under the gift laws. Rather, it is "compensation" and analyzed under the official compensation provisions in ORS 244.040(2)(a), as outlined above.

2. Gift Laws Applicable to Food and Beverage.

ORS 244.040(2)(e), (f), and (g) govern when a public official may accept food and beverage from a person, business, or other entity that are not the public body that the public official serves. ORS 244.040(2)(e), (f), and (g) cross-reference the gift provisions in ORS 244.0020(7) and ORS 244.025. Therefore, we analyze those relevant provisions using the four-step process set forth below.

Step 1 – Is the Food and Beverage Provided a "Gift?"

The first step in the analysis of whether a public official may accept food and beverage from a person, business, or other entity (Source) is to determine whether the food and beverage being offered qualifies as a "gift" for purposes of ORS Chapter 244. ORS 244.020(7)(a) defines a gift as:

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> "Gift" means something of economic value given to a public official, a candidate or a relative or member of the household of the public official or candidate:
>
> > (A) Without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others who are not public officials or candidates or the relatives or members of the household of public officials or candidates on the same terms and conditions; or
> >
> > (B) For valuable consideration less than that required from others who are not public officials or candidates.

In other words, a "gift" is something of economic value given to a public official, or their relative or household member, without equivalent consideration or at a discount, and that is not offered to others who are not public officials on the same terms and conditions. Consequently, if the food and beverage being offered to the public official is being provided to non-public officials on the same terms and conditions, then the public official may accept the food and beverage, regardless of value. If it is not being offered to non-public officials on the same terms and conditions, then the food and beverage is a "gift" for purposes of ORS Chapter 244 and the public official must proceed to the next step of the analysis.

Step 2 – Is Food and Beverage Provided from a Source that has Given the Public Official $50 or Less in Value in a Calendar Year?

If the food and beverage being offered is a "gift," then the next step in the analysis is to determine whether it is a gift that the public official can accept. ORS 244.040(2)(e) authorizes a public official to accept the food and beverage if the gift "do[es] not exceed the limits specified in ORS 244.025 received by a public official or a relative or member of the household of the public official from a source that could reasonably be known to have a legislative or administrative interest." ORS 244.025(1) provides that a public official, and their relatives or household members, may not solicit or receive any gift or gifts with an aggregate value in excess of $50 in a calendar year from a Source that could reasonably be known to have a legislative or administrative interest in the public official's decisions or votes. To determine the value, the public official must consult OAR 199-005-0005.

Therefore, the second step in the analysis requires the public official to determine the value of the food and beverage being provided, as well as the value of any other gifts that the public official received from that Source during the calendar year, using the method prescribed by OAR 199-005-0005. If the cumulative value of the food and beverage and all other gifts received from that Source during the calendar year is $50 or less, the public official may accept the food and beverage from that Source. If, however, the cumulative value of the food and beverage and all other gifts received from that Source in a calendar

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year exceeds $50, then it is necessary for the public official to proceed to the third step in the analysis.

Step 3 – Is the Food and Beverage from a Source Reasonably known to have a Legislative or Administrative Interest in the Public Official's Decision or Votes?

ORS 244.040(2)(e) prohibits a public official from accepting a gift if the cumulative value of all gifts from that Source exceeds $50 in a calendar year *and* the source could reasonably be known to have a legislative or administrative interest. Likewise, ORS 244.040(2)(f) authorizes a public official to receive gifts "from a source that *could not* reasonably be known to have a legislative or administrative interest." (emphasis added). Therefore, these two provisions together outline the third step of the analysis, which requires the public official to determine whether the source of the gift has a legislative or administrative interest.

The term "legislative or administrative interest" means an economic interest, distinct from that of the general public, in any matter subject to the decision or vote of the public official, acting in their official capacity. See ORS 244.020(10)(a). OAR 199-005-0003 provides examples of what constitutes a legislative or administrative interest and further clarifies that the term does not include "recommendations" made by the public official. By way of example, an entity that contracts with the city would have a legislative or administrative interest in city officials who approve the contract or vote on the budget; a person who owns residential or commercial property in a city would have a legislative or administrative interest in a planning commissioner or city councilor who could make land-use decisions concerning that property; and a city employee would have a legislative or administrative interest in the city administrator or city councilors, as those public officials could make decisions (on matters such as salary, promotions, or leave) that would have an economic impact on the employee.

When it comes to gifts provided by one's colleagues, a key factor is whether the person receiving the gift is in a position where they could make a decision that could financially impact those colleagues providing the gift. In most cases, city staff could accept gifts from their colleagues because city staff are not in positions where they could make decisions that could financially impact their colleagues. For the same reasons, city staff could accept gifts from their supervisors, managers, the city administrator, or the city councilors (i.e., their appointing authorities). The analysis is different, however, when it is the appointing authorities who are accepting gifts from their employees or subordinates, as those employees could have legislative or administrative interests in the decisions that those appointing authorities could make.

The final aspect of Step 3 is the standard that must be used by a public official to determine whether the person providing the food and beverage has a legislative or administrative

interest in the public official's decision or votes. If it "could not reasonably be known" by the public official that the person has a legislative or administrative interest in the public official's decision or votes, then ORS 244.040(2)(e) and (f) would authorize the public official to accept the food and beverage, regardless of its value. In other words, the analysis is factually dependent under a reasonableness standard. If the facts establish that the public official could have reasonably known that the person providing the food and beverage has a legislative or administrative interest in the public official's decisions or votes, the public official is prohibited from accepting the food and beverage. The only exception to this prohibition is if gift exception applies, as described in Step 4.

Step 4 – Does a Gift Exception Apply?

ORS 244.040(2)(g) authorizes a public official to receive any item, regardless of value, that is expressly excluded from the definition of "gift" in ORS 244.020. Therefore, the next step is for the public official to determine whether the food and beverage being provided falls within one of the gift exceptions in ORS 244.020. If it does, then the public official may accept the food and beverage, regardless of value.

ORS 244.020(7)(b) establishes a list of exceptions to the definition of gift. Many of the gift exceptions relate to food and beverage in specific circumstances. For purposes of this analysis, it appears the relevant gift exceptions are ORS 244.020(7)(b)(E), (I), and (L)

We examine each relevant exception separately.

(E) - Food and Beverage Consumed by a Public Official At a Reception, Meal or Meeting.

ORS 244.020(7)(b)(E) authorizes a public official to be provided food and beverage "at a reception, meal or meeting held by an organization when the public official represents state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117." Several administrative rules elucidate the meaning of this statute:

- First, OAR 199-005-0001(8) defines "reception" as "a social gathering." The rule goes on to explain that "[r]eceptions are often held for the purpose of extending a ceremonial or formal welcome and may include private or public meetings during which guests are honored or welcomed. Food and beverages are often provided, but not as a plated, sit-down meal."
- Second, OAR 199-005-0001(4) defines "Meeting" as "an event that includes multiple attendees who are members of an organization or members of the general public who have been invited to the event. The purpose or agenda for the meeting would be included in any advance notice of the event."

- Third, OAR 199-005-0001(6) defines "Organization" as "any public body, corporation, partnership, proprietorship, firm, enterprise, franchise, association, trust, or other entity other than an individual."
- Fourth, OAR 199-005-0001(7) defines "representing government" as "a public official is representing a state or local government or a special government body when the public official attends an event on behalf of the government agency." The rule then provides multiple examples of when a public official represents government, including a fire chief attending an event to honor protection services representatives who attends on behalf of the station in an official capacity and a department manager in their official capacity attending a conference sponsored by a vendor that sold products to the agency in the past.
- Fifth, OAR 199-005-0015, establishes a list of factors for consideration in determining compliance with ORS 244.020(7)(b)(E). Those factors include: "(1) A large number of people or groups are invited. For example, all members of an organization are invited. (2) The invitations or programs are sent in advance. (3) The event is publicized. (4) The reception, meal, or meeting is open to the public. [and] (5) Written materials such as a printed program are available."
- Sixth, OAR 199-005-0015 specifically provides that "private meals where the participants engage in discussion" is not authorized.

Together, these statutes and rules authorize a public official to consume food and beverage if the public official is representing their government agency in an official capacity and they attend a reception, meal or meeting held by an organization that is not their employing government agency. However, private meals where the participants engage in discussion is prohibited. For example, a city councilor or city employee would be authorized to consume food and beverages when attending the local chamber of commerce breakfast. However, they would be prohibited from consuming food and beverage with a vendor at a private lunch meeting between only them and the vendor.

Importantly, and as detailed above, this analysis *does not* apply to the public body's own public meetings or to the public body providing food and beverage to their own public officials. A public body's provision of food and beverage to their own public officials is a form of "compensation," not a gift, and must be analyzed under the official compensation provisions set forth in ORS 244.020(2)(a) as described in Section A above.

(l) - Food or beverage consumed by a public official acting in an official capacity involving certain financial transactions.

ORS 244.020(7)(b)(l) authorizes a public official acting in an official capacity to consume food and beverage while involved with certain financial transactions. Specifically, the consumption of food and beverage is not considered a gift if it is provided:

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> (i) In association with the review, approval, execution of documents or closing of a borrowing, investment or other financial transaction, including any business agreement between state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117 and a private entity or public body as defined in ORS 174.109;
>
> (ii) While engaged in due diligence research or presentations by the office of the State Treasurer related to an existing or proposed investment or borrowing; or
>
> (iii) While engaged in a meeting of an advisory, governance or policy-making body of a corporation, partnership or other entity in which the office of the State Treasurer has invested moneys.

A determination of whether this exception applies would be dependent on the factual circumstance. If the factual circumstances establish compliance with this section, the public official may consume the food and beverage provided. Given the limited nature of this provision, it will not be applicable to many public officials.

Like the other gift exceptions, this exception does not apply to the public body's own public meetings or to the public body providing food and beverage to their own public officials. A public body's provision of food and beverage to their own public officials is a form of "compensation," not a gift, and must be analyzed under the official compensation provisions set forth in ORS 244.020(2)(a) as described in Section A above.

> **(L) - Food and beverage consumed at a reception and that is provided as an incidental part of the reception and no cost is placed on the food and beverage.**

ORS 244.020(7)(b)(L) authorizes a public official to consume food and beverage "at a reception where the food or beverage is provided as an incidental part of the reception and no cost is placed on the food or beverage." As noted previously, OAR 199-005-0001(8) defines reception as "a social gathering" and provides that "[r]eceptions are often held for the purpose of extending a ceremonial or formal welcome and may include private or public meetings during which guests are honored or welcomed. Food and beverages are often provided, but not as a plated, sit-down meal." This exception is further clarified by OAR 199-005-0005(5), which establishes that food and beverage provided under this exception is permitted without regard to the fair market value of the food and beverage.

Under this exception, if the public official is attending a social gathering and the food and beverage does not include a sit-down meal, then the public official may accept the food and beverage. We note there is some overlap between ORS 244.020(7)(b)(E) and (L).

However, only ORS 244.020(7)(b)(E), outlined above, could allow the public official to consume the food and beverage if the event is a sit down meal or a meeting.

Like the exception in ORS 244.020(7)(b)(E), this exception does not apply to the public body's own public meetings or to the public body providing food and beverage to their own public officials. A public body's provision of food and beverage to their own public officials is a form of "compensation," not a gift, and must be analyzed under the official compensation provisions set forth in ORS 244.020(2)(a) as described in Section A above.

ANSWERS

In light of the above analysis, the answers to your specific questions are as follows:

Questions (1) and (2)

Question (1) asks whether city staff members accepting food and beverages provided by the city would violate ORS 244.040 or any other provision of ORS 244. Question (2) then asks whether the exception in ORS 244.040(2)(a) and OAR 199-008-0005(3) would apply if the city's personnel manual included the following policy statement:

> *"Food, beverage, and other related items provided by the city to employees including any of their relatives or household members who are accompanying them during work-related events such as, but not limited to meetings, team building activities, and conferences, are provided as part of the employee's official compensation package."*

Assuming the policy was formally adopted by the public body as outlined above, city staff members may accept food and beverages paid for or provided by the city, consistent with the specifications of the policy. Such acceptance is authorized under ORS 244.040(2)(a). As for whether such actions may violate any other provisions in ORS Chapter 244, the facts you present do not allow us to analyze *all* of ORS Chapter 244. However, we note that it is certainly possible for factual circumstances involving the provision of food and beverage to implicate other violations. For instance, if the person in charge of purchasing the food for the city purchases the food from their relative's restaurant, such action may violate the use of office provisions in ORS 244.040 and the conflict of interest provisions in ORS 244.020. Likewise, if the compensation of the meal is taxable and a city human resources or finance employee in charge of ensuring the city complies with tax laws fails to report their own receipt of a meal, this action may violate ORS 244.040 as using their position to avoid a taxable gain. The determination of whether ORS 244 is violated is dependent on the particular factual circumstances involved.

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Question (4)

Question (4) asks whether city elected officials may consume a meal at a gathering provided by the city prior to a public meeting. You indicate that the purpose of the gathering is not for conducting city business but rather for team building. You ask whether an elected official who accepts the city provided food and beverages at such an event would violate ORS 244.040 or any other provisions of ORS Chapter 244.

This analysis would also fall under ORS 244.040(1) and (2)(a). If the meal is authorized as part of the elected officials' official compensation packages, then the exception in ORS 244.040(2)(a) would apply and the elected officials could accept the city paid or provided meals. If the city has not adopted an official compensation package that includes meals for their elected officials, then accepting food and beverage violates ORS 244.040(1). If the city has not adopted an official compensation package that includes meals for their elected officials, but is thinking of doing so, city elected officials need to be mindful of, and comply with, the conflicts of interest provisions in ORS 244.120(2) and ORS 244.020(1) and (13) when adopting the official compensation policy.

Questions (3) and (5)

These two questions ask about city staff members and elected officials accepting food and beverages provided not by the city but by other city staff or officials, such as at a potluck. You ask whether the city staff members or the elected officials would violate ORS 244.025 or any other provisions in ORS Chapter 244 by accepting the food and beverages at such a potluck.

When the food and beverages are being provided by persons or entities other than an employing public body, the analysis falls under ORS 244.040(2)(e), (f), and (g). As explained above, each city staff and official attending the potluck would need to determine: (1) whether the food and beverage qualifies as a gift; (2) the value of the gift and the cumulative value of all other gifts received in the calendar year by the Source providing the food and beverage; (3) whether the Source providing the food and beverage could be reasonably known to have legislative or administrative interest in the city employee's or city official's decisions or votes; and (4) whether any of the gift exceptions apply.

As also noted above, for the majority of city employees, mere participation in a city potluck would not result in a violation of the statutes discussed above because the employees attending do not have a legislative or administrative interest in their fellow employees' decisions or votes. However, that is not the case for elected officials, supervisors, and managers who receive food and beverage from their subordinate public officials. Elected officials, supervisors, and managers will need to proceed through the steps above to determine if they can accept the food and beverage items provided at the potluck from their subordinates. That said, in the majority of circumstances an elected official, supervisor, or

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manager participating in a potluck likely falls within the gift exception in ORS 244.020(7)(b)(L).

THIS OPINION IS ISSUED BY THE OREGON GOVERNMENT ETHICS COMMISSION PURSUANT TO ORS 244.280. A PERSON SHALL NOT BE LIABLE UNDER ORS CHAPTER 244 FOR ANY GOOD FAITH ACTION OR TRANSACTION CARRIED OUT IN ACCORDANCE WITH THIS OPINION. THIS OPINION IS LIMITED TO THE FACTS SET FORTH HEREIN.

Issued by Order of the Oregon Government Ethics Commission at Salem, Oregon on the 9th day of May, 2025.

_____
David Fiskum, Chairperson

_____
Sean T. Brady, Senior Assistant Attorney General

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RELEVANT STATUTES AND ADMINISTRATIVE RULES: The following Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR) are applicable to the issues that are addressed in this opinion:

ORS 244.020(7)(a): "Gift" means something of economic value given to a public official, a candidate or a relative or member of the household of the public official or candidate:

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

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

* * * * *

ORS 244.020(7)(b): "Gift" does not mean:

* * * * *

(E) Admission provided to or the cost of food or beverage consumed by a public official, a relative of the public official accompanying the public official, a member of the household of the public official accompanying the public official or a staff member of the public official accompanying the public official, at a reception, meal or meeting held by an organization when the public official represents state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117.

(I) Food or beverage consumed by a public official acting in an official capacity:

(i) In association with the review, approval, execution of documents or closing of a borrowing, investment or other financial transaction, including any business agreement between state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117 and a private entity or public body as defined in ORS 174.109;

(ii) While engaged in due diligence research or presentations by the office of the State Treasurer related to an existing or proposed investment or borrowing; or

(iii) While engaged in a meeting of an advisory, governance or policy-making body of a corporation, partnership or other entity in which the office of the State Treasurer has invested moneys.

(L) Food or beverage consumed by a public official or candidate at a reception where the food or beverage is provided as an incidental part of the reception and no cost is placed on the food or beverage.

ORS 244.020(10): "Legislative or administrative interest" means an economic interest, distinct from that of the general public, in:

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(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(11): "Member of the household" means any person who resides with the public official or candidate.

* * * * *

ORS 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.

* * * * *

ORS 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.

* * * * *

ORS 244.025(1) Gift Limit: During a calendar year, a public official, a candidate or a relative or member of the household of the public official or candidate may not solicit or receive, directly or indirectly, any gift or gifts with an aggregate value in excess of $50 from any single source that could reasonably be known to have a legislative or administrative interest.

ORS 244.040 Prohibited use of official position or office; exceptions; other prohibited actions:

(1) Except as provided in subsection (2) of this section, a public official may not use or attempt to use official position or office to obtain financial gain or avoidance of financial

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detriment for the public official, a relative or member of the household of the public official, or any business with which the public official or a relative or member of the household of the public official 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 official position or office.

(2) Subsection (1) of this section does not apply to:

(a) Any part of an official compensation package as determined by the public body that the public official serves.

* * * * *

(e) Gifts that do not exceed the limits specified in ORS 244.025 received by a public official or a relative or member of the household of the public official from a source that could reasonably be known to have a legislative or administrative interest.

(f) Gifts received by a public official or a relative or member of the household of the public official from a source that could not reasonably be known to have a legislative or administrative interest.

(g) The receipt by a public official or a relative or member of the household of the public official of any item, regardless of value, that is expressly excluded from the definition of "gift" in ORS 244.020.

* * * * *

OAR 199-005-0001 Definitions. The following definitions are provided for works or terms as they are used in ORS Chapter 244, especially in the exceptions to the definition of a gift in ORS 244.020(7)(b):

* * * * *

(4) A "Meeting" is an event that includes multiple attendees who are members of an organization or members of the general public who have been invited to the event. The purpose or agenda for the meeting would be included in any advance notice of the event.

(5) "Official capacity" means that the public official attends an activity while engaged in duties or responsibilities that are customary to their office or position.

(6) "Organization" means any public body, corporation, partnership, proprietorship, firm, enterprise, franchise, association, trust, or other entity other than an individual.

(7) "Representing Government" means that a public official is representing a state or local government or a special government body when the public official attends an event on behalf of the government agency. The following examples are offered to illustrate the meaning of "representing government," but are not meant to be the only circumstances that would define representing government:

(a) A fire chief attends an event to honor protection services representatives and attends on behalf of the station in an official capacity.

(b) A department manager attends a conference being sponsored by a vendor that has in the past sold products to the agency in which the manager is employed. The

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manager's official duties include the responsibility of attending conferences on behalf of the governing body.

(c) An executive director for a state agency attends ceremonial events; the director's official duties include representing the agency at such events.

(d) A state employee who works in the IT department whose responsibilities include reviewing and recommending software attends a workshop on software applications held by a professional membership organization.

(e) A planning commissioner speaks to a non-profit organization on behalf of the county planning department.

(f) A volunteer for a city park department attends an event representing the department at a meeting to discuss issues surrounding volunteerism.

(g) A legislator attends an event being sponsored by a Native American tribe on behalf of a legislative committee on which the legislator serves.

(h) A city councilor attends the local chamber of commerce breakfast.

(8) "Reception" means a social gathering. Receptions are often held for the purpose of extending a ceremonial or formal welcome and may include private or public meetings during which guests are honored or welcomed. Food and beverages are often provided, but not as a plated, sit-down meal.

OAR 199-008-0005(3) Definitions of terms in ORS Chapter 244:

(1) The purpose of this rule is to define certain terms and to clarify substantive provisions of ORS Chapter 244.

* * * * *

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

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Oregon
Tina Kotek, Governor

Government Ethics Commission
3218 Pringle Rd SE, Ste 220
Salem, OR 97302-1680
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E-mail: mail@ogec.oregon.gov
Website: www.oregon.gov/ogec

April 11, 2025

Sent via email

Honorable Representative Mark Gamba
Oregon State House of Representatives
900 Court St. NE H-274
Salem, Oregon 97301

Re: Advice Number 25-217I

Dear Representative Gamba:

Thank you and your chief of staff, Ryan Moore, for contacting the Oregon Government Ethics Commission (OGEC) with this inquiry.

As a member of the Oregon State House of Representatives, you have been invited to participate in an event sponsored by Oregon Walks, a 501(c)(3) nonprofit organization. The event is "WalkStars," Oregon Walks' annual celebration and fundraiser. The event includes a reception, dinner, auction and programming. You are being offered free admission to the event. According to the Oregon Walks' website, members of the public may purchase tickets to the event for $125. You have asked whether you can accept this offer of a free ticket to the event under any of the gift exceptions in ORS 244.020(7)(b).

In most circumstances, when a public official is offered something of economic value at no cost or at a discount, and it is not offered to others, who are not public officials, on the same terms and conditions, it is considered a gift, as defined in ORS 244.020(7)(a). In this case, because the Oregon Walks' event ticket is being offered to you free of charge while members of the public are required to purchase tickets, the free ticket would qualify as a gift, subject to the gift clause in ORS 244.025(1), unless one of the gift exceptions in ORS 244.020(7)(b) apply.

ORS 244.020(7)(b)(E) provides that a public official may accept payment of the cost of "[a]dmission provided to or the cost of food or beverage consumed by a public official [and a relative, household member, or staff member accompanying the public official] at a reception, meal or meeting held by an organization" when the public official is representing state government, a local government, or a special government body.

OGEC has adopted Administrative Rules that apply. OAR 199-005-0001(8) defines "reception" as a social gathering, often for the purpose of a ceremonial or formal welcome, and that may include food and beverages. In this case, the Oregon Walks

event appears to include both a reception and a plated, sit-down meal. Both receptions and meals are covered under the gift exception in ORS 244.020(7)(b)(E).
OGEC has also adopted an Administrative Rule, OAR 199-005-0015, that specifically addresses the gift exception in ORS 244.020(7)(b)(E). The Rule specifies that its purpose is "to allow public officials to attend organized, planned events and engage with the members of organizations when representing" state government, a local government, or a special government body." This Rule goes on to list a number of factors that serve as indicia of whether the paid expenses would qualify under this gift exception. These factors include:

1. A large number of people or groups are invited.
2. The invitations or programs are sent in advance.
3. The event is publicized.
4. The reception, meal, or meeting is open to the public.
5. Written materials such as a printed program are available.

Based on the information provided and that available on the Oregon Walks' website, it appears that the Oregon Walks' event would qualify under this list of factors. A large number of people and groups are invited, and tickets are being sold to members of the public. The event is well-publicized and invitations have been sent in advance. While we do not know whether there will be written materials, the website does indicate there will be programming; it is just not certain whether that would include written materials. Even if it does not, however, the rest of the factors appear to be satisfied.

It appears the Oregon Walks' event would qualify under these factors, and therefore, assuming that you would be attending the event in your official capacity, you could accept the offer of a paid ticket to the event under the ORS 244.020(7)(b)(E) exception.

If you have any additional questions regarding the application of the gift clause or any other provision of Oregon Government Ethics Law, please feel free to contact me directly.

Sincerely,

Susan V. Myers

Susan V. Myers
Executive Director

*****DISCLAIMER*****
This staff advice is provided under the authority given in ORS 244.284(1). This opinion offers guidance on how Oregon Government Ethics law may apply to the specific facts described in your request. This opinion is based on my understanding and analysis of the specific circumstances you described and should not be applied to circumstances that differ from those discussed in this request.

Oregon
Tina Kotek, Governor

Government Ethics Commission
3218 Pringle Rd SE, Ste 220
Salem, OR 97302-1680
Telephone: 503-378-5105
Fax: 503-373-1456
E-mail: mail@ogec.oregon.gov
Website: www.oregon.gov/ogec

April 29, 2025

Sent via email and USPS

Tommy A. Brooks
Cable Huston LLP
1455 SW Broadway, Suite 1500
Portland, OR 97201

Re: Advice Number 25-240I

Dear Mr. Brooks:

Thank you for contacting the Oregon Government Ethics Commission (OGEC) with this request. The advice and analysis that follows is offered under the authority provided in ORS 244.284 as guidance on how the current provisions of ORS Chapter 244 may apply to the specific circumstances described.

You explain that the Northern Wasco People's Utility District (District) is a people's utility district organized under ORS Chapter 261. The District is authorized, per ORS 261.305(10), "to set salaries and provide compensation for services rendered by employees and by directors." As the District's governing body, the Board of Directors (Board) is authorized to determine questions of policy and adopt written resolutions of ordinances. [ORS 261.460]. The District Board operates pursuant to the terms of a Governance Policy that the Board approves by resolution and that has been in place since 2019. The Governance Policy applies to all current and future members (Directors) of the District Board.

As authorized by ORS 261.305(10) and implemented by the Governance Policy, the District pays each Director a stipend of $1,000 per month as compensation for the services the Director renders to the District. On November 5, 2024, the District Board adopted Resolution #35-2024, which amended the Governance Policy by incorporating an annual Consumer Price Index adjustment (CPI Adjustment) to the Directors' stipends. The Resolution provides that in January 2025 and January 2026, the Directors' stipends will be adjusted for inflation based on the changes in the identified consumer price index. The CPI Adjustment is designed "to serve as a pre-defined, rules-based compensation adjustment mechanism." The Resolution also directs the District to implement the Resolution "in a manner that is consistent with the Oregon Government Ethics Law."

You indicate the District is waiting to implement the adjustment in the Directors' stipends pending confirmation that it can do so in a manner consistent with ORS Chapter 244. The question asked in your request is whether the current and future Directors can accept their stipends, based on the CPI Adjustment, without violating ORS 244.040(1).

ORS 244.040(1) prohibits a public official from using or attempting to use their office or position to obtain a financial gain or avoid a financial detriment, for themselves, their relatives or household members, or any businesses with which they are associated, if that financial gain or avoidance of detriment would not otherwise be available but for them holding their public office or position.

ORS 244.040(2)(a) provides an exception, directing that a public official may accept any part of an official compensation package without violating ORS 244.040(1). An "official compensation package" is defined in OAR 199-008-0005(3) as the "wages and other benefits provided to the public official." The Rule goes on to explain: "To be part of the public official's 'official compensation package', the wages and benefits must have been specifically approved by the public body in a formal manner, such as through a union contract, an employment contract, or other adopted personnel policies that apply generally to employees or other public officials."

So long as the wages or benefits provided to a public official are part of their official compensation package, then the public official can accept those wages or benefits without violating ORS 244.040(1).

Based on the information provided, the Directors' stipends are benefits that were specifically approved by the District in a formal manner, first when the District Board approved the Governance Policy in 2019 and then when the District Board amended that Governance Policy in November 2024 to authorize the stipends to be adjusted for inflation per the applicable consumer price index. Thus, the stipends would qualify as part of the Directors' official compensation packages. Per ORS 244.040(2)(a), the Directors on the District Board could accept the stipends and would not be violating ORS 244.040(1) by doing so.

Separately you reference a previously issued Letter of Advice, No. 23-342I (Maguire Advice Letter), suggesting that it addressed "a nearly identical factual situation." You submit that the application of the Government Ethics Laws in the situation you presented "should be governed by the Commission's analysis and decision in the Maguire Advice Letter."

Any advice issued by the Commission is legally limited to the specific facts addressed in that advice. The facts presented in the Maguire Advice Letter and those in your request are different, in terms of the statutory authority for adopting stipends, the procedures through which the stipends may be adopted or amended, and the amounts of such

stipends. While the legal analysis in terms of application of ORS 244.040(1) and ORS 244.040(2)(a) to acceptance of stipends that are part of an official compensation package would be the same, the factual differences in the situations presented mean that the Maguire Advice Letter does not govern the situation you have presented.

In summary, under ORS 244.040(2)(a), the current and future Directors on the District Board could accept the stipends adopted per the Governance Policy as amended by the Resolution without engaging in a prohibited use of office or violating ORS 244.040(1).

If you have any additional questions regarding this matter or application of the Government Ethics Laws, please let us know.

Sincerely,

Susan V. Myers
Executive Director

*****DISCLAIMER*****
This staff advice is provided under the authority given in ORS 244.284(1). This opinion offers guidance on how Oregon Government Ethics law may apply to the specific facts described in your request. This opinion is based on my understanding and analysis of the specific circumstances you described and should not be applied to circumstances that differ from those discussed in this request.

EXECUTIVE DIRECTOR'S REPORT
5/1/2025

BUDGET:

2023-25: Surplus as of March 2025 is approximately $495,898.64.

2025-27: Budget bill (SB5522) is scheduled for a work session before the Joint Ways & Means General Government Subcommittee on May 6th. It will go to the full committee on May 9th.

LEGISLATIVE SESSION:

- We are waiting for our two bills (HB 2930 and HB 2932), that have passed the house, to have public hearings scheduled in the Senate Rules Committee. These public hearings are tentatively scheduled for May 14th.

- We are continuing to monitor other bills through BillTracker

OTHER:

- SEI filers: So far, 5,828 filers have completed their SEIs. 172 have not yet filed. Daily penalties will begin to accrue beginning on May 6th.

- Lobbyists/Clients: For Q1 2024, we have 13 lobbyists and 21 lobbyist client/employers who have not yet filed their Q1 quarterly expenditure reports.

- Commission staff are continuing to reach out to filers to assist them with getting their reports filed.

OREGON GOVERNMENT ETHICS COMMISSION
AY25 CASH FLOW
AS OF MARCH 2025 ACTUALS

		Appn 30000 - Admin - PCA 41501				Appn 70000 - GF - PCA 00501			
		Actuals To Date	Actuals + Projected	2023-2025 LAB	Variance	Actuals To Date	Actuals + Projected	2023-2025 LAB	Variance
	Beginning Cash Balance	864,566.15	864,566.15	601,021.00		-	-		
				-					
REVENUE									
0415	ADMINISTRATIVE AND SERVICES CHARGES	5,364,497.88	5,364,497.88	5,352,395.00	(12,102.88)	-	-	-	0.00
0505	FINES AND FORFEITS	-	-	-	0.00	103,772.95	103,772.95	50,000.00	(53,772.95)
0975	OTHER REVENUE	52.25	52.25	-	(52.25)	-	-	-	0.00
	Total Revenue	**5,364,550.13**	**5,364,550.13**	**5,953,416.00**	(12,155.13)	**103,772.95**	**103,772.95**	**50,000.00**	(53,772.95)
TRANSFERS									
2010	TRANSFER OUT TO OTHER FUNDS	-	-	-	0.00	-	-	-	0.00
1107	TRANSFER IN FROM DEPT OF ADMIN SVCS	-	-	(50,000.00)	(50,000.00)	-	-	-	0.00
	Total Transfers	**-**	**-**	**(50,000.00)**	(50,000.00)	**-**	**-**	**-**	0.00
	Total Available Revenues			**5,903,416.00**					
PERSONAL SERVICES									
3110	CLASS/UNCLASS SALARY & PER DIEM	1,796,898.21	2,115,168.83	2,090,604.00	(24,564.83)	-	-	-	0.00
3115	BOARD MEMBER STIPENDS	14,365.00	15,967.00	29,065.00	13,098.00				
3160	TEMPORARY APPOINTMENTS	-	-	526.00	526.00	-	-	-	0.00
3170	OVERTIME PAYMENTS	397.18	397.18	-	(397.18)	-	-	-	0.00
3190	ALL OTHER DIFFERENTIAL	10,465.61	12,814.61	-	(12,814.61)				
3210	ERB ASSESSMENT	580.35	672.33	718.00	45.67	-	-	-	0.00
3220	PUBLIC EMPLOYES' RETIREMENT SYSTEM	319,432.72	380,086.14	371,411.00	(8,675.14)	-	-	-	0.00
3221	PENSION BOND CONTRIBUTION	83,689.76	99,157.63	93,391.00	(5,766.63)	-	-	-	0.00
3230	SOCIAL SECURITY TAX	140,385.99	165,048.08	159,971.00	(5,077.08)	-	-	-	0.00
3241	PAID LEAVE OREGON-EMPLOYER	11,958.30	13,237.77	8,201.00	(5,036.77)				
3250	WORKERS' COMPENSATION ASSESSMENT	443.80	529.75	624.00	94.25	-	-	-	0.00
3260	MASS TRANSIT	10,846.20	12,755.83	13,184.00	428.17	-	-	-	0.00
3270	FLEXIBLE BENEFITS	457,688.91	537,019.26	539,550.00	2,530.74	-	-	-	0.00
3465	RECON ADJUSTMENT	-	-	102,803.00	102,803.00				
	Total Personal Services	**2,847,152.03**	3,352,854.41	3,410,048.00	57,193.59	**-**	**-**	**-**	0.00
SERVICES AND SUPPLIES									
4100	INSTATE TRAVEL	11,947.40	15,547.40	23,567.00	8,019.60	-	-	-	0.00
4125	OUT-OF-STATE TRAVEL	1,194.65	1,194.65	-	(1,194.65)	-	-	-	0.00
4150	EMPLOYEE TRAINING	13,141.02	14,641.02	20,242.00	5,600.98	-	-	-	0.00
4175	OFFICE EXPENSES	15,612.44	17,262.44	35,018.00	17,755.56	-	-	-	0.00
4200	TELECOMM/TECH SVC AND SUPPLIES	31,780.05	36,280.05	43,879.00	7,598.95	-	-	-	0.00
4225	STATE GOVERNMENT SERVICE CHARGES	85,802.06	87,496.08	87,495.00	(1.08)	-	-	-	0.00
4250	DATA PROCESSING	80,540.09	80,810.09	118,500.00	37,689.91	-	-	-	0.00
4275	PUBLICITY & PUBLICATIONS	667.41	2,460.41	1,793.00	(667.41)	-	-	-	0.00
4300	PROFESSIONAL SERVICES	9,861.84	9,861.84	11,347.00	1,485.16	-	-	-	0.00
4315	IT PROFESSIONAL SERVICES	454,903.00	736,693.00	789,480.00	52,787.00	-	-	-	0.00
4325	ATTORNEY GENERAL LEGAL FEES	367,864.86	442,864.86	232,720.00	(210,144.86)	-	-	-	0.00
4375	EMPLOYEE RECRUITMENT & DEVELOPMENT	324.50	324.50	4,475.00	4,150.50	-	-	-	0.00
4400	DUES AND SUBSCRIPTIONS	445.00	445.00	2,299.00	1,854.00	-	-	-	0.00
4425	FACILITIES RENT & TAXES	112,448.20	129,748.87	193,000.00	63,251.13	-	-	-	0.00
4575	AGENCY PROGRAM RELATED SVCS & SUPP	16,935.31	16,935.31	400,000.00	383,064.69	-	-	-	0.00
4650	OTHER SERVICES AND SUPPLIES	146,197.40	149,197.40	301,493.00	152,295.60	-	-	-	0.00
4700	EXPENDABLE PROPERTY $250-$5000	69,414.75	69,414.75	23,627.00	(45,787.75)	-	-	-	0.00
4715	IT EXPENDABLE PROPERTY	39,052.28	39,052.28	-	(39,052.28)	-	-	-	0.00
	Total Services and Supplies	**1,458,132.26**	**1,850,229.95**	**2,288,935.00**	438,705.05	**-**	**-**	**-**	0.00
5900	OTHER CAPITAL OUTLAY								
	TOTAL EXPENDITURES	**4,305,284.29**	**5,203,084.36**	**5,698,983.00**	**495,898.64**	**-**	**-**	**-**	**0.00**
	Ending Cash Balance*	**1,923,831.99**	**1,026,031.92**			103,772.95	103,772.95		
	*Outstanding Revenue Invoices not taken into consideration, See Appn Tabs								

216,795.18 Avg Monthly Expenditures

797,070.03 Projected Cash Ending Balance

3.68 Month Ending Balance