

Council Orientation and Preparation
January 7, 2009
2:00-6:00
DRAFT: January 5, 2009

- 2:00-2:20 Opening
- Call to order, roll call
 - Welcome (Jack Hoffman)
 - Brief introductions: What's most important to you in the coming year – for the Council and for yourself?
- 2:20-4:00 Orientation, focusing on LO Council rather than councils in general (Dave Powell/Stephan Lashbrook/Alex McIntyre/Robyn Christie)
- Legal Structure
 - Land Use Hearings
 - Ethics
 - Public Meetings Law
 - Public Records Law
- 4:00-4:15 Break
- 4:15-5:45 Procedures and expectations (facilitated by Joe Hertzberg)
- Communication with one another, staff, and the public – mutual expectations
 - How can we make Council discovery, debate, and decision-making as effective, respectful, and transparent as possible?
 - Expectations for one another
 - Expectations for presiding officer
 - Council Procedures
- 5:45-5:55 Preparation for goal-setting January 16-17 – 10 minutes
- 5:55-6:00 Final observations and adjournment

THE CITY OF LAKE OSWEGO
2009 CITY COUNCIL ORIENTATION

LEGAL STRUCTURE

- A. Constitutional Authority. Article XI Section 2 of the Oregon Constitution authorizes the voters of each municipality to enact a municipal charter governing all aspects of local concern. The Lake Oswego Charter sets forth the structure and function of City government. It is essentially the constitution of the City.
- B. Powers. Chapter II grants the City broad powers over all matters of municipal concern. Cities are general purpose units of government, meaning that the City Council has broad authority to provide any service or adopt any regulation that it believes is in the best interest of the citizens (subject to the limitations addressed in paragraph G, below).
- C. Form of Government. The Lake Oswego Charter establishes what is known as the "council/manager" form of government, by far the most common type of city government in Oregon. In a council/manager form of government, legislative and policy authority is vested in an elected city council, while the administrative authority for day-to-day operations is vested in an appointed City Manager. Alternate forms of city government include:
1. The Commission Form. Under this form, the elected commissioners serve as both the legislative body and as full time administrators of the local government. Examples of the commission form include most Oregon counties and the City of Portland.
 2. The Strong Mayor Form. Under this form, the city council serves as a legislative and policy-making body, while an elected Mayor serves as the full time chief executive officer, in place of a city manager. The City of Beaverton is an example of this form of government.
- D. The Lake Oswego City Council. The Lake Oswego City Council consists of the mayor and six councilors who serve four-year terms. At least three council positions are up for election every two years. Councilors are elected "at large," as opposed to by position or district. The three candidates who receive the highest number of votes are elected to the vacant seats. The mayor is elected separately.
1. Powers of the Mayor. The Mayor presides over all Council meetings, preserves order, enforces the rules of the Council and determines the

order of business to come before the Council. The Mayor, with approval of the Council, appoints members of all city boards, commissions and committees and Council subcommittees. The Mayor has no veto authority, but may vote and participate in debate as a member of the Council.

2. Council President. Each year the Council elects a Council President, who performs the Mayor's functions in the Mayor's absence.
3. Meetings. Most of the Charter and City Code requirements for meetings have been included in the City Council Rules of Procedure. The rules explain meeting mechanics, motions, quorum and decision requirements.

E. Charter Officers. In addition to the City Council, the Charter establishes three appointed Charter Officers: the City Manager, City Attorney and Municipal Court Judge. The three Charter Officers are appointed by, and serve at the pleasure of, the City Council.

1. The City Manager. The City Manager is "the full time chief administrative officer of the City." He or she:
 - Hires, fires and disciplines all city employees except the employees of the City Attorney. (The Charter expressly prohibits members of the Council from attempting to influence the hiring or firing of an employee; doing so can result in the forfeiture of the office.)
 - Administers all City functions (except those performed by the City Attorney and Municipal Judge)
 - Prepares and submits the City's budget.
 - After authorization from the Council, conducts all real property transactions.
 - Enforces City ordinances and regulations.
 - Acts as the City's purchasing agent.
 - Makes recommendations to the City Council concerning the affairs of the City.
2. The City Attorney. The City Attorney is the "full time chief legal officer of the City", appoints the members of his or her staff, and performs "whatever duties consistent with this Charter are required by the

Council."

3. The Municipal Judge. The Municipal Judge is the City's judicial officer and presides over the Municipal Court. The Lake Oswego Municipal Court is a full service court with jurisdiction over all misdemeanor crimes, traffic offenses and civil violations (including violations of the City Code) occurring within the City. It is also a "court of record," meaning that appeals from Municipal Court judgments go directly to the Oregon Court of Appeals, rather than to a state trial court.
- F. Ordinances. The Council enacts local law via adoption of ordinance. Ordinances can be either general or special. A "general ordinance" is an enactment of a law of prospective general applicability, such as a Community Development Code amendment. Once a general ordinance is enacted, it governs activities regulated thereby until it is amended or repealed by a subsequent ordinance. A "special ordinance" enacts regulations of particular applicability, such as the grant of a franchise.
1. Lake Oswego Code. Once a general ordinance has been enacted, it is codified into the Lake Oswego City Code, a document that includes all current City laws.
 2. Ordinance Enactment. The Lake Oswego Charter was amended in 1998 to allow enactment of an ordinance at a single meeting. However, if the Council makes any "substantive" changes in the proposed ordinance (as opposed to simply correcting typos, etc.) enactment of the ordinance must be continued to a second meeting. Except in the case of an emergency, an ordinance becomes effective 30 days after its enactment, unless the Council specifies a later effective date in the ordinance.
 3. Other Forms of Enactment. The Council can also take action or give direction by resolution, order, simple motion, or consensus. All may be enacted at a single meeting and may take effect immediately.
 - Resolution. A resolution is used when the Council desires to enact an ongoing administrative or procedural policy, or authorize an administrative act. Examples include adoption of the City Council Rules of Procedure or the Capital Improvement Plan or authorizing intergovernmental agreements. Unlike an ordinance, resolutions do not have the force of law except where so established by a city ordinance or state law. A resolution may also be used to express the Council's collective opinion, such as support for a particular bill or project, or recognition of an achievement.

- Order. Orders are used to express the Council's final decision in quasi-judicial matters. A "quasi-judicial" decision is one where the Council applies existing policy or law to an individual circumstance or application. The City Council's final decision on a land use appeal is adopted by order (unless the decision involves a zone change or a change to comprehensive plan, which must be done by ordinance.)
- Simple motion. Where less formality is required, a decision can be made by only a motion and vote at a public meeting.
- Consensus direction. The least formal method of giving council direction is an informal expression of consensus by the Council. Consensus is sometimes used for giving staff preliminary directions prior to a final decision.

G. Limitations on City Authority. In spite of the broad powers authorized in the Charter, the City may not violate applicable provisions of the state or federal constitutions or statutes. A significant portion of the Council orientation session will focus on state laws affecting local governments, including regulations relating to land use, ethics, public meetings, public records, etc.

THE CITY OF LAKE OSWEGO
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LAND USE HEARINGS

I. City Council Land Use Hearings are either Legislative or Quasi-judicial.

- A. Legislative Hearings are those where the decision applies to everyone, or to a large group or class of persons or property. The Council acts more like a legislature than a court.

Examples: Adopting new Code provisions
Amending the Code
Amending the text of the Comprehensive Plan
Zoning large areas or districts

- B. Quasi-judicial Hearings are those where the Council makes a decision as to how the already-adopted ordinances and rules (criteria) apply to individual persons or properties, after considering the evidence in the record. The Council acts like a court, rather than a legislature.

Examples: Development permits (design review)
Single property zone change
Application for a variance
Conditional Use Permits

II. Legislative Hearings

- A. Discretionary. Legislative decisions are *usually* policy decisions that are within the discretion of the City Council. However the decision must also comply with any relevant state land use law. If the legislative decision involves a code amendment, the decision must also comply with the Lake Oswego Comprehensive Plan.
- B. Non-discretionary. Occasionally certain legislative enactments are required by state law, Metro's Functional Plan, etc.
- C. Previous Decisions. Legislative land use matters usually come before the Council on a recommendation by the Planning Commission. It is not an "appeal" of the Planning Commission's decision.

- D. Evidence. Unlike quasi-judicial hearings, the Council is not limited to the evidence in the record before the lower hearing body. New evidence may be received.
- E. Bias and Ex Parte Contacts. Unlike quasi-judicial hearings, bias or ex parte contacts are not a problem.
- F. Conflicts of Interest. Conflicts of interest must be avoided in all Council activities, including legislative land use hearings. Any decision that could be to the private pecuniary (financial) benefit of a Counselor, a relative, or a business with which the Councilor is associated, may create a potential or actual conflict of interest. Rules for handling conflicts will be discussed in the separate presentation on ethics.
- G. Legislative Hearing Procedure.
- Mayor explains the nature of the decision
 - Staff report
 - Mayor calls for public testimony (5 minutes for individuals, 10 minutes for neighborhood associations or other public interest organizations)
 - Council deliberates
 - Motion is made for a preliminary decision, directing staff to prepare findings and an ordinance implementing the decision.
 - (At a later Council meeting) Council adopts findings and an ordinance.
- H. Decision Options. The Council may:
- Approve the legislative proposal.
 - Reject the proposal
 - Modify the proposal
 - Send the proposal back to the Planning Commission with instructions to consider additional matters
 - Continue the proposal for additional hearings or deliberation (No 120-day requirement for legislative matters)
 - Do nothing (unless a legally-mandated enactment)
- I. Appeal. The Council's decision can be appealed to the Land Use Board of Appeals (LUBA). Notice of the intent to appeal must be filed within 21 days of the date the decision becomes final.

III. Quasi-judicial Hearings

- A. Non-discretionary. The applicant is entitled to the permit, variance, conditional use, etc., if he or she can demonstrate that the application meets the “approval criteria” (the applicable code provisions, state law, or Metro requirements).
- B. Previous Decision. Quasi-judicial matters usually come before the Council on an appeal from a decision by the Development Review Commission or Planning Commission (annexations are the exception – they go straight to the Council.)
- C. Evidence. Generally, Council review is limited to the evidence in the record of the proceedings before the lower hearing body. No new evidence may be presented at the Council hearing. Persons who testify must limit their comments to argument based upon the evidence in the record. Only those who testified orally or in writing before the lower hearing body may testify before the Council. No issue may be raised on appeal to the Council that was not specifically raised before the hearing body.
- D. New Evidence. Under extremely limited circumstances, the Council can allow new evidence to be presented. The request to do so must be made by someone who testified before the lower hearing body. The requesting party must demonstrate:
 - 1. That the lower hearing body committed a procedural error that prejudiced their substantial rights and that the only way, other than a remand, to correct the error is to allow the new evidence; or
 - 2. That new, material evidence exists that could not have been presented to the lower hearing body. The requesting party must demonstrate that the new evidence concerns an unanticipated event that occurred after the close of the hearing.
- D. Basis for Decision. A decision on a quasi-judicial matter must be based upon “substantial evidence” in the record that shows the approval criteria have or have not been met. “Substantial evidence” is not necessarily related to the “volume” of evidence. Substantial evidence can be any evidence that a reasonable person would conclude is sufficient to support the decision.
- E. Ex parte Contacts. Parties to a quasi-judicial land use hearing are entitled to “an impartial tribunal free from ex parte contacts.” An ex

parte contact is any communication with a Council member outside of the hearing process concerning a matter that the Council will decide. Communications with staff are not ex parte contacts.

1. Examples of Ex parte Contacts:
 - a. Communications (oral or written) about the subject matter of the application;
 - b. Attending meetings or events where the subject of the application is discussed;
 - c. Reviewing articles, editorials or news broadcasts concerning the subject of the application.
2. When can Ex Parte Contacts occur?
 - a. Before the hearing.
 - b. During the proceedings. (Communications during breaks or between continued meetings are ex parte contacts.)
 - c. After the decision. (Be aware that matters on appeal may be remanded to the Council for further proceedings. Please wait until the appeal period has expired – 21 days- or after any filed appeal has been resolved before allowing non-staff communications.)
3. What if an Ex Parte Contact inadvertently occurs?
 - a. LUBA will not reverse a decision because of an ex parte contact if:
 - (1) At the beginning of the Council hearing, the Councilor discloses the contact, and states the substance of the contact with enough detail to allow participants to rebut the information the Councilor has received.
 - (2) Participants actually have the opportunity at the public hearing to rebut the information.
 - b. Please contact me if an ex parte contact accidentally occurs. I can advise as to the process for disclosure, etc.

- F. Bias. A quasi-judicial decision can be reversed if it can be shown that a Councilor was biased. Bias means more than having a certain inclination or philosophy. It means that the Councilor has such strong feelings that he or she is incapable of basing the decision only upon the approval criteria as applied to the evidence in the record.
- G. Conflicts of Interest. Conflicts of interest must be avoided in all Council activities, including quasi-judicial land use hearings. Any decision that could be to the private pecuniary (financial) benefit of a Counselor, a relative, or a business with which the Councilor is associated, may create a potential or actual conflict of interest. Rules for handling conflicts will be discussed in the separate presentation on ethics.
- H. Quasi-judicial hearing procedure.
- The Mayor states the general nature of the appeal and summarizes the procedures
 - The Mayor calls for Councilors to declare any conflicts of interest, bias or ex parte contacts
 - The Mayor asks if there are any challenges to a Councilor's right to consider the appeal
 - Staff Report
 - Appellant's testimony
 - Testimony in the following order: (1) in support of the appeal; (2) in opposition to the appeal; (3) neutral testimony; (4) rebuttal by the appellant.
 - Time limits for testimony: 15 minutes for the appellant; 15 minutes for the applicant (if not the appellant); 10 minutes for representatives of neighborhood association, or other public interest organizations; 5 minutes for other persons; 5 minutes for rebuttal.
 - Deliberation by the Council
 - Preliminary oral decision by the Council
 - (At a later meeting) Council adopts written findings and a final order
- I. Decision Options. The Council may:
- Affirm the hearings body's decision
 - Reverse the decision
 - Modify the decision

- Remand the decision back to the hearing body for additional evidence or consideration (Usually not an option unless the applicant waives the 120-day rule, below.)
- J. 120-Day Rule. Unless waived by the applicant, most quasi-judicial decisions must be finalized within 120 days of the date the application is complete.
- K. Appeal. Quasi-judicial land use decisions can be appealed to LUBA. The Notice of the intent to appeal must be filed within 21 days of the date the decision becomes final.

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ETHICS

A. Conflicts of Interest

1. Actual Conflict of Interest. An actual conflict of interest occurs whenever a the act, decision or recommendation of the City Council member would result in a private financial benefit or detriment to the Council member, a *relative* of the Council member (defined below) or a *business with which the Council member or the relative is associated* (also defined below).

2. Potential Conflict of Interest. A potential conflict of interest occurs whenever the act, decision or recommendation could result in financial benefit or detriment to the persons or businesses described above.

3. Dealing with Conflicts.

- When met with any conflict of interest, a Council member must publicly announce the *nature* of the conflict (simply stating that a conflict exists is not enough). This announcement must occur on each occasion (each meeting) at which the conflict arises – even if the same conflict was declared on a previous occasion. Following the announcement:
 - In the case of a potential conflict of interest, the Council member may participate in the official action on that matter.
 - In the case of an actual conflict of interest, the Council member must not participate in the official action in any way.
 - Exception: If the Council member's vote is necessary in order for the City Council to meet the minimum number of votes required in order to take action (quorum requirement), a member with an actual conflict of interest may vote on the matter, but may not participate in any other way. This does not apply where Councilor absences create quorum problems. It only applies where the quorum problem would exist even if all members of the Council are present (for example, if multiple Council members would otherwise need to refrain from participation because of actual conflicts of interest.)

- There is no requirement to announce a conflict, or to refrain from participating, in the following cases:
 - If the financial benefit or detriment affects the Council member, relative or business to the same degree as all residents of the City or all members of another identifiable group or “class” of individuals of which the Councilor, relative or business is a member. (Note: At present, the minimum size requirements of this “class exception” are uncertain. In the case of smaller groups, it is recommended that individualized analyses occur in each instance.)
 - If the conflict arises from a position on the board of directors of, or membership in, a nonprofit corporation that is tax exempt under Section 501(c) of the Internal Revenue Code.

4. “Relative.” For purposes of ethics laws, “relative” means:

- The public official’s spouse or domestic partner;
- Any children of the public official or of the official’s spouse;
- Siblings, spouses of siblings or parents of the public official or of the official’s spouse;
- Any person for whom the public official has a legal support obligation; and
- Any individual for whom the public official provides benefits from the official’s public employment or from whom the official receives benefits from that individual’s employment.

5. “Business.” A “business”¹ with which the public official or the relative is associated” means:

- Any private business or closely held corporation of which the public official or the relative is a director, officer, owner, employee or agent or any private business or closely held corporation in which the public official or the relative owns or has owned stock, another form of equity interest, stock options or debt instruments worth \$1,000 or more at any point in the preceding calendar year;
- Any publicly held corporation in which the public official or the relative owns or has owned \$100,000 or more in stock or another form of equity interest, stock options or debt instruments at any point in the preceding calendar year;
- Any publicly held corporation of which the public official or the relative is a director or officer; or

¹ “Business” means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for economic gain but excluding any income-producing not-for-profit corporation that is tax exempt under section 501(c)(3) of the Internal Revenue Code with which a public official or a relative of the public official is associated only as a member or board director or in a non-remunerative capacity. ORS 244.020(2)

- Any business required to be listed as source of income for the public official on the statement of economic interest (discussed below).

B. General Prohibition.

It is illegal for any public official to use his or her official position or office to obtain financial gain or to avoid financial detriment for:

- The public official;
- A relative (defined above)
- A member of the official's household; or
- Any business with which the public official or a relative or a member of the household is associated (defined above);

-- if the financial gain or avoidance of financial detriment would not otherwise be available except for the public official's holding of the official position.

This applies to all public officials, whether or not they have reporting requirements.

"Public official" includes any person who is serving the City as an elected or appointed official, or as an employee or agent, regardless of whether or the person receives compensation (unpaid volunteers are included).

This general prohibition does not apply to:

- Official compensation as determined by the City;
- Receipt of certain honoraria within limits (discussed below);
- Reimbursement of expenses (from the City);
- An unsolicited award for professional achievement;
- Gifts from relatives or members of the official's household;
- Gifts received from a source that could *not* reasonably be known to have a legislative or administrative interest in the City;
- Gifts from a source that *could* reasonably be known to have a legislative or administrative interest in the City *within certain limits* (discussed below);
- Contributions to certain legal defense trust funds established for the public official;
- Campaign contributions;
- An unsolicited token or award of appreciation in the form of a plaque, trophy, desk item wall memento or similar item, with a resale value reasonably expected to be less than \$25.
- Waiver or discount of registration expenses or materials provided to a public official at a continuing education event that the public official may attend to satisfy a professional licensing requirement.

C. Gifts.

A “gift” is something of economic value given to a public official, or a relative or a member of the official’s household. To be a “gift” there must be no valuable consideration (meaning received in exchange) of equivalent value.

An item is not a “gift” under the ethics laws if it is extended to others who are not public officials (or relatives or members of the household) on the same terms and conditions.

As mentioned above, a Lake Oswego public official may receive gifts in any amount from relatives or members of the official’s household or from persons who *could not* reasonably be known to have a legislative or administrative interest in the City.

If a person *could* reasonably be known to have a legislative or administrative interest in the City, the public official (or a relative or member of the household) is prohibited from receiving from that person gifts having an aggregate value in excess of \$50 during any calendar year.

A “legislative or administrative interest” means that the person has an economic interest, distinct from the general public, in one or more resolutions, regulations, proposal or other matters subject to the action or vote of the public official.

D. Food and Beverages.

Gifts of food and beverages from persons who could reasonably be known to have a legislative or administrative interest are generally included within the \$50 annual limitation, above. However, certain exceptions apply.

There is no annual limitation on the value of:

- Food or beverage consumed by a public official (or household member or staff accompanying the official) at a reception, meal or meeting held by an organization before whom the official appears to speak or to answer questions as part of a scheduled program.
- Food or beverage consumed by a public official, acting in an official capacity, in association with the review, approval, execution of documents, or closing of a financial transaction, including any business agreement, between the City and another entity.
- Food or beverage consumed by a public official 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. (On the other hand, if it’s a sit-down meal, the value will be included in the \$50 annual limitation from any one source).
- Food or beverage consumed by the public official (and a relative, household member or staff member accompanying the official) where:

- The official is representing the City; and
- The official is on an officially sanctioned trade promotion or fact-finding mission --- or is in officially designated negotiations, or economic development activities, where receipt of the expenses is approved in advance.

E. Travel, Lodging (and Food and Beverage).

Gifts of travel and lodging (and food and beverage) from persons who could reasonably be known to have a legislative or administrative interest in the City are generally included within the \$50 annual limitation. However, there is no annual limitation on the following:

- Expenses paid by:
 - the federal government, or a state or local government;
 - a recognized Native American tribe;
 - a membership organization to which the City pays membership dues; or
 - a not-for-profit, tax-exempt 501(c)(3) corporation that receives less than five percent of its funding from for-profit organizations or entities,
 - for attendance at a convention, fact-finding mission or trip, or other meeting, if the public official is *scheduled* to:
 - deliver a speech;
 - make a presentation;
 - participate on a panel; or
 - represent the City
- Food, travel or lodging provided to the public official (and a relative, household member or staff member accompanying the official) when the official is representing the City on:
 - An officially sanctioned trade-promotion or fact-finding mission; or
 - In officially-designated negotiations, or economic development activities, where receipt of the expenses is approved in advance (by the Council or a supervisor).
- Expenses paid by one public official to another public official for travel inside the state to or from an event that:
 - bears a relationship to the receiving public official's office; and
 - at which the receiving official participates in an official capacity.

F. Entertainment.

As with the other types of gifts addressed above, gifts of entertainment from persons who could reasonably be known to have a legislative or administrative interest in the City are generally included within the \$50 aggregate annual limitation.

However, there is no value limitation on entertainment provided to the public official (or a relative or member of the household) where:

- The entertainment is incidental to the main purpose of another event; or
- The public official is acting in an official capacity while representing the City for a ceremonial purpose.

G. Honoraria.

Per Oregon ethics law, an “honorarium” is a payment, or something of economic value, given to a public official in exchange for services, upon which custom or propriety prevents the setting of a price. Such services include, but are not limited to, speeches or other services rendered in connection with an event.

A public official may solicit or receive an honorarium or a certificate, plaque, commemorative token or other item with a value of \$50 or less. The official may also solicit or receive an honorarium for services performed in relation to the private profession, occupation, avocation or expertise of the public official.

Except as provided above, a public official may not solicit or receive an honorarium for the public official (or for a member of the official’s household) in connection with his or her official duties.

H. Reporting Requirements

For Lake Oswego, reporting requirements apply to the members of the City Council, Planning Commission, Development Review Commission and the Historic Resources Advisory Board.² They also apply to the City Manager and Municipal Judge. Each of these officials must provide an Annual Verified Statement of Economic Interest to the Ethics Commission by April 15 of each year. They also must submit Quarterly Public Official Disclosure Forms on January 15, April 15, July 15 and October 15.

Candidates for City Council must also file a verified statement of economic interest within 30 days after the filing deadline for the general election.

² Because the Historic Resources Advisory Board has authority to “direct the use of land” by making rulings on historic districts and property designations that affect development opportunities, it is considered a “development commission” for purposes of the ethics reporting requirements. ORS 244.010(4); ORS 244.050(1)(j).

1. Annual Verified Statement of Economic Interest.

The annual statement must include the following information:

- The name, address and a brief description of each business³ for which the public official, or a member of the official's household, was an officer or director during the preceding calendar year.
- All names under which the public official and members of the official's household do business, together with the address and a brief description of the business.
- Names, addresses and brief descriptions of the five most significant sources of income received during the preceding calendar year by the public official and members of the official's household.
- A list of all real property within the City of Lake Oswego, in which the public official or a member of the official's household held an interest⁴ during the preceding calendar year, *not including the public official's principal residence.*
- The name of each member of the public official's household (any person who "resides with the public official") who is 18 years of age or older.
- The name of each relative of the public official who is 18 years of age or older. "Relative" means:
 - The public official's spouse or domestic partner;
 - Any children of the public official or of the official's spouse;
 - Siblings, spouses of siblings or parents of the public official or of the official's spouse;
 - Any person for whom the public official has a legal support obligation; and
 - Any individual for whom the public official provides benefits from the official's public employment or from whom the official receives benefits from that individual's employment.
- With relation to any individual or business that has been doing business, does business or could reasonably be expected to do

³ "Business" is defined in footnote 1, above.

⁴ This includes any personal, beneficial ownership interest, any options to purchase or sell real property, including a land sales contract, and any other rights of any kind in real property located within the City. ORS 244.060(4)(a)

business with the City, or that *has a legislative or administrative interest in the City*,⁵ the public official must list:

- The name of each such person or entity to whom the public official owes or has owed money in excess of \$1,000, plus the interest rate and date of the loan. This does not apply to retail contracts or debts owed to any federal or state regulated institution;
 - The name, address and brief description of the nature of each such business in which the public official, or a member of the official's household, has had a personal beneficial interest or investment in excess of \$1,000, including stocks or other securities. This does not include individual items involved in a mutual fund or a blind trust, or a time or demand deposit in a financial institution, shares in a credit union, or the cash surrender value of life insurance.
 - Each such person or entity for whom the public official has performed services for a fee in excess of \$1,000, except for any disclosure prohibited by law or a professional code of ethics.
- The name of each lobbyist associated with any business with which the public official or a member of the official's household is also associated,⁶ unless the only relationship is that both the public official and the lobbyist held stock in the same publicly traded corporation.

2. Quarterly Public Official Disclosure Forms .

The quarterly disclosures must include the following:

- Any expenses with an aggregate value exceeding \$50 received by the public official when participating in a certain conventions, mission trips or other meetings under circumstances that would be excluded from the definitions of "gifts" (see above).⁷ The name of

⁵ "Legislative or administrative interest" is defined in Section C, above.

⁶ "Business with which the person is associated" is defined in Section A.5., above

⁷ This applies to expenses paid by any unit of the federal government, a state or local government, a Native American tribe that is recognized by federal law or formally acknowledged by a state, a membership organization to which a public body pays membership dues or a not-for-profit corporation that is tax exempt under section 501(c)(3) of the Internal Revenue Code and that receives less than five percent of its funding from for-profit organizations or entities, for attendance at a convention, fact-finding mission or trip, or other meeting if the public official is scheduled to deliver a speech, make a presentation, participate on a panel or represent state government, a local government or a special governmental body. ORS 244.020(5)(b)(F). This also applies to food, travel or lodging expenses when the public official is representing a state, local or special government body

the organization paying the expenses and the amount of the expenditures must also be disclosed. *[Certain organizations that provide such expenses are required to provide the public official with written notice of the amount of the expense within 10 days following the event.]*

- Any honoraria⁸ exceeding \$15 received by the public official or a member of the official's household, the payer of each honorarium and the date and time of the related event. The statutory disclosure requirement applies to those honoraria that are *allowed* by state law.⁹ *[Persons or entities providing an honorarium to a public official are required to provide the public official with written notice of the value of the honorarium within 10 days following the event.]*
- Each source of income exceeding an aggregate amount of \$1,000 received by the public official or a member of the official's household, if the source of that income is derived from an individual or business that has been, does, or could reasonably be expected to do business with the City, or that has a legislative or administrative interest in the City.

on: 1. an officially sanctioned trade-promotion or fact-finding mission; or 2. in officially designated negotiations, or economic development activities, where receipt of the expenses is approved in advance. ORS 244.050(5)(H)

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

⁹ This includes honoraria, certificates, plaques, commemorative tokens or other items with a value of \$50 or less; it also includes the solicitation or receipt of an honorarium for services performed in relation to the private profession, occupation, avocation or expertise of the public official. ORS 244.042.

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2009 CITY COUNCIL ORIENTATION

PUBLIC MEETINGS LAW

A. Basic Rule. One of the City Council's chief statutory obligations is to conduct all meetings pursuant to the State of Oregon Public Meetings Law (ORS Chapter 192): Any time a quorum of the City Council convenes to make a decision or to deliberate toward a decision on any item of public business, or to receive information preliminary to such deliberations or decisions, the meeting must comply with all requirements of the law, meaning:

1. Notice of the meeting and the proposed agenda must be given to the press and interested parties at least 24 hours in advance.
2. Minutes must be taken (and, pursuant to the Charter, the meeting must be recorded). Minutes must include:
 - A list of the Council members present.
 - The nature and disposition of all items of business
 - The results of all votes by name.
 - The substance of discussion.
 - A reference to any public document discussed.
3. Meetings must be held within the City boundaries if feasible and at a location accessible to the public.
4. Any person must be allowed to attend. There is no general right under the public meetings law for the public to participate by testifying, although the Council has a spot on its regular meeting agenda for citizen comment and often provides opportunities for public comment on agenda items. Certain matters, such as adoption of the budget or land use decisions, require public hearings.

B. Executive Sessions. ORS 192.660 allows the City Council to discuss a limited number of specified topics in a non-public session. The most frequent Council executive session topics are litigation/advice from legal counsel, real property transactions, employee evaluations, and labor negotiation strategy sessions. The basic executive session rules are as follows:

1. An executive session may be called during a special or regular meeting by announcing the specific statutory provision authorizing the session.
2. The press may attend any executive session except for labor

negotiation strategy sessions, but may not report on the discussion in executive session if instructed not to do so.

3. No final decision may be made in executive session. In order to finalize a decision, the Council must reconvene in an open session. The Council can give informal direction in executive sessions, preliminary to a final decision.

C. Social Gatherings. Purely social gatherings including City Council members are not subject to the public meeting requirements. However, if deliberations on a matter of City business should happen to occur among a quorum of Council members during a social event, that could constitute a “convening” of the Council in violation of the public meetings law.

D. Electronic Communications. A convening of a quorum of Council members via telephone conference or “real time” electronic messaging, (or possibly by *simultaneous* use of e-mail messages by a quorum of Councilors) for the purpose of deliberating or deciding official City business, would be subject to public meeting law requirements. It is possible to conduct such electronic communications in compliance with the law. However that would require advance public notice of the opportunity to observe or hear the Council deliberations via a speaker phone or computer monitor in an accessible location, plus the taking of minutes, etc.

E. Exceptions. Per state law, a “meeting” does not include any on-site inspection of any project or program. It also does not include attendance of members of a governing body at any national, regional or state association to which the public body or its members belong.

THE CITY OF LAKE OSWEGO
2009 CITY COUNCIL ORIENTATION

PUBLIC RECORDS LAW

A. What is a “Public Record?” Per state law, a “public record” is any writing containing information relating to the conduct of the public’s business, regardless of the physical form or characteristics of that writing. The law defines “writing” as including every means of recording information, including electronic recordings. “Writings” created by City Council members in the course of conducting public business are public records.

B. Public Right to Inspect Records. Any person has a legal right to inspect public records, unless those records are specifically exempted from disclosure by law. The City may charge the requesting party a fee reasonably calculated to reimburse the actual cost of producing the records.

C. Records Exempt from Disclosure. There are dozens of categories of public records that are exempt from the disclosure requirement. With a few exceptions, these records are “conditionally exempt,” meaning that the City is not required to disclose them “unless the public interest requires disclosure in the particular instance.” Examples include:

- Records less than 75 years old that contain information about the physical or mental health or psychiatric care of a living individual, if disclosure would constitute an unreasonable invasion of privacy;
- Records of the City pertaining to litigation. This exemption does not apply once the litigation has been concluded;
- Investigatory information compiled for criminal law purposes;
- Information pertaining to the appraisal of real estate prior to its acquisition;
- A personnel discipline action, or materials or documents supporting that action;
- Information that would allow unauthorized access to buildings or property, or that would identify areas of structural or operational vulnerability that would permit unlawful disruption to services, or that would allow unauthorized access to public funds or to communications systems;
- Records that would reveal security measures or potential weaknesses;
- Social Security numbers;
- Communications within a public body of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless it is shown that, in the particular instance, the public

interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure;

- Information of a personal nature, if public disclosure would constitute an unreasonable invasion of privacy;
- Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obligated itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure;
- Information that is made confidential or privileged under Oregon law (for example: confidential attorney-client communications);

D. Enforcement. Any person who believes the City has improperly denied the right to inspect a record may petition the District Attorney to order disclosure. Either the City or the requesting party may challenge the District Attorney's by petitioning the Circuit Court for an injunction or for declaratory relief. If a person requesting records prevails in court, he or she will be awarded a judgment against the City for costs and attorney fees.