



*Marion County*  
OREGON

# LEGAL CONSIDERATIONS FOR ADVISORY BOARDS

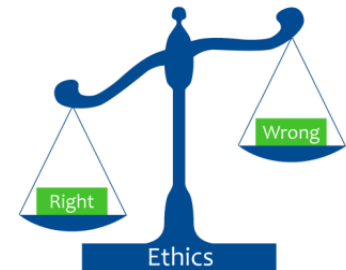
Office of Legal Counsel

# Agenda

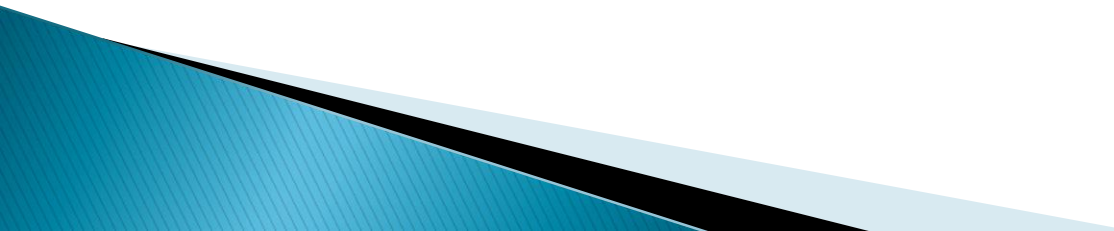
- 1) Code of Ethics
- 2) Conflict of Interests
- 3) Public Meetings Law
- 4) Public Records
- 5) Hypotheticals



# Ethics



# Who is a public official?

- ▶ Any person elected or appointed to an office or position with a state, county or city government; elected or appointed to an office or position with a special district; an employee of a state, county, or city agency or special district; or an unpaid volunteer for a state, county, city agency, or special district.
  - ▶ **ORS 244.020(14)**
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# Code of Ethics for Public Officials

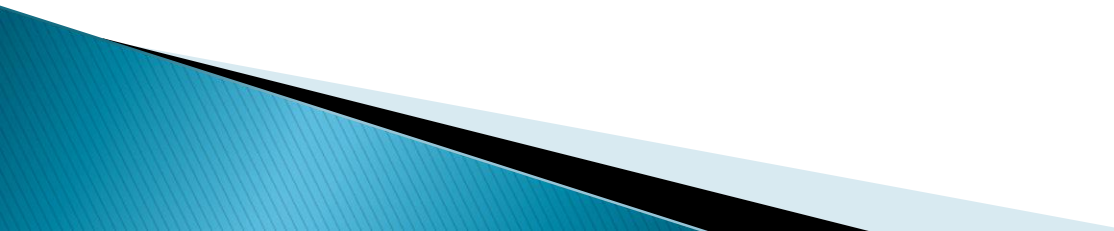
- ▶ The Legislative Assembly declares that service as a public official is a public trust and that, as one safeguard for that trust, the people require all public officials to comply with the applicable provisions of this chapter.
- ▶ The Legislative Assembly recognizes and values the work of all public officials, whether elected or appointed.
- ▶ The Legislative Assembly recognizes that many public officials are volunteers and serve without compensation.
- ▶ The Legislative Assembly recognizes that it is the policy of the state to have serving on many state and local boards and commissions state and local officials who may have potentially conflicting public responsibilities by virtue of their positions as public officials and also as members of the boards and commissions, and declares it to be the policy of the state that the holding of such offices does not constitute the holding of incompatible offices unless expressly stated in the enabling legislation.
- ▶ The Legislative Assembly recognizes that public officials should put loyalty to the highest ethical standards above loyalty to government, persons, political party or private enterprise.
- ▶ The Legislative Assembly recognizes that public officials should not make private promises that are binding upon the duties of a public official.

**ORS 244.010**



# Conflict of Interest

Statutory conflicts of interest have three components:

1. An action, decision, or recommendation made in the official capacity *which causes*
  2. A private pecuniary benefit or detriment *for*
  3. The public official, the public official's relatives, or a business associated with the public official or the public official's relative.
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# Potential Conflict Of Interest

- ▶ **Public official** participates in an action that could affect the financial interest of the official, the official's relative or a business with which the official or relative is associated.
- ▶ **Example:** A member of a fire district board of directors owns a sheetrock contracting business. The fire district is planning to remodel a fire station in the district. To reduce cost, the district will manage the project and solicit bids from contractors for specified work, such as the sheetrock that needs to be installed. The member on the board of directors, who is the contractor, while participating in a meeting of the board of directors, would be met with a **potential conflict of interest when the members discuss or act on the invitation for bids on the sheetrock installation.**

# Actual conflict of Interest

## Actual Conflict of Interest

Any action, decision, or recommendation by a public official in their official capacity, the effect of which **WOULD** be to the private pecuniary gain or detriment of the public official, a relative or household member of the public official, or a business with which any of the above are associated.

- ▶ **Example:** A city councilor is employed by a building supply business from which the city public works director purchases building materials. City payments on invoices must be submitted to the city council and approved by a vote. The city councilor, who is employed by the building supply business, while participating in a meeting, would be met with an **actual conflict of interest when the request to pay the invoice from the business that employs the councilor is presented to the city council for official action.** . .

ORS 244.020





# EXCEPTION

- ▶ If the conflict of interest arises from a membership or interest held in a particular business, industry, occupation or other class and that membership is a prerequisite for holding the public official position. [ORS 244.020(12)(a)] For example, if a member of a state board is required by law to be employed in a specific occupation, such as an accountant or a doctor, then the official actions taken by the board member that affect all accountants or doctors to the same degree would be exempt from the conflict of interest disclosure requirements and participation restrictions.

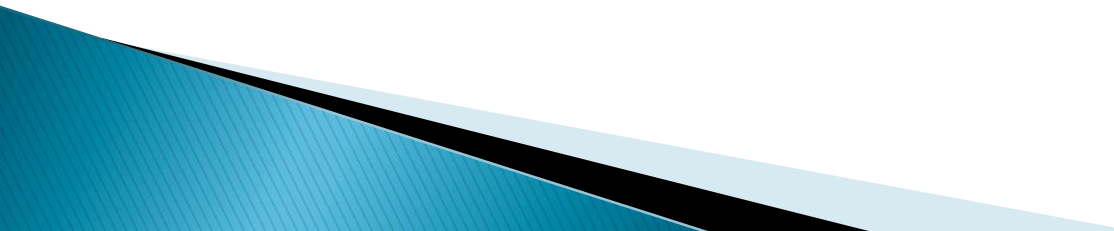
# What to do when Faced with an Actual or Potential Conflict of Interest?

- ▶ A member must declare any conflicts of interest at a public meeting (ORS 244). A conflict exists if a recommendation by SWMAC may potentially or actually affect the finances of the SWMAC member or a direct family member, defined as spouse, child or stepchild, parents, or siblings. If an actual conflict exists, the member must declare this fact at the beginning of the meeting where the issue is discussed and the member must refrain from discussing or voting on the matter. For a potential conflict of interest, the member must declare this fact at the beginning of the meeting where the issue is discussed, however the member may still discuss and vote on the issue.

# Main Areas in which Conflicts of Interests Arise

- ▶ Use of Position or Office
  - ▶ Nepotism
  - ▶ Gifts
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# Use of Position or Office

- ▶ **ORS 244.040 prohibits every public official from using or attempting to use the position held as a public official to obtain a financial benefit, if the opportunity for the financial benefit would not otherwise be available but for the position held by the public official. The financial benefit prohibited can be either an opportunity for gain or to avoid an expense.**
  - ▶ **Example:**
  - ▶ **A volunteer firefighter borrows the fire district's power washer to prepare the exterior of the volunteer's personal residence for painting.**
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# Nepotism

- ▶ Public officials may not participate in any
- ▶ personnel action taken by a public agency that would impact the employment of a relative or member of the public official's household.)
- ▶ **Prohibited actions include:**
- ▶ Appointing, employing, promoting, discharging, firing or
- ▶ demoting, interviewing or discussing, or
- ▶ debating any of the above.
- ▶ **ORS 244.177**

# Gifts

- ▶ What is a “Gift”?
- ▶ Something of economic value given to the public official, their relative, or member of their household without cost, at a discount, or as a forgiven debt, and the same offer is not made available to the general public.
- ▶ There are restrictions(\$50 in calendar year from a single source) on the value of gifts accepted by a public official, if the source of the gift has a legislative or administrative interest in decisions or votes the public official makes when acting in the capacity of a public official. ORS 244.025.
- ▶ **Restrictions do not apply to:**
  - ▶ Honoraria less than \$50
  - ▶ Reimbursement of Expenses
  - ▶ Award for Professional Achievement

# Public Meetings



# What is a Public Body?

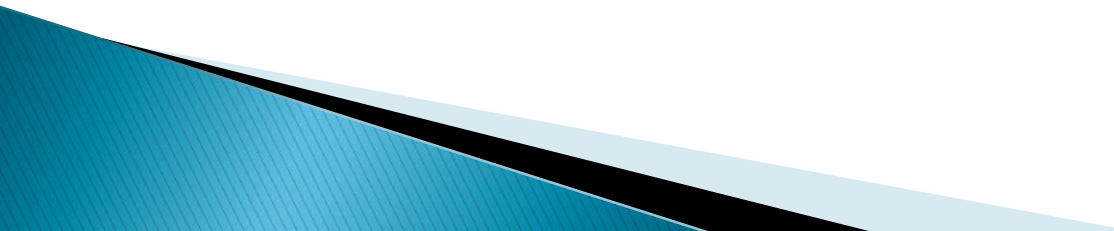
- ▶ **ORS 192.610(4)** defines a public body as:

The state, any regional council, county, city or district, or any municipal or public corporation, or any board, department, commission, council, bureau, committee or subcommittee or advisory group or any other agency thereof.



# What is a Governing Body?

**ORS 192.610(3)** defines a governing body as the members of any public body which consists of two or more members, with the authority to make decisions for or recommendations to a public body on policy or administration.



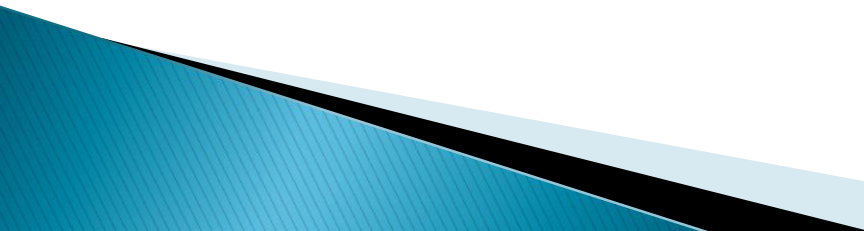
# Why does that Matter?

Because pursuant to ORS 192.630, as members of a county advisory board, you are subject to the requirements of the Open Public Meetings Act.

All meetings of the governing body of a public body shall be **open to the public** and all persons shall be permitted to attend any meeting AND

A quorum of a governing body may not meet in private for the purpose of deciding on or deliberating toward a decision on any matter

# Requirements for a Public Meeting Where

- ▶ Meetings of the governing body of a public body shall be held:
  - ▶ (A) Within the geographic boundaries over which the public body has jurisdiction;
  - ▶ (B) At the administrative headquarters of the public body;
  - ▶ (C) At the nearest practical location.
  - ▶ **ORS 192.630**
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# Requirements for a Public Meeting

## How

The governing body of a public body shall provide for and give public notice, reasonably calculated to give actual notice to interested persons including news media which have requested notice, of the time and place for holding regular meetings. The notice shall also include a list of the principal subjects anticipated to be considered at the meeting, but this requirement shall not limit the ability of a governing body to consider additional subjects.

**ORS 192.640(1)**

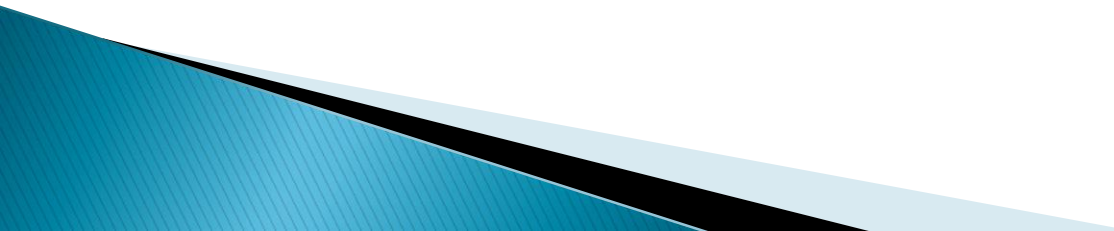
**SWMAC Bylaws require 3 day advance notice**



# Special Meetings

No special meeting shall be held without at least 24 hours' notice to the members of the governing body, the news media which have requested notice and the general public. In case of an actual emergency, a meeting may be held upon such notice as is appropriate to the circumstances, but the minutes for such a meeting shall describe the emergency justifying less than 24 hours' notice.

**ORS 192.640(3)**



# Minutes for Public Meetings

- ▶ The governing body of a public body shall provide for the sound, video or digital recording or the taking of written minutes of all its meetings. The written minutes or recording must give a true reflection of the matters discussed at the meeting and the views of the participants. All minutes or recordings shall be available to the public and include at least the following information:
  - ▶ All members of the governing body present;
  - ▶ All motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition;
  - ▶ The results of all votes and the vote of each member by name;
  - ▶ The substance of any discussion on any matter; and
  - ▶ a reference to any document discussed at the meeting.
- ▶ **ORS 192.650**

# Meeting Process

- ▶ Bylaws
- ▶ Control of Meetings: Presiding officer keeps order, imposes restrictions, keep meetings within time limits
- ▶ Presiding officer can request disruptive to leave meeting (AG model rule and opinion)

Can members of public record the meeting?



# Quorum Requirement

- ▶ Quorum is majority of appointed members
- ▶ If quorum is talking business, it is a public meeting.

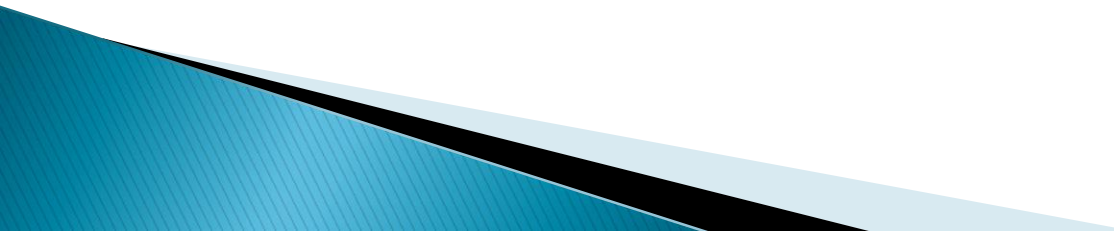
What if there is a subcommittee to your board that makes decisions or recommendations?



# Voting

- ▶ Must be public– no secret voting
- ▶ No vote by proxy
- ▶ Majority of appointed members must vote to approve an item

# Executive session

- ▶ Governing bodies can exclude the public (not usually the media) from discussion of certain subjects enumerated in **ORS 192.660**
  - ▶ No final action can be taken in executive session
  - ▶ Executive session subject to public notice requirements
  - ▶ Minutes shall be kept in same matter as public meetings
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# ▶ Public Records



# What is a Public Record?

- Broadly defined in **ORS 192.410** as:
  - Any writing containing information relating to the conduct of the public's business prepared, owned, used or retained by a public body.
- A public record includes EVERY paper document, photograph, electronic file, map, tape recording, email used in conducting the committee's business.

# Public Records

## ▶ **Public Body**

- Because a volunteer advisory committee is a public body, an advisory committee's records are subject to disclosure unless an exemption applies

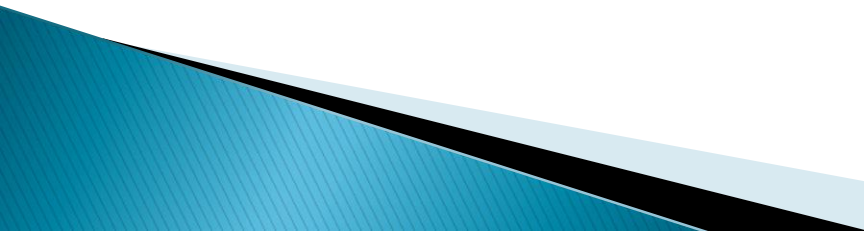
## ▶ **The public has a right to inspect nonexempt records of a public body.**

- First adopted by Oregon Legislature in 1973.
- Response to Watergate scandal; desire for open government;
- The statutes are “disclosure statutes;” not confidentiality statutes;
- Courts liberally construe the statutes in favor of disclosure.


# Are any Records Exempt from Production?

- ▶ Public records must be disclosed unless an exemption applies. **Courts narrowly apply exemptions.**
  - Some exemptions protect individual privacy.
    - Medical records;
    - Employee and volunteer address, phone numbers, dates of birth and social security numbers;
    - Mental health, alcohol and drug treatment, and HIV records receive extra protection under the law.
  - Some exemptions prevent interference with government operations.
    - Advisory opinions – want a frank and uninhibited debate;
    - On-going criminal investigations;
    - Information submitted in confidence;
    - Litigation records;
    - Government Safety and security plans;

# Public Records Requests

- The public has the right to inspect the original records or to receive a certified copy of the original.
  - Public body can require that request be made in writing.
  - The public body must provide access or copies within a reasonable amount of time.
  - If exempt and non-exempt information is in the same document, may provide a document that has been redacted (portions blacked out) so long as you inform requester of editing.
  - A public body may establish fees that are reasonably calculated to reimburse for actual cost in making records available.
  - A public body is not required to create documents to comply with a public records request.
  - May require pre-payment.
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# Retention of Records

- Secretary of State requires that certain public records be retained.
  - Some board records must be kept permanently; some ten years.
  - Volunteer notes are public records but if not directly connected to board action need not be retained. OAR 166-150-0005(8).
  - Volunteer records relating to board “business” may be subject to a public records request. This includes emails.
  - Unlawful destruction of a public record is a misdemeanor.
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Almost done, but first...

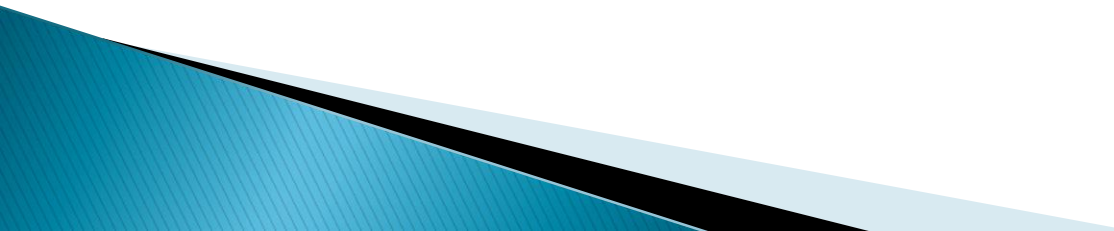
# Hypotheticals!



# Hypothetical No. 1

- ▶ You are a member of an advisory committee preparing for a committee meeting the following week. A citizen phones you at home and asks you to identify every document you have reviewed for the meeting. Are you required to tell him?
  - What if he asks you for a list of everything you have reviewed for that meeting?
  - What if the citizen wants you to bring copies of all the records you have reviewed on the certain subject and give them to him at next week's meeting. What do you say?

# Hypothetical No. 2

- ▶ You are a member of an advisory committee and you take notes during a meeting. Are those notes a public record?
  - ▶ What if you write down your grocery list during a meeting?
  - ▶ What if you write a note to a friend?
- 

# Hypothetical No. 3

- ▶ Three members of an 11-member advisory committee have an ongoing email discussion about a controversial issue. They use their home or business computers to send the emails. John Smith learns about these emails and requests copies of all committee member emails relating to the controversial subject.
  - Without considering any exemptions in the public records law, are the committee members' emails considered public records?
  - What if the emails also contain discussions of personal (non-volunteer related) subjects?
  - What about emails between the chair and the staff representative?



# Hypothetical No. 4

- ▶ You staff an advisory committee. During a meeting the advisory committee wants to go into executive session to discuss the performance of a contractor. Is this permissible?

# QUESTIONS?

- ▶ Please contact our office if you have questions or need more information!

