



**AGENDA**  
**February 15, 2019**  
**Immediately following SPAC meeting**

**MEDFORD SITE PLAN AND ARCHITECTURAL COMMISSION  
STUDY SESSION**

**MEDFORD ROOM, 3<sup>RD</sup> FLOOR, CITY HALL, 411 W. 8<sup>TH</sup> STREET, MEDFORD**

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**Subjects**

1. Ex-parte Communications & Conflicts of Interest

Meeting locations are generally accessible to persons with disabilities. To request interpreters for hearing impaired or other accommodations for persons with disabilities, please contact the ADA Coordinator at (541) 774-2074 or [ada@cityofmedford.org](mailto:ada@cityofmedford.org) at least three business days prior to the meeting to ensure availability. For TTY, dial 711 or (800) 735-1232.



# **CITY ATTORNEY'S OFFICE**

## **Ethics, Public Meetings, & Public Records Training**

**City of Medford's Boards and Commissions**

PRESENTED BY THE CITY OF MEDFORD | [WWW.CITYOFMEDFORD.ORG](http://WWW.CITYOFMEDFORD.ORG)

# PART ONE: ETHICS

Legal requirements imposed by Oregon legislature and described in ORS Chapter 244.

This is a matter of technical compliance, not a lecture on morality.



# Who is a “public official”?

“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(15)

All members of Boards and Commissions are public officials.

All City employees are public officials.



# Who is a “relative”?

- Your “spouse, parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law”
- Your spouse’s “parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law”
- Anyone where you have a legal support obligation



# Who is a “relative”?

- Any individual where you provide benefits from your employment
- Any individual who provides you benefits from their employment
- Nobody else (not first cousins, aunts/uncles, nieces/nephews, grandparents, or grandchildren)



# Conflicts of interest

About financial entanglements, not other types of bias.

Actual conflict: the decision “would be to the private pecuniary benefit or detriment of [1] the person or [2] the person’s relative or [3] any business with which the person or a relative of the person is associated”

Potential conflict: the decision “could be” that sort of benefit



# Actual conflict of interest

If you discover an actual conflict of interest, you must recuse yourself from both voting and from debating as a public official.

But you can give testimony as a member of the public, so long as you are representing your own interests and not those of a client.

Recusing yourself from a vote will not eliminate a quorum for that meeting. So attend the meeting and just recuse yourself for that one agenda item.



# Potential conflict of interest

If you discover a potential conflict of interest, you must announce at the meeting the existence and nature of the conflict.

Recusing yourself is not legally required, but is best practice, since the line between actual conflict of interest and potential conflict of interest can be blurry.

If you do not recuse yourself, you should allow the applicant or members of the audience to question you on the conflict. Not mentioned in statute but important for a clear record.



# Gifts

Neither you nor a member of your household should “solicit or receive, directly or indirectly,” a gift of more than \$50 from anyone “that could reasonably be known to have a legislative or administrative interest.”

That means an economic interest, which is different from that of the general public, in any matter subject to the public official’s decision or vote.

*Warning: this rule does not require an improper motive by either party, and preexisting friendship or preexisting history of gift exchange are not defenses!*



# Honoraria

“Honoraria” are gifts in exchange for providing a speech or similar service (for example, being the keynote speaker at a conference).

Food, beverage, travel, and expenses are permitted.

In addition, plaques, commemorative tokens, and gifts of value up to \$50 are permitted.

Beyond that, you should decline the gift or consult with the City Attorney’s Office.



# Nepotism

General rule: you may not “not appoint, employ or promote a relative or member of the household to...a position with the public body that the public official serves or over which the public official exercises jurisdiction or control.”

This includes participating in interviews, discussion, or debate about the appointment.

Exception where that position (not just your position) is a volunteer position.



# Representing private interests

Cannot represent a client for a fee before your own Board or Commission.

Can represent your own interests before the Board or Commission.

Can represent your employer or business partner before the Board or Commission.



# Interest in public contracts

A person who ceases to hold a position as a public official may not have a direct financial interest in a public contract authorized by that body for two years after the contract was authorized.

Exception: if you did not participate in the authorization of the contract. So if you think you might be interested in later doing something connected with a public contract, recuse yourself from the vote over that contract!



# PART TWO: PUBLIC MEETINGS

Legal requirements imposed by Oregon legislature and described in ORS Chapter 192.

Purpose is transparency in public proceedings.

Once again, this is a matter of technical compliance, not motive.



# General rule

“All meetings of the governing body of a public body shall be open to the public and all persons shall be permitted to attend.”

The City of Medford is a “public body.”

Its Boards and Commissions are “governing bodies.”

A “meeting” is anything where a quorum is needed to either make a decision or deliberate toward a decision.



# Quorum requirement

Without a quorum, no votes can be taken.

Without a quorum, discussion on an issue is not prohibited.

However, be wary of “serial” discussions under the Oregon Court of Appeals 2015 *Handy* decision. If three people make a quorum, and A talks to B about an issue, and then B talks to C about that issue, there has been a quorum even though A, B, and C never all met simultaneously.

Best practice is to not discuss upcoming business with other Board/Commission members prior to the meeting.



# Notice requirement

If it is a “public meeting,” prior notice must be given to the public. This is typically handled by Staff.

However, Staff cannot provide the legally-required notice for a public meeting that spontaneously or inadvertently occurs.

The purpose of the notice is to allow interested parties to attend (but not necessarily to participate).



# Voting requirement

All official actions must be decided by public vote. Can be voice vote (“all in favor say aye”) for certain matters and roll call (each person asked “yes” or “no” by Staff) for more complex matters.

No proxy voting (for members who aren’t present).

No remote voting (Skype, telephone, etc) without prior agreement with Staff; this is highly discouraged in all but emergencies.



# Social gathering exception

A gathering of Board or Commission members is not subject to public meetings law unless (1) a quorum is present, and (2) there is discussion relevant to the Board or Commission's work.

If a meal is provided prior to your meeting, do not discuss what is on the evening's agenda during that meal.

At events like the Boards and Commissions' luncheon, keep discussion on what the group has done in the past, not what the group will tackle in the future.



# Ex parte contacts

The public process only works if the decision is made on evidence in the record, and every decision-maker is operating from the same set of facts.

Interested parties may reach out to you directly, outside of a public meeting, just trying to explain their concerns directly. Such communication undermines the public process even when there is no nefarious intent.

If this happens, politely disengage, forward written ex parte communications to Staff, summarize oral ex parte communications to Staff, and disclose the ex parte at the public meeting.



# The ex parte rule

**ORS 227.180(3):** No decision or action of a planning commission or city governing body shall be invalid due to ex parte contact or bias resulting from ex parte contact with a member of the decision-making body, if the member of the decision-making body receiving the contact:

- (a) Places on the record the substance of any written or oral ex parte communications concerning the decision or action; and
- (b) Has a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication made at the first hearing following the communication where action will be considered or taken on the subject to which the communication related.



# PART THREE: PUBLIC RECORDS

Legal requirements imposed by Oregon legislature and described in ORS Chapter 192.

Purpose is transparency in government.

Once again, this is a matter of technical compliance, not motive.



# Public records requirements

Generally, the City has two legal responsibilities with public records.

First, public records must be kept for a certain amount of time.

Second, public records must be made available to members of the public upon request, unless an exception applies.



# Emails

If the City has provided you with an email address, use that for Board/Commission business instead of a personal email account.

Emails to and from City email accounts (whether the account is for a Staff member or a Board/Commission member) are preserved by the City.

Personal email accounts used for City business pose public records problems unless a City Staff member is cc'ed on each email.



# Text messages

Text messages can be public records, just like emails.

Text messages are very difficult for the City to preserve and to locate.

Text messages are often deleted when an individual buys a new phone.

Best practice is to not use text messaging for public purposes.

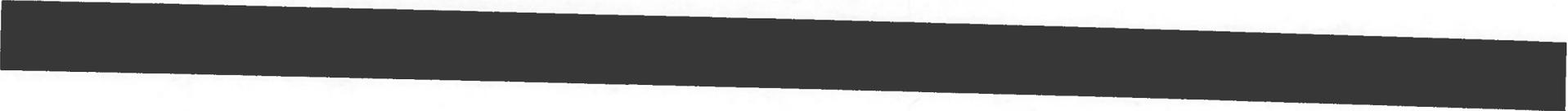


# Consequences

Knowingly destroying public records is a criminal offense pursuant to ORS 162.305 (tampering with public records).

The crime requires that the act be “knowing,” but does not require malicious or dishonest intent.





# Questions?

If you think of a question later, please contact  
the City Attorney's Office.

541-774-2020

Or

City Hall, Room 360





**THANK YOU**

**FROM THE**

**CITY ATTORNEY'S  
OFFICE**