



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

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.

- 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?

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

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

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 employees 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.

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 244.020(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:

“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

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.

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

ORS 244.020(7)(b)(I) 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:

(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.

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

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 M. Fiskum

David Fiskum, Chairperson

Sean Brady

Sean T. Brady, Senior Assistant Attorney General

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:

(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

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

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.