

COTTAGE GROVE CITY COUNCIL
WORK SESSION MINUTES
FEBRUARY 13, 2017

CALL TO ORDER

Mayor Jeff Gowing called the meeting to order at 6:00 pm in the Council Chambers at City Hall.

ROLL CALL

COUNCIL PRESENT: Mayor Jeff Gowing, City Councilors Bob Ehler, Jake Boone, Mike Fleck, Garland Burbach, Amy Slay (6:18) and Kenneth Michael Roberts (6:27)

YOUTH REPRESENTATIVE: MJ Raade (6:45)

STAFF PRESENT: City Manager Richard Meyers, City Recorder Trudy Borrevik, Finance Director Roberta Likens

CITY ATTORNEY: Carrie Connelly and Lauren Sommers

City Manager, Richard Meyers, said he had provided Council with log in information and passwords to log onto the City's insurance carrier, CityCounty Insurance (CIS), website and how to register trainings provided by CIS. He showed Council the website and how to log onto the site. He showed a video to Council from the website "Elected Officials Training."

City Attorney, Carrie Connelly, introduced one of her law partners, Lauren Sommers, and said Lauren specialized in ethics and employment law.

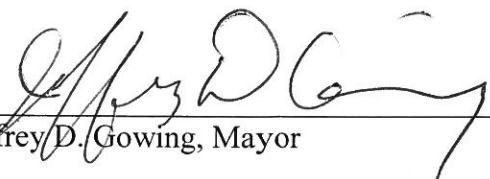
Lauren provided a PowerPoint presentation on Government Ethics which is attached hereto and marked Exhibit "A."

Discussion was held on Quasi-Judicial actions and ex parte contacts and conflicts of interest.

There being no further business, Mayor Gowing adjourned the meeting at 7:00 pm.



Trudy Borrevik, City Recorder



Jeffrey D. Gowing, Mayor

GOVERNMENT ETHICS IN THREE SIMPLE RULES (AND A FEW OTHER THINGS YOU NEED TO KNOW)

City of Cottage Grove

February 13, 2017

Lauren Sommers

The Local Government Law Group

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RED FLAGS

- Ethics questions are very fact-specific.
- Hopefully this presentation will give you enough information so that red flags will go up when you are presented with a situation that could create ethics issues.



Who is a Public Official?

A "public official" is any person serving the City as:

- An Elected Official;
- An Appointed Official;
- An Employee; or
- A Volunteer



RULE 1

DON'T USE YOUR POSITION FOR FINANCIAL GAIN



**THE "BUT-FOR" TEST
ORS 244.040(1)**

A **Public Official (PO)** cannot use his or her **position**

- To get \$ or to avoid losing \$
- For the PO or for the PO's **relative** or a **member of the PO's household** or a **business with which the PO or member is associated**
- If that opportunity would not be available **BUT FOR** his or her official position

DOES NOT INCLUDE

- Compensation or Reimbursement
- Unsolicited awards or legal expense donations
- GIFTS and honoraria (within limits)



Sid E. Manager has been hearing from his employees for months about how bad the City computers are. Finally, there is some money in the budget and Sid decides to order ten new computers for various City employees. Due to the size of the order, Dell offers the City a bulk discount of 25% off the retail price for all computers. Sid's home computer is almost 5 years old (ancient in computer years) and when he tries to stream movies, the buffering drives him crazy. Sid decides to add another computer to the City's order for his personal use. After placing the order, Sid immediately writes the City a check for the full cost of the computer and 1/11 of the shipping and handling charges. Sid's personal computer does not cost the City a dime. Does Sid's order violate the Ethics Laws?



1. No, Sid paid for the full cost of the computer.
2. Yes, Sid used his official position for personal gain by purchasing a computer for his personal use - after all, he would not have gotten the discount if he were not the City Manager.
3. No, even at a 25% discount, new computers are a rip-off so there was no personal gain.



**“RELATIVE” ORS
244.020(16)**

- Spouse
- Children of the PO or of the PO’s Spouse
- Brother or stepbrother of the PO or PO’s Spouse
- Sister or stepsister of the PO or PO’s Spouse
- Parents or stepparents of the PO or PO’s Spouse
- Son-in-law or daughter-in-law of the PO or PO’s Spouse
- Anyone for whom the PO has a legal support obligation or provides or receives employment benefits



RULE 2

“GIFTS” ARE LIMITED to
\$50 per year
per giver



WHAT IS A "GIFT"?
ORS 244.020(7)

- Something of economic value
- Given to public official, the PO's relative or member of the PO's household
- Without receiving value back and
- **NOT** given to the general public on the same terms



THE GIFT RULE:

- You (your relative or a member of your household)
- Cannot ask for or receive
- Gifts over \$50 from any single source in one year
- IF your source has an interest in your official actions: i.e., a decision, recommendation or vote



A GIFT IS **NOT LIMITED IF IT IS:**

- Campaign Contribution
- Present from relatives or household members
- Unsolicited award/token of appreciation with resale value <\$25



A GIFT IS NOT LIMITED IF IT IS:

- Part of a customary private business practice and not related to your public office
- Incidental food, beverage, and entertainment
- Food, beverage, and entertainment when acting in official capacity, representing the City



Cindy Planner and Dev L. Oper have been friends since 2nd grade. Cindy and Dev used to meet every day in the sandbox to build sand castles. It was a perfect friendship because Dev would actually build the sand castles and Cindy would tell Dev where to put them - making sure to mitigate transportation impacts and preserve plenty of open space. Their friendship has continued over the years, in large part because, despite their busy schedules (Cindy is a planner for the City of Metropolis and Dev owns and operates a company that constructs residential subdivisions), they make time to have lunch together every Wednesday. Cindy always orders a club sandwich and iced tea for \$10 and Dev always has a big salad and a diet soda, which costs \$8. Every week they alternate picking up the tab. Do these friendly lunches violate the Ethics Laws?



1. No, Cindy is not really getting a gift here since she pays every other week.
2. No, Cindy's lunch costs more than Dev's.
3. Yes, over the course of a year Dev will buy more than \$50 worth of lunches for Cindy.
4. No, because how can it be unethical to trade lunches with a friend?



RULE 3

**DECLARE
CONFLICTS
OF
INTEREST**



**“ACTUAL CONFLICT”
(WILL HAPPEN)**

- An action, decision, or recommendation
- By a public official
- Resulting \$ benefit to public official or
- Resulting in \$ detriment to public official
- Or relative
- Or any business associated with the public official or relative

**“POTENTIAL
CONFLICT”
(COULD HAPPEN)**

See definition of “actual” conflict, but the financial benefit *may or could* happen in the future.

“BUSINESS WITH WHICH PERSON IS ASSOCIATED”

- Any private business in which you or a relative are an owner, director, officer, or employee or in which you or a relative have \$1,000+ worth of interest
- Any publicly held corporation in which you or a relative have \$100,000 of interest or you or a relative are an officer/director
- A government entity is not a business

“BUSINESS WITH WHICH PERSON IS ASSOCIATED”

- OR if you file a Statement of Economic Interest, if more than 10% of your total annual household income comes from the business

Conflicts of Interest - Unelected Personnel

- **Notify** your supervisor of the conflict in writing
- **Request** instruction
- Supervisor may:
 - Ask someone else to deal with the issue
 - Direct you to deal with the issue

CONFLICTS OF INTEREST - ELECTEDS (BOTH ACTUAL AND POTENTIAL)

When in Doubt: Shout it Out!

- State the nature of your conflict
- Do it before voting or discussing the matter
- Do it on the record
- Do it each meeting the issue is discussed

ACTUAL CONFLICT ONLY - ELECTEDS

- **When in Doubt, Shout It Out...and then Shut It Up.**
- Same rules as Potential Conflict, but **NO** talking AND **NO** voting...
- **UNLESS** the body cannot act without you (but still no talking)

IT IS NOT A CONFLICT IF THE FINANCIAL BENEFIT HAPPENS BECAUSE OF:

- Membership in a class (any large, distinguishable group of citizens that the Commission determines is a class)
- Membership in a non-profit (501(c) status)

Kitty S. Avior is a City councilor for the City of Metropolis. She also serves on the board of directors of the nonprofit cat sanctuary, Catopia. Catopia's mission is two-fold: the organization spays and neuters feral cats, as well as offering a warm and safe place for homeless cats to shelter during the winter months. Despite Catopia's best efforts, the City's feral cat population has skyrocketed. Citizens are complaining and something must be done. The City issued an RFP for spaying and neutering services. Catopia and one other organization responded to the City's RFP. Tonight, the City Council will award the contract. As she arrives at City Hall, the City Administrator says, "Kitty, thank goodness you are here, Bob is sick and Tom is out of town, so we need all the rest of you to make a quorum." Then, just before she enters the Council Chambers, another councilor asks Kitty if she is planning to declare a conflict of interest and recuse herself from the discussion and vote on the spaying and neutering contract. What should Kitty do?

1. Declare a conflict, but discuss and vote on the contract award.
2. Declare a conflict and refrain from discussing or voting on the contract award.
3. Declare a conflict, refrain from discussing the contract, but vote on the contract award.
4. Not declare a conflict and discuss and vote on the contract award.

CONFLICTS OF INTEREST AND NEPOTISM RULES: ORS 244.175 - 244.179

- **HIRING FAMILY? THINK CONFLICT!**
 - A PO may not appoint, employ, promote, discharge, fire, or demote a relative or member of household unless the PO follows the conflict of interest rules, and the PO may not discuss the employment action.
- **YOU'RE NOT THE BOSS OF ME.**
 - A PO may not directly supervise a relative or member of the PO's household (BUT the City may adopt policies allowing for direct supervision).

**OUTSIDE EMPLOYMENT
CONFLICTS - ORS
244.047**

- A public official may not leave his or her government employer and directly benefit from a public contract authorized by the public official for two years from the date the contract was authorized.



**OTHER ETHICS
OBLIGATIONS**

- Remember, you may also have to meet professional ethics standards
 - Lawyers
 - Planners
 - Engineers
 - Police Officers
 - Journalists



BIAS, ETC.

- Quasi-Judicial Actions (usually land use)
- Council Acts as Judicial body rather than Legislative body
 - Parties are entitled to impartial decision-making
 - No *Bias* - be able to be fair and impartial
 - No *Ex Parte Contacts* - report any information received outside the formal process
 - No *Conflict of Interest*



MEDIA

Both traditional media (newspapers, radio, television) and Social Media (i.e. Facebook, Twitter, Instagram, LinkedIn) can offer powerful tools for communication with constituents. However, if you choose to use the media to communicate with the public there are some issues you should be aware of:

- Who are you speaking for? (If speaking on behalf of the City, make sure the authority has been properly delegated to you)
- Free speech issues
- Public meetings issues
- Public records issues
- Confidential Information (executive sessions)
- Elections Issues
- Employment Issues
- Quasi-judicial decisions (bias and ex parte contacts)



PROCESS AND PROCEDURE

Meetings

The following contains non-legal advice on how you can have a productive meeting, serve the public, stay friends with your colleagues, maintain satisfying personal relationships, and still get home at a decent hour.



PROCESS AND PROCEDURE

Meetings

- City Manager/Council must set realistic agenda
- Circulate materials/minutes in advance
- Keep it formal
- Have simple rules
- Public participation does not always mean public conversation
- Consider work sessions
- Restate vote, note if staff must follow up

