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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 165
SECRETARY OF STATE
ELECTIONS DIVISION

FILED

02/07/2024 10:15 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amends manual interpreting ORS 260.432 - Restrictions on Political Advocacy by Public Employees

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 03/28/2024 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:
Bob Roberts
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 03/27/2024

TIME: 2:00 PM - 2:30 PM

OFFICER: Bob Roberts

REMOTE HEARING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 503-446-4951

CONFERENCE ID: 755767317

NEED FOR THE RULE(S)

This rule is needed to help public agencies understand how the Elections Division interprets ORS 260.432 and to understand the requirements of the modified "safe harbor" program. The changes made to the manual associated with this rule specify changes made to the Division's "safe harbor" program to streamline the review process. The changes made were also needed to clarify language throughout the manual and implement SB 168 (2023).

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

None.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

This rule promotes racial equity. This rule and the associated manual promote racial equity by protecting against implicit bias and ensuring that the same guidelines and procedures apply consistently to all public employees and public agencies submitting materials for review under the Division's "safe harbor" program.

FISCAL AND ECONOMIC IMPACT:

The proposed amendments may cause minimal fiscal or economic impact to local elections offices and the Secretary of State, Elections Division. The Elections Division's "safe harbor" program requires the Division to devote significant staff time during certain times of the year. Submitting documents for review under the "safe harbor" program is optional, but public agencies choosing to participate may incur costs if they choose to participate. The costs are dependent on each public agency as some choose to hire outside entities to assist them.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) This rule impacts all government agencies and all public employees. Public agencies are required to provide a notice to public employees in a conspicuous place, but the cost to those agencies is expected to be minimal because the Division has already created a resource they may print and use. There may also be a minimal fiscal impact for government agencies to answer questions regarding compliance with this rule, to adopt policies consistent with this rule if they choose to do so, or for other unanticipated reasons.

(2) Because this rule regulates the activity of public employees and government agencies, it is not expected to impact small businesses.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses were not involved as this rule does not directly affect small businesses.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The fiscal impact of the proposed amendments is expected to be minimal at most.

AMEND: 165-013-0030

RULE SUMMARY: The amendments to this rule and the associated manual interpret the provisions of ORS 260.432 and inform the public, public employees, public agencies and other stakeholders of permissible and impermissible activities. The Elections Division uses this rule and the associated manual as a resource when investigating potential violations of ORS 260.432.

Further, this rule and the associated manual set forth the process by which the Elections Division will review materials created by public agencies under the Division's "safe harbor" program. Several provisions of the "safe harbor" review program are being changed to ensure Division staff are able to perform statutorily required job duties in addition to reviewing materials for safe harbor. The Division also aims to achieve this goal by clarifying the regulations and requirements so that public agencies know how to comply with the law and the "safe harbor" program.

The amendments to this rule also implement legislative changes set forth in SB 168 (2023).

CHANGES TO RULE:

165-013-0030

Restrictions on Political Advocacy by Public Employees ¶

In addition to, and not in lieu of, any other elections processes contained in ORS chapters 246 through 260 and OAR chapter 165, the Secretary of State designates the Restrictions on Political Advocacy by Public Employees manual revised ~~073/20234~~. This rule and the associated manual provide guidance and information to the public,

public employees, public agencies, and other stakeholders of permissible and impermissible activities. This rule and the associated manual also set forth the procedures the Elections Division will use when reviewing materials created by public agencies.

Statutory/Other Authority: ORS 246.150

Statutes/Other Implemented: ORS 260.432, SB 168 (2023)

RULE ATTACHMENTS MAY NOT SHOW CHANGES. PLEASE CONTACT AGENCY REGARDING CHANGES.

Restrictions on Political Advocacy by Public Employees

Published by

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Adopted by

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Secretary of State

Elections Division Rev. [07/202303/2024](#)

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Icons

The following icons are used in this manual to emphasize information:


alert icon

indicates alert; warning; attention needed


info icon

indicates additional information


deadline icon

indicates a deadline


example icon

indicates an example


form icon

indicates a reference to a form


search icon

indicates information located elsewhere

Assistance

If you have any questions about the material covered in this manual or need further assistance, please contact:

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Using this Manual

This manual sets forth allowable and restricted political activities by public employees, consistent with ORS 260.432 *et seq.*, and advice from the Attorney General. Any conflict between this manual and ORS 260.432 must be resolved in favor of the statute. This manual is adopted by Oregon Administrative Rule (OAR) 165-013-0030 and violations of this rule are to be enforced as violations of ORS 260.432. Examples and lists are used for illustrative purposes only and are not meant to be exhaustive or exclusive. Also included is information about the Elections Division's prior review process and obtaining safe harbor approval for documents and other materials prior to publication or distribution.

~~When an activity in this manual is referred to as allowable, it means that it **does not** violate ORS 260.432. When the activity is referred to as restricted, it means that it **does** violate ORS 260.432 and a penalty may be assessed.~~

Essentially, public employees may not engage in certain political activity prohibited under ORS 260.432 while on the job during working hours or when acting in their official capacity. This manual details what it means to promote or oppose, and when a public employee is considered to be "on the job during working hours." An Oregon Attorney General opinion dated October 5, 1993 states:

"Public bodies may use public funds to inform voters of facts pertinent to a measure, if the information is not used to lead voters to support or oppose a particular position in the election. However, we also have pointed out that 'informational' material may be found to 'promote or oppose' a measure even if it does not do so in so many words if the information presented to the public clearly favors or opposes the measure and, taken as a whole, clearly is intended to generate votes for or against a measure."

Who Must Comply with ORS 260.432?

All non-elected public employees are prohibited from engaging in political activity proscribed by ORS 260.432. No person, including elected officials or a public employer, may direct a public employee to engage in certain political advocacy proscribed by the statute.

Federal employees, including persons principally employed by state or local executive agencies in connection with programs financed in whole or in part by federal loans or grants, are covered by the federal Hatch Act, which is administered by the U.S. Office of Special Counsel.

Candidates and Elected Officials

An elected official may engage in political activity during work time. Elected officials are not considered public employees for purposes of ORS 260.432. An individual appointed to fill a vacancy in an elective public office is considered an elected official for purposes of this statute.

Elected officials cannot request that public employees who are on the job during working hours or acting in an official capacity engage in political advocacy prohibited under ORS 260.432. A request made by an elected official is considered a command.

An elected official's quote, opinion piece, letter or speech advocating a political position may be published in a public agency's newsletter or other publication produced or distributed by public employees so long as public employees did not alter or edit the content in any substantive way. Equal access must be granted to any individual, [a person seeking appointment, nomination or election to public office candidate](#) or political committee.



See Material Produced by Public Agencies, page 12.

See [Voters' Pamphlet, page 13](#), for an exception to this standard.

Public employees may not prepare material that promotes or opposes certain matters set forth in ORS 260.432, including but not limited to the text for a speech, a press release, constituent mail that advocates a vote, candidate filing forms, voters' pamphlet filing forms, file contribution and expenditure transactions online, etc. during their work time.

An elected official, as part of a governing body, may vote to support or oppose a measure under consideration for referral. The elected official may publicly discuss the vote. Elected officials may not use public employee staff time to develop political advocacy proscribed by ORS 260.432, except for administrative functions.

Appointed Board Members and Commissioners

ORS 260.432 applies to all appointed board and commission members when they are acting in their official capacity. This includes, but is not limited to, attending a meeting of the board or commission, working on a duty assigned by the board or commission, working on official publications (including website materials) for the board or commission, or when appearing at an event in an official capacity.

Appointed board or commission members may use their titles to engage in political advocacy (including endorsing [people seeking appointment, nomination or election to public office, candidates](#), measures, etc.) as long as they are not [on the job during working hours or](#) acting in an official capacity when making the endorsement or authorizing use of their title.



A candidate approaches a planning commission board member and asks for their endorsement. The candidate asks if they can use the board member's title, and the board member agrees. This is allowable if the board member was on their personal time when they authorized the endorsement.



A candidate, attending a planning commission meeting, asks the board members for an endorsement and some board members agree. The board members are not allowed to do this because they are at a meeting and therefore acting in an official capacity.



See [Use of Public Employee Title on page 7](#) for more information.

Salaried and Hourly Employees

Hourly employees' work time includes any time they are "on the job during work hours" which includes any time for which the employee is compensated, minus breaks and lunch periods protected by labor laws. This includes, but is not limited to, regular work hours, overtime, travel or conferences. Activities associated with attending a conference, such as award dinners or other sponsored events, could qualify as being "on the job during working hours" and are subject to the provisions of ORS 260.432.

Salaried employees' work time is not as easily measured as hourly workers. When a salaried employee is acting in their official capacity ORS 260.432 prohibitions apply regardless of the time of day or location.

If a salaried employee applies for expense reimbursement for a function or event, the employee is deemed to be on the job during working hours for the applicable time period. A regular workday may not be definable for a position, or may not have a specific time period or schedule. Whether the employee is on the job during work hours is determined by the activities performed and whether the person is acting, or appears to be acting, in an official capacity.

It is a good practice for salaried employees to keep personal notes to record when they are on or off duty. During public appearances, the employee is encouraged to specifically announce to the audience that they are not acting in their official capacity. However, such an announcement would not negate a subsequent statement or action that indicates the public employee is acting in his or her official capacity (such as handing out official publications, or speaking on behalf of the public agency).

Certain activities that are always undertaken in an official capacity (regardless of time of day or location) and are therefore subject to the provisions of ORS 260.432 include:

- Drafting material for, or approving material, to be posted on an official website;
- Drafting or distributing an official publication from the public agency; and
- Appearing at an event as a representative of a public agency.


ex If a salaried police officer attends a meeting about a bond measure on their own time (i.e. while not "on duty") and advocates for the measure, the officer should announce to the audience that they are appearing in their capacity as a citizen, and are not representing the police department.

However, if the police officer hands out official publications from the public agency, the police officer would be acting in their official capacity (despite their previous announcement) and would be subject to the requirements provisions of ORS 260.432.

ex A school superintendent acts in their official capacity at all school board meetings and school functions.

ex ~~A salaried public employee may be acting in their official capacity even when using personal equipment and personal time, if the activity is related to work duties. A public employee who, on their own computer on the weekend, drafts a press release about how a measure might affect their agency, and signs the document with their title, is acting in their official capacity.~~

Public employees have the right to participate in political activity on their own time. A public employee is not on the job during working hours or acting in their official capacity solely because they may be subject to a call back to duty at any time.

 See Use of Public Employee Title on page 7 for more information.

Volunteer Personnel at a Public Agency

Volunteers, other than members of appointed boards or commissions, receiving no compensation are not considered public employees and therefore are not subject to the provisions of ORS 260.432(2) which prohibits public employees from engaging in political advocacy while on the job during working hours or in their official capacity. However, all persons are subject to the provisions of ORS 260.432(1) which prohibits anyone from directing a public employee to engage in prohibited political advocacy set forth in the statute. Workers' compensation coverage is not considered compensation.

Volunteers may be bound by the policies of the public agency. The policies may include limits on political advocacy during their volunteer activities as well as limits on access to agency resources for advocacy purposes. While a volunteer will not be liable under ORS 260.432, a public employee may violate if the public employee directs a volunteer to engage in political advocacy.

ex If a public employee directs a volunteer to generate and distribute a flyer advocating for or against a measure, this would constitute a violation of ORS 260.432 on the part of the public employee.

Government Contractors

Public employees may not direct government contractors to engage in prohibited political activity as part of the contracting service.

Contractors are bound by the policies of the agency and the terms of the contract. A public employee may be liable under the statute if they direct a contractor to engage in prohibited political advocacy.

ex A school district may hire a public relations firm to help communicate with the public about an upcoming measure. If the public relations firm drafts material to be approved and disseminated by public employees, the material must be impartial. If the material is violative of ORS 260.432, the public employee who approved it would be liable.

National Voter Registration Act (NVRA) and ORS 247.208(3)

While the restrictions imposed under ORS 260.432 apply generally to all public employees, ORS 247.208(3) imposes a separate and rigorous set of restrictions that apply only to persons who provide voter registration services required under the National Voter Registration Act (NVRA). NVRA is a federal law enacted by Congress in 1993.

Public employees or other persons providing NVRA-required voter registration services on behalf of a designated agency may not:

- seek to influence the political preference or party registration of a person registering to vote;
- attempt to or actually discourage a person from registering to vote;
- display any indications of political preference or party allegiance (including the choice of [people seeking appointment, nomination or election to candidates for](#) partisan political office);
- make any statement or take any action while assisting a person with voter registration that would lead the person to believe the voter registration has any bearing on the availability of services or benefits;
- seek to induce any person to register to vote or to vote in any particular manner.

These restrictions prohibit public employees from wearing political buttons while performing NVRA services, which is more restrictive than the general rule set forth on [page 8](#).

🔍 See OAR 165-005-0070 for detailed guidelines.

Overview of Common Activities

Essentially, public employees may not use their work time to engage in certain types of political advocacy. This applies only to activities restricted by ORS 260.432, such as supporting or opposing measures, ~~candidates~~ person seeking appointment, nomination, or election to public office, recalls, political committees or petitions. The following are examples of when provisions of ORS 260.432 begin and cease to apply:

- for initiative, referendum and recall petition efforts, as soon as a person is considering filing a prospective petition or actually is filed does file a petition with the appropriate elections filing officer (for a statewide initiative, this is the date the sponsorship prospective petition is filed) and ending on the date the petition is withdrawn or otherwise becomes void;
- for a ballot measure, as soon as the measure is referred to the ballot by a governing body (district, city, county, state) as soon as the measure or is otherwise is certified to the ballot and ending at 8:00 pm on the date of the election at which the measure is being voted on. A county, city or district measure is certified to the ballot when the elections official files the referral with the county election office;
- ~~for a candidate~~ when a person seeks appointment, nomination, or election to public office and ending when the person is no longer seeking public office, ~~as soon as the person becomes a candidate under the definition in ORS 260.005(1);~~ and
- for political committees, whenever the political committee is active regardless of whether the committee is registered on ORESTAR and ending on the date the political committee is discontinued.

~~The prohibition ceases to apply at 8:00 pm on the date of the election at which the candidate, measure, recall or referendum is being voted on. The prohibition ceases to apply to a petition (initiative, referendum or recall) on the date the petition is withdrawn or otherwise becomes void. The prohibition ceases to apply when the political committee is discontinued.~~



The prohibitions may begin to apply again immediately after an election.



~~If a candidate wins the election and thereafter makes expenditures or receives contributions, ORS 260.432 applies.~~

An elected official or public employer may not require or direct public employees to prepare or distribute advocacy materials, or otherwise engage in prohibited political advocacy while on the job during working hours or while acting in their official capacity. Oregon election law does not specify any amount of work time that may be used before a violation occurs. Accordingly, a public employee may be found in violation even if they used a minimal amount of work time.

Notice to Public Employees

Public employers are required to post a notice to employees about the requirements of ORS 260.432 in a conspicuous place.



Visit the Elections Division's website to obtain a flyer for posting.

Use of Public Employee Title

Public employees may use their work title in political advocacy so long as the title is the only indication that the public employee is acting in an official capacity. Use of a title may give the impression that a public employee is acting in an official capacity, so public employees should exercise caution. Public employees may not always have control over whether people or political groups add their title to a publication.



A public employee, after work on personal time, is asked whether they are willing to endorse a candidate with the purpose of including the endorsement on the candidate's website. The public employee agrees. Regardless of whether the candidate adds the title of the public employee on their own or whether the

public employee specifically agrees for their title to be included, this is not prohibited by ORS 260.432 because the endorsement occurred after hours and the title is the only indication that the public employee may be acting in an official capacity. However, ORS 260.432 prohibits a public employee from discussing or agreeing to endorse a candidate while on the job during work hours or in their official capacity.

Public Employers Discussing Possible Effects of a Measure with Public Employees

A public employer may tell employees about the possible effects of a measure so long as the information presented is impartial and balanced. Public employers may not encourage public employees to support or oppose the measure, implicitly or explicitly.



ORS 260.665 prohibits threatening loss of employment (or other loss) or offering a thing of value to induce someone to vote in a particular manner.

Distribution of Political Material within an Agency

Public employees may not distribute or post material that promotes or opposes certain political matters set forth in ORS 260.432 while on the job during work hours. However, public employees may, as part of their job duties, process and distribute incoming mail addressed to specific employees that contains such political advocacy.

Political material can be distributed within an agency if the person doing the distribution is not on the job, if other people would be granted such access, and the activity does not violate the applicable agency's policies.

Unions may distribute political materials to their members pursuant to their contract.



A teacher may place information about their candidacy for a local office in the boxes of the other teachers at the school so long as any other candidate who asked would be allowed to distribute materials into the boxes and the material was distributed during their personal time.



See [Email on page 14](#) regarding responding to or forwarding political emails.

Political Buttons and Clothing

Except as prohibited under the National Voter Registration Act (NVRA) and ORS 247.208(3), public employees may wear political buttons or clothing at work so long as it does not violate their employer's policy. However, a public employer may not request or require that public employees wear political clothing, buttons, or other accessories.

Uniforms

Generally, wearing a uniform while engaging in political advocacy is governed by the uniform policy of the public agency that issues the uniform. Wearing a uniform to a political event, or while giving a political presentation, is not prohibited by ORS 260.432, unless other elements of the presentation violate the statute. Public employees who wear uniforms and engage in advocacy should notify the audience that they are not acting in their official capacity.



If a salaried police officer attends a meeting about a bond measure in their official uniform, it is not necessarily a violation of ORS 260.432, unless they engage in some form of prohibited political advocacy while wearing the uniform. The officer should announce to the audience that they are there in their capacity as a citizen and are not representing the police department. However, if the police officer attends the meeting while in uniform and makes a statement showing support for the bond measure, this could constitute a violation of ORS 260.432.

Union Bulletin Boards

Public employee unions may have a designated bulletin board to post information. The location and contents of those bulletin boards are regulated by collective bargaining agreements and are not subject to the requirements of ORS 260.432. Unions may distribute political materials to their members pursuant to their contract.

Unions may email their members with political information so long as it does not require the employee to promote or oppose matters as prohibited under ORS 260.432 while on the job during working hours or while acting in their official capacity.



See [Emails on page 10](#) regarding responding to or forwarding political emails.

Campaign Signs

Public employees may generally have political stickers on their personal property or display political signs in their work area, as long as they do so on personal time and such action does not violate ORS 260.432 or any employer policy. Public employers are encouraged to have written policies about posting political material at work.

Oregon election law does not address the size, location or timing of political campaign signs. Depending on the context, the relevant local or state government agency may have ordinances or policies that address campaign sign matters.

Public employees may not display any indications of political preference or party allegiance or wear political buttons while performing NVRA services.



See [National Voter Registration Act \(NVRA\) on page 6](#) for signage rules specific to NVRA employees.

Public Property

If a governing body makes their property available for political events, they must grant equal access for all individuals, [people seeking appointment, nomination or election to public office, candidates](#) and committees to use that same public property. This includes charging the same fee or requiring the same permit.

Public agencies may have policies that regulate the use of public property and/or other public resources. An agency's policy may be more restrictive than the requirements of ORS 260.432.

An elected official is not required to grant equal access to their office or equipment, even if it is in a public building.



ORS 294.100 provides a limited remedy for possible inappropriate use of public resources. That statute is not within the jurisdiction of the Elections Division, and therefore we cannot give advice about compliance with that statute.

Public Records

Public agencies must grant equal access to public records. All persons should be charged according to the same fee schedule, if applicable.

Public employees may respond to public records requests with information that contains advocacy, but may not proactively distribute advocacy material in a manner prohibited by ORS 260.432.



See [Websites on page 11](#), for information about links to previously published materials.

Agency Interaction with Media

A spokesperson for an agency may respond to media inquiries about the possible effects of a measure or initiative so long as the information they provide is balanced and impartial. The public employee must not state or imply support or opposition.

A public employee may draft and distribute an impartial news release, but may not draft a news release promoting or opposing a resolution or political position on a measure.

Information that is entirely factual may nonetheless be considered advocacy if, for example, it omits the required cost information or indicates only what would happen if a measure passes and does not indicate what would happen if it does not pass.



See [Resolutions \(Vote Taken\) by an Elected Governing Body, page 14](#).

Guest Opinions or Letters to the Editor

If a public employee is asked in their official capacity to produce a guest opinion related to a ballot measure or [a person seeking appointment, nomination or election to public office](#)~~candidate~~, the content must be balanced and impartial. A public employee may write a letter to the editor that contains political advocacy so long as they do so on their own time and not in their official capacity.

Contact Lists

Contact lists are considered public property if they are generated or supplied by a public agency. If contact lists are available to the public, a public employee must grant equal access to anyone who requests the list. This includes any list that the public body administers [or maintains](#). The public body must charge the same fee, if any. This includes any list that the public body administers.

~~A candidate may not use any list administered by a public body that is not available to all other candidates.~~

Candidates may use contact lists that they created themselves (including constituent contacts collected as an elected official) without granting equal access to other candidates.

ex This issue commonly arises with the use of personnel lists, public utility lists, email lists, voter lists, etc. Public bodies must allow equal access to these lists.

Emails

Elected officials can send emails that contain political advocacy to their employees, so long as they do not request the employees promote or oppose matters prohibited under ORS 260.432 while on the job during working hours [or while acting in their official capacity](#). An elected official cannot require that public employees read or respond to any email that contains such political advocacy and cannot require them to engage in any sort of political advocacy. This includes requiring their attendance at a political event, wearing political attire or sharing political emails or content. Requests made by an elected official are considered a command.

- Public employees may open and read emails that contain political advocacy. They may not, while on the job during working hours, send or forward emails that promote or oppose matters prohibited under ORS 260.432, except as outlined below. A public employee may:
 - forward an email containing advocacy to their personal email;
 - unsubscribe or otherwise ask to be removed for an email list while they are on the job during working hours;
 - forward an email containing links to advocacy material only when that material is pertinent to the agency and the public employee does not provide commentary.

Agencies are advised to have a policy on use of government email that incorporates the requirements of ORS 260.432. Unions can email their members with political information so long as it does not require the employee to engage in political advocacy while on the job during working hours [or while acting in their official capacity](#).

Websites

Material which promotes or opposes matters as prohibited under ORS 260.432 may not be posted [by a public employee](#) on a government website or blog unless it is part of an official function of the agency.

ex An elections website may contain voters' pamphlet information and a public agency may post information that is a record of a public meeting, even if such material contains advocacy.

Candidates and other political groups may link to government websites, but government websites may not contain links to advocacy prohibited material. A public employee could be considered to be acting in their official capacity, even during their personal time or when using personal equipment, when posting prohibited materials to an official agency website or social media account. This activity could constitute a violation of ORS 260.432. Government websites may contain public records about measures or [people seeking appointment, nomination or election to public office](#)~~candidates~~. Those public records must be treated the same as other

public records, which do not contain advocacy. Public records which contain advocacy cannot be proactively distributed or placed in a prominent location on a website when a measure or other restricted issue is pending.

Government agencies are advised to have a policy in place for their website that incorporates the requirements of ORS 260.432.

- ex** A city manager may produce a memorandum to the city council about the need for a possible future bond measure referral. If the city council refers the bond measure, then that memorandum cannot be proactively distributed after the measure is certified. The city could respond to a public records request for the memorandum or maintain it with, for example, the minutes for the meeting in an archival section of the website.

Social Media

Public employees may not post material to an official government social media account that contains political advocacy prohibited by ORS 260.432. This includes “re-tweeting” or sharing a post or news article that contains political advocacy. Posts or shared materials must meet impartiality requirements, even when sharing outside links, articles or materials.

If a government agency interacts with individuals, [people seeking appointment, nomination or election to public office candidates](#) or political committees on social media the agency must ensure that they treat them equally and that any agency interaction remains impartial.

For instance, if an agency allows comments on social media posts, it must ensure that comments in support of and in opposition to the political issues are treated equally.

A public employee may be acting in their official capacity even during their own personal time or when using personal equipment, when posting prohibited materials to an official agency website or social media account. This activity could constitute a violation of ORS 260.432.

- ex** An official school district Facebook page posts a “get out the vote” message. Several people offer comments, both in support of and in opposition to, a school district bond measure that is on the ballot. ORS 260.432 prohibits the school district from deleting negative comments while maintaining positive comments. A school district may delete a comment opposing or promoting the measure if the comment violates school district comment policy.

Agencies are advised to have policies on use of government social media accounts that incorporate the requirements of ORS 260.432.

Images

The placement of an image can be as important as the image itself. An image that would not normally be persuasive on its own could urge support of or opposition to a measure, initiative, [person seeking appointment, nomination or election to public office candidate](#), or recall, depending on context.

Logos used as part of an agency’s normal activities are generally allowable under ORS 260.432, even if the image could be considered persuasive. Altered logos or images that are not used in the regular course of business may be violative of ORS 260.432.

- ex** A school bond measure is being considered in an upcoming election. The school district distributes a flyer with information about the measure. The logo used on the flyer is different than what is normally used for the school district and adds the phrase “For Our Future.” Since this image is not generally used by the district, it would fall under the requirements of ORS 260.432 and may be violative of ORS 260.432.

Verbal Communication

ORS 260.432 does not restrict the right of a public employee to express personal political views during their personal time. [Further, it doesn’t prohibit a public employee from expressing personal political views during work time provided that a reasonable person would not infer that the employee’s opinion represents that of the](#)

public agency. However, a public employee may not express personal political views in a context that would lead a reasonable person to infer that the employee's opinion represents that of the public employer or public agency. ~~it does restrict some verbal communication while on the job during working hours or while acting in an official capacity.~~

~~A public employee cannot engage in prohibited political advocacy while they are on the job during work hours or acting in their official capacity.~~

ex A City Manager gives a presentation to staff about a pending measure. During the presentation, they say "I hope we all agree that it is important that this measure passes". That verbal communication would constitute a violation.

ex A city employee is speaking to their co-worker about a pending measure and expresses their personal political opinion about the measure. This would not constitute a violation because the co-worker could not infer that the employee's views represent that of the public agency.

Public Presentations and Speeches

A public employee cannot give a speech or presentation advocating a political position prohibited under ORS 260.432 if they are on the job during working hours or acting in their official capacity. An elected official may give political presentations and speeches, so long as no public employee ~~work time is utilized~~contributes substantively to the material.

When making a presentation that contains political advocacy during non-work time, the public employee should announce that they are acting in their capacity as a private citizen. The employee should also document that they were not on the job during working hours or acting in their official capacity.

ex Employees may document that they are on personal time by keeping a log, payroll records that indicate when they were on the job, time off slips, etc.

Meetings

Public employees may attend meetings at which political issues are discussed, so long as they do not engage in prohibited political advocacy themselves while on the job during working hours or acting in their official capacity.

Public employees cannot be compelled to attend political presentations. If a public agency has a mandatory staff meeting and a political group is making a presentation, the agency must make it clear that attendance at the political presentation is optional. Public employees who do attend the political presentation must do so during personal time. Presentations promoting or opposing political matters set forth in ORS 260.432 should not occur in close proximity to events requiring public employee attendance.

Forums/Debates

A governing body may sponsor a ~~candidate~~-forum or debate if it is open to all ~~candidates~~-sides but it is not necessary that all ~~candidates~~-sides attend. A forum to allow political proponents and opponents to debate ~~ballot measures~~ may be held using public employee work time so long as equal access is granted.

Public employees may use work time to arrange the forum and may perform administrative support functions in conjunction with the forum or debate and may attend on work time.

! All public employee involvement in the forum or debate must be impartial. Public employees may not draft or select questions for the ~~candidate~~forum or debate.

Advertising

Public agencies which raise funds through selling or hosting advertisements must grant equal access to any political group or person. The public body must charge the same fee, if any, to any individual, ~~person seeking appointment, nomination or election to public office~~ candidate or political committee for the same level of advertising space or time.

Public employees, while on the job during working hours or acting in their official capacity, should not design an advertisement or verbally promote, sponsor or oppose a person seeking appointment, nomination or election to public office, candidate, political committee, measure, initiative or referendum at an event. A public employee may make edits to an advertisement that are administrative in nature, such as reviewing to ensure it will fit in the designated space but must not make any substantive changes to the advertisement. Public agencies are advised to have written policies on advertising which incorporate the requirements of ORS 260.432.

Video and Audio Productions

Video and audio productions created or distributed by public employees must be impartial. Public employees may not make recordings that advocate a political message prohibited by ORS 260.432.

Public employees may not edit a video in a manner that promotes or opposes matters prohibited by ORS 260.432.

Public employees may broadcast videos of meetings for public access channels and post the videos on government websites, even if the videos contain advocacy. Posting excerpts of a meeting in a manner which promotes or opposes prohibited matters is violative of ORS 260.432.



ORS 260.432 does not prohibit a public employee from videotaping or recording a city council meeting and post it on the city's official website. It may be a violation of ORS 260.432 if a public employee records a presentation supporting a ballot measure and distributes the video in a manner that promotes or opposes a measure.

Scheduling Political Appearances

Public employees may maintain the schedule of a public official. Public employees may not solicit political scheduling opportunities for a public official but may respond to scheduling requests. Prohibited activities include, but are not limited to, organizing campaign events, communicating about political matters with the press or constituents, or initiating any other political activity on behalf of the official.

Visits ~~by Candidate or Candidate Representative~~ to a Public Agency

A person seeking appointment, nomination or election to public office candidate may request to visit a public agency work site. The public agency must grant equal access to all candidates similarly situated people and should not initiate these types of candidate visits, except for candidate forums or debates. Public employees involved with arranging for the visit may perform necessary administrative duties.

No public employee may take any actions to promote or oppose the candidate a person seeking appointment, nomination or election to public office before or during the visit. This includes taking a political position when announcing the event, holding a campaign sign during the event or assisting ~~the a~~ candidate in distributing campaign materials.

Voters' Pamphlet

A public employee's duties may include producing an official voters' pamphlet. Public employees may not prepare measure arguments or candidate statements for inclusion in the voters' pamphlet while on the job during work hours or in their official capacity.



See page 16 for information about ballot titles and explanatory statements.

Postcards

Postcards produced or distributed by public employees must be impartial, balanced, and must not otherwise violate ORS 260.432. When a public employee is involved in the production of a series of small mailers, each piece must be individually impartial. Read together, the series of mailers must also be impartial. If a measure would affect taxes or fees, the material must state how taxes or fees would be affected.

"Get Out The Vote" Materials (GOTV)

Public employees may produce “don’t forget to vote” materials that generally promote voting so long as the material is impartial. Material can contain information about the date of the election, how to return ballots, etc. and can also include information about a measure, so long as the information is impartial.

Government Logos

A governing body must allow equal access to logos for political purposes, meaning that if any [a person seeking appointment, nomination or election to public office](#) is allowed to use the logo, all [candidates similarly situated people](#) must be allowed. An agency may not allow certain individuals to use their logos while prohibiting others from doing so. Public agencies are advised to have written policies about use of their logos.

Government Letterhead

Election law does not regulate the use of government letterheads. Agencies are advised to have policies governing letterhead use which incorporate the requirements of ORS 260.432.

State Seal

ORS 186.023 governs the use of the Oregon State Seal. Elected officials may use the state seal in an official capacity, but not [in their capacity](#) as a [person seeking appointment, nomination or election to candidate for public office](#).



For questions about the use of the Oregon State Seal, contact the Secretary of State, Executive Office at 503-986-1523.

Resolutions (vote taken) by Elected Governing Body

Elected boards of governing bodies may take a position on a ballot measure (or initiative, referendum or recall petition) provided there is no use of public employee work time to advocate that position. With regard to a governing body’s resolution that advocates a political position on a ballot measure, initiative, referendum or recall, a public employee:

May	May Not
Edit the public agency’s name and board member names to conform it to the requirements for the resolution	Draft, type, or edit substantive content contained in the resolution
Prepare neutral, factual information for the board to use in taking a position on the measure, including impartial information on how the measure could affect the public agency	Recommend how to vote on the resolution
Be available at the board meeting to offer impartial information upon request	Sign a resolution, unless the public employee’s signature is ministerial and included only to attest that the board took the vote
Respond to direct questions from the media about the resolution, if their response is impartial	Prepare a news release or other announcement of promoting or opposing the resolution
If the public agency lists all votes on resolutions in a regularly published publication, they may include the vote in an impartial manner	Prepare and include impartial information about the vote or position of the governing body in a newsletter or other publication.
Use work time to record the vote if that is part of the employee’s work duties	

Use work time for regular job duties, such as responding to public records requests, taking minutes, retyping the resolution to conform to the required format, etc.	
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Petitions and Measures

Public employees may produce and distribute advocacy material about referrals prior to the measure being certified to the ballot. Any public employee work time used to change, amend, edit, distribute, etc. a document found to be supporting or opposing a referral between the date it is certified to the ballot until the date of the pertinent election could be a violation of ORS 260.432.

The actions taken by a governing body and its public employees in the planning stages of a possible measure are not subject to ORS 260.432.

Public employees may respond to public records requests for documents that contain advocacy, even if the measure has been certified. They may not proactively distribute those materials after the measure is certified.

ex If a school district has a recurring bond levy, district employees may not proactively distribute any materials from the previous levies (even though those elections have passed) during the period between certification and the current election.

Ballot Titles

Public employees are not liable under ORS 260.432 for drafting ballot titles as part of their regular job duties. Public employees may use work time to draft ballot titles. A public employee may also defend a challenged ballot title. Because the impartiality requirements and ballot title challenge process in ORS chapter 250 are distinct from the requirements of ORS 260.432, this office will not review ballot titles for impartiality.

Explanatory Statements

Public employees are not liable under ORS 260.432 for drafting explanatory statements as part of their regular job duties. Public employees may use work time to draft explanatory statements. Because the impartiality requirements and explanatory statement process in ORS chapters 251 are distinct from the requirements of ORS 260.432, this office will not review explanatory statements for impartiality.

Legal Challenges

Public employee's involvement in legal court challenges as part of their regular job duties is not a violation of ORS 260.432.

ex Examples of legal challenges include whether an initiative petition meets constitutional requirements, whether a ballot title complies with statutory standards, etc.

Legislation and Lobbying

Legislative bills are not covered by ORS 260.432. Therefore it is allowable, under Oregon election law, for public employees to lobby governing bodies. Once a referral has been certified to the ballot, political advocacy is restricted by ORS 260.432.

i For more information about lobbying, contact the Oregon Government Ethics Commission.

Advising Elected Official on Appointments

A public employee may communicate with other employees and with an elected official about the appointment of a person to a public office if the communication is made in furtherance of their official duties to make an appointment required by the Oregon Constitution or a state statute.

ex It is not a violation for a public employee to provide the governor with their personal opinions about a list of people being considered for appointment to a vacant judicial position.

Review of Public Agency Material

Material produced by public employees while on the job during work hours or by a contracted entity must be balanced and impartial. At a public agency's request, the Elections Division will review materials created by the public agency under the Division's Safe Harbor program to ensure compliance with ORS 260.432. If Safe Harbor is granted, and the Division later receives a complaint concerning the material, the Division will not investigate or issue civil penalties so long as the material does not deviate from the approved version. However, safe harbor approval does not shield agencies from associated activities which may be violative of ORS 260.432.

Submitting Documents for Review

Documents must be submitted in an editable format such as Microsoft Word or Adobe PDF. In the case of videotaped material, agencies are encouraged to submit a proposed script prior to submitting in video form. The Elections Division will only review material which has not been previously published.

Review Process

Material submitted to the Elections Division under the Elections Division's Safe Harbor program is edited for compliance with ORS 260.432 and returned to the agency for review and further editing. Participating agencies are encouraged to build plenty of time into their communications plan if safe harbor approval is desired. Safe harbor approval is not guaranteed, even if the agency resubmits the material.

Review of the initial submission of material can take up to 5 business days. However, if five or more requests are submitted for review in the aggregate within one calendar week (Sunday through Saturday), the Elections Division will review the materials within 10 business days.

Each public agency may submit a total of 5 original submissions for review per election. Materials may be resubmitted once, for a total of two reviews prior to a final determination. Resubmissions will be processed in as timely a fashion as possible, given other business demands on the Division.



Safe harbor material must be submitted by the 21st day before the applicable election.

Once a document has received safe harbor approval, the submitting agency may include a disclaimer that reads: "This information was reviewed by the Oregon Elections Division for compliance with ORS 260.432." The above disclaimer and addition of the applicable measure number are the only acceptable alterations that may be made post-approval.

If safe harbor is granted, the text of the material may be replicated in different formats so long as all the content is unchanged. If approved material is substantively altered and published by the submitting agency, safe harbor protection is rescinded.



If an agency submits a postcard for review, the agency may use the exact same content on a mailer without receiving safe harbor approval for the mailer.

The Elections Division does not review materials for the following:

- typographical, or grammatical errors
- accuracy or truthfulness of the content
- accuracy of translated materials



ORS 260.532 governs false statements in elections material. It prohibits false statements of material fact about candidates, political committees, or measures. The Elections Division does not have the authority to enforce the statute. Rather, a person may file their claim with the appropriate circuit court.

Review Criteria

The overall inquiry for determining impartiality is whether the material “promotes or opposes” an initiative, referendum or recall petition; candidatea person seeking appointment, nomination or election to public office; measure; political committee; or recall question. In order to be impartial for the purposes of ORS 260.432, a document must meet certain requirements such as:

- Materials must not implicitly or explicitly urge a yes or no vote;
- Materials must be factually balanced;
- If the material includes information about what a measure would pay for or do, it must also describe information about what would happen if the measure does not pass;
- If the material pertains to a measure that would affect property taxes, it must include the cost per \$1,000 of assessed property value.

Material that is entirely factual can still be prohibited if, for example, it omits the required cost information or indicates only what would happen if a measure passes and does not indicate what would happen if it does not pass. The requirements are discussed in further detail below.

Vote Yes/No

The contents of the document must not urge a yes or no vote for the measure. There should be no “vote yes” or “vote no” language. The document must not include phrases such as:

- “Vote Yes on Measure 99,”
- “Support for Measure 99 is encouraged,”
- “The County is asking voters to approve,”
- “Why Should I Vote for Measure 99?”
- “Voters are asked to support Measure 99,”
- “At election time, please support the Home Rule Charter,”
- “On May 15, 2012, Anytown voters are being asked to continue their support of the community youth by renewing the Youth Action Levy, Measure 57,” and
- “Please support our incumbent mayor.”

Even if the remainder of the document is impartial, explicitly urging someone to vote in a particular manner would be a violation of ORS 260.432.

Balance of Factual Information

Documents produced by public agencies must not be one-sided. They must include a balance of factual information. If a document states what would happen if a bond measure were to pass, it must also include information regarding what would happen if it does not pass. If the material includes just one side of a matter, it is potentially violative of ORS 260.432 because it is not balanced and impartial.

Description of Cost

If a measure proposes a change to taxes or fees, the cost of the measure to an individual taxpayer or consumer must be included. In the context of a bond levy, this is generally the cost per \$1,000 of assessed property value. The cost must not be worded in a way to minimize it. An estimate is allowed if the exact cost is not known.

- ex** Describing a cost as “less than”, “merely”, or “only” is not compliant with ORS 260.432.

~~It is allowable to indicate that a bond renewal would not “raise taxes” where the public agency states~~ A public agency may state that the bond, if renewed, would continue to cost \$X.00 per \$1,000 of assessed property value ~~where the measure proposes a continuation of the tax at the same rate.~~ It is also allowable to state how much the bond would ~~raise-increase~~ taxes compared to the previous bond, so long as the full cost information is also included.

ex “The ABC Library bond would not ~~raise-increase~~ taxes. If the bond is renewed the rate will remain at \$1.23 per \$1000 of assessed property value.”

“The ABC School bond, if passed, would cause an increase of \$0.25 per \$1,000 of assessed property value over the previous bond. The total rate if the bond is passed would be \$1.45 per \$1,000 of assessed property value.”

For measures that use funding mechanisms other than cost per \$1,000 of assessed property value, the cost must be described in a way that clearly informs the public of how the measure would affect taxes.

Persuasive or Minimizing Language and Images/Graphics

Material ~~containing political advocacy that is published or otherwise distributed by~~ created by a public agency should only provide factual, balanced and unbiased information regarding the topic at issue. Persuasive language ~~Language prohibited under ORS 260.432~~ can include anything that implicitly or explicitly urges an individual to ~~vote in support of or opposition to~~ a measure, recall, petition or person seeking appointment, nomination or election to public office ~~candidate~~. Avoid language that would be considered persuasive, emotional or vague. These types of words or phrases ~~can be interpreted as persuasive and~~ may be violative of ORS 260.432.

Commonly Used Words or Phrases & Alternatives

Common words or phrases to watch for when drafting a document that falls under ORS 260.432:

→ **Use** “If the bond measure passes, it would...” but not “The bond will...”

It is important to avoid language that might indicate certainty that the bond will pass or fail as this can be considered as persuasive. If the document reads that “The bond will...” it can lead a voter to believe that their vote against the bond is insignificant and they should either not vote or vote for the bond.

→ **Use** “Please remember to vote” but **not** “Please vote for Measure...”

Asking the reader to vote for the measure is violative of ORS 260.432 because this encourages people to vote in a certain way.

→ **Use** “The bond measure would cost \$x...”, but **not** “The bond would only cost \$x...”

Using the word “only” minimizes the cost of the bond and encourages a vote in support. Alternative wording may include, “If the bond passes, the tax rate would be...” By changing the wording the statement becomes neutral and provides factual information regarding the cost of the measure. It is important to also include language regarding the cost and consequences if the bond does not pass.

Unbalanced Language or Content

The material published or otherwise provided to voters should not be one-sided. It must include a balance of factual information and the information should fairly and neutrally explain the effect of the measure. The text should set out objective advantages or disadvantages of the measure.

ex If the bond passes, the city would hire five new police officers.

→ Information is only provided for what would happen if the bond passes. Material which omits information regarding what happens if the bond does not pass is unbalanced and biased.

Alternative language could be: If the bond passes, the city would hire five new officers. If the bond does not pass, staffing would remain at the current level, and taxes would not be increased.

Enforcement

Any Oregon elector may request an investigation into potential violations of Oregon election law. Requests may be submitted using the Elections Division's online form or in writing. If the Elections Division receives a complaint after an agency's materials are granted safe harbor approval, the Division will not investigate or penalize the agency so long as:

- 1 The agency did not alter the approved materials;
- 2 The material was used in a manner consistent with all provisions of ORS 260.432

If the Elections Division opens an investigation and determines that a violation occurred, the Division will proceed as set forth under OAR chapter 165, ORS chapter 260 and ORS chapter 183.

Who is Liable

Any public employee who authors, drafts or approves the use of material that promotes or opposes certain matters as set forth in ORS 260.432 may be liable. This includes any public employee who creates content for inclusion in material prohibited by ORS 260.432. A supervisor or any other person who requests or directs that a public employee create prohibited materials or who oversees creation of the material, may also be in violation of ORS 260.432, even if they are not the author of the document.