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# Stipends Taskforce Report

Bureau of Human Resources  
City Attorney's Office  
Office of Community & Civic Life  
Office of Equity and Human Rights

# Stipends Taskforce Report

## **Contents**

Page 2 Budget note

Page 2 Equity

Page 3 Executive Summary: Summary of findings

Page 4 Legal Framework

Page 8 Emerging policy options & Initial Recommendations

Page 10 Questions for Council

Page 11 Data, Reporting, Evaluation

Page 12 Education

Page 13 Preliminary Budget Impact

Page 14 Next Steps

Appendix

Research and references

## **June 2019 Budget Note**

“City Council directs the Office of Community & Civic Life, working with the Office of Equity and Human Rights, Bureau of Human Resources, and City Attorney’s Office, to conduct a thorough analysis of current practices and policies for providing stipends to volunteer members of City advisory bodies, looking both at existing practice for City of Portland advisory bodies and examples of stipend policies and practices used by other jurisdictions. The bureaus shall present the findings of this analysis and a recommendation for a Citywide policy on stipends for advisory bodies to Council by January 2020.”

### **Equity**

The disparities in community representation on advisory bodies is an impact of historical inequities. Institutionalizing the concept of equity involves intentional incorporation of an equity framework in the creation of new policies. A focus on the equity impacts of stipends is offered to guide policy development.

Institutional barriers and systemic oppression disproportionately impact historically oppressed groups. Gaining the perspectives of diverse community members is important for the City to make informed decisions that deliver more equitable outcomes. Advisory bodies are often positioned to identify gaps and address policies that have impacted oppressed communities when they have meaningful representation from those communities.

Currently, many institutions solicit feedback from underrepresented groups which results in community leaders receiving many calls to serve. It takes resources to participate, and it also takes courage for members of non-dominant groups to share their perspectives and personal experiences on advisory boards.

This policy does not address all of the disproportionate burden and impacts experienced by the most historically oppressed community members who wish to participate in advisory bodies. However, this policy does seek to reduce some of the barriers to participation by offering a nominal stipend to volunteer members of City advisory boards in recognition of their service. Accordingly, implementing a policy will require financial resources, staff, education and training, flexibility in implementation, shared reporting tools, and subject matter expertise.

## Executive Summary

Developing policy recommendations for “providing stipends to volunteer members of advisory bodies” requires clearly defining the terms *volunteer* and *stipend*. Defining the terms and roles and responsibilities between the volunteer and the City will best minimize potential risks to both the individual and the City under the complex body of state and federal laws that control this matter.

### Summary of Findings

- At the City of Portland, there is no consistent practice nor known policies for providing stipends to advisory body members.
  - For a summary of existing practice for City of Portland advisory bodies, see appendix document: [City of Portland Practices](#).
- Policies adopted by other jurisdictions may not have been legally reviewed or approved.
- Payments to advisory body members are typically conceived of by staff and are often funded by the program where the employee works or the project the committee is advising.
- Sometimes the request for stipends are made before the group has been created, before the scope has been developed, and/or before members’ needs are known.
- Stipends are not tracked, centrally reported, nor evaluated citywide.
- The status quo could give a false impression that a person’s time, emotional labor, and barriers to involvement matter on some topics, but not others.
- The federal Volunteer Protection Act, 42 U.S.C. §§14501-14505 (VPA) may limit the personal liability of volunteers, provided the volunteer does not receive benefits in excess of \$500, among other requirements.
- Volunteers may be covered for purposes of liability under the Oregon Tort Claims Act if they are acting as an agent of the City and acting within the course and scope of their volunteer assignment.
- The Department of Labor provides regulations for determining *volunteer* status under the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201, *et seq*, which is different than the definition under the VPA. The next section expands on each of these statutes.

For examples of stipend policies and practices used by other jurisdictions, see appendix.

## Legal Framework for Analyzing & Providing Stipends to Volunteers

There are primarily two statutes that impact the analysis regarding stipends: FLSA\* and the VPA.

\*Oregon's minimum wage law, which is patterned after the FLSA, similarly excludes "voluntary or donated services performed for no compensation or without expectation or contemplation of compensation." ORS 653.010(2).

### The Fair Labor Standards Act

The FLSA governs minimum wage and overtime. In enacting the FLSA, Congress did not intend to discourage or impede volunteer activities undertaken for civic, charitable, or humanitarian purposes. But it intended to prevent any manipulation or abuse of minimum wage or overtime requirements through coercion or undue pressure upon individuals to "volunteer" their services.

Although the FLSA does not define "volunteer," the FLSA regulations provide the following definition:

An individual who performs hours of service for a public agency for civic, charitable, or humanitarian reasons, *without promise, expectation or receipt of compensation* for services rendered, is considered to be a volunteer during such hours. (Emphasis added.)

29 CFR § 553.101(a).

Congress provided that "any individual who volunteers to perform services for a public agency" is exempt from FLSA coverage if:

(i) the individual receives *no compensation or is paid expenses, reasonable benefits, or a nominal fee* to perform the services for which the individual volunteered; and (ii) such services are not the same type of services which the individual is employed to perform for such public agency.

29 U.S.C. § 203(e)(4)(A)(i). (Emphasis added.)

### What Constitutes a "Nominal" Fee - the 20% Rule

Public agencies, unlike for-profit entities, are allowed to provide nominal fees (typically referred to as stipends) to volunteers. A nominal fee "is not a substitute

for compensation and must not be tied to productivity.” 29 C.F.R. § 553.106(e). The US Department of Labor (DOL) has adopted a “20% Rule” under which it is presumed that a fee paid to a volunteer is nominal if it is at or below 20 percent of the prevailing wage for that job. *See Wage and Hour Opinion Letter FLSA2005-51*. The intent behind this rule, which stems from the FLSA and accompanying regulations, is to ensure that volunteers truly are providing service with “no expectation of compensation.” *Mendel v. City of Gibraltar*, 727 F.3d 565 (6<sup>th</sup> Cir. 2013); *See* 29 U.S.C. § 203(e)(4)(A). Wages of the public agency itself are the usual measure used to determine the 20 percent threshold. Alternatively, if there aren’t comparable wages within the public agency, the DOL will look at prevailing wages for similar work locally or nationally.

The following factors are relevant in determining whether a given amount is nominal:

- The distance traveled and the time and effort expended by the volunteer.
- Whether the volunteer has agreed to be available around-the-clock or only during certain specified time periods.
- Whether the volunteer provides services as needed or throughout the year (An individual who volunteers to provide periodic services on a year-round basis may receive a nominal monthly or annual stipend or fee without losing volunteer status).

29 C.F.R. § 553.106(e). The regulation concludes by stating that the nominal fee inquiry should be made by examining “the total amount of payments made ... in the context of the economic realities of the particular situation.” 29 C.F.R. § 553.106(f).

It is important to designate the stipend expressly as a stipend and not as “compensation.” If a volunteer receives “compensation” they will be considered an employee rather than a volunteer. For volunteers to maintain their status as volunteers and not be subject to classification and treatment as employees, they cannot receive “compensation” and they cannot “work in contemplation of compensation.” *Mendel* at 565. Fixed stipends which are not tied to productivity, time or progress, are more likely to be interpreted to be a “nominal fee” or “stipend” rather than compensation. *Purdham v. Fairfax Co. School Bd.*, 637 F.3d 421, 434 (4<sup>th</sup> Cir. 2011).

In addition to the 20% Rule, the DOL requires all of the following factors must be met for the person providing service to be defined as a volunteer and not an employee:

1. The service is benefiting either a non-profit or government agency;
2. The volunteer has not been coerced into providing these services;
3. The services are typical of what is generally considered to be volunteer work.
4. The volunteer does not receive or expect compensation;
5. The service is less than full-time.; and
6. The volunteers are not replacing employees.

The Ninth Circuit applies an “economic realities test” to determine a person’s status as an employee or a volunteer by focusing on the relationship between the employer and employee. In *Boucher v. Shaw*, 572 F3d 1087, 1091 (9th Cir. 2009) (citing *Lambert v. Ackerly*, 180 F.3d 997, 1011-12 (9<sup>th</sup> Cir. 1999)), the court held that an individual will generally be deemed to be an employee when the employer exercises “control over the nature and structure of the employment relationship” or has “economic control” over the relationship.

### **Reimbursement of Expenses**

In addition to nominal stipends, the City may reimburse volunteers for the approximate out-of-pocket expenses incurred incidental to providing volunteer services. 29 C.F.R. § 553.106(b). Payment for the cost of meals and transportation expenses are two such examples. The City may also provide a reasonable benefit, such as childcare.

### **The Volunteer Protection Act**

The VPA specifically protects volunteers from personal liability when the following conditions are met:

- (1) The person performs services;
- (2) For a nonprofit organization or governmental entity; and either:
  - (a) receives no compensation (although reasonable reimbursement for expenses incurred is allowed), or
  - (b) does not receive anything of value in lieu of compensation in excess of \$500 per year;
- (3) The volunteer was authorized to act (or certified or licensed as required);

- (4) The harm was not caused by gross negligence; willful, criminal or reckless misconduct or a conscious, flagrant indifference to the rights or safety of the person harmed; and
- (5) The harm was not caused by the volunteer operating a motor vehicle, vessel or aircraft for which the State would require an operator's license and insurance.

Unlike the FLSA, which permits a combination of nominal stipend, expenses, and reasonable benefits, the \$500 VPA guideline is cumulative. The total value of the stipend or other benefits provided is included within the \$500 VPA guideline.

### **Oregon Tort Claims Act**

Volunteers may be agents of the City for purposes of the Oregon Tort Claims Act. The test for whether a volunteer is an agent examines what control the City exercises over the volunteer. If the volunteer is an agent of the City, they will have liability coverage by the City for their acts and omissions when acting within the course and scope of their duties.



## Emerging Policy Options & Initial Recommendations

This policy recognizes the valuable role volunteers serve by providing stipends, attendance support benefits, \* reimbursement of expenses or any combination thereof to volunteer advisory body members.

\*As used in this report, attendance support benefits include food offered at meetings, childcare that takes place at meetings, and transportation vouchers such as parking vouchers and transit passes. Attendance support benefits can be paid directly to a volunteer advisory body member as reimbursement of actual expenses.

This Taskforce recommends that subsequent to Council consideration of these initial recommendations, the policy options are shared with existing advisory body members and bureaus for further discussion and development.

The Taskforce will then present to Council a final set of recommendations—including budget projections grounded in specific policy options—reflecting these multiple phases and perspectives by May 2020.

### Initial Recommendations

#### 1. Conduct a one-year pilot

An adopted policy should be piloted for one year to allow for developing and implementing education, training, outreach, tracking and reporting tools. At the end of one year, an assessment of usage, demographics and processes will be made and further recommendations to the policy offered, as necessary.

#### 2. Define eligibility and allow bureaus to set priorities

People who are volunteer members of an advisory board operated by the City of Portland and who are not compensated by another entity, such as an employer, can be eligible for a stipend.

Bureaus may determine additional eligibility or priority frameworks, if any, for volunteers to receive stipends. These considerations can include but are not limited to funding availability and other accommodation support provided. For legal reasons, the number of hours, quality or quantity of service cannot be included as eligibility requirements. (See Appendix: Definitions)

**Consideration 1:** A list of formal advisory boards is still being worked out. The definition of an advisory body is not clear, not all advisory bodies have

registered with the Advisory Body Program, and the authority to determine whether a group is an advisory body must be evaluated on a case-by-case basis.

**Consideration 2:** An estimated 4,000 advisory body members may be eligible to receive a stipend.

### 3. Develop a process

A clear, streamlined process and support for bureaus will be offered through a toolkit of resources, forms and trainings initially developed by this task group on stipends and maintained by the Advisory Bodies Program of the Office of Community & Civic Life.

### 4. Select a basis for the stipend limit

Offer a nominal stipend that is compliant with the 20% Rule and the definitions of a volunteer under the FLSA.

**Consideration 1:** While it is not our preference, food, transportation and other attendance support are considered benefits and contribute to the total limit under the VPA. In order to protect volunteers from personal liability under the VPA, the total limit is \$500 in stipends and benefits annually. Accounting for people to request at least some benefits (such as food), the nominal stipend is recommended to be \$360 total for a 12-month period.

**Consideration 2:** The cost of these benefits would need to be projected, accounted for, and tracked on a per-person, per-meeting basis.

### 5. Stipend funding, tracking and reporting

To address differences in the size, budgets and sources of revenue for bureaus, a citywide stipend fund will be established for general-fund bureaus.

Stipends must be documented by bureaus through a central method and tracked for transparency and accountability. An annual report and assessment of bureau implementation of stipends will be delivered as part of the Advisory Bodies Program.

## Questions for Council

1. **Stipends:** Should the City of Portland offer a nominal stipend to volunteer members of advisory bodies?
2. **Stipend limit:** Should the stipend limit be set within the \$500 limit to benefit from liability protection under the VPA, at least in the initial pilot year?
3. **Priorities:** In addition to allowing bureaus to set additional priorities and eligibility frameworks, should City Council also establish strategic priorities and eligibility for stipends?
4. **Citywide fund:** Should the City develop a citywide stipend fund to be accessed by general fund bureaus without sources of revenue for stipends? What is the level of funding for an initial pilot year?

## Data, Reporting, Evaluation

- Without tracking and centrally reporting the dollar amount of attendance support benefits by advisory body member:
  - The City will not know whether its liability coverage applies to the individual under the VPA
  - Program usage would be unknown.
  - The City and individual may not meet their tax reporting obligations.
- If funds are disbursed at the bureaus' discretion, tracking payment across multiple committees is necessary. Some members may receive payment from more than one committee in a year. This could mean that uncoordinated practices could unwittingly put advisory body volunteers at risk.
- There are software programs specially made for this kind of payment and volunteer tracking that the Advisory Body Program could integrate with the tracking of the recruitment and application process, and mandatory volunteer trainings. The City does not currently use a software program that would meet this need. A preliminary cost estimate is located in the section on Budget Impact.
- Public Records related to volunteers are required to be retained for six years after the advisory body member completes their term. Term limits are capped at eight years. Members who serve the maximum term will have their financial information and potentially descriptions of financial need publicly retained for 14 years.
- Evaluation goals to be determined after a final policy is adopted.

## Education

The task group recommends that ongoing education supports be developed once a formal process is developed. The communication and resources will be directly tied to the details for administering stipends. Below are guiding concepts on what education and resources are needed.

### Toolkit

A resource guide with information and procedure would be developed after a policy is finalized and community engagement has been completed.

- Sample criteria
  - Liability responsibility
  - 20% Rule
  - Right to Control tests
  - Common definitions (such as “production”)
- Parameters for what is an “Advisory Body”
  - Determine who rules a group is an “advisory body” when it is unclear
- What it means to be “compensated” for involvement in advisory bodies
- Legal responsibilities of paying volunteers

### Bureau staff training and support

- Effective strategies for community engagement
- Understanding forms & process
- Tracking advisory body members who are paid
- Collecting only information that is critical

### Community members

- Informed consent of information shared with City. I.e., If someone is undocumented, we do not want to hold that information, so we tell them in advance this is a tax relationship.
- Impacts the additional income may have on other financial based social programs
- Resources required & responsibilities: bank, paperwork, taxes
- Federal limits on volunteer pay

## Budget Impact: Preliminary Projections and Considerations

These preliminary projections will be refined subsequent to Council response to these initial options and community feedback.

- Stipend payout: Citywide (bureau by bureau assessment not yet available)
  - There are an estimated 4,000 advisory body positions citywide
    - There may be some members on more than one board.
  - If all members received a \$500 stipend, it would require \$2 million citywide
- Community & Civic Life:  
Stakeholder engagement
  - Policy feedback
    - Room rental
    - Staff to administer survey
    - Focus groups (4)
      - Facilitator \$1000
      - Participant stipends \$2000
  - Ongoing volunteer support
    - Annual in-person trainings of volunteers (prospective, or approved to receive stipend)
      - 30 hours of staff time
      - Room rental
      - Food
      - Handouts & resources
  - Ongoing Staff support
    - 2-3 annual trainings dedicated to staff
    - 20 hours staff time
    - Handouts & resources
- Tracking software
  - Support from Bureau of Technology Services to discover a technology solution. A precursory search indicates there are options for less than \$20,000
  - Forms and process, how to make a request
  - Explore in-house options such as SAP
- City Attorney's Office
  - Frequently Asked Questions and Informational Reference Guide

- Human Resources
  - A resource guide on what defines an individual as an employee

## **Next Steps**

After receiving Council's direction on a policy framework, the Taskforce recommends a deeper look into City bureaus to determine which systems could support this program. Additionally, once a system is created, a sharing session and focus group of advisory body members and community members is recommended to engage prospective stipends recipients. Finally, it is recommended the resources and toolkits that are created are previewed and influenced by staff liaisons to advisory bodies and community to ensure they are effective and useful.

# Appendix

1. Definitions
2. Oregon Tort Claims Act
3. BOLI Right to Control Test
4. Department of Administrative Services Volunteer Best Practices
5. City of Portland Practices
6. Chittenden County
7. OHA Stipend Invoice



## Definitions

While the terms below are often used interchangeably, for the purposes of this policy it is important to be precise about the legal and policy implications of specific terms.

### Volunteer

Volunteer is defined differently in two crucial areas: under the Fair Labor Standards Act (FLSA) for purposes of distinguishing a volunteer from an employee, and under the Volunteer Protection Act to provide liability protection for volunteer services.

- The Volunteer Protection Act defines volunteer as “an individual performing services for a non-profit organization or a governmental entity who does not receive compensation (other than reasonable reimbursement or allowance for expenses actually incurred) or any other thing of value in lieu of compensation in excess of \$500 per year.”
- A volunteer under the FLSA is: an individual who performs hours of service for a public agency for civic, charitable, or humanitarian reasons, without promise, expectation or receipt of compensation for services rendered, 29 CFR § 553.101(a).

### Compensation

This term indicates an individual is an employee, not a volunteer and should be avoided in discussions around stipends. Compensation refers to when someone is hired by the City as an employee, intern, or contractor. Those forms of compensation are not permitted for volunteers and involve direct consultation from the bureaus of Human Resources and Procurement. Compensation and money given based on productivity like employment, jeopardize the person’s status as a “volunteer,” and create legal and liability risks.

### Stipend

A stipend is a nominal amount of money provided to volunteers to recognize their service to the City.

- The 20% Rule is what the US Department of Labor has adopted to define what constitutes a “Nominal Fee” that a volunteer can be paid. A nominal fee is at or below 20% of the prevailing wage for that job.

### **Oregon Tort Claims Act**

Public bodies are liable for the torts of its officers, employees, and agents acting within the course and scope of their employment or duties subject to the limitations in the Oregon Tort Claims Act. The Act obligates public bodies to defend and indemnify officers, employees, and agents acting within the course and scope of their employment or duties. This duty would apply to volunteers acting within the course and scope of their duties, regardless of whether the City provides a stipend.

### **Volunteer Protection Act \$500 limit**

If the City wants to ensure volunteers are able to avail themselves of the federal liability protection found in the Volunteer Protection Act, then volunteers cannot receive more than \$500 in benefits from the City. If the committee provides no other benefits, such as childcare, food, transportation, then the stipends would be limited to \$500 per person, per year. This per-person limit must be tracked by bureaus. It is recommended to be reported through a shared format to the Advisory Bodies Program.

### **Benefits for Advisory Body Members**

Attendance supports such as food offered at meetings, childcare that takes place at meetings, and transportation vouchers such as parking vouchers and Trimet transit passes. Attendance support can be paid by check as a reimbursement directly to a volunteer advisory body member as reimbursement.

- These benefits are included in the definition and value for the “nominal stipend,” and is be considered part of the federally-defined \$500 VPA guideline.

### **Benefits for attendees who are not Advisory Body Members**

Food and childcare and other attendance support that are available to all members of the public who attend a meeting. These are often provided without advance requests from community members, and are estimated based on regular

attendees, perceived interest in the agenda, and subject matter. There is no standard calculation or citywide guidance on these, and the benefits delivered are not tracked centrally.

### **Civil Rights/ADA Accommodations**

Accommodations under Civil Rights Title VI and Title II of the Americans with Disabilities Act are not included in the definition of benefits nor nominal stipend. City of Portland policy states that all City-sponsored programs, services, activities, events, and communications are meaningfully accessible and usable in accordance with Title II of the Americans with Disabilities Act, Title VI of the Civil Rights Act of 1964, and other related civil rights laws and statutes. These accommodations must be requested separately from the requested funding for nominal stipends and attendance support benefits.

## Oregon Tort Claims Act

Public bodies are liable for the torts of its officers, employees, and agents acting within the course and scope of their employment or duties subject to the limitations in the Oregon Tort Claims Act. The Act obligates public bodies to defend and indemnify officers, employees, and agents acting within the course and scope of their employment or duties. This duty would apply to volunteers acting within the course and scope, regardless of whether the City provides a stipend.

Sovereign immunity preexisted the Oregon Constitution as English common law that was incorporated into state law by article XVIII, §7, of the Oregon Constitution. Cities in Oregon historically had partial immunity from tort liability through court-created doctrines. Immunity for cities developed, in part, in recognition of their dual nature both as an arm of the state conferred for the benefit of the public and as a corporate body made for the special advantage of the city. Courts have distinguished between governmental functions (for which there generally was tort immunity) and proprietary functions (for which there was no tort immunity). In 1967, the Oregon Legislature adopted the Oregon Tort Claims Act (OTCA), thereby partially abolishing the tort immunity of state and local public bodies.

In its current form, the OTCA provides public officers, employees, and agents with protection from liability when acting within the scope of their duties. Specifically, the OTCA provides immunity for “[a]ny claim based upon the performance of or the failure to exercise or perform a discretionary function or duty, whether or not the discretion is abused.” The act also limits the amount of damages a plaintiff may recover, and generally requires a plaintiff to provide notice of a claim within 180 days of an injury to the public body.

Under the Oregon Tort Claims Act (OTCA), tort means the “breach of a legal duty that is imposed by law,” other than a contractually based duty, “which results in injury to a specific person or persons for which the law provides a civil right of action for damages or for a protective remedy.” The terms “officer” and “employee” are not defined in the OTCA, nor has any significant litigation defined the scope of those terms. The word “agent” is also not defined within the OTCA, except that certain retired physicians who voluntarily treat patients through county health referrals are deemed public-body agents for OTCA purposes. Some statutes outside the OTCA similarly declare certain persons to be agents for OTCA purposes. See, e.g., ORS 401.364 (qualified emergency service volunteers), ORS 409.360(2) (volunteers performing services for Department of Human Services Volunteer Program), ORS 656.327(4) (physicians or medical arbiters in workers’ compensation medical review), ORS 685.205(4) (peer review committee appointed by Board of Naturopathic Examiners). The definition of agent has been at issue in a number of appellate cases, however, volunteers should be covered if a Court finds the public body to have some element of actual control or right of control over the volunteer. In the absence of any federal protection, volunteers would look to the OTCA for immunity from liability for tort actions.

### **“Right-To-Control” Test**

BOLI’s Civil Rights Division utilizes the “right-to-control” test to determine whether a given worker is an employee for purposes of civil rights law. \*\*Please note that some civil rights statutes protect not only workers, but also job applicants and customers. In those situations, it would not matter whether an individual is an independent contractor or employee.

Under the “right-to-control test,” four factors are weighed to determine whether an employer has the “right to control” the work of an individual. Where an employer clearly has the “right to control” the work of an individual under this test, that individual is deemed an employee rather than an independent contractor.

The factors of the “right-to-control” test are:

- (1) Direct evidence of the right to, or the exercise of, control**
- (2) The method of payment**
- (3) The furnishing of equipment**
- (4) The right to fire**

It is not necessary that all factors coincide to determine whether a given worker is an employee. In such cases, the weight or strength of the factors which are in evidence will be considered.

Although not part of the official test, the following questions may help to illustrate whether a worker is performing work as an employee or an independent contractor:

- (1) Direct evidence of the right to, or the exercise of, control
  - Who sets the hours of work?
  - Who is responsible for quality control?
  - Does the worker have other customers?
  - Who determined the rate of pay? Was it negotiated?
  - Who determines how the work gets performed?
- (2) The method of payment
  - Do clients pay the individual worker directly or business employing that worker?
  - Does the worker set the rate of payment or the business employing that worker?
- (3) The furnishing of equipment
  - Does the worker supply his or her own tools?
  - Does the worker purchase materials necessary to do the job?

- Has the worker invested in bonds / insurance / advertising?

(4) The right to fire

- How long has the job lasted? Is an ending date contemplated (upon completion of the work)?
- Is the contract (if any) subject to periodic review or automatic renewal?
- Does the contract (if any) provide consequences for termination of the relationship?

**THE LEGAL PRECEDENT....**

In *Cantua v. Creager*, 169 Or.App. 82, 7 P.3d 693 (2000), the Oregon Court of Appeals examined the definitions of an employee and an employer at ORS 659A.001(3) & (4) (formerly ORS 659.010(5) & (6)) and determined that the right-to-control test incorporated in former ORS 659.010 is the common law test for employee status. The court quantified this test by identifying “[f]our factors that are material in determining whether an employer has the right to control an individual: (1) direct evidence of the right to, or the exercise of, control; (2) the method of payment; (3) the furnishing of equipment; and (4) the right to fire.”

**BOLI and the U.S. Equal Employment Opportunity Commission (EEOC)**

In its joint enforcement efforts with EEOC, BOLI’s Civil Rights Division will determine whether a worker is an employee under EEOC’s guidelines, outlined in its Directives Transmittal Number 915.003:

In most circumstances, an individual is only protected if s/he was an "employee" at the time of the alleged discrimination, rather than an independent contractor, partner, or other non-employee. An "employee" is "an individual employed by an employer." An individual may also have more than one employer. The question of whether an employer-employee relationship exists is fact-specific and depends on whether the employer controls the means and manner of the worker's work performance. This determination requires consideration of all aspects of the worker's relationship with the employer. Factors indicating that a worker is in an employment relationship with an employer include the following:

- The employer has the right to control when, where, and how the worker performs the job.
- The work does not require a high level of skill or expertise.
- The employer furnishes the tools, materials, and equipment.
- The work is performed on the employer's premises.
- There is a continuing relationship between the worker and the employer.

- The employer has the right to assign additional projects to the worker.
- The employer sets the hours of work and the duration of the job.
- The worker is paid by the hour, week, or month rather than the agreed cost of performing a particular job.
- The worker does not hire and pay assistants.
- The work performed by the worker is part of the regular business of the employer.
- The employer is in business.
- The worker is not engaged in his/her own distinct occupation or business.
- The employer provides the worker with benefits such as insurance, leave, or workers' compensation.
- The worker is considered an employee of the employer for tax purposes (i.e., the employer withholds federal, state, and Social Security taxes).
- The employer can discharge the worker.
- The worker and the employer believe that they are creating an employer-employee relationship.

*This list is not exhaustive.* Other aspects of the relationship between the parties may affect the determination of whether an employer-employee relationship exists. Furthermore, not all or even a majority of the listed criteria need be met. Rather, the determination must be based on all of the circumstances in the relationship between the parties, regardless of whether the parties refer to it as an employee or as an independent contractor relationship.

**Example 1** – A complainant (“CP”) provides computer consulting services to businesses. The Respondent contracts with CP to produce a computer database for a flat rate. CP produces the database at his own place of business, on his own equipment, and delivers the finished product to the Respondent. In these circumstances, CP is an independent contractor.

**Example 2** - A staffing firm hires CP and sends her to perform a long- term accounting project for a client. Her contract with the staffing firm states that she is an independent contractor. CP retains the right to work for others, but spends substantially all of her work time performing services for the client, on the client s premises. The client supervises CP, sets her work schedule, provides the necessary equipment and supplies, and specifies how the work is to be accomplished. CP reports the number of hours she has worked to the staffing firm, which pays her and bills the client. In these circumstances, despite the statement in the contract that CP is an independent contractor, she is an employee of both the staffing firm and the client.

# Volunteers

What is the difference between an employee and a volunteer? According to the United States Department of Labor, individuals may volunteer or donate their services to public sector employers such as the state. When they do this without contemplation of pay or profit motivation, they are not considered employees, but rather as volunteers.<sup>1</sup>

From a best work practices perspective and apart from compensation, there should be little difference between the direction provided for employees and volunteers. However, there is a difference between the control<sup>2</sup> an agency can provide over a volunteer. Too much control over a volunteer may make them an employee under civil rights law.<sup>3</sup> In other words, train volunteers well and supervise them with a light hand. Volunteers should be allowed to refuse work and have a voice in when they work. Volunteers should not be disciplined or promised future jobs. Volunteers should be provided with:

- Descriptions of the scope of work to be performed.
- Training for how to perform the work satisfactorily and safely.
- Training for how to interact with others appropriately in the workplace.

## Risks to Agencies

- Acceptance of liability for volunteer as an agent of the state
- Lawsuits for work practice violations
- Volunteer injuries

## Insurance Coverage

Tort liability coverage: Volunteers are agents of the state for purposes of the Oregon Tort Claims Act [ORS 30.260-300](#) and receive liability coverage by the state for their acts and omissions when acting within the course and scope of their duties.

Volunteer Injury Coverage Options: Agencies have three options for providing injury coverage to volunteers unless statutorily required to do otherwise. The three options are no coverage, workers' compensation coverage, or Voluntary Injury Coverage (known as VIC). Workers' compensation coverage is supplied by the state's workers' compensation insurance carrier and is similar to coverage provided to employees.<sup>3</sup> VIC is offered through [DAS Risk Managements VIC Policy Manual 125-7-204](#) and supplements a volunteer's personal health insurance by paying for things not covered by their health insurance plan.<sup>4</sup>



For more information about and how to obtain volunteer workers' compensation coverage or Volunteer Injury Coverage, visit DAS Risk Management's [Volunteer Injury Coverage Toolkit](#).

## Volunteer-Related Information and Best Practices

- If volunteers are paid stipends or receive remuneration as defined by the IRS<sup>5</sup>, full workers' compensation generally needs to be provided. This may affect boards, commissions, and park/camp hosts among others. Remuneration includes an exchange of work for non-cash items of value such as firewood and camping spots provided to camp hosts.



# RiskWise



## A Guide to Controlling Risk

### Volunteers

- Risks to Agencies
- Insurance Coverage
- Volunteer-Related Information and Best Practices
- References and Resources



# Volunteer-Related Information and Best Practices - Continued

- Avoid providing volunteers gifts such as cash or cash equivalents. This may create taxable income and may also require the need to provide full workers' compensation coverage. Gifts that are considered de minimis<sup>5</sup> under IRS rules (low value, low frequency, non-monetary) are not considered taxable income.
- When providing full workers' compensation coverage, hours and wages/assumed wages<sup>6</sup> must be reported as part of the payroll reporting process. In most situations Oregon's assumed wage is the wage used for this purpose. The minimum wage now varies by region of the state where the work is performed.<sup>7</sup>
- Reimbursement of expenses does not count as wages or remuneration.<sup>5</sup>
- Agencies should develop a tracking system for numbers of volunteers and their hours worked. Each year on the Risk Report, DAS Risk Management asks for this information.
- Track and recover state-owned property assigned to volunteers.<sup>8</sup>
- Many statewide human resource policies apply to volunteers including Discrimination and Harassment Free Workplace, Professional Workplace policies and Violence Free Workplace.<sup>9</sup> Assure volunteers receive training required by policy.
- Minors may volunteer. When utilizing minors as volunteers, use the Bureau of Labor and Industries' Child Labor Laws as a best practice guide. Limitations for minors under the OARs include but are not limited to restrictions of work hours, operation of power-driven machinery, driving, arduous work restrictions and hazardous exposures.<sup>10</sup>
- When utilizing minors as volunteers, ensure parents/legal guardians complete the required Volunteer Injury Coverage forms.<sup>4</sup> Securing [medical releases](#) is also recommended in case injury treatment is required (completed forms should be kept in a confidential locked location). Consider requiring parental/legal guardianship accompaniment when minors are performing volunteer work. Otherwise, consider how the agency will provide adequate personal protection of the minors.
- Provide volunteers the same safety and health training that would be provided employees doing the same work.



## References and Resources

<sup>1</sup>United States Department of Labor: [elaws – Fair Labor Standards Act Advisor, Volunteers](#)

<sup>2</sup>Bureau of Labor and Industries: [Right to Control Test](#)

<sup>3</sup>SAIF Corporation: [Volunteers Employer Guide](#)

<sup>4</sup>DAS Risk Management VIC: [State Agency Volunteer Coverage](#)

<sup>5</sup>IRS: [De Minimis Fringe Benefits](#)

<sup>6</sup>SAIF Corporation: [Minimum Hourly Assumed Wage Change](#)

<sup>7</sup>Bureau of Labor and Industries: [Oregon Minimum Wage Rate Summary](#)

<sup>8</sup>Statewide Policy 107-004-010: [Information Technology Asset Inventory & Management](#)

<sup>9</sup>Statewide Policy 50.010.01 [Discrimination and Harassment Free Workplace](#)

<sup>10</sup>Bureau of Labor and Industries OARs: [Employment of Minors in Oregon, Procedural Rules](#)

United States Code: [Volunteer Protection Act of 1997](#)

DAS Risk Management: [Volunteer Injury Coverage Toolkit](#)

DAS Risk Management: [Emergency Medical Care for Minor Child](#)

OSPA Reference Manual: [Volunteers, Boards and Commissions](#)

**DAS RISK MANAGEMENT**  
[www.oregon.gov/das/Risk/Pages/index.aspx](http://www.oregon.gov/das/Risk/Pages/index.aspx)

**DAS**  
DEPARTMENT OF  
ADMINISTRATIVE  
SERVICES

General Services Building  
EGS | Risk Management  
PO Box 12009  
Salem OR 97309

Phone: 503-373-7475  
Fax: 503-373-7337  
E-mail: [risk.management@oregon.gov](mailto:risk.management@oregon.gov)

*We commit to be KNOWLEDGEABLE, RESPECTFUL AND RESPONSIVE in business and interactions.*

# City of Portland Practices

There are no known policies to deliver stipends, although there are a variety of practices informally being used to pay community members. This is not a list of approved practices. There are many complex laws that must be observed in order to accomplish any one, and, even when done lawfully some avenues can present equity concerns.

## How?

- Offering food, transportation, childcare (many City of Portland offices use this approach)
  - Reimbursement of the above
- Payment dispersed at meetings (Visa)
- Honorarium
- Paying in gifts (such as a Visa or gift cards)
- Providing technology (email address, software programs)
- Hiring or paying volunteers to be on committees as staff (ie, interns, special projects, youth projects)
- Hiring as Community Service Aide (CSA)
- Student Interns (they receive credit from their universities)
- Hiring as consultant/subconsultant (for example, paying a member for facilitation or writing a report)
- Contracting the community engagement and input (focus group or [Community Engagement Liaisons](#))
- Contracting a consultant to run the outreach
- Contracting non-profits to disburse funds

## Who receives incentives?

- Non-profits participants
- People who are not compensated by their employer for daytime meetings
- People whose incomes restrict involvement
- People from underrepresented communities

## Why?

- Emotional compensation
- Knowledge and skills
- Real work (homework, research, attendance)
- Barriers (distrust, economics)
- Motivation (more inclined to fully participate)

Bureaus using these practices include but are not limited to:

Bureau of Planning & Sustainability, Office of Community & Civic Life, Portland Bureau of  
Emergency Management, Portland Bureau of Transportation, Portland Parks & Recreation

# APPENDIX F: INTERIM VOLUNTEER STIPEND POLICY & ADVISORY COMMITTEE ENROLLMENT FORM

## CHITTENDEN COUNTY REGIONAL PLANNING COMMISSION Interim Volunteer Stipend Policy

This policy is intended to assist in removing barriers to allow for meaningful and diverse community involvement in planning and policy work within Chittenden County. Its foundation is rooted in Federal Title VI requirements and the ECOS Plan's Social Community goal: "Promote the skills, resources, and assurance needed for all community members to participate in the workforce and in their family, civic and cultural lives, within and among their neighborhoods, and in the larger community." This policy also seeks to advance Strategy 8 of the ECOS Plan: "Ensure that the projects and actions in all ECOS Strategies assess equity impacts, and that the design and development of programs are inclusive of all and engage underrepresented populations."

Advisory Committee Members participating in a Corridor Study or Region-Wide Plan process, who are not being otherwise compensated for their attendance at such meetings or events, may request a stipend to off-set the cost of participating in each meeting or event. This stipend is intended to address barriers to participating such as missing work, child care, and transportation costs.

To be eligible for stipends, a volunteer must opt-in on the **Advisory Committee Enrollment Form** (see below). Eligible volunteers will receive a \$50 stipend per committee meeting or event when their attendance is verified on the meeting sign-in sheet. Stipends will be paid to volunteers within 30 days of the meeting or event.

All volunteers seeking reimbursement must be provided with, and acknowledge, that they have received and reviewed the *Interim Volunteer Stipend Policy*. To receive reimbursement volunteers must complete, sign, and submit a Form W-9 to the CCRPC before receiving a stipend. Volunteers receiving stipends must complete a current Form W-9 each calendar year.

Volunteers receiving stipends are not employees of the CCRPC. Volunteers receiving stipends acknowledge that stipends may be considered income for tax purposes. Volunteers receiving \$600 or more in stipends in a calendar year will be issued a Form 1099-MISC for that calendar year.

**CHITTENDEN COUNTY REGIONAL PLANNING COMMISSION**  
**Advisory Committee Enrollment Form**

Please fill out the following form to complete your enrollment in a Chittenden County Regional Planning Commission Advisory Committee.

**First and Last Name:** \_\_\_\_\_

**Organization Represented (if applicable):** \_\_\_\_\_

**Address:** \_\_\_\_\_ **City:** \_\_\_\_\_ **Zip Code:** \_\_\_\_\_

**Preferred Phone #:** \_\_\_\_\_

**Email address:** \_\_\_\_\_

**Preferred Contact Method (circle one or two):**    **Phone**                      **Email**                      **Mail**

**Are you compensated for your participation on this Advisory Committee through your place of employment or the organization you are representing? (Yes or No):** \_\_\_\_\_

*If no, please indicate if you would like to receive a stipend below.*

**It would be a challenge for me to actively participate in this Advisory Committee without receiving a \$50 per meeting stipend. (Yes or No):** \_\_\_\_\_

*Volunteers are not employees of the CCRPC. Meeting attendance will be verified by each meeting's sign-in sheet. Those requesting a stipend must submit a Form W-9 to the CCRPC before the stipend will be paid. Those receiving a stipend must acknowledge receipt and review of the Interim Volunteer Reimbursement Policy. Note that stipends may be considered income for tax purposes, and those receiving \$600 or more in a calendar year will be issued a Form 1099-MISC at year end.*

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By my signature below, I certify that all information provided as part of this Enrollment Form is true, accurate and complete to the best of my knowledge. I acknowledge receipt and review of the Interim Volunteer Reimbursement Policy. I give my consent to the CCRPC to use the information on this Enrollment Form for the purpose of contacting me regarding matters related to the Advisory Committee and determining my stipend eligibility.

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

*Approved by the Executive Committee 6/18/14*



**Consumer and Family Member Stipend Invoice**

**DATE:** \_\_\_\_\_

**TO:**

Health Systems Division  
Attn: Roberto Coto  
500 Summer Street NE E-86  
Salem, OR 97301-1118

Index 84000; PCA 80282; ABOJ \_\_\_\_\_

**FROM:**

<b>(Name)</b>	
<b>(Mailing Address)</b>	
<b>(City, State, Zip)</b>	
<b>(Email Address)</b>	
<b>(Phone Number)</b>	
<b>(Social Security #)</b>	

**SERVICES PROVIDED:**

Consumer/Family Member Participation on (check one):

- CSAC – Date of Meeting: \_\_\_\_\_ \$ 50.00
- CSAC Subcommittee \_\_\_\_\_  
Name of Subcommittee: \_\_\_\_\_ \$ 50.00
- Date of Subcommittee: \_\_\_\_\_

**TOTAL AMOUNT:** \$ \_\_\_\_\_

**I agree that I have not and will not receive compensation for my participation in the above Children’s System Advisory Committee from any other source.**

\_\_\_\_\_  
**Member Signature**

\_\_\_\_\_  
**Date**

Agenda No.  
**REPORT**  
 Title

Accept Stipends Taskforce Report (Report)

<p><b>INTRODUCED BY</b>                  Commissioner/Auditor:  <b>Eudaly</b></p>	<p>CLERK USE: DATE FILED <u>FEB 04 2020</u></p>
<p><b>COMMISSIONER APPROVAL</b></p> <p>Mayor—Finance &amp; Administration - Wheeler</p> <p>Position 1/Utilities - Fritz</p> <p>Position 2/Works - Vacant</p> <p>Position 3/Affairs - Hardesty</p> <p>Position 4/Safety - Eudaly </p>	<p style="text-align: center;">Mary Hull Caballero                  Auditor of the City of Portland</p> <p>By:  Deputy</p>
<p><b>BUREAU APPROVAL</b></p> <p>Bureau: Office of Community &amp; Civic Life                  Bureau Head: Suk Rhee</p>	<p><b>ACTION TAKEN:</b></p> <p style="font-size: 1.2em; font-weight: bold;">FEB 12 2020    ACCEPTED</p>
<p>Prepared by: Ashley Tjaden and Touk Keo                  Date Prepared: 1/21/2020</p>	
<p>Impact Statement</p> <p>Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/></p>	
<p><b>City Auditor Office Approval:</b>                  required for Code Ordinances</p>	
<p><b>City Attorney Approval:</b>                  required for contract, code, easement, franchise, charter, Comp Plan</p>	
<p>Council Meeting Date <b>2/12/20</b></p>	

**AGENDA**

**TIME CERTAIN**   
 Start time: 9:45am

Total amount of time needed: 45  
 (for presentation, testimony and discussion)

**CONSENT**

**REGULAR**   
 Total amount of time needed:  
 (for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
	YEAS	NAYS
1. Fritz	1. Fritz <input checked="" type="checkbox"/>	
2. Vacant	2. Vacant	
3. Hardesty	3. Hardesty <input checked="" type="checkbox"/>	
4. Eudaly	4. Eudaly <input checked="" type="checkbox"/>	
Wheeler	Wheeler <input checked="" type="checkbox"/>	