

# **Special District Management and Policy Resource Guide**

*Developed by the Oregon Fire District Directors Association  
and the  
Special Districts Association of Oregon*

***2009 Edition***

The Special District Management and Policy Resource Guide is provided to members of OFDDA to assist fire district board members and managers with the operation of the districts they serve. This resource guide is an educational reference that can be used as a daily information tool and an excellent orientation guide for new board members and employees.

The Guide is intended to be a dynamic and changing document that will be updated periodically to stay current with Oregon laws and management techniques. New chapters will be added and others revised to keep members up-to-date. If your fire district has a special need that is not addressed in the resource guide, please call the OFDDA office at 1-800-223-9708 for assistance.

Please help contribute to the guide by contacting the OFDDA office with any suggestions for changes or additions.

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# Fire Directors, Chiefs and Personnel

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## **Directors Duties and Responsibilities**

Fire districts in Oregon are special districts. Special districts operate under the general laws set forth in [ORS Chapter 198](#). Each special district also operates under its Principal Act, which describes the powers and authority of the particular type of special district. Fire districts' Principal Act is [ORS Chapter 478](#). A fire district may only exercise the authority granted by its principal statute or do those things necessary to carry out that authority.

Fire districts' grant of authority differs from cities and counties. The Oregon Supreme Court has taken the position that any fair, reasonable, and substantial doubt concerning the existence of a governmental power is resolved by the courts against the municipal corporation and the power is denied. Cities and counties were able to overcome this strict construction by including a requirement in their respective charters that they be liberally construed. Special districts have no similar authority to adopt charters. Their powers therefore remain strictly construed.

## **Who May be a Director?**

### **Size of Board**

A rural fire protection district operates with a Board of five elected directors. A director in a rural fire protection district may be an elector living in, or the owner of real property within the boundaries of the district. This requirement varies with different types of special districts. Also, fire districts, by ordinance, may prohibit employees or volunteers of the district from serving as board members. In order for the prohibition to apply to an election, such an ordinance must be adopted and in effect one year prior to the date of the election ([ORS 478.050](#)).

### **Position Numbers**

Each director's position shall be designated by a number, as position 1, position 2, and so forth. The secretary of the district shall assign a position number to each director's office on the board. The numbers assigned shall be certified by the secretary to the director in office holding that position. A copy of the certification shall be filed with the district's records and with the county election officer. Unless sub-districts are created, each director's position is voted upon by all of the voters in the district. However, because of position numbers, people may run against specific directors. This also allows the elections office to keep track of the terms of directors. If a director does not fill the first two years of a four year term, a replacement is voted upon at the next election for the remaining two years of that position's term. Directors assume office on July 1st, after the March election of each odd-numbered year.

**Oath of Office**

Upon assuming office, each director must take and subscribe to an oath of office.

**Sample Oath of Office**

I, \_\_\_\_\_, under penalty of perjury, do solemnly swear to support the Constitution of the United States and of the State of Oregon. I shall faithfully carry out my duties as director of the \_\_\_\_\_ Rural Fire Protection District.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Signature

The oath, once signed, should be maintained in the records of the district.

**Sub-districts**

It is also possible to have directors elected from sub-districts. With sub-districts, you divide the district into as many sub-districts as needed. Each sub-district must be approximately equal in population. Every ten years, the boundaries of the sub-district would have to be redrawn to reflect any population shifts as shown in the federal census. At the time of this writing, no district in the State is operating with sub-districts. If this is an option you are considering, you should reference [ORS 478.225](#) for the procedures and process.

**Role of a Board Member**

**Getting Started**

As a board member, each individual, in conjunction with their other board members, becomes responsible for the affairs of the district. In order to understand those obligations, it is recommended that new board members receive an orientation. This orientation should include a facilities tour and a review of the following: the budget, the past year’s minutes, the district’s policies, any major issues which will impact the district, and the district’s long range plan

**Authority to Act**

The district board shall hold meetings at such times and places within the district as it determines. The district board shall hold at least one regular meeting in each month on a day fixed by the board. For example, the third Wednesday of each month could be the regular board meeting. The district board may also hold any special meetings under such rules as it may make and in accordance with the notice provisions of the public meetings law. Even for regular board meetings, districts must still give notice of that meeting for compliance with the public meetings law. That notice must include the date, time, and place of the meeting, and the principal topics to be discussed. Review the section on

public records and meetings and also have available, at your district, a copy of the Attorney General's Public Records and Meetings Manual.

Many times elected officials do not understand the limited authority that is provided by their position. An individual director has no authority to act, except with the express permission of a quorum of the board granted in an open meeting. All decisions of the district must be made by the board of directors or made by those persons given that authority by the board. In order to be legal, a decision must be made by at least three of the five board members. This requirement is regardless of the number of board members present. You must have three board members present to make a quorum before any action on any issue may be taken. Additionally, regardless of the number of members present, there must be three affirmative votes for any issue to pass.

### **Powers**

The board of directors is given the authority by statute to select a fire chief qualified by actual experience as a fire fighter and fire precautionist or otherwise, and assistants, volunteer or otherwise, and fix their compensation ([ORS 478.260](#)) This statute further provides that the fire chief shall be responsible for the equipment and properties of the district. Under the direction of the board of directors, the fire chief is responsible for the day to day operation of the district. This means that the board of directors is responsible for setting district policy. The fire chief is responsible for implementing, or carrying out, adopted policies.

The district has the power to own property, enter into contracts, levy taxes, sue and be sued, and issue general obligation bonds. In addition to fire service, suppression and prevention, it also has the power to operate emergency services. Those services may include ambulance operations. However, districts only have authority to operate ambulances in accordance with a county plan and in accordance with the rules of the Oregon Health Division ([ORS 478.260\(3\)](#)).

Limited authority exists for operating street light systems where the district is situated within a radius of ten miles of a city over 100,000 in population ([ORS 478.290](#)). The district also has authority to establish or contract with others for hazardous material emergency responses and for mutual communication systems. Your district may respond to fire or other safety incidents outside your district's boundaries and bill for those services. Such action should be authorized by a policy adopted by the board of directors.

### **Fire Code**

Districts may adopt a fire prevention code. Such a code has to be adopted as an ordinance. To adopt an ordinance, the requirements of [ORS 198.510 to 198.600](#) must be followed (see discussion below). Care must be taken to make sure that any time you are adopting an ordinance, the statutory requirements are met. In order to become effective, the fire code must be approved by the county in which the district is located. If in more than one county, the code must be approved by all counties that include district territory. If the district provides fire services to a city, the code, in addition to the county, must be approved and accepted by the city. As a practical matter, prior to finalizing any code, it is recommended that you coordinate the code with any affected county or city. Otherwise, your district may adopt a code and find it ineffective, if not accepted by the

required jurisdictions. Once the code has been accepted, a copy must be filed with the State Fire Marshal's office and posted at each fire station within the district. **How to Adopt an Ordinance**

To adopt an ordinance, you must consider it at two different meetings, which must be at least 6 days apart. At least 4 days, but not more than 10 days, before each meeting, you must publish an agenda for the meeting in a newspaper of general circulation in your area. The procedure for adoption and amendment of an ordinance are the same.

The agenda must state the date, time and place of the meeting, and must include a brief description of the ordinance, such as: "Consideration of an ordinance adopting \_\_\_\_\_." The agenda must also state that copies of the ordinance are available at the office of the district board, and give an address. You should also list the other items which will be considered at the meeting.

The agenda may also be posted in three public places within the district at least 10 days before each meeting, or the district may advertise the meeting on radio and television stations broadcasting in your area.

Before the ordinance is adopted, it shall be read during regular meetings of the district Board on 2 different days at least 6 days apart. The ordinance must be read in full unless copies are available for each person who desires a copy and the board directs that the reading be by title only.

Within 7 days after adoption of the ordinance, it must be signed by the presiding officer (usually the president of the board), attested by the person who served as recording secretary of the district board at the session at which the ordinance was adopted, and filed in the records of the district. A certified copy of the ordinance must also be filed with the county clerk, available for public inspection ([ORS 198.510 through 198.600](#)). (This same process applies to the adoption of any ordinance, including the ordinance prohibiting employees or volunteers from serving as district board members.) There is a special procedure for the adoption of emergency ordinances. The statute should be consulted before attempting to enact an emergency ordinance.

Most fire district activity would be by motion or resolution. Because of the extra steps required to adopt an ordinance, ordinance adoption is recommended to be used only when required by statute. A resolution under consideration should be listed on the meeting agenda and can be made, adopted, amended or repealed at one meeting. If an ordinance is adopted, it can only be amended or repealed by following the ordinance adoption procedure.

### **Bonding**

Members of the board who handle funds must be bonded. The premium for the bond can be paid from district funds. The amount of the bond is established by the board ([ORS 198.220](#)). Oregon laws relating to audits of district funds provide for options other than complete audits which may impact your bond amount decision. Where total receipts and expenditures for all purposes are below \$150,000, the district may submit a financial statement, on the form provided by the Secretary of State's office, to the Secretary of State (within 90 days following the end of the year). One of the requirements for

submitting the financial statement, rather than the more expensive audit, is that the principal person responsible for the finances of the district is bonded in an amount equal to the total amount of money received by the district during the year.

If the total receipts from all sources and expenditures exceed \$150,000 but do not exceed \$500,000, financial statements may be submitted to the Secretary of State within 180 days following the end of the year. Those financial statements have to be reviewed by an accountant in accordance with the standards that have been prescribed by the Secretary of State. Also required is a certificate regarding bonding that shows a bond in an amount at least equal to ten percent of the total receipts for the year but, in no event, less than \$10,000.

If you did not meet the bonding requirements set forth above, or if your total receipts and expenditures exceed \$500,000 for the year, you would be required to file an annual audit.

Typically, the audit is significantly more expensive than either the Report to Secretary of State or the financial statement reviewed by an accountant ([ORS 297.435](#)).

### **Being an Effective Board Member**

To be an effective board member, you must be prepared for meetings. In order to be prepared for meetings, you must have information available regarding topics that will be decided at the meeting. Insist that an agenda and accompanying material be made available to you prior to the meeting. In this way, if additional information is needed, it can be provided ahead of time so that a decision does not have to be delayed.

To be an effective board member, you must know and respect both the spirit and the letter of the law. In this regard, a board member must learn and follow the open meetings laws, public contracting laws, budget laws and Oregon ethics laws (these areas are more specifically covered in other chapters of the manual and should be reviewed).

Careful review of the budget law and its requirements is very important. A director, as a public official, is personally responsible for an improper expenditure of public funds. This is broader than the term “misuse of funds” because it includes the spending of funds outside of appropriations. Review your budget and your expenditures on a regular basis to make sure you are not subject to liability under this section ([ORS 294.100](#)).

Relating to the open meetings laws, a board member needs to be aware that material and information received in executive session is confidential and should not be shared with others. There is a potential for personal liability for violation of some confidences from executive session. Violations of the executive session topic requirements may lead to ethics charges and personal liability (see appropriate chapters).

For effective operation, each board member must respect the authority of the majority and understand his/her role as a board member and as a team member. Once the entire board makes a decision, remember that is the decision, even if you cannot or did not actively support it.

As discussed above, as an individual, you have no specific authority. Board members should insist that all complaints regarding any activities of the district go through the proper channels. Each district should have specific policies. A director, outside a board meeting, should refuse to make any commitments on issues or matters that must be decided by the board as a whole.

### **Planning**

Planning or goal setting is recommended to set the direction of the district. Planning involves reviewing and asking where has your organization been? Where is it going? How will it get there? A long-range plan allows board members to track what is happening in the district, adjust district policies to meet new service delivery requirements and maintain stability. This may mean an increase or decrease in activity and alarms. It may mean a change from rural to urban responses. Without a plan, each action is just a response to a given set of circumstances or current emergencies. A plan provides a window into the future so current challenges can be put in long range perspective.

### **Suggestion to minimize likelihood of litigation**

Remember that your authority derives from the board itself. You have significant immunities when acting in your legal capacity as a board member. Your first duty is to the organization you serve, not to any colleague, chief administrative officer or friend. Insist on being provided necessary information and do not make rash decisions in moments of excitement or emotion. Hire and use independent accountants and auditors. Review your insurance policies and coverage with particular attention paid to exclusions. Consult with your legal counsel. Preventative law or advice is always your best defense.

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## **Planning Timetables & Agendas**

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### **Summary**

Two items that can be of great value in a district board's planning efforts are timetables and agendas. A timetable is a general listing, by month, of important items of business that need to be dealt with during the year. Agendas list the specific items of business that need to be taken care of at each particular board meeting. By developing timetables and agendas, a district board can be sure that all important business will be addressed in a timely manner.

### **General Guidelines**

Planning is an aspect of administration that cannot be overlooked in order for a district board to function effectively.

Each year, the board should develop a planning timetable that lists, by month, the important items of business that need to be scheduled for completion within that time period. The timetable should include items such as scheduled elections, phases of the budget process, deadlines, special events and policy reviews. Some items require completion before predetermined dates because of legal requirements such as tax filing deadlines or petition scheduling. Some items can be dealt with at any time during a



month, and items can be added as they come to the board's attention. This yearly timetable is used to develop the agendas for each meeting.

### **Agendas**

An agenda is a program of things to be done; specifically, a list of things to be dealt with at a meeting. An agenda properly prepared and followed facilitates the covering of business matters that may otherwise be overlooked. The president and the secretary of the board should meet with the fire chief to decide what should be included in the agenda. The agenda should be developed using;

- The planning timetable
- The previous meeting's minutes (unfinished business)
- Any requests by the chief
- Any important correspondence from citizens, vendors, organizations, other districts or governing bodies

Certain matters must be addressed by the board each meeting and should be included. Items that need monthly attention include the district's financial status report and approval of bills for payment. The agenda should also schedule time for constituent inquires and concerns and time for items not included.

It is recommended that a formal agenda be developed and adhered to at all meetings. Only details of the matters of action, considerations, or discussion would be different from meeting to meeting. Agendas ensure that important matters are addressed, and help meetings stay on track.

### **Planning Timetables**

A planning timetable allows a general overview of the considerations required throughout the year. Each district will have a timetable that differs because each district differs in its needs, priorities, financing, and development.

Under each month there are three categories. The first is for matters the board must deal with during that particular month. The second lists matters that are only suggestions for disposal at that time. The third category is for actions and considerations that are important to deal with but can only be fit into the timetable by the board.

## Sample Application for Appointment to the Board of Directors

Name:		
Address:		
Phone Number(s):	Home	Work
e-mail address:		

Are you a registered voter in the Fire District or do you own real estate that is in the boundaries of the Fire District?

List the Tax Code of the property you own in the fire district.

Briefly describe your employment, professional and community volunteer background.

What community affiliations or activities have you participated in?

List any public offices or governmental boards or committees that you have served on that have not already been mentioned.

Please explain why you are interested in serving as a director on the Fire District Board.

Signature & Date \_\_\_\_\_

Please describe what you believe are the major challenges facing fire district residents and business owners.

Please provide any additional information or comments which you believe will assist the Board of Directors in considering your application.

Please attach a current resume;

Signature & Date \_\_\_\_\_

## Sample Oral Interview for Appointment to the Board of Directors

The goal of the interview is to determine which of the applicants is to be appointed as a board member. Each candidate will be given a score after all of the interviews have been completed.

Following is a list of sample questions that may be used during an oral interview:

As Board members we will be evaluating you for the position of Director. This position is that of an elected official and is foundational to our form of local government in Oregon. This interview will last about 45 minutes. Do you have any questions?

1. Describe for us what have you personally done to prepare yourself for appointment to a position of an elected official?

SCORE:	Below average	Average	Above average
	20 30 40 45 50 55 60 65 70 75 80 85 90 95 100		
(Indicate your ranking of the candidate on the above line)			

2. Provide us an overview of your formal educational background.

SCORE:	Below average	Average	Above average
	20 30 40 45 50 55 60 65 70 75 80 85 90 95 100		
(Indicate your ranking of the candidate on the above line)			

3. What other life activities that have helped shape your view of society?

SCORE:	Below average	Average	Above average
	20 30 40 45 50 55 60 65 70 75 80 85 90 95 100		
(Indicate your ranking of the candidate on the above line)			

4. It would be helpful for us if you spent some time telling us why you are interested in seeking a public position such as this.

SCORE:	Below average	Average	Above average
	20 30 40 45 50 55 60 65 70 75 80 85 90 95 100		
(Indicate your ranking of the candidate on the above line)			

5. Issues involving labor-management relations frequently involve the Board of Directors. What is your experience in dealing with labor unions? Also describe for us how you would handle your role as a director and personal the relationship with fire district employees.

SCORE:	Below average					Average					Above average				
	20	30	40	45	50	55	60	65	70	75	80	85	90	95	100

(Indicate your ranking of the candidate on the above line)

6. There are times when you will be dealing with individuals in the public who may be verbally abusive and demanding. What would your reaction be? How would you deal with this person?

SCORE:	Below average					Average					Above average				
	20	30	40	45	50	55	60	65	70	75	80	85	90	95	100

(Indicate your ranking of the candidate on the above line)

7. What do you regard as some of your professional shortcomings?

SCORE:	Below average					Average					Above average				
	20	30	40	45	50	55	60	65	70	75	80	85	90	95	100

(Indicate your ranking of the candidate on the above line)

8. What do you see as the biggest challenge(s) for the fire district?

SCORE:	Below average					Average					Above average				
	20	30	40	45	50	55	60	65	70	75	80	85	90	95	100

(Indicate your ranking of the candidate on the above line)

**Do you have any questions? Is there any other information you would like to give regarding your qualifications for this position?**

## Oral Interview Score Sheet

INTERVIEWER: For each general area indicated below, rate the applicant's responses by circling H (high), M (medium), or L (low). Please make comments, as you feel appropriate

General Comments:

H   
M   
L

Candidates view of self and world:

H   
M   
L

Knowledge of current events:

H   
M   
L

Responses were consistent/inconsistent:

H   
M   
L

Candidate communicated prejudice about persons or institutions:

H   
M   
L

Oral Communication ability:

H   
M   
L

Evidence of Character:

H   
M   
L

Stability in past and prospects of stability in the future:

H   
M   
L

Indication of ability to perform as a director:

H

M

L

Possibilities of failure:

H

M

L

Conclusions - Recommendations:

H

M

L

### OVERALL RATING

SCORE:	Below average					Average					Above average				
20	30	40	45	50	55	60	65	70	75	80	85	90	95	100	

(Indicate your ranking of the candidate on the above line)

Interviewer Name \_\_\_\_\_

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# Firefighters

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## Employment

### Definition

A “firefighter” has been defined by the Oregon Legislature as “a person whose principal duties consist of preventing or combating fire or preventing loss of life or property from fire” ([ORS 652.050\(1\)](#)). Any employee furthering this objective should be classified as a “firefighter” for legislative purposes. For instance, a person who took care of fire department equipment and answered telephone was held to be a “firefighter” within the legislative meaning of the word (24 Op Atty. Gen. 274).

### Hours

No provision of Oregon law supersedes those federal requirements of the Fair Labor Standards Act (FLSA) (29 CFR Part 533).

FLSA covers all employees of state and local government, unless exempted. Exceptions are:

- elected officials and their appointed staff, political appointees and legal advisors, and
- 2) bona fide volunteers: cannot be an employee doing the same type of work for the agency as a volunteer, cannot receive more than expenses, reasonable benefits or a nominal compensation, paid employees may do the same type of work for other agencies.

Executive personnel (management), administrative employees (office or non-manual work related to management policy or general operations), and professional employees (advanced learning and work requiring exercise of discretion and judgment) may be exempt from the overtime requirements of FLSA and State law if specific requirements are met.

The 13-B-20 exclusion allows that if a department employs four or less firefighters, then the employees are not required to be covered under federal overtime requirements. Under FLSA, there is a 7-K exemption:

1. Applies only to firefighters defined as:
  - Employed in an organized state or local fire department
  - Trained in operational duties
  - Have legal authority and responsibility to engage in the prevention, control or extinguishing of fires
  - Must perform activities during 80% or more of working time that are directly concerned with prevention, control, and extinguishing of fires
  - Or be a qualified EMS responder that functions under the umbrella of a fire department



2. Work periods may be up to 28 days and 212 hours
3. Must be enacted by the board, it is not automatic and may be subject to collective bargaining or union agreements
4. Overtime at the rate of time and one-half for all hours in excess of those set in accordance with the work period
5. To be paid only for the days worked: days taken off for vacation, sick leave, or personal days do not count in the accumulation of overtime
6. May use compensation time at time and one-half rate up to a total of 480 hours

Record keeping must include the following information: 1) name, home address, birth date (if under age 19) 2) sex and occupation 3) hour and day work week begins 4) regular pay rate if overtime is worked 5) regular earnings 6) overtime earnings 7) deductions or additions to pay 8) total pay and 9) date of payment and pay period covered.

Trade time is voluntary and must be approved by the agency. For overtime, the calculation is based on the employee scheduled to work, not the employee actually working. Oregon regulations for firefighter working hours are covered under [ORS 652.050 – 652.080](#). Firefighters must be provided with at least 48 consecutive hours off duty in each 7 day period (ORS 652.070(1)).

Because employment laws are complex and constantly revised, and penalties can be severe, appropriate legal counsel should be consulted before enactment of new policies or procedures.

### **Hiring, Firing, Demotion, and Discipline (ORS 242.702 – 242.824)**

In Oregon, all fire districts that employ four or more full time firefighters, except the Chief, must apply the Civil Service regulations, or its equivalent. Each district that fits those requirements must have a civil service commission. The district board has the option to decide if the Fire Chief is covered under Civil Service. Oregon courts have held that a substitute system (other than the statutory system) must have an independent review board to be substantially similar to the civil service provisions.

The civil service commissions are comprised of three individuals appointed by the district board. These individuals cannot be board members or employees of the district (although they may be board members or employers of another district). The commission must, by law, meet at least once every 90 days. Two members constitute a quorum.

The function of the commission is to develop rules for examinations, appointments, promotions, demotions, transfers, reinstatements, suspensions, and discharges. The rules must be posted in each fire department and be available for inspection at the office of the commission's secretary. The commission also certifies all persons appointed or employed in civil service. All positions subject to civil service regulations must be filled by individuals certified by a commission.

Firefighters employed continuously for six months and who are US citizens automatically are inducted into the civil service when such a system is first implemented in a district. Entrance examinations into civil service must be given at least every 30 months. Notice must be posted once every week for two consecutive weeks in a newspaper of general circulation prior to an examination. In addition, notice must be posted in three public places (one of which is the office of the commission) for not less than two weeks before the examination. Promotional examinations are generally held every 30 months (if there are four or more positions open) but may be scheduled more frequently if necessary.

The commission keeps a register of each grade and classification in the civil service for purposes of entrance and promotion. Persons who have been laid-off head the current entrance register and persons who have been demoted for no fault of their own are to be placed at the top of the promotion register. Individuals appointed to the civil service are placed on a 12-month probation period. New employees may be dismissed without cause during this period.

[ORS Chapter 242](#) addresses numerous civil service provisions including causes for dismissal, demotion and suspensions, the conduct of investigations and hearings, the rights of appeal and counsel. Any system adopted as a substitute to the civil service provisions must be very similar to the substantive provisions of Chapter 242 and have procedural regulations at least as rigorous as those in that chapter.

There are two good sources for information on federal employment laws. The first is the US Department of Labor web site where each law can be accessed.

Link: <http://www.dol.gov/compliance/laws/main.htm>

The second is the Employment Law Guide issued by the same department which has employer information in an easy to understand format.

Link: <http://www.dol.gov/compliance/guide/index.htm>

### **Discrimination in Employment Prohibited**

It is unlawful in Oregon to refuse to hire, fire, or discriminate against an individual in compensation, terms, conditions, or privileges or employment because of that individual's race, religion, sex, national origin, marital status, age (when over 18), expunged juvenile record, association with any one of the "protected classes", family relationship, or opposition to safety and health hazards. State and Federal laws prohibit discrimination against individuals on the basis of mental or physical disability, if the individual can perform the essential functions of the job once the employer has provided "reasonable accommodation" for the disability. The 1993 Oregon Legislature repealed the statute that made the retirement of firefighters mandatory at age 60.

### **Due Process**

Employees who have a reasonable expectation of continued future employment have a "property right" in such future employment, which they may not be deprived of without due process. Such property rights may arise from policies or practices that indicate that

employees may only be terminated for certain reasons or for “just cause.” Civil service procedures will usually meet due process requirements, but even employees of departments that do not have civil service are entitled to due process protection. When a district takes certain disciplinary actions (discharge, demotion, suspension without pay, reduction in pay or benefits, reduction in rank), the employee is entitled to procedures which meet the due process requirement. Before the employee is disciplined, the employee is entitled to receive notice of the charges, notice of the possible sanctions, an explanation of the evidence against the employee, and an opportunity to respond to the charges to the person who will make the disciplinary decision. If the discipline is imposed after the pre-disciplinary hearing, the employee is entitled to a formal post-disciplinary hearing, including the right to present evidence and witnesses, cross-examine adverse witnesses, and representation (at the employee’s cost) by legal counsel or another person.

### **Striking Prohibited**

[ORS 243.736](#) provides that it is unlawful for firefighters to strike or recognize a picket line of a labor organization while in the performance of their official duties. [ORS 243.742](#) provides for binding arbitration for employees who are prohibited from striking.

### **Military Leave**

[ORS Chapter 408](#) requires public employers to grant leave of absence for participation in active military duty and temporary active duty in the US Armed Forces (National Guard and reserve units). The Oregon Attorney General has interpreted this law to prohibit a public employer from limited, attaching conditions to, or requiring a certain time for the leave to begin. The leave of absence must not cause loss of time, pay, benefits or regular leave after six months of employment. Leave time for annual reserve training is restricted to a maximum of 15 days per year.

## **Benefits**

### **Retirement**

All paid firefighters must be participants in the Public Employee’s Retirement System (PERS) unless the district provides retirements equal to, or better than, PERS benefits. If a district does provide an alternate retirement system, it may collect a percentage of the employee’s salary to fund the cost of such a program ([ORS 478.340](#)). Under state law, a district may not budget or collect contributions to fund retirement plans for individuals not in employment of the district.

Volunteer firefighters may be included under PERS, although their benefits will be determined differently than for full time firefighters. Volunteers may also be covered under the length of service award plans adopted by individual districts.

A firefighter under PERS may retire on a reduced service retirement allowance at age 50. A firefighter who is age 55, or who is age 50 with 25 years in the system, may retire with full allowance.

## **LOSAP**

**Length of Service Awards Program (LOSAP)** OFDDA administers a recruitment and retention program for fire service organizations to offer for volunteer service, the Length of Service Award Program (LOSAP). LOSAP acts as a retirement benefit that fire departments offer to their volunteers as an incentive to continue their service, or to express appreciation for the volunteer's efforts. The program allows for participation by city fire departments.

LOSAP allows districts and cities to determine what to contribute each year, including no contribution. Volunteers manage their individual accounts, creating ownership on the part of the volunteer and taking away the investment risk from the district.

### **Disability Benefits**

A firefighter is eligible for benefits for a disability of any cause under PERS and for a service connected disability under [ORS 237.630](#). Under PERS, benefits are equal to the pension entitlement had the firefighter worked continuously until age 55. Under [ORS 237.630](#), the firefighter may choose to participate in either program. A firefighter may convert benefits received under PERS into a service connected disability retirement annuity.

### **Life Insurance**

The State of Oregon provides \$10,000 in life insurance for covered firefighters (including volunteers) dying through injuries occurring during working hours. The premiums of the insurance are paid by the district. The district may provide its own insurance benefits if they are equal to or better than state coverage ([ORS 237.025](#)). The surviving spouse or child under PERS are eligible for benefits equal to 12.5 percent of the firefighters final average salary ([ORS 237.674](#)).

The Public Safety Office Benefits Program offers a life insurance policy for death of firefighters caused by line-of-duty. The policy pays in excess of \$100,000 but has considerable restrictions. Death must not be the result of underlying illness or any other factor not relating to firefighting activity, and certain tests must be performed on the deceased very soon after death. Applications can be made to:

Public Safety Office Benefit Program  
Attention: Special Programs  
633 Indiana Avenue NW, Room 1044  
Washington, DC 20531  
(202) 307-0635

[http://www.ojp.usdoj.gov/BJA/grant/psob/psob\\_main.html](http://www.ojp.usdoj.gov/BJA/grant/psob/psob_main.html)

### **Health Coverage**

A district may, but is not required to, provide insurance or contract for medical or hospital services for employees. If it does enter into insurance or service contracts, it may pay all, a portion of, or none of the premiums ([ORS 478.325](#)).

[ORS 243.303\(2\)](#) states: *The governing body of any local government that contracts for or otherwise makes available health care insurance coverage for officers and employees*

*of the local government shall, insofar and to the extent possible, make that coverage available for any retired employee of the local government who elects within 60 days after the effective date of retirement to participate in that coverage and, at the option of the retired employee, for the spouse of the retired employee and any unmarried children under 18 years of age. The health care insurance coverage shall be made available for a retired employee until the retired employee becomes eligible for federal Medicare coverage, for the spouse of a retired employee until the spouse becomes eligible for federal Medicare coverage and for a child until the child arrives at majority, and may, but need not, be made available thereafter. The governing body may prescribe reasonable terms and conditions of eligibility and coverage, not inconsistent with conditions of eligibility and coverage, not inconsistent with this section, for making the health care coverage available. The local government may pay none of the cost of making that coverage available or may agree, by collective bargaining agreement or otherwise, to pay part or all of that cost.*

**Caution:** The termination of any employee, for any reason, may be subject to the federal COBRA law. Carefully check those requirements.

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## **The Role of the Board and the Manager**

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In general, it is the responsibility of the elected board to establish policy and the role of the manager to implement policy. This line sometimes moves depending on the size and responsibilities of a district and whether or not the staff is paid or volunteer, but boards should be careful to have a clear understanding with their manager on respective roles and responsibilities. It is also important for board members to understand that their authority is not as an individual, but as a board. A board member, for example, does not have the authority to direct staff or take any position on behalf of the district unless authorized by the full board of directors.

The board does have the responsibility of hiring the district manager, evaluating his or her performance and occasionally dismissing. All three areas require compliance with applicable state and federal laws, even if the hire is an “at will” employee and can be fired without cause. The district manager is the only employee the board generally hires, fires or evaluates other than when the board adopts personnel policies or a public hearing on other employee actions.

The termination process of district managers and employees is a leading cause of lawsuits against districts and board members personally. For this reason directors need to pay close attention when developing personnel policies and when hiring or firing a district manager. Generally, districts should utilize legal counsel familiar with employment and labor law when dealing with personnel decisions. Never forget that one of the most important jobs of a board is to establish and maintain overall district personnel policies and procedures.

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## **Fire Chief**

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A fire chief is the focus of the department's operations. The chief must be able to respond to inquiries from the public and other government planning agencies. The chief is the primary agent of community relations, financial planning, strategic planning, personnel and training management and support considerations. The chief is also responsible for community education. In larger districts, these duties can be delegated to select personnel. In smaller districts, all administration may have to be addressed by a single person.

Each district must choose which facets are considered most important. The bottom line is what the budget allows a district to pay in salary and whether that salary will attract qualified candidates. Below are the criteria that Tualatin Valley Fire & Rescue use to evaluate potential candidates. As Jeff Johnson, Chief for Tualatin Valley Fire and Rescue and former Community Public Relations Officer stated:

“Each community and the organizations within that community, need to establish their own hiring criteria based on their local needs and experience. These model qualifications are in now way complete or considered applicable to all situations. When evaluating the qualifications, one should take the time to subtract from the list those qualifications that do not apply to your organization and those qualifications that do. Tualatin Valley Fire & Rescue offers the following as suggestions for working towards a hiring criterion for the position of Fire Chief. They are in no way the only or best criteria and you may want to review information from NFPA 1201 Chief Officer.”

### **Fire Chief Recruitment**

#### **Organizations with Combination Career and Volunteer Personnel**

1. Masters Degree in related field – desired
2. Bachelors Degree in Fire Service Administration
3. Oregon Fire Administrators Institute I
4. Oregon Fire Administrators Institute II – desired
5. Board on Public Safety Standards and Training, Fire Officer IV
6. Board on Public Safety Standards and Training, Fire Officer VI – desired
7. Six years or more progressive responsibility in the fire department, with three years or more at, or above, Battalion Chief or comparable rank
8. Extensive knowledge of fire prevention, fire education, suppression, fire ground operations, labor relations, budget preparation, open meetings laws, principles of supervision, community relations, apparatus maintenance and firefighter safety
9. Certified in Incident Command (NIIMS)

#### **Organizations with Administrative Staff Managing Volunteer Members**

1. Bachelors Degree in Fire Science or equivalent combination of education and experience
2. Board on Public Safety Standards and Training, Fire Officer IV
3. Oregon Fire Administrators Institute I

4. Six years or more progressive responsibility in a fire department, with three years or more at, or above, Captain or comparable level
5. Thorough knowledge of fire prevention, fire education, suppression, fire ground operations, labor relations, budget preparation, open meetings laws, principles of supervision, community relations, apparatus maintenance, firefighter safety, training and retaining volunteers.

#### **Organizations with All Volunteers**

1. Associate Degree in Fire Science or equivalent combination of education and experience
2. Board on Public Safety and Training, Fire Officer IV
3. Oregon Fire Administrators Institute I – desired
4. Six years or more progressive responsibility in a fire department, with three years or more at, or above, Captain or comparable level
5. Thorough knowledge of fire prevention, fire education, suppression, fire ground operations, budget preparation, open meetings laws, principles of supervision, community relations, apparatus maintenance, firefighter safety, training and retaining volunteers.

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## **Hiring, Job Descriptions and Sample Policies**

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The most important part of the personnel process is the selection and hiring of employees. To assist your district with this task, this section includes helpful materials on applications, interviews, job descriptions and evaluations. These materials should only be used as samples. Your district should always refer back to its adopted personnel policies.

In order to be successful in the hiring process is to know what your district expects and to communicate those job expectations with a well-formulated job description. The job description is a guide the district and its employees can use throughout the term of employment to measure results and communicate expectations. Job descriptions should be reviewed on a regular basis and updated when duties and responsibilities change.

The following is a sample job description from a fire district. Although it is specific to a fire district, the basic elements can be applied to any type of district.

## Sample Job Description

FIRE CHIEF \_\_\_\_\_ Fire District \_\_\_\_\_

DEPARTMENT: ADMINISTRATIVE  
SUPERVISOR: DISTRICT BOARD OF DIRECTORS  
SUPERVISION EXERCISED: Directly supervises \_\_\_\_\_ Administrative personnel and indirectly supervises over \_\_\_\_\_ Fire District employees and over \_\_\_\_\_ Fire District Volunteers.  
SALARY/WAGE STATUS: EXEMPT, GRADE \_\_\_\_\_  
CIVIL SERVICE STATUS: NO  
BARGAINING UNIT: NO  
REVISED: \_\_\_/\_\_\_/200\_

### Primary Purpose

Formulates operating procedures that carry out the policies of the Board of Directors. Directs and delegates responsibilities for all activities of the Fire District.

### Essential Functions

The essential functions of a Fire Chief include, but are not limited to, the following duties and responsibilities that are listed in no particular order of importance or significance:

1. Manages and controls all matters pertaining to the Fire District.
2. Analyzes municipal fire and emergency service problems, develops plans and techniques to provide adequate protection for the Fire District, and applies Insurance Services grading schedule to improve fire and emergency services defense.
3. Coordinates with area fire departments and emergency service agencies.
4. Assures appropriate incident command procedures are initiated and followed at all incidents.
5. Develops short and long-range plans, goals and objectives to meet Fire District needs.
6. Manages the development and execution of Fire District operation and personnel policies.
7. Supervise the development of Fire District budget for submission to the Board of Directors and prepares a variety of monthly and annual reports covering departmental operation.
8. Coordinates District's relationships with a variety of political subdivisions and public service agencies.



## **Secondary Functions**

1. Assists with area planning for emergency services protection in event of major disaster.
2. Maintains awareness and knowledge of current fire prevention, fire suppression, emergency medical response, and administrative techniques.
3. Performs other duties as assigned.

## **Job Scope**

The Fire Chief is responsible for all operations and activities of the Fire District. Involves a high degree of regular contact with others both inside and outside the Fire District as he or she works highly independent on a wide variety of complex duties and responsibilities with only general direction given by the Board of Directors.

Performances of functions have significant financial, professional image, and operational impacts upon the District that require the incumbent to use a high degree of judgment and tact in the execution of the essential functions. Requires extensive travel both inside and outside the District as he or she represents the District in community, political, and other fire service related activities. Involves limited exposure to hazards and extreme conditions, but may require such exposure in the event of major disaster operations supervision or routine involvement in emergency operations at the command level. Involves frequently working under a high degree of stress and requires working long hours in the performance of essential functions. Requires frequent travel within and outside of the District.

## **Job Specifications**

1. Any combination of education, training, or experience that provides the required knowledge, skills and abilities to perform essential functions. High school graduate with a Bachelors' Degree or equivalent required.
2. Ten (10) years experience in the Fire Service or equivalent required.
3. Must meet knowledge, health and physical qualifications established by a Fire District and the Civil Service Commission.
4. Must possess demonstrated political skills necessary to implement District Strategic Plan and identify and effect solutions to regional emergency services.
5. Must possess a current driver's license valid in the state of Oregon.
6. General knowledge of modern fire-fighting techniques, including emergency medical services and hazardous materials.
7. Knowledge of principles, practices, procedures of fire department administration as well as an extensive understanding of the rules and regulations of the department as well as of fire prevention laws and ordinances.

8. Ability to analyze the effectiveness of the Fire District and to collate its development with changing conditions in the District and protected area.
9. Ability to plan, assign, and direct a large number of subordinates.
10. Ability to maintain satisfactory relationships with officials and the general public.
11. Ability to effectively direct the operations of staff and equipment under emergency conditions.
12. Ability to communicate effectively in English, both orally and in writing, as well as the ability to effectively perform public speaking and negotiations as required.
13. Ability to perform those physical requirements necessary for essential functions including, but not limited to, regular sitting, standing, walking, and general mobility; continual talking in person, in group presentations, and over the phone to diverse groups of various sizes and natures; occasional keyboard typing; infrequent crouching, kneeling, crawling, climbing, limb extension, and all other physical activities required in his or her activities in emergency situations.
14. Ability to work independently as well as establish and maintain harmonious relations with people both inside and outside the organization.

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## **Pre-Employment Inquiry Guidelines**

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Asking the right questions and avoiding the wrong ones on an employment application is crucial to a district's ability to prevent legal challenges and conduct proper background checks. Use the following model application to update your own application materials to insure that you are not asking any illegal questions.

**Note:** This is a general compendium of permissible inquiries based on federal, state and local anti-discrimination statutes. It should not be interpreted as representing the law of any one state or municipality.

### **Age**

#### **Permissible**

- "Can you show proof of age upon hire?"
- "Are you over 18 years of age? If you are under 18 years of age, can you produce a work permit upon hire?"

#### **Suspect**

- Dates of attendance at elementary or high school.
- Questions which tend to identify applicants as 40 years of age or over.

## **Applicant Referral**

### **Permissible**

- “How were you referred to this position? For example, current employee, newspaper advertisement.”

### **Suspect**

- Questions inquiring as to the name of the person who referred the applicant.

## **Arrest or Criminal Record**

### **Permissible**

- Questions regarding prior convictions where accompanied by a statement that such convictions will not absolutely prohibit employment, but will only be considered in relation to specific job requirements.

### **Suspect**

- “Have you ever been arrested?”

## **Birthplace or Citizenship**

### **Permissible**

- “Are you legally authorized to work in the United States?”
- Statement that proof of the applicant’s legal right to work in the U.S. will be required after being hired.

### **Suspect**

- “Are you a U.S. citizen?”
- Birthplace of applicant (or applicant’s parents or family).

## **Education**

### **Permissible**

- Questions regarding extent of education, degree(s) received names of schools attended, but only where such requirements are demonstrably related to the job.

### **Suspect**

- Questions regarding dates of attendance at elementary or high school.
- Questions regarding ethnic, social or religious ethnic, social or religious affiliation of schools attended sororities, fraternities, etc.

## **Fidelity Bonding**

### **Permissible**

- Statement that fidelity bond is a requirement of employment.

### **Suspect**

- “Have you ever been denied a fidelity bond or has one been canceled?”

## **Height or Weight**

### **Permissible**

- Questions may be asked about an applicant's height or weight but only if height or weight is a bona fide occupational qualification (demonstrably related to job performance).

### **Suspect**

- Height and weight

## **Military Service**

### **Permissible**

- Questions regarding relevant experience gained during military service.

### **Suspect**

- Questions regarding type of discharge (except dishonorable).
- Questions regarding reserve duty obligations.
- Questions regarding service in foreign military.

## **Name**

### **Permissible**

- "Have you ever used any other name?"
- Is additional information such as an assumed name or nickname, necessary in order to check job references?

### **Suspect**

- "What is your maiden name?"
- "Has your name been changed by court order?"

## **National Origin**

### **Permissible**

- What languages other than English are relevant to the job applied for: "What languages, other than English, do you read or write?"
- "Can you speak, read or write [Spanish]?"

### **Suspect**

- Questions requiring applicant to identify national origin, ancestry or nationality.
- "What is your first/native language?"

## **Notice in Case of Emergency**

### **Permissible**

- Statement that the name and address of an individual to be notified in case of accident or emergency will be required upon hire.

### **Suspect**

- "Name, address and relationship of relative or other individual to be notified in case of accident or emergency."

## **Organizational Activities**

### **Permissible**

- “List all job-related organizations, clubs or professional societies to which you belong - you should omit those that would identify you race, color, religion, sex, national origin, age, disability or sexual orientation.”

### **Suspect**

- “List all organizations clubs, societies, etc. to which you belong.”
- Questions related to political affiliations or union membership.

## **Physical/Mental Disability**

### **Permissible**

- Describing the various functions of the job and asking: “Can you perform the functions of the job for which you are applying, with or without a reasonable accommodation?”

### **Suspect**

- “Do you have any physical or mental condition/disability which may affect your ability to perform the job applied for?”
- Questions regarding an applicant’s general health, medical conditions, illnesses, or disabilities or receipt of benefits for disability or workers’ compensation.

## **Qualifications/Previous Work Experience**

### **Permissible**

- Questions related to previous experience and/or skills that are pertinent to the job applied for, names and addresses of former employers, dates of prior employment and reason(s) for leaving previous employer.

### **Suspect**

- Inflated experience requirements that are not strictly job related.

## **Religion**

### **Permissible**

- Statement of the employer’s regular working hours, days or shifts and whether the applicant can work this schedule.
- Questions regarding religious days of observance or religious affiliation but only where such is a bona fide occupational qualification (demonstrably related to job performance).

### **Suspect**

- Religion of applicant.
- Any questions which tend to elicit information about an applicant’s religious affiliation, for example, regarding activity in church groups.
- Requirement that applicants include a member of the clergy as a personal reference.

## **Residence**

### **Permissible**

- Address.

### **Suspect**

- “Do you rent or own your home?”
- “Do you have any foreign residences?”
- “How long have you lived at your present residence?”

## **Sex**

### **Permissible**

- Applicant’s sex but only if sex is a bona fide occupational qualification (demonstrably related to job performance). Note: This is a very narrow defense.

### **Suspect**

- Sex of applicant.
- Questions regarding pregnancy, birth control, numbers of ages of children, childbearing or child care plans.
- Questions inquiring whether an applicant’s spouse will allow him/her to travel.

## **Race**

### **Permissible**

- Statement that a photograph may be required after hiring decision.
- Data for OFCCP or affirmative action compliance about EEO record keeping may be recorded and maintained separate from the application.

### **Suspect**

- Questions requiring applicant to identify race, color, complexion, color of skin, hair or eyes.
- Questions requiring applicant to identify attitudes working with, supervising or being supervised by person of another race.

## **References**

### **Permissible**

- “List those persons willing to provide personal and/or professional references.”

### **Suspect**

- Questions directed to applicant’s former employer(s) or personal references which illicit information regarding applicant’s race, color, religion, creed, sex, age, national origin or disability.

## **Relatives/Anti-Nepotism**

### **Permissible**

- Statement of employer’s anti-nepotism policy. (Even though this is not an inquiry, the only way that an applicant can be informed that such a policy exists, and that it may be a disqualifier, is by a statement).
- Questions regarding spouse or relatives working for competitors where necessary to protect company secrets.

- Information for purposes of benefits administration, for example, marital status or number of dependents, can be required after hiring.

**Suspect**

- Questions that ask applicant to identify relatives or close friends working for the employer.

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## Model Application for Employment

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This district makes its employment decisions without regard to race, color, sex, national origin, religion, marital status, age, prior industrial injury, or mental or physical handicaps unrelated to job performance. This district does not hire applicants who must smoke while on the job.

This application will be considered only for the specific job applied for. It will not be retained. If you desire to be considered for a position at a future time, you must file a new application.

Job applied for: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_  
(First) (Middle) (Last)

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_ Social Security No.: \_\_\_\_\_

Are you over 18 years of age? \_\_\_\_\_

It is the district's policy to comply with the provisions of the Immigration Reform and Control Act of 1986 and to hire only authorized workers. If you are hired, you will be asked to provide verification of your work eligibility. The types of verification require may change from time to time as federal regulations are promulgated or amended. Your employment will not be continued if you are unable to or are unwilling to provide the verification requested by the company.

Please describe any education, training, qualifications, or skills that you think are relevant to the position for which you are applying. \_\_\_\_\_  
\_\_\_\_\_

Have you ever worked for this district before? \_\_\_\_\_

Date worked: \_\_\_\_\_ Position held: \_\_\_\_\_

How did you become aware of this opening? \_\_\_\_\_



**Previous Work Experience**  
(Within the last ten years)

Please list most recent employment first.

1. Company name: \_\_\_\_\_ Telephone No. ( ) \_\_\_\_\_  
Company address: \_\_\_\_\_  
Immediate supervisor: \_\_\_\_\_ Dates worked: \_\_\_\_\_  
Position held: \_\_\_\_\_ Latest Salary: \_\_\_\_\_  
Job responsibilities, equipment operated: \_\_\_\_\_  
Reason for leaving: \_\_\_\_\_
  
2. Company name: \_\_\_\_\_ Telephone No. ( ) \_\_\_\_\_  
Company address: \_\_\_\_\_  
Immediate supervisor: \_\_\_\_\_ Dates worked: \_\_\_\_\_  
Position held: \_\_\_\_\_ Latest Salary: \_\_\_\_\_  
Job responsibilities, equipment operated: \_\_\_\_\_  
Reason for leaving: \_\_\_\_\_
  
3. Company name: \_\_\_\_\_ Telephone No. ( ) \_\_\_\_\_  
\_\_\_\_\_  
Company address: \_\_\_\_\_  
Immediate supervisor: \_\_\_\_\_ Dates worked: \_\_\_\_\_  
Position held: \_\_\_\_\_ Latest Salary: \_\_\_\_\_  
Job responsibilities, equipment operated: \_\_\_\_\_  
Reason for leaving: \_\_\_\_\_

May we make inquires of previous employers? \_\_\_\_\_

**References**

List three persons other than relatives who have known you longer than one year.


Please sign a "Release and Waiver" form (attached) for each employer and reference listed above. The nature of our business requires employees to maintain regular attendance and to work day, swing and evening shifts. If for any reason you would not be able to be present regularly during any of these shifts, please indicate which shifts you cannot work regularly. \_\_\_\_\_

A job description detailing the functions and duties of the job for which you are applying is attached. Are there any functions or duties listed which you would be unable to perform? If so, please explain. \_\_\_\_\_

Please list any criminal convictions (other than traffic infractions) sustained within the last 10 years. You will not be automatically excluded from consideration if you have been convicted of a crime. Your suitability for the position sought will be evaluated based upon the totality of circumstances, such as: the nature of the crime, the timelines of the conviction, or the type of work involved. \_\_\_\_\_

In submitting this application for employment, I authorize investigation of all statements contained in it, and it is understood and agreed that any misrepresentation by me in this application may result in cancellation of the application and/or separation from the company's service if I have been employed. I agree that I will undergo a physical examination, at the district's expense, if requested by the company.

In consideration of any employment, I agree to conform to the rules and regulations of the district. My employment and compensation can be terminated, with or without cause, and with or without notice, at any time, at the option of either the company or myself. I understand that no representative of the district except the board of directors has the authority to enter into any agreement for any specified time or to make any agreement contrary to the foregoing.

I certify I have read all of this application and the information I have provided above is true and correct.

Signature: \_\_\_\_\_

**INCOMPLETE APPLICATIONS WILL NOT BE CONSIDERED**

**RELEASE AND WAIVER**

I authorize any person, school, current employer, past employer(s), and organizations named in my application for employment (and accompanying resume, if any) to provide \_\_\_\_\_ [insert company name] with relevant information and opinion that may be useful to the company in making a hiring decision, and I release such persons and organizations from any persons and organizations from any legal liability in making such statements.

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

**IMPORTANT – Please read carefully and initial each paragraph before signing.**

By my signature and initials placed below, I promise that the information provided in this employment application (and accompanying resume, if any) is true and complete, and I understand that any false information or significant omissions may disqualify me from further consideration for employment, and may be justification for my dismissal from employment, if discovered at a later date. I agree to immediately notify the company if I should be convicted of a felony, or any crime involving dishonesty or a breach of trust while my job application is pending, or during my period of employment, if hired.

\_\_\_\_\_ Initials

I authorize the investigation of all statements contained in this application (and accompanying resume, if any) and any other person or entity with knowledge of me. I also authorize the company to contact my present employer (unless otherwise noted in this application form), past employers, and listed references. I understand that if my position is one that warrants such an inquiry, the company may request an investigative consumer report from a consumer reporting agency that includes information as to my character, general reputation, personal characteristics, and mode of living. I understand that the investigative consumer report may involve personal interviews with my neighbors, friends, relatives, former employers, schools, and others. I also understand that under the Federal Fair Credit Reporting Act I have the right to make a written request to the company, within a reasonable time, for the disclosure of the name and address of the consumer-reporting agency so that I may obtain a complete disclosure of the nature and scope of the investigation.

\_\_\_\_\_ Initials

I authorize any person, school, current employer (except as previously noted), past employer(s), and organizations named in this application form (and accompanying resume, if any) and any other person or entity with knowledge of me to provide the company with any information and opinion which the company regards as useful to it in making a hiring decision, and I release such persons and organizations from any legal liability in making such statements or furnishing any and all information that the company may seek.

\_\_\_\_\_ Initials

I give permission for a complete pre-placement physical examination and psychological tests and interview, if appropriate for the position to which I am applying, including a drug screening exam and x-rays, and I consent to the release to the company of any and all medical information, as may be deemed necessary by, the company in judging my capability to do the work for which I am applying.

\_\_\_\_\_ Initials

I understand that if my employment is terminated by the company for dishonesty, breach of trust, or any criminal acts the authorities may be notified and I may be criminally prosecuted.

\_\_\_\_\_ Initials

I understand that this application does not, by itself, create a contract of employment. I understand and agree that, if hired, MY EMPLOYMENT IS FOR NO DEFINITE PERIOD OF TIME, and may, regardless of the date of payment of my wages or salary, BE TERMINATED AT ANY TIME, subject to company policies and rights provided by written contract. I understand that NO PERSON IS AUTHORIZED TO CHANGE ANY OF THE TERMS MENTIONED IN THIS EMPLOYMENT APPLICATION FORM.

\_\_\_\_\_ Initials

Date: \_\_\_\_\_ Signed: \_\_\_\_\_

THIS APPLICATION FOR EMPLOYMENT WILL REMAIN ON FILE FOR  
\_\_\_\_\_ WEEKS.

**Example of What Not To Ask**  
**SO-SUE-ME, INC.**  
**NOT FOR EMPLOYMENT APPLICATION**

Mr.  
 Mrs.  
 Miss Name: \_\_\_\_\_ Sex: \_\_\_\_\_  
Race/Color: \_\_\_\_\_  
Maiden Name or other legal names used: \_\_\_\_\_  
Date of Birth: \_\_\_\_\_ Place of Birth: \_\_\_\_\_  
Marital Status  Married  Single  Widowed  Divorced  
Religion: \_\_\_\_\_  
Number and ages of Dependents: \_\_\_\_\_  
Are you a U.S. Citizen?  Yes  No  
Height: \_\_\_\_\_ Weight: \_\_\_\_\_ Eye & Hair Color: \_\_\_\_\_  
Are you pregnant?  Yes  No  
Have you ever tested positive for HIV?  Yes  No  
Have you ever been arrested?  Yes  No  
Are you veteran?  Yes  No  
Are you related to anyone employed by So-Sue-Me, Inc.?  Yes  No  
If yes, give name and relationship: \_\_\_\_\_  
Have you ever been injured on the job?  Yes  No  
If yes, give full details. \_\_\_\_\_  
Have you ever sued your employer for discrimination?  Yes  No  
If yes, give full details. \_\_\_\_\_

Have you ever seen a psychiatrist or other mental health professionals?  
 Yes  No

If yes, give full details. \_\_\_\_\_  
\_\_\_\_\_

If married, spouse's name (maiden name for women), age, race, and occupation:  
\_\_\_\_\_  
\_\_\_\_\_

Do you smoke?  Yes  No

Are you willing to take a polygraph (lie detector) test?  Yes  No

Have you ever belonged to a labor union?  Yes  No

If yes, give name(s) of union(s) and dates of membership. \_\_\_\_\_  
\_\_\_\_\_

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## Sample Interview Appraisal Form

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When conducting interviews a simple form should be used to keep the interview team from asking inappropriate questions and for documentation. A form can also help the interview team focus on the skills and abilities that are the most important.

Applicant's Name: \_\_\_\_\_

University (ies): \_\_\_\_\_ Degree(s): \_\_\_\_\_

	Excellent	Very Good	Good	Fair	Slight
Appearance					
Maturity/Comportment					
Oral Communication Skills					
Interpersonal Skills					
Motivation					
Energy Level					
Flexibility/Tolerance					
Leadership Ability/Potential					
Knowledge of Industry					
Total					

Comments:

- Recommend For Hire
- Do Not Recommend
- Hold for Further Consideration

Interviewer: \_\_\_\_\_ Date: \_\_\_\_\_ Location: \_\_\_\_\_

## Evaluations

Performance evaluations for employees at all levels in an organization are extremely important. Not only do evaluations give employees crucial information about their performance but they also help the employer establish documentation for the personnel file.

### Sample Chief Administrators Performance Evaluation

For the period beginning \_\_\_\_\_ and ending \_\_\_\_\_ Rating: \_\_\_\_\_

U = Unsatisfactory                      NI = Needs Improvement  
 ME = Meets Expectations              EE = Exceeds Expectations  
 O = Outstanding

PUBLIC RELATIONS	U	NI	ME	EE	O
Maintains a proactive image of district programs in the community through effective utilization					
Ensures that a public perception of service by the district is with courtesy and professionalism					
Remains accessible to the community					
Effectively handles citizen complaints/inquires					

COMMENTS:

ADMINISTRATION	U	NI	ME	EE	O
Plans and organizes implementation of programs and policies approved or adopted by the Board of Directors					
Provides a clear, concise budget document that funds District services					
Administers the adopted budget within approved revenue and expenditure allocations					
Plans and organizes the maintenance of District-owned facilities, buildings and equipment to ensure maximum and safe utilization					
Plans for future staffing needs to meet District established service levels					
Plans and organizes programs to maintain quality staff					

COMMENTS:

RELATIONSHIP WITH BOARD OF DIRECTORS	U	NI	ME	EE	O
Maintains effective communications with the Board of Directors					
Plans and organizes materials to present comprehensive information to the Boards that assist in decision making					

COMMENTS:

INTERGOVERNMENTAL RELATIONS	U	NI	ME	EE	O
Maintains contacts with other governmental agencies					
Represents the district in communicating with other jurisdictions with which the district is involved or interfaces					
Reports to the Board on intergovernmental plans and activities					

COMMENTS:

PERSONAL / PROFESSIONAL DEVELOPMENT	U	NI	ME	EE	O
Maintains relationships with professional associations and colleagues					
Attends conferences and seminars to remain aware of developments in the field of communication					
Reports to the Board on intergovernmental plans and activities					

COMMENTS:

ACCOMPLISHMENTS AND ACHIEVEMENT OF GOALS

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FUTURE GOALS (Mutually Agreed Upon for Next review Period)

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\_\_\_\_\_  
Chief/Administrator

\_\_\_\_\_  
Date

\_\_\_\_\_  
President, Board of Directors

\_\_\_\_\_  
Date



## **Termination of Employment**

Termination of employment is never easy. Courts consistently award damages to employees when their rights have been violated because of a termination that was handled improperly. When terminating an employee it is essential to receive expert legal advice. Employment law has become too complicated for most special districts to make all of the right decisions without the advice of legal counsel. A little expense up-front can save on substantial litigation costs in the future.

For SDAO members that are part of the Property/Casualty program, pre-loss legal assistance is available for just such a situation. Call SDAO for legal advice before making any employment termination decision.

## **Sample Personnel Policies**

There are many legal and practical considerations that govern the drafting of personnel policies. Issues of human resource management and organizational culture are also important. Choices you make should be reviewed by the authors or by legal counsel familiar with employment law, public employee rights, and government law.

### **POLICY 14.1: Personnel Policies and Procedures**

#### **A. OVERVIEW AND GENERAL POLICIES**

#### **B. PURPOSE OF PERSONNEL POLICIES**

These policies provide rules and regulations for all employees of the \_\_\_\_\_ DISTRICT (which is referred to as "the District" throughout these policies) relative to matters of personnel administration, except that the [General Manager, Fire Chief, Executive Director] serves at the pleasure of the Board of Directors and is the Board of Directors' representative in relation to application and administration of these policies to all other District employees. These rules and regulations are intended to set a general framework for effective personnel administration. In all cases, these policies should be construed with this in mind and should be understood as guiding the [General Manager, Fire Chief, Executive Director], and not limiting in any way the prerogatives of the Board in its relationship with the [General Manager, Fire Chief, Executive Director].

#### **ALTERNATE SECTION (For Districts with Union Agreement)**

In the event of a conflict in language, interpretation or application of a collective bargaining agreement, where specific collective bargaining agreement language differs from these rules and regulations, the language contained in the collective bargaining agreement shall take precedence over the rules and regulations in the policies for any employee covered by such collective bargaining agreement.

These policies replace and supersede all pre-existing policies, procedures or orders relating to personnel matters of the District and its employees. Department heads should ensure that existing department policies are consistent with this Manual.

### **C. INTRODUCTION**

This manual contains statements of personnel policies and procedures. It is designed to inform of the working guidelines for supervisory and staff personnel in the day-to-day administration of the District to provide employees an understanding of what is expected of them, and to ensure consistent, fair and uniform treatment of District employees.

The District reserves the right to change these policies and procedures at any time. These policies and procedures do not and are not intended to confer any property right in continued employment, to constitute an express or implied contract, or to give rise to a binding past practice under any collective bargaining agreement.

Employees and the District reserve the right to end the employment relationship, with or without cause, at any time. Further, except as might be approved in writing by the \_\_\_\_\_, no employee or representative of the District has the authority to enter into an agreement for employment for any specified period of time, or to make any agreement contrary to Board-approved policies.

Each employee can assist in keeping the District personnel program up to date by notifying the [ ] whenever problems are encountered or improvements can be made. When the need for a new or revised policy presents itself, a recommendation should be submitted to the [ ] for consideration.

The [ ] may vary or modify any District personnel policy, on a case-by-case basis, if it is found that strict application of the policy is impractical or if it would result in hardship. Exceptions granted in any instance will not be binding in the future.

### **D. PERSONNEL ADMINISTRATION GENERALLY**

The Board of Directors and [ ] shall have authority over all matters of personnel administration through adoption and implementation of the District budget, pay plans, collective bargaining agreements, and ordinances and resolutions adopting and/or amending the personnel rules and regulations.

The [ ] is charged with responsibility for the interpretation and application of the policies.

The [ ] may specifically delegate in writing the authority for the enforcement of rules and policies.

The [ ] shall be responsible for ensuring the effective implementation of these rules and may further establish, amend, or otherwise modify administrative rules and regulations pursuant to Board policies and shall advise the Board on any changes concerning these rules and regulations. The Board delegates to [ ] broad discretion in all aspects of personnel and labor relations, subject to the advice and concurrence of the Board.

Labor negotiations (including the settlement of any grievance after that grievance has been denied by the Board or a committee thereof) must and in every instance shall be approved by the Board of Directors before the District may be bound.

#### ALTERNATE SECTION

### **E. WRITTEN DEPARTMENTAL RULES AND STANDARD OPERATING PROCEDURES**

Each department may establish such additional written rules and operating procedures deemed necessary for the efficient administration of the department. Such rules and procedures are subject to approval by the [ ] before becoming effective and must be consistent with the general policies, procedures, rules, or regulations established by the District. Copies of the applicable departmental rules shall be made available to all employees in the department and shall be filed with the Board and maintained in the [ ]'s office.

### **POLICY 14.2: Appointments, Qualifications and Separation**

#### **A. JOB ANNOUNCEMENT**

Job announcements will be made for any vacant position within the District and shall be initiated upon the request of the [department head] to the [ ]. The announcement shall specify title and salary range of the position, the nature of duties performed, qualification requirements, the time and place to apply, and may include the selection process to be used. Job announcements shall be posted on appropriate bulletin boards, and may be published in District publications [and appropriate newspapers or newsletters]. Job announcements will be posted a minimum of [ ] working days prior to the closing date.

#### **B. APPLICATIONS**

Appointment to positions is through an open competitive process and will be based on merit and qualification. Promotional appointments may be made exclusively from employees if [it is determined that a sufficient number of employees are interested and qualified to compete through an internal selection process] [qualified].

Applications shall be available in the [ ]'s office. Applications will be accepted only for advertised openings. Applicants will complete the application form and any supplemental materials required by the District for positions within the time period specified in the job announcement.

Applicants for employment shall furnish complete information requested as to education, special training, experience and skills, as well as a chronological schedule of employment, references, and other pertinent information. The [ ] makes all appointments to positions authorized by the Board.

### **C. ELIGIBILITY**

At the time of application, all applicants must meet the minimum qualifications for the position or demonstrate a reasonable assurance of meeting the minimum qualifications by the time of appointment.

### **D. SELECTION**

Selection criteria and procedures will be based solely on job-related knowledge, skills, abilities, experience, education, training, and, when appropriate, prior demonstrated performance, aptitude, and character. The [department head and] [ ] shall design selection criteria based on the classification specifications and job requirements. Based on the results of the selection process, applicants will be selected by the department head for an employment interview.

### **E. ORIENTATION**

Upon appointment, the [immediate supervisor] [department head or a designee] [Chief] shall be responsible for orientation of new employees. Orientation shall include, but shall not be limited to organization and services of the District, work rules, personnel policies and procedures, safety training, completion of payroll forms, and introduction to other District personnel.

### **F. PROBATIONARY PERIOD**

New and rehired employees shall serve a probationary period of [six (6) months] commencing with their first day of employment. [except firefighters, security or police employees, for whom the probationary period shall be twelve (12) months.] Upon promotion probation is six (6) months unless otherwise specified in the position or at the time of the promotion opportunity.

Probation is part of the selection process used to confirm the initial employment decision and to reject those whose performance is not satisfactory. During this evaluation period, the employee and the District will have an opportunity to determine whether further employment with the District is appropriate.

The District can extend the duration of the probationary period up to six (6) months if, in its discretion, it determines that such an extension is appropriate. The employment relationship can be terminated by the employee or the District at any time during the probationary period for any reason. An employee who successfully completes the probationary period will be notified in writing that he or she has become a regular full-time or a regular part-time employee of the District. No employee will be deemed a "regular" and no longer a probationary employee until the District has so determined and notified the employee in writing.

### **G. EMPLOYEE STATUS**

1. Regular Full-Time Employees. An employee who regularly works a minimum of forty (40) hours a week on a continuing basis, and who has completed the probationary period, is considered a regular full-time employee.
2. Regular Part-Time Employees. An employee who regularly works less than forty (40) hours a week is considered a regular part-time employee once the probationary period is successfully completed. [The District shall pay a proportion of benefits, based on the regular hours of work.]
3. Temporary Employees. Temporary employees are defined as those employees holding jobs of limited duration arising out of special projects, abnormal work loads, or emergencies. [Temporary employees are ineligible for employer-paid benefits.]
4. Duration of Employment. All employees except temporary employees are hired for an unspecified duration. The District may not guarantee employment for any specific length of time. Employment is at the mutual consent of the employee and the District. Accordingly, either the employee or the District can end the employment relationship at any time, in accordance with District procedures [and applicable collective bargaining agreements.] Discipline and discharge may occur subject to District policies and procedures.
5. Anniversary Dates. The anniversary date used to determine vacation and merit increases of an employee hired before the 15th of the month shall be the first day of the month. The anniversary date of an employee hired on or after the 15th shall be the first day of the following month.

## **ALTERNATE SECTION**

### **H. VOLUNTEERS**

Volunteers are not employees of the District. Volunteers receive only those benefits expressly conferred in writing or by law. Workers' Compensation insurance will be provided to volunteers. The service of a volunteer may be discontinued at any time for any reason. Volunteers must abide by all applicable rules, policies and practices of the District, and are held to the same standard of performance as applies to regular employees. Volunteers serve at the pleasure of the District and the volunteer, and either may end the volunteer arrangement at any time.

### **I. EMPLOYMENT OF RELATIVES**

Relatives of employees may be hired by the District only if individuals concerned do not work in a direct supervisory relationship. "Relatives" are [this term may be defined the same as "immediate family" under the sick leave policy] Present employees who marry will be permitted to continue work only if they do not work in a direct supervisory relationship with one another. Employees will be allowed to accept a transfer including a demotion to an available and suitable position to avoid direct supervision by a relative. If this can not be accomplished, one of the employees may be terminated.

**J. PHYSICAL EXAMINATIONS**

An offer of employment may be contingent upon an applicant's successful completion of a medical examination to determine if the applicant is able to perform the essential functions of the job, with or without reasonable accommodation and without direct threat to the health or safety of the applicant or other persons. If required, this examination will be provided by the District at District expense. Any information gathered will be treated as a confidential medical record. The scope of the post-offer medical examination need not be limited to ability to perform essential job functions and may include a base-line physical exam and other inquiry into the applicant's physical and/or mental condition.

In order to ensure continued qualification for employment, the District may request its employees to submit to a medical examination when the request is job related and consistent with business necessity at the District's expense. Medical examinations may be required to support family medical leave, including requests for second or third opinions and fitness for duty certifications as provided by family medical leave laws and the District's policies.

**K. DRIVING RECORD**

Employees who may be required to drive must possess a valid Oregon driver's license and must comply with any operator's license restriction. All employees who may be required to drive on District business may at any time have their driving record checked by the District. If the record indicates violations, the employee may be subject to appropriate warnings or disciplinary action. As a condition of continued employment each employee who operates District vehicles must maintain a personal driving record, which is within risk criteria, if any, established by the District's insurer. Job applicants' driving records are checked prior to being hired as a condition of employment.

Employees who may be required to drive shall notify the [department head] [ ] of any change in license status, and all traffic violations. Failure to report a traffic violation or change in license status to the [department head] [ ] is viewed as a violation of District policy. The District monitors driving records as a component of risk management, in order to identify needs for driver improvement. This section is applicable to qualified individuals with disabilities only when driving is an essential function of their job.

**L. LAYOFFS**

Should a reduction in the District work force become necessary, the following procedures shall apply:

Layoffs may be implemented on a District-wide basis or in one or more departments, work groups, or job classifications depending on the needs of the District. Once it is determined what the scope of the layoff will be, employees generally will be laid off in the following order:

Temporary and on-call employees; Probationary employees; [Part-time employees; and] regular employees, according to knowledge, skills, and abilities as determined by the District.

In lieu of layoff, the District may reduce the hours of work of District personnel. The District will make available medical and dental insurance as required by COBRA.

#### **M. VOLUNTARY RESIGNATIONS**

To voluntarily resign in good standing, an employee must submit a written letter of resignation to the department head allowing at least ten working days' advance notice. Failure to submit a timely written resignation may preclude the individual from future employment opportunities with the District.

#### **N. PERSONNEL RECORD**

Maintenance of File. Personnel records of employees shall be maintained by the [ ]. If there is a change of name, address, telephone number, marital status, or number of dependents, the [ ] should be notified.

Removal. Documents shall not be removed from a personnel file, except pursuant to a determination by the [ ] that each particular document is not accurate, or is no longer relevant or timely to any personnel or performance matter. Any document, which is removed, shall be maintained in a separate file containing all such documents, not indexed under the name of any employee.

Medical Records. Documents containing medical information shall be kept in a separate, confidential file that is not part of the employee's personnel file. While these records shall be treated as confidential, supervisors and managers may be informed regarding necessary work restrictions and necessary accommodations, first aid and safety personnel may be informed, when appropriate, of an employee's disability, if the disability might require emergency treatment, and government officials investigating compliance with discrimination laws shall be provided relevant information on request.

#### **ALTERNATE AND OPTIONAL SECTION**

Personnel Files. This policy defines circumstances under which an employee may examine his/her personnel records; and an individual who is not an employee of the District may examine an employee's personnel record. This policy and procedure applies to all District employees.

No material of a negative or derogatory nature shall be placed in an employee's file unless the employee has had an opportunity to review the material, which shall be noted on the documents.

Employees may be allowed to include in their personnel file any material deemed relevant to job qualifications or performance, in the judgment of the District. Employees

may inspect and review their personnel files, excluding confidential reports from previous employers.

Employees may protest, or comment upon, in writing, any materials placed in their personnel file. Such protest/comments shall be placed in the personnel file.

### **OPTIONAL SECTION**

#### **Procedure for Access by Employee.**

Employees wishing to inspect/review their personnel file shall make an appointment in advance with the [            ].

An employee may receive a copy of such records. The employee will be charged the actual cost of providing this service.

### **OPTIONAL SECTION**

#### **Access to Personnel Files - Persons Other Than Employee.**

Personnel files are exempt from disclosure under the provisions of [ORS 192.502\(2\)](#) if disclosure would constitute an unreasonable invasion of privacy. Records of discipline may be exempt from public disclosure.

Any person seeking disclosure of material that would constitute an unreasonable invasion of any employee's privacy shall have the burden of showing that public disclosure would not constitute such an unreasonable invasion of privacy, by clear and convincing evidence.

No information in any employee's personnel file will be released until the employee is notified and has a reasonable opportunity to comment on the request. In all cases, the District must determine whether or not particular personnel records of any District employee are subject to public disclosure. An employee's expectation of confidentiality and privacy is, in each case, subject to the requirements of Oregon's Public Records Law. This decision shall be made by [the Chief Executive of the District] [the Board of Directors by Resolution following deliberation in Executive Session].

Information regarding an employee's address, telephone number, work history, performance or salary will not be given over the telephone. Only employment dates and job title may be released verbally.

Verification of employment, requests for salary or other confidential information must be in writing, signed by the employee, authorizing release of specific information.

Work reference requests, for both present and terminated employees, must be in writing and signed by the employee, authorizing release of information.



## **OPTIONAL SECTION**

### **Management Review of Personnel Files.**

All personnel files will be reviewed by [ ] every [five years] for material reflecting caution, warning, admonishment, reprimand and/or suspension, to determine the continued appropriateness of retention.

Materials deemed inappropriate or no longer relevant may be removed from the personnel file with the employee concerned so notified. Criteria that may be used include age of the material, seriousness of the infraction, and instances of repeated or similar infractions.

## **POLICY 14.3: Payroll, Scheduling and Overtime Practices**

### **A. WORK WEEK AND WORKING HOURS**

The normal work week consists of forty (40) hours within seven (7) consecutive days, however this should not be considered as a guarantee of any specific amount of work being made available. [Department heads] and employees are expected to accomplish service priorities in a timely fashion within the normal work week to the greatest extent possible. The hours of employment shall be fixed by the [department heads].

### **B. WAGE COMPENSATION**

**Wage Policy.** The District maintains a pay plan covering all positions in the District, showing the minimum and maximum rates of pay. In arriving at such salary ranges, consideration is given to prevailing rates of pay for comparable work in other public and in private employment, including consideration of conditions of work and basic pay, current costs of living, the local economy and wage adjustments in the community, suggestions of [department heads,] and the District's financial condition.

**Salary Review.** Compensation will be reviewed by the [department head] at the end of an employee's probation. An increase may be recommended to the [ ] based upon competent and commendable service.

Regular employee's salaries will be reviewed [after twelve (12) months] of continuous employment in the current classification. Wage increases are not automatic. [ ] make salary recommendations to the Board of Directors based upon merit. For exceptional performance a [department head] may recommend a merit increase to any employee paid below the top of the range, and if granted, it may be reduced to the step appropriate at any time extraordinary performance ceases.

### **C. OVERTIME**

Employees who are non-exempt under the Fair Labor Standards Act and state law will be paid for all hours worked in excess of 40 hours in a work week at the rate of time and one-half their regular rate unless a collective bargaining agreement provides otherwise.

**D. REST PERIODS**

Employees may take a paid 15-minute rest period during each half shift, scheduled at or as near as feasible to the middle of each half shift. Consistent with operating requirements, employees who at the request of the District work two or more hours beyond their regular quitting time shall receive a 15-minute rest period before starting on the next shift in addition to the regular rest periods occurring during the shift. Each rest period shall not exceed fifteen (15) minutes total. Rest periods shall not interfere with or be detrimental to the public safety.

**E. MEAL PERIODS**

Employees shall be granted an uncompensated off-duty meal period not to exceed one hour during each work shift. Consistent with operating requirements, meal periods shall be scheduled at or about the middle of the work shift.

\* Those districts covered by ERB/PERS public sector need not abide by BOLI's meal and rest break rules.

**F. PAYDAY**

Example: [The District's payday is the last business day of the month. A mid-month payroll draw of 35% of salary shall be allowed upon written request of the employee. In the event of emergency, employees may be permitted a draw at another time.]

**G. PAYROLL DEDUCTIONS**

Required Deductions. Federal and state laws require the following deductions from every paycheck:

Federal Withholding Tax  
State Withholding Tax  
Social Security Taxes (FICA)  
State Accident Insurance-Employee Surcharge  
Court ordered child support payments or garnishments  
Retirement.

Optional Deductions. Other deductions may be made from the employee's paycheck with the employee's written request, including, but not limited to:

Credit Union participation  
United Way contributions  
Insurance contribution

Any other deduction of general interest to District employees affecting five or more employees may be authorized by the employee in writing, with approval of the Finance Director

#### Union Dues

Monies due to the District which are in the nature of a loan where the employee has voluntarily signed a repayment agreement, the loan was in cash or equivalent, the loan was solely for the employee's benefit and the deduction does not exceed the limits of [ORS 23.185](#)(a) or (d).

Deferred Compensation. Any District employee may elect to enroll in a deferred compensation plan approved by the District. Deferred compensation accounts will be established on behalf of any employee who is willing to make contributions to the plan in accordance with plan requirements.

### **H. MEDICAL AND LIFE INSURANCE**

The District provides [group medical, dental and long term disability and life insurance] for eligible employees. Coverage for eligible employees begins the first of the next month following the employment date. Information regarding eligibility and specific benefits is available from the Finance Director. [The District participates in the Public Employee Retirement System for employees working over 600 hours per year. Information about contributions and retirement or disability benefits may be obtained from the [ ] or from the PERS.]

### **I. TIME RECORDS**

Time cards must serve as an accurate record of the time for which each employee works and is paid wages and overtime. Each employee is expected to record accurately the time spent working on District business. Personal time spent in District offices outside regular working hours should not be recorded.

Probationary or regular employees shall record all time worked for the District. An employee of the District may volunteer service to the District, and the time involved would not be recorded, ONLY IF the volunteer hours worked DO NOT INVOLVE THE SAME TYPE OF SERVICE which the person is employed to perform for the District. All volunteer activities by employees must be approved in advance, and in writing.

### **J. PAY UPON SEPARATION**

A regular employee terminating employment with the District will be paid any earned and unpaid wages then due for work hours, earned vacation which the employee is eligible to take off, and compensatory time, which shall be paid at the employee's hourly rate (hereafter "pay upon separation"). An employee who is involuntarily terminated will be paid no later than the end of the first business day after a discharge or termination. If an employee resigns and fails to give at least forty-eight (48) hours advance notice prior to quitting District employment, pay upon separation shall be paid within forty-eight (48) hours of the termination excluding weekdays and holidays.

## **OPTIONAL SECTION**

### **K. JOB SHARING**

A job sharing position is a regular full-time position that is held by two individuals on an interdependent, shared-time basis. The duties and responsibilities of the single position will be divided so as to provide total coverage by the two partners. The partners will normally divide the required working hours, not to exceed a total of forty (40) hours per week, within a pay period.

Each partner in a job sharing position must have, or be capable of having, all the knowledge, skills and abilities necessary to perform the job. Job share partners will share the benefits of the regular full-time position. Vacation, sick leave and holiday benefits will be pro-rated on the basis of hours worked.

### **ALTERNATE AND OPTIONAL SECTION**

Long term disability and retirement benefits will be provided to job share partners based on salary received. Job share partners have the same rights and privileges under the retirement plan as regular full-time employees. Each job share partner receives the same life insurance coverage as other regular full-time employees.

The District pays the cost of health and dental insurance for one full-time equivalent position. Accordingly, if a position is job-shared, each partner pays one half of the insurance premium and the District pays the other half, if both wish to receive coverage. If one partner chooses to waive all coverage, however, then the other partner may receive full coverage at no cost.

Job sharing shall be implemented, continued or terminated at the discretion of the District based on operational efficiency. Specific scheduling arrangements shall be determined by [ ] and should be a function of the needs of the District, the nature of the job and the desires of the job share partners.

## **POLICY 14.4: Employee Travel Authorization and Reimbursement**

### **A. GENERAL EXPECTATIONS**

All employees of the District are expected to use good judgment regarding the expenditure of funds for travel expenses. Only through teamwork can the costs of travel on District business be minimized.

### **B. DOCUMENTATION OBJECTIVES**

The Procedures for documenting the expenses involved with employee travel on District related business activities are designed to provide public accountability in two areas:

Pre-approval of all travel requests to insure that the travel is appropriate to the needs of the District and that budgeted funds are available for specific travel requests

A complete accounting of the actual expenses for the travel to insure that the expenses reported for reimbursement are appropriate and provide appropriate documentation.

### **C. APPROVAL**

The [ ] shall authorize registration, travel and attendance expenditures in advance within the budgeted amounts adopted by the Board. Prior to submittal for [ ] approval, the request must be approved by [the employee's department head] [ ].

### **D. TRAVEL REQUEST**

At least [two weeks] prior to the anticipated travel, the employee should submit a completed REQUEST FOR EXPENSES form to [ ]. This will document advance approval of the requested travel and provide a basis for an advance of funds to the employee.

### **E. TRAVEL SETTLEMENT**

Within [one week] after the travel has been completed, the employee must turn in receipts for lodging and all other expenses to be paid on an actual basis.

### **OPTIONAL SECTION**

#### **F. GUIDELINES**

The following general guidelines apply to the reimbursement of employee travel expenses.

Transportation. The actual cost of transportation, taxi fares, telephone calls and similar items incidental and necessary to the performance of official business while on travel status will be paid. If the employee's personal vehicle is used, the District will reimburse the employee at the current IRS mileage rate for the actual mileage required for the trip. Parking and other related expenses must be documented by receipt.

Lodging. Hotel and motel accommodations should be appropriate to the purpose of the trip. Expenses for lodging must be supported by actual receipts. Reimbursement for lodging is generally limited to the expense of a single room, except where employees are sharing a room. If an employee chooses to make other arrangements for lodging, a payment of [\$15.00] per night may be allowed in lieu of paying the actual accommodation costs.

Meals. Employees will be allowed a per diem rate of [\$23.00] per day for meals. This is broken down as follows: [\$5.00] for breakfast, [\$6.00] for lunch, and [\$12.00] for dinner. No receipts are required for meals covered under the per diem.

Telephone and Telegram. Expenses for telephone and/or telegram communications are reimbursable only if they are directly related to District business and are supported by actual receipts. Personal telephone calls charged to the District or to your room and paid by the District must be reimbursed.

Registration and Tuition Fees. Expenses for registrations and/or tuition fees are allowable expenses, and a copy of the registration must be attached to the Request for Expenses form.

Accompanied Travel. Any expenses for family members who accompany the employee on a trip are not reimbursable.

Alcoholic Beverages. Any expenditures for alcoholic beverages are not allowed and reimbursement will be required if any are charged to the District.]

## **POLICY 14.5: Time Off**

### **A. VACATION BENEFITS**

Vacation benefits are intended to provide eligible employees with a period of paid rest and relaxation away from work. Accordingly, employees are encouraged to schedule vacations each year, and to use all earned vacation benefits.

If a holiday falls during an employee's scheduled vacation, the employee will receive holiday pay for the day if eligible for such pay and will not be charged for vacation benefits for the day.

Accrued and unused vacation benefits shall be paid upon termination of employment. Vacation credits shall not accrue during any unpaid leave of absence.

The District provides vacation benefits to its regular part-time and full-time employees. Vacation credits will be posted monthly as follows for employees:

<u>Years of Continuous Service</u>	<u>Monthly Accrual</u>
0 through 1	6.673 hours
2 through 5	8 hours
6 through 10	10.001 hours
11 through 15	13.329 hours
16 plus	15 hours

Staff members may accrue up to [sixty (60) days] of vacation accrual. Accruals will not be posted to increase any employee's vacation balance in excess of [sixty (60) days] [and will be forfeited] [and may be directed as time off or paid in the District's discretion].

Vacations must be scheduled and approved by department heads (or the District Manager in the case of department heads) in advance.

**ALTERNATE SECTION**

Vacations for the year will be scheduled during/in the month of [ ], based upon seniority. Thereafter, vacations will be approved on an first-to-apply basis. No employee may accrue a vacation balance in excess of [double the maximum annual accrual]. Any employee with the maximum accrued vacation will forfeit additional vacations accruals.

**B. HOLIDAYS**

Regular full-time employees will receive a day off with pay on each of these recognized holidays:

- Day Before Christmas or New Years
- New Years Day
- Presidents' Day
- Memorial Day
- Fourth of July
- Labor Day
- Veteran's Day
- Thanksgiving Day
- Day after Thanksgiving
- Christmas Day

**ALTERNATE SECTION**

Note to drafter: Consider floating holidays in lieu of fixed holidays, and Martin Luther King's Birthday in lieu of Presidents' Day.

Floating Holidays. [Employees] [Employees in the positions of ] shall earn [ floating holidays per year] [one floating holiday per month] which shall be scheduled off and taken off during the year in which the holiday is earned. Floating holidays may not be carried forward into the succeeding [calendar] [fiscal] year, unless approved in advance by [ ]. Approval will be given only if the holiday time was scheduled, approved and then canceled by the District.

**ALTERNATE SECTION**

Part-time employees receive pro-rated holiday benefits.

When a scheduled holiday falls on Sunday, it will be observed on the following Monday. When a scheduled holiday falls on a Saturday, it will be observed on the preceding Friday.

If an employee works on any holiday observed by the District, the employee shall either be paid or given compensatory time for all hours worked at the rate of [one and one-half times the regular rate of pay] [double the regular rate of pay].

Employees who are off work on a leave of absence shall not receive holiday pay. Employees who are off work due to sickness or vacation shall be paid for the holiday in lieu of using vacation or sick leave credits.

### **C. SICK LEAVE**

Notification of Inability to Work. Employees who are unable to report to work due to personal or dependent illness or injury must contact the immediate supervisor on or before scheduled starting time. If an employee becomes sick during the day, the supervisor or designee must be notified before the employee leaves work. When sick leave is taken to care for a dependent, the District expects that other care arrangements will be made as soon as possible, except where leave for dependent care purposes is provided for by family leave laws and the employee is eligible for such leave. The employee must comply with the notice requirements under family leave laws, which may provide for later notification of inability to work than is otherwise required by this policy if the need for the leave is unanticipated.

Accrual. In order to minimize the economic hardships that may result from an unexpected short-term personal or dependent illness or injury, the District provides regular full-time employees with eight (8) hours of accumulated sick leave per month.

Unused sick leave benefits accumulate from year to year. Employees are not paid for unused sick leave upon employment termination. [Up to \_\_\_\_\_ hours of accumulated sick leave will be applied to PERS fold-in upon retirement.]

Concurrent Leaves. More than one type of leave may apply. Where allowed by federal or state law, leaves will run concurrently. This means that sick leave, workers' compensation leave, personal leave, leave as a reasonable accommodation for a qualified individual with a disability, federal family medical leave and state family leave, unpaid leaves of absence may all run concurrently and be counted against the employee's family medical leave entitlement. The District may designate any type of leave as family medical leave if the leave is used for a family medical leave purpose.

Medical Certification. An employee on sick leave that is running concurrently with another type of leave, for example family medical leave or personal leave, must provide the medical certification required for any and all applicable types of leave. This means an employee on sick leave may be required to have their medical provider complete the certification of physician or practitioner form required for federal or state family medical leave, obtain second or third medical opinions as provided by family medical leave laws and provide fitness for duty medical certifications before return to work as provided by the family medical leave policy.

### **OPTIONAL SECTION**

Transfer of Sick Leave. Employees who have exhausted their sick and vacation leave benefits may receive a gift of sick leave from other District employees if they require extended time off for illness or injury. In such event the District's only involvement shall be to transfer an employee's sick leave credit in accordance with the employee's request



and add it to the sick leave balance of another employee. Employees may donate up to 10% of their accrued sick leave balance. Only employees who have accumulated more than 240 hours may make a contribution, and no employee may contribute more than 40 hours per year to other employees.

### **ALTERNATE AND OPTIONAL SECTION**

A leave of absence with pay for up to three (3) days may be granted an employee when a death in the employee's immediate family requires the absence of an employee. Should circumstances require an employee to be absent longer than the three (3) days, the days in excess may be charged against accumulated sick leave. Immediate family means the immediate family of the employee or of the spouse, and is intended to include parents, children, grandparents, stepchildren, siblings and members of the employee's household.

6.(A) In addition to regular sick leave, an employee shall be granted up to three (3) days per year leave of absence with full pay in the event of death in the immediate family. If additional time is needed it may, with approval of the [ ] be credited against accrued sick leave.

### **ALTERNATE SECTION**

"Immediate family" is defined as a member of the employee's household, dependent of the employee, and parent of the employee or the employee's spouse. "Immediate family" is defined as an employee's spouse, parents, children, brother, sister, grandparents, father-in-law, mother-in-law, brother-in-law, sister-in-law, aunt and uncle, niece, nephew and grandchildren.

### **ADDITIONAL SECTION**

(Required for Employers With More Than 25 Employees but Less Than 50). (This section includes Oregon family leave rules only. The Federal Family Medical Leave Policy does not apply to Employers with less than 50 employees.)

### **D. FAMILY MEDICAL LEAVE POLICY**

The District recognizes that employees need support in balancing their work with personal and family responsibilities. The following document outlines the District's policies in compliance with Oregon leave laws. Not every detail can be included in this policy; however, the District will administer this policy in accordance with all legal requirements. Requests for benefits under this policy may be reviewed on a case-by-case basis.

OVERVIEW For employers with 25 – 49 employees in Oregon during each working day of 20 or more calendar weeks, either in the calendar year in which the leave is taken or in the preceding calendar year. The District's family medical leave policy provides benefits required by the Oregon Family Leave Act ("OFLA").

Reasons for Leave. Family medical leave may be taken for any of the following four purposes:

- For the birth of a child or for placement of a child under 18 years of age for adoption or foster care (this type of family medical leave may also be referred to as "parental leave")
- To care for a family member with a serious health condition (family member is defined to include: spouse, parent, parent-in-law and/or child) (this type of leave may be referred to as "serious health condition leave")
- To recover from or seek treatment for a serious health condition of the employee (this type of leave may be referred to as "serious health condition leave"); and/or
- To care for a child who suffers from an illness or injury that does not qualify as a serious health condition but that requires home care (this type of family medical leave may also be referred to as "sick child leave").

Length of Leave. In any one-year calculation period, eligible employees are entitled to the following amounts of family medical leave:

- 12 weeks of family medical leave
- 12 weeks of leave for an illness, injury or condition related to pregnancy or childbirth that disables the employee
- Employees who take parental leave are entitled to an additional 12 weeks of leave to care for a sick child.

More than one type of leave may apply to a situation. Where allowed by state law, leaves will run concurrently. This means that workers' compensation leave, leave for a non-industrial injury or illness (including paid leave such as sick leave), leave as a reasonable accommodation for a qualified individual with a disability, paid vacation used for a family leave qualifying reason, and state family medical leave may all run concurrently and be counted against the employee's annual family medical leave entitlement.

#### BASIC PROVISIONS RELATED TO FAMILY MEDICAL LEAVE

Certification. You must provide certification from your healthcare provider to support a family medical leave. Where the need for the leave is anticipated, you must provide the certification in advance of the leave, when possible (except certification is not required for parental leave although you may be required to provide documents evidencing birth, adoption or foster placement). Where the need for leave is not anticipated, you must provide medical certification within 15 days of the District's request for such certification. In some cases, the District may require a second or third opinion (not for leave to care for a sick child), at District expense. If your family medical leave is for your own serious health condition, you will also be required to furnish a "medical release certification" (fitness-for-duty certification) from your healthcare provider at least three working days before returning to work.

Benefits Continuation. Employees are not entitled to continuation of the employer-paid portion of their healthcare benefits or other benefits during family medical leave. Employees on a family medical leave are responsible for paying the employee's and

dependents' (if any) medical insurance premiums during the leave period (both employee and employer portions). You will be asked to authorize payroll deductions to cover insurance premiums while you are on leave. In certain situations, the District reserves the right to recover any premiums paid on your behalf for group medical insurance during your leave. For example, if after a leave you decide not to return to work for reasons other than a serious medical condition of yourself or a family member or other circumstances beyond your control, the District reserves the right to recover those premiums paid on your behalf for medical insurance during your unpaid leave.

If the law gives you a right to take leave intermittently, i.e., if you qualify for leave for your own or a family member's serious health condition, you may take intermittent leave or work a reduced schedule. District approval is required to take intermittent leave or work a reduced schedule for any other type of leave.

**Benefit Status and Accrual.** Generally, family medical leave will be unpaid. However, you may use accrued sick leave for your own serious health condition (including illness or injury related to pregnancy or childbirth) or for parental leave and will be required to use accrued vacation leave for all other types of leave. Where accrued paid leave is available, it must be substituted for unpaid family medical leave before unpaid leave is taken.

You will retain credit for seniority, pension plan, sick leave and vacation earned prior to your leave, except for the amount of sick leave and vacation time you use during the leave. You will not accrue vacation pay during any part of your leave in which you are absent without pay.

**Absenteeism.** Absences due to family medical leave, which are within the maximum required by law, are not a basis for corrective action for absenteeism. Where bonus programs are provided, an employee on family medical leave is not entitled to bonuses or awards based on productivity during the period of family medical leave but may be eligible for bonuses based on attendance or safety.

**Reinstatement.** When you return to work, you will be reinstated to your former job. If your former job has been eliminated, you may be entitled to be reinstated to an available equivalent position. You cannot be guaranteed a job, however, if your former position has been eliminated under circumstances where the law does not require reinstatement.

Employees are expected to promptly return to work when the circumstances which necessitated their leave ends. If circumstances change during the leave and the necessary leave period is shorter than originally expected, the employee must give the District reasonable notice (i.e., within two business days) of the changed circumstances where foreseeable and request reinstatement. With the exception of employees who are off work as the result of industrial injury or illness, employees lose their reinstatement rights when the period of leave exceeds the maximum allowed.

**One-Year Calculation Period.** Generally, the 12-month period during which leave is available (one-year leave calculation period) will start with the first day of the first leave

taken by the employee. A second 12-month period will commence with the first day of the first leave taken by the employee following the initial 12-month period and so forth.

### PARENTAL LEAVE

**Eligibility Requirements.** To qualify for parental leave, you must have been employed by the District for at least 180 days.

**Length of Leave.** Parental leave is designed to give you an opportunity to care for your child. Leave may be taken to care for the birth of a child or placement of a child under 18 years of age or over 18 years of age if the child is incapable of self-care due to a mental or physical disability.

Leave for birth or placement of a child must be taken within 12 months of the event. Each parent is entitled to 12 weeks of leave. Keep in mind that employees are generally only entitled to a total of 12 weeks of family medical leave in a one-year period, of which parental leave is one type.

If both parents work for the District, they are not entitled to take concurrent leave except in limited situations. Employees will only be allowed to take leave in two or more nonconsecutive periods with the District's prior approval.

**Leave Request.** You must provide 30 days advance notice if the leave is foreseeable. To apply for a parental leave of absence, notify your supervisor and obtain a "Request for Family Medical Leave" form. If the reason for the leave is unforeseeable, you must provide the District oral notice within 24 hours of the commencement of the leave and must provide written notice within three days of your return to work. If you have used three days of leave within a one-year period to care for a sick child, you may be required to obtain a "Certification of Physician or Practitioner" form to support a request for any additional leave to care for a sick child. In this case, the District will pay the cost of obtaining the medical certification if it is not covered by your health insurance plan. These forms are in Human Resources. Return the completed forms to Human Resources.

If you fail to provide notice as set forth above, the District may reduce your leave by up to three weeks, and you may be subject to discipline, up to and including discharge.

**OPTIONAL:** OFLA does not require this for parental leave.

**Intermittent Work.** With District approval, you may be allowed to work intermittently during your parental leave. Requests for this option would be reviewed on a case-by-case basis for approval by the District. Intermittent leave will be permitted only in extraordinary circumstances, and employees should not feel obligated to work intermittently during a parental leave.]

**Benefit Status.** Parental leave is unpaid. However, you do have the right to use (and you will be required to use) your accrued sick time and vacation days during your parental leave.

Relationship to Leave to Care for a Sick Child. Employees may be entitled to an additional 12 weeks to care for a sick child who requires home care for an illness or injury that is not a serious health condition. The definition of sick child is something less than a child suffering from a serious health condition.

An employee who takes the entire 12 weeks of family leave for parental leave may also take up to an additional 12 weeks of sick child leave within the same leave year. Employees who take less than 12 weeks of parental leave are entitled to the balance of the 12 weeks for any other family leave purpose, including sick child leave. When the leave taken for parental leave is less than 12 weeks, the employee is not eligible for an additional 12 weeks of sick child leave.

### SERIOUS HEALTH CONDITION LEAVE

Eligibility Requirements. To qualify for serious health condition leave, you must have been employed at least 180 days (six months) and have worked an average of 25 or more hours per week.

Length of leave. State law entitles an eligible employee, in any given year, to 12 weeks of leave for any of the following four purposes:

- Parental leave (see Section III above)
- To care for a family member with a serious health condition -- eligible family members include your minor children, spouse, parents or parents-in-law
- To care for the employee's own serious health condition
- To care for a child who suffers from an illness or injury that does not qualify as a serious health condition but that requires home care (this type of leave is called "sick child" leave).

Serious Health Condition. A serious health condition is defined as an illness, injury, impairment or physical or mental condition that involves:

- An illness, injury, impairment or physical or mental condition that requires in-patient care in a hospital, hospice or residential medical care facility
- An illness, disease or condition that in the medical judgment of the treating healthcare provider poses an imminent danger of death, is terminal in prognosis with a reasonable possibility of death in the near future, or requires constant care
- Any period of disability due to pregnancy or period of absence for prenatal care of childbirth.

A "chronic condition" which requires in-patient care or constant care. A chronic condition:

- Requires periodic visits for treatment by a healthcare provider
- Continues over an extended period of time (including recurring episodes of a single and underlying condition); and
- May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes and epilepsy).

A "permanent long-term condition" which requires in-patient care, constant care, or poses an imminent danger of death. Persons who suffer from a permanent or long-term condition must be under the continuing treatment of a healthcare provider. Examples of qualifying conditions include Alzheimer's disease, a severe stroke or the terminal stage of a disease.

Periods of employee disability resulting from industrial injury or illness will qualify as family medical leave if the injury or illness is a serious health condition as defined in this policy.

Unless complications arise, the following conditions do not qualify as serious health condition: Cosmetic treatments which do not require inpatient hospital care, and the common cold, flu, earaches, headaches (except migraine), routine dental or orthodontic problems, and periodontal disease. "Stress" is not considered a serious health condition unless it results in mental illness.

Leave Request. If possible, your request for a family leave must be submitted in writing to your supervisor at least 30 days prior to the leave. You must provide medical verification of the serious health condition from your healthcare provider and obtain "Request for Family Medical Leave" and "Certification of Physician or Practitioner" forms from Human Resources. If the reason for the leave is unforeseeable, you must provide the District oral notice within 24 hours of the commencement of the leave and must provide written notice within three days of your return to work.

If you fail to provide notice as set forth above, the District may reduce your leave by up to three weeks, and you may be subject to discipline, up to and including discharge.

Intermittent Leave. With District approval, you may be allowed to work intermittently or work a reduced schedule during leave to care for a sick child. An employee may be temporarily reassigned to an alternative position which better accommodates intermittent or reduced schedule leave. Requests for this option would be reviewed on a case-by-case basis for approval by the District. Employees must make a reasonable effort to schedule medical treatment so as to minimize disruption of District operations.

You will be allowed to work intermittently during a period of leave to care for sick family member and for your serious health condition. An employee may be temporarily reassigned to an alternative position which better accommodates intermittent or reduced schedule leave. Employees must make reasonable efforts to schedule medical treatments so as to minimize disruptions of District operations.

Benefit Status. In general, family medical leave is unpaid. However, you do have the right to use (and you will be required to use) your accrued sick time for your own serious health condition and parental care and vacation days during all other types of leave.

Leave to Care for a Sick Child. The District may not approve the employee's request for leave where another family member is available to care for the child.

**PREGNANCY LEAVE**

Oregon law provides female employees with an additional 12 weeks of leave for an employee's illness, injury or condition related to pregnancy or childbirth that disables the eligible employee from performing her job.

The right of a pregnant employee to take a medically necessary leave of absence in addition to any right the employee may have to take a leave for her own serious health condition. A pregnant employee could be on pregnancy leave prior to the delivery date and then on 12 weeks of parental leave after the baby is born.

You must provide 30 days advance notice when the leave is foreseeable. To apply for pregnancy leave, notify your supervisor and obtain "Request for Family Medical Leave" and "Certification of Physician or Practitioner" forms. If the reason for the leave is unforeseeable, you must provide the District oral notice within 24 hours of the commencement of the leave and must provide written notice within three days of your return to work.

If you fail to provide notice as set forth above, the District may reduce your leave by up to three weeks, and you may be subject to discipline, up to and including discharge.

You may use accrued sick leave or vacation days during the otherwise unpaid portion of the pregnancy disability leave and must use accrued paid leave before going on unpaid leave.

\_\_\_\_\_ District

Request for Family Medical Leave

PLEASE PRINT

Where the need for the leave may be anticipated, written request for Family Medical Leave must be made, if practical, at least 30 days prior to the date the requested leave is to begin.

Name: \_\_\_\_\_ Date: \_\_\_\_\_

Department: \_\_\_\_\_ Title: \_\_\_\_\_

Status:  Full Time  Part Time  Temporary

Hire Date: \_\_\_\_\_ Length of Service: \_\_\_\_\_

I request family medical leave for one or more of the following reasons:

- Because of the birth of my child and in order to care for him or her.  
 Expected date of birth: \_\_\_\_\_  
 Actual date of birth: \_\_\_\_\_ Leave to start: \_\_\_\_\_  
 Expected return date : \_\_\_\_\_
  
- Because of the placement of a child with me for adoption or foster care.  
 Date of placement: \_\_\_\_\_  
 Leave to start: \_\_\_\_\_ Expected return date: \_\_\_\_\_
  
- In order to care for my spouse, child, parent or parent-in-law with a serious health condition.  
 Leave to start: \_\_\_\_\_ Expected return date: \_\_\_\_\_  
 Please check one:  Spouse  Child  Parent  Parent-in-law  
 Please state name and address of relation:  
 Name: \_\_\_\_\_ Address: \_\_\_\_\_  
 Describe serious health condition: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
  
- For a serious health condition' which prevents me from performing my job functions.  
 Describe: \_\_\_\_\_  
 Leave to start: \_\_\_\_\_ Expected return date: \_\_\_\_\_
  
- Regarding 3 or 4 above, request intermittent (reduced workday hours) or reduced leave (fewer work days each work week) schedule (if applicable, subject to employer's approval) Please describe schedule of when you anticipate you will be unavailable to work: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
  
- In order to care for a child with a condition requiring home care which does not meet the definition of serious health condition, and is not life threatening or terminal. Is another family member available to care for the child?  
 Yes  No  
  
 Have you taken a family medical leave in the past 12 months?  
 Yes  No  
  
 If yes, how many workdays? \_\_\_\_\_

I understand that where allowed by law, all approved leave, whether paid or unpaid and including leave designated as sick leave, vacation leave, or personal leave, will be counted against my annual family medical leave entitlement. I understand I will be



allowed to use sick leave where appropriate as provided by District policy and to substitute any accrued vacation.

If my request for a leave is approved, it is my understanding that without an authorized extension and where the need for an extension could be anticipated, the District reserves the right to terminate my employment if I do not report to work on the first day following the date my leave is scheduled to end.

I authorize the District to deduct from my paychecks any employee contributions for health insurance premiums, life insurance, or long-term disability insurance which remain unpaid after my leave, consistent with state law.

I have been provided a copy of the District's Family Medical Leave Policy with this Family Medical Leave Request Form.

Signature of Employee: _____	Date: _____
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A physician's certification may be required to support a request for family medical leave. In addition, a fitness for duty certification may be required before reinstatement following the leave.

**ALTERNATE SECTION**

(Required for employers with more than 50 full or part-time employees within a 75 mile radius of a worksite during each of 20 or more calendar work weeks in the current or a previous calendar year. The weeks do not have to be contiguous). (This section meets both the Oregon and Federal Family Medical Leave Act rules and is appropriate when the Employer has 50 or more employees.)

**D. FAMILY MEDICAL LEAVE POLICY.**

The District recognizes that employees need support in balancing their work with personal and family responsibilities. The following document outlines the District's policies in compliance with the federal and State of Oregon family medical leave laws. Not every detail of those laws can be included, and the District will administer this policy in accordance with all legal requirements. Requests for benefits under these laws may be reviewed on a case-by-case basis.

OVERVIEW. The District's family medical leave policy combines benefits required by the federal Family and Medical Leave Act ("FMLA") and state law.

Reasons for Leave. Family medical leave may be taken for any of the following four purposes:

- For the birth of a child or for placement of a child under 18 years of age for adoption or foster care (this type of family medical leave may also be referred to as "parental leave")

- To care for a family member with a serious health condition (family member is defined to include: spouse, parent, parent-in-law and/or child) (leave to care for a parent-in-law is only required by state law) This type of leave may be referred to as "serious health condition leave"
- To recover from or seek treatment for a serious health condition of the employee (this type of leave may be referred to as "serious health condition leave")
- To care for a child who suffers from an illness or injury that does not qualify as a serious health condition but that requires home care (this type of family medical leave may also be referred to as "sick child leave" and is only required by state law).

Length of Leave. In any one-year calculation period, eligible employees are entitled to the following amounts of family medical leave:

- 12 weeks of family medical leave
- 12 weeks of leave for an illness, injury or condition related to pregnancy or childbirth that disables the employee

Employees who take parental leave are entitled to an additional 12 weeks of leave to care for a sick child.

An employee who takes the entire 12 weeks of family leave for parental leave may also take up to an additional 12 weeks of sick child leave within the same leave year. Employees who take less than 12 weeks of parental leave are entitled to the balance of the 12 weeks for any other family leave purpose, including sick child leave. When the leave taken for parental leave is less than 12 weeks, the employee is not eligible for an additional 12 weeks of sick child leave.

More than one type of leave may apply to a situation. Where allowed by the federal or state law, leaves will run concurrently. This means that workers' compensation leave, (sick leave), leave as a reasonable accommodation for a qualified individual with a disability, federal family medical leave and state family medical leave may all run concurrently and be counted against the employee's annual family medical leave entitlement.

#### BASIC PROVISIONS RELATED TO FAMILY MEDICAL LEAVE.

Certification. You must provide certification from your health care provider to support a family medical leave. Where the need for the leave is anticipated, you must provide the certification in advance of the leave, when possible (except certification is not required for parental leave although you may be required to provide documents evidencing birth, adoption or foster placement). Where the need for leave is not anticipated, you must provide medical certification within 15 days of the District's request for such certification. In some cases, the District may require a second or third opinion (not for leave to care for a sick child), at District expense. If your family medical leave is for your own serious health condition, you will also be required to furnish a "medical release certification" (fitness-for-duty certification) from your health care provider at least three working days before returning to work.

**Benefits Continuation.** While you are on a family medical leave required under federal law (FMLA qualified leave), and if you are otherwise qualified, the District will continue your employee benefits, including group medical insurance, for up to 12 weeks provided you pay your portion of the premiums. You will be asked to authorize payroll deductions for any employee contributions for your benefits while you are on leave. In certain situations, the District reserves the right to recover any premiums paid on your behalf for group medical insurance during your leave. For example, if after a leave you decide not to return to work for reasons other than a serious medical condition of yourself or a family member or other circumstances beyond your control, the District reserves the right to recover those premiums paid on your behalf for medical insurance during your unpaid leave.

If the law gives you a right to take leave intermittently, i.e., if you qualify for leave for your own or a family member's serious health condition, you may take intermittent leave or work a reduced schedule. District approval is required to take intermittent leave or work a reduced schedule for any other type of leave.

**Benefit Status and Accrual.** Generally, family medical leave will be unpaid. However, you may use accrued sick leave for your own serious health condition (including illness or injury related to pregnancy or childbirth) or parental care and will be required to use accrued vacation leave for all other types of leave. Where accrued paid leave is available, it must be substituted for unpaid family medical leave before unpaid leave is taken.

You will retain credit for seniority, pension plan, sick leave and vacation earned prior to your leave, except for the amount of sick leave and vacation time you use during the leave. You will not accrue vacation pay during any part of your leave in which you are absent without pay.

**Absenteeism.** Absences due to family medical leave which are within the maximum required by law are not a basis for corrective action for absenteeism. Where bonus programs are provided, an employee on family medical leave is not entitled to bonuses or awards based on productivity during the period of family medical leave but may be eligible for bonuses based on attendance or safety.

**Reinstatement.** When you return to work, you will be reinstated to your former job. If your former job has been eliminated, you may be entitled to be reinstated to an available equivalent position. You cannot be guaranteed a job, however, if your former position has been eliminated under circumstances where the law does not require reinstatement.

Employees are expected to promptly return to work when the circumstances which necessitated their leave ends. If circumstances change during the leave and the necessary leave period is shorter than originally expected, the employee must give the District reasonable notice (i.e., within two business days) of the changed circumstances where foreseeable and request reinstatement. With the exception of employees who are off work as the result of industrial injury or illness, employees lose their reinstatement rights when the period of leave exceeds the maximum allowed.

One-Year Calculation Period. Generally, the 12-month period during which leave is available (one-year leave calculation period) will start with the first day of the first FMLA leave taken by the employee. A second 12-month period will commence with the first day of the first leave taken by the employee following the initial 12-month period and so forth.

When state leave is available before the employee is eligible for FMLA leave or the reason for the first leave qualifies for state leave but does not also qualify for FMLA, the one-year leave calculation period will begin with the first state leave taken by the employee. Thereafter, a new leave calculation period will begin with the first day of FMLA qualified leave for FMLA calculations.

## PARENTAL LEAVE.

### Eligibility Requirements.

Oregon: To qualify for state family medical leave of absence, you must have been employed by the District for at least 180 days.

Federal: To qualify for federal family medical leave, you must have been employed by the District for at least 12 months and worked at least 1,250 hours in the previous 12 months.

There is a period of time where you may be eligible for state but not federal family medical leave. During this period, you will not be eligible for benefit continuation, which is only required by federal law.

Length of Leave. Parental leave is designed to give you an opportunity to care for your child (birth, placement for adoption or foster care).

Leave for birth or placement of a child must be taken within 12 months of the event. Each parent is entitled to 12 weeks of leave. Keep in mind that employees are generally only entitled to a total of 12 weeks of family medical leave in a one-year period, of which parental leave is one type.

If both parents work for the District, they are not entitled to take concurrent leave except in limited situations. Employees will only be allowed to take leave in two or more nonconsecutive periods with the District's prior approval.

Leave Request. You must provide 30 days advance notice if the leave is foreseeable. To apply for a parental leave of absence, notify your supervisor and obtain a "Request for Family Medical Leave" form. If you have used three days of leave within a one-year period to care for a sick child, you may be required to obtain a "Certification of Physician or Practitioner" form to support a request for any additional leave to care for a sick child. In this case, the District will pay the cost of obtaining the medical certification if it is not covered by your health insurance plan. These forms can be found in [                      ]. Return the completed forms to [                      ].

If the reason for the leave is unforeseeable, you must give the District oral notice within 24 hours of the commencement of the leave and must provide written notice within three days of your return to work.

**Intermittent Work.** With District approval, you may be allowed to work intermittently during your parental leave. Requests for this option would be reviewed on a case-by-case basis for approval by the District. Intermittent leave will be permitted only in extraordinary circumstances, and employees should not feel obligated to work intermittently during a parental leave.

**Benefit Status.** Parental leave is unpaid. However, you do have the right to use (and you will be required to use) your accrued sick time and vacation days during your parental leave.

**Relationship to Leave to Care for a Sick Child.** Employees who have taken parental leave may be entitled to an additional 12 weeks to care for a sick child who requires home care for an illness or injury that is not a serious illness. This does not entitle you to additional leave to care for a child with a serious health condition. The definition of sick child is something less than a child suffering from a serious health condition.

#### SERIOUS HEALTH CONDITION LEAVE.

**Eligibility Requirements.**

**Oregon:** To qualify for state family medical leave of absence, you must have been employed at least 180 days (six months) and have worked an average of 25 or more hours per week.

**Federal:** To qualify for federal family medical leave of absence, you must have been an employee of the District for a minimum of 12 months (need not be consecutive) and have worked a minimum of 1,250 hours in the preceding 12 months.

There may be a period of time when you are eligible for leave under state but not federal law. In situations where either set of rules may be applied, we will always apply the rules that grant the employee the most favorable benefits.

**Length of leave.** Federal and/or state leave laws entitle an eligible employee, in any given year, to 12 weeks of leave for any of the following four purposes:

- Parental leave (see Section III above)
- To care for a family member with a serious health condition -- eligible family members include your minor children, spouse, parents or parents-in-law (leave to care for a parent-in-law is required under state law only)
- To care for the employee's own serious health condition
- To care for a child who suffers from an illness or injury that does not qualify as a serious health condition but that requires home care (this type of leave is called "sick child" leave and is required under state law only).

Serious Health Condition. A serious health condition is defined as an illness, injury, impairment or physical or mental condition that involves:

- Inpatient care in a hospital, hospice or residential medical facility, including a period of incapacity connected with inpatient care

Continuing treatment by a health care provider for a serious health condition for:

- Incapacity of more than three days
- Any period of incapacity for pregnancy or prenatal care
- Any period of incapacity or treatment for a chronic serious health condition (i.e., asthma, diabetes, epilepsy, etc.)
- Permanent or long-term incapacity for which treatment may not be effective (i.e., Alzheimer's, a severe stroke, terminal stages of a disease, etc.)
- Multiple treatments for restorative surgery or a condition that, if not treated, would likely result in incapacity of more than three calendar days (i.e., chemotherapy for cancer, physical therapy for arthritis, dialysis for kidney disease, etc.).
- Periods of employee disability resulting from industrial injury or illness will qualify as family medical leave if the injury or illness is a serious health condition as defined in this policy.

Unless complications arise, the following conditions do not qualify as serious health condition:

- Cosmetic treatments which do not require inpatient hospital care, and the common cold, flu, earaches, headaches (except migraine), routine dental or orthodontic problems, and periodontal disease. "Stress" is not considered a serious health condition unless it results in mental illness

Leave Request. If possible, your request for a family leave must be submitted in writing to your supervisor at least 30 days prior to the leave. You must provide medical verification of the serious health condition from your health care provider and obtain "Request for Family Medical Leave" and "Certification of Physician or Practitioner" forms from Human Resources.

Intermittent Leave. With District approval, you may be allowed to work intermittently during leave to care for a parent-in-law with a serious health condition or leave to care for a sick child. An employee may be temporarily reassigned to an alternative position that better accommodates intermittent or reduced schedule leave. Requests for this option would be reviewed on a case-by-case basis for approval by the District. Employees must make a reasonable effort to schedule medical treatment so as to minimize disruption of District operations.

You will be allowed to work intermittently during a period of leave to care for sick family member (spouse, parent or child) and for your serious health condition. An employee may be temporarily reassigned to an alternative position that better accommodates intermittent or reduced schedule leave. Employees must make reasonable efforts to schedule medical treatments so as to minimize disruptions of District operations

Benefit Status. In general, family leave is unpaid; however, you may use accrued sick leave for your own serious health condition (including illness or injury related to childbirth or pregnancy) or parental care. You are entitled to use your accrued vacation days for all other types of leave.

Leave to Care for a Sick Child. The District may not approve the employee's request for leave where another family member is available to care for the child.

PREGNANCY LEAVE.

Oregon law provides female employees with an additional 12 weeks of leave for an employee's illness, injury or condition related to pregnancy or childbirth that disables the eligible employee from performing her job. The right of a pregnant employee to take a medically necessary leave of absence under state law is in addition to any right the employee may have to take a leave for her own serious health condition under federal and state law. A pregnant employee could be on pregnancy leave prior to the delivery date and then on 12 weeks of parental leave after the baby is born.

You must provide 30 days advance notice when the leave is foreseeable. To apply for pregnancy leave, notify your supervisor and obtain "Request for Family Medical Leave" and "Certification of Physician or Practitioner" forms. You may use accrued sick leave or vacation days during the otherwise unpaid portion of the pregnancy disability leave and must use accrued paid leave before going on unpaid leave.

District: \_\_\_\_\_

FAMILY MEDICAL LEAVE POLICY REQUEST FORM

Request for Family Medical Leave

PLEASE PRINT

Where the need for the leave may be anticipated, written request for Family Medical Leave must be made, if practical, at least 30 days prior to the date the requested leave is to begin.

Name: \_\_\_\_\_ Date: \_\_\_\_\_

Department: \_\_\_\_\_ Title: \_\_\_\_\_

Status:  Full Time  Part Time  Temporary

Hire Date: \_\_\_\_\_ Length of Service: \_\_\_\_\_

I request family medical leave for one or more of the following reasons:

- Because of the birth of my child and in order to care for him or her.  
Expected date of birth: \_\_\_\_\_ Actual date of birth: \_\_\_\_\_  
Leave to start: \_\_\_\_\_ Expected return date: \_\_\_\_\_

Because of the placement of a child with me for adoption or foster care.  
Date of placement: \_\_\_\_\_  
Leave to start: \_\_\_\_\_ Expected return date: \_\_\_\_\_

In order to care for my spouse, child, parent or parent-in-law with a serious health condition.  
Leave to start: \_\_\_\_\_ Expected return date: \_\_\_\_\_

Please check one:  Spouse  Child  Parent  Parent-in-law

Please state name and address of relation:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Describe serious health condition: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

For a serious health condition' which prevents me from performing my job functions.  
Describe: \_\_\_\_\_

\_\_\_\_\_

Leave to start: \_\_\_\_\_ Expected return date: \_\_\_\_\_

Regarding 3 or 4 above, request intermittent (reduced workday hours) or reduced leave (fewer work days each work week) schedule (if applicable, subject to employer's approval) Please describe schedule of when you anticipate you will be unavailable to work:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

In order to care for a child with a condition requiring home care which does not meet the definition of serious health condition, and is not life threatening or terminal. Is another family member available to care for the child?

Yes  No

Have you taken a family medical leave in the past 12 months?

Yes  No

If yes, how many workdays? \_\_\_\_\_



I understand that where allowed by law, all approved leave, whether paid or unpaid and including leave designated as sick leave, vacation leave, or personal leave, will be counted against my annual family medical leave entitlement. I understand I will be allowed to use sick leave where appropriate as provided by District policy and to substitute any accrued vacation.

If my request for a leave is approved, it is my understanding that without an authorized extension and where the need for an extension could be anticipated, the District reserves the right to terminate my employment if I do not report to work on the first day following the date my leave is scheduled to end.

I authorize the District to deduct from my paychecks any employee contributions for health insurance premiums, life insurance, or long-term disability insurance which remain unpaid after my leave, consistent with state law.

I have been provided a copy of the District's Family Medical Leave Policy with this Family Medical Leave Request Form.

Signature of Employee: _____ Date: _____
--

A physician's certification may be required to support a request for family medical leave. In addition, a fitness for duty certification may be required before reinstatement following the leave.

**E. JURY DUTY**

If a summons for jury duty is received, the employee shall notify the department head. Arrangements will be made to reassign work and time off will be granted. Jurors will pay the District payments for jury duty [except mileage when using personal vehicle] and will be paid regular wages. Employees are expected to report for work when not selected for a jury on any day, or when jury duty requires only part of a day.

**OPTIONAL SECTION**

**F. TIME OFF TO VOTE**

If an employee does not have sufficient time outside of working hours to vote at a statewide or local election, the employee may, without loss of pay, take off enough working time which, when added to the voting time available outside of working hours, will enable the employee to vote.

**G. UNIFORMED SERVICES LEAVE AND REEMPLOYMENT**

Overview. This policy covers leave and reemployment for employees in the uniformed services. It also contains nondiscrimination and non-retaliation provisions related to uniformed service. Regular employees requiring a leave of absence for service in the uniformed services shall, under certain defined conditions, be provided leave, continue their benefits during their leave, and be reemployed at the end of leave.

This policy is intended to be in full conformance with all federal and local laws regarding the rights of military personnel and re-employment of veterans. Nothing in this policy shall diminish rights under the applicable federal or local laws.

Definitions. The following definitions shall apply to this policy:

Service in uniformed service means performance of duty on a voluntary or involuntary basis in a uniformed service.

- Active Duty
- Active Duty for Training
- Initial Active Duty for Training
- Inactive Duty Training
- Full-time National Guard Duty
- Fitness for Duty Examination

Regular employee shall be defined as all employees except those hired for a brief, non-recurrent period where there is no reasonable expectation that their employment would continue indefinitely or for a significant period.

General. This policy applies to all employees of the District.

Compensation and Benefits for an Employee on Uniformed Services Leave. The District shall excuse the employee for the uniformed services leave. During the leave, the Company will not compensate the individual, but the individual may elect to utilize vacation pay accrued before commencement of the leave and maintain his or her health care insurance coverage through COBRA at no more than 102% of the full premium under the plan.

Required Notice of an Employee's Need for Uniformed Services Leave.

Employees (or the uniformed services in which the employee is to serve) must provide written or verbal notification to the Company of their obligation or intention to perform service in the uniformed services, unless notice is precluded by military necessity or otherwise unreasonable or impossible.

An employee's failure to provide notice may result in loss of reemployment rights and benefits and other employment benefits under law.

An Employee's Obligation to Report for Work or Request for Reemployment.

Employees must report back to work or request reemployment within the following time limits (extended by two years in case of disability):

- Service for 1 - 30 days uniformed service or a fitness for duty exam: employee must report to work on the first regularly scheduled work day after return plus eight hours to rest.
- Service for 31 - 180 days: employee must submit an application for reemployment within 14 days after completion of service.
- Service for 181 days or longer: employee must submit an application for reemployment within 90 days after completion of service.

Employees may be required to provide documentation to verify their rights to reemployment including separation papers.

Employees who fail to report to work or apply for reemployment within the required time periods will be considered absent and unexcused.

#### Reemployment Rights.

An employee returning from uniformed services of 90 days or less who has met the requirements for reemployment will be reinstated to the job the employee would have had if continuously employed with the employer without interruption for uniformed service, as long as the person is qualified to perform the job.

An employee returning from uniformed services of 91 days or longer will be reinstated to the job the employee would have had if continuously employed with the employer without interruption for uniformed services or a position of like seniority status and pay, as long as the person is qualified to perform the duties.

Reemployment is not required in the following circumstances:

Circumstances have changed to make reemployment impossible or unreasonable

The employee has a disability incurred or aggravated during uniformed service and it would be an undue hardship on the company to reemploy the person

The employment the employee left for uniformed services was for a brief, nonrecurrent period and there was no reasonable expectation such employment would continue indefinitely or for a significant period.

The employee failed to give advance written or verbal notice of the need for uniformed service leave, as required by this policy and the law.

The cumulative length of the uniformed services leave and all previous absences from a position with the Company exceeds five years. Some periods of uniformed service are excluded by law from the five-year calculation.

The employee was separated from uniformed services with a dishonorable or bad conduct discharge or other such designation regarding character of service as permitted by law.

Nondiscrimination and Nonretaliation. The District will not discriminate in employment or take any adverse employment action against any person because the person has taken an action to enforce a legally protected right under the laws protecting those in uniformed services.

## **OPTIONAL SECTION**

### **H. UNPAID LEAVE OF ABSENCE**

General. Employees who have been continuously employed with the District for at least one (1) year may request a personal leave of absence without pay for a reasonable period of time up to [sixty (60) days.] Requests for leaves of absence will be considered on the basis of the employee's length of service, performance, responsibility level, the reason for the request, whether other individuals are already out on leave, and the expected impact of the leave on the employer.

Requests. Requests must be submitted in writing and must be approved in writing by the employee's department head before the leave begins. Requests for extensions of leaves must be submitted in writing and approved in writing by the department head before the extended period of a leave begins. It is the employee's responsibility to report to work at the end of the approved leave. An employee who fails to report to work on the day after the leave expires will be considered to have voluntarily resigned.

Status of Employee Benefits During Personal Leave. The District will not pay for group health or dental insurance premiums during any portion of an unpaid leave of absence (except when the leave qualifies for federal family medical leave and benefit continuation is provided by the Family Medical Leave Policy. See Family Medical Leave Policy, if any). Accordingly, the premiums for such coverage are the complete responsibility of the employee. In order to keep the insurance in force, premiums for the entire period of the leave must be paid before the employee begins the leave (except as provided by Federal Family Medical Leave laws). Vacation time and sick leave will not accrue during personal leave of absence.

Sometimes more than one type of leave may apply to a situation. Where allowed by federal or state law, leaves will run concurrently. This means that unpaid leaves of absence, workers' compensation leave, sick leave, leave as a reasonable accommodation for a qualified individual with a disability, federal family medical leave and state family medical leave may all be run concurrently and be counted against the employee's annual family medical leave entitlement. The District may designate any type of leave as family medical leave if the leave is used for a family medical leave purpose.

An employee on personal leave that is running concurrently with another type of leave, such as sick leave or family medical leave, must provide the medical certification required for any and all applicable types of leave.

**ALTERNATE SECTION (Fire Districts)**

**UNPAID LEAVE TO PERFORM VOLUNTEER FIREFIGHTER DUTIES**

Employees of the District whose job duties do not involve firefighting or require firefighter skills and training may volunteer to serve as volunteer firefighters and respond to general alarms and other firefighter service emergencies in response to the alarm. Response time within the employee's regular shift will be considered hours worked at the employee's regular rate of pay. The employee will receive no points or other compensation for responding to an alarm during the ordinary hours of work.

**POLICY 14.6: Safety and Accidents**

**A. SAFETY POLICY STATEMENT**

Nothing is of greater concern to the District than the safety of its employees and the public. For the employee's protection, job-related injuries or illnesses must be reported immediately in accordance with the District's safety and accident policy. Employees are expected to use common sense and good judgment in work habits, to follow safe work practices, and to bring any unsafe condition to the attention of a supervisor. For example, employees shall:

Use the safety equipment which has been provided for use

Not operate equipment while medication, drugs or alcohol are present in the body without a doctor's written approval

Operate only the equipment on which they have received training

Warn co-workers and management of unsafe conditions or practices. Accept with appreciation the warning of a co-worker or supervisors as an expression of concern for their own well being

Report dangerous or unsafe conditions observed at work

Refrain from horseplay at all times

**B. UNSAFE CONDITIONS**

Employee Responsibility. Every employee is responsible for safety as a specific job assignment. To achieve the District goal of providing a safe work place, everyone must be aware of safety at all times. Employees shall report immediately any unsafe or hazardous condition directly to a supervisor, if it cannot be corrected safely and independently. Every effort will be made to remedy safety problems as quickly as possible.

Management Responsibility. Each department supervisor shall frequently review the need for implementing safety practices, policy or procedures warranted by hazards. Each accident and "near miss" is cause for review. A copy of such policies shall be delivered to all department employees. Department heads will periodically involve employees in the process. The need for periodic training shall be considered, and arranged as determined by the department head.

Managing Unsafe Conditions. It is every employee's responsibility to observe and identify conditions which could pose a hazard to employees or to the general public.

After identifying the problem, employees at the scene are expected to:

- Safely eliminate the hazard, and obtain necessary assistance
- Safely control the hazard by enclosure or guard
- Employ avoidance procedures
- Use personal protective equipment as appropriate.

### **C. ACCIDENT REPORTING**

Accidents involving the District must be reported in detail as soon after the occurrence as possible. All accident reports should be submitted to the [ ].

Vehicular Accidents. Accidents involving other District owned vehicles or personal vehicles being operated on District business must also be reported to a police agency for investigation. Any accident resulting in personal injuries or death must be reported immediately to the District office.

Other Accidents. Accidents involving damage to equipment or property, or personal injury, must also be reported to [the appropriate department head] [ ]. The [department head] [ ] will determine the need for further investigation.

### **D. EMPLOYEE INJURY REPORT**

In case of an accident involving personal injury to an employee, regardless of how serious, a supervisor and the [ ] should be notified as soon as possible. Failure to report accidents can result in a violation of conditions of insurance coverage and State laws, leading to difficulties in processing insurance and benefit claims. Injured workers must fill out a Worker's Compensation Report form and submit it as soon as possible to the Safety Officer. All injuries must be reported in a timely manner to avoid risk of claim denial. The [Safety Officer] will provide advice and assistance to any person filling out a Workers' Compensation Report.

If an injury results in the death of an employee, then the supervisor shall immediately notify the Safety Officer who, in turn, shall immediately notify the State Workers' Compensation Department and the District's insurance carrier by phone. The [Safety Officer] will then proceed to process a claim report form. The appropriate entries shall be made in the OSHA 200 Report log.

**E. WORKERS' COMPENSATION INSURANCE**

If an employee is injured on the job, in most cases the injured worker will be entitled to benefits under the state workers' compensation law. The District carries workers' compensation coverage and will assist employees in obtaining all benefits to which they are legally entitled.

**ALTERNATE SECTION**

**F. WORKERS' COMPENSATION PAYMENTS**

If an employee receives compensation from the District's carrier for an on-the-job injury, the employee must photocopy each check before cashing it and furnish a copy of the check to [the Finance Department.] [ ]. The District pays the difference between time loss benefits paid and the employee's wage net (less) taxes.

It is equally important that the employee's supervisor tells [the Finance Department] [ ] that such an injury has occurred as there are special rules in processing an employee's benefit check if the employee has been injured on the job (the amount of sick leave deducted for each day off the job is one example).

**G. RETURN-TO-WORK POLICY**

The following procedures must be followed by employees who wish to return to work following an on-the-job injury which has resulted in the employee's being off work.

All requests to return to work must be made in writing, dated and signed by you.

All requests to return to work must be accompanied by a dated, written release signed by your attending physician. This release must clearly specify whether you are released for your former job or are restricted in any way and include any request for reasonable accommodation.

Requests to return to work must be made no later than the 7th regular work day following the date of your physician's signature on the written release. Except where, in our opinion, extenuating circumstances exist, failure to make a timely request terminates your right to reinstatement or reemployment. Failure to seek a written release upon your becoming able to return to work may constitute abandonment of your right to reinstatement or reemployment.

Requests to return to work may be brought in personally or mailed to the District. If mailed, the request should be directed to the person listed in No. 5 below. Requests brought in personally will be deemed made the date on which the written request is given to the District. Mailed requests will be deemed made on the date of receipt. All requests will be date stamped upon receipt.

All requests to return to work must be directed to [ ].

If your former job or a suitable alternative is not available at the time of your request, you must contact [ ] in person or by telephone once a week to renew your request. If a period of 10 days elapses without such a contact, you will be considered to have abandoned your right to be returned to work.

All job offers will be made by telephone. It is your obligation to keep the District advised of any changes in your telephone number.

If you are offered a suitable position in response to your request to return to work and you refuse to accept it, you will be considered to have voluntarily terminated your employment and abandoned your right to reinstatement or reemployment.

### **ALTERNATE SECTION**

Light Duty Work Assignments. Disabled employees who are temporarily assigned light duty work as a reasonable accommodation but are unable to perform the essential duties of their regular job may be required to provide a medical evaluation after (select 30, 60 or 90) days from their treating physician so that the [ ] may determine whether the employee is capable at that time of performing the essential functions of their regular job, with or without reasonable accommodation. The District offers light duty accommodations only for those employees whom the [ ] may anticipate will recover the ability to perform all the essential functions of the job with or without a reasonable accommodation and within a reasonable time. If recovery becomes doubtful, the [ ] may discontinue the light duty assignment. No light duty assignment is intended to become permanent.

### **ALTERNATE SECTION**

(Add instructions appropriate for any District payroll practices.)

"If the job-related injury results in time off, the supervisor should insure that the relevant period on the employee's time card is designated "Z" and record the necessary information on the back of the time card."

## **H. VIOLENCE IN THE WORKPLACE**

Statement of Concern. The District recognizes the need for a violence-free work environment for all employees and the public. The District will not tolerate violence in the workplace and is committed to maintaining an environment clear of all forms of violence, including verbal or physical threats as well as forms of intimidation such as sexual harassment or abusive language. Employees are expected to report all threats and violence, physical or verbal, to their supervisors.

Definitions.

Assault — The actual offer to use force with the apparent present ability, if not prevented, to execute that attempt which creates a reasonable fear of imminent peril.

Battery — The unlawful touching of another person.



Law Enforcement Personnel — Any city police officer, deputy sheriff or member of the Oregon State Police.

Perpetrator:

- An employee inflicting acts or threats of violence on his/herself, or another employee.
- A third party engaging in violent acts or threats against his/herself, an employee, or another third party.
- An employee inflicting acts or threats of violence on a third party.
- Third Party — Any visitor to a District workplace, including a former employee.
- Violent Act — An act by a third party or an employee that may range from verbal or physical threats or intimidation to assault or battery.
- Workplace — All property (including parking lots) owned by the District and any non-District property where work is being performed by District employees in an official capacity for the District.

General.

In the workplace, an employee witnessing violence directed against another should observe the situation and attempt to get information such as the name and description of the perpetrator, but only if it can be done without endangering the employee or others.

When applicable, the District and its employees shall cooperate fully with police and other law enforcement officials in the investigation and prosecution of violent acts.

No employee or third party, excluding law enforcement personnel, is permitted to bring weapons or firearms into the workplace or onto District property for any reason.

Implementation.

Managing a Potentially Violent Situation.

District employees are expected to assist the general public and fellow employees in a courteous manner.

If, for example, a person becomes angry, the employee should courteously attempt to calm the person down. If that does not work, the employee should get his/her supervisor involved or call for assistance from another supervisor.

A Person Threatening Bodily Harm. If the employee feels that he/she or another person is threatened, that is, in danger of imminent bodily harm:

The employee should attempt to leave the scene, if it can be done safely.

If the supervisor is unaware of the situation, the employee should notify the supervisor as soon as it can be done safely.

Either the employee or the supervisor may determine if law enforcement should be notified.

[ ] shall be notified as soon as possible by the supervisor of the employee who feels threatened, witnesses, or has knowledge of a violent act.

When the [ ] responds, if law enforcement have not been notified earlier, [ ] may decide to call the police or take other actions related to the incident.

#### Reporting Incidents.

The supervisor shall complete an incident report and forward the report to [ ] within 24 hours of a violent act.

For an act involving the threat of bodily injury, the supervisor is responsible in making sure [ ] is contacted, as soon as it can be done safely.

Any District employee having knowledge of a violent act involving any other District employee (as victim or perpetrator) must report it. Disciplinary action may result if the employee having knowledge of a suspected violent act fails to report the episode. The employee may report the incident to the employee's supervisor or, if the employee prefers, to [ ] or [ ].

The person complaining may ask for anonymity during all or part of an investigation. However, anonymity will be maintained at the discretion of those investigating and resolving the complaint. There is no right to or guarantee of anonymity.

#### Resolution and Investigation.

To the extent practicable, investigations and resolutions shall be conducted using the same procedures as are in the District's policy on Harassment.

In cases where the perpetrator is not a District employee or in any other case the District deems advisable, the District may request the investigation be conducted by law enforcement personnel.

As needed, the investigating party may alter the procedures of the investigation.

Workplace Security. Recommendations for improved safety often come from suggestions from employees. These suggestions are encouraged and may be channeled through supervisors, safety committees, or [ ].

### **POLICY 14.7: What the District Expects from You**

#### **A. TEAMWORK AND EXCELLENCE**

This section has been arranged to present a general overview of some of the District's expectations of its employees. Every employee should keep in mind that each is a part of a team of public employees, and public satisfaction with the District depends upon good service.

## **B. PERSONAL CONDUCT**

Positive attitude, proper courtesy, and conduct on and off the job are important to the individual as well as to the District. Neatness of work performed is also important. All employees are engaged in public relations. Some deal directly with the public; others, while not in direct personal contact, do perform work under the public eye. Employees of the District, regardless of whether contacts are direct or indirect, are expected to be courteous, efficient, and helpful in all their work assignments. Favorable impressions created by employees' public behavior help develop good will and support for District services.

## **C. CODE OF ETHICS FOR DISTRICT EMPLOYEES**

**Personal Interests Avoided.** District employees may not use District time, equipment or services for personal interest or gain. When giving testimony unrelated to their assigned District responsibilities, District employees shall not use information or facts that have come to them by virtue of their employment for personal gain or benefit. In matters of personal interest, employees should conduct themselves so as not to impair their working relationship with other employees, officials, or the public.

**Gifts and Gratuities.** Employees shall not accept any special favors, gifts, or gratuities resulting from or related to employment with the District. In this regard, the appearance of impropriety can be as damaging as actual impropriety and shall be avoided.

**Special Gifts.** Department heads may allow acceptance of non-monetary gifts of nominal value [e.g., under \$50] at holidays or special occasions, which are available to be shared by all employees.

## **D. POLITICAL ACTIVITIES OF DISTRICT EMPLOYEES**

**Official Position - Campaigning.** Employees may not use their official authority or position with the District to further the cause of any political party or candidate for nomination or election to any political office.

**On-Duty Activity.** Oregon law forbids any District employee, while on the job, from soliciting money, influence, service, or other article of value or otherwise aiding and/or promoting any political cause or the nomination or election of any person for public office.

## **OPTIONAL SECTION**

**Off-Duty Activity.** During the term of their employment a District employee may not hold any elective office that creates a conflict of interest between the duties of that

employee and the prospective duties of the elective office holder. An employee may obtain a prior written approval of their department head and/or [ ] before filing as a candidate for an elective office. Failure to obtain prior written approval may be deemed by the District to constitute a voluntary resignation if the employee is elected to that position and the District determines that the election to the position creates a conflict of interest with the employee's position with the District.

Nothing in this rule is intended to restrict the political actions or activities of employees outside of their regular working hours.

## **OPTIONAL SECTIONS**

### **E. COST CONSCIOUSNESS**

Every employee of the District is a citizen and taxpayer and is expected to practice economy in all duties. Failure to do so is not in the best interests of the District and may lead to discipline, and/or discharge, as appropriate.

### **F. ATTENDANCE AND PUNCTUALITY**

Each employee and the employee's performance on the job is important to the overall success of operations. When absent, someone else must do the job. Everyone is expected to keep regular attendance, be on time, and work as scheduled.

In accepting employment with the District, each employee is required to meet certain standards. Maintaining an acceptable level of job attendance is part of good work performance and is one of the standards by which an employee's overall contribution to the District may be measured. Continued employment carries with it the personal responsibility of each employee to be on the job on time every scheduled work day. Recurring and excessive absences and/or tardiness is disruptive to work schedules, costly to the District and its residents, and detrimental to the morale and efforts of employees who maintain a good work record.

Except when the absence is due to leave protected by state or federal law, failure to meet these requirements subjects an employee to disciplinary action, which includes termination. The ability to attend work regularly is an essential job requirement.

### **G. PERSONAL APPEARANCE**

Each employee is responsible to present a proper, businesslike appearance whether in the office, a District vehicle, or other site. Good taste and good judgment in personal attire is expected.

### **H. APPEARANCE OF WORK AREAS**

The District's objective is to provide and maintain clean, safe and healthy work conditions. It is the responsibility of each employee to maintain a safe, neat work area

and insure that all working documents, desks, cabinets and equipment are secure at the close of the work shift.

#### **I. PERSONAL TELEPHONE CALLS**

District phones are to be used for District purposes. Telephone calls of a personal nature (incoming or outgoing) should be kept to a minimum and made during breaks or lunch periods whenever possible. Under no circumstances should an employee charge a long distance call to the District unless it is work-related. Friends and relatives should be discouraged from calling during working hours except in emergencies.

#### **J. SMOKING**

For health and safety considerations, the District discourages smoking. State law prohibits smoking in buildings except in designated smoking areas. [Smoking areas will be designated.]

#### **K. OUTSIDE EMPLOYMENT**

District Comes First. When an individual accepts employment with the District it is understood that the District has first call upon the services of its employees, regardless of any effect on secondary employment.

Incompatible Work. Employees shall not engage in outside employment that conflicts in any way with District employment, detracts from the efficiency of work performance, or is in conflict with the interests of the District. The District expects employees to avoid extra work which affects endurance, overall personal health, or effectiveness. The District will hold all employees to the same standards of performance and scheduling demands, including employees who hold outside jobs.

Notification. Employees shall notify the [department head] [ ] in writing, in advance, of all employment outside the scope of their employment with the District.

Conflicts. The [ ] will notify the employee at any time outside employment is found to be in conflict with the interests of the District or is likely to bring discredit upon the District. It shall be up to the employee to choose which employment option is most desired.

#### **L. DRUGS AND ALCOHOL**

Statement of Concerns.

The District has a responsibility to its employees, and the public to insure safe working conditions for its employees and a productive District workforce unimpaired by chemical substance abuse. The District has a responsibility pursuant to the Drug Free Workplace Act of 1988. To satisfy these responsibilities, the District must preserve a work environment free from the effects of drugs, alcohol, or other performance-impairing substances.

The misuse of alcohol and other drugs can impair employee performance, as well as physical and mental health, and may jeopardize employee safety as well as the safety of the public.

Policy.

The District is committed to maintaining a safe and healthy work place for all employees by assisting employees to overcome drug or alcohol related problems through appropriate treatment and, if necessary, disciplinary action.

Each employee is responsible for meeting performance, safety and attendance standards.

Employees shall not report to work under the influence of intoxicating liquor or illegal drugs.

The use, sale, possession, manufacture, distribution and/or dispensing by an employee of an intoxicating liquor, controlled or illegal substance, or a drug not medically authorized, or any other substances which impair job performance or pose a hazard to the safety and welfare of the employee, other employees or the public, is strictly prohibited. The use of alcohol or medically prescribed controlled substances off-duty is not controlled by this policy. Conduct in violation of this policy may result in disciplinary action and/or criminal investigation, if appropriate.

The policy includes both voluntary and mandatory testing.

Employees may obtain counseling and rehabilitation through the Employee Assistance Program ("EAP").

Laboratory tests relied upon shall be highly accurate and reliable.

Positive test results may only be disclosed to the employee, the appropriate EAP administrator, the appropriate management officials necessary to process an adverse action against the employee, or a court of law or administrative tribunal in any adverse personnel action.

All medical and rehabilitation records in an EAP will be deemed confidential "patient" records and may not be disclosed without the prior written consent of the patient, authorizing court order, or otherwise as permitted by Federal law implemented at 42 CFR Part 2.

This policy will be enforced and administered in a manner which is consistent with the value statements set forth in this section, and with the advice and concurrence of the District's [                    ].

Permitted Use. It is the employees' responsibility to determine from a physician whether or not a prescribed drug can impair job performance. An employee whose impairment may affect job performance should take sick leave or other steps consistent with advice of

a physician. If an employee reports to work under the influence of prescription medication and endangers self or others, the employee may be disciplined. Any failure to report the use of such drugs or other substances following an event of concern to the District, or failure to provide evidence of medical authorization, can result in disciplinary action.

Reports of Drug Conviction. Each employee must report facts and circumstances to the [ ] no later than five (5) days after conviction for violating any criminal drug statute.

Employee Education. The District will afford employees an opportunity to deal with drug and alcohol related problems. The [ ] maintain information relating to the hazards of and treatment for drug and alcohol related problems. Proactive training and information shall be sponsored by the District periodically. Any District employee may seek advice, information and assistance voluntarily. Medical confidentiality will be maintained, consistent with this policy.

Employee Assistance. Any employee who voluntarily requests assistance in dealing with a personal drug and/or alcohol problem may do so through a private treatment program for drug and alcohol problems. The [ ] will assist employees who wish to identify and select an appropriate treatment program.

If an employee seeks drug treatment voluntarily and not under adverse employment circumstances, accrued sick leave benefits may be used while attending rehabilitation. After such accommodation, the discontinuation of any involvement with alcohol or drugs may be an essential requisite for employment and is consistent with the District's policy of maintaining a drug free workplace.

Discipline Related to Abuse. An employee may be found to use illegal drugs on the basis of any appropriate evidence including, but not limited to:

Direct observation

Evidence obtained from an arrest or criminal conviction

A verified positive test result

An employee's voluntary admission.

As a result of disciplinary action arising from current use of illegal drugs or job-related alcohol problem, an employee may be directed to consult with the [ ] and other health care providers. Such an employee may be required to participate in a drug or alcohol treatment program as a condition of continued employment.

A supervisor, based on reasonable suspicion that substance abuse is a factor in employment, may require an employee to be evaluated for illegal drug and alcohol use and treatment by an employee assistance program or a doctor. An employee may be

required to participate in follow-up care as part of a comprehensive alcohol and drug treatment program based upon medical advice.

When an employee is required to undergo treatment under the policy, the employee may be required to authorize the following as a condition of continued employment:

Monitoring of the treatment program and the employee's participation by the [ ] or the [ ]

Submission to random blood and/or urine screening for alcohol and/or drugs for a specific period of time not to exceed thirty-six (36) months.

When an employee voluntarily enters a treatment program that is not associated with District intervention, testing and monitoring by the District will not be required.

Medical confidentiality will be preserved, subject to rights granted by the employee to the [supervisor] and [department head] to monitor treatment and program compliance through the [ ] or directly with a health care provider in order to ensure compliance with conditions of employment and ability to return to or remain at work.

**Drug Testing upon Reasonable Suspicion.** Where a supervisory employee has a reasonable suspicion that an employee is under the influence of alcohol or illegal drugs, including unlawful use of a controlled substance without a valid prescription, the employee in question will be asked to submit to discovery testing including urinalysis or a blood screen, or both, to confirm involvement with alcohol or illegal drugs or that the employee is drug or alcohol free at the time in question.

**Consequence of a Positive Test.** An employee who is found to be under the influence of or impaired by alcohol or illegal drugs as a result of a test requested by the District based upon reasonable suspicion will be subject to disciplinary action including suspension or termination.

**Consequence of Refusal to Submit to Testing.** An employee who refuses to submit to discovery testing for alcohol and illegal drugs will be subject to suspension or discharge, or both. Alleged lack of reasonable suspicion is not grounds to refuse to submit to a test; however, it is reason to challenge discipline if discipline is imposed based on the test result alone.

**Testing Procedure.**

**Employee Representation.** When the employee is notified that he or she is required to consent and submit to such tests, he or she may request the presence of a representative to witness the test. The test may not be delayed unreasonably in order to wait for a representative. The absence of a representative shall not be grounds for the employee to refuse to consent and submit to such tests or searches. The presence of a representative shall not disrupt or interfere with the tests or searches.



Authorization to Test. Before a supervisor, acting on behalf of the District under this policy, may require an employee to consent and submit to any test, the supervisor must first obtain concurrence from the [ ] or the [ ] that the information available to the District about the subject employee is sufficient to determine reasonable suspicion that prohibited conduct will be established as a result of the test.

Procedure for Consent. The employee shall give consent to a blood, urine or breathalyzer test, or any combination, upon request, by signing a consent form. The form shall contain the following information:

Employee's consent to release tests results to the District

The procedure for confirming an initial positive test result for a controlled substance, including marijuana

The consequences of a confirmed positive test result for a controlled substance, including marijuana

The consequences of a positive test for alcohol, under the circumstances

A listing provided by the employee of legally prescribed and over-the-counter medications which may be in the employee's body

The right to explain a confirmed positive test result for a controlled substance, including marijuana, or a positive test for alcohol

The consequences of refusing to consent to the blood, urine or breathalyzer test.

Confirmatory Test. In the event that the blood or urine test results are positive for controlled substance(s), including marijuana, the District shall require that a second confirmatory test from the same sample be conducted, using gas chromatography/mass spectrometry methods performed by a laboratory certified by the National Institute on Drug Abuse, which also must be positive before concluding the employee has such substances(s) present in the body.

Employee Requested Test. If a blood or confirmed urine test is positive, the District will instruct the laboratory to retain the blood or urine sample for a period of not less than (thirty) 30 calendar days from the date the tests are complete for the purposes of allowing the employee to conduct an independent test at his or her own expense at a laboratory approved by the District.

Chain of Evidence. The procedures to obtain, handle and store blood and urine samples and to conduct laboratory tests shall be documented to establish procedural integrity and chain of evidence. Such procedures shall be administered with due regard for the employee's privacy and the need to maintain the confidentiality of tests results to an extent which is not inconsistent with the needs of this policy.

Notification. The employee shall be notified of the results of all tests conducted pursuant to this policy. Employees who test positive shall be afforded an opportunity to provide medical or other information that may explain the positive test result. If a question exists, the available information will be reviewed by a licensed physician with training in forensic drug testing.

Pre-Employment Drug Screening. The District will invite successful applicants who are offered an opportunity to interview the opportunity to consent to a pre-employment drug screen. The applicant will be advised that the presence of one or more drugs may be cause for rejection from further consideration for employment, and that appointment to a position is contingent upon a negative drug test result. The applicant will be asked to authorize the District to conduct through the District's designated physician or laboratory testing facility a drug screen test as a requirement of employment.

Applicants shall be directed to an appropriate collection facility. The drug test must be undertaken as soon after notification as possible, and no later than 48 hours after notice to the applicant. Where appropriate, applicants may be reimbursed for reasonable travel expenses.

Applicants shall be advised of the opportunity to submit medical documentation that may support a legitimate use for a specific drug and that such information will be reviewed only by medical consultants to determine whether the individual is lawfully using an otherwise illegal drug.

The District will decline to extend a final offer of employment to any applicant with a verified positive test result, and such applicant may not reapply to the District for a period of twelve months. The [ ] shall object to the applicant on the basis of failure to pass the drug screen, a lack of personal characteristics necessary to relate to public employment or failure to support the goals of the District. The District shall inform such applicant that a confirmed presence of an illegal drug in the applicant's urine precludes the District from hiring the applicant.

Definitions.

"Reasonable suspicion" is defined as specific articulable observations by a supervisory employee concerning the work performance, appearance (including noticeable odor of an alcoholic beverage), behavior, or speech of the employee. Any accident or incident involving physical injury to any person may be considered as constituting reasonable suspicion for discovery testing for drugs and alcohol where human factors contribute to the incident and a question of sobriety short of reasonable suspicion exists.

Reasonable suspicion testing may be based upon, among other things:

Observable phenomena, such as direct observation of drug use or possession and/or the physical symptoms of being under the influence of a drug

A pattern of abnormal conduct or erratic behavior

Arrest or conviction for a drug-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking

Information provided either by reliable and credible sources or independently corroborated

Newly discovered evidence that the employee has tampered with a previous drug test.

Although reasonable suspicion testing does not require certainty, mere "hunches" are not sufficient to meet this standard.

"Under the influence" is defined as any detectable level of a controlled substance (in excess of trace amounts attributable to secondary exposure) in an employee's blood or urine or any noticeable or perceptible impairment of the employee's mental or physical faculties. With respect to alcohol, a blood alcohol content of .004% constitutes under the influence while on duty.

"Controlled substances" are defined as all forms of narcotics, depressants, stimulants, hallucinogens, cannabis, and other controlled substances of which the sale, purchase, transfer, use or possession is prohibited or restricted by The Federal Controlled Substances Act. "Illegal or controlled substances" means a controlled substance included in Schedule I or II, as defined by section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under chapter 13 of that Title. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

"Over-the-counter drugs" are those which are generally available without a prescription from a medical doctor and are limited to those drugs which are capable of impairing the judgment of an employee to safely perform his or her duties.

"Prescription drugs" are defined as those drugs which are used in the course of medical treatment and have been prescribed and authorized for use by a licensed practitioner/physician or dentist.

Searches. Employees have no expectation to be free from search of a locker, desk or contents of other similar District controlled spaces. A search for contraband within personally controlled spaces on District property (purses, garments, brief cases or a personal vehicle, for example) shall be based on reasonable grounds or consent of the employee. In accordance with the provisions of this policy prohibiting drugs in the work place, or based upon legitimate concerns for the possession of other unauthorized materials (such as firearms, explosives or stolen property,) this policy constitutes formal notice of the District's intent to search premises, persons and secured spaces, including vehicles parked on District property, based upon reasonable grounds or consent. Searches shall be approved by the [ ] or his/her designee, and, if possible, notice to the employee and an opportunity to be present shall be given.

Refusal. Failure to appear for testing without a deferral will be considered refusal to participate in testing, and will subject an employee to the range of disciplinary actions,

including dismissal, and an applicant to the cancellation of an offer of employment. If an individual fails to appear at the collection site at the assigned time, the collector shall contact the [ ] to obtain guidance on action to be taken.

## **POLICY 14.8: Non-Discrimination and Harassment**

### **A. EQUAL EMPLOYMENT OPPORTUNITY**

It is the District's policy to employ, retain, promote, discipline, discharge, and otherwise treat all employees and job applicants on the basis of merit, qualifications and competence or membership in any other classification protected under federal or Oregon law. It is the policy of the District to comply with federal and state statutes on equal employment opportunity. This policy shall be applied without regard to any individual's sex, race, color, religion, national origin, ancestry, age, marital status, political affiliation, veteran status or any physical handicap or disability which can be accommodated reasonably.

The [ ] is the coordinator for the District's procedures for the implementation of this policy. It is the intent and desire of the District that equal employment opportunity will be provided in employment, promotions, wages, benefits and all other privileges, terms and conditions of employment.

### **B. HARASSMENT**

Statement of Concern. The District will work to eliminate and prevent harassment and to alleviate any effects discriminatory harassment may have on the working conditions of an employee. All forms of unlawful discriminatory harassment are forbidden, including unsolicited remarks, gestures or physical contact, display or circulation of derogatory written materials or pictures, negative stereotyping, slurs or denigrating labels that relate to gender or disability, age, or racial, ethnic or religious groups, and personnel decisions based on an employee's response to such harassment. No person may be harassed based on his/her association with a person with characteristics set forth in this paragraph. The District regards work related harassment an unlawful function as a serious transgression, whether if occurs on or off the job, and reason for discipline or discharge.

Policy. The policy of the District is that every employee has a right to work in a setting free from unlawful harassment and retaliation against an employee who makes a good faith report of harassment, or who participates in good faith in an investigation. Unlawful harassment and retaliation will not be tolerated. In response to reports of harassment, the District will protect all parties involved from retaliation, false accusations, or future harassment, and where indicated, will take prompt and appropriate remedial measures.

Should an issue of harassment be raised, all related matters will be kept confidential to the extent possible throughout the investigation, counseling and disciplinary stages. Any supervisor or manager receiving notice of harassment shall notify the [ ], or the [President] [Chairman] who will direct an investigation and insure that the charge is resolved appropriately.

Reporting Harassment. An employee who feels they have subjected to harassment, or is aware of harassment of another employee is urged to report this to an immediate supervisor, department head, or [\_\_\_\_\_]. The report may be informal or formal. A formal report shall include a written statement, which may be a grievance under a labor agreement. An employee may report harassment without first contacting their supervisor.

Response to Reports of Harassment. Written reports concerning harassment will be forwarded to the [\_\_\_\_\_] unless there is an allegation against that person, and if so, then written reports will be forwarded to the [President] [Chairman] who will delegate the matter to the District's legal counsel. This procedure will apply to written statements received from reporting employees or written records made by supervisory employees, including department heads. Whenever supervisory employees become aware of allegations of harassment, they will make a written record of the allegations and will forward the record to the District in accordance with this policy. Regardless if written or unwritten, all reports of harassment in violation of this policy will be investigated and appropriate measures taken where warranted.

Investigation. The [\_\_\_\_\_] or the District's legal counsel or other person designated by the [President] [Chairman] will begin an investigation if necessary. The first pre-investigation step shall be to inquire of all persons reporting as to whether the record now includes all allegations of harassment. The investigation will be conducted promptly on a priority basis.

The investigation will be directed at ascertaining the facts concerning the allegations. If, in the course of investigation, evidence of harassment in violation of this policy is found, the District shall initiate separate investigations.

The investigator shall cause the person reported to have harassed an employee to be advised of the allegations and to afford such person an opportunity to reply orally or in writing. The employee shall also be advised that any retaliatory conduct will not be tolerated and is subject to disciplinary action regardless of allegations of harassment.

The results of the investigation shall be reduced to writing, if appropriate. A finding shall be made that there is or is not reasonable cause for disciplinary action. Nothing in this section shall limit the authority of the District to modify policies or practices to correct any appearance of harassment, including sexual harassment, without finding reasonable cause for disciplinary action or taking any disciplinary action. The report will also include any recommendations to remedy any harm which was suffered if the evidence shows that the employee alleged to have been affected by sexual harassment was injured or harmed, and to remedy and correct a hostile work environment.

A report which finds reasonable cause for disciplinary action will be maintained in the personnel file of any employee subject to discipline. The employee may have placed in the personnel file a statement of rebuttal or correction. For the purpose of this section, a former employee may present such statement.

Sealing of Records Relating to Harassment. [Records relating to harassment, including written reports regarding alleged harassment, memos between District employees

concerning investigation of such allegations and District recommendations in response to allegations] [Records relating to sexual harassment] will be retained by the District for a minimum of six (6) years. All such records will be retained in a sealed file. There will be a cross reference to the sealed file of the reporting employee, the allegedly affected employee and the employee who was reported to have harassed another. Once the material in the sealed file is determined to have no reasonable bearing on job performance or on the efficient and effective management of the District, reference to it in one or more individual personnel files may be removed.

No information from the sealed file nor any indication of the cross reference to the sealed file will be disclosed to persons who do not have confidential access to the personnel affairs of the District, provided that there are two exceptions which permit some disclosure. First, an employee who reported harassment and/or an employee who was allegedly affected by harassment may request that the District provide information to another regarding the investigation of harassment. On a case-by-case basis, the District, in its own discretion, may agree to release specified information. Secondly, whenever the District would provide general information to persons who are not officers or employees of the District regarding an employee or former employee from the District's personnel file and the employee's personnel file reflects a finding of reasonable cause for disciplinary action, then the District will also send information regarding the investigation of harassment; except that no readily identifiable reference to other parties involved may be included, and any statement which the employee had requested be held in the file will accompany the disclosure. Information about the finding of reasonable cause for disciplinary action would not be given in response to a request for verification of dates employed.

## **OPTIONAL SECTION**

### **C. HIV DISCRIMINATION**

The Disease. Acquired Immune Deficiency Syndrome (AIDS) is a fatal, infectious disease which claims an increasing number of lives each year. It is caused by spread of the AIDS virus, Human Immunodeficiency Virus (HIV). Because of the alarming increase of AIDS, AIDS Related Complex (ARC), and (HIV), the District has investigated AIDS concerns and has consulted with experts on this subject. According to the best medical evidence available, casual work place contacts among employees and citizens infected with HIV will not result in the transmission of the virus. The nature of the disease and its presence in society warrants a District policy.

Purpose of Policy. The District recognizes that its employees are entitled to a safe working environment. Employees and job applicants who are HIV carriers or are afflicted with ARC or AIDS are entitled to compassion and legal protection against unlawful discrimination. Based on these principles, the District has formulated this AIDS policy to:

Prevent unlawful discrimination

Educate employees about the ways HIV is, and is not, spread

Designate a person to whom concerned employees can go for information

Ensure the confidentiality of information about any employee who contracts the virus

Address employment concerns of infected employees

Assure that the public is accommodated and that risks to health are minimized

Protect the health and safety of all employees through a program of universal precaution

Avoid disruption or interference with District business that could result from unfounded health concerns.

This policy addresses the work place and shall be supplemented with any additional protocols found appropriate.

**Non-Discrimination in Hiring.** The District will not unlawfully discriminate against persons with AIDS, ARC or HIV on the basis of their handicap. The following practices are to be followed:

Job applicants are not to be asked whether they have AIDS or are infected with HIV. They may be asked if they are able to perform all functions of the job, both essential and marginal, with or without reasonable accommodation. Only after extension of an offer of employment (which may be made conditional on ability to perform essential job functions) may the applicant's condition be discussed or the need for any reasonable accommodation be discussed

Job applicants who voluntarily disclose that they have AIDS or are HIV infected shall be asked if they can perform all job functions, but may not be asked about their disability or need for accommodation before extending an offer of employment. The reasonableness of any requested accommodation shall be determined by management.

Any applicant known by the District to be handicapped or disabled but capable of performing the duties of the job sought, with or without reasonable accommodation, shall be given the same consideration as other equally qualified applicants.

**Employee Education.** Employees who are educated about the actual medical risks posed by AIDS and HIV will be safer and more comfortable at work. The District will strive to provide the following sources of education about the transmission of HIV:

Informational materials designed to answer specific questions

Videotaped and/or live presentations

Confidential access to a designated contact person trained to answer questions or obtain additional information.

Employees are strongly urged to take advantage of these resources.

The Designated Contact Person. The District will have a designated contact person, who will be trained to address AIDS concerns. At present this person is the [                      ].

Confidentiality. The District recognizes that an employee's health concerns are confidential. Employees who have been infected with or exposed to HIV may contact the designated contact person confidentially. Medical information will be kept confidential in separate medical files apart from personnel files, consistent with legal, medical and management practices.

Employees infected with HIV or afflicted with ARC or AIDS are expected to refrain from publicizing their condition in a manner likely to subject the District to adverse publicity or internal controversy. Failure to do so will be regarded by the District as grounds for discipline, wholly independent of the employee's underlying handicap or disability.

Employees who obtain knowledge that an employee, guest or other individual utilizing District services is an HIV carrier or is afflicted with ARC or AIDS shall maintain the confidentiality of such information. Failure to do so will result in discipline if the circumstances warrant.

Employment Concerns of Infected Employees. Employees who are infected with HIV or afflicted with ARC or AIDS may contact the designated contact person for confidential information about the potential impact of their condition on their employment. The District will make reasonable accommodations for employees infected with HIV or afflicted with ARC or AIDS unless it would be an undue hardship to do so or would result in a direct health or safety threat to the individual or other persons. The reasonableness of any proposed accommodation will be determined by management and shall take into consideration the health and safety of all employees. Supervisors are to consult the designated contact person and obtain District authorization before making any employment decision on the basis of an employee's actual or perceived infection with HIV. Unlawful discrimination against such employees on the basis of their disability will not be tolerated.

Upon request, the designated contact person will assist concerned employees in obtaining information about community resources and psychological counseling available to persons with AIDS or HIV and their families.

Infected Citizens. As a public service organization, the District may not discriminate against citizens on the basis of disability. If uniform body fluid precautions are followed rigorously and routinely, then the risks of accidental infection when rendering aid to an infected person is minimized. The routine activities of citizens in dealings with the District pose no measurable risk of HIV infection to employees. Unlawful discrimination against citizens with or suspected of HIV or AIDS will not be tolerated.

Business Disruptions Due to Unfounded Health Concerns. If an employee refuses to work with an HIV infected co-worker or serve an infected citizen, and a supervisor



decides that the co-worker or citizen poses or posed no threat to the health and safety of others, continued refusal or a failure to work or other disruption of District services may result in discipline including discharge. Harassment of known or suspected HIV carriers is expressly prohibited and may result in discipline, including discharge.

Oversight. Supervisors are charged with insuring that this policy is adhered to. Complaints concerning any employee's failure to comply with this policy should be brought to the attention of a supervisor, and may be raised by following procedures of Section relating to harassment or Section relating to Complaints.

### **ALTERNATE SECTION**

(Consider as mandatory if any employees may reasonably anticipate exposure to a bloodborne pathogen or other potentially infectious materials. See [OAR Chapter 437](#) and [29 CFR 1910](#))

### **C. BLOODBORNE PATHOGENS EXPOSURE CONTROL**

Background. Employees of the District provide services to citizens which may require employees to come into contact with bodily fluids, such as blood or other potentially infectious materials. This can occur as a regular part of the duties of emergency responders, firefighters and paramedics, law enforcement officers, corrections officers, evidence handlers, health care workers, maintenance workers, or persons giving first aid to others. There are a variety of methods by which this exposure may occur.

Policy. Exposure to blood borne pathogens may lead to sickness such as hepatitis, AIDS, or malaria. The District wants to assure its employees of a safe and healthy work environment. It is the policy of the District to comply with all legal and regulatory obligations for the prevention of exposures to blood borne pathogens. To this end, the District will comply with all sections of the Oregon Administrative Rules, Chapter 437 and all other statutory requirements regarding the prevention of occupational exposures to blood borne pathogens. The District will identify each classification and position the duties of which could lead to exposure, identify the nature of exposure, and insure that equipment, training and appropriate procedures are in place. These shall be grouped as class 1 (all employees could be exposed) and class 2 (some employees could be exposed).

Infected Citizens. As a public service organization, the District cannot discriminate against citizens on the basis of disability. If uniform health precautions are followed rigorously and routinely, then the risks of accidental infection when rendering aid to an infected person is minimized. The routine activities of citizens in dealings with the District pose no measurable risk of blood-borne infection to employees. Unlawful discrimination against citizens with or suspected of infection will not be tolerated.

Exposures. In the event of exposure to body fluids under circumstances that could present a risk of infectious exposure, a report will be made to the [ ] as soon as possible. If confirmed, the [ ] may solicit the cooperation of the source person through voluntary testing with informed consent. In order to protect the employee, a baseline test will be made within the week following exposure, and at three month intervals for one year. The [ ] will insure that the employee involved receives

counseling appropriate for the circumstances. All testing will be preceded by informed consent and written authorization.

**Universal Health Precautions and Work Practices.** As recommended by public health authorities, the District will adhere to a program of universal precautions for protection against diseases spread by blood or bodily fluids. ("Bodily fluids" refers to fluids that may contain blood or feces, not urine, sweat, saliva or tears.) This means that, for safety purposes, employees will operate on the assumption that all blood and bodily fluids are potential carriers of blood borne disease, and will adhere to universal precautions protect against AIDS and other diseases. The following general precautions will be followed:

Eating, drinking, smoking, applying cosmetics, lip balm or handling contact lenses are prohibited in the work areas, including field locations, where there is an anticipated exposure to blood borne pathogens.

The Oregon Administrative Rules mandate Universal Precautions at all times to prevent contact with blood or other potentially infectious materials. It is difficult or impossible to differentiate between bodily fluid types under circumstances present in the workplace. Therefore, **ALL BODILY FLUIDS SHALL BE CONSIDERED POTENTIALLY INFECTIOUS MATERIALS**, including blood and tissue or organs from either a living or dead human.

Any employee cleaning up a spill of blood or bodily fluids or rendering emergency medical assistance will wear appropriate protective gear (such as latex gloves and a mask);

Protective gear for cleaning blood or bodily fluid spills will be provided by the District and will be located near any area determined to be a site of such a spill, in emergency response vehicles, and at first aid stations.

An employee rendering medical assistance which may expose the employee to blood or bodily fluids will take precautions against contamination (such as wearing latex gloves while bandaging a bleeding wound, or using a disposable mouth piece for CPR. An employee exposed to blood or bodily fluids will scrub with soap and water, remove rings, watch and jewelry and scrub thoroughly.

Gloves and one-way CPR masks shall be available in all first aid kits.

Hand washing facilities shall be provided at all locations where there is anticipated exposure to blood borne pathogens. If the anticipated exposure is to a crew, working in the field, an approved portable pressure tank may be used. There shall be a sufficient amount of soap and water to wash the greatest number of washings on a crew. Where the anticipated exposure is to an individual at a place where hand washing facilities are not available, antiseptic hand-cleaner or towelettes shall be readily accessible and shall be used. However, if antiseptic hand-cleaner or towelettes are used, the exposed areas shall be washed with soap and water as soon as possible after removal of the personal protective equipment.

Contaminated syringes or needles shall be handled only in accordance with approved one-handed methods or with approved devices. Needles shall not be bent, recapped, or removed unless authorized and the employee is specifically trained to do so.

If potentially contaminated syringes or needles are discovered, the devices shall be placed in approved containers. After securing in an approved container, the item shall be delivered to the [ ] or to a medical services provider for disposition.

Equipment which may become contaminated with blood or other potentially infectious materials shall be examined prior to servicing and shall be decontaminated as necessary. Emergency service equipment may be used while contaminated to complete the assignment. However, upon completion of the immediate assignment, vehicles and equipment shall be removed from service and the contaminated area decontaminated prior to the next use. The contaminated area shall be identified with an approved BIOHAZARD label, and all affected employees, including maintenance personnel shall be informed of the hazard, until decontaminated.

Any additional precautions applicable to specific job functions, as well as any further general precautions, will be conveyed through employee training sessions, educational material, or more specific departmental policy.

Personal Protective Equipment. When an employee has an anticipated exposure to a blood borne pathogen, and the exposure can not be controlled through redesign of work facilities, mechanical devices or barriers which isolate people from potentially infectious materials, or work practice controls, then personal protective equipment shall be provided.

The equipment shall be provided at no cost to the employee and shall be decontaminated and/or replaced as necessary.

Employees shall wear appropriate personal protective equipment whenever there is a potential for an exposure. Personal protective equipment is appropriate if it does not permit blood or other potentially infectious materials to pass through and come in contact with the employee's street clothes, undergarments or skin.

Personal protective equipment selected shall be appropriate for the anticipated exposure. Some examples of personal protective equipment are latex (surgical) gloves, surgical masks, and disposable mouthpiece for CPR, face-shields, disposable coveralls, and disposable boots.

If the personal protective equipment is penetrated by blood or other potentially infectious materials, the personal protective equipment shall be removed immediately or as soon as feasible. All personal protective equipment shall be removed before leaving the work area, and placed into an appropriate designated area or container for storage, washing, decontamination, and/or disposal.

If gloves are used for protection, the following precautions shall be taken:

Disposable gloves shall be replaced as soon as practical when contaminated.

Disposable gloves shall not be washed or decontaminated for reuse.

Reusable gloves may be decontaminated for reuse if the integrity of the glove is not compromised. Reusable gloves shall be thrown away if the glove is contaminated and cracked, torn, punctured, or when their ability to function as a barrier is compromised.

Masks and eye and face protection shall be worn when there is an anticipated exposure to splashed, spraying, spatter of blood or other potentially infectious materials.

Other body protection, such as disposable coveralls, over-boots and aprons shall be worn when there is an anticipated exposure to blood or other potentially infectious materials.

Housekeeping. Worksites shall be maintained in a clean and sanitary condition. When warranted due to risks of contamination, a supervisor shall determine and implement an approved written schedule for cleaning and method for decontamination. If the anticipated exposure is in the field, a supervisor shall determine if and where decontamination exists and whether it is necessary to implement the appropriate actions.

All equipment and environment, including work surfaces shall be cleaned and decontaminated after known or suspected contact with blood or other potentially infectious materials.

All protective coverings, such as plastic wrap used to cover equipment shall be removed as soon as feasible.

All bins, cans, pails or similar devices which are anticipated to become contaminated shall be visually inspected and cleaned on a regular schedule. If there is visible contamination, they shall be cleaned immediately.

All refuse anticipated to be contaminated with blood or other potentially infectious materials shall be handled with a mechanical device.

Waste Management. Whenever it is necessary to prevent the spread of a known or potential infectious disease, a waste management program will be implemented. The program will be implemented as soon as the potential exposure is discovered. The District will use red plastic bags, identified with the BIOHAZARD label for contamination containers. Unless the contaminated materials are evidence to be retained for use in a criminal proceeding, the containers shall be transported to the appropriate disposal site.

When personal protective equipment is removed it shall be placed in an appropriate biological hazard container. The container shall be:

Closable

Constructed to contain all contents and prevent leakage of fluids

Labeled biohazard and colored red

Closed prior to removal.

Disposal of all infectious waste shall be done in accordance with all federal, state and local requirements.

Decontamination and Laundry. Decontamination of employees, equipment, materials, and the environment shall be done immediately or as soon as practical, upon discovery of the contamination. Decontamination means the washing of the body, equipment, materials, and the environment so as not to have any contamination with blood or other infectious materials.

The minimally acceptable level of decontamination is washing with soap and water. Depending on the type of contamination, more aggressive measures may need to be taken such as use of commercially prepared agents or a 1:9 solution of household chlorine bleach and water.

If an employee's clothes become contaminated, the employee shall immediately, or as soon as feasible, remove all contaminated clothing and wash with soap and water. If contamination of an employee's clothes results in exposure of the employee's non-intact skin or mucus membranes to blood or potentially infectious materials, the employee should be transported to the nearest hospital or the nearest appropriate facility for evaluation. If the employee is required to enter a vehicle while contaminated, both the employee and vehicle shall be decontaminated prior to being put back into service.

All clothing and equipment considered for decontamination shall be placed in a container which is clearly marked and identified with the appropriate BIOHAZARD label, and transported to an approved commercial laundry with employees trained in universal precautions. Washing in 160 degree F water for at least 25 minutes with chlorine bleach is effective.

Only authorized personnel shall be qualified to transport contaminated containers.

Hepatitis B. Vaccination Information.

All employees who have a reasonably anticipated occupational exposure to hepatitis B and have received training in accordance with [OAR 437.1910.1030\(g\)](#) shall be offered the opportunity to receive the hepatitis B vaccination series, and any boosters as

recommended by law. Receiving the hepatitis B series is not mandatory, nor is it a bona fide occupational qualification.

The hepatitis B vaccination series shall be offered to all employees within 10 days of initial assignment, unless the employee has previously received the complete hepatitis B series. Antibody testing may be performed to determine that the employee is immune to hepatitis B, or that the vaccine is contraindicated for medical reasons. Such additional testing shall be the decision of the [                      ].

An employee may decline to receive the hepatitis B series initially, and later change his/her mind and receive the series at any time the employee performs duties where there is a reasonably anticipated occupational exposure to hepatitis B.

If any employee declines to receive the hepatitis B vaccination series, the employee shall sign a statement indicating the declination, which states:

"I understand that due to my occupational exposure to blood or other potentially infectious materials I may be at risk of acquiring hepatitis B virus (HBV) infection. I have been given the opportunity to be vaccinated with hepatitis B vaccine, at no charge to myself. However, I decline hepatitis B vaccination at this time. I understand that by declining this vaccine, I continue to be at risk of acquiring hepatitis B, a serious disease. If in the future I continue to have occupational exposure to blood or other potentially infectious materials and I want to be vaccinated with hepatitis B vaccine, I can receive the vaccination series at no charge to me."

#### Post-Exposure Evaluation and Follow-up.

Upon notification of an exposure to blood or other potentially infectious materials, the employee will be given the opportunity to have a confidential medical evaluation and follow-up at a local hospital at no cost to the employee.

The immediate supervisor of the employee exposed to blood or other potentially infectious materials shall perform an investigation of the exposure immediately after the exposure. A copy of the evaluation shall be provided to the employee and the person performing the medical evaluation. The Post-Exposure Evaluation shall contain the following information:

Employee biographical information

Circumstances under which the exposure incident occurred

The route of exposure

A description of the exposed employee's duties as they relate to the exposure incident

Results of the source individual's blood testing, if available

If the exposure was not a person, the source of the exposure

All medical records relevant to the appropriate treatment of the employee, including vaccination status.

The department shall obtain a copy of the health care provider's written evaluation, if any, within fifteen (15) days of the evaluation, and shall provide a copy to the exposed employee. The information shall be kept confidential and not disclosed without the employee's consent.

After an exposure an employee shall be given the opportunity to have their blood tested for the presence of hepatitis B (HBV) and human immunodeficiency virus (HIV).

After the exposure an employee shall be given the opportunity for counseling.

Reasonable attempts shall be made to identify the source individual and obtain a consent test for HIV/HBV, including consent to make the test results available to the exposed employee.

#### Communication and Training.

Communication of the potential hazards from blood or other potentially infectious materials shall be done by means of labels or signs, with the appropriate "BIOHAZARD" label, red bags, or red containers, which meet the requirements of the law.

All employees working in classifications identified as having a reasonably anticipated potential for an occupational exposure to blood or other potentially infectious materials shall be trained prior to initial assignment, upon change in assignment and annually thereafter.

The training program shall contain the elements required by [OAR Chapter 437](#).

#### Recordkeeping.

Individual employee medical records shall be kept by the [ ]. The records shall be kept confidential and only released to the employee, to anyone having the employee's express written consent, and as may be required by law. Employee medical records with regard to exposures to blood or other potentially infectious materials shall be kept for the term of employment, plus thirty (30) years.

An official record of training shall be maintained in the employee's personnel file. Training records shall be provided, upon request, to employees, employee representatives, and as required by law. The record of training shall be maintained as a permanent part of the personnel file.

### **D. IMMIGRATION AND NATIONALITY PROGRAM**

Policy Statement. The District recognizes that it has a responsibility to comply with the provisions of the Immigration Reform and Control Act of 1986 by employing only

citizens of the United States of America and lawfully authorized alien workers. The District further recognizes that it is an unfair immigration-related employment practice to discriminate against an individual, other than an unauthorized alien, based on national origin or citizenship status.

The District's policy is to provide equal opportunity to all persons in matters affecting employment with the District, including full compliance with the Immigration Reform and Control Act of 1986. The District shall not discriminate against any individual, other than an unauthorized alien, based on national origin or citizen status.

Procedure. In order to assure compliance with the Immigration and Nationality Act, the District will: consider every job applicant on his or her merits; verify employability and identity in a lawful and consistent way; and maintain complete and accurate documentation of all decisions.

Appeal Procedure. Special Counsel for Unfair Immigration-Related Employment Practices has been established within the Department of Justice. Regional Offices of the Immigration and Naturalization Service handle the investigation and prosecution of cases. Individuals wishing to file a complaint may contact the Immigration and Naturalization Service, between the hours of 8:30 a.m. and 3:00 p.m., Monday through Friday.

## **POLICY 14.9: Performance Evaluation**

### **A. EMPLOYEE PERFORMANCE REVIEWS**

Purpose - Communication. Employee performance reviews are an essential communication process between the employee and the immediate supervisor. Such reviews provide information relating to merit, identify areas of training needs, target the strengths and weaknesses of the employee's work performance, and measure the relationship between goals and objectives and the individual employee's job performance. The purpose of evaluations is to let employees know how well they are performing their job and whether they have performance problems. It also serves as a basis of personnel decisions -- merit increases, promotion and termination.

Goal - Form Desirable Behaviors. The goal of the employee performance review process is to establish a pattern of expected work performance and habits. The review process gives employees and supervisors an opportunity to measure, review and establish goals, reward or acknowledge good performance, create incentives, and to detect and correct improper behavior or activity and/or substandard work performance.

Review Process. Performance reviews shall be completed at least annually and in accordance with the guidelines and instructions set forth below. Employees and supervisors are required to sign the completed performance review forms. All performance reviews will be reviewed by the [ ] and placed in the employee's personnel file. Employees will be provided with a copy of performance reviews.



Employees Affected. All regular employees of the District will be evaluated under this policy. The [ ] shall be evaluated by the Board Members based upon the consensus of the Board, using a written performance evaluation.

Regular Review. All employees will be evaluated at least annually in the month of [their anniversary date.] [ ].

Probationary Review. Probationary employees will participate in goal-setting interview/reviews as often as appropriate and will be evaluated in at least two performance progress reviews before being transitioned to regular employee status.

Pay and Probation Recommendations. A recommendation for a merit or step increase and/or extension of probation, or passing probation to regular employee status, or termination shall be set forth in a performance evaluation as appropriate.

Supplemental Evaluation. A supplemental performance evaluation may be submitted on any occasion deemed appropriate by a supervisor.

## **B. THE EVALUATION PROCESS**

Meaningful performance assessments require both the supervisor and the employee's evaluation of the employee's performance.

The Supervisor. The employee's immediate supervisor is responsible for timely completion of the official evaluation report. In cases where the immediate supervisor does not have ample opportunities to judge the employee's performance, the lead worker (or others in a position to observe performance) should be consulted in completing the evaluation. The form should be completed initially in pencil, and after discussion with the employee and the reviewer (if needed), the final evaluation will be typed or written neatly in ink.

### **OPTIONAL SECTION**

The Employee Self-Evaluation. The employee shall complete the form for self-evaluation prior to formally discussing past performance with the supervisor. Employees should be notified in writing in advance that an interview is planned. Employees will actively participate in the performance review interview and will be given advance notice of the review date.

### **OPTIONAL SECTION**

Department or Division Review. Individual divisions or departments may review the evaluations. Each should establish procedures and standards for review. The reviewer should normally be the evaluator's immediate supervisor. Only one person within that department or division should be the reviewer. The reviewer may want to review the performance evaluation completed by each evaluator under his/her responsibility before the evaluation is discussed with the employee. The reviewer should consider each evaluator's fairness, objectivity, thoroughness, and consistency in evaluating employees

under the reviewer's supervision. In some circumstances to assure consistency, the reviewer should compare one supervisor's evaluations with another's, particularly within the same classification and work assignments.

**Common Errors to Avoid in Evaluating an Employee.** No matter how well designed, a performance appraisal program can fail if the supervisors doing the appraisal are not adequately trained and informed. The following guidelines describe some frequent errors to avoid.

Avoid rating most employees at the high end of the scale. Experience shows that "excellent" and "very good" rating are used more frequently than competent or adequate. This is often a reflection of supervisor's lack of confidence in the supervisor's own ability than the employee's performance. A rating of "competent" or "adequate" is not adverse and can generate suggestions for improvement needed to merit a higher rating. Descriptions of excellence should be reserved for those whose performance is truly superior.

Avoid the "Halo Effect." Raters tend to rate an individual consistently high, average, or low on all factors based on an overall impression. A dependable, conscientious employee does not necessarily produce high-quality work. Consider each factor separately and indicate strong and weak points. Don't hesitate to use the entire scale in your ratings. If the evaluations are to provide meaningful information, they must take advantage of the entire scale.

Avoid labels. Describe exact behavior. For example, telling an employee of a "bad attitude" does not offer an alternative for improvement or provide the employee with understandable examples of the behavior.

Evaluation Form.[Insert form desired by District.]

### **C. PREPARING FOR AND CONDUCTING THE PERFORMANCE REVIEW**

**Briefly Review General Background Information.** The more you know about an employee, the easier it is for you to understand and discuss work performance and behavior. Some time prior to the appraisal discussion, you should review the employee's past history, work experience, education, and previous performance appraisals.

Arrange for the Interview.

Set a time and place for the discussion and avoid postponement. Arrange for appropriate privacy and time for the discussion. It is important to prevent interruption if at all possible. A private office or conference room creates a setting in which you and the employee can communicate effectively.

Notify the employee several days beforehand, so that the employee has enough time to prepare for the performance review. One good method of having the employee prepare is to require that the employee evaluate himself. Ask the employee to fill out an appraisal form for discussion and comparison with yours during the interview.

Conduct the Interview. Approach evaluations as a helper, not a judge. Too often performance appraisal discussions are viewed as a time when the supervisor is the "judge". This is a difficult role which often prevents positive discussion. This is a time when you and the employee can look at job performance and find and discuss ways to improve it.

"Rating" performance involves judgments. However, in the discussion you should focus on specific ways to improve performance, in the role of a helpful teacher.

Structure and Format of the Evaluation. The interview should have some structure to it, varying with individual circumstances.

Create a relaxed climate by indicating overall satisfaction and honest appreciation of job performance.

Outline the purpose and objectives of the review. Explain the benefits of positive two-way communications about performance -- a clear idea of how the employee is doing and potential steps to improve performance.

Follow a comfortable sequence during the discussion, for example:

Past performance -- on each relevant job performance factor

Major strong points and weak points needing greater effort

Specify developmental steps to be taken to improve performance

Goals and the role of the [department] [District].

Encourage the employee to participate. The more an employee discusses performance, the better the review. Listen and gather information. Active listening is very important.

Use open-ended questions (who, what, when, why and how) which encourage discussion rather than simple "yes/no" responses

Tell the employee you are receiving information, not judging

Use restatement or reflection. This is a clarification process and feeds back what you are hearing to the employee.

Discuss areas of good performance first. This is easier if you have required the employee to appraise performance as preparation for the review.

Focus on areas of performance the employee identifies as not fully satisfactory. Determine what corrective action should be taken, and by whom. Collaborate on the action steps. Do you agree on areas of strengths and weaknesses? The more the employee participates in the plans for improvement, the greater will be the commitment

to those plans. Offer useable criticism tactfully and constructively in the context of a discussion of strengths.

Use specific and realistic improvement targets. Don't try to eliminate all areas of weakness in one session. Concentrate on the most important ones. A development plan with two or three steps is often accomplished. One with eight or nine may cause the employee to give up.

Discuss personal goals and interest.

Close the discussion by summarizing what has been covered and reviewing the specific steps to be taken by supervisors and the employee. If appropriate, set a follow-up date to discuss progress towards performance improvement.

Follow-Up. During the review, specific steps to improve performance were identified. If action needs to be taken by you, take it.

If specific training has been recommended, it is important that it be undertaken. If parts of the job description have become obsolete, it should be rewritten.

## **POLICY 14.10: Problem Solving Process**

### **A. DISTRICT POLICY**

The District strives for fair treatment of all employees, however, misunderstandings and problems may occur in any organization. The District intends that such matters be resolved as early and fairly as possible. Disagreements relating to work assignment, pay, promotion opportunity or any aspect of the work relationship should be openly discussed with the immediate supervisor. Supervisors and employees should make honest attempts to understand each others perspectives and make every effort to resolve differences.

### **B. STEPS TO SOLUTION**

If at any time an employee believes s/he is not being treated fairly, the employee may report the problem to the department head or the [ ]. Several steps are suggested to insure that a prompt and fair resolution is achieved.

Talk with your supervisor as soon as possible. Your department head is the person responsible for what goes on in your work areas. S/he will review your problem, and keep you informed of the progress.

If you believe the problem is not properly resolved you can file a written statement concerning the problem with [your department head.] A copy should be sent to the [ ]. You will be given a written reply by your [department head] [ ] within [ten (10)] working days after the written statement is received, unless additional time is needed.

The [ ] will review any decision upon request, investigate further if appropriate, and issue a decision. The employee's request for consideration of the [ ] should be made within [ten (10) working] days from receipt of the supervisor's decision. The employee may present further facts, documents or argument.

The District cannot guarantee that an employee's point of view will be accepted, but supervisors and the [ ] will always listen, and make every effort to insure that problems are resolved fairly and in the public interest.

### **ALTERNATE SECTION**

## **POLICY 14.10: Fair Treatment Policy**

### **A. GENERAL POLICY**

It is the policy of the District to provide for an orderly process whereby employees may have their problems and complaints considered as fairly and rapidly as possible without fear of retaliation. Every effort shall be made to find an acceptable solution by informal means at the lowest possible level of supervision.

### **B. DEFINITION OF NON-DISCIPLINARY APPEAL**

If an employee or group of employees in the District believes [an injustice] has occurred because of:

- Lack of a District policy or a department policy
- A policy that is unfair
- Misapplication of a policy
- Disagreement with another employee or supervisor

A discretionary action of the District or a department in the application of the rules and regulations of the District

Discrimination on the basis of race, color, religion, sex, national origin, marital status, age, expunged juvenile record, association with anyone of a particular race color, sex, national origin, marital status, age or religion, family relationship, mental or physical disability, or application for Workers' Compensation benefits;

A request written may be filed under the following established procedures.

### **C. NON-DISCIPLINARY APPEAL PROCEDURE**

Employee/ Employer relations are a matter of personal management choice. Some managers may prefer direct, open, free-flowing discussion with their employees, others may prefer more formal management leaving the details of the day-to-day operation to their subordinate supervisors.

It is recommended that every department manager establish a written procedure, which best reflects his/her personal choice in handling non-disciplinary appeals. Regardless of which of the following policies is chosen, all non-disciplinary appeals should be handled in an informal setting to gain better understanding of the problem and a prompt, fair resolution within the department.

Non-disciplinary appeals should not be presented to the department head or supervisor in writing, unless the issue is such that it cannot be understood except in writing.

### **POLICY NO. 1.**

OPEN DOOR POLICY - an employee wishing to discuss any issue or problem of a non-disciplinary nature may meet with the department head at any reasonable time. This is the established non-disciplinary policy. Access to supervisors may be delayed by District operational requirements.

### **POLICY NO. 2.**

CHAIN OF COMMAND POLICY - Employees wishing to discuss a specific non-disciplinary matter shall start with the immediate supervisor and follow the chain of supervisory command. In the event the employee cannot start with the immediate supervisor, s/he shall be entitled to commence the process at whatever level of supervisory command is available.

### **D. HEARING OF APPEAL**

When an appeal of a non-disciplinary policy cannot be resolved with the department procedure, the appeal shall be directed to the [ ] to cause investigation of the matter and make a recommendation on the appeal.

## **POLICY 14.11: Discipline**

### **A. DISCIPLINE GENERALLY**

On-the-job conduct of District employees affects the ability of the District to serve its citizens and affects the taxpayer's impression of District government. Employee safety, public safety, productivity and morale are dependent upon employee conduct. Occasionally it is necessary for supervisors to resort to corrective action when other actions are inappropriate, or where a particular employee fails to respond to informal guidance.

In order to provide a fair method of correcting, and when necessary, disciplining employees, the District's [General Manager, Manager, Chief, \_\_\_\_\_] will use progressive discipline procedures to the extent appropriate under the circumstances in the District's judgment. This section concerning discipline does not apply to the District's chief executive officer, who serves [at the pleasure of the Board of Directors] [under the terms of an employment agreement].

## **B. CORRECTIVE ACTION- GENERAL GUIDELINES**

Corrective action may be initiated for many proper reasons, including, but not limited to, violations of the work rules, insubordination or poor job performance. The severity of the action generally depends on the nature of the offense and an employee's work record, and may range from verbal counseling to discharge.

Corrective actions for poor performance or misconduct include:

Coaching and counseling

Written counseling or warning

Temporary reduction in pay in lieu of suspension

Suspension

Demotion

Discharge.

Any or all of these steps may be utilized, depending upon individual circumstances and the nature of the infraction. Exceptions or deviations from the normal procedure may occur whenever the District deems it appropriate, case by case.

## **C. SUSPENSION OF SALARIED EXEMPT EMPLOYEES**

No salaried exempt employee will be suspended by the District except for serious misconduct which does not warrant discharge and in such a case the employee must be suspended for not less than one full work week.

## **D. APPLICATION OF PROGRESSIVE PROCEDURES**

For performance deficiencies, employees will normally be verbally counseled once before receiving a written warning. A supervisor may or may not choose to make the imposition of a verbal warning part of the employee's personnel file.

### **OPTIONAL SECTION**

If no other deficiency occurs during the next eighteen (18) months, the employee may request the warning be removed from the personnel file. Documents removed from individual personnel files will be retained by the District in a separate record system not filed by name, which shall not be considered in personnel decisions.

In the event of two or more performance problems or a more serious violation of a District policy rule, or expectation, a written warning may be issued.

The warning should be signed and dated by the employee. An employee who disagrees with the facts in the warning may submit a written response. It will be placed in the personnel file with the warning.

A written warning need not pertain to the same or similar matter (issue).

In addition to a written warning, the [ ] or [department head] may also suspend an employee without pay for a period of up to [thirty (30) working] days, or take other disciplinary action deemed appropriate. Prior to suspending an employee without pay, the [ ] will meet with and afford the employee a pre-suspension conference by complying with the requirements of a pre-deprivation conference described in section E of this policy.

Department heads, with the approval of the District, may demote or reduce the pay of employees for cause. A written statement of the reasons for such action shall be furnished to the employee, and a copy shall be made a part of the personnel file. The employee will sign the statement acknowledging he has received a copy of it, and may file a rebuttal statement. Prior to imposing a demotion, the pre-deprivation conference procedure shall be followed.

Discharge may result if the employee violates District policy, commits serious misconduct or fails to improve the level of performance.

An employee should not be reinstated or otherwise relieved of misconduct if to do so would be contrary to public policy. In determining if reinstatement or other action would be contrary to public policy, the District will look at public policy requirements as clearly defined in statutes or judicial decisions, including but not limited to policies respecting sexual harassment or sexual misconduct, unjustified or egregious use of physical or deadly force and serious criminal misconduct, related to work. Additionally, when an employee claims the employer's alleged previous differential treatment of employees for the same or similar conduct is the basis for reinstatement of an employee who has engaged in misconduct, the following principles apply:

Some misconduct is so egregious that no employee can reasonable rely on past treatment for similar offenses as justification or defense to discharge or other discipline.

Public managers have a right to change disciplinary policies at any time, notwithstanding prior practices, if reasonable advance notice is given to affected employees and the change does not otherwise violate a collective bargaining agreement.

## **E. DEPRIVATION PROCEDURE**

Pre-Deprivation Conference. If a [department head] [ ] determines there is cause for the discharge, suspension or demotion of an employee, [the department head] [ ] shall notify the employee of the specific reasons and that a suspension without pay, demotion and/or discharge is being considered. The employee shall be provided with the facts upon which the actions are based. The [department head] [ ] shall afford the employee a formal opportunity to refute the charges orally or in writing. Once the



employee has been afforded an opportunity to refute the charges and explain the circumstances, the employee may be suspended without pay. If a pre-discharge conference is to be held, it will be scheduled and held [3] days after notice of action has been given. The employee will be given adequate time to develop a response and to seek necessary outside assistance as the employee feels necessary. The time limits may be varied by the District to meet individual needs.

The [department head] [ ] will conduct the conference and decide whether to impose discharge or a lesser degree of corrective action.

#### F. APPEAL OF DISCIPLINE ACTION

**Right to Appeal from Discipline.** Any regular employee subordinate to the District's Chief Executive Officer who has been suspended, reduced in pay, demoted or dismissed, shall have the right of appeal to the [General Manager] [Chief] [ ]. Notice of the appeal must be filed not later than ten (10) days of the effective date of the action. The notice of appeal shall include at least the following information: (a) a statement of the complaint and the facts upon which it is based; (b) the remedial action requested; (c) a statement of the reasons why the remedial action is appropriate; (d) a statement of any policies, procedures or law or rules which have not been adhered to or which should be followed. The appeal shall be heard by the [ ] within twenty (20) days after receipt of the request. The [ ] shall furnish the department head concerned with a copy of the notice of appeal in advance of the hearing.

**Who May Appeal.** Only regular employees not excluded from the application of these policies (see § \_\_\_ ) have a right to appeal disciplinary actions. In addition to formal appeals under this Section, the [ ] may give consideration to all suggestions and complaints that concern administration of the personnel policies.

**Investigations.** In connection with an appeal or complaint, with respect to any matter arising under these personnel policies, the [ ] may conduct an investigation as he deems necessary. The [ ] shall make a written report upon all matters investigated under the personnel policies. A copy will be given to the employee and placed in the file.

**Hearings on Appeal.**

**Procedure.** The [ ] shall set a hearing upon timely requests made under this policy. The employee and the department head shall be given written notification of the time and place of the hearing.

The order of procedure at the hearing will be as follows:

The department head or a designee will set forth the reasons for the action and the facts on which it is based. The employee may conduct cross-examination if appropriate.

The employee may present evidence in support of the appeal with or without the assistance of legal counsel or other representative.

The department head or a designee may cross-examine or submit evidence in rebuttal or both.

Opening statements, if any, will be brief and confined to the issues. Closing argument, if any, will be first by the department head or a designee then by the employee. The department head may offer rebuttal evidence if desired.

Evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible. Irrelevant, immaterial or unduly repetitious evidence may be excluded. Affidavits and counter-affidavits are acceptable as evidence. If either party intends to rely on an affidavit, it shall provide the other party with such affidavit together with the name, address and telephone number of the affiant at least ten (10) days prior to the hearing or such affidavit shall be inadmissible.

Conduct of Hearings. A hearing before the [ ] is intended solely for the purpose of receiving evidence either to refute or substantiate specific charges brought to the [ ]. The hearing shall be conducted accordingly. The [ ] may impose limits on questioning in the interest of the orderly conduct of the hearing and fairness.

Counsel or Representative. In appealing a disciplinary action to the [ ] an employee may, but is not required to, have counsel or other representative.

[ ] Findings. If, after receiving evidence presented in hearings on disciplinary actions, the [ ] finds that sufficient evidence supports the charges, that the complained-of action taken by the department head was reasonable and was taken for a proper reason consistent with policy, the [ ] may affirm the action; if the finds that the complained-of action taken by the department head was not so made, the [ ] shall fashion an appropriate remedy and the personnel file shall be purged of such record. The [ ] in lieu of affirming the disciplinary action may modify the discipline as the circumstances warrant.

At the time of filing of the request of the appeal with the [ ], the department head shall supply the employee with an outline of the procedures used by the [ ]. The decision of the [ ] shall include findings of fact and shall be final.

An employee with remedies under a labor agreement may use this appeal procedure, and may do so only if the employee and the Union waive the right to proceed to appeal under any other policy or contract law or rule.

## **ALTERNATE SECTION**

### **F. APPEAL OF CORRECTIVE ACTION**

Right to Appeal from Corrective Action. Any regular employee who is subordinate to the District's Chief Executive Officer, who has been suspended, reduced in pay, demoted or dismissed, shall have the right of appeal to the [Board of Directors] [ ]. Notice of the appeal must be filed not later than [ten (10)] days after the effective date of the action.

Such notice shall be in writing and must set forth the reasons why the disciplinary action is thought to be improper. The appeal shall be heard by the [Board of Directors] within [twenty (20)] days after receipt of the request. The [Board of Directors] shall furnish the department head concerned with a copy of the notice of appeal in advance of the hearing.

**Who May Appeal.** Only regular employees have a right to appeal corrective actions. The [Board of Directors] in any manner as it may deem proper, may give consideration to all suggestions and complaints that concern proper administration of the personnel policies.

**Investigations.** In connection with an appeal, complaint, protest, or any other purpose authorized by the personnel policies, the [Board of Directors] may conduct such investigation as the Board deems necessary. The [Board] shall make a public report upon all matters investigated under the personnel policies.

**Hearings.**

**Procedure.** The Board of Directors shall set a hearing upon timely requests made timely under this policy. The employee and the department head shall be given written notification of the time and place of the hearing.

**Conduct of Hearings.** A hearing before the Board of Directors is intended solely for the purpose of receiving evidence either to refute or substantiate specific charges brought to the Board of Directors an adequate hearing shall be conducted. In lieu of conducting a hearing, the Board may hire a hearings officer to conduct proceedings and submit recommended findings to the Board of Directors.

**Counsel or Representative.** In appealing a disciplinary action to the Board of Directors an employee may, but is not required to have counsel or other representative. The employee or his/her spokesperson may examine, cross examine witness, make statements, summarize testimony, and otherwise conduct the hearing.

**Board of Directors Findings.** If, after receiving evidence presented in hearings on corrective actions, the Board of Directors finds that the complained-of action taken by the [ ] was reasonable and consistent with policy, the Board of Directors may affirm the action; if the Board of Directors finds that the complained-of action taken by the [ ] was not so made, the employee shall be reinstated to the position and shall not suffer any loss in pay or status and the personnel file shall be purged of such record. The Board of Directors in lieu of affirming the disciplinary action may modify the discipline as the circumstances may warrant. At the time of filing of the request of the appeal with the Board of Directors, the [ ] shall supply the employee with an outline of the procedures used by the Board. The decision of the Board of Directors shall include a finding of fact and shall be final and binding. An employee with remedies under a labor agreement [or District Civil Service] may use this policy appeal, and may do so only if the employee waives the right to proceed to appeal under any other policy or contract law or rule.

Procedural Rights Related to Performance and Discipline For Department Heads. The standards of conduct, performance and discipline to which the District holds department heads and managers is quantitatively and qualitatively different (higher) than the standards by which other employees are judged. Discussions of expectations, goals and objectives, and coaching and counseling should, in the case of management employees, be sufficient. In rare cases of misconduct, it may be that a suspension could be justified, however, ordinarily instances committed by this level of employee warrant either discharge or counseling. The [ ] is expected to ensure standards are established and met, and that an appropriate combination of performance plans, evaluations and counseling are utilized to help the manager succeed.

In the event a manager excluded from the application of Sections 11.12 to 11.14.5 is discharged, asked to resign, or suspended without pay, then such manager may request review of the decision of the [ ] by the Board.

In the event such a hearing is requested, the request shall meet the requirements of Section 11.5.1. The hearing procedure involving the [ ] (and not a department head) before the Board of Directors shall be conducted in the same manner provided for in Section 11.5.4. The Board shall determine whether the action was taken for sufficient cause and is not arbitrary and capricious as determined solely by the Board of Directors. Sufficient cause shall be judged based on factors which include the considerations set forth above. The following shall also apply:

Evidence objected to may be received by the Board and, in the Board's discretion, rulings on admissibility or exclusion may be reserved until such time as the Board's findings are issued. In considering the admissibility of evidence, the Board may consider but is not bound by the Oregon's Rules of Evidence.

If, after receiving evidence presented in hearings on disciplinary actions, the Board finds that the complained-of action taken by the department head or the [ ] was taken for sufficient cause, the Board may affirm the action; if the Board finds that the complained-of action taken was for insufficient cause, the employee shall be reinstated to the position and shall not suffer any loss in pay or status and the official personnel file shall be purged of such record. The Board, in lieu of affirming the disciplinary action, may modify it as the circumstances may warrant. The decision of the Board shall include findings of fact and shall be final and binding on all interested parties.

The Board may refer any issue to a Hearings Officer who shall conduct the proceedings in accordance with these rules. In such event, all provisions of these rules relating to the duties and authority of the Board shall also apply to the Hearings Officer in the conduct of the hearing. The Hearings Officer shall issue Recommended Findings which shall be reviewed by the Board based solely on the record and applicable law. The Board may adopt the Findings by voice vote. In all other cases the Board shall issue a final written decision within twenty (20) working days from receipt of the Recommended Findings.

## **OPTIONAL SECTIONS**

### **POLICY 14.12: Employee Assistance Program**

#### **A. PURPOSE**

The objective of the Employee Assistance Program ("EAP") is to assist and retain valued employees and reduce the potential for difficulties in the workforce stemming from employees' needs and difficulties which otherwise may not be addressed. Problems of a personal nature can have an adverse effect on an employee's job performance. Most personal problems can be dealt with successfully when acknowledged and referred to an appropriate counselor or resource person. The purpose of the Employee Assistance Program is to provide services through appropriate arrangements with outside resources. The program is intended to afford help in the broad range of human problems such as emotional/behavioral, family and marital, alcohol and/or drugs, financial, legal and other personal problems. The program provides problem assessment, short term counseling and referral services. Costs for these services are covered by the employer. If costs are incurred for additional services not covered by insurance or other benefits, those costs will be the responsibility of [the employee].

#### **B. POLICY**

The policy applies to all employees of the District, who receive full benefits, regardless of job title or responsibilities.

The program is available to employees or their families on a self-referral basis. Employees or family members who have personal problems and may benefit from assistance are encouraged to use the program.

Participation in the program will not jeopardize an employee's job security, promotional opportunities or reputation.

All records and discussions of personal problems will be handled in a confidential manner as other medical records. These records will be kept by the designated counseling resource and will not become a part of the employee's personnel file. The District will not be informed of matters discussed unless the employee requests.

When work related performance problems are not corrected in response to supervisory attention, the supervisor should consider whether the employee should be encouraged to seek assistance to determine if personal problems are causing unsatisfactory performance. Performance problems which persist will be dealt with corrective action or discipline as appropriate.

Personal problems are not a justification for lower performance requirements. A reasonable toleration period may be established as part of a work plan of accommodation after an employee has sought help through the program upon recommendation of counselor.

It is the responsibility of all managers to utilize the program as appropriate to assist in resolving job performance problems which result from identifiable personal problems.

Sick leave may be granted for treatment or rehabilitation on the same basis as is granted for ill health. Consideration may be given for the use of leave without pay.

This policy does not alter or replace other policies or terms of labor agreements.

**OPTIONAL SECTION**

**POLICY 14.13: Education and Training**

The District encourages continued education and training for employees to enhance job performance and assist in potential career advancement within the District. The District shall provide such in-service training as deemed necessary and beneficial to the delivery of services and performance of duties.

Employees may request compensation for the costs of college-level, technical or other academic course work, seminars, and conferences relevant to their current or future roles in the organization. Such requests must be made in writing to the [ ] (and forwarded with a recommendation to the [ ] for approval prior to the employee's enrollment or participation.) Reimbursement for college-level course work will only be made if the employee receives a passing grade. All training activities involving a cost to the District must be approved in advance, in writing.

**CERTIFICATE**

I certify that I have received a copy of the Personnel Policies and Procedures of the District. I understand that it is my responsibility to read and ask questions if necessary regarding personnel policies. I accept responsibility for understanding and complying with the District's policies. I understand that my employment can be terminated with or without cause, at any time, at the option of either the District or myself, subject however only to such restrictions as may appear in the District Policies and Procedures Manual [or in a collective bargaining agreement], as each may be amended periodically. I understand that no one except the [ ] and Board, has the authority to enter into any agreement in writing, contrary to the personnel policies and procedures of the District.

---

Signature

---

Date

EXHIBIT A

RESOLUTION NO.

A RESOLUTION ADOPTING PERSONNEL  
POLICIES FOR THE DISTRICT

WHEREAS, it is in the best interests of the citizens of the District and the employees of the District that certain policies relating to employment by the District be clearly set forth; and

WHEREAS, the District Board has reviewed this manual of personnel policies for employees; and

WHEREAS, the adoption of these policies appears to be in the best interest of the District and its employees;

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE :

That the personnel policies attached hereto are approved and adopted as the policies for all employees of the District.

ADOPTED BY BOARD OF DIRECTORS THIS DAY OF ,  
200\_.

President [or Chairman]

ATTEST:

, Secretary [or Clerk]

APPROVED AS TO FORM:

, Legal Counsel

# Board Member Duties and Responsibilities

## Introduction

The authority given a special service district, except as otherwise provided, shall be exercised by a board of directors. Each type of special district has its own statutes and requirements for board members. Some districts refer to board members as commissioners or directors. For the purpose of this chapter, district governing officials will be referred to as board members. Most types of districts require by law that board members are electors, or at least own property within the boundary of the district. The number of board members varies as does the length of their terms. For specific requirements, districts should refer to the Oregon Revised Statute that governs their type of district. (See Chapter 9 for a list of applicable statutes.)

District board members are public officials who must act in the best interests of the public and are accountable to the public through federal, state, and local laws. Governance is a responsibility that must not be taken lightly. Public laws concerning district elections, public records and meetings, investment, and budgeting can be time consuming and frustrating. Board members can become objects of public scrutiny and criticism if district affairs are not managed properly.

Acting as a board member can be a rewarding experience, which brings pride in the knowledge that local communities depend on the efficient operation of district services. A well-informed board member should pay attention to the needs their district serves, and aware of their many and important responsibilities.

A well-formulated board member policy manual can assist board members in understanding their responsibilities. Codes of ethics should be developed so that board members understand what is expected of them as public officials. Written policies can assist in orienting new board members.

Much of the information in this chapter was taken directly from Oregon Government Standards and Practices Laws: A Guide for Public Officials. December, 1993. As of the current edition of this chapter, there has not been a revision to this guide.

## Bonding

The governing body of a district must require bond or irrevocable letter of credit of any member of the governing body or any officer or employee of the district who is charged with possession and control of district funds and properties. The amount of the bond shall be fixed by the governing body of the district. The premium shall be paid from the district funds. The letter of credit shall be issued by a commercial bank. ([ORS 198.220](#))

Under certain conditions the amount of the bond can affect the frequency of a financial audit as required by the Secretary of State. ([ORS 198.435](#))



All board members or employees can be bonded for a minimal additional charge to the cost (premium) of bonding only one board member. It is practical and beneficial to take the necessary steps to bond all board members or district managers.

## **Compensation & Expenses**

A district board member may not receive over \$50 per day or a portion thereof as compensation for services performed as a member of the governing body. The governing body may provide for reimbursement of a member for actual and reasonable traveling and other expenses incurred by a member in performing official duties ([ORS 198.190](#)).

Public officials in Oregon are prohibited from using their office to obtain financial gain for themselves, their relatives, or business with which they or any member of their household is associated. Board members devote a great deal of energy and time to the community. They must view their position as one of service and representation, not as an avenue toward financial gain.

## **Government Standards and Practices (Ethics) Regulations**

**Oregon Government Ethics Commission** In response to the Watergate scandal, Oregon voters in 1974 approved a statewide ballot measure creating what is now known as the Oregon Government Ethics Commission (OGEC)). The ballot measure also created a code of ethical conduct in the form of [ORS Chapter 244](#). The ethics statute applies to all elected and appointed officials, employees and volunteers at all levels of state and local government in all three branches.

The Commission itself consists of seven members, all appointed by the Governor and confirmed by the Senate. Each leader of the Democratic and Republican parties in each house of the Legislative Assembly may recommend an appointee. The remaining three members are appointed at the discretion of the Governor; however, no more than two appointees shall be from the same major political party. The term of office is four years.

**Regulated Activities** The OGEC is charged with regulating the activities of public officials in three primary areas: financial disclosure, prohibition against the use of office for financial gain, and conflicts of interest. Additionally, the OGEC also enforces public meetings laws under ([ORS 192.610 to 192.690](#)).

**Financial disclosure** Certain public officials are required to file statements of economic interest (SEI). The OGEC has developed a form requesting information about the sources of the official's household income, business interests, and other financial matters for the purpose of making general information about an official's income sources and business relationships available to the public. No specific dollar amounts are required. For a list of individuals who must file a SEI, and a sample form, see [Chapter 244.050](#) and [Sample Statement of Economic Interest Form](#).

**As of this writing, board members of special districts are not required to file financial records with a district unless the district is a metropolitan service district.**

However, a district may enact a resolution requiring its board members to disclose their financial records.

To avoid problems with conflicts of interest, it may be wise to require board members to submit financial records which at least indicate their degree of investment and property ownership within the district.

**Prohibition against the use of office for financial gain** [ORS 244.040](#) states that "No public official shall use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment that would not otherwise be available but for the public official's holding of the official position or office..." This provision is the basis for violations relating to use of public equipment (such as cell phones and vehicles) and accepting offers for discounted rates from merchants and service providers. The prohibition does not include acceptance of official salary, reimbursement of expenses, honoraria and unsolicited awards for professional achievement.

**Conflicts of interest** The Oregon Government Standards and Practices laws define "potential conflict of interest" and "actual conflict of interest." Both relate to taking of official action that may result in financial benefit or avoiding a negative financial effect on the public official, the official's relative or a business with which the official or the official's relative is associated.

As the term implies, a potential conflict of interest occurs when an action potentially could affect the financial interests of the public official, or the official's relatives or associated businesses. An actual conflict occurs when such action definitely would have such an effect. Before taking an official action, a public official should first:

Determine if an action could result in financial benefit or avoidance of financial detriment to the official, a relative, or a business with which the official or a relative is associated. If the answer is "no," proceed with the action.

Determine if the action will similarly affect a "class" of people ( see below) or if, for any other reason, the official is exempt from the conflict of interest statutes; and

If (2) does not apply, determine if taking action would result in financial gain or avoidance of financial detriment to the official, a relative, or a business with which the official or a relative is associated.

Answers to (1) and (2) above determine if a potential conflict of interest exists. The answer to (3) determines if there is not just a potential, but an actual conflict.

If you are unable to determine which fits your situation, ask the staff of the Government Standards & Practices Commission (OGEC) or SDAO for assistance before you take official action. If it is not possible to contact the OGEC or SDAO before taking official action, avoid the risk of violating the law by declaring the conflict and then by not discussing, voting or participating in any way concerning the matter in question.

Why is the distinction between "actual" and "potential" conflicts important?

For certain officials, the law prescribes different actions depending on whether a conflict of interest is “potential” or “actual.”

What is a potential conflict of interest?

A potential conflict of interest exists when an official takes action that reasonably could be expected to have a financial impact on that official, a relative or a business with which the official or official's relative is associated.

This would be the case when an official is asked to take action (recommend, debate, vote on or make an administrative decision) that might affect property or a business with which the official or any relative of the official is associated, or is asked to make a recommendation that will be re-evaluated by another committee or official for formal action.

In these and other circumstances, the public official's action could have an impact on the personal finances of the official, a relative or an associated business. However, the result of the actions are not certain. It is not clear if or how a land use decision on adjacent property will affect a parcel. It is not certain that a recommendation will be acted on finally.

What is an actual conflict of interest?

According to the statute, the difference between a potential and actual conflict of interest is determined by the words "could" and "would." An actual conflict of interest occurs when the action is reasonably certain to result in a financial benefit or detriment. It will occur when an action is taken that directly and specifically affects land, a business, or any other financial interest of the office holder or office holder's relative.

Examples listed below demonstrate differences between potential and actual conflicts. However, in many cases, the distinction may be vague. When in doubt, check with SDAO or OGEC.

What must an official do when faced with an action that results in a potential or actual conflict of interest?

An ***elected official*** or a person appointed to a board or commission must publicly declare a potential or actual conflict of interest prior to abstaining, discussing, recommending, voting or taking other official action on an issue. The official also must explain the nature of the conflict. The declaration and the nature of the conflict must be noted in the minutes. (Note: Abstaining instead of disclosing a conflict of interest does not fulfill statutory requirements because the act of abstaining is an official action and the law requires disclosure before action is taken.)

In the case of a potential conflict of interest, an official may participate in the action, once the nature of the conflict has been announced. In the case of an actual conflict of interest, the person must:

Declare the actual conflict and announce its nature; and  
Refrain from taking any official action on the issue.

At each session or meeting at which the issue is addressed, the official must make the same public declaration. However, the official is required to make that announcement only once at each meeting, even if the issue involves a series of votes.

If the official's vote is necessary for the public body to achieve a quorum, the official may vote but may not discuss or debate the issue.

Example: A planning commission member owns property adjacent to a parcel for which the commission is considering a conditional use permit. The change in use of the debated parcel may or may not impact the value of the commissioner's property, but the possibility exists. The commissioner should declare a potential conflict of interest and announce the nature of the conflict. Then the commissioner may enter into debate and proceed to vote or take other official action.

Example: The same planning commissioner has approached the planning department for a conditional use permit on his property. The permit comes before the planning commission. Because the outcome of the decision clearly would have a financial impact on the commissioner's property, he must declare an actual conflict of interest, and he may not take any official action on the permit application.

Example: A fire district board member is asked to approve a contract authorizing her husband's brother to be principal contractor on a new district fire station. Such an action would be a clear financial benefit to a relative of the board member and as such constitutes an actual conflict of interest. She would be required to announce an actual conflict of interest and refrain from any further official action.

Example: A district board has asked a special panel of employees to recommend three consultants from a large applicant pool. One of the employees is married to one of the consultants who has applied. The panel recommends three names for a decision by the full board. The employee is required to declare his potential conflict of interest, and then he is permitted to vote on moving the slate of consultants to the board for final selection. He is not sure of the outcome, therefore, the potential for financial gain exists, but it is not a certainty.

An ***appointed official***, including public employees, must disclose the actual or potential conflict of interest in writing to the person who appointed the official (the "appointing authority"), disclose the nature of the conflict and ask that person to handle the issue. The appointing authority may designate another person to be responsible for the matter, or may give the official specific instructions on how the matter should be resolved.

Example: A county worker is in charge of disposing of surplus property. The employee's brother is a contractor interested in purchasing a piece of heavy equipment that the county is selling. Normally, the county employee has the flexibility to negotiate payment terms with prospective purchasers.

Because the payment terms agreed on will impact the finances of the employee's relative, this circumstance is an actual conflict of interest. The county employee must notify the appointing authority in writing of the circumstances surrounding the transaction. The law does not specify what the appointing authority must do.

In this example, the appointing authority -- the supervisor who hired the county worker -- could take over negotiations with the employee's brother, or assign responsibility for negotiating to another employee, or specifically instruct the employee how to negotiate the matter.

How can a public official ensure that a declared conflict of interest has gone into the official record?

The statute requires that a notice of potential or actual conflict of interest be noted in the official records of the public body. The commission's administrative rules require that the record shall also detail the outcome of a vote or action.

A public official should make sure that the meeting minutes or any other official records make note of the announcement. In case an action is questioned, the minutes will verify that the appropriate declaration has been made.

Be sure that the announcement is made clearly and is very explicit. Even if you know or believe that other officials and any members of the public are aware of the official's relationship to the issue at hand, it is essential to state for the record that there is a potential or actual conflict of interest.

A good test to determine if you are complying with the law is to determine if a citizen would be able to learn about your conflict of interest in the same way that citizen could become informed about other business of the public body -- through reading the minutes of a meeting or an equally available public record.

Public employees or other appointed officials must notify their appointing authorities in writing of any potential or actual conflict of interest.

Must a public official disclose financial amounts when announcing a potential conflict of interest?

No. The statute requires only that the nature of the conflict be disclosed.

What is a "class" exemption to the statutes relating to potential and actual conflict of interest?

The law has identified certain circumstances creating what is called a "class exception" from the definitions of actual and potential conflicts of interest.

Sometimes an official may take action that would have a financial effect on that official, a relative, or a business with which the official or the official's relative is associated. But

when other people are also "affected to the same degree" by that action, the official may be exempt from conflict of interest on the basis of a class exemption.

The law says that a "class" can be comprised of inhabitants of the state or a smaller group, such as an industry or occupation.

If the official, official's relative, or associated business is found to be a member of a class, no actual or potential conflict of interest is involved. The official need not declare a conflict nor refrain from action. Only the OGEC is authorized by law to determine the existence of a class for the purpose of compliance with [ORS Chapter 244](#).

There is no rule that identifies a class. For example, in a town of 5,000, where virtually all residents work for or are otherwise financially associated with a single business, the OGEC may find that the public officials are members of a class of people with an interest in that business. However, in a community of 150,000, 5,000 people with a common financial interest would most likely not be considered a "class."

If you are uncertain whether you as an official are a member of a class if a potential or actual conflict may exist otherwise, you should contact the OGEC. The following examples may help:

Example: A park district board may consider using public funds to develop a series of parks on property that currently consisted of eyesores and condemned buildings. The result of such action would be to raise property values throughout much of the community -- "affecting to the same degree" a significant number of other people.

Because most public officials are property owners, the officials would be considered members of a class of property owners, as everyone in the community who owns property -- not just the officials -- would benefit from the investment.

However, if the public official owned the particular property to be improved, he or she would not be considered a member of a class. The result would be an actual conflict of interest. The official would be required to declare a conflict and abstain from action.

Are there other exceptions to [ORS 244.020](#), the definition of "conflict of interest?"

Yes, there are several. [ORS 244.020\(7\)\(a\)](#) exempts individuals when the conflict arises from "an interest or membership in a particular business, industry, occupation, or other class required by law as a prerequisite to the holding by the person of the office or position."

Example: Half the members of the same Advisory Committee on Historic Preservation are required by law to be people who are recognized as professionals in the areas of history, architectural history, architecture, archeology, museum management or be cultural or ethnic minorities. There may be times when the committee would take action that would affect an employing business or other business or financial interest of one or more of the members.

In this case, actions they take would be exempt from conflict of interest requirements, because their membership in a specific occupation is necessary to maintaining their seat on the commission. The nature of that occupation naturally would lead to what otherwise might be conflicts of interest.

What is the law with regard to affiliation with non-profit organizations?

The statute says that officials need not declare a potential or actual conflict of interest when the circumstance arises from "membership in" or "membership on" the board of directors of a nonprofit corporation that is tax-exempt under 501 (c) of the Internal Revenue Code.

Example: A school board member is presented with a decision to approve a contract for mental health services to a local non-profit organization on which she is also a board member. She is not required to declare an actual or potential conflict of interest and she is able to take action on the contract.

What if a public body would be one short of the minimum number of votes necessary to take action if a person failed to vote because of a conflict of interest?

The statute requires that when a member's vote is necessary for the voting body to meet a required minimum number of votes necessary to take official action, the member must declare an actual conflict of interest and may cast a vote, but may not participate in any discussion.

Example: The water district board is asked to approve a low-bid contract with a plumbing contractor. An employee of the contractor sits on the board.

Ordinarily, the employee would be required to declare an actual conflict of interest and refrain from voting or taking other action. This particular night, because several board members are out with the flu, his vote is necessary for the board to meet the required minimum number of votes necessary to take action. He should declare his actual conflict of interest and vote, without entering any debate on the motion.

**Advisory Opinions and Staff Opinions** To assist public officials in avoiding ethics violations, the OGECC lists both Staff Opinions and Advisory Opinions on its web site. A Staff Opinion is an informal opinion that addresses only the application of Government Standards and Practices law or Lobbying Regulation law to the facts stated in the request. Any relevant information, which was not included by the requester of this opinion in the stated facts, could completely change the outcome of this opinion. Other laws or requirements may also apply. The opinion does not exempt a public official from liability under the applicable law for any action or transaction carried out in accordance with the opinion. The opinion is the personal assessment of the executive director of the Oregon Government Ethics Commission. [Browse Staff Opinions](#)

An Advisory Opinion is issued by the Oregon Government Ethics Commission pursuant to [ORS 171.776](#) and [ORS 244.280](#). A public official or business with which a public official is associated shall not be liable under Lobby Regulation law or Government

Standards and Practices law for any action or transaction carried out in accordance with this opinion. The opinion is limited to the facts set forth in the request. [Browse Advisory Opinions](#). You may also Browse [Opinions by Category](#).

When in doubt regarding specific activity, you may almost always find an existing opinion related to the topic at hand. If not, you may [Request an Opinion](#) from the OGEC.

**Complaint Process** This section describes the complaint process. For a more details, see the Guide for Public Officials at <http://egov.oregon.gov/OGEC/docs/POGUIDE.pdf>.

The process for review and investigation of complaints received by the OGEC consists of the following phases:

Preliminary review – OGEC staff opens a file and solicits information and documentation regarding the complaint. The preliminary review phase must be completed within 90 days of the filing of the complaint or initiation of action on the part of the commission.

Investigative Phase – If the commission finds "cause" to pursue the case, the investigative phase begins. The Commission has 120 days to investigate the issues. The Commission has subpoena power and may require individuals to present evidence before the commission. The Commission then has the following options:

- Dismiss the case
- Continue the investigation for no more than 30 days
- Move to the contested case proceeding
- Seek a negotiated settlement or
- Take other appropriate action if justified.

Contested Case Hearing – Based on the evidence gleaned in the investigative phase, the Commission makes a preliminary finding of violation. A hearings officer assigned to hear the contested case. The OGEC and its legal counsel (assigned by the Attorney General's Office) presents its case and the public official and/or the public official's legal counsel presents a defense. It is up to the hearings officer to hear the facts and make a recommendation as to a final order, which the OGEC may accept, change or reject.

Circuit Court – A public official may elect to have the commission file a lawsuit against the official in the Marion County Circuit Court rather than hold a contested case hearing. The public official must notify the commission of that decision in writing within 21 days of receiving notice of the commission's action to move to the contested case hearing phase. The commission must file a circuit court suit within 30 days of receiving the public official's notice.

Appeal – Final orders may be appealed through the Oregon Court of Appeals.

A copy of the OGEC's [complaint form](#) is available for review.



## 2007 Changes to the Ethics Statutes

Twenty bills were introduced during the 2007 legislative session attempting to modify Oregon's ethics laws. Most of those proposals were generated by the Oregon Law Commission (OLC) in response to the directive by Governor Kulongoski to review Oregon's government ethics laws embodied in ORS [ORS Chapter 244](#) (the 'Code of Ethics') and prepare a comprehensive revision for recommendation to the legislature. The Governor tasked the Commission, with the ethics overhaul following the veto of HB 3328 in 2003, a bill crafted, supported, and strongly lobbied by special districts.

Two pivotal pieces of legislation emerged; one from the House and one from the Senate. Both contained recommendations by the OLC, both were approved by the legislature and signed by the Governor.

[SB 10](#) represented the Senate version of ethics reform. The bill was based on Colorado's ethics laws and originally required that local government bodies be assessed a fee for every public official, including volunteers, serving the body. Under SB 10, the Ethics Commission is required to adopt rules clarifying the gift provisions and specifying conditions under which repeated violations involving failure to file an Statement of Economic Interest (SEI) in a timely fashion are reported to the Legislative Assembly.

The bill also drastically modified the reporting requirements for both public officials and lobbyists by requiring lobbyists and entities employing lobbyists to file quarterly expenditure reports. Additionally, the Ethics Commission must develop an electronic filing system by 2010, and make filed statements and reports (by lobbyists, entities and public officials) available to the public on the Internet. Other notable changes include:

### **Funding**

The funding provision referenced above was modified to allow the Ethics Commission to determine its expenses and then assesses percentages of those expenses to state and local government. Public bodies subject to the municipal audit law (as demonstrated by total expenditures of \$150,000 or more in a single year) will be assessed a percentage of their municipal audit fee. Small special districts not subject to the municipal audit requirement will not be assessed. However, in light of numerous cases of malfeasance, it is anticipated that the legislature may want to expand the list of entities subject to the municipal audit requirement. State agencies are to be assessed by the number of public officials serving the agency. However, the inclusion of volunteers in that assessment was removed.

### **Public Bodies May Determine Compensation**

One of the more notable provisions of SB 10 relates to the prohibition that public officials use their office for financial gain or the avoidance of financial detriment. New provisions included in SB 10 provided exemptions for "*Any part of an official compensation package as determined by the public body that the public official serves.*" This empowerment of public bodies to determine what is and what is not part of a public official's compensation package is expected to create a level of certainty and quiet complaints regarding cell phone and vehicle use, "dog leg" trips, ownership of frequent

flyer miles, and other issues that had previously triggered the majority of ethics complaints.

### **Gifts**

SB 10 drastically changed the gift and gift reporting provisions. For example, public officials who are required to file SEIs are required to file quarterly reports for any gift or honoraria received over \$15 in value. However, no reporting threshold is specified for those public officials who are not required to file an SEI, although this point is expected to be covered during the rulemaking process. **Efforts to require all public officials (including those serving special districts) to file statements of economic interest (SEIs) failed.**

Public officials obligated to file SEIs under ORS 244.050 must also report

- 1) Convention, trip, mission or other meeting expenses in excess of \$50; and
- 2) Income sources exceeding \$1,000 if the source does business with the government agency or has a legislative or administrative interest in the public official's actions.

Prior to SB 10, gifts to public officials were capped at \$100 per gift giver per year if the giver of the gift had a *legislative or administrative interest*. The giver could also gift an additional \$250 in entertainment for a total maximum of \$350 per source per year. "Bundling" of gifts was also permitted from multiple parties. That is, multiple gift givers could each contribute to one gift to circumvent the \$100 maximum amount so long as each individual gift giver did not exceed the \$100 maximum amount. Finally, unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item are exempt from the gift prohibition if the item has a resale value reasonably expected to be less than \$25

SB 10 capped gifts at \$50 from persons having a legislative or administrative interest and ***gifts of entertainment are strictly prohibited***. There is no cap on gifts given from individuals with no legislative or administrative interest and gifts from family members or members of household are exempted from the gift provisions.

### **Legal Defense Fund**

While SB 10 limited the giving of gifts to public officials, it does permit public officials to establish a legal expense trust fund (regulated by the Ethics Commission) to defray legal expenses incurred by the official for expenses incurred in connection with defending any action brought by the Ethics Commission that relate to or arise from the course and scope of the duties of the public official.

### **Food, Travel and Beverage**

Reasonable expenses for food, lodging, and travel for attendance at a convention, fact-finding mission or trip, or other meeting are allowed under the following conditions:

1. The public official is scheduled to deliver a speech, make a presentation, participate on a panel, or represent state or local government AND
2. The giver is a unit of (a) federal, state, or local government; (b) A Native American Tribe; or

(c) A 501(c)(3)

Reasonable expenses for food, travel, or lodging is also allowed when a public official is representing state or local government on an officially sanctioned trade-promotion or fact-finding mission outside the United States.

In an attempt to end the cozy dinners for legislators and lobbyists, SB 10 prohibits the giving of food and beverage with the following exceptions:

1. Food or beverage, consumed at a reception, meal, or meeting IF held by an organization and IF the official appears to speak or answer questions as part of a scheduled program.
2. Food or beverage consumed by public official acting in an official capacity related to certain State Treasurer activities.

The Ethics Commission is required to write administrative rules clarifying the food, beverage and gift provisions.

### **Penalties**

Like [HB 2595](#), SB 10 increases the maximum civil penalty amount from \$1,000 to \$5,000. However, in response to lobbying efforts by fire districts, the Ethics Commission is now authorized to issue letter of reprimand, explanation or education for violations.

### **Revolving Door**

Under SB 10, legislators are prohibited from receiving money for lobbying for one session after the legislator ceases to be members of the Legislative Assembly. Any person who ceases to be a public official may not use confidential information gained by reason of holding a position as a public official for gain of any person (present law only covers confidential information while a public official is in office). Finally, public officials may not receive any direct beneficial financial interest in a public contract authorized by the public official or governing body of which the public official was a member, for 2 years, unless the public official did not participate.

[HB 2595](#), the House version of ethics reform, became the omnibus Law Commission bill, encompassing a number of the proposals recommended by the OLC. The most important aspect of the bill for local governing bodies is that it authorized state agencies and *statewide associations of public bodies* (such as OFDDA, OFCA, SDAO, and the League of Oregon Cities) to adopt government ethics rules or policies consistent with state law and submit those rules and policies to the Ethics Commission. Once approved by the Commission, public officials may not be penalized for operating within the rule or policy approved by the Commission. **Please contact SDAO or OFDDA regarding the status of these policies.**

HB 2595 also requires the Ethics Commission to respond to requests for Commission advisory opinions within sixty days and creates a safe harbor for public officials acting in accordance with advice provided in those opinions. The bill sets a thirty day deadline for Ethics Commission staff to respond to requests for staff advisory opinions.

A compromise reached in 2003 to allow the Commission an extension for preliminary review from 90 days to 135 days was also included, and the time line for investigations was increased from 120 days to 180 days. One controversial change removes the ability for public officials to “opt-out” of the adjudication process in favor of having their cases heard in Circuit Court. The “opt-out” provision was opposed by the Department of Justice.

HB 2595 also encompasses the provisions of SB 495, an OLC recommendation relating to nepotism. Under this change, public officials are prohibited from hiring, appointing or promoting relatives unless the public official complies with conflict of interest requirements. The fire service testified that this provision should not apply to volunteers, volunteer firefighters in particular. In response to that testimony, exemptions from the nepotism provisions were granted to members of the legislature and to unpaid volunteers. *Additionally, amendments were adopted that allow public bodies to adopt local policies allowing public officials to supervise relatives and members of the household.*

Finally, another OLC recommendation, HB 2636, was incorporated into HB 2595 and changes the agency name from “Government Standards and Practices Commission” back to “Ethics Commission”.

## **Use of Official Position or Office to Obtain Financial Gain**

How do the Oregon statutes help ensure that public officials do not use public office for personal financial gain?

[ORS 244.040](#) states that:

"No public official shall use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment that would not otherwise be available but for the public official's holding of the official position or office..."

The statute makes specific exceptions to this prohibition that include acceptance of official salary, reimbursement of expenses and certain types of awards and honoraria. Furthermore, the statute limits very strictly the value of gifts that officials can accept from specified individuals or organizations.

When is an official in violation of the statutes prohibiting use of official position or office to obtain financial gain?

A 1993 addition to the statutes helped clarify when a person would be considered to use official position or office for personal gain. The new words are, "that would not otherwise be available but for the public official's holding of the official position or office."

This means if people are able to gain financially only because they hold a public office, and the same opportunity is not available to persons who are not public officials, they are violating the statute.

Some examples are very clear, others are less obvious. For example, an out-and-out exchange of cash in return for a certain vote or administrative decision certainly would be use of official position or office to obtain financial gain. The office holder would not have received the money if that person were not a public official.

Similarly, an official who makes a decision in favor of a company, in exchange for a promise of a job is violating the law. The official is also violating the statute if the official suggests or solicits that type of agreement.

Again, that official is offered the job not just because of skills, talents or experience, but because that person is in an official position to do a favor for that company in exchange for future employment.

The statute prohibits public officials from using public equipment for personal purposes. It also prohibits an official from asking or allowing publicly paid staff to do personal tasks for the official on public time or to make decisions that will benefit the official financially. A variety of examples follow. Some are based on actual OGE cases and others are hypothetical.

Example: A state agency purchased a fleet of new cars at discount prices. An agency administrator ordered an additional car for himself and paid the fleet price for it with personal funds.

The Oregon Supreme Court found that this was a violation of the Oregon statutes. The court reasoned that the official gained financially (the money he saved by purchasing the new car at the fleet price), and that the only reason he was able to save the money was because of the official position he held. He would not have had the opportunity to save that money "but for" his position.

It is important to note that while similar behavior may be acceptable in private business, the State of Oregon holds its public officials to a higher standard. Public officials must act with caution whenever their personal interests overlap with those of the government entity they serve.

Example: A district employee learns through confidential agency memos that an investigation will result in shutting down a local tavern. The employee arranges financing and by using the information is able to buy out the tavern before the original owner loses his liquor license.

The employee has improved her financial situation by purchasing a business at a very low price based on confidential information. Using confidential information which is obtained because of official position for personal financial gain is a specific violation of law.

Example: A county employee hears from a co-worker about a piece of property that has been foreclosed on by the county for back taxes. Official notices are printed in the newspaper and the county holds an auction for that parcel.

Provided the employee does not use confidential information on which to base the bid, and the employee is not responsible for any decisions concerning the auction, sale, or other related financial details, he is legally able to bid on the property. In this situation, he is not benefiting from his situation as a public official and has no advantage that would not be available to any other member of the public.

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## **Responsibilities of the Board**

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The following is a list of suggested responsibilities for board members. Each organization is different and should tailor its own list to fit the needs of the district.

### **Communications**

Develop regular channels of communication with board members and the staff.

Encourage participation of staff members on appropriate committees.

Develop procedures for bringing staff opinions and recommendations to the board, as well as board opinions and decisions to the staff.

Invite clients, non-board members, other local governments, and groups to board or committee meetings or other types of board sponsored assemblies to explore and develop approaches to common concerns.

Recognize that certain information obtained at board meetings may be non-public and confidential making disclosure a breach of trust.

Make use of educational sessions, workshops, and seminars to gain a further understanding of issues.

Respect the opinion of other members and accept the principle of majority rule in board decisions.

### **Financial**

Approve the annual budget.

Monitor district finances and the budget, setting policy or taking action to ensure the fiscal integrity of the organization.

Policies, Objectives, and Plans

Abide by and become familiar with all laws and policies governing the operation of the district.

Approve the annual strategic plan or plan of operations.

Approve policies for the organization.

A director's basic function is policy making - not administrative.

Develop and approve long-range plan of growth and development for the organization.

Approve specific important projects.

Approve any significant departure from established plans or policy.

Receive and pass on committee or other planning body recommendations.

Ensure that program objectives are assigned to the proper planning or implementing subgroups.

Where applicable, bring other local governments or community groups into the planning and decision-making process.

Approve contracts binding the organization.

Approve major changes in the district's organization or structure.

Approve board plans of action.

Pass district resolutions, or adopt ordinances.

## **Management**

Select the district president and other officers.

Hire the district manager.

Define the duties and responsibilities for the president, district manager, officers, and major committee chairpersons.

Select legal counsel and consultants for the board.

Authorize officers or board agents to enter into contracts or to sign other written instruments and to take financial actions.

Approve the plan, form, and amount of management compensation, that is, salaries, bonuses, vacation, travel, and so on.

Evaluate the performance of the district management.

Approve the form and amount of reimbursement for board members.  
Approve programs for management development.

Provide advice and consultation to management on matters within the purview of the board's responsibilities.

Recognize that the district manager should have full administrative authority for properly discharging the duties of managing the operation within the limits of the established board policy.

Give the district manager the respect and consideration due dedicated people in their community service role.

### **Employee Relations**

Approve any employee benefit plans.

Insist that personnel complaints go through a proper chain of command. If not resolved, only then should the board get involved.

Approve contracts with and between any unions involved with the organization.

Do not allow personnel problems other than problems with the district manager to be brought into board considerations.

### **Control**

Identify types of information needed by the board to analyze effectively the districts directions and achievement. Create a process for collecting and analyzing information.

Realize that the citizens within the boundaries of the district are the true "owners" of the district.

Review and asses the organization's performance against objectives, resources, plans, policies, and services rendered.

Analyze major "shortfalls" in achievement.

Identify obstacles, sense changing needs, propose new directions or goals.

Ensure that the district is in compliance with all federal, state, and local laws.

Board of Directors

Motivate board members to accept positions of leadership and responsibility.

Appoint, change, or abolish committees of the board.



Define powers and responsibilities of committees of the board.

Appoint and compensate outside auditors and legal counsel.

Approve contracts for professional services required by and for the board.

Do not make commitments on any matter that should come before the board as a whole.

Recognize that an individual board member has no legal status to act for the entire board.

Realize that if a quorum of the board meets, then the meeting is considered a public meeting and must comply with all of the requirements of the Oregon Public Meetings Laws.

Discussions on matters of overall policy outside of regular board meetings can violate the open meetings law.

### **Public Accountability**

Keep the public informed on all district matters.

Make decisions based on the wishes and needs of the public.

Spend the district's money with prudence and trust.

Place the needs the public above the ambitions of the board or the district.

### **Board Policies**

Every district board should have a policy manual to orient new board members and act as a guide for conducting public business, meetings, and behavior. A policy guide will help eliminate unnecessary arguments and confusion, because the rules will be specified in writing. Changes to the policies should be formally approved at a board meeting and the policies officially amended. All members should be made aware of the changes. Some sample policies are included at the end of this chapter.

### **Board Member Liabilities**

District board members can be held liable for wrongful actions of the board. Although historically the number of governing boards found liable has been slight, the potential for a lawsuit exists. Governments are no longer governed by the principal of sovereign immunity, which in the past protected them from liability.

The size of claims against governing bodies in the State of Oregon is limited by the Oregon Tort Claims Act. The act sets a limit of \$500,000 for each claim filed against a governing body. To protect themselves from liability, district boards are encouraged to purchase General Liability Coverage that includes Errors and Omissions Liability coverage.

District boards and their members can be held liable if a claim filed against the district meets any of the four following tests:

**Violation of Duties:** The violation must be clearly outside the scope of the district's duties and responsibilities.

**Cause and Fact:** The board or the decisions of its members must be the cause of the injury. If the decision was not the substantial reason behind the injury then the board cannot be held liable.

**Breach of Duty:** The district board must use reasonable care to prevent an injury if the potential for an injury is foreseeable. For example, liability can be found if an unsafe work area, that the board was informed of and failed to take any action against, was the cause of an accident. The court will follow the Prudent Person Rule when deciding if the district is liable: "Would a reasonable person have known that if they failed to do something an injury would occur?"

**Injury or Damage:** There must be injury or damage caused to the plaintiff in order for the district to be held liable for a tort. Potential injury or damage is not a substantial enough reason to sue the district.

### **Discretionary Immunity**

Under Oregon law, public bodies and their officers, employees and agents are immune from liability for "any 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" ([ORS 30.265](#))

A discretionary (immune) act is an act in which a policy decision is made, while a ministerial (non-immune) act is an act which implements a policy decision which has already been made. In the real world, the distinction is often vague.

Not every exercise of judgment constitutes an exercise of "discretion." In deciding whether an act was discretionary (and, therefore, immune), the courts often ask whether the act was the result of a delegation of responsibility for policy choices to a certain level of operations (discretionary), as distinguished from routine decisions which every employee must make in every action he or she takes (ministerial). For example, if an officer or committee had to decide whether to take one action versus another because of financial constraints, a discretionary action is usually present because a policy decision regarding financial priorities will have been made.

Similarly, the decision to choose one plan of a roadway over another plan is probably a discretionary act; most acts done in routine maintenance of a road would be ministerial.

Establishing that an act was discretionary allows a court to dismiss an action against the public body before trial. It is well worth some planning to create a record to prove the discretionary nature of acts of your district.

First, all decisions which actually are policy decisions should be made by the person or committee which has the duty and/or right to make such decisions. Do not allow policy to be made at an inappropriate level. Second, all decisions made should be documented and a synopsis of the discussions regarding the decision should be kept. Carefully written minutes of a meeting may be sufficient to accomplish this documentation.

If a claim is filed against your district, be aware of the discretionary immunity defense and provide a documentation of related decisions and actions to your attorney as soon as possible.

## **Sample Policies**

### **SAMPLE POLICY:**

#### **Membership on the Board of Directors**

##### **A. POSITIONS AND TERMS**

1. The Board of Directors of the District shall consist of [number] members serving [number] year [staggered] terms. No person shall be eligible to be a Board member who is not at the time of election or appointment a resident or property owner in the District\*.
2. [The District's Organic Act may provide for each Board member to be identified by a position number. If so, position numbers shall be transferred to the successors of each Board member.]
3. All Board members shall [serve at large] [or] [be nominated and elected from sub-districts.]

\* Does not apply to all districts, check your districts ORS for guidelines

##### **B. ELECTION OF BOARD MEMBERS**

The election of Board members shall be conducted as provided by [the District's Organic Act] and [ORS Chapter 255](#).

##### **C. QUALIFICATIONS**

No person elected or appointed to the Board shall be sworn in unless such person meets the qualifications for office set forth in [the District's Organic Act]. If questions exist regarding the eligibility of any candidate, the Board shall obtain an opinion from legal counsel prior to swearing in such person.

##### **D. OATH OF OFFICE**

Each newly elected or appointed Board member shall take an oath of office at a Board meeting prior to assuming the duties of the position.

**E. TERM OF OFFICE -- STARTING DATE**

Except where the Board or the [County Court] [or] [County Commission] is filling a vacancy on the Board, terms of office shall start on [date].

**F. VACANCIES**

Vacancies on the Board shall be filled by appointment by a majority of the remaining members of the Board. If a majority of the membership of the Board is vacant, or if a majority cannot agree, the vacancies shall be filled promptly by the [County Court] [or] [County Commission] of County. The period of service of a person appointed to fill a vacancy shall expire on the June 30 after the next regular District election at which a successor is elected. The successor shall be elected to serve the remainder, if any, of the term of the position for which the appointment was made. If the term for which the appointment was made expires June 30 after election of the successor, the successor shall be elected to a full term. In either case, the successor shall take office July 1 next following his or her election.

**SAMPLE POLICY:**

**Powers and Duties of the Board of Directors**

**A. MEETING THE NEEDS OF THE DISTRICT**

It is the policy of the Board of Directors to exercise those powers granted to it, and to carry out those duties assigned to it by law, in such a way as to best meet the needs of the District.

**B. FORMULATION AND INTERPRETATION OF DISTRICT POLICY**

The most important activity of the Board is the formulation and interpretation of District policies. The Board shall establish policy, reserving to itself all authority and responsibility not expressly assigned to other District officers and personnel.

**C. BOARD MEMBERS AUTHORIZED BY OFFICIAL BOARD ACTION ONLY**

No individual Board member may speak for or act on behalf of the Board or District, except as authorized to do so by official Board action as recorded in the official minutes, guidelines or policies of the District.

**D. ETHICAL STANDARDS**

Board members act as representatives of the citizens of the District. Therefore, Board members shall adhere to the highest ethical standards in the conduct of District business.

**E. BOARD MEMBER EDUCATION**

In order to effectively carry out their duties, Board members must be adequately informed. Members are encouraged to attend such conferences and other training programs as the Board may authorize.

**SAMPLE POLICY:**

**Board Member Orientation**

**A. COOPERATION WITH BOARD CANDIDATES**

The Board, through its staff, shall cooperate impartially with candidates for the Board and provide them with information about Board policies, administrative regulations and other aspects of the operation of the District.

**B. ORIENTING NEW BOARD MEMBERS**

The Board and its staff shall assist each new member-elect and appointee to understand the Board's functions, policies, and procedures before he/she takes office. The following methods shall be employed:

1. New members shall be invited to attend and participate in public Board meetings prior to being sworn in.
2. The Chief Executive Officer shall provide material pertinent to District meetings and respond to questions regarding such material.
3. New members shall be invited to meet with the Chief Executive Officer and other District personnel to discuss the services each performs for the District.
4. The Chief Executive Officer shall give each new Board Member:
  - a. An updated copy of the District's policies and procedures.
  - b. A copy of the Attorney General's "Public Records and Meetings Manual."
  - c. Copies of the minutes of all Board meetings, except for executive sessions, for the preceding twelve (12) months.
  - d. Copies of the District's last five (5) budgets.
  - e. Copies of the District's insurance policies.
  - f. Copies of all such documents as the attorney[s] for the District may recommend with respect to any pending claims or lawsuits.
  - g. A list of all District personnel by position.
  - h. Such other materials as the Board may direct or the Chief Executive Officer deems appropriate.

**SAMPLE POLICY:**

**Reimbursements of Board Member Expenses**

**A. BOARD MEMBER COMPENSATION AND REIMBURSEMENT**

Pursuant to [ORS 198.190](#), Board Members may receive daily compensation not to exceed \$50.00 for their services on the Board. Such compensation shall be set by majority vote of the Board. Board Members shall also be reimbursed for their actual and reasonable travel and other expenses incurred in the performance of official District duties.

**B. REIMBURSEMENT DOCUMENTATION**

Board Members incurring reimbursable expenses shall submit proper documentation of such expenses to the Chief Executive Officer or such officer's designee for reimbursement by the District.

**SAMPLE POLICY:**

**Duties of the President**

**A. DUTIES OF THE PRESIDENT**

1. The President of the Board shall preside at meetings of the Board of Directors. The President shall perform all of the duties prescribed by the Oregon Revised Statutes.
2. The President shall consult with the Clerk of the Board regarding the preparation of each Board meeting agenda.
3. The President shall have the same right as other members of the Board to discuss and to vote on questions before the Board.
4. The President may call Special Meetings of the Board as described by the Oregon Public Meetings Law.
5. The President of the Board shall sign official District documents on behalf of the Board when authorized to do so by a majority of the Board.

**SAMPLE POLICY:**

**Duties of the Vice-President**

**A. DUTIES OF THE VICE-PRESIDENT**

In the President's absence, or during any disability of the President, the Vice-President shall have the powers and duties of the President of the Board as prescribed by district policy. The Vice-President shall have such other powers and duties as a majority of the Board may from time to time determine.

**SAMPLE POLICY:**

**Duties of the Secretary-Treasurer**

**A. DUTIES OF THE SECRETARY-TREASURER**

1. The Secretary-Treasurer of the Board shall cause accurate minutes of each Board meeting to be taken, transcribed and distributed to each Board Member in a timely manner for review prior to approval. The Secretary-Treasurer shall maintain properly authenticated official minutes in chronological order. Any of the foregoing responsibilities may be delegated to staff members under the supervision of the Secretary-Treasurer.
2. The Secretary-Treasurer of the Board shall assure that accurate accounting and financial records are maintained by the District.
3. The Secretary-Treasurer shall annually review the District's financial audit with District personnel prior to submitting the audit to the balance of the

Board. The Secretary-Treasurer shall send copies of the audit to state or local agencies requiring its submission.

**SAMPLE POLICY:**

**Duties of the Clerk**

The Clerk of the Board shall be the Chief Executive Officer of the District or such other person as may be designated by the Board. The duties of the Clerk of the Board are:

1. Respond directly to routine correspondence.
2. Handle correspondence of special interest to the Board as follows:
  - a. Draft replies in advance, when possible, for Board consideration.
  - b. Seek instruction for reply when necessary.
  - c. Prepare correspondence as the Board directs.
3. Prepare for Board meetings.
  - a. Prepare the agenda with the advice of the President.
  - b. Maintain a calendar for the Board's unfinished business.
  - c. Call to the Board's attention legal requirements and those matters for which the District is responsible.
  - d. Draft policy motions at the request of any Board member.
4. Board meeting duties:
  - a. Attend all Board meetings or designate an alternate.
  - b. Make physical arrangements for Board meetings.
  - c. Provide notice of Board meetings in accordance with the Public Meetings Law.
  - d. Maintain and update the District's Policy and Procedure Manual.

# Emergency Medical and Ambulance Services

## Summary

Ambulance vehicles, ambulance services and emergency medical personnel are governed under [ORS 682.015 through 682.991](#) and [ORS 820.300 to 820.380](#), administered by the Oregon Health Division. The Division's [Ambulance Service and Ambulance Licensing Program web page](#) provides links to applications, inspection forms and other documents that are currently in use by the Division. Those providing ambulance services must have a number of written policies and procedures for carrying out day-to-day activities. Those policies and other vital information may be found in the [Ambulance Licensing Manual](#) developed by the Health Division to assist ambulance service providers in meeting the ambulance service and ambulance licensing criteria.

## Ambulance Providers

All ambulance service and ambulance licenses expire and need to be renewed by June 30 of each year. If the ambulance service and ambulance license applications are received and processed prior to April 1, the licenses will expire on June 30 of the same year. If the applications are received and processed between April 1 and June 30, the licenses will expire on June 30 of the next year.

If your new or replacement ambulance is replacing one of your older ambulances, and you are not going to continue to operate it as an ambulance or you are not going to sell it to another ambulance operator in Oregon, you are to return the white and yellow copies of the ambulance license, the 3" X 6" window license and the 3" X 1" year-tag for that ambulance to the Health Services. If you are selling your old ambulance to another ambulance operator in Oregon, do not remove the 3" X 6" ambulance license from the window, however, remove and return the year-tag, the white and yellow copies of the ambulance license, and the name and address of the new owner of the ambulance to Health Services within ten days of the transaction.

### **IMPORTANT NOTES:**

An ambulance service and ambulance licenses are not transferable. If you are purchasing and licensing a ground ambulance that was built prior to June 1, 1985, you must apply for and receive a variance from the Health Services in order to license and operate that ground ambulance.

If you are selling a ground ambulance that was built prior to June 1, 1985, to another ambulance service in Oregon, you must inform the prospective buyer, that they must apply for and receive a variance from the Health Services to license and operate that ground ambulance.

Below are links to forms To enable you to decide which documents may be of use to your district, a brief description of each information item will be included in an information box. All forms are in PDF format and can be viewed and printed using Adobe Acrobat Reader 4.0. To download a pdf file: point and right click on the link and choose "Save



As" from the file menu. If the forms are not viewable, then you need to upgrade your Adobe Acrobat Reader to version 4.0. A free version of the Acrobat Reader can be downloaded from Adobe's Home Page. [Adobe](#)

Note: If an application is two or more pages, please print the pages "front to back." Be sure that you complete the licensing application by providing all the requested information and attach a check for the proper licensing fee. If an application is incomplete or does not have the proper licensing fee, the application will not be processed. Make the check payable to the Oregon Health Services. Return the completed application and check to:

**Oregon Health Services**  
Business Services  
PO Box 14260  
Portland OR 97293-0260

**Ambulance Service Documents**

[Ambulance Service & Ambulance Replacement License Application](#)

[Ambulance Service Facilities and Records Inspection Form](#)

[Satellite Facilities Inspection Form](#)

[Medical Director Application](#)

[Request for Variance](#)

[Signature Authorization](#)

Air Ambulance Documents

[Air Ambulance Inspection Form](#)

[Air Ambulance Personnel Roster](#)

[Air Ambulance Personnel Inspection Form](#)

Ground Ambulance Documents

[Ground Ambulance Inspection Form](#)

[Ground Ambulance License Application Form](#)

[Ground Ambulance Personnel Roster](#)

[Ground Ambulance Personnel Inspection Form](#)

Oregon Administrative Rules Relating to Ambulance Service:

[Chapter 333](#)

[Division 250](#)

Ambulance Service Licensing

[Division 255](#)

Ambulance Licensing

[Division 260](#)

County Ambulance Service Area Plans

[Division 265](#)

Emergency Medical Technicians

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## Critical Incident Stress

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Oregon has an active Emergency Chaplains' program that has a history of providing assistance to personnel exhibiting signs of stress.

### Symptoms of Stress

Fire personnel may develop a delayed reaction to stress. This form of stress is more difficult to identify due to the time between the occurrence and the reaction. Similar signs and symptoms of an acute reaction may occur. Watch for:

- Crying spells
- Unexplained changes in mood
- An inability to concentrate
- Changes in normal personnel behavior
- Sleep disturbance
- Marital conflict
- Guilt

A firefighter suffering a delayed stress reaction may suffer from intrusive images, fear of repetition of the event, and other physical or emotional changes.

It is important to recognize stress as early as possible and seek help. If several firefighters are involved, the district may want to have a critical incident stress debriefing. If only one firefighter is suffering from stress, the district should seek professional help for that person. It is important to pursue help from a professional that is trained in the needs of firefighter critical incident stress.

Many county fire defense boards have developed systems to aid fire districts in their county. Klamath and Jackson counties are an example of counties that exchange some stress debriefing services.

Learn how to identify acute and delayed stress in your firefighters and have a plan developed to deal with it. Having a well thought out system before you need it is strongly recommended.

### Reminders

Require frequent breaks for personnel at the emergency scene.

Keep good communications on the way to the emergency, at the scene, and after the district's personnel have returned to the station.

Have plenty of fluids for your personnel at each emergency. Water and fruit juice are preferred liquids that don't contain caffeine. Caffeine may contribute to critical incident stress.

Special attention should be given to young or inexperienced personnel in the department. These firefighters may be more susceptible to stress.

Special thanks to the [Federal Emergency Management Agency \(FEMA\)](#) and the National Fire Academy for allowing the OFDDA to in part summarize Firefighter Critical Incident Stress, a video produced and available through FEMA.

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# Hazardous Materials Operations

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## Hazardous Materials

Hazardous materials are those substances, which in specific forms, pose a threat to the safety and well-being of people and the environment in general. The range that hazardous materials cover is astonishing. Besides known carcinogens and explosives, hazardous materials include common household materials that when exposed to heat, change form and exude poisonous fumes and liquids. Some otherwise stable compounds, when brought into contact with each other, form something new and deadly. Even water, in its purest form, is one of the strongest solvents known to science.

Because of the advances of technology, the new uses found for chemicals and the greater awareness of the dangers of certain substances found through medical research, there are a number of substances listed as hazardous or toxic. According to the United States Environmental Protection Agency, there are four groups of chemicals subject to reporting:

There are over 300 Extremely Hazardous Substances, or substances that if released into the environment are of immediate concern to the community.

Greater than 700 substances are listed as Hazardous Substances under Section 103(a) of the comprehensive Environmental Resource and Conservation Liability Act.

Over 2,000 chemicals are defined by Occupational Safety and Health Administration (OSHA) regulations as Hazardous Chemicals.

320 chemicals or chemical categories are listed by Congress as Toxic Chemicals because of their chronic or long-term toxicity, and releases into air, land, and water must be reported annually.

Hazardous substances are defined by OSHA as:

Any substance defined under section 101(4) of CERCLA

Any biological agent and other disease-causing agent as defined in section 101(33) of CERCLA

Any substance listed by the US Department of Transportation as hazardous materials under 49 CFR 172.101 and appendices

Hazardous wastes are herein defined as:

A waste or combination of wastes defined in 40 CFR 261.3

Those substances defined as hazardous wastes in 49 CFR 171.8

A health hazard is a chemical or mixture of chemicals or a pathogen for which there is statistically significant evidence that immediate or delayed health effects may occur. The term includes carcinogens, toxin or highly toxic agents, reproductive toxins, irritants,

corrosives, sensitizes, hepatotoxins, nephrotoxins, neurotoxins, agents which act on the hematopoietic system, agents which damage the lungs, skin, eyes and mucous membranes, and stress due to temperature extremes.

### **Laws in Effect**

A fire department is required to safeguard the population in its district, while at the same time guarding the safety of its personnel. That means in an emergency situation, a fire department should know what's there, the probable risks present and the type of equipment it has available. With this information, the fire department must determine whether a response to the emergency is possible that does not endanger firefighters with conditions beyond the scope of their training and equipment. Besides risking the safety or loss of personnel, endangerment constitutes a violation of Oregon law and could have severe repercussions.

A fire district must balance the need for protection of life and property with the limitations imposed by budget and training on its ability to respond. The general guidelines for response are set down in:

[The Resource Conservation and Recovery Act of 1976 \(RCRA\)](#)

[The Comprehensive Environmental Response Compensation and Liability Act of 1980 \(CERCLA\)](#)

[The Superfund Amendments and Reauthorization Act of 1986 \(SARA\)](#)

[Oregon Administrative Rules Chapter 437](#), Divisions 2, 40, and 151.

Oregon has also adopted regulations with the same wording as 29 CFR part 1910.

### **Sara Title III**

In an effort to decrease dangers to the public, workers, and response personnel, Congress passed the Emergency Planning and Community Right-to-Know Act of 1986. Sections 304, Title III of the Federal Superfund Amendments and Re-authorization Act (SARA) of 1986 requires facilities to notify the Local Emergency Planning Committee (LEPC) and the State Emergency Response Commission (SERC) if there is a release of a listed hazardous substance that exceeds the reportable quantity for that substance. The law establishes requirements for federal, state and local governments and industry regarding emergency planning and reporting on hazardous and toxic chemicals.

At the federal level, Title III designated the [National Response Team](#), composed of representatives of 14 agencies, as the coordinator of procedures involved in responding to hazardous materials releases. It is aided by the [Environmental Protection Agency \(EPA\)](#), Department of Transportation (DOT) and the Federal Emergency Management Agency (FEMA) among others. It has the most resources and data available in the area of emergency response. It publishes the [Hazardous Materials Emergency Planning Guide](#) to help communities develop response plans. It also compiles the [Hazardous Materials](#)

[Planning Guide 2001 Update](#) (PDF, 1.15 MB) – Provides guidance on developing a hazardous materials community response plan. Additional resources include:  
[Developing a Hazardous Materials Exercise Program](#) – Provides a detailed handbook for developing hazardous materials exercises at the state and local level.  
[Incident Command System/Unified Command Technical Assistance Document](#) (PDF, 472 KB) – Supplies a detailed description of the Incident Command System produced by the NRT.  
[Counter-Terrorism & Homeland Security](#) – Includes several links that provide information on HAZMAT and counter-terrorism training opportunities throughout the United States.

Federal agencies can be contacted at:

- National Emergency Response Center  
800-424-8802  
[www.nrc.uscg.mil](http://www.nrc.uscg.mil)
- FEMA (Region 10), Bothell, WA  
(206) 487-4606  
[www.fema.gov](http://www.fema.gov)
- EPA (Region 10), Seattle, WA  
800-424-4EPA  
[www.epa.gov/region10](http://www.epa.gov/region10)

States were required to form a State Emergency Response Commission (SERC). It may be in the form of an already existing agency. In Oregon, this was the Office of the State Fire Marshal. It is required to form Local Emergency Planning Districts, coordinate and supervise the activities of the local communities, review local emergency response plans, and notify EPA of all facilities subject to emergency planning requirements.

Oregon has formed Regional Response Teams, or units with the expertise and equipment to respond to all anticipated types of emergencies. There are approximately 10 of these units, contracted by the state, scheduled to be operational by early 1991.

Oregon Emergency Response (24 hour)      800-452-0311

### **Local Emergency Planning Commissions**

[Local Emergency Planning Commissions \(LEPC\)](#) are appointed by the SERC and consist of representatives of the following: elected state and local officials, law enforcement, civil defense, fire fighting, first aid, health, local environment and transportation, hospitals, broadcast and print media, community groups, and facility representatives of those organizations subject to planning and reporting laws.

A LEPC must develop an emergency plan that:

- Includes identity and locations of hazardous materials

- Develop procedures for immediate response.
- Identify means to notify the public of emergencies
- Obtain the names of coordinators at plants
- Develop schedules and plans for testing the plans

The LEPC receives emergency release and hazardous material and chemical information submitted by local facilities. It can also request additional information from facilities to aid in planning and visit facilities to find out what the facility is doing to reduce hazards, prepare for accidents, and reduce hazardous inventories. The LEPC is also the public information agent about plans, hazardous materials in the area, and health and environmental risks.

Local businesses and industry are responsible for determining if they have reporting and emergency planning obligations and, if so, meet those obligations.

### **Sara Title III Sections**

SARA Title III, section 301-303 details the emergency planning requirements:

- Identify facilities and transportation routes of extremely hazardous substances
- Describe emergency response procedures, on-site and off-site
- Designate community coordinator and facility coordinator to implement plan
- Outline emergency notification procedures
- Describe methods for determining the occurrence of a release and probably effected area
- Describe community and industrial emergency equipment and facilities and responsible parties
- Develop evacuation plan
- Describe and implement a training program
- Present methods and schedules for exercising response plans

Section 304 details Emergency Notification of release into environment of a listed hazardous substance, including:

- Chemical name
- An indication whether it is extremely hazardous
- The estimated quantity released
- The time and duration of release
- Whether it was released into the air, water, and/or land
- The known or anticipated immediate or long term health risks
- The proper precautions to be taken (evacuation, etc.)
- The name and telephone number of facility contact person

It also requires written follow up emergency notice after the release to update information in the initial notice and provide additional information on the actual response taken and probable medical attention necessary for exposed individuals.

Section 311-312, the [Community Right-to-Know](#) requirements, allows that facilities must maintain Material Safety Data Sheets (MSDS) for any substance with a) immediate (acute) health hazard, b) delayed (chronic) health hazard, c) sudden release of pressure hazard, or d) a reactive hazard. These MSDS' or a list of them must be submitted to the SERC, LEPC, and local fire departments.

There are threshold quantities below which they are not required to report:

- 500 lbs. or threshold planning quantity, whichever is lower
- 0 lbs. for all other hazardous chemicals (subject to revision)

Under section 312, a facility must submit an emergency and hazardous chemical inventory form to the SERC, LEPC, and the fire department with jurisdiction over the facility. The inventory includes all substances that require a MSDS. The inventory has a two-tier approach. Under Tier I, facilities must submit the following aggregate information for each applicable hazard category:

- An estimate (in ranges) of the maximum amount of chemicals for each category at the facility at any time during the preceding year
- The estimated average daily amount of chemicals in each category
- The general location of hazardous chemicals in each category

Tier II information must include:

- Chemicals or their common name
- The estimated maximum amount of the chemical
- A brief description of the manner of storage
- Location of the chemical at the facility
- An indication of whether the owner elects to withhold location information from disclosure to the public

Section 313 requires reporting toxic chemical releases during the preceding calendar year. The EPA is mandated to establish an inventory of routine toxic chemical emissions from certain facilities. Facilities subject to this reporting are required to complete a Toxic Chemical Release Inventory for certain substances. The information gathered will be used to help develop regulations, guidelines and standards and aid in research. Reporting requirements apply to facilities of 10 or more employees that are in Standard Industrial Classification codes 20 through 39 that use a listed toxic chemical in excess of threshold quantities.

The Toxic Chemical Release form requests:

- The name, location and type of business
- Off-site locations to which the facility transfers toxic chemicals in waste
- Whether the chemical is manufactured, processed, or otherwise used and general categories of the use of the chemical
- An estimate (in ranges) of the maximum amounts of the toxic chemical present at the facility at any time during the preceding year



- The quantity of the chemical entering each medium (air, water, land) annually
- Waste treatment and disposal methods and efficiency of methods for each waste stream
- Optional information on waste minimization
- Certification by senior facility official that the report is complete and accurate

Section 325 provides for civil and administrative penalties of \$10,000 to \$75,000 can be assessed against facilities failing to comply with sections 302, 304, 311 & 312, 313, 322 and 323. Criminal penalties of up to \$50,000 or five years can be assessed against persons knowingly failing to comply with emergency release information requirements. In addition, \$20,000 can be assessed for persons disclosing trade secrets.

Section 326 allows citizens to initiate civil actions against the EPA, state and owners of facilities for failure to comply and force compliance.

It is the intent of SARA Title III to reduce the danger to the public and the environment by reducing the number of incidences, the magnitude of incidences, and the probability of emergencies while reducing the amount of hazardous materials used.

### **Personnel Safety**

It is the responsibility of fire departments to assess the situation and ensure the safety of their personnel going into emergencies involving hazardous materials. Oregon has adopted the national regulations as mandated by the Occupational Safety and Health Administration in 29 CFR Part 1910. In proposing guidelines, OSHA testimony included these comments (Federal Register Vol. 54, No. 42):

Mr. William Bunner stated, “The highest-risk incidents are the persons who respond to spills and accidental release of hazardous chemicals; and those personnel...have had the least protection in terms of chemical emergency response safety and health plans, training and equipment.” (pgs. 24-25) Mr. Bunner further stated, “The real strength of 29 CFR 1910.120 is that it not only provides for a more consistent and thorough approach to protecting workers involved in hazardous waste operations but also for personnel who face extremely high risk to life and health that’s associated with chemical emergency response.” (pg. 25)

### **OSHA Regulations**

The Oregon Department of Insurance and Finance Accident Prevention Division administers compliance with regulations concerning worker safety. [OAR Chapter 437](#), Oregon Occupational Safety and Health Code, Division 2, Subsection H, Hazardous Materials establishes training and safety requirements, including equipment, for personnel involved in the handling of hazardous substances.

According to guidelines established by [Oregon OSHA](#), the ability of a fire department to respond to an incident involving hazardous materials is based upon the level of training and equipment available to that department. Working within the procedures of the LEPC, a site assessment will determine the course of action to be taken by the fire

department. Division 2, paragraph (q) “Emergency response to hazardous substance release,” calls for an emergency response plan, procedures, levels of competency, training, trainer requirements and medical surveillance and consultation.

## **Emergency Response Plans**

An emergency response plan must be developed and implemented prior to commencement of operations. It requires that all personnel not meeting training requirements be absent from the site of the emergency and not be allowed to assist handling the emergency. The plan must include:

- Pre-emergency planning and coordination with outside parties
- Personnel roles and lines of authority, training and communication
- Emergency recognition and prevention
- Safe distances and places of refuge
- Site security and control
- Evacuation routes and procedures
- Decontamination
- Emergency medical treatment and first aid
- Critique of response and follow-up
- Personal protection equipment (PPE) and emergency equipment

There must be a site-specific Incident Command System with all parties by the most senior official at the site, with command directed through each unit’s most senior official. Equipment used in the emergency shall be appropriate for the nature of the hazards encountered with the number of personnel engaged limited to the number actively performing emergency operations. A safety official, designated by the individual in charge of the ICS, will identify and evaluate hazards judged to be immediately dangerous to life or health, operations will be altered, suspended or terminated to ensure safety.

## **Training**

Training shall be based on the duties and function to be performed by each responder of an emergency response organization. The skill and knowledge levels required for all new responders, those hired after the effective date of this standard, shall be conveyed to them through training before they are permitted to take part in actual emergency operations on an incident. Employees who participate, or are expected to participate, in emergency response shall be given training in accordance with the following paragraphs:

First responder awareness level: First responders at the awareness level are individuals who are likely to witness or discover a hazardous substance release and who have been trained to initiate an emergency response sequence by notifying the authorities of the release. First responders at the awareness level shall have sufficient training or have had sufficient experience to objectively demonstrate competency in the following areas:

- An understanding of what hazardous materials are, and the risks associated with them in an incident.

- An understanding of the potential outcomes associated with an emergency created when hazardous materials are present.
- The ability to recognize the presence of hazardous materials in an emergency.
- The ability to identify the hazardous materials, if possible
- An understanding of the role of the first responder awareness individual in the employer's emergency response plan including site security and control and the US Department of Transportation's Emergency Response Guidebook.
- The ability to realize the need for additional resources, and to make appropriate notifications to the communication center.

First responder operations level: First responders at the operations level are individuals who respond to releases or potential releases of hazardous substances as part of the initial response to the site for the purpose of protecting nearby persons, property, or the environment from the effects of the release. They are trained to respond in a defensive fashion without actually trying to stop the release. Their function is to contain the release from a safe distance, keep it from spreading, and prevent exposures. First responders at the operational level shall have received at least eight hours of training or have had sufficient experience to objectively demonstrate competency in the following areas in addition to those listed for the awareness level and the employer shall so certify:

- Knowledge of the basic hazard and risk assessment techniques
- Know how to select and use proper personal protective equipment provided to the first responder operational level
- An understanding of basic hazardous materials terms
- Know how to perform basic control, containment, and/or confinement operations within the capabilities of the resources and personal protective equipment available with their unit.
- Know how to implement basic decontamination procedures
- An understanding of the relevant standard operating procedures and termination procedures

Hazardous materials technician: Hazardous materials technicians are individuals who respond to releases or potential releases for the purpose of stopping the release. They assume a more aggressive role than a first responder at the operations level in that they will approach the point of release in order to plug, patch, or otherwise stop the release of a hazardous substance. Hazardous materials technicians shall have received at least 24 hours of training equal to the first responder operations level and in addition have competency in the following areas and the employer shall so certify:

- Know how to implement the employer's emergency response plan.
- Know the classification and version of known and unknown materials by using field survey instruments and equipment.
- Be able to function within an assigned role in the Incident Command System
- Know how to select and use proper specialized chemical personal protective equipment provided to the hazardous materials technician
- Understand hazard and risk assessment techniques.

- Be able to perform advance control, containment, and/or confinement operations within the capabilities of the resources and personal protective equipment available with the unit.
- Understand and implement decontamination procedures
- Understand termination procedures
- Understand the basic chemical and toxicological terminology and behavior

Hazardous materials specialist: Hazardous materials specialists are individuals who respond with and provide support to hazardous materials technicians. Their duties parallel those of the hazardous materials technician, with a more directed or specific knowledge of the various substances they may be called upon to contain. Hazardous materials specialists shall have received at least 24 hours of training equal to the technician level and in addition have competency in the following areas and the employer shall certify:

- Know how to implement the local emergency response plan
- Understand classification, identification, and verification of known and unknown materials by using advanced survey instrument and equipment
- Know the state emergency response plan
- Be able to select and use proper specialized chemical personal protective equipment provided to the hazardous materials specialist
- Understand in-depth hazard and risk techniques
- Be able to perform specialized control, containment, and/or confinement operations within the capabilities of the resources and personal protective equipment available
- Be able to determine and implement decontamination procedures
- Have the ability to develop a site safety and control plan
- Understand chemical, radiological, and toxicological terminology and behavior

On scene commander: Incident commanders shall receive at least 24 hours of training equal to the first responder operations level and in addition have competency in the following areas and the employer shall so certify:

- Know and be able to implement the employer's incident command system
- Know how to implement the employer's emergency response plan
- Know and understand the hazards and risks associated with employees working in chemical protective clothing
- Know how to implement the local emergency response plan
- Knowledge of the state emergency response plan and of the Federal Regional Response Team
- Know and understand the importance of decontamination procedures

Trainers: Trainers who teach any of the above training subjects shall have satisfactorily completed a training course for teaching the subjects they are expected to teach, such as the courses offered by the US Fire Academy, or they shall have the training and/or academic credentials and instructional experience necessary to demonstrate competent instructional skills and a good command of the subject matter of the courses they are to teach.

Refresher training: Those employees who are trained in accordance with paragraph (q)(6) of this section shall receive annual refresher training of sufficient content and duration to maintain their competencies or shall demonstrate competency in those areas at least yearly.

A statement shall be made of the training or competency and if a statement of competency is made, the employer shall keep a record of the methodology used to demonstrate competency.

## **Personal Protective Equipment**

Employer requirements for providing workers with personal protective equipment (PPE), including gloves, goggles, helmets and safety shoes, were updated by [Federal OSHA](#) based on ANSI consensus standards. Employers are required to:

Assess hazards in the workplace and determine which may require use of PPE, and certify that such an assessment has been completed

Provide training to employees on identifying when such equipment is necessary, how to use it, and the proper care and maintenance of it

Provide personal protective equipment that fits properly

## **Sample Case**

To demonstrate how a hazardous material incident might unfold, the Federal Register Vol. 54, No. 42 used the following scenario:

A state trooper is on patrol along a highway passing through a residential and light industrial area of a large city. Ahead in his path, the trooper notices a multi-vehicle accident involving a large overturned tank truck. Immediately, the trooper uses his radio to contact his dispatcher to report the accident. After letting the dispatcher know the location and type of accident, the trooper places his vehicle across the lanes of the highway approaching the accident site to stop traffic. While he is doing this, the dispatcher is alerting fire and rescue companies and dispatching fire and rescue vehicles.

The trooper then surveys the accident scene from his vehicle trying to identify the cargo of the overturned truck, making note of the different US DOT placards and checking his DOT Emergency Response Guide for a summary of actions to be taken for the chemicals identified on the placards. After determining his next onsite responsibility, he re-contacts the dispatcher with the additional information and secures the scene. He stays away from the immediate accident site and does not become involved in rescue or site mitigation.

While the trooper has been securing the scene, the fire and rescue units begin to arrive with the additional information from the trooper's second call. The officer in charge (OIC) of fire/rescue response stops his vehicles in a safe location and contacts the state trooper. After determining the type of accident and vehicles involved, the OIC takes control of the scene and directs his crews to take predetermined defensive action in

controlling a leak that has begun on the tanker. The OIC then contacts the dispatcher and reports his assessment of the accident, including that the tanker is now leaking. He requests the dispatcher to send him the closest hazardous materials response team. He also asks for representatives from the shipper of the liquid and the liquid's manufacturer.

In the meantime, firefighters have established a perimeter defense of the accident scene using fire hose lines and proper personal protective equipment. They begin to evacuate surrounding homes and businesses as indicated in the Emergency Response Guide in case the leaking water should explode. They construct dikes and diversion pits to contain water and chemical run-off from the fire hoses. Rescue personnel, including emergency medical technicians, have made a preliminary assessment of the accident scene and have determined whether any individuals in the spill area are trapped or need immediate assistance. They report their observations to the OIC.

A decision is made by the OIC, based upon the reports of the police officer, emergency response crew, and data from the DOT placards, that no rescue attempts can be made safely until such time as the leaking liquid is positively identified and controlled by the HAZMAT team. The proper local authorities are notified under the requirements of SARA Title III.

As firefighters continue to provide defensive protection of the scene and as emergency medical technicians establish a triage area for the treatment of injured passengers, the HAZMAT team arrives and takes control of the accident scene, assessing the scene and planning their attack on the leaking tanker.

After equipping themselves properly, the HAZMAT team makes a final pre-attack evaluation of the scene, including a scan of the area with the proper monitoring equipment and reports its findings to the fire and rescue personnel. Based upon the results of this evaluation that the spill area is non-hazardous, rescue personnel enter the area of the accident to provide emergency medical treatment to injured passengers and to extricate passengers trapped in their vehicles. The HAZMAT team proceeds to the point of release and secures the leak.

After all the injured have been cared for and the leak stopped, the firefighters and HAZMAT team begin to clean up the accident scene in accordance with pre-planned procedures.

All four levels of hazardous materials response have played a role in this scenario. The state trooper, the first on the scene, is the first responder awareness level. The first responding fire and rescue companies who provided the defensive attack are the first responder operations level. The responding HAZMAT team had both hazardous materials technicians and hazardous materials specialists. In this scenario, the state trooper would have had to have a sufficient amount of training, the first responding fire/rescue companies would need eight hours of training, and the HAZMAT team would need 24 hours of training. The tiered training schedule is based upon the duties and responsibilities of the individuals in the various levels of response illustrated in the scenario.

In Oregon, fire departments would likely have training sufficient for first responder level operations. The Regional Response teams would be the personnel equipped and trained to handle responsibilities of hazardous materials technicians and specialists. Technical assistance would be available from the Office of the State Fire Marshal and federal agencies. Other agencies that might have an interest in events, such as the Department of Environmental Quality (water pollution, etc.) would be contacted and informed of an accident by the coordinating efforts of the Oregon Emergency Response 24 hour system.

# Insurance

## Insurance Services Office

Insurance Services Office, Inc. (ISO) is a leading source of information about property and liability risk. ISO provides statistical, actuarial, underwriting, and claims information and analyses; consulting and technical services; policy language; and information about specific locations for a broad spectrum of commercial and personal lines of insurance. In the United States and around the world, ISO serves more than 2,900 insurers and re-insurers, as well as agents, brokers, self-insurers, risk managers, insurance regulators, and other government agencies.

ISO's Risk Decision Services unit provides information about specific properties. Every year, ISO's field staff conducts more than 200,000 on-site surveys of commercial and personal properties to support insurers' underwriting.

### **Public Protection Classifications**

ISO's Public Protection Classification (PPC) ratings give insurers up-to-date information about a municipality's fire protection services to help establish appropriate fire insurance premiums for residential and commercial properties. ISO collects information on a community's public fire protection, analyzes the data, then assigns a PPC rating from 1 to 10. Class 1 represents superior public protection and Class 10 indicates no recognized protection.

### **ISO bases its PPC rating on a number of factors:**

- How well the fire department receives and dispatches fire alarms
- The number of engine companies, maintenance of fire suppression equipment, type and extent of training provided to fire company personnel, and amount of water a community needs to fight a fire
- Whether there is sufficient water supply for fire suppression beyond what may be used for daily maximum consumption

### **Evaluating building code effectiveness**

ISO's Building Code Effectiveness Grading Schedule evaluates the effectiveness of local building code enforcement to help determine how well homes and commercial structures in a given community will hold up to hurricanes, earthquakes and other natural disasters. ISO grades communities' building-code enforcement on a scale of 1 to 10, with 1 being the best. Insurers now use the building-code evaluations as a key variable in assessing risk and determining premiums.

Communities should contact ISO after making any improvements to their fire protection services and building code-enforcement service. ISO is a clearinghouse for insurance companies regarding district information.

ISO is a source for property information

For more than 25 years, ISO has been conducting detailed on-site surveys of individual properties. ISO also maintains one of the country's largest databases of information on



commercial properties, containing data on the construction, occupancy, and special features of more than 2.0 million buildings.

### **On-site surveys for diverse information needs**

Insurers, government agencies, banks, and other financial institutions rely on ISO for thorough, up-to-date information on specific properties. ISO provides on-site survey services for:

- performing due-diligence investigations on individual properties;
- calculating replacement-cost valuations;
- collecting marketing data on specific locations and their surrounding neighborhoods;
- identifying hazards that threaten buildings and premises;
- uncovering potentially costly bodily-injury exposures;
- assessing the livability and condition of multifamily housing;
- evaluating conformance of individual business sites with corporate loss-control and safety programs; and
- gathering business and financial information needed for general liability and workers compensation premium audits

For more information about ISO, visit their web site at <http://www.iso.com> or call 1-800-888-4476.

## **Insurance for Fire Districts**

This chapter is a simplified outline of some of the insurance issues currently facing Oregon Fire Districts. Due to the amount of material needed to properly cover this topic, your association has developed an in-depth, separate document that is available at your request.

This outline is only a guide to help you better understand the unique insurance issues facing the fire service in Oregon. There is no substitute for the Districts insurance policy. This outline of insurance issues is generic in nature. Each insurer uses slightly different terms, conditions, exclusions, and definitions associated with their coverage document. As laws change and courts define risk, this chapter will become outdated. This information should not be considered as legal advice.

## **Risk Management**

Insurance is one of five classic Risk Management techniques that protect a Public Entity from unexpected loss. A well-managed insurance program is only a small part of the bigger picture of Risk Management. Several typical big picture issues would include:

Each District needs to have a system to identify and analyze exposures they face. This process is the foundation that allows a Department to build safety SOPs and SOGs.

Districts should develop strategies to utilize non-insurance techniques to manage your risk and monitor their success. This process helps to reduce insurance cost and risk

exposure to the District. When properly administrated risk management will minimize cost and maximize protection.

The development of a strong loss prevention program will pay dividends to Districts. Once the Risk Manager has developed the appropriate safety SOPs and SOGs, the focus will shift to safety training. The goal is to prevent accidents and injuries from happening. Insurance claims impact morale and long term cost to the District. Studies indicate that for every \$1 spent by the insurance company on a claim, the District will spend roughly \$4 in hidden costs. Preventing losses is the backbone to a strong risk management program.

The development of a strong loss control program will help reduce the District's out of pocket cost and wasted time.

When losses occur, it is important to minimize their impact through good loss management. When claims are reported late or incorrectly, an insurance company may have a difficult time reconstructing the facts. Inappropriate statements made by District employees can create liability for the Fire Department.

## **The Agent**

As a Board member, it is impossible to be an expert on every issue that will face the District during your term. Directors frequently choose to surround themselves with advisors that specialize in one specific area of knowledge. This practice assists the Board in making informed decisions. Typically, Fire District advisors might include an Attorney, Accountant, and Insurance Agent of Record. The Attorney General's Model Contracting Rules ([OAR 137](#), Divisions 46 through 49), which became effective March 1, 2005, address these and other professionals that assist districts with different issues requiring a high degree of specialized knowledge. Every District should contact its legal counsel and take the appropriate actions to assure they comply with the public contracting requirements.

An insurance "Agent of Record" is a licensed individual that advises the District on insurance issues. The term "Agent of Record" has created some confusion over the years. Insurance carriers also use the same term to define a licensed agent that represents their product to a consumer.

It is recommended the Fire District develop a contract listing the minimum services expected from the "Agent of Record". Some services to consider include:

- An annual review of all insurance policies.
- An annual review of all real property values.
- An annual inspection of all real property.
- An annual review of all exclusions, limitations, and warranties.
- An annual review of optional coverage.
- An annual review of all claims.
- An annual analysis of deductible options and the cost savings associated with each.

- Annual reviews of the insurance marketplace to ensure the District's best interests are being serviced.

## **The Insurance Carrier**

As of this writing, most Fire Districts in Oregon are insured through 4 different providers. Oregon has over 400 hundred admitted insurance carriers and hundreds of non-admitted providers doing business legally in the state.

Roughly a dozen insurance providers have filed special coverage forms with the Insurance Commissioner's office offering many of the unique coverages needed by Fire Districts. Nationally, less than 50 insurers provide that vast majority of coverage to the Public Fire Service Agencies. Many of these providers are state or regional Self-Insured Pools. With over 3000 insurers operating in the United States, it is easy to grasp how specialized insurance has become. More than ever, financial stability and tailored produces are key factors when selecting an insurance provider.

## **Agent Fees**

Most insurance premiums automatically include an agent's commission. In past years, the Insurance Commissioner's office allowed Public Entities to negotiate a fee with an agent in lieu of commissions. The Commissioner's rules addressing Fees are extremely strict. To further complicate the issue, the Insurance Commissioner's office also licenses "Insurance Consultants" that traditionally charge a fee for services. The Insurance Commissioner's office recently published an article restating their position on agent commission and the issue of rebating. Penalties can be imposed on both the agent and the Public Entity for improper compensation, it is recommended that any payment to an agent other than the insurance providers standard commission be reviewed with the Insurance Commissioner's office prior to execution.

## **Coverage Denial**

One of the most common reason insurance coverage is denied, is that the party named in the suit is not named on the policy. At each review of your coverages, remember to inspect the "Named Insured" section of the policy. It may be important to include the Volunteer Firefighters Association, Auxiliary, Junior Firefighters, and various other names that are involved with the District.

Always suspense your insurance coverage to review at some point prior to renewal. Coverage should always be concurrent with the expiring policy. Do not expect any policy to offer an automatic "Grace Period". A lapse in some types of policies could void coverage for prior acts. A second common reason for the denial of insurance coverage is that the claim falls outside of the policy period.

## **Property Coverage**

Property insurance can cover items owned, rented, leased, or loaned to the Fire District. Property insurance is usually based on the value of the item. Values are contractually

determined typically as Replacement Cost, Actual Cash Value, or Stated Amount. Each settlement option stating valuation will also be controlled by other policy conditions; for example, limitations and exclusions. In most cases, a Replacement Cost Coverage will provide the best protection to the District.

Property insurance will also describe the perils from which the District is protected. Most insurers offer a named peril form or an All Risk form commonly referred to as all other perils. The All Risk form is the broader type of coverage and is frequently offered at a lesser rate. Named Perils coverage is most frequently sold to a lower standard property.

Most property insurance is sold with a deductible. In most cases, the higher the deductible the lower the premium the District will be charged. With each higher deductible, the CREDITS (rate reduction multiplier) increases. When reviewing your coverage, we recommend you evaluate several different deductible options. Typically, deductible credits increase sharply at the low end and then quickly level off at the high end. For example, increasing a deductible from \$250 to \$1000 may offer a 15% saving to the District. If the District raised the deductible high to \$2,500, the additional savings may only be 3%, making this higher deductible a high risk and low reward option. To make a well-informed decision, you must find the point of diminishing return. It should be noted that this point does change from year to year based on the insurance carrier's experience. The majority of Fire Districts in Oregon will find the most effective deductible to range from \$250 to \$1000.

Insurers offer hundreds of endorsement forms that extend coverage for unique property and for unusual exposures. Coverage include:

- Ordinance of Law
- Business Interruption
- Quake
- Flood
- Glass Breakage
- Valuable Papers
- Crime
- Boiler and Machinery
- Water craft
- Inland Marine

How important are these unique coverages? A closer look at Inland Marine is a good example of the types of exposures Fire Districts face that require special attention.

This section of coverage offers protection against loss for portable equipment. The District's hoses, nozzles, portable tools, radios, and computers represent a small portion of items that would be covered in the section. When purchasing insurance this is a section that should be reviewed annually and updated with every equipment purchase. Inland Marine claims represent the most common property loss Fire Districts suffer.

## **General Liability**

Unlike for-profit business, much of a Public Entities liability is defined in [ORS 30.260 to 30.300](#) also known as the Oregon Tort law. This limits many types of suits against a Special District to \$100,000 per person, \$500,000 for all persons, and \$50,000 of property damage. The law further protects Districts by shorting the statute of limitations to 180 days. The District's attorney can best explain the importance of this law. The need for proper coverage for this exposure should be specifically addressed when purchasing insurance.

Claims brought in OTHER STATES may not be subject to this law. If your District responds to calls in neighboring states, the coverage you purchase should address both the Oregon Tort Law and the Laws applicable in that neighboring state. Further, if your District performs work in navigable waters you may be subject to a number of Federal exposures including the Jones Act.

Insurance coverage must address each jurisdiction property and have the appropriate limits. Higher limits of coverage are most frequently provided under an insurance umbrella.

A specific type of additional coverage each Fire District should buy is Employment Practices Liability. The coverage should provide for both Federal and State Civil Rights as well as wrongful termination, failure to hire, and Section 1988 (plaintiffs attorney fees). This area of claims is growing at an alarming rate. Federal claims are not subject to Oregon Tort limitation. From a risk management perspective, higher limits of coverage should be considered to properly protect the District.

Contractual liability is another exposure that may fall outside of the Oregon Tort Claims Law. Contract claims may have a 6-year tail and not be subject to Oregon Tort limitation.

Every District should purchase Professional acts coverage. This coverage should include protection from the acts, errors, or omissions of Board members, firefighters, emergency medical technicians, and any other professional services of the District.

Some of the other exposure concerns include budgeting, open meetings, all regulator authorities (including but not limited to DEQ, Or-OHSA, Standards and Practices), and personal liability. Each of these exposures are discussed in-depth at regular OFDDA meetings by the association's legal counsel. Some of these exposures are not insurable. We strongly recommend each board member and management staff attend at least one OFDDA meeting annually.

As stated in the property section, insurers offer hundreds of liability options that need to be considered. Some of the other coverages you should be aware of include:

- Auto liability
- Auto physical damage (actual cash value stated amount replacement cost coverage)
- Non-owned auto
- Non-owned auto physical damage

- Garage Keepers insurance
- Employee Benefits Liability
- Umbrella coverage

Insurance and risk management are important complicated services every Fire District needs to understand. Schedule enough time to make sure you have the proper protection.

# Fire District Formation and Dissolution

## Introduction

This Guide contains information included in the Oregon Statutes, but it should not be used as a legal guide for forming a special district. Members are strongly recommended to read the Oregon statutes pertaining to district formation and to contact an attorney for legal advice if they decide to proceed with the formation process.

- Applicable Oregon Revised Statutes -

The formation of most types of special districts is covered in Oregon Revised Statute (ORS) [Chapter 198 - "Special Districts Generally."](#) Rural Fire Protection Districts have additional requirements for formation that are found in [ORS Chapter 478](#).

## Summary

Interested citizens should think through all aspects of forming a rural fire protection district. Areas that must be considered are the probable area to be served, the assessed valuation of the area, the revenue that could be provided by a reasonable tax, and where money needed to purchase equipment and a suitable station will be obtained. The source of funding for formation and election costs must also be considered. Because of legal land description requirements, these may be significant.

It is useful to have solid information for an economic feasibility study before irretrievable amounts of resources are used on something with little chance of survival or public approval. This includes projections of operating costs, permanent levies, and the use of bond issues or local option levies for funding capital purchases. Analyzing current local government taxes imposed in the proposed district and the impact of desired new taxes must be evaluated in light of the Oregon constitutional requirements embodied in Ballot Measures 5 (adopted in 1990) and 50 (adopted in 1996) respectively. It is advisable to employ an attorney familiar with rural fire protection district laws.

There are three ways a fire district can be formed:

1. A fire district may be formed by the filing of a petition for formation.
2. A fire district may be formed by the consent of all property owners within the area of the proposed district.
3. A fire district may be created by initiation and order of the county board of commissioners.

## Suggested Initial Steps

The following steps are general guidelines to follow in the initial attempt to form a rural fire protection district. Although the following steps in this section are not required by law, they are recommended as a good basis for creating interest and support in the formation of a district.

Committee formed: Dedicated and resourceful citizens should form an unofficial or “ad hoc” committee.

Before proceeding further, the committee should determine whether voters in the area to be served will vote once to create the proposed district and vote a second time to fund it. The committee will also find it helpful to consult with the State Fire Marshal, the insurance industry, other fire district officials, and possibly an attorney. The State Fire Marshal’s office is required by law to assist in the formation of rural fire protection districts. The insurance industry and other parties who have gone through the process of formation should be contacted in order to gain additional insight, information, and help. Even in this earliest stage, the committee would find the assistance of an attorney familiar with special district formation and election law invaluable.

The committee should establish the sources of financial support and responsibility for initiating the formation as early as possible. Costs will include, but may not be limited to, obtaining a bond to accompany the formation petition, possible election costs, and printing. These costs are refundable only if the district is actually formed. Whoever provides the money must carry the loss if the district is not formed.

Formation Proposal Developed: In developing the proposal for formation, the committee should determine the following:

- The probable area to be served (rough boundaries should be established)
- The estimated assessed valuation of the area to be served
- The estimated potential revenue that could be derived from a reasonable tax
- Whether the district will provide its own fire protection or contract with an available agency
- The level of protection that will be provided by a reasonable tax
- The possibility of annexation to an existing district
- A plan of how to fund the newly created district (both operational and capital costs).

Promotional Materials Developed: Promotional materials, such as a handbill, should be developed and distributed as widely as possible. Special attention should be paid to making all property owners within the proposed district aware of the proposal. Available news media should be utilized. The material should:

- Discuss the proposal
- Outline the proposed boundaries of the district
- Briefly describe the benefits and announce the time and place of a public meeting held to discuss the proposal.

Public Meeting Held: At the public meeting, the committee should estimate community interest. It should also:

- Present its recommendations
- Introduce any resource people available, such as an attorney, or a representative of the State Fire Marshal or the insurance industry
- Show comparative fire insurance costs of protected versus unprotected areas



- If the proposed district is to provide its own fire protection, show estimates for initial outlay and continuing costs for a minimum level of protection
- If the proposed district will contract for fire protection, present local city or district fire officials from the contracting entity.
- After time has been given to answer questions from the floor, those attending should be polled to determine if there is enough support to petition the county board on the matter of formation. With sufficient interest in the measure, the committee should begin the process of circulating a petition for district formation.

### **Included Territory**

The territory to be included in the district must meet the following requirements:

- It cannot include any territory within a city, unless the governing body of the city adopts a resolution approving the inclusion of that territory. [ORS 198.720\(1\)](#) and [ORS 478.010\(2\)\(a\)](#).
- It cannot include the territory in another fire protection district, unless withdrawal of that territory is simultaneous and approved by both districts. [ORS 198.720\(2\)](#)
- If any territory to be included in the district is within the boundaries of a forest protection district, the Forestry Department must be consulted before determining what land should or should not be included
- The territory included must practically be able to receive fire protection from the district. [ORS 198.720\(3\)](#)
- It cannot include territory that is within a water supply district authorized to supply its own fire protection. [ORS 478.010\(2\)\(b\)](#)
- It cannot include land within forest protection districts and railroad right-of-ways, unless by consent of owner, or include ocean shore lands defined by [ORS 390.605\(2\)](#) and [ORS 478.010\(2\)\(c-d\)](#).
- See [ORS 478.010\(2\)](#) and [ORS 478.120](#) for exceptions concerning forest lands.

### **Economic Feasibility Statement**

[ORS 198.749](#) requires that an economic feasibility study be conducted by those people designated as chief petitioners (professional help is suggested). It must include:

- A description of the services and functions to be performed or provided
- An analysis of the relationships between those functions or services and existing or needed services
- A proposed first year line item operating budget and a projected third year line item operating budget that demonstrate the feasibility of the proposed permanent tax rate required under [ORS 198.750\(1\)](#).
- This statement shall form the basis for the proposed permanent tax rate limit for operating taxes. It is difficult to pass an operating tax levy, as such votes are limited to biennial primary elections (at which the 50/50 requirements must be met) and general elections. Although the 50/50 requirements do not apply to general elections, the competition for approval is steep, as voters will probably also be asked to approve many other formation and local option levies at that time.

## **Formation**

A special district may be formed from contiguous or noncontiguous territory located in one or more adjoining counties. Exceptions to this may exist in individual principal acts that govern the formation and authorities of specific types of districts. A district may also include territory within a city if the city governing body consents to the formation. Territory within another district performing the same services as the proposed district may not be included in a new district unless the territory is withdrawn, either by a simultaneous withdrawal proceeding or automatically by statute, from the former district. The boundaries of a new district may only include territory that can be reasonably served by the facilities or services of the proposed district.

If two or more counties are affected by a formation proposal, the notices, proceedings, orders and any other act required of a county board or county clerk must be given or taken to the person holding those offices in the principal county. The principal county is the county in which the greatest portion of the assessed valuation of all taxable property in the district is located. Officers of any other affected county must cooperate with the officers of the principal county and must furnish such records and certificates as may be required. Once the principal county is determined, it will remain the county with jurisdiction over the special district for all purposes thereafter.

As mentioned previously, there are three procedures that may be used to form a special district: the filing of a petition for formation; the consent of all property owners within the area of the proposed district; or initiation and order of the county board. Following is an analysis of each of those procedures:

### **Initiation by Petition**

Pursuant to [ORS 198.800](#), formation of a special district may be initiated by a petition filed with the county board of the principal county. If the proposed district includes territory within a city, a certified copy of the resolution of the city's governing body approving the petition must be filed with the petition.

The petition must contain the following information:

- A statement that the petition is filed pursuant to [ORS 198.705 to 198.755](#).
- A statement of the names of all affected districts and all affected counties.
- A designation of the principal act of each affected district.
- A statement of the nature of the proposal, whether formation of a district or change of organization and the kind of change proposed.
- A statement whether the territory subject to the petition is inhabited or uninhabited (uninhabited territory means territory within which there reside less than twelve (12) electors who were residents within the territory thirty (30) days prior to the date a proceeding is commenced to form the district).
- A statement that district board members are or are not to be elected and, if so, the number of members on the board.
- A proposed permanent tax rate sufficient to support the services and functions described in the economic feasibility statement and a declaration of the rate of

taxation necessary to raise an amount of revenue equal to the proposed permanent tax rate.

- A statement of the proposed terms and conditions, if any, to which a proposed formation is to be subject.
- A statement or indication opposite each signature on the petition whether the signers of the petition are landowners within the district or electors registered within the district, or both.
- A request that proceedings be taken for formation of the district.
- A permanent tax rate and tax rate need not be included in the petition if no tax revenues are necessary to support the services and functions described in the economic feasibility statement. The permanent tax rate, if any, must be expressed as a total dollar amount and the tax rate must be expressed as a rate per thousand of assessed valuation. These rates must be calculated for the latest tax year for which information is available.

The petition must be signed by at least:

- 15% of the electors or 100 electors, whichever is more, registered in the territory to be included in the proposed district; or
- 15 landowners or the owners of 10% of the acreage, whichever is greater, within the territory to be included in the proposed district.

Before circulating the petition for formation of a district, the persons designated on the petition as the chief petitioners must complete an economic feasibility statement for the proposed district. That feasibility statement forms the basis for any proposed permanent tax rate. The feasibility statement must contain:

- A description of the services and functions to be performed or provided by the proposed district;
- An analysis of the relationships between those services and functions and other existing or needed government services;
- A proposed first year line item operating budget and a projected third year line item operating budget for the new district that demonstrates its economic feasibility.
- The economic feasibility statement must be attached to the petition when it is filed with the county and before it is circulated for signing.
- Prior to circulation of any petition, the petitioners must file with the county clerk of the principal county a prospective petition. The prospective petition must include a description of the boundaries of the territory proposed to be included in the district.
- A petition for formation of a district may not be accepted for filing by the county unless the petition is accompanied by a bond, a cash deposit or other security deposit.
- A bond must be in a form and in an amount approved by the county board not to exceed \$100 for each precinct in the affected district and any territory to be included in the district, up to a maximum of \$10,000. The bond must be conditioned that, if the attempted formation is not completed, the chief petitioners will pay the costs thereof.
- A cash deposit must be in an amount approved by the county board not to exceed \$100 for each precinct in the affected district and any territory to be included in the

district up to a maximum of \$10,000. The cash deposit must be accompanied by a form prescribed by the Secretary of State. The form must include the names and addresses of all persons and organizations providing any part of the cash deposit and the amount provided by each, and a statement signed by the chief petitioners that if the costs of the attempted formation exceed the deposit, the chief petitioners will pay to the county the amount of the excess costs.

- A security deposit other than a bond or cash deposit shall be of a kind and in an amount approved by the county board not to exceed \$100 for each precinct in the affected district and any territory to be included in the district up to a maximum of \$10,000. The security deposit must be accompanied by a form prescribed by the Secretary of State. The form must include the names and addresses of all persons and organizations providing any part of the security deposit and the amount in mind provided by each, and a statement signed by the chief petitioners that if the costs of the attempted formation exceed the security deposited, the chief petitioners shall or will pay to the county the amount of the excess cost.
- After circulation of the petition, the clerk of the principal county has ten (10) days from the date the petition is received to review the petition and determine whether it has been signed by the requisite number of qualified signers. If the clerk determines there are sufficient signatures, the clerk files the petition. If the clerk determines there are insufficient signatures, the clerk notifies the chief petitioners and may return the petition to the petitioners.
- The petition should provide space for each signer to sign his or her name, print his or her name and add the date of signing. The petition should also provide that if the person is signing the petition as an elector, the person shall add after the signature the person's place of residence, giving street and number or a designation sufficient to enable the place of residence to be readily ascertained. If the signer is signing the petition as a landowner, the number of acres of land owned by the signer and the name of the county whose assessment role is used for the purpose of determining the signer's right to vote must be stated in the body of the petition or indicated opposite the signature. If the signer is a legal representative of the owner of the property, the signature must be accompanied by a certified copy of the signer's authority to sign as a legal representative. A signer may withdraw his or her name from the petition up until the time of filing with the county, but may not withdraw the name after such filing.
- A petition must designate not more than three (3) persons as "chief petitioners," setting forth their names and mailing addresses.
- A petition may consist of a single document or separate documents.
- A petition may not be accepted for filing by the county unless the signatures have been secured within six (6) months of the date on which the first signature on the petition was obtained. Nor may a petition be accepted for filing if it is not accompanied by the economic feasibility statement required under [ORS 198.749](#).
- If the petition for formation of a district includes a permanent tax rate for the proposed district, the petition must be filed not later than 180 days before the date of the next regular statewide primary or general election at which the petition for formation may be voted upon.
- A petition may not be filed unless the certificate of the county clerk or the district secretary is attached thereto certifying that the county clerk or district secretary has compared the signatures of the signers with the appropriate records and that the

county clerk or district secretary has ascertained the number of qualified signers appearing on the petition and that the petition is signed by the requisite number of qualified signers.

- After a petition satisfying all the statutory requirements has been filed, the county board must set a date for hearing on the petition and will give notice of the hearing by posting and publication as specified in [ORS 198.730 and 198.800\(2\)](#). Chief petitioners are advised to keep in constant contact with the county clerk and the board of county commissioners to assure that the functions required of the county by the statutes are actually performed in a timely manner.

### **Formation by Consent of Property Owners**

A special district may be created by consent of all property owners within the area of the proposed district. The owners of all real property within an area may petition the county board to form a district. The petition must contain all the information required by [ORS 198.750](#) and must state the names of the person who will serve as members of the first district board, and must contain the written acceptance of each person agreeing to serve as a board member, [ORS 198.830\(1\)](#). The petition must include an affidavit of one of the petitioners that the petitioner believes that the signers of the petition comprise all the owners, at the time of the verification, of all the land included within the proposed district.

The county board then holds a hearing on the petition. If the county board finds that all property owners within the proposed district have joined in the petition and that the area could be benefited by formation of the district, the board will adopt an order approving formation of the district. If the formation is approved, any election otherwise required by law is dispensed with. The board shall enter an order creating the district, and the persons nominated by the petition and accepted nomination as members of the board shall constitute the first board of the district.

### **Initiation by County Board**

A county board may initiate and pay the cost of the formation of a district to be located entirely within the county by adopting an order stating the county board's intention to initiate formation of the district, identifying the principal act, describing the name and boundaries of the proposed district, and setting a time, date and place for a public hearing on a proposal. If any of the territory to be included within the proposed district is within the boundaries of a city, a certified copy of the city governing body's resolution approving the order must be attached to the order.

Notice of the hearing set by the board order must be posted in at least three public places and published by two insertions in newspaper. In addition, the notice must state that the county board has entered an order declaring its intention to initiate formation. The hearing and election on the proposal, and the election of the initial board members, is to be conducted pursuant to [ORS 198.800 to 198.825](#).

### **Hearing**

Once proper petitions have been filed with the principal county and have been approved by endorsement by any agency required by the principal act, the county is required to set a hearing on the petition. The hearing must be held between 30 days and 50 days after the date the petition is

filed. Notice of hearing must be posted in at least three places and published by two insertions in a newspaper. The notice must include:

- The purpose for which the district is to be formed.
- The name and boundaries of the proposed district.
- The time and place of the hearing on the petition.
- A statement that all interested persons may appear and be heard.

On or before the date set for any hearing on the petition, any person interested in the proposed formation of a district may appear and present written statements for or against the granting of the petition. At the hearing on the petition for formation, the county board may receive oral or written testimony favoring or opposing the district formation. Any written statement objecting to the formation must clearly identify the error, omission or defect which is the basis for the objection. If the written objection is not timely filed, the objection is considered waived.

Upon conclusion of the hearing, the county board must evaluate the formation petition by applying the criteria in [ORS 199.462](#). That statute requires consideration of local comprehensive planning for the area, economic, demographic and sociological trends and projections pertinent to the proposal, past and prospective physical development of land that would directly or indirectly be affected by the proposed district and the statewide goals. The board may modify the boundaries of the proposed district to include or exclude territory considering the benefit the proposed district will have to territory in or out of the district. The board may not modify the boundaries to exclude land that could be benefited by the district formation and may not include land that will not be benefited. If the county board determines that land has been improperly omitted from the proposed district and the owner has not appeared, the county board must continue the hearing and order notice to be given to the nonappearing owner in the manner required by [ORS 198.805](#).

If the county board approves the formation of the petition, the board adopts an order identifying the name and boundaries of the proposed district and setting a time and place, between 20 and 50 days from the date of the order, for a final hearing on the petition. The order must also state that if no written requests for an election are filed, the board will adopt an order creating the district at the final hearing. Notice of the final hearing is given by publication.

### **Election**

If the approved petition includes a permanent tax rate, an election on the question of formation of a special district is required. An election is also required if the county board receives requests for an election filed by at least 15% of the electors or 100 electors,

whichever is less, on or before the date of the final hearing, even if the petition for formation includes no permanent tax rate.

If a sufficient number of requests for an election are filed with the county on or before the date of the final hearing, or if the petition for formation includes a permanent tax rate for the proposed district, the board provides by an order for the holding of an election to submit to the electors the question of forming the district. The board must cause notice of the election to be published by two insertions in a newspaper. If requests for an election are filed by less than the required number of persons and no permanent tax rate is included in the petition, the county board shall dismiss the requests for an election and enter an order creating the district. Nevertheless, the county board must order an election for the purpose of electing the first members of the district board. The procedure for nominating and electing first board members is provided in [ORS Chapter 255](#).

If no permanent tax rate is proposed, the only question before the electors is whether the proposed district should be formed. When the proposal for formation includes a permanent tax rate for the proposed district, the ballot title shall clearly indicate that a single question is being proposed which is:

- Whether the proposed district should be formed.
- Whether the permanent tax rate specified in the ballot title should be adopted as the initial permanent tax rate of that district.

The county board has thirty (30) days after the date of the election to canvass the votes and adopt an order regarding the proposed formation. If a majority vote favors formation of the district, the board adopts an order creating the district. After the date of the formation order, the inhabitants of the territory within the new district become a municipal corporation with all the powers conferred by the principal act. The new district pays the costs of forming the district and the county clerk refunds any cash deposit or other form of security to the persons who post the security with the county.

If a majority votes against formation of the district, the county board will adopt an order dismissing the petition. The county clerk reimburses the county for the costs of the attempted formation from the security deposit posted by the chief petitioners and refunds any remaining portion of the security deposit to the chief petitioners. If the costs of the attempted formation exceed the amount of the deposit, the chief petitioners must pay the amount of the excess costs.

### **Challenges to District Formation**

Pursuant to [ORS 198.785](#), any citizen of the affected district or territory may initiate proceedings to challenge the county clerk's refusal to accept and file a petition for formation or the county board's refusal to call a special election on the question of formation within ten (10) days of such refusal. Such citizen may file in circuit court of the principal county for a writ of mandamus to compel the county clerk to accept and file the petition or to compel the county board to call an election. If the circuit court finds that the petition for formation is legally sufficient and the requisite number of signatures is attached, the circuit court will direct the county board to call the election. The courts

are required to handle and decide such suits as quickly as possible and the circuit court's decision is appealable.

In addition, proceedings to challenge the validity of a formation of a district may be brought by filing a writ of review pursuant to [ORS 33.710](#) or [ORS 34.010 to 34.100](#).

### **Steps for District Formation**

1. Establish a working committee.
  - a. Set up community meetings and contact local agencies.
  - b. Draft maps and research property values.
2. Review estimated costs and boundaries at public meetings.
3. Draw up petitions. Submit prospective petition to county clerk. Begin preparing Economic Feasibility Statement.
4. Circulate petitions. Obtain resolutions from any affected cities.
5. Submit petitions, Economic Feasibility Report, and security deposit 180 days prior to election to County Clerk and Surveyor for review.
6. County schedules hearing date and bond posted.
7. County holds initial hearing.
8. County holds second hearing.
9. County enacts formation resolution or schedules election date.
10. Formation materials submitted to Department of Revenue.
11. Submit formation to Assessor's Office.
12. Hold levy and Board election (Permanent tax rate elections may only be held in May or November of even numbered years).

Note: If there is a formation election held, the permanent tax rate, if any, must be included in that election.

### **Merger and Consolidation**

Pursuant to [ORS 198.895 to 198.885](#), two or more districts providing like services may consolidate and form a new district or a district may merge its operations into a surviving district. Consolidation and merger are statutory methods for creating a special district by joining two or more existing districts into a single new or surviving district.



Districts which are merged into other districts are considered to be annexed by and absorbed into the surviving district. Districts which consolidate, however, become an entirely new district.

Mergers and consolidations are designed to promote efficiency in providing governmental service. In fact, Oregon law encourages and facilitates mergers and consolidations among water and sanitary service providers located within a single river basin or other region.

### **Initiation of Merger or Consolidation**

Creation of a new district by merger or consolidation may be initiated in any one of four ways:

1. By duplicate petitions filed by the electors of two or more districts with the boards of the districts to be merged or consolidated, [ORS 198.895\(1\)](#). The petition shall state the names of the affected districts and the name of the surviving or successor district and whether the merger or consolidation must be approved by each district.
2. By duplicate petitions filed by the electors of two or more districts with the district boards and by the electors of a city with the city governing body, if the proposed consolidation includes joining a city to the surviving or successor district, [ORS 198.895\(3\)](#). A petition under this statute must contain all the matters required be stated in the petition under Paragraph 1 above except that the petition must also state the name of the city proposed to join the surviving or successor district and whether the merger or consolidation must be approved by each district or city in order to be effective.
3. By duplicate petitions filed by the electors of a single district with the district board and by the electors of a city with the city governing body, if the proposal is to join a city to the district, [ORS 198.895\(4\)](#). A petition under this statute must contain the name of the district, the name of the city, and must state that the proposal must be approved by the district and the city in order to be effective.
4. By resolution adopted by the boards of two or more districts. If the merger or consolidation proposes to join a city to the successor district, the city governing body must also adopt a resolution approving the consolidation, [ORS 198.895\(5\)](#). A resolution adopted or approved under this statute must contain all the matters required to be stated in a petition to merge or to consolidate.

The procedures and requirements for preparing, circulating and filing a petition in a district or city proposed to be included in a proposed consolidation are described in [ORS 198.705 to 198.755](#). A petition for merger or consolidation must be signed by not less than 15% of the electors or 100 electors, whichever is less, registered in each district proposed to merge or consolidate; or by 15 owners of land in each district or by the owners of 10% of the acreage located in each district, whichever is the greater number of signers, [ORS 198.755\(4\)](#).

A petition for consolidation or merger may include a plan for the distribution of debt, which is to be voted upon as a part of the proposal. The plan may provide for any distribution of indebtedness and may require that merging or consolidating districts, and any city to be joined to the surviving or successor district, remains solely liable for all or any portion of the indebtedness outstanding at the time of the consolidation or merger, [ORS 198.900\(1\)](#).

When the governing body of each affected district or city has received a petition containing the required number of signatures, or has adopted or approved a resolution, the governing body of the affected entity having the largest population according to the most recent federal decennial census must call a joint assembly of the governing bodies of the affected entities. The governing body calling the joint assembly must give notice of the time and place of the assembly by certified mail.

At the joint assembly, a majority of the members of each governing body will constitute a quorum for the transaction of business. The assembly, by a majority of all members present, must adopt an order calling an election in each affected entity. That order must include all matters required in [ORS 198.745](#). The order adopted by the assembly may include a plan for zoning or subdistricting the surviving or successor district for the purpose of nominating or electing members of its board if the principal act for the district provides for election or representation by zone or subdistrict.

It should be noted that districts must be based on equal distribution of population. Also, if the merger or consolidation is initiated by petition, and the petition includes a debt distribution plan, the order adopted by the assembly must include that plan, [ORS 198.903](#).

### **Election**

As indicated above, there is held a joint assembly of the affected governing bodies. By a majority vote of all of the members present, the joint assembly adopts an order calling for an election in each affected entity. The electors of each district and city involved in the merger or consolidation must approve the merger or consolidation, and the majority of votes in any one of the districts or city against consolidation or merger defeats the proposal. However, where there are more than two districts, or districts and cities, involved and the proposal specifically provides that it will be effective in all districts or cities where it has been approved and does not require the approval of all areas to be effective, the election will be effective in those approving districts or cities, and the areas where the proposal is not approved would not be part of the merged or consolidated district.

If the proposal for merger or consolidation is approved by a majority of the votes cast in each affected entity, the governing body of the affected entity with the largest population must call and give notice of a joint meeting of the governing bodies of the affected entities. The meeting must be held at a time and place designated by the governing body calling the meeting not later than ten (10) days after the canvass of the vote in the entity last canvassed. At the meeting, a majority of the members of the governing body of each affected entity to constitute a quorum for the transaction of business. The purpose of the

joint meeting is to elect members of the board of the successor district and to declare the formation of the consolidated district.

The newly elected board meets immediately and adopts a resolution declaring the districts consolidated and each affected city joined to the district, as the case may be. The number of board members elected is as provided in the principal act of the surviving or successor district, and the terms of office of such members is provided in [ORS 198.910\(3\)](#). From the date of adoption of the resolution, the merger or consolidation is complete and the city territory, if any, together with any territory thereafter annexed to the city, is included in the boundaries of the surviving or successor district and shall be subject to all the liabilities of the district in the same manner and to the same extent as other territory included in the district.

In a merger or consolidation, board members of the new or surviving district are apportioned as required by [ORS 198.912](#). If two or more of the affected districts each have 20 percent or more of the electors or owners of land within the successor or surviving district, then each affected district is represented by one member when the percentage of electors owners of land is at least 20 percent but less than 40 percent of the successor or surviving district. When the percentage is between 40 and 60 percent, they are represented by two members.

At the first regular election held in the surviving or successor district, two or three board members are required to be elected as provided for in [ORS 198.910 \(3\)](#).

### **Effect of Consolidation or Merger**

Once a consolidation is effective, the successor district succeeds to all the property, contract rights and powers of the former districts. The former districts must turn over to the board of the successor district all funds, property contracts and records of the former districts, and uncollected taxes, assessments or charges levied by the former district become the property of the successor district. The successor district board must levy taxes and assessments for the liquidation of any prior existing indebtedness in accordance with the debt distribution plan.

Where two or more districts have merged, the permanent tax rate of the surviving district is retained and the area which is absorbed by the surviving district is treated as an annexation for purposes of determining the new permanent tax rate for the surviving district. A consolidation creates a new district, which does not have a permanent tax rate until approved by its voters. The permanent tax rates of the former districts are not carried over to the new district.

### **Annexation**

Annexation is the process by which territory may be added to a special district. Generally, territory may be annexed to a special district in two ways: (1) unincorporated territory or territory within a city may be annexed to a special district pursuant to [ORS 198.850 to 198.860](#); and (2) a city which undertakes a specified process may be annexed to a special district to receive services from that district pursuant to

[ORS 198.866 to 198.867](#). The process for consummating either of the above type of annexation will be different depending upon whether the territory to be annexed is within the jurisdiction of a boundary commission.

A district may consist of contiguous or noncontiguous territory located in one or more adjoining counties. If any part of territory to be annexed is within a city, the petition must be accompanied by a certified copy of a resolution of the governing body of the city approving the petition. A district may not, by annexation or otherwise, include territory included within another district formed under the same principal act when the other district is authorized to perform and is performing the services the affected district is authorized to perform unless (a) withdrawal of such territory is proposed and the territory is actually withdrawn by means of withdrawal proceedings conducted in the other district simultaneously with the annexation proceedings, and the proposed boundary changes are approved for both districts; or (b) the principal act provides for automatic withdrawal of the affected territory in such case.

Finally, the boundary lines of a special district must include only such territory as may reasonably be served by the facilities or services of the district. Therefore, if property proposed to be annexed cannot be served by the district, the county board may remove that territory or the annexation may be challenged in court on that ground.

### **Application of Statutes**

The process of annexation to special districts is governed by [ORS 198.850 through 198.869](#). Those statutes refer to other statutes that indicate particular procedural requirements. The processes provided for in those statutes apply to annexation to special districts that are listed in [ORS 198.010](#). Annexations to districts not listed in that statute would be accomplished pursuant to the statute creating the particular district (principal act). Territory within a district may not be included within or annexed to another district subject to the same principal act.

### **Initiation of Annexation**

A proceeding to annex territory to a special district may be initiated by any one of the following methods:

1. By Electors. Pursuant to [ORS 198.850\(1\)](#), electors of an area who wish to annex to a special district may file an annexation petition with the county board of the county in which the territory proposed to be annexed is located. Prior to filing the petition with the county board, the petition must be approved by the board of the affected district, by endorsement on the petition, and by any other agency which is required by the principal act of the particular district to endorse or approve the petition. Annexations may also be initiated by petition of all landowners (or a single landowner) or by a majority of electors and owners of more than half the land to be annexed. In these cases, an election is not required ([ORS 198.855](#)).
2. By the district board. Pursuant to [ORS 198.850\(3\)](#), annexation may be initiated by a resolution of the district board by adoption of a resolution setting forth the

following:

- a. The intention of the district to initiate the annexation of territory to the district and citing the principal act of the district.
  - b. The name of the district and the proposed territory to be annexed.
3. By the county board. The county board may initiate an annexation to a special district by the same process indicated in paragraph B. See [ORS 198.850\(3\)](#).
  4. Other agencies. If authorized by the principal act, any other agencies so authorized may initiate an annexation to a special district pursuant to the process indicated in paragraph B above. See [ORS 198.850\(3\)](#).

### **Contents of Petition**

A petition by electors should include the following information:

- The proposal to annex certain property to a specific special district.
- The name and principal act of the special district.
- The boundaries of the territory proposed to be annexed.
- Endorsement on the petition by the district or any agency required by the principal act to endorse or approve the petition.
- Any other information required by the principal act of the district whether or not the territory proposed to be annexed is within the jurisdiction of a boundary commission.
- A statement of how the proposal complies with the criteria prescribed by [ORS 199.462](#) which requires consideration of:
  - Local comprehensive planning for the area;
  - Economic demographic and sociological trends and projections pertinent to the proposal;
  - Past and prospective physical development of land that would directly or indirectly be affected by the proposed annexation;
  - The statewide goals.
- Signature of all petitioners including a statement of whether each signatory is an elector and a description of the property owned by each.
- Whether or not any of the proposed property to be annexed is within a city. If so, a copy of a resolution of the governing body of the city approving the petition should be attached.
- Where an annexation is initiated by resolution of a district or the county board, or by any other public agency authorized to do so by the principal act, the resolution should set forth the matters indicated above. In addition, if the initiation is by a district board, it may include an effective date, which is not later than 10 years after the date of the order declaring the annexation.

### **Annexation Procedures**

**Sufficiency of Petition.** Before any further proceedings are conducted, the county must determine whether the petition is sufficient. The petition must:

- State that the petition is filed pursuant to [ORS 198.705 to 198.955](#);
- State the names of all affected districts and all affected counties;
- Designate the principal act of each affected district;
- State the nature of the proposal (annexation);
- State whether the territory subject to the petition is inhabited or uninhabited. "Uninhabited territory" means territory within which there reside less than 12 electors who were residents within the territory 30 days prior to the date a proceeding for annexation is commenced ([ORS 198.705\(18\)](#));
- State any proposed terms and conditions, if any, to which the proposed annexation is to be subject;
- State opposite each signature whether the signers of the petition are landowners within the district or electors registered in the district or both;
- Request that proceedings be taken to annex the proposed territory;
- Include a description of the boundaries of the territory proposed to be annexed;
- Include an affidavit of the person circulating the petition stating that every person who signed the petition did so in the presence of the person circulating the petition;
- Be signed by not less than (a) 15% of the electors or 100 electors, whichever is less, registered in the area proposed to be annexed; or (b) 15 owners of land or the owners of 10% of the acreage, whichever is the greater number of signers, within the area proposed to be annexed ([ORS 198.755\(2\)](#));
- Include the printed name of each signer and the date of signing;
- If the signer is signing as an elector, include the person's place of residence, giving street and number or a designation sufficient to enable the place of residence to be readily ascertained;
- If the signer is signing the petition as a land owner, include the number of acres of land owned by the signer and the name of the county whose assessment roll is used for the purpose of determining the signer's right to vote;
- If the signer is a legal representative of a property owner, the signature shall be accompanied by a certified copy of the signer's authority to sign as a legal representative;

### **Notice of Hearing**

If the matter is not referred to a boundary commission, the county board must set a date for hearing on the petition, which hearing shall be held not less than 30 days nor more than 50 days after the date the petition is filed. The county board shall cause notice of the hearing to be posted in at least three public places and published by two insertions in a newspaper. The notice should state (a) the purpose of the proposal; (b) the boundaries of the proposed annexation; (c) the time and place of the hearing on the petition; (d) that all interested persons may appear and be heard.

### **Hearing**

At the time and place announced in the notice, the county will conduct a hearing pursuant to [ORS 198.805](#). All interested persons may appear and be heard. The county must determine at the hearing whether the proposal is consistent with the criteria and if the area could be benefited by the annexation. The county must adopt written findings of compliance with those criteria. The county may adjourn the hearing from time to time but not exceeding four weeks in all without additional notice. The county may alter the

boundaries proposed in the petition to either include or exclude territory based upon benefit of such inclusion or exclusion. The board may not modify the boundaries to exclude from the proposed area any land that could be benefited nor may the board include any land that may not be benefited.

If the county board determines that any land has been improperly omitted from the proposal and that the owner of such property has not appeared at the hearing, the board shall continue the hearing and order notice given to the non-appearing owner requiring the owner to appear before the board and show cause if any why the land of the owner should not be included in the proposal. Service of such notice is prescribed by [ORS 198.805\(2\)](#).

At the conclusion of the hearing, the board should make its determination, consistent with the above criteria, and adopt findings in support of that determination.

If the board approves the petition, as presented or modified, or if the boundary commission does so and transmits its approval to the county board, the board shall enter an order declaring approval of the petition.

### **Election**

The county board must order an election on the proposed annexation to be held in the territory proposed for annexation to the special district and in the special district in the following circumstances:

If the annexation petition is signed by less than all of the owners of all of the lands in the territory proposed to be annexed and the county board receives the requisite number of requests for an election pursuant to [ORS 198.815](#); or

If the annexation petition is signed by less than the majority of the electors registered in the territory proposed to be annexed and by the owners of half or less than half of the land in the territory and the county board receives the requisite number of requests for an election pursuant to [ORS 198.815](#).

The election must be held both in the territory proposed to be annexed and in the affected district on the same day. After the election, the district board must certify the results of the election in the district to the county board. The county shall order the annexation only if a majority of the votes in the territory to be annexed and a majority of the votes in the district are in favor of the annexation. Without such double majority, the county board shall declare that the proposal has failed.

If the annexation petition is signed by all the owners of land in the territory proposed to be annexed, or is signed by a majority of the electors registered in the territory proposed to be annexed and by the owners of more than half of the land in the territory, an election in the territory and in the district shall be dispensed with.

After the hearing on the petition, if the county board approves the petition as presented or as modified, or if an election is held, and the electors approve the annexation, the county

board shall enter an order describing the boundaries of the territory to be annexed and declaring it annexed to the district.

After the election, if any, is held, if it is determined by the county board that the majority of the votes cast were in favor of the annexation to the district, the board shall enter an order approving the annexation. The order shall be entered within 30 days after the date of the election.

### **Effect of Annexation**

After the date of entry of an order by county board annexing territory to a district, the annexed territory becomes subject to all outstanding indebtedness of the district, including bonded debt, in the same manner as other territory in the district. See [ORS 198.860](#).

### **City Annexation to a District**

The governing body of a city may adopt a resolution or motion to propose annexation to a district for the purpose of receiving services from the district. Upon adoption of such annexation proposal, the governing body of the city shall certify to the district board a copy of the proposal. The district board shall then approve or disapprove the city's annexation proposal. If the district board approves the proposal, the board shall adopt an order or resolution calling an election in the district. The order or resolution shall (1) provide for giving notice of the election (2) designate the district or the territory within which the election is to be held (3) fix a date for the election (4) state the substance of the question to be submitted to the electors (5) specify any terms or conditions provided for in the annexation proposal, and (6) contain such other matters as may be necessary to call provide for or give notice of the election and to provide for the conduct thereof in the canvass of the returns thereupon.

In addition, the order or resolution may contain a plan for zoning or subdistricting the district as enlarged by the annexation if the principal act for the district provides for election or representation by zone or subdistrict.

The district board must certify a copy of the resolution or order to the governing body of the city. Upon receipt of the resolution or order from the district board, the city shall call an election on the date specified in the order or resolution of the district board. The election must be held on a date specified in [ORS 255.345](#) that is not sooner than the 90th day after the date of the district order or resolution calling the election.

If the electors of the city approve the annexation, the city governing body must certify to the county board of the principal county for the district the fact of approval. If the electors of the district approve the election, the district board must certify the results of the election to the city and the county board. Upon receipt of the certificate from the city and the district, the county board enters an order annexing the territory included in the city to the district. Thereafter, the city territory is annexed to the district and is subject to all liabilities of the district in the same manner and to the same extent as other territory included in the district.



## **Contracts to Annex**

Pursuant to [ORS 198.869](#), a special district and a land owner may contract regarding provision of ex-territorial service and consent to eventual annexation of property to the district. Such agreement must be recorded in county records and, when recorded is binding on all successors with an interest in that property.

## **Withdrawal of Territory**

Territory of a special district can be withdrawn from the district pursuant to the procedures contained in [ORS 198.870 to 198.882](#). Generally speaking, withdrawal of territory from a district may occur when the territory to be withdrawn has not been or cannot be served by the district.

## **Initiation of Withdrawal**

A withdrawal of territory from a special district may be initiated by either of two methods:

A property owner within the district may petition the county board to withdraw the owner's property from the district. Such petition may be filed when a plan for district improvements is adopted by the district or at any time more than two years after a district is formed, or after the date the owner's property is annexed to the district.

The electors of an area within a special district may petition the county board to withdraw their property from the district. Such petition must be signed by not less than 15% of the electors or 100 electors registered in the district; or by 15 landowners or the owners of 10% of the acreage, whichever is the greater number of signers, within the district.

Under either of the above alternatives, the petitioners must cause notice of the filing of the petition to be given in writing to the secretary of the district. Within five days after the petition is filed, the petitioners must furnish the secretary of the district with a copy of the petition filed.

Procedure

With some exceptions, the statutory procedure for withdrawing territory from the special district is the same as the statutory procedure for annexing property to a district. The procedures governing the county board's conduct of hearings, adoption of orders, and calling an election, are the procedures set forth in the preceding section on annexation. The county board may approve a petition for withdrawal as presented, or may approve the petition with modified boundaries. The county board must approve the petition if it has not been, or would not be feasible for the territory described in the petition to receive service from the district. The board must deny the petition if it appears that it is or would be feasible for the territory described in the petition to receive service from the district.

### **Election**

An election on the petition for withdrawal may or may not be required. Unless written requests for an election are filed by fifteen percent (15%) or one-hundred (100) electors, whichever is less, an election must be held. If a sufficient number of written requests for election have not been filed at the time of the county board's final hearing on the proposed withdrawal, an election is not required, and the county board simply adopts an

order withdrawing the territory from the district. If sufficient requests are timely filed, the county board must call an election on the proposed withdrawal if those requests are filed on or before the date of the board's final hearing on the withdrawal.

If a majority of the votes cast favors the proposed withdrawal of territory, the county board adopts and enters an order withdrawing the territory from the district. If a majority of the votes cast opposes the proposed withdrawal, the county board adopts and enters an order declaring the election result. The election is held district wide.

Regardless of the result of the election, the county board must cause a copy of the order to be filed with the secretary of the district.

#### Effect of Withdrawal

From the date of the entry of the order by the county board, the area withdrawn from a district is thereafter free from assessments and taxes levied thereafter by the district.

However, the withdrawn area remains subject to any bonded or other indebtedness existing at the time of the order. The proportionate share of such indebtedness is based upon the assessed valuation, or according to the assessment role in the year of the levy, of all the property contained in the district immediately prior to the withdrawal.

Notwithstanding the above, the governing body of the district shall relieve an area withdrawn from the district from taxation for its proportionate share of outstanding bonded or other indebtedness if no district services have been provided to the withdrawn area and the area withdrawn does not exceed five percent (5%) of the equalized assessed valuation of the taxable property within the entire district prior to the withdrawal.

However, if the total unlimited taxing power of the district over the area not withdrawn does not wholly satisfy the bonded or other indebtedness incurred prior to the withdrawal, the withdrawn territory is taxed in an amount sufficient to satisfy its proportionate share of that indebtedness.

## **Dissolution**

Dissolution of a special district is a process of terminating the district's existence and disposing of any remaining assets.

## **Initiation**

Dissolution of a special district may be initiated in one of three ways:

1. By a petition of electors requesting dissolution of the district, filed with the county board. Such petition must be signed by not less than 15% of the electors registered in the district or the owners of 15% of the acreage of the district.
2. By resolution of the district board filed with the county board when the district board determines that it is in the best interest of the district's inhabitants that the district be dissolved and liquidated.
3. By resolution of the county board if (a) the district has failed to elect district board members to fill vacancies on the district board, or (b) if the territory within the district is uninhabited and (c) if the county board determines it is in the best interest of the people of the county that the district be dissolved and liquidated.

Within five days after a petition is filed or a resolution of the county board is adopted as provided for above, a copy shall be filed with the district's secretary, if any, or with any other district officer who can with reasonable diligence be located. If there are no qualified district board members at the time, the county board shall act as, or appoint, a board of trustees to act on behalf of the district regarding the dissolution proceedings. If the district to be dissolved is located within the jurisdiction of a local government boundary commission, the dissolution must be reviewed and approved according to the boundary commission's procedures for the review of major boundary changes.

## **Procedures**

When dissolution proceedings have been initiated, the district board must make findings of fact concerning the district's finances. Specifically, those findings must include the following:

- The amount of each outstanding bond, coupon or other indebtedness with a general description of the indebtedness and the name of the holder and owner of each, if known.
- A description of each parcel of real property and interest in real property and, if the property was acquired from delinquent taxes or assessments, the amount of such taxes and assessments on each parcel of property.
- Uncollected taxes, assessments and charges levied by the district and the amount upon each lot or tract of land.
- A description of the personal property and all other assets of the district.
- The estimated cost of dissolution.

In addition, the district board must also propose a plan of dissolution and liquidation as required by [ORS 198.925\(2\) and 198.930](#). The plan of dissolution and liquidation may include provisions for transfer and conveyance of all assets of the district to any other district or, in the case of a county service district, to the county in which the district is located.

Within 30 days after initiation of the dissolution proceeding, the findings of fact and the proposed plan of dissolution and liquidation must be filed in the office of the county clerk and must be made available for inspection by any interested person. Within 10 days after the district board files the dissolution and liquidation plan with the county clerk, the district board calls an election to determine whether the district shall be dissolved, its indebtedness liquidated and its assets disposed of in accordance with the proposed dissolution and liquidation plan. The notice of election must briefly summarize the dissolution and liquidation plan and state that the plan is available for examination at the office of the county clerk.

An election is not required if the county board finds:

- The dissolution is in the best interest of the people of the county;
- The territory within the affected district is uninhabited;

- The district has failed regularly to elect district board members in accordance with the district principal act; or
- For a county service district, dissolution is required because there is no public need for continuation of the district. Under these circumstances, the county board may declare the district dissolved and proceed to wind up the district's affairs.

If a majority of the district's electors approve dissolution of the district, the district board declares the district dissolved. The district board then becomes a board of trustees who pays or obtains releases of the district's debt and disposes of the district property. If the district is located entirely within the boundaries of a single county, the district board may designate the county board as the board of trustees for the purpose of winding up the district's affairs.

After the district's affairs have been fully settled, the board of trustees deposits all of the district's books and records with the county clerk. The board of trustees must execute under oath and file with the county board a statement that the district has been dissolved and its affairs liquidated. As of the date of the statement, the corporate existence of the district is terminated for all purposes.

If a majority of the district's electors opposes dissolution, the district board declares the dissolution proposal failed and makes the election results a part of the district's records. No subsequent election on dissolution of the district may be held for one year after the date of the election.

### **Disposition of District's Assets**

The board of trustees may convey all of the dissolving district's assets to another district if the other district assumes all of the debt and obligations of the dissolving district, continues to furnish the services provided by the dissolving district pursuant to the dissolution and liquidation plan and if the consent of all known holders of valid indebtedness against the district has been obtained or the plan provides for payment of the nonassenting holders.

The board of trustees may turn over to the county treasurer any surplus funds remaining after payment of the entire district's indebtedness. If the district's assets are insufficient to pay the indebtedness, the board of trustees must levy taxes within the district for the liquidation of the indebtedness. However, if property of the district is within the corporate limits of a city, the property vests in the city upon dissolution and any property of the district located outside the city's corporate limits vests in the county upon dissolution.

### **Dissolution of Inactive District**

The procedures for dissolution of inactive districts are somewhat different. Special districts that fail to file for three consecutive years reports required by [ORS 294.555](#) or [297.405 to 297.555](#) with the Secretary of State or Department of Revenue, as the case may be, either of those state agencies must notify the county board of the county where the district is located. Within 30 days after such notice to the county board, the

county must initiate proceedings to dissolve the special district and may appoint three individuals, which are residents of the district, to assist in locating the assets, debts and records of the district.

Within 60 days after receiving the notice from either state agency, the county board must prepare a financial statement for the district and file it with the county clerk. The financial statement must include:

- The date of formation of the district;
- The date of the last election of officers and the names of such officers;
- The amount of each outstanding bond, coupon or other indebtedness with a general description of such indebtedness and the name of the holder and owner of each;
- A description of each parcel of real property and interest in real property owned by the district;
- Any uncollected charges, taxes and assessments levied by the district;
- A description of all personal property and of all other assets of the district; and
- The estimated cost of dissolution.
- Upon filing the financial statement, the county board must enter an order calling for a hearing on the question of dissolving the district. The hearing shall be called not less than 21 or more than 30 days after the filing of the statement. If the county is within the jurisdiction of a local government boundary commission, the county board must, within ten days after filing a financial statement, file with the boundary commission a resolution requesting dissolution of the district.
- If the county is not within a local government boundary commission, the notice of hearing by the county must be given by publication once each week for not less than three weeks in a newspaper of general circulation within the district. The notice must state the time and place of the hearing and that all interested persons may appear and be heard. The notice must also state that all persons having claims against the district must present them at the time of the hearing.
- After the hearing, the county board must determine whether the district is in fact operating as an active district. Once the reports required by [ORS 294.555](#) and [297.405 to 297.555](#) are properly filed by the county for the district, the county must then enter an order. Such order may (a) terminate all further proceedings if the county finds that continuation of the district is necessary; or (b) continue the hearing to initiate proceedings to incorporate or annex the district area into a county service district. In such case, the county proceeds under [ORS Chapter 451](#) to create a county service district.
- If the county board finds that the district is not active and there is no need for the district, the board shall thereupon constitute a board of trustees for the purpose of paying the debts and disposing of the property of the district. Any surplus funds and assets remaining to the credit of the district after payment of the debts of the district shall be credited to the county general fund. If the district was located in more than one county, the surplus shall be apportioned and turned over to each county in which the district was located. The funds and assets are apportioned according to the proportion in each county of the assessed valuation of taxable property in the district.
- If the assets of the district are insufficient to pay the debts of the district, the county board must levy taxes for the liquidation of the debts. If the only debt of the district

is the cost of dissolution proceedings, the county shall pay the cost of the proceedings.

## **Formation by Initiative Petition**

Prior to circulating any petition, petitioners must file a prospective petition with the county clerk of the principal county. The prospective petition must include a description of the boundaries of the territory proposed to be included in the district. Methods of initiating the formation of a district by petition are:

- A petition signed by either 15 percent of the voters or 100 voters (whichever is greater) of the affected territory. [ORS 198.755\(1\)\(a\)](#).
- A petition signed by 15 owners of land or owners of 10 percent of the acreage (whichever is greater) of the affected territory. [ORS 198.755\(1\)\(b\)](#).
- A petition signed by all the owners of land in the affected territory. [ORS 198.830](#).

## **Petition Requirements**

A petition for formation should contain the following information:

- A statement that the petition is being filed according to the principles of [ORS 198.705](#) to 198.955 concerning changes of organization
- The names of all affected counties and districts
- The principal act of each affected district (the statutes describing a district's power). For fire districts, [ORS Chapter 478](#)
- The nature of the proposal (whether formation of a district or change of organization and the kind of change proposed).
- Whether the territory is inhabited or uninhabited (uninhabited territory means territory within which there reside less than 12 electors).
- Any terms or conditions to which the proposed formation is subject
- The number of members that will be on the district board
- Indications next to each signature whether the signer is a registered voter or a landholder within the affected territory, or both
- A request that proceedings be taken to form the proposed district
- A description of the boundaries. If finances are a problem, try to find someone in your community who is qualified and willing to draw up the boundaries free of charge or for a nominal fee. If not, possibly the county surveyor's office can help. Also, the Department of Revenue will offer assistance if notified early enough, and there is no charge for their service. This is a detailed description similar to that required on a deed. Refer to Section XI for deadline information.
- Include a proposed permanent tax rate limit for operating taxes sufficient to support the services and functions described in the economic feasibility statement, expressed in dollars per thousand dollars of assessed value. No tax rate limit need be included in the petition if no tax revenues are necessary to support the district
- Certification by sworn statement in writing on each signature sheet that the person circulating the petition witnessed each signature personally.

In addition to the above, a petition for formation should propose a name for the district ([ORS 198.750](#)) and designate up to three persons as chief petitioners. [ORS 198.760\(3\)](#).

Each petition signer must indicate the date of signing. Registered voters must also give their address, while landowners must show the number of acres they own and the county whose assessment toll shows their right to vote. A legal representative signing for a landowner must show a certified copy of the legal authorization that enables them to do so. [ORS 198.765\(1\)](#).

All signatures on a petition must be obtained within six months after the date of the first signature. For petitions proposing formation of a district with a proposed permanent rate limit, the petition must be filed not later than 180 days before the next biennial primary or general election at which the formation petition will be voted upon. [ORS 198.765\(1\)](#). The petition must be filed with the county clerk of the principal county involved (the county with the most value in terms of taxable property included in the district).

The petition may not be accepted by the county unless the petition is accompanied by a bond, a cash deposit, or other security deposit. A bond must be in a form and in an amount approved by the county board, not to exceed \$100 for each precinct in the affected district and any territory to be included in the district, up to a maximum of \$10,000.

After circulation of the petition, the county clerk has 10 days from the date the petition is received to review the petition and determine whether it has been signed by the correct number of qualified signers. [ORS 198.765\(2\)](#).

### **Formation by Consent of Property Owners**

A fire district may be formed by consent of all property owners within the area of the proposed district. The petition must contain all the same information and is circulated in the same manner as was discussed in the above sections. Also, one petitioner must verify by affidavit that the petitioner believes that the signers comprise all the owners of land to be included within the district.

If the county board finds that all property owners within the proposed district joined in the petition and that the area could be benefited by the formation of the fire district, the board must adopt an order approving the formation of the new district. The first board members will be the persons nominated by the petition.

### **Formation by Initiation of the County Board**

A county board can initiate the formation of a fire district that is entirely within the county, by order. If any of the territory to be included in the fire district is within the boundaries of a city, a certified copy of the city governing body's resolution approving the order must be attached to the order creating the district.

The county board must give notice of and hold a hearing on the matter of formation. After the hearing, the question of formation will be put to a vote. (See the following sections on hearing requirements.)

### **Hearings**

If the petition for formation satisfies all requirements, the county board of the principal county involved will set a hearing on the petition not less than 30 days nor more than 50 days after it is filed. [ORS 198.800\(1\)](#).

A notice of the hearing must be posted in at least three public areas and published by two insertions in a newspaper. The notice must include: (1) the purpose for which the district is to be formed, (2) the name and boundaries of the proposed district, (3) the time and place of the hearing on the petition, and (4) that all interested persons may appear and be heard.

At or before the initial hearing, interested persons may appear and present written statements for or against the proposal. [ORS 198.735](#).

During the hearing the county board can modify the boundaries of the proposed district. In doing so, its goal will be to include all land that can be benefited by the district and exclude all land that, in its judgment, would not be benefited. [ORS 198.805](#).

If the county board approves the petition as presented or modified, it will enter an order declaring the name of the district and its boundaries, and the place and time of a final hearing. The order will also state that an order creating the district will be issued at the final hearing if written requests for an election are not filed by the required number of voters, or if the petition for formation does not include a permanent tax rate limit. [ORS 198.810\(1\)](#).

A final hearing will be held between 20 and 50 days after the date of the order.

### **Election on Formation**

If the approved petition includes a permanent rate limit for operating taxes, an election on the question of formation of a fire district is required. An election is also required if the county board receives requests for an election filed by at least 15 percent or 100 electors, whichever is less, on or before the date of the final hearing, even if the petition for formation includes no tax rate limit.

If no tax rate limit is proposed, the only question before the voters is whether the proposed district should be formed. When the proposal for formation includes a tax rate limit for the proposed district, the ballot title shall clearly indicate that a single question is being proposed which is: (1) whether the proposed district should be formed, and (2) whether the permanent rate limit specified in the ballot title should be adopted as the maximum rate of operating taxes for that district.

Also, when a permanent tax rate is included in a proposal for formation, the district shall be authorized to impose operating taxes not in excess of the permanent rate limit, only if the proposal is approved by a majority of the votes cast, and either: (1) at least 50 percent



of the registered eligible electors cast a ballot; or (2) the election is a general election in an even-numbered year. [ORS 198.815\(5\)](#).

If formation is properly approved by the voters, the county board will enter an order creating the district within 30 days of the election. [ORS 198.820\(1\)](#).

### **Election of Directors**

An election solely for the purpose of electing district board members will be held if an election was not held for the district formation. This will be done at the next practicable election date after the final order of formation is filed. [ORS 198.825](#).

When the formation petition was initiated and signed by all landowners in the proposed district, those persons nominated by the petition and accepting nomination will be the first board members. [ORS 198.830](#).

### **Deadlines**

It needs to be emphasized that all requirements must be met, and the details of the FINAL APPROVED FORM reported to the county assessor and the Department of Revenue by March 31 for changes to become effective at the start of the next fiscal year beginning July 1. This applies to completed formations or other boundary changes, as well as those which have not become final or effective by March 31, but which will be final prior to July 1.

“Final approved form” means approved by the county board and approval of the map and boundary description (certified by a registered Oregon land surveyor, a registered engineer or the Department of Revenue). The boundary description can be certified by the Department of Revenue, free of charge, if it is received no later than February 15.

“Final approved form” also means that all legal requirements have been met, including petitions, hearings, elections, approved boundaries and maps.

It is actually the county board’s responsibility to report all the necessary information to the county assessor and the Department of Revenue. Therefore, all material filed with the county board should be completed early enough to give the county board adequate time to complete filing before the deadline on March 31.

### **Mergers and Consolidations**

Two or more fire districts can consolidate and form a new district or a district may merge its operations into a surviving district. Consolidation and merger, therefore, are statutory methods for creating a special district by joining two or more existing districts providing like services into a single new or surviving district.

Districts which are merged into other districts are considered to be annexed by and absorbed into the surviving district. Districts which consolidate, however, become a new district.

## **Methods of Initiation**

Mergers and consolidations can be initiated in the following ways:

The electors of two or more districts may initiate proceedings to merge or consolidate districts by filing duplicate petitions with the boards of the districts to be merged or consolidated. The petitions must state the names of the districts, and the name of the surviving or successor district and whether the merger or consolidation must be approved by each district. The petitions must be signed by at least 15 percent of the electors or 100 electors, whichever is less, registered in each district proposed to merge or consolidate, or by 15 owners of land in each district, or by the owners of 10 percent of the acreage located in each district, whichever is the greater number of signers.

If a proposed merger or consolidation includes a proposal to join a city to the surviving or successor district, the electors of the districts and the city also must file a duplicate petition with the governing body of the city. In addition to the information required to be in the petition outlined in the above paragraph, the petition must state the name of the city proposed to join the surviving or successor district and whether the merger or consolidation must be approved by all districts and/or cities to be effective. The same signature requirements applicable to the district, are applicable to the city.

Merger or consolidation may also be initiated by resolution, adopted, or approved by two or more district boards. If the merger or consolidation includes a proposal to join a city to the district, the governing body of the city must also adopt or approve a resolution.

A petition may also include a debt distribution plan to provide for the distribution of indebtedness. It can require that the merging or consolidating districts remain responsible for all or any debts remaining at the time of the proposal. [ORS 198.900\(1\)](#).

When the governing body of each fire district or city has received a petition containing the required number of signatures or has adopted or approved a resolution, the governing body of the affected entity having the largest population according to the most recent federal census must call a joint meeting of the affected boards. At the joint meeting, the assembly must adopt an order calling an election in each affected district or city.

### **Elections**

The electors of each fire district or city involved in the merger or consolidation must approve the merger or consolidation, and a majority of votes in any one of the districts or city against consolidation or merger defeats the proposal. However, where there are more than two districts or cities involved and the proposal specifically provides that it will be effective in all districts or cities where it has been approved and does not require the approval of all areas to be effective, the election will be effective in those approving districts or cities, and the areas where the proposal is not approved would not be part of the merged or consolidated districts.

## **Procedures after Approval**

If a merger or consolidation is approved, the involved parties must hold a joint meeting. This is called by the governing body of the body of the entity with the largest population.

This meeting must be held within 10 days after the last district's official examination of votes. The secretary of the board calling the meeting must notify each board member of the affected districts of the time and place of the meeting. [ORS 198.910\(1\)](#).

During the joint meeting, board members will be selected to serve until the next general election, and those members will meet and officially declare by resolution the districts merged or consolidated and each affected city joined, as the case may be. [ORS 198.910\(2\)](#). Where two or more of the districts each have 20 percent or more of the electors or owners of land within the surviving district, each such affected district shall be represented on the board as follows:

By one member when the percentage of electors or owners of land in the affected district is at least 20 percent but less than 40 percent of the electors or owners of land within the successor or surviving district.

By two members when the percentage of electors or owners of land in the affected district is at least 40 percent but less than 60 percent of the electors or owners of land within the successor or surviving district.

By the number of board members remaining after apportionment of board members under subsection (1) and (2) of this section when, among all of the affected districts, the percentage of electors or owners of land in the affected district is the highest percentage of electors or owners of land within the successor or surviving district. [ORS 198.912](#).

Within 10 days after a resolution for merger or consolidation is adopted, the board must file duplicate copies of the resolution with the Secretary of State, Department of Revenue, and the county clerk and assessor of each county involved. [ORS 198.780](#).

## **Effects**

Upon the effective date of the merger or consolidation, the surviving or successor district will:

- Take over all property, contracts, rights, and powers of the merging or consolidating districts. In turn, becoming a regularly organized district;
- Inherit the uncollected taxes, assessments, or charges levied by the merging or consolidating districts; and
- Become responsible for all the legal and contractual obligations of the merging or consolidating districts, subject to any debt distribution plan. [ORS 198.855\(2\)](#) and [198.890\(2\)](#).

Where two or more districts have consolidated or merged, the permanent tax rate of the surviving or successor district is the rate that will produce the same tax revenue as the local taxing districts would have cumulatively produced in the year of the consolidation if the change had not occurred. [Oregon Constitutional Article XII, Section 11\(3\)\(d\)](#). In other words, the total amount that could have been taxed in each district is added together and spread over the assessed valuation of the surviving or successor district.

# Training and Certification

## **Department of Public Safety Standards and Training**

4190 Aumsville Highway SE

Salem, OR 97301

Phone: (503) 378-2100

Fax: (503) 378-4600

<http://egov.oregon.gov/DPSST>

### **Mission**

To promote excellence in public safety through the development of professional standards and the delivery of quality training.

### **Values**

As we work together to achieve our mission, we value:

Integrity	Following the highest ethical standards in our working relationships, practices and decisions.
Excellence	Dedicated to the highest quality, both in our individual actions and as an organization.
Customer Service	Working proactively to meet the needs of our constituents, stakeholders, and one another.
Respect	Regarding others with honor and valuing their varied roles, contributions, and viewpoints.
Accountability	Understanding that we are responsible to constituents, stakeholders, and one another both in our everyday work and in pursuing our mission.
Communication	Speaking and listening openly, honestly and consistently to further our mission and build trust into our relationships.
Employee Development	Committed to developing as a well-trained, competent and reliable workforce that: abides by the organization's values, is empowered for personal and professional growth, and is recognized for service to constituents, stakeholders, and one another.

# Organization and Decision Making

## Organization

The Department of Public Safety Standards and Training (DPSST) was created in 1997 as the result of increased demands for public safety training. The increased demands were due to the growth in numbers of public safety providers and community needs and expectations for officers with greater skills. Over time, public safety training and standards have undergone numerous changes. The department's origin was a 1961 advisory committee responsible for recommending standards for city and county police. In 1968, the Police Standards Act granted authority to mandate minimum standards for selection and training of law enforcement officers and officially recognized the Board on Police Standards and Training (BPST). By 1971, the legislature created an assessment fee on criminal fines as the sole revenue base.

BPST was renamed the Board on Public Safety Standards and Training (BPSST) in 1991 after the addition of the Department of Corrections, telecommunicators, emergency medical dispatchers, and numerous related constituents such as public safety providers for mass transit, ports, school districts, Indian reservations, railroads, lottery, local corrections, parole and probation, polygraph operators and investigators for the Department of justice. With the abolishment of the Fire Standards Accreditation Board in 1993, the fire service was added to the BPSST family. That same year, Oregon State Police the joined forces with BPSST. 1995 saw the addition of private security providers as the first partnership between public and private safety providers.

Throughout all the additions, the revenue base has remained outside the General Fund, with all revenue coming from "other funds". Criminal and traffic fines and assessments remain the sole funding source for the criminal justice constituents. The fire service training and certification is funded through the Fire Insurance Premium Tax. Telecommunicator training is funded through the 9-1-1 Excise Tax and private security is completely supported by self-generated fees.

Today, DPSST is a full, cabinet-level, state agency reporting to the Governor. The Governor appoints a Director for the agency who is a cabinet member and directly responsible for overseeing and managing all aspects of the agency's operations. The Director confers with the Governor in the appointment of a Deputy Director who assists with the overall management of the Department. For a list of Department staff and their contact information, see: <http://egov.oregon.gov/DPSST/docs/StaffResponsibilities.pdf>.

The Governor also appoints a 23-member [Board on Public Safety Standards and Training \(BPSST\)](#) that represents the broad constituencies DPSST serves. The Board sets the minimum standards for physical, emotional, intellectual, and moral fitness to serve as a public safety provider in Oregon. In addition, the Board sets reasonable minimum training standards for all levels of professional development from basic training to executive leadership. The Board advises the Director, the Governor and the Legislature of the needs of Oregon's public safety community.

The following organizations are represented on the Board:

- Federal Bureau of Investigation
- Oregon Association of Chiefs of Police (2)
- Oregon Chapter – Association of Public Safety Communications Officials
- Oregon Council of Police Associations
- Oregon Department of Corrections
- Oregon Department of Forestry
- Oregon Department of State Police
- Oregon District Attorneys Association
- Oregon Fire Chiefs Association
- Oregon Fire District Directors Association
- Oregon League of Cities
- Oregon Peace Officers Association
- Oregon State Firefighters Council
- Oregon State Sheriffs Association (2)
- Oregon Volunteer Firefighters Association
- Portland Fire Bureau
- Portland Police Bureau
- Private Security Industry (2)
- Citizen Member

The Department and the Board receive support from advisory committees for corrections, parole and probation, fire services, law enforcement, private security, and telecommunications. The advisory committees serve as the initial and primary providers of constituent input in the Board’s decision-making responsibilities. The advisory committees are the communication link between the Department, Board and local public safety constituents and their various representative associations.

The [BPSST/DPSST Fire Advisory Committee](#) is made up of representatives from Oregon various fire service organizations including:

Oregon Department of Forestry	Oregon Fire Chiefs Association
Oregon Fire District Directors Association	Oregon Fire Instructors Association
Oregon Fire Marshals Association	Oregon Office of State Fire Marshal
Oregon State Fire Fighters Council	Oregon Volunteer Firefighters Assoc.
Chief – Portland Fire Bureau	Fire Insurance Industry Representative
Private Fire Service Representative	
Community College & Higher Education Fire Service Program Representative(s)	

### **Authority and Decision Making**

The 1997 Legislature created the Department as a full state agency. It continued the Board and defined the roles of each by statute. It is anticipated that there is a close working relationship between the Board and the Department in order to promote the quality of criminal justice and fire services. In general, decision-making responsibilities

and authorities between the Department and the Board are outlined in [ORS 181.630, 181.635, and 181.640](#) and are divided as follows:

Department	Board
Recommend reasonable minimum standards of physical, emotional, intellectual and moral fitness for police officers, certified reserve officers, corrections officers, youth corrections officers, parole and probation officers and fire service professionals.	Set the reasonable minimum standards and approve administrative rules for implementation.
Recommend reasonable minimum training for all levels of professional development, basic through executive, including but not limited to courses or subjects for instruction and qualifications for public safety personnel and certified reserve officers that are consistent with legislatively approved funding.	Set the reasonable minimum training standards.
Consult with the Board and establish by administrative rule a procedure or procedures to be used by law enforcement units, public or private safety agencies or the Oregon Youth Authority to determine whether a police officer, a certified reserve officer, a fire service professional, a corrections officer, a youth correction officer, a parole and probation officer, a telecommunicator or an emergency medical dispatcher meets minimum standards or has minimum training.	Consult with the Department on the establishment of these administrative rules.
Certify police officers, reserve officers, fire service professionals, corrections officers, parole and probation officers, telecommunicators and emergency medical dispatchers as being qualified.	Approve administrative rules for the Department to use for certification.
Deny application, certification or revoke certifications as provided in <a href="#">ORS 181.661 to ORS 181.664</a> . Grant extensions, waivers, and exceptions.	By administrative rule may waive any physical requirement.
Inspect the standards and training for police officers, certified reserve officers, corrections officers, parole and probation officers, fire service professionals, telecommunicators and emergency medical dispatchers.	
Contract, procure property; accept gifts or grants of services or property; furnish law enforcement units and private safety agencies' information on applicants for	

<p>appointment as police officers, certified reserve officers, fire service professionals, corrections officers, parole and probation officers, telecommunicators or emergency medical dispatchers.</p>	
<p>Consult with the Board, and at the request of a law enforcement unit or public safety agency, conduct surveys or aid cities and counties to conduct surveys through qualified public or private agencies and assist in the implementation of any recommendations resulting from such surveys.</p>	<p>Consult with the Department in carrying out this activity.</p>
<p>Consult with the Board, and at the request of law enforcement units or public safety agencies, conduct studies and make recommendations concerning means by which requesting units can coordinate or combine their resources.</p>	<p>Consult with the Department in carrying out this activity.</p>
<p>Consult with the Board and stimulate research by public and private agencies to improve police, fire service, corrections and adult parole and probation administration and law enforcement.</p>	<p>Consult with the Department in carrying out this activity.</p>
<p>Consult with the Board and provide grants from available resources to law enforcement units, public safety agencies, special districts, cities and counties.</p>	<p>Consult with the Department in carrying out this activity.</p>
<p>Consult with the Board and provide optional training programs for persons who operate lockups.</p>	<p>Consult with the Department in carrying out this activity.</p>
<p>Consult with the Board and provide optional training programs for public safety personnel and their support staffs.</p>	<p>Consult with the Department in carrying out this activity.</p>
<p>Consult with the Board and enter into agreements with federal, state or other governmental agencies to provide training or other services in exchange for receiving training, fees or services of generally equivalent value.</p>	<p>Consult with the Department in carrying out this activity, and establishing policy.</p>
<p>Consult with the Board, and at the request of a law enforcement unit or public safety agency employing police officers, certified reserve officers, fire service professionals, corrections officers or parole or probation officers, grant an officer or fire service professional a multi-discipline certification consistent with the minimum requirements adopted or approved by the Board.</p>	<p>Consult with the Department in carrying out this activity, and establishing policy. Adopt minimum requirements for multi-discipline certifications.</p>



Consult with the Board and adopt administrative rules to carry out the Department's and the Board's duties and powers.	Consult with the Department on the adoption of these administrative rules.
Obtain approval of the Board to submit legislative concepts, Emergency Board requests and budget requests to the Department of Administrative Services.	Approve submission of these items to the Department of Administrative Services.
The Director, with approval of the Governor and after consultation with the Board, shall organize and reorganize the Department as necessary to conduct the work of the Department	Provide advice in organization and reorganization.
The Director appoints all subordinate officers and employees and prescribes their functions, subject to state personnel relations laws.	

## **Services**

### **Fire Service Training**

DPSST's administrative headquarters is located at 4190 Aumsville Highway in Salem. The main administration building fronts the new Oregon Public Safety Academy and houses all DPSST administrative staff members. Staff from DPSST's Fire Program, Private Security/Private Investigators Program, Standards and Certification Section, and DPSST's partners Oregon Department of Corrections and Oregon State Police are also located in this building. Main reception, the Board room and several conference rooms are found in the administration building, as is the large multi-purpose room where student graduations are held.

The academy training building houses nine, 40-person classrooms, several smaller breakout rooms, a resource center, a mock court room and a 9-1-1 dispatch room with working equipment. Classrooms are set up with all the latest technology including pre-mounted projectors, laptops, and other components that are easily accessible to instructors at a central control pad located at the front of each room. Academy training, regional and advanced training, instructor development, curriculum development and academy operations staff members are located on the second floor of the building.

DPSST assists in the coordination and delivery of over 200 fire service classes on an annual basis. These classes are delivered statewide and coordinated in partnership with 22 regional fire training association and the Oregon Fire Instructors Association. It is important to note that local fire agencies and regional fire training associations deliver the majority of fire service training in Oregon. DPSST staff provides support and assistance to local fire training officers and regional fire training associations. DPSST is also a member of the Oregon Fire Service Administrators Institute.

DPSST is also the state conduit for the United States Fire Administration's - National Fire Academy. The National Fire Academy is located in Emmitsburg, Maryland and offers a wide variety of classes for both career and volunteer fire service professionals. Fire service professionals can select from over three-dozen 80-hour classes. Topics include leadership, management, fire suppression tactics and strategy, fire investigation, public fire education, fire code administration, fire information systems, emergency medical systems administration, and several other topics. These classes are held throughout the year at the Emmitsburg campus. To allow volunteer firefighters and fire officers to attend the Academy, various six-day training courses are delivered through the Volunteer Incentive Program (VIP). Various two-day courses are delivered throughout Oregon or a regional with the assistance of DPSST staff and the regional fire training associations. National Fire Academy course information is available through the world-wide-web at [www.usfa.fema.gov/](http://www.usfa.fema.gov/)

### **Fire Service Certification**

DPSST administers mandatory and voluntary certification of public safety personnel. Basic certification must be completed within one year from the date of hire for all public safety professionals except fire services and private security personnel. Higher levels of certification may be achieved by an accumulation of training, education and experience.

Certification is a voluntary program for professional development of fire service personnel. Certificates are issued to fire fighters, fire prevention officers, fire investigators, public education officers, fire service instructors, fire apparatus drivers and operators, hazardous materials responders, maritime fire service operators, wildland interface firefighters, fire officers and managers. Certification is based on completion of performance objectives and job experience. Some certification levels require successful completion of both classroom and skills examinations. Many of the Oregon fire certification and training standards are based on those recommended by the National Fire Protection Association (NFPA).

### **Resource and Information Services Center (RISC)**

Located at the central academy is the Resource and Information Services Center, which provides materials for training and research to public safety providers statewide. The Resource Center works closely with federal, state, and local agencies to provide the best service and most contemporary materials available. The Center provides a wide variety of information on public safety topics utilizing multi-educational mediums. The Resource Center has videos, books, pamphlets, and training kits available for loan. A catalog of resources is available through the internet and can be found on the DPSST web page at: [www.oregonvos.net/dpsst](http://www.oregonvos.net/dpsst). For convenience, materials may be ordered using the online order form. Over 1200 fire training resources are available for loan.

### **Constituents and Areas Served**

During the last several years, both the scope of DPSST's responsibilities and the number of constituent groups it serves have substantially grown. In the past, DPSST primarily

served law enforcement. It now serves a broad base of over 32,000 public safety professionals. The following is a list of the Department's major constituents:

City, County and State Police Officers	Public Safety Support Staff
Police Officers – Special Districts	Parole and Probation Officers
County and State Corrections Officers	Fire Service Personnel, Career and
Telecommunicators	Volunteer
	Other Authorized Law Enforcement Units:
Emergency Medical Dispatchers	Indian Reservations
Oregon Youth Authority	Port Authority
Polygraph Examiners	School Districts
Federal Officers	Mass Transit District
Campus Public Safety	Oregon State Lottery Commission
Private Security	Common Carrier Railroad

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# Line of Duty Serious Injury

## Public Safety Officers' Benefits Program

In 1976, the Public Safety Officers' Benefits (PSOB) act (42 U.S.C. 3796, et seq.) was enacted. This act has gone through many changes and updates over the years. Currently, the act provides a \$146,949 benefit for claims they accept. This limit is tied to the Consumer Price Index and adjusted each year on October 1.

PSOB provides a one-time financial benefit to the eligible survivors of a public safety officer whose death is the direct result of a traumatic injury suffered in the line of duty. The act also pays a benefit for permanent and total disability by a catastrophic personal injury suffered in the line of duty. This injury must permanently prevent the safety officer from performing any gainful work. Medical retirement for a line of duty disability does not qualify.

PSOB does have an established criteria that a claim must meet prior to being approved. The Bureau of Justice Assistance has developed a "Fact Sheet" that will help you better understand the requirements that each claim must meet:

**Bureau of Justice Assistance**  
Public Safety Officers' Benefits Program  
810 Seventh Street NW.  
Washington, DC 20531

Tel: 202-307-0635  
Toll Free: 1-888-744-6513  
Fax: 202-307-3375

Internet: [http://www.ojp.usdoj.gov/BJA/grant/psob/psob\\_main.html](http://www.ojp.usdoj.gov/BJA/grant/psob/psob_main.html)

It is important to know the program does have limitations and exclusions that may impact a claim. For example, a claim may be denied as the result of:

- Intoxicates or drugs
- Intentional misconduct
- Gross negligence
- Claimant's actions were a substantial contributing factor

Further, the act does not cover claims as the result of stress, strains, occupational illness, or a chronic, progressive, or congenital disease (such as heart or pulmonary disease) unless there is a traumatic injury that is a substantial contributing factor. An example could be a heart attack caused by carbon monoxide poisoning. It is imperative to note that an immediate toxicology test would be required showing the SPECIFIC LEVELS of CO<sub>2</sub> in the body at the time of death. CO<sub>2</sub> dissipates out of the body very quickly. The department would need to document the time of death, time the blood was tested, and provide the Department of Justice with specific test results. These results can not state "greater than or less than".

The PSOB act extends to public agency Police, Firefighters, Rescue Squad, and Ambulance personnel. In the last fiscal year ending October 1999 the act received 38 death claims for Firefighters across the United States and approved 31 for payment. We

estimated the United States will lose over 80 Firefighters in 1999. Do not overlook this important benefit.

### **Oregon Revised Statute 243**

Oregon requires each Public Entity provide a \$10,000 accidental death benefit policy covering paid and volunteer Firefighters for line of duty fatalities. This law does extend coverage in some cases to heart and lung deaths. Heart or lung deaths do have specific time requirements limiting the amount of time that can pass from the last known firefighting activity to the date of death. Although required by the State it is important to note the State of Oregon does not provide the benefit.

Departments will frequently purchase this coverage through their insurance agent of record. Some departments increase the death benefit to better provide for the Firefighters beneficiary. It is not uncommon for a department to expand coverage to offer on and off the job coverage. Another common extension of benefits under some policies is supplemental disability income coverage. Supplemental Disability coverage can help limit the short fall many volunteers suffer when they are disabled as the result of an injury while responding to a department emergency.

### **Workers Compensation**

All Public Entity paid and volunteer firefighters should be covered under a Workers Compensation Policy. A policy can be purchased through the district agent of record. These policies cover occupational injury and illness. In addition to medical payments injured workers may be eligible for disability income payments. An eligible disabled paid firefighter will receive 2/3 of their regular wage. An eligible volunteer firefighter will receive 2/3 of the assumed wage the district has selected for their volunteers. The State has established the minimum assumed wage at \$800. The assumed wage can be increased at the same "per one hundred rate" listed under the volunteer class code. Prior to increasing your limit give notice to the insurance carrier of the higher limit you have selected.

If your district has firefighters that perform work for the department that falls outside of the "scopes" manual definition you will need to have additional class codes added to your policy. A district that provides water rescue in navigable waters needs to add the code for Jones Act coverage. Any district that splits employees time between different class codes needs to establish "verifiable records" in accordance with the insurance carrier requirements. Verifiable records that do not comply will convert all pay automatically to the highest rated class code.

### **Other Insurance**

The district's greatest assets are their personnel. No single event will have a greater impact on the morale of a department than an injury or death of a Firefighter. It is in the best interest of the department to provide a level of benefits that protects all paid and volunteer personnel from financial loss due to a work related injury. There are many types of supplemental benefits that a district may purchase for their personnel. It is common for a district to purchase accidental death coverage, accidental medical, and

disability income coverage. The most frequently utilized coverage is the supplemental disability coverage. This coverage supplements the volunteers assumed wage under workers compensation. Adequate income is the single greatest problem a volunteer Firefighter faces after a disabling injury occurs at a fire scene. This coverage is very inexpensive, and can be tailored to provide adequate coverage for all of the district volunteers.

### **Firefighter/EMS Serious Injury-Fatality**

IN EVENT OF SERIOUS INJURY REQUIRING HOSPITALIZATION OR DEATH, THE FOLLOWING CONTACTS ARE RECOMMENDED:

- Family and your membership
- Immediately contact the districts agent of record
- Critical stress debriefing team serving your area

#### Oregon-OSHA

All fatalities and catastrophes must be reported within 8 hours to: Salem- 503-378-3272  
Injuries requiring hospitalization confinement must be reported to nearest OR-OSHA field office within 24 hours:

Salem-	503-378-3272 or	Pendleton-	541-276-9175
	503-373-7819	Eugene-	541-686-7913
Portland-	503-229-6193	Bend-	541-388-6068
Medford-	541-776-6030		

#### Public Safety Officers Benefit Act (PSOB)

Fatality or disability claims-U.S. Dept of Justice Washington D.C.- 202-307-0635 (please note you must do timely blood draws.)

#### Office of State Fire Marshal

Civilian casualty report form #814-440-10c(r-2/96) For any police, fire, EMS, civilian or other injury, illness or fatality. (in addition to fire report)

Salem: 503-373-1540, Fax 503-373-1825

Oregon Health Division - (ambulance accidents-only)

Portland Oregon 1-503-731-4011

Workers Compensation insurance:

Special Districts Insurance Service (SDAO)

Self Insured Management Service (SIMS) 1-800-804-9527

State Accident Insurance Fund (SAIF) Salem 1-800-285-8525

Department of Motor Vehicles- if appropriate

Life and Accident & Sickness insurance company(ies)- call insurance agent

Major Medical insurer- if appropriate.

Social Security Administration- if appropriate.

## Firefighter Serious Injury Checklist

Victim Name \_\_\_\_\_ Date \_\_\_\_\_

Incident Time \_\_\_\_\_ Alarm Number \_\_\_\_\_ Employee Number \_\_\_\_\_

### At Scene

\_\_\_\_\_ Control two-way radio communications, use cellular phone if possible.

\_\_\_\_\_ Secure scene: Note and record exact location of accident/body discovery. Do not alter, add, or remove anything. Do not allow unauthorized persons access to the scene.

\_\_\_\_\_ Impound protective clothing and equipment directly involved in the incident. This may include SCBA and any small tools.

\_\_\_\_\_ Documentation: The immediate supervisor of the victim and all others involved in the incident shall be instructed to document in writing all observations and information immediately. All reports shall be completed and submitted to the Fire Chief by the end of the next scheduled work day. Persons instructed to prepare reports:

Name \_\_\_\_\_ Name \_\_\_\_\_

Name \_\_\_\_\_ Name \_\_\_\_\_

Name \_\_\_\_\_ Name \_\_\_\_\_

### At Hospital

Hospital \_\_\_\_\_ Physician \_\_\_\_\_

\_\_\_\_\_ Continue to impound clothing and equipment as removed.

\_\_\_\_\_ Blood draw for specific level of Carbon Monoxide as expressed as an exact percent.

\_\_\_\_\_ Autopsy, if needed.

### Notification

\_\_\_\_\_ Fire Chief By Whom \_\_\_\_\_ Time \_\_\_\_\_

\_\_\_\_\_ Assistant Chief By Whom \_\_\_\_\_, Time \_\_\_\_\_

\_\_\_\_\_ District Chaplain By Whom \_\_\_\_\_, Time \_\_\_\_\_

_____ Union President	By Whom _____,	Time _____
_____ Volunteer President	By Whom _____,	Time _____
_____ Next-of-kin	By Whom _____,	Time _____
_____ Notify and arrange for Critical Incident Stress Debriefing	By Whom _____,	Time _____
_____ State Fire Marshall's Office	By Whom _____,	Time _____
_____ Workers Compensation Board/OSHA	By Whom _____,	Time _____
_____ Public Safety Officers Benefit Program	By Whom _____,	Time _____
_____ Department Agent of Record	By Whom _____,	Time _____
_____ Supplementary Insurance carriers	By Whom _____,	Time _____

The following is a sample for ceremonial procedures, there are many other funeral procedures that a fire district may choose to follow. An excellent resource available through Fire Engineering is the booklet, "Final Farewell to a Fallen Firefighter." For information on this and other funeral procedure resources, contact the OFDDA office.



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# **Guidelines for Ceremonial Procedures**

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## **Introduction**

The purpose of this paper is to set forth responsibility and procedures in the event of line-of-duty death or death of a member or retiree of the Fire Department.

## **General Responsibility**

This department accepts the responsibility to show proper reverence and provide proper representational services for its deceased Firefighters and Employees. Each employee should in turn realize and accept this responsibility and attend whenever possible, Funeral Services of deceased Firefighters and co-workers as well as other ceremonial occasions.

## **Responsibilities of Notification**

### **Line of Duty Death**

Upon the death of a member in the line of duty, the Officer in Charge shall notify the Fire Chief or in his/her absence, the Acting Chief as well as the Assistant Chief, Volunteer Firefighters President, Union President and District Chaplain.

The Chief and a Designated Representative, the Department Chaplain if available, shall notify the next of kin as soon as possible. No radio traffic should be aired concerning the death.

The Chief or a designated Representative should officially notify the District Board of Directors and other appropriate officials.

If possible and the scene allows, the Officer in Charge should relieve the immediate co-workers (those in immediate proximity or those responsible for attempted rescue and/or removal of the deceased) from the scene to return to station.

Defusing by the Chaplain or qualified person (OCRT member) to be done as soon as possible on the same shift. This to be followed by general information of how notification is being done, and what is to be expected in the next few hours.

Public Information Officer should be notified or a person designated to handle any public news as soon as possible so that factual information is disseminated promptly.

Within 72 hours of the death there should be a debriefing.

The Chief shall designate an Officer-in-Charge who shall be responsible for the department's involvement in the funeral procedures. The department's Chaplain could do this in conjunction with the Duty Officer for days, which an activity is scheduled.

It is suggested that upon receipt of a notice of a member killed in the line of duty and following the proper notification of the next of kin, that the station flags be lowered to half mast and to fly at half mast for seven days after the funeral. (In some jurisdictions the city's flags will also fly at half-mast.)

### **Death Other Than in the Line of Duty**

When any member of the department learns of the death of an active or retired member of the Fire Board notification should be given to the Chief and the Chaplain.

As soon as possible, the Chief as well as the Chaplain, should make a personal visit to the immediate family offering any service the department can render.

The Chief shall designate an Officer-in-Charge who shall be responsible for the Department's involvement in the funeral procedures.

It is suggested that the station flags fly at half-mast until the day after the funeral.

When the Scene Involves the Death of a Relative of a Member of the Department.

When on scene it is discovered that a death (or trauma) involves a relative of a department member the Officer-in-Charge should designate a department member, the Chaplain if available, to take another department member and make notification to the member and family.

The department should offer any help or services that may be applicable.

### **General Observations**

In any case (A, B, or C above) the person notifying next of kin should stay with the family member until support people can gather. Support people may be other family members, church members or fellow firefighters or their significant others.

Following initial notification it is often very helpful to make the first telephone contact of relatives. You should be prepared to explain the circumstances of the death and answer any questions. The general circumstances of death should be explained, however it is very important to not infer or draw any conclusions as to cause of death. Explain that is and will be under investigation for some time; for further guidance on your statements contact the Chief or his/her designee.

Meals may be provided by District members or families; this should be coordinated with the Chaplain or his/her designee.

It may be that the Chaplain or another staff member can arrange some of this.

## **Responsibilities of the Officer-in-Charge**

The Officer-in-Charge shall contact the family of the deceased member and, in coordination with the funeral director, establish the family's desires as to Fire District participation in the funeral. He/she shall assist the family in any way. He/she shall offer the fire district's services for the following situations:

- A formal funeral at home, funeral home, church or cemetery, which may involve the use of an engine, active pallbearers, honorary pallbearers and Funeral Detail, color guard (if available) and bugler (if available.) A Color Guard and Bugler shall be reserved for those deaths, which occur in the line-of-duty.
- A semi-formal funeral at home, funeral home, church or cemetery, which may involve active pallbearers, honorary pallbearers, honor guard and Funeral Detail.
- A non-formal funeral at home, funeral home, church or cemetery, which may not have fire department involvement, other than members attending in a passive roll either in the viewing and/or funeral service.
- A private funeral at home, funeral home, church or cemetery; respecting the family's wishes to have no outside participation at the funeral.

Note: At all times the desires of the family shall be paramount and shall be given the fullest respect.

Having established the wishes of the family, the Officer-in-Charge shall carry out any or all of the following in order to realize these wishes. The OIC shall continually be in communication with the Funeral Director as he/she arranges for the Fire Department's participation.

- Normal Funeral Arrangements
- Arrange for an Honor Guard to stand duty during the viewing, minimum of four.
- Arrange for Active Pallbearers; six (6) plus an officer.
- Arrange for necessary equipment (clean, wash, and wax as needed.)
- Arrange for Honorary Pallbearers (Family, Company Officers, Retirees, etc.)
- Arrange for Funeral Detail (All uniformed members in attendance.)
- Arrange for Bugler (if one is available.)
- Arrange for Color Guard, (practice ahead of time.)
- Obtain American flag for casket. (Funeral Director secures flag for veterans only.)
- Provide members of the Fire Department with the information necessary to carry out their roles in the funeral.
- Survey the area of the services and make provision for placement of all attending units and provide information and/or map as necessary.
- Designate an area of assembly for all attending (preferably in a building or nearby room.) Be sure to include all areas being used (Funeral home or church and cemetery, etc.)
- If black tape is to be used for a horizontal black band for badges of all uniformed personnel have tape and small round tip scissors that can be available for use in the assembly area.
- White gloves should be available for honor guard, color guard and pallbearers.

- The OIC or his/her delegated representative will coordinate all commands during the movement of the casket and personnel.
- Special Arrangement for Formal Funeral
- A fire department engine designated by the Chief will be appropriately prepared with flowers and black bunting and stripped of hose for use to transport the casket.

Note: In case of multiple joint funerals, vans or station wagons can be substituted for engines.

- Arrange for the proper placement of all vehicles that will participate in the funeral procession.
- A map of the areas involved should be prepared to expedite the proceedings and assist members, out-of-town guests and others that may need it.

Assess that which may be needed but consider the following:

- Location of Fire Department.
  - Location of funeral Home, church and cemetery as needed.
  - Location of assembly areas.
  - Location of parking areas.
  - Location of vehicles for funeral procession.
  - Route of procession.
  - Location of grave in cemetery.
  - Any other information deemed necessary.
- On a map or a separate sheet provide diagrams of the vehicle placement at each location and the route of movement for personnel.
- The OIC or a designated representative will coordinate all commands during the movement of the casket and personnel.
- Proper arrangements should be made ahead of time with the police department for handling traffic and parking. Consider police escort to the cemetery also.
  - Photographic coverage should be considered and tactfully implemented if used.
  - Establish guidelines for the media and press considering placement and interviews.

Note: Food service may be needed between morning and afternoon funeral service or following a service. Consider help from the district's auxiliary or support groups such as churches, lodges, etc.

## **Protocol**

The Governor's Fire Policy Counsel has made the following recommendations for uniforms.

[http://www.ofca.org/Assets/dept\\_1/PM/pdf/Uniform%20Guidelines%20Final.pdf](http://www.ofca.org/Assets/dept_1/PM/pdf/Uniform%20Guidelines%20Final.pdf)

All off-duty members and those on-duty members, upon proper relief from normal duty, should make every effort to honor their fellow members by attending the funeral services.

All members of the fire department shall acquaint themselves, with the prescribed courtesies of the fire department's funeral procedures as outlined in this guide.

Honor Guard:

- At least four (4) honor guards are required.
- One member of the Honor Guard shall be designated as the Officer of the Guard (OG). He/she shall be responsible for obtaining necessary equipment (white gloves, black badge tape, etc.) and for the scheduling of the Honor Guard members.
- Two Honor Guards, one for the head and one for the foot of the casket, shall be scheduled at ten (10) minute intervals.
- Uniforms shall be dress uniforms with tie and white gloves.
- Honor Guard shall stand at attention at their assigned positions for the duration of their ten (10) minute tour of duty.
- Honor Guard may be used during viewing and prior to the service as custom dictates.

Honorary Pallbearers:

- Persons designated as Honorary Pallbearers, usually retirees or members of the family of the deceased, shall at all times move ahead of the casket as it is moved.
- The Honorary Pallbearers shall sit on the designated side of the church or funeral home during the service.

Dress for Honorary Pallbearers:

- Retirees will normally wear civilian clothes.
- Active members shall wear the district's standard dress uniform.

Active Pallbearers:

- The Active Pallbearer Detail shall consist of six (6) pallbearers and one officer.
- The Officer of the detail shall contact the OIC and/or funeral director and chaplain for detailed instructions.
- The pallbearers will not salute while acting in this capacity.
- The flag shall be placed over the casket with the blue field over the deceased's left shoulder. Note: Any time the casket is moved in public, funeral home to coach, coach to church, church to coach, or coach to grave site the pallbearers carry it.
- The pallbearers will sit in the designated place at the services.
- The pallbearer detail will be responsible to know how to fold the U.S. flag properly and do so wherever it is required to do so in the ceremony and make the proper presentation to the commanding officer and in turn to the surviving spouse.
- Upon orders from the officer the detail shall take their place with the rest of the funeral detail.

Funeral Detail:

- All members of the department, not otherwise detailed, will act as the Funeral Detail, in dress uniform, no gloves required.
- The Funeral Detail will arrive as a group from the staging area prior to the arrival of the funeral coach at the church trying to arrive just a bit before the funeral coach.

- For formal and semi-formal funerals the Funeral Detail will take a position in front of the Church in two (2) facing ranks with city officials closest to entry followed by Fire Department officers in order of rank, honorary pallbearers and funeral detail.
- As the Active Pallbearers move the casket from the coach the Funeral Detail will be called to attention by the OIC. If the casket is draped with the flag the OIC will order a hand salute as the casket passes. The command shall be “Present arms!” The command to end the salute shall be “Order arms!”
- After the casket passes the OIC will order, “At ease!” and the Funeral Detail will file into the church according to rank and sit in the designated area of the church. Head covering, if worn, is removed upon entering a Christian church. Note: Items 4 and 5 above are repeated upon leaving the place of services and at the time of graveside or committal services.
- The Funeral Detail should ride as a group in cars or vans from funeral home to church, church to gravesite, etc.
- After the casket is placed over the grave the Funeral Detail forms ranks in front of the grave, highest rank on the right.
- If taps are sounded, uniformed members should execute hand salute on order of the OIC.
- At any time the officiating pastor, rabbi or chaplain says, “Let us Pray” all personnel will bow.
- All personnel, except active pallbearers while holding the flag, will follow the lead of the officiating clergy as to when to cover or uncover their head.

### **Equipment Guidelines**

The following list of equipment should either be on hand or a record attached to these guidelines as to where they can be obtained.

- Color guard standards
- Casket flag
- Black plastic tape or elastic bands for badges
- Round tipped scissors
- 13 pair of white gloves
- Black bunting (for stations and fire truck)

# Budgeting

## Introduction

Most special districts in Oregon are required to prepare and adopt an annual budget. The budget is often the most important task that districts are required to complete. The budget sets the priorities of the district, forces the district board members to make choices and evaluate alternatives, and gives the public input on where public funds should be spent. It is a time consuming and often frustrating process but it is absolutely necessary.

The Department of Revenue supervises the local budget process and has responsibility for administering and interpreting budget law. The Revenue Department is an excellent resource for questions regarding local budget law. All of the required forms can be obtained from the Revenue Department as well as [The Basic Budgeting Book](#) and accompanying videotape, which explain the budget process step by step.

By June 30 of each year, the authority of local governments to spend money expires unless a new budget has been adopted for the following fiscal year. Districts that have property taxing authority cannot levy taxes unless their budgets have been adopted.

Budget law in Oregon is structured to accomplish two tasks, to establish standard procedures for preparing and administering the budget and to encourage citizen involvement.

Much of the information in this chapter was taken directly from Oregon Department of Revenue Property Tax Division, [Local Budgeting Manual](#) – Revised February, 2002.

## What is Local Budget Law?

Oregon's Local Budget Law has several purposes:

- It establishes standard procedures for preparing, presenting and administering the budgets of Oregon's local governments.
- It offers a way of outlining the programs and services provided by local governments and the fiscal policy used to carry out programs and services.
- It provides a method of estimating revenues, expenditures and proposed taxes.
- It encourages citizen involvement in the preparation of the budget before its formal adoption.
- It provides for the control of revenues and expenditures for the promotion of efficiency and economy in the expenditure of public funds.
- It enables the public to be apprised of the financial policies and administration of the governments.

Budgeting in Oregon is a joint effort between the people affected by the budget and the appointed and elected officials responsible for providing the services.

Citizen involvement in the budget process varies. It is up to each local government to prepare a budget that clearly outlines its fiscal policies and is satisfactory to its patrons. If a budget is clear and concise, taxpayers better understand how their tax dollars are spent.

Oregon's Local Budget Law is set out in Oregon Revised Statutes [294.305 – 294.565](#).

## **What is a Budget?**

A budget is a financial plan containing estimates of revenues and expenditures for a single fiscal year. Each local government operates within a fiscal year beginning on July 1 and ending the following June 30.

Budgeting allows a local government to evaluate its needs in light of the revenue sources available to meet those needs. A complete budget justifies the levy of ad valorem (according to value) property taxes.

Questions?

Call the Oregon Department of Revenue (DOR) at (503) 378-4988.

The Oregon Department of Revenue's website is an excellent resource and contains most of the information referred to in this document ([www.dor.state.or.us](http://www.dor.state.or.us)) and particularly the page relating to local budget law ([http://www.oregon.gov/DOR/PTD/IC\\_504\\_620.shtml](http://www.oregon.gov/DOR/PTD/IC_504_620.shtml)).

## **The Budget Process: Who Is Involved**

Many state agencies and organizations are involved in the budget process. This section explains the duties and responsibilities of each agency or organization.

The Oregon Department of Revenue and Local Budgeting

The authority of the Department of Revenue in its oversight role in the budgeting process of local government is found in [ORS 294.490 and ORS 294.495](#).

ORS 294.490 gives the department authority to ensure compliance with Local Budget Law and all other laws relating to making property tax levies by municipal corporations. The same statute prohibits the department from interfering with the fiscal policy of any municipal corporation.

ORS 294.495 gives the department sole authority to interpret and administer Local Budget Law and to adopt rules to ensure compliance.

## **Workshops and Training**

The Department of Revenue conducts workshops and training sessions throughout the state to help local officials understand and follow Local Budget Law. Attendance is



strongly recommended for all budget officers, budgeting personnel, governing bodies and members of budget committees.

## **Levy Checks**

The Department of Revenue may review the budgets submitted by municipal corporations and check property tax levy computations. The assessor checks the certified levies to verify that they are proper and legal.

## **Budget Review Letters**

The Department of Revenue may review and write reports on budgets to help municipal corporations follow Local Budget Law. The reports point out irregularities that should be corrected in future budgets. They also allow the staff to acknowledge that a budget is in compliance.

## **Forms**

[ORS 294.495](#) gives the Department of Revenue authority to prescribe forms to carry out [ORS 294.305 to ORS 294.565](#) (Local Budget Law) or any other law on making tax levies. The department has developed budget and publication forms that comply with the law. Municipal corporations must use these forms or follow exactly the format on forms they produce.

Each year, a packet of current budget and tax notification forms is sent to the budget officer of every local government on the Department of Revenue mailing list. It is important that local officials use the current budget forms. Levy certification forms are revised annually. Outdated forms should be destroyed. The local government should make sure that the person responsible for preparing the budget receives all the current forms. Each local government is responsible for keeping the Department of Revenue updated on name and address changes.

The Notice of Property Tax and Certification of Intent to Impose a Tax, Fee, Assessment or Charge on Property, ([Form LB-50](#) and Notice of Property Tax and Certification of Intent to Impose a Tax, Fee, Assessment or Charge on Property for Education Districts [ED-50](#)), Provided by the department must be used by all local governments.

### Local Budget Forms and Instructions

The forms listed are replicas of the Oregon Department of Revenue's official forms. They may be printed, filled out, and filed with the Oregon Department of Revenue. You must have [Adobe Acrobat Reader](#) to download the forms to your computer.

NOTE: All of the forms can be downloaded as blank forms, however some forms are also available in a fillable format and can be completed online (sorry, can't file them online). The fillable forms are noted as [Fillable Forms] in the index below. Use the Tab key or the cursor to navigate the "fillable" form once it is open. Please review the [Fill-in Forms Instructions](#) for detailed instructions.

Your Web browser may store a temporary copy of fillable PDF forms. If you are using a public or shared computer, click the "Clear Form" button at the top of the form after printing. This will prevent others from viewing your personal information.

2006-07 Tax Year

Form LB-50, Notice of Property Tax and Certification of Intent to Impose a Tax, Fee, Assessment or Charge on Property, 150-504-050 (Rev. 1-06)

[\[Fillable form and instructions\]](#) [\[Excel file\]](#)

Forms and Instructions for Municipal Corporations, 150-504-073 (Rev. 1-06)

[\[Fillable form and instructions\]](#)

You can find the following forms at the fillable forms and instructions link above:

Notice of Budget Committee Meeting, 150-504-073-1

Form LB-1, Notice of Budget Hearing, 150-504-073-2

[\[Excel file\]](#)

Form LB-2, Funds not Requiring a Property Tax to be Levied, 150-504-073-3

[\[Excel file\]](#)

Form LB-3, Funds Requiring a Property Tax to be Levied, 150-504-073-4

[\[Excel file\]](#)

Form LB-4, Summary of Organization Unit/Program by Fund, 150-504-073-5

[\[Excel file\]](#)

Second Notice of Budget Hearing, 150-504-073-9

Notice of Supplemental Budget Hearing, 150-504-073-8

Form LB-50, Notice of Property Tax and Certification of Intent to Impose a Tax, Fee, Assessment or Charge on Property, 150-504-073-7

[\[Excel file\]](#)

Resolution, 150-504-073-6

Detail Sheets:

Form LB-10, Special Fund Resources and Requirements, 150-504-010 (Rev. 1-06)

[\[Fillable Form\]](#) [\[Excel file\]](#)

Form LB-11, Reserve Fund Resources and Requirements, 150-504-011 (Rev. 1-06)

[\[Fillable Form\]](#) [\[Excel file\]](#)

Form LB-20, Resources, 150-504-020 (Rev. 1-06)

[\[Fillable Form\]](#) [\[Excel file\]](#)

Form LB-30, Expenditure Summary, 150-504-030 (Rev. 7-04)  
[\[Fillable Form\]](#) [\[Excel file\]](#)

Form LB-31, Detailed Expenditures, 150-504-031 (Rev. 9-94)  
[\[Fillable Form\]](#) [\[Excel file\]](#)

Form LB-35, Bonded Debt Resources and Requirements, 150-504-035 (Rev. 1-06)  
[\[Fillable Form\]](#) [\[Excel file\]](#)

Form LB-36, Debt Service Fund Supplement, 150-504-036 (Rev. 9-94)  
[\[Fillable Form\]](#) [\[Excel file\]](#)

Form LB-40, Personal Services Summary, 150-504-040 (Rev. 9-94)  
[\[Fillable Form\]](#) [\[Excel file\]](#)

## **Department of Revenue Oversight**

The Department of Revenue is responsible for interpreting and administering Local Budget Law and laws on making tax levies. Any local government with questions about these laws and their requirements should contact the Department of Revenue for help. These laws are complex and ever changing. It is important that local governments stay informed of law changes and requirements.

## **Secretary of State Audits Division**

All Oregon local governments are subject to the Municipal Audit Law, [ORS 297.405 to 297.555](#). The law requires an annual audit of the financial statements of counties and school districts. All other local government must also be audited unless they are exempted from audit.

A local government, other than a county or school district, (1) with combined revenues and expenditures of less than \$150,000, and (2) whose chief fiscal officer is bonded for the total amount of money received during the year may file unaudited financial statements with the Secretary of State within 90 days after its fiscal or calendar year ends.

Forms used to file unaudited financial statements are available at no charge from the Audits Division of the Secretary of State.

A local government, other than a county or school district, (1) with combined revenues and expenditures of more than \$150,000 but less than \$500,000, and (2) whose financial statements have been reviewed by a licensed municipal auditor may file “review reports” with the Secretary of State within 180 days after its fiscal or calendar year ends.

A local government, including counties and school districts, that must have its financial statements reviewed or audited must contract with an accountant licensed as a municipal auditor by the Oregon Board of Accountancy to complete the review or audit. The Board

of Accountancy maintains a list of licensed municipal auditors. Write to the Board of Accountancy for a copy of this listing. Its address is 3218 Pringle Road SE, Suite 110, Salem, OR 97302-6307.

Audits and reviews must be made as directed by administrative rules adopted by the Secretary of State. The rules referring to reviews are known as “Minimum Standards for Reviews of Oregon Municipal Corporations.” These rules prescribe the financial statements that must be included in audit or review reports, the minimum procedures that must be followed, and the standards that must be followed in an audit or review. Copies of these rules may be obtained from the Secretary of State, Division of Audits, 255 Capitol Street NE, Suite 500, Salem, OR 97310-0210.

Copies of all financial statements, whether unaudited, reviewed, or audited, must be filed with the Secretary of State. They are public records available for inspection by anyone who is interested. Copies of these reports may be obtained for a small fee.

A filing fee must accompany all reports filed with the Secretary of State. [ORS 297.485](#) sets the amount of the fee. It is determined by the amount of expenditures of the municipal corporation. The Division of Audits uses the filing fee to administer the Municipal Audit Law. The Division of Audits offers technical help in accounting and financial reporting. Address written inquiries to the Secretary of State, Division of Audits, 255 Capitol Street NE, Suite 500, Salem, OR 97310.

### **The Budget Process: An Outline**

Budgeting is not simply something a local government does once a year. It is a continuous process taking 12 months to complete a cycle. The budgeting process has five parts. The budget is: (1) prepared, (2) approved, (3) adopted, (4) executed, and (5) reviewed by audit. The budget must be prepared far enough in advance, so that it can be adopted before June 30. After adopting the budget, the governing body makes the necessary appropriations and certifies the tax levy to the county assessor.

Local governments that are not subject to Local Budget Law may be subject to other statutory and constitutional limits, but they may still follow the local budget process in preparing their budgets.

Oregon's Local Budget Law has two important objectives:

1. It establishes standard procedures for preparing, presenting, and administering the budget and;
2. It requires that citizen involvement be provided for in preparing the budget and that public exposure of the budget occur before its formal adoption.

Budgeting in Oregon is a joint effort between the people affected by the budget and the appointed and elected officials responsible for providing the services. Elected or appointed officials are responsible for ensuring that the annual budget is correct. The Department of Revenue checks to see that the budget is prepared according to law.

Citizens involved with budget preparation have the opportunity to comment on the programs they want and need.

To give the public ample opportunity to participate, Local Budget Law requires that a budget officer be appointed and a budget committee formed. The budget officer draws together necessary information and prepares the first draft of the proposed budget. The budget committee reviews and may revise the proposed budget before it is formally approved. Notices are published, budgets are made available for review, and public hearings are held. These requirements encourage public participation and also give public exposure to budgeted programs and fiscal policies before the governing body of a municipal corporation adopts the budget.

Citizen involvement in the budget cycle varies from one community to another. It is up to each local government to prepare a budget that clearly outlines its fiscal policies and is satisfactory to the patrons of the district. If a budget is clear and concise, taxpayers have a better understanding of the purposes for which their tax dollars are spent. Local governments may also find citizen input informative and rewarding.

## **10 Steps of the Budget Process**

1. Budget Officer Appointed ([ORS 294.331](#))  
Each local government must have a budget officer, either appointed by the governing body or designated by the local government's charter. The budget officer is under the supervision of either the executive officer or the governing body.
2. Proposed Budget Prepared ([ORS 294.331](#))  
The budget officer is responsible for preparing or supervising preparation of the proposed budget to present to the budget committee.
3. Budget Officer Publishes Notice ([ORS 294.401](#))  
After the proposed budget is prepared, the budget officer publishes a "Notice of Budget Committee Meeting." The notice must state: a) the purpose, time and place of the meeting(s) to which the notice relates and the place where the budget document is available; b) that the meeting is a public meeting where deliberations of the budget committee will take place and; c) if the meeting describe in the notice is a meeting at which the budget committee will receive questions and comments from the public. If the budget officer anticipates that more than one meeting will be needed, a single notice may contain information regarding all budget committee meetings. If the notice is published in a newspaper of general circulation, it must be published at least twice, five to 30 days before the scheduled budget committee meeting date. The publications must be separated by at least five days. If notice is hand delivered or mailed, only one notice is required not later than 10 days prior to the meeting.
4. Budget Committee Meets ([ORS 294.401](#))  
The budget officer may make the proposed budget available to the budget committee at any time before the meeting. Alternatively, the budget officer may choose to make the budget available at the meeting. At the time the budget is made available to the committee, a copy must be filed in the office

of the governing body of the district. The budget becomes a public record at this point and must be made available to anyone who is interested in viewing it. The budget message is delivered at the first budget meeting for budget deliberations. The budget message explains the proposed budget and any significant changes in the local government's financial position. After the initial meeting, the budget committee may meet as many times as needed to revise and complete the budget. After the budget is approved, the budget committee is allowed to meet for training and advisory reviews throughout the year. All meetings are subject to Oregon's Public Meetings Law ([ORS Chapter 192](#)).

5. Budget Committee Approves Budget ([ORS 294.406](#))  
When the budget committee is satisfied with the budget, including additions to or deletions from the one proposed by the budget officer, it is approved. The budget approved by the committee specifies the amount of ad valorem property tax amount or rate for all funds.
6. Budget Summary and Notice of Budget Hearing Published ([ORS 294.421](#))  
After the budget is approved, a budget hearing must be held by the governing body of the district. The governing body must publish a "Financial Summary and Notice of Budget Hearing" five to 30 days before the scheduled hearing. This information must either appear in a newspaper of general circulation, be mailed or hand delivered. If no newspaper is published in the district and the total estimated expenditures in the approved budget do not exceed \$50,000, the summary and hearing notice requirement may be met by an of the methods described in [ORS 294.311\(32\)](#) or by posting the notices in three conspicuous places in the municipal corporation for at least 20 days prior to the date of the meeting and publish the notice required in [ORS 294.430\(4\)](#). If the district posts the summary and notice, a second notice of budget hearing must be published in a newspaper of general circulation, mailed or hand delivered five to 30 days before the scheduled hearing ([ORS 294.421](#)). Please reference the Publication Requirements outlined further on in this chapter for more details.
7. Budget Hearing Held ([ORS 294.430](#))  
The governing body must hold the budget hearing on the date specified in the public notices. The purpose of the hearing is to listen to citizens' testimony on the budget approved by the budget committee. Additional hearings may be held. All hearings are open to the public.
8. Budget Adopted, Appropriations Made, Tax Levy Declared ([ORS 294.435](#))  
By law, the governing body may make changes in the approved budget before it is adopted.

However, there are limitations: Taxes may not be increased over the amount approved by the budget committee. Estimated expenditures in a fund cannot be increased by more than \$5,000 or 10 percent, whichever is greater. Neither of the two limitations can be exceeded without first publishing a revised Financial Summary and holding another budget hearing.

After the budget hearing, and after considering relevant testimony, the governing body adopts the budget. It should not be formally adopted until the latter part of June so last-minute revisions to revenue or expenditure estimates

can be incorporated.

The governing body must prepare a resolution or ordinance that formally adopts the budget, makes appropriations, and levies and categorizes property tax amounts or rates. The budget then becomes the basis for making appropriations and for certifying the tax amounts or rates. The resolutions or ordinances adopting the budget and making appropriations must be adopted no later than June 30.

9. Taxes Certified ([ORS 294.555](#))  
The next step in the budget cycle is to certify the budget and certify any necessary property tax levy to the county assessor.

The budget documents submitted to the assessor's office include the following:

Two copies of the tax certification form (Form LB/ED-50) which contains the statement of the budget committee approved tax amounts and/or tax rates, and

Two copies of the resolution statements that adopt the budget, make appropriations, itemize and categorize and certify the taxes.

Two copies of any successful ballot measures for local option levies or permanent rates.

10. Post-Adoption  
After the previous nine steps have been completed, changes to the budget are restricted by statute.

[ORS 294.326](#) provides for authorizing appropriations as an exception to the budget process.

[ORS 294.450](#) governs the transfer of appropriations within a fund or from the general fund to another fund.

[ORS 294.455](#) provides for the expenditure of funds to repair or replace property that has been damaged or destroyed. It also allows funds to be expended because of civil disturbance or natural disaster.

[ORS 294.460](#) outlines the procedure for interfund loans.

[ORS 294.480](#) specifies the conditions under which a municipal corporation must adopt a supplemental budget.

[ORS 294.483](#) provides exceptions for certain debt service expenditures.

## **Publication Requirements**

Publishing budget information is one of the most important steps in the budget process. The budget officer must be familiar with the statutes ([ORS 294.401, 294.416, 294.418 and 294.421](#)) governing publication of the meeting notices and the budget summary. This section explains the statutory publication requirements.

### **Notice of Budget Committee Meeting**

The budget officer must publish a “Notice of Budget Committee Meeting” by one of the following methods:

- Publication in a newspaper of general circulation within the boundaries of local government. If the notice is published in a newspaper of general circulation, it must be published twice, five to 30 days before the committee meeting. The publications must be separated by at least five days.
- Mailing through the U.S. Postal Service by first class mail to each street address within the boundaries of the district. If the notice is mailed, only one notice is required not later than 10 days before the meeting ([ORS 294.401\(5\)](#)).
- Hand delivery to each street address within the boundaries of the district. If the notice is hand delivered, only one notice is required not later than 10 days before the meeting ([ORS 294.401\(5\)](#)).

### **Notice of Budget Hearing and Budget Summary**

Each local government must publish a summary of the budget approved by the budget committee. Along with the approved budget, the summary must contain the current year's budget summary and the preceding year's actual expenditures and resources ([ORS 294.416](#)).

The local government must also prepare a financial summary which states the estimated budget resources and expenditures, a statement of outstanding indebtedness, indebtedness authorized but not yet incurred, and an estimate of ad valorem property taxes, stated in dollars and cents and also stated as an estimated tax rate per thousand dollars of assessed value ([ORS 294.386](#)).

At the same time the budget summary is published, a notice of the governing body's budget hearing must be published. The hearing notice must give the place and time of the hearing ([ORS 294.416](#)). The budget summary and notice are published not less than five days or more than 30 days before the budget hearing.

There is an exception to the publication requirements just described. If no newspaper of general circulation is published within the boundaries of the local government and the budget expenditures for the coming year do not exceed \$50,000, the notice may be posted. Post the notice in three conspicuous places within the municipal corporation at least 20 days before the hearing. These are places where many people are likely to go – such as the post office or grocery store.

When a budget summary and notice are posted, the local government is required to mail or hand deliver the following information: 1.) the date, time and place of the budget



hearing, 2.) the place where the budget document can be inspected or obtained by the public during regular office hours 3.) the total approved budget requirements and tax amounts, 4.) any change in the tax amount from the prior year, and 5) the place where copies of the complete budget or parts thereof may be obtained. This notification is done five to 30 days before the date of the hearing.

The Department of Revenue provides forms and instructions each year for publishing the budget and financial summary and notice of budget hearing. Local Budget Law and Notice of Property Tax and Publication Forms and Instructions contain all the required publication forms.

### **Exception – Counties with Tax Supervising and Conservation Commission**

A local government with a population over 200,000 in a county with a tax supervising and conservation commission (TSCC) (for example see [Multnomah County's Tax Supervising and Conservation Commission](#)), or a local government with 200,000 or fewer inhabitants that requests that the TSCC conduct the public hearing outlined in [ORS 294.430](#), does not publish its budget summary and hearing notice as described above. Instead, the local government submits its committee-approved budget to the TSCC 30 days before the public hearing that will be held by TSCC ([ORS 294.421\(6\)](#)).

The local government is required by one of the publication methods the following information: 1) the date, time and place of the TSCC budget hearing, 2) the place where the budget document can be inspected or obtained by the public during regular office hours, 3) the total approved budget requirements and tax amounts, 4) any change in tax amount from the prior year, and 5) the place where copies of the complete budget or parts thereof may be obtained. This notification is done five to 30 days before the date of the hearing.

### **How to Count Days for Publication**

Local budget law sets the number of days that a notice must be published before a budget hearing.

[ORS 193.060](#) says, “The time for the publication of legal notices shall be computed so as to exclude the first day of publication and to include the day on which the act or event of which notice is given is to happen, or which completes the full period required for publication.”

For example, if your notice appeared in the paper on May 15 and your meeting was on May 25, you would have given 10 days notice. Count May 25, but not May 15.

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## **The Publication Forms**

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The Department of Revenue supplies forms to be used to publish the budget committee meeting and to present the budget summary and notice of budget hearing. These forms

are “Notice of Budget Committee Meeting,” LB-1, LB-2, LB-3 and LB-4. Urban renewal districts use forms UR-1 and UR-2. Education districts use forms ED-1, ED-2 and ED-3. The publication forms and instructions are included in the Local Budget Law and Notice of Property Tax Forms and Instructions booklets.

### **Budget Committee Meeting**

The form “Notice of Budget Committee Meeting” has two formats. The format option you use depends on the number of committee meetings that are planned and when public input will be received. Option A is used when the budget committee will receive the budget message and take public comment at the same meeting. Option B is used when public comment will be taken after the first meeting.

### **Budget Hearing**

Form LB-1, UR-1 or ED-1 notifies the public of the budget hearing date and time and where to obtain a copy of the budget. The local government should use a street address, rather than a post office box, so a copy of the budget can be picked up. Include the street address where the hearing will be held.

The Financial Summary has two columns, one for the adopted budget for the current year and one for the budget committee-approved amounts for the coming fiscal year. The two columns allow district patrons to compare the current financial plan and the proposed financial plan for the coming fiscal year.

The anticipated requirements and revenues from all funds are summarized on Form LB-1, UR-1 or ED-1. The totals of the Financial Summary must equal the sum of the requirements and revenues on the LB-2, UR-2 or ED-2 and LB-3 or ED-3.

The total amount of property taxes needed by all funds to balance is shown along with the amount of taxes anticipated not to be received. The amount of taxes not to be received is broken down into two parts. The first part shows the amount of taxes the district anticipates to lose because of the constitutional tax limitations. The second part shows the amount of taxes that will not be received because of the 3% discount given to taxpayers for paying on time ([ORS 311.505\(3\)](#)), and the taxes not received because some taxpayers do not pay taxes in the year they are billed.

Local Budget Law allows local governments to include as part of their taxes certified to the assessor and allowance for the discount and taxes that will not be collected ([ORS 294.381\(3\)\(a\)](#)). In this way, local governments can more realistically plan for the actual revenue that will be received from their property taxes. This allowance does not give the local government any more taxing authority.

The amount of taxes anticipated not to be received does not show in the budget documents itself. The only place this amount is shown is on the publication forms. The budget document shows the amount of tax needed to balance the budget.

The taxes needed to balance the budget and the taxes anticipated not to be received cannot exceed the local government's taxing authority. This is the total amount of taxes that the local government can certify to the county assessor. Remember, these taxes should include any taxes for which the local government is planning to seek voter approval.

All local governments must disclose the status of indebtedness by showing the debt outstanding or debt authorized, but not yet incurred. The lower portion of Form LB-1, UR-1 or ED-1 provides for this disclosure. If a local government has no debt to disclose, this portion of the form is not required to be published ([ORS 294.386](#)). [Form LB-1](#), and [UR-1](#) are amended only when republished.

Form LB-2, UR-2, or ED-2 is used to summarize individual budget funds as approved by the budget committee that do not require property taxes to balance. Requirements must balance with the resources. Only the completed portion of the form must be published.

Form [LB-3](#) or ED-3 is used to summarize individual budget funds as approved by the budget committee that require property taxes to balance. Requirements must balance with the resources. Only the completed portion of the form must be published.

This form shows the property taxes required and the taxes anticipated not to be received by the individual fund. The taxes anticipated not to be received is broken down into two parts as is done on the Form LB-1 or ED-1. The amount of taxes lost because of the constitutional limit may vary among funds. The percentage of taxes not to be collected because of the discount and failure to pay should be the same for each fund.

The total resources and requirements of each fund shown on the [LB-2](#), UR-2, or ED-2 and LB-3 or ED-3 are added together and summarized on the LB-1, UR-1, or ED-1. For this reason, it is suggested that these forms be completed first.

[Form LB-4](#) is a more detailed publication of organizational units or programs within a fund. This form will only be used by local governments that have departments or programs within a fund, such as a city with police, fire, and administrative departments within the general fund. This form follows the same format as the form LB-2, except there are no resources. Each organizational unit or program is summarized by category and totaled in the corresponding fund on the LB-2 or LB-3 forms.

The Local Budget Law and Notice of Property Tax Forms and Instructions booklets give detailed instructions for completing the forms and samples to use as reference. There are separate booklets for municipal corporations, urban renewal districts, and education districts.

### **Narrative Publication-An Alternative**

When publishing the budget summary, Local Budget Law permits the use of a narrative publication ([ORS 294.418](#)). The purpose is to give meaning to the budget figures while highlighting significant features in the budget.

At the minimum, the narrative publication must list the total requirements for personal services, materials and services, capital outlay, special payments, debt service, transfers, and operating contingencies for the budget. In addition, the publication must include a brief narrative description of the major activities or major programs of the municipal corporation and the significant changes from the current year. Personnel requirement changes for each major activity or major program must be provided. The narrative must state (1) the major resources for financing each major activity or program and the significant changes from the current year, or (2) that each major activity or program is financed from general resources of the municipal corporation.

The narrative summary for the coming year and for the current year must show total budget requirements, total estimated resources other than property tax revenue, and the estimated property tax revenue for all funds stated in dollars and cents. The estimated property tax levy must show the taxes necessary to balance the budget and the estimated taxes not to be received, as well as the total tax revenues. The summary must also state the local government's operating tax rate and the amount or rate or any other property taxes to be certified to the assessor. The tax rates must be expressed in a rate per thousand dollars of assessed value.

The narrative summary must also include a breakdown of the tax revenues for the current and coming years. This breakdown must show the local option levies approved or yet to be approved by the voters, the tax levy for meeting principal and interest payments on bonds.

In addition to the financial summary, a notice is published of the time and place (including the street address) at which the budget document may be discussed with the governing body. This is the notice of budget hearing.

The governing body chairperson must certify in the publication that the budget is prepared with the method of accounting used in the preceding year unless a change in the method of accounting is anticipated. If a change is anticipated, the chairperson must explain the change and its effects.

The Notice of Budget Hearing must show the place where the public can inspect the complete budget document during business hours. It must also show where copies of the complete budget document may be obtained.

The manner of publication and publication time requirements are the same for the narrative publication as they are for the standard financial summary publication described earlier in this section ([ORS 294.421](#)).

### **Correcting Publication Errors**

The governing body of a local government should be careful when publishing the financial summary. All anticipated property tax revenues approved by the budget committee must be published and summarized. It is strongly recommended that the

budget officer verify that publication occurred and that the correct numbers were published.

Errors in the published budget summary may occur. Correctable errors include typographical errors, failure to mail or hand deliver the notice and summary to each street address, arithmetic errors, errors in calculation of tax revenues and failure to publish within the time periods required by law ([ORS 294.425](#)). It should be noted that these errors are errors in the published documents. The budget officer cannot change the expenditures, revenues or taxes approved by the budget committee.

If an error occurs, the budget officer can correct the error. At the first regularly scheduled meeting of the governing body after the error occurs, the budget officer informs the governing body in writing of the error. The budget officer corrects the error in testimony before the governing body. If the error relates to the tax amount certified to the assessor, the budget officer notifies the assessor in writing that an error occurred. The budget officer submits a corrected tax certification document with the notification. Corrections must be submitted to the assessor before October 1.

### **Levy Limitations Imposed by the Publication**

All anticipated property tax amounts and rates must be published and summarized. No property tax rate or amount that exceeds the total amount or rate published in the Budget Summary ([ORS 294.435](#)) can be collected. Budget estimates and proposed tax amounts or rates may be amended if a new budget summary of the total budget is published and another budget hearing held before June 30.

[ORS 294.435](#) requires that republication of a budget must meet the same requirements as the original publication. Important: Republishing the budget is not the same as a supplemental budget. A budget cannot be republished after the budget has been adopted and a new fiscal year begins.

Once the governing body has adopted and appropriated the budget and June 30 is past, the district is operating in a new fiscal year. A supplemental budget must be used for any change in the financial plan requiring a publication and hearing. No additional tax can be levied to support a supplement budget.

### **Resource and Expenditure Limitations after Publication**

The published budget also sets limits on resources and expenditures. The governing body of a municipal corporation may increase resources and expenditures up to 10 percent in each fund without republishing. New expenditures or appropriations cannot be created without either republishing before adoption or going through the supplemental budget procedure after adoption and June 30.

For additional information on budget changes after publication, call the Department of Revenue at (503) 378-4988, or toll free at 800-356-4222 or email the Department staff at [questions.dor@state.or.us](mailto:questions.dor@state.or.us)

## **Estimated Property Taxes Not To Be Received**

Most local governments' operating tax revenue comes from its permanent tax rate limitation. In general, the simplest way to estimate the amount of tax revenue that will be generated by the permanent tax rate is to multiply the permanent tax rate by the estimated assessed value of the local government for the upcoming year.

However, three reasons affect the amount of property taxes actually received by the government. First, not all taxpayers pay their taxes in the year billed. Second, discounts are given for timely property tax payments. Third, the Oregon Constitution sets limits on the amount of property tax that can be collected from an individual property.

The estimate of property taxes not to be received is not included when calculating the government's budget resources.

## **Constitutional Limit**

[Article XI, section 11b of the Oregon Constitution](#) (Ballot Measure 5) limits the amount of taxes that can be collected from an individual property. The constitution breaks property taxes down into categories based on the kind of services that the taxes are supporting – education services, including support services, and general government services. It also provides that certain property taxes will not be limited.

The Department of Revenue refers to the tax categories as education, general government and excluded from limitation. Governing bodies must determine into which categories their property taxes should be placed. This must be done as a resolution or ordinance at the same time the budget is adopted ([ORS 294.435](#)). The tax categories are also certified to the tax assessor when the tax certification documents are submitted ([ORS 310.060](#)).

Once the tax categories have been determined, the local government can estimate the loss of tax revenue, if any, that will result because of the constitutional limits.

## **Types of Property Taxes**

Many local governments rely heavily on local property taxes to finance the services they offer. In some cases, services are paid for entirely by property taxes.

Property tax revenue is available to all local governments that have the power to levy taxes. Each local government should refer to its enabling statutes to determine its statutory taxing authority.

Four types of property tax are available, each fulfilling a specific purpose or function:

- Permanent tax rate limit taxes
- Local option taxes
- Bonded debt taxes

- Other qualified obligations (gap bonds)

Definitions of these levies are found in Oregon Administrative Rule (OAR) 150-294.311.

The Oregon Constitution and Oregon law limits the amount and type of tax a municipal corporation may levy. The constitution allows a local government to annually collect through its permanent rate limit the amount of property taxes generated when that rate is applied to the assessed value of the local government. The growth of assessed value is limited for each individual property to 3% each year, but the entire assessed value of new construction can be added to the assessed value of the district.

When a local government has no permanent tax rate or when a tax rate does not provide enough revenue to meet estimated expenditures, the local government may request voters to approve a local option tax.

Local option taxes can be used for general or specific purposes. Local option taxes used for general operating purposes can be imposed from one to five years. Local option taxes used for capital projects may be imposed for the expected useful life of the capital project, or 10 years, whichever is less.

The Oregon Revised Statutes allow local governments to levy taxes for general obligation or limited tax bond principal and interest without annual voter approval. Levy approval is considered to have been gained when voters originally approved the bonds. The debt service levy amount is limited to the repayment of principal and interest necessary to retire the bonds.

An election on a tax measure is approved if 50% of the registered voters cast a ballot or the election is in November of an even-numbered year and a majority of those voting approve the measure. This is referred to as the “double majority” requirement.

### **Statutory Tax Limits**

Some local governments are subject to statutory tax limitations. The maximum amount of tax that these local governments can impose for general operations is the lesser of the amount of their permanent rate will raise, plus any local option taxes or the tax allowed under the statutory limit. Statutory limits are usually a percentage of the local government’s real market value. Consult the Oregon Revised Statutes for information on statutory tax limits.

Statutory limits do not authorize a local government to impose a tax. Taxing authority comes from voter approval to impose a permanent tax rate; local option levies must also receive a nod from voters. The assessor is prohibited from extended on the tax roll any tax that exceeds statutory or constitutional limits ([ORS 310.070](#)).

### **Permanent Tax Rates**

A permanent rate is an ad valorem property tax rate expressed in dollars per thousand of assessed value.

No action of the local government can increase this limit. This rate is levied against the assessed value of property to raise taxes for general operating purposes. Permanent tax rate limits were either computed by the Department of Revenue for districts existing prior to 1997-98, or voter-approved for districts formed in or after 1997-98.

Only new local government or local governments that have never levied a property tax before can seek voter approval of a permanent tax rate. These local governments can take the question to the voters on any special or regular election date.

### **Consolidation or Merger**

If two or more local governments consolidate or merge, the newly combined local government is allowed to calculate a rate limit. The new entity is limited to a rate that will produce the same tax revenue that would have been produced by the separate local governments in the year of consolidation if they had not been combined.

At this writing, it has not been determined if the constitution grants the authority to impose the tax or simply sets a limitation. If it only establishes a limitation, new local governments formed through consolidation would need to gain taxing authority through voter approval. The Department of Revenue is seeking Attorney General advice on this issue.

It is recommended that Article XI, section 11(3)(d) of the Oregon Constitution be reviewed with legal counsel before determining a new permanent rate limits for merged or consolidated local governments.

Division

When a local government divides, the new entities are limited to a rate that is the same as the rate of the local government before it divided. In addition, the rates cannot raise more tax revenue than would have been raised by the local government in the year of division if it had not been divided.

As with consolidation and merger rate limits, the questions on division and taxing authority have not been determined. Consult with legal counsel when determining the permanent rate limits for local governments formed from division.

### **Local Option Taxes**

When approved by voters, local option taxes can be imposed in addition to taxes generated by the local government's permanent rate.

Local option taxes used for general operations can be imposed for up to five years. If the local option taxes are to be used for capital projects, they can be imposed for up to 10 years or the useful life of the project, whichever is less. "Capital project" is defined in statute. It means:

- The acquisition of land upon which to construct an improvement
- The acquisition or construction of improvements
- The acquisition of buildings



- Additions to a building that increase its square footage
- Construction of a building
- The acquisition and installation of machinery and equipment which will become an integral part of a building, or
- The purchase of furnishings, equipment or other tangible property with an expected useful life or more than one year.

Determining the useful life of a capital project is not complicated when only one type of capital project is to be financed by the local option tax. For example, if the tax is requested to purchase a fire truck with a useful life of nine years, the local option tax can be imposed for no more than nine years.

However, if the proposed local option tax is to pay for several capital projects with different useful lives, then the following formula is used to determine the maximum number of years the local option tax can be imposed:

$$\frac{\text{Average useful life}}{\text{Total weight}} = \frac{\text{Cost}}{\text{Total Cost}} = \text{Maximum years allowed for tax}$$

Example:

Item	Cost	Useful Life	=	Weight
2 computers	\$ 10,000	2 years		20,000
2 patrol cars	80,000	5 years		400,000
Rewire station	50,000	15 years		750,000
Totals	\$140,000			810,000

$810,000 = 5.78$  or rounded up to 6 years which is the maximum number of years the local 140,000 option tax can be imposed.

### **General Obligation Bond Taxes**

Approval of a general obligation bond issue by the voters carries with it authority to levy taxes to pay the bond principal and interest. However, a local government cannot impose a tax that exceeds the amount necessary to:

- Meet the principal and interest of a single fiscal year, plus
- Any unappropriated ending fund balance necessary to meet principal and interest payments between July 1 and the first tax revenue receipts in November.

The total tax must include an estimate of taxes not to be received due to the discount and uncollectible amounts. ([ORS 287.006](#), [287.072](#), [ORS 328.260](#), etc.). There is no loss from the constitutional limit on tax collections because these types of bond levies are not limited. If other resources are available to the Debt Service Fund, the local government can impose only the taxes necessary to balance the fund.

Local governments with questions about their bonding authority and limitations should refer to the Oregon Revised Statute under which they are organized.

## **Other Qualified Obligations Taxes**

A few local governments are able to impose taxes to pay for other qualified taxing district obligations. This debt is often referred to as “gap bonds.” To qualify, the obligations had to have been in existence before December 5, 1996, and meet the requirements specified in statute. No new “gap bonds” can be created.

The portion of the taxing authority being used to repay the qualified obligations was not reduced when Measure 50 implemented in 1997-98. Local governments that identified “gap bonds” when certifying taxes in 1997-98 are the only ones that can impose this type of tax. The exempted tax authority can continue to be imposed until the debt it is repaying is satisfied.

The amount of tax that can be imposed in any year to repay “gap bonds” is limited to the amount of principal and interest due on the debt, or the amount of obligation required by the City of Portland’s pension and disability plan.

When the debt is satisfied, the taxing authority for the debt will be incorporated into the local government’s permanent rate. Local governments should contact the Department of Revenue when “gap bonds” are satisfied so the permanent rate can be recalculated.

## **Elections**

A local government may call a tax election when the taxes needed to balance the budget are more than the government's taxing authority.

The tax election process is not tied directly to the budget process. However, the two processes are usually closely coordinated. Taxing authority may be voted on before the budget process begins, during the budget process, or after the end of the budget process.

Holding the election after the budget committee meeting allows the governing body to adopt a budget using known taxing authority. If the tax request passes, the budget will not need to be revised before it is adopted. If the tax request fails, the budget can be revised or another election scheduled.

After a tax request fails, another budget hearing and republication are required only if the governing body decides to hold a second election which increases the tax amount above the published amount in the Notice of Hearing and Financial Summary.

[OAR 150-294-435\(1\)\(B\)](#) gives instructions on how to adopt a budget by June 30 if the levy has not been passed. In all cases, the budget must be adopted and appropriations made by June 30.

The Elections Division of the Secretary of State administers laws governing the conduct of elections in Oregon. Administrative rules and directives are issued by the Secretary of State to provide uniform elections administration.

The Elections Division distributes the District Elections Manual to all 36 county clerks, who serve as county elections officers. Copies are then available locally. Persons responsible for coordinating elections for a local government should work closely with the county elections officer so elections run smoothly. In most counties, the county clerk will mail a copy of the manual to each voting district in the county. The Elections Division will also answer questions and help solve problems.

The manual provides current election dates and a calendar for special districts showing the final filing dates for various types of elections. Information is also provided on emergency elections for special districts and school districts. An elections checklist for special districts, cities, and counties lists the activities as they occur in the general order of the election cycle.

Examples of various forms in the District Elections Manual help answer questions about types of elections, ballot format, and content required by law. For additional help on tax related measures, contact the Department of Revenue.

Remember that the county clerk and the Secretary of State are responsible for election laws. The Department of Revenue is responsible for property taxation laws.

An approved ballot measure must follow all election and taxation laws. If a voter-approved measure fails to meet the requirements of the law, the Department of Revenue must void a part or all of the tax ([ORS 310.070](#)).

### **Preparation of a Tax Levy Ballot Measure**

The ballot for a tax measure consists of:

**Caption:** limited to 10 words. It is a title identifying the measure.

**Question:** 20-word limit. The question asks the voters if they will allow the district to impose an amount of tax or a tax rate. Examples are to: establish a permanent tax rate for local governments which have never levied a tax, and to authorize a local option tax for general operating purposes or a specific purpose. State this in a question format that can be answered "yes" or "no." In addition, a "yes" response to the question must mean the voters approve the measure, while a "no" response must mean the voters do not approve the measure.

**Summary:** 175-word limit. The explanation is in plain, factual, and non-technical language. It describes the specifics of the question without advocating a "yes" or "no" response to the question.

In some local governments, an ordinance or resolution is required declaring the intent to hold an election. There are also publication requirements for the ballot measure. See the Secretary of State's Local Election Manual for further information, or contact your county elections officer.

## **Local-Option Tax for One Year**

Ballot language asks voters to approve taxes represented as either an amount in dollars and cents or a tax rate per \$1,000 of assessed value ([ORS 280.075](#)). The following example is for a fixed rate local option tax:

Sample caption: One-Year Local Option Tax

Sample question: Shall (district name) impose \$(amount of rate) per \$1,000 of assessed value for operating purposes for (fiscal year)? This measure may cause property taxes to increase more than three percent.

The first sentence of the summary is the following statement: “This measure may be passed only at an election with at least a 50 percent voter turnout.” (When the election is being held in November of an even-numbered year, this statement is not required.) This statement is not included in the limitation of 175 words.

## **Local Option Taxes for Multiple Years**

Ballot measures for multiple-year local option taxes are slightly different. A local government can request a dollar amount or a tax rate for either operating purposes or capital projects. The ballot language must state the length, in years, that the proposed local option taxes to be used for general operations can be imposed, for up to five years. If the local option tax is to be used for capital projects, it can be imposed for up to 10 years or the useful life of the project, whichever is less.

### **Fixed-Dollar – Multiple-Year Tax**

Sample caption: Six-Year Operating Serial Levy

Sample question: Shall (district name) impose \$(dollar amount) for six years to purchase of a fire truck beginning in (fiscal year)? This measure may cause property taxes to increase more than three percent.

Begin the summary with the same statement described under one-year local option tax. Show the total amount of money to be raised by the multiple-year tax in the summary portion of the ballot measure, as required by [ORS 280.075\(1\)](#).

### **Rate – Multiple-Year Tax**

The contents of the question and the summary are different from the fixed-dollar amount multiple-year tax. The caption can be worded the same; the question is different.

Sample question: Shall (district name) impose \$(amount of rate) per \$1,000 of assessed value for six years to purchase a fire truck beginning (fiscal year)? This measure may cause property taxes to increase more than three percent.

Along with the beginning statement described under one-year local option tax, the summary for a rate multiple-year tax must contain an estimate of the tax amount of taxes to be raised in each year that the tax will be imposed. If the approved tax rate raises more than the estimated amount in the ballot summary, the excess revenue is treated as a budget resource for the following fiscal year ([ORS 280.075\(2\)](#)).

### **Permanent Rate Election**

New local governments and ones that have never imposed a property tax before are allowed to seek voter approval for a permanent rate (Article XI, section 11(3)(c)(A)). The following ballot language is recommended:

Sample caption: Permanent Rate Limitation

Sample question: Shall (district name) impose \$(amount of rate) per \$1,000 of assessed value as a permanent rate limit beginning (fiscal year)? This measure may cause property taxes to increase more than three percent.

The first sentence of the summary should be the statement about voter turnout when the election is other than November in an even-numbered year. Estimates of tax impact are usually not included in this type of measure because the estimate would only be valid for the first year in which the permanent rate is imposed. If one is included, the disclaimer language shown under the fixed-dollar local option tax above must be used.

### **Bond Election**

Ballot questions requesting approval of bonds when the principal and interest will be paid by property taxes must include this statement directly after the question:

“Question: (herein the question is stated) If the bonds are approved, they will be payable from taxes on property or property ownership that are not subject to the limits of sections 11 and 11b, Article XI of the Oregon Constitution.” ([ORS 250.037\(1\)](#))

The ballot summary must begin with the statement: “This measure may be passed only at an election with at least 50 percent voter turnout.” ([ORS 250.036](#)) The ballot summary must also contain a reasonably detailed, simple and understandable description of the use of bond proceeds ([ORS 250.037\(3\)](#)).

Election Dates for Tax Purposes – [ORS 255.345](#)

Second Tuesday in March  
Third Tuesday in May  
Third Tuesday in September  
First Tuesday after the first Monday in November

### **Filing with County Assessor**

Local governments should submit to the county assessor by July 15 as part of the tax certification documents two sample ballots of tax measures that are voter-approved. The assessor will forward one copy to the Department of Revenue. Do not submit sample ballots for measures not approved by voters.

For complete information about the election of board members, directors or council members, consult the District Elections Manual, published by the Secretary of State.

### **Significance of the July 1 Date**

An appropriation is the authorization of the governing body to spend money and incur obligations for specific purposes. Appropriations are limited to a single fiscal year. That means all spending authority of a local government ends each June 30. A local government does not have legal spending authority for the new fiscal year until the budget is adopted and appropriated by resolution or ordinance.

Since July 1 is the beginning of a new fiscal year, it is critical that a local government have an adopted budget and proper appropriations on July 1. Without an adopted budget and proper appropriations, the local government has no legal authority to spend. The governing body must keep this in mind if it appears that the budget will not be adopted until after July 1. Spending by the governing body for the new fiscal year without proper appropriations is unlawful. All governing body members should be familiar with [ORS 294.100](#), which discusses the personal liability of a public official of a municipal corporation making unlawful expenditures.

### **Declaring the Ad Valorem Taxes**

Local governments that are using ad valorem property taxes to balance their budgets must declare the tax levy amount and/or rate by resolution or ordinance. The resolution or ordinance should state the aggregate total of all property taxes and/or the rate being certified to the county assessor ([ORS 294.435\(1\)](#)). Property taxes are levied on the assessed value of all taxable property within the district as of 1 a.m., July 1.

### **Budget Changes After Adoption**

After a local government is operating within the adopted budget for the current fiscal year, changes in appropriated expenditures are sometimes necessary. Appropriations may have to be decreased or increased, but it is unlawful to levy an additional tax in the current fiscal year.

### **Supplemental Budgets**

During the fiscal year, circumstances may require expenses to be paid that were not budgeted. Or a district may receive non-tax revenue it did not plan for in its budget. A supplemental budget is required to pay the additional expenses and spend the extra revenue. Supplemental budgets are good only through June 30 of the fiscal year in which they are adopted. The supplemental budget must be adopted and appropriated before any additional money can be spent ([OAR 150-294.480](#)).

Although a supplemental budget is usually associated with the expenditure of new appropriations and increased revenues, it can also be used for other purposes. For example, a supplemental budget is required when transferring revenues from a special fund to the general fund to increase existing appropriations. Preparing a supplemental budget does not authorize the governing body to levy additional ad valorem taxes ([ORS 294.480\(5\)](#)).

## **When Can a Supplement Budget Be Prepared?**

A local government may prepare a supplemental budget only if one or more of the following circumstances exists ([ORS 294.480](#)):

An occurrence or condition that had not been ascertained at the time of the preparation of a budget for the current year that requires a change in financial planning.

A pressing necessity that was not foreseen at the time of the preparation of the budget for the current year that requires prompt action.

Funds were made available by another unit of federal, state or local government and the availability of such funds could not have been ascertained at the time of the preparation of the budget for the current year.

A request for services or facilities, the cost of which shall be supplied by a private individual, corporation or company or by another governmental unit and the amount of the request could not have been accurately ascertained at the time of the preparation of the budget for the current year.

Proceeds from the involuntary destruction, involuntary conversion, or sale of property have necessitated the immediate purchase, construction or acquisition of different facilities in order to carry on the governmental operation.

Ad valorem taxes are received during the fiscal year in an amount sufficiently greater than the amount estimated to be collected that the difference will significantly affect the level of government operations to be funded by those taxes as provided in the budget for the current year.

## **When is a Supplemental Budget Not Allowed?**

In a November 17, 1967, letter the attorney general determined that a supplemental budget cannot be used to spend revenues that could have been estimated and adopted in the regular budget.

A supplemental budget cannot authorize spending an unappropriated ending fund balance ([ORS 294.371](#)). It also cannot be used to spend the tax raised above the estimated amount stated in the ballot for a rate serial local option tax ([ORS 280.075\(2\)](#)).

## **Process and Preparation**

After it has been decided that a supplemental budget is necessary and appropriate, the preparation process to follow must be determined. A supplemental budget may adjust one fund or several.

For the purpose of preparing a supplemental budget, fund expenditures in the current budget do not include unappropriated ending fund balance, interfund transfers, or contingency amounts.



## **Less than 10 percent**

When the supplemental budget will adjust a current budget fund by less than 10 percent of that fund's expenditures, then the process used to adopt the supplemental budget is fairly simple. If the supplemental budget is adjusting more than one fund, then each adjustment to each fund must be less than 10 percent to use the simpler process.

The simple process for less than 10 percent is as follows:

The governing body at a regularly scheduled board meeting may adopt the supplemental budget. The budget committee is not required.

Notice of the regular meeting at which the supplemental budget will be adopted must be published in a one of the manners listed in [ORS 294.311\(32\)](#) not less than five days before the meeting. The notice must include the name of each fund being adjusted and the amount of change in each fund's resources and expenditures.

At the meeting, a resolution adopting the supplemental budget and making appropriations may be approved.

## **10 percent or more**

When the supplemental budget will adjust a current budget fund by 10 percent or more of the expenditures of that fund or will create a new fund, then a longer process must be used to adopt the supplemental budget.

A special hearing must be held to discuss and adopt the supplemental budget. The governing body holds the hearing. Publication of the budget notice of the hearing must be given in the manner provided for in [ORS 294.421](#). Following such a hearing the governing body shall make additional appropriations and may make additional expenditures as authorized by such appropriations.

## **Distribution**

Send a copy of the complete supplemental budget document to the Department of Revenue, 955 Center Street NE, Salem, OR 97310. The county assessor's office does not need a copy since no property tax can be levied through a supplemental budget.

## **Adjusting the Current Budget**

When preparing the budget for the coming fiscal year, revise the figures in the current adopted budget to reflect the changes made by any supplemental budgets.

## Glossary

### **Adopted Budget**

Financial program adopted by the governing body that forms the basis for appropriations.

### **Ad Valorem Tax**

A property tax computed as a percentage of the value of taxable property.

Appropriation Authorization for spending a specific amount of money for a specific purpose during a fiscal year. It is based on the adopted budget, including supplemental budgets. It is presented in a resolution or ordinance adopted by the governing body ([ORS 294.311\(3\)](#)).

### **Assessed Value**

The value set upon real and personal property as a basis for imposing taxes. It is the less of the property's maximum assessed value or real market value.

### **Budget Committee**

Fiscal planning board of a local government, consisting of the governing body plus an equal number of legal voters from the district ([ORS 294.336](#)).

Budget Written report showing the local government's comprehensive financial plan for one fiscal year. Must include a balanced statement of actual revenues and expenditures during each of the last two years, and estimated revenues and expenditures for the current and upcoming year ([ORS 294.311\(5\)](#)).

### **Budget Message**

Written explanation, by the executive officer or chairman of the governing body, of the budget and the local government's financial priorities ([ORS 294.391](#)).

### **Budget Officer**

Person appointed by the governing body to assemble the budget material and other information and to physically prepare the budget ([ORS 294.331](#)).

### **Capital Outlay**

Items which generally have a useful life of one or more years, such as machinery, land, buildings, furniture, equipment ([ORS 294.352\(6\)](#)).

### **Constitutional**

The maximum amount of tax on property that can be collected from an individual property in each category of limitation (Article XI, Section 11b, [Oregon Constitution](#)).

### **County Elections Officer**

County clerk or registrar of elections.

**Double Majority**

A term that refers to an election where at least 50 percent of the registered voters eligible to vote in the election cast a ballot and more than 50 percent voting approve the question.

**Excluded From**

The category for taxes used to pay principal and interest on exempt Limitation bonded indebtedness ([ORS 310.150\(3\)](#)).

**Exempt Bonded**

1) Bonded indebtedness authorized by a specific provision of the Oregon Indebtedness Constitution, or 2) bonded indebtedness issued as a general obligation on or before November 6, 1990, incurred for capital construction or capital improvements, or 3) bonded indebtedness issued as a general obligation after November 6, 1990, incurred for capital construction for capital construction or capital improvements with the approval of the electors of the local government. Bonded indebtedness described above is also included ([ORS 310.140\(15\)](#)).

**Expenditures**

Total amount incurred, if accounts are kept on an accrual basis; total amount paid, if accounts are kept on a cash basis ([ORS 294.311\(13\)](#)).

**Fiscal Year**

Twelve-month period beginning July 1 and ending June 30 ([ORS 294.311.14](#)).

**Fund**

Money or other assets set aside to carry on a specific activity or reach a certain objective.

**Governing Body**

District board of directors or other managing board of a local government unit ([ORS 294.311\(16\)](#)).

**Local Option Tax**

Taxing authority voter-approved by a double majority that is in addition to the taxes generated by the permanent tax rate. Local option taxes can be for general operations, a specific purpose or capital projects. They are limited to five years unless they are for a capital project, then they are limited to the useful life of the project or ten years, whichever is less.

**Maximum Assessed**

The maximum taxable value limitation placed on real or personal property value by the constitution. It can increase a maximum of 3 percent each year. The 3 percent limit may be exceeded if there are qualifying improvements made to the property, such as a major addition or new construction.

**Ordinance**

Written directive or act of a governing body. Has the full force and effect of law, within the local government's boundaries, provided it does not conflict with a state statute or constitutional provision.

**Permanent Rate**

The maximum rate of ad valorem property taxes that a local government Limit can impose. Taxes generated from the permanent rate limit can be used for any purpose. No action of the local government can increase a permanent rate limit.

**Proposed Budget**

Financial and operating program prepared by the budget officer, submitted to the public and the budget committee.

**Resolution**

An order of a governing body. Requires less legal formality and has lower legal status than an ordinance. Statutes or charter will specify which actions must be by ordinance and which may be by resolution.

**Resource**

Estimated beginning funds on hand plus anticipated receipts ([ORS 294.361](#)).

**Supplemental**

Prepared after the regular budget has been adopted to meet unexpected Budget needs or to spend revenues not anticipated at time regular budget was adopted. Cannot be used to authorize a tax ([ORS 294.480](#)).

**Tax Rate**

The amount of tax stated in terms of a unit of tax for each \$1,000 of assessed value of taxable property.

### **Sample Resolution Adopting the Budget**

Be it resolved that the Board of Directors for Sample Water District hereby adopts the budget approved by the Budget Committee for fiscal year 2000-2001 in the sum of \$59,000 now on file at the district office.

### **Sample Resolution Making Appropriations**

Be it resolved that the amounts for the fiscal year beginning July 1, 2000, and for the purposes shown below are hereby appropriated as follows:

#### GENERAL FUND

Personal services	\$30,000
Materials and services	6,000
Operating contingencies	2,000
Transfers to other funds	1,000
Fund Total	\$39,000

#### DEBT SERVICE FUND

Debt Service	\$5,000
Fund Total	\$5,000
Total	\$44,000

### **Sample Resolution Imposing Taxes**

Be it resolved that the Board of Directors for the Sample Water District hereby imposes the taxes provided for in the adopted budget in the aggregate amount of \$200,000; and that these taxes are hereby imposed for tax year 2000-2001 upon the assessed value of all taxable property within the district

### **Sample Resolution Categorizing Taxes**

Be it resolved that the Board of Directors for the Sample Water District hereby categorizes the taxes as follows:

General Government	\$150,000
Excluded from Limitation	\$ 50,000

### **Sample Resolution Imposing and Categorizing Taxes**

Be it resolved that the Board of Directors for the Sample Water District hereby imposes the taxes provided for in the adopted budget at the rate of \$1.50 per \$1,000 of assessed value for operations and in the amount of \$0.50 for bonds; and that these taxes are hereby imposed and categorized for tax year 2000-2001 upon the assessed value of all taxable property within the district

	General Government	Excluded From Limitation
General Fund	\$1.50/\$1,000	
Debt Service		\$0.50/\$1,000

## **Accounting**

### **Introduction**

Financial management is necessary for the control of district financial affairs. A financial policy should be developed which includes rules for conducting all aspects of financial control and transactions. All phases of the financial process should have documentation, showing when and why money was received and disbursed. Since most districts must be audited, a sound accounting system will make it easier for an auditor to attest to the legitimacy of financial statements.

Sound accounting practices and policies are absolutely necessary for insuring the integrity of financial records and district funds. Records must be kept up-to-date, secure, and accurate. Internal controls and security policies must be established to avoid errors and omissions, ensuring that public funds are protected from mismanagement.

The yearly audit that most districts are required to conduct can be a complicated procedure. To make the process run smoothly, a committee should be formed to supervise and prepare for the audit and create a written audit policy. When selecting an auditor, districts should solicit requests for proposal.

### **Public Accounting**

#### **Purpose**

The purposes of an accounting system are as follows:

1. To provide for the orderly accumulation and recording of financial data.
2. To summarize this information in reports which present financial condition and compare actual with expected results of operations.
3. To provide for safeguarding of assets and accuracy of record keeping to the maximum extent possible; this is called "internal control."

## **Scope**

The complexity of the accounting system will be determined by the needs of the individual district. A basic accounting system will include at least the following:

- A general ledger.
- Subsidiary ledgers as necessary.
- Books of original entry, such as a general journal, revenue (cash receipts) journal, and expenditures (cash disbursement) journal. A payroll journal may be part of the disbursements journal.
- Written documents supporting, authorizing, and explaining individual financial transactions such as invoices, bank statements, board minutes, annual budget, purchase orders, or fund transfers.
- Monthly reconciliation of all bank accounts.

Note: Items 1, 2 and 3 above may be in the form of computer reports.

In addition to maintaining these records, the governing body will want to keep in mind the following: First, there should be good documentation for all phases of a transaction. This means a clearly marked path of vouchers, authorizations, deposit slips, bank statements, canceled checks, etc., showing when and why money was received and when, to whom, and for what purpose money was disbursed. Second, the accounting system should be designed to encourage good financial management. For example, money should be spent only for authorized purposes. Requiring approval by a responsible official before a check is prepared assures compliance with applicable laws and discourages unauthorized expenditures.

It is suggested that a district use vouchers in triplicate form. This will enable the district to retain copies of all transactions even while an audit is taking place.

## **Results**

A good accounting system should produce the following results:

- Data necessary for the preparation of financial statements. Some districts may prepare their own financial statements, others will have statements prepared for them by the auditors. Regardless of who prepares the statement, the data must be provided by the accounting system.
- Efficient functioning of financial affairs of the district.
- Encouragement of sound financial management policies and practices.
- Documentation maintained in neat, orderly files.

## **Fund Accounting**

Public accounting and budgeting is based on funds. Revenues and expenses must be kept separate by each type of fund. An accounting policy should state the types of funds that a district has, their definition, and where the resources and expenditures transfer to in the event the fund is dissolved. The main types of funds include the General Fund, Special

Revenue Funds, Debt Service Funds, Capital Projects Funds, Enterprise Funds, Trust Funds and Reserve Funds.

### **General Fund**

The General Fund is composed of accounts for the financial operations of the district which are not accounted for in any other fund. The principal sources of revenue are property taxes, and interest income. Primary expenditures in the General Fund are made for general district services and administration.

### **Special Revenue Funds**

Special Revenue Funds are authorized for a specific purpose and generally operate on a year to year basis until the fund is discontinued or revised by proper legislative authority. In the event the fund is discontinued, any excess funds should be returned to the originating jurisdiction or the General Fund.

### **Debt Service Funds**

A Debt Service Fund is a fund to account for the payment of principal and interest on all general obligation long-term debt, including that payable exclusively from revenue-producing enterprises. Resources cannot be diverted or used for any other purpose.

### **Capital Projects Fund**

Capital Projects Funds operate until the capital project is completed. Upon completion, any remaining cash is transferred to the Debt Service Fund, the originating source of the funds, or the General Fund.

### **Internal Service Funds**

An Internal Service Fund finances and accounts for services furnished by a department or agency to other departments or agencies within the local government. Amounts expended from the fund are restored from either operating earnings or as operating expenditures from other funds to the internal service fund.

### **Enterprise Funds**

An Enterprise Fund is a fund established to finance and account for acquiring, operating, and maintaining facilities and services which are self-supporting from user charges and fees (such as water and sewer).

### **Trust and Agency Funds**

Assets are sometimes held, or revenue received, by districts in a fiduciary capacity to be used for a certain specified purpose.



## **Reserve Funds**

A district may set up a Reserve Fund to accumulate money for financing the cost of any service, project, property or equipment that the district can legally perform or acquire. Some districts will even have a Reserve Fund established for debt service in the event revenues are insufficient to meet future payment obligations on long-term obligations.

## **Internal Controls**

Internal controls are absolutely necessary for maintaining a secure and reliable accounting system. Internal controls, when strictly followed, can protect the financial integrity of district records and protect against mismanagement of district funds. District directors can be held liable for negligence in the management of district funds so extreme care should be followed in developing a system which ensures that finances are viewed closely by the board.

Sound internal controls should contain many of the following items:

- Deposits
- Deposits should be reviewed by a person other than the depositor of the funds to ensure that funds are placed in the proper district accounts.

Example: All deposits of district funds should be made by the accounts receivable officer and reviewed by the district manager.

## **Computer Records Security**

All accounting computer records must be kept secure. Persons authorized to edit or review the records must be given passwords which only enable them to access the system. More than one person should be trained on the system. Accounting records should be backed-up on a regular basis.

Example: Passwords to access the district's computer accounting systems shall only be issued to the accounting staff, accounts payable clerk and the district manager. All accounting records shall be backed-up on a daily basis.

## **Checkbook Reconciliation**

The person that does the reconciliation of district accounts should not be the same person that writes the checks. If it is not possible to have separate functions, then the books must at least be reviewed regularly by the board of directors or someone who does not write the checks.

Example: The district board of directors shall, at its monthly meeting, review the accounts and check register supervised by the district accounts payable officer.

## **Purchases**

All large purchases should be authorized by someone other than the signer of the checks.

Example: All purchases over \$ \_\_\_\_\_ shall be approved by the Board of Directors at their monthly meeting.

### **Verification of Receipts**

Receipts should always be verified prior to paying an invoice. Procedures should be developed for checking receipts or packing slips to determine that merchandise or services have been received before payment.

Example: No invoice shall be paid without written proof that the goods or services stated on the invoice have been received by the district. If no written proof exists, the district shall request written proof from the issuer of the invoice.

### **Cash Transactions**

Cash transactions, should always involve more than one individual to ensure that cash is properly recorded and deposited.

Example: Duties will be assigned to individuals in such a manner that no one individual can control all phases of collecting cash, recording cash, and processing transactions in a way that permits errors or omissions to go undetected.

### **Authorization for Writing off Bad Debt**

A procedure should be developed for writing off bad debt. The policy should specify the persons responsible for writing off the debt and their level of authority.

Example: Authorization for writing off bad debt shall be given to the accounts receivable officer, district manager, and the district board at the following levels:

\$0 to 10	Accounts receivable officer
\$11 to 100	District manager
\$100 and above	District board of directors

### **Petty Cash**

Petty cash funds should require full documentation, including the purpose of the expenditure and who was present.

### **Multiple Signatures**

More than one district employee or board member should be required to sign checks.

### **Vacation/Job Rotation**

Require individuals in high-fidelity risk areas to take mandatory annual vacations of at least ten consecutive working days. Job rotation or independent audit of function should be implemented when two-week vacations are not practical.

### **Security Policy**

A security policy should determine the procedures and controls for protecting the actual physical accounting records and assets of the district. Cash should be stored in a safe location. Signature stamps must be issued only to properly authorized personnel, and check books and accounting records should be kept in a locked and fireproof location.

## **Sample Security Policy**

### **Purpose**

The purpose of this policy is to safeguard the District's checks, facsimile stamps, financial records, payroll records, petty cash, change funds and other District assets.

### **Treasury Checks**

During working hours, treasury checks will be assigned to the accounting staff and kept in a secure location. During non-working hours, the checks will be locked in the District safe.

### **Check Stock**

All general, payroll and other checks will be located in the fire proof file cabinet in the vault. This includes both signed and unsigned checks. Checks or cash will be locked in a drawer or safe at all times. The keys are to be kept in the possession of the assigned personnel and not left on the premises.

Outgoing payroll and accounts payable checks are not to be left in the mail room unattended, but will be held until entrusted to the mail carrier. Payees, not personally know to the District employees, who pick up checks must show identification.

### **Facsimile Signature Plates and Stamps**

All facsimile signature plates and stamps are to be locked in the safe room during non-business hours. During business hours they are to be kept in a secure location.

### **Petty Cash/Change Funds**

During business hours, petty cash/change funds entrusted with the accounting staff will be monitored at all times and will not be left unattended. During non-business hours, the petty cash/change funds will be locked in the safe.

### **Bank Deposits**

Collections received by the accounting staff will be reviewed by the District Manager or Board of Directors. Personnel making deposits and deposit times will be varied so as not to create a routine pattern.

### **General Security**

The District office doors will be locked at 5 p.m. by the District Manager, Finance Director, or appointed designee.

### **Policy**

Changes to this policy will be approved by \_\_\_\_\_ . (designated person)

### **Financial Management Policy**

The basis of a good accounting system should originate from a sound financial policy. The financial policy should outline the district's rules for handling district funds. The scope of the policy should take into account more than just basic accounting procedures, by including all district activities revolving around the disbursement and management of funds. The following sample policy includes elements that any district should consider when deciding on how to manage its finances:

## **Sample Fiscal Management Policy**

### **Objectives**

- To preserve capital through prudent banking and cash management activities.
- To achieve the most productive use of cash, minimize operating costs and to control receipts and disbursements.
- To maintain competitive and good working relations with financial institutions.
- To ensure that all financial systems, functions and controls meet generally accepted auditing standards.
- To provide safety to employees.

### **Banking Services**

- Banking services shall be solicited at least every five years on a competitive bid basis.
- Banks submitting proposals must meet the following minimum criteria.
- Must be able to provide Collateral Pool Certificates.
- Must be insured by the Federal Deposit Insurance Corporation.
- Must be able to facilitate transfers to and from the Local Government Investment Pool managed by the Oregon State Treasurer.
- Must provide annual audited financial statements.
- All District bank accounts must be authorized and approved by the District Manager.

### **Billing and Receipts**

The District will invoice all vendors for amounts due on a current basis. An accounts receivable age schedule will be prepared and monitored to ensure amounts due the District. Invoices are due within 30 days of billing date. Interest of one and one half percent per month will be charged on all balances over 30 days.

State Funds/State Grants. If state agency/grantor is willing and it is feasible, funds will be received via Local Government Investment Pool.

### **Accounts Payable**

The District will maintain a system to age accounts payable. Invoices will be analyzed to take advantage of any discounts available.

All obligations paid to the District will be reviewed to ensure proper documentation is attached and that all District requirements are met.

### **Cash Forecasting**

Each fiscal year, the District Manager will prepare an annual General Fund cash flow budget for the District for approval by the Board of Directors.

Each month the cash flow statement will be adjusted to reflect the current month's actual cash flow and revise the remaining estimated cash flow schedule.

### **Debt**

If feasible, the District may enter into long-term lease obligations or issue bonds to finance capital acquisitions upon approval of Board of Directors.

Before issuing any debt, the District will consult with appropriate internal and/or external financial advisors.

All leases as reported in the District's annual financial report will be limited as follows:

- Annual leases will be limited to the economic life of the equipment or facilities to be purchased and in no case shall be extended beyond 20 years or as otherwise authorized per Oregon Revised Statutes
- Lease purchases of equipment and facilities will be limited to fit within the District's stated mission, goal or governmental role.
- All lease-purchase payments must be included in the originating departments approved budget.

### **Investments**

The District will have a written investment policy adopted annually by the Board of Directors.

## **Audits/Auditors**

The District will conduct an annual audit on \_\_\_\_\_. (fill in date)

District employees are to cooperate with all auditors, external and internal, regarding any records maintained for or by the District.

All external and internal audit reports are to be sent to the Board of Directors, District Auditor, and the District Manager.

The District Manager or elected official shall respond in writing to all external audit reports stating what actions have been taken to address the findings contained in the audit.

## **Authorized Personnel/Security**

The District Manager or Finance Director is authorized to open demand deposit accounts as may be required by the District.

Checking accounts require two manual signatures or stamps.

Checkbooks are to be in a secure place at all times during business hours and locked in a safe during non-business hours.

The District Manager is responsible for maintaining a current signature card with the appropriate financial institution.

## **Internal Controls**

Duties will be assigned to individuals in such a manner that no one individual can control all phases of collecting cash, recording cash and processing transactions in a way that permits errors or omissions to go undetected.

The District Manager is authorized to request departments in the District to provide financial reconciliation when deemed appropriate by the District Manger.

## **Auditing**

### **Requirements**

Oregon local governments are subject to the municipal Audit Law, [ORS 297.405 to 297.555](#). The law requires an annual audit of the financial statements of counties and school districts. Unless otherwise specified in the Oregon Revised Statutes, all districts must also be audited.

A district (1) with combined revenues and expenditures of less than \$150,000, and (2) whose chief fiscal officer is bonded for the total amount of money received during the

year may file unaudited financial statements with the Secretary of State within the 90 days after its fiscal or calendar year ends.

Forms used to file unaudited financial statements are available at no charge from the Audits Division of the Secretary of State.

A district, other than a county or school district, (1) with combined revenues and expenditures of more than \$150,000 but less than \$500,000, and (2) whose financial statements have been reviewed by a licensed municipal auditor may file “review reports” with the Secretary of State within 180 days after its fiscal or calendar year ends.

A district, including counties and school districts, that must have its financial statements reviewed or audited, must contract with an accountant licensed as a municipal auditor by the Oregon Board of Accountancy. For a copy of this listing write the [Oregon Board of Accountancy](#) at 3218 Pringle Road SE, #110, Salem, OR 97302-6307/phone (503) 378-4181.

Audits and reviews must be made as directed by administrative rules adopted by the Secretary of State. The rules referring to reviews are known as “Minimum Standards for Reviews of Oregon Municipal Corporations.” These rules prescribe the financial statements that must be included in audit or review reports, the minimum procedures that must be followed, and the standards that must be followed in an audit or review. Copies of these rules may be obtained from the [Secretary of State, Division of Audits](#), Public Service Bldg., Suite 500, Salem, OR 97310-0210.

Copies of all financial statements, whether unaudited, reviewed or audited, must be filed with the Secretary of State. They are public records available for inspection by anyone who is interested. Copies of these reports may be obtained for a small charge.

A filing fee must accompany all reports filed with the Secretary of State. The amount of the fee is set by law. It is determined by the amount of expenditures of the municipal corporation. The Division of Audits uses the filing fee to administer the [Municipal Audit Law](#). The Division of Audits offers technical help in accounting and financial reporting. Address written inquiries to the Secretary of State, Division of Audits, Public Service Bldg., Suite 500, Salem, OR 97310-0210.

### **Purpose of the Audit**

The auditor's main job is not to look for mistakes (although he/she may find them if they are there). An auditor's main purpose is to independently review the financial statements to attest to their fairness. In addition to this, the auditor will also:

Comment on the compliance of the district's financial affairs with applicable laws and budget requirements.

Assist the district in revising its accounting system to increase efficiency and ease of function.

Help the district institute procedures that will increase accuracy of record keeping and strengthen internal control.

### **What the Auditor Expects**

Since the main purpose of the audit is to express an opinion on the financial statements of the district, the auditor expects the district to have already prepared those statements. If this has not been done, the auditor will examine the accounting records and prepare the statements himself. In either case, the district should have available to the auditor:

A general ledger and related subsidiary ledgers posted accurately and up to date.

Books of original entry that provide, in an orderly manner, the summarization of transactions.

Source documents supporting the transactions in the books of original entry filed in a neat and orderly manner. (Remember that source documents include all revenues as well as expenditures.)

Explanations of apparent differences between general ledger balances and source documents (an example of this would be a reconciliation of a bank account.)

Copies of reports required to be filed with government agencies, and explanations of any differences between amounts reported and the accounting records.

Specifically, the above would include such items as minutes of regular meetings, budget committee minutes, insurance forms and policies, copies of adopted resolutions that may not be included in the regular minutes, copies of the ballot title and abstracts of any bond issues, copies of published newspaper notices of budget committee meetings and hearings, a copy of the proceeding year's budget, county tax turnover documents, right of way documents, and copies of lease contracts on equipment.

The district's governing body should realize that a good accounting system can be of financial benefit. The easier it is for an auditor to do his job, the less time it will take and the less money it will cost the district for the audit.

### **The Audit Report**

At the conclusion of the audit examination, the auditor will issue an audit report. This report will contain:

The financial statements of the district with appropriate notes.

The auditor's opinion on these statements.

The auditor's comments about the district's financial affairs and its compliance with legal requirements.



In addition to this, the auditor may also give the district recommendations on how the district may improve its accounting system or more effectively conduct its financial affairs.

### **Audit Request for Proposal**

Districts which must use an outside auditor to conduct their annual audit should conduct a formal Request for Proposal process to select an auditor. The process is designed to help districts pick the most qualified and cost effective service. The following Sample Request for Proposal is a good example of how the solicitation letter should be constructed:

### **Sample Request for Proposal**

We invite your written proposal to conduct an audit of the financial records of the \_\_\_\_\_ District , for fiscal year 7/1/ \_\_\_ to 6/30/ \_\_\_.

Your proposal should contain, but not be limited to the following considerations:

- Eligibility - authorization by the state Board of Accountants to conduct audits.
- Experience of your firm in relation to the scope of audits for the District.
- A list of similar local governments or pertinent accounts served by your firm.
- Your staff assignments and availability to complete the audit on a timely basis.
- Participation of senior audit personnel assigned to the engagement.
- Frequency of contact with fiscal personnel.
- Availability of staff to respond to questions within the scope of the engagement and the hourly charge, if any, for services outside the scope of the audit.
- Audit firm staff stability history - what assurances can you provide the District regarding the assignment of your permanent personnel to the engagement.
- Describe capability to audit computerized accounts receivable systems and to audit during the development of a completely computerized bookkeeping system.
- Procedures used to transmit audit adjustments and the reasons for them along with management recommendations to the responsible personnel within the District structure.
- Detailed audit plan.
- Your fee proposal to conduct the basic audit function, along with your fee schedule for additional services that may be required beyond the scope of the audit engagement. The proposal should also state that any increase in the audit fee will be immediately disclosed to the District Manager. This disclosure should include an estimation of the increased fees and the reason for the increase.
- Estimated number of hours to complete the audit by classification of your employees, i.e. partners, senior, junior.
- Detail of expenses expected to be incurred, i.e. mileage, per diem, telephone, etc.
- Audit firm to produce statements and to print annual report.
- Proof that the firm is certified to conduct municipal audits by the Board of Accountancy.

I am enclosing a copy of the audit proposal information to provide you with information about the District's financial records. I have enclosed the unaudited statement from the previous fiscal period as well.

The final decision of the selection of the firm to conduct the audit will be made by the Board of Directors of the District. The final agreement will be in the form of a written contract following the standard agreement form used by CPA firms conducting audits.

I will look forward to receiving your proposals on or before \_\_\_\_\_.

Additional information should be supplied to the auditor when conducting an RFP to give the auditor information about the district and what will be expected from the audit.

### **Audit Proposal Information**

Sealed audit proposals will be accepted by the \_\_\_\_\_ District until \_\_\_\_\_ p.m., on \_\_\_\_\_. Please direct proposals to the attention of \_\_\_\_\_. All proposals become the property of \_\_\_\_\_ District.

All proposals will become part of the requester's files without obligation.

#### Nature of Services Required

1. Audit period will be \_\_\_\_\_ through \_\_\_\_\_. (one year)
2. Special reports, exhibits, and schedules required:
  - Accounts report
  - Balance sheet
  - Schedule of cash
  - Statements of changes in financial position
  - Notes of financial statement
3. Conferences:
  - Exit conference with and District Manager.
  - Exit conference with office personnel.
4. Description of Entity and Records to be Audited:
  - General ledger, fixed assets ledger, accounts receivable, general journal, accounts payable.
5. Available Manuals and Information Sources:
  - Minutes of the board meetings of the District.
  - Accounting function work description of General Ledger Bookkeeper.
  - By-laws.

6. Details of fixed assets are maintained. Fixed assets are based on cost when available otherwise on estimates authorized by the Board of Directors. The fixed assets ledger was constructed with historical information by the District Manager during an audit period.
7. A budget is maintained and is available for examination.
8. Staff members will be available to pull and reproduce documents. Legal counsel will be made available with prior staff approval.
9. Work areas will be provided by the District in close proximity with the financial records on the premises.
10. Report Requirements

The report will be addressed to the Board of Directors and will contain items listed in item #2.

State the scope of the examination and that the audit was performed with generally accepted accounting principles and include a statement of opinion as to whether the statements conform to generally accepted accounting principles.

Reports of compliance examinations must include a statement that the audit was conducted in accordance with applicable standards. The audit report must state where the examination disclosed instances of significant non-compliance with laws and generally accepted accounting principles. Findings of non-compliance and ineligible expenditures must be presented in enough detail for management to be able to understand them.

A management letter will be required. It should contain a statement of audit findings and recommendations affecting financial systems and statements, internal control, legality of actions, other instances of non compliance with laws and generally accepted accounting principles and any other material matters.

11. Time Requirements

Proposals will be delivered to the District office at \_\_\_\_\_ not later than \_\_\_\_\_ p.m. on \_\_\_\_\_.

If presentations of possible finalists are necessary, no one with personal bias will interview proposers.

The Board of Directors have made no decision as to the date of the award of the audit. All proposers will be notified of the Board action in a timely manner.

Once a contract has been signed, work may begin immediately to generate the audit in a progress manner with costs to be billed to the District as the charges generated by the proposer in accordance with the original agreement.

Preliminary work to close accounts can begin immediately.

The preliminary report and exit conference will be completed prior to \_\_\_\_\_.

12. Report Review Timing and Number of Copies.

Prior to the submission of the completed audit report the audit firm will be required to deliver and review the draft and the proposed management letter with the District Board.

Copies required

- a. Audit report, copies.
- b. Management letter, copies.
- c. Working papers, copies.

13. The District Reserves the Right:

- To reject any and all proposals submitted.
- To request additional information from all proposers.

References

- [ORS Chapter 287](#) -- Borrowing and Bonds of Local Governments
- [ORS Chapter 294](#) -- County and Municipal Financial Administration (The Local Budget Law)
- [ORS Chapter 295](#) -- Depositories of Public Funds and Securities
- [ORS Chapter 297](#) -- Audits of Public Funds and Financial Records
- [ORS Chapter 310](#) -- Property Tax Rates and Amounts; Tax Limitations; Tax Reduction Programs
- [Oregon Administration Rules 162-01-0000 through 162-10-0330](#) -- These administrative rules are contained in a booklet put out by the Secretary of State's office entitled "Minimum Standards of Audits for Municipal Corporations"

Glossary

Original

- Books of Records where expenditures are written down and Entry money received is recorded.

Expenditure/Cash

- Disbursements Journal A listing of all money spent.

#### Internal Control

- The system of procedures and policies to insure safeguarding of assets and bookkeeping accuracy.

#### Source Documents

- Invoices, purchase orders, check stubs, receipts, and other evidence that money has either been received or spent.

#### Revenue/Cash

- Receipts Journal A listing of all money received.

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# Public Contracting

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## Introduction

Like all public agencies, Oregon special districts are required to comply with public contracting laws when purchasing goods and services, and for construction projects.

Under the new laws and rules adopted in March 2005, local governments are given much more flexibility with their contracting processes than ever before, particularly in the procurement of goods and services. However, in most cases this latitude is not available unless the governing body expressly adopts rules that grant and define the district's authority in certain areas. For example, the new laws require local contracting agencies to adopt rules that address the following:

- Contracts or classes of contracts that is exempt from competitive bidding;
- Dollar limits for contracts subject to “informal bidding requirements,” rather than formal ones;
- Definition of “personal services” and procedures for granting personal services contracts;
- Use of sole-source procurements;
- Delegation of authority for decision-making in the award of public contracts;
- Procedures for pre-qualifying bidders; and
- Procedures for disposal of surplus property.

These processes are discussed more completely in later sections of this chapter.

This chapter is designed to provide a basic understanding of the laws as they pertain to special districts, and instructions for implementing them. This chapter is intended as an informational tool only. It should not be used as a substitute for assistance of qualified legal counsel.

## Applicable Laws and Rules

[ORS Chapter 279](#) governs public contracting, and is divided into three subparts, as follows:

- [ORS 279A](#) (General Provisions – applies to all public contracts)
- [ORS 279B](#) (Public Procurement – applies to the purchase of goods and routine services (“procurements”), and, for state agencies, to the purchase of personal services)
- [ORS 279C](#) (Public Improvements – applies to contracts for construction, reconstruction, or major renovation of real property by or for a public agency. Also applies to state contracts for services with architects, engineers, and land surveyors.)

So, for any public contract, a special district need look either to ORS 279A and 279B (for procurements), or ORS 279A and 279C (for public improvements). Similarly, the Model

Public Contracting Rules are found in Oregon Administrative Rules Chapter 137, as follows:

- [Division 46](#) – General Provisions (apply to all public contracts)
- [Division 47](#) – Public Procurements for Goods and Services (implements ORS 279B)
- [Division 48](#) – Consultant Selection: Architectural, Engineering, Land Surveying, Related Services (must be used by state agencies; may be adopted by local agencies)
- [Division 49](#) – General Provisions Related to Public Contracts for Construction Services (implements ORS 279C)

Effective March 1, 2005, each government entity’s prior contracting rules became void. Therefore, each entity will need to adopt new rules that are consistent with the new laws. They may adopt all or part of the Model Public Contracting Rules as the contracting rules for that entity. They also may expressly decline to adopt the Model Rules, and adopt their own rules. The Model Rules will apply, by default, to any public entity that has adopted no contracting rules. Whether a contracting agency adopts the Model Rules affirmatively or adopts its own rules, the agency must review any changes to statute or the Model Rules to determine if the agency’s rules likewise need to be updated or modified.

As is discussed in more detail below, special districts are strongly advised to adopt their own contracting rules in certain key areas, in order to maximize the benefits afforded under the changes in the law.

Adoption of contracting rules is not just a formality. Once rules are adopted—whether they are the Model Rules or the district’s own rules—your district is required to follow them. Therefore, at least one person in your district should be well-acquainted with both statutory requirements and the district’s public contracting rules, and be responsible for advising staff and the district’s Board of Directors to ensure that the rules are followed. For complex contracts or contracts involving substantial sums of money, the advice of qualified legal counsel is also strongly recommended.

A copy of the Model Rules, and useful commentary, is available by contacting:

***Model Public Contract Rules Manual***  
***Department of Justice***  
***Administrative Services***  
***550 Justice Building***  
***Salem, Oregon 97310***  
***Phone: 503.378.4400***

A sample resolution for adopting public contracting rules is included at the end of this chapter.

## **Contracting Authority: Local Contract Review Board (LCRB)**

ORS 279A.060 provides that if the governing body of a local contracting agency takes no action to provide otherwise, the governing body is the LCRB. The roles of the LCRB are to:

- Adopt certain rules for public contracting;
- Establish rules for carrying out its public contracting duties;
- Grant exemptions from competitive bidding;
- Hold hearings on exemptions, when necessary; and
- Hear and decide appeals of disqualified bidders.

## **Delegation of Authority**

Some portions of ORS Chapter 279 require certain authority to be exercised by the LCRB. This authority cannot be delegated because it is expressly granted in the Code. However, some portions of ORS Chapter 279 assign responsibility to the “contracting agency,” which means the district’s Board of Directors unless the Board delegates this authority to someone else. Through ORS 279A.075, certain administrative contracting responsibilities may be delegated to others, usually a district manager or purchasing officer. Therefore, every contracting agency should consider adopting a rule to this effect:

- Except as otherwise provided in these rules, the powers and duties of the local contract review board under the Public Contracting Code must be exercised and performed by the District’s Board of Directors.
- All powers and duties given or assigned to contracting agencies by the Public Contracting Code must be exercised or performed by the District Manager or the District Manager’s designee.
- Finally, it is important to note that only the district’s Board of Directors may contractually bind the district, though it may be able to delegate the authority to approve such contracts. Therefore, the district should adopt a policy that establishes the types of contracts, or value of contracts, that the designee is authorized to approve, and which contracts must go to the Board of Directors for approval.

## **The Bidding Requirement: Exceptions and Exemptions**

Unless an exemption is declared, most contracts for purchases other than personal services contracts are awarded through a competitive, sealed bidding process, or competitive sealed proposal process and contracts are awarded to the lowest responsive, responsible bidder.

The requirements of this section do not apply to public contracts for small procurements (ORS 279B.065), intermediate procurements (ORS 279B.070), sole-source procurements (ORS 279B.075) and emergency procurements (ORS 279B.080). See Exceptions and Exemptions below.



However, pursuant to ORS 279B.050, contracting agencies may choose whether to solicit competitive sealed bids using an invitation to bid (“ITB”) under ORS 279B.055, or to solicit competitive sealed proposals using a request for proposals (“RFP”) under ORS 279B.060. In both cases, the ITB or RFP spells out the requirements of the bid or proposal. However, whereas ultimately the ITB seeks to obtain the best price, the RFP seeks to obtain the best value, considering all criteria, one of which may be price. Ultimately, if the RFP process is used, the contract will be awarded to the proposer who makes the offer “most advantageous” to the contracting agency.

**Note:** It is important to remember that the process described above applies to procurements of goods and services, not public improvement contracts. The process for obtaining public improvements must follow the provisions of ORS 279C.

Competitive bidding processes do not apply in cases of an exception or exemption to contracting laws. An exception to competitive bidding means that the public contracting rules do not apply at all. An exemption to competitive bidding means that the contract is excused from competitive bidding requirements under certain circumstances.

### **Exceptions Provided By Statute**

The following types of contracts relevant to special districts are not required to be competitively bid, according to ORS 279A.025:

- Contracts for the purchase and sale of real estate. (Instead, see ORS Chapters 273 and 276);
- Personal services contracts. (Rules are required, however).
- Contracts made with other contracting agencies or the federal government.
- Contracts made with qualified nonprofit agencies providing employment opportunities for disabled individuals.
- Service contracts for health insurance entered into by the State Department of Health and Human Services.
- Grants.
- Contracts for professional or expert witnesses in litigation.
- Sole-source expenditures when rates are set by law or ordinance for purposes of source selection.
- Procurements from an Oregon Corrections Enterprises program.
- Energy saving performance contracts.
- Contracts entered into pursuant to the incurring of debt or investment of funds by the public body.
- Contracts for employee benefit plans.
- Emergency Contracts. ORS 279B.080 allows the “head of a contracting agency” (i.e., the Board) or someone delegated this authority in writing, to make or authorize others to make emergency procurements of goods or services in an emergency. The emergency and the methods used to procure the goods or services must be documented.

**Note:** Although no rules are specifically required to declare the emergency or to act under emergency conditions, if the authority to act in an emergency is to be delegated by the

Board, this must be done in writing. Thus, it is advisable to have the district's public contracting rules specify who is authorized to enter into emergency contracts, and under what conditions.

Contracts between fire departments for fire protection equipment, if the following requirements are met:

- The recipient makes a written request for the equipment;
- The equipment is surplus to or unusable by the transferor;
- The total fair market value of the equipment received does not exceed \$50,000 per calendar year;
- The transferor holds a public hearing, with 14 days' written notice published in newspaper of general statewide circulation; and
- The transferor makes written findings that the contract is in the public interest.

**Note:** These requirements apply even if the recipient fire department takes the equipment at no cost.

### **Exceptions for Contracts of Certain Dollar Amounts**

These exemptions are embodied in ORS 279B.065 and ORS 279B.070, with some modifications. They do not apply to public improvements, which are addressed in ORS Chapter 279C.

Small Procurement:

- A "small procurement" is defined in ORS 279B.065 as "any procurement of goods or services not exceeding \$5,000." Such contracts may be awarded in any manner provided for in the contracting agency's rules as being "practical or convenient" by the contracting agency, including direct selection. The rules also may provide for the degree to which the value of such a contract may be amended and still fall within this exception.

Intermediate Procurement:

- An "intermediate procurement" is defined in ORS 279B.070 as "any procurement of goods or services exceeding \$5,000 but not exceeding \$150,000." When seeking to award such a contract, the agency must obtain at least three informally solicited quotes from prospective contractors. The contract must be awarded to the offer or whose quote or proposal will "best serve the interests of the contracting agency, taking into account price as well as other considerations." Rules adopted by the contracting agency may provide for the degree to which the value of the contract may be amended to still fall within the exception.

For procurements in excess of \$150,000, formal bidding processes (i.e., advertisement, ITB/RFP, competitive process) must be followed, unless an exemption is taken by the procedures described below.

## **Exemptions by the Local Contract Review Board (“Special Procurement”)**

There are two types of special procurements described in ORS 279B.085: A “class special procurement,” which includes an entire class of contracts, and a “contract-specific special procurement,” which includes only one contract. Class special procurements are for the purpose of entering into a series of contracts over time for the acquisition of a specified class of goods or services. Contract-specific special procurements are for the purpose of entering into a single contract or a number of related contracts for the acquisition of specified goods and services on a one-time basis or for a single project.

To use this process, a written request for the special procurement must be made to the LCRB, that describes the proposed contracting procedure, the goods or services or the class of goods or services to be acquired through the special procurement and the circumstances that justify the use of a special procurement. A special procurement qualifies if it will:

- Be unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts; and
- Result in substantial cost savings to the contracting agency or to the public; or
- Otherwise substantially promote the public interest in a manner that could not practically be realized by complying with the requirements that are applicable under ORS 279B.055 or 279B.060, 279B.065 or 279B.070 or under any other adopted rules.

A contracting agency shall give public notice of the LCRB's approval of a Special Procurement in accordance with ORS 279B.055(4) and OAR 137-047-0300. The public notice shall describe the goods or services or class of goods or services to be acquired through the special procurement. The contracting agency shall give such public notice of the approval of a special procurement at least seven (7) days before award of the contract.

In addition, once the special procurement is authorized by the LCRB, the contract may be awarded to the offer or “whose offer the contracting agency determines in writing to be the most advantageous to the contracting agency.” If the approval is for a class special procurement, contracts within that class may be awarded, in perpetuity, without further approvals or bidding.

**Note:** These provisions do not apply to public improvements, which are discussed in ORS Chapter 279C.

### **Name Brands and Sole-Source Suppliers**

ORS 279B.075 permits a contracting agency to award a contract for goods or services without competition when the LCRB, or a person designated in writing by the LCRB, determines in writing, according to adopted rules, that the goods or services, or class of goods or services, are available from only one source.

The determination of a sole source must be based on written findings that may include:

- That the efficient utilization of existing goods requires the acquisition of compatible goods or services;
- That the goods or services required for the exchange of software or data with other public or private agencies are available from only one source;
- That the goods or services are for use in a pilot or experimental project; or
- Other findings that support the conclusion that the goods or services are available from only one source.

**Note:** the statute requires findings to be adopted, but provides a list of justifications that may be included in the findings. It is not clear whether this means that the LCRB only may base its decision on the options listed, or whether it may base its decision on some reason not on the list. Until this ambiguity is addressed, it is recommended that the rules adopted by the public entity for sole-source procurements require the findings to, at minimum, include at least one of the criteria listed in the statute.

To the extent reasonably practical, the contracting agency must negotiate with the sole source to obtain advantageous contract terms.

### **Contracts with Qualified Non-Profit Agencies Providing Employment Opportunities for Disabled Individuals**

ORS 279A.025(r)(4) requires a local contracting agency to check the list of qualified products maintained by the Department of Administrative Services before procuring any product or service. If the product or service needed is listed, and if it is of the appropriate specifications and is available when needed by the public agency, the contracting agency must obtain the product or service from the qualified non-profit agency. Such contracts may not be competitively bid.

For more information, see the following website:  
<http://www.oregon.gov/DAS/SSD/SPO/qrf-menu.shtml>.

### **Prequalification of Bidders**

Districts have the option of pre-qualifying all bidders for a particular contract or type of contract.

ORS 279B.120 provides that the method of submitting prequalification applications, information required in order to be pre-qualified, and the forms to be used for submitting prequalification information, are determined by the contracting agency, unless otherwise prescribed by rules adopted by the LCRB.

Within 30 days of receipt of an application for prequalification (or sooner if the applicant requests it sooner, and it is practicable to do so), the contracting agency must notify the prospective bidder whether the bidder meets the standards of responsibility in ORS 279B.110(2); whether the bidder is qualified to compete for the type or nature of the contract or class of contracts; and the period of time the prequalification is in effect. If the contracting agency denies prequalification, it must state which standard(s) of responsibility were not met, or the bidder will be deemed to be pre-qualified. The notice

also must state the applicant's right to a hearing. If the applicant is not pre-qualified, the applicant may demand a hearing within 3 business days after receipt of the notice that prequalification was denied.

If the contracting agency subsequently determines that the pre-qualified bidder is not qualified, the agency must issue reasonable notice to the bidder that the bidder is no longer qualified, or that the contracting agency has modified the prequalification, and the notice must state the reasons for the revocation or modification of prequalification. Again, the notice must state the applicant's right to a hearing, and the applicant may demand a hearing within 3 days of receipt of the notice. A revocation or revision does not apply to contracts that have already been advertised.

### **Preference for Oregon Products and Services**

A "resident bidder" is a bidder that does business in Oregon – i.e., has paid unemployment taxes or income taxes in Oregon during the 12 calendar months immediately preceding submission of the bid and has a business address in Oregon. Bidders who do not meet these criteria are "non-resident bidders."

All things being equal—including price, fitness, availability and quality—districts must "prefer" goods or services that have been manufactured or produced in Oregon. This is done by adding to the non-resident bidder's bid a percentage equal to the preference, if any, given to the bidder in the state where the bidder resides.

When contracts in excess of \$10,000 are awarded to a non-resident bidder – i.e., a contractor who is not located or registered to do business in Oregon—the contractor is required to report the total contract price, terms of payment, length of the contract and any other information required by the Oregon Department of Revenue. Districts must be satisfied that this requirement has been met before they issue a final payment on a contract. This can be done by requesting a copy of the required notice.

For public improvement contracts, bid documents must require bidders to state whether they are resident bidders, and indicate the percentage amount that a bid will be increased for non-resident bidders.

On or before January 1 of each year, the Oregon Department of Administrative Services is required to publish a list of states that give preference to in-state bidders, with the percent increase applied in each state. The contracting agency that relies on this document in its bidding process cannot be held liable to any bidder when determining the lowest responsible bidder.

OAR 137-046-0300 of the Model Public Contracting Rules provides procedures for determining if goods are manufactured in Oregon, determining whether bids are identical, and drawing lots to select the winning bid when bids are identical.

## **Personal Services Contracts**

For non-state agencies (such as special districts), “personal services” are whatever the governing body decides they will be, by rule or legislative act. [See ORS 279A.055.] ORS 279A.070 permits a local contracting agency to adopt rules governing personal services contracts, and requires them to create procedures for screening and selection. Typical examples of personal services contracts are those with accountants, attorneys, consultants, physicians, artists, architects and engineers, and land surveyors (procured under ORS 279C.105 or 279C.110). Routine types of services typically based on price, such as janitorial, food service, or maintenance contracts, may also be included in the definition of “personal services.”

Note: The Attorney General’s Model Public Contracting Rules for personal services contracts expressly do not apply to local contracting agencies. Thus, there are no “default” rules for personal services contracts. A district that legally wants to enter into personal services contracts, must adopt rules for doing so, or may not enter into these kinds of contracts.

### **Architects, Engineers, and Land Surveyors:**

Under ORS 279C.105, each contracting agency authorized (by its own rules) to enter into personal services contracts with architects, engineers, and land surveyors, must adopt procedures for screening and selection under ORS 279C.110 and ORS 279C.120. ORS 279C.100(3) states that procedures for the selection of these “consultants” are “within the sole discretion of the contracting agency and may be adjusted to accommodate the contracting agency’s scope, schedule and budget objectives for a particular project,” including providing for the direct appointment (without competition) if the value of the project does not exceed a threshold amount as determined by the contracting agency.

*Note:* The requirement to establish a dollar limit for direct appointment of a contractor does NOT apply to other types of personal services contracts.) This statute also permits a contracting agency to establish procedures for breaking a tie, and permits negotiation of such things as scope of services, compensation, and contract conditions. Furthermore, ORS 279C.115 permits direct appointment of such consultants if the contract is a continuation of an existing contract, and other conditions are satisfied.

Chapter 137, Division 48 of the Model Rules deals with selection of these kinds of consultants. It’s important to note that, although under ORS 279A.065(4), the Model Rules will apply automatically to a district that has not adopted its own contracting rules, the provisions relating to architects, engineers and land surveyors will not automatically apply.

Public improvement projects expected to exceed \$900,000, with at least 10 percent of the contract amount coming from state funds are required to use Qualification-based selection (“QBS”) procedures when selecting architects, engineers and land surveyors. Essentially, this means that the agency must solicit proposals from such professionals

only on the basis of qualifications for the job, and may negotiate price only after it has made its qualification-based selection. If the agency and the selected contractor cannot agree on a price for the services, the agency is free to terminate the negotiations and move on to the next qualified candidate. [ORS 279C.110.]

Note: QBS is not unique to state contracting. Many projects receiving federal funds, such as transportation projects, may require a QBS process as well. Federal laws and regulations will “trump” state law when the two conflict. Therefore, if a special district is receiving federal funds, it must carefully review the terms of the grant or loan to ensure compliance with this and other requirements.

## **Purchasing Through the State of Oregon**

Districts can purchase certain supplies and equipment through the State Department of Administrative Services without going through the bid process. The State Department of Administrative Services is authorized to acquire, warehouse and distribute surplus property to all eligible governmental units and certain nonprofit organizations.

To obtain information contact the Department of Administrative Services:

**1225 Ferry St. SE**  
**Salem, Oregon 97310**  
**503.378.4642**  
<http://www.oregon.gov/DAS/index.shtml>

## **Sale of Surplus Property**

Under ORS 279A.185, local contracting agencies may dispose of surplus property in accordance with adopted rules. These rules will determine how the contracting agency will dispose of surplus property, including exempting such contracts from competitive bidding if desired.

Note: The Model Public Contracting Rules do not address disposition of surplus property, so no rule will apply by default if a contracting agency does not adopt its own rules. If no rules are adopted, the contracting agency has no authority to dispose of surplus property except through the bidding processes provided by statute. Thus, it is advisable to adopt rules addressing disposition of surplus property.

## **Public Procurements: Advertising; Notice; Award of Contract**

The process for advertising a bid or proposal now depends on what is being purchased. Therefore, the following section describes only the processes for advertising for procurement of goods and services. The processes for advertising for public improvements are addressed later in this chapter.

The contracting agency may choose whether to proceed using an invitation to bid (“ITB”) (ORS 279B.055), or a request for proposals (“RFP”) (ORS 279B.060). This requirement

does not apply to public contracts for small procurements, intermediate procurements, emergency procurements or special procurements.

As a general rule, ITBs are likely to be most useful when the item to be procured is not particularly unique, and price will be paramount in making the award decision. RFPs may be most useful when something other than price is important to the procurement of the good or service, such as unique qualifications and experience of the proposer, or when the approach to providing the good or service can vary, and the contracting agency is open to creative solutions. Another important factor to consider is that either process may be used to award multiple public contracts for goods or services when specified in the solicitation document. The statute does not elaborate on whether the “multiple contracts” must be for the same goods and services, or even related to each other. However, OAR 137-047-0600(4)(c) and (d) state as follows:

“Multiple Awards shall not be made if a single Award will meet the Contracting Agency’s needs, including but not limited to adequate availability, delivery, service, or product compatibility. A multiple Award may be made if Award to two or more Bidders of similar Goods or Services is necessary for adequate availability, delivery, service or product compatibility. Multiple awards may not be made for the purpose of dividing the Procurement into multiple solicitations, or to allow for user preference unrelated to utility or economy. A notice to prospective Bidders that multiple Contracts may be Awarded for any (solicitation) shall not preclude the Contracting Agency from Awarding a single Contract for such (solicitation).... If the (solicitation document) permits the Award of multiple Contracts, the Contracting Agency shall specify in the (solicitation document) the criteria it will use to choose from the multiple Contracts when purchasing Goods or Services.”

Although no rules are specifically required for special districts to use these two types of solicitation, a district would be prudent to adopt the Model Rules relating to these processes, or similar rules of its own, to ensure fair competition in public contracting.

**Note:** The Model Public Contracting Rules may interpret or elaborate on statutory requirements. See, for example, the following administrative rules regarding procurement of goods and services:

- OAR 137-047-0440: Pre-closing Modification or Withdrawal of Offers
- OAR 137-047-0470: Mistakes
- OAR 137-047-0490: Extension of Time for Acceptance of Offer
- OAR 137-047-0600: Offer Evaluation and Award
- OAR 137-047-0640: Rejection of an Offer
- OAR 137-047-0650: Rejection of All Offers
- OAR 137-047-0660: Cancellation of Procurement or Solicitation
- OAR 137-047-0800: Contract Amendments



## **Public Improvement Contracts**

A public improvement is “a project for construction, reconstruction or major renovation on real property by or for a contracting agency.” Public improvements do not include emergency work, minor alterations, or ordinary repair and maintenance needed to preserve the public improvement.

The definition also specifically excludes projects for which no funds of a contracting agency are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspections are excluded. This clearly addresses situations such as whether a public entity may receive a donation of construction services, or whether it must put contracts out to bid when they are being entirely funded by a private source, as in a public-private partnership agreement.

Contracts for construction projects that are not public improvements must be competitively bid like a public procurement of goods and services under ORS 279B. However, other aspects of laws that apply to public improvements – such as payment of prevailing wage – may apply.

As a reminder, ORS 279C applies to public improvements only. The entirety of OAR Chapter 137, Section 49, applies to public contracts for construction services. And, because ORS Chapter 279A applies to all public contracts, it also applies to public improvement contracts.

### **Minor Alterations, Ordinary Repair or Maintenance**

These types of projects are not included in the definition of “public improvement.” They may be awarded according to the processes for obtaining goods and services under ORS 279B.

### **BOLI Filing**

On an annual basis, districts must prepare and file with the Commissioner of the Bureau of Labor and Industries (BOLI) a list of every public improvement that the district plans to fund in the upcoming budget year. For each project, the district must indicate whether it intends to do the work itself, or hire a private contractor.

If the district intends to do its own work on a project estimated to cost over \$125,000, it must show that the decision to perform the construction using district personnel and equipment is the least cost to the district.

The information must be filed 30 days prior to adoption of the district’s budget and should include a description of the improvement and an estimate of the total on-site construction costs.

## **Exemptions from Competitive Bidding**

Exemptions from competitive bidding for public improvement contracts include:

- Contracts under \$5,000;
- Contracts between \$5,000 and \$100,000 (or \$50,000 for transportation projects) if the process for obtaining competitive quotes for intermediate procurements (see ORS 279B.070) are followed;
- Contracts with qualified non-profit agencies providing employment for the disabled;
- Contracts or a class of public improvement contracts for which an exemption has been adopted after making findings that doing so is unlikely to encourage favoritism in the awarding of public improvement contracts or substantially diminish competition, and that the awarding of public improvement contracts under the exemption will result in substantial cost savings to the public agency. A public hearing is required for an exemption for a public improvement contract. In making findings for a class exemption for public improvement contracts the contracting agency must clearly identify characteristics of the class, using some combination of project descriptions, locations, time periods, contract values, or other factors that the class has in common. Classes may not be identified solely based on their funding source (such as "all grant-funded projects").
- Certain projects for the Department of Veterans Affairs under ORS 407.135 and 407.145(1).
- Emergency contracts.

An exemption of a public improvement contract requires a public hearing. Notification of the public hearing shall be published in at least one trade newspaper of general statewide circulation a minimum of 14 days before the hearing. The notice shall state that the public hearing is for the purpose of taking comments on the contracting agency's draft findings for an exemption from the competitive bidding requirement. (ORS 279C.335(5)(c)).

### **“In-House” Projects**

It is a common misconception that public entities are required to contract out public improvement contracts. They're not. If a special district has qualified personnel who can complete the improvement, it may use them, provided the following requirements are met:

- If the cost of the work exceeds \$5,000, the district must adopt and apply a cost accounting system that complies with the model cost accounting guidelines developed by the Oregon Department of Administrative Services.
- If the project is estimated to cost more than \$125,000, the district must demonstrate that doing the work itself is the least costly alternative. To this end, the district must prepare adequate plans and specifications and the estimated unit cost of each classification of work. The estimated cost must include a reasonable allowance for the cost, including investment cost, of any equipment used. In this context, “adequate” plans and specifications are those “sufficient to control the performance of the work and to assure satisfactory quality of construction by the public district personnel.”

- Districts must keep an accurate account of the costs of performing the work, including all engineering and administration expenses and costs, including investment costs, of any equipment used.
- The above rules do not apply to improvements for the distribution or transmission of electric power.

### **Prevailing Wage**

For “public works” of \$50,000 or more, the prevailing wage rate must be paid by all contractors and subcontractors. “Public work” is defined substantially similarly to “public improvement.” Public works include, but are not limited to, roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting which is carried on or contracted for by a public agency to serve the public interest but does not include the reconstruction or renovation of privately owned property that is leased by a public agency.

Prevailing wages on public works is addressed in ORS 279C.800 through 279C.870, and are enforced by the Bureau of Labor and Industries (BOLI). Exceptions include projects in which no funds of the public agency are used.

A public project must meet two requirements for prevailing wage law to apply:

- Project must be a public work
- Project must use public funds, which include bond proceeds from conduit or pass-through revenue bonds that are loaned to a private entity.

Compliance with prevailing wage requirements is the responsibility of the contractor or subcontractor. However, public agencies are required to include this requirement in both the solicitation document and the ensuing contract, and the contract must require that necessary fees be paid to BOLI. Public agencies also are required to notify BOLI – on forms provided by BOLI – within 30 days of awarding a contract subject to prevailing wage. Subcontractor disclosure forms must be included. (ORS 279C.835.)

### **Disclosure of Sub-Contractors**

Within two working hours after the date and time of the deadline when bids are due to a contracting agency for a public improvement contract of more than \$100,000, a "responsive" bidder must disclose its first-tier subcontractors. The disclosure must be provided for each first-tier subcontractor who will be furnishing labor, or labor and materials, in connection with the contract and whose contract value is equal to or greater than 5 percent of the total project bid, or \$15,000, whichever is larger; or \$350,000, regardless of the percentage of the total bid.

The contracting agency shall designate a deadline for submission of bids that has a date on a Tuesday, Wednesday, or Thursday and a time between 2 p.m. and 5 p.m. except for public improvement projects for maintenance or construction of highways, bridges or other transportation facilities.

The disclosure of the first-tier sub-contractors must include the name of each subcontractor, the category of work that each subcontractor will perform and the dollar value of each subcontract.

### **First-Tier Sub-Contractor Disclosure Form**

Project Name: \_\_\_\_\_ Bid #: \_\_\_\_\_  
Bid Closing: Date: \_\_\_\_\_ Time: \_\_\_\_\_

This form must be submitted at the location specified in the Invitation to Bid on the advertised bid closing date and within two working hours after the advertised bid closing time.

List below the name of each subcontractor that will be furnishing labor or will be furnishing labor and materials and that is required to be disclosed, the category of work that the subcontractor will be performing and the dollar value of the subcontract. Enter "NONE" if there are no subcontractors that need to be disclosed. (ATTACH ADDITIONAL SHEETS IF NEEDED.)

Name	Dollar Value	Category of Work
1) _____	\$ _____	_____
2) _____	\$ _____	_____
3) _____	\$ _____	_____
4) _____	\$ _____	_____
5) _____	\$ _____	_____
6) _____	\$ _____	_____

Failure to submit this form by the disclosure deadline will result in a non-responsive bid. A non-responsive bid will not be considered for award.

Form submitted by (bidder name): \_\_\_\_\_ Contact name: \_\_\_\_\_  
Phone no.: \_\_\_\_\_

(3) A contracting agency shall accept the subcontractor disclosure. The contracting agency shall consider the bid of any contractor that does not submit a subcontractor disclosure to the contracting agency to be a non-responsive bid and may not award the contract to the contractor.

A contracting agency is not required to determine the accuracy or the completeness of the subcontractor disclosure.

(4) After the bids are opened, the subcontractor disclosures must be made available for public inspection.

(5) A contractor may substitute a first-tier subcontractor under the provisions of ORS 279C.585.

(6) A subcontractor may file a complaint under ORS 279C.590 based on the disclosure requirements of subsection (1) of this section. [2003 c.794 §116; 2005 c.103 §16]

### **Substitution of First-Tier Sub-Contractors**

A contractor whose bid is accepted may substitute a first-tier subcontractor that was not disclosed by submitting the name of the new subcontractor and the reason for the substitution in writing to the district.

Substitutions of first-tier subcontractors are permitted in the following circumstances:

- When the disclosed subcontractor fails or refuses to execute a written contract after having had a reasonable opportunity to do so.
- When the disclosed subcontractor becomes bankrupt or insolvent.
- When the disclosed subcontractor fails or refuses to perform the subcontract.
- When the disclosed subcontractor fails or refuses to meet the bond requirements of the prime contractor that had been identified prior to the bid submittal.
- When the contractor demonstrates to the public contracting agency that the subcontractor was disclosed as the result of an inadvertent clerical error.
- When the disclosed subcontractor does not hold a license from the Construction Contractors Board, and is required to be licensed by the board.
- When the contractor determines that the work performed by the disclosed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications or that the subcontractor is substantially delaying or disrupting the progress of the work.
- When the disclosed subcontractor is ineligible to work on a public improvement pursuant to the applicable statutory provisions.
- When the substitution is for good cause. The Construction Contractors Board defines “good cause” in OAR 812-002-0325 as follows: “Good cause” includes but is not limited to the financial instability of a subcontractor. The definition of "good cause" must reflect the least-cost policy for public improvements established in ORS 279C.305.
- When the substitution is reasonably based on the contract alternates chosen by the district.

After bids are opened, the subcontractor disclosures must be made available for public inspection.

### **Bid Opening**

All bids submitted to the district must comply with all requirements of the Invitation to Bid, and also must be:

- In writing.
- Filed with the person designated by the district to receive the bids.
- Opened publicly by the contracting agency at the specific time designated in the advertisement for the bid.
- Filed for public inspection after they have been opened.

- Attached to a surety bond, cashier's check, or certified check for bid security unless the contract has been exempted from the requirement. Such security must not exceed 10 percent of the amount bid for the contract.

**Note:** The Model Public Contracting Rules may interpret or elaborate on statutory requirements. See, for example, the following administrative rules relating to solicitation for public improvement contracts:

- OAR 137-049-0250: Addenda to Solicitation Documents
- OAR 137-049-0260: Request for Clarification or Change; Solicitation Protests
- OAR 137-049-0270: Cancellation of Solicitation Document
- OAR 137-049-0320: Pre-Closing Modification or Withdrawal of Offers
- OAR 137-049-0340: Late Bids, Late Withdrawals, and Late Modifications
- OAR 137-049-0350: Mistakes
- OAR 137-049-0380: Bid or Proposal Evaluation Criteria
- OAR 137-049-0390: Offer Evaluation and Award; Determination of Responsibility
- OAR 137-049-0440: Rejection of Offers

### **Non-Resident Bidders**

When determining the low bidder, the district must add a percentage increase on the bids of nonresidents equal to the percent, if any, of the preference given to that bidder in the state in which the bidder resides. A "resident bidder" means a bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid and has a business address in this state. Each year the Oregon State Department of General Services publishes a list of states that give preference to in-state bidders, with the percent increase applied in each state.

#### Rejection of Bids

The district may reject any bid not in compliance with all public bidding procedures and requirements. The district also may reject all bids for good cause if it makes written findings showing that it is in the public interest to do so. If all of the bids are rejected and the contract is not abandoned, the district may call for new bids.

#### Negotiation With Lowest Bidder

As a general rule, the district may not negotiate with the low bidder in a public improvement contract. However, according to ORS 279C.340, if all bids exceed the district's estimate of what the contract will cost, the district may, according to its adopted rules, negotiate with the lowest responsive, responsible bidder prior to awarding the contract, in order to attempt to bring the price within the district's estimate. However, the negotiation may not result in a significant change in the scope of work. Bidder records used in negotiating the contract are not subject to public inspection until after the contract has been awarded or the negotiation process terminated.

## **Awarding the Contract**

The general rule in awarding public contracts is that they must be awarded to the responsible bidder who submits the lowest responsive bid or proposal. An unresponsive bid from a responsible bidder must be rejected. Similarly, a responsive bid must be rejected in the bidder is determined to be not responsible.

### “Responsive Bid”

ORS 279B.005(1)(g) defines “responsive bid” or “responsive proposal” as a bid or proposal that substantially complies with the invitation to bid or request for proposals, and all prescribed procurement procedures and requirements.

### “Responsible Bidder”

ORS 279B.110 defines responsibility of bidders and proposers. In determining whether a bidder or proposer has met the standards of responsibility, the contracting agency must consider whether a bidder or proposer has:

- Available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to indicate the capability of the bidder or proposer to meet all contractual responsibilities;
- A satisfactory record of performance. The contracting agency must document the record of performance of a bidder or proposer if it finds the bidder or proposer non-responsible;
- A satisfactory record of integrity. The contracting agency must document the record of integrity of a bidder or proposer if it finds the bidder or proposer non-responsible;
- Qualified legally to contract with the contracting agency;
- Supplied all necessary information in connection with the inquiry concerning responsibility. If a bidder or proposer fails to promptly supply information requested by the contracting agency concerning responsibility, the contracting agency must base the determination of responsibility upon any available information or may find the bidder or proposer non-responsible; and
- Not been debarred by the contracting agency under ORS 279B.130. The contracting agency must prepare a written determination of non-responsibility if the bidder or proposer does not meet the standards of responsibility.

After bids are opened and a determination is made that a public improvement contract is to be awarded, the contracting agency shall award the contract to the lowest responsible bidder.

At least seven days before the award of the public contract, unless the contracting agency determines that seven days is impractical under rules adopted under ORS 279A.065, the contracting agency shall issue to each bidder or post electronically or otherwise, a note of the contracting agency's intent to award a contract. This does not apply to a contract excepted or exempted from competitive bidding under ORS 279C.335(1)(c) or (d) or (6). The notice and manner of posting must conform to rules adopted under ORS 279A.065.

In determining the lowest responsible bidder, the contracting agency shall:

- Check the list created by the Construction Contractors Board under ORS 701.227 for bidders who are not qualified to hold a public improvement contract.
- Determine whether the bidder has met the standards of responsibility in accordance with ORS 279C.375(3)(b).
- Document the contracting agency's compliance with the requirements of ORS 279C.375(3)(b) by completing a Responsibility Determination Form (see below).
- Submit the Responsibility Determination Form, with any attachments, to the Construction Contractors Board within 30 days after the date the contracting agency awards the contract.

### **Responsibility Determination Form**

Project Name: \_\_\_\_\_  
Bid Number: \_\_\_\_\_  
Business Entity Name: \_\_\_\_\_  
CCB License Number: \_\_\_\_\_  
Form Submitted By (Contracting Agency): \_\_\_\_\_  
Form Submitted By (Contracting Agency Representative's Name): \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

(The contracting agency must submit this form with attachments, if any, to the Construction Contractors Board within 30 days after the date of contract award.)

The contracting agency has (check all of the following):

- Checked the list created by the Construction Contractors Board under ORS 701.227 for bidders who are not qualified to hold a public improvement contract.
- Determined whether the bidder has met the standards of responsibility. In so doing, the contracting agency has considered whether the bidder:
  - Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or the ability to obtain the resources and expertise, necessary to meet all contractual responsibilities.
  - Has a satisfactory record of performance.
  - Has a satisfactory record of integrity.
  - Is qualified legally to contract with the contracting agency.
  - Has supplied all necessary information in connection with the inquiry concerning responsibility.

Determined the bidder to be (check one of the following):

- Responsible under ORS 279C.375 (3)(a) and (b).



[ ] Not responsible under ORS 279C.375(3)(a) and (b).

(Attach documentation if the contracting agency finds the bidder not to be responsible.)

The successful bidder shall:

- Promptly execute a formal contract; and
- Execute and deliver to the contracting agency a performance bond and a payment bond when required by ORS 279C.380. This requirement is for public improvement contracts that exceed \$100,000 or \$50,000 for high-ways, bridges and other transportation contracts.

## **Performance ad Payment Bonds**

### Performance Bonds

Performance bonds are for the protection of the contracting agency that awarded the contract and any public agency or agencies for whose benefit the contract was awarded. The contracting agency may also require a performance bond and payment bond on a class of public improvement projects that have been exempted by the LCRB.

The performance bond must be in an amount equal to the full contract price. A contracting agency may waive the requirement of a performance bond and permit the successful bidder to submit a cashier's check in lieu of all or a portion of the required performance bond.

Each performance bond and each payment bond must be executed solely by a surety company or companies holding a certificate of authority to transact surety business in Oregon. The performance and payment bonds must be payable to the contracting agency or to the public agency or agencies for whose benefit the contract was awarded and be in a form approved by the contracting agency.

Performance and payment bonds may be excused in cases of an emergency, or when the interest or property of the contracting agency would suffer material injury or delay or other cause. A declaration of the emergency must be made in accordance with ORS 279A.065.

A local contract review board can exempt certain contracts or classes of contracts from all or a portion of the requirement that good and sufficient bonds be furnished to ensure performance of the contract and payment of obligations incurred in the performance of the contract.

### Payment Bonds

Payment bonds ensure that laborers, subcontractors and suppliers on the project are paid in the event the contractor doesn't pay them what is owed. Requiring a payment bond protects the district by enabling unpaid persons to bring a claim against the bond, rather than pursuing a claim against the district as the owner of the project. The amount of the payment bond must be equal to the full contract price.

## **RFPS/Competitive Proposals**

When authorized or required by an exemption granted under ORS 279C.335 after proper findings, a contracting agency may award a public improvement contract by competitive proposals instead of by traditional invitation to bid. A contract awarded under this section may be amended only in accordance with rules adopted by the contracting agency in accordance with ORS 279A065.

With limited exceptions, competitive proposals are subject to the following requirements of competitive bidding:

- Advertisement under ORS 279C.360;
- Requirements for solicitation documents under ORS 279C.365;
- Disqualification due to a Construction Contractors Board listing as described in ORS 279C.375(3)(a);
- Contract execution and bonding requirements under ORS 279C.375 and 279C.380;
- Determination of responsibility under ORS 279C.375 (3)(b);
- Rejection of bids under ORS 279C.395; and
- Disqualification and prequalification under ORS 279C.430, 279C.435 and 279C.440.

However, competitive proposals are not subject to the following requirements of competitive bidding:

- First-tier subcontractor disclosure under ORS 279C.370; and
- Reciprocal preference under ORS 279A.120.

If the award of a public improvement contract advertised by the issuance of an RFP may be made without negotiation, the contracting agency may require proposal security as follows:

- In a form and amount determined to be reasonably necessary or prudent to protect the interests of the contracting agency.
- The contracting agency must retain the proposal security if a proposer who is awarded a contract fails to promptly and properly execute the contract and provide any required bonds or insurance.
- The contracting agency must return the proposal security to all proposers upon the execution of the contract, or earlier in the selection process.

A contracting agency is not required to award a contract advertised by RFP based on price, but may award the contract to the responsible proposer whose proposal “is determined in writing to be the most advantageous to the contracting agency based on the evaluation factors set forth in the request for proposals and, when applicable, the outcome of any negotiations authorized by the request for proposals.” Other factors may not be used in the evaluation. For each RFP, the contracting agency must prepare a list of proposals received.

Notwithstanding the public records law, proposals may be opened so as to avoid disclosure of contents to competing proposers during, when applicable, the process of negotiation. Proposals are not required to be open for public inspection until after the notice of intent to award a contract is issued.

However, a contracting agency may withhold from disclosure to the public any trade secrets, as defined in ORS 192.501, and information submitted to a public body in confidence, as described in ORS 192.502, that are contained in a proposal. The fact that proposals are opened at a public meeting as defined in ORS 192.610 does not make their contents subject to disclosure, regardless of whether the public body opening the proposals fails to give notice of or provide for an executive session for the purpose of opening proposals.

If an RFP is canceled after proposals are received, the contracting agency may return a proposal to the proposer. The contracting agency must keep a list of returned proposals in the file for the solicitation.

As provided in the RFP, a contracting agency may conduct discussions with proposers who submit proposals that the agency has determined to be closely competitive, or to have a reasonable chance of being selected for award. The discussions may be conducted for the purpose of clarification, to ensure full understanding of, and responsiveness to, the solicitation requirements. The contracting agency must accord proposers fair and equal treatment with respect to any opportunity for discussion and revision of proposals. Revisions of proposals may be permitted after the submission of proposals and before award for the purpose of obtaining best and final offers. In conducting discussions, the contracting agency may not disclose information derived from proposals submitted by competing proposers.

When provided for in the RFP, the contracting agency may employ methods of contractor selection including, but not limited to, award based solely on the ranking of proposals, negotiation with the highest ranked proposer, competitive negotiations, multiple-tiered competition designed to identify a class of proposers that fall within a competitive range or to otherwise eliminate from consideration a class of lower-ranked proposers, or any combination of methods, as authorized or prescribed by rules adopted under ORS 279A.065. When applicable, in any instance in which the contracting agency determines that impasse has been reached in negotiations with a highest ranked proposer, the contracting agency may terminate negotiations with that proposer and commence negotiations with the next highest ranked proposer.

The process for cancellation of RFPs and the rejection of proposals are the same as for ITBs.

At least seven days before the award of a public contract, unless the contracting agency determines that seven days is impractical under rules adopted under ORS 279A.065, the contracting agency must issue to each proposer or post, electronically or otherwise, a notice of intent to award.

## **Disqualified Bidders**

A contracting agency may disqualify a person from consideration for award of the agency's public improvement contracts and may also petition the Construction Contractor's Board to disqualify a person for reasons listed under ORS 279C.440(2). Under either circumstance, the person must be provided with notice and a reasonable opportunity to be heard.

The contracting agency or the Construction Contractor's Board must issue a written decision to disqualify a person that shall:

- State the reason for the action taken.
- Inform the disqualified person of the appeal right under ORS 279C.445 and 279C.450 if the decision to disqualify was issued by the contracting agency or ORS Chapter 183 if the decision to disqualify was issued by the Construction Contractors Board.
- A copy of the decision must be mailed or otherwise furnished immediately to the disqualified person.

## **Legal Remedies**

Legal remedies for violations of public contracting laws are provided in the following statutes:

- ORS 279A.225 Protests and disputes regarding cooperative procurements
- ORS 279B.400 Judicial review of approvals of special procurements
- ORS 279B.405 Protests and judicial review of solicitations
- ORS 279B.410 Protests of contract award
- ORS 279B.415 Judicial review of protests of contract award
- ORS 279B.420 Judicial review of other violations
- ORS 279B.425 Review of prequalification and debarment decisions (procurements)
- ORS 279C.350 Appeal of exemption decision
- ORS 279C.450 Appeal of prequalification and disqualification decisions (public improvements)
- ORS 279C.460 Suit by or on behalf of adversely affected bidder or proposer
- ORS 279C.465 Action against successful bidder
- ORS 279C.470 Compensation for contractor when contract declared void

## **Resolution Adopting Public Contracting Rules**

WHEREAS, \_\_\_\_\_ District ("District") is an Oregon special district which is subject to Oregon's public contracting rules; and WHEREAS, in 2003 the Oregon Legislature substantially revised the Oregon Public Contracting Code, and most of these revisions will take effect March 1, 2005; and WHEREAS, on March 1, 2005, the District's existing public contracting rules will become void, and the District is required to adopt new public contracting rules consistent with the revised Public Contracting Code; and WHEREAS, ORS 279A.065(5) provides that a local contracting agency may adopt its own rules of procedure for public contract that:

(A) Specifically state that the model rules adopted by the Attorney General do not apply to the contracting agency; and

(B) Prescribe the rules of procedure that the contracting agency will use for public contracts, which may include portions of the model rules adopted by the Attorney General;

NOW, THEREFORE, BE IT RESOLVED:

1. That, except as otherwise provided herein, the District hereby adopts the provisions of ORS 279A, 279B, and 279C, and the Oregon Attorney General’s Model Public Contracting Rules (“Model Rules”) as the contracting rules for the District, as such Model Rules now exist or are later modified.
2. That the District affirmatively adopts the public contracting rules described in Exhibit A, which is attached to this Resolution and incorporated herein by reference. The Rules described in Exhibit A shall be in addition to, and shall supersede any conflicting provisions in, the Model Rules.
3. That the District shall regularly review changes in the Public Contracting Code and the Model Rules to ensure that the Rules adopted in Exhibit A are consistent with current law.

APPROVED AND ADOPTED on \_\_\_\_\_, 200\_.

\_\_\_\_\_  
Board President

ATTEST: \_\_\_\_\_

Board Secretary

## RESOURCES

Administrative Services Purchasing Home Page:  
<http://www.oregon.gov/DAS/SSD/SPO/index.shtml>

Administrative Services Purchasing – Reciprocal Preference Law re Non-resident Bidders:  
<http://www.oregon.gov/DAS/SSD/SPO/reciprocal.shtml>

Attorney General’s Model Public Contracting Rules: OAR Chapter 137

- [Division 46](#) – General Provisions (apply to all public contracts)
- [Division 47](#) – Public Procurements for Goods and Services (implements ORS 279B)
- [Division 48](#) – Consultant Selection: Architectural, Engineering, Land Surveying, Related Services (must be used by state agencies; may be adopted by local agencies)
- [Division 49](#) – General Provisions Related to Public Contracts for Construction Services (implements ORS 279C)

Bureau of Labor and Industries Prevailing Wage Information:  
<http://www.boli.state.or.us/BOLI/WHD/PWR/index.shtml>

Construction Contractor's Board Home Page (List of unqualified contractors and subcontractors):  
<http://www.oregon.gov/CCB/index.shtml>

Public Contracting Statute (ORS 279):

[ORS Chapter 279](#) governs public contracting, and is divided into three subparts, as follows:

- [ORS 279A](#) (General Provisions – applies to all public contracts)
- [ORS 279B](#) (Public Procurement – applies to the purchase of goods and routine services (“procurements”), and, for state agencies, to the purchase of personal services)
- [ORS 279C](#) (Public Improvements – applies to contracts for construction, reconstruction, or major renovation of real property by or for a public agency. Also applies to state contracts for services with architects, engineers, and land surveyors.)

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# Capital Finance

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## Introduction

The first step toward obtaining funding for the acquisition or improvement of district facilities or equipment is the development of a capital improvement plan. The plan is necessary to determine which type of debt will be best to meet a district's financial requirements. In addition, when bonds are issued, a plan must be in place that will assure timely repayment. Districts should institute a plan for capital improvement projects in phases ranging from one year to as far as ten years or more into the future.

After a plan is developed, a district can begin to analyze which tools to use for acquiring funds. Projects are often completed with a variety of instruments. For example, a district may issue bonds to buy land and a building and then enter into a lease-purchase agreement to buy equipment for the facility.

Types of financing available include: general obligation bonds, lease-purchase agreements, limited tax bonds, revenue bonds, short-term bonds, special assessment bonds (also referred to as Bancroft Bonds), citizen bonds and systems development charges. Determining the right financing requires careful analysis and often advice from outside experts.

Most of this chapter briefly explains different financing tools with attention on bonds. Bonds can be very complicated, especially for districts without a staff. For further information contact:

*David Ulbricht, Senior Vice President, Public Finance*

*Tim Iltz*

*(503) 471-6790 [Portland]*

*FAX (503) 224-7097-0434*

*Cell (503) 701-7774*

## Capital Improvement Planning

Financing capital improvement projects begins well in advance of holding a bond election, preparing an official statement, developing fee structures or actually selling bonds. The framework for responsible debt management is established in advance by development of a long-term plan for capital improvement and expenditure.

First, a special district should evaluate its past economic growth and financial performance, its current condition, and the implications of these trends for the future. Districts experiencing significant community growth usually require expenditures on a variety of projects with useful lives of several years. The following are some examples of capital projects:

Major recreational projects or land acquisition.

General community services such as wastewater treatment and distribution systems, water treatment plants and distribution systems, public safety facilities, fire protection equipment, and port facilities.

Replacement and improvement of older facilities to meet the rising expectations and standards of the community or Federal government.

A carefully considered capital planning program is a composite of all the needs and desires for community facilities, tempered by the government's ability to serve its population. Districts must sort through the desires and expectations of the many to find what will be permitted by those who will pay the bill. The equation must also include a cost-benefit analysis that yields an objective measurement of what is the best choice, given the variables.

A capital improvement plan lists:

- Each proposed expenditure item.
- Estimated date in which the improvement or project will commence.
- Number of years to complete construction.
- Amount budgeted for each year.
- Financing methods proposed.

The capital improvement budget is adopted annually, based on the capital improvement plan, and includes enacting appropriations and the necessary bond issues. The capital improvement budget may differ from the capital improvement plan because of financial constraints. After adoption of the budget, the capital improvement plan must be updated to include any changes necessary in future years as a result of current budget revisions.

#### Legal Authority

Each type of special district has special rules for issuing debt. When considering which options to use when financing a capital construction project, consult the enabling statutes of the district to make sure that the option you choose is permissible by Oregon law.

In general, most types of districts that have ad valorem property tax authority or derive their general operating revenues from property taxes have authorization to issue general obligation bonds only after receiving an affirmative vote of the district's electors. Many types of districts have the authority to issue revenue bonds.

#### Bancroft Bonds

Special districts that have special assessment authority, such as water districts, sanitary districts, port districts, and road districts may use Bancroft Bonds to finance local improvements.

Properties that benefit from the improvement are assessed proportionately for the cost, and these assessment payments are used to meet debt service obligations. Once the improvement project is completed and assessments levied, districts may sell Bancroft Bonds to provide long term financing during the period in which property owners are meeting their assessment installment obligations.



### Revenue Bonds

Revenue bonds are issued to finance capital improvements for revenue producing enterprises, such as water or sanitary systems. In addition, the 1993 Legislature granted fire districts the authority to issue revenue bonds.

Revenue bonds are payable from the revenue that the project generates. The 1991 Legislature gave districts the authority to use as collateral for the repayment of revenue bonds any other revenue sources that they have available – such as assessments, property taxes, charges, rentals, and all other income and receipts to which the district is entitled from the operation. This may include use of facilities, projects, utilities or systems owned or operated by the district and other legally available to be pledged to secure the revenue bonds.

Revenue bonds can usually be issued without a vote, except for certain types of districts. Districts should refer to their enabling statutes to determine if a vote for issuance of revenue bonds is required.

Example: A water district can issue revenue bonds to build a new treatment plant if it can prove that the revenue generated from the plant by increased water service fees will eventually pay for the plant. The district may use as additional collateral any other fees or charges that it collects.

### Citizen Bonds

The 1991 Legislature gave authorization for districts to issue citizen bonds. Cities have had the authority to issue citizen bonds since 1981. Citizen bonds are also known as "mini-bonds" because they allow local governments to issue small denomination general obligation bonds directly to investors. Investors must be notified that "there is no assurance that the holders of these Citizen's Bonds will be able to redeem them prior to the stated maturity date. Potential buyers are advised to purchase only those bonds which they can reasonably expect to hold to maturity."

The Municipal Debt Advisory Commission creates the rules that govern the issuance of citizen bonds.

Citizen bonds can be a tool for involving the community in a capital improvement project. For example, if a fire district is trying to build a new fire station, it can promote the idea of investing in the community. Local citizens can invest in secure citizen bonds, make money, and help the community at the same time.

### Short-Term Debt Financing

Short-term debt is available to Oregon special districts. General obligation and revenue bonds are classified as long-term debt, whereas short-term debt instruments are usually referred to as notes or warrants. Several types of short-term instruments are described below:

- Tax Anticipation Notes (TANs)

Many Oregon special districts face short-term cash flow deficits, primarily between the beginning of the fiscal year, July 1, and the first receipt of property tax revenue in late November. SDAO's FlexTran program offers a financing tool to help with short-term cash flow needs.

In 1996, SDAO introduced a tax anticipation financing program for SDAO members called the SDAO Pooled Advanced Funding Program. By pooling participating districts' short-term cash flow needs and borrowing costs, FlexTran can provide reduced short-term interest rates. Each district issues its own tax and revenue anticipation note, using the note proceeds to meet short-term cash flow needs.

The program is administered and underwritten by Sutro and Co. and is similar in concept as FlexLease. To learn more about this program refer to Chapter One.

- Bond Anticipation Notes (BANs)

BANs are issued to provide immediate funds to begin a project prior to an approved bond issue. Bond anticipation, under the authority of [ORS 287.526](#), may be repaid according to the schedule determined by the governing body. In periods of volatile interest rates, bond anticipation notes may be useful.

- Revenue Anticipation Notes (RANs)

RANs are used as interim financing prior to collection of revenues which will be generated once a project is completed. RANs may also be used for operating purposes prior to collection of a specific revenue.

- Grant Anticipation Notes (GANs)

GANs may be used to finance a project for which a state or federal grant has been committed.

### Lease-Purchase Financing

Lease-purchase financing or agreements are used to finance the construction or acquisition of public facilities, equipment or any other item which serves as an essential use for the daily function of the governmental unit or special district. Lease-purchase agreements are not considered debt and do not require a vote of the district's electors. However, the district's ability to make the regularly scheduled payments due under a lease-purchase agreement are unconditional and absolute. Thus, the district must take significant care before entering into a lease-purchase agreement in order to be certain that the funds are sufficiently available through the ordinary course of the budget process.

In 1991, the Special Districts Association sponsored a program for its members to enter into lease-purchase agreements. The program, called the SDAO Pooled Cooperative Asset Financing Program, also known as FlexLease, is administered by the program underwriter Sutro & Co.

The purpose of the SDAO FlexLease program is to provide a means by which SDAO members may borrow for both equipment and real property acquisitions through lease-purchase financing in a way which allows each participant to achieve interest rates and lower cost of financing than would otherwise be available.

The way this is done is to pool the borrowing needs of a number of districts and to bring them collectively to the market as Certificates of Participation\*. In this way, districts needing to borrow for equipment or property acquisitions have a way in which to access competitive market rates.

\* Certificates of Participation represent a proportionate ownership interest in the right to receive payments due under a lease-purchase agreement. The manner in which certificates of participation are structured and sold to investors are similar to municipal bonds. The SDAO FlexLease program is structured by collectively pooling each individual participating district's lease-purchase agreement into one large certificate of participation issue. Sutro & Co. sells the certificates of participation to investors at tax-exempt interest rates.

The Program also includes legal and trustee services so the rate quoted by the program is the total cost to the district for financing. Real property acquisitions may be financed at a competitive fee structure providing for the additional costs associated with real property financing.

Some examples of items that may be financed through the Program include:

- Equipment Purchase
- Fire trucks
- Utility vehicles
- Telecommunications equipment
- Computer equipment
- Construction & maintenance equipment
- Real Property
- Land (acquisition)
- Certain buildings
- Remodeling and improvements

The SDAO program may also be used to refinance existing obligations at lower rates, including such items as vendor contracts, vendor leases, and bank loans.

Most types of special districts are eligible to participate in the SDAO FlexLease program. To receive more information about FlexLease and your district's ability to participate, please refer to [Financial Services section of the SDAO website](#) or contact:

*David Ulbricht, Senior Vice President, Public Finance*  
*Tim Iltz*  
*(503) 471-6790 [Portland]*  
*FAX (503) 224-7097-0434*  
*Cell (503) 701-7774*

#### Industrial Development Revenue Bonds

Industrial development revenue bonds are revenue bonds authorized in Oregon through the State Department of Economic Development, port districts, and cities of over 300,000 population.

Industrial development revenue bonds are issued to finance the construction or rehabilitation of certain eligible manufacturing facilities. Bond proceeds from the sale of industrial development revenue bonds is strictly governed by federal tax law and are used to promote economic development, industry diversity and to increase employment within the private sector.

#### Issuing Bonds

Preliminary Analysis: involves three broad considerations: project viability (a cost benefit analysis); various financing options; and the advantages of public offering as opposed to private placement -- where private placement is legally allowed. As a general rule, the debt redemption schedule should be roughly comparable to the useful life of the project being financed.

The Capital Improvement Plan: identifies those community needs which are appropriate capital expenditures and candidates for debt financing. Debt is theoretically justified on the basis of several factors such as the following:

The debt distributes payment for a project to those who will benefit from it over its useful life, rather than requiring today's taxpayers or ratepayers to pay for future use.

During times of inflation, debt allows future repayment of borrowed money in cheaper dollars.

The debt does not immobilize current revenues, thus allowing such revenues to be used for operating expenses or investments.

In the case of general obligation bonds, voter approval is required. Voter approval is also required for Bancroft Bonds if they are to be kept out of the property tax limits imposed by Ballot Measure 5 and Measure 50.

Future Operating Costs: must be determined once a capital project has been selected. These costs include debt service and the maintenance and operation expense of any physical facility.

A review of financing options and when to use them can be made after a decision has been reached to fund a capital project.

### Maturity Schedule

The first step after deciding what type of financing to use is to decide on a maturity schedule. When determining the maturity schedule for a bond issue, it is important to match bond and interest payment dates to available cash flow. If the bonds are self-supporting, the bond principal repayment dates should be scheduled to coincide with revenue collections. If the bonds are dependent on tax collections, plan payment dates to match historical collection experience.

After matching bond issue debt service to available cash flow, a second factor in designing a maturity schedule is overall cash flow. Decide how the new debt service schedule will impact the existing maturity schedules. Project future borrowing needs as defined in the capital improvement plan. Make sure the new maturity schedule has been optimally designed for the issuer's cash flow capacity.

1. Maturity schedules can be designed either to yield level debt (roughly equal installment) payments or level principal (declining installment) payments or some form of a combination of these former two schedules.
2. Debt service is most often scheduled as "level" that is, the sum of principal and interest remains relatively constant throughout the life of the bonds. Thus, principal payments begin low and increase, while interest payments decrease.
3. Another common maturity schedule has level principal. This may be useful to heavy or frequent issuers of bonds, where aggregate outstanding debt is planned as part of an annual or biennial budget.
4. Both "level debt" and "level principal" structuring types are called serial maturities. Bond issues may also be structured as "term" bonds. In the instance of term bonds, the entire principal amount is paid at a single maturity date. With term bonds, issuers are usually required to make annual sinking fund payments to provide for principal repayment when due.

### Preparing for the Bond Sale

After gaining the necessary approval(s) to issue the bonds (i.e., from votes, a district resolution or ordinance), the actual bond sale must be planned. All bond sales require the preparation of several legal documents. Preparation of a bond sale calendar or check-list is useful in coordinating the timing of the sale and will include, but not limited to, the following.

1. Determination of the amount of the issue.
2. Decision upon a sale date and notification to the Municipal Debt Advisory Commission in the State Treasury of the sale date.
3. Publication of the preliminary official statement
4. Choice of date for settlement of the bond deal

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## Grants & Loans

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### Introduction

Applying for grants and loans can be an excellent way to get funds for improving the services districts provide. Usually funds must be used for specific programs that add value to the community. Funds are generally not granted to meet normal operating expenditures.

Receiving needed aid is often not as easy as it sounds. Filling out complicated applications can be time-consuming and complicated for districts with little or no staff. Receiving assistance from written materials, councils of governments, state agencies, and SDAO may be necessary. Patience is essential; it can take months to gather materials necessary for grant and loan applications.

There are three main sources for grants and loans: the Federal government, State government, and private sources. Exploring all three will increase the chances of finding funding to meet the district's needs. Most often, funds are combined from various sources to meet the goals of the district's program. Providing matching funds can also be helpful.

### Developing a Plan

The most important step in applying for a grant or loan is the development of an effective plan. Careful consideration and documentation must be dedicated to determining exactly for what purpose the funds will be dedicated. If the district cannot justify the need for the funds and prove that the money is essential, then it is likely that funds won't be granted.

A schedule should be implemented and a detailed capital improvement plan generated. Good planning and a demonstration that the plan is well formulated will be essential for proving the merits of your project to any funding source.

Suggested steps to be completed when developing a plan:

1. **Legislative Commitment:** The district board agrees to implement an ongoing comprehensive capital planning process. Some kind of staff support is assigned.
2. **Set a Timetable:** A timetable is developed, taking into account the annual budget cycle of the district. Development of a GANT chart can be of great assistance in displaying the schedule of the project.
3. **Identify Roles:** The district board identifies who will develop, monitor, and recommend revisions to the capital planning process. It could be citizens' group, a number of department heads, or some mixture of staff and public.

4. Establish Criteria: Criteria is established for use in prioritizing project proposals against local needs and goals.
5. Gather Information: Necessary information is gathered -- existing plans and documents, or an inventory of the condition and adequacy of all systems. This crucial step develops the first-cut list of local needs as proposed projects.
6. Financial Analysis: Examining historic and projected revenues and expenditures, estimating the district's cash flow and long-term financial condition, and taking a hard look at present and future capital financing alternatives -- is performed. Account for and be able to justify every dollar that you are asking for.
7. Funding Sources: Funding sources are identified and recommendations made regarding the type of funding most appropriate for specific kinds of capital improvements.
8. Project Proposals: The project proposals are evaluated using the project selection criteria developed earlier and a preliminary project list is made.
9. Selecting Funding Sources: Priority projects are matched with fund sources, taking into account when the financing will become available. The list is further fine-tuned and the resulting preliminary capital plan is submitted to the district board for review and approval.
10. Public Review: Opportunities for public review and comment are made available. Following consideration of local input, any adjustments are made and the district board formally adopts the capital plan.
11. Planning Period: The first year of the five or six-year capital plan is adopted as the capital budget for the given fiscal year, allowing implementation of the plan to begin.
12. Implementation: Implementation of the plan is monitored by the district board and assigned staff.

### **Application Pointers**

Once the plan is completed, the district can proceed with the application process. Explore many different alternatives and find the agency or organization that is most likely to fund your project. Most funds for public infrastructure projects will be loans. Districts with projects that relate to improving health, education, or community support may have an easier time finding grant funds from private sources.

Once the district decides where to apply, it should give careful consideration to the following:

1. Know the needs and priorities of your district.

Six year plans, comprehensive plans, public facility plans, water plans, and sewer plans can help a district allocate scarce local and grant funds to the most important needs. Plans should be appropriate to the community. Nothing is worse than spending all your money analyzing problems and then having no money to pay for solutions. Involve citizens in setting priorities, they will have a better understanding of your district's and revenue needs. Plans are important for three reasons:

They help the district make better decisions. Some grant and loan programs require a plan as a condition of funding. The information and priorities in the plans are useful when writing the grant.

2. Know the grant loan programs and the program staff.

Competition is tough for most grants and loans. Most major projects are funded by a "package" of funding from several sources, sometimes in several phases. The more you know, the more competitive your application.

Do initial research on the grant and loan program available. Find out which programs are most likely to fund the solution to your problem.

Contact the program staff. Attend the application seminar. Ask questions. Ask staff for a "one to one" conference where you discuss your project and how to apply.

Get a copy of a successful application for a similar problem and read it. How did they do it? Program staff will provide you with a copy, generally for free, ask them.

Read the application package.

3. Get help if you need it.

Many districts can do most grants alone. Some districts need a little help. There are several sources of inexpensive grant writing help that may be available to you.

United Way offers inexpensive programs on how to write grants. Go or send a staff person.

If you belong to a Council of Governments or Regional Planning Commission and need some help, ask them.

If your grant or loan application will promote economic development, the local Economic Development Council may be able to help.



If your grant or loan will aid low-income persons, your Community Action Council may be able to help.

If you decide you need a consultant, check lots of references, get a contact, and establish a firm price.

Call SDAO and we can help you find a district that has gone through a similar process before.

4. Get the application written.

Most applications take two or three months to pull together. Cost estimates, letters of support, and writing all take time. Last minute applications are usually not very competitive.

Be accurate, but tell a story. Tell how many are affected by the problem. Personalize the problem. Tell why the problem is important from both a local and statewide perspective. Explain how the problem and solution meet the grant or loan program criteria.

Make sure cost estimates are accurate. Especially for public facilities projects, the cost estimate is not a job for nonprofessionals. Preliminary engineering should be done on all public facilities before the application is submitted. Get an estimate and the details to back it up. Include the detail in an appendix to the application. You will get a better estimate if you require detailed data.

5. Learn from your mistakes and successes.

If you are not funded, there is always next year. Because of heavy competition, good projects are not always funded.

If you are not funded, ask the program staff for a conference to discuss why the application was not approved. Take notes and do better next year. Don't argue. Remember, it is your job to communicate to program staff through the application. Help them find and understand the information included in the application.

6. Establish a track record of delivering on your promises.

If you are funded, do a good job of administering the project. Do what you said you were going to do. Your application should include enough funds to do the job right. Municipalities with good track records have a better chance of being funded in the future.

## **Developing a Proposal**

Competition for grant funds can be intense. Every non-profit corporation or local government with a project that will improve the community is likely to be applying for some type of aid. The key is to make your proposal stand out and the merits of your project seem more important. Know what the funding organization wants and then give it to them. Make the proposal easy to understand, clean and appealing, and demonstrate that your project has been well planned and thought out.

The following are some suggestions to consider when developing a proposal:

- Develop the project well, in a logical sequence, and make sure the project accomplishes what it is supposed to do.
- Don't waste your time on projects that clearly won't be funded.
- Find out what the agency has funded lately, and why.
- Make the proper marriage of your local project with a funding agency's priorities.
- Read more than others do: Look at the administrative rules and procedures, not just the application guidelines. These will help shape your proposal.
- Put up some matching funds: How can you expect someone else to pay for your project if you won't help?
- Communicate: Grant writing is like any other form of persuasion:
- Know your audience: the agency and its concerns, the individuals and their concerns, the review process and environment.
- Know your project: what are its benefits in the context of what the funding agency wants?
- Remember your goal: your actions should flow from it.
- Brevity is the Soul of Wit (and Good Grant Applications). Keep it short: short words, short sentences, short paragraphs. Make it easy to read. Jargon and lengthy descriptions do not sell.

## **Types of Aid**

1. Federal Aid: Federal funds are available through both loans and grants. Most Federal dollars are distributed to states first and then local governments apply for the funds through their individual states. Important points to remember when considering federal aid include:

Be patient: It can take a long time for Federal funds to be approved.

Be accurate: Don't leave anything out of the application materials. Make sure every question is answered and every blank filled.

Be prepared: Federal dollars are often attached to strict requirements for accepting the money. Be prepared to expand your administrative support to keep up with all of the new paper work that will be required.

Matching funds: Many Federal programs will require that the district find matching funds from state or local sources.

2. State Aid: Most money from the State of Oregon is in the form of loans. Individual state agencies administer programs that relate to their purpose. Grant money is also available and often in the form of federal dollars administered through the state.

Although state aid can be easier to get than federal aid, the district must understand that the funds will not be granted immediately.

Don't leave anything out or miss any details.

Stay in contact with the agency that will be making the decision. Know the individuals involved with your application and ask how the process is going and if they need anything from your district.

3. Private Aid: Most private money is in the form of grants, available for almost any need. Competition for money from private grant sources can be intense. Many grants do not allow governments to apply, so read the eligibility requirements carefully.

Prepare specific, clean, and detailed grant applications. Prove that the district needs the money and that it is a project that the grantor should be interested in.

Don't spend a great deal of time preparing grant applications until you are fairly certain that the granting source is interested. Write a letter explaining the proposed project and ask for their opinion.

Thousands of grants are available, do careful research to find out which will fit your organization the best.

## **Private Sources**

Applying for grants from private sources is much different than applying for aid from the Federal government or the State because private sources likely know little or nothing of your organization or what it does. Time must be dedicated in the proposal to explain the mission of your district, the population it serves, and the nature of the services it provides.

1. Be Brief: Be specific and to the point. Go only into as much detail as needed to adequately explain your project and the need for the funds you are requesting.
2. Define Terms: Make sure that you define all of the jargon that you may use in the application. Remember that those reviewing the application will probably not know very much about your district or the services you provide.

3. Clarity: Have persons not involved in the project or even with the district read the application to see if they understand it.
4. Accuracy: Don't make mistakes. Persons reviewing the application will assume that if you make mistakes on the application you will probably make mistakes administering the grant.
5. Packaging: Don't use elaborate proposal packaging. Make the proposal clean and neat but don't give the impression that you have wasted valuable resources creating the proposal.
6. Copies: Only submit as many copies as required.  
  
Original: Don't send out hundreds of the same material to different sources. Tailor each application, letter, and proposal to meet the specific needs of each granting source.
7. Credibility: Design a detailed program. Substantiate how all of the money will be spent, provide a detailed timetable, and thoroughly describe the scope of your problem.

## **Grant and Loan Directory**

This directory is only a sample of what is available. If you know of any other good sources for funds that should be added to the list, please let SDAO know and we will add them to future updates.

Some of the programs relate only to specific types of districts, while others are broad in their scope. Browse through the directory and see if a program can help your district solve a current or future problem.

Note: Before requesting any applications, contact the organization administering the program, explain what you have in mind, and find out if you are eligible to apply.

### Community Transportation Program

Contact: ***Oregon Department of Transportation  
Public Transit Section  
355 Capitol St., NE Room 131  
Salem, Oregon 97301-3871 Phone: (503) 378-8201***

Type of Assistance: Grants

The Community Transportation Program is a discretionary grant program. Its goal is to maintain and improve passenger transportation service for Oregon's senior citizens, people with disabilities, and the rest of the public.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Contact: *Department of Environmental Quality*  
*811 S.W. Sixth Avenue*  
*Portland, Oregon 97204 Phone: (503) 229-5589*

Type of Assistance: Loans

Low interest loan fund available for water and sanitary systems.

ECONOMIC DEVELOPMENT ADMINISTRATION

Contact: *Economic Development Administration*  
*Suite 244, One World Trade Center*  
*121 S.W. Salmon*  
*Portland, Oregon 97204 Phone: (503) 326-3078*

Type of Assistance: Grants

Fee for Service: Local match is required.

Grants are provided to help distressed communities attract new industry, encourage business expansion, diversify economies, and generate long-term, private sector jobs. Projects funded for water and sewer facilities primarily serving industry and commerce.

Proposed projects must be located within an EDA-designated redevelopment area (RA). Projects must be consistent with an approved overall economic development program.

EMERGENCY MANAGEMENT INSTITUTE - TRAINING ASSISTANCE

Contact: *National Training Center*  
*Support Services Branch*  
*16825 South Seton Avenue*  
*Emmitsburg, Maryland 21727 Phone: (301) 447-1000*

Type of Assistance: Training Grants

To defray travel and per diem expenses of state and local emergency management personnel who attend training courses conducted by the Emergency Management Institute. Individuals who need emergency management training or are assigned an emergency management or civil defense position in state or local government are invited to apply.

HISTORIC PRESERVATION FUND

Contact: *Oregon Parks and Recreation Department*  
*1115 Commercial St. NE, Suite 2*  
*Salem, Oregon 97301-1012 Phone: (503) 378-4168 ext. 230*

Type of Assistance: Grants

The Oregon State Historic Preservation Office has funds available for archaeological and historic preservation projects. These funds may be used for surveys, inventories, and evaluation of historic and prehistoric resources. Grants may be used to nominate multiple property resources to the National Register of Historic Places.

#### JACKSON FOUNDATION

Contact: ***Jackson Foundation***  
***Trust Department U.S. Bank***  
***P.O. Box 3168***  
***Portland, Oregon 97208 Phone: (503) 275-4882***

Type of Assistance: Grants

Grants awarded for money to be used within the State of Oregon for charitable and educational purposes, and for the advancement of public welfare.

#### JELD - WEN FOUNDATION

Contact: ***Jeld - Wen Foundation***  
***P.O. Box 1329***  
***Klamath Falls, Oregon 97601 Phone: (541) 882-3451***

Type of Assistance: Grants

Funding emphasis is given to projects that improve existing opportunities or provide new community services via capital projects or seed money for new programs.

#### LOCAL PARKS GRANT

Contact: ***Oregon Parks and Recreation Department***  
***525 Trade St. SE***  
***Salem, Oregon 97310 Phone: (503) 378-4168 ext. 241***

Type of Assistance: Grants

Grant funds available for the acquisition of land and the development of public outdoor recreation facilities. The grants are limited to 50% of the total cost of the project.

#### MEYER MEMORIAL FOUNDATION

Contact: ***Meyer Memorial Foundation***  
***1515 S.W. 5th Avenue, Suite 500***  
***Portland, Oregon 97201 Phone: (503) 228-5512***

Type of Assistance: Grants

General purpose grants awarded for a variety of projects. Grants distributed by the following formula: 26% social welfare, 30% arts and humanities, 22% education, 11% health, and 11% other.

#### OREGON COMMUNITY FOUNDATION

Contact: ***Oregon Community Foundation***  
***621 S.W. Morrison, Suite 725***  
***Portland, Oregon 97204 Phone: (503) 227-6846***

Type of Assistance: Grants

Grants to provide assistance to youth, elderly, disadvantaged, citizen participation, health care, and community enrichment.

#### OREGON COUNCIL FOR THE HUMANITIES

Contact: ***Oregon Council for the Humanities***  
***812 S.W. Washington, Suite 225***  
***Portland, Oregon 97205 Phone: 1-800-735-0543***

Type of Assistance: Grants

Grants to assist in providing high quality public humanities programs serving Oregonians throughout the state, especially in smaller and rural communities.

#### OREGON DEPARTMENT OF ENERGY

Contact: ***Oregon Department of Energy***  
***Small Scale Energy Loan Program (SELP)***  
***625 Marion Street N.E., Suite 1***  
***Salem, Oregon 97301-3742 Phone: 1-800-221-8035***

Type of Assistance: Loans for energy saving measures

The objective of the Small Scale Energy Loan Program (SELP) is to finance energy conservation and renewable resource energy projects in Oregon. Renewable resources would include projects involving water, wind, geothermal heat, solar radiation, biomass, and waste heat. Water and sewer treatment projects can be funded by SELP if the improvements result in energy production or conservation. SELP loans can cover most project-related costs.

OREGON ECONOMIC DEVELOPMENT DEPARTMENT

Contact: ***Oregon Community Development Programs***  
***775 Summer Street NE***  
***Salem, Oregon 97310 Phone: 1-800-233-3306***

Type of Assistance: Grants

Grants and Loans focusing on economic development projects. Emphasis on water and sanitary projects that are essential for economic development.

OREGON FORESTRY DEPARTMENT

Contact: ***Oregon Forestry Department***  
***2600 State Street***  
***Salem, Oregon 97310 Phone: (503) 945-7445***  
***Contact: Pete Norkevick***

Type of Assistance: Grants

The grants are fairly small in size, call for information. Funds can be used of training, equipment, and management needs.

OREGON STATE FIRE MARSHAL'S OFFICE

Contact: ***Office of State Fire Marshal***  
***4760 Portland Rd. NE***  
***Salem, Oregon 97305 Phone: (503) 378-FIRE (3473)***

Type of Assistance: Grants

The State Fire Marshal's office has two \$5,000 grants for community based fire education and six \$3,500 grants for model projects that have a statewide impact or are adaptable statewide. Grants are awarded December through January on odd-numbered years.

RURAL ECONOMIC AND COMMUNITY DEVELOPMENT

Contact: ***Community and Business Programs***  
***101 SW Main St., Suite 1410***  
***Portland, Oregon 97204-3222 Phone: (503) 414-3360***

Type of Assistance: Loans and Grants

Financial assistance for water, wastewater and other essential community facilities in rural areas.



## TRANSPORTATION ACT FOR THE 21ST CENTURY

Contact: ***Federal Highway Administration  
Western Resource Center  
222 SW Columbia St., Suite 600  
Portland, Oregon 97201 Phone: (503) 326-2053***

Type of Assistance: Grants and Information

Authorizes Federal surface transportation programs for highways, highway safety, and transit for the 6-year period 1998 – 2003. Visit their website at:  
[www.fhwa.dot.gov/tea21/index.htm](http://www.fhwa.dot.gov/tea21/index.htm).

## WATER RESOURCES DEPARTMENT

Contact: ***Water Resources Department  
Water Development Loan Program  
158 12th St. NE  
Salem, Oregon 97310 Phone: (503) 378-8455***

Type of Assistance: Loans

Loans for community water supply projects. Loans can be made for governmental purposes to cities, counties, and water districts for all aspects of community drinking water systems.

### **Grant Information on the Internet**

The internet is a useful tool when conducting research for grant and funding resources. There are many helpful search engines that can provide webpage addresses for funding resources. Some search engines to try are:

[www.altavista.com](http://www.altavista.com)  
[www.ask.com](http://www.ask.com)  
[www.go.com](http://www.go.com)  
[www.hotbot.com](http://www.hotbot.com)  
[www.lycos.com](http://www.lycos.com)  
[www.looksmart.com](http://www.looksmart.com)  
[www.excite.com](http://www.excite.com)  
[www.google.com](http://www.google.com)  
[www.metacrawler.com](http://www.metacrawler.com)  
[www.yahoo.com](http://www.yahoo.com)

To conduct a search, enter the key words of the topic you are researching. For instance, to search grant information, enter “grants” or “funding sources”. Many web pages have grant application contact names and phone numbers, an online grant application process, or downloadable grant applications.

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## **Investment**

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### **Introduction**

Investing is an important part of using district funds efficiently, and maximizing resources. Even small districts with limited expertise can take advantage of investment opportunities that have been created specifically for small public organizations.

Oregon Revised Statutes, Chapter 294, "Municipal Financial Administration," provides the investment authorization for special districts. If this chapter does not specifically authorize an investment, then districts are forbidden from making that type of investment. In addition, no district may invest money unless its board has authorized the investment.

Normally, the district board appoints a staff investment officer, such as the manager or chief financial officer, and approves the investment policy. The adoption of an investment policy provides authorization and guidelines for the types of investments that will be permitted. The policy should be put in writing and state that it complies with applicable state statutes. The policy should also set guidelines for diversification, liquidity, and maturity of investments.

The Oregon Short Term Fund Board, "strongly recommends that local governments with limited amounts of money to invest, or with limited time and resources to devote to their investment, concentrate on making sure that their investments are safe (there is no appreciable risk that the investment will fail) and liquid (the investment can be easily converted to cash)." Little importance should be attached to maximizing the rate of return.

### **Cash Management**

Investing is part of a cash management program. The objective of cash management is to have sufficient liquidity to pay obligations when they are due while minimizing borrowing expenses and maximizing investment revenues from surplus funds.

Surplus funds are monies, which temporarily exceed cash flow requirements. Typically these funds are monies reserved for capital expenditures, fall tax turnovers (when a large percentage of annual revenue is received in a short period of time and will not be disbursed until later in the year), bond sale proceeds, carryover funds from the previous fiscal year (cash on hand), system development charge income, grant proceeds, etc.

Good cash management practices encourage the investment of monies which in turn increases revenue. Reasonable rates of return on investments can be obtained while maintaining security and liquidity. In some cases, investment earnings can even reduce tax rates or user charges.

## **Fiduciary Responsibilities of Board Members**

Board members can be held personally liable for certain financial misdeeds of the organization. There are several actions board members should take to protect themselves from exposure to litigation. These include:

- Purchase appropriate liability insurance coverage for the governing body. Note: If you do not currently have this coverage, SDAO has coverage options available to members.
- Put an investment policy in writing.
- Insist on adequate financial reporting from staff.
- Understand the board's powers, responsibilities and any legal restrictions.
- Seek expert advice before taking any action in which the directors lack reasonable competence to handle.
- Understand the principals of investment so that the board can manage the investment manager.

## **The Investment Policy**

Since any investment made by a district requires authorization by the board, it is recommended that all districts have an adopted investment policy. A policy is useful regardless of the type of investing a district intends to pursue. The policy should be easily understood by individuals with or without investment expertise.

The Oregon Short Term Fund Board recommends, in its "Local Government Investment Policy Guidelines," creating a written investment policy for several reasons. An investment policy can:

- Increase investment flexibility.
- Reduce investment risk.
- Improve the district board's understanding of the investment process.
- Allow the district board to deal with the investment policy in a consistent and clear manner.
- Acquaint the investment officer with the investment preferences of their board, and provide the investment officer with rules to avoid misunderstanding and liability.
- Provide written guidance to new or substitute investment officers, who may not be familiar with investment or the district's past practices, and who might otherwise make inappropriate investments.

The Oregon Short Term Fund Board further recommends that each district's investment policy address the following subjects:

- Scope. This section details the specific funds that come under the direction of the investment policy. The size or seasonal range of all funds invested is listed here; this latter information is useful to those reviewing both the policy and the fund's performance. The language may be broad enough to bind the district to follow all currently applicable statutes and all future statutes.

- Objectives. This section should indicate the relative importance the district attaches to safety, liquidity and rate of return. Preservation of principal should always be first and rate-of-return last.
- Delegation of Authority. There must be a clear statement designating who is responsible for the investment process and the level at which oversight and review of the investment activity is exercised. For example, for a district, the district manger is often the designated investment officer. The district board usually performs the oversight functions. If there is adequate staff available, an alternate investment officer should be designated.
- Prudence. The investment policy should cite the prudent investor rule, which states that, "Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived."
- Safekeeping and Collateralization. If an investment is collateralized (for example, a repurchase agreement), the collateral must be delivered to the local government or a third-party safekeeping agent (a financial institution not controlled by or related to the seller ) at the time the local government pays for the investment.

Accounting Method: The policy should recognize the need to comply with the many authoritative bodies dictating accounting practices and reporting requirements, such as, GAAP, FASB, and GASB.

Internal Controls: The most important feature is the requirement for the periodic review of the internal controls, at least as part of the annual audit, or upon any extraordinary event.

Reporting Requirements: The investment policy should indicate who generates investment reports, how often they are generated, and where the reports will be filed. The board should evaluate the investment policy at least once a year to insure that it still meets the needs of the district.

Investment Policy Adoption: Review and adoption by the district board is the last process to assure adequacy and relevance. Review and comment by the Oregon Short-Term Fund Board provides another source of feedback to the district as does the requirement for annual re-adoption.

Qualified Institutions. The investment policy should direct the investment officer to evaluate the creditworthiness of each institution issuing a security purchased by the district. The investment officer should maintain a list of institutions, which have been evaluated and approved. If an institution does not have an adequate credit rating to make the list of approved institutions, then no more then \$100,000 should be deposited in the institution at one time. However, the \$100,000 FDIS guarantee is not always completely safe because it can take months to receive lost funds.

Credit Worthiness. To evaluate the creditworthiness of an institution, the investment officer should request a copy of the institution's most recent financial statement or Consolidated Report of Condition (Call Report). For districts that do not have the staff to

evaluate such data, the county may be able to provide a copy of its approved institution list. Also, for a fee, several companies will evaluate the creditworthiness of institutions.

Investment Maturity: This establishes the sensitivity of the portfolio to interest rate changes and the resultant principal risk. The degree of exposure to principal risk from interest rate changes should be within the tolerances of the local government's cash forecast; there should be adequate liquidity to mitigate the need to sell securities prior to their maturity at a loss.

Diversification. An investment policy should require diversification by stating the maximum amount (usually as a percentage of the amounts which are invested) which may be invested in each type of securities, in securities issued by a single institution, and in particular lengths of maturity. It is important to split up the invested dollars so that everything is not lost in case of an investment failure. Most of the funds should be invested in secure and safe investments such as United States government bonds.

Monitoring and Adjusting the Portfolio: Markets and portfolios are dynamic. Both require monitoring and portfolios can benefit from some active management. This latter process of active management, however, may be limited by the size of the portfolio; the nature of the funds; the time, technical expertise, and frequency of review by the board; and the availability of reliable cash flow forecasts.

Performance Evaluation: The choice of an appropriate performance standard should be realistic. Whatever standard is chosen, it should be reviewed periodically, or if the character of the portfolio changes materially.

For a copy of the Model Investment Policy Guidelines published by the Local Government Investment Pool, call 1-503-452-0345 (it can also be accessed through the Oregon State Treasurer's web page at [www.ost.state.or.us](http://www.ost.state.or.us)).

### **Investment Methods Available to Special Districts**

Oregon law restricts special districts to specific types of investments. The following is a short description of the types of investments that districts can legally utilize.

#### Oregon's Local Government Investment Pool

The Local Government Investment Pool (LGIP) is a State organization under the Secretary of the Treasurer's Office. Oregon local governments are allowed to deposit money with the State Treasurer, which the Treasurer pools and invests. The large amounts of money the Treasurer invests allows the Investment Pool to have high rates of return on a relatively liquid portfolio. The pool has an advisory board, the Oregon Short Term Fund Board, which includes finance officers from cities, counties and districts. The advisory board makes recommendations to the Oregon Investment Council concerning investment rules and practices and may assist local governments with their investment policies.

No minimum investment is required. Deposits are limited to a maximum of \$30 million which can be temporarily exceeded for 20 business days by county governments and 10 days by other local governments. There is no limitation on pass-through funds.

With a resolution passed by the governing body of any local government, surplus funds may be placed in the LGIP where they will be invested and collateralized by the State of Oregon's Treasury. These funds may be deposited or withdrawn within a 24-hour period.

The advantages of the Local Government Investment Pool are:

- Ease of use.
- Liquidity of investments.
- Investments are well collateralized.
- Reasonable rate of return.
- Minimal administrative time or investment experience required.

For more information, contact the Local Government Investment Pool at (503) 378-4329.

Treasury Bills: Considered the most secure and liquid short-term investment as they are fully guaranteed by the US government. They are auctioned weekly as 13 and 26 week maturities; every four weeks as 52 week maturities; and for special unscheduled fundings, as cash management bills. Minimum auction purchases are \$10,000 and \$5,000 increments thereafter. Cash management bills are auctioned in minimum lots of \$1,000,000. Bills traded in the secondary market may be available in more flexible denominations.

Treasury Notes: Considered the most secure and liquid medium-term investment as they are fully guaranteed by the US Government. They are auctioned monthly as two and five year maturities; and quarterly as three and ten year maturities. They are auctioned in minimum denominations of \$ 1,000 or \$5,000.

Treasury Bonds: Considered the most secure and liquid long-term investment as they are fully guaranteed by the US Government. They are auctioned semiannually (previously quarterly with three-year and ten-year notes) in thirty year maturities and minimum denominations of \$1,000.

Treasury STRIPS/CUBES: These zero coupon US Government guaranteed securities are available in minimum denominations of \$ 1,000 but are not periodically auctioned like bills, notes, or bonds. They are offered in the secondary market or are "created" by dealers on an order basis and are only available in monthly maturities of February 15, May 15, August 15, and November 15 out to thirty years. Given matched maturity to bills , notes, and bonds, they are not as liquid.

Securities of US Government Agencies and US Government Sponsored Enterprises (GSE's): Considered the next most secure investment after Treasury securities, most are not US Government guaranteed, but are chartered and supervised by the US Government. Typically, they are available in minimum denominations of \$ 1,000 to \$1,000,000

depending on the issuer and the maturity which ranges from one day (for discount notes) out to 40 years for notes and bonds with fixed or floating rate and zero coupon features.

Repurchase Agreements: Repurchase agreements are investments involving the purchase of US Government and agency securities with a simultaneous agreement to resell them back to the same seller for the same dollar investment plus a fee. Amounts invested, rate, and terms are negotiable but such repurchase transactions are subject to 90 days maximum. Maximum percentages are prescribed by the Oregon Investment Council or the Oregon Short-Term Fund Board.

Bankers' Acceptances: Appropriate if guaranteed by, and carried on the books of, a qualified financial institution; eligible for discount by the Federal Reserve System; and issued by a qualified financial institution whose short-term letter of credit rating is rated in the highest category by one or more nationally recognized statistical rating organizations. Available in various denominations, and subject to a 25% of the moneys of a district available for investment.

Corporate Indebtedness (secured and unsecured): These securities are corporate commercial paper and promissory notes that have minimum commercial paper ratings of A1 or P1 or long-term minimum ratings of AA (Moody's) or AA (S & P) or equivalent by any nationally recognized statistical rating organization. The minimum credit quality may be lowered to A2, P2 for commercial paper and A for long-term if the issuer is a business enterprise that has its headquarters in Oregon, employs more than 50 percent of its permanent workforce in Oregon or has more than 50 percent of its tangible assets in Oregon. Commercial paper is typically not very liquid though paper directly issued may be sold back to the issuer. For others, the secondary market is extremely limited. More active markets may be available for long-term notes and bonds. They are available in various denominations, maturities and payment features (floating rate, fixed, zeros, etc.) but are limited to 35% of the monies of a local government available for investment.

Municipal Debt Obligations: Municipal debt obligations are lawfully issued debt of the State of Oregon and its political subdivisions that have a long-term debt rating of A or better or are rated on the settlement date in the highest category for short-term municipal debt by a nationally recognized statistical rating organization. Also, lawfully issued debt obligations of the States of California, Idaho and Washington and their political subdivisions if such obligations have a long-term rating of AA or better or are rated on the settlement date in the highest category for short-term municipal debt by a nationally recognized statistical rating organization.

Certificates of Deposits: These are not a security but a deposit in a qualified financial institution. They should be FDIC insured to \$100,000 and further collateralized at 25% above the FDIC insurance. Available in various deposit amounts and maturities (flexibility subject to the amount), they have penalties for early withdrawal.

Other Investments: Oregon statutes permit certain other investments and transactions for special purpose funds in limited circumstances. For example, fixed or variable life insurance or annuity contracts; guaranteed investment contracts; and for deferred compensation funds: share and savings accounts in credit unions and trusts. Seek advice

of legal counsel if these investments are contemplated. Reverse repurchase agreements are not listed above since they are not technically "investment securities or investment transactions". These are financing arrangements with a counterparty. This type of agreement is typically used as part of interest rate arbitrage and to that extent, the same credit standards; delivery vs. payment; market pricing; etc. for repurchase agreements (which is an investment vehicle) should apply to the transaction.

## **Investment Restrictions**

Oregon law places certain restrictions on local government investing. [ORS 294.135](#) and [ORS 294.145](#) prohibit local governments from:

- Committing to invest funds more than 14 days in advance of settlement.
- Agreeing to invest funds or sell securities for a fee other than interest.
- Lending securities, unless authorized by an investment policy which has been reviewed by the Short Term Fund Board.
- Paying for securities before the local government or a custodian bank receives physical delivery of the securities.
- Delivering securities to a purchaser prior to receiving payment in full.

In addition, investments may not have a maturity in excess of eighteen months unless the governing body adopts a written investment policy, and after that policy is reviewed by the Oregon Short Term Fund Board. The investment policy must include guidelines concerning maximum investment maturity dates and require re-adoption not less than annually. This eighteen month restriction does not apply to money which the local government is specifically authorized by state law to hold for more than one year, if the money is invested in securities which mature when the money is expected to be needed and to certain reserves for bonds and construction projects.

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## **Meetings and Records**

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### **Introduction**

Any person has the right to inspect nonexempt public records in the State of Oregon. The reasons do not matter, and no justification need be given, unless the records can be considered exempt from public disclosure. It is the intent of the law to provide access to any interested citizen, organizations, and the media as to the affairs and decisions of government. Districts must be aware that their records must be made available to the public and maintained in such a way that they are easily accessible. The records are open to anyone, including:

- "Interested persons, news media representatives, business people seeking access for personal gain, busybodies on fishing expeditions, persons seeking to embarrass government agencies, and scientific researchers all stand on equal footing."
- All public bodies in the state, including all special districts, must comply with Public Records Laws. In addition, all public corporations such as SAIF and the Oregon State Bar are also covered under the law. Special districts and their board members



may be held liable if they refuse to provide nonexempt records to any individual or organization that requests them.

Much of the information in this chapter is taken directly from the [Attorney General's Public Records & Meeting Manual](#) and from [Oregon Revised Statute 192](#).

## **Records Covered by the Law**

Public Records Laws apply to all government records, no matter what kind. As defined by the Oregon Statutes, public records are "any writing containing information relating to the conduct of the public's business, including but not limited to court records, mortgages and deed records, prepared, owned, used or retained by a public body regardless of physical form or characteristics."

Public records can be in the form of paper, tape, film, photographs, discs, or any other physical medium used to record information.

Public Records Laws do not require public bodies to create public records. For example, if a district has information stored in a computer and the public requests that it be provided with a copy of the information in a different form than the district stores the information, the district is not required to manipulate the information to create the requested document.

Records do not need to be created by a district to be considered public records. If an outside body, such as a private contractor, prepares a document for a district that contains information that can be considered public information, the records are considered public and fall within Public Records Laws. However, a record created by a private organization or individual does not become a public record simply because it is reviewed by a public body. For example, sample materials prepared and owned by a private company are not considered public records when they are simply reviewed by the public body and no decisions to use the materials have been made.

## **Obtaining Public Records**

Districts must ensure that their records are made accessible to the public. Records must be available during usual business hours to persons wishing to either review or copy the records. The requester of the records is obligated to come to the district to get the records. The district need not deliver any records.

## **Copying**

If the records can be copied, then it is the responsibility of the district to furnish a certified copy of the records to the requester. The following statement on either the cover sheet or the last sheet of the record is sufficient for certification:

## Certification of True Copy

I certify that I have compared the [attached/forgoing] \_\_\_\_\_ [document] consisting of \_\_\_ page[s] with the original in this office, that I am the custodian, and the [attached/foregoing] is a true and correct copy.

\_\_\_\_\_, Oregon \_\_\_\_\_  
[City] Signature

\_\_\_\_\_, (year) \_\_\_\_\_  
[Date] Name/Title

[Official Seal if any]

## Certification of Electronic Copy

I certify that I have compared the description of record/data \_\_\_\_\_ contained on the attached computer disk/tape/ whatever with the original in this office, that I am the custodian, and that the attached is a true and correct copy of the original. However, because of the nature of the electronic medium on which the attached record is provided, I cannot ensure that its contents will not be modified after its release from my custody.

\_\_\_\_\_, Oregon \_\_\_\_\_  
[City] Signature

\_\_\_\_\_, (year) \_\_\_\_\_  
[Date] Name/Title

[Official Seal if any]

In addition to the right to request certified copies, private individuals also have the right to make their own copies, using their own equipment, or inspect copies of the records. The district has the right to protect the records if it feels that the method used to copy the records will cause them damage.

A rule designed to protect public records must be "reasonable." For example, it would not be reasonable to expect the person requesting the records to wait one month before receiving the records. However, it would be reasonable to require that persons requesting records complete an order form and allow the district 24 hours to locate and copy the records.

## **Fees**

Districts are allowed to charge a fee for copying or locating records. The fee must be reasonable and reflect the actual cost of making the records available. Services that are permissible to charge a fee for include:

1. The time spent by staff in locating the requested records.
2. Reviewing records in order to delete exempt material.
3. Supervising a person's inspection of original documents in order to protect the records.

## **Copying records.**

- Certifying documents as true copies.
- Sending records by special methods, such as express mail.
- Fees should be consistent and included in the official policies of the district. A per-page charge is recommended that includes the expenses involved with handling and providing access to the records.
- The requestor of the records does have the right to petition for a waiver of the fee if the records are of "public interest." If the records simply relate to a personal matter, such as seeking information relating to defense in a criminal matter, then the request for a waiver can be denied.

## **Consulting Legal Advice**

Districts should seek the advice of legal counsel if they receive a request, which is difficult to arrange, or if they feel the request should be denied on the basis that the records are exempt from the Public Records Laws. The State Attorney General has concluded that, "when a public body does so, it does not thereby actually or constructively deny the request. Nor does a public body deny a request merely because it fails to comply with the deadline the requester seeks to impose."

Districts in the SDIS Property/Casualty Program can contact SDIS for free pre-loss legal advice before making a decision.

## **Public Records Exempt from Disclosure**

If a district denies a request for a public record, it has the burden to prove that the record is exempt from disclosure. If the record is exempt from disclosure, the district is not required to provide the record. In many instances, the district has the authority to voluntarily provide records, even if they are exempt from disclosure. If a district does voluntarily provide an exempt record to an individual, it does not give up the right to deny access of the record to another individual in the future.

The district records officer should use the following steps when deciding whether to honor a request for the district's records:

1. Is there any good reason not to disclose the records?

2. If the answer is yes, is the record exempt from disclosure?
3. If there is any question as to whether or not the record is exempt, and the district does not wish to release the record, then legal counsel should be consulted.

An individual may submit a written request to a public body not to disclose a specified public record indicating the home address or personal telephone number of the individual. A public body shall not disclose the specified public record if the individual demonstrates to the satisfaction of the public body that the personal safety of the individual or the personal safety of a family members residing with the individual is in danger if the home address or personal telephone number remains available for public inspection.

Documents that are exempt from disclosure unless "the public interest requires disclosure in the particular instance," include the following:

1. Public Records Pertaining to Litigation [[ORS 192.501\(1\)](#)] – Litigation records in which the district is part of the complaint or which the district believes that it is likely to become part of the complaint.
2. Trade Secrets [[ORS 192.501\(2\)](#)] – The information must not be patented, it must only be known to a limited number of persons, it must have the potential of deriving economic value, and it must give its users the chance to obtain a business advantage over competitors not having the information.
3. Criminal Investigation Material [[ORS 192.501\(3\)](#)] – Information compiled in a criminal investigation that if divulged may deprive a person of a fair trial, constitute an invasion of privacy, disclose the identity of a confidential source, disclose investigation techniques, or endanger the safety of law enforcement officers.
4. Tests and Examination Material [[ORS 192.501\(4\)](#)] – Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination.
5. Business Records Required to be Submitted [[ORS 192.501\(5\)](#)] – Records which will identify a particular business and its production levels.
6. Real Estate Appraisal Information [[ORS 192.501\(6\)](#)] – Information relating to the appraisal of real estate prior to its acquisition.
7. Employee Representation Cards [[ORS 192.501\(7\)](#)] – The names and signatures of employees who sign authorization cards or petitions for the purpose of requesting representation or decertification elections.
8. Civil Rights Investigation Material [[ORS 192.501\(8\)](#)] – Information relating to complaints of discrimination in housing, places of public accommodation, or private vocational, professional or trade schools. However, the actual complaint is not exempt.

9. Unfair Labor Practices Complaints [[ORS 192.501\(9\)](#)] – Information which relates to unfair labor practice investigations and complaints before the Employment Relations Board. The complaint itself would not be exempt from disclosure.
10. Debt Collection Agency Investigation Records [[ORS 192.501\(10\)](#)] – Records, reports and other information received or compiled by the Director of Consumer and Business Services concerning debt collection.
11. Archaeological Site Information [[ORS 192.501\(11\)](#)] – Information concerning the location of archaeological sites or objects, except if the governing body of an Indian tribe requests the information and the need for the information is related to that Indian tribe's cultural or religious activities.
12. Personnel Discipline Actions [[ORS 192.501\(12\)](#)] – A personnel discipline action, or materials or documents supporting that action, if a sanction was imposed. This exemption does not apply when an employee of a public body resigns during an employer investigation or in lieu of disciplinary action.
13. Information about Threatened or Endangered Species [[ORS 192.501\(13\)](#)] – Information regarding the habitat, location or population of any threatened or endangered species, if the requestor of the records will use the information to further endanger the species.
14. Faculty Research [[ORS 192.501\(14\)](#)] – Writings prepared by or under the direction of faculty of public educational institutions, in connection with research, until publicly released, copyrighted or patented.
15. Computer Programs for the Use of Public Bodies [[ORS 192.501\(15\)](#)] – Computer programs developed or purchased by or for a public body for its own use, not including the original data or the mathematical formulas used to manipulate the data.
16. Agricultural Producer Indebtedness Mediation Data [[ORS 192.501\(16\)](#)] – Data and information provided by participants to mediation for agricultural producers in danger of foreclosure.
17. Unsafe Workplace Investigation Materials [[ORS 192.501\(17\)](#)] – Investigatory information relating to complaints of violations of laws governing workplace safety. It does not cover the complaint itself but provides for confidentiality of the identity of the employee making the complaint.
18. Law Enforcement Public Safety Plans [[ORS 192.501\(18\)](#)] – Specific operational plans in connection with an anticipated threat to individual or public safety for deployment and use of personnel and equipment, prepared and used by a law enforcement agency, if public disclosure would endanger the life or physical safety of a citizen or law enforcement officer or jeopardize the law enforcement activity involved.

19. Telecommunications Utility Audits [[ORS 192.501\(19\)](#)] – An external or internal audit or audit report pertaining to a telecommunications carrier.
20. Residence Address of Elector [[ORS 192.501\(20\)](#)] – Requires the county clerk to keep the elector’s residence address exempt from disclosure if requested by an elector who demonstrates to the satisfaction of the county clerk that the elector’s personal safety or that of any family member residing with the elector is in danger.
21. Housing Authority Information [[ORS 192.501\(21\)](#)] - Certain records, communications and information submitted to a housing authority as defined in ORS 456.005 by applicants for and recipients of loans, grants and tax credits.
22. Councils and Boards [[ORS 192.501 \(22\)](#)] - Records of the name and address of a person who files a report with or pays an assessment to a council, board or commission created or organized under ORS chapter [576](#), [577](#), [578](#) or [579](#).
23. Security Information [[ORS 192.501 \(23\)](#)] - Records or information that would reveal the security measures taken or recommended to be taken to protect:
  - a. An officer or employee of a public body
  - b. Buildings or other property used or owned by a public body
  - c. Information processing, communication or telecommunication systems, including the information contained therein, that are used or operated by a public body;
24. OHSU Donors [[ORS 192.501 \(23\)](#)] - Writings prepared by or under the direction of officials of Oregon Health Sciences University about a person and the person's potential interest in donating money or property to the university or the person's actual donation unless disclosure is authorized by the person.

The following public records are always exempt from disclosure ([ORS 192.502](#)):

1. Internal Advisory Communications – Communication within a public body or between public bodies if it is advisory or preliminary to any final action. If the communication covers purely factual materials, or if the public interest in frank communication outweighs the public interest of disclosure then the records are exempt from disclosure.
2. Personal Privacy Exemption – Information, which would constitute an unreasonable invasion of privacy if publicly disclosed. Unless the public interest by clear and convincing evidence requires disclosure in the particular instance.
3. Public Employee Addresses and Telephone Numbers – Addresses, telephone numbers and dates of birth contained in personnel records maintained by employer or recipient of volunteer services. Does not apply to employees or volunteers if they are elected officials or that public interest requires disclosure in a particular instance.

#### 4. Confidential Disclosures by Citizens

In order for records submitted by a citizen of the district in confidence to be exempt, they must meet the following tests:

1. The information must be submitted voluntarily.
2. The district must prove that the information is of a nature that it should be kept confidential.
3. The district must show that it has obligated itself in good faith not to disclose the information.
4. Disclosure must cause harm to the public interest.
5. The person must have submitted the information in confidence.
6. Corrections and Parole Board Records – Information or records from the Department of Corrections which if made available to the public would interfere with the rehabilitation of a person in custody.
7. Lending Institution Records – Records, reports and other information received or compiled by the Department of Consumer and Business Services to the extent that interests of lending institutions, their officers, employees and customers in preserving the confidentiality of such information outweighs the public interest in disclosure.
8. Presentence and Probation Records – Presentence and probation reports filed with court order.
9. Federal Law Exemption – Any public records or information the disclosure of which is prohibited by federal law. For example, public assistance and unemployment insurance records, and certain student records.
10. Other Oregon Statutes Establishing Specific Exemptions – Any public records or information the disclosure of which is prohibited, restricted, or otherwise made confidential or privileged under Oregon law.
11. Transferred Records – Public records or information furnished by a public body to any other public officer or public body in connection with performance of the duties of the recipient.
12. Security Programs for Transportation of Radioactive Materials – Records of the Energy Facility Siting Council concerning the review or approval of security programs pursuant to siting of nuclear power plants.
13. PERS Non-financial Information about Members – Employee and retiree address, telephone number and other non-financial membership records and employee

- financial records maintained by the Public Employees Retirement System.
14. Public Investment Records – Confidential records provided to the State Treasurer or Oregon Investment Council by private businesses or individuals related to proposed public investments.
  15. Public Employee Retirement Fund and Industrial Accident Fund Monthly Reports – The monthly reports prepared and submitted concerning the Public Employee Retirement Fund and
  16. Industrial Accident Fund may be exempt from disclosure for a period of up to 90 days after the end of the calendar quarter.
  17. Abandoned Property Reports – Reports of abandoned property filed by the property holder.
  18. Economic Development Information – Information submitted to the Oregon Economic Development Department, including personal financial statements, financial statements of applicants, customer lists, information of an applicant pertaining to litigation, production and sales data, or marketing strategy information.
  19. Transient Lodging Tax Records – Records, reports or returns submitted by private concerns or enterprises required by law to be submitted to or inspected by a governmental body to allow it to determine the amount of any transient lodging tax payable and the amounts of such tax payable or paid.
  20. Information for Obtaining Court-Appointed Counsel – All information supplied by a person for the purpose of requesting court-appointed counsel.
  21. Workers’ Compensation Claim Records – Workers’ compensation claims records that can be used to discriminate unlawfully against persons previously injured on the job who has filed a workers’ compensation claims.
  22. OHSU Sensitive Business Records – Records of financial or commercial information of the Oregon Health Sciences University that is not customarily provided to business competitors.
  23. OHSU Candidates for University President – Records of the Oregon Health Sciences University regarding candidates for the position of university president.
  24. Library Records - The records of a library, including circulation records, showing use of specific library material by a named person or consisting of the name of a library patron together with the address or telephone number, or both, of the patron.



25. Housing and Community Services Department Records – Records, communications and information submitted by applicants for and recipients of loans, grants and tax credits:
  - a. Personal and corporate financial statements and information, including tax returns.
  - b. Credit reports.
  - c. Project appraisals.
  - d. Market studies and analyses.
  - e. Articles of incorporation, partnership agreements and operating agreements.
  - f. Commitment letters.
  - g. Project pro forma statements.
  - h. Project cost certifications and cost data.
  - i. Audits.
  - j. Project tenant correspondence requested to be confidential.
  - k. Tenant files relating to certification.
  - l. Housing assistance payment requests.
  
26. Forestland Geographic Information System – Raster geographical information system (GIS) digital databases provided voluntarily and in confidence to the State Forestry Department.
  
27. Electricity Competition - Sensitive business, commercial or financial information furnished to or developed by a public body engaged in the business of providing electricity or electricity services, if the information is directly related to a transaction and disclosure of the information would cause a competitive disadvantage for the public body or its retail electricity customers.
  
28. Klamath Cogeneration - Sensitive business, commercial or financial information furnished to or developed by the City of Klamath Falls, acting solely in connection with the ownership and operation of the Klamath Cogeneration Project, if the information is directly related to a transaction and disclosure of the information would cause a competitive disadvantage for the Klamath Cogeneration Project.
  
29. Mass Transit Mapping - A record of the street and number of an employee's address submitted to a special district to obtain assistance in promoting an alternative to single occupant motor vehicle transportation.
  
30. Public Utility Districts - Personally identifiable information about customers of a municipal electric utility or a people's utility district.
  
31. Pesticide Applications - Pesticide sales or use reporting data obtained by the State Department of Agriculture, with certain exceptions, that would reveal the identity or specific location of the owner or lessee of a specific property where a pesticide has been applied for a private agriculture or forestry production operation, or other nonpublic facility on private property.

## **Other Public Record Exemption Rules**

After 25 years, exempt records lose their exemption and may be available to the public.

Records may be exempt for up to 75 years if they contain information about the physical or mental health, or psychiatric care or treatment of a living individual.

Records less than 75 years old which are sealed by statute or by a court order are exempt unless a court orders disclosure.

Records of a person who is or has been in custody or under supervision of a state agency, court or local government are exempt from disclosure for 25 years following termination of the custody to the extent that disclosure would interfere with rehabilitation of the person. The public interest in confidentiality may outweigh the exemption.

Student records required by state or federal law to exempt from disclosure.

## **Answers to Questions Commonly Asked About the Public Records Law**

Q. Does a "policy or procedure" of nondisclosure by a federal agency justify nondisclosure?

A. No. The exemption justifies nondisclosure only when disclosure is prohibited by federal law or regulation. The prohibition requirement is satisfied by federal laws cutting off federal funding if the state discloses specified information.

Q. May a public body establish a single "information officer" for all public records requests?

A. Yes. However, the statutes do not allow any unnecessary delay. The public body must "furnish proper and reasonable opportunities during the usual business hours." The public body may make reasonable rules but only for the protection of the records and to prevent interference with the regular discharge of duties. Any procedure that has the effect of unnecessarily delaying or discouraging response to public records requests is invalid.

Q. Are an outside consultant's report and recommendations paid for by a public body subject to disclosure?

A. Yes. Although various exemptions may apply to all or parts of the report.

Q. Can I get a transcript of material that is on tape?

A. You are required only to listen to the tape, and to make (or be furnished) a copy of the tape. The public body is not required to make a transcript of the tape, although of course it may.

Q. Does a requestor of records have the right to actually inspect the original records, or can the district require the requestor to accept copies?

A. The requestor of the records has the right to inspect original records, except for particular documents that contain exempt and nonexempt material which must be separated, or where the district has adopted a requirement that copies will be furnished instead because this is necessary to protect the records or to prevent interference with its work.

Q. May a public body establish a charge of 50 cents per page for copies of public records?

A. Yes, if that reasonably reflects its actual cost including the time of the person locating and copying the record, plus administrative overhead. A public body may not charge more than its actual cost of making the records available for inspection or for furnishing copies.

Q. May a public body charge for time spent in reviewing records to determine which of them are exempt, and for time spent in separating exempt and nonexempt material?

A. Yes. This activity is an essential part of making records available for inspection, and the agency is entitled to charge its actual cost.

Q. Is an indigent person entitled to waiver of the fee for inspection or copies of records?

A. Not automatically, however, indigence is a factor that a district may consider in deciding whether to grant a request for a fee waiver.

Q. Can a district be required under the Public Records Law to "make" a record subject to disclosure, by collecting information, recording oral statements, or otherwise?

A. No. A district cannot be required to create any record, including running a computer program to generate a report not previously generated, even when it has the means to do so.

Q. Must a local government release a police report to a victim who is filing a civil lawsuit after the criminal prosecution has been concluded?

A. No. Criminal investigatory material is exempt from disclosure. This exemption does not expire after the close of the prosecution, but it is more difficult to justify withholding the information.

Q. Must police officer notebooks be disclosed? Must access be given to police logs?

A. Notebooks and logs are public records. Specific exemptions, such as those for criminal investigation information and information submitted in confidence, may apply. Any information that is not exempt must be separated from that which is and must be made available.

Q. Are there any restrictions concerning information requested on behalf of another person?

A. No. There are no restrictions on securing information requested on behalf of another individual where no exemption applies.

Q. Does the Public Records Law require a district, after finding the records requested, to inform the requestor of the nature and volume of the records and the estimated costs of providing those records?

A. No. However, the law permits that practice, and most State agencies follow it.

Q. Are death records public records?

A. Abstracts of birth and death records are public records open to public inspection.

Q. May I obtain names and addresses of public employees, or of persons doing business with public bodies?

Generally, yes. Names and addresses are personal information. Disclosure of the name and address of a public employee, or of a licensee of (or person doing business with) a public body, is not an unreasonable invasion of privacy. However, disclosure of a list of names and addresses of recipients of ADC or unemployment benefits, or of certain public employees (e.g. police officers), could be unreasonable depending upon the circumstances.

# Public Meetings

## Introduction

Meetings of a district board must be open to the public unless specifically exempted by law. In order to be considered a meeting, a majority of the members of the board (a quorum) must be present for the purpose of making a decision or deliberating toward a decision on any matter.

An advisory body, subcommittee, task force or other official group that has authority to make recommendations to a public body on policy or administration also is required to comply with public meetings law.

A staff meeting is not covered under the Public Meetings Law because it does not require a quorum, and because staff simply makes recommendations to the board which is the policy making body. If however, a staff meeting includes enough board members as to constitute a quorum, then it must be open to the public.

Public Meetings Law is not a "public participation law." The right of the public to attend public meetings does not include the right to participate by giving testimony or comment. However, the public must be allowed to give comment on the employment of a public officer or the standards to be used in hiring a chief executive officer.

## Communication Between Board Members

Telephone conferences are considered public meetings. If a district has a telephone conference and enough members are involved in the conference to make a quorum, then the public must be given access to the conversation through at least one place where people can listen to the meeting.

To keep from inadvertently breaking the Public Meeting Law while having a telephone conference, it may be wise to formulate a policy that forbids a quorum of the board from taking part in the conversation at the same time.

A social gathering where a quorum of the board is present and deliberations toward a decision are being discussed is prohibited. However, a quorum can discuss public policy during chance or social meetings, as they are likely to occur at times. Members constituting a quorum must avoid any discussions of the business of their governing body during social gatherings.

## Notice of Meetings

The public must be notified of the time and place of district board meetings. Also, the district board must give notice to the persons and the media that have stated in writing that they wish to be notified of every meeting.

The notice of any meeting that will include an executive session should be given to the media and to the public. The notice must state that the executive session is not open to the public and include the statutory reason why it is not.

The public must be provided with an agenda for all regular, special, and emergency meetings. The agenda need not go into detail but it must include a list of the principal subjects anticipated to be considered at the meeting. It must be clear enough that interested persons will have an accurate idea of what the meeting will cover.

Not every proposed item of business is required to be on the agenda. The district must make a "reasonable" effort to include all of the important items, but if an additional subject arises too late to be mentioned in the notice, it may still be discussed at the meeting.

The following are suggested ways to meet the public meetings requirement for regular meetings, special meetings and emergency meetings.

- Regularly Scheduled Meetings – Press releases should be issued to:
  - Wire Service – Associated Press and United Press International.
- Local Media Representatives – If the meeting involves a local matter then the notice should be sent to local media.
- Mailing Lists – Districts maintaining mailing lists of persons or groups for notice of public meetings should send notice to the persons on the list.
- Interested Persons – If a district is aware of persons interested in receiving notice of a meeting, these persons should be notified.
- Notice Boards – Some smaller communities have a designated area or bulletin board for posting notices. Governing bodies may want to post notices of meetings in such areas.
- Special Meetings – Special meetings require at least 24 hour notice. Press releases should be given to wire services, interested persons, and news media requesting to be notified.
- Emergency Meetings – Meetings are considered an emergency if they are called with less than 24 hours notice. An actual emergency must exist and the minutes must describe the reason for the emergency. The district must still make an effort to contact the media and issue public notice.

## **Meeting Locations**

District meetings must be held either within the boundaries of the district, at its administrative headquarters, or at another nearby practical location. If the meeting is held within the district boundaries it need not be held at the district office. If the district has a joint meeting with another governing body then the meeting must be held within the boundaries of the area over which one of the bodies has jurisdiction. Meetings held for simply training purposes, which do not include deliberations or decisions on district matters, may be held outside of the district boundaries.

Meetings may be held in private citizens homes, restaurants, or other private locations. However, adequate notice must be given and there should be enough room to

comfortably accommodate the public. A meeting may not be held in a location that discriminates on the basis of race, creed, color, sex, age, national origin or disability.

### **Accommodations for the Disabled**

Oregon law states that, "it shall be considered discrimination on the basis of disability for a governing body of a public body to meet in a place inaccessible to the disabled, or, upon request of a hearing impaired person, to fail to make a good faith effort to have an interpreter for hearing impaired persons provided at regularly scheduled meetings." A person requesting an interpreter must give the district 48 hours advance notice and the district must make a reasonable effort to find an interpreter.

District meetings facilities should be wheelchair accessible and provide restroom facilities and other accommodations for the disabled.

## **Control of Meetings**

The district board has the authority to control the meetings, to regulate the length of public testimony, or ask any person who is disruptive or fails to comply with the rules of the meetings to leave.

Cameras, tape recorders, and microphones, must be allowed in public meetings but the presiding officer may regulate their use to the extent of keeping them from disrupting the meeting. Members of the public must be allowed to tape record public meetings.

Smoking is banned in public meetings. Anyone violating the law can receive a \$10 fine. The presiding officer should make an announcement at the beginning of each meeting to remind participants that smoking is not allowed.

## **Executive Sessions**

An executive session is a meeting that is closed to certain persons or organizations for the purpose of discussing sensitive matters. Districts have the authority to call an executive session when discussing the following subjects:

Employment of Public Officers, Employees, and Agents – A meeting to discuss the specific hiring of a public officer, employee, or staff member. An “individual agent” for this purpose means an independent contractor.

Discipline of Public Officers and Employees – A meeting called to discuss the discipline or termination of a public officer, employee, or staff member, unless the person asks for an open hearing.

Performance Evaluations – A meeting to review the performance of a chief executive officer, other officers, employees, and staff members of the district.

Labor Negotiations – Labor negotiations can be held in an open meeting unless both sides of the negotiations request that they be held in executive session. Labor negotiations are not subject to noticing requirements contained in Public Meetings Law.

Exempt Public Records – If any of the records considered exempt from Public Records Law are discussed at a meeting then the district may hold an executive session.

Trade and Commerce - To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competitions with governing bodies in other states or nations.

Legal Counsel – A meeting may be held in executive session for the purpose of consulting with legal counsel concerning the legal rights and duties of current litigation or litigation likely to be filed. The governing body must bar any member of the news media from attending the executive session if the member of the news media is a party to the litigation or is an employee, agent or contractor of a news media organization that is a party to the litigation.



Real Property Transactions – A meeting to discuss or negotiate on a property transaction.

Public Investments – An executive session, may be called to negotiate with private persons or businesses regarding proposed acquisition, exchange or liquidation of public investments.

Public Hospital Medical Staff – Meetings that relate to the medical competency of a hospital and the hospital's staff.

Health Professional Licensee Investigation – Meetings that consider information obtained as part of an investigation of licensee or applicant conduct.

Other Executive Session Statutes – Statutes outside the meetings law authorize governing bodies to hold executive or closed sessions, sometimes without cross-reference Public Meetings Law. For example, [ORS 332.061](#) authorizes school boards to consider student expulsion and confidential medical records of students in executive session, notwithstanding the Public Meetings Law.

All final decisions must be made outside of the executive session. The public must have a chance to be aware of the final decision. A vote of the district board relating to information discussed in the executive session can satisfy this requirement. However, executive sessions may not be held for the purpose of taking any final action or making any final decision.

Executive sessions may be called during regular meetings, special or emergency meetings, or at a completely separate meeting. If an executive session is called as a separate meeting, notice of the meeting must be given the same as a regular meeting.

Executive sessions must always be open to the media except in two instances: a meeting designated to carry on labor negotiations, or a meeting called to consider the expulsion of an elementary or secondary student. The district board can require that certain information discussed at the meeting not be disclosed to the public. It is important that the board carefully specify and note in the minutes which information cannot be released by the media.

Even though certain persons can be excluded from executive sessions, it does not restrict the authority of the governing body to invite persons not part of the board to attend executive sessions.

## **Voting**

All official public actions of a district board must be taken by public vote. Unless the board has more than 26 members, all of the votes of the members must be recorded. Secret ballots are prohibited, and if voting is conducted in writing the voters must specify their names, and the votes must be announced.

Minutes and Record Keeping - Minutes must be kept of all district meetings. The meeting minutes should include the following items:

- Members present.
- Motions, proposals, resolutions, orders, ordinances, and measures proposed.
- Results of all votes taken, unless the district board has more than 25 members present.
- The substance of any discussion of any matter.
- A reference to any document discussed at the meeting.
- Minutes need only be a summary of the meeting. A tape recording of the meeting is not required, although it is recommended. The minutes must be made available to the public and are considered public records. The minutes should be made available to the public a few weeks after the meeting. If the minutes are not made available in a "reasonable" period of time, the district may be held in violation of the Public Meetings Law.

### **Answers to Questions Commonly Asked About Public Meetings Law**

Q. May a three-member governing body meet with staff in carrying out its administrative functions, without complying with all the notice and other requirements of the Public Meetings Law?

A. If the governing body is gathering in order to obtain information on which it later will deliberate, or to deliberate or decide on substantive regulatory matters, it must comply with the prior notice, public attendance, and record keeping requirements of the Public Meetings Law.

Q. As a member of a three-member governing body, must I notify the press and public and arrange for their attendance every time I drop into a colleague's office or make a telephone call to another member?

A. Yes, if you discuss the business of the governing body. The law requires that the public have access to any meeting of a quorum of a governing body where the governing body meets to gather information on which it will later deliberate, or to deliberate or make a decision on any matter of policy or administration.

Q. How far in advance must a public body give notice of its meetings?

A. Far enough in advance reasonably to give interested persons actual notice and an opportunity to attend. Because the notice must specify the principal subjects to be covered, it must be given separately for each meeting even though the public news media know that the body meets every Wednesday evening.

Q. Is a notice on a bulletin board sufficient?

A. It is not.

Q. If a news medium requests notice of meetings, is it sufficient for that notice to be mailed "general delivery" to that news medium?

A. Probably yes, if mailed far enough in advance. It is up to the news medium to establish procedures to ensure that the proper person receives the notice. For a special or emergency meeting, a telephone call to a responsible person is necessary.

Q. Is a media request to receive notice of any meetings sufficient to require notice of special and emergency meetings?

A. Yes.

Q. May a governing body issue a single notice for a "continuous session" that may last for several days?

A. Probably yes, if the body can identify the approximate times that principal subjects will be discussed.

Q. If during an executive session, the members of the governing body discuss matters outside its proper scope, what is the proper role of media present? May they begin taking notes?

A. The Public Meetings Law does not prohibit media representatives from taking notes of executive sessions they attend, whether or not the discussion includes matters outside the lawful scope of the executive session. The law merely permits the governing body to require that specified information discussed during executive session be undisclosed.

Q. Must meeting notices be published as legal notices?

A. No.

Q. May a governing body reach a decision in an executive session?

A. It may not reach a final decision, but it may informally decide to reach consensus. This is proper so long as the body goes into public session to act formally on the matter.

Q. What if the decision is to take no action? For example, a complaint with respect to a public official, informally concluded to be without sufficient merit to warrant discipline?

A. It is appropriate but probably not required to announce in public session that the matter was not resolved, that no decision was reached or that in the absence of a motion for action, no action will be taken. If, however, a final "no action" decision is made by vote of a quorum of a governing body, the decision probably must be made and announced in public session.

Q. Does the meeting law's smoking prohibition apply to executive sessions?

A. The prohibition applies if the executive session is held in the same room in which the public meeting later will continue. However, the executive session itself probably is not a public meeting and, if held in a separate room, is not covered by the prohibition.

Q. Is a "retreat" of a governing body subject to the Public Meetings Law?

A. The answer depends on the matters discussed at the retreat. If the retreat were confined, for instance, to training and personal interaction, the Public Meetings Law would not apply. However, if at the retreat the governing body deliberates or makes a decision on official business the law applies.

Q. What about a "retreat" for employees and administrators of the public body, attended by members of the governing body?

A. Such a "retreat" can be organized to avoid the meeting of a quorum of the governing body for the purpose of gathering information or "deliberation" toward decisions on matters within their responsibility. However, it also is very easy for information gathering or policy deliberations by members of the governing body to occur, in violation of the Public Meetings Law.

Q. May a quorum of members of a governing body participate in a "community retreat" sponsored by a chamber of commerce?

A. Yes, so long as they avoid getting together as a group for any deliberations.

Q. Is a people's utility district board subject to the Public Meetings Law?

A. Yes.

Q. May a governing body restrict the number of media representatives attending an executive session?

A. Perhaps. A governing body probably would be able to limit attendance to one representative of each medium wishing to be represented. It should be reasonable to limit total attendance to a number that would not interfere with its deliberations.

Q. May a reporter who has a personal stake in a matter, or who has close a relationship to someone who is personally interested, be excluded from a special session?

A. The law does not provide, but if the attendance of a reporter with direct personal interest would frustrate the purpose of the executive session, a governing body could justify barring the individual.

Q. What is a quorum?

A. The Public Meetings Law does not define quorum. It may be defined by district charter, or rules.

Q. Does the Public Meetings Law notice requirement require the purchase of advertising?

A. No, it requires only appropriate notice.

Q. Must a notice be posed for a meeting that is exclusively an executive session?

A. Yes. The notice requirements are the same and must include statutory authority for the executive session.

Q. May I tape record a public meeting?

A. Yes.

Q. Must I inform the governing body before I tape record?

A. No.

Q. Are written minutes required?

A. Written minutes are required except for executive sessions, which may be audio taped.

Q. Must reporters be permitted access to executive sessions conducted by electronic conference?

A. Yes.

Q. May a person who has disrupted prior meetings, assaulted board members, etc. be excluded from a public meeting?

A. It is doubtful that a person may be excluded for prior conduct. The person who causes the disruption may be arrested for trespass.

Q. If a city council meets in executive session to discuss litigation, must the council meet in public session to vote to file a lawsuit or appeal?

A. Yes. Final decisions must be made in public.

Q. Is an on-site inspection outside the public body's jurisdiction subject to the Public Meetings Law?

A. No. On-site inspections are not "meetings" subject to the meetings law.

Q. Is a meeting without proper notice an illegal meeting?

A. A meeting without notice violates the Public Meetings Law.

Q. May a governing body reviewing or evaluating a public employee's performance in executive session exclude the employee from attending?

A. If the employee requests a public session, the meeting must be held in public, and the employee may not be excluded. If the employee makes no such request, then the employee may be excluded.

Q. How can a suit be filed for a meeting violation?

A. A suit should be filed in circuit court. The timing of the suit depends on the relief sought, but no action under the meetings law may be commenced for more than 60 days after the decision challenged became public record.

## **Sample Notices**

### 1. Notice of Regular, Special or Emergency Meeting

- a. The Board of Directors for the North Rose Sanitary District will hold a (regular, special, emergency) meeting at (time) at the District Office at 691 N.E. Alameda Ave., Rose City, on (month, day, year). A copy of the agenda of the meeting is attached.
- b. The Board of Directors for the North Rose Sanitary District will hold a (regular, special, emergency) meeting at (time) at the District Office at 691 N.E. Alameda Ave., Rose City, on (month, day, year). The meeting will cover the Rose Urban Area Comprehensive Plan, Treatment Plant rate increase, and district medical plan.

### 2. Notice of Executive Session

The Board of Directors for the North Rose Sanitary District will hold an Executive Session [pursuant to ORS 192.660(1)(a)] at (time) at the District Office at 691 N.E. Alameda Ave., Rose City, on (month, day, year). The session will consider an applicant for the position of General Manager for the district.

Notices of meeting do not require that they be directed to any particular group or signed by any officer or employee. A notice in the foregoing style mailed or delivered will be sufficient.

## Sample Agenda

\_\_\_\_\_ DISTRICT  
BOARD OF DIRECTORS MONTHLY AGENDA

month, day, year, time

location

1. CALL TO ORDER - President
2. ROLL CALL OF DIRECTORS - Office Manager
3. APPROVAL OF MINUTES OF PREVIOUS MEETING(S) - President
  - a. Regular Board meeting - (month, day, year)
  - b. Special Board meeting - (month, day, year)
4. APPROVAL OF ACCOUNTS PAYABLE - President
5. AUDIENCE RESPONSE - President (The audience is invited to speak on any item that is on the agenda. The presence of individuals who wish to address the Board is noted and they will be called upon when the agenda item is reached. Prior arrangements must be made before anyone from the audience can address the board on off-agenda items.)
6. INFORMATION ITEMS - Finance Director
  - a. STATUS OF CIVIL SERVICE - The Board members from the Fire District have been contacted and plan on attending a training session in order to educate individuals in the principles of Civil Service for firefighters. The session is scheduled to be held Saturday, November 17 at 8:30 am in the District classroom.
  - b. BUDGET COMMITTEE - In your packet is a letter from Budget Committee member Joe Smith indicating that he will not be serving on the Committee in the future. This leaves the District with two (2) openings on the Budget Committee. Applications are to be received by December 19.
  - c. VEHICLES SOLD - The 1984 Mercury was sold for \$1,500 and the 1983 Chevrolet station wagon was sold for \$1,000 in accordance with direction received from the Board.
7. OLD BUSINESS
  - a. ANNUAL AUDIT  
BACKGROUND: The Board received the audit for FY 1999 – 2000 at their last meeting, but our auditor was unable to be in attendance. Tonight, the auditor indicates that he will be in attendance to discuss the audit and answer any questions that the Board may have.  
ACTION REQUESTED: Once the Board has had their questions addressed and are satisfied with the audit, they should move for acceptance of the 2000 – 2001 annual audit.

b. BOARD POLICIES

BACKGROUND: At the last meeting, the Board received drafts of the following Board Policies to be included in the Board Policy Manual:

5-F – Sample Board Meeting Information Sheet

10-108 – Rules and Regulations

10-701 – Apparatus Preventive Maintenance

ACTION REQUESTED: After reviewing and making any suggested changes to the policies, move for their adoption.

8. NEW BUSINESS

a. VOLUNTEER REIMBURSEMENT

BACKGROUND: Based on the activities of the Volunteer force during the month of October 1999, in attendance at training sessions and response to emergencies, Staff is recommending that payment in the amount of \$3,228 be made from the account 62160, Volunteer Program, to the Volunteer Firemen's Association.

ACTION REQUESTED: Approve payment to the Volunteer Firemen's Association.

b. 1991 FIRE PROTECTION CONTRACTS

BACKGROUND: In accordance with Board Policy 10-608, an addendum has been prepared for each of the existing fire protection contracts. Each addendum contains all the necessary data that the Board elected to incorporate in their Board Policy.

ACTION REQUESTED: Review and approve the enclosed list of contracts and the 2000 rates.

c. DEFERRED COMPENSATION PLAN

BACKGROUND: Through payroll deduction, career employees currently may opt to participate in three (3) Board approved deferred compensation investment products. A deferred compensation plan has been drafted which would cover all of the approved investment products rather than having a plan/agreement for each product.

ACTION REQUESTED: Review the plan draft, determine if the Board wishes to appoint a three (3) member committee to handle the responsibilities, and give Staff direction relative to any changes needed before approval of the plan. Since the plan is lengthy and will take some time to study, Staff suggests that the Board direct Staff to have a resolution prepared for action at the December meeting.

9. TOPICS THAT SURFACED FOLLOWING PREPARATION OF THE MONTHLY AGENDA

10. INDIVIDUAL BOARD MEMBER COMMENTS

11. ADJOURNMENT



## **Sample Policy: Preparation for Board Meetings**

### DISTRIBUTION OF MATERIALS TO BOARD MEMBERS

The Agenda, Chief Executive Officer's Report, Treasurer's Report, and Statement of Bills shall be given to each member of the Board of Directors at least four (4) days prior to any regularly scheduled Board meeting.

At the same time, the Chief Executive Officer shall provide members detailed information relative to the Agenda, including existing Board policy pertinent to Agenda items.

### DISTRIBUTION OF AGENDA TO THE PUBLIC

The proposed Agenda will simultaneously be distributed to all District offices and other facilities, local and other news media, and posted at one or more locations convenient for review by District personnel and the public.

## **Sample Policy: Board Meeting Agenda**

### MEETING AGENDA

The Clerk of the Board shall draft the Agenda after conferring with the President of the Board. The following general order shall be observed:

1. Call to order; Pledge of Allegiance to the flag.
2. Roll call by Secretary-Treasurer or designee
3. Approval of the minutes.
4. Audience participation (testimony from citizens).
5. Secretary-Treasurer's report.
6. Statement of bills.
7. Old business.
8. Correspondence.
9. New business.
10. Chief Executive Officer's report.
11. Items not on agenda open to public, Board and staff participation.
12. Agenda suggestions for future meetings from Board members and District personnel.

## **Sample Policy: Notice and Location of Meetings**

### APPLICATION

This policy applies to all meetings of the Board of Directors of the District, and to any meetings of subcommittees or advisory groups appointed by the Board if such subcommittees or advisory groups normally have a quorum requirement, take votes, and form recommendations as a body for presentation to the Board of Directors.

### COMPLIANCE WITH LAW

All meetings shall be conducted in accordance with the Oregon Public Meetings Law, [ORS 192.610-192.710, and 192.990.](#)

### LOCATION OF MEETINGS

All meetings shall be held within the geographic boundaries of the District, except for training sessions held without any deliberative action. No meeting shall be held in any place where discrimination on the basis of race, creed, color, sex, age, national origin or disability is practiced. All meetings shall be held in places accessible to the handicapped.

### MEETINGS HELD BY TELEPHONE

Meetings held by telephone or other electronic communications are subject to the Public Meetings Law if they otherwise qualify by virtue of their deliberative purpose and the presence of a quorum. [ORS 192.670\(1\)](#). Notice and opportunity for public access shall be provided when meetings are conducted by electronic means. At least one location shall be provided where meetings held by telephone or other electronic means may be listened to by members of the public. [ORS 192.670\(2\)](#). The media shall be provided access to a listening location whenever executive sessions are conducted electronically, unless such executive sessions are exempt from media attendance pursuant to [ORS 192.670\(1\) and 192.660\(3\)](#).

### REGULAR MEETINGS

The Board shall hold regular monthly meetings on the [day, e.g. the first and third Wednesday] of each month. Such meetings shall be held at [location], at [hour, a.m./p.m.], or at such other places and times as the Board may designate from time to time.

### SPECIAL MEETINGS

The Board shall hold special meetings at the request of the President or any three members of the Board. If the President is absent from the District, special Board meetings may be held at the request of the Vice-President. No special meeting shall be held upon less than 24 hour public notice.

### EMERGENCY MEETINGS

Emergency meetings may be held at the request of persons entitled to call special meetings, upon less than 24 hour notice in situations where a true emergency exists. An emergency exists where there are objective circumstances which, in the judgment of the person or persons calling the meeting, create a real and substantial risk of harm to the District which would be substantially increased if the Board were to delay in order to give 24 hour notice before conducting the meeting. The convenience of Board members is not grounds for calling an emergency meeting.

At the beginning of any emergency meeting, the Director or Directors calling such meeting shall recite the reasons for calling such meeting, and the reasons the meeting could not have been delayed in order to give at least 24 hour notice, which reasons shall be noted in the minutes. The Board shall then determine if the reasons are sufficient to hold an emergency meeting and, if not, shall immediately adjourn such meeting. Only business related directly to the emergency shall be conducted at an emergency meeting.

### NOTICE OF MEETINGS

Notice of the time, place, and principal subjects to be considered shall be given for all meetings. For regular meetings, the notice shall be in the form of an agenda, which shall be sent to all Board members, local media, and to all persons or other media representatives having requested notice in writing of every meeting. The agenda shall also be posted at the following locations within the District: [insert locations].

Written notice shall also be sent to any persons which the District knows may have a special interest in a particular action, unless such notification would be unduly burdensome or expensive. For special meetings, press releases shall be issued or phone calls made to wire services and other media; and interested persons shall be notified by mail or telephone. For emergency meetings, the District shall attempt to contact local media and other interested persons by telephone to inform them of the meeting. A sample "Notice of Meetings" is contained in the Appendices to this Manual in the "Outline of the Oregon Public Meetings Law."

### EXECUTIVE SESSIONS

Notice for meetings called only to hold executive sessions shall be given in the same manner as notice for regular, special and emergency meetings set forth above, except that the notice need only indicate the general subject matter to be considered at the executive session, but it shall also set forth the statutory basis for calling the executive session. A sample "Notice of Executive Session" is contained in the Appendices to this Manual in the "Outline of the Oregon Public Meetings Law."

### INTERPRETERS FOR THE HEARING IMPAIRED

The District shall comply with [ORS 192.630\(5\)](#) regarding the provision of interpreters for the hearing impaired at Board meetings, in accordance with the following rules:

1. The District shall make a good faith effort to have an interpreter for hearing impaired persons provided at any regularly scheduled meeting if the person requesting the interpreter has given the District at least 48 hour notice of the request, provided the name of the requester, the requester's sign language preference, and any other relevant information which the District may require. "Good faith efforts" shall include contacting the Oregon Disabilities Commission, or other state or local agencies that maintain a list of qualified interpreters.
2. If a meeting is held upon less than 48 hour notice, the District shall make reasonable efforts to have an interpreter present.
3. The requirement for an interpreter does not apply to emergency meetings.
4. The Chief Executive Officer shall be responsible for developing and maintaining a list of qualified interpreters, and shall have the responsibility for making the required good faith effort to arrange for attendance of an interpreter at any meeting for which an interpreter is requested.

## **Sample Policy: conduct of Board Meetings**

### PRESIDING OFFICER

The President shall preside at Board meetings. In the President's absence, the Vice-President shall preside. If both the President and Vice-President are absent, any other member of the Board may preside.

### AUTHORITY TO CONDUCT MEETINGS

The President or other presiding officer at any Board meeting shall have full authority to conduct the meeting. Meetings shall be conducted in such a manner as to provide a full and fair opportunity for discussion of the issues in an efficient and timely manner. Any decision of the President or other presiding officer at the meeting may be overridden by a majority vote of the Board.

### PUBLIC PARTICIPATION

If public participation is to be a part of the meeting, the presiding officer may regulate the order and length of appearances, and limit appearances to presentations of relevant points. Persons failing to comply with the reasonable rules of conduct outlined by the presiding officer, or causing any disturbance, may be asked or required to leave. Upon failure to do so, such persons become trespassers.

### ELECTRONIC EQUIPMENT

The authority to control the meetings of the District Board extends to control over equipment such as cameras, tape recorders and microphones. The presiding officer shall inform persons attending any meeting of the District Board of reasonable rules necessary to assure an orderly and safe meeting. The physical comfort and safety of members of the Board and the public attending the meeting shall be of primary concern in formulating such rules.

### RECORDING OF VOTES

Votes shall be recorded. Any member may request that his or her vote be changed, if such request is made prior to consideration of the next order of business.

### QUORUM REQUISITES

[Number] members shall constitute a quorum. If only a quorum is present, a unanimous vote shall be required to take final action.

### VOTE EXPLANATIONS

Members of the Board may append to the record, at the time of voting, a statement indicating either the reason for their vote or abstention.

### CONFLICT OF INTEREST/EX PARTE CONTACTS

In the event of a potential conflict of interest, a member of the board shall declare such conflict but may participate in discussions and vote. In the event any member of the Board has had any ex parte contact in a quasi-judicial matter, the member shall declare such contact prior to participating in discussion on the matter.

## SMOKING

Pursuant to [ORS 192.710](#), no person shall smoke or carry any lighted cigar, cigarette, pipe or other smoking equipment into a room where a meeting is being held by the Board or is to continue after a recess. For purposes of the statute, a meeting is deemed to have started at the time the agenda or meeting notice indicates it is to commence, regardless of the time the meeting actually begins. This rule shall apply at any regular, special or emergency meeting at which the Board intends to "exercise or advise in the exercise of any power of government." No quorum requirement shall apply for this smoking ban to apply. If the Board intends to reconvene after leaving a meeting room for an executive session, the Board will be deemed to be in a "recess" during which smoking shall be prohibited in the meeting room.

1. Smoking Policy at Other Locations: If a meeting is held at a location other than one which is "rented, leased or owned" by the State or a political subdivision, such as a hotel meeting room, where no separate charge is made for the room, the smoking ban of [ORS 192.710](#) shall not apply, but other laws prohibiting smoking except in designated areas, such as that found in [ORS 433.845](#), may apply.
2. Smoking Reminder: Whenever members of the public are in attendance at a meeting, the presiding officer shall remind those present of the no smoking rule at the beginning of the meeting to avoid potential embarrassment.

## ADJOURNMENT

The meeting shall be adjourned by a majority vote or as a result of the loss of a quorum.

### **Sample Policy: Executive Sessions**

## NOTICE

Public notice of executive sessions shall be provided in accordance with district policy [insert policy number relating to noticing requirements].

## NO FINAL DECISIONS

The Board shall not make any final decisions during any executive session. This policy, however, shall not prohibit full discussion of Board members' views during executive sessions.

## PURPOSES

Executive sessions shall be held only for the following purposes:

1. Employment of Personnel: [ORS 192.660\(1\)\(a\)](#). To discuss the employment of a public officer, employee, or staff member, but only if the following requirements have been met:
  - a. The vacancy for the position has been advertised;
  - b. Regularized procedures for hiring have been adopted;
  - c. There has been opportunity for public input into the employment of such employee or officer;
  - d. Where employment of a Chief Executive Officer is under consideration, the standards, criteria and policy directives to be used in hiring such

officer must have been adopted at a meeting open to the public at which the public has had an opportunity to comment. No executive session may be held under [ORS 192.660\(1\)\(a\)](#) for purposes of filling a vacancy in an elective office.

2. Discipline of Public Officers and Employees: [ORS 192.660\(1\)\(b\)](#). To consider the dismissal or disciplining of a public officer, employee, staff member or individual agent, or to hear complaints or charges brought against such persons, unless the person complained against requests an open hearing.
3. Medical staff of a public hospital: [ORS 192.660\(1\)\(c\)](#). To consider matters pertaining to the function of the medical staff of a public hospital including, but not limited to, all clinical committees, executive, credentials, utilization review, peer review, committees and all other matters relating to medical competency in the hospital.
4. Consultation with Labor Negotiator: [ORS 192.660\(1\)\(d\)](#). To conduct deliberations with persons designated by the Board to carry on labor negotiations on its behalf. News media representatives may be excluded from executive sessions called under this section.
5. Real Property Transactions: [ORS 192.660\(1\)\(e\)](#). To conduct deliberations with persons designated by the Board to negotiate real property transactions.
6. Exempt Records: [ORS 192.660\(1\)\(f\)](#). To consider records that are exempt by law from public inspection. Examples of such records include medical records pertaining to personnel, confidential communications from legal counsel, employment tests or examination materials, and other materials exempted from public disclosure under the Public Records Law, [ORS 192.501 and 192.502](#).
7. Trade or Commerce: [ORS 192.660\(1\)\(g\)](#). To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations.
8. Litigation/Consultation with Legal Counsel: [ORS 192.660\(1\)\(h\)](#). To consult counsel concerning the District's legal rights and duties, as well as current litigation or litigation likely to be filed. Whenever written legal advice received from counsel is to be discussed, the Board may utilize an executive session to discuss the writing under the authority of [ORS 192.660\(1\)\(f\)](#), as well. This section authorizes an executive session to consider records which are exempt by law from public inspection.
9. Performance Evaluations: [ORS 192.660\(1\)\(i\)](#). To review and evaluate the employment-related performance of the chief executive officer, other officers, employees or staff members, pursuant to standards, criteria and policy directives adopted by the District, unless the person whose performance is being reviewed and evaluated requests an open hearing. The standards, criteria and policy directives to be used in evaluating chief executive officers must first have been

adopted by the Board in meetings open to the public in which there was an opportunity for public comment. Executive sessions called pursuant to this section may not include a general evaluation of any District goal, objective or operation, and may not include any directive to the Chief Executive Officer or other District personnel concerning agency goals, objectives, operations or programs.

10. Labor Negotiations: [ORS 192.660\(2\)](#). Labor negotiations may be held in executive session if either side requests an executive session.

#### CONDUCT OF EXECUTIVE SESSION

The President or other presiding officer shall announce the statutory authority for the executive session before going into closed session. Once the executive session has been convened, the President shall direct any representatives of the news media who are present not to report certain specified information from the executive session. In general, the extent of the non-disclosure requirement should be no broader than the public interest requires, and the news media will ordinarily be allowed to report the general topic of discussion in the executive session. Board members, staff and other persons present shall not discuss or disclose executive session proceedings outside of the executive session without prior authorization of the Board as a whole.

### **Sample Policy: Minutes of Meetings**

#### WRITTEN MINUTES

The Board shall keep written minutes of all of its meetings in accordance with the requirements of [ORS 192.650](#). Minutes of public meetings shall include at least the following information:

1. All members of the Board present.
2. All motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition.
3. Results of all votes, including the vote of each member by name.
4. The substance of any discussion on any matter.
5. Subject to [ORS 192.410 - 192.505](#) relating to public records, a reference to any document discussed at the meeting.

#### MINUTES OF EXECUTIVE SESSIONS

Minutes of executive sessions shall be kept separately from minutes of public meetings. Minutes of executive sessions may be kept either in writing, in the same manner as minutes of public sessions, or by tape recording. If minutes of an executive session are kept by tape recording, written minutes are not required, unless otherwise provided by law. [ORS 192.650\(2\)](#).

#### DISCLOSURE OF EXECUTIVE SESSION MATTERS

If disclosure of material in the executive session minutes would be inconsistent with the purpose for which the executive session was held, the material may be withheld from disclosure. No executive session minutes may be disclosed without prior authorization of the Board. [ORS 192.650\(2\)](#).

### RETENTION

Any tape recordings or written minutes of public Board meetings or executive sessions shall be retained by the District until such time as their disposal is authorized by rule or specific authorization of the State Archivist pursuant to [ORS 192.105](#).

### AVAILABILITY TO THE PUBLIC

Written minutes of public sessions shall be made available to the public within a reasonable time after the meeting. [ORS 192.650\(1\)](#)

## **Sample Policy: Public Records**

### COMPLIANCE

The District shall fully comply with the Oregon Public Records Law, [ORS 192.410-192.505](#).

1. **Specificity of Request:** In order to facilitate the public's access to records in the District's possession, and to avoid unnecessary expenditure of staff time, persons requesting access to public records for inspection or copying, or who submit written requests for copies of public records, shall specify the records requested with particularity, furnishing the dates, subject matter and such other detail as may be necessary to enable District personnel to readily locate the records sought.
2. **Access:** The District shall permit inspection and examination of its non-exempt public records during regular business hours in the District's offices, or such other locations as the District Manager may reasonably designate from time to time. Copies of non-exempt public records maintained in machine readable or electronic form shall be furnished, if available, in the form requested. If not available in the form requested, such records shall be made available in the form in which they are maintained. [ORS 192.440\(2\)](#).
3. **Certified Copies:** Certified copies of non-exempt public records shall be furnished upon request, and receipt of payment therefore.

### FEES FOR PUBLIC RECORDS

In order to recover its costs for responding to public records requests, the following fee schedule is adopted by the District:

1. **Copies of Public Records; Certified Copies:** Copies of public records shall be cents per copy for standard, letter size copies. Copies shall be certified for an additional charge of \_\_\_\_\_.
2. **Copies of Sound Recordings:** Copies of sound recordings of meetings shall be per copy.
3. **Copies of Maps and Other Nonstandard Documents:** Charges for copying maps or other nonstandard size documents shall be charged in accordance with the



actual costs incurred by the District.

4. **Research Fees:** If a request for records requires District personnel to spend more than 15 minutes searching or reviewing records prior to their review or release for copying, the minimum fee shall be per hour and additional charges shall be in ¼ hour increments. The District shall estimate the total amount of time required to respond to the records request, and the person making the request shall make payment for the estimated cost of the search and copying of the records in advance. If the actual time and costs are less than estimated, the excess money shall be refunded to the person requesting the records. If the actual costs and time are in excess of the estimated time, the difference shall be paid by the person requesting the records at the time the records are produced.
5. **Additional Charges:** If a request is of such magnitude and nature that compliance would disrupt the District's normal operation, the District may impose such additional charges as are necessary to reimburse the District for its actual costs of producing the records.
6. **Reduced Fee or Free Copies:** Whenever it determines that furnishing copies of public records in its possession at a reduced fee or without costs would be in the public interest, the Board or District Manager may so authorize. [ORS 192.440\(4\)](#).

#### AUTHORIZATION REQUIRED FOR REMOVAL OF ORIGINAL RECORDS

At no time shall an original record of the District be removed from the District's files or the place at which the record is regularly maintained, except upon authorization of the Board of Directors or Manager of the District.

#### ON-SITE REVIEW OF ORIGINAL RECORDS

If a request to review original records is made, the District shall permit such a review provided that search fees are paid in advance in accordance with paragraph B.4, above. A representative shall be present at any time original records are reviewed, and the charges for standing by while the records are reviewed shall be the same as the charges for searching or reviewing records.

#### UNAUTHORIZED ALTERATION, REMOVAL OR DESTRUCTION OF ORIGINALS

If any person attempts to alter, remove or destroy any District record, the District representative shall immediately terminate such person's review, and notify the attorney for the District.

# Elections

## Introduction

As a board member or manager of a special district, it is necessary to understand the election requirements for special districts. Special districts must hold elections to select board members, ask for a new or increased tax rate, or vote on bond measures.

Laws governing the conduct of local elections are administered by the Secretary of State's Election Division and by each county's elections officer (county clerk). Administrative rules and directives are issued by the Secretary of State to provide uniformity in local elections. County elections officers are responsible for conducting and administering local elections. Please contact your county before proceeding with election preparations.

When any measure is to be voted upon, the district board must notify the county elections officer. The county clerk is responsible for overseeing all further requirements. It is recommended that each person responsible for coordinating elections work closely with the county elections officer to assure that correct procedures are followed.

## The State of Oregon's District Elections Manual

The State of Oregon's Elections and Public Records Divisions prepares the [District Elections Manual](#) and distributes copies to 36 county clerks, who serve as county election officers. Copies are then made available locally. In most counties, the county clerk mails a copy of the manual to each voting district in the county's jurisdiction. This useful publication is updated annually and contains election calendars, a special district's election "checklist," sample filing forms, and the names of county elections officers.

The Elections Division also publishes a [Campaign Finance Manual](#) for candidates and political committees. This manual is a must for any district candidate or political committee that will be accepting financial contributions. To obtain copies of these manuals call or write:

### [Elections Division](#)

141 State Capitol  
Salem, Oregon 97310-0722  
(503) 986-1518

## Election Dates

Districts can hold elections on the following four dates:

1. The second Tuesday in March - (Board of Director's elections in odd numbered years only).
2. The third Tuesday in May - (Primary Election).
3. The third Tuesday in September.
4. The first Tuesday after the first Monday in November - (General Election).

Districts may, in any year, submit a measure to vote at any one or more of the four dates listed above. However, an election on the question of a permanent tax rate may only be considered at a biennial primary or general election (even-numbered years). Elections of governing board members may only be held in March of odd-numbered years (unless a new district is being formed---board members are elected at the time of formation).

A special election may be held on a date other than one of the above if the district elections authority approves an election to finance repairs to property damaged by fire, vandalism, or a natural disaster.

### **Filling Vacancies in the District Board**

When a vacancy becomes available on a district board between elections, the vacancy shall be filled by appointment of the remaining board members. If a majority of the board is vacant or if a majority cannot agree, the county court shall fill the position.

The person appointed to fill a vacancy by the board or the county court will serve until June 30th following the next regular district election at which governing body members are elected (March in odd numbered years). The successor elected at the next regular election shall serve for the unexpired term.

### **Election Notices**

#### Governing Body Election Notices

When a district board member election is to be held, the elections officer (the county clerk) publishes a notice that includes the following information:

1. Date of the election.
2. Governing body positions up for vote.
3. The last date candidates may file for office.
4. The newspaper(s) in which the notice is to be published. The newspaper must be of general circulation in the district not later than the 40th day before the last day for filing a petition for nomination or declaration of candidacy.

Publishing the notice is the responsibility of the county clerk.

#### Bond or Measure Election Notices

Before a bond or measure election, the district must deliver notice 61 days before the election to the county clerk, which asks for:

1. The date of the election.
2. The ballot title.

Any notice of a bond election must also include:

- The purpose for which the bonds are to be used.
- The amount and term of the bonds.
- The kind of bonds proposed to be issued.

\*\* If the measure is to be held in November, and the district already submitted the same measure at the proceeding September election, then the measure must be filed 47 days before the election.

### **Candidates Filing for District Offices**

Candidates for district offices can either declare their candidacy by submitting a filing fee (with the proper forms), or petition for nomination. Contact your county clerk's office to receive all required filing forms.

#### All Candidates

Required to establish a principal campaign committee before receiving or spending any money to support their candidacy. These requirements include:

- Any expenditures of personal funds by the candidate or treasurer and payment of the filing fee if the candidate files by declaration.
- Filing a Statement of Organization (SEL 220) within three business days of receiving or making an expenditure, but no later than when candidacy papers are filed.
- A candidate who serves as the candidate's own treasurer and who does not expect to receive or spend more than \$300 for the entire election is not required to file a Statement of Organization.

### **Candidates Filing by Petition**

Candidates for special district offices filing by petition must submit the following forms to the county clerk before circulating the petition:

- Filing of Candidacy for Special District Nomination (SEL 190)
- Special District Petition for Nomination (SEL 191)
- Filing a Statement of Organization (SEL 220) within three business days of receiving or making expenditure, but no later than when the perfected petition is filed.
- A candidate who serves as the candidate's own treasurer and who does not expect to receive or spend more than \$300 for the entire election is not required to file a Statement of Organization.
- The Special District Petition for Nomination (SEL 191) petition must be submitted to the county clerk no later than 5:00 p.m. on the 61st day before a regular district election or the 70th day before an election held on the same day as a primary or general election for signature verification.

The final petition must be submitted to the county clerk no sooner than the 101st day and no later than 5:00 p.m. on the 61st day before a regular district election (or the first election at which members of a the district board are elected) or no sooner than the 110th

day and no later than 5:00 p.m. on the 70th day before an election held on the same day as a primary or general election. A "final or perfected" petition must meet the following criteria:

The petition must be signed by at least 10 percent of the voters or 25 voters (whichever is less) residing in the district.

The electors signing the petition must include their signatures, printed names, precinct names or numbers (if known) and residence addresses.

Candidates gathering signatures from more than one county (multi-county districts only) must not have signatures from more than one county on a page. Signatures of electors from more than one county in a multi-county district must be verified by county elections official before submission.

Each signature sheet must be verified on its face by the signed statement of the circulator that the circulator believes each individual is an elector qualified to sign the petition.

Signatures must be submitted to the county clerk of the county in which the signer is registered for verification purposes.

### **Candidates Filing by Declaration**

Candidates for special district offices filing by declaration must submit the Candidacy for Special District Nomination (SEL 190) form to the county clerk no sooner than the 101st day and no later than 5:00 p.m. on the 61st day before a regular district election (or the first election at which members of a the district board are elected) or no sooner than the 110th day and no later than 5:00 p.m. on the 70th day before an election held on the same day as a primary or general election.

Filing of Candidacy for Special District Nomination (SEL 190). The form asks for:

- Position number or zone, district name or number, office title and length of term of office.
- Name and address of candidate and date of filing.
- A statement of qualifications and an acceptance by the candidate.
- The signature of the candidate.
- An indication that the \$10.00 filing fee has been paid.

A candidate must also file a Statement of Organization (SEL 220) within three business days of receiving or making an expenditure, but no later than when the Candidacy for Special District Nomination (SEL 190) is filed.

A candidate who serves as the candidate's own treasurer and who does not expect to receive or spend more than \$300 for the entire election is not required to file a Statement of Organization.

## Candidate Withdrawal

1. A nominee for election to the district board must withdraw the nomination no later than 5:00 p.m. on the 70th day before a Primary or General election or no later than 5:00 p.m. on the 61st day before a regular district election (or the first election at which members of the district board are elected).
2. Complete the Withdrawal of Candidacy or Nomination form (SEL 150). The withdrawal shall be signed by the nominee and state the reasons for withdrawal.
3. If it is determined that a person has filed two or more nominating petitions or declarations of candidacy for any lucrative office without filing written withdrawal, all such filings shall be invalid.

## **Abstracts and Certificates of Election**

Not later than the 20th day after an election, the county clerk shall prepare an abstract of the votes and deliver it to the district election authority. Not later than the 30th day after receiving the abstract, the district elections officer shall determine from it the results of the election.

The county clerk only shall issue a certificate of election after the district elections officer has notified the county clerk in writing of the result of the election.

## Miscellaneous Provisions

### Contests of Election, Recount and Recall

The procedures for election contests, recount and recall for special districts are the same as for any other election in the state.

Provisions regarding election contests and recounts may be found in [ORS 258](#).

Provisions regarding recall may be found in [ORS 249](#) and [OAR Chapter 165](#).

## Initiative and Referendum

The specific requirements for the exercise of initiative and referendum in special districts are as follows:

- The petitioner must file the prospective petition with the county elections officer.
- The petition must include the text of the proposed measure.
- A Statement of One or More/No Petitioner Circulators Will be Compensated (SEL 370) must be filed.
- A Prospective Petition for Local Initiative/Referendum Measure (SEL 370) must be filed.
- A Statement of Organization for Political Committee and Appointment of Political Treasurer (SEL 221) must be filed.

- The county elections official must notify the chief petitioners, no later than five business days after the proposed initiative is filed, that the text complies with the single subject requirement contained in the [Oregon Constitution, Article IV, Section 1](#) and [ORS 255.140](#).
- The county elections official forwards two copies of the prospective initiative petition to the District Attorney for preparation of the ballot title no later than the sixth business day after the prospective initiative is filed.
- The District Attorney has five business days to prepare a ballot title and return it to the county elections official. Oregon statutes require that the ballot title contain the following elements: 1) a caption not to exceed 10 words; 2) a question not to exceed 20 words and; 3) a summary not to exceed 175 words.
- The county elections official furnishes the chief petitioners with a copy of the ballot title. Receipt of the ballot title must be published in the next available edition of a newspaper of general circulation that includes a statement that the single subject requirement was met, notice that an elector can file a petition for a review of the ballot title and the deadline for filing a petition for review with the Circuit Court (no later than the 7th business day after the ballot title is filed with the county elections official).
- The county elections official may not approve cover and signature sheets for circulation until after the challenge period for the ballot title expires, or if the ballot title is challenged, after the Circuit Court order is received by the county elections official.
- The chief petitioner must receive approval of the cover and signature sheets from the county elections official before circulating an initiative petition.
- Each person collecting signatures must carry at least one full and correct copy of the text of the initiative petition and allow any person to review the text upon request. The circulator whose certification appears at the bottom of the petition sheet must personally witness each signature.
- No later than the annual anniversary date of the approval to circulate the initiative, the chief petitioner must file a statement indicating whether the initiative is still active. If the statement is not filed, the initiative is void.
- Once the initiative has been submitted for final signature verification, the chief petitioners committee's treasurer must file its first contribution and expenditure report.
- Signature verification must be completed within 15 days of submission; the county elections officer issues an order calling for an election.
- A measure which receives the qualifying number of signatures must be placed on the ballot at the next available date contained in [ORS 255.345](#) and no later than the first regular district election following the 40th day after the order of the election.

## **Candidate Campaign Finance**

Each candidate must file a statement of organization. A candidate who serves as the candidate's own treasurer and who does not expect to receive or spend more than \$300 for the entire election is not required to file a Statement of Organization. A candidate is:

An individual whose name is printed on a ballot, for whom a declaration of candidacy, nomination petition or certificate of nomination to public office has been filed or whose name is expected to be or has been presented, with the individual's consent, for nomination or election to public office.

An individual who has solicited or received and accepted a contribution, made an expenditure, or given consent to an individual, organization, political party or political committee to solicit or receive and accept a contribution or make an expenditure on the individual's behalf to secure nomination or election to any public office at any time, whether or not the office for which the individual will seek nomination or election is known when the solicitation is made, the contribution is received and retained or the expenditure is made, and whether or not the name of the individual is printed on the ballot.

A public office holder against whom a recall petition has been completed and filed.

When to Register: Registration must occur within three business days of receiving a contribution or making an expenditure and no later than the deadline for filing a nominating petition or declaration of candidacy.

How to Register: To register, file a Candidate's Statement of Organization (SEL 200) with the county elections office. The form is also obtained from the county elections office. A candidate may have only one principal campaign committee at any one time. If a candidate has a statement of organization on file with one filing officer and wishes to be a candidate for an office with a different filing officer, the candidate must file a statement of organization with the new filing officer and close out the old committee.

## **Candidate Responsibilities**

A candidate may either serve as the candidate's own treasurer or may designate a principal campaign committee and appoint a separate treasurer. The treasurer must be a registered voter in Oregon. Only the candidate or a designated treasurer may sign the Statement of Organization and Contribution and Expenditure reports.

The candidate is responsible for:

- Maintaining detailed records and filing accurate, timely statements of contributions and expenditures.
- Signing all reports and statements.
- Keeping financial records current to within seven days after the date of receiving a contribution or making an expenditure.



- Preserving records for at least two years after the date of the election for which the records were generated or a least two years after the last supplemental report has been filed whichever is later.

### Liability

Both the candidate and the treasurer are personally responsible for carrying out the duties listed above and should understand these responsibilities, as well as their personal liability for fulfilling them.

Oregon election law provides for civil penalties up to \$10,000 for late or insufficient filings of reports. The candidate and treasurer are held financially responsible for such penalties imposed on a committee.

### Ballot Measure Campaigns

While the following guidelines are offered, local officials are encouraged to consult with their attorney when specific questions arise. These guidelines apply to the expenditure of public funds, with a focus on the use of work time by public employees. Confusion about the use of funds may be avoided if interested citizens form a Political Action Committee (PAC), which can legally solicit contributions and produce/distribute advocacy materials.

### General

Public agencies are subject to the general rule prohibiting the use of public funds to advocate a position either in support of, or opposed to, a ballot measure. All information presented and paid for with tax dollars must be impartial. [ORS 260.432](#) prohibits public employees from spending time “while on the job during working hours” to promote or oppose a ballot measure. While it does not apply to elected public officials, the definition of “public employees” includes not only paid staff, but also unpaid appointed members of boards, commissions, and committees.

Issues relating to the use or misuse of public funds, equipment, materials, supplies or space are likely to be dealt with under the provisions of [ORS 294.100](#), which establishes personal liability for misappropriation of public funds.

### Preparation and Distribution of Written Material

Local officials, both elected and appointed, can develop and distribute impartial and factual information on the effects of a ballot measure and may use public funds to do so. Such material should be informational, provide the public with a fair presentation of relevant facts, and not advocate a particular position. For example, staff may spend time doing research and preparing information that fairly assesses the effects of the measure on the agency. Local officials can use such information in meeting with individuals and organizations, e.g. newspaper editors and reporters, legislators, local civic organizations, and special interest groups to explain objectively the measure’s impact on the agency.

Written material prepared or distributed by public employees must be impartial, neutral, unbiased, equitable, and dispassionate. A statement is advocacy if, when read in its entirety, is clearly intended to generate votes for or against the measure. Factors, which may be used to determine the line between information and campaign advocacy, may include the following:

1. The timing of the material relative to an election date.
2. The balance of factual information including pros and cons about the measure.
3. The overall impression a reader may be left with. Have facts been presented neutrally so that the reader has to decide how to vote, i.e. it informs rather than persuades?
4. The tone of the material. Is it dispassionate rather than enthusiastic for one side or the other of the measure? Do headings, words and phrases lend a positive, negative or neutral tone in favor of, or opposition to, the measure?
5. The quotes used. Are they all favorable or unfavorable? Are they all from persons on one or the other side of the measure?
6. Reference to contact with supporting or opposing PACs—such references may imply a connection between the agency and the campaign.
7. The content of the document - it cannot explicitly urge a “yes” or “no” vote.

If you have difficulty making a distinction between legitimate research/information efforts and possible campaign advocacy in specific instances, the Secretary of State’s Office is willing to review staff work before its printing and distribution.

Published material (written or broadcast) relating to a ballot measure requires identification as to its source. The words “authorized by” and the name and address of the person, agency, or political committee responsible for the material should be seen or heard. Governing bodies are exempt from this requirement when they publish impartial material for information purposes related to a measure they are referring to the ballot. Regularly published agency newsletters are also exempt from this requirement. (Special editions or one-time publications are not exempt.) In both cases though, it needs to be apparent that the governing body has prepared and is distributing the material.

### The Governing Body

A governing body of elected officials can take positions on ballot measures and staff can record votes and type resolutions of support or opposition if that is part of their normal work duties. Staff can also do research to bring the measure to the governing body. This research can describe background information on the measure, its potential effects, and pros and cons of the measure.

The governing body may not make a mass distribution of their advocacy position on a ballot measure to the public; however, if copies are requested by the public, the agency may use office facilities to copy the resolution expressing their position.

## Elected Officials

Elected officials may spend their work time on ballot measures, whether the position they hold is paid or unpaid under [ORS 260.432\(4\)\(a\)](#). The courts have recognized the right, if not the duty, of public officials to speak out on major issues, particularly on matters that affect the governmental body on which they serve. However, elected officials must be careful not to involve support staff in their advocacy campaign, e.g. staff persons cannot type advocacy statements or speeches for elected officials on agency time.

## Agency Staff

Agency staff must use their own personal time if they want to advocate a position on a measure. A public employer is required to post in a conspicuous place a notice that outlines legal restrictions on the political activity of their employees while on the job during working hours. Contents of the notice are contained in [ORS 260.432\(3\)](#).

Employees may use breaks, lunch hours, and vacation time to advocate for or against a measure. Employees should keep notes on when they are using breaks, lunch, or vacation time for advocacy. If a public employee makes a presentation outside working hours which will include advocacy statements, it may, still be advisable to announce to the audience that they are speaking not in their “official capacity” but as a private individual.

Subject to limited regulation by the employer to avoid disruption in the workplace or suggesting to the public that the employee’s personal political views are endorsed by the public employer, public employees may express their personal opinion on the job, wear buttons, and do other things which are protected under their right to free speech.

A public employee may not be coerced to vote for a measure, or work to advocate for or against it. For example, a manager representing the public agency may tell employees about the possible effects of a measure, such as possible layoffs, but must not threaten them with financial loss if they vote one way or another.

A public employee can make an impartial presentation of information relating to a ballot measure. This presentation can include a discussion about how the measure came into being (history) and its impacts, so long as it doesn’t segue into advocacy. An elected official may follow a staff person’s presentation and advocate in support of or opposition to the measure.

## **Political Action Committee (PAC)**

Formation of a PAC must occur before any funds are collected. PACs must be filed with the county elections officer. The forms and guidebooks necessary to form a political committee and report contributions and expenditures are available from the county elections officer.

As a general rule then, public employees may say, “Here are the facts, please vote.” Elected officials may say, “Here are the facts, please vote for/against this measure,”

provided public funds are not used to advocate that position and no public employee time is used to assist in delivering that message.

## **Sample Permanent Tax Rate Ballot Measure**

1. Caption limited to 10 words  
Purpose is to identify the subject of the measure Dollar figures should not appear in the caption  
Example: “Establishment of The Water District”
  
2. Question limited to 20 words  
Purpose is to ask whether the proposed district shall be formed and whether the permanent rate limit specified shall be adopted as the maximum rate of operating taxes for the district.  
The tax rate per \$1,000 of assessed value of the proposed rate limitation  
The first year in which the permanent rate will first be imposed  
Example: “Shall the Water District be formed authorizing a maximum permanent tax rate of \$0.37/\$1,000 of assessed value beginning 2000-2001?”
  
3. Summary limited to 175 words  
Summarize the measure and its major effect  
Do not advocate a yes or no answer
  - a. If measure is on the ballot during the biennial primary the summary must begin with the statement: “This measure may be passed only at an election with at least 50 percent voter turnout.” \*Note this statement is not subject to the 175-word limitation.
  - b. Example: “This measure may be passed only at an election with at least 50 percent voter turnout. Establishes a permanent tax rate of \$.037/\$1,000 of assessed value for the Water District beginning 2000-2001. The boundary for The Water District includes the entire State of Oregon. The Water District will provide water service to all residents of the district. The funds generated from the establishment of the permanent tax rate will be used to fund the operations of The Water District.”

\*Note: When the proposal for formation includes a permanent rate limit for the proposed district, the district shall be authorized to impose operating taxes not in excess of the permanent rate limit if the proposal is approved by a majority of the votes cast and: (a) at least 50% of the registered electors eligible to vote in the election cast a ballot or; (b) the election is a general election in an even-numbered year.

\*Note: An election on the question of a permanent tax rate may only be considered at a biennial primary or general election (even-numbered years).

## **SAMPLE**

CAPTION: "Establishment of The Water District"

QUESTION: "Shall The Water District be formed authorizing a maximum permanent tax rate of \$0.37/\$1,000 of assessed value beginning 2000-2001?"

SUMMARY: "This measure may be passed only at an election with at least 50 percent voter turnout. Establishes a permanent tax rate of \$.037/\$1,000 of assessed value for the Water District. The boundary for The Water District includes the entire State of Oregon. The Water District will provide water service to all residents of the district. The funds generated from the establishment of the permanent tax rate will be used to fund the operations of The Water District."

### Sample Local Option Levy Ballot Measure-Multiple Year

1. Caption limited to 10 words
  - a. Purpose is to identify the type of tax
  - b. Dollar figures should not appear in the caption
  - c. Example: "Five Year Local Option Tax"
  
2. Question limited to 20 words
  - a. Name of the district
  - b. State the amount of the tax rate per thousand dollars of assessed value
  - c. State whether the levy is for operating purposes or for capital construction
  - d. State the length in years of the period in which the local option tax will be imposed
  - e. State the first fiscal year in which the local option tax will be imposed
  - f. Include the following statement after the question: "This measure may cause property taxes to increase more than three percent."
  - g. Example: "Shall The Water District impose \$.037/\$1,000 of assessed value for general operation beginning 2000-2001 for a period of five years?"
  
3. Summary limited to 175 words
  - a. Summarize the measure and its major effect
  - b. Do not advocate a yes or no answer
  - c. Include the amount of money to be raised in dollars and cents
  - d. If the measure includes an estimated tax impact it must be based on the most current estimate of assessed value available from the county assessor. In addition, the measure must include the statement: "The estimated tax cost for this measure is an ESTIMATE ONLY based on the best information available from the county assessor at the time of the estimate." \*Note this statement does not apply for local options for capital projects as defined in [ORS 280.060\(1\)\(b\)](#).
  - e. If measure appears on the ballot during an election other than the general election (even numbered year) the summary must begin with statement:

“This measure may be passed only at an election with at least 50 percent voter turnout.” \*Note this statement is not subject to the 175-word limitation.

- f. Example: “This measure may be passed only at an election with at least 50 percent voter turnout. The Water District will use the tax revenue from this measure to operate the district at its current level of service. Without this additional revenue, the district will reduce its administrative staff by twenty percent. The proposed rate will raise approximately \$462,500 in 2000-2001, \$476,400 in 2001-2002, \$490,700 in 2002-2003, \$507,800 in 2003-2004, and \$526,100 in 2004-2005, for a total of \$2,463,500. The estimated tax cost for this measure is an ESTIMATE ONLY based on the best information available from the county assessor at the time of the estimate.”

## **SAMPLE 2**

CAPTION: “Five Year Local Option Tax”

QUESTION: “Shall The Water District impose \$.037/\$1,000 of assessed value for general operation beginning 2000-2001 for a period of five years?” This measure may cause property taxes to increase more than three percent.

SUMMARY: “This measure may be passed only at an election with at least 50 percent voter turnout. The Water District will use the tax revenue from this measure to operate the district at its current level of service. Without this additional revenue, the district will reduce its administrative staff by twenty percent. The proposed rate will raise approximately \$462,500 in 2000-2001, \$476,400 in 2001-2002, \$490,700 in 2002-2003, \$507,800 in 2003-2004, and \$526,100 in 2004-2005, for a total of \$2,463,500. The estimated tax cost for this measure is an ESTIMATE ONLY based on the best information available from the county assessor at the time of the estimate.”

Sample Local Option Levy Ballot Measure-Fixed Dollar

1. Caption limited to 10 words
  - a. Purpose is to identify the type of tax
  - b. Dollar figures should not appear in the caption
  - c. Example: “Five Year Local Option Tax”
2. Question limited to 20 words
  - a. Name of the district
  - b. State the amount of the tax rate per thousand dollars of assessed value
  - c. State whether the levy is for operating purposes or for capital construction
  - d. State the length in years of the period in which the local option tax will be imposed
  - e. State the first fiscal year in which the local option tax will be imposed

- f. Include the following statement after the question: “This measure may cause property taxes to increase more than three percent.”
  - g. Example: “Shall The Water District impose \$450,000 for general operation beginning 2000-2001 for a period of five years?” This measure may cause property taxes to increase more than three percent.
3. Summary limited to 175 words
- a. Summarize the measure and its major effect
  - b. Do not advocate a yes or no answer
  - c. Include the amount of money to be raised in dollars and cents
  - d. If the measure includes an estimated tax impact it must be based on the most current estimate of assessed value available from the county assessor. In addition, the measure must include the statement: “The estimated tax cost for this measure is an ESTIMATE ONLY based on the best information available from the county assessor at the time of the estimate.” \*Note this statement does not apply for local options for capital projects as defined in [ORS 280.060\(1\)\(b\)](#).
  - e. If measure appears on the ballot during an election other than the general election (even numbered year) the summary must begin with statement: “This measure may be passed only at an election with at least 50 percent voter turnout.” \*Note this statement is not subject to the 175-word limitation.
  - f. Example: “This measure may be passed only at an election with at least 50 percent voter turnout. The Water District will use the tax revenue from this measure to operate the district at its current level of service. Without this additional revenue, the district will reduce its administrative staff by twenty percent. The taxes imposed for five years total \$2,250,000, which will be imposed in equal amounts of \$450,000 each year. It is estimated that the proposed tax will result in a permanent rate increase of \$.010/\$1,000 of assessed value in the first year. The estimated tax cost for this measure is an ESTIMATE ONLY based on the best information available from the county assessor at the time of the estimate.”

### **SAMPLE 3**

CAPTION: “Five Year Local Option Tax”

QUESTION: “Shall The Water District impose \$450,000 for general operation beginning 2000-2001 for a period of five years?”

SUMMARY: “This measure may be passed only at an election with at least 50 percent voter turnout. The Water District will use the tax revenue from this measure to operate the district at its current level of service. Without this additional revenue, the district will reduce its administrative staff by twenty percent. The taxes imposed for five years total \$2,250,000, which will be imposed in equal amounts of \$450,000 each year. It is estimated that the proposed tax will result in a permanent rate increase of \$.010/\$1,000 of assessed value in the first year. The estimated tax cost for this measure is an ESTIMATE

ONLY based on the best information available from the county assessor at the time of the estimate.”

#### Sample Ballot Measure – Outside Constitutional Limitations

1. Caption limited to 10 words
  - a. Purpose is to identify the type of tax
  - b. Dollar figures should not appear in the caption
  - c. Example: “General Obligation Bonds for Capital Construction”
  
2. Question limited to 20 words
  - a. Name of the district
  - b. The purpose of the bonds
  - c. The kind of bonds to be used
  - d. Include the following statement after the question: “If the bonds are approved, they will be payable from taxes on property or property ownership that is not subject to the limits of sections 11 and 11b, Article XI of the Oregon Constitution.
  - e. Example: “Shall The Water District issue \$3,000,000 in general obligation bonds for the purpose of constructing a water treatment plant?”
  
3. Summary limited to 175 words
  - a. Explain the purpose in plain language
  - b. Do not advocate a yes or no answer
  - c. The purpose of the bond that includes a reasonably detailed, simple, understandable description of the use of proceeds
  - d. The term and amount of the bond
  - e. The type of bond

#### **SAMPLE 4**

Caption: “General Obligation Bonds for Capital Construction”

Question: “Shall The Water District issue \$3,000,000 in general obligation bonds for the purpose of constructing a water treatment plant?”

Summary: This measure would allow The Water District to issue general obligation bonds to construct a water treatment plant to comply with the Safe Drinking Water Act. Currently, The Water District does not have a water filtration system and uses the chlorination process to disinfect the water system. The Water District has recently completed a master plan and seeks to implement recommendations of that plan. The \$3,000,000 general obligation bond term will not exceed 20 years. If the bonds are approved, they will be payable from taxes on property ownership that is not subjected to the limits of sections 11 and 11b, Article XI of the Oregon Constitution.



# Land Use Planning

## Introduction

When the Land Conservation and Development Commission (LCDC) was created, and cities and counties were required to adopt comprehensive plans, the intent was to bring together all of the information and actors involved in the delivery of public services to develop long-term coordinated plans. Instead, many special districts stayed on the fringes of land use planning activities, or avoided them altogether. As a result, there developed a lack of coordination among cities, counties and special districts. Some local comprehensive plans contain policies that special districts providing services will be eliminated at some time in the near future; those policies come as a surprise to districts that thought they provided a valuable public service. In other instances, the conflicts may be more immediate ones involving line extension policies or avoiding costly duplication of services. In any case, lack of coordination can present a serious obstacle to the ability of communities to respond to and manage growth.

The 1993 Legislature addressed this problem by enacting SB 122 (ORS Chapter 195), requiring the adoption of cooperative agreements (generally process-oriented) and urban service agreements (long-term agreements establishing ultimate responsibility for provision of services in the planning area). Through the process of negotiating these agreements, special districts now can be recognized as legitimate providers of quality, efficient public services. This new role will require that fire districts become familiar with the land use planning process. It will not be necessary for districts to become land use planning experts, but many will have to develop more formal business plans – including finance and service delivery plans – if the process envisioned by SB 122 is to be most effective.

This chapter will introduce the basics of Oregon land use planning law and outline the cooperative and urban service agreement process that was created by the enactment of SB 122. Information from this chapter was provided by Western Advocates, Inc.

## Planning Law

Oregon cities have been authorized to implement zoning since 1919, and counties since 1947. Few cities took advantage of that opportunity until the 1960's and very few counties even then. During the late 1960's, concern grew around the issue of preserving farmland in the face of increasing development pressures. In 1973, SB 100 (codified as ORS Chapter 197) was passed establishing the Land Conservation and Development Commission (LCDC). Under the bill, every city and county is required to prepare and adopt a comprehensive plan for regulating land uses within the jurisdiction. LCDC was given responsibility for reviewing the plans to assure that they were consistent with applicable statewide planning goals. The legislators assumed that within one year, all cities and counties would adopt comprehensive plans. In reality, it was 1986 before all of the cities and counties completed their plans and received final approval from LCDC.

Under the 1973 legislation, LCDC was required to adopt statewide planning "goals." The goals were to be the benchmarks against which all local plans were to be measured.

Originally, 14 goals were adopted using relatively broad but absolute language to cover a range of situations throughout the state. The Goals and the subjects they deal with are:

- Goal 1: Citizen involvement
- Goal 2: Assuring an adequate basis for land use plans and land use decisions
- Goal 3: Conservation of agricultural lands and uses
- Goal 4: Conservation of forest lands and uses
- Goal 5: Conservation of open spaces and protection of natural, scenic and historical resources
- Goal 6: Maintaining and improving the quality of air, water and land resources
- Goal 7: Protection against natural disasters and hazards
- Goal 8: Satisfaction of recreational needs
- Goal 9: Diversification and improving of the state's economy
- Goal 10: Provide for the housing needs of the citizens of the state
- Goal 11: Plan and provide for public facilities and services
- Goal 12: Plan and provide for transportation systems
- Goal 13: Conservation of energy resources
- Goal 14: Establishing urban growth boundaries

Five other goals were added later, relating to the Willamette Greenway, estuary resources, coastal shore lands, beaches and dunes, and ocean resources.

### **Land Use Regulations**

Under the hierarchy created in the statutes, each layer of regulation or action must be consistent with the one above it. New developments or changes in use must comply with the zoning ordinances and standards; the zoning regulations must comply with the comprehensive plan; and, finally, the plan must comply with the goals.

Next in the hierarchy of land use regulations below the goals are local comprehensive plans. The plans are policy documents, laying the foundation for specific regulations. The plan formalizes local preferences on many issues, such as permitted categories of land uses, residential densities, required service levels, resource protection and transitions in development patterns. Each of the LCDC goals must be addressed in the plan. Therefore, plans are generally prepared as a collection of various elements. For example, each plan includes a public facilities element analyzing the current status of sewer, water, fire, police, parks and other public service, projecting the future needs for those services, and addressing how those needs will be met. These elements guide the preparation and contents of specific plans and programs, such as public facilities plans, master plans and capital improvement plans.

Following the comprehensive plan and the specific improvement plans in this hierarchy are the zoning ordinances and development standards. These regulations apply the policies in the plan to determine the use of each property in the community, and the specific standards (e.g., setbacks from property lines, street standards, design standards, review procedures) that any use must meet.

By identifying the permissible land uses throughout the community and establishing an urban growth boundary, the comprehensive plan and zoning ordinances establish a framework for growth and determine where new services will be needed. These factors guide the community's annexation and service extension policies. These policies create the potential for coordination and jurisdictional conflicts between districts and other local governments. The original LCDC legislation required the plans to be coordinated with special districts, but that coordination rarely consisted of more than establishing the procedure by which districts would be notified of pending development or annexation applications. SB 122 (ORS 195) was adopted in 1993 to require expanded coordination which addresses appropriate service levels, delineation of service area boundaries, the structure of the service providers, and other issues.

### **Plan Amendment Process**

The Legislature also recognized that comprehensive plans and other regulations need to be kept up to date. The circumstances (economic and otherwise) prevailing in the community will change over time, as will the laws and administrative rules the plans must comply with. The law provides two ways to keep plans updated but still in compliance with the goals.

Cities and counties may at any time amend their plan policies or regulations to address changes in the assumptions on which the plan was based or to reflect a change in community desires. The local government must notify the Department of Land Conservation and Development (DLCD) and the public in general as it goes through this process. Persons who submit written comments in a timely manner, or appear at a public hearing are authorized to object to the amendment on the grounds that it violates one of the goals. LCDC determines the validity of that objection.

### **Appeals of Changes**

Appeals of land use decisions (loosely defined as the adoption of land use regulations or the application of them through development or annexation decisions) are heard by the Land Use Board of Appeals (LUBA). Appeals from LUBA go to the Court of Appeals and from there on to the Oregon Supreme Court.

### **Periodic Review**

State law requires that certain cities and counties to undergo “periodic review,” which is a legislatively mandated process for ensuring that plans and ordinances are kept up to date and comply with new state laws. Periodic review is also the mandated time for cities and counties to adopt urban service agreements with special districts as required by ORS 195. Until 1999, all cities and counties had to go through periodic review every few years. The complexities of the process resulted in periodic review taking many years to complete. At one point, there were over 160 cities and counties in periodic review at the same time – with four LCDC staff persons available to work with the process.

To break the log jam, the Legislature in the 1999 session passed SB 543. Additional changes to periodic review laws were made by the 2005 session and will become

effective on July 1, 2007. Under these measures, the scope of periodic review has been greatly reduced and LCDC is required to “concentrate” periodic review on urban issues such as urban growth boundary expansions, affordable housing and completion of urban service agreements with special districts.

In general, the new laws exempts cities with less than 2,500 persons within their urban growth boundary, and counties with populations of less than 15,000 from the periodic review process. Also, periodic review must be completed within 3 years and the LCDC can give only one 6-month extension. The districts that are required to have urban service agreements completed under periodic review are those who provide water, sanitary sewer, parks and recreation, transportation and fire services. Districts with questions or concerns should contact SDAO for additional information.

When a city or county is scheduled for periodic review, the local government must first prepare its own evaluation of the comprehensive plan and regulations to determine if any of the following standards apply:

There has been a substantial change in circumstances, including but not limited to the conditions, findings or assumptions upon which the comprehensive plan or regulations were based, so that the comprehensive plan or land use regulations do not comply with the statewide planning goals;

That implementation decisions, or the effects of implementation decisions, including the application of acknowledged plan and land use regulation provisions, are inconsistent with the goals; or

That there are issues of regional or statewide significance, intergovernmental coordination or state agency plans or programs affecting land use which must be addressed in order to bring comprehensive plans and land use regulations into compliance with the provisions of the goals. ORS 197.628.

The local government’s evaluation of its plan results in a recommendation to DLCD either that no amendments are necessary (none of the standards apply), or in submission of a proposed work program identifying the amendments needed and a timeline for completing them.

DLCD staff conducts its own review of the plan and the local government's recommendation, and submits both the local report and its own analysis to the department Director for approval of a work program, if needed.

Interested parties are permitted to submit comments based on their own evaluation of the plan or of decisions made under the plan. However, this opportunity is available only if the party has either appeared in person or submitted written comments at the local level. The Director of DLCD determines whether the local recommendation should be approved or modified. That determination can be appealed to the Commission. However, it is important to participate in the local process if you want to have any recourse to seek a change in the local recommendation; only persons who submitted

comments to the city or county during the evaluation period and then file timely written objections are permitted to appeal the Director's decision on the work program.

If a work program is adopted, it will contain timelines for completion of each of the tasks identified in the document. LCDC has a number of enforcement options designed to be severe enough to ensure timely voluntary compliance. They range from voiding some or all of the plan policies so that the goals must be applied directly to land use decisions (which makes the decision process much slower and more complicated), to allowing DLCD to step in and do the work itself. Note.- Fire districts are subject to similar enforcement authority if they fail to cooperate in negotiation and adoption of cooperative and urban service agreements. ORS 197-319.

In scheduling jurisdictions for periodic review, DLCD attempts to group jurisdictions that share interests in cooperative or urban service agreement issues. (For example, the schedule groups Salem, Keizer, Marion County and Polk County so that issues involving the Salem Urban Area will be considered at the same time.) The department has the latitude to modify work programs or schedules if needed to address issues of statewide or regional significance arising out of the periodic review of another jurisdiction. Under the new law passed in 1999, LCDC will be adopting new procedures to stagger periodic review to allow for additional grouping of jurisdictions so regions as well as counties can be scheduled for review at the same time.

### **Periodic Review Timeline**

#### Day 1

DLCD sends notice to the local jurisdiction that it has been scheduled to begin periodic review. The jurisdiction begins the process of analysis and public involvement. The jurisdiction should send notice to all effected parties, including special districts, of the pending periodic review.

#### Day 120

The local jurisdiction must submit to DLCD its recommendation of (1) no work necessary, or (2) a proposed work program to bring the plan back into compliance. At least 21 days must be provided for local review and comment before submission of the recommendation.

#### Day 141

Deadline for submission of written objections from those who participated at the local level. DLCD staff will then proceed with its review of the local recommendation and comments. The DLCD Director will make a decision on approval or modification of the local proposal.

### **Comment Suggestions**

Comprehensive plans and related land use regulations are available for review in all local planning departments, as well as at DLCD's Salem office. You should review the plan and discuss your concerns with the local planning director before submitting comments. It may also be appropriate to contact the DLCD field representative for your area.

(Contact DLCD at 503- 373-0050 for the name and telephone number of the representative in your region). Review the DLCD periodic review rules before submitting any written objections. The rules require objections to meet certain standards. They must identify a specific deficiency in the evaluation or work program, suggest a specific work task to correct that deficiency, and demonstrate the objector participated at the local level in its evaluation process.

## **Cooperative and Urban Service Agreements – ORS 195**

The intent of ORS Chapter 195 is to assure coordinated planning for services in and around urban areas. Cities and counties are required to demonstrate, during the course of any periodic review, that they have complied with the requirements for adopting cooperative and urban service agreements. Certain types of services were deemed to be more critical to development patterns and decisions. These are designated "urban services" and trigger the requirement for urban service agreements.

It is the obligation of fire districts to get involved in the periodic review process and assist other local government jurisdictions in their area to develop cooperative or urban service agreements. The following sections describe the difference between cooperative and urban service agreements. Most fire districts are only required to develop cooperative agreements but districts in urban areas may be required to develop urban service agreements as well.

### **Cooperative Agreements**

Cooperative agreements build the framework for the relationship between units of government in the comprehensive planning process and in the approval of development applications. Recognizing that the city or county and the fire district have different interests and different information to bring to the table, the cooperative agreement is intended to lay out how the district and the other local government will share information and comments on land use issues. By establishing this foundation, the agreement should minimize the potential for one of the parties to be surprised by a decision of the other.

A cooperative agreement is required between each city and county (and in the Portland metropolitan area, the Metropolitan Service District) and each service district that provides an urban service inside an urban growth boundary. Cooperative agreements are optional with special districts providing other services. Where multiple cooperative agreements will be required, the county should encourage the use of standardized or similar formats for the agreements.

Urban services are defined as:

- Sanitary sewers.
- Water.
- Fire protection.
- Parks, open space and recreation.
- Streets, roads and mass transit.

Under the statute, cooperative agreements must address the following issues:

- Describe how the city or county will involve the special district in comprehensive planning, including plan amendments, periodic review, and amendments to land use regulations: This could be as simple as providing that the city or county will provide notice to the district of proposed amendments or that periodic review has begun, requesting comments, and defining a timeline and procedures for submitting comments on that proposal. The agreement should identify other units of local government that should also be included in coordination activities. The agreement could identify areas or issues of special concern that would require a more formal process of meetings or other means of soliciting district input.
- Describe the responsibilities of the special district in comprehensive planning, including plan amendments, periodic review and amendments to land use regulations regarding the provision of urban services: In addition to providing for district participation in proposals generated by the local government, the agreement might identify issues more under the control of the district for which it is responsible to plan. Examples include establishing a schedule for preparation of a capital improvement plan, and the elements to be included in the plan. What tasks are necessary for coordinating the district's plans with the local comprehensive plan? In the Portland area, the agreement must also address how Metro will include the district in its regional planning responsibilities.
- Establish the role and responsibilities of each party to the agreement with respect to city or county approval of new development: The agreement should provide for notice to the district of the pending application, request an evaluation of service levels and availability of services, a timeline for response, and identify how the district can participate in the decision process.
- Establish the role and responsibilities of the city or county with respect to district interests including, where applicable, water sources, capital facilities and real property, including rights of way and easements: Local land use decisions can affect the ability of a district to provide services, or the ease with which it is able to maintain or protect its assets. Who has the responsibility for construction and management? Who has the responsibility for establishing design standards? The agreement could, for example, address items to be included in road construction standards to assure that transmission lines are not damaged or that adequate space is provided for their installation. Development standards could be established to assure that development is not approved which would hinder the district's ability to perform its services, or which would exceed the capacity of the district to serve. Overlay zones for siting of future fire stations, or protection against deterioration of water sources are among the items that could also be addressed under this section.
- Specify the units of local government which shall be parties to an urban service agreement: Urban service agreements will be discussed next, but the cooperative agreement defines the structure for these agreements in terms of the parties to the agreements.

- Through negotiation and adoption of the cooperative agreement, each of the parties will know what its responsibilities are in the planning and development approval process, and how to communicate with the other parties when performing those responsibilities. If a special district's plans or procedures are in conflict with the city or county comprehensive plan, then the cooperative agreement should also include a program and time schedule for bringing the district into compliance.

## **Urban Service Agreements**

As development continues throughout an urban growth boundary, and as local government fiscal resources continue to feel the squeeze from taxpayer limits and increasing mandates, it is imperative that local governments cooperate to provide needed services in the most cost-efficient manner. The requirement for urban service agreements forces cities, counties and districts to jointly discuss the long-term needs of their constituents and long-term strategies for satisfying those needs.

Urban services agreements are required between units of local governments and special districts which provide an urban service inside an urban growth boundary with a population greater than 2,500, and which are identified in the cooperative agreement as appropriate parties for such agreements. [Failure to include a qualifying special district as an appropriate party in the cooperative agreement listing of such districts is subject to review by LCDC. A decision not to list a district should include a justification of why an urban service agreement with that district is not necessary. ]

Again, Urban Services are defined as:

- Sanitary sewers.
- Water.
- Fire protection.
- Parks, open space and recreation.
- Streets, roads and mass transit.

Negotiating an urban service agreement begins with the county convening a meeting of all cities and special districts that provide or declare an interest in providing an urban service inside the urban portion of the county. In the Portland area, the county also must include Metro, which will perform its review, advisory and coordinating functions. Counties are also required by the statute to consult with recognized community planning organizations; this does not necessarily mean that the organizations must be included as parties to the negotiations. After the initial meeting, the parties may proceed under whatever general framework they prefer. The statute allows for a single urban service agreement among all providers of an urban service, a series of individual agreements, or a combination of the two.

At issue in the negotiations is the basic question of which governments shall be ultimately responsible for providing an urban service to the community. An urban service agreement must address these basic issues:

- Determine which service will be provided by which entity.



- Determine the future service area for each service entity.
- Assign responsibility for (a) planning and coordinating with other services, (b) designing, constructing and maintaining service facilities, and (c) managing the provision from one entity to the other.
- The agreement could conclude that the existing relationship is the best for the long-term needs of the community. It is likely that the parties will contemplate moving the boundaries between the service providers, or identifying one of the providers or a consolidated agency to assume the role of sole provider.
- The statute (at ORS 195.070) lists a number of factors to be considered in establishing urban service agreements. It may be appropriate to include in or with the agreement a findings document addressing these factors.
- Financial, operational and managerial capacity to provide the service in the event of a merger or annexation, how should the transition of funding, capital, facilities, employees, etc., be addressed?
- The effect on the cost of the urban service to the users of the service, the quality and quantity of the service provided and the ability of urban service users to identify and contact their service providers, and to determine their accountability with ease
- Physical factors related to the provision of the urban service (are there features, such as a basin, which define a logical boundary)?
- The feasibility of creating a new entity for the provision of the urban service (are there opportunities for resource sharing? should one of the entities expand, shrink or dissolve, or is there an opportunity for an authority to be formed)?
- The elimination or avoidance of unnecessary duplication of facilities (are the design standards of the two compatible? if the special district will be providing services within a city, will it do so under a contract or delivery direct to the consumer)?
- Economic, demographic and sociological trends and projections relevant to the provision of the urban service (what is the "appropriate" level of service)?
- The allocation of charges among urban service users in a manner that reflects differences in the costs of providing services to the users
- Matching the recipients of tax supported urban services with the payers of the tax
- The equitable allocation of costs between new development and prior development (will current residents be required to pay for expansion of facilities to serve new residents? what is the cost - total and per capita - of providing service to new areas)?

### **Economies of scale**

The statute specifically provides (at ORS 195.075) that urban service agreements "shall provide for the continuation of an adequate level of urban services to the entire area that each provider serves." If the agreement plans significant reductions in the district's territory, the agreement must identify how the remaining portion will be served affordably. The solvency and prior commitments of the providers must also be addressed. If any provider, under the agreement, will be eliminated or reduced in size, the agreement must address the capital debt of the provider and its short and long-term finances; rates; employee compensation, benefits and job security; and equality of service.

## **Annexation Plans**

ORS 195 also created a new method for planning and implementing annexations. Where two units of local government are able to agree, through an urban service agreement, to a transfer of territory and service responsibility, the city or district may hold a hearing and submit to the voters an "annexation plan." If a majority of the voters in the territory to be annexed and in the city approve the plan, then the property is immediately annexed. This method does not replace the pre-existing annexation methods, but it does allow for a quicker process when there is widespread agreement on the need for change.

## **Strategies for Reaching Agreement**

ORS 195 requires cooperative and urban service agreements to be adopted; doing nothing is not an option. The Legislature did not expect that the negotiations would be easy, especially in the context of urban service agreement negotiations. For that reason LCDC has the authority to force compliance with the law by imposing an agreement of its own drafting, or withholding certain state funds, or by directing a mediator to intervene in the negotiations.

Since none of those results is desirable, either to the special district or to the city or county, there is strong motivation on both sides to reach an agreement. This will require both sides to go beyond issues of turf protection or expansion. After many years of friendly (or not so friendly) competition or confrontation, that can be a difficult task.

Frequently, an initial problem is that one or more of the parties do not see any need to negotiate. In some cases, the party believes - accurately - that it will achieve its own goals more effectively without negotiating. The other party must somehow change that situation, perhaps by finding an agency, such as DLCD, which will order negotiations to occur; by enlarging the political arena to encourage discussion; or by changing the environment so that stalling is no longer a benefit. If the reluctant party really is ignorant of the benefits it would gain from negotiations, it often is helpful to educate them indirectly, through a group or person that party respects.

Successful negotiators have found it useful to distinguish and focus on three aspects of the process: issues, interests and solutions. Groups tend naturally to start by rattling off issues of concern to them and solutions they want to impose on the other parties. Successful negotiations identify instead the interests behind the issues and fashion solutions to satisfy, as much as possible, those interests. A commitment from all parties to develop an agreement that meets the needs of all parties is essential to result in a win-win solution.

DLCD has funded two manuals for resolving land use disputes through negotiation: *Dispute Resolution - A Handbook for Land Use Planners and Resource Managers*, by Leonard Bauer and Peter K. Watt (1990); and *Introduction to Interest Based Negotiations and Collaborative Dispute Resolution Skills and Processes*, Elaine Hallmark and Theresa Anne Jensen (1993). Another book on this topic that many have found valuable is *Getting to Yes: Negotiating Agreement Without Giving In*, Roger Fisher and William Ury (1985). The Bauer and Watt book includes a list of other publications, videotapes

and courses on negotiation skills. There are also a number of public and private organizations offering mediation services, which can assist in conducting negotiations on urban service agreements where unassisted meetings are not successful. Some of these are listed in the Bauer and Watt book.

Bauer and Watt describe a 7 - step process for reaching an agreement:

1. Initiate contact.
2. Representation: Decide which groups need to be represented in the negotiations. It is better to err on the side of including too many groups than to exclude a party with the ability to undermine any agreement reached by the others. Among those who might be considered for inclusion are those who could claim legal standing to challenge the decision; persons having clout with elected officials, those with claims or political positions which would attract public sympathy; and those who could block implementation of the agreement. Then, assure that each group is represented at the negotiations by someone with sufficient knowledge and authority to participate effectively on behalf of the group he represents.
3. Ground Rules and Agenda: Written ground rules minimize the potential for discussions to later bog down in arguments over procedure.
4. Joint Fact Finding: Identify what information is available and which of it is accepted as accurate by all parties. Then identify what other information is needed for the negotiations and the process for obtaining those facts.
5. Invent Options for Mutual Gain: Focusing on interests rather than positions, have a "brainstorming" session with the goal of generating numerous options without committing to any one of them. Proposed solutions may broaden the scope of the problem by bringing in additional interests, increasing the possibility of tradeoffs. They may also break the problem into smaller pieces that address only some of the issues, apply only to certain geographical areas, or remain in effect for only a short period.
6. Packaging Agreements: Building upon the brainstorming options, develop alternate solution packages that address the interests of all parties. Each party will be looking for components that are of low cost to them but of high benefits to other parties. Work to develop a win-win solution.
7. Producing a Written, Binding Agreement: The parties need to develop a single version of an agreement, which will first be ratified by the respective boards or councils, and then adopted through the required formal process. This step tests how effective each representative was in representing the interests of his constituents. The agreement should include specific provisions for implementation and enforcement of its terms, and for monitoring of performance under the agreement.

Frequently, representatives are able to make the negotiation process work. However there are instances where the parties are unable to negotiate without outside assistance. Outside facilitators and mediators are available to assist parties in these cases. Facilitators help parties reach an agreement by assisting in the negotiation to improve communication and to assure that the parties follow the procedures they agreed on. Mediators can go beyond that, using their own expertise to help develop the content of an agreement as well.

ORS 195 provides a landmark opportunity for special districts to become full participants in land use planning and decisions that affect the quality of public service delivery. Likewise, cities and counties have much to gain from better coordination with special districts. The only way either side will attain these benefits is for each to identify their own strengths and needs, and to also determine the real perspective and objectives of the other side. Developing and applying constructive negotiation tools and remaining flexible to implement varied options will be crucial to the success of this negotiation process and to the long-term success of the urban service agreements.

### **Sample Cooperative Agreement Form**

\_\_\_\_\_

(Name of City or County)

\_\_\_\_\_

(Name of Special District)

#### COOPERATIVE AGREEMENT

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_ (Name of Fire District), a \_\_\_\_\_, hereinafter referred to as the "DISTRICT", and

\_\_\_\_\_ COUNTY, a political subdivision of the State of Oregon, hereinafter referred to as the "COUNTY".

(or)

METROPOLITAN SERVICE DISTRICT, hereinafter referred to as "METRO",

(or)

the CITY OF \_\_\_\_\_, an incorporated municipality of the State of Oregon, hereinafter referred to as the "CITY".

WHEREAS, Statewide Planning Goal #2 (Land Use Planning) requires that City, County, State and Federal agency and special district plans and actions shall be consistent with the comprehensive plans of the cities and counties and regional plans adopted under ORS Chapter 197; and

WHEREAS, ORS 190.101 provides that units of local government may enter into agreements for the performance of any or all functions and activities that a party to the agreement, its officers or agents, have authority to perform; and

WHEREAS, ORS 195.020 requires that special districts shall enter into a cooperative agreement with their counties, or the Metropolitan Service District if within Multnomah, Washington or Clackamas County, and if the special district's boundary falls within an urban growth boundary a cooperative agreement shall also be made between the special district and the city; and

WHEREAS, DISTRICT and \_\_\_\_\_, to promote coordinated administration of land uses consistent with the adopted comprehensive plan of consider it mutually advantageous to establish:

1. A process for coordinating comprehensive planning and development within the DISTRICT;
2. A process for \_\_\_\_\_ to involve DISTRICT in \_\_\_\_\_'s comprehensive planning, plan amendments, amendments to land use regulations and periodic review; and
3. The roles for DISTRICT and \_\_\_\_\_ with respect to approval of new development; and
4. The procedure for amending the service area of the DISTRICT; and
5. The role of \_\_\_\_\_ in the operational issues of the provision of service(s) by DISTRICT; and
6. A process to amend the Cooperative Agreement.

NOW, THEREFORE, DISTRICT AND \_\_\_\_\_ AGREE AS FOLLOWS:

1. Coordination of Comprehensive Planning and Development

Amendments to or Adoption of a Comprehensive Plan or Implementing Regulation

Definitions

"Comprehensive Plan" means a generalized, coordinated land use map and policy statement of the governing body of a local government that interrelates all functional and natural systems and activities relating to the use of lands, including, but not limited to, sewer and water systems, transportation systems, educational facilities, recreational facilities, and natural resources and air and water quality management programs.

"Implementing Regulation" means any local government zoning ordinance, land division ordinance establishing standards for implementing a comprehensive plan.

2. \_\_\_\_\_ shall provide DISTRICT with the appropriate opportunity to participate, review and comment on proposed amendments to or adoption of \_\_\_\_\_'s comprehensive plan or implementing regulations. Likewise, DISTRICT shall provide \_\_\_\_\_ with the appropriate opportunity to participate, review, and comment about proposed DISTRICT policies or procedures which may affect DISTRICT generally or a substantial area of DISTRICT relating to land use. The following procedures shall be followed by both parties in the process to involve one another in amending or adopting a comprehensive plan or implementing regulation or general or substantial area DISTRICT policy:

The originating agency that has jurisdiction over the proposal shall notify the other party of the proposed action no less than 45 days prior to final hearing or adoption action. The specific method of notification shall be finalized by memorandums of understanding between responsible agency officials.

The originating agency shall transmit draft recommendations for review and comment before adoption to the other party. Unless extended by memorandum of understanding, the responding agency shall have at least 10 days after receipt of a draft to submit comments orally or in writing to the originating agency.

Comments from the responding agency shall be given consideration as a part of the public record on the proposed action. If the originating agency acts contrary to the position of the responding agency, the responding agency may appeal that decision through the appropriate appeals body.

If a proposed action is adopted by the originating agency, the final form of the action shall be transmitted to the responding agency as soon as publicly available.

#### Development Actions Requiring Individual Notice to Property Owners

##### Definition:

"Development Action Requiring Notice" means an action by a local government which directly affects and is applied to a specific parcel or parcels and which requires notification by mail to the owners of property which could potentially be affected by the proposed action.

\_\_\_\_\_ will provide DISTRICT with opportunity to review and comment on proposed development actions requiring notice within DISTRICT. If there are similar notified actions proposed within the DISTRICT, the same opportunity to review and comment shall be afforded \_\_\_\_\_.

The following procedures shall be followed by \_\_\_\_\_ and DISTRICT to notify one another of proposed development actions:

The agency which has jurisdiction over the proposal shall mail a copy of the hearing notice to the responding agency no less than 10 days prior to the date of the hearing. Failure of the responding agency to receive this notice shall not invalidate an action if a good faith attempt has been made by the originating agency to notify the responding agency.

The responding agency may respond at its discretion prior to the hearing. By electing or failing to respond prior to or at the hearing, the responding agency shall be deemed to have "no objection" to the proposal.

Comments from the responding agency shall be given consideration as a part of the public record on the proposed action. If the action is contrary to the responding agency position, the responding agency may seek appeal through the appropriate appeals body.

### **Special Policies**

1. If an urban service agreement is to be made between these two agencies, a general time period for the negotiations shall be established in this section of the cooperative agreement. Included in this section should be general framework anticipated for public input and agency consideration. If a specific development policy issue or issues has already raised significant problems between the parties, this section may also be used to commit each party to addressing the problem during the negotiation of the urban service agreement.
2. Operational Issues: The cooperative agreement is also the best time to formalize or restate the operational understandings that each agency has with the other, such as the continuation of the use of public rights-of-way for water lines of a special district, shared facilities, shared staffs, emergency cooperation arrangements, etc.
3. Existing Policies: The city/county and special district may already have working policies, such as policies to deny zone changes unless water from a special district can be provided, etc. This section of the agreement should be used to state those existing policy relationships.

### **Amendments to Cooperative Agreement**

The following procedures shall be followed by \_\_\_\_\_ and DISTRICT to amend the cooperative agreement.

1. The party which seeks the amendment shall submit a formal request for amendment to the responding agency. The request shall clearly describe the proposed change and why the change is necessary.
2. The responding agency shall schedule a review of this request within 45 days from receipt of the request.

3. The parties shall make good faith efforts to resolve requests to amend this agreement if necessary. The responding agency may approve, deny or suggest modifications to the amendment.

The parties will jointly review this agreement every \_\_\_\_\_ years to evaluate the effectiveness of the processes set forth and consider amendments.

This agreement commences on \_\_\_\_\_, 20\_\_.

IN WITNESS WHEREOF the parties have executed this Cooperative Agreement on the date set opposite their signatures.

(CITY OR COUNTY) OF \_\_\_\_\_

By \_\_\_\_\_  
Title

Date \_\_\_\_\_

(FIRE DISTRICT)

By \_\_\_\_\_  
Title

Date \_\_\_\_\_



# Special Districts Association of Oregon

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## Services & Programs

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### Introduction

#### Mission Statement

***"The mission of the Special Districts Association of Oregon is to assist special service districts in providing cost-effective and efficient public services to the people of Oregon"***

The Special Districts Association of Oregon (SDAO) is a statewide non-profit corporation which was founded in 1978. Membership is comprised of all types and sizes of special service districts and includes approximately 800 special districts out of nearly 1,100 currently existing in Oregon.

The Special Districts Association of Oregon was founded by a group of district directors who believed special districts should speak with a common voice. The goal was to increase public and legislative awareness of the services that special districts provide. Today, that goal has been realized. SDAO has brought together districts to work toward the mission of providing cost-effective and efficient public services to the people of Oregon. SDAO assists members in this mission by providing training, tools and money-saving services.

Some of the specialized district associations that work closely with SDAO include:

***Oregon Association of Clean Water Agencies***  
***Oregon Association of Conservation Districts***  
***Oregon Association of Water Utilities***  
***Oregon Fire Chiefs Association***  
***Oregon Fire District Directors Association***  
***Oregon Recreation and Park Association***  
***Oregon People's Utility District Association***  
***Oregon Public Ports Association***  
***Oregon Transit Association***  
***Oregon Water Resources Congress***  
***Tri-County Water Districts Association***

The role of SDAO is to complement these groups by providing services that benefit districts of all types, including: insurance, legislative representation, employee benefits, financial services, and education programs.

SDAO has an elected board of directors from various districts, ensuring that no one type of district dominates the Association. Directors are chosen at the annual business

meeting during the annual conference. Caucuses of each type of district nominate members to fill Board vacancies.

The SDAO Board appoints the Special Districts Insurance Services (SDIS) Trust to oversee the SDAO self-insurance programs including:

General Liability	Excess Liability	Automotive Liability
Property/Casualty	Earthquake/Flood	Automotive Physical Damage
Boiler/Machinery	Multi-Crime Coverage	Public Officials Surety Bond
Workers' Compensation	Medical/Health/Vision	Life/Disability Coverages

Specific committees meet regularly to address association issues in detail. Members are encouraged to become involved and to serve on committees or attend committee meetings.

### **Special District Members**

SDAO membership is composed of the following types of special districts:

- Ambulance Districts
- Cemetery Districts
- County Service Districts
- Domestic Water Supply Districts
- Drainage Districts
- Education Service Districts
- Emergency Communication Districts
- Health Districts
- Irrigation Districts
- Library Districts
- Mass Transit Districts
- Park and Recreation Districts
- Peoples Utility Districts
- Port Districts
- Road Assessment Districts
- Rural Fire Protection Districts
- Sanitary Districts
- Special Road Districts
- Soil and Water Conservation Districts
- Transportation Districts
- Television Translator Districts
- Vector Control Districts
- Water Control Districts
- Water Improvement Districts

## **Legislative Services**

One of the most important programs SDAO offers is its legislative services. SDAO exists, and offers insurance and financing programs, due to its aggressive legislative advocacy.

The association provides legislative representation and advocacy on behalf on issues that come before the Oregon Legislature and various state administrative agencies. These services are delivered through Western Advocates, Inc., SDAO's legislative representatives, and staff support from SDAO. Direction and guidance is provided by the SDAO Board of Directors and the SDAO Legislative Committee. Legislative services include:

- Educating the Oregon Legislature and various agencies on the legitimate needs of local governments and special districts.
- Periodic interaction with Oregon senators and representatives and their staff and limited contact with federal administrative and regulatory agencies.
- Activity on regional issues – i.e. Metropolitan Area Boundary Commission, urban growth boundary issues, regional service delivery, and resource allocation issues that impact a large portion of association members.
- Assistance for member districts with the Periodic Review process undertaken by region's Land Conservation and Development Department throughout the state.

## **FlexLease Program**

Sponsored by SDAO in cooperation with Sutro & Co., FlexLease provides association members the ability to finance projects at flexible terms and competitive market rates.

The FlexLease program gives district members the ability to acquire equipment or purchase real property through lease purchase financing and issuing general obligation bonds. Lease-purchase agreements and general obligation bonds are collectively brought to market as certificates of participation.

Lease-purchase agreements or general obligation bonds may be prepaid. Legal fees and trustee fees are included in the amount to be financed. Other fees and costs may be financed.

## **General Obligation Bonds**

FlexLease offers small general obligation bond issuers ballot titles prepared free of charge and cost effective methods to sell voter approved general obligation bonds. Issuance of limited tax general obligation bonds for a specific time period may be brought to market without voter approval. Items financed through the program include:

## **Equipment Purchase**

- Fire trucks
- Rescue & utility vehicles
- Computer equipment
- Telecommunications equipment

- Hospital equipment
- Park & playground equipment

### **Real Property**

- Land (acquisitions)
- Buildings
- Remodeling and improvements

### **Authorization**

Oregon Revised Statutes 279.101 authorizes districts to enter into a contract for the purchase or lease with option to purchase real property or equipment.

### **Refinancing Opportunities**

The FlexLease program may also be used to refinance existing obligations at lower rates. Examples include vendors' contracts and leases, bank loans, and Farmers' Home Administration loans.

### **Term of Financing**

The term of the lease-purchase financing is typically slightly less than the asset's useful life. For example, three to seven years for equipment and 10 to 15 years for real property. General obligation bond financing must be approved as to term and amount by a majority of district voters.

### **Certificates of Participation**

Certificates of Participation (COPs) represent an ownership interest in payments made by districts under their lease purchase agreements and general obligation bond. The COPs are sold monthly to investors who are looking for tax-exempt income.

### **FlexTran Program**

Many Oregon special districts face short term cash flow deficits, primarily between the beginning of the fiscal year and the receipt of property tax revenue. SDAO, in cooperation with Sutro & Co., can help most districts respond to cash shortages through FlexTran, a short-term borrowing program based on district tax and revenue anticipation notes.

### **Pooled Short-Term Borrowing**

The SDAO FlexTran program provides great savings to participating districts. Short-term cash flow needs and borrowing costs of participating districts are pooled, reducing interest rates for individual participants. Districts issue tax and revenue anticipation notes. The proceeds of the notes are used to meet short-term cash flow needs. Upon

receipt of tax revenues, districts invest those funds for the remainder of the fiscal year. Each individual district's notes are paid at maturity.

### **Governmental Authority**

The SDAO FlexTran Program is available to qualified members of the Special Districts Association of Oregon. Sutro & Co. provides the FlexTran financing services. Oregon Revised Statutes 288.165 gives participating districts the legal authority to issue short-term tax and revenue anticipation notes.

### **Participation**

To participate in the program, the following is required:

- Adopted budget
- Cash flow certificate
- Borrowing resolution
- Audited financial statement

### **Certificates of Participation**

The notes are pooled together and issued as certificates of participation on behalf of the districts in the program. The total amount of the certificates equals each participating district's short-term borrowing requirements plus the associated program costs (administrative and issuance costs). The certificates are issued with a maturity of approximately one year at a fixed rate of interest.

### **Investment of Note Proceeds**

To the extent permitted by the law, participating districts may invest proceeds from the sale of the note. The district can withdraw funds to meet cash-flow needs, and upon receipt of property taxes, invest those funds until the maturity date of the note.

### **Program Administration**

The financial administration for the program is performed by the program's trustee, U.S. Bank, Portland, Oregon. The Trustee repays the principal and interest on the note and administers the program for participating districts. The Trustee is also responsible for an accounting of each district's funds and ensuring that the required loan repayments are made.

## **Research and Technical Assistance**

SDAO provides its members with a broad range of research and technical assistance:

### Original Research

Staff undertakes research to respond to member inquiries, and attempts to resolve the issue. Information developed in this process is stored and used for future reference.

### Reference Material

The association develops handbooks and sample/model materials to provide members with in-depth information on specific topics.

### Reference Library

SDAO has developed a library of reference materials to respond to member inquiries and for members to check out on a library loan basis.

### Technical Assistance with State Agencies

Periodically, members require assistance in interacting with state agencies. In this situation, the association will gather information on the member's behalf, identify the appropriate agency or staff person, and assist with the communication process. Also, to assist the state and other interested agencies and parties in contacting special districts within Oregon, SDAO maintains and distributes a directory of member special districts and their local contact persons.

### Training and Development

Professional education and training classes are developed on an interest and as-needed basis and from the input and direction of the SDAO Education Committee.

Topics addressed in the past have been: team-building; construction contracting; financial planning; organizational change; media and community relations; fraud detection and prevention; personnel management; boardmanship; parliamentary procedures, and budget law.

### Legislative Events

Two events are held during legislative session years. The Day at the Capitol is held during mid-session and Legislative Summary Seminar is held following the session. The Day at the Capitol gives members information on legislative processes, activities, and updates on mid-session issues affecting special districts. The Legislative Summary Seminar is a comprehensive overview of the most recent legislative session, including new laws and their implications for special districts.

### Regional Seminars

SDAO Regional Seminars focus primarily on SDIS Trust services and programs. Session topics vary from claims management to risk management.

## Annual Conference

SDAO hosts an annual conference that serves multiple purposes:

- Provides high quality training and professional development for board members and staff of special districts.
- Provides an opportunity for special districts throughout the state to meet, share information, and develop informal networks for future contacts.
- Covers the annual business needs of the association (i.e., board elections, financial reports, and periodic by-laws modifications).

## Certificate of Achievement

SDAO offers the Certificate of Achievement Program, a series of educational offerings that help special district elected officials and managers stay abreast of the issues they need to do their jobs responsibly and effectively. If a district is insured through Special Districts Insurance Services (SDIS), the district will receive a \$3 cash offset against their next property/casualty premium for every credit earned in the Certificate of Achievement Program.

## Communications

SDAO utilizes a variety of tools to inform and maintain continuous communication with members.

## Special Districts News & Risk Management Review

SDAO staff publishes a monthly newsletter, The Special Districts News and Risk Management Review. The newsletter contains information regarding association activities; current events; new programs and services; loss control and risk management services; insurance issues, and legal issues. Members are encouraged to contribute articles regarding local projects, awards, job openings, and equipment for sale.

## Legislative Bulletins

During legislative sessions, SDAO publishes periodic legislative bulletins with information regarding legislative issues, including the status of bills of interest to special districts. These publications are produced on an as-needed basis during the session and are followed by an end-of-session seminar and summary document.

## Mailings

In addition to newsletters and bulletins, the association also produces single-purpose mailings on a variety of topics. Examples include periodic surveys, risk management announcements, new OR-OSHA rules and procedures, and informational flyers.

## Affiliate Group Support

Association staff members attend special district affiliate group conferences to share information and better understand the challenges confronting special districts. Members are encouraged to alert SDAO staff of events requiring SDAO representation.

### Legislative Voice Mail

The SDAO Legislative Committee operates a temporary voice mail network during the session. Member districts can subscribe to the Legislative Voice Mail Network and receive up-to-the-minute information on legislative developments.

### Telecommunication Services

To help members reduce their telecommunication costs, the association, together with Shared Communications Services, Inc. (SCS), a telecommunications firm serving all of Oregon, provides telecommunication services at substantial discounts. Services include shared long distance discounts, calling card services, cellular services, 1-800 services, and consolidated billing.

### Web Page

SDAO strives to increase communication with our members through our Internet web site, [www.sdao.com](http://www.sdao.com). Visitors to the web site obtain information on SDAO programs and services; text of pertinent statutes and legislation; SDAO office location and map, and links to web sites of districts, affiliate organizations and other agencies. In addition, SDAO staff members have access to personal e-mail accounts to better assist members in contacting the correct person. To contact a staff member, use the first initial of their first name and their full last name (i.e. John Smith would be [jsmith@sdao.com](mailto:jsmith@sdao.com)).

### Mobile Phones & Pagers

In 1998, SDAO introduced a mobile phone and pager program as an added member benefit. For a low annual membership fee, SDAO members can take advantage of this savings opportunity.

#### **Mobile Phone Program**

- Low monthly access rates
- Pay only for the minutes you use
- Low per-minute rates
- Special programs for high volume users
- Monthly itemized billings
- Coverage throughout Oregon, Southwest, Central, and Eastern Washington
- Contact: Update Services, Inc. (503) 253-9385 (503) 253-9172 [fax]

#### **Pager Program**

- Digital pagers as low as \$5.95 per month\*
- Alphanumeric pagers as low as \$9.95 per month\*
- Voice mail available for \$3.00 per month\*
- One billing for pager and cellular subscribers
- Participants pay only one annual membership fee for an unlimited number of pagers
- Quarterly billings
- Coverage throughout Oregon and Washington
- \* Prices subject to change, call pager contact to confirm. Contact: Bobbi Luck, Arch Paging (503) 497-1107 [Portland] 1-800-888-5932 [statewide]



## **Retirement Programs**

SDAO offers its members deferred compensation and retirement programs. These programs are offered through a joint sponsorship arrangement with Nationwide Retirement Solutions, Inc.

### **Deferred Compensation**

The SDAO 457 Deferred Compensation Program is a tax-favored supplement retirement savings program that allows public employees to contribute a portion of their salary before federal taxes to a retirement account.

### **Retirement Supplement**

Like the deferred compensation program, the SDAO 401(a) Retirement Program allows employees of special districts to supplement their retirement savings and assists special district employers in providing retirement program benefits to employees.

The programs are a package with easy plan adoption, ongoing services and competitive investments as well as around-the-clock customer service. Participants can take advantage of low fees and flexible pay-out options – including lump sum, partial lump sum, systematic withdrawal, and annuities.

### **Section 125 Plan**

An added service sponsored by SDAO is the Section 125 Plan offered through Manley Administrative Services Co. Section 125 plans refer to a portion of the Internal Revenue Code that enables employees to deduct funds from their earnings on a pre-tax basis to pay for allowable expenses, saving the employer payroll costs. Eligible expenses include health insurance premiums, insurance deductibles, unreimbursed health care expenses, and dependent care expenses. For any amounts paid under these plans, the employee pays no federal, state, or FICA taxes, and the district pays no SUTA, FUTA, or FICA taxes.

SDAO has negotiated very favorable rates for this plan. In fact, the administrative costs can equal, or be less than, the savings to the district through reduced withholding taxes.

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## **Credit Union Services**

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### **Membership**

State Employees Credit Union (SECU) extends membership to SDAO member district employees, board members, volunteers, and family members. A district is eligible if it is not already eligible for membership in another credit union. Volunteers must have been with their district for at least 90 days to qualify for membership.

## **Services**

SECU is a full service financial institution. While many financial service providers focus on the bottom line, credit unions focus on meeting members' needs. The result is better service, lower fees, and competitive interest rates. Membership is good for a lifetime, even if you change jobs or retire. Once you open an account, your family becomes eligible to join as well.

SECU offices are located in Portland and Salem, but all services are easily accessible through telephone, mail, ATM, fax and internet. Services include:

- Loans for all needs including first mortgage and home equity loans
- Low cost checking with Visa Check card and ATM access
- 3 Visa Credit Card programs
- Auto Locator – vehicle purchasing service
- Direct Deposit: net pay, Social Security and other recurring checks
- Personal Access Teller – no fee, 24 hour telephone teller
- Financial planning and insurance services through State Employees Financial Services

An initial \$5.00 deposit gives you membership in the credit union and access to the full range of services. For more information, call (503) 585-7084 in Salem, (503) 227-4132 in Portland or (800) 452-7816. You will also find information at [www.secuor.org](http://www.secuor.org).

## **Special Districts Insurance Services**

### **Introduction**

Special Districts Association of Oregon (SDAO) offers members insurance programs with significant advantages over the commercial insurance market through its Special Districts Insurance Services (SDIS) Trust. The Association's objective is to meet members' insurance needs with economical, stable, and financially sound programs. This objective is met with programs offering:

- All major coverage's available from one source.
- Reasonable rates available for Oregon special districts.
- Stability in re-insurance arrangements.
- Strong loss control efforts by SDAO staff.
- Effective claims management practices.
- Helpful marketing and sales efforts to agents and members.

SDAO has established a self-insurance pool for liability, workers' compensation, automobile, and property exposures. Premiums are paid by participating member districts to the SDIS Trust. The Trust's claims administrator, Self-Insured Management Services (SIMS) of Portland, pays claims in accordance with the coverage documents. Program financial performance is monitored by the actuarial staff of Tillinghast & Company.

Coverage's available are:

- Property Coverage - broad coverage for replacement cost or stated value of real and personal property. Earthquake and flood coverage is also available.
- Public Officials Surety Bond and Crime Coverage - covers elected or appointed officials for faithful performance of their duties, which includes having custody of public funds or property.
- General Liability, Automobile Liability and Physical Damage Coverage.
- Workers' Compensation Coverage.
- Capped Special Coverages: Maritime, OR-OSHA, OGEC, and Pre-loss Legal

To protect SDIS funds in the event of adverse claims experience, re-insurance is offered through Best A+ rated re-insurer: Discover Re-Insurance Company. Pricing is very favorable, reflecting the experience of the SDAO programs, allowing savings to be passed on to members.

The association also provides ancillary insurance coverages through commercial insurers for boiler & machinery, crime, and public officials surety bonds. New programs and coverages continue to be developed as needs arise to enhance the value of services to SDAO members.

The managing broker, Marsh USA, Inc., has assisted in improvement of underwriting and rating to enhance service, ensure stability, and reduce costs. This helps insurance portion of a member's budget. SDIS works with independent agents for marketing and member needs. To participate, a district must be a member in good standing with SDAO.

### **Risk Control**

SDIS provides risk control consulting, including safety committees, OR-OSHA compliance, risk control surveys, technical advice, and safety engineering. SDIS consultants have assisted districts in loss prevention for worker and visitor injuries. SDIS low loss ratios are prime evidence of the success of consultant-member partnership in accident prevention.

### **Pre-Loss Legal Services**

The SDIS Trust budgets thousands of dollars for members participating in the general liability program to obtain free legal advice before taking action on complicated or rare issues or review of actions before claims or suits are filed.

Many members save their staff and board members the time and stress of unnecessary claims, as well as the SDIS program additional claim dollars. These savings help reduce future costs to all SDIS members. Member districts are highly encouraged to call before a serious legal decision. There is an annual maximum limit on this service.

## **General Liability Coverage**

The SDAO General Liability Coverage is thought to be the broadest coverage available to special districts. Most insurance carriers charge extra for special coverage, such as public official errors and omissions and employment practices liability. SDAO includes these types of coverage's under its general liability coverage at no additional cost.

### **Special Features**

- Bodily injury, personal injury, property damage coverages.
- Occurrence form with limits available of \$500,000 to \$5,000,000.
- All board members, employees, and volunteers included as insureds.
- Professional liability coverage.
- Employment practices liability.
- Employee benefits liability coverage.
- Public official errors & omissions coverage.
- Excess employers liability coverage.
- Limited pollution coverage.
- Liability under specified federal discrimination and civil rights statutes.
- Special events coverage.
- Coverage for Bureau of Labor and Industries (BOLI) administrative claims.
- Pre-loss legal services for legal advice before claims occur.
- Government Standards and Practices (ethics) defense coverage.
- Oregon OSHA defense coverage.

The Association's liability coverage form is designed specifically for Oregon special districts and provides:

- Liability coverage under Oregon Revised Statutes (ORS) based on any tort claim or demand arising out of an alleged act or omission of the public body, its officers, employees, volunteers, or agents in the performance of a duty to the district.
- Liability under specified federal discrimination and civil rights statutes.
- Legal liability under the laws of any state, other than the State of Oregon.

A district cannot defend or indemnify any officer, employee, or agent for an act of malfeasance in office, willful or wanton neglect of duty, or acts or omissions not occurring in the performance of duty. Such use of public funds are unlawful and against public policy.

To protect your district from such unlawful acts SDAO offers public officials surety bonds and multi-crime coverage.

### **Automobile Liability and Physical Damage**

SDAO provides coverage for over 4,600 special district automobiles including fire trucks, utility vehicles, dump trucks, trailers, ambulances, sedans, and more. This pool allows SDAO to provide very cost-competitive auto liability and auto physical damage coverage. Automobile liability coverage is available with identical wording of the general liability coverage form. Claims are funded from the pool; re-insurance is also in place to protect the pool's assets.

#### **Special Features**

- Excess liability limits available of \$1,000,000 to \$5,000,000
- Personal injury protection and medical payments
- Uninsured motorist coverage - \$500,000 and \$1,000,000
- Non-owned and hired automobile coverage
- Coverage for liability resulting from the use of a board member or employee auto for district business
- Physical damage with \$100 deductible comprehensive and \$500 deductible collision
- Actual cash value or replacement cost available for all vehicles regardless of their value

### **Public Officials Surety Bond**

SDAO's Public Officials Surety Bond program was implemented in 1993 to help small districts economically comply with [ORS 198.220](#), which requires a bond of any district elected official or employee entrusted with district funds. The bond covers elected or appointed officials for faithful performance of their duties, which includes having custody of public funds or property.

Since bonds are indemnity agreements, and not insurance, the bonding company anticipates being reimbursed by the person who causes the loss under the terms of their bond agreement.

### **Multi-Crime Coverage**

The SDAO Multi-Crime Group Policy was introduced in 1993 to help districts comply with [ORS 198.220](#), which requires a bond to cover the dishonest acts of board members and employees who have access to district funds or property.

### **Special Features**

- Limits available are \$25,000, \$50,000, or \$100,000
- \$250 deductible
- Public employee dishonesty coverage
- Depositors forgery coverage
- Theft, destruction, or disappearance of money and securities protection
- Coverage for non-compensated directors and officers
- Coverage for treasurer or tax collector

The multi-crime policy generally would be used by mid to large-sized districts where coverage is needed for employees in addition to the board members. The coverage form is very broad.

## **Property Coverage**

SDAO's pooled property insurance program features broad coverage for replacement cost of real and personal property. Earthquake and flood coverages are also available at reasonable rates. A master property policy covers all districts who qualify and purchase coverage.

### **Coverage**

- \$1,000,000 newly acquired real property
- \$500,000 newly acquired personal property
- \$100,000 contractor's equipment (rented or leased)
- \$25,000 each for:
  - Accounts receivable
  - Valuable papers and records
  - Personal property in transit
  - Fine arts
  - EDP equipment and media
  - Extra expense, including EDP extra expense
  - Personal property in care, custody, or control of carriers or bailees in due course of transit
- \$10,000 each for:
  - Real, personal property at unscheduled locations
  - Personal property of employees or volunteers
  - Loss adjustment expenses
  - Pollutant clean up
- \$5,000 money and securities

The rating structure recognizes the competitive environment for property insurance. Premiums are determined on insured values, building construction, and protection. Several deductible levels are available depending on the size and nature of the individual district.

## **Boiler & Machinery Coverage**

Boiler & machinery coverage is on a comprehensive form including production machinery. Limits are available up to \$5,000,000 for property damage and \$100,000 for extra expense with a deductible of \$1,000 per occurrence. The competitive pricing of this coverage is based upon total real and personal property values reported by the local district. Rates reflect the experience of certain types of districts.

## **Workers' Compensation Coverage**

Because of skyrocketing workers' compensation costs faced by its special district members in the 1980s, SDAO decided to create its own workers' compensation pool. Competitive rates and plans have contributed to significant growth in this program. Premium contributions are paid into the pool and claims are paid from pooled funds. An actuarial evaluation is made to assure adequacy of reserves for future claims.

Loss control services are available from SDAO staff and independent consultants located around the state. Services include, but are not limited to, assistance in the development and implementation of safety programs, compliance with OR-OSHA and the Americans with Disabilities Act (ADA), hazard communications, early return-to-work programs, and technical consultative services.

### **Special Features**

- Statutory State of Oregon Workers' Compensation coverage
- Employer's liability
- District employees covered
- Coverage for board members
- Coverage for volunteers (optional)
- Pre-loss legal services

## **Employee Benefits**

The SDAO Employee Benefits program began in 1985 with two objectives: to provide a benefit program beneficial to large and small districts; and to take advantage of the potential size protection of group purchasing on behalf of all interested members.

As the program grew, it was apparent that a third objective of providing as many coverage options as possible was imperative. At the outset, the association offered one medical deductible plan, one dental plan, one vision plan and one option for group life insurance. Now, districts can choose from eight medical plans, three dental plans with or without orthodontia, four vision plans, two options each for group life insurance and, long-term disability, and four short-term disability options.

As employee benefits coverages continue to evolve, the Board of Trustees, the SDAO staff, and the program administrator remain committed to responding to member needs and making the program the most cost-effective and high-quality benefit program available to special districts.

## **Medical Coverage**

### **Health Plan**

The SDAO Health Plan provides benefits for over 1,500 special district employees, enabling districts of any size to take advantage of the excellent rates and coverages of a large group policy. Lifewise, a wholly owned subsidiary of Blue Cross of Washington-Alaska, is the program's medical coverage provider.

#### **Special Features**

Each district can choose from a \$100, \$200, or \$500 deductible plan. Included are quality coverages such as well-baby care, physical examinations, immunizations, and co-payment prescription cards. In the area of cost containment, the plan provides major services, such as transplants, with certain contracted hospitals throughout the state. When implemented, this feature pays for the patient's cost of service 100 percent, yet protects the experience of the group by paying only contracted amounts.

For districts located in areas with preferred providers, SDAO offers three deductible options on a preferred provider basis through the provider networks of Lifewise or Providence. If the panel of providers meets the needs of the district, the members are paid benefits at a higher percentage, the claim charges are reduced, and the premium charges to the district are reduced.

Our fastest growing plans are our two Managed Care options. By accessing the same preferred provider networks, these options pay like an HMO plan with no deductible, but do not have the often troublesome requirements of naming a Primary Care Provider (PCP) and being referred by that PCP to a specialist.

### **Vision Plans**

Lifewise is also the provider for SDAO's four vision plans. Vision insurance is one of the few options that cannot be purchased on a stand-alone basis. To have vision coverage, districts must also have medical coverage.

#### **Special Features**

The basic vision plan pays a fixed amount for all vision services from the initial exam through lenses and frames. Benefits are payable annually if the patient is under 17 and bi-annually if older.

For an increased premium, districts may select the common deductible vision plan. With this plan, once the medical deductible has been met by either medical charges and/or vision charges, vision charges are paid at 80 percent up to a maximum annual benefit of \$250. This plan is only available with the \$100 and \$200 deductible medical plans.



## **Dental Coverage**

Since 1986, SDAO has offered a dental plan for member employees. Coverage is provided by Lifewise. More than 1,600 employees receive dental coverage through the program. The most important feature of our dental plans is that we pay on billed charges, not “usual and customary.”, eliminating the problem of provider charges being more than “usual and customary.”

### **Basic Plan**

The basic dental plan pays 100 percent for preventative services, then applies a \$25.00 deductible prior to paying 80 percent for restorative services and 50 percent for major services. Each insured person has \$1,500 in benefits per calendar year.

#### **Incentive Plan**

For a slightly higher premium, districts may choose the incentive plan. Under this plan, preventative and restorative services are paid with no deductible at 70 percent during the first year of coverage. As long as the patient visits the dentist once a year, this percentage increases 10 percent per year up to 100 percent. Major services are paid at a constant 50 percent. Each insured person has \$1,500 in benefits per calendar year.

### **Orthodontia**

With either of the plans, if the district has 20 or more employees or is coming from a plan with orthodontia, one of four different orthodontia plans may be added.

### **Life and Disability Coverages**

SDAO’s provider for life and disability coverages is Regence Life & Health Company.

#### **Life**

Expanded options include either \$10,000 or \$20,000 automatic issue life and accidental death and dismemberment insurance. In addition, Regence offers a voluntary supplemental life program that is available to each individual employee and/or spouse.

#### **Short-Term Disability**

The benefit program offers four short-term disability programs that are nearly identical, except that two programs pay benefits for 13 weeks while the other two programs pay for 26 weeks. All begin paying on the first day for an accident and the eighth day for an illness. Each district can pick a plan design and then choose between a \$100 or \$200 maximum benefit per week.

## Long-Term Disability

These four short-term disability program options are designed to coincide with the program's long-term disability options, which can begin after either 90 days or 180 days of disability. The long-term plans replace 60 percent of income, up to a \$6,000 per month benefit, and pay until the employee reaches 65 years of age.

## SDAO Resources

For more information on SDAO and its programs, visit [www.SDAO.com](http://www.SDAO.com)

### Resource Directory

#### Liability, Property, Workers' Compensation, and Other Coverages

Marsh USA, Inc. 111 S.W. Columbia, Suite 500 Portland, Oregon 97201-5897 Joe DePaepe, CPCU, CIC Frank Stratton Sandy Kosharek	Phone Numbers: (503) 248-4800 1-800-477-SDAO (7326) Fax Number: (503) 248-4850 Senior Account Executive Assistant Vice President Technical Assistant
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#### Claims Reporting and Management

Self-insured Management Services (SiMS) P.O. Box 19990 Portland, Oregon 97280-0990 Bob Murch Chip Bartel	Phone Numbers: (503) 245-9756 1-800-804-9527 Fax Number: (503) 246-1581 Property/Casualty Claims Workers' Compensation Claims
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#### Health, Dental, Life & Disability Insurance

Century Insurance Group P.O. Box 5939 Bend, Oregon 97708 Chet Weichman Lifewise PO Box 7709 Bend, Oregon 97708-7709	Phone Number: 1-800-599-2387 (541) 382-4211 Fax Number: (541) 382-7468 SDAO Health Plan Administrator Phone Number: 1-800-777-1502 FAX: (541) 318-2310
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#### SDAO FlexLease Program

Sutro & Co. 1400 Pioneer Tower 888 Fifth Avenue Portland, Oregon 97204-2028 David Ulbricht, Vice President, Public Finance	Phone Numbers: (503) 223-7711 1-800-547-4006 Fax Number: (503) 620-4350
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Susan Fleming, Municipal Finance  
Analyst

Ater, Wynne, Hewitt, Dodson & Skerrit  
Bond Counsel  
Ann Sherman

Phone Numbers: (503) 226-1191 ext. 444  
Fax Number: (503) 226-0079

#### Retirement Programs

Nationwide Retirement Solutions  
12621 SW 113th Place  
Tigard, OR 97223  
Garry Liday, State Director

Phone Numbers 1-800-942-3621  
(503) 620-3531  
Fax: (503) 620-4350

#### Section 125 Plan

Manley Administrative Services  
2350 Oakmont Way, Suite 200  
Eugene, Oregon 97401  
Customer Service Department, ext. 107  
Billing Department, ext. 122

Phone Number: 1-800-485-7488  
Fax: (541) 485-8759

#### Legislative Services

Western Advocates  
12725 SW 66th Avenue  
Portland, OR 97223  
Kelly Ross; Owner/Principal

Phone Number: (503) 984-1181  
Toll Free 1-800-796-0028  
Fax: (503) 597-3668

<http://www.westernadvocates.com>

#### First Tech Credit Union

Customer Service  
PO Box 2065  
Salem, Oregon 97308

Phone Number: 503-585-7084  
1-800-452-7816

#### Affiliated Special District Organizations

Local Government Personnel Institute 503-588-2251  
680 State St. #180 503-378-3203 (FAX)  
P.O. Box 908  
Salem, Oregon 97308

Oregon Association of Clean Water Agencies  
25 NE 11th Avenue, Suite 200  
(FAX)  
Portland, Oregon 97232

503-236-6722  
503-236-6719

Oregon Association of Conservation Districts (OACD) c/o Yamhill SWCD 2200 West 2nd McMinnville, OR 97128	503-472-6403
Oregon Association of Water Utilities 12312 Silverton Rd. (FAX) Silverton, Oregon 97381	503-873-8353 503-873-8538
Oregon Fire Chiefs Association 1284 Court St. N.E. (FAX) Salem, Oregon 97301	503-378-0896 503-364-9919
Oregon Fire District Directors Association (OFDDA) 1284 Court St. N.E. (FAX) Salem, Oregon 97301	503-378-0896 503-364-9919
Oregon Municipal Finance Officers Association c/o Association and Conference Services 7140 SW Fir Loop, Suite 130 Portland, OR 97223	503-588-0711
Oregon Recreation and Park Association P.O. Box 829 (FAX) Seaside, Oregon 97138	503-738-9433 503-738-9435
Oregon People's Utility Districts Association 727 Center St. N.E., Suite 108 Salem, Oregon 97301	503-370-4414
Oregon Public Ports Association 565 Union St. NE (FAX) Salem, Oregon 97301	503-585-1250 503-364-9919
Oregon Transit Association P.O. Box 588 (FAX) Lake Oswego, Oregon 97034	503-636-8188 503-636-1359

Oregon Water Resources Congress (Largely Irrigation) 503-363-0121  
1201 Court St. NE 503-371-4926  
(FAX)  
Salem, Oregon 97301

State Agencies Associated With Special Districts

Department of Environmental Quality 503-229-5850  
811 S.W. Sixth Ave.  
Portland, Oregon 97204

Economic Development Department 503-986-0123  
Ports Division  
775 Summer St. N.E.  
Salem, Oregon 97310

Land Conservation & Development Department 503-373-0050  
635 Capitol NE, #150  
Salem, OR 97301

Natural Resources Division 503-986-4700  
Department of Agriculture  
635 Capitol St. N.E.  
Salem, Oregon 97310-0110

Parks and Recreation Department 503-378-6305  
1115 Commercial St. N.E.  
Salem, Oregon 97310

State Fire Marshals Office 503-378-3473  
4760 Portland Road N.E.  
Salem, Oregon 97305-1760

Water Resources Department 503-378-3739  
158 12th St. N.E.  
Salem, Oregon 97310

# Miscellaneous Resources

## Accounting and Auditing

Agencies and Organizations:

### **State of Oregon**

Secretary of State Office  
[Audit Division](#)  
255 Capitol St. NE, Suite 500  
Salem, Oregon 97310  
(503) 986-2255

[Oregon Municipal Finance Officers Association](#)  
c/o Association and Conference Services  
7140 SW Fir Loop, Suite 130  
Portland, OR 97223  
503-588-0711

### **Publications:**

Oregon Revised Statutes: [Chapters 294](#) and [297](#)

Governmental Accepted Accounted Principles Guide  
HBJ Miller Accounting Publications  
1-800-831-7799

Local Government Finance Issues, May 1995  
Oregon Law Institute  
921 S.W. Morrison, Suite 409  
Portland, Oregon 97205  
1-800-222-8213

## Elections

Agencies and Organizations:

### **State of Oregon**

Secretary of the State  
[Elections Division](#)  
Room 141 State Capitol  
Salem, Oregon 97310  
(503) 986-1518  
Fax: (503) 373-7414

## **Other Resources**

County Elections Division - (see your county's listings)

### **Publications:**

Summary of Election Laws Enacted by the 1989 Legislative Assembly,  
Elections Division, 141 State Capitol, Salem, Oregon.  
(503) 986-1518

Oregon Revised Statutes: [Chapters 246 through 260](#). Chapter 255 pertains to special districts elections specifically.

#### [Districts Elections Manual](#)

Elections Division  
141 State Capitol  
Salem, Oregon 97310-0722  
(503) 986-1518  
Fax: (503) 373-7414

#### [Campaign Finance Manual](#)

Elections Division  
141 State Capitol  
Salem, Oregon 97310-0722  
(503) 986-1518  
Fax: (503) 373-7414

## **Emergency Preparedness/Hazardous Waste**

Agencies and Organizations:

### **State of Oregon**

#### [Local Emergency Planning Committee](#)

c/o Department of Environmental Quality  
811 S.W. 6th  
Portland, Oregon 97204  
(503) 229-5696

#### [Department of Environmental Quality](#)

Environmental Cleanup Division  
750 Front St. N.E. #240  
Salem, Oregon 97310  
(503) 378-8240

[Oregon Emergency Management](#)

P.O. Box 14370  
Salem, OR 97309-5062  
Phone: 503-378-2911  
Fax: 503-373-7833

**Publications:**

Oregon Revised Statutes: [Chapter - 466 \(generally\)](#)

The CEO's Disaster Survival Kit  
[Federal Emergency Management Agency](#)  
Emergency Management Information Center  
Emmitsburg, MD 21727  
1-800-480-2520

## **Intergovernmental Relations**

Agencies and Organizations:

**State of Oregon**

[Land Conservation and Development Department](#)

635 Capitol St. NE, Suite 150  
Salem, Oregon 97301-0590  
(503) 373-0050

[Governor's Office](#)

State Capitol Building  
Salem, Oregon 97310  
(503) 378-4582

**Other Resources**

[League of Oregon Cities](#)

1201 Court St. N.E., Suite 200  
Salem, Oregon 97308  
(503) 588-6550

[Association of Oregon Counties](#)

1212 Chemeketa St. NE  
Salem, Oregon 97301  
(503) 585-8351



**Publications:**

[Attorney General's Administrative Law Manual and Model Rules of Procedure](#)

Administrative Services  
Department of Justice  
550 Justice Building  
Salem, Oregon 97310  
(503) 378-4400

[State of Oregon Agency Directory](#)

[State of Oregon Employee Search Form](#)

## **Investment**

**Agencies and Organizations:**

[Local Government Investment Pool](#)

Oregon State Treasury  
Room 159 State Capitol  
Salem, Oregon 97310  
(503) 378-4111

Sutro & Co.  
1400 Pioneer Tower  
888 SW 5th Avenue  
Portland, OR 97204-2028  
(503) 223-7711  
David Ulbricht, Vice President, Municipal Finance  
Susan Fleming, Municipal Finance Analyst

**Publications:**

Oregon Revised Statutes: [Chapter - 294](#)

## **Legislation**

**Agencies and Organizations:**

Genoa Ingram, Court Street Consulting, LLC  
1284 Court Street NE  
Salem, OR 97301  
Ph: (503) 378-0595  
Fax: (503) 364-9919  
Email: [genoa@courtstreetconsulting.org](mailto:genoa@courtstreetconsulting.org)

Hasina Squires  
Government Relations Strategies  
PO Box 1745  
Lake Oswego, Oregon 97035  
Ph: (503) 321-5116  
Fax: (503) 321-5117  
Email: [HESquires@aol.com](mailto:HESquires@aol.com)

**State of Oregon:**

Legislative Administration Committee  
State Capitol, Salem, Oregon 97310

Information 503-986-1388  
Distribution (Bills and Calendars) 503-986-1180  
Oregon Legislative Information System (OLIS) 503-986-1187

**Publications:**

[Legislative Committee Schedule](#)

Legislative Committee Office  
Distribution Center  
(503) 986-1180

[Oregon Bulletin](#)

(Administrative Rule Orders and Notices of Rulemaking)  
Secretary of State  
Public Records Division  
(503) 373-0701

**Personnel**

**Agencies and Organizations:**

**State of Oregon**

[Oregon Bureau of Labor and Industries](#)

Portland State Office Building  
800 NE Oregon, Suite 32  
Portland, Oregon, 97232  
(503) 731-4200

[Public Employees Retirement System \(PERS\)](#)

800 Summer St. NE, Suite 200  
Salem, OR 97310  
(503) 378-3730

## **Other Resources**

### **[Local Government Personnel Institute](#)**

680 State St.  
Salem, Oregon 97310  
(503) 588-2251

## **Publications:**

### **[A Handbook for Oregon Employers of Wage and Hour Laws](#)**

Oregon Bureau of Labor and Industries  
Portland State Office Building  
800 N.E. Oregon St., Suite 32  
Portland, Oregon 97232  
(503) 731-4074

## **Public Meetings and Records**

## **Agencies and Organizations:**

### **State of Oregon**

#### **[Attorney General's Office](#)**

Oregon Department of Justice  
Justice Building  
Salem, Oregon 97310  
Information: (503) 378-4400

## **Publications:**

### **[Attorney General's Public Records and Meetings Manual](#)**

Administrative Services  
Department of Justice  
550 Justice Building  
Salem, Oregon 97310  
Phone: 503-378-4400

## **Revenue, Budgeting, and Taxes**

## **Agencies and Organizations:**

### **State of Oregon**

#### **[Department of Revenue](#)**

#### **[Local Government Finance and Taxation](#)**

955 Center St. N.E.  
Salem, Oregon 97310  
(503) 378-4329

[State Treasury Department](#)

State Capitol  
Salem, Oregon 97310  
(503) 378-4329

**Publications:**

[Local Budgeting In Oregon, Revised Edition](#)

Oregon State Department. of Revenue  
Local Government Finance and Taxation  
(503) 378-4988

[Local Budget Laws and Notice of Property Tax Forms and Instructions Booklet](#)

Publication # 150-504-073  
Oregon State Department. of Revenue  
Local Government Finance and Taxation  
(503) 378-4988

Oregon Revised Statutes: [Chapters 192, 198, 280, 287, 294](#) and [310](#)

[Oregon Bond Manual](#)

Municipal Bond Division  
Office of the State Treasury  
60-A State Capitol Building  
Salem, Oregon 97310  
(503) 378-4329

[Oregon Property Tax Statistics](#)

Oregon State Department. of Revenue  
Local Government Finance and Taxation  
(503) 378-4988

