

# TITLE 2

## GOVERNMENT ADMINISTRATION

### Table of Contents

Chapter 2.01 .....	1
2.01 ACCELERATION OF REDEMPTION FOR WASTE OR ABANDONMENT.....	1
2.01.010 Purpose .....	1
2.01.020 Definitions .....	1
2.01.030 Forfeiture for Waste; Penalty .....	2
2.01.040 Acceleration of Redemption Period Authorized .....	2
2.01.050 Hearing Required.....	3
2.01.060 Notice of Hearing .....	3
2.01.070 Conduct of Hearing .....	4
2.01.080 Board Order; Findings and Conclusions .....	7
2.01.090 Judicial Review.....	8
2.01.100 Tax Collector’s Deed.....	8
2.01.110 Removal of Occupants.....	8
2.01.120 Penalties.....	8
Chapter 2.02 .....	9
2.02 UNCLAIMED PROPERTY .....	9
Chapter 2.03 .....	10
2.03 HOSPITAL FACILITY AUTHORITY .....	10
2.03.010 Declaration of Public Need.....	10
2.03.020 Creation of Hospital Authority .....	10
2.03.030 Board of Directors; Composition; Terms .....	10
2.03.040 Powers and Duties of Board .....	10
Chapter 2.04 .....	12
2.04 ESTABLISHMENT OF LOCAL CONTRACT REVIEW BOARD .....	12
2.04.010 Introduction .....	12
2.04.020 Authority and Process To Adopt Rules .....	12
Chapter 2.05 .....	13
2.05 PERSONNEL POLICIES AND PROCEDURES FOR CLACKAMAS COUNTY EMPLOYEES .....	13
2.05.010 Responsibilities.....	13
2.05.020 Intent Of Document .....	13
2.05.030 Definitions .....	13
2.05.040 Purpose And Application Of This Chapter.....	17
2.05.040.1 Purpose Of The Personnel Chapter .....	17
2.05.040.2 Scope Of The Personnel Chapter .....	18
2.05.040.3 Application Of Personnel Chapter .....	18

2.05.040.4	Special Conditions - Unclassified Service .....	19
2.05.040.5	Annual Hours-Worked Limit for Unallocated Positions.....	20
2.05.050	Classification Of Positions .....	20
2.05.050.1	Classification Plan.....	20
2.05.050.2	Classification Specifications .....	21
2.05.050.3	Classification Review.....	21
2.05.050.4	Classification Upgrading.....	21
2.05.050.5	Classification Downgrading.....	22
2.05.050.6	Classification Review Of New Positions .....	22
2.05.050.7	Classification Review Resulting From A Reorganization Of A Department Or Unit.....	23
2.05.050.8	Other Requests For Classification Review.....	23
2.05.050.9	Notification Of Classification .....	24
2.05.050.10	Requests For Review Of Classification Determination .....	24
2.05.050.11	Trainee Classifications .....	24
2.05.050.12	Promotive Classifications.....	24
2.05.050.13	Unallocated (Temporary) Employment Classifications.....	25
2.05.060	Compensation Plan.....	25
2.05.060.1	Maintenance Of Compensation Plan.....	25
2.05.060.2	Administration Of Compensation Plan .....	25
2.05.060.3	Salary Range Adjustments .....	26
2.05.060.4	Request For Review Of Salary Range Recommendations.....	27
2.05.060.5	Salary Increases For part-time Positions.....	27
2.05.060.6	Hourly Rates.....	27
2.05.060.7	Overtime.....	27
2.05.070	Selection .....	29
2.05.070.1	Purpose Of Selection Process.....	29
2.05.070.2	Job Announcements .....	29
2.05.070.3	Selection Procedures .....	29
2.05.070.4	Types of Recruitments and Selection Procedures.....	30
2.05.070.5	Need For Recruitment .....	30
2.05.070.6	Publicity And Recruitment.....	31
2.05.070.7	Minimum Requirements.....	31
2.05.070.8	Disqualification Of Applicants.....	31
2.05.070.9	Modification Or Suspension Of Selection Procedures.....	31
2.05.070.10	Consideration Of Qualifications.....	32
2.05.070.11	Reapplication and Retesting.....	32
2.05.070.12	Written Exams.....	32
2.05.070.13	Review Of Selection Results.....	32
2.05.070.14	Requests For Review Of Selection Procedures.....	32
2.05.070.15	Appeals Of Selection Procedures In The Selection Process .....	33
2.05.070.16	Waiver Of Selection Process.....	33
2.05.070.17	Veterans Preference.....	33
2.05.080	Eligible Registers.....	33
2.05.080.1	Types Of Eligible Registers .....	33
2.05.080.2	Placement Of Names On Eligible Register .....	34

2.05.080.3	Removal Of Names From Open Eligible Register.....	34
2.05.080.4	Removal And Replacement Of Names From Promotional/Internal Eligible Register.....	34
2.05.080.5	Restoration To Eligible Register.....	35
2.05.080.6	Extension Of Eligibility .....	35
2.05.080.7	Inactive Status .....	35
2.05.090	Referral Of Eligibles.....	36
2.05.090.1	Referral Process.....	36
2.05.090.2	Referral From Eligible Registers.....	36
2.05.090.3	Referral For Trainee Purposes.....	37
2.05.090.4	Insufficient Names .....	37
2.05.090.5	Acceptance Of Referral In Lower Classification .....	37
2.05.100	Appointments.....	37
2.05.100.1	Types Of Appointments .....	37
2.05.100.2	Nepotism .....	39
2.05.100.3	Medical Standards .....	39
2.05.100.4	Employment Related Physical Assessments.....	39
2.05.110	Probationary Period.....	40
2.05.110.1	Purpose Of Probationary Period.....	40
2.05.110.2	Duration Of Probationary Period .....	40
2.05.110.3	Performance Evaluation During Probationary Period.....	40
2.05.120	Performance Evaluation .....	41
2.05.120.1	Purpose Of Evaluation .....	41
2.05.120.2	Evaluation System.....	41
2.05.120.3	Evaluation Procedure .....	41
2.05.120.4	Employee Disagreement With Evaluation.....	42
2.05.120.5	Use Of Evaluations.....	42
2.05.120.6	Records.....	42
2.05.120.7	Confidentiality.....	42
2.05.130	Training .....	42
2.05.130.1	Statement Of General Policy.....	42
2.05.130.2	Orientation Of New Employees .....	43
2.05.130.3	Time Of Training Periods .....	43
2.05.140	Status Changes.....	43
2.05.140.1	Promotion.....	43
2.05.140.2	Demotion.....	43
2.05.140.3	Voluntary Demotion.....	43
2.05.140.4	Transfer .....	44
2.05.140.5	Reclassification .....	45
2.05.140.6	Temporary Out-Of-Class.....	45
2.05.140.7	Resignation.....	46
2.05.140.8	Reinstatement Procedures .....	46
2.05.150	Leave Of Absence .....	46
2.05.150.1	General Procedure For Leaves Of Absence .....	46
2.05.150.2	Types Of Leave .....	47
2.05.160	Holidays, Vacation And Sick Leave.....	50

2.05.160.1	Holidays .....	50
2.05.160.2	Vacation Leave.....	51
2.05.160.3	Sick Leave .....	53
2.05.160.4	Extended Sick Leave.....	53
2.05.170	Ethical Standards Governing Employee Conduct .....	54
2.05.180	Employee Responsibilities .....	54
2.05.180.1	Purpose.....	54
2.05.180.2	Work Rules.....	55
2.05.190	Disciplinary Actions .....	56
2.05.190.1	Employee Conduct.....	56
2.05.190.2	Discipline Policy .....	56
2.05.190.3	Cause For Disciplinary Action.....	56
2.05.190.4	Kinds Of Disciplinary Action .....	57
2.05.190.5	Procedures For Taking Disciplinary Action.....	58
2.05.190.6	Appeal Of Dismissal, Demotion Or Suspension.....	59
2.05.200	Layoff And Seniority.....	59
2.05.200.1	Grounds For Layoff.....	59
2.05.200.2	Layoff Procedures .....	59
2.05.200.3	Layoff Order.....	60
2.05.200.4	Bumping Procedure.....	60
2.05.200.5	Layoff Rules.....	60
2.05.200.6	Layoff Registers And Recall .....	61
2.05.200.7	Rate Of Pay Following Appointment From Layoff Registers .....	61
2.05.200.8	Seniority .....	61
2.05.210	Appeals And Hearings.....	62
2.05.210.1	Appeals.....	62
2.05.210.2	Filing A Notice Of Appeal.....	62
2.05.210.3	Matters That Can Be Appealed.....	62
2.05.210.4	Timelines For Filing A Notice Of Appeal .....	62
2.05.210.5	Time For Hearing.....	62
2.05.210.6	Subpoenas And Records.....	63
2.05.210.7	Rights Of Parties .....	63
2.05.210.8	Attendance.....	63
2.05.210.9	Waiver Of Oral Hearing.....	63
2.05.210.10	Hearings Procedures.....	63
2.05.210.11	Reopening Of Hearing .....	64
2.05.210.12	Scope Of Authority Of The Hearings Officer.....	65
2.05.210.13	Final Order .....	65
2.05.210.14	Hearings Officer.....	65
2.05.220	Administrative Reviews By The Director Of Employee Services .....	66
2.05.220.1	Requests For Administrative Reviews .....	66
2.05.220.2	Filing A Request For Administrative Review.....	66
2.05.220.3	Actions That May Be Reviewed .....	66
2.05.220.4	Timelines For Filing A Request For Review .....	66
2.05.220.5	Response To Request For Administrative Review .....	67
2.05.220.6	Scope Of Authority Of Director Of Employee Services.....	67

2.05.220.7	Written Findings.....	67
2.05.230	Reviews Of Classification Allocations And Salary Grade Recommendations .....	68
2.05.230.1	Requests For Review Of A Classification Allocation Or Salary Grade Recommendation.....	68
2.05.230.2	Filing A Request For Review.....	68
2.05.230.3	What Actions May Be Reviewed.....	68
2.05.230.4	Process Of The Classification/Compensation Review Panel.....	69
2.05.230.5	Composition Of The Panel.....	69
2.05.230.6	Scheduling Of The Classification/Compensation Review Panel.....	69
2.05.240	Equal Employment Opportunities .....	69
2.05.240.1	Policy Statement.....	69
2.05.240.2	Affirmative Action Program .....	70
2.05.240.3	Complaint And Grievance Resolution Procedure .....	70
2.05.250	Harassment .....	70
2.05.250.1	Policy Statement.....	70
2.05.250.2	Sexual Harassment Policy.....	71
2.05.250.3	Initiating An Investigation Regarding Harassment.....	71
2.05.260	Personnel Records .....	71
2.05.260.1	Contents.....	71
2.05.260.2	Access To Personnel Records .....	72
2.05.260.3	Disclosure Of Information And Dissent.....	72
Chapter 2.06	.....	73
2.06	EXPORT OF UNPROCESSED TIMBER FROM LANDS OWNED OR MANAGED BY CLACKAMAS COUNTY.....	73
2.06.010	Definitions .....	73
2.06.020	Criteria for Eligibility to Bid on County Timber Sale Contracts .....	74
2.06.030	Prohibition of Indirect Substitution.....	74
2.06.040	Prohibition of Export of County Timber.....	74
2.06.050	Surplus Timber .....	74
2.06.060	Reporting Requirements .....	75
2.06.070	Remedies for Violation.....	75
2.06.080	Log Branding and Marking Requirements .....	76
2.06.090	Timber Sale Contracts .....	76
2.06.100	Enforcement.....	77
Chapter 2.07	.....	78
2.07	COMPLIANCE HEARINGS OFFICER.....	78
2.07.010	Philosophy and Purpose .....	78
2.07.020	Jurisdiction Of Compliance Hearings Officer.....	78
2.07.030	Process for Enforcement of Code.....	78
2.07.040	Request For Hearing/Initiation of Proceedings .....	80
2.07.050	Notice of Hearing .....	81
2.07.060	Statement of Rights .....	81
2.07.070	Procedure In Compliance Hearings.....	82
2.07.080	Presentation of Evidence .....	84

2.07.090	Powers Of The Compliance Hearings Officer.....	84
2.07.100	Orders Of The Compliance Hearings Officer.....	85
2.07.110	Enforcement Of Compliance Hearings Officer Orders .....	86
2.07.120	Civil Penalty .....	86
2.07.130	Judicial Review.....	87
CHAPTER 2.08	.....	88
2.08	BALLOT MEASURE 37 CLAIM PROCESSING PROCEDURE AUTHORIZATION .....	88
CHAPTER 2.09	.....	89
2.09	COUNTY ADMINISTRATOR .....	89
2.09.010	OFFICE OF COUNTY ADMINISTRATOR CREATED .....	89
2.09.020	APPOINTMENT .....	89
2.09.030	QUALIFICATIONS .....	89
2.09.040	VACANCY .....	89
2.09.050	ABSENCE OR DISABILITY .....	90
2.09.060	AUTHORITY .....	90
2.09.070	DELEGATION OF AUTHORITY .....	92
2.09.080	TERM .....	92
2.09.090	INTERACTION WITH COUNTY ADMINISTRATOR, EMPLOYEES .....	92
CHAPTER 2.10	.....	94
2.10	HAMLETS AND VILLAGES.....	94
2.10.010	Preamble .....	94
2.10.020	Purpose; intent; authority.....	95
2.10.030	Definitions. As used in this Chapter .....	96
2.10.040	CPO Functions; memoranda of understanding.....	97
2.10.050	Formation of a Hamlet or Village.....	97
2.10.060	Post-Formation Management of Hamlet and Village Affairs .....	102
2.10.070	Financing .....	103
2.10.080	Dissolution.....	104
2.10.090	Public meetings; public records.....	105
2.10.100	Local budget and audit law; charitable contributions; contracts .....	105
2.10.110	Liability; risk management.....	106
CHAPTER 2.11	.....	107
2.11	Board of County Commissioners.....	107
2.11.010	COMPOSITION .....	107
2.11.020	DESIGNATED OFFICES; NONPARTISAN ELECTIONS.....	107
2.11.030	TERMS.....	107
2.11.040	SELECTION .....	107
2.11.050	QUALIFICATIONS AND VACANCIES .....	108
2.11.060	ATTENDANCE AT BOARD MEETINGS.....	108
2.11.070	DUTIES OF COMMISSIONERS .....	108
2.11.080	SEVERANCE CLAUSE .....	108
2.11.090	TRANSITION PROVISIONS AND APPLICABILITY DATES ....	109
Chapter 2.12	.....	110
2.12	COUNTY COUNSEL.....	110

2.12.010	APPOINTMENT OF COUNTY LEGAL COUNSEL.....	110
2.12.020	AUTHORITY .....	110
2.12.030	DUTIES .....	110
Chapter 2.13	.....	112
2.13	Delegating Authority to the Director of the Department of Transportation and Development.....	112
2.13.010	Delegation of Authority.....	112
2.13.020	Authority to Accept .....	112
2.13.030	Severance Clause.....	113
2.13.040	.....	113

## **Chapter 2.01**

### **2.01 ACCELERATION OF REDEMPTION FOR WASTE OR ABANDONMENT**

#### **2.01.010 Purpose**

The Clackamas County Board of Commissioners (“Board”) has determined that the County is in need of a remedy to prevent the hazards, detrimental effects, and devaluation of property sold to Clackamas County in tax foreclosure actions that is subjected to waste and abandonment. This chapter is enacted under the authority of ORS 312.122 to provide such a remedy, through acceleration of the tax foreclosure redemption process and imposition of fines for waste of such properties.

The tax foreclosure statutes provide for a two-year redemption period between the time that tax delinquent property is sold to the County and the time a deed can be issued to the County. During the two-year redemption period, the former owner of the tax delinquent property retains the right to possession of the property under ORS 312.180, so long as no waste of the property is committed. If waste of the property is committed, or if the property is abandoned, however, and no one with a financial interest in the property chooses to redeem it from tax foreclosure, then the deed ultimately conveyed to the County can be wrongly and seriously devalued. Further, the County constituents who own and occupy neighboring properties can be wrongly subjected to health hazards and other detrimental impacts because of their proximity to the wasted or abandoned property over the extended length of the redemption period.

Under this chapter, if the Board has reason to believe that a tax foreclosed parcel of real property is being subjected to waste or abandonment, the Board shall set a public hearing date to determine whether to forfeit the right to possession of the property during the redemption period to the County under ORS 312.180, order a fine of not less than twice the value so wasted under ORS 312.990, and reduce the redemption period to accelerate the conveyance of the deed to the County under ORS 312.122. The legislature has specifically delegated to Clackamas County the authority to enact legislation providing for these remedies, through the statutes identified above. Enacting such local legislation would enable Clackamas County to reduce the detrimental impacts of wasted or abandoned tax foreclosed property on neighboring property owners and possessors, and preserve the value and marketability of tax foreclosed property to maximize its benefit to the taxing district upon resale. Therefore, the Board finds it in the best interests of the public and the taxing districts to enact such local legislation. [Codified by Ord. 05-2000, 7/13/00]

#### **2.01.020 Definitions**

- A. ABANDONMENT occurs when property is not occupied by the owner or any person or entity that appears in the records of the county to have a lien or other interest in the property for a period of six consecutive months, and the
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property has suffered a substantial depreciation in value or will suffer a substantial depreciation in value if not occupied.

- B. BOARD means the Clackamas County Board of Commissioners.
- C. FORMER OWNER means the person or entity who appears in the records of the County and who, by a judgment and decree issued by a Circuit Court pursuant to the foreclosure process foreclosing delinquent taxes under ORS Chapter 312, sold property to the County for the amount of the delinquent taxes stated in the judgment and decree. Former owner includes any person or entity rightfully in possession of the property, and any person or entity acting under the permission or control of such former owner.
- D. OWNER means Clackamas County for all properties shown in a judgment and decree executed by the Clackamas County Circuit Court in a proceeding to foreclose delinquent taxes under ORS Chapter 312.
- E. PARTIES when used in the context of the public hearing provided for in this Ordinance, means Clackamas County and any person or entity entitled to notice of that public hearing.
- F. PROPERTY means the property of the former owner listed in a judgment and decree executed by the Clackamas County Circuit Court in a proceeding to foreclose delinquent taxes under ORS Chapter 312.
- G. A RECORD OF THE COUNTY has that meaning given in ORS 312.125(7).
- H. TAX COLLECTOR means the Clackamas County Tax Collector.
- I. WASTE means any act with the potential to adversely affect the property's condition or value, whether caused by the former owner or by anyone acting under the former owner's permission or general control. Waste includes, but is not limited to, deterioration, destruction or material alteration of land or improvements, removal of agricultural or mineral assets, and violation of any provision of Clackamas County's Solid Waste Ordinance or any rule appearing in a state or local building code.

[Codified by Ord. 05-2000, 7/13/00]

### **2.01.030 Forfeiture for Waste; Penalty**

Any waste of property, as defined in this Chapter, shall forfeit to the County the former owner's right to possession of the property during the redemption period, and in addition, the former owner shall be punished as provided in Section 2.01.120. [Codified by Ord. 05-2000, 7/13/00]

### **2.01.040 Acceleration of Redemption Period Authorized**

- A. If the county determines, after the hearing provided for by this chapter, that either the property is subject to waste resulting in a forfeiture to the County of the former owner's right to possession of the property during the redemption period, or the property is subject to abandonment, the Board shall:
  - 1. Provide that any rights of possession the former owner may have in the property are forfeited to the County;
  - 2. Direct that the redemption period on the property will end 30 days after the date of the Board's decision; and

3. Direct that after the expiration of the accelerated redemption period, the property shall be deeded to the County by the tax collector if the former owner or anyone else having a right to redeem under ORS Chapter 312 has not redeemed it.

All rights of redemption held by any person or entity who appears in the records of the County to have a lien or other interest in the property shall terminate on the execution of the deed to the County. [Codified by Ord. 05-2000, 7/13/00]

#### **2.01.050 Hearing Required**

- A. Whenever the Board determines that real property sold to the County under ORS 312.100 may be subject to waste resulting in a forfeiture to the County of the former owner's right to possession of the property during the redemption period, or may be subject to abandonment, the Board shall set a date, time and place within the County for a hearing to determine whether the property should be deeded to the County as described in Sections 2.02.040 and 2.02.100.
- B. The former owner and any person or entity that appears in the records of the County to have a lien or other interest in the property shall be given an opportunity to be heard at the hearing set pursuant to Section 2.02.060.  
[Codified by Ord. 05-2000, 7/13/00]

#### **2.01.060 Notice of Hearing**

- A. Not less than thirty (30) days prior to the hearing, the County shall direct notice of the hearing to the former owner, the current occupants, and any person or entity appearing in the records of the County to have a lien or other interest in the property. The Notice of Hearing shall contain the following information:
  1. The date, time and place of the hearing;
  2. The date of the Judgment and Decree issued pursuant to ORS 312.100;
  3. The normal date of expiration of the period of redemption under ORS 312.120;
  4. The legal description and tax account number of the property;
  5. The name of the former owner as it appears on the latest tax roll;
  6. A warning that if the County determines that the property is subject to waste or abandonment, the redemption period associated with the tax foreclosure will be shortened to thirty (30) days from the date of the County's decision, and if the property is not redeemed before the end of this accelerated redemption period, the property shall be deeded to the County by the tax collector and every right or interest of any person in the property will be forfeited forever to the County;
  7. A warning that if the County determines that the former owner or persons acting under the former owner's permission or control have committed waste on the property, the former owner will be subjected to a fine of not less than twice the value so wasted; and
  8. A warning that any persons or entities remaining on the property after the property is deeded to the County may be subject to civil or criminal

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prosecution for trespass or to other lawful action that would remove the persons or entities from the property.

- B. The required notice shall be given in any manner reasonably calculated, under all the circumstances, to apprise the former owner and other interested persons of the existence and pendency of the action and to afford them a reasonable opportunity to appear and be heard. This shall always include mailing of the notice to the interested persons' last known address by both certified mail and by regular first class mail. The required notice shall be directed to interested parties using the following guidelines:
1. *Notice to Former Owners:* Notice sent to a former owner shall be addressed to the former owner or former owners, as reflected in the County records of deeds, at the true and correct address of the former owner(s) appearing on the instrument of conveyance under ORS 93.260 or as furnished under ORS 311.555, or as otherwise ascertained by the Clackamas County Tax Collector pursuant to ORS 311.560, and;
  2. *Notice to Other Financially Interested Persons:* Notice sent to persons or entities other than the former owner who have a recognized interest in the property shall be addressed to that person or entity at the address which the County knows or after reasonable inquiry, has reason to believe, is the address at which such person or entity will most likely receive actual notice.
  3. *Notice to Corporations or Limited Partnerships:* If a person or entity with a right to notice is a corporation or limited partnership, the notice shall be mailed to the registered agent or last registered office of the corporation or limited partnership, if any, as shown by the records on file in the office of the Oregon Corporation Commissioner. If the corporation or limited partnership is not authorized to transact business in Oregon, then notice shall be mailed to the principle office or place of business of such corporation or limited partnership, if known.
  4. *Notice to Occupants.* Notice to the occupant(s) of the property shall be addressed to "Occupants" at the property address, and if reasonably possible, shall also be posted on the property.

[Codified by Ord. 05-2000, 7/13/00]

## **2.01.070 Conduct of Hearing**

### **A. Statements of Rights**

1. The Board shall open the public hearing by informing the parties about the following matters:
    - a. A general description of the hearing procedure, including the order of presentation of evidence, what kinds of evidence are admissible, whether objections may be made to the introduction of evidence and what kind of objections may be made, and an explanation of the burdens of proof or burdens of production of evidence;
    - b. That a record shall be made of the proceedings and the manner of making the record and its availability to the parties;
    - c. The function of the record-making with respect to the perpetuation of the
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testimony and evidence and with respect to any appeal of the Board's decision;

- d. That the parties have a right to be represented by an attorney at their own expense; and
- e. That the Board's decision may be appealed pursuant to ORS Chapter 34, and that the appellant shall pay all costs on appeal, including costs for preparation of a transcript.

2. The failure to give notice of any item specified in Subsection 1 of this Section shall not invalidate any decision of the Board unless on review a court finds that the failure affects the substantive rights of one of the parties. In the event of such a finding, the court shall remand the matter to the Board for a reopening of the hearing and shall direct the Board as to what steps shall be taken to remedy any prejudice to the rights of any party.

B. Witnesses and Testimony

1. After the Board opens the public hearing, the Tax Collector or the Tax Collector's designee shall be placed under oath, and shall present evidence or testimony relevant to explain the County's position on the following:
    - a. What information indicates that the property is subject to waste or abandonment and should therefore be deeded to the County; and
    - b. If the property is subject to waste, how the value so wasted should be quantified, including, when appropriate, the approximate anticipated cost the County will incur in cleaning up the property;
  2. Adverse parties shall have the right to cross-examine the Tax Collector or the Tax Collector's designee.
  3. If there are additional witnesses present to testify in support of the County's position, they shall be placed under oath, one at a time, and shall present evidence or testimony relevant to the questions listed in Subsection 1(a) and 1(b) above. Adverse parties shall have the right to cross-examine these witnesses.
  4. Following testimony by the Tax Collector or the Tax Collector's designee and all other witnesses testifying in support of the County's position in the matter, the Board shall allow any person or entity entitled to notice to be placed under oath in order to present or challenge evidence or testimony. Evidence presented must be relevant to one of the following two questions:
    - a. Has the property been subject to waste or abandonment? and
    - b. If the property is subject to waste, how can the Board quantify the value so wasted?
  5. The Tax Collector or the Tax Collector's designee shall have the right to cross-examine the other parties who testify.
  6. The parties may present rebuttal evidence, if any.
  7. The Board shall have the right to question any witness at any time.
  8. The Board may set reasonable time limits for oral presentation and testimony and shall exclude or limit cumulative, repetitious or immaterial evidence.
  9. After all parties have been given the opportunity to present evidence, and to respond and reply to one another's evidence, the Board shall close the hearing and return the matter to the table for deliberation and decision.
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- C. Procedure in Hearings.
1. In hearings held under this chapter, the County must prove the allegations by a preponderance of the admissible evidence.
  2. If the only party who appears at the hearing is the County, a default order may only be issued upon a prima facie case made on the record before the Board.
  3. Testimony shall be taken upon oath or affirmation of the witnesses. Any member of the Board may administer oaths or affirmations to witnesses.
  4. The Board members presiding over the hearing shall place on the record a statement of the substance of any written or oral ex parte communications made on a fact in issue during the pendency of the proceedings. The Board members shall notify the parties of the communications and of their right to rebut such communications.
  5. The record of the hearing shall include, if applicable:
    - a. Proof that notice was appropriately given under Section 2.01.060 of this Chapter;
    - b. Motions and intermediate rulings;
    - c. Evidence received;
    - d. Stipulations;
    - e. Questions and offers of proof, objections and rulings thereon;
    - f. A statement of any ex parte communications on a fact in issue made to a member of the Board during the pendency of the proceedings; and
    - g. A Board Order in accordance with the provisions of Section 2.01.080.
  6. A verbatim, written or mechanical record shall be made on all motions, rulings, and testimony. The record need not be transcribed unless requested for purposes of court review. The Board shall charge the party requesting transcription the cost of a transcript, and shall require that party to pay a deposit in advance to cover the approximate cost in advance. Failure to pay the advance deposit or transcription fees shall constitute a separate ground for denial of review of the decision of the Board.
- D. Rules of Evidence
1. All evidence, including hearsay evidence of the type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs, will be admissible.
  2. Irrelevant, immaterial or unduly repetitious evidence shall be excluded at the discretion of the Board, and objections to such evidence may be sustained. Erroneous rulings on evidence shall not preclude action by the Board unless shown on the record to have substantially prejudiced the rights of a party.
  3. The Board shall give effect to the rules of privilege recognized by law.
  4. All evidence offered but not objected to, will be received, subject to the Board's power to exclude irrelevant or unduly repetitious evidence.
  5. Evidence objected to may be admitted at the discretion of the Board. Rulings on the admissibility or exclusion of evidence will be made at hearing or at the time the order is issued.
  6. The Board may take notice of judicially recognizable facts, and the Board may take official notice of general, technical, or scientific facts within the
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specialized knowledge of County employees. Parties shall be notified at any time during the proceeding, but in any event prior to the final decision, of material officially noticed and they shall be afforded an opportunity to contest the facts so noticed.

- E. Recording the Proceedings.  
The proceedings shall be electronically recorded. The recording shall be retained for two years after the date of the Board's order.

[Codified by Ord. 05-2000, 7/13/00]

### **2.01.080 Board Order; Findings and Conclusions**

- A. The Board's Order shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue of fact and as to each ultimate fact required to support the Board's order. If the Board concludes that the property is subject to waste or abandonment and should be deeded to the County, the Board shall adopt an order so finding. The order shall state:
1. That any rights of possession the former owner may have in the property are forfeited to the County;
  2. That the former owner, or any person or entity that then appears in the records of the County to have a lien or other interest in the property, may redeem the property; and
  3. That if the property is not redeemed before the expiration of thirty (30) days from the date of the Order:
    - a. The Tax Collector shall deed the property to the County; and
    - b. All rights of redemption shall terminate upon execution of that deed to the County.
- B. If the Board concludes that the former owner, or those under the former owner's permission or control, have committed waste on the property as described in ORS 312.180, the Board shall adopt an order so finding. The order shall state:
1. That a fine of not less than twice the value so wasted must be imposed under ORS 312.990 and Section 2.02.120;
  2. That the fine is intended, in part, to reimburse the County for the expenses associated with notice and hearing under this Ordinance;
  3. What method is being used to quantify the value so wasted, and what evidence was presented to support the value relied upon by the Board;
  4. That a fine is imposed in the amount of twice the value so wasted; and,
  5. That, if the property is redeemed before the expiration of the accelerated redemption period, a lien in the amount of the fine shall attach to the property, unless and until the fine is paid; and
  6. That, if the former owner owns any other real property, a lien in the amount of the fine shall also attach to those other parcels, unless and until the fine is paid.

The Board shall notify the parties of the final order by delivering or mailing a copy of the Order and any accompanying findings and conclusions to the parties or, if applicable, the

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parties' attorneys. A final order shall be issued by the Board within 14 days of the conclusion of the hearing. A final order shall become effective when signed by the Chair of the Board. [Codified by Ord. 05-2000, 7/13/00]

**2.01.090 Judicial Review**

Review of the Board's decision provided in Section 2.02.080 shall be by writ of review, pursuant to ORS Chapter 34. [Codified by Ord. 05-2000, 7/13/00]

**2.01.100 Tax Collector's Deed**

Upon failure of any party having the right of redemption to redeem the subject property within 30 days after adoption of the Board Order pursuant to Section 2.02.080, the Tax Collector shall issue a deed to the County, which shall terminate all redemption rights and cancel all taxes and special assessments. [Codified by Ord. 05-2000, 7/13/00]

**2.01.110 Removal of Occupants**

After issuance of a deed pursuant to this chapter, the County may remove in any manner provided by law any persons still in possession of the property. [Codified by Ord. 05-2000, 7/13/00]

**2.01.120 Penalties**

The commission of waste by the former owner, or anyone under the permission or control of the former owner, on property sold to the County pursuant to ORS Chapter 312 is punishable, upon conviction, by a fine of not less than twice the value so wasted. [Codified by Ord. 05-2000, 7/13/00]

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## **Chapter 2.02**

### **2.02 UNCLAIMED PROPERTY**

[Codified by Ord. 05-2000, 7/13/00; Repealed by Ord. 03-2009, 5/7/09]

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## Chapter 2.03

### 2.03 HOSPITAL FACILITY AUTHORITY

#### 2.03.010 Declaration of Public Need

After due consideration, and deeming it necessary, in the public interest for the health and general welfare of the state, and the community, and the purpose of increasing bed capacity, adding major new facilities, categories of medical service and combining medical specialties, supporting a regional health care concept in compatibility with the general health care development in the community, adding to inpatient and outpatient care, administration service and support, providing for health care and housing for senior citizens including, without limitation, adult congregate living facilities, granting savings to the community, as a result of centralization of services and to provide health care to the community in a manner which is economically practicable to help maintain high quality standards which are appropriate to the timely and economic development of adequate and effective health services in the area, the Board of County Commissioners for Clackamas County determines that it is wise and desirable to create a Public Hospital Facility Authority. [Codified by Ord. 05-2000, 7/13/00]

#### 2.03.020 Creation of Hospital Authority

There is hereby created, pursuant to Chapter 153, Oregon Laws 1973, and a public authority to be known as "Hospital Facility Authority of Clackamas County, Oregon." [Codified by Ord. 05-2000, 7/13/00]

#### 2.03.030 Board of Directors; Composition; Terms

The authority shall be managed and controlled by a Board of Directors composed of seven members. The future term of office of the Board members shall be four years. Any vacancy in said Board of Directors shall be filled by appointment made by the Board of County Commissioners for Clackamas County for the unexpired portion of the term. The members of this Board shall receive no compensation, except that they may be reimbursed for travel and other out-of-pocket expenses they incur as members of the Board of Directors. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 01-2005, 5/5/05]

#### 2.03.040 Powers and Duties of Board

The Board of Directors shall have all those powers and duties set forth and provided for in Chapter 153, Oregon Laws 1973, as amended from time to time. [Codified by Ord. 05-2000, 7/13/00]

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## **Chapter 2.04**

### **2.04 ESTABLISHMENT OF LOCAL CONTRACT REVIEW BOARD**

#### **2.04.010 Introduction**

The Board of County Commissioners of Clackamas County is hereby created as the Local Contract Review Board pursuant to Chapter 771, Oregon Laws 1975, with all the powers of the Public Contract Review Board. [Codified by Ord. 05-2000, 7/13/00]

#### **2.04.020 Authority and Process To Adopt Rules**

The Board of County Commissioners, in its capacity as the Local Contract Review Board, shall adopt, amend, or repeal local contract review board rules by Board Order, upon a single reading. The reading may be by title only, if no member of the Board requests a reading in full. Such rules shall take effect immediately upon adoption.

The rules presently adopted are in APPENDIX C of this code.  
[Codified by Ord. 05-2000, 7/13/00]

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## Chapter 2.05

### 2.05 PERSONNEL POLICIES AND PROCEDURES FOR CLACKAMAS COUNTY EMPLOYEES

#### 2.05.010 Responsibilities

- A. The Board of County Commissioners reserves the right to make changes in the Personnel Chapter 2.05 at any time. These changes will become effective only when made in writing.
- B. The Department of Employee Services shall provide supervisory staff with a copy of the Personnel Chapter 2.05 and any subsequent updates.
- C. It is the responsibility of each elected official and Division/Department Director to be familiar with and administer these policies in a consistent and impartial manner.
- D. It is the responsibility of each Department to maintain an updated Personnel Chapter 2.05 in a location easily accessible to all employees. Chapter 2.05 will be available to all employees on the County internet and intranet.
- E. It is the responsibility of all employees to familiarize themselves with and follow the policies in this chapter.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2009, 10/29/09]

#### 2.05.020 Intent Of Document

The Clackamas County Personnel Chapter does not establish a property right or contractual right of employment to any Clackamas County employee. [Codified by Ord. 05-2000, 7/13/00]

#### 2.05.030 Definitions

- A. ADVERSE IMPACT means a substantially different rate of selection in any phase of the employment process which works to the disadvantage of members of a protected class.
  - B. AFFIRMATIVE ACTION means identifying existing or potentially discriminatory conditions and making specific goal oriented corrective actions to eliminate and prevent unlawful discrimination.
  - C. ALLOCATED POSITION means a position which is specifically identified in the budget.
  - D. APPEAL means a request for a hearing before the Hearings Officer as provided by this chapter.
  - E. APPOINTING AUTHORITY means any person vested with the authority to appoint individuals to County positions. Such authority will be vested in elected officials and department directors, and may be delegated to
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- supervisory employees within a department or division.
- F. APPOINTMENT means the offer and acceptance of a job made in accordance with these rules.
- G. BONA FIDE OCCUPATIONAL QUALIFICATIONS means attributes that are job related and necessary for the safe and efficient operation of a business.
- H. CAUSE is defined in section 2.05.190.3.
- I. CLASSIFICATION means a group of positions sufficiently similar in duties, authority and responsibility to permit grouping under a common title and which call for similar qualifications and the same schedule of pay.
- J. CLASSIFICATION PLAN means a document which embodies all classifications that have been established, and the specification or descriptions of these classes.
- K. CLASSIFICATION SPECIFICATION means a written description of a classification containing a title, the general characteristics of the kind and level of work, description of typical duties, responsibilities, skills and knowledge required; other qualifications which may include requirements of training and experience; EEO category designation; and other pertinent information.
- L. CLASSIFIED EMPLOYEE means a person who has been appointed to a position in the classified service.
- M. CLASSIFIED SERVICE means those County positions which are not specifically exempt under 2.05.040.3 (B).
- N. DEMOTION means changing an employee's position to a classification that has a lower salary grade than the employee's present classification.
- O. DEPARTMENT means a County organizational unit under the direction of a single appointing authority.
- P. DIRECTOR OF EMPLOYEE SERVICES means a person appointed as the Director of the Department of Employee Services or a staff person, which the Director has designated as a representative.
- Q. DISCIPLINARY ACTION means any action taken by an appointing authority which reprimands the employee, or reduces temporarily or permanently, an employee's pay status, benefits, or other incidents of employment.
- R. DISCRIMINATION means illegal discrimination on the basis of race, color, sex, sexual orientation, gender identity, religion, national origin, age, disability, or other protected status as those terms are understood under Oregon and federal law.
- S. DOMESTIC PARTNER means persons who are eligible for County employee benefits domestic partner coverage.
- T. DOWNGRADING means a reclassification of a position where the newly assigned classification has a lower salary grade.
- U. EEO OCCUPATIONAL CATEGORY means a group of occupations deemed to be similar in duties, authority or responsibility as determined by the Equal Employment Opportunity Commission.
- V. ELIGIBLE REGISTER means a list of applicants for County employment or advancement in County employment who have successfully completed the selection process.
- W. EQUIVALENT CLASSIFICATION means a classification that requires both
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- the same kind of knowledge and the same degree of skills.
- X. FRAUD means conduct which meets all of the following elements of fraud as defined in the common law of the State of Oregon: (1) a representation is made; (2) the representation is false; (3) the representation is material; (4) the representation is made by the speaker with knowledge of its falsity or ignorance of its truth; (5) the speaker intends that the hearer should act upon the representation and do so in the manner reasonably contemplated; (6) the hearer is ignorant of the falsity of the representation; (7) the hearer relies on the truth of the representation; (8) the hearer has a right to rely on the truth of the representation; and (9) the hearer is injured as a consequent and proximate cause of reliance on the representation.
- Y. GRIEVANCE means a complaint filed pursuant to a collective bargaining agreement.
- Z. HEARING means a hearing that is established as a result of an appeal to the Hearings Officer to resolve employment disputes.
- AA. HEARINGS OFFICER means a person who is not an officer or employee of the County and is designated by the Board of County Commissioners to preside at hearings regarding employee appeals.
- BB. HIGHER SALARY GRADE means a minimum of 4.0% difference when comparing the maximum hourly rates of pay of the salary grades.
- CC. JOB SHARE means a situation in which two people share duties and responsibilities of one full-time position.
- DD. LAYOFF means a separation from the County service due to a shortage of funds or materials, elimination of position, material change in duties, changes in an organizational unit, inability to perform assigned duties due to a medical condition, or for any other reasons not reflecting discredit on an employee and outside of the employee's control.
- EE. LIMITED TERM APPOINTMENT means an appointment to a position which has been budgeted and allocated for a limited duration not to exceed two (2) years but which is in excess of the time requirements for temporary positions.
- FF. LOWER SALARY GRADE means a minimum of 4.0% difference when comparing the maximum hourly rates of pay of the salary grades.
- GG. NONREPRESENTED EMPLOYEE means an employee whose position is not included in one of the recognized County collective bargaining units.
- HH. OPEN REGISTER means an eligibility register consisting of all persons who have successfully completed an open competitive selection process. An open register may be a ranked open register or an unranked open register.
- II. PERSONNEL ACTION means any action taken with reference to appointment, compensation, promotion, transfer, layoff, dismissal or any other action affecting an employee's status.
- JJ. PERSONNEL FILE means the official record of each employee in the County service as established and maintained by the Department of Employee Services.
- KK. POSITION ALLOCATION means the number of positions budgeted in a classification within each department.
- LL. POSITION CONTROL means the process for obtaining budgetary approval
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- for the allocation and filling of a position.
- MM. POSITION REQUISITION means a Department of Employee Services form used to request the budgeting or filling of a position.
- NN. PROBATION means a working test period during which a classified employee is required to demonstrate fitness by actual performance of the duties of the position to which the employee is appointed.
- OO. PROMOTION means the appointment of an employee to a position in a classification that has a higher salary grade.
- PP. PROMOTIONAL/INTERNAL REGISTER means an eligible register consisting only of County employees who have regular status with the County or who have completed six (6) months of continuous service in a classified position and who have successfully completed an internal selection process.
- QQ. PROTECTED CLASS means members of groups of persons afforded protection under State and Federal law.
- RR. PROVISIONAL means an appointment of a person not on an eligible register to a classified position, for a limited duration of time not to exceed three (3) months.
- SS. RATERERS means representatives of departments, the public, interested organizations or other public jurisdictions who have been designated to administer and score selection procedures.
- TT. RECLASSIFICATION means a change in allocation of an individual position by raising it to a higher classification, reducing it to a lower classification or moving it to another classification at the same level on the basis of significant changes in the kind, difficulty or responsibility of the work performed in such a position.
- UU. RED CIRCLE means a process authorized by the Board of County Commissioners and used to continue the same salary rate as an employee received prior to a downgrading of the position or prior to the reduction of the salary grade for the classification.
- VV. REFERRAL OF ELIGIBLES means the process by which eligible applicants are referred by the Department of Employee Services to the appointing authority for selection.
- WW. REGULAR EMPLOYEE means a classified employee who has been appointed to an allocated position and who has successfully completed a probationary period for the position.
- XX. REGULAR STATUS means the status a classified employee acquires after successful completion of a probationary period for the particular allocated position to which the employee was appointed.
- YY. RULES OF PRIVILEGE means the definition found in ORS 40.225 - 40.295 shall apply.
- ZZ. SALARY GRADE means the number assigned by the County to a particular employee group and pay range in the County compensation plan. A salary grade will have a maximum and minimum pay rate, and may or may not have specific pay steps between the maximum and minimum pay rates, depending on the employee group to which the salary grade pertains.
- AAA. SELECTION PROCEDURE means a reasonable and impartial method of systematically and fairly evaluating an applicant's fitness for performing the
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requirements of a position.

- BBB. SENIORITY means the definition found in the applicable collective bargaining contract will apply. If no such definition exists, then seniority will be defined as length of continuous years of service with the County.
- CCC. TEMPORARY POSITION means an unallocated position. Temporary positions are subject to an annual limit on hours worked as provided in Section 2.05.040.5.
- DDD. TRANSFER means the movement of an employee to a different position in the same classification.
- EEE. UNALLOCATED POSITION means a position which is not specifically identified in the budget. Unallocated positions are funded by a budget entry for “temporary workers” or similar entry. Unallocated positions are subject to an annual limit on hours worked as provided in Section 2.05.040.5.
- FFF. UNCLASSIFIED SERVICE means those County positions which are exempt under 2.05.040 3B.
- GGG. UNDERFILL means an appointment to a position from a lower level eligibility register when no current eligibility register exists for the position.
- HHH. UNRANKED OPEN REGISTER means a register that is created when there are ten (10) or fewer applicants qualified for an open register for a single recruitment, and there are no names on the layoff or promotional/internal register for the position.
- III. UPGRADING means a reclassification of a position in which the newly assigned classification has a higher salary grade.
- JJJ. VOLUNTARY DEMOTION means a demotion approved by the County and requested by an employee in order to retain employment when layoff is imminent or for other reasons where the action is still entirely voluntary on the part of the employee.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 10-2004, 11/18/04; Amended by Ord. 07-2005, 11/3/05; Amended by Ord. 05-2007, 6/7/07; Amended by Ord. 05-2009, 10/29/09]

## **2.05.040 Purpose And Application Of This Chapter**

### **2.05.040.1 Purpose Of The Personnel Chapter**

It is the purpose of this chapter to establish a system of uniform and appropriate personnel policies and procedures which will provide County government with a productive, efficient, stable and representative work force by incorporating the following principles:

- A. Recruiting, selecting and advancing employees on the basis of their relative ability, education, training, knowledge and skills relevant to the work to be performed and providing progressive employment programs which encourage and support employee development.
  - B. Establishing and maintaining a uniform plan of classification and compensation based upon the relative duties and responsibilities of positions in the County service.
  - C. Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate
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- performance cannot be corrected.
- D. Assuring fair treatment of applicants and employees in all aspects of personnel administration without discrimination based on race, color, sex, age, religion, national origin, political affiliation, marital status, family relationships or disability and with proper regard for their privacy and constitutional rights as citizens.
  - E. Establishing ethical standards of conduct required of employees which will promote the proper operation of County government and the faith and confidence of citizens in their government.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 07-2005, 11/3/05]

### **2.05.040.2 Scope Of The Personnel Chapter**

This chapter shall govern and affect personnel administration for all employees of Clackamas County, unless otherwise specified. This Personnel Chapter is not intended to supersede provisions of collective bargaining agreements to which Clackamas County is a party. The Personnel Chapter shall also not supersede any local, state, or Federal statutes, rules and regulations, which take precedence in the government of employment at the County.

It is the intent of this chapter that it be interpreted broadly as a fair and reasonable approach to specific problems and situations; that it be considered as a total rather than each phrase being interpreted in isolation and out of context; and that the general principles stated herein will serve as a basis for the personnel policy for Clackamas County. [Codified by Ord. 05-2000, 7/13/00]

### **2.05.040.3 Application Of Personnel Chapter**

All positions within the County government shall be divided into the classified or unclassified service.

- A. Classified Services: The classified service shall include all positions that are not included in the unclassified service. Positions in the classified service are subject to all of the provisions in this Personnel Chapter.
  - B. Unclassified Service: The unclassified service shall include the following offices and positions:
    - 1. Any officer, chosen by popular election or appointed to fill a vacancy caused by death, resignation or removal of any officer chosen by election.
    - 2. Any special Deputy Sheriff or peace officer appointed to act without compensation from the County.
    - 3. Any Deputy District Attorney, the District Attorney Office Manager, the District Attorney Victim Assistance Manager, and the District Attorney Senior Administrative Services Manager.
    - 4. Any member of a board or commission whose principle vocation is other than as a County employee.
    - 5. Persons employed as on-site property managers residing in County-owned or County-provided facilities.
    - 6. Persons employed in unallocated positions (also known as temporary positions).
    - 7. Any part-time employee working less than half time.
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8. Persons employed under a limited term appointment status.
  9. The County Administrator, under employment contract with the Board of County Commissioners.
  10. Department directors, under employment contract with the County Administrator.
  11. Persons holding positions whose positions are designated by the County Administrator as appropriate for unclassified status, who hold positions under employment contract with the County Administrator.
  12. Persons employed in the Sheriff's Office as a Captain or Undersheriff.
  13. The County Counsel, under employment contract with the Board of County Commissioners.
  14. Employees of the Office of County Counsel, under employment contracts with the County Counsel.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 13-2003, 7/13/03;  
Amended by Ord. 07-2005, 11/3/05; Amended by Ord. 04-2007, 4/26/07;  
Amended by Ord. 01-2009, 2/5/09; Amended by Ord. 05-2009, 10/29/09]

#### **2.05.040.4 Special Conditions - Unclassified Service**

- A. Employment in the unclassified service is not subject to the terms of this Chapter, except for the following:
1. Unclassified employees designated in 2.05.040.3 B3, B5, B6, B7, B8, B9, B10, B11, B12, B13, and B14 are subject to :
 

Ethical Standards	(Code § 2.05.170),
Employee Responsibilities	(Code § 2.05.180),
Equal Employment Opportunity	(Code § 2.05.240),
Harassment	(Code § 2.05.250),
Employment Related Physical Assessments	(Code §2.05.100.4)
Personnel Records	(Code §2.05.260)
  2. Unclassified employees designated in 2.05.040.3 B3, B8, B9, B10, B11, B12, B13, and B14 are subject to:
 

Classification	(Code § 2.05.050)
Compensation Plan	(Code § 2.05.060)
Status Changes	(Code § 2.05.140)
Leave of Absence	(Code § 2.05.150)
Holidays, Vacation, and Sick Leave	(Code § 2.05.160)
  3. Unclassified employees are not subject to the following Employment Policies and Practices (EPP's) established by the Department of Employee Services:
    - EPP 16 - Transfer Policy;
    - EPP 19 - Classification/Compensation Review Panel;
    - EPP 36 - Disciplinary Procedures;
    - EPP 37 - Layoff Procedures.

Other EPP's may or may not apply to an Unclassified employee depending on type of position and the terms of the EPP. Application will be governed by the terms of the EPP.
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- B. Before filling a vacancy in any position in the unclassified service, the appointing authority, in consultation with the Department of Employee Services, and with the approval of the Board of County Commissioners, shall establish the qualifications for the position. Such qualifications shall be filed with, and enforced by, the Department of Employee Services.
- C. The Department of Employee Services, with the approval of the Board of County Commissioners, may prescribe regulations governing employment and compensation schedules for unclassified positions.
- D. Persons qualified to be employed in a sworn law enforcement position may be employed by the Sheriff as a Captain or Undersheriff. Employment as a Captain or Undersheriff is held at the will and pleasure of the Sheriff. A person who was employed in a classified position in the Sheriff's Office immediately prior to employment as a Captain or Undersheriff, and who is removed by the Sheriff from a position as a Captain or Undersheriff for reasons unrelated to misconduct, may resume employment in the classified position held prior to employment as a Captain or Undersheriff. A person who resumes a classified position as provided in this paragraph shall receive benefits and pay corresponding to the classified position, at the maximum pay rate within the range for classification. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 07-2005, 11/3/05; Amended by Ord. 04-2007, 4/26/07; Amended by Ord. 01-2009, 2/5/09; Amended by Ord. 05-2009, 10/29/09]

#### **2.05.040.5 Annual Hours-Worked Limit for Unallocated Positions**

Employees working in unallocated positions (also known as temporary positions) are limited to working 1560 hours annually (in divisions using 40 hours/week schedules), or 1462.5 hours annually (in divisions using 37 ½ hours/week schedules). The annual work-hour limit is applied for the 12 month period starting from the employee's first day of work. When the employee has reached the annual hour limit, they will be dismissed from employment. Unallocated employees who have been dismissed because they have reached the annual hours limit cannot be rehired for an unallocated position until the employee's next 12 month cycle begins. Unallocated employees dismissed and then rehired will continue to retain their 12 month cycle based on the original date of their first day of work. Work hours include regular hours and overtime hours worked. [Adopted by Ord. 05-2009, 10/29/09]

#### **2.05.050 Classification Of Positions**

##### **2.05.050.1 Classification Plan**

The Department of Employee Services shall prepare and maintain a classification plan based on an analysis of organization of departments and the duties and responsibilities of each position in the County service. A classification is a group of positions sufficiently similar in duties, authority, and responsibility to permit grouping under a common title and which would call for similar qualifications and the same schedule of pay. Positions within the same occupational family are grouped together according to organizational structure and the responsibility and difficulty of tasks assigned to the positions.

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The classification title shall be the official title of every position allocated to the classification for the purpose of personnel actions and shall be used on all payrolls, budget estimates and official records and reports relating to the position. Any other working title desired and authorized to be used by the appointing authority may be used as a designation of any position for the purposes of internal administration or in contacts with the public. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2009, 10/29/09]

#### **2.05.050.2 Classification Specifications**

Classification specifications shall be written and maintained for each classification in the County service. The specifications shall include an appropriate title; identify the general characteristics of the kind and level of work, description of typical duties, responsibilities, skills and knowledge required; other qualifications, which may include requirements of training and experience; EEO category designation; and other pertinent information.

The definitions in classification specifications are descriptive and not restrictive. They are intended to outline the general duties and are not intended to prescribe the specific duties of a given position. Nothing in the classification specification is to be interpreted as limiting the power of an appointing authority to modify or alter the detailed tasks involved in the duties of any position, as long as they remain within the general definition of the classification. The Department of Employee Services may modify qualification requirements or task statements for a given job announcement to include substitute equivalent requirements for selective recruitments, or to more clearly identify necessary qualifications. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 07-2005, 11/3/05; Amended by Ord. 05-2009, 10/29/09]

#### **2.05.050.3 Classification Review**

The Department of Employee Services shall review positions in the County service to ensure their appropriate classification.

The Department of Employee Services shall consult with department or major division directors prior to the recommendation of any classification changes.

Classification reviews may include but are not limited to: reviews of new positions, reviews resulting from organization changes, reviews directed by the Board of County Commissioners or as initiated by the Director of Employee Services, and approved reviews initiated by employee requests. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 07-2005, 11/3/05; Amended by Ord. 05-2009, 10/29/09]

#### **2.05.050.4 Classification Upgrading**

Classification upgrading occurs when a position is assigned to a different or new classification that carries a higher salary grade. "Higher salary grade" for these purposes means a minimum of 4.0% difference when comparing the maximum hourly rates of pay of the salary grades. Whenever a position is upgraded, the recruitment and selection process will be waived and the incumbent moved to the upgraded position's classification

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if: 1) the upgrading has resulted from an incremental change in duties; 2) the incumbent has been in the position performing the higher level duties and responsibilities for a minimum of six (6) months; and 3) the appointing authority and the Department of Employee Services agree that the incumbent possesses the minimum qualifications of the higher level position.

If the position held by an employee with regular status is upgraded, and the employee does not possess the minimum qualifications of the higher classification, the employee shall remain in the original classification if a vacant position is available. If no vacant position is available, the employee may be placed on the layoff register, in order of seniority, for referral to the original classification. The salary of an employee who retains regular status in an upgraded position is determined by sections governing compensation for reclassification. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2009, 10/29/09]

#### **2.05.050.5 Classification Downgrading**

Classification downgrading occurs when a position is assigned to a different or new classification that carries a lower salary grade. "Lower salary grade" for these purposes means a minimum of 4.0% difference when comparing the maximum hourly rates of pay of the salary grades. An employee whose position has been downgraded shall be placed in the position without competing for the position. An employee whose position has been downgraded shall be placed on the layoff register for their former classification or any equivalent classification for a period of two (2) years from the date of downgrading. Placement on the layoff register will allow referral and consideration for other positions within the same or equivalent classifications as the position held prior to classification downgrading. The order in which names will be placed on the layoff register shall be based upon seniority. An "equivalent classification" is defined as one requiring both the same kind of knowledge and the same degree of skills. Demonstration of the employee's skills and knowledge in appropriate selection procedures may be required by the Department of Employee Services or appointing authority prior to being placed in another position in the former or equivalent classification.

A downward reclassified employee will have no changes made to salary increase eligibility date or to an existing probationary period. At the request of the Department Director, the Board of County Commissioners may authorize continuation of the same salary rate as an employee received prior to a downgrading of the position (a "red circle"). The employee receiving a red circle pay rate shall receive no future salary increases until the salary grade of the position exceeds the "red circle" rate. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2009, 10/29/09]

#### **2.05.050.6 Classification Review Of New Positions**

When a new, regular position is approved by the Board of County Commissioners, a position requisition and position classification questionnaire shall be submitted to the Department of Employee Services. The Department of Employee Services shall review the proposed duties and responsibilities of any new position added to the Classified Service and determine the appropriate classification and compensation. At the request of the Board of County Commissioners, the Department of Employee Services shall also

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review position requisitions with regard to the need for the position. A new position shall not be filled until the Board of County Commissioners approves the classification assignment, position requisition, and budgetary allocation for the new position. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2009, 10/29/09]

#### **2.05.050.7 Classification Review Resulting From A Reorganization Of A Department Or Unit**

Whenever a department or a unit is reorganized, the Department of Employee Services and the appointing authority shall review the potential impact of the reorganization to the employees' classification and compensation in order to determine if approval is required by the County Administrator. In any reorganization, regular employees shall be placed in classifications with equivalent salary grades, if such positions are available and appropriate. Whenever positions are transferred from one appointing authority to another without significant change in duties, employees with regular status shall retain rights to such positions.

A position may be upgraded as a result of a department or division reorganization. When this occurs, the Department of Employee Services in consultation with the appointing authority, shall determine whether a reclassification or a selection procedure is appropriate for filling the position. In determining if the recruitment shall be promotional only or open-competitive the following shall be considered: analysis of job duties, availability of internal applicants and occupational standards.

Employees who successfully compete in a recruitment and selection process and are appointed to a higher level classification shall be subject to the policies governing compensation and probationary periods for promotion. Employees who are unsuccessful in completing the required probationary period shall be demoted to the previously held classification if positions are open and available. If no such positions are available, the employees may be removed from the upgraded position and placed on the layoff register in order of seniority for referral to their previously held classification. If employees return to the classifications held prior to upgrading, their salary grade and step shall return to those that would have applied had the employees not been upgraded. Rules of layoff shall apply when reorganization results in a surplus of employees. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2009, 10/29/09]

#### **2.05.050.8 Other Requests For Classification Review**

An employee may initiate a request for a classification review. Such a request must be made via the appropriate form, typically a position classification questionnaire, provided by the Department of Employee Services. The form shall be submitted through the employee's immediate supervisor and appointing authority, and submitted to the Department of Employee Services. The Director of Employee Services shall consider comments from the employee, the supervisor and the appointing authority and determine if there is a need to conduct a classification review. Within fourteen (14) working days of receipt of a completed document, the Department of Employee Services shall notify the employee and appointing authority whether or not a classification review is to be conducted. If a review will be conducted, the Department of Employee Services shall make a status report to the appointing authority and the employee within sixty (60)

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calendar days. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 07-2005, 11/3/05; Amended by Ord. 05-2009, 10/29/09]

#### **2.05.050.9 Notification Of Classification**

Upon completion of any position review or classification review, the Department of Employee Services shall notify the employee and the appointing authority in writing of the final recommendation. Such final notification shall not be made until the Department of Employee Services has consulted with the appointing authority. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 07.2005, 11/3/05; Amended by Ord. 10/29/09]

#### **2.05.050.10 Requests For Review Of Classification Determination**

An employee, appointing authority or recognized bargaining group shall have fourteen (14) calendar days from the date the final recommendation regarding a position review or classification review is mailed to the employee and appointing authority to file any objections of the recommended allocation with the Director of Employee Services as provided in 2.05.230. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 07-2005, 11/3/05]

#### **2.05.050.11 Trainee Classifications**

The Director of Employee Services may designate a classification in an occupational field as a trainee or apprentice classification. A trainee classification shall have an outline of the training criteria which an employee is expected to meet as well as a class specification.

The training criteria shall include additional experience, education, mandated certification and licensing. Training criteria shall also specify the level of knowledge, skills and abilities that must be demonstrated to be advanced to the higher level classification within a specified time frame. Upon successful work performance evaluation, or successful completion of appropriate selection procedures as outlined in **2.05.070**, the incumbent may be promoted to the higher level classification.

Individuals who are unsuccessful in completing a trainee program and who were regular status employees prior to participating in a trainee program shall be returned to their previous positions if the positions are available. If the positions are no longer available, the employees shall be placed on the layoff register for their previously held classifications. Employees who are unsuccessful in completing a trainee program and were not regular status employees immediately prior to participation in the trainee program shall be dismissed. [Codified by Ord. 05-2000, 7/13/00]

#### **2.05.050.12 Promotive Classifications**

The Director of Employee Services may designate a classification, or classification series, as promotive. A classification designated as promotive must have a written training and development program, approved by the Director of Employee Services, which shall establish the training criteria which an employee is expected to meet prior to advancement. The training criteria shall include the knowledge, skills and abilities that an individual is required to demonstrate in order to be eligible for a promotion to the

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higher level position. An employee who successfully completes the training and development program and is deemed qualified through a promotional appraisal may be placed on the promotional/internal eligibility register for the higher level classification. [Codified by Ord. 05-2000, 7/13/00]

#### **2.05.050.13 Unallocated (Temporary) Employment Classifications**

Positions classified as unallocated (also known as temporary positions) shall be evaluated against the duties and responsibilities of regular positions. When a temporary position has the same duties and responsibilities of a regular classification, the temporary position shall be paid within the salary grade established for the regular classification. Temporary positions not falling within a current classification may be paid at temporary rates established by the Department of Employee Services and the department and negotiated with the recognized bargaining group, if applicable. Unallocated employees must compete through the competitive selection process in order to be considered for open, regular positions. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2009, 10/29/09]

### **2.05.060 Compensation Plan**

#### **2.05.060.1 Maintenance Of Compensation Plan**

The Department of Employee Services, under direction of the County Administrator, shall maintain a compensation plan. It is the responsibility of the Department of Employee Services to keep the County Administrator informed of the adequacy of the County's compensation plan. The plan shall include for each classification a minimum and a maximum pay rate and such intermediate rates as are considered necessary or equitable. The salary grades shall reflect the relative responsibilities of the classification, availability of labor, prevailing rates of pay and financial conditions of the County. The County Administrator shall assign the compensation of all classified and unclassified positions except for those positions whose salaries are determined under state laws. In determining the amount of compensation thereof, the County Administrator shall give due consideration to the recommendations of the Department of Employee Services and the appointing authority. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2009, 10/29/09]

#### **2.05.060.2 Administration Of Compensation Plan**

- A. Rates of Pay: Classified employees shall be paid at a rate established within the salary grade for the classification in which they are employed, unless otherwise authorized by the County Administrator.
  - B. Entrance Salary: An employee will be appointed at the entrance rate for each classification. The entrance rate shall be either the first step in a salary grade established by a collective bargaining agreement or for nonrepresented employees it shall be any rate from minimum to midpoint in the established salary grade. If an appointment or reinstatement above the entrance rate ("upper-step") is requested, authorization must be obtained from the County Administrator, through the Department of Employee Services. In determining such requests, the County Administrator shall give consideration to qualifications of the candidate, availability of applicants and the resulting salary relationship with other positions.
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- C. Salary Increases: Salary increases are not automatic. Appointing authorities shall recommend to the County Administrator salary increases only for those employees who have demonstrated high standards of work performance. Work performance should be reviewed periodically to determine whether increases have been earned. (Refer to Performance Evaluation 2.05.120.)
1. Eligibility for Salary Increases: New employees or promoted employees shall be eligible for advancement to the next step of the salary grade for their classification six (6) months from the first of the month following their first day of work in the position. Thereafter, employees are eligible for a salary increase at the conclusion of twelve (12) months of continuous service since their last in-grade salary adjustment other than an exceptional increase. Eligibility for salary increases shall continue until employees reach the last step in their respective salary grade.
  2. Exceptional Increases: An appointing authority may request an exceptional increase for any employee when:
    - a. The employee's performance is outstanding in relation to other employees in the same department, and the employee's outstanding performance is documented according to an approved performance evaluation program; or
    - b. Other factors exist, such as compression of pay rates, which justify an exceptional increase; and;
    - c. Funds for such "special" increases are budgeted; and,
    - d. At least six (6) months have passed since the last "salary" or "step" increase, or last promotion.
  3. Exceptional increases will generally be limited to one step. Exceptional increases will not affect an employee's established salary increase date.

Interim Increases: An employee whose salary increase is denied may be eligible for an increase following an additional six-month period during which successful performance is monitored and documented. If such a salary increase is granted, the employee's new date of eligibility for a salary increase shall be one year from the date of the last salary increase. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2009, 10/29/09]

### **2.05.060.3 Salary Range Adjustments**

- A. General: The compensation plan for County personnel shall provide reasonably competitive grades of pay for each classification. The County Administrator may make adjustments in salary grade(s) as necessary to attract and retain competent personnel and to provide equity between the various classifications. Such salary grade adjustments are to be distinguished from salary increases. Salary grade adjustments are not intended to give recognition to length or quality of service; rather they are based solely on prevailing rates of pay for the various classes of work in the County service.
  - B. Effect of Salary Grade Adjustments: If a salary grade is adjusted, the salary rate of an incumbent employee is not usually adjusted. Circumstances indicating adjustment consideration include an employee's pay rate falling below the minimum of the salary grade and negotiations with recognized bargaining groups. The method for determining individual employee pay rate changes shall be applied consistently to all employees within the affected classification.
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[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2009, 10/29/09]

**2.05.060.4 Request For Review Of Salary Range Recommendations**

An employee, appointing authority or recognized bargaining group shall have fourteen (14) calendar days from the date the salary grade recommendation is mailed by the Department of Employee Services to request a review as provided in 2.05.230. Any review of a salary grade recommendation shall occur prior to the County Administrator's final determination of a salary grade. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2009, 10/29/09]

**2.05.060.5 Salary Increases For part-time Positions**

Eligibility for salary increases for part-time or job share regular status employees shall be provided under 2.05.060.2 (C) of this section. [Codified by Ord. 05-2000, 7/13/00]

**2.05.060.6 Hourly Rates**

Hourly rates of pay shall be used for temporary and part-time regular positions. Rates set by such actions shall be based on the established rates for the classification involved. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2009, 10/29/09]

**2.05.060.7 Overtime**

- A. Overtime Policy: It is the policy of the County to reduce to a minimum the necessity for overtime work. All overtime shall be pre-approved by the employee's supervisor and reported to Payroll.

Nonrepresented full time employees who are exempt from coverage by the federal Fair Labor Standards Act (FLSA) are not paid for overtime and do not accrue compensatory time for work in excess of their regularly scheduled workday or workweek. Employees who work such uncompensated overtime may take time off from work with prior approval from their supervisor, not to exceed one-half day, without deducting such leave from their leave accrual balances. The County Administrator may approve exceptions allowing overtime compensation for certain non-represented employees. Overtime pay may also be authorized by the President of the United States which may qualify for cost reimbursement through the Federal Emergency Management Agency. Part-time regular employees are not covered by this uncompensated overtime policy, and are paid for actual hours worked.

- B. Definition of Overtime: For all employees who are members of a bargaining unit, the conditions governing overtime compensation in the respective collective bargaining agreement shall apply.

Nonrepresented employees who are not exempt from coverage by the FLSA shall be allowed overtime pay or compensatory time for employment in excess of forty (40) hours in any one week.

Nonrepresented employees who are allowed overtime compensation by an

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exception approved by the County Administrator shall be allowed overtime according to the terms of that exception.

- C. Compensation: For those nonrepresented employees who are not exempt from coverage by the Fair Labor Standards Act, the rate of compensation for overtime worked shall be paid at one and one-half times the employee's regular rate of pay. A covered employee may receive cash compensation or compensatory time or a combination of both with prior mutual agreement in writing by the employee and appointing authority.

The payment of cash compensation for overtime or the use of compensatory time is at the discretion of the appointing authority based upon budgetary considerations. It shall be the responsibility of the appointing authority to establish appropriate policy to be implemented throughout the department, which provides equitable treatment of all employees.

- D. Compensatory Time: Unless otherwise specified in the collective bargaining agreements, compensatory time shall be allowed to accumulate to a maximum of 240 hours and must be reduced to no more than eighty (80) hours at the end of each fiscal year. Such reduction may be accomplished through time off or authorized payment by the appointing authority.
- E. Effect of Overtime on Benefits: Time worked as overtime shall not be used to serve out probation, salary increase periods or earn employee benefits, except as required by law. Compensatory time off may be used as part of the established workweek to earn employee benefits and to serve out probation and salary increase periods.
- F. Policy of Compliance with "Salary Basis" Requirements: An exemption from overtime wage provisions of the FLSA is provided for employees employed as bona fide executive, administrative, professional, or computer employees. To qualify for exemption, employees must meet certain tests regarding their job duties and be paid on a fee basis or "salary basis". Deductions from pay may be made for certain reasons without losing the "salary basis" exemption, including (1) for absences from work for one or more full days for personal reasons, (2) for absences from work for one or more full days for sickness or disability, (3) for penalties imposed for violation of safety rules of major significance, (4) for unpaid disciplinary suspensions of one or more full days for violation of workplace conduct rules, (5) for leave under the Family and Medical Leave Act, or (6) for absences of less than one work-day according to a practice established pursuant to principles of public accountability.

It is the County's policy to comply with the "salary basis" requirements of the FLSA. Therefore, the County prohibits any improper deductions from the salaries of exempt employees. If an employee believes that an improper deduction has been made to the employee's salary, he or she should immediately report that information to the Director of Employee Services. Reports of improper

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deductions will be promptly investigated. If it is determined that an improper deduction from an exempt employee has occurred, the employee will be promptly reimbursed for any improper deductions made.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 13-2003, 7/3/03; Amended by Ord. 07-2005, 11/3/05; Amended by Ord. 05-2009, 10/29/09]

## **2.05.070 Selection**

### **2.05.070.1 Purpose Of Selection Process**

The purposes and goals of the selection process are:

- A. To provide a competitive system of filling positions in the County classified service with the best-qualified persons possible, based on job related factors;
- B. To provide qualified persons for County employment and promotions ensuring equal employment opportunity;
- C. To ensure that all selection procedures are valid, impartial and free from personal and political considerations; and
- D. To comply with the Federal Uniform Guidelines on Employee Selection Procedures. [Codified by Ord. 05-2000, 7/13/00]

### **2.05.070.2 Job Announcements**

When establishing eligibility registers, the Department of Employee Services shall post job announcements in the office of the Department of Employee Services, County departments and other public places. The notice may include special requirements of the position and shall include:

- A. The title of the position;
- B. A brief statement of the duties;
- C. The salary grade or rate of pay;
- D. Minimum qualifications or requirements;
- E. Nature of the selection process; and
- F. Closing date for applications.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 07-2005, 11/3/05; Amended by Ord. 05-2009, 10/29/09]

### **2.05.070.3 Selection Procedures**

The Department of Employee Services shall determine appropriate selection procedures in consultation with the department representative. In determining selection procedures, the Department of Employee Services shall consider:

- A. Analysis of job duties;
- B. Availability of applicants;
- C. Special problems of protected classes related to effective competition;
- D. Occupational standards;
- E. Professional selection procedures; and
- F. Supportable job related experience.

Selection methods shall be confined to the measurement of knowledge, skills and abilities necessary to perform the defined duties of the position. Any pertinent factor or trait which affects job performance may be included.

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The Department of Employee Services shall appoint, as needed, special raters to assist in selection procedures. Raters may be representatives of departments, the public, interested organizations, or other public jurisdictions who have been designated to administer and score selection procedures.

All selection procedures shall be subject to continuous analysis for fairness and job relatedness in accordance with appropriate Federal and State regulations and professional standards. An appointing authority may request of the Director of Employee Services that a selection procedure be reviewed for fairness, job relatedness, or other defect. The Director of Employee Services may cancel or modify any part of the selection procedure or materials which he/she determines is not job related, is unfair, is confusing or otherwise is materially defective. The Director of Employee Services may at any stage of the selection procedure set the minimum passing score at a level designed to provide a sufficient number of candidates for further consideration. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2009, 10/29/09]

#### **2.05.070.4 Types of Recruitments and Selection Procedures**

The use of an open and/or promotional/internal recruitment shall be determined by the Director of Employee Services in accordance with the provisions of these rules:

- A. Open: A recruitment in which any interested person may submit an application for employment.
- B. Open Continuous Recruitment: These recruitments will remain open and are not of a limited duration. An individual's name shall be removed from the eligibility register after a designated period of time, normally not less than six (6) months or more than one (1) year. Open continuous recruitments may be used when practical, as determined by the Director of Employee Services based on an assessment of the anticipated number of positions to be filled from the register and/or consideration of current labor market conditions.
- C. Promotional/Internal: Only employees of the County in the classified service may submit an application. A promotional/internal recruitment may be limited to a particular agency, or department, or part thereof. Such limitations shall be used only when justified by the presence of a number of qualified competitive candidates or by the specialized unique nature of work performed. Such limitations require approval by the Director of Employee Services. Promotive classifications established in conformance with 2.05.050.12, may require completion of the training and development criteria and time periods before becoming eligible to submit an application. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 07-2005, 11/3/05]

#### **2.05.070.5 Need For Recruitment**

All vacancies in the Classified Service shall be filled by persons who have been qualified through the recruitment and selection process, except as otherwise provided by these rules. Departments have the responsibility to notify the Department of Employee Services as soon as a vacancy is anticipated and to provide them with a complete description of the duties of the position. Recruitments may be held when deemed appropriate by the Director of Employee Services. A recruitment need not reflect an

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immediately available vacant position. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2009, 10/29/09]

#### **2.05.070.6 Publicity And Recruitment**

The Department of Employee Services shall administer a program of recruitment which will attract qualified persons to County employment including members of protected classes. Recruitment efforts will include contacts with community groups, agencies, councils and individuals for purposes of soliciting applications from all segments of the population. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2009, 10/29/09]

#### **2.05.070.7 Minimum Requirements**

Minimum requirements established for a position shall be determined in accordance with legal requirements, classification specifications, duties of the position, occupational standards, the labor market and relevant past work experience. Such requirements shall be based upon an evaluation of the knowledge, skills and standards required for the position. Applicants may be required to submit additional information about their backgrounds, completion of courses of study or training or evidence of their possession of licenses or certificates. Applicants may be required to qualify in an employment related physical assessment tailored to job requirements. [Codified by Ord. 05-2000, 7/13/00]

#### **2.05.070.8 Disqualification Of Applicants**

All applications shall be reviewed by the Department of Employee Services for eligibility and admission to the selection process. A person shall be disqualified from consideration:

- A. Who is not eligible under the provisions of these rules;
- B. Whose application was received after the closing date and time for accepting applications as specified in the job announcement, unless waived by the Director of Employee Services;
- C. Who does not meet the minimum qualifications as prescribed in the job announcement;
- D. Who does not meet the legal requirements as set forth in Federal, State or County law; or,
- E. Who has knowingly made a false statement in any material fact or has practiced or attempted to practice any deception or fraud in the application or selection process.

Who did not complete the required elements of the employment application or supplemental application materials. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 07-2005, 11/3/05; Amended by Ord. 05-2009, 10/29/09]

#### **2.05.070.9 Modification Or Suspension Of Selection Procedures**

- A. If there are fewer than five (5) eligible competitors in any part of the selection process, subsequent parts may be modified or suspended. In such a case, referral may be made, provided that there is no existing eligible register and all eligible applicants are to be referred and interviewed by the appointing authority.
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- B. If there are ten (10) or fewer applicants qualified for an open register following review by the Department of Employee Services, and there are no names on the layoff or promotional/internal register, an unranked open register will be developed. Except as provided below in this section, all applicants on the unranked open register will be referred and interviewed by the appointing authority.
- C. An unranked open register will not be used if it conflicts with the terms of applicable collective bargaining agreements.
- D. An unranked open register will not be used if, prior to the job announcement open date, a department director specifically requests a ranked open register for that recruitment. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 10-2004, 11/18/04; Amended by Ord. 05-2009, 10/29/09]

#### **2.05.070.10 Consideration Of Qualifications**

The selection procedure(s) may be composed of one or several selection processes, which may be considered independently or jointly. Candidates may be required to be competitive at a prescribed level in the initial screening to advance in the selection process. [Codified by Ord. 05-2000, 7/13/00]

#### **2.05.070.11 Reapplication and Retesting**

Applicants may not reapply or retest for the same position more than once within a six, (6) month period. The Director of Employee Services may waive this restriction when warranted. [Codified by Ord. 05-2000, 7/13/00; amended by Ord. 05-2009, 10/29/09]

#### **2.05.070.12 Written Exams**

Applicants may register objections to any question or answer which they believe unfair or incorrect within three (3) working days of the applicant completing the written test. Such objections shall be made to the Director of Employee Services. Items may be deleted on the basis of item analysis, administrative or clerical errors, and incorrect keying and valid objections of applicants prior to computing scores. Any such deletions shall be recorded together with the reasons for such deletion. The Director of Employee Services may remove such questions or make such alterations in the answer key. Any alterations made to the answer key shall be applied to the scoring of all applicable tests. [Codified by Ord. 05-2000, 7/13/00]

#### **2.05.070.13 Review Of Selection Results**

Applicants may review their results within fourteen (14) calendar days from the date on which the notice of results was mailed. The selection materials of applicants are not open to inspection by the public or by other applicants except as provided by law. [Codified by Ord. 05-2000, 7/13/00]

#### **2.05.070.14 Requests For Review Of Selection Procedures**

Requests for review may be made by any applicant to the Director of Employee Services on any part or process of the selection procedure as identified in **2.05.070.13** above. An applicant has fourteen (14) calendar days from the date selection results were mailed to

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file a Request for Review. The Director of Employee Services shall investigate the circumstances surrounding the request and take appropriate administrative action to resolve any complaints within the time frames set forth in [2.05.220.5](#). [Codified by Ord. 05-2000, 7/13/00]

#### **2.05.070.15 Appeals Of Selection Procedures In The Selection Process**

Written appeals of the Director of Employee Services' decision resulting from a claim of fraud or illegal discrimination in the selection process may be made to the Hearings Officer. Appeals to the Hearings Officer must be made in writing within thirty (30) calendar days from the date the Director of Employee Services mails the determination of the matter to the applicant. (See [2.05.210](#) for Appeals Procedures.) [Codified by Ord. 05-2000, 7/13/00]

#### **2.05.070.16 Waiver Of Selection Process**

The selection process may be suspended and appointment made if transition to probationary/regular employment from a specially funded program is involved and the Director of Employee Services finds that competition is impractical. Such exception shall be requested in writing from the appointing authority stating the reasons for the suspension of the selection procedures. [Codified by Ord. 05-2000, 7/13/00]

#### **2.05.070.17 Veterans Preference**

Qualified veterans shall be granted veterans preference in conformance with Oregon Revised Statutes 408.230. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 07-2005, 11/3/05]

#### **2.05.080 Eligible Registers**

##### **2.05.080.1 Types Of Eligible Registers**

Eligible registers are maintained in accordance with the County's classification of jobs. The types of eligible registers are:

- A. Open: A register which shall consist of persons who have successfully completed an open competitive selection process. The period of eligibility will normally be not less than six (6) months (unless the registers are exhausted) nor more than one (1) year. An open register may be a ranked open register or an unranked open register.
  - B. Promotional/Internal: A register which shall consist of employees who have successfully completed a promotional/internal selection process. Promotional/internal registers shall remain in effect for not less than eighteen (18) months or more than twenty-four (24) months. Promotional/internal registers for non-represented positions shall remain in effect a minimum of six (6) months and may be extended for up to twenty four (24) months upon approval of the Director of Employee Services.
  - C. Layoff: A register which shall consist of previous employees who had attained regular status with the County and were displaced from their position due to layoff or reduction in force, current employees who exercised voluntary demotion in lieu of layoff, or employees who failed to pass the probationary period for a
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higher level position as a result of reclassification or trainee program. The period of eligibility will be two (2) years from the effective date of the action which placed the individual on the layoff register. [Codified by Ord. 05-2000, 7/13/00; Subsection A amended by Ord. 10-2004, 11/18/04; Amended by Ord. 07-2005, 11/3/05]

#### **2.05.080.2 Placement Of Names On Eligible Register**

The name of any person who has qualified for County employment or advancement must be placed on an appropriate eligible register, unless otherwise stated by these rules.

Persons who have completed six (6) months of continuous service in a classified position and are on an open register for a higher classification may be transferred, on request of the applicant, to an existing promotional/internal register for the higher level classification. The period of eligibility shall not be extended by such transfer. [Codified by Ord. 05-2000, 7/13/00]

#### **2.05.080.3 Removal Of Names From Open Eligible Register**

Names shall be removed from any eligible register after appointment, or at the end of the eligibility period. The acceptance of temporary work by persons on eligible registers shall not affect their referral for regular positions. The Director of Employee Services may remove names of persons:

- A. Who have declined three (3) appointments from any one eligible register;
- B. Who are considered, but not appointed after three (3) referrals;
- C. Who fail to respond to the referral notice within seven (7) calendar days from date notifications were mailed;
- D. Who fail to appear for a job interview;
- E. Who have failed to answer an availability inquiry within seven (7) calendar days;
- F. Who have failed to keep the Department of Employee Services informed of their address;
- G. Whose reasons for waiving referral or appointment are not satisfactory as determined by the Director of Employee Services;
- H. Who are determined to be unqualified by the Director of Employee Services based on their previous employment record;
- I. Who fail to meet minimum requirements, employment related physical standards, background/criminal history check or for any valid cause relating to their character and ability to perform satisfactorily on the job; or,
- J. Who have failed to comply with conditions of employment as a County employee.

All persons whose names are removed from an open eligible register for cause shall be so notified in writing and shall have the right of review by the Director of Employee Services. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 07.2005, 11/3/05; Amended by Ord. 05-2009, 10/29/09]

#### **2.05.080.4 Removal And Replacement Of Names From Promotional/Internal Eligible Register**

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A. Names shall be removed from the promotional/internal eligible register upon resignation or termination of the employee from County employment. The Director of Employee Services may also remove names of persons:

1. Who have declined three (3) appointments from any one promotional/internal register;
2. Who are considered, but not appointed after three (3) referrals;
3. Who fail to respond to the referral notice within seven (7) calendar days from date of notification;
4. Who fail to appear for a job interview;
5. Who have failed to answer an availability inquiry within seven (7) calendar days; or,
6. Who have failed to keep the Department of Employee Services informed of their address.

B. Persons who have been referred and fall into one of the following categories shall remain on the promotional/internal eligible register for future referrals, but shall have their name replaced on the current referral list:

1. Whose reasons for waiving referral or appointment are not satisfactory as determined by the Director of Employee Services;
2. Who are determined by the Director of Employee Services to be unqualified based on their previous employment record;
3. Who fail to meet minimum requirements, medical standards, or for any valid cause relating to their character and ability to perform satisfactorily on the job; or,
4. Who have failed to comply with conditions of employment as a County employee. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2009, 10/29/09]

#### **2.05.080.5 Restoration To Eligible Register**

The Director of Employee Services may restore the name of a person to the eligible register. Any restoration shall not extend the period of eligibility. [Codified by Ord. 05-2000, 7/13/00]

#### **2.05.080.6 Extension Of Eligibility**

The Director of Employee Services may extend, renew or reactivate the eligibility of persons qualified for a period not to exceed two (2) years from the first date of eligibility, provided however that eligibility may be extended for a period not to exceed five (5) years for an applicant who is a member of the U.S. Armed Forces, National Guard or Reserves who is deployed for military service, and is released from service under honorable conditions. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2009, 10/29/09]

#### **2.05.080.7 Inactive Status**

Applicants whose names are on the eligible register may request inactive status and their names shall be removed from the active eligible register. Upon notification, such names may be restored to the active eligible register for the remaining period of eligibility. Eligibility shall not be extended by reason of such inactivity. [Codified by Ord. 05-2000, 7/13/00]

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**2.05.090 Referral Of Eligibles****2.05.090.1 Referral Process**

The appointing authority shall request referral by submitting a position requisition which contains information necessary for the proper and prompt filling of positions. Upon receipt of the requisition, the Director of Employee Services shall order referral of persons from the appropriate eligible register in accordance with the provisions of this chapter and position control. The appropriate eligible register shall be determined by the classification of the position and special qualifications required to perform the duties of the position. If Eligibles fail to respond to a contact letter by either phone or mail within seven (7) calendar days of the County's mailing of the notification, they may be considered to have declined the position. [Codified by Ord. 05-2000, 7/13/00]

**2.05.090.2 Referral From Eligible Registers**

A. The order in which eligible registers shall be used for referrals is as follows:

1. Layoffs register;
2. Promotional/internal register;
3. Ranked open register;
4. Unranked open register.

The combined number of names referred from all registers shall not exceed the number of vacancies plus four (4), except as provided in subsection B of this section.

B. Any regular employee who has submitted a written request for transfer or demotion may be referred for all regular openings, in addition to those normally referred.

When tied scores exist between persons referred and those remaining on the eligible list, all persons with tied scores shall be referred.

If eligibles fail to respond within seven (7) calendar days from notification, the appointing authority may request additional names to be referred.

The appointing authority may specify requirements of particular experience, education, skill or ability, when it is deemed that such requirements are necessary for the position. If, after a review of the duties and responsibilities of the position, the Director of Employee Services finds the requirements essential for successful performance, only the names of individuals possessing those qualifications will be referred.

Up to ten (10) names will be referred when an unranked open register is used pursuant to §2.05.070.9.

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The Director of Employee Services will refer additional qualified applicants to be considered for employment if there is a required hiring goal(s) contained in the current County Affirmative Action Plan for the category in which the job vacancy exists, and there are no names on the layoff register or promotional/internal register for the position. In such cases, the Director of Employee Services shall refer enough names (if available) in addition to those referred according to normal register procedures to result in a referral of a total of five (5) applicants from all the protected groups collectively for which required hiring goals for that category exist. Referral of additional qualified applicants will not occur if it would conflict with the terms of applicable collective bargaining agreements. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 10-2004, 11/18/04; Amended by Ord. 07.2005, 11/3/05]

### **2.05.090.3 Referral For Trainee Purposes**

The appointing authority and the Director of Employee Services may consent to use an eligible register for a lower grade classification in order to fill the higher level position with a trainee if the rationale to do so is consistent with the County approved Affirmative Action Plan. Any "trainee appointment" shall be documented by identifying the proposed length of the training period prior to the employee's advancement to the full job level.

Those individuals appointed as trainees under **2.05.090.3** shall receive a copy of said documentation. [Codified by Ord. 05-2000, 7/13/00]

### **2.05.090.4 Insufficient Names**

When the total number of names on the available eligible register is fewer than five, (5), the appointing authority may elect to:

- A. Make a probationary appointment from those referred, or
- B. Accept referral of additional names from the most nearly appropriate eligible register as determined by the Director of Employee Services, or
- C. Request a provisional appointment, pending establishment of a new eligible register, and call for a new recruitment, or
- D. Accept referral of additional names from eligible registers of a lower grade classification in order to underfill the higher level position. [Codified by Ord. 05-2000, 7/13/00]

### **2.05.090.5 Acceptance Of Referral In Lower Classification**

The Director of Employee Services may refer an eligible candidate to a position in a lower or parallel classification. Such a position must have similar duties and responsibilities. A lower classification referral shall not deprive an eligible candidate of referral rights on the eligible register for the higher classification. [Codified by Ord. 05-2000, 7/13/00]

## **2.05.100 Appointments**

### **2.05.100.1 Types Of Appointments**

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Any offer for employment must be made by the appointing authority or authorized representative to a person eligible under these rules. The types of appointments are:

- A. Probationary/Regular: All regular positions in the Classified Service when vacant shall be filled by appointment of an eligible applicant referred from an appropriate eligible register, except as otherwise provided in these rules. No regular appointment shall be complete until the applicant has successfully passed the probationary period.
- B. Unallocated (also known as "Temporary"): Selection procedures for unallocated appointments shall comply with the Federal Uniform Guidelines on Employee Selection Procedures. The appointing authority may make such an appointment with the authorization of the Director of Employee Services and a screening of the applicant's qualifications. However, when it is possible and practical, eligible registers shall be used in the appointment of unallocated employees.

Unallocated employees may be discharged at any time by the hiring manager and shall have no appeal rights within the County except for those involving allegations of illegal discrimination.

Employees working in unallocated positions are limited to working 1560 hours annually (in divisions using 40 hours/week schedules), or 1462.5 hours annually (in divisions using 37 ½ hours/week schedules), as provided in Section 2.05.040.5.

- C. Provisional: Unless otherwise provided by these rules, appointment of a person not on an eligible register to a classified position for a limited duration is provisional. A provisional appointment is eliminated after ninety (90) calendar days or when the Department of Employee Services establishes an appropriate eligibility register, refers eligibles, or an appointment is made for the position, whichever occurs first. Provisional appointments may be renewed or extended by the Director of Employee Services prior to the appointment of a probationary status employee. A provisional appointment may be made under either of the following conditions:
  - 1. There is not an existing eligible register for the classification; or
  - 2. The eligible register contains less than five (5) names.

The appointing authority may make such a provisional appointment with the authorization of the Director of Employee Services and a screening of the applicant's qualifications.

- D. Limited Term: The appointment to a position which has been budgeted and allocated for a limited duration not to exceed two (2) years, but which is in excess of the time requirements for a temporary position, is a limited term appointment.

A limited term employee will not be eligible for placement on a layoff register, nor be eligible to "bump" a regular status employee, nor have any other recourse for re-employment rights, when the duration of the limited term position expires. The appointing authority may make such a limited term appointment with the

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authorization of the Director of Employee Services and establishment of a budgeted limited term position. The applicant must also undergo screening of qualifications by either the Director of Employee Services or the appointing authority. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2009, 10/29/09]

#### **2.05.100.2 Nepotism**

Appointments and promotions to positions in the classified service shall be based on merit as determined by a comparison of job related qualifications. Discrimination based on nepotism for or against applicants or employees is prohibited except that an appointing authority shall not approve the appointment, promotion, or transfer of an eligible candidate or employee to a position in which such employment shall result in an employee directly supervising a member of his/her family. For purposes of this rule, family consists of the employee's spouse or domestic partner and the , children, parents, grandparents, grandchildren, brothers, sisters, nephews, nieces and first cousins of the employee, spouse or domestic partner. For purposes of this rule, "domestic partners" mean persons who are eligible for County employee benefits "domestic partner coverage". If a violation occurs due to marriage, or the creation of a domestic partnership, steps shall be taken as soon as practical to correct the situation through transfer or other means. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 07-2005, 11/3/05]

#### **2.05.100.3 Medical Standards**

Successful completion of employment related physical assessments are valid criteria only for positions in which physical standards are determined to be a bona fide occupational criteria. These physical standards shall be established which do not unlawfully discriminate against job candidates. Federal law mandates that any employment practice that adversely impacts employment opportunities of a protected group is lawful only when the employment practice is a "business necessity", i.e. the practice is necessary for the safe and efficient operation of the business or the employment practice is "job related".

In order to utilize employment-related physicals as an employment criterion, the job related medical standards must first be established for jobs or groups of jobs. The job analysis system must include an on-site observation and measurement of factors critical to the physical performance of the job. Typical ways that this is achieved include direct observation of work performed and structured group interviews soliciting critical performance factors. [Codified by Ord. 05-2000, 7/13/00]

#### **2.05.100.4 Employment Related Physical Assessments**

An employment related physical assessment may be developed which addresses the job related medical standards that have been identified for the position. Employment related physical assessments may include a medical history interview, physical examination and/or a job related standardized performance test. The medical examination shall be conducted by a physician identified by the County for this purpose. The applicant may be required to pay the cost of the medical examination. The department requiring the employment related physical assessment will pay for the process where possible.

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When an employment related physical assessment is used as an employment criterion, a job offer may be made on the condition that the applicant successfully passes a medical examination. An offer of employment must be extended which clearly states the offer is contingent on the results of the examination. The appointing authority shall not act on the outcome of the examination until receipt of the written recommendation from the physician. A copy of the physician's recommendation shall be immediately sent to the Department of Employee Services for review. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 07-2005, 11/3/05; Amended by Ord. 05-2009, 10/29/09]

## **2.05.110 Probationary Period**

### **2.05.110.1 Purpose Of Probationary Period**

The probationary period is a working test period during which classified employees are required to demonstrate fitness by actual performance of the duties of the position to which they are appointed. The probationary period is an integral part of the selection process. It provides the hiring manager with the opportunity to observe the employee's work, to train, and to aid the employee in adjustment to the position, and to reject any employee whose work performance fails to meet required work standards. [Codified by Ord. 05-2000, 7/13/00]

### **2.05.110.2 Duration Of Probationary Period**

Every person who receives an initial appointment to a position in the classified service shall serve a probationary period of twelve (12) calendar months. The probationary period begins on the first day of work in the position. An employee who is promoted and was a regular status employee prior to receiving such promotion shall serve a six (6) month probationary period, provided however that if the promoted employee is required to undertake additional training at the Oregon Department of Public Safety Standards and Training, the promotional probationary period shall be twelve (12) calendar months. An employee's probationary period shall not be extended except when an employee has taken an authorized leave or been placed on leave by the County (paid or unpaid) that exceeds thirty (30) days during the probationary period. When the employee has taken or been placed on such leave, the probationary period will be extended by the amount of leave. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2009, 10/29/09]

### **2.05.110.3 Performance Evaluation During Probationary Period**

Progress reports shall be completed by the appointing authority on all employees serving a probationary period. An evaluation of the employee's work performance and ability to satisfactorily perform the duties of the position shall be made by the end of six (6) months' employment and at least thirty (30) days prior to the completion of the probationary period. An evaluation shall also be conducted within the six (6) month period following a promotion or demotion.

If the work or conduct of a probationary employee is found to be unacceptable to the appointing authority, the appointing authority may dismiss, demote or suspend the probationary employee. Every such action shall be accompanied by written documentation stating the reasons for such action. A probationary employee may request

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a review of such action by the Director of Employee Services. The Director of Employee Services shall conduct a review of such actions and uphold the action of the appointing authority unless the Director of Employee Services finds that the action was taken for arbitrary, capricious, or discriminatory reasons. The decision of the Director of Employee Services is final and not subject to appeal.

Probationary employees serving as a result of appointment from a promotional/internal register, who fail to qualify in the new position for reasons other than misconduct or delinquency, and who were regular employees immediately prior to this promotional appointment, shall be reinstated to their former position, if such position is vacant and available. If their former position is no longer vacant and available then they shall be placed on the layoff register for their former classification for a period of two (2) years. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2009, 10/29/09]

## **2.05.120 Performance Evaluation**

### **2.05.120.1 Purpose Of Evaluation**

It is the policy of the County to periodically review the work of each employee to assure that the employee is meeting the performance standards of that particular position. The review shall include the following: a) an evaluation of the employee's quality and quantity of work, b) a review of exceptional employee accomplishments, c) establishment of a goal for career development and job enrichment, d) a review of the areas which need improvement, and e) setting of performance goals for the employee for the ensuing year. [Codified by Ord. 05-2000, 7/13/00]

### **2.05.120.2 Evaluation System**

The Director of Employee Services in consultation with the appointing authorities shall establish and make effective a system of performance evaluations designed to give a fair review of the work performed and an outline of ways in which performance may be improved. Such evaluations shall be prepared, discussed, and recorded for all employees at least once a year. [Codified by Ord. 05-2000, 7/13/00]

### **2.05.120.3 Evaluation Procedure**

- A. Supervisor Review: At least once each year, supervisors shall meet individually with their employees to review their evaluation of the employee. A copy shall be made available to the employee at the time of the performance review. Preparation of the evaluation shall follow the procedures outlined in the "Supervisor's Guide to Performance Evaluations."
- B. Appointing Authority Review: The appointing authority shall review all performance evaluation forms, and when necessary, meet with the employee and/or supervisor to discuss concerns about the evaluation. Any comments made by the appointing authority shall be included on the form and a copy thereof supplied to the supervisor and employee.

Appointing authorities and supervisors shall make every effort to complete the evaluation during the month prior to the calendar month in which the performance evaluation date

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occurs. If the employee is also eligible for a salary increase, a notice of eligibility for salary increase shall be returned to the Department of Employee Services together with the evaluation form. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2009, 10/29/09]

#### **2.05.120.4 Employee Disagreement With Evaluation**

Employees who disagree with a performance evaluation may submit a written response with reasons for disagreement to be reviewed by their immediate supervisor and appointing authority. The employee's response shall be filed with the employee's performance evaluation in the employee's personnel file. Such response must be filed not later than thirty (30) days following the date the performance evaluation was received. [Codified by Ord. 05-2000, 7/13/00]

#### **2.05.120.5 Use Of Evaluations**

Evaluations of work performance shall be considered for all pertinent personnel actions including promotions, demotions, transfers, layoffs, salary increases, disciplinary actions and satisfactory completion of the probationary period. Performance evaluations shall also be reviewed for training and other personnel management needs. [Codified by Ord. 05-2000, 7/13/00]

#### **2.05.120.6 Records**

Performance evaluations, documents of commendation or discipline, and other related items that may have a bearing on employment status, shall be immediately forwarded to the Department of Employee Services for inclusion in the employee's official personnel file. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2009, 10/29/09]

#### **2.05.120.7 Confidentiality**

The performance evaluation is a confidential document. As a confidential document it shall be available only to the employee, the department official(s) completing or signing the evaluation, County employees required to handle the document as part of their official duties, or as otherwise required by law. [Codified by Ord. 05-2000, 7/13/00]

#### **2.05.130 Training**

##### **2.05.130.1 Statement Of General Policy**

Clackamas County recognizes that it is essential to train employees so that they can render the best possible service as they perform their jobs. To this end, and within priorities and resources, it is the policy of Clackamas County that employees receive the training they need to successfully perform their jobs to standard. Learning is a part of work; therefore, the County shall provide employees with a work environment that encourages and supports learning and growth.

The responsibility for training shall be a shared responsibility between the employees, managers and supervisors, County departments and the Department of Employee Services. Methods for selecting employees for training programs will comply with the County's policy to provide equal employment opportunities. Training required by the

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County will be paid for by the County. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 07-2005, 11/3/05]

#### **2.05.130.2 Orientation Of New Employees**

The County shall provide an orientation to familiarize new employees with County policies, their obligations and rights, and to inform new employees about the general function of County government. [Codified by Ord. 05-2000, 7/13/00]

#### **2.05.130.3 Time Of Training Periods**

Training programs may be conducted either during and/or after regular working hours. Employer required training sessions conducted after regular working hours shall be included in the employee's hours worked for the week and compensated in compliance with County policy, the law and collective bargaining agreements. [Codified by Ord. 05-2000, 7/13/00]

#### **2.05.140 Status Changes**

##### **2.05.140.1 Promotion**

When an employee is promoted to a classification with a greater salary grade, the employee shall receive the rate of pay within the new grade that most closely approximates a five (5) percent increase, effective on the date of promotion. When an employee is promoted to position that is nonrepresented, the appointing authority will have greater latitude as to the new pay rate. The appointing authority may grant a pay rate higher than 5% but limited to the midpoint of the salary grade. Upper step appointment rules shall apply if the appointing authority requests a rate above midpoint. Rules governing probationary periods and salary increases shall apply to the new position. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 07-2005, 11/3/05]

##### **2.05.140.2 Demotion**

An employee with regular status may be demoted only upon the written order of the appointing authority and the concurrence of the Director of Employee Services. An employee demoted for disciplinary reasons will receive the rate of pay in the lower salary grade specified as a part of the disciplinary action. At the time of demotion, no demoted employee shall receive an increase in pay. The employee's anniversary date for salary increases will be the effective date of demotion. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 07-2005, 11/3/05]

##### **2.05.140.3 Voluntary Demotion**

An employee may be demoted within a department upon an employee request and with approval from the appointing authority. Employees may request a voluntary demotion to a lower classification in the same classification series or to a classification previously held by submitting a written request to the Department of Employee Services. Employees may be placed on a transfer list for such lower level positions and be referred in addition to those included on the referral list. Employees may be referred from the transfer list for a period of one year from placement on the list or when they request removal of their name, whichever occurs first. A voluntary demotion shall only be

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granted to a vacant position and shall not displace any employee currently occupying a position.

When employees elect to voluntarily demote for reasons other than to avoid layoff, and have had successful work performance in the higher classification, their name may be placed at the top of the promotional eligibility register in order of seniority for that higher classification. The employee's name will remain on the register for a period of twelve (12) months from the date of demotion, or until appointment from that register, whichever occurs first. (For voluntary demotions in lieu of layoff see 2.05.200.5.)

If employees are demoted for reasons which do not reflect discredit on their employment record, the employee's salary rate may remain the same if it is within the salary grade of the lower classification. If the employee's salary exceeds the grade of the lower classification, the employee's salary will be the rate that causes the least reduction in salary. The demoted employee's appointing authority may request red circling the employee's salary subject to review by the Director of Employee Services and the approval of the Board of County Commissioners. The employee's anniversary date for salary increases shall be the effective date of demotion. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 07-2005, 11/3/05; Amended by Ord. 05-2009, 10/29/09]

#### **2.05.140.4 Transfer**

The transfer of an employee to a different position in the same classification may occur either within the same department (intradepartmental) or to another department under a different appointing authority (interdepartmental).

- A. Intradepartmental Transfer: An intradepartmental transfer may be either voluntary or involuntary. An appointing authority may transfer employees within their department without the employees' consent, but must give the employees ten (10) working days notice of this action. The employee may request that the Department of Employee Services investigate the transfer as provided in 2.05.220, if the employee believes the transfer was carried out improperly.
- B. Interdepartmental Transfer: Interdepartmental transfers require the written approval of the appointing authorities and the Department of Employee Services. Employees wishing to voluntarily transfer either within their department or to another department must request in writing to the Department of Employee Services to be placed on a transfer list. Employees may be placed on a transfer list for a classification in which they are an incumbent, for a lower level position in the same classification series or a lower level classification previously held. A move to a position in a classification that carries a lower salary grade in the same series is a voluntary demotion and is subject to the provisions governing voluntary demotions. Employees will be removed from the transfer list one year after they have requested placement, when they request removal of their name from the list, or after rejecting three (3) job offers, whichever occurs first. The Department of Employee Services will review the qualifications of the employee prior to transfer approval.

Normally, when an employee is transferred the rate of pay remains the same. The appointing authority has the discretion to pay another step in the salary grade with

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the approval of the Director of Employee Services.

- C. A transferred employee retains all benefits and privileges earned as of the date of transfer. Compensatory time may be transferred with the employee, paid by the appointing authority prior to transfer, or used prior to transfer, as agreed upon by the two appointing authorities. The anniversary date for salary increases may be adjusted to six (6) months from the date of transfer for interdepartmental transfer. The transferred employee may be required to serve a new probationary period. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 07-2005, 11/3/05; Amended by Ord. 05-2009, 10/29/09]

#### **2.05.140.5 Reclassification**

When a position is reclassified to a classification with a higher salary grade under the provisions of classification upgrading, the incumbent shall be advanced to the first step in the new grade or to the rate of pay that most closely approximates a five (5) percent increase from the employee's regular rate of pay, whichever is higher. The salary adjustment will take place on the effective date of reclassification. The employee's salary increase date will be adjusted to the first of the month following twelve (12) full months from the date of a classification upgrading.

When a position is reclassified downward, the incumbent's salary may remain the same if it is within the new salary grade. The employee's salary increase date will not be affected as a result of reclassification downward. If the position is downgraded to a classification that has a pay grade lower than the employees' current rate of pay, the salary rate may be red circled. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 07-2005, 11/3/05]

#### **2.05.140.6 Temporary Out-Of-Class**

Employees may be temporarily assigned higher or lower compensated duties without a change in pay, where periodic or regular variations in assignments occur because of seasonal needs or because of the nature of the duties or the work schedule. Such variations shall be considered as incidental to the position.

Unless otherwise specified in the collective bargaining agreement, an employee directed to continuously perform duties of a higher level classification shall be entitled to compensation at the higher level for the time worked in excess of thirty (30) consecutive days, providing such assignment clearly encompasses the full scope of duties and responsibilities normally associated with the higher level classification as confirmed and pre-approved by the appointing authority. Requests for such additional compensation shall be made by the appointing authority to the Department of Employee Services. Temporary out-of-classification pay is awarded as 5% of base pay or to the minimum rate of the higher level classification salary grade, whichever is greater.

The Director of Employee Services has the authority to approve temporary out-of-classification pay for extenuating circumstances where an appropriate classification at a higher salary grade does not exist. Such circumstances may include when a classification

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at a higher salary grade is in the development or approval stages, or when an employee is performing additional duties for a specific duration of time such as during a reorganization, etc. Approval of temporary out-of-classification pay shall not be retroactive unless approved by the Board of County Commissioners. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 07-2005, 11/3/05; Amended by Ord. 05-2009, 10/29/09]

#### **2.05.140.7 Resignation**

A regular employee wishing to resign is requested to give at least two (2) weeks written notice to the appointing authority. The written resignation shall be immediately forwarded to the Department of Employee Services. With the approval of the appointing authority an employee may rescind the resignation up to the effective date provided in the employee's written notice. At least two (2) weeks written notice of resignation is required for the employee to request reinstatement rights. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2009, 10/29/09]

#### **2.05.140.8 Reinstatement Procedures**

Employees who have attained regular status may request reinstatement to a position in their former classification and department within six (6) months of their effective date of resignation if they resigned with at least two (2) weeks notice, and the request is approved by the appointing authority. A former employee may be considered for vacancies for a period not to exceed six (6) months from date of resignation.

A former employee granted reinstatement shall be paid at the same step in the salary grade that was being paid at the time of resignation. Employees who are reinstated within ninety (90) days of the effective date of resignation shall regain all previously accrued seniority, time toward salary increases, longevity, vacation and sick leave accrual. Employees reinstated after ninety (90) days shall not regain previous service time toward seniority, salary increases, longevity, vacation and sick leave accrual. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 07-2005, 11/3/05]

#### **2.05.150 Leave Of Absence**

##### **2.05.150.1 General Procedure For Leaves Of Absence**

Consistent with the needs of the County, leaves of absence with or without pay for a limited period not to exceed ninety (90) days, or that which is stated in the applicable collective bargaining agreement, may be requested for any reasonable purpose. Leaves of absence shall be documented and processed in accordance with County administrative procedures and shall be subject to approval by the appointing authority. Leaves of absence in excess of ninety (90) days must be approved by the Board of County Commissioners.

Unless otherwise specified in the applicable collective bargaining agreement, seniority will continue to accrue during all approved leaves of absences whether with or without pay. Credit toward longevity, salary increases, sick leave, and vacation will accrue only if an employee is in paid status for at least eleven (11) days in any month.

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An employee who fails to return to work the first work day after the expiration of a leave of absence, shall be deemed to have resigned, unless the employee, prior to the expiration of the leave of absence, has made application for and has been granted an extension of the leave of absence. [Codified by Ord. 05-2000, 7/13/00]

### **2.05.150.2 Types Of Leave**

#### **A. Military Leave:**

In accordance with State and Federal law, employees are entitled to a cumulative five (5) year length of time in which they may be absent for military duty. Employees taking leave, either voluntarily or involuntarily, shall have a right to be restored to their former position or an equivalent position. The leave of absence shall be without pay and will not count towards monthly vacation, sick leave or longevity payments. However, seniority and employment credit towards vacation, salary increases, and longevity do accrue while on military leave. Employees returning from military leave shall be re-employed at the salary and service accrual level they would have achieved had they not left on military leave. To be eligible for such reinstatement the employee must be discharged under honorable conditions from the military and register an intent to return to County employment within timelines specified by State and Federal law.

Any employee, who has served in the County service for six (6) months preceding notification of duty and is a member of the National Guard, National Guard Reserve or any reserve component of the Armed Forces of the United States or of the United States Public Health Service, is entitled to an annual paid leave of absence for training for a period not exceeding fifteen (15) calendar days in any one training year. In the case of an employee on a five, (5) day workweek, this is equivalent to eleven (11) paid workdays in each training year. An employee on a four, (4) day workweek is entitled to a leave of nine (9) paid workdays per training year. The training year is defined as the Federal fiscal year commencing on October 1st and ending on September 30. Days for annual military reserve duty may be taken either consecutively or intermittently.

An employee taking military leave may be required to show proof of military service to have time credited toward leave of absence for military duty. If the employee does not show proof of military service either in advance or upon return to work, the employee may choose to utilize vacation or leave without pay during time away from work.

#### **B. Family and Medical Leave:**

In accordance with Federal and State law, an employee may be entitled to take up to 12 weeks family and medical leave within any 12 month period of time. Family and medical leave shall be for the purpose of caring for serious medical conditions of the employee or an immediate family member of the employee, pregnancy-related disability, or for parental leave following the birth or adoption of a child. Also, Oregon law allows additional family and medical leave to care for a child with a non-serious health condition, and may allow a woman to take up

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to 12 weeks each for pregnancy-related disability, parental leave and sick child leave.

For purposes of granting family and medical leave a family member shall be defined as: a spouse, domestic partner, , or child or parent of the employee, spouse or domestic partner, or someone with whom the employee has an “In Loco Parentis” relationship. A serious health condition is defined as one which requires either inpatient care or continuing treatment by a health care provider.

In situations where the leave is to care for the employee’s own illness including disability related to pregnancy or childbirth, or the illness of a family member, the employee is required to use all accrued sick leave. When all accrued sick leave has been exhausted, an employee may elect to use other paid leave or leave without pay. When an employee chooses to use accrued paid leave, such leave must be used prior to the commencement of unpaid leave.

Requests for family and medical leave must be made in writing at least thirty (30) days prior to the effective date of the leave if the leave is anticipated. In cases of sudden illness or injury, or unexpected birth or placement for adoption, an employee may make an oral request to his/her supervisor as soon as practicable, but must complete a written request form within fifteen (15) days. When the leave is for a serious health condition, the request for leave must include certification from the attending health care provider that the employee or family member qualifies for leave.

A female employee who has taken Family Medical Leave for disability due to pregnancy and childbirth is eligible to begin her parental leave entitlement on the date her health care provider certifies she is no longer disabled. Parental Leave must be taken in a consecutive period of time, unless the employee’s supervisor approves leave to be taken in two or more non-consecutive periods.

Employees who report for work at the expiration of a family and medical leave of absence shall be reinstated to their last held position at the prevailing salary rates, without loss of seniority. If their former position no longer exists, the employee shall be reinstated to an equivalent position. An employee who fails to report for work at the expiration of a family medical leave of absence and does not have any additional leave approved by the appointing authority shall be deemed to have resigned.

C. Bereavement or Funeral Leave:

Paid leave may be granted in each case of bereavement due to the death of a member of the immediate family (see Sick Leave, 2.05.160.3, for definition of immediate family). A request to use bereavement leave for the death of an individual outside of the immediate family is subject to approval by the appointing authority. The purpose of such leave shall be to allow time to attend a funeral and make necessary funeral and household adjustments. Bereavement leave shall not exceed the equivalent of three (3) days, including all travel time.

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This leave will not be counted against accumulated sick or vacation balances.

D. Workers' Compensation Leave:

If an employee is injured on-the-job and is unable to work, supervisors should immediately contact the Risk and Benefits Division and complete the appropriate Workers' Compensation forms. If the employee's Workers' Compensation claim is accepted, the County will place the employee on Worker's Compensation leave with pay with full benefits (unless prohibited by law or provider contact) for up to six (6) months, or as extended by the Board of County Commissioners or designee. Procedures for Workers' Compensation will conform to ORS regulations and County policy.

E. Disability Leave:

If an employee is disabled as result of non-job-related reasons, the employee shall apply for Family and Medical Leave, utilize sick leave and file a disability insurance claim with the Risk and Benefits Division. When an employee has used the twelve (12) week Family and Medical Leave entitlement and has a continuing need for leave, the employee may use available paid leave or request a leave of absence without pay. Leave without pay is subject to the appointing authority's approval. Employees who return to their former positions following a disability leave will have all unused previously accrued sick, vacation, seniority and longevity credit restored.

F. Compulsory Leave:

If, in the opinion of the appointing authority, an employee is incapacitated for work, a medical examination by a physician may be required. If the appointing authority disagrees with the medical report, the appointing authority may require the employee to be examined by a physician designated or approved by the Director of Employee Services. If the medical report does not show the employee to be in a fit condition required to perform the duties of the position, the appointing authority shall have the right to compel such employee to take sufficient leave of absence with or without pay until medically qualified to perform the duties of the position.

G. Jury Duty:

When an employee with regular or probationary status is called for jury duty, or subpoenaed as a witness by proper authority for cases in which the employee is not a party, the employee shall be granted a leave of absence with pay. All jury duty and witness fees other than mileage reimbursement shall be surrendered to Clackamas County. Employees who are excused from jury service or court appearance before the end of their workday shall immediately report their availability for assignment to their supervisor. Employees scheduled to work on shifts other than day shift shall be considered to be on day shift for the duration of jury duty.

H. Administrative Leave:

Employees may be placed on administrative leave, with pay, if the appointing

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authority feels they should be relieved of their duties or removed from the workplace pending a job-related investigation. Administrative leave, while not considered discipline, is commonly used during a discipline-related investigation prior to discipline being administered. No administrative leave shall extend beyond thirty (30) days unless approved by the Director of Employee Services.

I. Special Leave Without Pay:

A special leave without pay for a period not exceeding one (1) year may be granted to an employee who:

1. Desires to engage in a relevant course of study which will enhance the employee's value to perform the duties of the position; or
  2. Is a candidate for a public office and requests a leave of absence for a reasonable period to campaign for the election; or
- Has any reason considered appropriate by the appointing authority and the Director of Employee Services and is approved by the Board of County Commissioners. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 07-2005, 11/3/05]

## **2.05.160 Holidays, Vacation And Sick Leave**

### **2.05.160.1 Holidays**

A. Paid Holidays:

The following days shall be recognized and observed as paid holidays for regular and probationary employees with the County service unless the applicable collective bargaining agreement states otherwise.

New Year's Day (January 1st)

Martin Luther King Jr. Day (Third Monday in January)

President's Day (Third Monday in February)

Memorial Day (Last Monday in May)

Independence Day (July 4th)

Labor Day (First Monday in September)

Veteran's Day (November 11th)

Thanksgiving Day (Fourth Thursday in November)

Christmas Day (December 25th)

\*One (1) Floating Holiday

\*Floating Holiday: Regular full-time employees who have been employed for a minimum of ninety (90) days are entitled to one (1) floating holiday during each calendar year. Such holidays are to be taken during the calendar year in which the holiday is earned and may not be carried forward into the following calendar year. The floating holiday shall be scheduled in the same manner as paid vacation leave.

B. Weekend Holidays:

Whenever a holiday falls on Sunday, the succeeding Monday shall be observed as the holiday. Whenever a holiday falls on Saturday, the preceding Friday shall be

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observed as the holiday.

C. **Holiday Pay:**

Regular full-time employees shall receive one (1) day's pay for each of the holidays listed above on which they perform no work. Regular part-time employees will receive a prorated portion of one day's holiday pay based on the hours worked in the pay period in which the holiday occurs. Job share employees shall share a prorated portion of each holiday pay based on their full-time equivalency of the position which is shared.

Regular employees who are requested to perform work on a scheduled holiday will be compensated at a rate equal to their normal rate of pay for hours worked, in addition to their regular holiday pay, unless otherwise provided in the applicable collective bargaining agreement.

D. **Holiday During Leave:**

If an employee is on an authorized leave with pay when a holiday occurs, the holiday shall be paid and time shall not be charged against sick or vacation leave accumulation. To receive pay for a holiday, the employee must be in a paid status on the last working day immediately preceding the holiday and the next working day immediately following the holiday. Holidays occurring during a leave without pay shall not be compensated. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 07-2005, 11/3/05]

**2.05.160.2 Vacation Leave**

A. **Vacation Accrual for Non-Represented Employees** hired prior to January 1, 2001 who have elected not to participate in the vacation sell-back program shall be as follows:

(Continuous Service)

Less than 5 years	= 12.7 hours/month
5 years, but less than 10 years	= 14.0 hours/month
10 years, but less than 15 years	= 16.0 hours/month
15 years, but less than 20 years	= 18.0 hours/month
After 20 years of service	= 19.3 hours/month

B. **Non-represented employees** hired on or after January 1, 2001, and employees hired prior to that date who elected to enroll in the vacation sellback program when that program was first made available, accrue vacation leave, and may sell back vacation leave, as follows:

1. Vacation leave shall be accrued at the rate of sixteen (16) hours vacation leave per full month of service, regardless of years of service.
2. Such employees who have used at least forty (40) hours of vacation time in a calendar year may elect to sell back 40 hours vacation during that same calendar year. To receive compensation in lieu of time off, the employee must submit a completed "request to sell vacation" form to the payroll office no later than December 31<sup>st</sup> of that calendar year.

- C. The maximum vacation accrual shall be 280 hours. Vacation accrual may be accumulated beyond 280 hours during the calendar year (January 1 through December 31) but will be reduced to 280 hours as of January 1. Vacation accrual exceeding 280 hours on January 1 will not be compensated.
- D. Probationary and regular part-time employees and job share employees shall receive a pro-rated amount of the appropriate vacation accrual schedule based on their FTE percentage. Represented County employees shall accrue vacation according to the terms of the applicable bargaining group contract.
- E. Continuous Service:  
Continuous service, for the purpose of determining eligibility for accelerated vacation accrual rates and longevity pay, shall be service unbroken by separation from County employment. However, time spent by an employee on military leave, on an authorized leave of absence with pay, or on a leave with pay resulting from a job-incurred injury shall be included as continuous service. Time spent on other types of authorized leave without pay will not count as part of continuous service; however, employees returning from such leave, or employees who were laid off, shall be entitled to credit for service prior to the leave. Employees who resign or are discharged from County service for a period of time exceeding ninety (90) days shall not regain previously accrued service years to count towards accelerated vacation rates and longevity pay.
- F. Requesting Vacation Leave:  
Employees shall make a request for vacation leave to their immediate supervisor. The request shall be approved unless it is contrary to the needs of the County. Conflicts in scheduling shall be resolved by the appointing authority usually using seniority in the department as the determining factor. Collective bargaining agreements for vacation scheduling procedures shall take precedence. Vacation hours paid during any work week will always be paid at a straight time rate and those hours will not be considered in computing overtime hours worked in that work week.
- If an employee becomes ill while on vacation, the employee will not be allowed to charge that time to accrued sick leave, unless procedures regarding use of sick leave are initiated.
- Employees who are separating from service may not use vacation time to extend their period of employment for the purpose of gaining additional leave accruals and /or employee benefits.
- G. Transfer of Vacation Leave:  
When an employee is transferred to a position in a new department, vacation leave shall be transferred to the new department.
- H. Payment of Vacation upon Termination, Layoff or Death:
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If the employee is terminated, laid off or dies, the employee or employee's heirs shall receive cash compensation for all granted and accrued vacation leave, at the employee's current rate of pay. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 13-2003, 7/3/03; Amended by Ord. 05-2009, 10/29/09]

### **2.05.160.3 Sick Leave**

#### **A. Use of Sick Leave:**

Employees may use their sick leave when unable to perform their work duties by reason of illness, injury, pregnancy, necessity for medical or dental care, exposure to contagious disease of the employee or to attend to the care of the employee's immediate family. Employees may also use their sick leave under the provisions of parental leave or family medical leave. Immediate family is defined as spouse or domestic partner, and the parents, children, brothers, sisters, grandparents, grandchildren, of the employee, spouse or domestic partner. For exceptional circumstances, in relationships other than those stated above, sick leave may be granted by the appointing authority.

#### **B. Sick Leave Accrual:**

Full-time employees shall accrue sick leave at the rate of eight (8) hours per month commencing with the first full month of employment. Part-time employees and job share employees shall accrue sick leave at a prorated portion of eight (8) hours per month based on their hours worked in each pay period. Earned sick leave may be used as it is accrued. Sick leave hours paid during any work week will always be paid at a straight time rate and those hours will not be considered in computing overtime hours worked in that week.

#### **C. Procedures Governing Sick Leave:**

The appointing authority or immediate supervisor must be notified of an illness or injury on the first day of absence. Failure to do so may result in the denial to use sick leave with pay. The appointing authority may require the employee to furnish a certificate issued by a licensed physician or practitioner documenting proof of illness or injury. Proven abuse of sick leave shall be cause for disciplinary action. Unused sick leave shall not be payable upon layoff or separation of employment from the County, but will be reported to the PERS retirement system. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 07-2005, 11/3/05]

### **2.05.160.4 Extended Sick Leave**

Upon application of an employee, sick leave without pay for up to ninety (90) calendar days may be granted by the appointing authority for the remaining period of a disability after earned sick leave has been exhausted. In the event such unpaid sick leave exceeds ninety (90) days, the extension must be approved by the Board of County Commissioners or designee. The appointing authority shall require the employee to furnish a certificate issued by a licensed physician or practitioner or other satisfactory evidence of illness. (See 2.05.150 G, Disability Leave.) [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 07-2005, 11/3/05; Amended by Ord. 05-2009, 10/29/09]

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**2.05.170 Ethical Standards Governing Employee Conduct**

All employees and public officials shall strive to uphold the County's Code of Ethics, as adopted by the Board of County Commissioners. The Code of Ethics states that employees of Clackamas County shall strive to:

- A. Demonstrate the highest standards of personal integrity, truthfulness, honesty, and fortitude in all public activities, in order to inspire public confidence and trust in Clackamas County;
- B. Serve in such a way that does not realize undue personal or financial gain from the performance of official duties;
- C. Avoid any activity which is in conflict with the conduct of official duties;
- D. Approach the Clackamas County organization and the duties of their position with a positive attitude and constructively support open communication, teamwork, creativity, dedication, and compassion;
- E. Maintain professional excellence, accept the responsibility to keep up-to-date on emerging issues and conduct the public's business with competence, fairness, efficiency, and effectiveness;
- F. Support the values of the County organization and help make these values the norms of the organization. Support and strive to achieve the goals and visions for Clackamas County;
- G. Be knowledgeable and support the code of conduct, quality, ethical, and performance standards of their respective professions;
- H. Refrain from engaging in political activities during working hours if the employee is a non-elected County employee. Elected and non-elected County employees must not solicit participation of non-elected County employees in political activities during working hours;
- I. Be objective in the selection of employees, contractors, goods and services, basing decisions on merit and value to the County;
- J. Eliminate all forms of illegal discrimination, fraud, and mismanagement of public funds; support co-workers if they are in difficulty because of responsible efforts to correct such discrimination, fraud, mismanagement or abuse;
- K. Serve the public with respect, courtesy, concern, and responsiveness, recognizing that service to the public is beyond service to oneself or any special interest group; and
- L. Respect, support, study and when necessary, work to improve regulations, ordinances, laws, and policies which govern work at Clackamas County.  
[Codified by Ord. 05-2000, 7/13/00]

**2.05.180 Employee Responsibilities****2.05.180.1 Purpose**

The orderly and efficient operation of the County government requires that employees accept certain responsibilities. Work rules covering personal standards of conduct and standard operating procedures are necessary to protect the health and safety of all employees, to maintain uninterrupted service, and to protect the County's property.

[Codified by Ord. 05-2000, 7/13/00]

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**2.05.180.2 Work Rules**

The following work rules shall apply to all County employees. These rules are not intended to be all-inclusive. Additionally, County departments may, consistent with the provisions of applicable collective bargaining agreements, establish other rules to ensure the effective operation of the County government, besides:

- A. Employees shall be at their designated work area on time and ready to work; employees shall report to and remain at their work area, at work, until the scheduled quitting time consistent with department policy;
  - B. Where operations are continuous, employees shall not leave their position until replaced by the next shift employee or until relieved by their supervisor;
  - C. Employees shall follow all safety regulations including the wearing of safety articles and the use of protective equipment, when appropriate; employees shall immediately report safety hazards, accidents, or injuries to their supervisor;
  - D. Employees shall be responsible for, and not misuse County property, records or other materials in their care, custody and control;
  - E. Employees shall deal with the public and other employees in a courteous and professional manner;
  - F. Employees shall immediately report to their supervisor any inability to work and the reason therefore;
  - G. Employees shall notify their supervisor whenever there is a change in their personal data affecting their personnel or payroll records;
  - H. Employees shall not restrict, interrupt or interfere with the work of other County employees outside their assigned duties or authority;
  - I. Employees shall report for and remain at work only in a condition which will enable them to perform their regular duties;
  - J. Employees shall perform all work assigned unless performance of such work will constitute a safety hazard which violates established safety standards or law;
  - K. Employees shall not engage in conduct that reflects discredit on the County while on duty or while conducting County business;
  - L. Employees shall not engage in unauthorized political soliciting or political activity while on duty or while conducting County business;
  - M. Employees shall not use their position, or County property, or County-paid work time, for undue personal or financial gain, other than official salary and benefits. Employees shall not use their position, or County property, or County-paid work time, as a means to solicit or conduct personal business;
  - N. Employees shall not use their position to coerce other employees;
  - O. Employees shall not possess or use unauthorized firearms, weapons, illegal drugs, controlled substances other than those lawfully prescribed, or intoxicating beverages while on duty or while on County premises;
  - P. Employees shall not falsify any reports or records; all claims completed by employees shall be true and accurate, to the best of their knowledge;
  - Q. Employees shall not remove County property or the property of other employees without express approval of their supervisor or the owner of such property; and Employees shall not violate any of the laws, statutes, or ordinances of Federal, State or local government while on duty, while on County premises, or while conducting County business. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 07-2005, 11/3/05; Amended by Ord. 05-2009, 10/29/09]
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**2.05.190 Disciplinary Actions****2.05.190.1 Employee Conduct**

All employees, regardless of status or duration of employment, are required to meet and maintain County standards for job performance and behavior. The expected standard of conduct for all employees in the service of the County shall be the public interest as opposed to individual interests. High standards of conduct are deemed essential in order to render the best possible service to the general public and to reflect credit on County service. The tenure of every employee shall be conditioned on good conduct and satisfactory performance of duties. 2.05.190 serves only as a guideline in determining the appropriate action needed in a particular situation and shall not be implied as a contract. [Codified by Ord. 05-2000, 7/13/00]

**2.05.190.2 Discipline Policy**

The Discipline Policy and Procedures included in 2.05.190.2 through 2.05.190.6 shall apply to all regular status employees. Probationary employees are governed by procedures outlined in 2.05.110.

It is the policy of the County that disciplinary measures shall be corrective, progressive, lawful and proportionate to the nature of the offense. Appointing authorities shall take appropriate disciplinary action in dealing with employee misconduct. Disciplinary action shall be for cause as it relates to job performance.

- A. Corrective: The supervisor shall attempt to determine why the employee is deficient and attempt to correct those deficiencies and restore the employee to a productive and positive employment status. Excepting dismissal, disciplinary measures shall be for the purpose of correcting employee conduct.
- B. Progressive: The discipline will usually begin with passive or persuasive discipline (an oral reprimand or warning, etc.) and will increase in severity with subsequent offenses. When circumstances warrant, discipline may begin with active discipline such as: written reprimand, suspensions from work, demotion or discharge from employment with the County.
- C. Lawful: The discipline and the procedure by which it is administered shall not violate the County's contracts with the unions nor violate the employee's civil rights.
- D. Proportionate: Violating County standards of conduct will result in disciplinary action appropriate to the nature of the offense as determined by the appointing authority. The severity of disciplinary action will be determined by considering such things as the impact of the offense on County operations, the extent of damage caused, the circumstances of the offense, past disciplinary actions and the employee's work record. [Codified by Ord. 05-2000, 7/13/00]

**2.05.190.3 Cause For Disciplinary Action**

Any action which the appointing authority deems to reflect discredit upon the County, or is a hindrance to the effective performance of the County functions, shall be considered cause for disciplinary action. Improper action by an employee in an official County capacity which tends to bring the County into discredit, affects the employee's ability to

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perform, or is for personal advantage, shall also be judged cause for disciplinary action. In addition, cause includes but is not limited to the following:

- A. Conviction of a felony, or a misdemeanor which is related to the position held by the employee;
- B. Violation of any of the established work rules set forth in this chapter;
- C. Use of alcoholic beverages or controlled substances which affects the performance in the position held by the employee;
- D. The use of intoxicating beverages or non-prescribed controlled substances while on duty;
- E. Insubordination;
- F. Refusal or failure to perform to job standards;
- G. Inattention to duty, tardiness, carelessness, damage to or negligence in the care and handling of County property;
- H. Improper or unauthorized use of County property or services;
- I. Claim of sick leave under false pretense or misuse of sick leave;
- J. Absence from duty without authorized leave;
- K. Misconduct in the performance of duties as an employee;
- L. Violation of the County safety policy or department safety rules;
- M. Willful giving of false information, or withholding information with intent to deceive, including when making application for County employment;
- N. Violation of the County Affirmative Action Policy or Sexual Harassment Policy;  
or
- O. Violation of any provisions of this chapter or rules adopted by the Board, or any provisions of departmental rules.

Any standard of conduct that is not addressed above may be subject to disciplinary action as deemed appropriate by the appointing authority. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2009, 10/29/09]

#### **2.05.190.4 Kinds Of Disciplinary Action**

- A. Oral Reprimand: This is a warning procedure rather than a punitive action. The oral reprimand should serve to forestall the employee from being in such a position that a more severe form of action must be used.
  - B. Written Reprimand: The written reprimand is also a warning procedure. The written reprimand is used to place an employee on official notice that failure of the employee to take corrective action will result in a more severe form of action. The written reprimand will list the unacceptable behavior, the time it occurred, the rule/procedure violated and an outline of improvement that is needed. The reprimand is to be included in the employee's official personnel file.
  - C. Suspensions: Suspensions are an ordered absence from duty, other than administrative leave, and may be with or without pay, for an established length of time. The period of suspension shall not exceed thirty (30) consecutive calendar days at any one time. No service accruals may be given to an employee during a period of suspension without pay regardless of the length of suspension. No disciplinary suspension without pay shall be given to an employee performing executive, administrative or professional duties as defined by the Federal Fair Labor Standards Act, unless (1) the reason for the suspension is violation by the
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- employee of a safety rule of major significance, or (2) the suspension is for a period of one full work week or a multiple of one work week.
- D. Demotion: Demotion, both in pay and to a lower classification, may be used as a form of discipline when discharge is not warranted or when the appointing authority believes that the employee has the potential for corrective conduct. Such action shall be subject to **2.05.140.2**, and shall not cause the displacement of another employee.
  - E. Dismissal: An appointing authority may dismiss for cause any regular employee under the appointing authority's jurisdiction. In carrying out such actions, the appointing authority shall consult with County Counsel and the Director of Employee Services. [Codified by Ord. 05-2000, 7/13/00]

### **2.05.190.5 Procedures For Taking Disciplinary Action**

When an appointing authority believes there is a cause for disciplinary action, the appointing authority shall make a reasonable effort to administer the discipline in a manner that will not unduly embarrass the employee. If anything other than oral reprimand is administered, the original or a copy of the reprimand shall be forwarded to the Department of Employee Services for inclusion in the employee's personnel file. Unless otherwise stated in the collective bargaining agreement, the following procedures shall be followed when discipline is administered:

- A. Discipline Without Economic Loss to the Employee: When an appointing authority believes there is cause for disciplinary action without economic loss to the employee, the appointing authority shall confront the employee with the reason for the belief that there is cause for such discipline, the investigation made or to be made, and the disciplinary action considered. The employee shall be given a reasonable opportunity to offer facts in explanation or mitigation.
  - B. Discipline With Economic Loss to the Employee: When an appointing authority believes there is cause for disciplinary action with economic loss to the employee, the appointing authority shall so notify the employee in writing. The written notification shall state the reasons for that belief, the investigation made or to be made, and the disciplinary action with economic loss being considered. The employee shall be given a reasonable opportunity to offer facts in explanation or mitigation. If, after the employee has responded or been given a reasonable opportunity to respond and the appointing authority has completed the investigation, the appointing authority believes the disciplinary action with economic loss to the employee is appropriate, the appointing authority shall prepare a letter to the employee outlining the disciplinary action and the reasons for such action. A copy of the disciplinary letter shall be sent to the Department of Employee Services. If the economic loss is suspension without pay, such suspension shall not exceed thirty (30) calendar days.
  - C. Dismissal: When an appointing authority believes that there is cause for dismissal, the appointing authority shall give the employee written notice of proposed dismissal prior to the effective date of dismissal. The written notification shall state the reasons for the belief that there is cause for dismissal. The employee shall be given a reasonable opportunity to offer facts in explanation or mitigation at a pretermination meeting with the appointing authority. The employee shall be entitled to have a representative of his/her choice at the
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pretermination meeting for the purpose of providing counsel and advice to the employee. The employee may be granted additional reasonable time at the appointing authority's discretion to prepare for said meeting. If, after the employee has responded or been given a reasonable opportunity to respond, the appointing authority has completed the investigation and believes that dismissal is appropriate, the appointing authority shall prepare a letter to the employee affirming the dismissal. A copy of that letter shall be sent to the Department of Employee Services. If the appointing authority believes that circumstances require the separation of an employee from his/her work assignments following completion of an investigation but preceding the effective date of dismissal, an appointing authority may suspend the employee with or without pay during the time between the completion of the investigation and the effective date of dismissal. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2009, 10/29/09]

#### **2.05.190.6 Appeal Of Dismissal, Demotion Or Suspension**

An employee with regular status in the classified service who does not have available a grievance procedure pursuant to a collective bargaining agreement may appeal dismissals, or discipline with economic loss to the Hearings Officer appointed under this chapter. [Codified by Ord. 05-2000, 7/13/00]

#### **2.05.200 Layoff And Seniority**

##### **2.05.200.1 Grounds For Layoff**

An appointing authority may lay off an employee because of abolition of position, shortage of funds or work, a material change in duties, inability to perform assigned duties, changes in an organizational unit, or for a reason which does not reflect discredit on the service of the employee. [Codified by Ord. 05-2000, 7/13/00]

##### **2.05.200.2 Layoff Procedures**

Whenever the appointing authority anticipates a need to lay off employees in classified positions, the Director of Employee Services shall be immediately notified. The notification shall include the anticipated number and classifications of employees to be laid off and a plan for conducting an orderly layoff.

Layoffs will be identified by classification within the affected department. Employees holding positions within the affected classifications may be subject to demotion, transfer or layoff in inverse order of seniority.

An employee who may be subject to layoff or demotion in lieu of layoff shall be notified in writing at least ten (10) calendar days prior to such action. The bargaining unit representative, if any, shall be sent a copy of such notice at least ten (10) calendar days prior to the action. The notice shall state the reason for the action and shall further state that the action does not reflect discredit on the employee. An employee notified of proposed layoff will be allowed, at their request, an opportunity for a meeting at which they will be allowed to present information that the employee wants to have considered

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before a final decision is made regarding the proposed layoff of the employee. If such a meeting is held at the employee's request, the employee will be notified after the meeting whether the proposed layoff will proceed. An employee who is subject to layoff and is offered options shall elect an option within three (3) working days of notice of the options. Failure to elect one of the offered options will be deemed a refusal of the options and will result in layoff. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2009, 10/29/09]

### **2.05.200.3 Layoff Order**

Layoff order shall be established within the department on the basis of the retention of employees with the skills or performance abilities that are necessary for the efficient operation of the department. Seniority is a secondary consideration. The judgment of the appointing authority shall be sustained unless the Director of Employee Services finds the judgment to be arbitrary or capricious. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 07-2005, 11/3/05]

### **2.05.200.4 Bumping Procedure**

When an employee is laid-off due to a reduction in the work force, the employee shall be permitted to exercise bumping rights by displacing a classified employee with less seniority in a different classification with the same salary grade or lower in the department, provided that the bumping employee is qualified to do the work as determined by the appointing authority and the Director of Employee Services. For bumping purposes, seniority will be defined as length of continuous service within the County. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 07-2005, 11/3/05; Amended by Ord. 04-2007, 4/26/07]

### **2.05.200.5 Layoff Rules**

Within a classification and department, temporary, probationary and other employees who do not have regular status, will be laid off before employees with regular status. Employees who have never attained regular status with the County and who are laid off, will not be placed on layoff registers and do not have displacement rights.

- A. An employee who has not completed a probationary period following promotion or reclassification as a result of department reorganization, is subject to layoff rules at the previously held position.
  - B. Regular employees who have been given a temporary or unclassified appointment and are subject to layoff, shall be entitled to have their seniority considered under these rules.
  - C. Employees in a job share position shall be considered as one full-time equivalent.
  - D. Employees cannot bump to a classification with a higher salary grade. This is a promotion and shall be accomplished only by normal appointment procedures.
  - E. A regular employee who is subject to layoff may voluntarily demote to a lower classification in the same promotional line or to a classification previously held in the same or different department, provided a vacancy exists after all bumping procedures have been exercised by qualified employees.
  - F. No employee shall have any bumping rights over another employee working under regular appointment in another department.
  - G. Employees may be denied bumping or demotion rights otherwise available under
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these rules, only if they lack knowledge, skills or abilities required for the position which are not easily learned on the job within the normal orientation period.

Employees may be required to participate in qualifying selection procedures in order to establish their right to a position. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 07-2005, 11/3/05]

#### **2.05.200.6 Layoff Registers And Recall**

Employees who are laid off, demoted in lieu of layoff, or who have exercised bumping themselves to a lower level classification, will be placed on layoff registers according to seniority for the classification(s) held during the displacement and layoff process.

Employees placed on a layoff register will be referred in order of seniority. The duration of such placement on the layoff register shall not exceed two (2) years. An individual who is appointed from a layoff register to a position in the same classification in which the person was previously employed will not be required to serve a probationary period. An employee who accepts a transfer or elects to retire, will not be placed on a layoff register for recall. [Codified by Ord. 05-2000, 7/13/00]

#### **2.05.200.7 Rate Of Pay Following Appointment From Layoff Registers**

When an individual is appointed from a layoff register to a position in the same class in which the person was previously employed, the employee shall be paid at the same rate of pay, plus cost of living or other salary grade adjustments, as the employee was being paid at the time of layoff. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 07-2005, 11/3/05]

#### **2.05.200.8 Seniority**

Where seniority applies as a method of layoff, the definition of seniority is that found in the applicable collective bargaining agreement. If a collective bargaining agreement does not contain a definition of seniority, seniority shall be defined as length of continuous service within the County. If it is found that two (2) or more persons within the same classification have equal seniority, seniority for these individuals shall be determined by the date the employees were appointed by the department. In computing seniority, the following factors will be taken into account:

- A. Part-time work and job share in a regular status position will count on a prorated basis of full-time employee status, (i.e.: 0.5 or half-time status for twelve (12) months will count as six (6) months towards seniority);
  - B. Time spent on all authorized leaves of absences, including leaves without pay, will count;
  - C. Time spent in unclassified appointment status will not count;
  - D. Initial time spent in temporary or provisional status in the same classification will not count;
  - E. Time spent on layoff will not count; however employees recalled from layoff within two (2) years shall regain previously accrued seniority;
  - F. Time spent in previous government service will count if the employee transferred in accordance with ORS 236.610 through 236.650; and
  - G. Seniority shall be forfeited by discharge for cause, voluntary termination exceeding 90 (ninety) days, or involuntary termination due to expiration of a
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layoff register. [Codified by Ord. 05-2000, 7/13/00]

## **2.05.210 Appeals And Hearings**

### **2.05.210.1 Appeals**

All appeals to a Hearings Officer shall be subject to the requirements of this section.  
[Codified by Ord. 05-2000, 7/13/00]

### **2.05.210.2 Filing A Notice Of Appeal**

A notice of appeal must:

- A. Be made in writing;
- B. Name the appellant and include the appellant's address and phone number;
- C. Be signed by the appellant or the appellant's authorized representative;
- D. Be addressed and delivered to the Director of Employee Services;
- E. Contain a reference to the action(s) complained of and date(s) of the alleged action(s);
- F. Contain a statement of the provision of this chapter thought to have been violated; and
- G. Contain a statement of the remedy desired. [Codified by Ord. 05-2000, 7/13/00]

### **2.05.210.3 Matters That Can Be Appealed**

- A. Regular employees may appeal their dismissal, subject to 2.05.190.6.  
Regular employees may appeal their discipline with economic loss subject to 2.05.190.6.
- B. Applicants may appeal alleged fraud and discrimination against them in the selection process, subject to 2.05.070.15. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 07-2005, 11/3/05]

### **2.05.210.4 Timelines For Filing A Notice Of Appeal**

A regular status employee has fourteen (14) calendar days from the date of dismissal or the date discipline with economic loss occurred in which to file a notice of appeal. An applicant has thirty (30) calendar days from the date the Director of Employee Services mails the results of an investigation of selection procedures in which to file a notice of appeal based on alleged fraud or discrimination in the selection process. [Codified by Ord. 05-2000, 7/13/00]

### **2.05.210.5 Time For Hearing**

The Hearings Officer shall schedule a hearing and mail notice thereof to the appellant and the Director of Employee Services within fourteen (14) calendar days of receipt of the notice of appeal from the Director of Employee Services. The Hearings Officer shall set a date for the hearing, if any, not less than ten (10) calendar days from the date the notice of the hearing was mailed to the appellant and Director of Employee Services. If the Hearings Officer determines that the statements in the appeal, even if true, would not entitle the appellant to relief, then the Hearings Officer shall dismiss the appeal without a hearing and offer the appellant an opportunity to amend the appeal. The Hearings Officer

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may extend the time if necessary. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2009, 10/29/09]

#### **2.05.210.6 Subpoenas And Records**

In the course of a hearing, the Hearings Officer may administer oaths, subpoena witnesses and compel the production of books, papers, documents and accounts pertinent to the hearing. Attendance of witnesses, either with or without books, papers, documents or accounts may not be compelled unless such witnesses are personally served with a subpoena. The Hearings Officer may cause the deposition of witnesses residing within or outside the State to be taken in the manner prescribed by law for like depositions in civil suit and actions. If a person refuses to attend, to give testimony, or to produce books, papers, documents or accounts pursuant to a subpoena issued under this section, the Circuit Court of Clackamas County, upon petition from the Hearings Officer, shall compel obedience to the subpoena. The Circuit Court shall punish refusal to obey or to testify in the same manner as a refusal to obey a subpoena or to testify pursuant to a subpoena issued from the Circuit Court. [Codified by Ord. 05-2000, 7/13/00]

#### **2.05.210.7 Rights Of Parties**

The employee and the appointing authority shall have the right at the hearing to:

- A. Appear personally or by representative; if an employee chooses the assistance of an attorney, it shall be at the employee's own expense;
- B. Testify under oath;
- C. Have witnesses or documents subpoenaed;
- D. Question all witnesses;
- E. Present pertinent evidence; and
- F. Argue their case. [Codified by Ord. 05-2000, 7/13/00]

#### **2.05.210.8 Attendance**

The employee or the employee's representative and the appointing authority or the appointing authority's representative shall attend the hearing. Unless excused by the Hearings Officer for good cause, failure of the employee or the employee's representative to attend personally, at the time and place set forth for the hearing, shall be deemed a withdrawal of the employee's appeal. For hearings regarding discipline or discharge, at the request of either party, the Hearings Officer shall make the hearing closed to the public. [Codified by Ord. 05-2000, 7/13/00]

#### **2.05.210.9 Waiver Of Oral Hearing**

If both parties agree, the hearing may be conducted by submission of affidavits, depositions or other documents, mutually exchanged. The Hearings Officer will receive and take action on requests to waive an oral hearing prior to the scheduled hearing date. [Codified by Ord. 05-2000, 7/13/00]

#### **2.05.210.10 Hearings Procedures**

- A. Witnesses: At the request of either party, the Hearings Officer may exclude witnesses not under examination. The parties and their representatives shall be permitted to remain in the hearings room at all times, even though they may be called upon to testify as witnesses.
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- B. Order of Proceedings: The hearing shall be opened by the recording of the place, time and date of hearing, the presence of parties, counsel and representative, if any. In hearings on discharge and discipline with economic loss, the appointing authority shall proceed first with testimony. In hearings on fraud or discrimination in the selection process the person bringing forth the action shall proceed first with testimony.
- C. Report of Hearings: The County shall make an audio recording of all hearings. Such tapes shall be kept for three (3) years. The Department of Employee Services shall be the custodian of the tapes. The expense of transcribing such tapes shall be the responsibility of the party requesting the transcript. Either party may have the hearing reported by a court reporter at their own expense. The cost of any subsequent transcripts shall be the responsibility of the requesting party.
- D. Exhibits and Witnesses: Exhibits shall be marked and numbered, and when offered by either party, may be received in evidence. The names and addresses of all witnesses and exhibits shall be made a part of the record as herein provided.
- E. Oaths: All witnesses shall testify under oath. The oath shall read:  
*"Do you solemnly swear (or affirm) that the testimony you are about to give in this matter shall be the truth, the whole truth and nothing but the truth."*
- F. Evidence: Oral evidence shall be taken only upon oath or affirmation. Each party shall have the following rights: 1) to call and examine witnesses; 2) to introduce exhibits; 3) to cross-examine opposing witnesses on any matter relevant to the issues, even though that matter was not covered on direct examination; 4) to impeach any witness regardless of which party first called the witness to testify; and 5) to rebut the evidence against the appellant. If either or both parties do not testify on their own behalf, then that party may be called and examined as if under cross-examination. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Only relevant evidence shall be admitted. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions.
- G. Witness and Deposition Fees: Persons served with a subpoena requiring attendance before the Hearings Officer shall be entitled to the same fees and mileage as are allowed by law to witnesses in civil suits and actions. The payment of witnesses' fees and mileage shall be the responsibility of the party calling the witness. The cost of a deposition shall be borne by the party requesting the deposition.
- H. Continuances: For a reasonable time, the Hearings Officer may, for good cause, continue the hearing, upon request of a party or upon his/her own initiative.
- I. Confidentiality of Records: All records pertaining to an appeal or hearing are confidential unless otherwise required by law.
- J. Written Findings and Order: The Hearings Officer shall have the authority to conclude the hearing. The Hearings Officer shall provide the Board of County Commissioners and each party with written findings and an order within thirty (30) calendar days following the conclusion of the hearing. [Codified by Ord. 05-2000, 7/13/00]

### **2.05.210.11 Reopening Of Hearing**

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Prior to the issuance of the final order, the Hearings Officer may reopen the hearing. The Hearings Officer may reopen the hearing only for good cause. [Codified by Ord. 05-2000, 7/13/00]

#### **2.05.210.12 Scope Of Authority Of The Hearings Officer**

- A. The scope of authority of the Hearings Officer is to ensure that the appointing authority's action was for cause, was not arbitrary, capricious or discriminatory and that proper procedures prescribed by this chapter were followed. Any violation of any provisions of this chapter which does not substantially prejudice the right of a party, shall not invalidate any action taken under chapter.
- B. The Hearings Officer should not substitute personal judgment for that of the appointing authority in either matters of policy or in other matters as long as the appointing authority has acted within the allowable scope of discretion in the management of the appointing authority's proper business.
- C. The Hearings Officer may reverse the action of the appointing authority in matters of discharge or discipline involving economic loss where the Hearings Officer finds that the appointing authority's decision was not based on cause, was arbitrary, capricious or discriminatory or was in violation of a provision of this chapter which substantially prejudiced the right of the employee.
- D. In the event the Hearings Officer reverses the action of the appointing authority in matters of discharge, the Hearings Officer, upon giving due consideration to the merits of the case and the arguments of the parties, may impose discipline involving or not involving economic loss.
- E. In the event the Hearings Officer sustains the finding of the appointing authority that discipline involving economic loss is warranted, the Hearings Officer shall sustain the sanction involving economic loss that was imposed by the appointing authority, unless a finding is made that that sanction was clearly unreasonable, in which case the Hearings Officer may impose a lesser sanction.
- F. In cases where the action involving discharge or discipline with economic loss is reversed or a lesser economic loss sanction is ordered by the Hearings Officer, the Hearings Officer shall issue an order not inconsistent with the findings. In cases of discharge or discipline with economic loss, the Hearings Officer shall have the authority to order reinstatement of the employee with pay, or compensation or special privileges from the date of dismissal or disciplinary action.
- G. In cases of fraud and discrimination in the selection process, the Hearings Officer may reverse or sustain or modify the actions taken. [Codified by Ord. 05-2000, 7/13/00]

#### **2.05.210.13 Final Order**

The written findings and order by the Hearings Officer shall be final. [Codified by Ord. 05-2000, 7/13/00]

#### **2.05.210.14 Hearings Officer**

A Hearings Officer shall be appointed by the Board of County Commissioners of Clackamas County to preside at hearings authorized under this chapter. The Hearings Officer shall be a person who is not an officer or an employee of the County in any respect, other than as a Hearings Officer under this chapter. The Hearings Officer shall

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be paid such compensation as may be set by the Board of County Commissioners. The Hearings Officer shall serve at the pleasure of the Board and shall not have any personal rights of appeal under this chapter.

The functions of the Hearings Officer shall be conducted in an impartial manner. The Hearings Officer shall be excused from the hearing of any appeal in which there is a conflict of interest. The Hearings Officer shall notify the Board of County Commissioners of this decision. The appellant may file an affidavit of personal bias of the Hearings Officer any time up to five (5) days before the scheduled hearing. The affidavit shall be filed with the Hearings Officer. Upon receipt, the Hearings Officer shall cancel the hearing and forward the affidavit to the Board of County Commissioners. The Board shall either appoint a substitute Hearings Officer to hear any such case, or determine that no bias exists and order the hearing scheduled. [Codified by Ord. 05-2000, 7/13/00]

## **2.05.220 Administrative Reviews By The Director Of Employee Services**

### **2.05.220.1 Requests For Administrative Reviews**

All requests for an administrative review by the Director of Employee Services shall be subject to the requirements of this section. [Codified by Ord. 05-2000, 7/13/00]

### **2.05.220.2 Filing A Request For Administrative Review**

A request for administrative review must:

- A. Be made in writing;
- B. Name the employee or applicant and include his/her address and phone number;
- C. Be signed by the party requesting the review or the party's authorized representative;
- D. Be addressed and delivered to the Director of Employee Services;
- E. Contain a reference to the action(s) to be reviewed and date(s) of the action(s);
- F. State why the employee feels the action taken or recommended is incorrect; and
- G. Contain a statement of the remedy desired. [Codified by Ord. 05-2000, 7/13/00]

### **2.05.220.3 Actions That May Be Reviewed**

- A. A probationary employee may request an administrative review of a suspension, demotion, or dismissal subject to **2.05.110.3**.
- B. Applicants may request an administrative review of their selection results subject to **2.05.070.14**.
- C. Applicants or employees may request an administrative review following removal of their name from either an open eligibility register or a promotional/internal eligibility register, subject to **2.05.080.3** and **2.05.080.4**.
- D. An employee may request an administrative review of an intradepartmental transfer subject to **2.05.140.4**. [Codified by Ord. 05-2000, 7/13/00]

### **2.05.220.4 Timelines For Filing A Request For Review**

- A. Probationary employee has fourteen (14) calendar days from the effective date of discipline or dismissal to file a request for an administrative review.
  - B. An applicant has fourteen (14) calendar days from the date selection results were
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mailed to the applicant to file a request for an administrative review of the selection results.

- C. Applicants or employees have fourteen (14) calendar days from the date a notice was mailed that their name was removed from an open or promotional/internal eligibility register to file a request for an administrative review.
- D. An employee has fourteen (14) calendar days from the effective date of an intradepartmental transfer to file a request for an administrative review. [Codified by Ord. 05-2000, 7/13/00]

#### **2.05.220.5 Response To Request For Administrative Review**

Upon receipt of the request for administrative review, the Director of Employee Services shall investigate the circumstances surrounding the request. Within fourteen (14) days of receipt of the request for review, the Director of Employee Services shall render a decision and respond in writing to the party filing the request, with a copy to the supervisor and appointing authority. If the Director of Employee Services cannot complete the investigation within that time frame, the parties will be notified of the status of the investigation and be provided a schedule for completion of the review. [Codified by Ord. 05-2000, 7/13/00]

#### **2.05.220.6 Scope Of Authority Of Director Of Employee Services**

The scope of authority of the Director of Employee Services is to ensure the actions taken were job-related and that proper procedures prescribed by this code were followed. Specifically, the scope of authority of the Director of Employee Services shall be as follows:

- A. After a review of discipline or dismissal of a probationary employee, the Director of Employee Services may affirm, disaffirm, or amend the action of the appointing authority;
- B. In reviews of the circumstances surrounding an applicant's selection results, the Director of Employee Services shall take appropriate administrative action to resolve the complaint or uphold the selection results. Such administrative action may include a correction made to the applicant's test scores and appropriate placement on an eligibility register. If a correction is made as a result of such review, any change in selection results shall not affect a referral or appointment having already been made as a result of such examination;
- C. In reviews of applicants whose names were removed from an open or promotional/internal eligibility register, the Director of Employee Services shall affirm the action, or disaffirm the action and offer reinstatement of the applicant or employee to the appropriate eligibility register;
- D. In instances where the Director of Employee Services reviews intradepartmental transfers, the Director of Employee Services may affirm the transfers made by the appointing authority, disaffirm the transfers as being improper and order the employees be placed in their former positions, or modify the actions taken. [Codified by Ord. 05-2000, 7/13/00]

#### **2.05.220.7 Written Findings**

The Director of Employee Services shall prepare and issue a written finding at the conclusion of each administrative review. An employee or applicant shall have the right

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to review materials used by the Director of Employee Services in rendering a written finding on any administrative review. [Codified by Ord. 05-2000, 7/13/00]

### **2.05.230 Reviews Of Classification Allocations And Salary Grade Recommendations**

#### **2.05.230.1 Requests For Review Of A Classification Allocation Or Salary Grade Recommendation**

All requests for a review of either an employee's recommended classification allocation, or a new or revised salary grade recommendation for an unrepresented position, shall be subject to the requirements of this section. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 07-2005, 11/3/05]

#### **2.05.230.2 Filing A Request For Review**

A request for review must:

- A. Be made in writing;
- B. Name the employee and include the employee's address and phone number;
- C. Be signed by the party requesting the review;
- D. Be addressed and delivered to the Director of Employee Services;
- E. Contain a reference to the action(s) to be reviewed and the dates of the action;
- F. State why the employee feels the action taken or recommended is incorrect; and
- G. Contain a statement of the remedy desired. [Codified by Ord. 05-2000, 7/13/00]

#### **2.05.230.3 What Actions May Be Reviewed**

- A. An employee who does not agree with a classification allocation determination made by the Department of Employee Services may request a review of the allocation subject to 2.05.050.10. Such a review shall be limited to the determination of the appropriate allocation of the position to a classification within the County's classification system. The review of a classification allocation does not extend to a review of the creation, deletion, or change to a classification; the assignment of duties, or the appropriate salary grade for a classification.
  - B. A nonrepresented employee who does not agree with a new or revised salary grade recommendation made by the Department of Employee Services may request a review of the recommended salary grade, subject to 2.05.060.4. If provided in the applicable collective bargaining agreement, a represented employee may use the request for review process in place of the negotiation process for new or revised salary grade recommendations, subject to 2.05.060.4. Such a review shall be limited to the determination of the appropriate salary grade to recommend for the classification. The review of a salary grade recommendation does not extend to a review of the creation, deletion or change to a classification, or the assignment of duties. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 07-2005, 11/3/05; Amended by Ord. 05-2009, 10/29/09]
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**2.05.230.4 Process Of The Classification/Compensation Review Panel**

An employee has ten (10) calendar days from the date the written response to the request for review was mailed, to submit a written request to the Director of Employee Services to have the matter forwarded to the Classification/Compensation Review Panel. The employee and the employee's representative, the employee's appointing authority and/or the appointing authority's representative, and Personnel staff may present information to the panel in support of their respective positions. The Classification/Compensation Review Panel shall review the reasons for the classification allocation and/or the salary grade recommendation and may ask questions of the parties presenting information. Following the collection of information, the panel shall discuss their opinions with the Director of Employee Services.

- A. Final Determination of Classification Allocation: The Director of Employee Services shall consider opinions of the panel when determining the final classification allocation of a position. The Director of Employee Services shall prepare a written report of the final recommendation, issues raised during the request for review and the opinions of the panel. Copies of the report shall be delivered to the affected parties. The Director of Employee Services shall have the final authority for all classification allocation determinations.
- B. Final Recommendation of Salary Grades: The Director of Employee Services shall consider the opinions of the Classification/Compensation Review Panel when recommending the final salary grade recommendation to the Board of County Commissioners. The Director of Employee Services shall include in this recommendation a summary of issues raised during the request for review process and the opinions of the panel. The Board of County Commissioners shall have the final authority for all salary grade determinations. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 07-2005, 11/3/05]

**2.05.230.5 Composition Of The Panel**

The Classification/Compensation Review Panel shall be chaired by the Director of Employee Services. The panel shall be comprised of three management employees and three bargaining unit members as selected by the Director of Employee Services. Those presenting information are not allowed to be acting members of the panel for that meeting. [Codified by Ord. 05-2000, 7/13/00]

**2.05.230.6 Scheduling Of The Classification/Compensation Review Panel**

The review panel will meet at the call of the Director of Employee Services to hear and process requests for review. [Codified by Ord. 05-2000, 7/13/00]

**2.05.240 Equal Employment Opportunities****2.05.240.1 Policy Statement**

It is the policy of Clackamas County to adhere to the concept of equal employment opportunity and affirmative action as a basic element of human resources management. Discrimination in a personnel action on a basis unrelated to the job is prohibited. Employment and promotion decisions in County service shall be made in accordance

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with the principles of equal opportunity by utilizing only job-related requirements.  
[Codified by Ord. 05-2000, 7/13/00]

### **2.05.240.2 Affirmative Action Program**

The Board of County Commissioners has adopted an affirmative action policy and program which is set forth in a separate document and is available throughout County facilities. [Codified by Ord. 05-2000, 7/13/00]

### **2.05.240.3 Complaint And Grievance Resolution Procedure**

- A. Clackamas County firmly believes that a comprehensive, systematic and equitable process for resolving complaints of discrimination, harassment, unlawful employment practices, or violations of equal employment opportunity, is an essential part of a comprehensive affirmative action plan. The following internal complaint and grievance resolution process will apply to complaints alleging unlawful employment practices violations of equal employment, discrimination, or harassment.
- B. Any employee or applicant for employment may file a written complaint alleging discrimination, or an unlawful employment practice(s), or violation of equal employment opportunity, with the Director of Employee Services who will investigate the charge within thirty (30) days. The Director of Employee Services may also initiate an investigation without receiving a written complaint.

At the conclusion of the investigation, the Director of Employee Services shall make recommendations to correct any practices found to be in violation of this chapter. Notice of the recommendation shall be forwarded to the appointing authority. If the finding of the investigation is that there has been a violation of the Personnel Chapter, the Director of Employee Services will attempt to resolve the complaint. Under the law, individuals are protected from retaliation. Every effort will be made to preserve confidentiality consistent with conducting a thorough investigation. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2007, 6/7/07]

### **2.05.250 Harassment**

#### **2.05.250.1 Policy Statement**

It is the policy of Clackamas County to maintain a work environment which is free of harassment. Harassment is defined as verbal or physical conduct that is derogatory or shows hostility towards an employee because of race, color, age, religion, sex, sexual orientation, gender identity, disability, national origin or any other protected status in accordance with applicable law, and:

- A. Has the purpose or effect of creating an intimidating, hostile or offensive work environment;
  - B. Has the purpose or effect of unreasonably interfering with an employee's work performance; or
  - C. Otherwise substantially and adversely affects an employee's employment opportunities.
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This policy is not limited in application to harassment between supervisors and subordinates, it also includes harassment between co-workers. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2007, 6/7/07]

### **2.05.250.2 Sexual Harassment Policy**

The Equal Employment Opportunity Commission guidelines define sexual harassment to include unwelcome sexual advances, request for sexual favors and other offensive verbal or physical conduct of a sexual nature, when:

- A. Submission to sexual advances is a condition of employment; or
- B. Submission or rejection is the basis of an employment decision (tangible job benefits, promotion, retention, performance evaluation, etc.); or
- C. When the conduct unreasonably interferes with the affected person's work performance or creates an intimidating, hostile or offensive work environment.

Clackamas County and its managers are responsible for the acts of their agents and supervisory employees with respect to preventing sexual harassment in the work place. Prevention is the best approach in eliminating sexual harassment; all employees shall take reasonable steps necessary to prevent such harassment from occurring. Department managers and supervisors shall develop methods to sensitize employees on this issue.

Department managers and supervisors, male or female, shall not use their authority to solicit sexual favors, when submission to, or rejection of, such conduct by an individual is used as the basis for employment decisions affecting that individual. Department managers and supervisors shall not allow conduct that creates an intimidating, hostile or offensive work environment. Included in forbidden conduct are lewd gestures, sexually offensive language or sexually offensive behavior. Failure to adhere to this policy will result in disciplinary action up to and including termination. [Codified by Ord. 05-2000, 7/13/00]

### **2.05.250.3 Initiating An Investigation Regarding Harassment**

Employees or applicants for employment who experience behavior in violation of this policy are urged to contact their supervisor, another Clackamas County supervisor, or the Director of Employee Services. The Director of Employee Services will conduct a thorough investigation in compliance with the complaint and grievance resolution procedure available under [2.05.240](#), Equal Employment Opportunities. If evidence supports such a complaint, immediate, appropriate and corrective action will be taken. Under the law, individuals are protected from retaliation. Every effort will be made to preserve confidentiality consistent with conducting a thorough investigation. [Codified by Ord. 05-2000, 7/13/00]

### **2.05.260 Personnel Records**

#### **2.05.260.1 Contents**

Individual employee personnel files shall be established and maintained by the Department of Employee Services for all employees. Items shall be submitted to the Department of Employee Services and shall be considered the official record copy. The

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records will be maintained in accordance with County policies and State of Oregon record retention schedules.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2009, 10/29/09]

### **2.05.260.2 Access To Personnel Records**

A. The entire contents of an employee's personnel file shall be made available to the employee, except for reference checks from previous employers or where the employee has signed a written waiver of access. Employee personnel files are protected from access by persons other than the following:

- 1) employee;
- 2) employee's official representative with the employee's signed authorization;
- 3) employee's immediate supervisor and higher level supervisors;
- 4) Personnel Division or the County's Counsel; or
- 5) Persons or agencies authorized by law.

B. Material and information within an employee's personnel file that is considered public includes:

- 1) employing agency;
- 2) employee classification;
- 3) employee's salary rate;
- 4) employee's date of hire;
- 5) employee's date of separation; and
- 6) promotional eligible register (rank only).

[Codified by Ord. 05-2000, 7/13/00]

### **2.05.260.3 Disclosure Of Information And Dissent**

Employees shall be informed of all items being placed in their individual personnel file. Individual employees shall receive copies of these materials and have the right to place dissenting information into their files. Employees may receive additional copies upon request. [Codified by Ord. 05-2000, 7/13/00]

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## Chapter 2.06

# 2.06 EXPORT OF UNPROCESSED TIMBER FROM LANDS OWNED OR MANAGED BY CLACKAMAS COUNTY

### 2.06.010 Definitions

- A. COUNTY LANDS means lands owned or managed by Clackamas County.
  - B. COUNTY TIMBER means any timber owned by Clackamas County.
  - C. COUNTY TIMBER SALE CONTRACT means any timber under contract with Clackamas County that is owned by the County.
  - D. EXPORT means unprocessed timber loaded on a vessel or other conveyance with a foreign destination, or is present at a facility such as a port or dock with intent to load it on a vessel or other conveyance with a foreign destination.
  - E. PERFORMANCE BOND means the security required by a County timber sale contract that ensures satisfactory performance of contract requirements by the timber sale purchaser.
  - F. PERSON means an individual, partnership, a public or private corporation, an unincorporated association, or any other legal entity. The term includes any subsidiary subcontractor, parent company or other affiliate. Business entities are considered affiliates when one controls or has the power to control the other, or when a third person controls both, directly or indirectly.
  - G. UNPROCESSED TIMBER or UNPROCESSED COUNTY TIMBER means trees, or portions of trees, or other round wood, not processed to standards and specifications suitable for end product use. The term does not include timber processed into any one of the following:
    - 1. Lumber or construction timbers, meeting current American Lumber Standards Grades or Pacific Lumber Inspection Bureau Export R or N list grades, sawn on 4 sides, not intended for remanufacture;
    - 2. Lumber, construction timbers, or cants for remanufacture, meeting current American Lumber Standards Grades or Pacific Lumber Inspection Bureau Export R or N list clear grades, sawn on 4 sides, not to exceed 12 inches (nominal) in thickness;
    - 3. Lumber, construction timbers, or cants for remanufacture, that do not meet the grades referred to in clause b. and are sawn on 4 sides, with wane less than 1/4 of any face, not exceeding 8—3/4 inches in thickness;
    - 4. Chips, pulp, or pulp products;
    - 5. Veneer or plywood;
    - 6. Poles, posts, or piling cut or treated with preservatives for use as such;
    - 7. Shakes or shingles;
    - 8. Aspen or other pulpwood bolts, not exceeding 100 inches in length, exported for processing into pulp;
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9. Pulp logs or cull logs processed at domestic pulp mills, domestic chip plants, or other domestic operations for the purpose of conversion of the logs into chips; or
10. Firewood cut in pieces of 48 inches or less in length. [Codified by Ord. 05-2000, 7/13/00]

**2.06.020 Criteria for Eligibility to Bid on County Timber Sale Contracts**

- A. In addition to all other requirements of law, any person submitting a bid for the purchase of County timber must certify, in a form and manner specified by the County Forester, that:
  1. The person will not export directly or indirectly unprocessed County timber;
  2. The person has not exported directly or indirectly unprocessed timber originating from County lands in Oregon since September 10, 1990, except to meet contractual obligations made prior to September 10, 1990; and
  3. The person will not sell, transfer, exchange or otherwise convey unprocessed County timber to any other person without obtaining a certification from the person that meets the reporting requirements below.
- B. In addition to all other requirements of law, a persons previously not eligible to bid for County timber under subsection A of this section may bid for County timber if the person certifies in a form and manner specified by the County Forester that:
  1. The person will not directly or indirectly export unprocessed County timber; and
  2. Unless exempted by paragraph 3 below, the person has not exported unprocessed timber from County lands for a period of not less than 24 months prior to the date of submission of the bid; and
  3. The person will not sell, transfer, exchange or otherwise convey unprocessed County timber to any other person without obtaining a certification from the person that meets the reporting requirements below. [Codified by Ord. 05-2000, 7/13/00]

**2.06.030 Prohibition of Indirect Substitution**

- A. In addition to all other requirements of law, no person who is prohibited from purchasing County timber directly from the County may purchase County timber from any other person.
- B. Acquisitions of Western Red Cedar, which are domestically processed into finished products to be sold into domestic or international markets, are exempt from this prohibition. [Codified by Ord. 05-2000, 7/13/00]

**2.06.040 Prohibition of Export of County Timber**

All unprocessed timber, as defined in 2.06.010 above, which originates from County lands, may not be exported. [Codified by Ord. 05-2000, 7/13/00]

**2.06.050 Surplus Timber**

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The prohibitions against export contained in this chapter shall not apply to specific quantities of grades and species of unprocessed timber originating from County land which the United States Secretary of Agriculture or Interior has determined by rule to be surplus to the needs of timber manufacturing facilities in the United States. [Codified by Ord. 05-2000, 7/13/00]

#### **2.06.060 Reporting Requirements**

- A. Before the Board of County Commissioners executes a timber sale contract or the County in any other manner sells County timber, a purchaser of County timber must:
  - 1. Notify the County Forester of the delivery destination of all timber purchased. Notification will be made in a form and manner prescribed by the County Forester; and
  - 2. Deliver to the County Forester a certification of the eligibility to purchase County timber of any person to whom the purchaser intends to sell, trade, exchange, or otherwise convey the purchased County timber, and their intent to comply with the terms and conditions contained in this section. Certification will be made in a form and manner as prescribed by the County Forester. Obtaining certification shall not relieve the purchaser's responsibility to provide the County Forester with an accounting of the delivery destination of that timber.
- B. Any performance bond required by a County timber sale contract may be retained by the County Forester until s/he receives satisfactory notification of County timber delivery destination.
- C. Failure to provide the County Forester with a final accounting of the delivery destination of County timber will be considered a violation of this chapter. Violators shall be subject to the penalties contained in 2.06.070 below. [Codified by Ord. 05-2000, 7/13/00]

#### **2.06.070 Remedies for Violation**

- A. The County Forester shall keep a written record of all persons whom he or she believes have violated the requirements of this chapter.
  - B. A person whose name appears on the record for violations as stated in A above, and who again violates the requirements of this chapter, shall be disqualified from bidding on or purchasing County timber for a period of five years following the date of the violation.
  - C. The County Forester may cease operations on and/or terminate any County timber sale contract entered into with a person who has violated the requirements of this chapter.
  - D. The County Forester may assess damages for violations of this chapter according to the following formula:
    - 1.  $D = (OSV + AC) - (PR + RSV)$ , where:
      - a. D = Damages and Expenses;
      - b. OSV = Original Sale Value (timber only does not include project value). The original sale value shall be adjusted to reflect estimated overruns or under-runs on recovery sales;
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- c. AC = Administrative Costs--these costs include both the field and office costs required for the preparation of the defaulted parcel for resale; these costs also include rehabilitation or regeneration delay costs, legal service costs, interest, and other costs allowed by law;
  - d. PR = Payments Received; and
  - e. RSV = Remaining Sale Value. The value of the remaining timber shall be determined using the County Forester's estimate of remaining volume, multiplied by the dollar values stated in the contract.
- E. The County Forester shall promptly notify the person in writing of any action taken under B, C, or D, in this section. The notice shall include the nature and date(s) of the violation(s), and where appropriate, the date of contract termination and/or cessation of operations, the period of disqualification, and the amount of assessed damages and how they were calculated. If the person is disqualified, the notice shall also include a statement of the appeal rights and procedure described in paragraph F, below.
- F. A person who receives notification from the County Forester of disqualification may appeal the decision to the Board of County Commissioners.
- 1. A written request must be received by the County Forester, 902 Abernethy Road, Oregon City, Oregon 97045, no later than 15 days after the date of the County notification.
  - 2. After a timely appeal request is received, the Board of County Commissioners will schedule a public hearing. The appellant will receive at least 15 days' written notice of the hearing.
  - 3. Following the hearing, the Board of County Commissioners shall make written findings and issue a written decision. A copy of the findings and decision will be mailed to the appellant. The Board's decision shall be final.
- G. If a person does not timely appeal a disqualification notice, then the decision of the County Forester shall be final.
- H. The County Forester's decision to cease operations, terminate a timber sale contract, or assess damages shall be final. [Codified by Ord. 05-2000, 7/13/00]

#### **2.06.080 Log Branding and Marking Requirements**

- A. All County timber originating from County timber sales shall be branded with an assigned and registered brand before removal from the sale area. Unless prevented by the size or condition of the wood, both ends of all logs originating from County timber sales shall be hammer branded and both ends shall be painted with a paint type and color determined by the County Forester.
- B. If properly marked County timber is subdivided into smaller pieces for any other purpose than immediate processing, each piece must be branded with a County brand specifically used for this purpose and signifying the unprocessed timber is County timber ineligible for export. The County Forester's export restriction branding hammers can be obtained from the County Forester, at cost, upon request. [Codified by Ord. 05-2000, 7/13/00]

#### **2.06.090 Timber Sale Contracts**

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All County timber sale contracts shall contain the following provision:

“The Federal Forest Resources Conservation and Shortage Relief Act of 1990 prohibits the export of unprocessed timber originating from County lands. Violations of said Act or of the Clackamas County Log Export Chapter may result in termination of this contract, assessment of damages, disqualification from bidding on or purchasing County timber for up to five years, or federal or state legal action. In any legal action brought by the County to enforce this provision of this contract, the County, if it prevails, shall be awarded its reasonable costs and attorney fees.” [Codified by Ord. 05-2000, 7/13/00]

#### **2.06.100 Enforcement**

- A. Investigation of suspected violations of this chapter and/or surveillance of unprocessed timber in transit and at port facilities may be conducted by the County Forester, or contracted by the County Forester to other County, state or federal agencies. Any alleged violations of the export prohibition provisions of this chapter will be referred by the County Forester to the appropriate federal or state agency for prosecution or other legal action.
  - B. Once the County Forester makes a final decision that assesses damages, the full amount of damages shall be immediately due and payable. If payment is not made within 30 days, the County may enforce payment through civil legal proceedings, in which the County, if it prevails, shall be awarded its reasonable costs and attorney fees. [Codified by Ord. 05-2000, 7/13/00]
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## **Chapter 2.07**

### **2.07 COMPLIANCE HEARINGS OFFICER**

#### **2.07.010 Philosophy and Purpose**

Clackamas County's philosophy on code enforcement is to first take the approach of voluntary compliance and use an enforcement approach only as a last resort. To implement this philosophy, a protocol has been developed as the basis for the enforcement of the code. The approach is to develop solutions based on individual situations and provide broad-based public education. The assumption of the Board of Commissioners is that education of citizens regarding the requirements of our codes will solve most issues and our contacts with affected citizens will be to take an understanding and helpful approach to resolving potential enforcement issues.

The purpose of this chapter is to implement this philosophy and provide the prompt, effective, and efficient enforcement of the Clackamas County Zoning and Development Ordinance and the following chapters of this code: the Clackamas County Solid Waste and Waste Management chapter, the Application and Enforcement of the Clackamas County Building Code chapter, specifically including all administrative rules and referenced provisions of Section 9.02.040 of that chapter, the Excavation and Grading chapter, the Road Use chapter, and the Abatement of Dangerous Buildings chapter, and the Graffiti chapter. The Office of Compliance Hearings Officer is hereby created. The Compliance Hearings Officer shall act on behalf of the Board of County Commissioners in considering and applying regulatory enactments and policies set forth in this chapter. The Compliance Hearings Officer shall be appointed by the Board of County Commissioners to serve at the pleasure of, and shall be paid a fee for service fixed by, the Board of County Commissioners. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 06-2000, 10/12/00; Amended by Ord. 4-2003, 3/13/03; Amended by Ord. 07-2008, 12/18/08]

#### **2.07.020 Jurisdiction Of Compliance Hearings Officer**

The Compliance Hearings Officer shall have jurisdiction and authority to enforce the chapters cited in Section 2.07.010. In cases filed by the County with the Hearings Officer, the Hearings Officer's decision shall be the County's final determination. Judicial review of the Hearing Officer's decision may be sought before the Clackamas County Circuit Court as provided by Section 2.07.130. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 42003, 3/13/03]

#### **2.07.030 Process for Enforcement of Code**

##### **A. Review of Reports - Sufficiency**

1. **Statement of Facts.** When an alleged violation is reported to the County, staff shall evaluate the complaint and conduct a preliminary investigation to identify the priority level, established by policy of the Board of County Commissioners, into which the violation falls. The County shall prepare a statement of the facts and shall review the facts and circumstances surrounding the alleged violation.
2. **Sufficiency of Evidence.** The County shall not proceed further with the matter if it is determined that there is not sufficient evidence to support the allegation, or if the County determines that it is not in the best interest of the County to proceed. [Added by Ord. 4-2003, 3/13/03]

**B. Voluntary Compliance Agreement.**

1. The County may enter into a written voluntary compliance agreement with respondent before or after a citation is issued. The agreement shall include the required corrective action, time limits for compliance and shall be binding.
2. The fact that a person alleged to have committed a violation enters into a voluntary compliance agreement shall not be considered an admission of having committed the violation for any purpose.
3. The County will delay further processing of the alleged violation during the time allowed in the voluntary compliance agreement for the completion of the required corrective action. The County shall take no further action concerning the alleged violation if all terms of the voluntary compliance agreement are satisfied, other than steps necessary to terminate the proceedings against respondent. [Added by Ord. 4-2003, 3/13/03]

**C. Failure to Comply with Voluntary Compliance Agreement.**

Failure to comply with any term of the voluntary compliance agreement constitutes a separate violation, and shall be handled in accordance with the procedures established by this chapter, except no further notice after the voluntary compliance agreement has been signed need be given before further enforcement proceedings are initiated. The County may also proceed on the alleged violation that gave rise to the voluntary compliance agreement. [Added by Ord. 4-2003, 3/13/03]

**D. Citation and Forfeiture; Abatement Requirements.**

1. The County may issue respondent a citation for committing the violation and may require the respondent to abate the violation and/or enter into a voluntary compliance agreement within a specified time period. The

citation shall contain the same information required to be included in the complaint by section 2.07.040, and the forfeiture amount to be paid as a result of committing the violation.

2. Respondent may admit the existence of a violation by paying the forfeiture amount and correcting the violation. Payment of the forfeiture does not relieve respondent of the requirement to correct the violation. If the violation is disputed, respondent may request a hearing before the Compliance Hearings Officer, as described in this chapter.
3. Citations may be served by personal service on respondent. Citations may also be served by certified mail, return receipt requested through the United States Postal Service.
4. The County, in its discretion, may proceed directly into the state court system in any matter to secure compliance with the requirements of this Code. [Added by Ord. 4-2003, 3/13/03]

#### **E. Immediate Remedial Action**

If the County determines that the alleged violation presents an immediate danger to the public health, safety or welfare, the County may require immediate remedial action. If the County is unable to serve a citation on the respondent or, if after such service the respondent refuses or is unable to remedy the violation, the County may proceed to remedy the violation by any means available under law. [Added by Ord. 4-2003, 3/13/03]

#### **2.07.040 Request For Hearing/Initiation of Proceedings**

- A. Respondent may initiate a proceeding before the Compliance Hearings Officer by providing a written request for a hearing. If a request for a hearing is filed, the County shall file a complaint with the Compliance Hearings Officer. The County may, for any violation, file a complaint with the Compliance Hearings Officer before or after a citation is issued. The complaint shall contain the following: name and address of respondent (s); address or location of the alleged violation; nature of violation, including ordinance provision, County Code provisions, statute or administrative rules section violated; relief sought; and department initiating procedure. Employees of the County's Department of Transportation and Development are authorized to sign and file complaints on behalf of the County.
- B. In a case in which a citation has been issued and the respondent does not wish to contest the existence of the violation and there is economic or financial hardship, respondent may appeal only the forfeiture amount imposed by the citation by initiating a proceeding before the Compliance Hearings Officer. The only issue before the Compliance Hearings Officer in such a proceeding is whether the respondent establishes

sufficient economic or financial hardship to justify reduction of the forfeiture amount. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 4-2003, 3/13/03]

#### **2.07.050 Notice of Hearing**

- A. The notice shall contain a statement of the time, date, and place of the hearing. A copy of the Complaint and the Statement of Rights described in Section 2.07.060 shall be attached to the notice. Notice shall be mailed or delivered at least 15 days prior to the hearing date.
- B. The Compliance Hearings Officer shall cause notice of the hearing to be given to the respondent(s) either personally or by registered mail with return receipt requested. Notice may be delivered to the property or to the mailing address of the owner of the property as listed on the County tax roll. Notice is considered complete on the date of personal delivery or upon deposit in the U.S. mail.
- C. The failure of any person to receive notice properly given shall not invalidate or otherwise affect the proceedings under this Chapter. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 4-2003, 3/13/03]

#### **2.07.060 Statement of Rights**

- A. The Compliance Hearings Officer shall inform each party in writing of the following matters:
  - 1. A general description of the hearing procedure including the order of presentation of evidence, what kinds of evidence are admissible, whether objections may be made to the introduction of evidence and what kind of objections may be made, and an explanation of the burdens of proof or burdens of production of evidence;
  - 2. That a record shall be made of the proceedings and the manner of making the record and its availability to the parties;
  - 3. The function of the record-making with respect to the perpetuation of the testimony and evidence and with respect to any appeal from the order of the Compliance Hearings Officer;
  - 4. Whether an attorney will represent the County in the matters to be heard and the respondent's right to be represented by an attorney at their expense;
  - 5. The title and function of the Compliance Hearings Officer, including the effect and authority of the Compliance Hearings Officer's determination; and,

6. That the decision of the Compliance Hearings Officer may be appealed as described in Section 2.07.130, and that the appellant shall pay all costs of the appeal including costs for preparation of a transcript.
- B. The failure to give notice of any item specified in Subsection A of this Section shall not invalidate any order of the Compliance Hearings Officer unless on review a court finds that the failure affects the substantive rights of one of the parties. In the event of such a finding, the court shall remand the matter to the Compliance Hearings Officer for a reopening of the hearing and shall direct the Compliance Hearings Officer as to what steps shall be taken to remedy any prejudice to the rights of any party. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 4-2003, 3/13/03]

#### **2.07.070 Procedure In Compliance Hearings**

- A. Hearings to determine whether a violation has occurred shall be held before the Compliance Hearings Officer. The County must prove the violation alleged by a preponderance of the admissible evidence.
- B. Unless precluded by law, informal disposition of any proceeding may be made, with or without a hearing, by stipulation, consent order, agreed settlement, or default.
- C. A Party may elect to be represented by counsel at his/her own expense and to respond to and present evidence and argument on all issues involved.
- D. A Party may request that a hearing be held telephonically. The Compliance Hearings Officer has the discretion to grant or deny a request for a telephonic hearing for any reason.
- E. A Party may request that an appeal to the Compliance Hearings Officer be conducted solely based on written submissions by the parties, without a hearing. The Compliance Hearings Officer may grant a request for appeal based only on written submissions if, and only if, all parties agree in writing to waive a hearing and to proceed through written submission only.
- F. An order adverse to a party may be issued upon default only upon a prima facie case made on the record before the Compliance Hearings Officer.
- G. Testimony shall be taken upon oath or affirmation of the witness. The Compliance Hearings Officer may administer oaths or affirmations to witnesses.
- H. The Compliance Hearings Officer shall issue subpoenas to any party upon showing of general relevance and reasonable scope of the evidence sought. Witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the County, shall receive fees and mileage as prescribed by law for

- witnesses in civil actions from the party requesting their testimony. Any party requesting the issuance of a subpoena shall pay applicable fees and mileage at the time the issuance of a subpoena is requested.
- I. If any person fails to comply with any subpoena so issued, or any party or witness refuses to testify on any matters on which he/she may be lawfully interrogated, a judge of the Circuit Court for Clackamas County, on the application of the Compliance Hearings Officer, or of the party requesting the issuance of the subpoena, may compel obedience by proceedings for Contempt as in the case of disobedience of the requirements of subpoena issued from such court or a refusal to testify therein.
  - J. The Compliance Hearings Officer shall place on the record a statement of the substance of any written or oral ex parte communications made to the Compliance Hearings Officer on a fact in issue during the pendency of the proceedings. The Compliance Hearings Officer shall notify the parties of the communication and of their right to rebut such communications.
  - K. The record of the case shall include:
    - 1. All pleadings, motions, and intermediate rulings;
    - 2. Evidence received;
    - 3. Stipulations;
    - 4. A statement of matters officially noticed;
    - 5. Questions and offers of proof, objections, and ruling thereon;
    - 6. A statement of any ex parte communications on a fact in issue made to the Compliance Hearings Officer during the pendency of the proceedings;
    - 7. Proposed findings and exceptions; and
    - 8. The final order prepared by the Compliance Hearings Officer.
  - L. A verbatim, written or mechanical record shall be made on all motions, rulings, and testimony. The record need not be transcribed unless requested for purposes of court review. The Compliance Hearings Officer shall charge the party requesting transcription the cost of transcription in advance. Failure to pay the transcription fees shall constitute a separate ground for denial of review of the decision of the Hearings Officer.
  - M. Enforcement proceedings before the Compliance Hearings Officer shall be conducted in accordance with the procedure set forth in this Chapter. The

Compliance Hearings Officer may promulgate reasonable rules and regulations, not inconsistent with this Chapter, concerning procedure and the conduct of hearings. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 4-2003, 3/13/03]

#### **2.07.080 Presentation of Evidence**

- A. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. Erroneous rulings on evidence shall not preclude action by the Compliance Hearings Officer unless shown on the record to have substantially prejudiced the rights of a party. All other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible. The Compliance Hearings Officer shall give effect to the rules of privilege recognized by law.
- B. All evidence shall be offered and made a part of the record in the case, and except for matters stipulated to and except as provided in Subsection D of this Section, no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference. The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position.
- C. Every party shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence.
- C. The Compliance Hearings Officer may take notice of judicially recognizable facts, and the Compliance Hearings Officer may take official notice of general, technical, or scientific facts within the specialized knowledge of County employees. Parties shall be notified at any time during the proceeding, but in any event prior to the final decision, of material officially noticed and they shall be afforded an opportunity to contest the facts so noticed. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 4-2003, 3/3/03]

#### **2.07.090 Powers Of The Compliance Hearings Officer**

- A. The Compliance Hearings Officer shall order a party found in violation to comply within such time as the Compliance Hearings Officer may by order allow. The order may require such party to do any and all of the following:
  - 1. Make any and all necessary repairs, modifications, and/or improvements to the structure, real property, or equipment involved;

2. Obtain any and all necessary permits, inspections and approvals;
3. Order compliance as appropriate under the State Building Code, as defined in ORS 455.010(8);
4. Install any equipment necessary to achieve compliance;
5. Pay to Clackamas County a civil penalty for the class of violation committed, the amount of which shall be determined by the Compliance Hearings Officer within the range established by Section 2.07.120;
6. Reimburse Clackamas County for actual costs incurred in conjunction with the enforcement action;
7. Pay an administrative compliance fee established by the Board of County Commissioners pursuant to Section 1.01.090, which will be an estimated amount of the cost of enforcement, not to exceed actual cost;
8. Order the eviction of any tenant from any property on which there exists a violation. Such an eviction will be performed in compliance with Oregon law;
9. Abate or remove any nuisance;
10. Change the use of the building, structure, or real property involved;
11. Pay a reduced forfeiture amount;
12. Undertake any other action reasonably necessary to correct the violation. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 4-2003, 3/13/03]

#### **2.07.100 Orders Of The Compliance Hearings Officer**

- A. Every order adverse to a party to the proceeding shall be in writing or stated in the record and may be accompanied by an opinion.
- B. Findings of fact and conclusions of law shall accompany a final order. The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue of fact and as to each ultimate fact required to support the Compliance Hearings Officer's order.
- C. The Compliance Hearings Officer shall notify the respondent of a final order by delivering or mailing a copy of the order and any accompanying findings and conclusions to the respondent or, if applicable, the respondent's attorney of record. The Compliance Hearings Officer shall issue a final order within 14 days from the conclusion of the hearing.

- D. Every final order shall include a citation of the ordinance or title, chapter and section under which the order may be judicially reviewed.
- E. A final order shall become effective ten calendar days after the date it is signed by the Compliance Hearings Officer unless a party makes objections to the form of the order before it becomes effective. If objections are made, the final order shall become effective on the date the Compliance Hearings Officer signs the amended final order, or the date the Compliance Hearings Officer states in writing that the final order will not be amended. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 4-2003, 3/13/03]

**2.07.110 Enforcement Of Compliance Hearings Officer Orders**

- A. Fines and costs are payable upon the effective date of the final order declaring the fine and costs. Fines and costs under this Chapter are a debt owing to the County, pursuant to ORS 30.460, and may be collected in the same manner as any other debt allowed by law. If fines or costs are not paid within 60 days after payment is ordered, the County may file and record the order for payment in the County Clerk Lien Record.
- B. The County may institute appropriate suit or legal action, in law or equity, in any court of competent jurisdiction to enforce the provisions of any order of Compliance Hearings Officer, including, an action to obtain judgment for any civil penalty imposed by an order of the Compliance Hearings Office pursuant to Section 2.07.090.5 and/or any assessment for costs and administrative compliance fees imposed pursuant to Sections 2.07.090.A.6 and 2.07.090.A.7. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 4-2003, 3/13/03]

**2.07.120 Civil Penalty**

The following table provides violation classifications for each compliance priority class and the penalty range associated with each. The Compliance Hearings Officer may impose a penalty amount that is less than the minimum in a case involving economic or financial hardship. [Added by Section 1 of Ord. 4-2003, Enacted 3-13-03]

Violation Classification	Minimum Penalty	Maximum Penalty	Current Priority Class
1	\$750	\$3,500	priority 1
2	\$500	\$2,500	priority 2
3	\$250	\$1,500	priority 3
4	\$100	\$1,000	priority 4

[Added by Ord. 04-2003, 3/13/03]

**2.07.130      Judicial Review**

Review of the final order of a Compliance Hearings Officer under this Chapter by any aggrieved party, including Clackamas County, shall be by writ of review as provided in ORS 34.010 - 34.100, unless the Hearings Officer makes a land use decision, in which case the land use decision may be reviewed by the Land Use Board of Appeals pursuant to ORS Chapter 197. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 4-2003, 3/13/03]

**Chapter 2.08, “Oregon Constitution Article I, Section 18 claim Processing Procedure Authorization” [Codified by Ord. 05-2000, 7/13/00; Repealed by Ord. 03-2004, 4/14/04]**

## **CHAPTER 2.08**

### **2.08 BALLOT MEASURE 37 CLAIM PROCESSING PROCEDURE AUTHORIZATION** [Added by Ord. 13-2004, 12/30/04]

**2.08.010** The Board of County Commissioners may by order and/or resolution adopt and amend a process for consideration of claims brought by property owners for compensation pursuant to Ballot Measure 37. [Added by Ord. 13-2004, 12/30/04]

**2.08.020** The claims process shall provide, at a minimum, for the following:

- A. An opportunity for the claimant to provide evidence to support the claim.
- B. Final disposition of a claim by the Board. The final disposition of any claim may direct payment of the claimed amount, or other appropriate amount, denial of the claim, modification, removal or non-application of the land use regulation in lieu of compensation, or such other remedy as the Board deems appropriate.
- C. A processing fee, to be set by resolution. [Added by Ord. 13-2004, 12/30/04]

**2.08.030** A final disposition of a claim shall be recorded in the County deed records with reference to the affected real property. [Added by Ord. 13-2004, 12/30/04]

## **CHAPTER 2.09**

### **2.09 COUNTY ADMINISTRATOR**

#### **2.09.010 OFFICE OF COUNTY ADMINISTRATOR CREATED**

The Office of County Administrator is created and the person holding that office shall act as the head of administration for the County and, if delegated by the district board, its service districts. [Added by Ord. 11-2002, 8/22/02]

#### **2.09.020 APPOINTMENT**

The County Administrator shall be appointed by and serve at the pleasure of the Board of County Commissioners. The relationship between the County and the County Administrator shall be as set forth in this Chapter and any employment agreement between the County and the County Administrator not inconsistent with this Chapter. [Added by Ord. 11-2002, 8/22/02]

#### **2.09.030 QUALIFICATIONS**

The County Administrator shall be appointed by the Board of County Commissioners solely on the basis of his or her executive and administrative qualifications and experience and need not be a resident of the County or the State prior to his or her appointment. After the time of his or her appointment the County Administrator shall reside outside the County only by express permission of the Board. He or she shall receive a salary fixed by the Board commensurate with the responsibilities of the office. [Added by Ord. 11-2002, 8/22/02]

#### **2.09.040 VACANCY**

When a permanent vacancy occurs in the Office of County Administrator, the Board of County Commissioners shall designate an Acting County Administrator until such time as a County Administrator is appointed. Such person, while he or she is the

Acting County Administrator, shall have all powers and duties conferred by this Chapter on the County Administrator. [Added by Ord. 11-2002, 8/22/02]

**2.09.050 ABSENCE OR DISABILITY**

The County Administrator may designate an administrative officer of the County to exercise and perform his or her powers and duties during his or her temporary absence or disability. [Added by Ord. 11-2002, 8/22/02]

**2.09.060 AUTHORITY**

- A. The County Administrator shall be the Chief Administrative Officer of the County and all County service districts, if that authority is delegated by the board of the district. The County Administrator shall be responsible to the Board of County Commissioners for the administration and management of the County and its service districts and shall have control and supervision of all administrative departments, divisions, offices, districts and agencies subject to his or her jurisdiction, except County Counsel, or as otherwise provided by law. The County Administrator shall exercise no authority over the actions of elected County officials while they are performing the duties of their offices.
- B. The Board of County Commissioners hereby delegates to the County Administrator broad authority to perform his or her job functions. The County Administrator is responsible to the Board for the manner of his or her administration. The Board reserves to itself all of its legislative and judicial or quasi-judicial authority, unless expressly delegated.
- C. It shall be within the specific authority of the County Administrator to perform all day-to-day functions necessary for the administration and management of County affairs and the affairs of County service districts, if delegated. Such authority includes but is not limited to the following:
  - 1. Provide for the proper administration of all ordinances, orders and resolutions of the County

- and its service districts, all contracts and franchises entered into by the County and service districts, and provide for the enforcement of all policies, rules, procedures, orders and regulations adopted by the Board.
2. Keep the Board informed of pertinent matters related to the administration and management of the County and its service districts.
  3. Serve as the Budget Officer for the County and its service districts and in that role prepare and submit to the Board and Budget Committee an annual budget and a long range capital improvement and expenditure program. Administer the provisions of the budget as adopted by the Board.
  4. Prepare and submit to the Board an annual report on the finances and administrative activities of the County and its service districts for the preceding fiscal year, together with recommendations for the betterment of the public service.
  5. Select, appoint, supervise, discipline or dismiss all County Administration staff and all employees designated as appropriate for unclassified status under Section 2.05.040(3)(B)(11), except the County Counsel and any elected officers. The County Administrator has the authority to sign employment contracts for such designated unclassified employees, consistent with other employment contracts. The County Administrator shall consult the Board on these matters.
  6. Manage and administer the County and service districts personnel programs. Prepare and recommend to the Board employee compensation plans.
  7. Coordinate the work of all offices, departments and agencies, both elective and appointive, and devise ways and means whereby efficiency and economy may be secured in the operation of all offices, departments, districts and agencies.
  8. Formulate and present to the Board plans for the implementation for goals adopted by the Board.
  9. Administer the risk management program for the County and its service districts.
  10. Direct the use, maintenance and custody of all County and district property, buildings, works and improvements according to any policies adopted by the Board.

11. Furnish the Board with information, proposals and recommendations concerning the operation of County departments, districts, boards and commissions.
12. Unless excused by the Board, attend regular meetings of the Board, participate in the discussions and make recommendations for action by the Board.
13. Conduct such other activities and assignments as may be required by the Board. [Added by Ord. 11-2002, 8/22/02; Amended by Ord. 01-2009, 2/5/09]

**2.09.070 DELEGATION OF AUTHORITY**

The County Administrator may delegate any authority to County department heads or other County or district staff, in a manner consistent with the provisions of the County Code. [Added by Ord. 11-2002, 8/22/02]

**2.09.080 TERM**

The County Administrator shall be appointed for an indefinite term. The County Administrator is an at-will employee and may be removed at the pleasure of the Board, consistent with any applicable employment agreement. [Added by Ord. 11-2002, 8/22/02]

**2.09.090 INTERACTION WITH COUNTY ADMINISTRATOR, EMPLOYEES**

In the exercise of their authority as members of the governing body of the County, Board members may individually, or as a group in a public meeting, discuss fully and freely with the County Administrator any matter pertaining to County affairs or the interests of the County. Board members may not direct any County employee, other than the County Administrator or County Counsel, in the performance of their duties. This section shall not be construed to prohibit a Board member from pursuing their role as ombudsman in making inquires of County employees concerning the day to day conduct of County affairs. [Added by Ord. 11-2002, 8/22/02; Amended by Ord. 01-2009, 2/5/09]



[Chapter 2.10, Community Connections, adopted by Ord. 06-2005, 8/11/05 is hereby repealed and replaced by Chapter 2.10, Hamlets and Villages, adopted by Ord. 03-2007, 2/22/07]

## CHAPTER 2.10

### 2.10 HAMLETS AND VILLAGES

#### 2.10.010 Preamble

- A. **Policy objectives.** The Board of County Commissioners is committed to engaging its citizens by encouraging them to participate in decision-making processes that affect their lives. This Chapter is intended to further these policy objectives by creating a legal framework to enhance the connection between county government and its citizens.
- B. This Chapter represents the work of citizens, staff, and professional consultants who assisted the county in developing ways to meet these policy objectives. Information was gathered through community meetings and events, random opinion sampling, and mail-back questionnaires. Central to the project were two major phases:
1. **Complete Communities.** The concept of Complete Communities was initiated by the Board of County Commissioners in 1999, and is among the most ambitious public outreach efforts ever conducted by the county. The award-winning *Complete Communities for Clackamas County* project has received state, national and international attention, and was the recipient of the prestigious *2002 Public Education Award* by the American Planning Association, the *2005 National Association of Counties Achievement Award*, and a public engagement award for Completing Connections from the *International Association for Public Participation*.
    - a. The following purpose of Complete Communities was defined by its 65-member citizen Steering Committee based on broad outreach and involvement:
 

*“Working together to define our common and unique community values, identify the diverse attributes of complete communities, and guide future policy decisions and actions.”*
    - b. Through a number of community meetings, including the convening of several widely attended Community Congress events,

citizens identified and prioritized countywide recommendations in eleven issue areas. They then identified those recommendations determined to be most effective and easiest to carry out. Central to this process was the overarching recommendation that citizens be able to better connect with the county and be more involved in county decisions that affect their lives.

- c. From March 2001 to March, 2002, volunteer citizens and county staff formed work groups under nine areas: Cultural Diversity; Cultural Opportunities; Economy and Employment; Education; Environmental Quality; Growth, Land Use and Infrastructure; Health and Social Services; Housing Choices and Access to Transportation; Parks, Open Space and Recreation; and Public Safety. In July 2002 the Board of Commissioners approved the final report made by the work groups, and allocated funding for further work on the overarching recommendation to develop ways for citizens in unincorporated areas to become more closely involved in decisions that affect their lives. Updates on the various efforts were given at the 2005 Community Congress.

- 2. **Completing Connections.** Concurrent with the work of Complete Communities, a citizen-based task force was formed. Supported by staff and professional consultants, the task force's primary purpose was to conduct research and identify organizational and governance frameworks to implement the overarching recommendation to develop ways to better involve residents in unincorporated areas in decisions that affect their lives. As a result of the work of the task force and subsequent discussions at Complete Communities Congresses, the task force recommended two models short of incorporation for communities in Clackamas County: hamlets and villages. (Adopted by Ord. 03-2007, 2/22/07)

**2.10.020. Purpose; intent; authority**

- A. This Chapter establishes the organizational structure and process for hamlets and villages, which are intended to provide a forum for citizens residing, owning property or having businesses within defined geographic areas. Under this Chapter, citizens may form local hamlets or villages for the purpose of considering and making advisory recommendations to the county concerning a broad range of issues affecting the livability and quality of life in their communities. Hamlets and villages are advisory to the Board of County Commissioners, and are not local governments.
- B. It is intended that the powers created by this Chapter be interpreted and applied to enable the broadest exercise of the powers granted by this Chapter, to the extent not pre-empted by state or federal law. Hamlets and villages are intended to be a

form of participatory democracy to the extent that they promote the active involvement of citizens in county affairs and provide an opportunity for greater participation in matters affecting their local communities.

- C. It is a matter of local concern and a proper subject for county legislation to promote the active involvement of citizens in county affairs so that citizens may have a greater opportunity to participate in matters affecting their local communities. (Adopted by Ord. 03-2007, 2/22/07)

**2.10.030 Definitions. As used in this Chapter**

- A. BCC means the Board of County Commissioners.
- B. Board means the board of directors of a hamlet or village.
- C. Citizen means:
1. A person domiciled within the boundaries of a proposed or existing hamlet or village; a person who owns real property within the boundaries of a hamlet or village, but is domiciled outside those boundaries; or
  2. A business entity that is established under ORS Chapters 56-70, 554, 748, or that qualifies as a Business Trust under ORS Chapter 128 if the entity or trust owns real property or maintains a business located within a hamlet or village.
- To participate in formation activities, sign petitions, vote, or serve on the board of directors of a hamlet or village, a citizen who is an individual must be at least 18 years of age.
- D. Community Planning Organization (CPO), as described in Chapter 2 (Citizen Involvement) of the Clackamas County Comprehensive Plan, means a community organization which acts in an advisory capacity to the Board of County Commissioners, Planning Commission, and Planning Division on land use matters affecting its area. The CPO program is the method Clackamas County uses to meet Goal 1, Citizen Involvement, of the Statewide Planning Goals.
- E. County Liaison means the person designated by the County Administrator to facilitate communications among citizens, county staff, and the BCC. The liaison will also render advice and assistance to citizens to accomplish the goals and objectives of this chapter.
- F. Domicile means the place where individuals have their true, fixed, permanent and principal home.

- G. Hamlet means an unincorporated area that is an organized forum for citizens to express issues of concern, prioritize activities, and coordinate community-based activities, as may be approved by the Board of County Commissioners. A hamlet is financed primarily through contributions, grants or volunteer fundraising activities.
- H. Village means an unincorporated area that is an organized forum for citizens to express issues of concern, prioritize activities, and coordinate community-based activities, as may be approved by the Board of County Commissioners and that, after approval by village citizens and the Board of County Commissioners, may be financed through a range of means.
- I. Town hall meeting means a general meeting of the hamlet or village that is open to the community and provides an opportunity to discuss and decide matters of hamlet or village concern. (Adopted by Ord. 03-2007, 2/22/07)

#### **2.10.040 CPO Functions; memoranda of understanding**

A hamlet or village may assume the functions of a CPO upon agreement of the existing CPO, the hamlet or village, and the BCC. If a hamlet or village seeks to assume the functions of a CPO, it must first meet with the CPO to discuss the proposed transfer of responsibility. If the CPO agrees to assumption of its functions by the hamlet or village, a memorandum of understanding shall be negotiated between the CPO and the hamlet or village. The memorandum shall outline how the assumption will take place, the scope of responsibility transferred, the ongoing status of the CPO once the transfer occurs, and how the CPO will resume functioning if the hamlet or village is ever dissolved. The memorandum may be signed by a proposed hamlet or village and CPO prior to formation, but must be approved by the BCC at the final formation hearing and signed by the BCC before going into effect. (Adopted by Ord. 03-2007, 2/22/07)

#### **2.10.050 Formation of a Hamlet or Village**

- A. **Pre-petition process.** One or more citizens desiring to form a hamlet or village will be known as “chief petitioner(s)” and shall comply with all of the following steps in the formation process:
1. Chief petitioner(s) must hold a public meeting to discuss the proposed formation. Notice of the meeting may be given by publication in a newspaper of general circulation or by any other means reasonably calculated to provide notice to citizens of the affected community.
  2. If the proposed hamlet or village has community support, the chief petitioner(s) shall then meet with county staff to discuss the proposal. Terms to be discussed with county staff include, but are not limited to,

preliminary purposes, boundaries, activities, name, projected short and long-term needs, and possible methods of financing.

3. Hamlet or village chief petitioner(s) shall communicate their proposal to special districts and cities within three miles of the proposed hamlet or village boundaries prior to circulating a petition for formation.
  4. Within 150 days of county staff approval of the proposed hamlet or village, chief petitioner(s) shall complete the hamlet or village application and gather the required number of signatures petitioning for formation of the hamlet or village. Application and petition forms may be obtained from the Clerk of the BCC.
- B. **Hamlet petition.** A petition for formation of a hamlet must be signed by at least 10% of the citizens located within the proposed hamlet boundary (based on the latest U.S. census or most recent county-acknowledged survey) or 100 citizens, whichever is the lesser number, and shall state the proposed name, preliminary purposes, preliminary boundaries, and proposed activities.
- C. **Village petition.** A petition for a village must be signed by at least 15% of the citizens located within the proposed village boundary (based on the latest U.S. census or most recent county-acknowledged survey) or 150 citizens, whichever is the lesser number, and shall state the proposed name, preliminary purposes, preliminary boundaries, proposed activities, and any proposed methods of financing for the village.
- D. **Notice of public hearing.** When a completed application and petition is received by the Clerk of the BCC, the county shall set a public hearing within sixty (60) days on the question of formation. The county shall provide two successive notices in a newspaper of general circulation in the area of the proposed hamlet or village, and shall post a notice of the hearing for the same period of time in at least three public places in the proposed area and notify cities within three miles of the boundaries of proposed hamlet or village.
- E. **Public hearing.** At the public hearing, any person having an interest in the matter may appear and support or object to the formation of the hamlet or village. The BCC will consider the application and revise it as it deems appropriate.
- F. **Resolution authorizing organizational process to complete formation.** At the conclusion of the public hearing, the BCC may pass a resolution authorizing the chief petitioner(s) to proceed with the organizational steps necessary to complete the formation process as presented, or it may modify or reject the application.
1. The resolution authorizing further organizational steps shall include the hamlet or village name, preliminary purposes, proposed activities, and

preliminary boundaries. The resolution may also include the date for a final public hearing on the proposed formation.

2. During the organizational process, the BCC retains discretion to adjust the name, purposes, activities, and boundaries. The BCC may also set or adjust the date of the final public hearing on the proposed formation.
- G. **CPO status.** A vote by the BCC on the formation of a hamlet or village does not affect an existing CPO, unless otherwise provided in an approved memorandum of understanding.
- H. **Organizational meeting(s).** If the BCC passes a resolution authorizing the organizational steps necessary to complete the formation process, the chief petitioner(s) shall schedule one or more organizational meetings. Notice shall be by publication in a newspaper of general circulation in the affected area, or by other means reasonably calculated to provide notice to potential citizens of the proposed hamlet or village.
1. The chief petitioner(s) shall convene the first organizational meeting no later than sixty (60) days from the date on which the authorizing resolution is signed by the BCC.
  2. The chief petitioner(s) shall form one or more work groups for the purpose of developing bylaws, accepting nominations for board of director positions, and conducting other organizational activities, including but not limited to discussion of boundaries, purposes, and activities. Work groups may be formed at any organizational meeting.
  3. Candidates for positions on the board of directors of the proposed hamlet or village must be citizens of the proposed hamlet or village. Candidates shall complete an application form indicating their eligibility.
- I. **Bylaws and board members.** Bylaws shall define the qualifications, roles and responsibilities of board members, their terms of office, attendance requirements, the manner of filling vacancies, and the grounds and process for removal. A majority of the total number of board members shall constitute a quorum.
1. Bylaws shall also set forth purposes, activities, methods of action, and the process for amending the bylaws. Examples of hamlet or village activities include communications, transportation, CPO functions, and working with other hamlets, villages, cities, CPOs, service providers, other organizations, or the county to achieve community goals.
  2. In the case of a village, bylaws shall also expressly address the authority of, and process by which, a recommendation may be made to the BCC for

establishment of additional taxes or fees to be paid by citizens of the village. A village has no independent authority to levy taxes or fees.

- J. **BCC preliminary approvals.** At least thirty (30) days before a town hall vote, the chief petitioner(s) shall submit proposed bylaws and eligible board candidates to the BCC for preliminary approval at a public work session.
1. Other organizational issues may also be brought to the BCC in public work sessions for discussion and preliminary approvals.
  2. Preliminary approvals by the BCC in public work sessions must be ratified at the final public hearing on the question of formation of the proposed hamlet or village.
  3. Following preliminary approval by the BCC and prior to final ratification by the BCC, the county shall submit the question of formation of the proposed hamlet or village, the proposed bylaws, and board candidates, to the citizens of the proposed hamlet or village for a vote at one or more town hall meetings.
- K. **Town hall voting.** Citizens of a proposed or existing hamlet or village are eligible to vote at a town hall meeting. If a business entity is owned by more than one person, only one person may claim to be a citizen because of such ownership. A non-resident owner of multiple parcels of real property may claim to be a citizen because of such ownership, but may cast only one vote. Multiple non-resident owners of the same real property may claim citizenship because of such ownership but may cumulatively cast only one vote and hold only one board position based on that property. Business entities and trusts are entitled to one representative vote. If more than one person claims to be the authorized representative of a business or real property, the votes cast by those persons shall be made by provisional ballots.
1. The voting process will be conducted by the county. Since the town hall model is designed to encourage citizen participation, citizens must be present at a town hall meeting to vote during the formation process. At each such meeting, a written agenda shall be available identifying the issues to be voted on to facilitate citizen participation.
  2. More than one citizen may be a candidate in an election based on joint ownership of a business or property. Where this occurs, only the candidate receiving the most votes may take office.
  3. If a majority of citizens present at the town hall meeting vote to support formation of the proposed hamlet or village, approve the bylaws and choose the board of directors, the chief petitioner(s) shall recommend the

formation, bylaws and board, to the BCC for ratification at the final public hearing.

4. If a majority of citizens present at a town hall meeting vote not to support formation of the hamlet or village, the chief petitioner(s) shall so notify the BCC in writing, and the BCC may enter an order rescinding its resolution authorizing formation of the hamlet or village at the final hearing.
  5. The outcome of town hall voting is not binding on the BCC. However, the BCC shall consider the voting results as a factor in deciding whether to approve formation of a hamlet or village, or other matters, at the final hearing.
- L. **Provisional ballots.** A provisional ballot is a vote that is conditionally counted, as set forth in this section. Provisional ballots shall be given to attendees at a town hall meeting who cannot provide proof of hamlet or village citizen status at the time of the meeting, or in the event there is a dispute as to the authorized representative of a business or property.
1. In the event of a dispute over authorized representative status for a business or property, the burden is on the business or property owners to designate their authorized representative. Until then, the vote will be classified as provisional.
  2. To receive a provisional ballot, individuals must provide their name, address, contact telephone number, and basis for their claim of citizen status. If available, an email address must also be provided.
  3. Provisional ballots will be examined only upon a determination by the county that a sufficient number have been cast to possibly affect the outcome of the vote. In such event, public notice will be posted on the county's website of the intent to verify provisional ballots.
  4. If provisional ballots are to be examined, ballot-casters shall be notified of the need to provide proof of identification or other required information that verifies their status as citizens of the proposed hamlet or village who are eligible to cast votes. Voters casting provisional ballots will be given five (5) business days from the date of notification to provide proof of citizenship.
  5. Votes shall be counted by county staff or a designee.
- M. **Final public hearing on formation and organizational issues.** At the final public hearing, persons may present testimony on any matter relevant to the proposed formation of the hamlet or village. At the conclusion of the public

hearing, the BCC shall enter an order approving, approving with modification, or rejecting formation of the hamlet or village. If the Board approves formation, it shall enter an order that includes the approval of the name, purposes, activities, boundaries, initial board members, and bylaws of the hamlet or village.

- N. **Hamlet and village boundaries.** There can be only one hamlet or village in any given geographic area. The boundaries of the hamlet or village shall not overlap the boundaries of another hamlet, village or city. To the extent permitted by law, the BCC will not permit encroachment into the hamlet or village boundaries by other entities. (Adopted by Ord. 03-2007, 2/22/07)

#### **2.10.060 Post-Formation Management of Hamlet and Village Affairs**

- A. **Board of Directors.** The interests of the hamlet or village are represented by a board of directors. The board is the representative voice of its citizens and serves in an advisory capacity to the BCC on issues of concern to the hamlet or village. Prior to election, eligibility of candidates for the board of directors shall be approved by the BCC.
- B. **Meetings; public participation; action.** Each hamlet or village board shall meet with citizens at least quarterly at town hall meetings to identify, discuss, and prioritize community issues. All such town hall meetings shall be open to the public.
1. Citizens and non-citizens may attend and speak at town hall meetings.
  2. Voting shall be conducted in accordance with Section 2.10.050(K), unless otherwise specified in approved hamlet or village bylaws. Town hall votes by citizens are advisory to the hamlet or village board, and shall guide the board in setting policy direction in hamlet and village affairs.
  3. Official hamlet or village action shall be taken only by a vote of the board. If the hamlet or village board takes action contrary to a town hall vote, that action, and the board's reasoning, shall be presented to the county liaison, and to citizens at the next town hall meeting.
- C. **Bylaw amendments.** Proposed bylaw amendments shall be presented to the BCC for review and approval at a public work session scheduled at least thirty (30) days prior to a town hall vote on the amendments.
- D. **Boundary changes.** Using the process contained in its bylaws, a hamlet or village may request that the BCC modify its boundaries.
- E. **Agreements.** Upon approval of the BCC, a hamlet or village may enter into memoranda of understanding with neighboring jurisdictions or other

organizations. The county may, on behalf of a hamlet or village, enter into an intergovernmental agreement with other governments.

- F. **Activities; changes.** Individual projects to be undertaken within activity areas identified in the hamlet or village bylaws must first be reviewed and approved by the county liaison to ensure consistency with the approved bylaws. Proposed changes to a hamlet or village activity list must first be presented by the board to the BCC for review and approval. If approved by the BCC, the change must also be approved by a majority vote of those citizens of the hamlet or village who are present at the town hall meeting at which approval is sought. If the change is approved, the hamlet or village bylaws must also be amended to reflect the change. (Adopted by Ord. 03-2007, 2/22/07)

#### **2.10.070      Financing**

- A. **Hamlet.** A hamlet shall be financed primarily through contributions, grants, and volunteer fundraising activities. All such funds must be deposited with and administered by the county on behalf of the hamlet. A hamlet may enter into agreements for the sharing of revenue with the county.
- B. **Village.** A village may generate revenue through a range of means, including contributions, grants, and volunteer fund-raising activities. All such funds must be deposited with and administered by the county on behalf of the village. A village may enter into agreements for the sharing of revenue with the county. If approved by a vote of the citizens at a town hall meeting, the board may also request that the BCC take any of the following actions:
1. Fund proposed activities within the boundaries of the village through the establishment of a tax, fee or other charge. The BCC may implement such a recommendation if the tax, fee or charge is permitted by law, the revenue generated is intended to support the delivery of an enhanced level of service, and the level of service would not otherwise be provided from appropriated county funds.
  2. Initiate formation of a county service district with a permanent rate limit for operating taxes. If approved by the BCC, formation will be initiated in accordance with ORS Chapter 451, which includes public hearings and a vote on the question of formation by registered voters within the boundaries of the proposed district.
  3. Authorize the village to circulate a petition for the formation of a local improvement district pursuant to Chapter 4.02 of the Clackamas County Code pertaining to construction of public roads, sidewalks, traffic-calming, street lighting, and related facilities. (Adopted by Ord. 03-2007, 2/22/07)

**2.10.080      Dissolution**

- A.     **Initiation.** Dissolution of a village or hamlet may be initiated by:
1.     A resolution of the BCC; or
  2.     Filing a petition with the Clerk of the BCC. In the case of a village the petition must be signed by at least 30% of the citizens. In the case of a hamlet, the petition must be signed by at least 20% of the citizens. The latest U.S. census or most recent county-acknowledged survey shall be used to determine if a petition meets the requirements of this section.
- B.     **Process.**
1.     The hamlet or village shall hold a town hall vote on the question of dissolution from at least thirty (30) days after, but no more than fifty (50) days after, initiation of the dissolution process.
  2.     Following a town hall vote in favor of dissolution, the BCC shall hold a public hearing on the issue.
  3.     The BCC may enter an order dissolving the hamlet or village if the BCC finds:
    - a.     It to be in the best interests of the citizens of the hamlet, village, or the county, to dissolve the hamlet or village;
    - b.     That the hamlet or village has failed to regularly follow its adopted bylaws; or
    - c.     That the hamlet or village has failed to meet the requirements of this Chapter.
- C.     **CPO status.** Dissolution of a hamlet or village does not affect any existing CPO, except to the extent required by a written memorandum of understanding.
- D.     **Disposition plan.** A petition for dissolution of a hamlet or village shall include a plan for disposing of assets and for payment of any indebtedness. In the case of a village, the plan must include a recommendation on whether to dissolve or continue any districts formed to serve the village. A BCC order approving dissolution shall include a plan for dissolution. If the order requires the dissolution of any districts, the dissolution of such districts shall be conducted in accordance with state and local law. (Adopted by Ord. 03-2007, 2/22/07)

**2.10.090      Public meetings; public records**

- A.    **Public meetings.** Meetings of hamlet and village boards, including town hall meetings where a quorum of the board is in attendance, are public meetings under the Oregon public meetings law. The requirements for public meetings include, but are not limited to, providing adequate meeting notice, opening the meetings to the public, recording votes, and keeping minutes.
- B.    **Public records.** Hamlet and village records are public records subject to disclosure unless exempt. Public record requests must be submitted to the Clerk of the BCC for processing. The hamlet or village shall cooperate with the county in responding to each request.
- C.    **Records retention.** All original records shall be retained by each hamlet or village as required by law, with copies provided to the Clerk of the BCC. Copies of all meeting minutes shall be submitted to the Clerk of the BCC within forty-five (45) days from the date of the meeting. Changes to the bylaws and a list of current board members shall be submitted to the Clerk of the BCC within thirty (30) days of any changes in bylaws or board members. (Adopted by Ord. 03-2007, 2/22/07)

**2.10.100      Local budget and audit law; charitable contributions; contracts**  
Bookmark not defined.

- A.    **Local budget and audit law.** Hamlets and villages may receive financial support from the county or other public or private fund sources, and shall cooperate with the county in complying with the requirements of the local budget and audit laws of the State of Oregon.
- B.    **Charitable contributions.** Charitable contributions made for the benefit of a hamlet or village may be paid to Clackamas County. As of the adoption date of this Ordinance, federal tax law provides an income tax deduction for charitable contributions to the county made exclusively for public purposes. Contributions received by the county on behalf of a hamlet or village will be acknowledged in writing with the statement that the contribution is tax-deductible to the full extent allowed by law.
- C.    **County trust accounts.** Working with the county liaison, a hamlet or village shall open a trust account with the County Treasurer to accumulate contributions described in section "B" above. The account shall be established according to County Treasurer protocol. Authorized requests for funds held by the county in trust for the hamlet or village shall be made in writing to the county liaison.
- D.    **Imprest petty cash or bank account.** A hamlet or village may maintain an imprest petty cash fund or an imprest bank account in an amount authorized by the BCC for miscellaneous expenditures, if provided in the hamlet or village

bylaws. If the hamlet or village chooses to use an imprest bank account, all banking decisions must be coordinated with the County Treasurer or delegate. In addition, the County Treasurer or delegate must be an authorized signatory on the account and copies of all bank statements and reconciliations must be forwarded to the County Treasurer's office. Deposits in financial institutions must comply with all requirements of ORS Chapter 295.

1. As used in this section, "imprest" means a petty cash fund or a bank account into which a fixed amount of money is placed for the purpose of making minor disbursements for small, routine operating expenses. As disbursements are made, a voucher is completed to record the date, amount, nature, and purpose of the disbursement. The total of cash and the substantiating vouchers must always equal the total fixed amount of money set aside in the imprest fund or account.
- E. **County contract authority.** Hamlets and villages shall not enter into contracts unless expressly authorized in writing by the BCC or its delegate. All Clackamas County contracts are subject to the Clackamas County Local Contract Review Board rules. (Adopted by Ord. 03-2007, 2/22/07)

#### **2.10.110      Liability; risk management**

- A. **Agency status.** Hamlet and village board members acting within the scope of authority granted by the organization bylaws and county policies are advisory to the BCC and shall be treated as agents of the county for claims against them for purposes of the Oregon Tort Claims Act. When acting in the capacity of a CPO, a hamlet or village board shall not be considered an agent of the county.
- B. **Fund-raising activities.** A hamlet or village board must obtain approval from the county Risk Manager prior to staging public fund-raising activities.
- C. **Ethical standards.** Directors and officers are public officials subject to the Oregon Government Ethics laws (Oregon Revised Statutes Chapter 244), and may be removed from office by the BCC if found to be in violation thereof. (Adopted by Ord. 03-2007, 2/22/07)

## **CHAPTER 2.11**

### **2.11 Board of County Commissioners**

#### **2.11.010 COMPOSITION**

The Board of County Commissioners shall consist of five commissioners, all of whom shall be elected by a county-wide vote. (Adopted by Ord. 07-2007, 8-2-07; Approved by voters 11-6-07)

#### **2.11.020 DESIGNATED OFFICES; NONPARTISAN ELECTIONS**

A. Each commissioner office of the Board of County Commissioners shall be designated. One commissioner office shall be designated as the Chair of the Board of County Commissioners. Each remaining commissioner office shall be designated by numbered position.

B. All Board of County Commissioner offices are designated as nonpartisan offices.

C. The nomination and election of the Chair (Position 1) and Positions 3 and 4 shall be held during one election cycle and the nomination and election of Positions 2 and 5 shall be held during the next election cycle.  
(Adopted by Ord. 07-2007, 8-2-07; Approved by voters 11-6-07)

#### **2.11.030 TERMS**

All five members of the Board of County Commissioners shall serve four year terms. (Adopted by Ord. 07-2007, 8-2-07; Approved by voters 11-6-07)

#### **2.11.040 SELECTION**

Members of the Board of County Commissioners shall be nominated and elected as provided by the laws of the State of Oregon for the nomination and election of nonpartisan offices.

A candidate for a commissioner office shall designate the commissioner office for which the candidate seeks nomination and election. A qualified elector may cast a single vote for each commissioner office for which a candidate is to be selected. (Adopted by Ord. 07-2007, 8-2-07; Approved by voters 11-6-07)

#### **2.11.050 QUALIFICATIONS AND VACANCIES**

The qualifications for a member of the Board of County Commissioners shall be governed by the laws of the State of Oregon.

If a vacancy in the office of a county commissioner occurs, the vacancy shall be filled using the procedures set forth in the laws of the State of Oregon for filling such vacancies.

(Adopted by Ord. 07-2007, 8-2-07; Approved by voters 11-6-07)

#### **2.11.060 ATTENDANCE AT BOARD MEETINGS**

The attendance of three members of the Board of County Commissioners shall be necessary to transact business. A vote of approval of at least three commissioners is necessary for the board to take any action. (Adopted by Ord. 07-2007, 8-2-07; Approved by voters 11-6-07)

#### **2.11.070 DUTIES OF COMMISSIONERS**

The Board of County Commissioners shall serve as the governing body of Clackamas County and shall have all powers and duties granted to the governing body by law.

The Chair shall establish the agenda for each meeting of the Board of County Commissioners. Two or more commissioners may place any item on the agenda of a meeting of the Board of County Commissioners over the objection of the Chair.

(Adopted by Ord. 07-2007, 8-2-07; Approved by voters 11-6-07)

#### **2.11.080 SEVERANCE CLAUSE**

If any provision of this Chapter 2.11 is adjudged or declared to be unconstitutional or otherwise held to be invalid by a court of competent jurisdiction, the remaining provisions of this chapter shall remain in full force and effect. (Adopted by Ord. 07-2007, 8-2-07; Approved by voters 11-6-07)

**2.11.090      TRANSITION PROVISIONS AND APPLICABILITY DATES**

A. The Chair position shall be designated Position 1 and may be referred to either as the Chair or as Position 1. The commissioner position that exists on the day before the effective date of this chapter and the term of which expires on January 2, 2011, shall be designated Position 2. The commissioner positions that exist on the day before the effective date of this chapter and the terms of which expire on January 4, 2009, shall be designated Positions 3 and 4. The commissioner position that is not the Chair position and that was not in existence on the day before the effective date of this Ordinance shall be designated Position 5.

B. Notwithstanding section 2.11.030 of this chapter, the term of commissioner Position 5 for the term beginning January 5, 2009, shall conclude January 2, 2011. Thereafter, the term of commissioner Position 5 shall be as prescribed in section 2.11.030 of this chapter.

C. Section 2.11.020 (B) of this chapter, relating to the nonpartisan status of the offices of county commissioners, applies as of the effective date of this chapter. All other provisions of this chapter apply to the nomination and election of members of the Board of County Commissioners and to the operation of the Board of County Commissioners for each board that convenes on or after January 5, 2009.

D. On or after January 1, 2011, and before June 1, 2011, the Board of County Commissioners shall review the governance structure of the Board of County Commissioners and shall determine whether to propose to county electors changes in the governance structure of the Board of County Commissioners, including but not limited to whether commissioners should serve on a full-time or part-time basis and whether commissioners should be elected on a county-wide basis or by district.

(Adopted by Ord. 07-2007, 8-2-07; Approved by voters 11-6-07)

## Chapter 2.12

### 2.12 COUNTY COUNSEL

#### **2.12.010 APPOINTMENT OF COUNTY LEGAL COUNSEL**

- A. The Board of County Commissioners may appoint a person licensed to practice law in the State of Oregon as the County Counsel. The Office of County Counsel represents the County, and is authorized to provide legal advice and representation to the Board and other County officers, to render services in connection with legal questions of a civil nature arising in the discharge of their functions, to prosecute violations of County law as defined by statute, and to provide such additional services as the Board determines. The County Counsel is the chief legal officer of the County and serves at the pleasure of the Board as an unclassified employee under an employment agreement.
- B. The County Counsel will be chosen without regard to political considerations and solely with reference to legal and administrative qualifications. The County Counsel shall serve full-time as the director of the Office of County Counsel, and reports directly to the Board of County Commissioners. Compensation and benefits shall be fixed in an amount determined by the Board of County Commissioners. [Adopted by Ord. 01-2009, 2/5/09]

#### **2.12.020 AUTHORITY**

- A. The County Counsel shall be the chief legal officer of the County, and oversees all legal matters of a civil nature involving the County. Within broad objectives established by the Board of County Commissioners, the County Counsel will plan, organize, direct and manage all civil legal personnel and activities for the county, work closely with the County Administrator, and keep the Board informed of pertinent matters.
- B. When a person licensed to practice law in the State of Oregon has been appointed pursuant to this Chapter they shall have the same civil authority and responsibilities as are otherwise provided for the District Attorney when acting as advisor to the Board of County Commissioners and County officers. [Adopted by Ord. 01-2009, 2/5/09]

#### **2.12.030 DUTIES**

The County Counsel shall perform all day-to-day functions necessary for the administration and management of the Office of County Counsel. Such duties include but are not limited to the following:

1. Develops and implements policies and procedures for the Office of County Counsel.
2. Provides or oversees legal representation as determined by the Board in civil matters on behalf of the County.
3. Provides legal counsel to the Board of County Commissioners, County officers, the County Administrator, department directors, County employees and various boards and commissions, on matters pertaining to official County operations.
4. Advises County departments on appropriate action for a variety of legal problems and issues.
5. Provides legal advice and analysis of proposed state and federal legislation affecting County operations.
6. Directs the research and preparation of legal opinions, memoranda, ordinances, resolutions, contracts, agreements, deeds and other legal documents.
7. Selects, appoints, supervises, disciplines and dismisses all Office of County Counsel staff and assistant county counsel, including, but not limited to, Legal Counsel and Legal Counsel, Senior. The County Counsel has the authority to sign employment contracts for such employees, as unclassified employees, consistent with other employment contracts. The County Counsel shall consult the Board on these matters.
8. Hires outside legal counsel on behalf of the County, subject to applicable law and County policy, upon such terms and conditions as may be approved by the Board.
9. Conducts such other activities and assignments as may be required by the Board. [Adopted by Ord. 01-2009, 2/5/09]

## Chapter 2.13

### 2.13 Delegating Authority to the Director of the Department of Transportation and Development

#### 2.13.010 Delegation of Authority

- A. The Director of the Department of Transportation and Development (the “Director”) shall have the authority to accept, on behalf of the County, dedication of interests in land for use as public right of way, for related or appurtenant easements, and for other public purposes as set forth in this Chapter and as the Board may further determine by resolution and order.
- B. The Director, in instances when the Director is not present in the Department of Transportation and Development, shall have the power to temporarily delegate the authority under this section by a written statement to the Deputy Director or Transportation Engineering Manager, declaring the delegation, the individual designated, and the duration of the designation.
- C. The authority granted in this section shall be in addition to other authority that may be provided to County officers and employees to acquire interests in real property on behalf of the County. Nothing in this section shall be deemed to grant any employee or individual the authority to acquire or accept an interest in real property on behalf of the County except as specifically provided herein, or upon the direction or approval by the Board. (Added by Ord. 02-2009, 3/5/09)

#### 2.13.020 Authority to Accept

- A. In order for the Director to have the authority to accept a dedication or grant of a property interest the Board must have established a policy or directive as shown by one or more of the following examples:
  - 1. An expansion or realignment of a public road for which the Board has approved acquisition of right of way or declared the necessity of acquiring the same;
  - 2. An existing or proposed County road;

3. Any road or related facility shown on a transportation plan adopted or approved by the Board; and
  4. Any public road or easement required by the terms of a final land use approval.
- B. The Director's authority to accept, on behalf of the County, offers of dedication includes the following interests in real property:
1. Deeds and easements securing the right of way, including roads, streets, highways, paths, trails and public ways of whatever kind;
  2. Road related easements, including but not limited to temporary construction easements, public utility easements, soundwall easements, slope easements, storm drainage easements, sign easements, sidewalk easements, sight distance easements, and traffic control easements.
  3. Other lesser road related property interests, such as temporary rights of entry;
  4. Other easements and real property interests granted to the County or to the public pursuant to the terms of a final land use approval.
- C. All documents accepted pursuant to this section and submitted for recording shall show evidence of approval as to form by County legal counsel and the signature and title of the person accepting the document on behalf of the County. (Added by Ord. 02-2009, 3/5/09)

### **2.13.030 Severance Clause**

No other provision of the County Code shall be affected by the amendments herein adopted. A determination by a court of competent jurisdiction that any section, clause, phrase, or word of this chapter or its application is invalid or unenforceable for any reason shall not affect the validity of the remainder of this chapter or its application, and all portions not so stricken shall continue in full force and effect. (Added by Ord. 02-2009, 3/5/09)

### **2.13.040**

The authority to grant by this Chapter does not affect the authority granted the County Surveyor as set forth in Chapter 11.02 of the County Code. (Added by Ord. 02-2009, 3/5/09)