

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: 19-01-29-01

IN THE MATTER OF AMENDING LANE
MANUAL CHAPTERS 3 AND 61 TO MOVE THE
THE WORKERS' COMPENSATION PROGRAM
AND DELEGATE SETTLEMENT AUTHORITY
(LM 3.064, 61.060)

The Board of County Commissioners of Lane County **ORDERS** as follows:

Lane Manual Chapters 3 and 61 are amended by removing, substituting or adding the following sections:

REMOVE THIS SECTION

3.064
61.060

INSERT THIS SECTION

3.064
61.060

If any section, subsection, sentence, clause, phrase or portion of this Order or the referenced Lane Manual provisions is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion is deemed a separate, distinct, and independent provision, and such holding does not affect the validity of the remaining portions.

Said sections are attached hereto and incorporated herein by reference. The purpose of these substitutions is to move the Workers' Compensation program into Risk Management and delegate settlement authority. (LM 3.064, 61.060).

ADOPTED this 29th day of January 2019.



Pete Sorenson, Chair
Lane County Board of Commissioners

APPROVED AS TO FORM

Date _____

LANE COUNTY OFFICE OF LEGAL COUNSEL

3.064 Functions.

The function of the Office of Legal Counsel is to serve as attorney for County government and will include, but not be limited to, the following specific functions as is consistent with budget limitations:

- (1) Serve as primary legal advisor to the Board of County Commissioners;
- (2) Investigate and manage claims that are made against the County and its employees and defend County officers or employees as required by statute, in any action for damages based on an alleged wrongful act or omission in performance of official duty, except as otherwise directed by the Board;
- (3) Defend actions and suits to which the County is a party and such proceedings as resources permit;
- (4) Upon approval of the Board prosecute actions and suits to which the County is a party and such proceedings as resources permit;
- (5) Upon request, may advise County officers on legal questions that may arise;
- (6) Performance of the duties outlined in Lane Manual include:
 - (a) Attending meetings of Board as it may request;
 - (b) Approving formal ordinances, orders and actions of the Board as to form (legal sufficiency);
 - (c) Serving as legal advisor for/to the Planning Commission;
 - (d) Representing the Assessor (Director, Department of Assessment and Taxation) before the Tax Court in significant tax cases;
 - (e) Drafting and assisting in drafting of County charter amendments, ordinances, orders, contracts, deeds and other formal documents;
 - (f) Advising and, as necessary, appearing before the County Infractions Section;
 - (g) Assisting in collection of delinquent accounts, including proceeding to judgment and execution;
 - (h) Assisting in lease and acquisition of real property by purchase or condemnation;
 - (i) Drafting ballot titles;
 - (j) Serving as legal advisor to the Fair Board;
 - (k) Potential conflicts of interest within the Office of Legal Counsel will be handled in accordance with provisions set forth in Lane Manual and the applicable rules governing the ethics of attorneys; and,
 - (l) Maintain the Lane Code and Lane Manual.
- (7) Subject to the exercise of discretion regarding ethical considerations on the part of the County Counsel, the duties of the Office of Legal Counsel generally will be performed in the following order of priority:
 - (a) Litigation;
 - (b) Requests of or advice to the Board and elected officials;
 - (c) Requests of and advice to the County Administrator; and,
 - (d) Requests of and advice to the Department Directors.
- (8) Risk Management. The Department will be responsible for risk management functions, including loss prevention, self-insurance programs, insurance, general liability claims management and workers' compensation. *(Revised by Order No. 00-1-26-7, Effective 1.26.00; 10-7-28-3, 7.28.10; 17-06-06-06, 6.6.17; 18-01-30-02, 1.30.18)*

61.040.6.1 The County, in its discretion, may provide a defense for claims asserted against a county employee, officer, or agent which arise out of an alleged act or omission occurring in the performance of duty and which are outside the County's duty to defend under the Oregon Tort Claims Act, upon receipt of a written request for defense from the individual, and pursuant to the conditions and limitations described below.

61.040.6.2 The employee, officer or agent shall cooperate with the County and counsel in the same manner as required by the Oregon Tort Claims Act.

61.040.6.3 The County will reject a request for defense for instances described above where, after an investigation by the County, it is determined that the claim or demand did not occur out of an alleged act or omission occurring in the performance of duty or that the alleged act or omission amounted to malfeasance in office, or willful or wanton neglect of duty. Upon such rejection, the rights of the employee, officer or agent shall be determined in the same manner as provided by the Oregon Tort Claims Act.

61.040.6.4 County Counsel shall provide the defense in the instances described above, unless an ethical conflict exists or there are other factors which, after consultation with County Counsel, cause the Board to determine that it is in the best interests of the County to authorize engaging private counsel.

61.040.6.5 Upon approval of the Board of a request for a private attorney, or upon County Counsel's determination that an ethical conflict exists, or in an emergency situation, County Counsel shall authorize, for payment from appropriate budgeted funds, retaining a private attorney under reasonable terms not to exceed \$5,000 (Five thousand dollars and no cents) total fee. If it is necessary to exceed the \$5,000 (Five thousand dollars and no cents) fee, the fee agreement shall be handled through the normal contract process.

61.040.6.6 If a judgment is ultimately entered against the individual after the County has provided a defense, the County reserves the right to seek reimbursement, plus interest at the statutory rate, from the individual for any damages paid by the County and the costs of defense.

61.040.7 Nothing in these provisions is intended to create or confer a right or benefit on a plaintiff alleging a civil rights violation by or against the County or a County officer, agent or employee.

(Revised by Order No. 85-3-13-3, Effective 3.13.85; 98-12-2-5, 12.2.98; 02-9-25-10, 9.25.02; 16-02-09-03, 2.9.16)

AUTHORITY FOR SETTLEMENT

61.050 Policy.

The County recognizes that, given the inherent risks of litigation, it is often in its best interest to settle lawsuits, claims, personnel grievances, and appeals promptly. Settlements promote the good will of the County and allow the government to proceed with its business rather than dwelling on past actions. For these reasons, the County encourages reasonable settlements.

(Revised by Order No. 98-12-2-5; Effective 12.2.98; 13-04-23-03, 4.23.13; 16-02-09-03, 2.9.16)

61.060 Delegation of Authority.

61.060.1 Self-Insured Litigation. The Office of Legal Counsel is responsible for defending the County in litigation unless the case is covered by an insurance policy and the company chooses to employ outside counsel or a conflict of interest exists. After following the appropriate risk

management procedures, including identifying the risks involved, the probable costs, the impact of the settlement, and the source of budgeted funds to be used for any payment, the following individuals are delegated the authority to settle litigation up to the described limit and to execute any documents necessary to finalize the settlement.

61.060.1.1 The County Counsel or their designee - up to \$50,000 (Fifty thousand dollars and no cents).

61.060.1.2 The County Administrator or their designee - up to \$100,000 (One hundred thousand dollars and no cents).

61.060.2 Self-Insured Claims. The Risk Manager is responsible for investigating and managing claims for damages against the County unless the claim is covered by an insurance policy and the company chooses to settle the matter with an alternate method. After following the appropriate risk management procedures, including identifying the risks involved, the probable costs, the impact of the settlement, and the source of budgeted funds to be used for any payment, the following individuals are delegated the authority to settle claims up to the described limit and to execute any documents necessary to finalize the settlement.

61.060.2.1 The Risk Manager or their designee - up to \$50,000 (Fifty thousand dollars and no cents).

61.060.2.2 The County Administrator or their designee - up to \$100,000 (One hundred thousand dollars and no cents).

61.060.3 Grievances and Appeals. Grievances and appeals involve those personnel matters which are proceeding under Lane Manual Personnel Rules or pursuant to a claim for a violation of a collective bargaining agreement through the procedure in said agreement. Any settlement of a grievance or appeal must have the concurrence of all co-employers. After determining the risks involved in proceeding, the probable costs, the impact of the settlement and the source of budgeted funds to be used for any payment, the following individuals are delegated the authority to settle grievances and appeals up to the described limit and to execute any documents necessary to effect the settlement.

61.060.3.1 Human Resources Director or their designee – up to \$50,000 (Fifty thousand dollars and no cents).

61.060.3.2 The County Administrator or their designee - up to \$100,000 (One hundred thousand dollars and no cents).

61.060.4 Self-Insured Workers' Compensation Claims and Litigation. The Workers' Compensation Administrator (WCA) in consultation with the Human Resources Director, Risk Manager, and County Counsel is responsible for ensuring that adequate investigation and claim management takes place. The Risk Manager, in consultation with County Counsel, shall arrange a pool of appropriate legal counsel. The WCA shall select counsel from the pool when needed for routine workers' compensation litigation. County Counsel will ensure that appropriate legal counsel is retained in cases involving legal matters other than routine workers' compensation litigation. After following the appropriate risk management procedures, including identifying the risks and exposures involved, the probable costs, the impact of the settlement, the source of budgeted funds to be used for any payment and with the written concurrence of legal counsel or County Counsel (if the case here proceeded to

litigation), the following persons are delegated the authority to settle claims up to the described limit and to execute any documents necessary to finalize the settlement:

61.060.4 .1 The Risk Manager or County Counsel, in consultation with the Department Director - up to \$50,000 (Fifty thousand dollars and no cents) on disputed claims, to include any and all payments already made on claim other than defense costs; and up to \$50,000 on Permanent Partial Disability issues in addition to payments already made or ordered by Workers' Compensation Department on accepted claims.

61.060.4.2 The County Administrator, in consultation with the Workers' Compensation Administrator, Risk Manager, Department Director, and County Counsel - up to \$100,000 (One hundred thousand dollars and no cents) on disputed claims, to include any and all payments already made on claim other than defense costs; and up to \$100,000 on Permanent Partial Disability issues in addition to payments already made or ordered by Workers' Compensation Department on accepted claims.

61.060.4.3 The Workers' Compensation Administrator or Risk Manager may represent Lane County in all workers' compensation mediations and determine agreeable settlement terms. The Workers' Compensation Administrator, Risk Manager, Department Director, and County Counsel will consult prior to mediation to determine an acceptable settlement amount. When the settlement is estimated to exceed the delegated authority limits set above, increased authority shall be requested from the County Administrator or Board of County Commissioners.

61.060.5 Appeal and Settlement of APD Citations and Penalties. It is the policy of Lane County to appeal citations received from the Accident Prevention Division (APD) of the State of Oregon for workers' safety violations whenever there is any reasonable basis for such an appeal. The County Administrator is delegated the authority to appeal APD citations and any associated financial penalties, and to represent Lane County before APD on such matters through hearing. The County Administrator may further delegate this authority in writing to the Risk Manager or Department Director or to their subordinates with the particular knowledge to represent County interests regarding an APD citation and any associated financial penalties. Appeal of APD citations or any associated financial penalties may result in the opportunity for a settlement of contested issues as a result of an informal conference. After evaluating the proposed settlement and the source of budgeted funds to be used for any payment, and after considering the effort, costs and possible benefits of continuing to pursue the appeal to a formal hearing, the following persons are delegated the authority to approve settlements of the appeal of an APD citation and any associated penalty in the amounts below and to execute any documents necessary to effect the settlement:

61.060.5.1 Risk Manager, County Counsel, Department Director, or their subordinates as authorized by the County Administrator - up to \$50,000 (Fifty thousand dollars and no cents).

61.060.5.2 County Administrator - up to \$100,000 (One hundred thousand dollars and no cents).

61.060.6 Recovery of Moneys Owed to Lane County. The County Administrator is delegated the authority to seek recovery and the Risk Manager is responsible for seeking recovery on the County's behalf from those people who damage or steal County property, injure County employees which causes the County to pay time loss, or cause damages by breaking their contract with the County. In many of these cases, the costs of recovery, comparative negligence or disputes in amounts owed can make a settlement of these claims appropriate. The following individuals are delegated the authority

to approve settlement of claims for amounts owed to the County and to execute any documents necessary to finalize the settlement.

61.060.6.1 The Risk Manager or their designee - up to \$50,000 (Fifty thousand dollars and no cents).

61.060.6.2 The County Counsel or their designee - up to \$50,000 (Fifty thousand dollars and no cents).

61.060.6.3 The County Administrator or their designee - up to \$100,000 (One hundred thousand dollars and no cents).

61.060.7 Settlement. Prior to the approval of any settlement over \$25,000, the Director of the Department responsible for the budgeted funds to be used for payment shall be informed of the proposed action. Payment of any of the amounts described herein is contingent upon approval of the court in those types of cases where such approval is required by statute.

61.060.8 Board of Commissioners Notification/Review.

61.060.8.1 The Risk Manager shall prepare and distribute to the Board, for the Commissioners' information, quarterly reports describing any settlements approved.

61.060.8.2 At any time, a Commissioner may consult with the relevant settling authority as to the specific details of a settlement and the reasons for its approval. If the Board is not satisfied with an approved settlement, the settlement shall not be overturned, but the Board may direct a change be made to the settlement process or in the delegation of authority described above to be effective for all future settlements.

(Revised by Order No. 98-12-2-5; Effective 12.2.98; 13-04-23-03, 4.23.13; 16-02-09-03, 2.9.16; 18-01-30-02, 1.30.18)

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- (3) Defend actions and suits to which the County is a party and such proceedings as resources permit;
- (4) Upon approval of the Board prosecute actions and suits to which the County is a party and such proceedings as resources permit;
- (5) Upon request, may advise County officers on legal questions that may arise;
- (6) Performance of the duties outlined in Lane Manual include:
 - (a) Attending meetings of Board as it may request;
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 - (l) Maintain the Lane Code and Lane Manual.
- (7) Subject to the exercise of discretion regarding ethical considerations on the part of the County Council, the duties of the Office of Legal Counsel generally will be performed in the following order of priority:
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 - (b) Requests of or advice to the Board and elected officials;
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(Revised by Order No. 98-12-2-5; Effective 12.2.98; 13-04-23-03, 4.23.13; 16-02-09-03, 2.9.16; 18-01-30-02, 1.30.18)