AGENDA COVER MEMO

Memorandum Date: December 10, 2024

Order Date: January 7, 2025

TO:	Board of County Commissioners
DEPARTMENT:	Office of Legal Counsel
PRESENTED BY:	Andrea Nagles, Sr. Assistant County Counsel
AGENDA ITEM TITLE:	ORDER 25-01-07-XX/ IN THE MATTER OF INCORPORATING OREGON STATUTORY CHANGES AND CASE LAW CHANGES INTO LANE CODE

I. MOTION

Move to approve Order incorporating Oregon statutory changes and case law changes into Lane Code.

II. AGENDA ITEM SUMMARY

There are references in various places throughout Lane Code to the Oregon Revised Statutes ("ORS"). When the provisions of the Lane Code are applied by staff or the Board, confusion can arise about which version of the ORS applies if there have been amendments to the statutes since the Code's adoption.

A second issue arises if the Board intends to include in the incorporation of the ORS subsequent administrative rules or judicial opinions interpreting the statute. This raises the concern of an improper delegation of the Board's legislative authority. The adoption of this Board Order on an annual basis will eliminate both issues.

III. BACKGROUND/IMPLICATIONS OF ACTION

A. Board Action and Other History

In the past the issues raised by this memorandum have been dealt with on a case-by-case basis.

There have been a number of occasions in the last several years where questions have arisen about a particular section of the Lane Code that has incorporated a portion of the ORS. The questions that the use of the ORS in this matter raises are:

(1) Did the Board intend to adopt the version of the ORS that existed at the time of Lane Code change? (2) What happens when subsequent amendments to the ORS or administrative rules are at odds with the Board's original intent? and (3) With the adoption of the ordinance referencing the ORS, did the Board intend to incorporate applicable case law and administrative rules?

The issue of which version of the ORS appearing in Lane Code applies usually turns on which version of the ORS was incorporated at the time of the Code provision's adoption. On occasions it is clear that a particular version of the ORS was intended to be included and not any subsequent amendments. However, in other cases it is equally clear that the Board intended to not only include later versions of the ORS, but also judicial interpretations and administrative guidance regarding the ORS in question.

If the Board's intent is to include administrative rules adopted pursuant to the statute and judicial opinions interpreting the statute, additional action is required. Oregon law prohibits the Board from delegating its legislative authority to another body. In the situation where the Board affirmatively intends to incorporate later versions of the statute, administrative rules and judicial opinions, affirmative action by the Board is required so as to not violate this rule. This rule was summarized in *Seale v. McKinnon,* 215 Or. 562, 572-73 (1959):

> [The issue with the statute] is that it is a delegation of authority [by the legislature] to the Oregon Department of Agriculture to adopt and promulgate as the law of this state future laws of the United States and regulations of a United States Department of Agriculture. Under the decisions of this and numerous other courts, such a delegation is unconstitutional. (Internal citations omitted). Adoption of existing statutes and regulations of the federal government or another state is, however, valid.
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> When a statute adopts by specific reference the provisions of another statute, regulation, or ordinance, such provisions are incorporated in the form in which they exist at the time of the reference, and not as subsequently modified; whereas, where the reference is general, such as a reference to a system or body of laws or to the general law relating to the subject at hand, the referring statute takes the law or laws not only in their contemporary form but also as they may be changed from time to time.

The Board may want to use either alternative. For example, the Board may want to incorporate a specific existing form of ORS for the conduct of elections. If that is the case, the year of the statute that is being incorporated should appear in parenthesis at the end of the ORS citation. For example, if the Board intended to adopt the procedures in a particular version of the ORS, the ORS reference should include the year ("ORS 250.168 (2016)"). This adopts the version in existence in that year and would not require further action by the Board.

However, there will be other circumstances where the Board intends to follow the provisions of a body of Oregon law, like the Oregon Public Meetings Law. For example, "The XYZ committee will follow all provisions of the Oregon Public Meetings Law when noticing and holding its meetings." In this situation the Board intends to adopt any subsequent amendments to the applicable ORS, plus administrative guidance and court decisions. This version does not require additional action by the Board to incorporate later versions of the ORS and court decisions and avoid any claims of improper delegation of the Board's legislative authority.

As staff continues to review and revise the Lane Code, staff will look for circumstances that require the changes described in this memorandum.

B. Policy Issues

This Order would promote the Board's policy of transparency and clarity in processes which benefits the County and promotes citizen involvement.

C. Board Goals

Incorporating these changes on an annual basis will ensure that the versions of the rules that the Board intends are applied and will ensure that citizens make their decisions using the most accurate version of the Lane Code.

D. Financial and/or Resource Considerations

Certainty regarding Lane Code terms will lessen the risk of potential litigation.

E. Health Implications

There are no significant health implications associated with these proposals.

F. Analysis

See discussion above under "Background/Implications of Action".

G. Alternatives/Options

Option 1: Adopt the suggested Board Order as recommended.

Option 2: Decline to adopt the Board Order.

If Option 2 is decided, this will mean that the application of certain Lane Code provisions which incorporate ORS provisions may be unclear. In addition, specific Lane Code provisions that intend to adopt later court decisions of that statute may be subject to an improper delegation charge.

Option 3: The Board could direct staff to develop additional options.

IV. RECOMMENDATION

The Office of Legal Counsel recommends adoption of the Board Order to clarify the Board's intent when adopting various Lane Code provisions. The order will assure that legislation passed by the Board complies with Oregon law and does not result in unconstitutional delegation of its legislative authority.

V. TIMING/IMPLEMENTATION

If the Board adopts the proposed Board Order, it will take effect immediately. Staff will continue their review of the Lane Code and present additional specific Board Orders as needed.

VI. FOLLOW-UP

If the Board adopts this order, it will be added to the list of other Board orders that are reviewed on an annual basis each January.

VII. ATTACHMENTS

The Board Order that accomplishes the desired incorporation of law is attached to this memorandum.

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: 25-01-07-XX	In the Matter of Incorporating Oregon Statutory Changes and Case Law Changes into Lane Code

WHEREAS, the Lane Code codifies the legislative decisions of the Board of Commissioners of Lane County; and,

WHEREAS, in multiple sections of the Lane Code various provisions of the Oregon Revised Statutes and the related Oregon Administrative Rules are referenced; and,

WHEREAS, some sections of the Lane Code reference a specific version of the Oregon Revised Statutes and Oregon Administrative Rules by year; and,

WHEREAS, it is the intent of the Board of Commissioners to include in any references in the Lane Code to the Oregon Revised Statutes and related Oregon Administrative Rules any changes by the Oregon Legislature, state administrative agencies and Oregon courts; and

WHEREAS, the incorporation of any changes to the Oregon Revised Statutes and Oregon Administrative Rules and any court decisions involving those statutes and rules is intended and necessary to keep the Lane Code current; and,

WHEREAS, in those sections of the Lane Code that reference a specific version of the Oregon Revised Statutes and Administrative Rules are intended to remain unchanged; and,

NOW, THEREFORE, the Board of County Commissioners of Lane County **ORDERS** as follows:

1. All changes to any Oregon Revised Statute or Oregon Administrative Rule are hereby incorporated into the Lane Code; and

2. Any court decisions involving any Oregon Revised Statute or Administrative Rule are hereby incorporated into the Lane Code; and

3. Any sections of the Lane Code that references a specific year of the Oregon Revised Statutes or Oregon Administrative Rules as being the statute or rule to be used in that section of the Lane Code shall remain unchanged.

ADOPTED this ___ day of January, 2025.

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Chair
Lane County Board of Commissioners