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 NOTIFYING BOARD MEMBERS OF EMERGENCY MEETINGS AND BOARD PARTICIPATION IN EMERGENCY MEETINGS

I. MOTION

Move to approve Order permitting emergency meetings of the Lane County Board of Commissioners.

II. AGENDA ITEM SUMMARY

An emergency meeting may be called by the County Administrator or any individual Board member when a meeting of Lane County Board of Commissioners is necessary to address issues related to an emergency.

Notice of the emergency meeting will be provided as required by Oregon law or any other means reasonably likely to notify Board members of the meeting.

The meeting will not take place until a quorum of the Board members has acknowledged receipt of the notice and their availability to attend the meeting.

III. BACKGROUND/IMPLICATIONS OF ACTION

Please refer to the June 30, 2015, Memo from Stephen E. Dingle, former Lane County Counsel regarding "Emergency Declarations/Procedures" included as an attachment.

IV. FOLLOW-UP

This Order is received and renewed annually so the Board of Commissioners has the opportunity to make changes if they believe changes are needed.

V. ATTACHMENTS

Board Order
June 30, 2015 Memorandum

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: 25-01-07-XX	In the Matter of Notifying Board Members of Emergency Meetings and Board Participation in Emergency Meetings

WHEREAS, the Board of Commissioners directed staff to work on a plan to deal with a variety of emergency situations that would require swift action on the part of staff and the Board of Commissioners; and,

WHEREAS, the Board of Commissioners recognize that Lane County could face an emergency response to critical incidents, whether natural or manmade; and,

WHEREAS, the Board of Commissioners recognize that during an emergency ordinary and usual communication may be disrupted; and,

WHEREAS, the Board of Commissioners recognize that the Board may need to make decisions related to an emergency on very short notice; and,

WHEREAS, the Board of Commissioners desire to have a process in place for the notification and participation of Board members in emergency meetings.

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

1. An emergency meeting may be called for by the County Administrator or an individual Board member when, in their judgment, a meeting of the Lane County Board of Commissioners is necessary to address issues related to the emergency.

2. Notice of the emergency meeting will be provided as required by Oregon law and the Lane Charter and shall be made using cell phones, text, e-mail, and land lines, if possible, or any other means reasonably likely to notify Board members of the meeting. Board members will provide the Board Coordinator with secondary telephone numbers that can be used to attempt to contact them.

3. The meeting will not take place until a quorum of the Board members have acknowledged receipt of the notice and their availability to attend the meeting.

4. Board members shall be permitted to participate by any method possible that is consistent with Oregon law under the circumstances, including but not limited to: in person, by telephone, Zoom or Skype.

5. This Order shall be reviewed annually by the Board. Failure to review this Order does not affect its continuing validity.

ADOPTED this ___ day of January, 2025.

_____
Chair
Lane County Board of Commissioners

LANE COUNTY OFFICE OF LEGAL COUNSEL

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MEMORANDUM

DATE: **June 30, 2015**

TO: **Lane County Board of Commissioners**

FROM: **Stephen E. Dingle, Lane County Counsel**

SUBJECT: **Emergency Declarations/Procedures**

1.
BACKGROUND

On June 2, 2015, the Lane County Board of Commissioners conducted a work session on various aspects of emergency preparedness and response by Lane County government in general, the Board and the County Administrator. In addition to the entire Board, Linda Cook, Emergency Manager and Steve Mokrohisky, County Administrator (CAO) attended and participated in the work session.

During the work session the Board identified a number of areas that it wanted discussed and evaluated at another Board meeting:

1. A review of Board procedures to make certain that none of the measures taken by the Board are in conflict with the existing Lane County Emergency Operations Plan (EOP);

2. Draft and approve a Board Order (BO) to meet the requirements of ORS 476.280;

3. Create a template, and fill in as many of the blanks as possible in advance, for the Declaration of Conflagration (and associated BO);

4. Agree upon in advance a procedure for calling emergency meetings and notifications for such meetings required by natural or manmade emergencies;

5. Create a BO delegating authority for the CAO to expend and commit county resources in the event of an emergency;

6. Consider creating an automatic review process that would bring these emergency procedures before the Board each year, possibly in January, for review, possible modification and renewal;

7. Determine which emergency preparedness procedures require Board action and which procedures can be implemented by the CAO using the Lane County Administrative Procedures Manual (APM); and

8. Decide if the Board will pass BO's with different authority for different emergencies depending upon the nature of the emergency or general BO's that apply to all emergencies.

2.

DECISION POINTS

1. *Potential conflict with EOP*

At the work session Linda Cook, Lane County Emergency Manager, discussed the Lane County EOP. The EOP already contains a chain of command for emergencies. The BO's under consideration should not be in conflict with the EOP because the purpose of the delegation of authority under consideration by the Board only applies to resource allocation not decision making related to the EOP. There was agreement by the Board that the BO's under consideration should support the EOP and not conflict with the EOP. It was agreed that any proposals made by the Board would be reviewed by Linda Cook to make sure they did not create any unintended conflicts with the existing EOP.

2. *ORS 476.280 BO*

Lane County has large areas that are unincorporated and are not within fire districts. ORS 476.289 exists to allow a fire district to work outside of its jurisdiction, "[t]o extinguish uncontrolled fires that are found burning in unprotected areas situated outside the boundaries of the city or district and that are causing or may cause undue jeopardy to life or property." This provides advance authority to put out fires quickly before they cause additional damage. The statute also allows the fire district to bill the landowner for the cost of extinguishing the fire.

I recommend that the Board adopt the BO that is attached to this memorandum as **Exhibit 1**. Once adopted Linda Cook can make the necessary notifications to the appropriate fire districts. There is nothing in the statute that would require the Board to readopt or reaffirm the granted permission every year. However, the Board could include this in the group of emergency related BO's that are reviewed by the Board each year in January. (See Item 6 below).

3. *Conflagration Declaration*

Linda Cook explained that the process provided for with this type of declaration is when all local resources have been exhausted. The process is emergency

specific so there is a limited amount of the requirements that can be done in advance. However, the Board can adopt in advance the delegation of authority and the BO implementing it. The delegation form and the authorizing BO are attached to this memorandum as **Exhibits 2 and 3**. I recommend that the Board follow Linda Cook's recommendation as to the individuals that should be listed in the delegation.

I recommend that the Board agree upon the names to be included and adopt the proposed BO. I also recommend that this BO be reviewed each January to make sure it is current in terms of personnel and current regulations governing the process.

4. *Emergency Board meeting notification and participation*

During the work session there was discussion about the decision making process during an emergency. One part of that process will be addressed in Item 5, granting the County Administrator the authority to expend resources and make other decisions until the Board can meet and act. The second part was the process that would be used to notify Board members that an emergency meeting has been called, and the ways that Board members could participate in the emergency meeting.

During the discussion on this issue at the work session, there were four issues that were discussed: (1) Who could call for an emergency meeting, (2) How notice of the meeting would be provided, (3) the amount of notice, and (4) participation by Board members.

a. Who could call the meeting: At the work session the consensus among the Board seemed to be that an emergency meeting could be called by the CAO or an individual Board member. During the discussion it was assumed that during an emergency the Emergency Manager would be in contact with the CAO and the CAO could pass along any request(s) from the Emergency Manager. The draft BO on this subject (**Exhibit 4**) is drafted based upon this assumption.

b. How notice would be provided: Based upon technological issues (for example, the fact that texts may work when cell phones do not), there was consensus that multiple methods of notification should be used to assure that all Board members are notified. The draft BO on this subject includes this consideration.

c. The amount of notice: Oregon law permits the Board to call an emergency meeting with less than 24 hours of notice. ORS 192.640(3). The meeting must be in response to a true

emergency and the discussion at the meeting must be limited to the emergency that is the cause of the meeting. See, *Attorney General's Public Records and Meetings Manual* (2014) at page 147-148. Exhibit 4 lists several options in this area for Board consideration.

d. Participation by Board members: Again there agreement among Board members that ideally all Board members should participate in any way possible, despite any impediments imposed by the emergency (closed roads, no cell service or land lines). The example that was used in the discussion was Chair Bozievich's participation in the ICS exercise via text. **Exhibit 4** attempts to incorporate the desire for maximum input and participation by the Board during the emergency meeting.

Because of the number of decision points in this order, and the fact that there could be a change in Board membership, I strongly recommend that this BO, if adopted, be reviewed annually, perhaps in January of each year.

5. *Create a BO delegating authority for CAO to act in an emergency*

During the work session there was discussion about the need at times to commit county resources quickly during an emergency. There was recognition that at times the commitment of resources (property, material, personnel) might exceed the authority granted to Department Director or the CAO by the Lane Code. There was discussion about what to do to fill the gap until the Board could meet in emergency session. One solution was to delegate temporary authority to the CAO to act until the Board could meet. Two limitations on the proposed delegation of authority were discussed: (1) Time and (2) dollar amount.

After further discussion the limitation on dollar amount seemed unworkable. It did not seem practical or reasonable that in the midst of an emergency that the CAO should have to keep a running total of the estimated amount spent. I have drafted a BO that does include both options. The draft BO is attached to this memorandum as Exhibit 5. The discussion also recognized that the delegation included a great deal of trust by the Board in the good judgment of the CAO.

I recommend that the Board adopt this BO to provide the CAO legal protection, however unlikely, against being accused of exceeding his spending authority thus subjecting him to personal financial liability. Although the Board could retroactively authorize the expenditures, I think it would be cleaner and clearer legally if the authority were granted up front.

Because of the level of Board trust contained in this order and the fact that there could be a change in Board membership, I strongly recommend that this BO, if adopted, be reviewed annually in January of each year.

6. *Annual review*

At several points in this memorandum an annual review of the BOs' and other processes has been suggested. There are many reasons for the suggested review: (1) It is good governance to review the various BO's and make sure that to the extent that the BO's involve personnel they are current, (2) Any changes in law or procedure can be accounted for, (3) any changes that need to made based upon the actual use of the BO's and (4) a chance for any change in Board membership to have input on the BO's.

January was considered a good time because other routine orders are up for review. In addition, it was thought that January was a good time because it is before fire season and usually before bad weather (snow or flooding).

Finally, I have included language in the order that makes it clear the BO's remain in effect even if they are not reviewed by the Board. Another alternative would be to have each of these orders include this language: *"This order will expire on January 31 of the next calendar year after it was adopted unless reviewed and renewed by the Lane County Board of Commissioners before that time."*

7. *Other emergency preparedness procedures*

The Board also discussed other emergency preparedness procedures. The Board wanted to know which procedures required their approval and which could be made by the CAO through the APM. Below if a list of each that has been discussed to date:

a. Board: (1) ORS 476.280, (2) Conflagration delegation, (3) Emergency meeting notification procedure, (4) CAO delegation, and (5) Individual or general emergency declaration (Item 8 below).

b. CAO: (1) Emergency building evacuation procedures, (2) Emergency employee notification, (3) Active shooter procedure

8. *Single emergency/individual emergency*

Finally there was also discussion about whether the Board should adopt individual emergency BO's (by type) or general (the same procedures would apply no matter what type of emergency was involved).

I have attached some e-mails from other Oregon Counties and from Douglas County Nevada. The declaration from Douglas County seems to be required under their code. All of these are attached as Exhibit 6.

Another alternative would be to define the parameters in the BO itself. In doing that the BO's become self-executing and don't require any immediate action by the Board during an emergency which is one of the primary reasons this process is being considered by the Board.

The form of BO discussed here is not the form of BO that would have to be made to be eligible for FEMA funds.

3.

EXHIBITS

Exhibit 1: Draft BO implementing ORS 476.280 (Authority to Extinguish Fires in Unincorporated Lane County);

Exhibit 2: Draft BO Approving Delegation of Authority/Incident Commander;

Exhibit 3: Word version of Oregon State Fire Marshal Delegation of Authority;

Exhibit 4: Draft BO Emergency Board Meeting Notification and Procedure; and

Exhibit 5: Draft BO Delegating Authority to CAO to Expend County Resources.

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO:	IN THE MATTER OF GRANTING AUTHORITY PURSUANT TO ORS 476.280 TO EXTINGUISH UNCONTROLLED FIRES IN UNINCORPORATED LANE COUNTY

WHEREAS, the Board of Commissioners directed staff to work on a plan to deal with a variety of emergency situations including uncontrolled fires unincorporated Lane County, and,

WHEREAS, the Board of Commissioners, has adopted a Strategic Plan that identifies three priorities for Lane County for 2014-2017: Priority (1) Safe and Healthy County, Priority (2) Vibrant Communities, and Priority (3) Infrastructure; and,

WHEREAS, the Lane County Strategic Plan states that, Priority 1, Objective 1, is to *Ensure safety throughout our county*; and,

WHEREAS; Oregon law, specifically ORS 476.280 authorizes the governing body of any duly organized body to extinguish any uncontrolled fire found to be burning in an unprotected area; and,

WHEREAS, The Board of Commissioner of Lane County has jurisdiction over unincorporated areas of Lane County that are not covered by existing fire protection districts as shown in more detail on Attachment "A", which is by this reference incorporated herein; and

Fire Districts in Lane County (00094953).p

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

1. The fire chief, or representative of the fire chief, of any duly organized municipal or rural fire protection district may extinguish any uncontrolled fire found to be burning in any unprotected and unincorporated area of Lane County if:

    a. The governing body of the city or district board of the rural fire district, as the case may be, has authorized the fire chief and the representatives of the fire chief to extinguish uncontrolled fires that are found to be burning in unprotected and unincorporated Lane County situated outside the boundaries of the city or district are causing or may cause undue jeopardy to life or property; and

    b. The fire chief or the representative of the fire chief believes that such fire is causing or may cause undue jeopardy to life or property.

ADOPTED this ___ day of_____, 2015.

Exhibit 1

_____
Jay Bozievich, Chair

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: _____

IN THE MATTER OF APPROVING THE DELEGATION OF AUTHORITY/INCIDENT COMMANDER

WHEREAS, the Board of Commissioners shall assign an Incident Commander who is delegated full authority and responsibility for managing the fire suppression activities on unprotected rural lands in Lane County within the framework of law and direction provided by the State Fire Marshal and by the jurisdiction administrator or their designee; and,

WHEREAS, the Board of Commissioners, shall give the Incident Commander full responsibility to organize and direct the assigned resources for safe, efficient, and effective mitigation of any incident that may occur; and

WHEREAS, the appointed Incident Commander will maintain effective interagency cooperation with all agencies participating in any incident; and

WHEREAS, the appointed Incident Commander shall be accountable to the State Fire Marshal and the jurisdiction administrator of their designee; and

WHEREAS, the Board of Commissioners hereby appoint an Incident Commander and authorize the duties dictated in the form as the Delegation of Authority.

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

1. Appointing an Incident Commander; and
2. Authorizing the Incident Commander to have delegating authority.

ADOPTED this ___ day of_____, 2015.

_____
Jay Bozievich, Chair
Lane County Board of Commissioners

APPROVED AS TO FORM

Date_____

_____
LANE COUNTY OFFICE OF LEGAL COUNSEL

Exhibit 2

DELEGATION OF AUTHORITY

INCIDENT NAME _____ DATE AND TIME _____

<ICs Name> is assigned as the Incident Commander on the <Incident Name>located on lands protected by <Jurisdiction Having Authority>.

The individual above is delegated full authority and responsibility for managing the fire suppression activities on these lands within the framework of law and the direction provided by the State Fire Marshal and by the jurisdiction administrator or their designee.

Your primary responsibility is to organize and direct your assigned resources for safe, efficient, and effective mitigation of this incident.

You are to establish unified command with the agencies and jurisdictions named in this delegation.

You will maintain effective interagency cooperation with all agencies participating in this incident.

You are accountable to the State Fire Marshal and the jurisdiction administrator or their designee.

Specific direction for the<Incident Name> is as follows:

1. Integrate your Incident Management Team into the <Agency/Jurisdiction> command structure.

2. The jurisdiction administrator will provide maps of the jurisdiction and will retain the following responsibilities:

   - Document damage caused by the fire by producing maps, photographs, and narratives detailing what damaged occurred. The jurisdiction administrator will provide property value information.

   - Document damage caused by state-mobilized resources, which should inch1de photographic documentation. Initial notification of this type of damage shall be made to the jurisdiction administrator or their designee within 12 hours of the damage occurring.

   - Consult the county Fire Defense Board Chief and jurisdiction administrator or their designee before resources are demobilized.

Additional directions and considerations may include:

- How Incident Management Team logistics personnel will assist the jurisdiction with the jurisdiction's responsibilities for logistical support for mobilized resources,
- Responsibilities for situation reports to the jurisdiction administrator, Fire Defense Board Chief, county emergency manager, cooperating agencies, or others,

  Liaison and advisory responsibilities to county emergency management for evacuation planning and actions, and
- Providing information on fire cause, losses, and damages to assist the jurisdiction with its fire investigation and reporting responsibilities.

- Other directions:
  - _____
  - _____
  - _____
  - _____
  - _____

Authority Having Jurisdiction: <Agency/Jurisdiction>

_____ _____
JURISDICTIONAL ADMINISTRATOR NAME TITLE

In the event that I am not immediately available, my designated representatives will be:

_____ _____ _____
1st AGENCY REP DESIGNEE OFFICE CELL

_____ _____ _____
2nd AGENCY REP DESIGNEE OFFICE CELL

By my signature, I hereby delegate full authority and responsibility for managing the fire suppression activities within the framework of law and the direction provided herein.

_____ _____ _____
AGENCY ADMINISTRATOR OFFICE CELL

By my signature, I hereby accept the delegated authority as described herein.

_____
<INCIDENT COMMANDER>

This is to become effective <Date> <Time>
DATE AND TIME

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

OREDER NO:

IN THE MATTER OF NOTIFYING BOARD MEMBERS OF EMERGENCY MEEETINGS AND BOARD PARTICIPATION IN EMERGENCY MEETINGS

WHEREAS, the Board of Commissioners directed staff to work on a plan to deal with a variety of emergency situations that would require swift action on the part of staff and the Board of Commissioners, and,

WHEREAS, the Board of Commissioners, has adopted a Strategic Plan that identifies three priorities for Lane County for 2014-2017: Priority (1), Safe and Healthy County, Priority (2) Vibrant Communities, and Priority (3) Infrastructure; and,

WHEREAS, the Lane County Strategic Plan states that, Priority 1, Objective 1, is to *Ensure safety throughout our county*; and,

WHEREAS, the Board of Commissioners recognize that Lane County could face an emergency response to critical incidents, whether natural or manmade; and,

WHEREAS, the Board of Commissioners recognize that during an emergency ordinary and usual communication may be disrupted; and,

WHEREAS, the Board of Commissioners recognize that the Board may need to make decisions related to an emergency on very short notice; and,

WHEREAS, the Board of Commissioners desires to have a process in place for the notification and participation of Board members in emergency meetings;

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

1. An emergency meeting may be called by the County Administrator or any individual Board member when in their judgment a meeting of the Lane County Board of Commissioners is necessary to address issues related to the emergency;

2. Notice of the emergency meeting will be provided as required by Oregon and shall be made using cell phones, text and land lines, if possible, or any other means reasonably likely to notify Board members of the meeting;

3. The meeting will not take place: [options] a. until all Board members have acknowledged receipt of the notice; b. In no less than XX hours after the notification of the meeting has been sent; c. when in the judgment of the Board Chair or Vice Chair the meeting can must take place. d. other.

4. Board members shall be permitted to participate by any method possible under the circumstances, including but not limited to: in person, telephone, text or Skype.

5. This Order shall be reviewed annually by the Board. Failure to review this order does not affect its continuing validity.

ADOPTED this day of_____2015.

_____

Jay Bozievich, Chair
Lane County Board of Commissioners

Exhibit 4

DRAFT

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO:

IN THE MATTER OF AUTHORIZING THE COUNTY ADMINISTRATOR TO EXPEND AND COMMIT COUNTY RESOURCES DURING AN EMERGENCY UNTIL AN EMERGENCY MEETING OF BOARD

WHEREAS, the Board of Commissioners directed staff to work on a plan to deal with a variety of emergency situations that would require swift action on the part of staff and the Board of Commissioners, and,

WHEREAS, the Board of Commissioners, has adopted a Strategic Plan that identifies three priorities for Lane County for 2014-2017: Priority (1), Safe and Healthy County, Priority (2) Vibrant Communities, and Priority (3) Infrastructure; and,

WHEREAS, the Lane County Strategic Plan states that, Priority 1, Objective 1, is to *Ensure safety throughout our county;* and,

WHEREAS, the Board of Commissioners recognize that Lane County could face an emergency response to critical incidents, whether natural or manmade; and,

WHEREAS, the Board of Commissioners recognize that during an emergency ordinary and usual communication may be disrupted; and,

WHEREAS, the Board of Commissioners recognize that the county may need to make decisions related to the use of county resources in response to an emergency on very short notice; and,

WHEREAS, the Board of Commissioners recognize that the use of county resources may exceed the amount authorized by the Lane Code for Department Directors and the Lane County Administrator; and,

WHEREAS, the Board of Commissioners desires to have a process in place for the authorization of the use of county resources to respond to an emergency before an emergency meeting of the Board of Commissioners could be held;

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

1. The Lane County Board of Commissioners delegates to the Lane County Administrator authority to expend any county resources in response to an emergency, in excess of any limitations or procedures contained in the Lane Code, Lane Manual or Lane County Administrative Procedures Manual: [options] a. up to $XX. b. or for a period of XX days or hours. c. until an emergency meeting of the Lane County Board of Commissioners can be convened.

2. The Lane County Administrator will arrange an emergency meeting of the Lane County Board of Commissioners as soon as reasonably possible under the circumstances following the procedures in Board Order: [Exhibit 4]. The County Administrator shall brief the Board on all resources expended under the authority of this order at the emergency meeting, or other meeting of the Board, whichever occurs first.

3. This Order shall be reviewed annually by the Board. Failure to review this order does not affect its continuing validity.

ADOPTED this day of_____2015.

_____

Jay Bozievich, Chair

Lane County Board of Commissioners

Exhibit 5

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