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AGENDA COVER MEMO

AGENDA DATE: December 12, 2007
Memorandum Date: December 3, 2007

TO: LANE COUNTY BOARD OF COMMISSIONERS

DEPARTMENT: LANE COUNTY OFFICE OF LEGAL COUNSEL

PRESENTED BY: Liane I Richardson, Assistant County Counsel

AGENDA ITEM TITLE: IN THE MATTER OF AMENDING CHAPTER 2 OF LANE MANUAL
TO REVISE PROVISIONS PERTAINING TO UNINSURED
MOTORISTS (LM 2.625)

I. MOTION

I MOVE TO APPROVE CHANGES TO THE LANE MANUAL REGARDING THE PROVISIONS COVERING UNINSURED MOTORISTS.

II. AGENDA ITEM SUMMARY

The Board is being asked to approve amendments to Chapter 2 of the Lane Manual to revise the provisions that pertain to uninsured motorists.

III. BACKGROUND/IMPLICATIONS OF ACTION

A. Board Action and Other History There was a recent case out of Multnomah County, Wilson v. Tri-County Metro. Trans. (2007) which clarified how specific a self-insured entity needs to be regarding its uninsured motorist and phantom vehicle language. The current language in the Lane Manual, according to Wilson, is not sufficient to protect the County from claims arising from accidents with uninsured motorists or phantom vehicles that are filed outside of the timelines because it does not give notice of those timelines and does not define phantom vehicles. It may also leave the County open to lawsuits demanding payment in excess of the statutory minimum, as it does not clearly state that the minimum is \$25,000 for an individual or \$50,000 for 2 or more people who are injured or killed in an accident involving an uninsured motorist or phantom vehicle. These revisions will bring the Lane Manual into compliance.

B. Policy Issues Protection of public funds and compliance with state law are policy issues addressed with this change to the Lane Manual.

C. Board Goals The Board is committed to the most efficient use of the public's resources. These revisions are consistent with the Board's goals.

D. Financial and/or Resource Considerations The revisions should protect the County from certain uninsured motorist and phantom vehicle claims and clarifies the limits that exist in accidents involving uninsured motorists.

E. Analysis The proposed revisions incorporate the language necessary in order for the County, as a self-insured entity, to utilize the protections that exist under Oregon law when individuals injured in motor vehicle accidents involving uninsured motorists or phantom

vehicles do not file claims in the time prescribed under Oregon law and establishes the limits for such coverage.

F. Alternatives/Options The Board could choose to leave the language as it is, or the Board could choose to implement the revisions as recommended.

IV. TIMING/IMPLEMENTATION Effective immediately upon approval.

V. RECOMMENDATION I recommend the Board adopt the proposed changes.

VI. ATTACHMENTS Board Order with LM pages attached.

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO.

IN THE MATTER OF AMENDING CHAPTER 2 OF
LANE MANUAL TO REVISE PROVISIONS PER-
TAINING TO UNINSURED MOTORISTS (LM 2.625)

The Board of County Commissioners of Lane County orders as follows:

Lane Manual Chapter 2 is hereby amended by removing, substituting and adding the following sections:

REMOVE THESE SECTIONS

2.625

as located on pages 2-40 through 2-41
(a total of 2 pages)

INSERT THESE SECTIONS

2.625

as located on pages 2-40 through 2-45
(a total of 6 pages)

Said sections are attached hereto and incorporated herein by reference. The purpose of these substitutions and additions is to revise provisions pertaining to uninsured motorists (LM 2.625).

Adopted this _____ day of _____ 2007.

Chair, Lane County Board of Commissioners

APPROVED AS TO FORM

Date 12/3/07 Lane County

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OFFICE OF LEGAL COUNSEL

2.620 General Description of Duties and Responsibilities.

(1) Subject to the supervision of the Director of the Department of Public Works, the Support Services Manager is responsible for the following:

(a) Developing and maintaining an adequate cost control and recording system in conjunction with the Department of Management Services.

(b) Establishing an organizational structure and maximizing the utilization of such personnel.

(c) Determination of inventory levels for gas, oil, parts, tires and maintenance thereof.

(d) Providing recommendations for specifications of vehicles and equipment.

(e) Recommending whether needs for transportation require purchase of vehicles or equipment or some less costly alternative, e.g., private mileage, lease or rental.

(f) The determination of vehicle and equipment rotation between the various Departments, Divisions and Pools and the disposition of replaced vehicles.

(g) Providing recommendations concerning the retention period or turnover rate for vehicles and equipment.

(h) Signing fleet vehicle Certificates of Title and Fleet Services Bills of Sale whenever there is a transfer of ownership.

(2) A Fleet User Committee shall consist of persons appointed by the County Administrator. In addition, the Support Services Manager and Fleet Services Supervisor shall be nonvoting members of the Committee. The Chairperson of the Committee shall be elected by the Committee members. The Committee shall meet a minimum of twice a year, but a meeting can be called by the Chairperson or the County Administrator.

(3) The responsibilities of the Fleet User Committee include the review and recommendation to the County Administrator of the following:

(a) Criteria or guidelines for the assignment of vehicles.

(b) Policies regarding the use of Fleet Services Pool vehicles.

(c) The annual Fleet Services vehicle purchase plan.

(d) An annual Fleet Services rate structure.

(e) Policies regarding the replacement life utilization of vehicles. *(Revised by Order No. 89-5-31-3, Effective 5.31.89; 98-4-1-11, 4.1.98)*

2.625 Use and Operation.

(1) Provision of Vehicles. The County is not required to provide a County-owned vehicle to any County employee. However, every effort will be made to provide adequate transportation whenever and wherever the need is apparent and justified.

(2) Use of Vehicles.

(a) County vehicles and equipment will be used only for County official business. The usage of an official vehicle or piece of equipment as conveyance to and from work is not sanctioned, unless such use has been previously justified and approved under the procedures provided for in LM 2.635 below.

(b) County vehicles will be operated at all times in a reasonable and prudent manner in accordance with all State and local laws, ordinances and rules. The operator and occupants of all County vehicles shall utilize the seat belts provided in each vehicle at all times.

(c) Any misuse of County owned vehicles or equipment or negligence on the part of any employee in the use of the same may be cause for disciplinary action.

(d) The operator(s) and assigned Department shall be responsible for maintaining vehicles in accordance with procedures specified in the Administrative Procedures Manual.

(3) Operators. County vehicles will be operated by County officials, employees or other persons as designated by a Department Director. Such persons will use County vehicles only in connection with official County business. Operators of the County vehicles shall not pick up hitchhikers and will use discretion in transporting other persons.

(4) County Vehicle Pool. Fleet User Committee shall recommend to the County Administrator the number and type of vehicles required to maintain an efficient and economical pool. It shall also recommend the number and location of pools to be operated.

(5) Mileage Rates. The Support Services Manager shall recommend annual Fleet rental rates to the County Administrator at the beginning of each fiscal year. Rates shall be based on the previous fiscal year actual costs of ownership and operation. The Support Services Manager shall be responsible for Interdepartmental billings and shall submit to the Fleet User Committee, when requested, a monthly or quarterly report as to the actual vehicle cost.

(6) Accidents. In the event of an accident, the employee operating the vehicle should take the following steps:

- (a) Stop.
- (b) Ascertain if anyone is injured. If so, take action for obtaining ambulance and medical care.
- (c) Request that the local police come to the scene.
- (d) Follow reporting procedures as specified in the Administrative Procedures Manual.
- (e) User Departments are financially responsible for all vehicle accidents involving employee or vehicles assigned to the Department.
- (f) Accident expenses incurred shall be billed directly to Risk Management. Risk Management shall bill the user Department for any costs not collected from a third party.

(7) Uninsured Motorists. As a self-insured entity, Lane County has not and does not provide uninsured motorist coverage beyond the statutorily required minimum amount. Pursuant to ORS 30.282, Lane County has established a self insurance fund against liability of Lane County, its officers, employees and agents acting within the scope of their employment or duties. As a self-insurer pursuant to ORS 30.282, Lane County complies with the provisions of ORS 278.215 and ORS 742.500 through 742.504. Nothing in this chapter shall be construed as adopting procedure or limits to liability other than that required by ORS 742.500 through ORS 742.504.

(a) Definitions. As used in this section, the following words and phrases shall have the meaning indicated:

Bodily Injury means bodily injury, sickness or disease, including death resulting therefrom.

County Vehicle includes a bus, van, car, or other vehicle used to transport passengers and owned or operated by or on behalf of Lane County.

Passenger is any person, or their heirs, representatives or assigns, who is upon, entering onto, or alighting from, a Lane County vehicle, except that "passenger" does not include any Lane County employee acting within the scope of employment.

Uninsured Vehicle, except as provided below, means:

(i) A vehicle with respect to the ownership, maintenance or use of which there is no collectible automobile bodily injury liability insurance, in at least the amounts or limits prescribed for bodily injury or death under ORS 806.070 applicable at the time of the accident with respect to any person or organization legally responsible for the use of such vehicle, or with respect to which there is such collectible bodily injury liability insurance applicable at the time of the accident but the insurance company writing the same denies coverage thereunder or, within two years of the date of the accident, such company writing the same becomes voluntarily or involuntarily declared bankrupt or for which a receiver is appointed or becomes insolvent. It shall be disputable presumption that a vehicle is uninsured in the event the passenger and Lane County, after reasonable efforts, fail to discover within 90 days from the date of the accident, the existence of a valid and collectible automobile bodily injury liability insurance applicable at the time of the accident.

(ii) A "hit and run vehicle" as defined below.

(iii) A "phantom vehicle" as defined below.

Uninsured vehicle does not include:

(i) An insured vehicle;

(ii) A vehicle which is owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law, or any similar law;

(iii) A vehicle which is owned by the United States of America, Canada, a state, a political subdivision of any such government or an agency of any of the foregoing;

(iv) A land motor vehicle or trailer, if operated on rails or crawler-treads while located for use as a residence or premises and not as a vehicle.

Hit and Run Vehicle means a vehicle which causes bodily injury to a passenger arising out of physical contact of such vehicle with a County vehicle which the passenger is occupying at the time of the accident, provided:

(i) there cannot be ascertained the identity of either the operator or the owner or such hit and run vehicle; and

(ii) the passenger having an uninsured motorist claim or someone on behalf of the passenger having the uninsured motorist claim shall have reported the accident within 72 hours to a police, peace or judicial officer, to the Department of Transportation of the State of Oregon or to the equivalent department in the state where the accident occurred, and shall have filed with Lane County within 30 days thereafter a statement under oath that the passenger or the legal representative of the passenger has a cause or causes of action arising out of such accident for damages against a person or persons whose identity is unascertainable, and setting forth the facts in support thereof.

Phantom Vehicle means a vehicle which caused bodily injury to a passenger arising out of an accident which is caused by a motor vehicle that has no physical contact with the County vehicle, provided:

(i) there cannot be ascertained the identity of either the operator or the owner of such phantom vehicle;

(ii) the facts of such accident can be corroborated by competent evidence other than the testimony of the passenger having an uninsured motorist claim resulting from the accident; and

(iii) the passenger having an uninsured motorist claim or someone on behalf of the passenger having an uninsured motorist claim shall have reported the accident within 72 hours to police, peace or judicial officer, to the Department of Transportation of the State of Oregon or to the equivalent department in

the state where the accident occurred and shall have filed with Lane County within 30 days thereafter a statement under oath that the passenger or the legal representative of the passenger has a cause or causes of action arising out of such accident for damages against a person or persons whose identity is unascertainable, and setting forth the facts in support thereof.

(b) Coverage.

(i) A claim for bodily injury or death sustained while a passenger on a County vehicle arising out of the ownership, maintenance or use of an uninsured vehicle and caused by the fault of the uninsured motorist shall be limited to the benefits enumerated below:

(1) \$25,000 because of bodily injury to or death of one passenger in any one accident;

(2) Subject to that limit for one passenger, \$50,000 because of injury to or death of two or more passengers in any one accident;

(3) Coverage that is provided only to extent of legal liability of the uninsured motorist and is subject to the limitations of subparagraphs (1) and (2), above.

(ii) The limit of liability stated as applicable to "each passenger" is the limit of Lane County's uninsured motorist benefits for all damages because of bodily injury sustained by one passenger as the result of any one accident and, subject to the above provision respecting each passenger, the limit of liability stated as applicable to "each incident" is the total limit of Lane County's liability for all damages because of bodily injury sustained by two or more passengers as the result of any one accident.

(iii) Any payment made under this coverage to or for a passenger shall be applied in reduction of any other amounts the passenger may be entitled to recover from Lane County as a result of any one accident. Nothing in this chapter is intended to expand Lane County's liability for any one accident or claimant, beyond those limits imposed by ORS 30.270. Any amounts paid to any person pursuant to this uninsured motorist procedure shall be applied in reduction of Lane County's maximum liability limits to any one person or for any one accident, as established by ORS 30.270.

(c) Claims Procedures. The following procedure shall be utilized in making claim for compensation under this Chapter.

(i) As soon as practicable, the passenger or other person making claim shall give to Lane County written proof of claim, under oath if required, including full particulars of the nature and extent of the injuries, treatment, and other details entering into the determination of the amount payable hereunder. The passenger and every other person making claim hereunder shall submit to examinations under oath by any person named by Lane County and subscribe the same, as often as may reasonably be required. Proof of claim shall be made upon forms furnished by Lane County.

(ii) Upon reasonable request of and at the expense of Lane County, the passenger shall submit to physical examinations by physicians selected by Lane County and shall upon request from Lane County, execute authorization to enable Lane County to obtain medical reports and copies of records necessary to evaluate the claim.

(iii) If, before Lane County makes payment of loss hereunder, the passenger or the passenger's legal representative shall institute any legal action for bodily injury against any person or organization legally responsible for the use of a vehicle involved in an accident, a copy of the summons and complaint or other process served in connection with such legal action shall be forwarded immediately to Lane County by the passenger or the passenger's legal representative.

(iv) Passenger must provide Lane County with a sworn statement that no other insurance is available, if requested.

(d) Reduction in Lane County's Payments.

(i) Any amount payable under the terms of this chapter shall be reduced by:

(1) All sums paid on account of bodily injury or death by or on behalf of the owner or operator of the uninsured vehicle and by or on behalf of any other person or organization, including Lane County, jointly or severally liable together with such owner or operator for such bodily injury or death; and

(2) The amount paid and the present value of all amounts payable on account of bodily injury under any workers' compensation law, disability benefits law or any similar law.

(ii) This coverage shall apply only as excess over any other collateral benefits to which the injured person is entitled, including but not limited to, other uninsured motorist coverage, insurance benefits, governmental benefits or gratuitous benefits available to the passenger and shall then apply only in the amount by which the applicable limit of liability of this coverage exceeds the sum of the applicable limits of liability and all such other insurance; stacking of coverage shall not be allowed.

(e) Rights Against Uninsured Motorist. In the event of payment to any person under this coverage:

(i) Lane County shall be entitled to the extent of such payment to the proceeds of any settlement or judgment that may result from the exercise of any rights of recovery of such person against any uninsured motorist legally responsible for the bodily injury because of which such payment is made.

(ii) Such person shall hold in trust for the benefit of Lane County all rights of recovery which he shall have against such other uninsured person or organization because of the damages which are the subject of claim made under this coverage, buy only to the extent that such claim is made or paid herein.

(iii) If the passenger is injured by the joint or concurrent act or acts of two or more persons, one or more of whom is uninsured, the passenger shall have the election to receive from Lane County any payment to which he would be entitled under this coverage by reason of the act or acts of the uninsured motorist, or the passenger may, with the written consent of Lane County, proceed with legal action against any or all persons claimed to be liable to the insured for such injuries. If the passenger elects to receive payment from Lane County under this coverage, then the passenger shall hold in trust for the benefit of Lane County all rights of recovery the passenger shall have against any other person, firm or organization because of the damages which are the subject of claim made under this coverage, but only to the extent of the actual payment made by Lane County.

(iv) Such person shall do whatever is proper to secure, and shall do nothing after loss to prejudice, such rights.

(v) If requested in writing by Lane County, such person shall take, through any representative not in conflict with such person, designated by Lane County, such action as may be necessary or appropriate to recover such payment as damages from such other uninsured person or organization, such action to be taken in the name of such person, but only to the extent of the payment made hereunder. In the event of a recovery, Lane County shall be reimbursed out of such recovery for expenses, costs and attorney fees incurred by it in connection therewith.

(vi) Such person shall execute and deliver to Lane County such instruments and papers as may be appropriate to secure the rights and obligations of such person and Lane County as established by this provision.

(f) **Time Limitation.** No cause of action shall accrue to the passenger under this coverage unless within two years of the date of the accident:

(i) Suit for bodily injury has been filed against the uninsured, in a court of competent jurisdiction and, within two years from the date of settlement or final judgment against the uninsured motorist, the passenger has formally instituted arbitration proceedings or filed an action against Lane County in a court of competent jurisdiction;

(ii) Agreement as to the amount due under the coverage has been concluded;

(iii) The passenger has filed an action against Lane County in a court of competent jurisdiction.

(g) **Condition Precedent.** No action shall lie against Lane County unless, as a condition precedent thereto, the passenger and legal representative of the passenger have fully complied with all the terms of this chapter.

(h) **Tort Claims Notice.** Nothing in this chapter shall be construed to relieve the passenger from the notice requirements of ORS 30.275 or to alter the limitations of liability found in ORS 30.270. *(Revised by Order No. 89-5-31-3, Effective 5.31.89; 05-7-6-2, 7.6.05)*

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(c) Any misuse of County owned vehicles or equipment or negligence on the part of any employee in the use of the same may be cause for disciplinary action.

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- (b) Ascertain if anyone is injured. If so, take action for obtaining ambulance and medical care.
- (c) Request that the local police come to the scene.
- (d) Follow reporting procedures as specified in the Administrative Procedures Manual.
- (e) User Departments are financially responsible for all vehicle accidents involving employee or vehicles assigned to the Department.
- (f) Accident expenses incurred shall be billed directly to Risk Management. Risk Management shall bill the user Department for any costs not collected from a third party.

(7) Uninsured Motorists. As a self-insured entity, Lane County has not and does not provide uninsured motorist coverage beyond the statutorily required minimum amount, ~~if any~~. Pursuant to ORS 30.282, Lane County has established a self insurance fund against liability of Lane County, its officers, employees and agents acting within the scope of their employment or duties. As a self-insurer pursuant to ORS 30.282, Lane County complies with the provisions of ORS 278.215 and ORS 742.500 through 742.504. Nothing in this chapter shall be construed as adopting procedure or limits to liability other than that required by ORS 742.500 through ORS 742.504.

(a) Definitions. As used in this section, the following words and phrases shall have the meaning indicated:

Bodily Injury means bodily injury, sickness or disease, including death resulting therefrom.

County Vehicle includes a bus, van, car, or other vehicle used to transport passengers and owned or operated by or on behalf of Lane County.

Passenger is any person, or their heirs, representatives or assigns, who is upon, entering onto, or alighting from, a Lane County vehicle, except

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that “passenger” does not include any Lane County employee acting within the scope of employment.

Uninsured Vehicle, except as provided below, means:

(i) A vehicle with respect to the ownership, maintenance or use of which there is no collectible automobile bodily injury liability insurance, in at least the amounts or limits prescribed for bodily injury or death under ORS 806.070 applicable at the time of the accident with respect to any person or organization legally responsible for the use of such vehicle, or with respect to which there is such collectible bodily injury liability insurance applicable at the time of the accident but the insurance company writing the same denies coverage thereunder or, within two years of the date of the accident, such company writing the same becomes voluntarily or involuntarily declared bankrupt or for which a receiver is appointed or becomes insolvent. It shall be disputable presumption that a vehicle is uninsured in the event the passenger and Lane County, after reasonable efforts, fail to discover within 90 days from the date of the accident, the existence of a valid and collectible automobile bodily injury liability insurance applicable at the time of the accident.

(ii) A “hit and run vehicle” as defined below.

(iii) A “phantom vehicle” as defined below.

Uninsured vehicle does not include:

(i) An insured vehicle;

(ii) A vehicle which is owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law, or any similar law;

(iii) A vehicle which is owned by the United States of America, Canada, a state, a political subdivision of any such government or an agency of any of the foregoing;

(iv) A land motor vehicle or trailer, if operated on rails or crawler-treads while located for use as a residence or premises and not as a vehicle.

Hit and Run Vehicle means a vehicle which causes bodily injury to a passenger arising out of physical contact of such vehicle with a County vehicle which the passenger is occupying at the time of the accident, provided:

(i) there cannot be ascertained the identity of either the operator or the owner or such hit and run vehicle; and

(ii) the passenger having an uninsured motorist claim or someone on behalf of the passenger having the uninsured motorist claim shall have reported the accident within 72 hours to a police, peace or judicial officer, to the Department of Transportation of the State of Oregon or to the equivalent department in the state where the accident occurred, and shall have filed with Lane County within 30 days thereafter a statement under oath that the passenger or the legal representative of the passenger has a cause or causes of action arising out of such accident for damages against a person or persons whose identity is unascertainable, and setting forth the facts in support thereof.

Phantom Vehicle means a vehicle which caused bodily injury to a passenger arising out of an accident which is caused by a motor vehicle that has no physical contact with the County vehicle, provided:

(i) there cannot be ascertained the identity of either the operator or the owner of such phantom vehicle;

(ii) the facts of such accident can be corroborated by competent evidence other than the testimony of the passenger having an uninsured motorist claim resulting from the accident; and

(iii) the passenger having an uninsured motorist claim or someone on behalf of the passenger having an uninsured motorist claim shall have reported the accident within 72 hours to police, peace or judicial officer, to the Department of Transportation of the State of Oregon or to the equivalent department in the state where the accident occurred and shall have filed with Lane County within 30 days thereafter a statement under oath that the passenger or the legal representative of the passenger has a cause or causes of action arising out of such accident for damages against a person or persons whose identity is unascertainable, and setting forth the facts in support thereof.

(b) Coverage.

(i) A claim for bodily injury or death sustained while a passenger on a County vehicle arising out of the ownership, maintenance or use of an uninsured vehicle and caused by the fault of the uninsured motorist shall be limited to the benefits enumerated below:

(1) \$25,000 because of bodily injury to or death of one passenger in any one accident;

(2) Subject to that limit for one passenger, \$50,000 because of injury to or death of two or more passengers in any one accident;

(3) Coverage that is provided only to extent of legal liability of the uninsured motorist and is subject to the limitations of subparagraphs (1) and (2), above.

(ii) The limit of liability stated as applicable to "each passenger" is the limit of Lane County's uninsured motorist benefits for all damages because of bodily injury sustained by one passenger as the result of any one accident and, subject to the above provision respecting each passenger, the limit of liability stated as applicable to "each incident" is the total limit of Lane County's liability for all damages because of bodily injury sustained by two or more passengers as the result of any one accident.

(iii) Any payment made under this coverage to or for a passenger shall be applied in reduction of any other amounts the passenger may be entitled to recover from Lane County as a result of any one accident. Nothing in this chapter is intended to expand Lane County's liability for any one accident or claimant, beyond those limits imposed by ORS 30.270. Any amounts paid to any person pursuant to this uninsured motorist procedure shall be applied in reduction of Lane County's maximum liability limits to any one person or for any one accident, as established by ORS 30.270.

(c) Claims Procedures. The following procedure shall be utilized in making claim for compensation under this Chapter.

(i) As soon as practicable, the passenger or other person making claim shall give to Lane County written proof of claim, under oath if required, including full particulars of the nature and extent of the injuries, treatment, and other details entering into the determination of the amount payable hereunder. The passenger and every other person making claim hereunder shall submit to examinations under oath by any person named by Lane County and subscribe the same, as often as may reasonably be required. Proof of claim shall be made upon forms furnished by Lane County.

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(ii) Upon reasonable request of and at the expense of Lane County, the passenger shall submit to physical examinations by physicians selected by Lane County and shall upon request from Lane County, execute authorization to enable Lane County to obtain medical reports and copies of records necessary to evaluate the claim.

(iii) If, before Lane County makes payment of loss hereunder, the passenger or the passenger's legal representative shall institute any legal action for bodily injury against any person or organization legally responsible for the use of a vehicle involved in an accident, a copy of the summons and complaint or other process served in connection with such legal action shall be forwarded immediately to Lane County by the passenger or the passenger's legal representative.

(iv) Passenger must provide Lane County with a sworn statement that no other insurance is available, if requested.

(d) Reduction in Lane County's Payments.

(i) Any amount payable under the terms of this chapter shall be reduced by:

(1) All sums paid on account of bodily injury or death by or on behalf of the owner or operator of the uninsured vehicle and by or on behalf of any other person or organization, including Lane County, jointly or severally liable together with such owner or operator for such bodily injury or death; and

(2) The amount paid and the present value of all amounts payable on account of bodily injury under any workers' compensation law, disability benefits law or any similar law.

(ii) This coverage shall apply only as excess over any other collateral benefits to which the injured person is entitled, including but not limited to, other uninsured motorist coverage, insurance benefits, governmental benefits or gratuitous benefits available to the passenger and shall then apply only in the amount by which the applicable limit of liability of this coverage exceeds the sum of the applicable limits of liability and all such other insurance; stacking of coverage shall not be allowed.

(e) Rights Against Uninsured Motorist. In the event of payment to any person under this coverage:

(i) Lane County shall be entitled to the extent of such payment to the proceeds of any settlement or judgment that may result from the exercise of any rights of recovery of such person against any uninsured motorist legally responsible for the bodily injury because of which such payment is made.

(ii) Such person shall hold in trust for the benefit of Lane County all rights of recovery which he shall have against such other uninsured person or organization because of the damages which are the subject of claim made under this coverage, but only to the extent that such claim is made or paid herein.

(iii) If the passenger is injured by the joint or concurrent act or acts of two or more persons, one or more of whom is uninsured, the passenger shall have the election to receive from Lane County any payment to which he would be entitled under this coverage by reason of the act or acts of the uninsured motorist, or the passenger may, with the written consent of Lane County, proceed with legal action against any or all persons claimed to be liable to the insured for such injuries. If the passenger elects to receive payment from Lane County under this coverage, then the passenger shall hold in trust for the benefit of Lane County all rights of recovery the passenger shall have against any other person, firm or organization

because of the damages which are the subject of claim made under this coverage, but only to the extent of the actual payment made by Lane County.

(iv) Such person shall do whatever is proper to secure, and shall do nothing after loss to prejudice, such rights.

(v) If requested in writing by Lane County, such person shall take, through any representative not in conflict with such person, designated by Lane County, such action as may be necessary or appropriate to recover such payment as damages from such other uninsured person or organization, such action to be taken in the name of such person, but only to the extent of the payment made hereunder. In the event of a recovery, Lane County shall be reimbursed out of such recovery for expenses, costs and attorney fees incurred by it in connection therewith.

(vi) Such person shall execute and deliver to Lane County such instruments and papers as may be appropriate to secure the rights and obligations of such person and Lane County as established by this provision.

(f) Time Limitation. No cause of action shall accrue to the passenger under this coverage unless within two years of the date of the accident:

(i) Suit for bodily injury has been filed against the uninsured, in a court of competent jurisdiction and, within two years from the date of settlement or final judgment against the uninsured motorist, the passenger has formally instituted arbitration proceedings or filed an action against Lane County in a court of competent jurisdiction;

(ii) Agreement as to the amount due under the coverage has been concluded;

(iii) The passenger has filed an action against Lane County in a court of competent jurisdiction.

(g) Condition Precedent. No action shall lie against Lane County unless, as a condition precedent thereto, the passenger and legal representative of the passenger have fully complied with all the terms of this chapter.

(h) Tort Claims Notice. Nothing in this chapter shall be construed to relieve the passenger from the notice requirements of ORS 30.275 or to alter the limitations of liability found in ORS 30.270. *(Revised by Order No. 89-5-31-3, Effective 5.31.89; 05-7-6-2, 7.6.05)*