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AGENDA COVER MEMO

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AGENDA DATE: September 15, 2010  
TO: Board of County Commissioners  
DEPARTMENT: Office of Legal Counsel  
PRESENTED BY: Trina Laidlaw, Assistant County Counsel  
AGENDA TITLE: In the Matter of Amending Lane Manual Chapter 9 to Add Procedures for the Local Public Health Authority and Revise Board of Health Procedures (LM 9.900, 9.901, 9.902)

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I. MOTION

Move to amend Lane Manual Chapter 9 to add procedures for the Local Public Health Authority and Revise Board of Health Procedures.

II. ISSUE OR PROBLEM

The public health statutes establish a system for addressing public health services and programs through a partnership between the State and county governments. This includes the Board of Commissioners acting as the Local Public Health Authority and the Board of Health for the county. In March 2009, the Board adopted a procedural framework for the Board of Health which also referenced the Local Public Health Authority. It would be helpful to also now add procedures for the Local Public Health Authority. The existing Board of Health procedure should be modified to reflect the scope of the Local Public Health Authority. In addition, the statutes reflect that a new entity, the Oregon Health Authority, is assuming jurisdiction over public health, and county rules should reflect that.

III. DISCUSSION

A. Analysis

The two main purposes for the proposed revisions to LM 9.900-9.902 are to:

1. Add a procedure for the Local Public Health Authority in order to provide a more complete framework for potential future action, and
2. Revise the current Board of Health procedure in LM 9.901(3) and (4) regarding rule adoption and codification in Lane Code. The other proposed changes to the Board of Health procedure in LM 9.902 do not make substantive changes, rather they reorganize, restate or consolidate provisions with the Public Health Authority procedure.

The LM 9.900 – 9.902 procedures do not establish the Board’s authority to act, or extent of jurisdiction to act on any particular public health issue. Regardless of these procedures, it is advisable and necessary to consider the following questions, in addition to others, each time the Board is interested to considering adopting rules/ordinances:

1. Is the subject matter connected closely enough to “public health”, or is it more likely considered not to be a “public health” issue ?
2. Has the state pre-empted the field and decided to be the exclusive regulator of the subject?
3. Does the county have authority/jurisdiction to regulate the subject within the cities’ limits?

Answers to these questions may impact the risks and whether the Board wishes to pursue the adoption of a rule or ordinance, regardless of these Lane Manual procedures.

**B. Additional Procedure for the Local Public Health Authority**

The Board, acting as the Local Public Health Authority, has authority to submit an annual public health plan to the Oregon Health Authority (OHA) for performing public health services through county administered public health programs, and at a minimum it is responsible for activities in the areas of epidemiology and control of preventable diseases and disorders, collection and reporting of health statistics, health information and referral services, environmental health services and certain parent and child health services such as education, screening and follow up, counseling, referral or health services for family planning, perinatal care, and infants/children. The Local Public Health Authority is also responsible for administering and enforcing rules of the public health authority, the OHA and public health laws.

The proposed revision to LM 9.901 describes:

1. The Local Public Health Authority as the county with public health responsibilities, and the Board of Commissioners as the Board of Health serving as “a rulemaking arm” for the Public Health Authority, including for ordinances, to help the Authority meet its statutory responsibilities.
2. Generally, rules which are ordinances would be adopted by the Board of Health (no change), with the general protection that if a need arises, the Board or Local Public Health Authority may also adopt ordinances.

By describing the Local Public Health Authority as including the Board of Health and the county department, the County is better positioned (based on the broad statutory authority described in the preceding paragraph), to assert authority to regulate, including within city limits based on a specific grant under the public health statutes. There are risks with the Board adopting public health ordinances given another more general statute that cities must consent before certain ordinances covering “matters of county concern” in exercise of police power apply inside an incorporated city. The risks are fact dependent to a certain extent, and there does not appear to be clear case law which specifically decides this issue.

**C. Revision to Current Board of Health Procedure – LM 9.901(3) and (4)**

The current procedure for the Board of Health is to designate where its rules will be published, either Lane Code or Lane Manual. The proposed revisions more clearly delineate that the Board of Health rules that are not ordinances be published in Lane Manual, and ordinances published in Lane Code. It is consistent with general county practice for rules with enforcement attached (ordinances) to be in Lane Code. However, another focus of the Board of Health is on the implementation of duties of the local department of health (Health and Human Services in Lane County). A general county practice is to include rules (which are not ordinances) related to department services in Lane Manual. There are currently rules in Lane Manual related to public health and duties of the Department, eg, LM 9.005 policy, including duties of the Department on treatment of communicable disease, 9.100 covering environmental health and water supply systems.

**IV. ALTERNATIVES/OPTIONS**

1. Approve the motion to amend Lane Manual Chapter 9 to add procedures for the Local Public Health Authority and revise Board of Health Procedures which would complete a procedural framework.
2. Not approve the motion to amend which would leave more debate as to which entity, Board of Health or Local Public Health Authority should be acting.

**V. RECOMMENDATION**

Option 1, approve the motion.

**VI. ATTACHMENTS**

Order

## LANE COUNTY BOARD OF HEALTH AND LOCAL PUBLIC HEALTH AUTHORITY

### **9.900 Local Public Health Authority and Board of Health**

The Board of County Commissioners (Board) acts as the governing body for the Local Public Health Authority and as Board of Health in Lane County pursuant to ORS 431. The purpose of these rules is to set forth general procedures for adopting policies, rules and ordinances and not to establish authority or extent of authority to act on any particular issue. Nothing in these rules shall be construed to interfere with the Board of Health's or Local Public Health Authority's use of emergency procedures which are required by law or which they deem necessary to meet a public health need; or to amend, limit, or interfere with the ability of county officers, agents or employees to act in emergencies or address incidents, or otherwise meet their legal obligations.

### **9.901 Procedures of Local Public Health Authority and Ordinances**

Pursuant to statute, county government is the Local Public Health Authority. It submits a countywide annual public health plan for state approval, manages local public health services, administers public health programs, and is responsible for enforcing and administering public health laws including its own rules. In addition, in order to meet its responsibilities, the Public Health Authority uses the Board of Health to adopt policies and rules to implement duties of the Lane County Department of Health and Human Services (Department).

(1) The Board, acting on its own behalf and as the Board of Health has responsibility to adopt, amend and repeal public health ordinances, unless otherwise provided by specific law. The regular County ordinance process shall be used with the Board acting on its own behalf to approve codification in Lane Code and any modifications after the Board of Health acts. There may be joint meetings and a hearing.

(2) For rules which are not ordinances, the Board, acting as the Local Public Health Authority will follow its regular procedures for adopting, amending and repealing rules in Lane Manual. Rules may include, but are not limited to, those designed to facilitate administration and implementation of its public health ordinances, or programs or to administer or enforce other existing state public health laws or rules.

(3) Nothing in this procedure is intended to prevent the Board or local Public Health Authority from adopting ordinances permissible under the law and as they determine appropriate under county procedures.

### **9.902 Procedures of Board of Health**

The Board of Health has authority to adopt fees for public health services provided by the county. It has the authority to adopt general policies and rules to implement Department responsibilities so that the Local Public health Authority work can be completed. The Department's responsibilities include performance of its duties and functions set forth in public health statutes and state rules and performing, or arranging for performance of the activities included in the annual public health plan. Depending upon specific provisions, the Department's responsibilities may include to assist with administering and enforcing existing public health laws including local public health ordinances, and rules of the Local Public Health Authority and Oregon Health Authority (and those of Oregon Department of Human Services until Oregon Health Authority assumes full duties).

The Board, acting as the Board of Health will use the following procedures:

(1) Ordinances shall be adopted pursuant to LM 9.901(1).

(2) Policies may be adopted by resolution or order, and fees by order, using the County's regular processes. Approved fees shall be published in Lane Manual. Policies being considered shall include information or findings concerning the public health interest and identifying the duty(ies) of the Department which are the subject of the policy.

(3) For rules that are not ordinances, the regular County process for adopting and for publishing in Lane Manual will be used. Policies may be adopted at the same time as adoption of rules. The same information or findings in (1) should be included in joint policies/rules, in addition to the proposed rules.

(3) Nothing in these procedures prohibits the Board of Health from conducting a public hearing before adopting rules or policies, but such a hearing is not required.

(4) The Board acting as the Board of Health may act to amend or repeal its policies, rules or fees by order using the county's regular process.

(5) There may be joint meetings. The Board acting as of the Local Public Health Authority may decide to consider the adoption of a rule which, in part, specifies duties of the Department. The Board, acting as the Board of Health may also wish to consider the rule as to implementation by the Department. A joint meeting may be held, and any public hearing may also be jointly conducted; however, the decisions shall be made separately. *(Revised by Order No. 09-03-31-5; Effective 4.15.09)*

## LANE COUNTY BOARD OF HEALTH AND LOCAL PUBLIC HEALTH AUTHORITY

### 9.900 Local Public Health Authority and Board of Health

The Board of County Commissioners (Board) acts as the governing body for the Local Public Health Authority and as Board of Health in Lane County pursuant to ORS 431. The purpose of these rules is to set forth general procedures for adopting policies, rules and ordinances and not to establish authority or extent of authority to act on any particular issue. Nothing in these rules shall be construed to interfere with the Board of Health's or Local Public Health Authority's use of emergency procedures which are required by law or which they deem necessary to meet a public health need; or to amend, limit, or interfere with the ability of county officers, agents or employees to act in emergencies or address incidents, or otherwise meet their legal obligations.

### 9.901 Procedures of Local Public Health Authority and Ordinances

Pursuant to statute, county government is the Local Public Health Authority. It submits a countywide annual public health plan for state approval, manages local public health services, administers public health programs, and is responsible for enforcing and administering public health laws including its own rules. In addition, in order to meet its responsibilities, the Public Health Authority uses the Board of Health to adopt policies and rules to implement duties of the Lane County Department of Health and Human Services (Department).

(1) The Board, acting on its own behalf and as the Board of Health has responsibility to adopt, amend and repeal public health ordinances, unless otherwise provided by specific law. The regular County ordinance process shall be used with the Board acting on its own behalf to approve codification in Lane Code and any modifications after the Board of Health acts. There may be joint meetings and a hearing.

(2) For rules which are not ordinances, the Board, acting as the Local Public Health Authority follow its regular procedures for adopting, amending and repealing rules in Lane Manual. Rules may include, but are not limited to, those designed to facilitate administration and implementation of its public health ordinances, or programs or to administer or enforce other existing state public health laws or rules.

(3) Nothing in this procedure is intended to prevent the Board or local Public Health Authority from adopting ordinances permissible under the law and as they determine appropriate under county procedures.

### 9.900902 Authority Procedures of Board of Health.

The Board of Health has authority to adopt fees for public health services provided by the county. ~~The Board of County Commissioners is the county board of health for Lane County pursuant to ORS 431. It has the~~ The Lane County Board of Health ("Board of Health") ~~has the authority to adopt general policies or and rules to implement Lane County Department of Health and Human Services ("Department") responsibilities so that the Local Public health Authority work can be completed, under the county public health authority.~~ ~~The Department's responsibilities include performance of its duties and functions set forth in public health statutes and state rules and performing, or arranging for performance of the activities included in the annual public health plan. Depending upon specific provisions, the Department's responsibilities may include to assist with administering and enforcing existing public health laws including local public health~~

~~ordinances, and rules of the Local Public Health Authority and Oregon Health Authority (and those of Oregon Department of Human Services until Oregon Health Authority assumes full duties). It shall have the authority to amend or repeal such policies and rules. The Board has authority to adopt policies and rules implementing Department responsibilities to administer and enforce other public health rules and laws pursuant to statute, and to adopt fees for services.~~

~~By statute, Lane County is part of a statewide public health system, and is granted public health authority with countywide jurisdiction. One requirement is to have plans approved by the Oregon Department of Human Services ("DHS"), and a contract with DHS in order to receive state funding to perform under the plans and program elements. The Department has responsibility to address implementation under the plans and programs. (Revised by Order No. 09-3-31-5; Effective 4.15.09)~~

### ~~9.901 Procedures.~~

~~The Board, acting as the Board of Health will use the following procedures: to adopt policies, rules, and fees under its authority except when there is a public health emergency or incident needing expedited attention:~~

~~(1) Ordinances shall be adopted pursuant to LM 9.901(1).~~

~~(2) Policies may be adopted by resolution or order, and fees by order, using the Board of Commissioners' County's regular processes, except actions will be taken as the Board of Health. Approved fees shall be published in Lane Manual. Policies being considered shall include information or findings concerning the public health interest and identifying the duty(ies) and role of the Department being addressed which are the subject of the policy.~~

~~(2) For rules that are not ordinances, the regular County process for adopting and for publishing in Lane Manual will be used. Policies may be adopted at the same time as adoption of rules. The same information or findings in (1) should be included in joint policies/rules, in addition to the proposed rules. The Board of Health shall set and conduct at least one public hearing before adopting rules, subject to (3)(a) below. The Board of Health will adopt joint policies/rules by order.~~

~~(3) Nothing in these procedures prohibits the Board of Health from conducting a public hearing before adopting rules or policies, but such a hearing is not required. Because the Board of Health currently has no formally recognized method to codify or publish its rules, the following guidelines will be followed:~~

~~(a) The Board of Health will designate where its rules will be codified or published in its order. Generally, public accessibility supports publication in Lane Code for matters which include direct affect on the public; however, the Board of Health may not have authority to codify or publish its rules in Lane Code. The Board of Commissioners, acting on behalf of the county ("Board of Commissioners") is authorized to approve the codification and publication of Board of Health rules in Lane Code by ordinance, if this is the selected method. It is not the intent that this limited codification and publication role be construed as the Board of Commissioners acting to adopt its own rules or rules on behalf of the county under Home Rule. The Board of Health's rules are based on a specific grant of power by the state in ORS 431.~~

~~(b) The Board of Health may designate codification of its rules in Lane Manual, or in some other manner designed to provide broad public accessibility. The Board of Commissioners is authorized to approve the codification and publication of Board of Health rules in Lane Manual as designated by the Board of Health.~~

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Bold indicates material being added  
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9.901

Lane Manual

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~~(4) The Board of Health and the Board of Commissioners may meet jointly to accomplish the adoption and codification steps in (1) (3), as long as any action taken by the Board of Commissioners is taken after the Board of Health's action and is identified in its order or ordinance as for the purpose of codification and publication of Board of Health action. Any action of the Board of Health should be clearly identified as adoption of policies or rules in its order. For joint meetings where codification or publication is to be by the Board of Commissioners by ordinance, the county's regular ordinance procedure should be used.~~

~~(54) The Board acting as the Board of Health may act to amend or repeal its policies, rules or fees by order using the county's regular process, except that action will be taken as the Board of Health. It may include a direction to the Board of Commissioners to make the appropriate codification and publication changes to Lane Code or Lane Manual, as appropriate. The Board of Health and Board of Commissioners may meet jointly pursuant to (4) above.~~

~~(65) There may be joint meetings. The Board acting as of the Local Public Health Authority may decide to consider the adoption of a rule which, in part, specifies duties of the Department. The Board, acting as the Board of Health may also wish to consider the rule as to implementation by the Department. A joint meeting may be held, and any public hearing may also be jointly conducted; however, the decisions shall be made separately. Nothing in these rules shall be construed as: a) interfering with the Board of Health's or public health authority's use of emergency procedures which are required by law or which they deem necessary to meet a public health need; b) amending, limiting or interfering with the ability of any county officers, agents or employees to act in emergencies or otherwise meet their legal obligations. (Revised by Order No. 09-03-31-5; Effective 4.15.09)~~