



**OFFICE OF COUNTY COUNSEL**

**PUBLIC SERVICES BUILDING**  
 2051 KAEN ROAD | OREGON CITY, OR 97045

October 17, 2013

**Stephen L. Madkour**  
 County Counsel

Board of County Commissioner  
 Clackamas County

**David W. Anderson**  
**Kimberley Ybarra**  
**Kathleen Rastetter**  
**Chris Storey**  
**Scott C. Ciecko**  
**Alexander Gordon**  
**Amanda Keller**  
**Nathan K. Boderman**  
 Assistants

Members of the Board:

**Approval of Board Order Designating Certain Officials as Persons in Charge of County Facilities, Buildings and Property**

<b>Purpose/Outcomes</b>	To designate the County Administrator and the Sheriff, and their respective designees as Persons in Charge for the purposes of ORS 164.205.
<b>Dollar Amount and Fiscal Impact</b>	This Board order is not expected to have a fiscal impact on the County
<b>Funding Source</b>	County General Fund
<b>Safety Impact</b>	The designation of a "Person in Charge" by the Board is a statutory requirement to any enforcement efforts under ORS 164.205.
<b>Duration</b>	Effective immediately and of indefinite duration
<b>Previous Board Action</b>	The Board has generally considered the issue of exclusions and ejections from county library and other facilities at study sessions on August 27 and September 24, and the business meeting of September 12, 2013.
<b>Contact Person</b>	Stephen L. Madkour, County Counsel at 503/655-8362

**BACKGROUND:**

Clackamas County owns, operates, and occupies facilities throughout the county. Presently no policy exists that designates who is in charge of the various facilities. This designation is important in the context of disruptive individuals refusing to leave county facilities.

Oregon Revised Statutes 164.204 requires that the Board of Commissions designate a "person in charge" in order to effectuate the provisions of that statute. The proposed

Order designates the County Administrator and the Sheriff, or their respective designees, as "persons in charge" of County facilities, buildings, and property.

After receiving a considerable amount of public testimony, the Board of County Commissioners proposes adopting a Board Order that will create greater flexibility in the operation of County facilities while at the same time providing for the safety of our employees. Rather than being punitive, the intent of this Order is to prevent inappropriate activity from interfering with the County's ability to serve citizens visiting County facilities.

**RECOMMENDATION:**

Staff recommends the Board approve the proposed Order, which is attached to this staff report as Exhibit A.

Respectfully submitted,



Stephen L. Madkour  
County Counsel

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF CLACKAMAS COUNTY, STATE OF OREGON**

**In the Matter of Designating Certain  
Officials as Persons in Charge of  
County Facilities, Buildings  
and Property**

Order No. \_\_\_\_\_

WHEREAS, Clackamas County owns, operates, and leases facilities, buildings, and property throughout the County, and the majority of these facilities, buildings and property are open to the public;

WHEREAS, Oregon Revised Statutes 164.205 authorizes the Board of Commissioners to designate a "person in charge" for the purposes of having lawful control over the premises; and

WHEREAS, the Board of County Commissioners finds that it is in the public interest to designate certain individuals as "persons in charge" of county facilities, buildings, and property; now,

Now, therefore, it is hereby ordered:

The following County officials are hereby designated as those "persons in charge" of county facilities, buildings and property:

1. The County Administrator or his/her designee; and
2. The Sheriff or his/her designee.

DATED this \_\_\_\_ day of September, 2013.

**BOARD OF COUNTY COMMISSIONERS**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary



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Members of the Board:

**Approval of Ordinance No 05-2013 Amending Section 6.09 of the Clackamas County Code Pertaining to Library Exclusion Process**

<b>Purpose/Outcomes</b>	To amend existing ordinance to provide library staff with greater flexibility and discretion to accommodate library users
<b>Dollar Amount and Fiscal Impact</b>	No fiscal impacts are anticipated as a result of the amendments.
<b>Funding Source</b>	Existing library budget and operations
<b>Safety Impact</b>	The ordinance is intended to promote and protect the public's health, safety, and welfare.
<b>Duration</b>	Effective Immediately and of indefinite duration
<b>Previous Board Action</b>	The Library Ordinance was initially adopted in 2001, and amended in 2005. This Board has held study session on August 27, September 24, and October 8. The Board held a public hearing and first reading of the proposed ordinance on September 12, 2013.
<b>Contact Person</b>	Stephen L. Madkour and Chris Storey, Office of County Counsel at 655-8362

**BACKGROUND:**

Clackamas County Code Section 6.09 presently designates the Library Director as a person in charge for purposes of excluding individuals and issuing exclusion or warning notices. This provision was initially adopted by the Board in 2001 and amended in 2005.

Library staff is very experienced and trained in customer service, and staff works hard to solve problems and provide options to meet the needs of the citizens without relying on exclusions. The library is a public facility and serves all types of people. Occasionally, a patron may become upset and disruptive. Currently, if the patron refuses to lower their voice and calm down, staff would have to issue a warning notice, and if that does not work, a second notice and then an exclusion. Exclusions are anywhere from one day to 90 days.

The proposed changes are designed to give staff more flexibility in handling these types of situations. Currently, the ordinance allows for exclusions but requires a defined time period. Staff would like the ordinance to authorize immediate ejection for only so long as the problem continues.

If, for example, a patron enters the library without a shirt or brings a non-service dog with them, they could be directed to go outside. If the patron puts on a shirt and leaves the dog outside, they would be immediately welcomed back to use the library. The current ordinance does not have the situational flexibility to respond to minor issues such as these. Having the ability to ask a patron to leave the building until the actions stop, or the ability to ask kids to take the play outside and come back in when done, provides an additional tool to keep the library operating safely and productively for citizens and staff.

The proposed amendments also eliminate the existing requirement that patrons notify library staff that they are carrying a weapon.

Attached as Exhibit A for the Board's review and consideration are the proposed updates to Section 6.09 of the County Code dealing with Library exclusions.

**RECOMMENDATION:**

Staff recommends the Board read the proposed ordinance by title only and approve its adoption.

Respectfully submitted,



Stephen L. Madkour  
County Counsel

AN ORDINANCE AMENDING CHAPTER 6.09 OF THE CLACKAMAS  
COUNTY CODE – LIBRARY EXCLUSION PROCESS

WHEREAS, the Clackamas County Board of Commissioners finds that disruptive behavior on County Library property is contrary to the public health, safety and welfare and hinders the ability of County staff to provide service; and

WHEREAS, the Clackamas County Board of Commissioners wishes to update and clarify the authority to County staff to exclude persons from the Library who engage in such disruptive behavior;

Now, therefore, the Board of Commissioners of Clackamas County amends the Clackamas County Code as follows:

**Section 1:** Chapter 6.09, Library Exclusion Process is amended in its entirety to read as follows:

6.09 LIBRARY EXCLUSION PROCESS

6.09.010 EXCLUSION FROM LIBRARY

- A. A person is subject to a warning notice, ~~or immediate exclusion~~ from library property, immediate ejection from library property or may otherwise have their library privileges restricted or suspended for a period of up to ninety (90) days for any of the following conduct:
1. **Sleeping.** Sleeping using bedding, sleeping bag or other sleeping matter in the library unless such use has been approved in advance by the Library Director;
  2. **Unrelated Activities.** Use of Library facilities and/or equipment for activities unrelated to the purposes of the Library;
  3. **Excessive Noise.** Loud or excessive noise or use of amplified recording or sound production equipment, including, but not limited to, radios, tape recorders, compact disc (CD) players, and digital media players, such that the sound produced is audible five (5) feet from the device, unless such use has been approved in advance by the Library Director.

4. **Children Required to be in School.** Violating ORS 339.010 or any successor statutes, which requires children between the ages of 7 and 18 years who have not completed the 12<sup>th</sup> grade to attend regularly a public full-time school, unless the child is exempt from compulsory school attendance by ORS 339.030.
5. **Disruptive Behavior.** Disruptive behavior, which includes, but is not limited to:
  - a. any illegal activity;
  - b. damaging library materials or equipment;
  - c. smoking;
  - d. ~~intoxication~~ or drinking alcoholic beverages;
  - e. littering;
  - f. soliciting;
  - g. running;
  - h. harassing patrons and/or staff;
  - i. using abusive or threatening language or gestures;
  - j. create public disturbance;
  - k. panhandling; or
  - l. riotous behavior.
6. **Disobeying Library Staff.** Disobeying the direction of a library staff member.
7. **Interference with Use or Duties.** Persons who interfere with the use of the Library by other persons, or interfere with Library employees' performance of their duties.
8. **Appropriate Clothing.** Persons who are not wearing a shirt or other covering of their upper bodies, pants or other covering of their lower bodies, or who are not wearing shoes or other footwear.
9. **Hygiene.** Persons whose bodily hygiene is offensive so as to constitute a nuisance to other persons shall be required to leave the building.
10. **Weapons.** Persons who bring a weapon into the library unless authorized by law under ORS 166.370. ~~A person authorized to carry a weapon must notify library staff that he/she is carrying a weapon in the library.~~
11. **Animals.** Allowing any non-service animal that is not pre-approved by library staff into the library. Any service

animal that is allowed to annoy, molest, bark continuously, attack or injure any person or animal on library property or is tied up and left unattended will no longer be deemed a service dog and will not be permitted to remain on the premises.

Under the federal Americans with Disabilities Act, a service animal is defined as a dog that is individually trained to do work or perform tasks for people with disabilities. The work or task a dog has been trained to provide must be directly related to the person's disability. A service animal whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA.

12. **Concessions and Solicitations.** Persons who engage in any of the following on library property:
- a. Operate a concession, either fixed or mobile, without having obtained a permit or contract from the Director;
  - b. Solicit, sell, or offer for sale, peddle, hawk, or vend any goods, wares, merchandise, food, liquids or services without having obtained a permit or contract from the Director; or
  - c. Advertise any goods or services, except signs painted or mounted on vehicles in personal use, without having obtained a permit from the Director.
- B. As used in subsection A: above, the term "library privileges" means the ability to obtain the use of any printed material, pictures, sound recordings or information that is kept in any form within any Clackamas County Library building, and to physically enter any Clackamas County Library.
- C. A person may be immediately ~~immediately excluded~~ dejected from the library based on conduct from subsection A, at the discretion of the Library Director or other authorized designee.
- D. A person may obtain a permit to engage in concessions or solicitations, as referenced above in subsection A(12), by submitting a completed application to the Director. The Director will use a range of content-neutral factors to make a determination whether to issue the permit. If a permit application is denied, the applicant may file an appeal following the procedures in 6.09.040 below.



6.09.020 PERSONS AUTHORIZED TO ISSUE EXCLUSION OR WARNING NOTICES OR EJECT INDIVIDUALS FROM PROPERTY.

The Library Director is hereby designated as the person in charge of the Library for purposes of excluding or ejecting individuals and issuing exclusion or warning notices in accordance with this Chapter. The Library Director may authorize other personnel to exclude or eject individuals or issue exclusion or warning notices consistent with this Chapter.

6.09.030 ISSUANCE OF WARNING OR EXCLUSION NOTICES.

A. Warning Notice.

At the time of the occurrence of any conduct identified in Section 6.09.010.A., the Library Director, or designee may issue a written warning notice. The notice shall specify that in the event a second notice is issued to the individual within ninety (90) days of the first notice, that person shall be subject to exclusion from the Library and/or lose such other Library privileges as the Library Director may determine to be appropriate for a period of up to ninety (90) days. The warning notice shall include information concerning the right to appeal the warning notice to the County Administrator.

B. Exclusion Notice.

The Library Director may issue a written exclusion notice excluding the person from the Library. If an individual engages in conduct described in section 6.09.010(A) above that warrants exclusion without a warning notice, then the individual will receive a written exclusion notice.

The notice shall specify that the person is to be excluded from the Library, the period of the exclusion, the time the exclusion is to commence, as well as contain information concerning the right to appeal the exclusion notice to the County Administrator.

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6.09.040 RIGHT TO APPEAL.

A. The individual who is excluded, to whom a warning or exclusion notice is issued, or to whom a permit application has been denied shall have the right to appeal the decision.

- B. An appeal must be filed, in writing, with the County Administrator within five (5) business days of the notice's issuance. The notice of appeal shall state the following:
1. The appellant's name;
  2. The appellant's address and a telephone number where they can be reached.
  3. A concise statement as to why the exclusion, denial of a permit or issuance of the notice was in error; and
  4. Attach a copy of the notice or letter of denial.
- C. A hearing on the appeal shall be held no more than thirty (30) calendar days after the filing of the appeal, except in the event the County Administrator determines otherwise. The hearing shall afford a reasonable opportunity for the person requesting it to present and rebut evidence that the warning, exclusion, or permit denial is invalid or unjustified. The decision of the County Administrator is final and shall be in writing. The written decision shall state how it can be appealed.
- D. The warning or exclusion shall ~~not take~~ remain in effect during the pendency of the appeal. ~~In the event no appeal is properly and timely filed, then the warning or exclusion shall take effect on the sixth calendar day following the issuance of the notice.~~
- E. The County shall have the burden to show by a preponderance of evidence that the warning or exclusion is based on conduct described in Section 6.09.010. In the case of a permit denial, the County shall have the burden to show by a preponderance of the evidence that the denial of the permit was determined through a content-neutral analysis.
- F. Copies of any and all County documents ~~which are to be used by the County at the hearing shall be made available to the appellant upon request.~~ at least two (2) days prior to the hearing.

**Section 2: Emergency Clause**

The Board of Commissioners hereby finds and declares that an emergency exists inasmuch as the immediate effect of this Ordinance is necessary for the peace, health and

welfare of the residents of the County. Accordingly, this Ordinance shall be effective upon its adoption.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ 201\_\_.

**BOARD OF COUNTY COMMISSIONERS**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary