

**CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS**  
**Sitting/Acting as** (if applicable)  
**Study Session Worksheet**

**Presentation Date:** Tuesday, December 12

**Approx. Start Time:** 11am 2:30p

**Approx. Length:** 30 Minutes

**Presentation Title:** Liability Insurance and Rules of Conduct for Community Planning Organizations

**Department:** County Counsel, PGA, and HR/Risk Management

**Presenters:** Stephen Madkour, Katie Wilson, and Eric Machado

**Other Invitees:**

**WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?**

Seeking Board authority to proceed to a Board business meeting to approve a Board Order or Resolution authorizing the procurement of liability insurance coverage for CPO's, adopting rules of conduct for participating CPOs, and delegating authority to County staff to effectuate these goals and objectives.

**EXECUTIVE SUMMARY:**

A Community Planning Organization (CPO) as defined in Chapter 2.10 of the County Code and described in Chapter 2 (Citizen Involvement) of the Clackamas County Comprehensive Plan, means a community organization that acts in an advisory capacity to the Board of County Commissioners, Planning Commission, and Planning Division on land use matters affecting its area. The CPO program is the method Clackamas County uses to meet Goal 1, Citizen Involvement, of the Statewide Planning Goals. A CPO is not considered an agent of the County.

Hamlets and Villages are considered agents of the County for the purposes of liability coverage. Chapter 2.10.110 of the County Code states: Agency status: "Hamlet and village board members acting within the scope of authority granted by the organization bylaws and county policies are advisory to the BCC and shall be treated as agents of the county for claims against them for purposes of the Oregon Tort Claims Act. When acting in the capacity of a CPO, a hamlet or village board shall not be considered an agent of the county."

Villages and hamlets are really subdivisions of the county. Its members are elected and are subject to a code of conduct set forth in the County Code. Hamlet and village board members are subject to removal. No such oversight is available for CPOs, which operate more independently. Additionally, a CPO could be adverse to the county in land use decisions.

A few years ago, members of the Mt Hood CPO were named as defendants in a lawsuit filed by a property owner. The members were able to obtain legal representation from volunteers at the Lewis and Clark Law School. However, it has been reported that the lawsuit had a chilling effect on members of the community wanting to volunteer on a CPO.

Since that time, the County has received correspondence from various CPO board members expressing concerns about legal liability exposure and the desire to be provided some type of insurance coverage from the county. Essentially, CPO board members feared the legal exposure brought on by particular lawsuits commonly referred to as SLAPP suits, or strategic lawsuit against public participation.

In March 2017, the Board held a study session on this issue and directed staff to explore best available options for providing CPOs with some type of insurance coverage. In the interim, in an effort to provide CPOs with some sense of security, the Board budgeted \$50,000 as a line item in the County Counsel budget for legal defense costs in the event of any litigation involving CPOs. No litigation has been filed and the \$50,000 remains intact.

County staff has worked collaboratively with CPO representatives in an effort to identify the most cost effective method of obtaining coverage. We have quotes from Laporte, a local insurance broker.

Along with providing CPOs with the benefit of insurance coverage also comes an expectation that CPO Board members would be subject to the same general rules of conduct applicable to hamlets and villages. The attached "Assumed Responsibilities" prepared by CPO member Martin Myers is an outgrowth of the rules of conduct for hamlets and villages found in our code. Section 7 contains mandatory training requirement for those CPOs that "opt in" for insurance coverage. County staff added language to the document to clarify CPOs must be active and recognized by the county to be eligible for coverage and that all active CPOs shall be enrolled in the policy. Eligibility will be determined annually by county staff.

#### FINANCIAL IMPLICATIONS (current year and ongoing):

The quoted annual cost for a commercial general liability (CGL) policy and Directors and Officers (D&O) coverage is approximately \$5000 for the coverage, and \$5000 administration fee from the broker. The annual administrative cost may drop slightly over time. The policy would provide insurance coverage to all participating CPOs.

Presently, CPO's receive up to \$150 annually from PGA for operating expenses. Accordingly, the cost would need to be borne by the County out of the general fund.

#### LEGAL/POLICY REQUIREMENTS:

Under County Code, Hamlets and Villages board members are agents of the county when acting within the course and scope of their authority. CPO's however, are not agents of the County and as such are not entitled to coverage under the County's self-insured risk pool.

**PUBLIC/GOVERNMENTAL PARTICIPATION:** PGA provides a dedicated staff liaison to support Hamlets, Villages and CPOs. In addition, PGA manages Hamlet and Villages board recruitment and election processes.

#### OPTIONS:

1. Do not authorize any expenditures for legal defense or insurance;
2. Maintain a line item in County Counsel budget for legal defense costs for CPOs;
3. Authorize obtaining CGL/D&O insurance for CPOs without implementing any rules of conduct; or

4. Authorize obtaining CGL/D&O insurance coverage for CPOs provided each CPO accepts the rules of conduct

**RECOMMENDATION:**

4. Authorize obtaining CGL/D&O insurance coverage for CPOs provided each CPO accepts the rules of conduct

**ATTACHMENTS:**

Statement of Assumed Responsibilities for Elected Officers and Directors of CPOs  
July 11, 2017 letter to BCC from Clackamas County Committee for Community Involvement

**SUBMITTED BY:**

Division Director/Head Approval \_\_\_\_\_  
Department Director/Head Approval \_\_\_\_\_  
County Administrator Approval \_\_\_\_\_



For information on this issue or copies of attachments, please contact  
Stephen L. Madkour, County Counsel at 503-655-8362 or [SMadkour@Clackamas.us](mailto:SMadkour@Clackamas.us).

Statement of Assumed Responsibilities for Elected Officers and Directors  
of Community Planning Organizations,  
an addendum to the Model Bylaws for Community Planning Organizations.

A. Preamble.

The Community Planning Organizations of Clackamas County ("CPO") are volunteer citizen organizations. CPOs are a part of the citizen involvement program required by State of Oregon statute as outlined in Goal 1, Citizen Involvement of the Statewide Planning Goals. CPOs serve the residents, property owners, businesses, corporations, and trusts within their geographical boundaries in matters concerning community development, land use and community issues in general. CPOs are each entities that are distinct from, and not an agent of, Clackamas County.

B. Statement of Assumed Responsibilities for CPO Board Members.

CPO Board Members ("CPO Board Members") are officers and directors at large that have been elected by the CPO members to act on the CPO members' behalf. By accepting a position in a CPO, each CPO Board Member pledges to follow and assume these stated responsibilities in all of their official acts taken as a CPO Board Member:

1. To serve the best interests of the CPO as a whole regardless of personal interests;
2. To conduct open, fair, and well-publicized meetings and elections;
3. To provide opportunities for members of the CPO to comment on decisions facing the CPO;
4. To perform duties without bias for, or against, any individual or group;
5. To act in compliance with all of their CPO's bylaws;
6. To comply with all other aspects of Oregon law applicable to public officials, including the public records law, public meeting law, ethics law, and election laws; and
7. To be eligible for general liability and directors' and officers' insurance coverage under any insurance plan or plans offered to the CPOs and paid for by Clackamas County, then the CPO Board Members of the CPO shall both: a) undertake reasonable training as reasonably provided by, and at the expense of, the Clackamas County Board of County Commissioners and County staff within 90 days of being elected (or the enactment of this Statement whichever is later); and b) notify the County in writing that such training was taken. Such training may include but not be limited to general governance and procedure, bylaws, public meetings and public records,

elections, and governmental ethics, and shall be offered at times and in formats that are convenient for citizen volunteers, such as online and/or at regularly scheduled CPO meetings.

8. To comply with the requirements provided by Clackamas County to be recognized as an active CPO.

July 11, 2017

Dear Clackamas Board of County Commissioners,

CCI met on May 16<sup>th</sup> and discussed possible CPO member obligations to qualify for county-funded liability protection and help reduce SLAPP liability. We are very appreciative of you listening to the needs of our CPO members and providing liability protection. We all agree it makes complete sense to use this opportunity to build a better partnership between the CPOs and the county and that there should be requirements for each CPO to qualify for liability protection. We have discussed this at length. Our agreed upon recommendations include:

- Required meeting notice procedures
- Required meeting agenda and summary template
- Requirement to utilize the county website as one of the methods used to post agendas and meeting summaries
- Required training for board members including public meeting law, basic public administration, overview of Clackamas County services, and conflict resolution
- Required annual report of CPO activities

Again, thank you for your support. Please let us know if you can be of further assistance on this matter.

Sincerely,

Clackamas County Committee for Community Involvement