

**CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS  
ACTING AS THE GOVERNING BODY OF THE  
LIBRARY DISTRICT OF CLACKAMAS COUNTY**

**Policy Session Worksheet**

**Presentation Date:** 2/23/16 **Approx Start Time:** 2pm **Approx Length:** 30 minutes

**Presentation Title:** Library District Use of Funds & Oversight Responsibilities

**Department:** BCS

**Presenters:** Gary Barth, Director BCS; Laura Zentner, Deputy Director BCS; Chris Storey, Assistant County Counsel

**Other Invitees:**

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

Staff is requesting input and direction from the Board regarding two major Library District of Clackamas County ("District") issues: use of district funds for library-related capital purposes, and the exercise of oversight over expenditures of District funds.

EXECUTIVE SUMMARY:

There has been continuing discussion by citizen groups and the Board regarding several library-related issues. This staff report would first refer the Board to the financial and background information previously provided, and the policy session immediately following it with respect to the County's interest in the Gladstone/Oak Lodge library discussion. It serves as a useful exemplar of the impact of these broader, district-wide issues when applied to a specific library situation. Particular attention is noted on both the apparent need for District funds to support any of the available facility options for those residents, and significant citizen concerns regarding their participation in decision-making that affects their library service levels.

*Use of District Funds for Capital Purposes:*

As previously discussed in July 2014, there is a current restriction on the use of District funds, namely that they must be used for operational and not capital purposes. This arose in the formation of the District, when the County faced a boundary issue because a county service district providing library services already existed, covering the area of the Estacada school district. The Estacada Library District issued bonds to support construction of library improvements for the City of Estacada's Library. Applicable state statute requires that two districts not exist over the same territory providing the same service. To avoid the necessity of excepting the Estacada area from the county-wide Library District, during the formation process the Board determined that the Estacada District was used for capital-only purposes and the Library District of Clackamas County would be used for operating-only purposes.

This was reflected in the election materials provided to voters. The explanatory statement noted that "The Library District would implement a permanent rate of \$0.3974 per \$1,000 assessed value to exclusively fund library services....This dedicated funding would allow the libraries in Clackamas County to stay open and continue their programs." The formation board order

adopted November 18, 2008, (the “Current Master Order”) established similar reasons for formation of the District, which state:

1. To provide a dedicated, stable funding source for the support of library services.
2. To raise revenue to be distributed to the existing city and county-operated libraries in the system. Formation of the District should provide sufficient funding to raise the service levels at all facilities to the most basic (“Threshold”) level recommended by the Oregon Library Association.

The reasons excluded capital expenditures consistent with formation proceedings and the election materials. The District’s current funding stream is intended to expand the level of library services available to residents to meet those standards. Further, the IGA between the District and those cities providing library services (“Library Cities”) entered into in 2009 (the “Master IGA”) places a requirement on the Library Cities for the use of funds in Section 2.1 to be only to “...provide public library service, and shall expend the entire library revenue paid under this Agreement in accordance with the purpose for which it was provided by implementing a plan to achieve the Service Standards.” The service standards are generally defined around the provision of Threshold standards which are attached to the Master IGA.

However, as previously discussed, several cities appear to have acted inconsistent with the ballot measure and the Master IGA, including Oregon City, Estacada and Sandy in the past and Gladstone’s current plans. It also appears that, in addressing cost overruns relating to the deteriorated condition of the county building that now houses the Sunnyside/Happy Valley library, operational reserves accrued from District distributions were used for capital purposes. In considering the issue, the Board in July 2014 informally directed staff to not pursue claims of violations of the ballot language and/or the Master IGA.

The same issues are again being discussed, and staff would like board direction on how the BCC, as the governing body of the District, would like to proceed. There are three main options. First, to continue as it is. This leaves the District board in the awkward position of knowing of violations by another party but not taking any action regarding the same. It is the least tenable position, but unfortunately is the status quo. The second option is to declare a violation and seek reimbursement from the various entities of District funds expended for capital purposes from other sources. This may require a declaration of a breach of the Master IGA, termination thereof, or other efforts of enforcement by law or equity. The final option is, now that the Estacada Library District is dissolving, to seek to remove the restriction on the use of the funds. The BCC, as the governing body of the District, has the authority pursuant to ORS 451 to adopt a new “master order” to specifically authorize use of District funds for library-related capital purposes. This Master Order is subject to remonstrance and, if sufficient numbers are received, a vote of District residents. If insufficient remonstrances are received, the new Master Order would go into effect. However, it would still be necessary to modify the Master IGA to remove all legal barriers to the newly authorized use of funds.

*District Exercise of Oversight over Expenditure of District Funds:*

Prior to the formation of the District the County was distributing, depending on the year, somewhere between \$4 and \$5 million to the library cities from the general fund. During 2008, the BCC decided that the general fund could no longer sustain that level of expenditures and sought creation of the District to replace those general fund distributions. The BCC also

announced its intention to “get out of the retail library business” and have no direct management responsibilities for the provision of library services.

In forming the District, the prior consent of each city council had to be obtained per governing law. The consent of all but Damascus, Johnson City and Tualatin (for that portion of the city within Clackamas County) were obtained after significant discussion. Damascus and Tualatin subsequently annexed into the District, leaving only Johnson City outside the otherwise County-wide service district. One of the key points of emphasis from the cities was their desire to continue to have local control over their libraries, just as they had when receiving county general fund distributions. There was limited appetite or desire for a regionalized library system, such as Multnomah County has. Therefore, the Master IGA adopted after formation of the District is deliberately structured to keep decision making regarding library service levels at the city level, with the District serving as a funding conduit in support of the provision of those services. The discussion of “threshold” level of service is not mandatory but aspirational, and each city is intended to make its own decisions regarding how best to serve its community. There are two major conditions in the Master IGA, however: first, that the money is used to meet the operational service standards and that the cities had to agree to serve unincorporated residents. Upon passage of the District, the funds available to support library services more than tripled, and currently the District is distributing over \$16 million per year to the twelve current library service areas within Clackamas County.

The Master IGA, recognizing the BCC’s desires and fiduciary responsibilities, structured responsibilities such that cities committed to complying with the two conditions set forth above and tried to create an incentive structure for each city to encourage its peers to best utilize distributed funds. Therefore each city agreed to use the funds in a particular way, and agreed in the Master IGA to the creation of the Library District Advisory Committee (“LDAC”) to be the body to vet the issues of use of funds. LDAC is charged with reviewing and ensuring that the District funds, used for operation, are being appropriately used. LDAC’s charge does not include capital efforts by the cities. At the time, the main concern focused around the fear of over-allocation of city overhead/administrative expenses to dedicated library funds.

There has been significant public comment and concern from residents, in particular from unincorporated residents, that the LDAC structure and reliance on peer pressure between the cities is an insufficient safeguard for the fair and appropriate use of District funds. The BCC has been asked to intervene in some fashion to ensure that unincorporated residents, who are paying an equal amount as city residents, have equal voice in the decisions regarding the provision of library services. To change the current oversight structure would require amendment of the Master IGA.

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

Is this item in your current budget?  YES  NO

What is the cost? If the BCC directs staff to seek greater oversight in the use of District funds, it will require expenditure of staff resources. Currently, the District does not provide any funding for staff efforts on its behalf – the costs of such are paid for by the County general fund.

## STRATEGIC PLAN ALIGNMENT:

- How does this item align with your Department's Strategic Business Plan goals? Build public trust through good government.
- How does this item align with the County's Performance Clackamas goals? Public trust in government

LEGAL/POLICY REQUIREMENTS: There is pending action towards the dissolution of the Estacada Library District, eliminating the issue of overlapping service districts. See options for possible future actions.

PUBLIC/GOVERNMENTAL PARTICIPATION: County-wide vote to form the Library District. Formation and continued interaction of the LDAC. Multiple public meetings on the general topic. Prior BCC discussions.

## OPTIONS:

### Issue 1: *Use of District Funds for Capital Purposes*

1. Maintain the Status Quo. Preserve the current restrictions against use of District funds for capital purposes, but take no further action. This leaves the District in a difficult position of knowing of violations of the ballot requirements by cities but not taking action to remedy the situation.
2. Seek Redress for Misuse of Funds. Direct staff to begin efforts with respect to known violations of the restrictions on the use of District funds, including but not limited to seeking reimbursement from such cities of District funds from other sources.
3. Adopt New Master Order. Adopt a new master order that would authorize the use of District funds in support of library-related capital efforts. If remonstrated against, this would require a vote. If not, it goes into effect at the end of the remonstrance period. This option would also require renegotiation of the Master IGA.

### Issue 2: *District Exercise of Oversight over Expenditure of District Funds*

1. Maintain the Status Quo. The Master IGA empowers the LDAC to review and consider use of District funds. If no change is made, this will continue to be the case and the BCC can look to a properly-constituted LDAC to work through library-related issues.
2. Increase District Participation in Oversight. Revise the Master IGA to allow for greater oversight in how District funds are being expended. The specifics of a revised relationship can be negotiated with the other parties, but at a minimum should include (i) accurate and comparable annual reports on service delivery, (ii) summaries of expenditure of District-distributed funds, including allocated and other expenses, and (iii) a more robust enforcement system for when a recipient of District funds is not using them consistent with the requirements of the Master IGA.

**RECOMMENDATION:**

For Issue 1, Use of District Funds for Capital Purposes, staff conditionally recommends Option 3 that the BCC direct staff to prepare for its consideration a new master order and begin discussions with cities on an amendment to the Master IGA. It would be disruptive to several of our partner cities to require reimbursement of District funds. However, this issue should be clearly linked to improvements in oversight and use of District funds.

For Issue 2, District Exercise of Oversight over Library Services, staff recommends Option 2. It is now apparent, eight years into the life of the District, that there are real and reasonable concerns from residents of both cities and especially the unincorporated area regarding the fair and appropriate expenditures of their tax dollars. The BCC, as the governing body of the District, is the appropriate safeguard for the appropriate use of those funds.

This is a collective recommendation. Staff believes that it is crucial that, if the District agrees to expand the legal scope of use of funds, then a concomitant degree of expanded oversight take place as well. To the extent the BCC desires to take a different course on one or the other, then staff would ask to be allowed to provide additional feedback or recommendations based on that new course.

**ATTACHMENTS:**

None.

**SUBMITTED BY:**

Division Director/Head Approval \_\_\_\_\_

Department Director/Head Approval \_\_\_\_\_

County Administrator Approval \_\_\_\_\_

For information on this issue or copies of attachments, please contact _____ @ 503- _____
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