

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Study Session Worksheet

Presentation Date: September 24, 2013 Time: 2:30pm Length: ^{1hr}~~30~~ minutes
Presentation Title: County Code Amendment & Resolution – Exclusion Provisions
Department: County Counsel, Business & Community Services
Presenters: Stephen Madkour, Chris Storey, and Gary Barth

ACTIONS REQUESTED

Approve presentation at a business meeting of 2nd reading of proposed county code amendment for Library exclusions and board resolution setting county policy regarding exclusions from county property.

EXEC SUMMARY

County Counsel is running a review and update process for the County Code. As part of that review, the provisions dealing with exclusions of persons from County property were reviewed and revisions proposed by affected staff. After first reading of the proposed ordinances on September 12th and discussion at Issues on September 17th, the BCC requested additional discussion.

Staff has prepared a proposed Board Resolution (attached) outlining a policy regarding exclusions in lieu of an ordinance for general county buildings, along with an Order designating persons in charge, and a sample exclusion form.

Staff recommends proceeding with amendments to the existing Library exclusion ordinance to provide more flexibility in dealing with customer issues.

FINANCIAL IMPLICATIONS

No direct financial cost or benefit.

LEGAL/POLICY REQUIREMENTS

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. 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 come back in when done, provides an additional tool to keep the library operating safely and productively for citizens and staff.

Attached for Board review as Exhibit A are the proposed updates to the county code dealing with Library exclusions as read at the September 12th board hearing. The proposed changes are designed to give staff more flexibility in handling 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 bringing 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.

The Board resolution attached hereto as Exhibit B designates either the County Administrator or the Sheriff as the person in charge of a facility and allows them to exclude members of the public without the need to resort to a criminal process unless said person refuses the exclusion. Also under Exhibit B is a sample Order designating persons in charge of county facilities, and a sample Exclusion Order.

PUBLIC/GOVERNMENT PARTICIPATION

The categories of exclusion, in particular around the libraries, are based on patron feedback and requests for action by staff. Particular complaints that have come up include homeless citizens camping in public rooms, significant odor problems, viewing inappropriate material on public computers, bringing non-service animals into public buildings, inappropriate or lack of clothing, and related issues.

The issue of exclusion from general county buildings came from reported incidents within the last few years, including:

- Behavioral health customer coming to county administration and screaming at staff that he wanted his medication, eventually kicking a door and acting in a threatening manner;
- Permit customer screaming at staff in the DSB over a permit issue, refusing to leave and eventually throwing his keys and other objects at staff; and
- Customer of Soils group at WES counter in the DSB becoming enraged and yelling profanities at staff and fellow customers while discussing a septic permit issue.

OPTIONS

1. Status Quo: Continue with county code as currently adopted for Libraries, no resolution adopted.
2. New Ordinance and Resolution: Direct staff to present the attached draft library exclusion ordinance changes for a 2nd reading at the October 3rd business meeting, and consider a board resolution setting a general exclusion policy at the same meeting.
3. Revise Proposed Ordinance and/or Resolution: Direct staff to modify the attached draft ordinance and/or resolution as desired and present to the BCC at a future business meeting.

RECOMMENDATION

Direct staff to present the attached draft ordinance for a second reading at the Board's Business Meeting on October 3, 2013.

Direct staff to present the board resolution for consideration at the Board's Business Meeting on October 3, 2013.

Division Director/Head Approval _____

Department Director/Head Approval _____

County Administrator Approval _____

For information on this issue or copies of attachments, please contact Chris Storey
@ 503-742-4623.

ORDINANCE NO. _____

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 12th 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. 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.

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 individual 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~~ unwarranted. In the case of a permit denial, the County individual shall have the burden to show by a preponderance of the evidence that the denial of the permit was not determined appropriately ~~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

[Board Resolution Header]

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

WHEREAS, the Clackamas County Board of Commissioners wishes to provide authority to County staff to exclude persons from County buildings and property who engage in such disruptive behavior;

Now, therefore, the Board of Commissioners of Clackamas County establishes as a policy for addressing such situation:

1. **General Policy.** A person who engages in certain disruptive or threatening conduct in County buildings or on County property shall be subject to immediate exclusion as necessary to ensure the safety of others and the ability to conduct County business.
2. **Person in Charge.** For the purposes of this policy, the persons in charge of County buildings and property are either the County Administrator or his designee and the Clackamas County Sheriff or his designee. All such persons in charge are delegated the discretion to exclude people pursuant to this policy. Persons in charge shall have discretion to set reasonable parameters when issuing exclusions, which shall be reasonably related to the following factors:
 - a. The nature of the conduct;
 - b. The level of threat posed;
 - c. Any history of past exclusions or similar conduct;
 - d. Any risk of violence; and
 - e. The likelihood of repeated conduct.
3. **Behaviors Giving Rise to Exclusion.** A person shall be subject to exclusion from County buildings or property if that person engages in any of the following types of conduct:
 1. Fighting or engaging in threatening behavior or disorderly conduct;
 2. Interfering with the ability to conduct County business;
 3. Making unreasonably loud or disturbing noise;
 4. Causing damage to County property;
 5. Using abusive or obscene language in a threatening manner;
 6. Intentionally entering or attempting to enter an area not open to the public; or
 7. Entering or attempting to enter a County building or County property while possessing an illegal or dangerous item, including a weapon, unless the individual meets an exception as listed in ORS 166.370(3);
4. **The Extent and Duration of an Exclusion.** The duration of the exclusion shall be no less than 7 days and no longer than 1 year unless the exclusion results from fighting or other offensive physical contact, or bringing an illegal or dangerous item onto County property, in which case the exclusion shall be no less than 1 year and no longer than 3 years.

5. **Process of Exclusion.** Upon determining that an exclusion of a person is necessary, a person in charge shall issue a written notice of exclusion. The notice shall be personally served on the person to be excluded, or may alternatively be served by mailing a copy by first-class mail, to the excluded individual's residence or mailing address. A notice of exclusion shall contain at least the following:

- a. The name and address (if known) of the individual to be excluded;
- b. The date and time of the event(s) resulting in the exclusion;
- c. A brief description of the behavior or conduct resulting in the exclusion;
- d. The duration for which the exclusion will be in effect;
- e. The name and phone number of the person in charge who issues the exclusion;
- f. A statement that the excluded person may request reconsideration of the exclusion and how such a request can be made;
- g. A statement that if the excluded person requires County services during the exclusion period, he/she may do so pursuant to Section 6.12.030(H) of this exclusion policy;
- h. A statement that the violation of a notice of exclusion could result in arrest and prosecution pursuant to Oregon law, including ORS 162.235, ORS 164.245, ORS 164.265, or ORS 166.360;
- i. A full copy of this exclusion policy for the person's reference; and
- j. A person who has received notice that he or she is excluded from County buildings or property and who subsequently remains or returns to County buildings or property, may be arrested and may face prosecution for criminal trespass pursuant to ORS 162.235, ORS 164.245, ORS 164.265, or ORS 166.360.

6. **Scope of Policy.** This policy applies to buildings and property owned or leased by the County. If this general exclusion policy conflicts with a more specific exclusion policy or ordinance, the more specific policy or ordinance shall control.

7. **No Exclusion from Service.** Persons excluded pursuant to this policy may obtain necessary County services during the exclusion period by scheduling to meet with staff at specified locations at pre-arranged times, provided the individual appropriately conducts him or herself during any such meetings. When an excluded individual arrives for a pre-arranged meeting, the person must immediately check-in with a security checkpoint, building reception or departmental reception upon entering County property.

8. **Due Process Appeal of Exclusion.** Excluded persons may request reconsideration by mailing a written request and explanation within 10 days of the exclusion to the County Administrator. The request must contain a current mailing address, telephone number, and any other pertinent contact information. Upon receiving a request for reconsideration, the County Administrator shall review the exclusion for consistency with County policy. Review shall be completed within 10 days after the request is delivered and the excluded person shall be informed of the determination in writing. The exclusion order remains in effect unless changed or rescinded upon reconsideration. The decision by the County Administrator after reconsideration shall be the County's final decision on an exclusion.

**In the Matter of Designating Certain
Officials as Persons in Charge of
County Facilities to Order
Exclusions from County Buildings
and Property**

Order No. _____

WHEREAS, the Board of County Commissioners adopted Resolution No. _____
on _____, 2013 which established a policy for the Exclusions of Persons from
County Buildings and Property;

WHEREAS, certain officials need to be designated as those persons in charge of
county facilities to order exclusions;

Now, therefore, it is hereby ordered:

The following County officials are hereby designated as those persons in charge
of county facilities to order exclusions from County buildings and property:

1. The County Administrator;
2. The Sheriff;
- 3.
- 4.

DATED this _____ day of September, 2013.

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

EX B

EXCLUSION ORDER

This exclusion order is issued to:

Name: _____

Address: _____

Describe event(s) leading to exclusion: _____

Date of event(s) leading to exclusion: _____

You are hereby excluded from the _____ building pursuant to Clackamas County Code Chapter 6.12.

If you would like this exclusion order to be reconsidered, mail a written request and explanation within 10 days of the exclusion to the County Administrator at:

2051 Kaen Rd.
Oregon City, OR 97045

The request must contain your current mailing address, telephone number, and any other pertinent contact information.

If during the exclusion period you are in need of County services, you may do so by contacting _____

You shall not enter or be in the _____ building for not to exceed ____ days.

Violation of the exclusion order could result in arrest and prosecution pursuant to Oregon law.

For questions regarding this exclusion order please contact:

Phone number: _____

A full copy of this exclusion policy is attached for your reference

EX B