



## MEMORANDUM

FROM John R. Hutt, Curry County Counsel

TO Board of Commissioners

RE: Options on County Administrator

DATE: February 2, 2017

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### **Summary**

This memorandum presents a summary of a brief survey of Counties that have Administrators/Managers, and the options for creating and enabling such a position.

### **Discussion**

The authority for Counties to create the position of a County Administrator (CA) are contained in the Oregon Statutes or a Home Rule County Charter adopted pursuant to the Oregon Constitution. A County can create a CA position even if it does not have a County Charter.

A County Administrator (CA) is not a required County officer listed in the Oregon statutes which regulate Counties. Some Counties do not have a CA. The position is described by various terms: Administrator, Director of Administration, Court Administrator, Administrative Assistant, Administrative Officer, Chief Administrative Officer, Chief Operating Officer, Executive Secretary, Chief of Staff, and Administrative Services Director.<sup>1</sup>

Counties that create a CA position usually describe the positions powers and limitations in a Charter, a codified set of ordinances (a code), an individual ordinance, an order creating a job description or other orders, rules and contracts, or a combination of the above.

This memorandum samples some of the different ways Oregon counties have employed a CA.

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<sup>1</sup>A document from Association of Oregon Counties (AOC) which lists the counties having a County Administrator includes Curry County. However, Curry County does not have a current CA, and our Director of Administration position lacked some of the central authority found typically in such titles.

## Sources of County Powers -- Charter not required

**203.010 General powers of county as body politic and corporate.** Each county is a body politic and corporate for the following purposes:

- (1) To sue and be sued;
- (2) To purchase and hold for the use of the county lands lying within its own limits and any personal estate;
- (3) To make all necessary contracts; and
- (4) To do all other necessary acts in relation to the property and concerns of the county.

The statutes actually grant broad powers to the governing body of the County to act.

**203.035 Power of county governing body or electors over matters of county concern.** (1) Subject to subsection (3) of this section, the governing body or the electors of a county may by ordinance exercise authority within the county over matters of county concern, to the fullest extent allowed by Constitutions and laws of the United States and of this state, as fully as if each particular power comprised in that general authority were specifically listed in ORS 203.030 to 203.075.

(2) The power granted by this section is in addition to other grants of power to counties, shall not be construed to limit or qualify any such grant and shall be liberally construed, to the end that counties have all powers over matters of county concern that it is possible for them to have under the Constitutions and laws of the United States and of this state.

Language similar to the above statutory language can be found in both city and county charters where that option has been exercised by the voters. So who is a county governing body?

**203.111 County governing body; legislative authority; quorum.** Unless otherwise provided by county charter, a county court shall be the governing body and shall exercise general legislative authority over all matters of county concern and shall consist of the county judge and two county commissioners and a majority of those persons shall constitute a quorum.

**203.240 Organization, powers and duties of board.** (1) A board of county commissioners shall:

(a) Have the powers and duties and be otherwise subject to the laws applicable to county courts sitting for the transaction of county business.

(b) Unless provided otherwise by county charter or ordinance, consist of three county commissioners. A majority of the board is required to transact county business.

(c) Except as otherwise provided in ORS 203.230 (5) or an order issued under ORS 203.230 (1), appoint a chairperson from among their number who shall serve until the first Monday in January next following appointment. If two members of the board cannot agree on the appointment of a chairperson, the

member of the board who is longest in length of service shall act as chairperson.

(2) When a county has established a board of county commissioners any reference in the statutes to the county court of that county shall be considered a reference to the board of county commissioners of the county.

As such the statutes grant broad powers to counties, and those powers to conduct county business are exercised by a majority of the board.

Can the powers be delegated? The answer is yes. For instance, many Counties place authority to hire, promote, discipline and fire employees and officers in the discretion of the County Administrator.

I have found no authority that a Board of Commissioners, and if delegated to a County Administrator, could “fire” another elected official; except the statutes specifically grant the Board authority to appoint a substitute assessor, which may or may not be a delegable function.

**308.055 Special assessor appointed if assessor fails to act.** If the assessor fails to commence or continuously and vigorously prosecute the making of the assessment in the manner provided by law, the county court or board of county commissioners may summarily appoint a special assessor. The special assessor shall qualify in the same manner as the assessor. The special assessor shall have all the duties, rights, privileges and emoluments of the assessor in making the assessment for the current year. The acts of the special assessor shall have the same effect as if they had been done by the assessor.

Further, county boards have the power to fix compensation of its own members and all officers, deputies and employees of the county. ORS 204.116. Boards can also fix the number of employees and deputies and other officers of the county. ORS 204.601.

However, the statutes specifically grant the Sheriff power to appoint the Sheriff’s deputies. ORS 204.635. (“(1) A sheriff’s deputies shall be appointed by the sheriff in writing and continue during the pleasure of the sheriff.”) Also, the statutes specifically grant the Sheriff authority over the organization of his office. ORS 206.210. (“Authority of sheriff over organization of office.”)

I found no such statutes with respect to other offices. Therefore, except as stated above, a CA can be delegated power to hire and fire employees of various county elected and appointed officers. In general, due to organizational constraints, most organizations employing a CA grant the CA authority to hire and fire appointed department head level officials, and those officials being granted authority to discipline the employees they hire, sometimes limiting the department head authority to terminate being subject to CA approval.

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**A CA position can be created by county charter, by code, ordinance, or order.**

According to the Oregon Blue Book, published by the Oregon Secretary of State, nine counties have adopted “home rule” charters, wherein voters have the power to adopt and amend their own county government organization. Lane and Washington were the first to adopt “home rule” in 1962, followed by Hood River (1964), Multnomah (1967), Benton (1972), Jackson (1978), Josephine (1980), Clatsop (1988) and Umatilla (1993).

Clatsop County Charter Chapter IV, section 2 states:

Section 2. County Manager.

The County Manager shall:

- be chosen by the Board without regard to political affiliation and solely with reference to executive and administrative qualifications;
- be the head of the administrative branch of County government;
- be responsible to the Board for the administration of the County;
- be responsible for carrying out the policies established by the Board; and
- be responsible for the employment and termination of all County employees, for all departments of the County.

Term. The County Manager shall be appointed for an indefinite term and may be removed at the pleasure of the Board. If a vacancy occurs in the office of County Manager, the Board shall immediately initiate proceedings to appoint a successor. When the County Manager is unable to perform the duties of the office, or the office becomes vacant, the Board shall appoint an interim County Manager who shall possess the powers and duties of the office.

The Clatsop County Board of Commissioners then supplements the above general grant of authority with specific authority in its code. For instance, with respect to personnel actions that code provides:

**2.20.010 Application.**

- A. General. This chapter shall apply to all employees of the County except as provided in Section 2.20.050.
  - B. Represented Employees. This chapter shall not be construed to abrogate any rights guaranteed to County employees by ORS 243.650—243.782 or regulations adopted under the Public Employees Collective Bargaining Act.
  - C. Conflicts. In the event of any conflict between this chapter and any contract with a recognized bargaining unit, or between this chapter and any state and federal law, then the terms of the state or federal law or collective bargaining agreement shall prevail.
  - D. Modifications. The Board of Commissioners has the right at any time to amend or to modify this chapter or to repeal it, so long as consistent with the County Charter. No provision of this chapter shall be deemed to have created any contractual or vested right in any employee or to limit the power of the Board of Commissioners to amend, modify or to repeal this chapter.
- 2.20.020 Definitions.

Unless a different meaning is shown to be clearly intended, the terms below shall have the following meanings as used in this chapter:

A. Employee. A person employed by the County; provided, the term “employee,” as used herein, does not include and does not apply to any of the following:

1. Elective officers (members of the Board of Commissioners, the Sheriff, and District Attorney).
2. The County Manager and those persons who report directly to the County Manager.
3. The County Counsel.
4. Department heads.
5. Members of appointive County boards, commissions and County committees.
6. Persons engaged under a personal service contract or as an independent contractor to provide any service to the County.
7. Volunteer personnel.
8. Persons hired from time-to-time to perform casual work, including, but not limited to, those employed to perform seasonal work or to meet the immediate requirements of an emergency condition.

B. County Manager. The person appointed by the Board of Commissioners under County Charter as the head of the administrative branch of the County government or a person acting as County Manager pro tem.

C. Department Head.

1. A County employee who has been appointed by the County Manager to be the head of a department established by the Board of Commissioners.
2. Department heads are not employees covered by those provisions of this chapter or personnel policies established under its terms which provide for probationary periods, grievance procedures, layoff procedures or discipline procedures for employees. Department heads may be covered by other personnel policies and procedures adopted by the County Manager.
3. A department head may be discharged from County employment at any time, with or without cause. A department head has no property right nor right to continued employment with the County.

D. Disciplinary Action. An action such as a written reprimand, a suspension, a demotion or a discharge from employment for reasons which relate to the recipient’s employment or conduct, and which has been or may be imposed on an employee by the County Manager or by the County Manager’s designee. Verbal warnings, counseling, written statements of performance expectations, including related notes and performance appraisals shall not be considered disciplinary actions, although any of these may be considered subsequently in determining whether to take any disciplinary action and in determining the type and extent of disciplinary action to be taken.

E. Personnel Policies. Those policies, guidelines and procedures adopted by the County Manager pursuant to County Charter and this chapter.

2.20.030 Administration.

A. County Manager. The County Manager's powers under County Charter Section 14(1)c shall include, but shall not be limited to, the following:

1. To prepare and to adopt and establish written personnel policies and to revise and amend such personnel policies as the County Manager finds necessary.
2. To prepare and adopt a position classification plan, including class specifications, and to revise and amend such plan as he or she finds necessary.
3. To discipline employees as he or she determines is necessary in accordance with this chapter.
4. To provide for recruitment and for any examination of candidates for County employment and for certification of persons eligible for appointment to County employment.
5. To delegate any of his or her powers and duties to any department head or other subordinate.

Such delegation may include authorization to any department head, or to any other employee reporting directly to the Administrator, to appoint, promote, transfer, layoff, reduce or to discipline employees.

6. To perform any other duty necessary or appropriate to administer this chapter or the County's personnel system and personnel policies.

B. An employee or employees, under the supervision of the County Manager, may be assigned to administer the provisions of this chapter, the County's personnel system and the personnel policies implemented in accordance with this chapter.

C. No one has authority to grant or to offer to any employee any job security or job protection, which is not provided for that employee by County ordinance.

As above, Clatsop County Manager has authority to hire and fire employees at all county levels or delegate its authority to a department official.

Of note, with respect to the relation between the County Manager and the Board of Commissioners, Clatsop County also has adopted "Board Rules" which state:

#### BOARD-MANAGEMENT DELEGATION

Policy 1. GLOBAL BOARD-MANAGEMENT DELEGATION The Board's sole official connection to the operational organization, its achievements and conduct will be through a County Manager as provided for in the County Home Rule Charter.

Policy 2. UNITY OF CONTROL Only officially passed motions of the Board are binding on the County Manager.

Policy 3. ACCOUNTABILITY OF THE COUNTY MANAGER The County Manager is the Board's only link to operational achievement and conduct, so that all authority and accountability of staff, as far as the Board is concerned, is considered the authority and accountability of the County Manager.

Policy 4. DELEGATION TO THE COUNTY MANAGER The Board will instruct the County Manager through written policies that prescribe the

organizational ends to be achieved, and proscribe organizational situations and actions to be avoided, allowing the County Manager to use any reasonable interpretation of these policies.

**Policy 5. MONITORING COUNTY MANAGER PERFORMANCE**

Systematic and rigorous monitoring of County Manager job performance will be solely against the only expected County Manager outputs: organizational accomplishment of Board policies on Ends and organizational operation within the boundaries established in Board policies and Executive Limitations.

Jackson County's Home Rule Charter does not create the County Administrator Position, but leaves it up to the Board of Commissioners.

Section 17. ADMINISTRATIVE RESPONSIBILITY. The Board of County Commissioners is responsible to the people of the County for the proper administration of the affairs of the County. The Board itself may carry on and may delegate administrative functions consistently with this Charter.

Section 18. ADMINISTRATIVE PERSONNEL. The Board of County Commissioners may appoint administrative and advisory personnel of the County to offices and positions established by the Board or by its authority.

Section 19. ADMINISTRATIVE STRUCTURE. The structure of the administrative branch of the County government shall be prescribed consistently with this Charter by the Board of County Commissioners or by its authority. Consistent with the provisions of this Charter, the Board may establish, reorganize, unify and abolish administrative departments and prescribe their functions and the functions of offices and positions within the departments

That board then adopted ordinances that explain the powers of the County Administrator. That CA can appoint numerous county officers; determine rightfulness of claims to abandoned property; authorize modifications to the county logo; and review fees; among other powers.

Another county, Clackamas County, describes the county administrator function in its code.

**2.09.010 Office of County Administrator Created**

The Office of County Administrator is created and the person holding that office shall act as the head of administration for the County and, if delegated by the district board, its service districts.

**2.09.020 Appointment**

The County Administrator shall be appointed by and serve at the pleasure of the Board of County Commissioners. The relationship between the County and the County Administrator shall be as set forth in this Chapter and any employment agreement between the County and the County Administrator not inconsistent with this Chapter.

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### **2.09.030 Qualifications**

The County Administrator shall be appointed by the Board of County Commissioners solely on the basis of his or her executive and administrative qualifications and experience and need not be a resident of the County or the State prior to his or her appointment. After the time of his or her appointment the County Administrator shall reside outside the County only by express permission of the Board. He or she shall receive a salary fixed by the Board commensurate with the responsibilities of the office.

### **2.09.060 Authority**

A. The County Administrator shall be the Chief Administrative Officer of the County and all County service districts, if that authority is delegated by the board of the district. The County Administrator shall be responsible to the Board of County Commissioners for the administration and management of the County and its service districts and shall have control and supervision of all administrative departments, divisions, offices, districts and agencies subject to his or her jurisdiction, except County Counsel, or as otherwise provided by law.

B. The County Administrator shall exercise no authority over the actions of elected County officials while they are performing the duties of their offices.

C. The Board of County Commissioners hereby delegates to the County Administrator broad authority to perform his or her job functions. The County Administrator is responsible to the Board for the manner of his or her administration. The Board reserves to itself all of its legislative and judicial or quasi-judicial authority, unless expressly delegated.

D. The Board of County Commissioners hereby delegates to the County Administrator contract signing authority for any contract previously approved by the Board of County Commissioners.

E. The Board of County Commissioners hereby delegates to the County Administrator the authority to draft and promulgate administrative rules and establish and implement operational policies.

F. It shall be within the specific authority of the County Administrator to perform all day-to-day functions necessary for the administration and management of County affairs and the affairs of County service districts, if delegated. Such authority includes but is not limited to the following:

1. Provide for the proper administration of all ordinances, orders and resolutions of the County and its service districts, all contracts and franchises entered into by the County and service districts, and provide for the enforcement of all policies, rules, procedures, orders and regulations.
2. Keep the Board informed of pertinent matters related to the administration and management of the County and its service districts.
3. Serve as the Budget Officer for the County and its service districts and in that role prepare and submit to the Board and Budget Committee an annual budget and a long range capital improvement and expenditure program. Administer the provisions of the budget as adopted by the Board.
4. Prepare and submit to the Board an annual report on the finances and administrative activities of the County and its service districts for the preceding



fiscal year, together with recommendations for the betterment of the public service.

5. Select, appoint, supervise, discipline or dismiss all County Administration staff and all employees designated as appropriate for unclassified status under Section 2.05.040(3)(B)(11), except the Office of County Counsel and any elected officers. The County Administrator has the authority to sign employment contracts for such designated unclassified employees, consistent with other employment contracts. The County Administrator shall consult the Board on these matters.

6. Manage and administer the County and service districts personnel programs. Prepare and recommend to the Board employee compensation plans.

7. Coordinate the work and facilities of all offices, departments and agencies, both elective and appointive, and devise ways and means whereby efficiency and economy may be secured in the operation of all offices, departments, districts and agencies.

8. Formulate and present to the Board plans for the implementation for goals adopted by the Board.

9. Administer the risk management program for the County and its service districts.

10. Direct the use, operation, maintenance, control and custody of all County and district property, buildings, works and improvements.

11. Furnish the Board with information, proposals and recommendations concerning the operation of County departments, districts, boards and commissions.

12. Unless excused by the Board, attend regular meetings of the Board, participate in the discussions and make recommendations for action by the Board.

13. Conduct such other activities and assignments as may be required by the Board.

#### **2.09.070 Delegation of Authority**

The County Administrator may delegate any authority granted by this Chapter to County department heads or other County or district staff, in a manner consistent with the provisions of the County Code

#### **2.09.080 Term**

The County Administrator shall be appointed for an indefinite term. The County Administrator is an at-will employee and may be removed at the pleasure of the Board, consistent with any applicable employment agreement.

When compared to the earlier section of Clatsop County Code, the above code grants power to the County Administrator in more areas than simply personnel. This makes the CA responsible for county property, financial reporting, risk management, purchasing contracts, and others. An order creating a CA would include similar definition.

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## **CA County Job Descriptions**

Whether there is a charter or code or order creating the position, most counties would have a job description to outline the qualifications, duties and responsibilities of the position. In Curry County it would likely be an order creating the position and job description of CA, similar to other positions.

### **EMPLOYMENT QUALIFICATIONS:**

Knowledge of: County government organization, authority and functions and relationships with other governmental jurisdictions. Thorough knowledge of the principles and practices of public administration. Thorough knowledge of the principles and practices of public budgeting, financing, reporting and personnel management.

Ability to: plan, organize and conduct research projects. Ability to communicate effectively both orally and in writing. Ability to analyze problems, prepare clear and concise reports on same with proposed solutions. Ability to analyze and prepare budgets. Ability to supervise the work of assigned personnel and programs. Ability to establish and maintain effective working relationships with the Board of Commissioners, department heads, elected officials, employees, officials from other agencies and the general public.

### **EDUCATION, EXPERIENCE AND TRAINING:**

Five years of professional, progressively responsible experience in an administrative, managerial or supervisory capacity which included experience in budget preparation, personnel administration, and program development implementation and management. Bachelor's degree in Business Administration or related field, preferably supplemented by a master's degree in Business or Public Administration or related field; or any equivalent combination of experience and training.

A list of the powers and duties included in job descriptions typically includes.

1. Performs administrative work in planning and coordinating operations of County government under authority of Board of Commissioners; works closely with individual elected officials and department heads on specific assignments.
2. Supervises central services including personnel and accounting. Is responsible for annual budget preparation and control.
3. Oversees labor negotiations on behalf of the Board of Commissioners; coordinates evaluations of department heads under the Board of Commissioners.
4. Administers various aspects of County insurance programs, including self-insurance fund and unemployment insurance.
5. Develops and implements County's management and training process; establishes goals and priorities in order to enhance communication, expand knowledge and skills; maintains library of management training material; consults with department heads on individual management problems.

6. Contributes to agendas for Board of Commissioners' meetings and attends same as needed.
7. Coordinates special projects (e.g. master facilities plan development, classification and compensation plan development) at direction of Board of Commissioners.
8. Serves as management analyst to Board of Commissioners; responds to identified and perceived problems, researches problems and proposed solution; works directly with department heads to solve specific problems identified by Board of Commissioners.
9. Carries out any other assignment as directed by Board of Commissioners.
10. Performs related duties as required.

### **Employment Agreements**

Some Counties have employment agreements with their CAs. However, an agreement is not required and a simple letter of hire can be used. Sometimes employment agreements are used where the local government personnel regulations do not include the CA as being subject to the personnel rules. At the time of writing, I was unable to obtain a sample employment agreement. There is information in the public domain that describes some provisions of employment agreements to include perquisites such as monthly travel and communication allowances, annual review requirements, and severance packages.

### **Conclusion**

About half the Counties in Oregon have some form of County Administrator. As stated above, Curry County does not have a County Administrator. We did have a Board of Commissioners Director of Administration, but that position lacked any of the broad authority as included in the typical CA role described above. In my capacity as Interim BOC Administrative Staff supervisor<sup>2</sup> I also lack any of the authority typically found in the CA position.

CAs are usually implemented to lend structure, and perhaps to a lesser degree accountability, to the carrying-out of county business. If the Board considers the County in need of structure and accountability, or for other reasons, it should consider implementing a CA position.

The Board has broad authority to employ a County Administrator and to delegate to that CA broad powers. The rules from Clatsop County help further define the relationship between a CA and a County Board. Let me know if you have any questions.



John R. Huttli  
County Counsel / Risk Manager  
Interim BOC Administrative Staff Supervisor

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<sup>2</sup> My compensation package currently falls under our Personnel Rules "working-out-of-class" 10% increase for my role in supervising two staff members in addition to my duties as County Legal Counsel and Risk Manager. The BOC office staff budget still includes two workers, but one worker left and is not being replaced pending budget development. As such I am now supervising a single employee in BOC, and it makes sense to reduce my "working-out-of-class" adjustment accordingly.