

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO: 14-04

IN THE MATTER OF EXEMPTING ANY UNIT OF LOCAL GOVERNMENT LOCATED IN LANE COUNTY FROM ANY OTHER UNIT OF LOCAL GOVERNMENT'S RESOLUTION, ORDINANCE, RULE, OR REGULATION THAT MANDATES, REGULATES, ORDERS, OR REQUIRES ANY CHANGE IN TERMS OR CONDITIONS OF EMPLOYMENT FOR COMMISSIONERS, DIRECTORS, MANAGERS, EMPLOYEES (INCLUDING FULL-TIME, PART-TIME, SEASONAL, TEMPORARY, REPRESENTED AND NON-REPRESENTED), AGENTS, VENDORS, OR CONTRACTORS OF ANY OTHER UNIT OF LOCAL GOVERNMENT LOCATED IN LANE COUNTY

WHEREAS, Lane County possesses the rights and legal authority of a home rule county as granted by Article VI, Section 10 of the Oregon Constitution and Section 203 of the Oregon Revised Statutes (2013); and

WHEREAS, the Board of Commissioners has the authority under Chapters II, IV and V of the Home Rule Charter for Lane County Oregon (1962) to regulate in matters of county concern, including internal administration and personnel matters; and

WHEREAS, the Oregon Legislature at ORS 431.480 has abolished city boards of health and instead at ORS 431.375(2) have designated the county government as the local public health authority at the city and county level; and

WHEREAS, Article 1, Section 21 of the Oregon Constitution provides that no law impairing the obligation of contracts shall ever be passed and the Oregon legislature expressed its intent to preempt local legislation in this area with the passage of ORS 657.017; and

WHEREAS, Lane County has spent significant taxpayer resources developing equitable and lawful rules and policies governing the terms and conditions of employment with Lane County commissioners, directors, managers, employees (including full-time, part-time, seasonal, temporary, represented and non-represented) or agents of Lane County; and

WHEREAS, Lane County has spent significant taxpayer resources negotiating mutually agreed upon collective bargaining agreements with seven recognized bargaining units in compliance with the Oregon Public Employees Collective Bargaining Act; and

WHEREAS, the Lane County Board of Commissioners supports a healthy workforce and community and would encourage all Lane County employers to adopt and develop policies that promote a healthy workforce, a living wage, and a healthy community; and

WHEREAS, the Board of Commissioners is aware that the City of Eugene has proposed to adopt an ordinance purporting to mandate that employers with employees that work within the city limits provide certain sick leave benefits and has not exempted other public entities; and

WHEREAS, work by staff in Lane County Human Resources, Budget and County Counsel have identified significant additional costs to Lane County not currently budgeted for in the next fiscal year, and unknown additional potential costs associated with the city's proposed ordinance because of the incomplete nature of the ordinance and supporting regulations, or in the alternative reduced levels of service to Lane County residents; and

WHEREAS, the Board of Commissioners finds that the city's proposed ordinance is scheduled to be adopted before the end of July 2014, and in order to protect the county's home rule rights immediate consideration and action on this ordinance is necessary.

NOW, THEREFORE, the Board of County Commissioners of Lane County **ORDAINS** as follows:

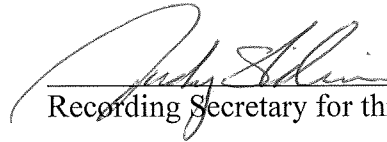
1. Any resolution, ordinance, rule, or regulation adopted or enacted by any unit of local government that mandates, regulates, orders or requires that a unit of local government located in Lane County make any change in the terms and conditions of employment of their commissioners, directors, managers, employees (including full-time, part-time, seasonal, temporary, represented and non-represented), agents, vendors or contractors, is without any legal force and effect.
2. Nothing in this ordinance prohibits any unit of local government from mandating, regulating, ordering, or requiring any terms and conditions of employment of their own commissioners, directors, managers, employees (including full-time, part-time, seasonal, temporary, represented and non-represented), agents, vendors, or contractors or otherwise limits any powers granted to a unit of local government by law.
3. For purposes of this ordinance, "unit of local government" shall have the same definition as that in ORS 190.003.
4. For purposes of this ordinance, "terms and conditions of employment" includes, but is not limited to, any written employment contract, collective bargaining agreement any form of salary or wages, any form of insurance, any paid or unpaid sick leave, vacation, or holiday pay, retirement, or any other condition of employment mandated by state or federal law.

5. For purposes of this ordinance, “employer” and “employee” shall have the same definitions as ORS chapter 659A.
6. If any provision of any other ordinance adopted at the same time on this subject shall ever be declared defective, void or voidable, or otherwise struck down or invalidated, the invalidation shall have no effect on this ordinance.
7. An emergency is hereby declared to exist and this ordinance, being enacted by the Board in the exercise of its police power for the purpose of meeting such emergency and for the immediate preservation of the public peace, health and safety, takes effect immediately.

ENACTED this 21 day of JULY, 2014.



Pat Farr, Chair
Lane County Board of Commissioners



Recording Secretary for this Meeting of the Board

APPROVED AS TO FORM

Date



LANE COUNTY OFFICE OF LEGAL COUNSEL

DRAFT

ORDINANCE NO. _____

AN ORDINANCE CONCERNING SICK LEAVE; ADDING SECTIONS 4.570 THROUGH 4.580 TO THE EUGENE CODE, 1971; AMENDING SECTION 4.996 OF THAT CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:

Section 1. Sections 4.570 through 4.580 of the Eugene Code, 1971, are added to provide as follows:

DRAFT
SICK LEAVE

4.570 Sick Leave - Purpose. *The purpose of sections 4.570 through 4.580 of this code is to promote a sustainable, healthy, and productive workforce by establishing minimum standards for employers to provide sick leave and to ensure that all persons working in the City of Eugene will have the right to earn and use paid sick leave. Allowing employees to earn and take sick leave will maintain a healthy workforce and promote a vibrant, productive, and resilient city.*

4.572 Sick Leave - Accrual of Sick Leave.

- (1) *Except as otherwise provided in sections 4.570 through 4.580 of this code or in the administrative rules adopted pursuant to section 4.578 of this code:*
 - (a) *If an employer is located within the city, the employer shall provide its employees with a minimum of one hour of paid sick leave for every 30 hours of paid work performed by the employee; and*
 - (b) *If an employer is located outside the city but sends an employee into the city to perform work, the employer shall provide that employee with a minimum of one hour of paid sick leave for every 30 hours of paid work performed inside the city.*
- (2) *Employers shall allow employees to accrue a minimum of 40 hours of paid sick leave in a year.*
- (3) *Sick leave accrued by an employee that is not used in a calendar year may be used by the employee in the following year, except that employers are not required to allow employees to use more than 40 hours of paid sick time in a year.*
- (4) *Employees shall begin to accrue sick leave from an employer on July 1, 2015, or commencement of employment, whichever is later.*

- (5) **An employer with a sick leave or paid time off policy that provides the employee with accrual of sick leave that equals or exceeds the requirements of this section is compliant with this section.**

4.574 Sick Leave - Use of Sick Leave.

- (1) **An employee becomes eligible to use sick leave when he or she has worked for an employer for at least 90 days.**
- (2) **Nothing in sections 4.570 through 4.580 of this code requires an employer to compensate an employee for accrued unused sick leave upon the employee's termination, resignation, retirement, or other separation from employment.**
- (3) **An employer with a sick leave or paid time off policy in effect that provides the employee with use of sick leave that equals or exceeds the requirements of this section is compliant with this section.**

4.576 Sick Leave – Exercise of Rights Protected; Retaliation Prohibited.

- (1) **It shall be unlawful for an employer to interfere with the exercise of any right protected under sections 4.570 through 4.580 of this code.**
- (2) **An employer shall not take retaliatory action or discriminate against an employee because the employee has exercised rights protected under sections 4.570 through 4.580 of this code.**

4.578 Sick Leave – Administrative Rules. The city manager shall adopt, and as necessary amend, rules in the manner prescribed in section 2.019 of this code to assist in the implementation of sections 4.570 – 4.580 of this code, including but not limited to:

- (1) **Establishing conditions under which an employee may use sick leave, such as for an illness of the employee or family member, or circumstances related to domestic violence, sexual assault or stalking;**
- (2) **Adopting definitions including but not limited to “employee,” “employer,” “paid time off” and “paid work”;**
- (3) **Identifying record-keeping, accrual, and use of sick time requirements;**
- (4) **Establishing enforcement protocols for administrative civil penalties and private rights of action;**
- (5) **Defining an equivalent or better policy that would be deemed in compliance with this ordinance, such as paid time off, collective bargaining agreements and building trade protocols;**
- (6) **Providing a methodology for establishing when an employee whose employer is located outside the city, is considered to be working within the city;**
- (7) **Adopting provisions to ensure that employers may establish and enforce reasonable policies for employees in order to maintain**

- workplace productivity and prevent possible abuse, while prohibiting employers from retaliating against employees for using sick leave; and*
- (8) *Establishing a grace period after July 1, 2015, during which time compliance will be sought through education rather than imposition of fines and penalties.*

4.580 **Sick Leave – Enforcement.**

- (1) *The city may contract with the Oregon State Bureau of Labor and Industries or another entity to enforce sections 4.570 through 4.580 of this code.*
- (2) *Subject to the administrative rules adopted pursuant to section 4.578 of this code, any employee claiming to be aggrieved by an employer's violation of sections 4.570 through 4.580 of this code shall have a cause of action for damages and such other remedies as may be appropriate. The court may grant such relief as it deems appropriate.*

Section 2. Subsection (7) of Section 4.996 of the Eugene Code, 1971, is amended to provide as follows:

4.996 **Administrative Civil Penalty.**

- (7) In addition to, and not in lieu of any other enforcement mechanism authorized by this code the city manager or designee may impose upon the person responsible for violation of sections 4.083 through 4.084, section 4.335, section 4.340, [and] section 4.430 **and sections 4.570 through 4.580** of this code, **and violations of administrative rules adopted under sections 4.570 through 4.580 of this code**, an administrative civil penalty as provided by section 2.018 of this code.

Section 3. The City Manager shall adopt the administrative rules required by Section 4.578 of the Eugene Code, 1971 ("EC") not later than January 31, 2015. In addition to other requirements imposed by EC 2.019 for administrative rule-making, the City Manager shall consider at a minimum: (a) the findings in the Sick Leave Task Force report dated June 18, 2014; (b) similar ordinances adopted by other cities; and (c) input from a broad array of stakeholder perspectives including representatives of the

business community, labor organizations and other workers, and advocates (both supporters and opponents).

Section 4. Notwithstanding the effective date of ordinances as provided in the Eugene Charter of 2002, the provisions of this Ordinance shall become effective on July 1, 2015, except that EC 4.578 and Section 3 of this Ordinance related to administrative rulemaking shall become effective in the normal course as provided in the Eugene Charter.

Section 5. On or before July 1, 2017, the City Council shall review the sick leave program adopted by this Ordinance.

Passed by the City Council this

Approved by the Mayor this

___ day of July, 2014

___ day of July, 2014

DRAFT

City Recorder

Mayor

MEMORANDUM

Memorandum Date: July 1, 2014

Board Order Date: July 8, 2014

TO: Lane County Board of Commissioners

DEPARTMENT: Legal Counsel

PRESENTED BY: Stephen E. Dingle

AGENDA ITEM TITLE: IN THE MATTER OF EXEMPTING LANE COUNTY GOVERNMENT FROM ANY CITY OF EUGENE RESOLUTION, ORDINANCE, RULE, OR REGULATION WHICH MANDATES, REGULATES, ORDERS, OR REQUIRES ANY TERMS OR CONDITIONS OF EMPLOYMENT FOR LANE COUNTY COMMISSIONERS, DIRECTORS, MANAGERS, EMPLOYEES (INCLUDING FULL-TIME, PART-TIME, SEASONAL, TEMPORARY, REPRESENTED AND NON-REPRESENTED) OR AGENTS OF LANE COUNTY

I. MOTION

Exempt Lane County from any City of Eugene Resolution, Ordinance, Rule or Regulation which mandates, regulates, orders, or requires any terms or conditions of employment for Lane County Commissioners, Directors, Managers, employees (including full-time, part-time, seasonal, temporary, represented and non-represented) or agents of Lane County.

II. SUMMARY

Any resolution, ordinance, rule, or regulation adopted or enacted by the City of Eugene which mandates, regulates, orders or requires that Lane County government make any change in the terms and conditions of employment of any Lane County commissioners, directors, managers, employees (including full-time, part-time, seasonal, temporary, represented and non-represented) or agents of Lane County, shall be without any legal force and effect.

III. BACKGROUND/IMPLICATIONS OF ACTION

Lane County has spent significant taxpayer resources developing equitable and lawful rules and policies governing the terms and conditions of employment with Lane County commissioners, directors, managers, employees (including full-time, part-time, seasonal, temporary, represented and non-represented) or agents of Lane County.

Lane County has also spent significant taxpayer resources negotiating mutually agreed upon collective bargaining agreements with seven recognized bargaining units in compliance with the Oregon Public Employees Collective Bargaining Act.

IV. ATTACHMENTS

Attachment A: Board Ordinance

Attachment B: City of Eugene Proposed Draft Sick Leave Ordinance