



**Lincoln County Library District Board
Work Session & Regular Meeting
Tuesday October 19, 2021
132 NE 15th and online
Newport, OR 9765**

Join Zoom Meeting

**[https://us02web.zoom.us/j/88591932009?pwd=cUQ5UIRIY3d4bGh2bGczOUcrMnlZ
Zz09](https://us02web.zoom.us/j/88591932009?pwd=cUQ5UIRIY3d4bGh2bGczOUcrMnlZZz09)**

Meeting ID: 885 9193 2009

Passcode: 370410

By Phone: 1 253 215 8782

Board Work Session #2 Funding Model Review		Agenda Attached
Agenda		
Call Regular Meeting to Order		President
Approval of the Agenda		President
Topic	Lead	Purpose Outcome
Public Comment	President	Anyone may speak at this time
Minutes Board Meeting September 22, 2021	President	Approval
Reports		
Board Reports	Board Members	Information
Director's Report	Director	Information
Financial Report	Director	Acceptance
Old Business		
Pandemic update	Director	Discussion
Funding Model Review	Director	Decision

Next Steps		
New Business		
Good of the Order		Information
Next District Board Meeting November 16, 2021		Information
Adjourn	President	Motion

Lincoln County Library District

Board Virtual Work Session #2 on Funding Model Review

October 19, 2021, 10 a.m. - noon

Topic	Time	Lead	Purpose/ Outcome
Welcome and Introductions Project Purpose, Project Team	10 mins	MaryKay	Consider Alternative funding models that are in alignment with the Board's underlying district funding principles
Library District 101: key aspects and terms	20 mins	Ruth	Understand essential concepts and distinctions about Oregon library districts Develop common funding model vocabulary
Interim staff work report --population --UCSLD formula applied to LCLD --Alternative funding model A	60 mins including 10 minute stretch break	Mary Kay Erin Ruth	Population source findings Input and feedback about alternative funding models Clarity about the +/- of alternative funding models
Next steps Board Work Session #3, November	30 mins	Ruth	Clarify Staff Intermediate Work
Put work sessions 3 and 4 on the calendar		MaryKay	Identify the optimum funding model
Adjourn			

Notes from LCLD Board Work Session: Funding Model Meeting #1 **September 22, 2021**

Welcome & Introductions - Who is present?

Brian Fodness called work session to order. Present were: LCLD Board members Brian Fodness, Virginia Tardaewether, and Carla Clark, LCLD Director, MaryKay Dahlgreen, Newport Public Library Director, Laura Kimberly and consultants, Ruth Metz and Erin McCusker.

Current Funding Model Overview:

The board hasn't had problems with the circulation portion of the funding. They have concerns about the 35% that is designated to operating budgets. Cities with the biggest budgets get more money.

When we are looking at the numbers, will the cities' reductions in budgets be factored in? What can the libraries do if they have reductions in staffing, etc. because of shorter budgets.

District hasn't been consistent in asking for reports from cities. And the reporting on whether the libraries are meeting the standards hasn't been done.

Have the new formula to do the new contract. Helps the library directors advocate for maintaining budgets to meet standards. MaryKay will be going out to the city managers and councils to explain the whys and wherefores of the new contract and the funding model, etc., as well as provide education about the whole library system, district and cities.

Library directors want something fair and cities want the most money they can get out of the District.

City officials not understanding the requirements of the contract. - does the contract include a glossary. First of all, the contracts haven't been changed since 2004. The process should be less of a pass through and more of an educational effort. District goes to cities and says, we want to work with you and here are the terms we are proposing.

Aiming for clarity about who we are doing this for, why and how (package)

What is the accountability for the city to spend the money in the appropriate way. This is something to fix. It hasn't been tracked well and the new contracts

What is wrong - calling out what is wrong with current system is important for Carla.

- Don't have an equitable way of determining population served - big mystery. Not an exact science, but we need to determine "this is the service population for this library." How many of those people that you serve, where do they live in the District? Don't have a good population model

- The District staff need to be held harmless - there should be a clear way that the determinations are made
- Circulation isn't clearly defined as to how it is counted from library to library.
- Circulation isn't the best indicator of library service
- Do the circulation numbers include the people within the cities or only district residents?
- Toledo keeps getting less money from the city and circ is going down - with current funding model, they get substantially less from the District. With different circulation systems, people get sent to the other library and they get the circulation numbers
- Two different circulation systems
- Look at as a system - the system is broken - we need to look at what are we doing for the people who pay taxes to us
- The board hasn't had problems with the circulation portion of the funding. They have concerns about the 35% that is designated to operating budgets. Cities with the biggest budgets get more money.
- City administrators/ finance depts/ city councils don't understand what the district/cities system is about. It's money that goes for library services, not to the city general fund. Need to include all of these departments too.
- Need to build in accountability that contract requirements are being met.

What works well about it?

- We have a library - can get books, wifi
- Courier service
-

Important piece of this - the Board is the authority - legislative intent

Break

Framework Case Study - UCSLD:

What should the funding model enable?

Enables the legislative intent:

What is the intention of the LCLD:

- Library services to residents that aren't in an incorporated area
- Implementing a formula to distribute funds that is fair and equitable
 - Hurdle - convince the people who get the money, that we as a district library (municipal corporation) have the same rights and responsibility to manage the funds as the cities do - responsibility lies with Board
- Serving the people in Siletz and the surrounding area with full gamut of library services

- Intentionality
- Part of the intention is that the library serve as a meeting place in the community - community hub
- Intentionally used the words of the term "Library Services" because they vary from era to era and location to location - materials to community hub to education partner to life-long learning
-

Based on reliable data--the data for any formula element is reliably objective

The model includes an accountability feature. The administration of the model includes clear information about expectations. Accountability - expectations of the District are understood by the city managers, financial depts, Councils, etc

The distribution needs to enable service to those it is supposed to serve.

Liked from UCSLD - the outcomes, interested to find out how we can do it.

Can the libraries align with the strategic plan of the District so that all are working in the same direction to serve the residents

Any distribution model addresses the reality of the difference for cities that pay into the District and cities whose residents don't pay into the District

LCLD has a community needs assessment done and they have a strategic plan in place - good piece to have in place to start this process and the Board understands their authority.

In Lincoln County, the agencies have collaborated for years - integral to every single group of people.

Common theme - recognize that there is a funding partnership between district and cities to provide library services - it has to be acknowledged that it takes both. Partnership of general fund money and district money to provide library services. Cities have a responsibility to provide library services to the incorporated and the district serves the unincorporated.

How many residents are cardholders? Who are we not serving?

Current funding model rewards service to the served - is there a reward to the unserved? Are we serving the people who pay for this? How are the cities serving the residents of unincorporated areas? Currently through the existing municipalities.

What issues does the board need to think about - a change in the formula that helps libraries move forward in the way that the Board wants them to.

What should the funding model emphasize?

Population:

Is it data driven and can it change as population changes? Whatever is chosen is done for clear reasons

For Lincoln County, the zip codes may not work.

District is divided into 5 zones - voting zones - could use this

Census tracts for population

School Districts for population

What are the advantages and disadvantages to different ways to get population numbers?

What are reliable numbers? To distribute money?

Go through every cardholder and determine if they are within the city limits and who are in the unincorporated? - can the cardholders be coded in a way to determine which are incorporated and unincorporated.

Would the hardships of the cities be considered by the District?

Not sure if the library district's position is to save a city library?

What should it accomplish, near-term to long-term?

- The intentions of the district formation
- Support of the provider libraries in serving all of the residents of jurisdictions that are in the district service area
- The dynamic development of library services
- Ever expanding inclusion of residents of the district service area

On what should the staff's intermediate work focus?

Digest and synthesize input from first session, bring back to 2nd session

Investigate population sources best suited to LCLD

Develop a scenario that parallels UCSLD formula based on best population source or sources for LCLD

What particular issues should be taken into account?

Population sources suited to Lincoln Co

Disparity of "double tax"

Serving the unserved as well as the served

Looking at a paradigm that incentivizes expanding inclusivity of those not served

Accountability feature

Framework for Funding Model

Should focus on investigating reliable sources for population #s

Accountability structure

Very concrete and simple - math that all can understand

Adjustable to population changes

Utilize new vision, mission and the concepts that informed those

Tie the funding model to legislative intent - does not change

Board is the steward of the District resources - part of being a good steward (transparent, open, can be explained, equitable, provides access)

See what the LCLD numbers look like in the UCSLD formula spreadsheet

Team will bring back

Best thinking of sources of reliable population data - represent proposed service areas

Solidify from our notes, the framework of the Boards **principles, values**, etc.

Bring back to the next work session

Bring legislative intent to the forefront

Formula scenarios

Time line

Three work sessions, September October November

Would have something to take to the Cities in January and February, 2022 (coincidentally at budget time)

Contracts signed by July 1, 2022



Lincoln County Library District

Funding Model Review
LCLD Board Work Session #1
Virtual via Zoom

September 22, 2021
Lincoln County, OR

Welcome & Introductions

Board

Project Team



Agenda

Topic	Time	Lead	Purpose/ Outcome
Welcome and Introductions, Introduce Project Team	10 mins	MaryKay	Clarify the project purpose and objectives
Project Purpose & Objectives		Ruth	Clarify our roles for this Funding Model Review process
Current Funding Model Overview Description and why the review	40 mins	MaryKay	Understanding the current funding model
Break	10 mins	Everyone	Understanding Board concerns Stretch
Framework case study: In search of an alternative funding model	45 mins	Erin & Ruth	Framework and Direction for intermediate staff work
Next steps Staff Intermediate Work Board Work Session #2 [TBA]	15 mins	Ruth & Erin	See Alternative funding models that are in alignment with underlying principles Input and feedback about alternative funding models
Next Work Sessions [TBA] and #4 [TBA] if needed		Ruth	Clarity about the +/- of alternative funding models
Adjourn		MaryKay	Identify the optimum funding model



Project Purpose

The District Board wants to re-examine the bases of the revenue distribution model that has been in use for many years. The ultimate project purpose is for the Board to decide on a fund use structure and methods that best align with the legislative intent and purposes of the District.



Project Objectives

1. Understand the legislative intent of the District formation and its purposes.
2. Establish the principles and values the Board wants incorporated into funding options analyses.
3. Identify the optimal funding methods and/or formulae to support the intent, principles and values.
4. Understand how various scenarios will impact the District members, partners, and providers.
5. Ensure that future funding structure and methods most effectively enable the legislative intent and purposes of the District.

Lincoln County Library District Funding Model



Each City provides library services to any resident of the Lincoln County Library District

- On a non-fee basis
- To those services City's residents are entitled to
- Does not include fees for special services which City residents must pay



Requirements of City

- Maintain services and facilities meeting or exceeding the Oregon Library Association's Standards for Oregon Public Libraries, current version, except in times of a declared City fiscal emergency.



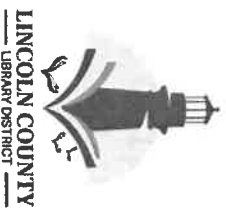
Reimbursement to Cities for Library Services

- 70% of the District's revenues: taxes, forestry receipts, and uncollected taxes from previous years
- Does not apply to grants, donations, and bequests the specific terms of which require the use of revenue for other purposes.



Direct Services and Administration

- 10% of the District's revenue appropriated for direct services to the City libraries. May include, but are not limited to, courier and OCLC services.
- 20% of the District's revenue appropriated for administration of the Lincoln County Library District.



Distribution Formula

- Calculated as of October 31 of each year
- 65% of the monies shall be distributed in proportion to each City library's District circulation during the preceeding fiscal year
- 35% of the monies shall be distributed in proportion to each City library's operation costs as set out in the latest available Public

Library Statistics as collected and published by the
State Library of Oregon





2020/2021 Reimbursement

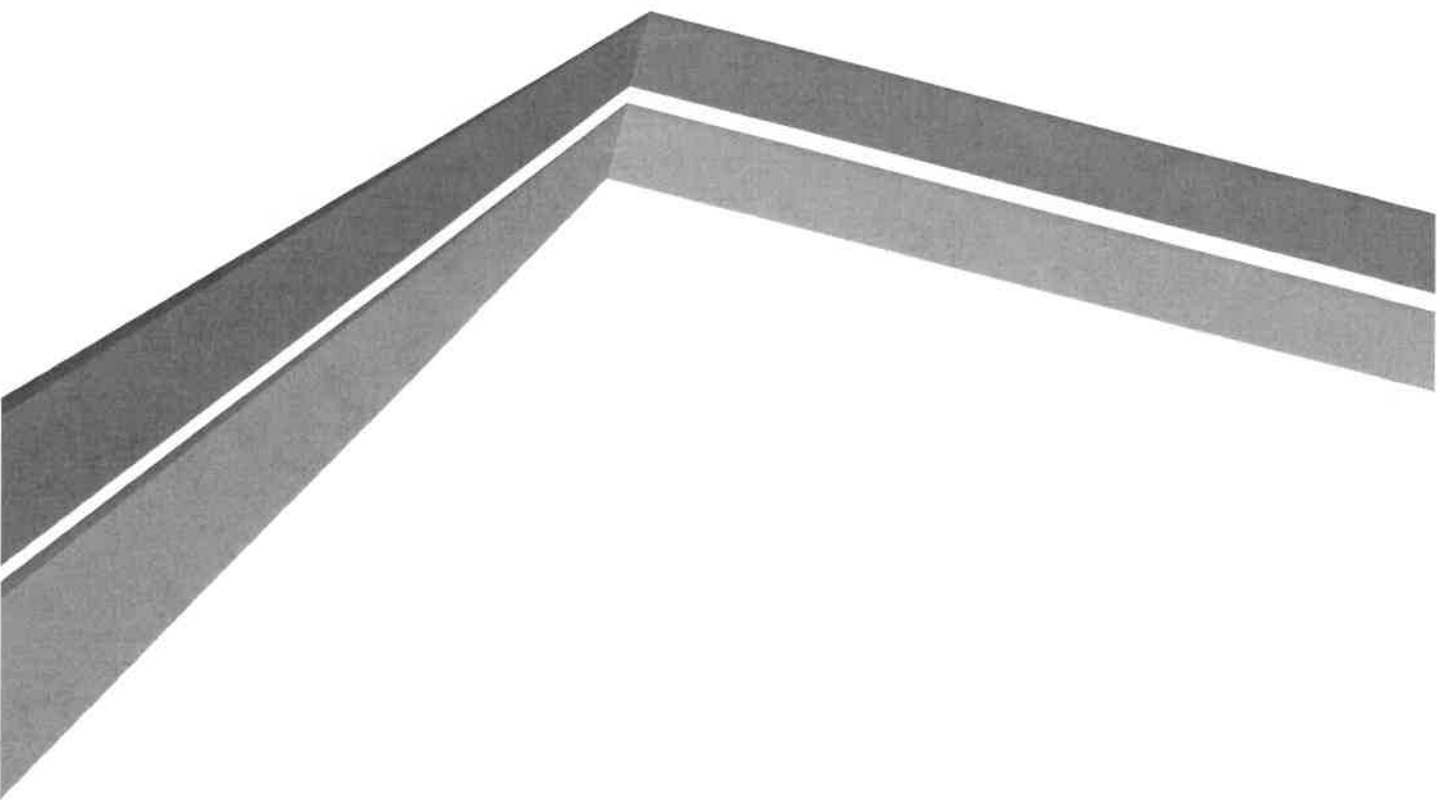
Proposed Funding 2020/2021
\$ 874,855

Operating Expenditures	Op. Ex 2018/2019	Percentage	Total
\$ 0			
\$ 306,199 Driftwood	\$ 949,680	38.392%	\$ 117,557
Newport	\$ 988,444	39.960%	\$ 122,356
Toledo	\$ 263,256	10.643%	\$ 32,587
Waldport	\$ 272,231	11.005%	\$ 33,698
Total	\$ 2,473,611	100.000%	\$ 306,199

Circulation	Circ. 2018/2019	Percentage	Total
\$ 1			
\$ 568,656 Driftwood	\$ 51,496	21.7%	\$ 123,369
Newport	\$ 134,140	41.7%	\$ 236,978
Toledo	\$ 19,451	8.2%	\$ 46,599
Waldport	\$ 67,500	28.4%	\$ 161,710
Total	\$ 272,587	100.0%	\$ 568,656

Total Reimbursement	Op. Ex.	Circ.	Total
2020/2021			
At 35% & 65%			
Driftwood	\$ 117,557	\$ 123,369.06	\$ 240,926
Newport	\$ 122,356	\$ 236,978.03	\$ 359,334
Toledo	\$ 32,587	\$ 46,598.80	\$ 79,186
Waldport	\$ 33,698	\$ 161,709.87	\$ 195,408
Total	\$ 306,199	\$ 568,655.75	\$ 874,855

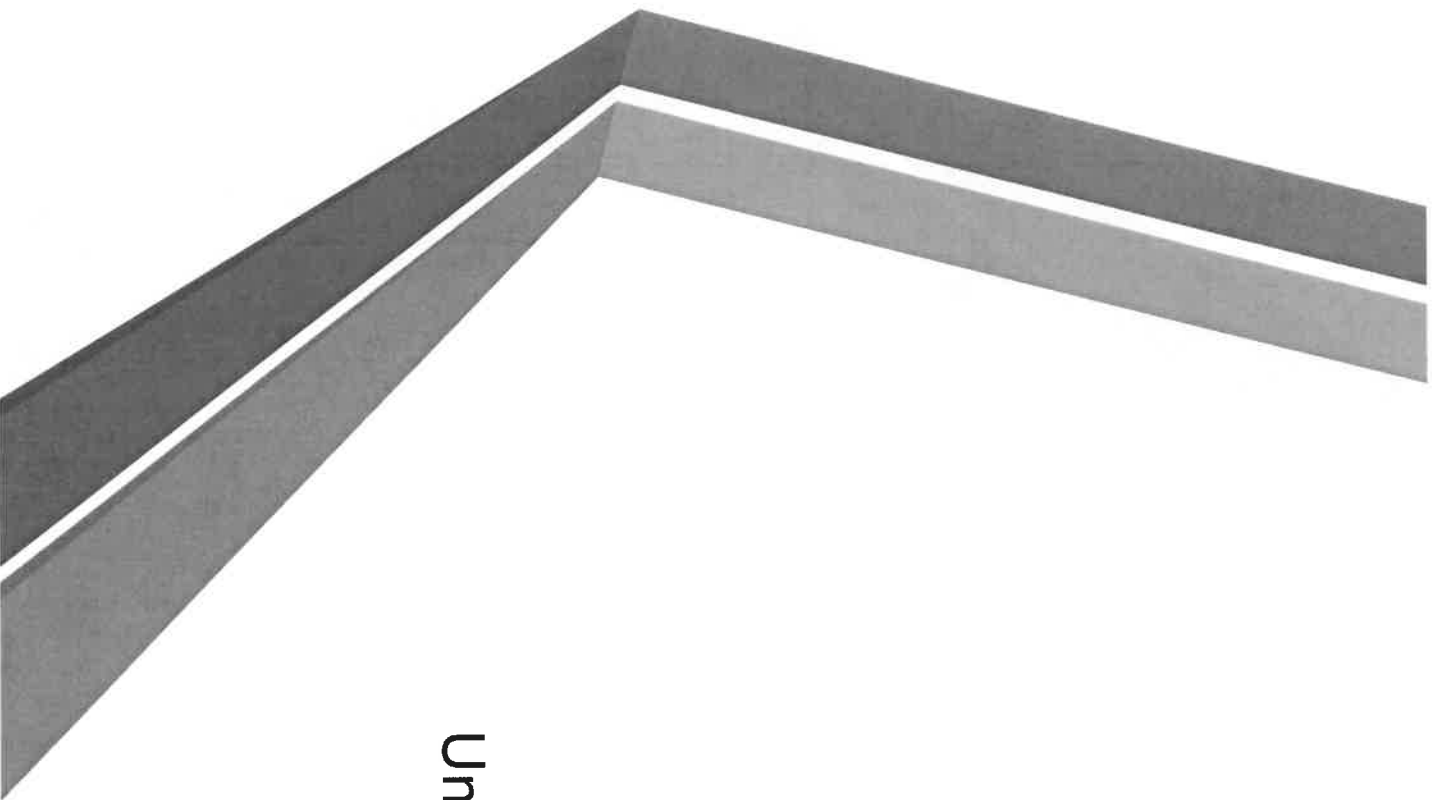
Break



Case Study:

Funding Model Framework

Umatilla County Special Library District





About the UCSLD

- Established 1986 by voters
- 5-member elected board
- Service area population
- Service Delivery model:
 - Member Libraries - direct library service
 - Non-member Partner Library - direct library service to District residents
- UCSLD - collective infrastructure and outreach services

Fund Allocation Model

Before

- Driver: past practices
- Service Delivery Model: Libraries and the District
- Revenue - 80:20 Libraries: District
- Libraries' formula
 - Threshold criteria – SLO & OLA Standards
 - Population – calculated service area



Fund Allocation Model

What Changed

- Driver: re-oriented to legislative intent
 - “The purpose of the UCSLD shall be to provide library and information services to persons within the district.”
- Service Delivery Model: Members ~ Partner
- Funding formula
 - Threshold (State Law and Rules) funding for Member libraries
 - Population – zip code area, actual population, not calculated



Underlying Principles & Values

Board re-oriented to the residents of the

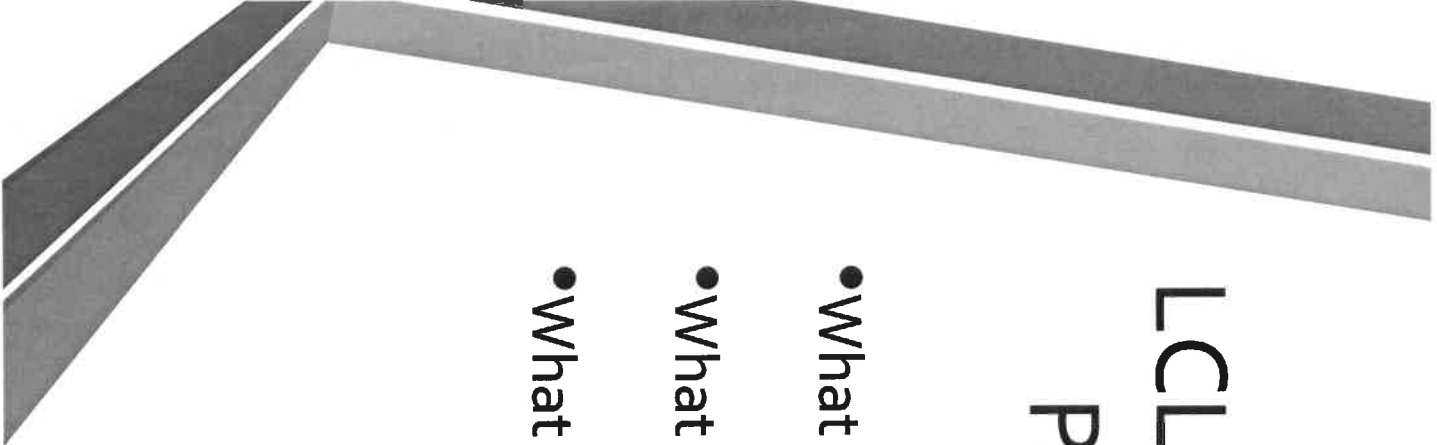
District - the legislative intent

- Directs finite resources to what the Board is authorized to do
- Transparent, objective, linkable to the District's purpose
- Clear, efficient, cost-effective to administer
- Strives to enable equitable provision of services to residents of the district



UCSLD Board Direction re: Formula

- An objective and impartial formula to ensure library service for the residents of the District including the unincorporated populations
- A clear, uncomplicated, concrete mathematical formula, that is easily understood, reviewed and readily administered
- Contributes an amount of money to help member libraries be able to offer a threshold of service
- Recognizes and adjusts for changes and shifts in population over time



LCLD Funding Model: Underlying Principles, Concepts, Values

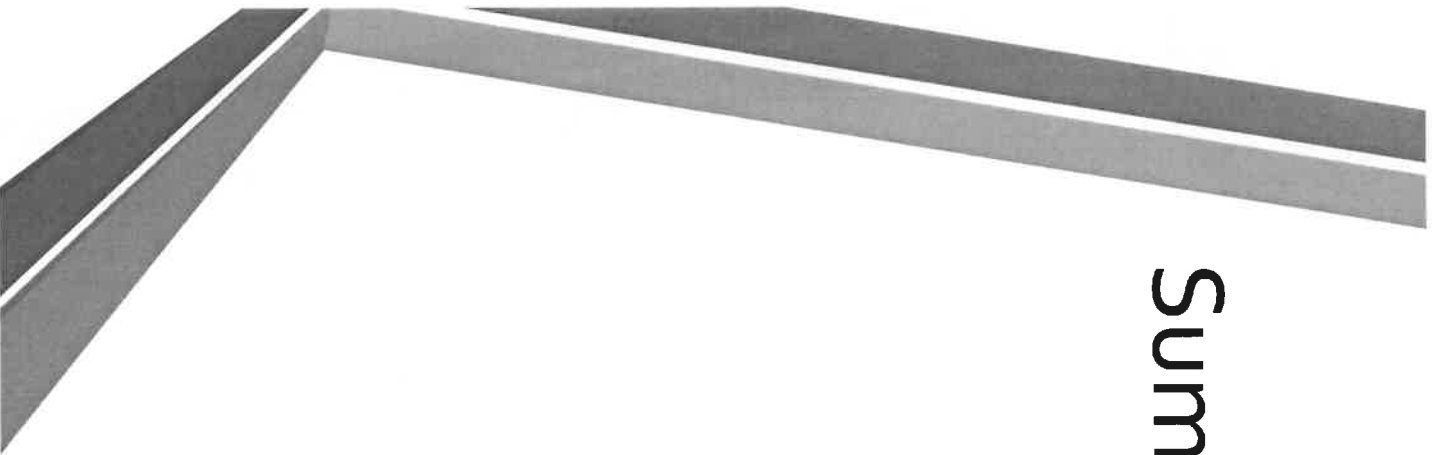
- What should the funding model enable?
- What should the funding model emphasize?
- What should it accomplish, near-term to long-term?



Next Step Directions to Staff

1. On what should the staff's intermediate work focus?
1. What particular issues that should be taken into account?

Summary: Framework for Funding Model





Work Session Wrap-up

- Did we achieve objectives 1 & 2?
- What worked for you in this session, what would have been better?
- Final remarks?



Minutes
Lincoln County Library District
Board Meeting
September 22, 2021
132 NE 15th Newport, OR and Zoom
2:00 p.m.

ATTENDANCE—BOARD

Brian Fodness
Chris Boyle-Absent
Virginia Tardaewether
Carla Clark

ATTENDANCE—STAFF

MaryKay Dahlgreen, District Director

CALL TO ORDER

Board President Brian Fodness called the Regular Board Meeting to order at 2:20 p.m.

CALL THE ROLL AND ESTABLISH QUORUM

Quorum was established.

APPROVAL OF AGENDA

Dahlgreen evaluation and pay increase discussion added to Old Business.

APPROVAL OF MEETING MINUTES

Carla moved and Virginia seconded approval of the Regular Board minutes of August 10, 2021.
Passed unanimously.

BOARD MEMBER REPORTS

Carla reported on the Siletz Valley Friends of the Library very successful raffle which raised over \$3,500 for library repairs and maintenance. The Friends will be part of the all-city Siletz garage sale on September 25, 2021.

DIRECTOR'S REPORT

Siletz staff are working on public access computer grant project.

We had some extra Ready to Read grant funding remaining and so with permission from the State Library we used the funding for art supplies for all the libraries.

We are working on the 2020-2021 audit with Dean from Isler CPA. We are working remotely at this point.

The application for membership in the Local Government Investment Pool has been submitted and MaryKay is working with their staff to get our account set up.

MaryKay did a presentation on the Lincoln County Library District strategic plan for Rotary of Newport on September 9, 2021.

The 2021-2022 Ready to Read grant application has been submitted.

MaryKay has been on vacation from September 15-21st and will be on vacation from September 27 through October 1, 2021.

Carla asked about progress on vacant Board position. MaryKay has spoken with a possible candidate and will follow up with her.

FINANCIAL REPORT

This is the first report for the 2021-2023 biennial budget. MaryKay is working with Suzy and Summer to prepare for audit. Virginia moved and Carla seconded that the financial report be accepted. Vote to accept was unanimous.

OLD BUSINESS

MaryKay Evaluation and Compensation

Brian discussed the evaluation process that the Board participated in early in 2021. He noted that due to health issues the comments didn't get compiled. Brian summarized that the Board agreed that the work of MaryKay had been good over the course of the year. Brian also noted that all of the goals set for and by MaryKay were not met, partially because of outside influences.

Virginia moved and Carla seconded that the Board approve a budgeted 3% raise retroactive to July 1, 2021.

Pandemic Update

MaryKay has been asked about vaccine mandates for staff in light of the vaccine mandate at the federal level. The President has directed OSHA to write rules about vaccine mandates which might affect local governments. It was agreed that waiting for guidance would be the best approach. MaryKay will bring something to the next meeting.

Funding Model Review Next Steps

Nothing was brought up in the work session that would require a vote at this point.

NEW BUSINESS

Resolution 2021-9.1 Transferring Funding from Contingency to Professional Services

MaryKay is requesting a transfer from Contingency to Professional Services of \$16,000 that will cover the cost of moving through the funding formula review process. Virginia moved and Carla seconded adoption of the resolution. Passed unanimously.

GOOD OF THE ORDER

NEXT DISTRICT BOARD MEETING

The Board agreed that the next regular meeting would be combined with a work session on the funding model project. It was agreed that the regular meeting be held on October 19, 2021 after the work session which will start at 10:00 a.m.

ADJOURNMENT

Meeting adjourned at 2:50 p.m.



Library Director's Report October 2021

General Updates

The Siletz Public Library has increased their open hours and will be on the following schedule: Closed Sunday and Monday; 1:00 p.m to 5:00 p.m. Tuesday; 10:00 a.m. to 5:00 p.m. Wednesday – Friday; Saturday 10:00 a.m. to 4:00 p.m.

We have opened an account with the Oregon Local Government Investment Pool and the Lincoln County Treasurer will deposit our tax receipts in that account rather than the US Bank money market account. We will continue to use US Bank for checking and credit cards but will get a higher yield on our deposits through the Local Government Investment Pool.

The SDAO Conference will be held in Eugene February 10-13, 2022. Preliminary information about the Conference is attached to this report and registration opens on December 1, 2021.

The Public Library Association Conference is being held in Portland March 23-25, 2022. This will replace the annual Oregon Library Association Conference and is a good opportunity for staff and Board members to attend a national library conference. Registration has been reduced for OLA members and the early registration deadline is January 7, 2022.

SDAO has brought to the attention of special districts in Oregon the issue of the regulation of public property. This may be something the Board is faced with in the future and an overview is attached.

The first meeting with Carson Block, the consultant hired with LSTA funds to do a feasibility study to discover the most cost-effective and inclusive option for a shared integrated library system among the Lincoln County libraries, was held on October 13, 2021, and begins a 8 or 9 month process. I will continue to keep the Board up to date on progress.

Successes

We have hired a new bookkeeper, Marina Khuon, Bayview Bookkeeping. We have met with Suzy Beck to assist with the transition and expect it to go very smoothly.

We have resumed our First Thursday Book Review Group meetings in person and had 8 people attending.

Upcoming

November 3-4, 2021, SDAO Board Planning Retreat at Salishan

November 5-7, 2021, REFORMA National Conference held virtually

2022 SDAO ANNUAL CONFERENCE

A HYBRID EVENT EXPERIENCE



EUGENE, OR | FEBRUARY 10-13, 2022

Registration opens December 1st

Mark your calendars! We will be at the Graduate Eugene for the 2022 SDAO Annual Conference from February 10-13. This year, we are excited to offer the conference in a hybrid format – with both an onsite and virtual option. Sessions onsite at the Graduate Eugene will be livestreamed to virtual attendees and networking opportunities will be available for both experiences. Our sponsors and exhibitors will be available for all attendees to answer questions and offer information about their products and services. Whether you are a special district member, non-member, affiliate organization, or vendor, our conference will have something for you.

LOCATION

Graduate Eugene - 66 E 6th Ave. Eugene, OR 97401

ESTIMATED COSTS

ONSITE

Pre-Conference Session (Full Day): **\$85**

Pre-Conference Session (Half Day): **\$50**

One Day Only Experience (Friday OR Saturday): **\$140**

Full Onsite Experience (Includes Thursday evening to Sunday morning): **\$230**

VIRTUAL

Pre-Conference Session (Full Day): **\$35**

Pre-Conference Session (Half Day): **\$20**

Full Virtual Experience (Friday & Saturday): **\$75**



HOTEL ROOM BLOCK INFORMATION

There are two blocks of rooms at the Graduate Eugene where the conference will be held. We encourage you to try the per diem room block first for the better rate. Once that rate has reached its limit, you can use the other room block. Please make your reservation as soon as possible if you plan to attend the conference.

By Phone: 1-844-888-4723

- Per Diem Rate \$109/night: Room Block Code – **SDAO0222**
- \$149/night: Room Block Code – **SDAOT0222**

Online: You may also reserve your room online. Please visit our website at www.sdao.com/annual-conference for more information.

MORE INFORMATION & REGISTRATION

Please watch your email inboxes, mailboxes, our website, and winter newsletter for more information about the conference including scheduling details and registration instructions. **Registration will open December 1st.**

For the safety of our members, staff, sponsors and exhibitors, we will ensure that all COVID-19 protocols are followed. If county, state, or federal restrictions do not allow for the event to be held in person, we will alert all members and transition registrations to the virtual option.

CANCELLATION POLICY

To receive a refund for your registration, you must notify SDAO Membership Services at memberservices@sdao.com or 800-285-5461 by the following date:

- Onsite Attendee: February 3rd
- Virtual Attendee: February 9th

Late cancellations and no shows will be charged.

QUESTIONS

Please contact SDAO Membership Services at memberservices@sdao.com or 800-285-5461.

www.sdao.com/annual-conference

SCHEDULE OVERVIEW

THURSDAY

FEBRUARY 10, 2021

Pre-Conference Sessions
Welcoming Reception*

FRIDAY

FEBRUARY 11, 2021

Exhibitor Trade Show
Breakout Sessions
Caucus Meetings
Exhibitor Reception*

SATURDAY

FEBRUARY 12, 2021

Breakout Sessions
Annual Business Meeting
Awards Banquet*
Entertainment: Dueling Pianos
with Jeff and Rhiannon*

**For onsite attendees only.*



Regulation of Public Property in a Rise of Homelessness



By: Laura Westmeyer and Tommy A. Brooks, Cable Huston LLP

Local ordinances prohibiting camping on public property and sleeping on city streets and sidewalks were once commonplace. But in 2018, the Ninth Circuit Court of Appeals raised a red flag that began to affect the enforcement of these ordinances everywhere. In the City of Boise, Idaho, homeless individuals challenged the City's ordinances criminalizing, among other things, unauthorized sleeping in public spaces, and camping on streets, sidewalks, parks, and in public spaces. The court sided with the plaintiffs and struck down the challenged code provisions. In that case, *Martin v. Boise*, the Ninth Circuit held that the Eighth Amendment precludes a local government's enforcement of ordinances criminalizing sitting, sleeping, or lying outside in public places against homeless individuals who have no practical access to alternative shelter.

After an initial flurry of enforcement moratoria that followed the *Martin v. Boise* decision, governments began rethinking their policies, and many began updating their ordinances in ways that seemed to fit the narrow Ninth Circuit

holding. Two years after the *Martin v. Boise* decision, however, the U.S. District Court for the District of Oregon struck down one government's response. In *Blake v. City of Grants Pass*, a class of individuals asserted that the city unlawfully punished people based on their status of being homeless. Grants Pass had enacted laws and policies prohibiting unpermitted camping on public property, including a ban on sleeping on streets and sidewalks. Individuals found in violation of those laws could be excluded from the property and would be fined with mandatory civil penalty amounts. If the civil penalties remained unpaid, additional collection fees would be applied, followed by collection efforts, all of which, the court found, made it more difficult for the individuals cited to ever secure housing, which might ultimately lead to further violations of the same prohibited conduct.

The opinion in *Blake v. City of Grants Pass* built on the *Martin v. Boise* decision, and the court there held that the Eighth Amendment prohibits the enforcement of anti-camping and anti-sleeping



jurisdictions have interpreted these cases as preventing them from regulating camping and sleeping on public property entirely. Such an interpretation, however, is not consistent with the courts' language in those cases. The courts in both cases note that cities may still implement reasonable time, place, and manner restrictions on the regulated activities. For example, in *Martin v. City of Boise*, the court stated: "[Cities] are not required to allow persons to sit, lie, or sleep on public property at any time and any place." And in *Blake v. City of Grants Pass*, the court provided more detail, writing:

"The City may implement time and place restrictions for when homeless individuals may use their belongings to keep warm and dry and when they must have their belongings packed up. The City may also implement an anti-camping ordinance that is more specific than the one in place now. For example, the City may ban the use of tents in public parks without going so far as to ban people from using any bedding type materials to keep warm and dry while they sleep. The City may also consider limiting the amount of bedding type materials allowed per individual in public places."

In short, the courts reminded cities that they could still adopt local laws regulating public property in a manner that is consistent with the Constitution and in compliance with these case holdings.

Local jurisdictions have continued to revise their ordinances and policies regulating the type of conduct examined in these cases. In the legislative session following the *Blake v. City of Grants Pass* decision, the Oregon State Legislature enacted House Bill 3115 (2021), in part to guide local governments in the update of their codes in response to these two case precedents.

ordinances against individuals who have no practical access to alternative shelter, regardless of whether the violations are designated as criminal or civil matters. The court also found the civil penalties Grants Pass enacted were punitive; and, as punitive fines, they were found to be in further violation of the Eighth Amendment as grossly disproportionate to the gravity of the offense. Finally, the court also held that the city's framework for exclusions from public property violated procedural due process rights.

The decisions in *Blake v. City of Grants Pass* and *Martin v. Boise* are binding on local governments in Oregon; under those case precedents, governments may not enact local laws that prohibit individuals from sitting, lying, sleeping, or camping on public property when the individuals have no alternative shelter available. Some

Substance of House Bill 3115

House Bill 3115—which relates to the regulation of public property with respect to persons experiencing homelessness—is essentially a codification of the courts' guidance in *Martin v. Boise* and *Blake v. City of Grants Pass*. The regulations affected by the new law are those that concern the conduct of "sitting, lying, sleeping, or keeping warm and dry outdoors on public property." Under the new law, by July 1, 2023, certain local laws regulating this type of conduct must be objectively reasonable as to the time, place, and manner of the restrictions, in regard to persons experiencing homelessness.

"Public property" in the bill is defined to mean: "public lands, premises and buildings," including "any building used in connection with the transaction of public business" and "any lands, premises or buildings owned or leased by this state or any political subdivision therein." Because special districts are political subdivisions of the state, property within the jurisdiction of a special district is included in this definition. While the *definition* of public property includes that of special districts, the law requires only that *city or county* laws regulating the specified conduct (sitting, lying, sleeping, etc.) must be "objectively reasonable as to time, place, and manner with regards to persons experiencing homelessness."

Even though the statutory language refers specifically to cities and counties—and not to special districts or other units of local government—special districts should not take a laxer approach in the regulation of their property. The requirement to regulate conduct on public property in a manner that is objectively reasonable as to time, place, and manner is already an existing requirement of the First Amendment, and, as such, applies to special districts and all forms of state and local governments equally as it does to cities and counties. One incremental effect of House Bill 3115 is that it requires cities and counties to specifically take into account the objective reasonableness of their laws in regard to the effect of those laws on persons experiencing homelessness. With this new law, the Legislature



has essentially added "effect on homelessness" as a factor to be considered by a court when determining the objective reasonableness of a local ordinance. However, given the holdings in *Blake v. City of Grants Pass* and *Martin v. Boise*, all units of local government (not just cities and counties) should consider that factor when regulating conduct on publicly owned lands.

One area where House Bill 3115 may apply differently to special districts than it does to cities and counties is that the bill creates an affirmative defense for persons who are cited as violating a noncompliant city or county law. The bill also provides a right of action for non-monetary (injunctive or declaratory) relief for challenges to a city or county law under the statute and allows attorneys' fees to the prevailing plaintiffs. Because these specific mechanisms for challenging local ordinances are created by statute, they may be available only for a challenge to city and county ordinances. Even if they are not available to a plaintiff challenging a special district regulation, however, special districts remain obligated to enact only those regulations that are consistent with existing law.



Authority of special districts to regulate conduct on public property

A special district is formed under either a specific or general statute authorizing its organization. As creatures of statute, all special district authority must be grounded in statutory law, and the same principal acts and general statutes that provide for their formation also determine what local laws a district has the authority to enact.

There is no general authority of a special district to enact regulations concerning conduct on public property within the district's jurisdiction. Under ORS 198.530, special districts must follow a certain process to adopt local ordinances and regulations, which process applies only where a district's governing body is already authorized through its principal act to enact local ordinances and regulations. Thus, special districts do not appear to have specific authority to regulate sitting, sleeping, lying, or camping on public property. Most districts, however, have broad regulatory authority that likely encompasses the regulations of those specific activities.

The following are **three examples** of different types of special districts whose principal statutes would likely authorize the district's governing body to enact ordinances and regulations concerning sitting, sleeping, lying, or camping on public property within its jurisdiction.

1. Port districts have the authority to "make, modify or abolish regulations to provide for the

policing, control, regulation and management of property owned, operated, maintained or controlled by the port" and to appoint peace officers to enforce the same. ORS 777.190.

2. Sanitary districts have the authority to "do any act necessary or proper to the complete exercise and effect of any of its powers or for the purposes for which it was formed." ORS 450.075(14). Sanitary districts specifically have the authority to enact local laws and ordinances regulating the cleanliness of roads and streets of the district and for all other sanitary purposes not in conflict with the laws of this state. ORS 450.075(15); 450.810(1).

3. Library districts have the authority to "do and perform any and all acts necessary and proper to the complete exercise and effect of any of its powers or the purposes for which it was formed." ORS 357.261(8).

While the principal acts of other types of special districts do not necessarily provide for the same authorization as these three examples, special districts often have broad authority to take actions necessary to exercise other powers, such as in the example of a library district. Thus, a district that has authority to acquire property such as land, premises, and buildings, would likely have the authority to regulate the same property—if not an implied obligation to protect the property from waste or misuse. Unfortunately, there simply is no clear guidance on how this authority would extend to regulating specific conduct like sitting, lying, sleeping, or camping on the public property. Each district should review its specific statutory authorities prior to enacting regulations governing this conduct.

Effect of House Bill 3115 (2021) on special districts

As enacted, we view the bill to have the following impacts (or non-impacts) on special districts:

A. Special districts regulating this type of conduct are not required by statute to specifically consider the effect of their regulations on persons experiencing homelessness – but they should still consider those effects. Even though House Bill 3115 does not expressly require special districts to consider homelessness as a factor when enacting public property regulations, special districts are bound by the First Amendment to the U.S. Constitution, which mandates that governments regulating conduct on public property do so in a manner that is reasonable in time, place, and manner. The courts have indicated that they will consider the effect on homeless individuals when scrutinizing time, place, and manner restrictions; special districts should also take into consideration these effects.

B. Persons cited under any authorized special district law as violating regulations concerning this type of conduct do not necessarily have the affirmative defense provided under this bill. The affirmative defense House Bill 3115 establishes expressly refers to challenges to city and county laws. Special districts regulating this type of conduct should, however, continue to consider procedural due process requirements in their enforcement of their regulations against individuals.

C. Reasonable attorneys' fees are not necessarily available to a prevailing plaintiff in a challenge to a special district ordinance regulating this type of conduct. The availability of attorneys' fees will depend on the specific cause of action that the challenge is brought under, as the new law does not provide for a cause of action for challenging a special district regulation.

Conclusion

In sum, House Bill 3115 simply codifies the existing constitutional requirements that already apply to special districts, and, against cities and counties alleged to be in violation (but not against special districts), allows a right of action, along with attorneys' fees for prevailing plaintiffs.

This law does not provide any new authority for a city or county to regulate this type of conduct, and it does not provide any new authority for a special district to regulate this type of conduct. The extent to which a special district can regulate these activities will depend on the type of special district and the statute under which it is formed. In all cases, however, any regulations adopted must be reasonable in terms of time, place, and manner, and they will likely be subject to the same scrutiny the courts gave in *Blake v. City of Grants Pass* and *Martin v. Boise* when considering the impact of local regulations on persons experiencing homelessness. Special districts interested in managing the use of their public spaces should contact their legal counsel for guidance. Cable Huston attorneys are also available to assist in advising districts on this matter.

New Prevailing Wage Rates for Public Works Contracts in Oregon

Effective July 1, 2021, the new Prevailing Wage Rate for Public Works Contracts in Oregon publication has been published online at www.oregon.gov/boli/employers/Pages/prevailing-wage-rates.aspx

You may request one complimentary hard copy by emailing BOLI at pwremail@boli.state.or.us or calling 971-673-0838. Please include your mailing address with your request.

