

# LANE REGIONAL AIR PROTECTION AGENCY A HANDBOOK FOR BOARD MEMBERS

## **1. INTRODUCTION**

Congratulations and welcome! Your appointment to the Board of Directors of Lane Regional Air Protection Agency (LRAPA) presents you with a unique opportunity to meaningfully contribute to the quality of life within Lane County.

As you can imagine, the primary purpose for the adoption of environmental protection laws and regulations is to protect public health. Your participation on this Board will allow you to share in the satisfaction that comes from doing your part to provide an important service to the public and protect our environment.

As a new (or continuing) member of the Board, you likely have some questions about the task before you. The goals of this Board Member's Handbook are several. First is to provide you with a brief summary about what a local Air Protection Agency is, its duties and mandates. Second is who the Agency 'answers' to, how it is funded, the responsibilities and obligations of a Board member as well as general information concerning several State laws applicable to Board members. Lastly, it also contains a brief discussion regarding the LRAPA Executive Director and the Citizens Advisory Committee (CAC).

## **2. LOCAL AIR PROTECTION AGENCY**

### **What is a Local Air Protection Agency?**

Local Air Agencies are *autonomous* government agencies. They are authorized by state law to implement virtually all aspects of the Federal Clean Air Act (CAA). The geographic jurisdiction of a Local Air Agency may consist of a single County or may include multiple Counties. The decision to create a Local Air Agency is made by the governing body(ies) of the County(ies) included in the jurisdictional boundary of the Agency. The applicable Oregon Revised Statutes are primarily in ORS 468A, and parts of ORS 468 (e.g., 468.035 and 468.100); the applicable Oregon Administrative Rules are primarily in the 200-series of OAR Chapter 340 (i.e., OAR 340-200 through 340-266).

### **What are the duties and mandates of a Local Air Agency?**

As a special purpose municipal government, Local Air Agencies differ from general purpose municipalities, such as Cities and Counties. They generally have four basic functions: permitting of stationary emission sources (they are not empowered to establish or enforce emission standards for mobile sources); enforcement of federal, state or agency specific rules and regulations relating to air pollution control; monitoring the ambient air quality; and public education and outreach regarding air quality. As a Regulatory entity, civil penalties can be issued and penalty money can be collected. In order to enforce federal regulations, Local Air Agencies must receive delegation of

specific programs from the US EPA. In order to receive delegation, the Local Air Agency must adopt the necessary regulations and have staff capable of implementing them. A *contract* called the EPA-LRAPA 105 Base Grant Agreement with EPA is agreed upon and outlines federal, state and local commitments to operate delegated federal programs. In Oregon, EQC and DEQ are responsible for state oversight for all major and minor industrial source categories as well as the federal Prevention of Significant Deterioration program, while LRAPA and its Board performs similar regulatory duties in Lane County.

### **What does a Local Air Agency actually do?**

A Local Air Agency performs a variety of tasks. Foremost, it regulates statutorily identified categories of activity which contribute to air pollution. Additionally, it monitors the ambient air quality within its jurisdiction, responds to citizen concerns about potential air pollution, enforces Federal and State air quality laws, and Federal, State and Local air quality regulations, reviews applications for projects which require permits from the Local Agency and issues such permits. A Local Air Agency administers air quality grants that provide funding directly to communities for emission reduction projects. Local Air Agencies also provide public education and facilitate citizen involvement in local air quality issues. Further, Local Air Agencies must operate in a transparent manner so as to ensure the public has access to information about current air quality and access to information concerning major sources of air pollution within its jurisdiction. Examples of LRAPA's transparency include its annual report and website.

### **How is a Local Air Agency funded?**

Generally, the operational funding of a Local Air Agency is a combination of fees, Federal and State grants, and contributions by local governments. LRAPA also receives Airmetrics enterprise revenues, unique among Local Air Agencies, from the local manufacture of portable air monitoring devices now sold throughout the world. Major source programs under Title V of the Federal Clean Air Act require the Agency to collect fees equal to (but not exceeding) the cost of operating the Title V air operating permit (AOP) program. Other air quality protection programs (e.g., New Source Review or NSR, and Prevention of Significant Deterioration or PSD), which are required by state and federal law, allow the Agency to establish fees which will fully cover the cost of the programs. Similarly, for minor emission source permitting programs (the various air contaminant discharge permits), the Agency is authorized to establish fees which will fully cover the cost of the programs. Oregon law prevents LRAPA from receiving enforcement fines and penalties as a funding source. All LRAPA fines, after legal fees are recovered, are directed to the Lane County General Fund or up to 80% of a fine may be directed to a Supplemental Environmental Project.

### **How does a Local Air Agency provide adequate financial records and controls?**

One of the Board's responsibilities is to oversee the Agency's financial affairs, making sure that the Agency has adequate internal accounting systems and controls. The

Board is responsible for reviewing and approving the Agency's annual budget. Board members should expect the Executive Director (or other designated staff) to produce timely and adequate income and expense statements, balance sheets and budget status reports, and should expect to receive these in advance of Board meetings. The Board should employ, either directly or through an audit and finance committee, an independent auditor and review the auditor's annual report at a face-to-face meeting.

#### **To whom is LRAPA accountable?**

LRAPA is a regional air quality control authority authorized by state statute and established by a local intergovernmental agreement between Lane County and the cities of Cottage Grove, Eugene, Oakridge and Springfield. LRAPA financial statements are audited annually by an independent auditor in accordance with the Government Auditing Standards issued by the U.S. Comptroller General. As a delegatee and contractor for the EPA, the Agency receives *performance* audits by the EPA as part of its audits of the overall Oregon programs. Most importantly, LRAPA is accountable to the citizens within its jurisdiction to faithfully perform its duties and thereby contribute to community health and well-being. You, as a Board member, have the responsibility and duty of care to ensure that this most important task is accomplished on an ongoing basis.

#### **What should Board members know about Agency Mission, Policies and Procedures?**

Board members should be familiar with the Local Air Agency's governing documents and should follow the provisions of those documents. Board members should be sure proper notice is given for meetings, that regular meetings are held, that Board members are properly appointed and that the Local Air Agency's mission is being accomplished.

#### **What is the Board's oversight responsibility?**

The Board has two primary oversight roles. The first is to oversee the actions of the Executive Director and the general actions of the Agency to implement policy. The second is to review the actions of the Executive Director regarding particular air pollution sources and the protection of air quality.

### **3. LOCAL AIR AGENCY BOARD MEMBER**

#### **Responsibilities of a Board member**

As a member of the Board, you have a fiduciary duty to the Agency. While you may have other public responsibilities, as an LRAPA Board member your responsibility and loyalty is to the Agency itself. You may have been selected to the Board because you participate in another governmental body. However, as a Board member of the Local Air Agency, the interests and obligations of the Agency must be your first priority when deciding matters before the Board. Of course, your other governmental affiliations should inform your decisions as a Board member, but such affiliation should not interfere with your responsibility to faithfully perform your principal duty: to protect the public health throughout the jurisdiction of the Local Air Agency, which may extend beyond your affiliation's jurisdiction, by setting policies, providing resources and

adopting rules which best ensure the Agency is able to fulfill its statutory and contractual obligations.

### **Board member duties**

As a member of a statutorily created Board, you do not have individual power to act on behalf of the Agency. Rather, your power is exercised as part of a group: the full Board. That being said, the Board has, among other powers: the duty to establish an Agency annual budget, establishment a fair method of contribution by partner agencies (e.g., per capita allocation); adoption of Local Air Agency Rules and Regulations , pursuant to applicable State regulations (provided that such rules are at least as stringent as State and Federal laws and rules), hiring of an Executive Director, establish organizational priorities, and adoption of generally applicable workplace policies.

The Board as a whole will instruct the Executive Director through written policies that define the results and goals that the Agency is to achieve and which describe the delegation of authority to the Executive Director. If a deficiency occurs in the Agency's implementing an existing policy, the Board as a whole may create new policies or revise existing policies in order to achieve the desired effect or goal. Within the budget process the board may alter the director's organizational and staffing proposals.

Board members do *not* have administrative authority within the Agency. Board members should *not* expect to manage the day-to-day activities nor the budgetary items related to day-to-day activities of the Agency and should always refrain from involving themselves from doing so.

### **Characteristics of an effective Board member**

1. Recognizes that serving the public interest is the top priority.
2. Recognizes that the Board must operate in an open and public manner.
3. Is aware that authority to act is granted to the Board as a whole, not to individual members. Board members will attempt to understand their legal obligations, and if unclear, will seek advice of legal counsel.
4. Board members and the Executive Director will keep each other informed about all situations which may directly affect them or the organizational status of the Agency.
5. Treats other Board members with courtesy, civility, and respect despite differences of opinion. Members will treat the Executive Director and staff, as well as the general public, with the same level of respect.
6. In public, Board members will talk constructively about the Agency, fellow Board members, Executive Director, and staff.
7. Regularly attends Board meetings, is well prepared for meetings, communicates well and actively participates in group discussions.

8. Is respectful of limited meeting time, recognizing that Board priorities take precedent over individual priorities.
9. Examines all available evidence and makes reasonable inquiry; listens, discusses, and tries to understand another's view; and is knowledgeable about the legislative process and issues affecting the Board before making a judgment. If absent from a meeting, Board members may authorize the Chairperson to represent their point of view.
10. Possesses a willingness to work with the group in making decisions and recognizes that compromise may be necessary in order to reach group consensus. Does not let personal feelings toward other Board members or staff interfere with his or her judgment; a member need not always be right, but they must act with common sense and informed judgment.
11. Once a decision is reached, Board members will support the Board decision even when they might hold a minority view.
12. Personal issues between Board members will be dealt with individually and privately; and if needed, a third party will be used to help with the issue.
13. Board members will only speak for themselves unless authorized to speak for the Board.
14. Decisions or instructions of individual Board members, officers, or committees are binding on the Executive Director only when the Board as a whole has specifically authorized such authority.
15. In the case of Board members or committee members requesting information or assistance without Board authorization, the Executive Director may refuse such requests that require, in the Executive Director's opinion, a material amount of staff time or funds; are disruptive, unethical or illegal; are in direct opposition to Board policy; or assume a level of responsibility beyond that created by statute or charter.
16. Neither the Board, nor individual Board members, will give instructions to persons who report directly or indirectly to the Executive Director without the Executive Director's permission.
17. The Board will refrain from evaluating, either formally or informally, any staff other than the Executive Director.

#### **Board Protocols: Restrictions and Requirements**

Board members should be aware of certain restrictions and requirements that may affect them during their tenure as a Board member.

1. Board members must be familiar with and operate within their Board's governing statutes and bylaws, and state and federal laws at all times.

2. No Board member may make unilateral decisions or take action without the consent of the Board as a whole.
3. At industry or professional gatherings, individual Board members must use discretion to avoid the appearance of speaking for the Board, unless specifically authorized to do so.
4. Board members must keep in mind that their mission is to serve the public, and that it is inappropriate to use Board membership to create a personal platform.
5. Questions about Board issues should be directed to the Agency's Executive Director, who will see that all Board members receive full information by the next regular meeting.

### **Notification of Meetings**

The Open Meetings Law requires that all meetings of the governing body of a public agency, as well as other meetings regarding policies affecting the public, be open to the public. It also applies to any subcommittee of any of these public bodies. Staff meetings generally are not covered by the Open Meetings Law. For the meeting to be subject to open meeting law, a majority must be present. In addition, the public must be notified of such meetings in a timely manner. Public meetings may be conducted electronically, but the public must have adequate notice and access to the meeting no matter how it is conducted.

### **Executive Sessions**

In limited situations, a meeting can be closed to the public if a governing body goes into Executive Session. The law governing Executive Session is designed to allow a public body to have confidential discussions, but does not allow any decisions to be made in secret. All decisions by a governing body must be made in public. Reasons for Executive Session include discussions about labor negotiations, real estate transactions, public employee matters such as hirings, performance evaluations, or disciplinary actions. During such sessions, it is usually a good idea to have legal counsel present, and may be required, depending on the subject of the executive session.

### **Public Disclosure**

The minutes of all regular meetings must be recorded and made available for public inspection. The Open Meetings Law applies to most all Board and some committee meetings. Any meeting which has a majority of Board members present constitutes a Board meeting and notice of such meeting shall be made available to the public, just as is the case with regular Board meetings.

Details of Board investigations, personnel files, or business discussed at closed executive sessions should not be disclosed unless they are part of the public record. Actions cannot be taken during executive sessions, but must be done in open session and are a part of the public record.

The business of the LRAPA board shall be conducted in public. Email discussions among a majority of Board members about LRAPA business to avoid deliberations in public is a violation of ORS 192, Open Meetings Law. As such, Board members should be cautious with the use of email communications on issues before the Board, and recognize that emails involving LRAPA and the Board are part of public record.

### **Ethics and Conflicts of Interest**

As a Board member, you are expected to uphold a high standard of ethics. It is *extremely* important that Board members avoid conflicts of interest or even the *appearance* of conflicts of interest.

Using a public position for private gain is improper and illegal. Similarly, actions benefiting close relatives are prohibited. There are penalties for violations of state ethics statutes. The following are examples of conflicts of interest:

1. Directing Agency contracts to a business in which one has a financial interest.
2. Using confidential information for private investments.
3. Accepting gifts or favors in exchange for certain regulatory rulings.
4. Accepting gifts or favors in exchange for making certain purchases.
5. Obtaining personal favors from employees.
6. Accepting favors for disclosure of confidential information.
7. Engaging in outside employment which assists non-governmental entities in their quests for Agency business.

Board members can avoid conflict of interest problems by being aware of statutory restrictions, adhering to such restrictions, using good judgment, and being fair and equitable in decision-making.

Public officials may face situations in which their actions may, or will, result in a financial benefit or detriment for themselves, their relatives, or businesses with which they or their relatives are associated. In such cases, the state ethics law describes the proper response. The response depends upon whether the conflict is an actual conflict or a potential conflict. Keep in mind, however, that under no circumstances may an official use their office for the purpose of benefiting the official, a relative, or member of the public official's household or an associated business.

**In every case in which a public official is met with an actual or potential conflict of interest, the official must disclose the conflict.** Elected officials and appointed officials serving on boards or commissions must publicly announce the nature of the conflict prior to taking any action. A public official need only announce a conflict of interest once during the course of any particular meeting.

When faced with an **actual conflict of interest**, a public official must, after disclosing the conflict, refrain from participating in any discussion or debate on the issue out of which the actual conflict arises and refrain from voting on the issue. The public official should make certain that the minutes reflect that public official did not participate in the discussion or vote.

When faced with a **potential conflict of interest**, a public official must announce publicly the nature of the potential conflict prior to taking any action thereon. Following the declaration of the conflict, the official may discuss and vote on the matter. (ORS 244.120)

### **Influencing Ballot Measures**

ORS 260.432 strictly forbids the use of public or agency facilities for the purpose of assisting a campaign for election of any person to any office or for the promotion or opposition to any ballot proposition unless they are activities which are a part of the normal and regular conduct of the office or Agency.

## **4. EXECUTIVE DIRECTOR**

Per LRAPA Title 13, Section 13-020, the Executive Director is responsible for the general administration and enforcement of applicable regulations and policies of the Agency under the direction of the Board of Directors. The Executive Director performs his/her duties following a mutually-agreed upon contract. The contract with the Executive Director is one of the first documents that Board members should familiarize themselves with.

### **Functions and Responsibilities of the LRAPA Executive Director**

1. The Executive Director must bring to the Board's attention circumstances that affect the policies and goals established by the Board or materially impact the Board and may request the Board to take appropriate actions.
2. The Executive Director may lawfully delegate any or all of the responsibilities within his/her authority.
3. The Executive Director is to produce timely and adequate income and expense statements, balance sheets and budget status reports and make them available to the Board in advance of the Board meetings.
4. The Executive Director must inform the Board of any significant incidental information it requires including anticipated media coverage, threatened or pending lawsuits and material internal and external changes.
5. The Executive Director must advise the Board that in his/her opinion the Board is not in compliance with its own policies, procedures or Board/Management



delegations, particularly in the case of Board behavior that is detrimental to the work relationship between the Board and the Executive Director.

6. The Executive Director must not deal with the Board in a way that favors or privileges certain Board members over others, except when (a) fulfilling individual requests for information or (b) responding to officers or committees duly charged by the Board.

## **5. CITIZENS ADVISORY COMMITTEE (CAC)**

Per LRAPA Title 13, Section 13-030, an advisory committee shall be appointed by the Board, to advise the Agency in matters pertaining to its air pollution control program and particularly as to methods and procedures for the protection of public health and welfare and of property from the adverse effects of air pollution, and on matters relative to legislation.

The advisory committee shall consist of at least seven but no more than fifteen members appointed for a term of three years with at least one representative from each of the following groups from within the territory of the Agency:

- Public Health Agencies
- Agriculture
- Industry
- Community Planning
- Fire Suppression Agencies
- General Public

The CAC serves at the pleasure of the Board and advises the Board on topics or issues as assigned. The Board decides which topics or issues will be assigned to the CAC. The CAC may offer advice, information, analysis, and recommendations on a specific topic or issue, however, the CAC does no final decision-making. The CAC may request Board concurrence to take on an issue they are interested in exploring. Communication between the Board and CAC is seen as a two-way street with information flowing in both directions.

It is important that CAC members be qualified representatives; geographically broad representation is not as important. The CAC members have many links in the community and are expected to stay connected to various groups in the county and be able to relate the views of those groups to the board. Because the CAC has a diverse membership, meeting notes or minutes should reflect majority and minority views and opinions on issues.

Along with a final recommendation on a topic or issue, the CAC should provide other significant options discussed as well as analysis and research done by the CAC on specific topics.

The Board should understand the time constraints of the CAC working on complex issues and be cautious against overburdening the volunteers who serve on the CAC.

## **6. SUMMARY**

As stated at the outset of this handbook, participation in the activities of the Lane Regional Air Protection Agency will allow you to make a tangible contribution to the health and wellbeing of your community and our entire region. While the responsibilities of membership on this Board might be somewhat different than those of other groups you participate with, there are many principles which are shared.

The Board has ten regular meetings per year. The meetings are currently scheduled on the third (or occasionally on the fourth, if necessary to avoid other schedule conflicts) Thursday of each month, excepting the months of August and December. Prior to the meeting, a 'packet' of materials will be delivered to you. If you spend the time reviewing these materials in advance, the meeting will undoubtedly be more interesting and you will likely be a more active participant.

Additionally, because of the multi-community jurisdiction of the Agency, you have the opportunity to discover and learn from your Board counterparts who, while facing issues similar to your own, may have identified unique solutions. Or you may learn who may be facing what seems to be a novel problem or challenge, but which may be the next 'new' issue you must address. Taking advantage of the relationship opportunities presented by Board membership can enhance your work in your own jurisdiction as well as your experience on the LRAPA Board.

Welcome to the Lane Regional Air Protection Agency!

*ADOPTED by the Board of Directors of the Lane Regional Air Protection Agency on the 17th day of May, 2012.*

Annual Acknowledgement dated this 18th day of October, 2012.

ATTEST:   
\_\_\_\_\_  
Chair  
LRAPA Board of Directors

  
\_\_\_\_\_  
Member  
LRAPA Board of Directors

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