

# TITLE 4

## BOARDS, COMMISSIONS, AND COMMITTEES

### CHAPTER 455

#### ALBANY AREA METROPOLITAN PLANNING ORGANIZATION CODE

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#### 455.001 Title

This Chapter, LCC 455.001 to 455.999, shall be known and may be cited as the “Linn County Albany Area Metropolitan Planning Organization

Code” or simply as the “Albany Area Metropolitan Planning Organization Code.”

[Adopted 2013-015 § 1 eff 1/16/2013]

#### 455.005 Background

(A) This agreement is made and entered into by and between the City of Albany, the City of Jefferson, the City of Millersburg, the City of Tangent, Benton County, Linn County, and the State of Oregon, acting by and through its Department of Transportation (“ODOT”). The local governmental entities and ODOT establishing the Albany Area Metropolitan Planning Organization (“MPO”), as it is created through this agreement or in the future, will be referred to throughout this agreement as “**Party**” or “**Parties**.”

(B) A portion of Marion County is within the Albany Urbanized Area boundary and Marion County is eligible to be a party to this Intergovernmental Agreement. The Marion County Board of Commissioners, by formal action, requested that Marion County not be included as a party to this agreement. Under federal law, Marion County remains eligible to participate in the Metropolitan Planning Organization planning process and remains eligible to become a party to this agreement at any time in the future.

[Adopted 2013-015 § 1 eff 1/16/2013]

#### 455.010 Introduction

(A) Based on the results of the US Census 2010, the Albany Urbanized Area has exceeded 50,000 in population. Federal law (USC Title 23 and USC Title 49) requires that a Metropolitan Planning Organization be designated for the area to conduct a continuing, cooperative, and comprehensive transportation planning process that results in plans and programs that consider all transportation modes and support metropolitan community development and social goals. The Metropolitan Planning Organization shall be

designated by agreement between the Governor and units of general purpose local government representing at least seventy-five percent (75%) of the affected population as determined by the US Census. Federal regulations (23CFR Chapter 1 Part 450) also allow state departments of transportation to be a voting member of any MPO policy board created under these regulations. The plans and programs shall lead to the development and operation of an integrated, intermodal transportation system that facilitates the efficient, economic movement of people and goods.

(B) ORS 190.010 allows units of local government to join together to form intergovernmental entities for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform. ORS 190.110 allows State agencies to enter into cooperative agreements with units of local government.

(C) Pursuant to these statutes, an intergovernmental entity is hereby created by the Parties to this agreement, to be called the Albany Area Metropolitan Planning Organization. Further, the Parties agree to cooperate to meet all federal and State requirements regarding the conduct of MPO responsibilities. This agreement shall be governed and construed in accordance with the laws of the State of Oregon.

[Adopted 2013-015 § 1 eff 1/16/2013]

#### **455.020 Purpose**

(A) To carry out planning, coordination and integration of activities necessary to maintain a comprehensive, cooperative, and continuing transportation planning program; and further, as specified by the Policy Board, carry out other related specific tasks.

(B) To establish a setting in which to undertake effective decision-making processes regarding transportation in the metropolitan area; evaluate transportation alternatives that are realistic and scaled to address the needs of the metropolitan area; develop and maintain a long range transportation plan for the metropolitan area addressing no less than a 20-year planning horizon as the plan's

effective date; and develop a Transportation Improvement Program (TIP) to establish how transportation funding will be used for regional transportation purposes to address the modernization, operation and maintenance of transportation facilities and service needs within the metropolitan area.

(C) To promote public participation in the decision making process.

(D) To exercise leadership and initiative in planning and assisting development of efficient, integrated transportation system facilities and services in the metropolitan area.

[Adopted 2013-015 § 1 eff 1/16/2013]

#### **455.030 Planning Area Defined**

(A) The MPO, or Metropolitan Planning Area, contains the Albany Urbanized Area designated by the 2010 U.S. Census and the contiguous area expected to become urbanized within 20 years. The Albany Urbanized Area includes the Cities of Albany, Jefferson, Millersburg and Tangent, and adjacent unincorporated areas of Benton, Linn, and Marion Counties, which altogether comprised a population of 56,997 persons in the 2010 U.S. Census. The urban growth boundaries for each of these cities are included within the MPO Planning Area.

(B) Where the boundary appears to coincide with a transportation facility (e.g., highways, bridges, rail lines), that facility is included within the urbanized area. The facility includes the right-of-way for the facility.

(C) Appendix 1 shows the area to be included in the MPO boundary.

[Adopted 2013-015 § 1 eff 1/16/2013]

#### **455.040 Governing Body of MPO**

(A) *Policy Board Membership.* The Policy Board for the MPO consists of officials representing each Party to this agreement, initially including the cities of Albany, Jefferson, Millersburg, and Tangent, Benton County, Linn County and ODOT. This membership is consistent with the requirements of federal law related to metropolitan planning organizations. An elected official will represent a Party with elected officials.

(B) In the event that a transportation entity separate from the Parties (such as a transportation district) is formed to serve the urbanized area, it shall be provided with Policy Board membership upon redesignation of the MPO as required by federal law.

(C) MPO Parties will be encouraged to have their MPO representative also represent the government entity on the Cascades West Area Commission on Transportation (CWACT).

[Adopted 2013-015 § 1 eff 1/16/2013]

#### **455.050 Policy Board Members, Terms of Office, Officers, and Meetings**

(A) Each Party will appoint its initial Policy Board member at its first business meeting following MPO designation by the Governor of Oregon. Thereafter, the represented Parties will appoint members to the Policy Board at the beginning of the calendar year. Any vacancy on the Policy Board shall be filled by the represented Party with the vacancy. Policy Board members may be re-appointed by the represented Party.

(B) The Policy Board shall elect a Chair and Vice Chair at its first meeting. Thereafter, the Policy Board shall elect a Chair and Vice Chair at the first meeting of each calendar year. In the absence of the Chair, or upon her/his inability to act or serve, the Vice Chair shall have the powers of the Chair.

(C) ODOT shall appoint a representative following MPO designation by the Governor of Oregon. ODOT may replace that representative from time to time by written notice to the Chair.

(D) Parties may designate an alternate member to the Policy Board as prescribed for the member. An alternate need not be an elected official. If a Party will be represented at a particular meeting by a person other than the regular member or designated alternate, that person must declare that fact when the meeting is called to order.

(E) Members with three (3) consecutive unexcused absences from Policy Board meetings will result in the Chair contacting the respective member's highest elected official to resolve the attendance issue. The Chair will contact the

ODOT Region 2 Manager in the event that the ODOT representative has three (3) consecutive unexcused absences.

(F) The Policy Board and its committees shall follow the Oregon Public Meeting Laws.

(G) The first meeting of the Policy Board shall be held within sixty (60) days of the effective date of designation by the Governor of the State of Oregon. Thereafter, regular meetings of the Policy Board shall be held at such time and place as shall be determined by the Policy Board. Special meetings of the Policy Board may be called by the Chair or by a majority of the members. All Policy Board members are entitled to notice of any meeting. No action may be taken unless all Policy Board members are given notice. Notice of meetings to Policy Board members may be given telephonically, by other means of electronic communication, or as specified in the MPO By-Laws. All required notices to the Public of Policy Board meetings shall meet, at a minimum, the public notice requirements of the Public Meetings laws of the State of Oregon as set forth in ORS 192.640.

[Adopted 2013-015 § 1 eff 1/16/2013]

#### **455.060 Decision Making**

(A) MPO business may be conducted provided a quorum of the Policy Board is in attendance. A quorum consists of at least four members of the Policy Board. The Policy Board members may participate telephonically or by other means of electronic communication, provided the meeting is called to order at a public noticed meeting place where the public can attend, hear, understand and/or read the comments of the members participating by telephonic or electronic means and the members so participating can fully hear, understand, and/or read the comments of the other members participating in the meeting.

(B) The Policy Board will make decisions using the following procedures:

(1) The Policy Board will strive to reach decisions on a consensus basis;

(2) If representatives of three Parties determine that consensus cannot be reached, they may request to call a vote;

(3) Decisions made by vote require a majority of the Policy Board;

(4) Policy Board decisions that create criteria that will be used to prioritize and/or rank transportation projects located within the MPO boundary must be made by a unanimous vote of all Policy Board members present.

(C) Each Party has one vote.

[Adopted 2013-015 § 1 eff 1/16/2013]

#### **455.070 Bylaws**

The Policy Board may adopt bylaws to establish procedures for management of the MPO. The bylaws may be periodically amended by the Policy Board.

[Adopted 2013-015 § 1 eff 1/16/2013]

#### **455.080 Powers and Responsibilities of the MPO**

(A) The MPO will remain a separate entity from its Parties with a separate budget, its own governing body and separate operating principles as outlined in this IGA.

(B) The Policy Board is responsible for all actions, agreements, and functions to be carried out by the MPO, including the management, supervision, policy and direction of all programs, functions and activities established and operated under the MPO. To this end, the MPO:

(1) Shall appoint the Director and Fiscal Agent and there shall be established a regular reporting cycle;

(2) Shall serve in a review capacity to insure that all federal and state assisted development projects are consistent with integrated regional transportation plans and programs;

(3) May accept contributions and grants-in-aid;

(4) May contract with the Federal Government for planning assistance and other transportation-related planning projects, products, and services;

(5) May contract for the provision and receipt of planning or associated products or services;

(6) Shall administer grants, Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) funds, and other funds provided to the MPO;

(7) May own property, facilities and equipment;

(8) Shall, in a manner that complies with applicable state and federal requirements, maintain financial records, supporting documentation for financial records and records relating to procurement and management of contracts for implementation of its work plan;

(9) May create advisory committees; and

(10) Shall take actions as are reasonably necessary to carry out its responsibilities.

(C) The MPO has policy and administrative responsibilities related to federal and state transportation laws and regulations including the development of the following:

(1) Annual Unified Planning Work Program (“UPWP”) and budget;

(2) Regional Transportation Plan;

(3) Transportation Improvement Program;

(4) Title VI Civil Rights Compliance Review;

(5) Audit of MPO activities; and

(6) Other products authorized by the Policy Board as specified in the UPWP.

(D) In fulfilling its responsibilities, the MPO shall coordinate with other entities responsible for transportation planning, facilities, and services. This includes the Cascades West Area Commission on Transportation (CWACT), the Linn Benton Loop Commission, the Corvallis Area Metropolitan Planning Organization (CAMPO), and the Mid-Willamette Valley Area Commission on Transportation (MWACT). Coordination efforts may include representation on the Technical Advisory Committee (TAC), special committees and outreach regarding specific transportation issues.

(E) Project design and oversight shall be the sole responsibility of the Party(ies) sponsoring the project. Policy Board and TAC members may provide input into design considerations and standards in an advisory capacity only.

[Adopted 2013-015 § 1 eff 1/16/2013]

#### **455.090 Formation of Committees**

(A) *Technical Advisory Committee.* The Policy Board identifies the need to create a standing committee to be known as the MPO Technical Advisory Committee (TAC). Membership of the TAC includes the governmental entities within the metropolitan area that are impacted by the decisions and that have significant contributions to the MPO, but these entities do not necessarily need to be parties to this agreement. The TAC includes appropriate technical and/or managerial staff representatives from each of the participating governmental entities. In addition, there may be one or more ex-officio, non-voting members from the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) as well as other representatives from other agencies. In the future, the Policy Board may add additional organizations, as well as a citizen representative, a business representative or a freight stakeholder, as voting or as ex-officio members. Initial membership in the TAC is stated in subsection B of this section.

(1) The TAC has authority and primary responsibility to conduct or have conducted technical reviews and analyses regarding all work activities of the approved UPWP, and any related issues as specified by the Policy Board and to advise the Policy Board on appropriate actions to be taken. The TAC works closely with the MPO staff, providing guidance and direction for development of the annual UPWP/Budget and work activities defined therein.

(2) The TAC may recommend creation of special committees and recommend individuals it deems qualified to serve on the committees to the Policy Board. The Policy Board will consider such recommendations at its next opportunity.

(3) The TAC may create subcommittees consisting of its own members to investigate a particular work task or issues relevant to the MPO.

(4) Organization and management of the TAC shall be according to bylaws adopted by the TAC and approved by the Policy Board.

(B) *TAC Membership.*

(1) Upon designation of the MPO by the Governor of the State of Oregon, the initial voting membership on the TAC shall include:

- (a) City of Albany;
- (b) City of Jefferson;
- (c) City of Millersburg;
- (d) City of Tangent;
- (e) Benton County;
- (f) Linn County; and
- (g) Oregon Department of Transportation.

(2) Upon designation of the MPO by the Governor of the State of Oregon, the ex-officio members of the TAC shall include:

- (a) Federal Highway Administration;
- (b) Federal Transit Administration;
- (c) Oregon Department of Land Conservation and Development;
- (d) Oregon Department of Environmental Quality; and
- (e) Oregon Division of State Lands.

(3) Transportation related advisory committees created by any Party, in addition to their jurisdictional responsibilities outside the MPO, may also be advisory to the MPO, at the discretion of the Policy Board. The Policy Board recognizes that it does not have a role in selecting members to these advisory committees.

(4) The Policy Board may create special MPO committees, as it deems necessary. A special committee may be either an ad hoc committee for a specific work task or a standing committee for one or more work tasks. The Policy Board shall decide membership on such a committee. Any such special committee will be advisory to the Policy Board and/or TAC.

(5) The Policy Board and TAC may also conduct outreach to transportation, business, environment, and general community interests in a variety of ways including appointments to standing or special committees and public comment opportunities.

[Adopted 2013-015 § 1 eff 1/16/2013]

#### **455.100 MPO Finances**

(A) The fiscal year for the MPO shall commence on July 1 of each year.

(B) The MPO shall provide for an annual financial audit. The audit is a public record, and shall be made available to all Parties and ODOT.

(C) The Policy Board does not have the authority to obligate any of the individual Parties (City of Albany, City of Jefferson, City of Millersburg, City of Tangent, Benton County, Linn County, and ODOT) to spend their own funds on MPO business. An action by the Policy Board that could impact a Party's funds will be a recommendation that must be ratified by the affected Party or Parties.

(D) The MPO shall have the power to receive funds from any public or private sources including, but not limited to, the federal, State, and local governments, voluntary associations, non-profit corporations, firms, partnerships, persons, or any combination thereof; the MPO shall also have the power to receive funds from any donations, grants, devices, bequests and gifts of all kinds of property.

[Adopted 2013-015 § 1 eff 1/16/2013]

#### **455.110 Coordination with Other Agencies and Jurisdictions**

(A) Federal regulations (including 23CFR Chapter 1 Part 450) and Oregon policy (including the state's Policy on Formation and Operation of Area Commissions on Transportation) require MPOs to coordinate with other agencies and jurisdictions.

(B) The Albany Area Metropolitan Planning Organization shall establish a written coordination protocol with the Corvallis Area Metropolitan Planning Organization.

(C) The Albany Area Metropolitan Planning Organization shall establish a written coordination protocol with the Cascades West Area Commission on Transportation.

(D) The Albany Area Metropolitan Planning Organization shall establish a written coordination protocol with the Mid-Willamette Valley Area Commission on Transportation.

[Adopted 2013-015 § 1 eff 1/16/2013]

#### **455.120 MPO Staff**

(A) The MPO may contract for staff or hire staff directly as necessary, including legal counsel. The MPO staff consists of a Director and supporting staff required to accomplish the work identified in the Unified Planning Work Program (UPWP) within the MPO's financial resources. The Director of the MPO shall report directly to and take direction from the Policy Board. Supporting staff personnel shall report directly to and take direction from the Director.

(B) The MPO and the Corvallis Area MPO (CAMPO) may share staffing. This arrangement optimizes collaboration in a shared travel shed, efficiency, MPO expertise, and service to the local governments' shared transportation system.

(C) MPO Parties may donate personnel to serve as staff to the MPO, subject to the provisions of LCC 455.130.

[Adopted 2013-015 § 1 eff 1/16/2013]

#### **455.130 No Joint and Several Liability**

(A) Pursuant to ORS 190.080(3), the Parties specifically do not agree to be jointly and severally liable with each other or with the MPO for any tort (as defined by ORS 30.260(8)). Each Party agrees that it assumes sole liability and will indemnify, defend, and hold all other Parties, and the MPO harmless from any claim or action of any nature whatsoever brought as the result of actions of any elected or appointed official, employee or agent of that Party, regardless of whether that official, employee or agent is acting on behalf of the MPO. Each Party agrees that it will maintain general liability insurance in an amount sufficient to fully indemnify, defend, and hold every other Party harmless from any claim made as a result of the actions of that Party's, officials, employees, or agents. In the event the MPO is unable to meet fully its liabilities, the MPO shall be liable first, and then the amount of deficiency shall be calculated. Each Party agrees that it will contribute to any such deficiency in an amount proportionate to the population within the MPO area the Party represents.

(B) To the extent that the MPO has officers, agents, employees or contractors who are not officials, employees or agents of the Parties, the MPO must indemnify, defend, and hold harmless the Parties from any tort claim made as a result of the actions of those officers, agents, employees or contractors. In the event the MPO is unable to meet fully its liabilities, the MPO shall be liable first, and then the amount of deficiency shall be calculated. Each party agrees that it will contribute to any such deficiency in an amount proportionate to the population within the MPO area the Party represents.

(C) Nothing in this agreement shall be construed to increase tort liability that any Party or the MPO would otherwise have under Oregon Law. Specifically, all Parties agree that the responsibility of any one Party to defend, indemnify, or hold harmless any other Party or Parties is subject to the limitations of the Oregon Tort Claims Act, ORS 30.260 – ORS 30.300.

(D) To the extent that the MPO has officers, agents, employees or contractors who are not officials, employees or agents of the Parties, the MPO must maintain general liability insurance in an amount sufficient to fully indemnify, defend and hold the Parties harmless from any claim made as a result of the actions of those officers, agents, employees or contractors.

(E) Pursuant to ORS 190.080(3), the Parties specifically do not agree to be jointly and severally liable with each other or with the MPO for any contractual or quasi-contractual obligation. The Parties agree that the MPO shall be solely responsible for any obligations arising from any agreement or contract whatsoever.

(F) Except as provided in subsection (G) below, the Parties agree that in all documents executed by the MPO, memorializing any agreement or contract whatsoever, the following language must appear: “This agreement is entered into with the specific understanding that the Parties of the MPO have not assumed any obligations of the MPO and are not responsible in any manner whatsoever for any claims deficiencies, damages or defaults on the part of the MPO.”

(G) Nothing in this agreement precludes any Party or Parties to this agreement from assuming responsibilities for specific debts, liabilities or obligations of the MPO. Any such assumption must be in writing and approved by the governing body of the Party or Parties, or the ODOT Director or designee. To the extent that any Party or Parties has assumed the responsibilities of the MPO under a specific agreement, such assumption must be specifically included within the agreement documents.

(H) Each Party agrees to indemnify, defend and hold harmless every other Party and the MPO for any claims arising under a quasi-contractual theory as the result of the actions of an elected or appointed official, employee, agent or contractor of that Party. The MPO will be solely responsible for any claims arising under a quasi-contractual theory as the result of the actions of an official, employee, agent or contractor of the MPO who is not an official, employee or agent of a Party.

[Adopted 2013-015 § 1 eff 1/16/2013]

#### **455.140 Employment Liabilities**

(A) Each Party shall be responsible for any and all claims arising from its respective employer/employee relationships with respect to any donated employee of the Party during any time that the employee of the Party is working on MPO matters. For the purpose of this agreement, elected and appointed public officials are included in the employer/employee relationship. Examples of the employer/employee relationship include selection, termination, discipline, benefits and equal employment opportunity issues.

(B) Each Party shall provide its own Workers Compensation coverage as provided by law with respect to any employee of the Party during any time that the employee of the Party is working on MPO matters.

[Adopted 2013-015 § 1 eff 1/16/2013]

#### **455.150 Effectiveness, Duration, Amendment, Termination and Withdrawal**

(A) This agreement and the formation of the MPO shall be effective upon the approval of this

agreement by the City of Albany, City of Jefferson, City of Millersburg, City of Tangent, Benton County, and Linn County and, upon approval from the Oregon Transportation Commission for ODOT, and upon designation of the MPO by the Governor of Oregon.

(B) This agreement shall be perpetual unless the MPO is officially redesignated or the MPO is terminated consistent with federal regulations.

(C) Amendments to this Agreement that are not prohibited by federal law may be made by action of the Policy Board and ratification by the Parties. A proposed amendment must be provided in writing to all Parties at least sixty (60) days before the Policy Board may make a decision on the issue.

(D) Upon termination of the MPO, all Planning Documents and other MPO current work products and planning documents required by federal law of an MPO shall be copied and distributed with at least one copy of each document given to each Party and ODOT. All records, working files, and source documents shall also be copied and distributed with at least one copy of each document for each Party that requests a copy.

(E) Upon termination or redesignation of the MPO as required by federal law, title to all assets of the MPO, other than Planning Documents and other MPO work products, shall be disposed of in the following manner:

(1) All assets, including all records, documents and work products, shall be distributed to the successor organization created at the time of redesignation provided that the successor organization assumes all outstanding indebtedness or other liabilities incurred.

(2) In the event the MPO is terminated, all funds not needed to fulfill the contractual obligations of the MPO shall be returned to the funding source. If the funding source does not allow return of the funds, the funds shall be distributed to the Parties that are members of the MPO Policy Board at the time of dissolution in proportion to the population within the MPO area the Party represents.

(3) All assets other than funds shall be sold or converted to cash and distributed to the Parties that are members of the MPO Policy Board at the time of termination in proportion to the contribution of the Party in obtaining the asset. If the contributions of the Parties in obtaining an asset cannot be determined, then that asset shall be sold or converted to cash and the cash shall be distributed to the Parties that are members of the MPO Policy Board at the time of termination in proportion to the proportion of the population within the MPO area the Party represents.

(4) The Policy Board shall determine whether any Party that has ceased to participate on the MPO Policy Board prior to MPO termination is entitled to any distribution from the assets of the MPO, regardless of that Party's contribution to obtaining the asset.

(5) Notwithstanding any of the above, if a Party agreed to assume all responsibility for a debt, liability, or obligation of the MPO, which allowed the MPO to obtain a specific asset, then upon dissolution of the MPO, such a specific asset should be distributed to the relevant Party.

(F) Nothing within this agreement should be seen as limiting the ability of the Parties to agree to distribute specific assets in a different manner in return for a Party, assuming specific liabilities, responsibilities or obligations of the MPO.

(G) Any Party not prohibited by federal law may propose to withdraw from this agreement, and in so doing, withdraw from the MPO. The Party will do so by act of its governing body through written notice of intent to withdraw. The written notice shall be provided to the other Parties, including the Governor, not less than 120 days prior to the effective date. Any Party objecting to the withdrawal shall notify all Parties of the objection within 60 days of receiving the notice of intent to withdraw. Upon receipt of a written notice of objection, the withdrawing Party shall suspend its effective date of withdrawal until such time that the basis for the objection can be reviewed by the Parties. The final determination of whether to authorize withdrawal will be made by the Gover-

nor of Oregon. Written findings shall be provided to the Parties to support the determination.

[Adopted 2013-015 § 1 eff 1/16/2013]

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## **Statutory References and Other Authorities:**

### **Legislative History of Chapter 455:**

Adopted 2013-015 eff 1/16/2013

Amendments to 2013-015:

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**Appendix 1 —Albany Area MPO Boundaries**

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