

COUNTY OFFICERS AND EMPLOYEES

CHAPTER 340

EMPLOYEE FAITHFUL PERFORMANCE
CODE

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Statutory References and Other Authorities

Legislative History of Chapter 340:

I. GENERAL PROVISIONS

340.005 Title; short title

This Chapter, Section 2 to Section 10, shall be known and may be cited as the “Linn County Employee Faithful Performance Code” or simply as the “Faithful Performance Code.”

[Adopted 03-053 §2 eff 3/5/03]

340.010 Definitions

As used in this Chapter, unless the context or a specially applicable definition requires otherwise:

(A) “**Board**” mean the Board of County Commissioners of Linn County, Oregon.

(B) “**County**” means Linn County, Oregon.

(C) “**Employee**” includes the persons included in the term ‘employee’ in an insurance policy or policies providing the coverages described in Section .

(D) “**Faithful performance undertaking**” includes the following legal instruments by whatever name made in favor of the county and conditioned upon the faithful performance of the duties of the office of the public official on whose behalf the instrument is issued:

(1) a good and sufficient bond;

(2) an irrevocable letter of credit issued by an insured institution as defined in ORS 706.008;

(3) an official undertaking with such surety as the governing body determines necessary; and

(4) fidelity bond.

(E) “**Linn County Code**,” “**LCC**” or “**Code**” means the collection of codified ordinances of Linn County more particularly described in LCC Chapter 120 (Code Codification Code).

340.050 Background

(A) The Oregon Constitution, Art. VI. §6, establishes in each county the following elected county offices:

- (1) a clerk;
- (2) a treasurer, and
- (3) a sheriff.

(B) The Oregon Constitution, Art. VI. §7, authorizes the electors of each to elect other county officers as may be necessary, and, pursuant to this authority, the electors of Linn County have elected:

- (1) a surveyor; and
- (2) a tax assessor

(C) The Oregon Constitution, Art. VII (original). §17, establishes the elected office of the prosecuting attorney.

(D) The Oregon Constitution, Art. VI. §8, establishes the following as qualifications for such elected officers:

- (1) Every officer shall be an elector of the county.
- (2) The county assessor and the county sheriff shall possess such other qualifications as may be prescribed by law.
- (3) All county officers shall keep their respective offices at such places therein.
- (4) They shall perform such duties as may be prescribed by law.

(E) Pursuant to the Oregon Constitution, Art. XV. §3, before entering office, every person elected or appointed to any office established by the State Constitution shall:

- (1) take an oath or affirmation to support the Constitution of the United States and of the State of Oregon before entering office; and
- (2) take an oath of office before entering office.

(F) The Oregon Constitution, Art. VII (original), §12, authorizes the Legislature to establish a board of commissioners to be elected by the citizens of a county to assist the County Judge in the transaction of county business; and, statutes, specifically ORS 203.230 and 203.240, have

accordingly been enacted by the Legislature providing that the electors may not only elect such county commissioners, but replace the County Judge with a third elected commissioner.

(G) The statutes of the State of Oregon (ORS 204.020) require that every elected sheriff, clerk, assessor, treasurer, surveyor, and commissioner:

(1) before entering office, shall qualify by filing with the county clerk an oath of office indorsed thereon and subscribed by the elected person, to the effect that the person will support the Constitution of the United States and of the State of Oregon, and will faithfully carry out the office being assumed;

(2) before assuming office, shall file, if required by ordinance of the governing body, an official undertaking with such surety as the governing body determines necessary or of an irrevocable letter of credit issued by an insured institution, in either case in a reasonable amount, with the county governing body.

(H) Regarding appointments made by the Board to the Linn County Fair Board, ORS 565.210 provides:

(1) that the county governing body shall require each member of the fair board to furnish a good and sufficient bond or an irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 in favor of the county, conditioned upon the faithful performance of the duties of the office;

(2) that the bond or letter of credit for each member be in a sum equal to \$10,000 or 20 percent of the total revenues received by the fair in the last fiscal year ending prior to the appointment of such member, whichever is the lesser amount;

(3) that the bond or letter of credit be filed with the county clerk; and

(4) that the premium on the bond or the fee for the letter of credit be paid for by the county fair board as an expense of the fair board.

(I) The county has as a matter of sound fiscal policy obtained for all of its employees certain coverages such as:

- (1) forgery or alteration;
- (2) theft, disappearance and destruction, both inside premises and outside premises; and
- (3) computer fraud.

(J) The county may be able to expand its employee coverage to include a faithful performance of duty coverage that is the equivalent of a commercially obtainable faithful performance undertaking.

[Adopted 03-053 §4 eff 3/5/03]

340.075 Legislative policy; liberal construction of this policy

(A) It is the legislative policy of Linn County that it endeavor to provide, subject to availability of funding, certain insurance coverages to protect the assets of the county. Such coverages include: employee dishonesty, faithful performance of duty, forgery or alteration, theft, disappearance, and destruction, and computer fraud.

(B) It is the legislative policy of Linn County that certain public officials be required to have obtained a faithful performance undertaking as a condition for entering upon their office.

(C) This Chapter shall be liberally construed to carry out these policies.

[Adopted 03-053 §5 eff 3/5/03]

II. EMPLOYEE FAITHFUL PERFORMANCE COVERAGES

340.200 County-provided insurance coverage for all employees

(A) If the coverages described in this section are commercially available at reasonable rates, the county may, in its sole discretion, elect to obtain and maintain any combination of the following insurance coverages for its employees:

- (1) employee dishonesty, \$500,000;
- (2) faithful performance of duty, \$500,000;
- (3) forgery or alteration, \$500,000;
- (4) theft, disappearance and destruction:
 - (a) inside premises, \$500,000;
 - (b) outside premises, \$500,000;

and

- (5) computer fraud, \$500,000.

(B) The coverage amounts described in this section may be changed by resolution of the Board from time to time, but in no event shall the amount for faithful performance of duty coverage be less than any amount required by statute.

(C) The maintenance and continued provision of the coverages is subject to funding allocated and available for this purpose and the availability of commercially reasonable rates.

[Adopted 03-053 §6 eff 3/5/03]

340.230 County-provided insurance coverage in lieu of a faithful performance undertaking

(A) The election by the county to provide the faithful performance of duty coverage described in LCC 340.200 (A) (2), subject to the conditions of this section, shall satisfy the requirements of LCC 340.300 and LCC 340.350 by acting in lieu of the faithful performance undertaking required by those sections.

(B) The election to obtain on behalf of the persons described in LCC 340.300 (A) and LCC 340.350 (A) the faithful performance of duty coverage described in LCC 340.200 (A) (2) does not relieve such persons from their personal responsibility of providing such individual faithful performance undertakings except as expressly provided in this Code.

(C) Notice of a decision of the County not to provide or to discontinue providing the faithful performance of duty coverage described in LCC 340.200 (A) (2) shall be made in the following manner:

- (1) for any person already entered into an office described in LCC 340.300 (A) and LCC 340.350 (A), the notice shall be provided to such person within 15 working days after a resolution electing not to provide the coverage is executed and signed by the Board; however, the County will make reasonable effort, subject to available funding to continue to maintain the faithful performance of duty coverage described in LCC 340.200 (A) (2) for such person or persons until the expiration of the term of any person affected

by the notice. After such notice has been provided each person subject to the notice shall be subject to the requirements of this Chapter;

(2) for any person filing for an office, the notice will be included in the candidate's packet of filing information made available by the Clerk to persons requesting filing information or will be directed by the Clerk to obtain such notice from the office of the Board.

(D) The failure of any person to obtain the notice described in subsection (C) of this section does not relieve that person from the responsibility of complying with the requirement to first obtain the faithful performance undertaking required by this Chapter before entering upon or assuming an office. No person failing to obtain such notice has a claim or cause of action against the County or any of its public officials for any arising out of such failure to obtain the notice or for failure to obtain any required faithful performance undertaking .

(E) If an insurer providing faithful performance of duty coverage cancels such coverage for a particular public official or class of public officials, notice thereof shall be given to that official or class of officials that such coverage is no longer available, and that official or class of officials shall thereupon be required to obtain individual faithful performance undertakings in compliance with this Chapter.

[Adopted 03-053 §7 eff 3/5/03]

III. FAITHFUL PERFORMANCE COVERAGES FOR CERTAIN OFFICIALS

340.300 Undertaking for certain elected officials required to be filed with county clerk

(A) Persons elected to the following offices shall comply with this section:

- (1) treasurer; and
- (2) tax assessor.

(B) No person who has been elected to an office named in subsection (A) of this section may enter into or assume the office for which the

person is elected unless that person has first filed with the county clerk a faithful performance undertaking.

(C) The amount of the undertaking required by this section shall be an amount that is reasonable and may be determined from time to time and shall be established by resolution of the Board.

(D) No person elected to an office described in this section is required to comply with this section so long as the county elects to obtain and is able to obtain and maintain the insurance coverage described in LCC 340.200 (A) (2), subject to available funding and reasonable commercial rates.

[Adopted 03-053 §8 eff 3/5/03]

340.350 Undertaking for certain appointed officials required to be filed with county clerk

(A) Persons appointed to the following offices shall comply with this section:

- (1) budget officer;
- (2) tax collector; and
- (3) members of the Linn County Fair Board.

(B) No person who has been appointed to a position described in subsection (A) of this section may enter into or assume the office for which the person is appointed unless that person has first filed with the county clerk a faithful performance undertaking.

(C) The amount of the faithful performance undertaking required by this section for members of the fair board shall be an amount that is determined pursuant to ORS 656.210 (3) and shall be authorized by resolution of the Board.

(D) No person appointed to an office described in this section is required to comply with this section so long as the county elects to obtain and is able to obtain and maintain the insurance coverage described in LCC 340.200 (A) (2), subject to available funding and reasonable commercial rates.

[Adopted 03-053 §9 eff 3/5/03]

IV. CONSEQUENCES FOR LOSS OF COVERAGE

340.900 Consequences of the loss of a faithful performance undertaking while in office

If a person described in LCC 340.300 (A) and LCC 340.350 (A) is required under this Chapter to obtain a faithful performance undertaking while such official is serving a term office, because the county during that term elects not to provide the insurance coverage described in LCC 340.200 (A) (2) or because sufficient funds are no longer allocated and available or because an insurer cancels such coverage for that particular official or class of officials, and the official is unable to obtain such undertaking, the official is no longer qualified to remain in such office and the office shall be declared vacant.

[Adopted 03-053 §10 eff 3/5/03]

Statutory References and Other Authorities:

Oregon Constitution Article VI, section 6 and 8, Article XV, section 3; ORS 204.005, 204.020 (2) and (3); ORS ch 203

Legislative History of Chapter 340:

Adopted 03-053 §1 eff 3/5/03

Amendments to 03-053:

#1 none

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