

(Underlined sections are new or replacements; [bracketed] sections are deleted.)

BEFORE THE BOARD OF COMMISSIONERS

FOR THE COUNTY OF MULTNOMAH

ORDINANCE NO. 573

An Ordinance amending MCC Chapter 6.31 by making the EMS Policy Board advisory to the Board of County Commissioners, and ratifying rules adopted by the EMS Policy Board and declaring an emergency.

Multnomah County ordains as follows:

Section 1. Findings.

1. Ordinance No. 229 (MCC Chapter 6.31) created the EMS Policy Board (EMSPB) and authorized it to adopt an ambulance plan and administrative rules and to hear appeals in matters concerning licensees.

2. In December 1986, the EMSPB directed its staff to prepare a plan establishing a single ambulance service area in Multnomah County to be served by a single provider. However, in December 1987, the Circuit Court ruled that the delegation of authority to the EMSPB to adopt a single ambulance service plan violated the Home Rule Charter.

3. The Circuit Court ruling is on appeal. However, in response to the portion of the ruling concerning the Home Rule Charter, the Board deems it advisable to revise the code to make the EMSPB advisory to the Board and to ratify the rules previously adopted by the EMSPB. This ordinance carries out these objectives.

Section 2. Amendment.

MCC 6.31.035 is amended to read:

6.31.035 POLICY BOARD CREATED.

(A) There is hereby created an EMS Policy Board which shall consist of one representative from the county, one representative from the City of Portland, and one representative from among the other incorporated cities of the county which agree to enforcement of this chapter under MCC 6.31.200; provided however, that until such representative is

duly chosen, a person appointed by the policy board shall serve as the third member of the policy board.

(B) The representative from the County shall be a County Commissioner selected pursuant to the Home Rule Charter [the County Executive]. The representative from the City of Portland shall be the Commissioner in charge of emergency medical services. The representative from the other incorporated cities shall be appointed to two year terms by vote of the mayors of the participating cities. The initial representative shall be determined by vote taken prior to October 1, 1980. The initial term shall run from October 1, 1980 to January 1, 1983. In the event that only one city has agreed to participate by October 1, 1980, the mayor of that city shall serve a two year term as the initial third member of the policy board.

(C) Upon the expiration of a term of a member of the policy board that member shall continue to serve until a new member is chosen.

(D) The members of the policy board shall serve without compensation.

Section 3. Amendment.

MCC 6.31.037 is amended to read:

6.31.037 POWERS AND DUTIES. The EMS Policy Board shall have the following powers and duties:

(A) [Oversee] Advise the Board of County Commissioners concerning the operation of the licensing and regulatory system adopted under this chapter;

(B) Recommend to the City/County Health Officer, the hiring and firing of a Director and such other persons as are necessary to carry out this chapter;

(C) Report annually to the Board of County Commissioners and City Council concerning the operation of this chapter and recommend changes as considered necessary;

(D) [Take] Recommend action by the Board of Commissioners on rules proposed under this chapter;

[(E) Hear and determine appeals of denial or revocation of licenses by the Director;]

(E) [(F)] [Adopt] Recommend action by the Board of County Commissioners on an ambulance plan under ORS [485.573] 823.180(1) relating to the need for, and coordination of, ambulance service. [The Board shall establish ambulance service areas consistent with the plan for the efficient and effective provision of ambulance service and the Board shall adopt rules requiring persons to conform to the ambulance plan and ambulance service areas. The plan and service areas shall be adopted under the rulemaking provisions of this chapter; and] The plan shall comply with the rules and regulations of the State Health Division and state law.

[(G) Exercise such other powers and perform such other duties as may be necessary to achieve the purposes of this chapter stated in MCC 6.31.015.]

Section 4. Amendment.

The following section shall be added to MCC Chapter 6.31:

6.31.038 Plan Adoption by Board of County Commissioners

A. The Board of County Commissioners shall adopt and may amend an ambulance plan as defined by ORS 823.180 and rules of the State Health Division. The Board shall request a recommendation from the EMS Policy Board prior to adopting or amending such a plan or portion thereof. In the event no recommendation is submitted to the Board of County Commissioners within 45 days after a request, the Board may take final action. Plan adoption, amendment or repeal shall be by ordinance.

Section 5. Amendment.

The following section shall be added to MCC Chapter 6.31:

6.31.039 Ratification of Rules Previously
Adopted by Policy Board

The rules adopted by the EMS Policy Board prior to March 31, 1988 are hereby ratified. EMS Rule 631-080 (single ambulance area) is subject to Circuit Court judgments declaring the rule invalid. The judgments are on appeal. The rule is hereby ratified, but it shall take effect only if the judgments are reversed and any applicable period for further appeal of those judgments has expired.

Section 6. Repeal.

MCC 6.31.053 and 6.31.054 are repealed.

Section 7. Amendment.

MCC 6.31.060 is amended to read as follows:

6.31.060 RECOMMENDATION [ADOPTION] OF RULES.

(A) The director may recommend to the policy board and the policy board may recommend to the Board of County Commissioners the adoption, amendment, or repeal of administrative rules deemed necessary to constitute an ambulance plan and to achieve the purposes of this chapter. [Such rules shall be adopted by the policy board in accordance with MCC 6.31.062 to 6.31.069 and shall establish.] The rules shall include, but not be limited to:

(1) Minimum ambulance and equipment standards;

(2) Minimum levels of training, including continuing education and training for EMTs employed by licensees, consistent with the various functions performed by such EMTs,

(3) Procedures and pre-hospital treatment protocols for the various types of emergencies to which licensees respond;

(4) Procedures for monitoring performance of EMTs and response times of licensees; including procedures for submission by licensees of regular reports concerning prehospital care of patients;

(5) Procedures for submission and review of citizen complaints concerning pre-hospital patient care provided by licensees;

(6) Standards for designation of one or more medical resource hospitals and designation of such hospital(s) in accordance with the standards;

(7) Rates of reimbursement for members of the EMS Medical Advisory Board; and

(8) Penalties for violation of administrative rules and procedures for appeals from the imposition of penalties.

[(B) In promulgating these rules, the director shall consult with the Emergency Medical Services Advisory Council, each of the providers of emergency medical services in Multnomah County, the City/County Health Officer and other appropriate persons and agencies.]

(B) [(C)] No rule relating to protocols for pre-hospital patient care or to equipment or drugs required to be carried on vehicles operated by licensees shall be adopted unless the rule is first approved in writing by the Medical Advisory Board.

Section 8. Amendment.

MCC 6.31.062 is amended to read as follows:

6.31.062 PREREQUISITES TO [ADOPTION] RECOMMENDATION OF RULES; EMERGENCY ADOPTION OF TEMPORARY RULE; [APPLICATION; SUBSTANTIAL COMPLIANCE REQUIRED].

(A) Prior to making a recommendation on [the adoption, amendment or repeal of] any rule, [by] the policy board, shall give

notice [of the proposed adoption, amendment or repeal shall be given]:

(1) In the manner established by rule which provides a reasonable opportunity for interested persons to be notified of the proposed action;

(2) By publication in a newspaper of general circulation in Multnomah County at least 10 [15] days prior to the date of intended action;

(3) By mail to persons who have requested notice pursuant to subsection (E) [(F)] of this section [to the EMS Advisory Council] at least 10 [15] days prior to the date of intended action.

(4) The director shall prepare and publish or mail the above-described notices as appropriate. Failure of any person to receive a mailed notice shall not prevent action by the policy board.

(B) The notice required by subsection (A) of this section shall state the subject matter and purpose of the intended action in sufficient detail to inform a person that his interests may be affected, and the time, place and manner in which interested persons may present their views on the intended action. The notice and the statement required by subsection [(G)] (F) of this section, including the full text of any material cited in the statement, shall be available for public inspection during regular business hours at the main office of the director.

(C) (1) When the director proposes action on a rule [to recommend that the policy board adopt, amend or repeal a rule], he shall give notice of a director's hearing as required by subsection (C)(2) of this section. [and give interested persons reasonable opportunity to submit data or views, which may include the submission of statements describing the financial impact of the rule. The director shall consult

with persons directly affected by the proposed action and each of the ambulance companies and fire departments operating EMS vehicles as well as an organization representing hospitals and shall fully consider every submission.]

(2) [Opportunity for oral hearing shall be granted upon request received from 10 individuals or an organization having not less than 10 employees or an association having not less than 10 members within 15 days after the notice referred to in subsection (A) (2) of this section. The director or a person designated by the policy board shall conduct the hearing in accordance with the Attorney General's Model Rules of Procedure, Rule 137-01-030 (Dec. 1979), and shall thereafter make available to the policy board written minutes or other record of the proceedings, the documentary material received, and a report and recommendation concerning the rule.] Notice of the director's hearing shall be given ten days in advance by publication in a daily newspaper having general circulation in excess of 50,000 in Multnomah County and by mail to persons requesting the [hearing] notice under MCC 6.31.062(E).

(3) Upon receipt of the director's report and recommendation, the policy board shall conduct a public hearing thereon and may recommend that the Board of County Commissioners adopt, amend or repeal the rule. The hearing shall include the opportunity for interested persons to present testimony and data. The recommendation shall be in writing, signed by the Presiding Officer and filed promptly with the Clerk of the Board of County Commissioners. The record of testimony and documents received by the policy board shall also be filed with the clerk.

[(D) Upon the request of an interested person, received within 15 days after the policy board's notice pursuant to subsection (A) of this section, the policy board shall postpone the date of intended action no less than 15 nor more than 90 days in order to allow the requesting person an opportunity to submit data, views or arguments

concerning the proposed action. Nothing in this subsection shall preclude the director from adopting a temporary rule pursuant to subsection (E) of this section.]

[(E)] (D) Notwithstanding subsections (A) through (C) [(D)] of this section, if the director finds that his failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned, and sets forth in writing the specific reason for his findings, he may proceed upon the approval of the City/County Health Officer to adopt, amend or suspend a rule without notice or hearing or upon any abbreviated notice and hearing deemed practicable. Such rule is temporary and shall be effective upon filing with the Clerk of the Board pursuant to MCC 6.31.065 for a period of not longer than 15 [180] days. The director shall also notify the policy board of the adoption of a temporary rule.

The subsequent adoption by the Board of County Commissioners [policy board] of an identical rule under subsections (A) through (C) [(D)] of this section is not precluded; provided, however, that if the Board of County Commissioners finds that public safety warrants prompt action, the rule may be adopted without prior recommendation by the policy board. Within 10 days following the date of adoption of a temporary rule, the director shall prepare the complete statement required by subsection (F) [(G)] of this section. The statement shall be available for public inspection during regular business hours at the main office of the director. A rule temporarily suspended shall gain effectiveness upon expiration of the temporary period of suspension unless the rule is repealed pursuant to subsections (A) through (C) [(D)] of this section.

[(F)] (E) Any person may request in writing that the director mail him copies of notices of intended action [given pursuant to subsection (A) of this section]. Upon receipt of any request the director shall acknowledge the request, establish a mailing

list and maintain a record of all mailings made pursuant to the request. The director may establish procedures for establishing and maintaining the mailing lists current and[, by rule,] establish fees necessary to defray the costs of mailing and maintenance of the lists.

[(G)] (F) The policy board shall cause to be prepared a brief written statement of intended action, including:

(1) The legal authority relied upon and bearing upon the promulgation of the rule;

(2) A statement of the need for the rule and a statement of how the rule is intended to meet the need; and

(3) The citation of applicable portions of the principal documents, reports or studies, if any, prepared by or relied upon in considering the need for and in preparing the rule and a statement of the location at which those documents are available for public inspection. The list may be abbreviated if necessary, and if so abbreviated there shall be identified the location of a complete list.

[(H)] (G) This section does not apply to rules establishing an effective date for a previously effective rule or establishing a period during which a provision of a previously effective rule will apply.

(H) After a recommendation concerning a rule is filed with the clerk, the Board of County Commissioners shall consider the rule. Notice of a public meeting by the Commission to consider a rule shall be mailed by the Clerk of the Board to persons who have requested notice under MCC 6.31.062(E), but the failure of a person to receive notice shall not prevent action on a rule. Action by the Board of Commissioners on a rule shall be by ordinance.

[(I) No rule is valid unless adopted in substantial compliance with the provisions of this section in effect on the date the rule is adopted, provided that the policy board may correct a failure to substantially comply with the requirements of subsections (B) and (E) of this section in adoption of a rule by an amended filing, so long as the noncompliance did not substantially prejudice the interests of persons to be affected by the rule.]

[(J)] (I) Unless otherwise provided by law, the adoption, amendment or repeal of a rule need not be based upon or supported by an evidentiary record.

Section 9. Amendment.

MCC 6.31.180 is amended to read as follows:

6.31.180 APPEALS AND HEARINGS; REVIEW.

(A) A person receiving a notice from the director of a denial, refusal to renew, suspension, revocation or violation as provided in this chapter may request a hearing by an appeals hearing officer by filing a written request with the director within 60 days of receipt of the notice, setting forth reasons for the hearing and the issues to be heard. The director shall [may] prescribe forms for the filing of an appeal.

(B) Filing of a hearing request shall abate any further proceeding by the director, provided, however, that in any case where the director, with the approval of the City/County Health Officer, finds a serious danger to the public health or safety and sets forth specific reasons for such findings, the director may suspend or refuse to renew a license without hearing, but if the licensee demands a hearing within 90 days after the date of notice to the licensee of such suspension or refusal to renew, then a hearing must be granted to the licensee as soon as practicable after such demand, and the Board of County Commissioners [policy board] shall issue an order pursuant to such hearing confirming, altering, or revoking the director's earlier order. Such a hearing need not be held where the order of suspension or refusal to renew is accompanied by or is pursuant to, a citation for

violation which is subject to judicial determination by any court of this state, and the order by its terms will terminate in case of final judgment in favor of the licensee.

(C) The director shall, upon receipt of a timely request for hearing, promptly notify the appeals hearings officer, and said officer shall, within five business days, set a time and place for hearing, which shall be not more than 30 days from the date of receipt of request for hearing.

(D) The hearings officer shall notify the parties of the date, time and place of a hearing. The contents of the notice shall conform to MCC 6.31.140.

(E) The hearing shall be conducted by the hearings officer in accordance with the most recently published Attorney General's Model Rules of Procedure[, Rule 137-03-030 through 137-03-050 (Dec. 1979)].

(F) Disclosure of ex parte communications shall be made by the hearings officer [and policy board] in accordance with the most recently published Attorney General's Model Rules of Procedure[, Rules 137-03-062 through 137-03-064 (Dec. 1979)].

(G) The hearings officer shall issue a proposed final order as soon as is practicable after the termination of the hearing and shall mail a copy of the proposed order to the policy board and the parties. A proposed final order shall conform to the most recently published Attorney General's Model Rules of Procedure[, Rule 137-03-07 (Dec. 1979)].

(H) The Clerk of the Board of County Commissioners [policy board] shall notify the parties of the date when written exceptions to the proposed order must be filed when oral argument may be made [to the policy board].

(I) The Board of County Commissioners [policy board] shall consider the recommendation of the hearings officer, the entire record of the proceeding, oral argument, and the written exceptions filed by the parties and shall thereafter issue a final order in conformance with the most recently published Attorney General's Model Rules of Procedure[, Rule 137-03-07 (Dec. 1979)].

(J) The Board of County Commissioners [policy board] may accept the proposed final order, modify it or reject it and prepare, or cause a person designated by it to prepare a final order. Final orders shall be properly signed by the presiding officer [of the policy board], filed with the Clerk of the Board, and mailed to the parties.

Section 10. Amendment.

MCC 6.31.182 is amended to read as follows:

6.31.182 ORDER WHEN NO HEARING REQUESTED OR ON FAILURE TO APPEAL.

(A) When a party has been given an opportunity and fails to request a hearing within the time limit allowed hereunder or, having requested a hearing fails to appear, the Board of County Commissioners [policy board] shall cause to be entered an order which supports the intended action.

(B) The order supporting the action shall set forth the material on which the action is based or the material shall be attached to and made part of the order.

Section 11. Amendment.

MCC 6.31.184 is amended to read as follows:

6.31.184 RECONSIDERATION; JUDICIAL REVIEW.

(A) The Board of County Commissioners [policy board] may reconsider a final order upon the filing of a petition for reconsideration within 15 days after issuance of the order. If no action is taken [by the policy board] within 15 days after the petition is filed, the petition shall be deemed denied. If the petition is allowed by vote of the Board of County Commissioners [policy board], a hearing on the reconsideration shall be held and an amended order shall be issued. Only those [policy board] members of the Board of County Commissioners who voted in the original hearing on the appeal may vote on whether to allow a petition for reconsideration.

(B) Review of the action concerning an appeal [of the EMS policy board] shall be taken solely and exclusively by writ of review in the manner set forth in ORS 34.010 to 34.100.

Section 12. Adoption.

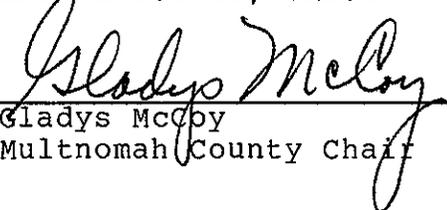
This Ordinance, being necessary for the health, safety, and general welfare of the people of Multnomah County, an emergency is declared and the Ordinance shall take effect upon its execution by the County Chair, pursuant to Section 5.50 of the Charter of Multnomah County.

ADOPTED this 31st day of March, 1988, being the date of its 1st reading before the Board of County Commissioners of Multnomah County.

BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON

(SEAL)

BY

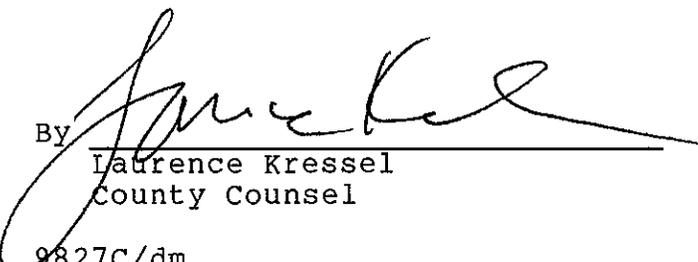


Gladys McCoy
Multnomah County Chair

APPROVED AS TO FORM:

LAURENCE KRESSEL, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON

BY



Laurence Kressel
County Counsel

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